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re.]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

_____ Individually and on)
Behalf of All Others Similarly Situated,)

Plaintiff,)

vs.)

POWERWAVE TECHNOLOGIES)
INC., RONALD J. BUSCHUR and)
KEVIN MICHAELS,)

Defendants.)

VIA FAX

No. SACV12-00222 CJC (JPRx)

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

1 9. Defendant Kevin Michaels (“Michaels”) served as the Company’s Chief
2 Financial Officer during the Class Period.

3 10. Defendants Buschur and Michaels (collectively, the “Individual
4 Defendants”), by virtue of their high-level positions with the Company, had access to
5 adverse, undisclosed information about Powerwave’s business, operations, financial
6 statements, markets and present and future business prospects, via internal corporate
7 documents, conversations and connections with other corporate officers and
8 employees, attendance at management and Board meetings and committees thereof,
9 and reports and other information was provided to them as part of their positions.

10 11. By virtue of their high level positions with the Company, the Individual
11 Defendants possessed the power and authority to control the contents of Powerwave’s
12 quarterly reports and other public filings, press releases and presentations to securities
13 analysts, money and portfolio managers and institutional investors, *i.e.*, the market.
14 Each of the Individual Defendants, by virtue of their high level positions with
15 Powerwave, directly participated in the management of the Company and was directly
16 involved in the day-to-day operations of the Company. The Individual Defendants
17 were involved in drafting, producing, reviewing and/or disseminating the false and
18 misleading statements and information alleged herein, and were aware, or recklessly
19 disregarded, that false and misleading statements regarding Powerwave were being
20 issued, and approved or ratified these statements, in violation of the federal securities
21 laws.

22 12. As officers and controlling persons of a publicly-held company whose
23 common stock was traded on the NASDAQ during the Class Period, and governed by
24 the federal securities laws, each of the Individual Defendants had a duty to
25 disseminate promptly accurate and truthful information regarding the Company’s
26 financial condition and performance, growth, operations, financial statements,
27 business, markets, management, earnings and present and future business prospects,
28 and to correct any previously-issued statements that had become materially misleading

1 or untrue, so that the market price of Powerwave common stock would be based upon
2 truthful and accurate information. The Individual Defendants' misrepresentations and
3 omissions during the Class Period violated these specific requirements and
4 obligations.

5 13. Each of the defendants is liable as a participant in a fraudulent scheme
6 and course of conduct that operated as a fraud or deceit upon purchasers of
7 Powerwave common stock by disseminating materially false and misleading
8 statements and/or concealing material adverse facts. The scheme: (i) deceived the
9 investing public regarding Powerwave's business; (ii) artificially inflated the price of
10 Powerwave common stock; and (iii) caused plaintiff and other members of the class to
11 purchase Powerwave common stock at inflated prices.

12 **MATERIALLY FALSE AND MISLEADING STATEMENTS**
13 **ISSUED DURING THE CLASS PERIOD**

14 14. Defendant Powerwave engages in the design, manufacture, marketing,
15 and sale of wireless solutions for wireless communications networks worldwide. The
16 company offers antennas, boosters, combiners, cabinets, shelters, filters, radio
17 frequency power amplifiers, remote radio head transceivers, repeaters, tower-mounted
18 amplifiers, and advanced coverage solutions for use in frequency bands, including
19 cellular, PCS, 3G, and 4G wireless communications networks.

20 15. The Class Period begins on February 1, 2011. On that date, Powerwave
21 issued a press release announcing its financial results for its fourth quarter, the period
22 ending January 2, 2011. For the quarter, the Company reported net sales of \$175.6
23 million, compared to \$142.6 million for the same period the prior year. Defendant
24 Buschur commented on the results, stating, in pertinent part, as follows:

25 For the fourth quarter of 2010, we were able to show growth of 23%
26 over the same period last year and 12% sequentially over the third
27 quarter of this year[.] More importantly, we were able to continue our
28 improvements in our operating income for this year, with the added

1 benefit of demonstrating strong profitability on both a GAAP and pro
2 forma basis for the fourth quarter and year results. We continue to see
3 signs of improvement in overall demand for wireless infrastructure
4 equipment, driven globally by the continued increase in demand for
5 smartphones and the requirements for faster data transmission rates. We
6 are continuing to work to position Powerwave to capitalize on the long-
7 term growth opportunities we believe are available within the global
8 wireless infrastructure marketplace.

