

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Individually and on Behalf  
of All Others Similarly Situated,

Plaintiff,

v.

FUELCELL ENERGY, INC., JASON B.  
FEW, and MICHAEL S. BISHOP,

Defendants.

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Case No.

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FEDERAL  
SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

Plaintiff (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by FuelCell Energy, Inc. (“FuelCell” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by FuelCell; and (c) review of other publicly available information concerning FuelCell.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired FuelCell securities between June 24, 2026 and September 1, 2026, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. FuelCell, together with its subsidiaries, engages in the design, development, production, construction, operation, and servicing of high temperature fuel cells for clean electric power generation.

3. On June 24, 2026, FuelCell announced a capital equipment purchase agreement (“CEPA”) with Fit Energy USA LP (“Fit Energy”) for up to 380 MW of fuel cell power for data centers, with an initial committed 30 MW phase (“Phase 0”) including an immediate deposit.

4. On September 2, 2026, before the market opened, FuelCell reported its fiscal third quarter 2026 financial results, reporting a net loss of \$45.3 million. According to the Company’s press release, this reflected “a higher gross loss than the prior year period,” which was caused by “product costs and manufacturing overhead that currently exceed the contractual pricing

established under the CEPA with Fit Energy.” Further, FuelCell reported that the annualized production rate was “below the production volume at which we expect our cost structure to align with market-based pricing for orders of this scale,” and as a result, the Company recorded a \$17 million charge to “reflect the impact of contractual pricing provisions associated with specific inventory and firm purchase commitments” arising from Phase 0 of the CEPA.

5. On this news, FuelCell shares fell \$2.68, or 15.69%, to close at \$14.40 per share on September 2, 2026, on unusually heavy trading volume.

6. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company’s manufacturing capacity was inadequate to generate the production rate required under the CEPA; (2) that, as a result, the Company’s annualized production rate for deliveries under the CEPA with Fit Energy was slower than expected; (3) that, as a result, the Company was incurring higher product costs and manufacturing overhead expenses; (4) that, as a result of the slower production rate, the Company was reasonably likely to incur charges in connection with the CEPA; (5) that the foregoing was a known trend affecting the Company’s profitability; and (6) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

7. As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the market value of the Company’s securities, Plaintiff and other Class members have suffered significant losses and damages.

## **JURISDICTION AND VENUE**

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

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

10. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District.

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

## **PARTIES**

12. Plaintiff as set forth in the accompanying certification, incorporated by reference herein, purchased FuelCell securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

13. Defendant FuelCell is incorporated under the laws of Delaware with its principal executive offices located in Danbury, Connecticut. FuelCell's common stock trades on the NASDAQ exchange under the symbol "FCEL."

14. Defendant Jason B. Few (“Few”) was the Company’s Chief Executive Officer (“CEO”) at all relevant times.

15. Defendant Michael S. Bishop (“Bishop”) was the Company’s Chief Financial Officer (“CFO”) at all relevant times.

16. Defendants Few and Bishop (together, the “Individual Defendants”), because of their positions with the Company, possessed the power and authority to control the contents of the Company’s reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

17. FuelCell, together with its subsidiaries, engages in the design, development, production, construction, operation, and servicing of high temperature fuel cells for clean electric power generation.

## Materially False and Misleading

### Statements Issued During the Class Period

18. The Class Period begins on June 24, 2026.<sup>1</sup> On that day, FuelCell announced a strategic agreement with Fit Energy USA for up to 380 MW of fuel cell power for data centers, with an initial committed 30 MW phase including an immediate deposit. The press release touted, among other things, that the deal was “***designed to align long-term value creation with successful project execution and customer deployment.***” Specifically, the Company stated as follows, in relevant part:

DANBURY, Conn. and BOCA RATON, Fla., June 24, 2026 (GLOBE NEWSWIRE) -- FuelCell Energy, Inc. (FCEL), a clean energy technology company that manufactures utility scale power solutions, and Fit Energy USA LP (“Fit Energy”), a developer of reliable power solutions to support advanced computing infrastructure and artificial intelligence, today announced a strategic agreement for up to 380 megawatts (MW) of clean, baseload on-site power for data centers using FuelCell Energy’s utility-scale fuel cell technology. The agreement includes an immediate deposit for an initial 30 MW of power scheduled to begin delivery later this year.

“We are pleased to partner with Fit Energy on its development plans. We’ve engaged with a diverse range of prospective customers across the digital infrastructure landscape, and Fit Energy has distinguished itself through its commitment to ‘energy as a service’ power solutions that support both communities and the environment,” said Jason Few, President and CEO of FuelCell Energy. He added, “This agreement further validates our decision to scale our operations to 500 MW, preserving our ability to serve a broad and growing pipeline of customers.”

