

1 per share, a 77 percent increase from the initial offering price. The successful stock offering
2 placed significant pressure on Isilon's management, however, to maintain the stock price
3 gains.

4 2. As Isilon's actual sales results came in for the three quarters following the
5 Initial Public Offering, Fuhlendorf knew that the Company would not meet the analysts'
6 revenue forecasts and that Isilon's share price was at risk of a significant decline. Fuhlendorf
7 therefore engaged in a scheme to inflate Isilon's reported revenues in violation of the
8 requirements of the Company's own accounting policies as well as Generally Accepted
9 Accounting Principles ("GAAP").

10 3. Fuhlendorf fraudulently caused Isilon to improperly recognize revenue on five
11 transactions in its first three quarters as a public company and concealed the fraud from
12 Isilon's Audit Committee, outside auditor, and Controller. Fuhlendorf knew that Isilon, on
13 multiple occasions, booked "sales" to resellers who did not have firm commitments from end-
14 users or the ability to pay without the resale. He also participated in a roundtrip transaction
15 where Isilon purchased software from a customer who used the software revenue from Isilon
16 to "purchase" Isilon product. Fuhlendorf also played a part in a transaction where the terms
17 were not fixed until after the quarter ended.

18 4. By engaging in this scheme to report revenue in violation of GAAP and the
19 Company's accounting policies, Fuhlendorf knowingly and/or recklessly caused Isilon to
20 report revenues that were materially inflated by a total of \$4.8 million over the first three
21 quarters following the Initial Public Offering.

22 5. The Commission seeks an order enjoining Fuhlendorf from future violations of
23 the securities laws, requiring him to disgorge his ill-gotten gains with prejudgment interest,
24 pay a civil monetary penalty, and repay certain bonuses and stock profits, and barring him
25 from serving as an officer or director of a public company.

1 **JURISDICTION AND VENUE**

2 6. The Commission brings this action pursuant to Section 20(b) of the Securities
3 Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities
4 Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d)]. This Court has jurisdiction
5 over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and
6 Sections 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(e) and 78aa].

7 7. Fuhlendorf, directly or indirectly, has made use of the means and
8 instrumentalities of interstate commerce, of the mails, or of the facilities of a national
9 securities exchange, in connection with the acts, practices, courses of business, and
10 transactions alleged herein.

11 8. This District is an appropriate venue for this action under Section 22 of the
12 Securities Act [15 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa].
13 Certain of the acts, practices, courses of business, and transactions constituting the violations
14 alleged herein occurred within the Western District of Washington, where the defendant
15 resides. Assignment to the Seattle Division is appropriate because much of the relevant
16 conduct took place in King County.

17 **THE DEFENDANT**

18 9. Stuart W. Fuhlendorf, age 47, resides in Seattle, Washington. At the time of
19 the events alleged herein, Fuhlendorf was the CFO of Isilon. Fuhlendorf’s employment with
20 Isilon terminated in October 2007. Prior to joining Isilon in 2004, Fuhlendorf served as CFO
21 for two companies in the technology and manufacturing sectors. During the Commission’s
22 investigation, Fuhlendorf refused to answer questions, asserting his right against self-
23 incrimination under the Fifth Amendment to the United States Constitution.

24 **RELEVANT ENTITY**

25 10. Isilon Systems, Inc. is a Delaware corporation headquartered in Seattle,
26 Washington. The Company’s common stock is registered with the Commission under
27 Section 12(b) of the Exchange Act [15 U.S.C. § 78l]. Isilon sells systems for storing and

1 managing file-based data to end-users and resellers to store electronic unstructured, file-based
2 data such as video, audio, and digital images.

3 **FACTUAL ALLEGATIONS**

4 11. Isilon went public in December 2006 in the most successful IPO for a
5 technology stock since autumn 2000. On the first day of trading, Isilon's stock price rose
6 from \$13.00 to \$23.10, a 77 percent increase from the initial offering price. The success,
7 however, placed significant pressure on Isilon's management at the time. Analysts covering
8 Isilon projected revenue for the company to grow from \$21.5 million in the fourth quarter
9 2006 to \$29.9 million for the second quarter of 2007 and revenue to remain in "hyper-growth"
10 through 2009.

11 12. At the time of the events alleged herein, Isilon's policy, as described in
12 multiple SEC filings, was to recognize revenue on sales to end-users and resellers when it (1)
13 had entered into a legally binding arrangement with a customer, (2) delivery had occurred, (3)
14 the fee was deemed fixed or determinable and free of contingencies and significant
15 uncertainties, and (4) collection was probable. With sales to resellers, Isilon had an internal
16 written policy that the company did not recognize revenue on sales to resellers without
17 persuasive evidence of a firm arrangement with an end-user customer. Isilon typically
18 accepted purchase orders from resellers and end-users as the legally binding arrangement
19 outlining the terms of the sale.