9 16. Following the issuance of the press release, also on February 1, 2011,
10 Powerwave held a conference call with analysts and investors to discuss the
11 Company's earnings and operations. During the conference call, Defendants Michaels
12 and Buschur made positive statements about the Company and its operations.

13 17. On May 5, 2011, Powerwave issued a press release announcing its
14 financial results for its first quarter, the period ending April 3, 2011. For the quarter,
15 the Company reported net sales of \$136.6 million, compared to \$114.5 million for the
16 same period the prior year. Defendant Buschur commented on the results, stating, in
17 pertinent part, as follows:

18 The first quarter revenue was impacted by delays we encountered
19 ramping up one of our new LTE products[.] We believe that we have
20 resolved the production issues that impacted our revenues for the first
21 quarter. Looking ahead for the remainder of this year, we continue to
22 believe that we are on track for meeting our annual revenue guidance.
23 There are signs of improving demand for global wireless infrastructure
24 for the remainder of 2011. We believe that Powerwave is in an excellent
25 position to build upon and capture the long-term growth opportunities
26 that are in the wireless infrastructure marketplace.

27 18. Following the issuance of the press release, on May 5, 2011, Powerwave
28 held a conference call with analysts and investors to discuss the Company's earnings

1 and operations. During the conference call, Defendants Michaels and Buschur made
2 positive statements about the Company and its operations.

3 19. On July 12, 2011, Powerwave issued a press release to provide a “Second
4 Quarter Update.” The Company reported that for its second fiscal quarter, the period
5 ending July 3, 2011, it “anticipates that revenues for its fiscal second quarter ended
6 July 3, 2011 will be in the range of \$168 million to \$172 million. This updates
7 Powerwave’s previously announced expectations of revenues for the second quarter.”
8 Defendant Buschur commented on the announcement, stating, in pertinent part, as
9 follows:

10 For the second quarter, in spite of some slowness in several of our
11 markets, we were able to increase revenues by over 24 percent from the
12 first quarter of this year and achieve the anticipated revenue range[.]
13 Looking ahead for the remainder of this year, we continue to believe that
14 we are on track for meeting the bottom range of our 2011 annual revenue
15 guidance of \$650 million to \$680 million. We continue to believe that
16 Powerwave is in an excellent position to build upon and capture the
17 long-term growth opportunities that are in the wireless infrastructure
18 marketplace.

19 20. Following this announcement, the price of Powerwave common stock
20 declined from \$2.77 per share on July 11, 2011, to \$2.10 per share on July 13, 2011, a
21 decline of 24%. Defendants, however, continued to conceal the scope of the problems
22 facing the Company.

23 21. On July 20, 2011, Powerwave issued a press release announcing that it
24 had entered into a purchase agreement to which it would issue an aggregate of \$100
25 million of 2.75% Convertible Senior Subordinated Notes due 2014.

26 22. On August 4, 2011, Powerwave issued a press release announcing its
27 financial results for its second quarter, the period ending July 3, 2011. For the quarter,
28 the Company reported net sales of \$170.6 million, compared to \$144.6 million for the

1 same period the prior year. Defendant Buschur commented on the results, stating, in
2 pertinent part, as follows:

3 For the second quarter, we were able to grow our revenues by 25%
4 sequentially from the first quarter of this year, and by 18% when
5 compared to the same period last year[.] In addition, we were able to
6 show improvement in our gross margins during the quarter while
7 continuing to control our operating expenses, thereby driving strong
8 profitability on both a GAAP and pro forma basis for the second quarter.
9 While we are concerned about global macro economic issues, we
10 continue to believe that we have positioned Powerwave to be in an
11 excellent position from which to build upon and capture both the short-
12 term and long-term growth opportunities that are in the global wireless
13 infrastructure marketplace.

14 23. Following the issuance of the press release, on August 4, 2011,
15 Powerwave held a conference call with analysts and investors to discuss the
16 Company's earnings and operations. During the conference call, Defendants Michaels
17 and Buschur made positive statements about the Company and its operations.

