

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. \_\_\_\_\_

\_\_\_\_\_ INDIVIDUALLY AND ON BEHALF OF ALL  
OTHERS SIMILARLY SITUATED,

Plaintiffs,

v.

ZYNEX, INC., f/k/a ZYNEX MEDICAL HOLDINGS, INC.;  
THOMAS SANDGAARD; AND  
FRITZ G. ALLISON,

Defendants.

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**CLASS ACTION COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAWS AND JURY DEMAND**

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Plaintiffs, [REDACTED] individually and on behalf of all other persons similarly situated, by their undersigned attorneys, for her complaint against defendants, alleges the following based upon personal knowledge as to herself and her own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through their attorneys, which included, among other things, a review of defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Zynex, Inc. f/k/a Zynex Medical Holdings, Inc., (collectively "Zynex" or the "Company"), securities analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

#### NATURE OF THE ACTION

1. This is a federal securities class action on behalf of a class consisting of all persons other than defendants who purchased the securities of Zynex for the time period May 21, 2008 through and including March 31, 2009 (the "Class Period"), seeking to recover damages caused by Defendants' violations of federal securities laws and pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Zynex engineers, manufactures, markets, and sells medical devices for eltrotherapy, and stoke and spinal cord injury rehabilitation markets primarily in the United States. In addition to the Company's own products, Zynex distributes a number of products from other domestic and international manufacturers.

3. During the Class Period Zynex; Company founder, President, CEO, Director and Chairman Thomas Sandgaard; and Company CFO Fritz G. Allison engaged in an accounting

fraud, in violation of Generally Accepted Accounting Principles and the Company's own revenue recognition policies that caused the Company to overstate its net accounts receivable and net income for the first three quarters of the fiscal year ended December 31, 2008 that, according to a Company announcement on April 1, 2009 had the cumulative effect of at least \$5.1 million.

4. As a result of this adverse information, the price of Zynex stock fell over 50% on April 1, 2009, damaging Plaintiffs and the Class.

#### **JURISDICTION AND VENUE**

5. The claims asserted herein arise under and pursuant to 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 (17 C.F.R. §240.10b-5).

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

7. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b), as a substantial part of the conduct complained of herein occurred in this District.

8. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

PARTIES

9. Plaintiffs [REDACTED] as set forth in the accompanying certification, incorporated by reference herein, purchased Zynex securities at artificially inflated prices during the Class Period and has been damaged thereby.

10. Defendant Zynex is a Nevada Corporation with its principal executive offices located at 8022 Southpark Circle, Suite 100, Littleton, Colorado. At all relevant times herein, Zynex's common stock was listed on the NASDAQ Bulletin Board. From the beginning of the Class Period to July 8, 2008 the Company's was known as Zynex Medical Holdings, Inc. and its common stock was listed under ticker ZYNX. Thereafter, the Company changed its name to Zynex, Inc. and the ticker for its common stock was changed to ZYXI.

11. Defendant Thomas Sandgaard ("Sandgaard") at all relevant times herein was the Company's founder, President, CEO, Director and Chairman.

12. Defendant Fritz G. Allison ("Allison") at all relevant times herein was the Company's CFO.

13. Sandgaard, and Allison are collectively referred to hereinafter as the "Individual Defendants."

14. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that dissemination of the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein is the result of collective actions of the narrowly defined group of defendants identified above. Each of the above officers and directors of Zynex and its subsidiaries and affiliates, by virtue of his position with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels, and was

privity to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Said Defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements regarding the Company were being issued, and approved or ratified these statements, in violation of the federal securities laws.

**PLAINTIFFS' CLASS ACTION ALLEGATIONS**

15. Plaintiffs bring this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who purchased the securities of Zynex during the Class Period and who were damaged thereby. 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.

16. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Zynex securities were actively traded on the OTC Bulletin Board. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are at least hundreds of members in the proposed Class. Members of the Class may be identified from records maintained by Zynex or its transfer agent and may be notified of the pendency of this action by mail, using a form of notice customarily used in securities class actions.

17. Plaintiffs' claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

18. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

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

(a) whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Zynex; and

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

20. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to redress individually the wrongs done to them. There will be no difficulty in the management of this action as a class action.

#### **SUBSTANTIVE ALLEGATIONS**

21. The Class Period begins on May 22, 2009 when the Company issued a press release with the SEC announcing "record revenues and profit" for Q1 2008. The Company reported revenues of \$3,741,028 for Q1 2008—a 180% increase from the same period in 2007, and reported a 415% increase of net income for the period as compared to Q1 2007.