20 13. In response to pressure from the market to perform, Fuhlendorf fraudulently
21 caused Isilon to improperly recognize revenue on five transactions in its first three quarters as
22 a public company, totaling \$4.8 million. Fuhlendorf knew or was reckless in not knowing
23 that Isilon, on multiple occasions, sold to resellers who did not have firm commitments from
24 end-users or the ability to pay without the resale. He also participated in a roundtrip
25 transaction where Isilon purchased software from a customer who used the software revenue
26 from Isilon to purchase Isilon product. Fuhlendorf also played a part in a sale where the terms
27 were not fixed until after the quarter ended. This fraud was concealed by Fuhlendorf from

1 Isilon's Audit Committee, outside auditor, and Controller.

2 **A. Fourth Quarter 2006: Fuhlendorf Improperly Recognized Revenue on a**
3 **\$1.1 Million Transaction with an Isilon Reseller.**

4 14. For the fourth quarter of 2006, Isilon expected one of its largest resellers
5 ("Reseller 1"), based in West Teterboro, New Jersey, to place a \$1 million order, but as the
6 quarter progressed, Reseller 1 advised Isilon that, because its end-user did not yet need the
7 product, the order would not be forthcoming in 2006.

8 15. After the IPO, in mid-December 2006, Fuhlendorf and Isilon's former CEO
9 called the CEO of Reseller 1 and asked if Reseller 1 would accept shipment of over \$1 million
10 in product before the end of the year as a "favor" to Isilon. Fuhlendorf and Isilon's former
11 CEO made this request for a favor, knowing that Reseller 1 did not have a purchase
12 commitment from an end-user. During this call, Fuhlendorf or Isilon's former CEO told
13 Reseller 1's CEO that Reseller 1 would not have to pay Isilon for product until it received an
14 order and payment from an end-user.

15 16. The CEO of Reseller 1 agreed to order and warehouse \$1.1 million in Isilon
16 product based on the assurance it would not have to pay for the product until it received an
17 order and payment from an end-user. The assurance provided to Reseller 1 by Fuhlendorf or
18 Isilon's former CEO did not appear in the purchase order issued by Reseller 1 on December
19 20, 2006.

20 17. The purchase order from the end-user never materialized, and Reseller 1
21 refused to pay for the product and instead sought to return the product. In 2008, Isilon agreed
22 to accept the return of the product, less \$382,000 in product Reseller 1 was able to sell to
23 other end-users in the third and fourth quarters of 2007.

24 18. Despite the oral side agreement, Isilon improperly recognized \$900,000 in
25 revenue on the transaction in the fourth quarter of 2006. On February 7, 2007, Isilon filed a
26 current report on Form 8-K announcing its results for the fourth quarter and year-ended
27 December 31, 2006. Isilon reported revenue for the fourth quarter of \$20.7 million, \$900,000

1 of which came from the Reseller 1 transaction. This was improper under GAAP because
2 Isilon had no firm commitment from Reseller 1 to pay for the product without a resale and
3 thus the sale was not free of contingencies.

4 19. Isilon reported the same false and misleading financial information in its Form
5 10-K for 2006, filed with the Commission on March 15, 2007. In the filing, Fuhlendorf
6 falsely certified that he had reviewed the Form 10-K and that it did not contain any untrue
7 statements of material fact or omit to state a material fact necessary to make the statements
8 made, in light of the circumstances under which such statements were made, not misleading.
9 Isilon's Form 10-K for 2006 – as well as all subsequently filed quarterly reports – was
10 incorporated by reference into a Form S-8 registration statement filed by Isilon on January 18,
11 2007 offering securities to its employees.

12 20. Fuhlendorf also made false and misleading representations to Isilon's outside
13 auditor about the Reseller 1 transaction. In a representation letter dated March 14, 2007,
14 Fuhlendorf falsely stated that there were no material transactions, agreements, or accounts
15 that had not been properly recorded in the accounting records underlying Isilon's consolidated
16 financial statements and that Fuhlendorf was not aware of any oral or written side agreements
17 with respect to any of the sales recorded.

18 21. Fuhlendorf knew or was reckless in not knowing that Isilon's statements in its
19 Forms 8-K, 10-K, and S-8, the certification, and the representation letter were false and
20 misleading because he directly participated in the Reseller 1 transaction that caused Isilon to
21 overstate its revenue for the quarter.

22 **B. First Quarter 2007: Fuhlendorf Improperly Approved Recognition of**
23 **\$3.1 Million in Revenue on Three Separate Transactions.**

24 22. The pressure that Isilon felt after the very successful IPO only increased during
25 its first full quarter as a public company. There was significant pressure on Isilon to meet
26 analysts' expectations or to at least meet the projections Isilon had provided to the market. By
27 the end of the first quarter the pressure to bring in revenue hit a peak with Fuhlendorf and

1 Isilon's Vice President of Sales arranging an 8:00 a.m. conference call with the entire sales
2 organization on Saturday, March 31, where Fuhlendorf told the sales force to do whatever
3 needed to be done to get sales booked before the quarter-end and in particular, to close deals
4 that had previously been categorized as probable first-quarter sales.

