

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
(Alexandria Division)

IGOR KRAMER, Individually and on Behalf of All Others Similarly Situated,	)	Civil Action No.
	)	
	)	<u>CLASS ACTION</u>
Plaintiff,	)	
	)	
vs.	)	
FLUENCE ENERGY, INC., MANUEL PÉREZ DUBUC, DENNIS FEHR, JULIAN NEBREDA, MANAVENDRA SIAL, AES CORPORATION, and AES GRID STABILITY, LLC,	)	
	)	
Defendants.	)	
	)	
	)	<u>DEMAND FOR JURY TRIAL</u>

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**COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS**

Plaintiff Igor Kramer (“plaintiff”), by and through plaintiff’s undersigned attorneys, individually and on behalf of all others similarly situated, alleges the following based upon personal knowledge as to plaintiff and plaintiff’s own acts and upon information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through plaintiff’s attorneys, which included, among other things, a review of defendants’ public documents, conference calls, and U.S. Securities and Exchange Commission (“SEC”) filings, press releases published by Fluence Energy, Inc. (“Fluence” or the “Company”), analysts’ reports about the Company, court filings, and information readily obtainable on the Internet. Plaintiff believes 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 securities class action on behalf of all purchasers of Fluence Class A common stock between October 28, 2021 and February 10, 2025, inclusive (the “Class Period”).

Plaintiff seeks to pursue remedies under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), and Rule 10b-5 promulgated thereunder, against Fluence and certain of the Company’s senior executives and directors and its controlling shareholder.

#### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under §§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.

3. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act, 15 U.S.C. §78aa.

4. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b) because Fluence is headquartered in this District and the events and omissions giving rise to the claims asserted herein occurred in substantial part in this District, including the dissemination of false and misleading statements in and from this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

#### **PARTIES**

6. Plaintiff Igor Kramer, as set forth in the accompanying certification, which is incorporated by reference herein, purchased Fluence Class A common stock during the Class Period and has been damaged thereby.

7. Defendant Fluence is a global provider of energy storage products and services and digital applications for renewable energy and storage. Fluence is a holding company and conducts all of its business through Fluence Energy, LLC. The Company is headquartered in Arlington, Virginia. Fluence Class A common stock is listed on the Nasdaq Global Select Market (“NASDAQ”) under the ticker symbol “FLNC.”

8. Defendant Manuel Pérez Dubuc (“Pérez”) served as Fluence’s Chief Executive Officer (“CEO”) from May 2020, and as a member of the Company’s Board of Directors (“Board”) from October 2021, until his departure from the Company in August 2022. Prior to his role on the Board and as CEO, defendant Pérez served as SVP of Global Renewables at AES (defined below), and as president of AES’s subsidiaries in South America, Mexico, Central America, the Caribbean, China, and North Asia.

9. Defendant Dennis Fehr (“Fehr”) served as Fluence’s Chief Financial Officer (“CFO”) from at least September 2021 until his departure from the Company in September 2022. Prior to serving as CFO of Fluence, defendant Fehr served as CFO of Fluence Energy, LLC since January 2018.

10. Defendant Julian Nebreda (“Nebreda”) has served as Fluence’s President and CEO from September 2022, and as a member of the Company’s Board since September 2021. Prior to his role as President and CEO, defendant Nebreda held various executive and senior positions within AES (defined below), and also served as chairman of the board of AES’s subsidiaries in Chile and Brazil.

11. Defendant Manavendra Sial (“Sial”) served as Fluence’s Senior Vice President and CFO from September 2022 until his departure from the Company in December 2023.

12. Defendants referenced above in ¶¶8-11 are referred to herein as the “Individual Defendants.” The Individual Defendants and the Company are referred to herein as “defendants.”

13. Each of the Individual Defendants was directly involved in the management and day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, services, client relations, and present and future business prospects. In addition, the Individual Defendants were involved in drafting, producing, reviewing, and disseminating the false and misleading statements and

information alleged herein, were aware of, or recklessly disregarded, the false and misleading statements being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

14. As officers and controlling persons of a publicly held company whose securities are registered with the SEC pursuant to the Exchange Act and traded on the NASDAQ, which is governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to promptly disseminate accurate, truthful, and complete information with respect to the Company's operations, business, services, and present and future business prospects. In addition, the Individual Defendants each had a duty to correct any previously issued statements that were materially misleading or untrue, so that the market price of Fluence Class A common stock would be based upon truthful, accurate, and complete information. Defendants' false and misleading misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

15. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to, and did, control the contents of various SEC filings, press releases, and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be false and/or misleading before or shortly after their issuance, participated in conference calls with investors during which false and misleading statements were made, and had the ability and opportunity to prevent their issuance or cause them to be corrected. Accordingly, each Individual Defendant is responsible for the accuracy of the public statements detailed herein and is, therefore, primarily liable for the representations contained therein.