22. That same day the Company filed its Q1 2008 results on Form 10QSB with the SEC. The Form 10QSB was signed and separately certified by both Sandgaard, and Allison pursuant the Sarbanes-Oxley Act of 2002—attesting to the accuracy and truthfulness of the financial information contained therein.

23. On August 12, 2008 the Company issued a press release announcing that it has filed an application to have its common stock listed on the American Stock Exchange n/k/a NYSE Alternext. In the announcement defendant Sandgaard trumpeted the Company's continuing growth and corporate governance. He stated in relevant part: "An AMEX listing involves quantitative standards which we believe we currently satisfy. We are very proud that we have continued to improve our financial performance. Our stock closes at \$4.63 per share on August 11, 2008 and we are implementing a number of corporate governance matters to comply with AMEX's standards."

24. On August 15, 2008 the Company issued a press release accounting "record revenue and profit" for Q2 2008. The Company reported revenues of \$5,047,635 for Q2 2008—a 235% increase from the same period in 2007, and reported a 427% increase of net income for the period as compared to Q2 2007.

25. The day before the Company filed its Q2 2008 results on Form 10Q with the SEC. The Form 10Q was signed and separately certified by both Sandgaard, and Allison pursuant the Sarbanes-Oxley Act of 2002—attesting to the accuracy and truthfulness of the financial information contained therein.

26. On November 20, 2008 the Company issued a press release accounting its results for Q3 2008. The Company reported revenues of \$3,502,994 for Q3 2008.

27. The day before the Company filed its Q3 2008 results on Form 10Q with the SEC. The Form 10Q was signed and separately certified by both Sandgaard, and Allison pursuant the Sarbanes-Oxley Act of 2002—attesting to the accuracy and truthfulness of the financial information contained therein.

**TRUTH BEGINS TO EMERGE; DAMAGING INVESTORS**

28. On April 1, 2008, the Company issued a press release announcing that the Company's financial results and periodic reports for the first three quarters of 2008 can no longer be relied upon. The announcement states in relevant part:

**Zynex Announces Adjustments to 2008 Quarterly Financial Statements and Estimated 2008 Net Income**

Wednesday April 1, 2009, 8:35 am EDT

LITTLETON, Colo.--(BUSINESS WIRE)--Zynex, Inc. (OTCBB:ZYXI - [News](#)), a provider of pain management systems and electrotherapy products for medical patients with functional disability, announces that the Board of Directors and Audit Committee of Zynex has concluded that Zynex's unaudited financial statements for the quarters ended March 31, 2008, June 30, 2008 and September 30, 2008, included in its quarterly reports, should be revised to reflect adjustments to Zynex's allowance for provider discounts, accounts receivable and net revenue for such periods. These quarterly adjustments were determined after an evaluation of adjustments identified in connection with the 2008 year-end closing and the audit of the 2008 financial statements.

Zynex will restate its unaudited financial statements for the first three quarters of 2008. Zynex will include restated information regarding these quarters in its Annual Report on Form 10-K for the year ended December 31, 2008 or will amend its Quarterly Reports on Form 10-Q for the first three quarters of 2008. Zynex believes that there will not be a restatement of 2007 financial statements. Zynex intends to file its Annual Report on Form 10-K for the year ended December 31, 2008 as soon as practicable.

The adjustments identified in connection with the year-end closing and 2008 year-end audit result in a decrease in net accounts receivable and related net revenues of approximately \$5.1 million as of and for the year ended December 31, 2008. A substantial part of these adjustments applies to the first three quarters of 2008. These adjustments are based on a re-evaluation of the estimated allowance for

provider discounts that management believes should have been utilized in 2008. The change in the provider discount rates is based on management's analysis of business conditions, recent rates of collection and additional methodologies that the Company applied in estimating these rates at year end, which management believes are more accurate than previously applied rates during the quarterly periods in 2008. Zynex's allowance for provider discounts is recorded to account for the risk of non-payment arising from reimbursements from insurance providers that are less than amounts claimed, amounts subject to patients' deductibles and benefit denials.

Zynex's management estimates, that, after taking into account the unaudited impact of the adjustments, the results for the year ended December 31, 2008 will be approximately as follows:

Net Rental and Sales Revenue	\$11,750,000
Income Before Taxes	\$330,000
Net Income	\$215,000

The unaudited amounts presented above are subject to change until the 2008 financial statements are finalized.

Thomas Sandgaard, President and CEO of Zynex commented: "Zynex's business continues as usual, and we are working on improvements to our accounting estimates and our internal operations. Doctors and patients continue to have a readiness to use our products, and our rental and sales of products continue at favorable levels. The adjustments to our financial statements are to better recognize the current environment and collectability of accounts receivables."