5 23. In the final days of the first quarter, Fuhlendorf directly participated in three
6 transactions that accounted for \$3.1 million in reported revenue for the quarter. Two of the
7 transactions involved sales to resellers where Fuhlendorf knew or was reckless in not knowing
8 that collection was not reasonably assured and the third involved a fraudulent round-trip
9 transaction with an end-user where collection was not assured without Isilon's cash payment
10 to the end-user. As Fuhlendorf knew, recognizing revenue on these transactions was
11 improper under GAAP.

12 **i. The Undisclosed Oral Side Agreement in Sale to Reseller 2**

13 24. In the first quarter of 2007, a small Burbank, California reseller that serves
14 companies in the film industry ("Reseller 2") told Isilon that it might place an order for
15 approximately \$500,000 worth of product before the end of the quarter. However, as the
16 quarter-end approached, Reseller 2 declined to place an order because it had not received a
17 purchase order from its anticipated end-user.

18 25. On the second-to-last day of the quarter, Saturday March 31, the Isilon sales
19 representative on the Reseller 2 account scheduled a three-way conference call among
20 himself, the president of Reseller 2, and Fuhlendorf. During the call, the president of Reseller
21 2 informed Fuhlendorf that Reseller 2 did not have a purchase order from the end-user and
22 that Reseller 2 would not be able to pay for the product until it resold. Fuhlendorf assured
23 Reseller 2 that lack of a purchase order from the end-user would not be a problem and that
24 Isilon would help Reseller 2 resell the product to another end-user if necessary. Reseller 2
25 asked Fuhlendorf to memorialize his assurances in writing and Fuhlendorf declined.

26 26. Reseller 2 decided to go forward with the deal based on Fuhlendorf's oral
27 assurances, assurances that did not appear – at Fuhlendorf's insistence – in the purchase order

1 issued by Reseller 2. Reseller 2 placed an order the night of Saturday, March 31, 2007, for
2 \$517,000 of Isilon product, of which Isilon improperly recognized \$453,000 in revenue for
3 the first quarter. Isilon's recognition of revenue on the sale was in violation of GAAP
4 because, as Fuhlendorf knew, there was no firm commitment from Reseller 2 and
5 collectability was not reasonably assured. Additionally, Fuhlendorf knew that, in violation of
6 GAAP, Isilon had an ongoing involvement in the transaction since Isilon sales people were
7 obliged to help the buyer find an end-user.

8 27. Ultimately, Reseller 2's end-user did not issue a purchase order. The product
9 was resold by Isilon's sales force, working on behalf of Reseller 2, to other end-users in the
10 fourth quarter of 2007 and the first quarter of 2008. Reseller 2 did not pay Isilon for the
11 product until it was sold through to the end-users.

12 **ii. The Undisclosed Oral Side Agreement in Sale to Reseller 3**

13 28. Also during the first quarter of 2007, another small reseller out of North
14 Hollywood, California serving the entertainment industry ("Reseller 3") informed Isilon that
15 it anticipated a \$600,000 order from an end-user soon. As quarter-end approached,
16 Fuhlendorf asked the president of Reseller 3 to take the Isilon product without a final
17 purchase order from the end-user. Reseller 3 advised Fuhlendorf that Reseller 3 could not pay
18 without an end-user and Reseller 3 could not have non-payment hurt its relationship with
19 Isilon. Fuhlendorf responded that non-payment would not result in a credit hold and that
20 Isilon would find another home for the product if necessary. None of Fuhlendorf's oral
21 promises appeared in the purchase order issued by Reseller 3.

22 29. With the assurances from Fuhlendorf, Reseller 3 ordered \$638,000 in Isilon
23 product on March 31, 2007, of which Isilon recognized \$612,000 in revenue in the first
24 quarter. Isilon's recognition of revenue was in violation of GAAP because, as Fuhlendorf
25 knew, there was no firm commitment and collectability on the sale was not reasonably
26 assured. Moreover, Fuhlendorf knew that, in violation of GAAP, Isilon had an ongoing
27 involvement in the transaction since Isilon sales people were continuing to try to sell the

1 product.

2 30. The end-user did not materialize for Reseller 3, which, per the oral side
3 agreement, did not pay Isilon for the product until it was sold to another end-user. About
4 \$200,000 in product was ultimately resold by Reseller 3; the remaining product was returned
5 to Isilon in June 2008.