16. Defendant AES Corporation (“AES Corp.”) is a global energy company that operates utilities and power generation facilities. Defendant AES Corp. is headquartered in Arlington, Virginia.

17. Defendant AES Grid Stability, LLC (“AES Grid Stability”) is an indirect subsidiary of defendant AES Corp.

18. Defendants AES Grid Stability and AES Corp. are collectively referred to herein as “AES.”

19. Prior to and leading up to the Class Period, defendant AES owned 100% of Fluence’s outstanding Class B-1 common stock, providing defendant AES with approximately 71.8% of the combined voting power of all of Fluence common stock. Accordingly, Fluence was considered a “controlled company” under NASDAQ rules. In addition, defendant AES entered into a stockholders’ agreement with the Company, pursuant to which defendant AES had the right to appoint three directors to the Board and provided AES with certain rights and privileges not available to outside shareholders. Defendant AES oversaw the Company and exerted influence over its management as a controlling shareholder. For example, defendant AES caused Fluence to hire defendant Nebreda as CEO, who was himself previously an executive at AES, and also defendant Sial as CFO. Numerous directors of Fluence were also affiliated with AES during the Class Period, including Ricardo Falu (Senior Vice President and Chief Strategy and Commercial Officer at AES); Tish Mendoza (Senior Vice President and Chief Human Resources Officer at AES); and John Christopher Shelton (Senior Vice President and Chief Product Officer of AES).

## **BACKGROUND**

20. Fluence is a global provider of battery-based energy storage products, services, and artificial intelligence-enabled digital applications for renewable energy storage. Fluence is a holding company and conducts all of its business through Fluence Energy, LLC. Fluence Energy, LLC was

established in 2018 as a joint-venture between AES and Siemens Industry, Inc., an indirect subsidiary of Siemens AG (collectively referred to herein as “Siemens”). Fluence’s customers include utilities, developers, independent power producers, and commercial and industrial customers. In October 2021, AES and Siemens took Fluence public in an initial public offering (the “IPO”).

21. Fluence’s energy storage products are based upon the Company’s technology stack that the Company claims is comprised of factory-built hardware, a proprietary edge-based control platform, and digital applications that optimize electrical market bidding for storage assets. The hardware component of Fluence’s sixth-generation technology stack consists of a modular 8’x8’x8’ building block that houses batteries and other components.

22. During the Class Period, Fluence offered four energy storage products that were specifically designed to address common customer use cases. The four products each varied in scale and application. The Company’s “Gridstack” solution, for example, was Fluence’s industrial-strength energy storage product intended to meet large grid-scale demands. By contrast, Fluence’s “Edgestack” product was intended for smaller commercial applications.

23. Fluence generates the vast majority of its revenues from the provision of energy storage solutions. In fiscal 2023, Fluence generated approximately \$2.2 billion in revenues from the sale of energy storage products, while the Company’s other businesses (*i.e.*, services and digital applications) collectively generated only \$20 million.<sup>1</sup> As part of its provision of energy storage products, Fluence also provides design, engineering, installation, and commissioning services, and allows its customers to select from the full range of project design to complete installation.

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<sup>1</sup> Fluence’s fiscal year ends on September 30 of the calendar year. For example, Fluence’s fiscal 2023 ended on September 30, 2023.

24. Since its inception, Fluence has relied significantly on AES and Siemens for financial and operational assistance. Through various agreements entered into between Fluence and its corporate parents, Fluence has historically obtained access to critically needed support services, including intellectual property licenses, established sales organizations and customer relationships, equipment supplies, and credit support, among other things.