Joel Leonoff, CEO of Fit Energy, added, “Today’s announcement marks a critical step in building the power foundation required for the next generation of AI infrastructure. FuelCell Energy’s technology aligns with our growth objectives and our goal of delivering behind-the-meter power solutions to data centers at gigawatt scale.”

***Under the arrangement, Fit Energy will be eligible to receive warrants tied to future deployment milestones of up to 380 MW. The warrant structure is designed***

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<sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all footnotes are omitted.

***to align long-term value creation with successful project execution and customer deployment.***

19. On July 8, 2026, FuelCell filed a prospectus supplement on Form 424b5, which followed an automatic shelf registration statement that became effective on June 8, 2026. The prospectus supplement was filed in connection with an underwritten public offering of approximately 12.3 million shares of common stock sold at a price of \$21 per share. The prospectus supplement stated the following about the CEPA, in relevant part:

**Recent Events**

***Fit Energy USA LP Transaction and Warrants***

On June 22, 2026, we entered into a Capital Equipment Purchase Agreement (the “CEPA”) with Fit Energy USA LP (“Fit”), by its general partner, Fit US Inc. Pursuant to the CEPA, the Company agreed to manufacture, sell, and deliver to Fit carbonate fuel cell block systems (each, a “Block”), with each Block having a nameplate generating capacity of 2.5 MW, for a total aggregate generating capacity of up to 380 MW across four phases. The fuel cell systems are intended to supply baseload electricity for data center applications. The payment obligations with respect to the initial phase, representing a generating capacity of 30 MW in phase 0, became effective upon execution of the CEPA. Thereafter, Fit will have the ability to elect, at its sole option, to proceed with the remaining phases for generating capacity of 100 MW in phase 1, generating capacity of 125 MW in phase 2 and generating capacity of an additional 125 MW in phase 3, in each case, with a milestone-based payment obligation with an initial deposit due at election of each phase, upon delivery by Fit of timely election notices.

20. The July 8, 2026 prospectus supplement incorporated by reference the risk factors reported in the Company’s Form 10-K for the period ended October 31, 2025 (the “2025 10-K”) and the “most recent Quarterly Report on Form 10-Q,” which is the second quarter 2026 Form 10-Q filed on June 8, 2026. The 2025 10-K purported to warn that manufacturing delays “may” affect profitability, and this was incorporated by reference to the July 8, 2026 prospectus supplement. Specifically, the 2025 10-K stated, in relevant part:

***Our cost reduction strategy for manufacturing may not succeed or may be significantly delayed, which may result in our inability to deliver improved margins.***

Our cost reduction strategy for manufacturing is based on the assumption that increases in production will result in economies of scale. In addition, our cost reduction strategy relies on advancements in our manufacturing process, global competitive sourcing, engineering design, reducing the cost of capital and technology improvements (including stack life and projected power output). Failure to achieve our cost reduction targets could have a material adverse effect on our results of operations and financial condition.

21. The 2025 10-K also purported to warn that FuelCell’s “manufacturing facilities . . . *may be inadequate to meet demand.*” Specifically, the following statements were incorporated by reference to the July 8, 2026 prospectus supplement, in relevant part:

***Unanticipated increases or decreases in business growth have resulted and may continue to result in adverse consequences to our financial condition and business strategy.***

We operate a 167,000 square-foot manufacturing facility in Torrington, Connecticut where we produce the individual cell packages and assemble the fuel cell modules for our carbonate fuel cell products. The maximum annualized capacity (module manufacturing, final assembly, testing and conditioning) is 100 MW per year under the Torrington facility’s current configuration when being fully utilized. We believe that the Torrington facility could accommodate an estimated annualized production capacity of up to 350 MW per year with additional capital investments in machinery, equipment, tooling, labor, outsourcing of certain processes and inventory.

We have a manufacturing and service facility in Taufkirchen, Germany that has the capability to perform final module assembly for up to 20 MW per year of carbonate sub-megawatt fuel cell power platforms to service the European market. Our European service activities are also operated out of this location.