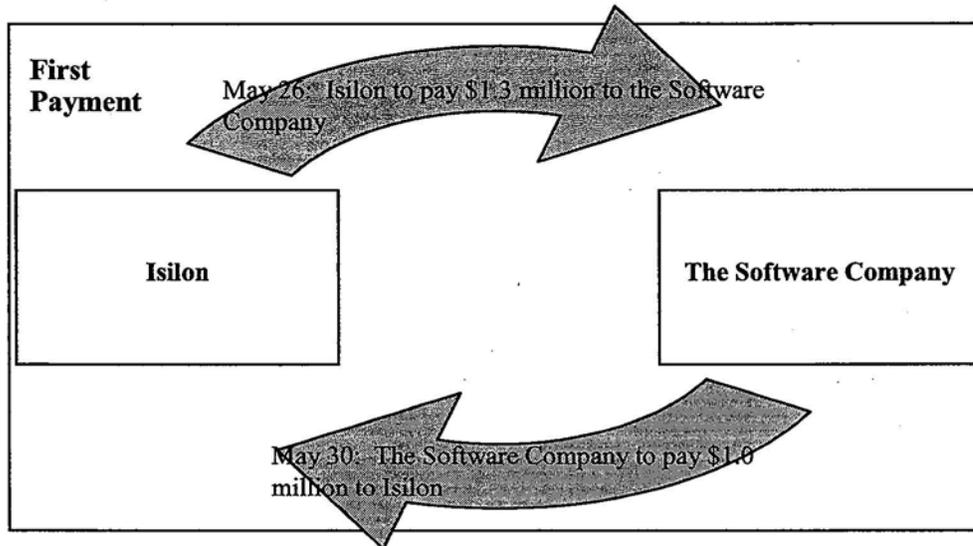
6 **iii. The Bogus Roundtrip Transaction**

7 31. In mid-February 2007, a small start-up software company (“Software
8 Company”) based in Redwood City, California, issued a purchase order to Isilon for \$2.8
9 million in product. The purchase order stated it was contingent on the Software Company
10 receiving authorization from the Italian government for use of its product.

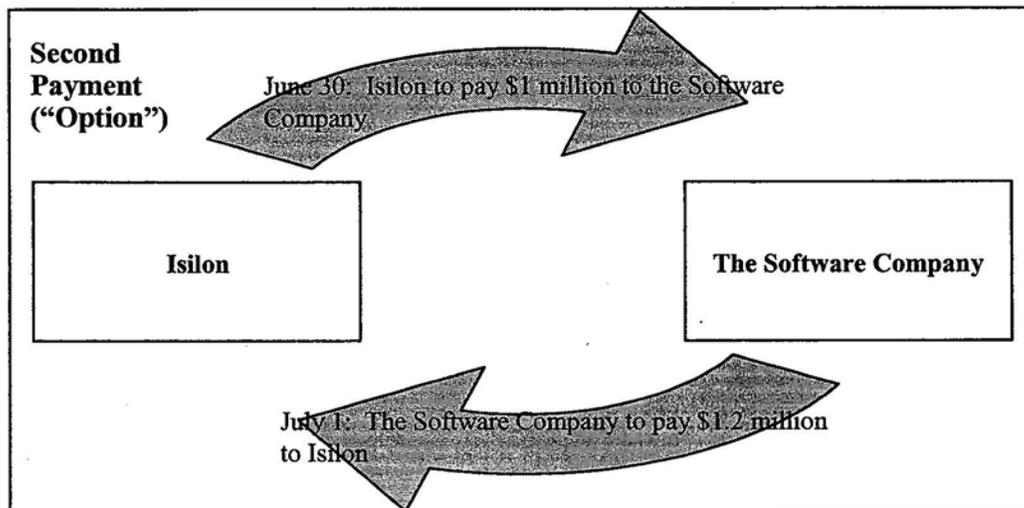
11 32. By late March, Fuhlendorf learned that it was unlikely that the Italian
12 government would authorize use of the product before the end of the quarter, and thus the
13 contingency would not be lifted – preventing revenue recognition under GAAP. In response,
14 Fuhlendorf called the president of the Software Company and negotiated a deal whereby the
15 Software Company would complete its purchase of Isilon hardware before the end of the first
16 quarter and in return Isilon would purchase the Software Company’s software in the second
17 quarter of 2007. Fuhlendorf committed Isilon to buy the Software Company’s software
18 knowing that the product had not been tested with Isilon’s hardware and knowing that neither
19 sales nor marketing plans had been established. Because the president of the Software
20 Company told Fuhlendorf during the call that he did not want this deal to impact the Software
21 Company’s cash flow, Fuhlendorf structured the transaction so that Isilon’s cash payments to
22 the Software Company would flow back to Isilon.