25. Notably, both Siemens and AES entered into purchase agreements with Fluence, which required them to purchase energy storage equipment (and related services) from Fluence under preferred purchasing conditions, with prices purportedly set by reference to sales arrangements with Fluence's other customers. Pursuant to these agreements, the purchasing obligations for AES and Siemens would cease in the event that either held less than 10% of the outstanding voting power of Fluence stock. The Company's agreement with AES was particularly lucrative. As a result of AES's relatively higher needs for energy storage products, Fluence derived significant financial benefits from its sales agreement with AES. In fiscal 2022, approximately 54% of Fluence's nearly \$1.2 billion in reported revenue was derived from related parties, primarily AES.

26. Despite this support, however, Fluence has incurred significant losses since its IPO. As such, analysts and investors were keenly attuned to Fluence's profitability. In addition to conventional financial measures recognized under Generally Accepted Accounting Principles ("GAAP"), Fluence also reports its profitability through various non-GAAP metrics, including: (i) adjusted earnings before interest, taxes, and depreciation ("EBITDA"); (ii) adjusted gross profit; and (iii) adjusted gross profit margin.

27. Leading up to the Class Period, Fluence began experiencing significant operational issues with the installation and commissioning of its initial sixth-generation products, which resulted in project cost overruns and delivery delays. During a February 2022 conference call, defendant Pérez represented to investors that Fluence had acted quickly to "implement corrective actions" and

address cost overruns related to the rollout of the Company’s “first Generation 6 product installations and commissioning.” A presentation used during the conference call further represented that the “corrective actions” Fluence had implemented to address its product installation problems had “[r]ectified issues with customers.” The following quarter, defendant Pérez updated investors on the progress of Fluence’s purported “corrective actions,” and claimed that Fluence had “successfully installed” ten sixth-generation systems, including specifically one “mega” project known as Diablo.

28. Notwithstanding this purported progress, controlling shareholder AES deemed a corporate reset was needed. In an unusual move, Fluence announced within the same month (August 2022) that it was replacing both its CEO and CFO, installing former AES executive defendant Nebreda to serve as CEO and bringing in defendant Sial to serve as CFO.

29. During the Class Period, defendants Nebreda and Sial continued to highlight the purported “track record of safety and performance” of Fluence’s products, representing that the Company had “improved execution” that allowed for ““accelerating project”” completion. For example, during a May 2023 conference call, defendant Nebreda highlighted the high quality and reliability of Fluence products, claiming this had allowed the Company to maintain strong customer relationships, stating in pertinent part as follows:

We look for customers that value what we offer, that value, clearly, products that are – that we – ***that they are sure that they were going to be delivered, that they're going to perform as we tell them that they're going to perform***, that will provide services that will keep this solutions up to date, and that will have them running for them when they need it, that they can ensure it very well and that they can finance it.

So the customers who care about that are the customers we work with. For some of them, price is very more important than others. For some of them is ensuring the performance. For some of them means, “Hey, especially where the regulatory systems are going to change, I need somebody who will know will help me adopt my systems to it.”

30. On November 28, 2023, Fluence announced the Company’s financial and operational results for the fourth quarter and year ended September 30, 2023. In connection with the earnings

announcement, Fluence reported that it had achieved a “[q]quarterly [p]rofitability [m]ilestone” generating positive net income for the first time in the Company’s history. Fluence attributed the financial results to Fluence’s ““unwavering commitment to operational excellence”” and ““strong execution.”” On this news, the price of Fluence Class A common stock soared more than 23% from \$20.27 per share on November 28, 2023 to \$25.09 per share on November 29, 2023.

31. Defendants were quick to capitalize on the rising price of Fluence stock. On December 8, 2023, Fluence conducted a registered secondary public offering enabling the Company’s largest shareholders, including defendant AES and Siemens, to collectively sell nearly \$400 million in Fluence Class A common stock at artificially inflated prices.

32. Unbeknownst to investors, however, material portions of Fluence’s energy storage products sold to customers, including related installation and commissioning work, were materially deficient and fell short of Fluence’s obligations to provide products and services to its customers that were free from defect or error. Despite being repeatedly notified of its defective work by customers, Fluence failed to adequately address product defects and installation errors or to honor outstanding warranty obligations. Accordingly, Fluence’s various profitability metrics were artificially inflated throughout the Class Period, because they were based on unsustainable work practices and the Company’s failures to honor commitments that it had made to its clients. Moreover, Fluence was acutely exposed to material undisclosed risks of significant financial and/or reputational harm in the event that its deficient work quality became widely known, including through loss of current or prospective clients.