18 24. The statements referenced above in paragraphs 15-19, 22 and 23 were
19 each materially false and misleading when made as they failed to disclose the
20 following adverse facts, which were known to defendants or recklessly disregarded by
21 them:

22 (a) that the Company was experiencing a dramatic decline in demand
23 from customers in its North American markets;

24 (b) that the Company was rapidly burning through its free cash flow as
25 revenues declined and expenses increased; and

26 (c) as a result of the foregoing, defendants lacked a reasonable basis
27 for their positive statements about the Company, its operations and earnings.

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1 25. On October 18, 2011, Powerwave issued a press release announcing that
2 “it anticipates that revenues for its fiscal third quarter ended October 2, 2011 will be in
3 the range of \$75 million to \$79 million.” Defendant Buschur commented on the
4 announcement, stating, in pertinent part, as follows:

5 Our third quarter revenues were impacted by several factors, which
6 included a significant slowdown in spending by North American
7 network operators, a significant reduction in activity with our original
8 equipment manufacturing customers, coupled with further weakness in
9 several international markets, including Western and Eastern Europe,
10 and the Middle East[.] From a global perspective, we believe that the
11 current economic environment has caused operators to reduce or
12 postpone their spending plans for the near term while they evaluate the
13 macro-economic pressures in each individual market. The Middle East
14 market has been significantly impacted by the political unrest throughout
15 the region. In addition, in the North American market we believe that
16 the uncertainty arising from the government’s recent opposition to the
17 proposed merger of AT&T and T-Mobile, has led to delays in spending
18 as these operators re-evaluate their capital spending plans. All of these
19 factors, combined together, have had a significant impact on our third
20 quarter revenues. While near term visibility remains difficult in our
21 markets, we continue to believe that the long-term demand for
22 improvements in wireless infrastructure remain strong, as global demand
23 for data continues and wireless network operators continue to promote
24 their plans to improve existing coverage and add additional capacity, in
25 the form of 4G capabilities, to wireless networks across the globe. We
26 believe that Powerwave remains positioned to build upon and capture the
27 long-term growth opportunities that are in the wireless infrastructure
28 marketplace.

1 26. Following the issuance of the press release, Powerwave held a conference
2 call to discuss the announcement. During the conference call, Defendants Michaels
3 and Buschur admitted that the Company was performing poorly and burning through a
4 substantial amount of free cash.

5 27. In response to the announcement, on October 19, 2011, the price of
6 Powerwave common stock declined from \$1.46 per share to \$0.85 per share, or 42%,
7 on extremely heavy trading volume.

8 28. On October 28, 2011, Powerwave issued a press release announcing that
9 its Board of Directors had approved a 1-for-5 reverse stock split and a reduction in the
10 number of authorized shares of its common stock.

11 29. On November 1, 2011, Powerwave issued a press release announcing its
12 financial results for its third fiscal quarter, the period ending October 2, 2011. The
13 Company reported a net loss of \$35.1 million, or a basic loss per share of \$1.09.
14 Defendant Buschur commented on the results, stating, in pertinent part, as follows:

15 As we have previously reported, our third quarter revenues were
16 impacted by several factors, which included significant slowdowns in
17 several of our markets, including North America, Western and Eastern
18 Europe and the Middle East, as well as our original equipment
19 manufacturing customers[.] From a global perspective, we believe that
20 the current economic environment has caused operators to reduce or
21 postpone their spending plans for the near term while they evaluate the
22 macro-economic pressures in each individual market. While near term
23 visibility remains difficult in our markets, we continue to believe that the
24 long-term demand for improvements in wireless infrastructure remain
25 strong, as global demand for data continues and wireless network
26 operators continue to promote their plans to improve existing coverage
27 and add additional capacity, in the form of 4G capabilities, to wireless
28 networks across the globe. We are currently finalizing our restructuring

1 plans in order to take the steps we believe necessary to maintain
2 Powerwave's competitive position and continue to position Powerwave
3 for long-term success.