23 33. The deal struck by Fuhlendorf and the Software Company’s president was
24 memorialized in two separate documents dated March 30. The separate documents concealed
25 the true nature of the transaction creating a misleading appearance of two separate and
26 independent deals rather than the interrelated transaction negotiated by Fuhlendorf. In one
27 document, the Software Company agreed to immediately lift the contingency on \$2.2 million

1 of the \$2.8 million ordered in February with \$1 million due to Isilon by May 30, 2007 and the
2 other \$1.2 million due by July 1. In the second agreement, signed by Fuhlendorf, Isilon
3 agreed to purchase \$1.3 million of the Software Company's product on April 26 and pay for it
4 by May 26 (four days before the Software Company would pay \$1 million to Isilon).



14 34. Additionally, according to the agreement signed by Fuhlendorf, Isilon had the
15 option to purchase \$1.0 million of the Software Company's product by June 30 (four days
16 before the Software Company was to pay \$1.2 million to Isilon for the Isilon product).
17 Although the written agreement signed by Fuhlendorf stated that Isilon had the "option" to
18 order \$1.0 million in additional Software Company product on or before June 30, during the
19 phone call negotiating the transaction, Fuhlendorf characterized the additional order to the
20 president of the Software Company not as an option, but as an actual commitment to
21 purchase. During Isilon's Audit Committee review of the transaction, Fuhlendorf falsely
22 described to the Committee a rationale and business purpose for Isilon to purchase the
23 Software Company's product, when, in fact, there was no legitimate business purpose or
24 economic substance to the deal.



10

11 35. Of the \$2.2 million sale of product to the Software Company, Isilon recognized

12 revenue on \$2.0 million in the first quarter of 2007. Isilon's recognition of the revenue on the

13 transaction with the Software Company was in violation of GAAP because, as Fuhlendorf

14 knew, it was a round-trip transaction in which the essence of the transaction was a circular

15 flow of cash and there was no economic substance to the deal. Fuhlendorf also knew that

16 collectability was not assured.

17 36. After the first quarter ended, per the agreements, Isilon paid \$1.2 million to the

18 Software Company and the Software Company paid \$1 million to Isilon. Isilon, however, did

19 not purchase additional Software Company product as it found no business use for the

20 Software Company's software and no way to sell it bundled with Isilon's hardware. In

21 response to Isilon's failure to place the second order, the Software Company refused to make

22 the second scheduled payment of \$1.2 million and instead, made a partial payment of

23 approximately \$200,000 to offset the \$1.2 million Isilon had paid to the Software Company

24 on May 22.

25 37. On April 25, 2007, Isilon filed a Form 8-K announcing its results for the first

26 quarter ended April 1, 2007. Isilon reported revenue of \$21.6 million, of which \$3.1 million

27 came from revenue improperly recognized in transactions with Reseller 2, Reseller 3, and the

1 Software Company. Fuhlendorf knew the recognition of the \$3.1 million was improper
2 because he knew of oral side agreements with Reseller 1 and Reseller 2 and knew
3 collectability was not reasonably assured on any of the three transactions. Fuhlendorf further
4 knew that recognition of the revenue on the roundtrip transaction with the Software Company
5 was improper because there was no economic substance to the transaction.

6 38. Isilon also reported this inflated revenue in its Form 10-Q, filed with the
7 Commission on May 10, 2007. Fuhlendorf signed the Form 10-Q, as well as a certification
8 falsely stating that the Form 10-Q did not contain any untrue statements of material fact or
9 omit to state a material fact necessary to make the statements made, in light of the
10 circumstances under which such statements were made, not misleading.

11 39. Fuhlendorf also signed a representation letter, dated May 9, 2007, to Isilon's
12 outside auditor that falsely stated that the consolidated interim financial statements had been
13 prepared and presented in conformity with GAAP; that there were no material transactions,
14 agreements, or accounts that had not been properly recorded in the accounting records
15 underlying the consolidated financial statements; and that Fuhlendorf was not aware of any
16 oral or written side agreements with respect to any of the sales recorded.

17 40. Fuhlendorf knew or was reckless in not knowing that Isilon's statements in its
18 Forms 8-K and 10-Q, the certification, and representation letter to be false and misleading
19 because he directly participated in the transactions that caused Isilon to overstate its revenue
20 for the quarter.

21 **C. Second Quarter 2007: Fuhlendorf Improperly Approved Recognition of**
22 **\$800,000 in Revenue on a Transaction with an Isilon End-User.**

23 41. In June 2007, a Paris, France based video file-sharing company (the "Video
24 Company") started discussions with Isilon about purchasing product. By late June, the Video
25 Company and Isilon had come close to finalizing a deal for the sale of \$1 million in Isilon
26 product. Before the deal closed, however, the Video Company's CFO advised an Isilon sales
27 representative that the Video Company could not enter into the transaction until it received

1 approval from its board. The CFO also informed the sales representative that the board would
2 not meet to approve the transaction until early July, after the close of Isilon's second quarter.

3 42. Fuhlendorf learned about the contingency in June from the sales manager.
4 Despite the fact that the Video Company's board had not yet approved the deal, Isilon shipped
5 over \$1 million of product to the Video Company on July 1, 2007 (the last day of Isilon's
6 second quarter) and recognized the revenue in Isilon's second quarter.