Prior to the implementation of the restructuring actions announced in November 2024 and June 2025, our manufacturing and research and development facility in Calgary, Alberta, Canada focused on the engineering and development of our solid oxide power generation and electrolysis technologies. This facility also housed our solid oxide power generation and electrolysis stack research and development effort and includes equipment for the manufacturing of solid oxide cells and stacks, including advanced manufacturing capabilities. Beginning in fiscal year 2022 and continuing in fiscal years 2023 and 2024, we made investments in the Calgary facility, including by increasing the total leased facility space and ordering long lead process equipment, with the goal of increasing solid oxide production capacity. However, in November 2024 and June 2025, we announced global restructuring plans relating to our operations in the U.S., Canada, and Germany that aim to reduce operating costs, realign resources toward advancing the Company’s core carbonate technologies, and protect the Company’s competitive position amid slower-than-

expected market investments in clean energy. These restructuring plans also include the deferment and cancelation of certain previously planned capital and project expenditures related to solid oxide manufacturing in our facility in Calgary, Canada. As a result of these restructuring plans, we have deferred the capital spending required to complete the Calgary expansion and do not currently expect to complete this project. In addition, as part of these restructuring plans, we ceased development of the solid oxide power generation platform and began focusing on demonstrating the capabilities of our solid oxide electrolysis platform. We expect to seek partnerships for solid oxide product commercialization and manufacturing.

***If our business grows more quickly than we anticipate, our existing and manufacturing facilities and plans to increase production may be inadequate to meet demand and we may need to seek out new or additional space, or retrofit or further equip our existing facilities, at considerable cost to us.*** If our business does not grow as quickly as we expect, our existing manufacturing facilities would, in part, represent excess capacity for which we may not be able to recover the cost. In that circumstance, our revenues may be inadequate to support our committed costs and our planned growth, and our gross margins and business strategy would be adversely affected.

22. The above statements identified in ¶¶18-21 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that the Company's manufacturing capacity was inadequate to generate the production rate required under the CEPA; (2) that, as a result, the Company's annualized production rate for deliveries under the CEPA with Fit Energy was slower than expected; (3) that, as a result, the Company was incurring higher product costs and manufacturing overhead expenses; (4) that, as a result of the slower production rate, the Company was reasonably likely to incur charges in connection with the CEPA; (5) that the foregoing was a known trend affecting the Company's profitability; and (6) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

#### **Disclosures at the End of the Class Period**

23. On September 2, 2026, before the market opened, FuelCell reported its fiscal third quarter 2026 financial results, reporting a net loss of \$45.3 million. According to the Company's

press release, this reflected “a higher gross loss than the prior year period,” which was caused by “product costs and manufacturing overhead that currently exceed the contractual pricing established under the CEPA with Fit Energy.” Further, FuelCell reported that the annualized production rate was “below the production volume at which we expect our cost structure to align with market-based pricing for orders of this scale,” and as a result, the Company recorded a \$17 million charge to “reflect the impact of contractual pricing provisions associated with specific inventory and firm purchase commitments” arising from Phase 0 of the CEPA. Specifically, on that date, the Company issued a press release which stated as follows, in relevant part:

- Revenue of \$33.0 million, compared to \$46.7 million, a decrease of approximately 29%
- Gross loss of \$(24.5) million, compared to \$(5.1) million, an increase of approximately 377%
- Loss from operations of \$(46.7) million, compared with \$(95.4) million, a decrease of approximately 51%
- Net loss per share attributable to common stockholders was \$(0.64), compared with \$(3.78)

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Third quarter revenue of \$33.0 million represents a decrease of 29% from the comparable prior year quarter. This was primarily due to lower product revenue resulting from fewer module deliveries to customers in Korea compared to the comparable prior year quarter and lower generation revenue due to lower operating output from plants in our generation portfolio, including the 7.4 MW Groton Project at the U.S. Navy’s submarine base in Groton, CT, which was not operating pending an equipment upgrade during the quarter.

Net loss was \$(45.3) million in the third quarter of fiscal 2026, compared to net loss of \$(91.9) million in the third quarter of fiscal 2025. Decreased net loss in the third quarter of fiscal 2026 was primarily due to the lack of impairment and restructuring expenses which impacted net loss in the prior year period, partially offset by a higher gross loss than the prior year period. ***The gross loss from product revenues for the three months ended July 31, 2026 reflects product costs and manufacturing overhead that currently exceed the contractual pricing established under the CEPA with Fit Energy.*** Our per-unit product costs, and the fixed manufacturing overhead absorbed into those costs, reflect the annualized

production rate of approximately 37.1 MW at which we operated during the quarter, which remains below the production volume at which we expect our cost structure to align with market-based pricing for orders of this scale. ***Charges totaling \$17.0 million were recorded during the three months ended July 31, 2026 and reflect the impact of contractual pricing provisions associated with specific inventory and firm purchase commitments arising as a result of Phase 0 of the CEPA as of July 31, 2026.*** The charges are expected to be limited to identified inventory and purchase commitments for Phase 0 of the CEPA with Fit Energy, and do not reflect management's expectations regarding the overall economic value of the CEPA. As production volumes increase, we expect improved absorption of fixed manufacturing overhead, greater purchasing scale and continued execution of our cost reduction initiatives to result in product and overhead costs per unit below our current cost profile.