Because of the adjustments, the unaudited financial statements and press releases previously issued on results for the first three quarters of 2008 should not be relied upon. Zynex's management is developing new methodologies that it believes will identify changes in collections of accounts receivable and business conditions in order to make more accurate estimates of the allowance for provider discounts on a more timely basis.

29. This announcement shocked the market causing the Company's stock to fall from the March 31, 2009 closing price of \$1.15 per share to \$.50, or about a 56% decline.

30. Had the Plaintiffs and the Class been aware of the adverse information they would not have purchased the Company's securities at all or would not have purchased such securities at the artificially inflated prices at which they did.

**Applicability of Presumption of Reliance:  
Fraud-on-the-Market Doctrine**

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

Zynex's stock met the requirements for listing, and was listed and actively traded on the OTC.BB, a highly efficient and automated market;

(a) During the class period, on average, several hundreds of thousands of shares of Zynex stock were traded on a weekly basis, demonstrating a very active and broad market for Zynex stock and permitting a *strong* presumption of an efficient market;

(b) As a regulated issuer, Zynex filed with the SEC periodic public reports during the Class Period;

(c) Zynex 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;

(d) Zynex was followed by several securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective brokerage firms during the Class Period. Each of these reports was publicly available and entered the public marketplace;

(e) Numerous NASD/FINRA member firms were active market-makers in Zynex stock at all times during the Class Period; and

(f) Unexpected material news about Zynex was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

32. As a result of the foregoing, the market for Zynex's common stock promptly digested current information regarding Zynex from all publicly available sources and reflected such information in Zynex's stock price. Under these circumstances, all purchasers of Zynex's common stock during the Class Period suffered similar injury through their purchase of Zynex's common stock 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 Zynex who knew that those statements were false when made.

**FIRST CLAIM**

**Violation of Section 10(b) Of  
The Exchange Act and Rule 10b-5  
Promulgated Thereunder Against All Defendants**

34. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

35. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (1) deceive the investing public, including Plaintiffs and other Class members, as alleged herein; and (2) cause Plaintiffs and other members of the Class to purchase and sell Zynex's securities at artificially inflated and distorted prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each of them, took the actions set forth herein.

36. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business that operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Zynex's securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

37. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Zynex as specified herein.

38. These Defendants employed devices, schemes and artifices to defraud while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Zynex's value and performance and continued substantial growth, which included the making of, or participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Zynex and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaging in transactions, practices and a course of business that operated as a fraud and deceit upon the purchasers of Zynex's securities during the Class Period.

39. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (1) the Individual Defendants were high-level executives, directors, and/or agents at the Company during the Class Period and members of the Company's management team or had control thereof; (2) each of these Defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's financial condition; (3) each of these defendants enjoyed significant personal contact and familiarity with the other Defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (4) each of these Defendants was aware of the Company's dissemination to the investing public of information that they knew or recklessly disregarded to be materially false and misleading.

40. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such Defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing from the investing public Zynex's operating condition and future business prospects and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and misstatements of the Company's financial condition throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

41. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Zynex's securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Zynex's publicly-traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by Defendants but not disclosed in public statements by Defendants during the Class Period, Plaintiffs and the other members of the Class acquired Zynex securities during the Class Period at artificially high prices and were or will be damaged thereby.

42. At the time of said misrepresentations and omissions, Plaintiffs and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiffs and the other members of the Class and the marketplace known the truth regarding Zynex's

financial results, which were not disclosed by defendants, Plaintiffs and other members of the Class would not have purchased or otherwise acquired their Zynex securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices that they paid.

43. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

44. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

45. This action was filed within two years of discovery of the fraud and within five years of each plaintiffs' purchases of securities giving rise to the cause of action.

## **SECOND CLAIM**

### **Violation of Section 20(a) Of The Exchange Act Against the Individual Defendants**

46. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

47. The Individual Defendants acted as controlling persons of Zynex within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, agency, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual 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 that Plaintiffs contend are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiffs to have been misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or to cause the statements to be corrected.

48. In particular, each of these 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.

49. As set forth above, Zynex and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint.

50. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

51. This action was filed within two years of discovery of the fraud and within five years of each plaintiffs' purchases of securities giving rise to the cause of action.

**WHEREFORE**, Plaintiffs prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action, designating Plaintiffs as Lead Plaintiffs and certifying them as class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs' counsel as Lead Counsel;

(b) Awarding compensatory damages in favor of Plaintiffs 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;

(c) Awarding plaintiffs 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**

Plaintiffs hereby demand a trial by jury.

Dated: April 6, 2009