7 43. As it turned out, the Video Company's board did not approve the deal.
8 Instead, on or around July 3, 2007, before Isilon filed its financial statements for the second
9 quarter of 2007, the Video Company proposed different terms, nearly doubling the amount of
10 product Isilon would provide at no additional charge. Isilon accepted the new terms and on
11 July 5, the Video Company's CFO confirmed the new deal with the additional product by e-
12 mail to Fuhlendorf and others.

13 44. On July 26, 2007, Isilon filed a Form 8-K announcing its results for the second
14 quarter-ended July 1, 2007. Isilon reported revenue of \$25.1 million. This revenue included
15 \$800,000 from the Video Company transaction. Isilon's recognition of revenue for this sale
16 was in violation of GAAP because, as Fuhlendorf was aware, the terms were not fixed and
17 determinable at quarter-end.

18 45. On August 9, 2007, Isilon filed its Form 10-Q for the second quarter reporting
19 the same false and misleading financial information. Fuhlendorf signed the Form 10-Q, as
20 well as a certification falsely stating that the Form 10-Q did not contain any untrue statements
21 of material fact or omit to state a material fact necessary to make the statements made, in light
22 of the circumstances under which such statements were made, not misleading.

23 46. Fuhlendorf also signed a representation letter to Isilon's outside auditor, dated
24 August 8, 2007, that falsely stated that the consolidated interim financial statements had been
25 prepared and presented in conformity with GAAP; that there were no material transactions,
26 agreements or accounts that had not been properly recorded in the accounting records
27 underlying the consolidated financial statements; and that Fuhlendorf was not aware of any

1 oral or written side agreements with respect to any of the sales recorded.

2 47. Fuhlendorf knew or was reckless in not knowing that the Forms 8-K and 10-Q,
3 the certification, and the representation letter were false because he directly participated in the
4 transaction that caused Isilon to overstate its revenue for the quarter.

5 48. In the third quarter of 2007, Fuhlendorf informed Isilon's Controller that Isilon
6 needed to ship product free-of-charge to the Video Company. Instead of telling the Controller
7 that Isilon was shipping the product pursuant to the July 5 email agreement, Fuhlendorf
8 concealed the terms of the agreement and falsely told the Controller that the product would be
9 shipped as a "loan" and would be returned at some point in the future. Fuhlendorf told the
10 Controller that the loan was part of a customer care issue and the loaned equipment would be
11 used by the Video Company while making repairs to the purchased product.

12 **D. Isilon Restated Its Past Financial Statements.**

13 49. On October 23, 2007, Fuhlendorf's employment with Isilon terminated. On
14 November 8, 2007, Isilon publicly announced that its Audit Committee was conducting an
15 independent internal investigation.

16 50. On February 29, 2008, Isilon disclosed that, as a result of the investigation, it
17 would restate its financial statements in its Form 10-K for the fiscal year ended December 31,
18 2006 and in its Forms 10-Q the first and second quarters of fiscal 2007. In the restatement,
19 the company corrected \$7.0 million of the \$67.4 million of revenue reported from the fourth
20 quarter of 2006 through the second quarter of 2007. Of the \$7.0 million restated, \$4.8 million
21 derived from the improper revenue recognition on the sales described above.

Quarter	Isilon GAAP revenue reported	Isilon revenue guidance	Analyst revenue consensus	Impact of improper revenue recognition on revenue and net loss
Q4 2006	\$20.7M	N/A	\$21.5M	\$900,000 or 4.6% overstatement of revenue and 5.1% understatement of net loss
Q1 2007	\$21.6	\$21-23M	\$22.4M	\$3.1M or 16.9% overstatement of revenue and 26.7% understatement of net loss
Q2 2007	\$25.1	\$24.5-27.5M	\$29.9M	\$800,000 or 3.4% overstatement of revenue and 9.6% understatement of net loss

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

51. The Commission realleges and incorporates by reference Paragraphs 1 through 50 above.

52. By engaging in the conduct described above, Fuhlendorf, directly or indirectly, in connection with the purchase or sale of securities, by the use of means or instrumentalities of interstate commerce, or of the mails, with scienter:

- (a) employed devices, schemes, or artifices to defraud;
- (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and
- (c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon other persons, including purchasers and sellers of securities.

53. Fuhlendorf has violated and, unless restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

1 **SECOND CLAIM FOR RELIEF**

2 *Violations of Securities Act Section 17(a)(1)*

3 54. The Commission realleges and incorporates by reference Paragraphs 1
4 through 50 above.

5 55. By engaging in the conduct described above, Fuhlendorf, directly or
6 indirectly, in the offer or sale of securities, by use of the means or instruments of
7 transportation or communication in interstate commerce or by use of the mails, with
8 scienter, employed devices, schemes, or artifices to defraud.