24. On this news, FuelCell shares fell \$2.68, or 15.69%, to close at \$14.40 per share on September 2, 2026, on unusually heavy trading volume.

### **CLASS ACTION ALLEGATIONS**

25. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired FuelCell securities between June 24, 2026 and September 1, 2026, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

26. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, FuelCell's shares actively traded on the NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of FuelCell shares were traded publicly during the Class Period on the NASDAQ. Record owners and other members of the Class may be identified from records maintained by FuelCell or its transfer agent and may be notified of the

pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

27. Plaintiff's 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.

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

29. 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 omitted and/or misrepresented material facts about the business, operations, and prospects of FuelCell; and

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

30. 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 makes it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

### **UNDISCLOSED ADVERSE FACTS**

31. The market for FuelCell's securities was open, well-developed and efficient at all relevant times. As a result of these materially false and/or misleading statements, and/or failures to disclose, FuelCell's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired FuelCell's securities relying upon the integrity of the market price of the Company's securities and market information relating to FuelCell, and have been damaged thereby.

32. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of FuelCell's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or misleading because they failed to disclose material adverse information and/or misrepresented the truth about FuelCell's business, operations, and prospects as alleged herein.

33. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about FuelCell's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein when the truth was revealed.

### **LOSS CAUSATION**

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

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

### **SCIENTER ALLEGATIONS**

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

### **APPLICABILITY OF PRESUMPTION OF RELIANCE**

#### **(FRAUD-ON-THE-MARKET DOCTRINE)**

37. The market for FuelCell's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, FuelCell's securities traded at artificially inflated prices during the Class Period. On June

30, 2026, the Company's share price closed at a Class Period high of \$36.01 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of FuelCell's securities and market information relating to FuelCell, and have been damaged thereby.

38. During the Class Period, the artificial inflation of FuelCell's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false and/or misleading statements about FuelCell's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of FuelCell and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

39. At all relevant times, the market for FuelCell's securities was an efficient market for the following reasons, among others:

- (a) FuelCell shares met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) As a regulated issuer, FuelCell filed periodic public reports with the SEC and/or the NASDAQ;
- (c) FuelCell regularly communicated with public investors via established market communication mechanisms, including through regular dissemination of press releases on

the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and/or

(d) FuelCell was followed by securities analysts employed by brokerage firms who wrote reports about the Company, and these reports were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

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

41. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class's claims are, in large part, grounded on Defendants' material misstatements and/or omissions. Because this action involves Defendants' failure to disclose material adverse information regarding the Company's business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

#### **NO SAFE HARBOR**

42. 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.

The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and 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. In the alternative, to the extent that the statutory safe harbor is determined to 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 speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of FuelCell who knew that the statement was false when made.

### **FIRST CLAIM**

#### **Violation of Section 10(b) of The Exchange Act and**

#### **Rule 10b-5 Promulgated Thereunder**

#### **Against All Defendants**

43. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

44. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase FuelCell’s securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

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

46. 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 FuelCell's financial well-being and prospects, as specified herein.

47. 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 FuelCell's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about FuelCell and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

48. Each of the Individual Defendants' primary liability and controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management

team or had control thereof; (ii) each of these defendants, by virtue of their 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 internal budgets, plans, projections and/or reports; (iii) 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 (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew and/or recklessly disregarded was materially false and misleading.

49. Defendants had actual knowledge of the misrepresentations and/or 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 FuelCell's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or 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.

50. As a result of the dissemination of the materially false and/or misleading information and/or failure to disclose material facts, as set forth above, the market price of FuelCell's securities was artificially inflated during the Class Period. In ignorance of the fact that

market prices of the Company's 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 trades, and/or in 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, Plaintiff and the other members of the Class acquired FuelCell's securities during the Class Period at artificially high prices and were damaged thereby.

51. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that FuelCell was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their FuelCell securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

53. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff 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.

## **SECOND CLAIM**

### **Violation of Section 20(a) of The Exchange Act**

#### **Against the Individual Defendants**

54. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

55. Individual Defendants acted as controlling persons of FuelCell within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions and their ownership and contractual rights, participation in, and/or awareness of the Company's operations and intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, 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 which Plaintiff contends are false and misleading. 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 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.

56. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

57. As set forth above, FuelCell and Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their position as controlling persons, Individual Defendants are liable pursuant to Section 20(a) of the Exchange 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 the Company's securities during the Class Period.

#### **PRAYER FOR RELIEF**

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

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

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

(c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.