4 **SCIENTER**

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

17 **NO SAFE HARBOR**

18 31. The statutory safe harbor provided for forward-looking statements under
19 certain circumstances does not apply to any of the allegedly false statements pleaded
20 in this Complaint. Many of the specific statements pleaded herein were not "forward-
21 looking statements" when made. To the extent there were any forward-looking
22 statements, they were not identified as such nor was there meaningful cautionary
23 statements identifying important factors that could cause actual results to differ
24 materially from those in the purportedly forward-looking statements given to
25 investors. Alternatively, to the extent that the statutory safe harbor does apply to any
26 forward-looking statements pleaded herein, defendants are liable for those false
27 forward-looking statements because at the time each of those forward-looking
28 statements was made, the particular speaker knew that the particular forward-looking

1 statement was false, or the forward-looking statement was authorized or approved by
2 an executive officer of Powerwave who knew that those statements were false when
3 made.

4 **FRAUD-ON-THE-MARKET PRESUMPTION**

5 32. Plaintiff will rely upon the presumption of reliance established by the
6 fraud-on-the-market doctrine. This presumption provides, *inter alia*:

7 (a) defendants made public misrepresentations or failed to disclose
8 material facts during the Class Period;

9 (b) the omissions and misrepresentations were material;

10 (c) the Company's securities traded in efficient markets;

11 (d) the misrepresentations alleged would tend to induce a reasonable
12 investor to misjudge the value of the Company's securities; and

13 (e) Plaintiff and other members of the Class purchased Powerwave
14 common stock between the time defendants misrepresented or failed to disclose
15 material facts and the time the true facts were disclosed, without knowledge of the
16 misrepresented or omitted facts.

17 33. At all relevant times, the market for Powerwave common stock was
18 efficient for the following reasons, among others:

19 (a) Powerwave common stock met the requirements for listing, and
20 was listed and actively traded during the Class Period, on the NASDAQ;

21 (b) Powerwave common stock was regularly followed by securities
22 analysts employed by major brokerage firms who wrote reports that were distributed
23 to the sales force and customers of their respective brokerage firms; and

24 (c) Powerwave regularly communicated with the public and investors
25 via established market communication mechanisms, including via regular
26 dissemination of press releases on major news wire services and through other wide-
27 ranging public disclosures, such as communications with the financial press, securities
28 analysts, and other similar reporting services.

1 34. As a consequence, the markets for Powerwave common stock digested
2 current information with respect to Powerwave from publicly available sources and
3 reflected such information in the price of Powerwave common stock. Under these
4 circumstances, all purchasers or acquirers of Powerwave common stock during the
5 Class Period suffered similar injury through their purchase of securities at artificially
6 inflated prices and, thus, a presumption of reliance applies.

7 **PROXIMATE LOSS CAUSATION/ECONOMIC LOSS**

8 35. During the Class Period, as detailed herein, defendants engaged in a
9 scheme to deceive investors and the market and a course of conduct that artificially
10 inflated and maintained the price of Powerwave common stock and operated as a
11 fraud or deceit on Class Period purchasers of the Company's publicly traded common
12 stock by issuing false statements during the Class Period. When defendants'
13 misrepresentations and omissions were revealed, the price of Powerwave common
14 stock fell precipitously as the prior artificial inflation was removed. As a result of
15 their purchases of Powerwave common stock during the Class Period, plaintiff and
16 other members of the Class suffered significant economic loss, *i.e.*, damages, under
17 the federal securities laws.

18 36. Defendants' false statements and omissions had the intended effect and
19 caused Powerwave stock to trade at artificially inflated levels. As a direct result of the
20 disclosures on July 12, 2011 and October 18, 2011, the price of Powerwave common
21 stock suffered material, statistically significant declines. These two drops removed
22 the inflation from Powerwave's common stock price, causing real economic loss to
23 investors who had purchased Powerwave common stock during the Class Period.

24 **CLASS ALLEGATIONS**

25 37. Plaintiff brings this action as a class action pursuant to Federal Rule of
26 Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of purchasers and
27 acquirers of Powerwave common stock during the Class Period (the "Class").
28 Excluded from the Class are the defendants, the officers and directors of the

1 Company, members of their immediate families and their legal representatives, heirs,
2 successors or assigns and any entity in which defendants have or had a controlling
3 interest.