9 56. By reason of the foregoing, Fuhlendorf violated and, unless restrained and
10 enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C. §
11 77q(a)(1)].

12 **THIRD CLAIM FOR RELIEF**

13 *Violations of Securities Act Section 17(a)(2) and (3)*

14 57. The Commission realleges and incorporates by reference Paragraphs 1
15 through 50.

16 58. By engaging in the conduct described above, Fuhlendorf, directly or
17 indirectly, in the offer or sale of securities, by use of the means or instruments of
18 transportation or communication in interstate commerce or by use of the mails, obtained
19 money or property by means of untrue statements of material fact or by omitting to state a
20 material fact necessary in order to make the statements made, in light of the circumstances
21 under which they were made, not misleading, and engaged in transactions, practices, or
22 courses of business which operated or would operate as a fraud or deceit upon purchasers.

23 59. By reason of the foregoing, Fuhlendorf has violated and, unless restrained
24 and enjoined, will continue to violate Section 17(a)(2) and (3) of the Securities Act [15
25 U.S.C. § 77q(a)(2) and (3)].
26
27

1 **FOURTH CLAIM FOR RELIEF**

2 *Aiding and Abetting Violations of Section 13(a) of the Exchange Act and*
3 *Rules 12b-20, 13a-1, 13a-11, and 13a-13 Thereunder*

4 60. The Commission realleges and incorporates by reference Paragraphs 1 through
5 50 above.

6 61. Isilon filed with the Commission current, quarterly, and annual reports on
7 Forms 8-K, 10-Q, and 10-K that contained untrue statements of material fact and omitted to
8 state material information required to be stated therein or necessary in order to make the
9 required statements, in the light of the circumstances under which they were made, not
10 misleading, in violation of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-
11 11, and 13a-13 thereunder.

12 62. Through the conduct alleged above, Fuhlendorf knowingly provided
13 substantial assistance to Isilon in its violations of Section 13(a) of the Exchange Act and
14 Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and therefore is liable as an aider and
15 abettor pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

16 63. Fuhlendorf has aided and abetted and, unless restrained and enjoined, will
17 continue to aid and abet violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)]
18 and Rules 12b-20, 13a-1, 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-
19 11, and 240.13a-13] thereunder.

20 **FIFTH CLAIM FOR RELIEF**

21 *Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act*

22 64. The Commission realleges and incorporates by reference Paragraphs 1 through
23 50 above.

24 65. Isilon failed to make and keep books, records, or accounts which, in reasonable
25 detail, accurately and fairly reflected its transactions and dispositions of its assets, in violation
26 of Section 13(b)(2)(A) of the Exchange Act.

27 66. Through the conduct alleged above, Fuhlendorf knowingly provided

1 substantial assistance to Isilon in its violations of Section 13(b)(2)(A) of the Exchange Act,
2 and therefore is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act
3 [15 U.S.C. § 78t(e)].

4 67. Fuhlendorf has aided and abetted and, unless restrained and enjoined, will
5 continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. §
6 78m(b)(2)(A)].

7 **SIXTH CLAIM FOR RELIEF**

8 *Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act*

9 68. The Commission realleges and incorporates by reference Paragraphs 1 through
10 50 above.

11 69. Isilon violated Section 13(b)(2)(B) of the Exchange Act, which obligates
12 issuers of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I]
13 to devise and maintain a sufficient system of internal accounting controls.

14 70. Through the conduct alleged above, Fuhlendorf knowingly provided
15 substantial assistance to Isilon in its violations of Section 13(b)(2)(B) of the Exchange Act,
16 and therefore is liable as an aider and abettor pursuant to Section 20(e) of the Exchange Act
17 [15 U.S.C. § 78t(e)].

18 71. Fuhlendorf has aided and abetted and, unless restrained and enjoined, will
19 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. §
20 78m(b)(2)(B)].

21 **SEVENTH CLAIM FOR RELIEF**

22 *Violations of Section 13(b)(5) of the Exchange Act*

23 72. The Commission realleges and incorporates by reference Paragraphs 1 through
24 50 above.

25 73. Through the conduct alleged above, Fuhlendorf knowingly circumvented
26 Isilon's system of internal accounting controls, and knowingly falsified Isilon's books,
27 records, and accounts.

1 74. Fuhlendorf has violated, and unless restrained and enjoined, will continue to
2 violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

3 **EIGHTH CLAIM FOR RELIEF**

4 *Violations of Rule 13b2-1 Under the Exchange Act*

5 75. The Commission realleges and incorporates by reference Paragraphs 1 through
6 50 above.

7 76. Through the conduct alleged above, Fuhlendorf directly and indirectly falsified
8 and caused to be falsified Isilon's books, records, and accounts.