33. Then on December 20, 2023, *Energy Storage News* published an article revealing that Fluence’s work on the Diablo project had suffered from a “litany of ‘defects, deficiencies, and failures.’” The article detailed several alleged defects and chronic failures that plagued the Diablo project, including, *inter alia*, that: (i) Fluence’s project control system responded slowly or

inaccurately, causing California’s system operator to temporarily remove the project from the service markets; (ii) Fluence’s proprietary systems failed to function properly, requiring project owners to resort to alternative technologies not designed for that purpose, resulting in costly inefficiencies; (iii) Fluence’s inverters failed 27 times within a short 1-month period, just 2 months after project delivery; and (iv) the occurrence of 2 arc flashes created the risk of serious harm and injury. Beyond these significant defects, the article revealed that Fluence had delivered the Diablo project approximately eight months after it was contractually due and repeatedly failed to timely address and resolve related warranty claims. On this news, the price of Fluence Class A common stock fell precipitously from \$27.22 per share on December 19, 2023 to \$23.01 per share on December 20, 2023 – a decline of approximately 15%.

34. In response, Fluence denied the information revealed by the *Energy Storage News* article. For example, during a February 2024 conference call, defendant Nebreda represented that the Diablo project was “performing very well and has delivered availability or uptime above its contractual requirement during 2023.”

35. Then, on February 22, 2024, analysts at Blue Orca Capital published a research report revealing that Fluence had prematurely sold its sixth-generation technology before the design of the technology had been completed. The report disclosed that this failure had contributed to the operational mishaps that had occurred at Fluence’s installed projects, including the Diablo project. In addition, the research report revealed that a Siemens’ affiliate, Siemens Energy Inc., had filed a lawsuit against Fluence for fraud, misrepresentation, and a host of engineering and design failures with respect to a project located in Antioch, California. The report stated that Fluence had unilaterally altered the design of the project originally proposed without consulting Siemens Energy Inc. and had done so in order to avoid safety concerns raised by an explosion that had occurred at another Fluence project. Moreover, citing interviews with former Fluence employees, the Blue Orca

Capital report stated that defendant AES had become “frustrated” with its obligations under its purchase agreement with Fluence as it prevented AES from securing prices commensurate with its size and negotiating leverage. As a result, defendant AES was intent on divesting its position in Fluence, and withdrawing its outsized revenue support from Fluence’s business. On this news, the price of Fluence Class A common stock declined from \$17.01 per share on February 21, 2024 to \$14.73 per share on February 22, 2024, a decline of more than 13%.

36. Following these revelations, Fluence would go on to report two sequential quarters of worsening financial results that were negatively impacted by delayed customer projects, execution errors, and increased competitive pressure. As a result of these adverse impacts, Fluence would go on to slash its fiscal 2025 revenue guidance from a range of \$3.6 billion to \$4.4 billion to a range of \$3.1 billion to \$3.7 billion, representing a reduction of approximately \$600 million at the midpoint. As a result of these serial disclosures, the price of Fluence Class A common stock declined more than 80% from highs of more than \$39 per share during the Class Period to roughly \$6 per share following the end of the Class Period.

37. Due to defendants’ wrongful acts and omissions, and the significant decline in the market value of Fluence Class A common stock, plaintiff and other Class members (defined below) have suffered significant losses and economic damages under the federal securities laws.

#### **DEFENDANTS’ MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS ISSUED DURING THE CLASS PERIOD**

38. The Class Period begins on October 28, 2021, the first day after the Company’s registration statement for its IPO was declared effective by the SEC. On September 28, 2021, Fluence filed with the SEC a registration statement on Form S-1 for the IPO (the “IPO Registration Statement”). On October 29, 2021, Fluence filed with the SEC a prospectus on Form 424B4 for the IPO (the “IPO Prospectus”), which incorporated and formed a part of the IPO Registration Statement.

39. The IPO Registration Statement represented that Fluence’s “Sixth-Generation Technology Stack” delivered “safe” and “cost-effective” products, stating in pertinent part as follows:

Our energy storage products are built on our Tech Stack, which is comprised of our Fluence Cube, Fluence OS, and Fluence IQ. The Tech Stack builds upon 13 years of development in prior generations (introduced in 2008, 2009, 2010, 2014, 2017), **reflecting ongoing safety and design improvements.**

Fluence Cube is a modular, factory-built, approximately 8’x8’x8’ building block that **delivers safe, scalable, cost-effective products.** Our battery and supplier-agnostic product architecture allows us to deliver optimized solutions for our customers on a global scale while incorporating the latest technology components.