4 38. The members of the Class are so numerous that joinder of all members is
5 impracticable. Throughout the Class Period, Powerwave common stock were actively
6 traded on the NASDAQ. While the exact number of Class members is unknown to
7 plaintiff at this time and can only be ascertained through appropriate discovery,
8 plaintiff believes that there are thousands of members in the proposed Class. Record
9 owners and other members of the Class may be identified from records maintained by
10 Powerwave or its transfer agent and may be notified of the pendency of this action by
11 mail, using the form of notice similar to that customarily used in securities class
12 actions.

13 39. Plaintiff's claims are typical of the claims of the members of the Class as
14 all members of the Class were similarly affected by defendants' wrongful conduct in
15 violation of federal law that is complained of herein.

16 40. Plaintiff will fairly and adequately protect the interests of the members of
17 the Class and has retained counsel competent and experienced in class and securities
18 litigation.

19 41. Common questions of law and fact exist as to all members of the Class
20 and predominate over any questions solely affecting individual members of the Class.
21 Among the questions of law and fact common to the Class are:

22 (a) whether the federal securities laws were violated by defendants'
23 acts and omissions as alleged herein;

24 (b) whether statements made by defendants to the investing public
25 during the Class Period misrepresented and omitted material facts about the business
26 and operations of Powerwave; and

27 (c) to what extent the members of the Class have sustained damages
28 and the proper measure of damages.

1 purpose and effect of supporting the artificially inflated prices of Powerwave common
2 stock.

3 47. As a result of the dissemination of the materially false and misleading
4 information and failure to disclose material facts, as set forth above, the market price
5 of Powerwave common stock was artificially inflated during the Class Period. In
6 ignorance of the fact that the market price of Powerwave's publicly traded securities
7 was artificially inflated, and relying directly or indirectly on the false and misleading
8 statements made by defendants, or upon the integrity of the markets in which the
9 securities trade and/or on the absence of material adverse information that was known
10 to or recklessly disregarded by defendants, but not disclosed in public statements by
11 defendants during the Class Period, plaintiff and the other members of the Class
12 acquired Powerwave common stock during the Class Period at artificially inflated
13 prices and were damaged when the artificial inflation came out of the price of the
14 stock.

15 48. At the time of defendants' false and misleading statements, plaintiff and
16 other members of the Class were ignorant of their falsity and believed them to be true.
17 Had plaintiff, the other members of the Class and the marketplace known the truth
18 regarding Powerwave's operational condition, that was not disclosed by defendants,
19 they would not have purchased their Powerwave common stock, or, if they had
20 acquired such common stock during the Class Period, they would not have done so at
21 the artificially inflated prices they paid.

22 49. As a direct and proximate result of defendants' wrongful conduct,
23 plaintiff and the other members of the Class suffered damages in connection with their
24 respective purchases and sales of the Company's common stock during the Class
25 Period.

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COUNT II

**Violation of §20(a) of the 1934 Act
Against All Defendants**

50. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

51. Defendants acted as controlling persons of Powerwave within the meaning of §20(a) of the 1934 Act as alleged herein. By virtue of their high level positions, participation in and awareness of the Company’s operations, and intimate knowledge of the false statements made by Powerwave and disseminated to the investing public, defendants had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements plaintiff contends are false. The defendants participated in conference calls with investors and were provided with or had unlimited access to copies of the Company’s reports, press releases, public filings and other statements, alleged by plaintiff to be misleading, prior to and/or shortly after these statements were issued, and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

52. In particular, each of the defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

53. As set forth above, each of the defendants violated §10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the defendants are liable pursuant to §20(a) of the 1934 Act. As a direct and proximate result of defendants’ wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of Powerwave common stock during the Class Period.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff respectfully prays for relief and judgment, as follows:

3 A. Determining that this action is a proper class action, and certifying
4 plaintiff as class representative under Federal Rule of Civil Procedure 23;

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

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

11 D. Such equitable, injunctive or other and further relief as the Court may
12 deem just and proper.

13 **JURY DEMAND**

14 Plaintiff hereby demands a trial by jury.

15 DATED: February 9, 2012

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