9 77. Fuhlendorf has violated, and unless restrained and enjoined, will continue to
10 violate Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

11 **NINTH CLAIM FOR RELIEF**

12 *Violations of Rule 13a-14 Under the Exchange Act*

13 78. The Commission realleges and incorporates by reference Paragraphs 1 through
14 50 above.

15 79. Fuhlendorf signed, as Isilon's principal accounting officer, false certifications
16 pursuant to Rule 13a-14 of the Exchange Act that were included in Isilon's fiscal 2006 annual
17 report filed on Form 10-K, as well as its quarterly reports filed in fiscal 2007.

18 80. In the certifications included with the annual reports, Fuhlendorf falsely stated,
19 among other things, that: (a) each report did not contain any untrue statement of material fact
20 or omit to state a material fact necessary to make the statements made, in light of the
21 circumstances under which such statements were made, not misleading; (b) the financial
22 statements, and other financial information included in the report, fairly presented in all
23 material respects the financial condition, results of operations, and cash flows of Isilon as of,
24 and for, the periods presented in the report; and (c) he had disclosed to Isilon's auditor and
25 audit committee all significant deficiencies and material weaknesses in the design or
26 operation of internal control over financial reporting and any fraud, whether or not material,
27

1 that involved management or other employees who had a significant role in Isilon's internal
2 control over financial reporting.

3 81. For the quarterly reports, Fuhlendorf falsely stated in the certifications, among
4 other things, that the quarterly reports fully complied with the requirements of Section 13(a)
5 or 15(d) of the Exchange Act and that information contained therein fairly presented in all
6 material respects the financial condition and results of operations of Isilon. Fuhlendorf falsely
7 stated in the certifications, among other things, that: (a) each report did not contain any
8 untrue statement of material fact or omit to state a material fact necessary to make the
9 statements made, in light of the circumstances under which such statements were made, not
10 misleading; (b) each financial statement, and other financial information included in each
11 report, fairly presented in all material respects the financial condition, results of operations,
12 and cash flows of Isilon as of, and for, the period presented in the report; and (c) he had
13 disclosed to Isilon's auditor and audit committee all significant deficiencies and material
14 weaknesses in the design or operation of internal control over financial reporting and any
15 fraud, whether or not material, that involved management or other employees who had a
16 significant role in Isilon's internal control over financial reporting.

17 82. By reason of the foregoing, Fuhlendorf has violated and, unless restrained and
18 enjoined, will continue to violate Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

19 **TENTH CLAIM FOR RELIEF**

20 *Violations of Rule 13b2-2 Under the Exchange Act*

21 83. The Commission realleges and incorporates by reference Paragraphs 1 through
22 50 above.

23 84. By engaging in the acts and conduct alleged above, Fuhlendorf, directly or
24 indirectly, knowingly made or caused to be made a materially false or misleading statements
25 or omitted to state or caused another person to omit to state, material facts necessary in order
26 to make statements made, in light of the circumstances under which such statements were
27 made, not misleading to an accountant in connection with an audit or examination of the

1 financial statements of Isilon required to be made or the preparation or filing of reports
2 required to be filed by Isilon with the Commission.

3 85. By reason of the foregoing, Fuhlendorf has violated and, unless restrained and
4 enjoined, will continue to violate Exchange Act Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Commission respectfully requests that this Court:

8 I.

9 Permanently enjoin Fuhlendorf from violating Section 17(a)(1), (a)(2), and (a)(3) of
10 the Securities Act [15 U.S.C. § 77(q)(a)], Sections 10(b) and 13(b)(5) of the Exchange Act
11 [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1, 13b2-2, and 13a-14
12 thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, and 240.13a-14], and from
13 aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange
14 Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), and 78m(b)(2)(B)] and Rules 12b-20, 13a-1, 13a-
15 11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13]
16 thereunder.

17 II.

18 Prohibit Fuhlendorf, pursuant to Section 20(e) of the Securities Act [15 U.S.C. §
19 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an
20 officer or director of any entity having a class of securities registered with the Commission
21 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports
22 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

23 III.

24 Order Fuhlendorf to disgorge any wrongfully obtained benefits, including
25 prejudgment interest.

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IV.

Order Fuhlendorf to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

V.

Order Fuhlendorf to reimburse Isilon bonuses or other incentive-based or equity-based compensation received from Isilon and stock-sale profits pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243].

VI.

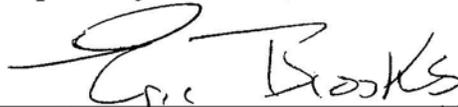
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: September 14, 2009

Respectfully submitted,



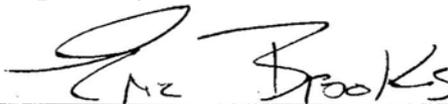
Eric M. Brooks
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

DEMAND FOR JURY TRIAL

The Commission hereby demands a jury trial on all claims in the Complaint.

Dated: September 14, 2009

Respectfully submitted,



Eric M. Brooks
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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