40. In addition, the IPO Registration Statement emphasized the purported “safety features” of Fluence’s technology, which it claimed were “comprehensive” and “built into each Fluence Cube,” stating in pertinent part as follows:

**[C]omprehensive safety features are built into each Fluence Cube**, including HVAC, fast-stop, incipient gas detection, fire suppression, deflagration panels, and more, **while factory assembly provides consistent quality control. Continuous safety upgrades are based on extensive research, industry-leading experience, and ongoing design improvements.**

41. Under a heading titled “Rapid Delivery and Augmentation,” the IPO Registration Statement highlighted the “form factor” of Fluence’s products, which it claimed drove “efficiencies” and supported “rapid on-site installation and commissioning,” stating in pertinent part as follows:

**Rapid Delivery and Augmentation: repeatable form factor drives efficiencies in project design and Balance of Plant interfaces.** The Fluence Cube ships with all battery, cooling, and controls equipment pre-installed to support rapid on-site installation and commissioning. Our building block approach is designed to help customers meet current requirements and enable optimal augmentation of products over time, taking advantage of falling battery prices and best-in-class technologies.

42. On December 8, 2021, Fluence issued a press release providing the Company’s financial results for its fourth fiscal quarter and full year ended September 30, 2021 (“4Q21 Release”). The 4Q21 Release stated that Fluence generated revenue of \$681 million and \$188 million for the full year and fourth quarter, respectively, representing an increase of approximately

21% from the prior year, and a decrease of approximately 21% from the prior year quarter. The 4Q21 Release also stated Fluence achieved an adjusted gross profit margin of approximately 2.2% for the year and 4.5% for the fourth quarter. The 4Q21 Release further stated that Fluence achieved adjusted EBITDA of approximately negative \$65 million for fiscal year 2021 and negative \$15 million in the quarter compared to negative \$36 million in fiscal 2020 and \$1 million in the prior quarter, respectively.

43. On December 14, 2021, Fluence filed with the SEC its annual report on Form 10-K for the fiscal year ended September 30, 2021, which was signed by defendants Pérez and Fehr who also filed certifications attesting to the document's accuracy and completeness ("4Q21 Form 10-K"). The 4Q21 Form 10-K contained the same financial information reported in the 4Q21 Release.

44. The 4Q21 Form 10-K represented that Fluence's "Sixth-Generation Technology Stack" delivered "safe" and "cost-effective" products, stating in pertinent part as follows:

The Tech Stack, which is comprised of our Fluence Cube, Fluence OS, and Fluence IQ, builds upon 13 years of development in prior generations, reflecting ongoing safety and design improvements. The Fluence Cube is a modular, factory-built, approximately 8'x8'x8' building block that delivers ***safe, scalable, cost-effective products***. Our battery and supplier-agnostic system architecture allows us to deliver optimized solutions for our customers on a global scale while incorporating the latest technology components.

45. On February 9, 2022, Fluence issued a press release providing the Company's financial results for its first fiscal quarter ended December 30, 2021 ("1Q22 Release"). The 1Q22 Release stated that Fluence generated quarterly revenue of \$175 million, representing a 50% increase compared to the prior year quarter. The 1Q22 Release further stated that Fluence achieved a quarterly adjusted gross profit margin of approximately negative 4.8%. In addition, the 1Q22 Release stated that Fluence achieved quarterly adjusted EBITDA of negative \$43 million, compared to negative \$11 million in the prior year quarter.

46. On February 10, 2022, Fluence hosted a conference call with analysts to discuss the Company's financial and operational results for its first fiscal quarter of 2022. During his prepared remarks, defendant Pérez represented that Fluence had quickly "implement[ed] corrective actions" to address "cost overruns" related to the rollout of its "first Generation 6 product installations and commissioning," stating in pertinent as follows:

Turning to Slide 6. I would like to update you on the headwinds that we discussed on our last earnings call and the steps we are taking to mitigate their impact. This mostly stemmed from supply chain disruption as a result of COVID-19 as well as some cost overruns in the rollout of our first Generation 6 product installations and commissioning. ***Our team has acted swiftly to implement corrective actions that provide us the confidence to further execute on our plan.***

Some of these mitigation efforts include securing shipping capacity for our high-volume routes on a 2- to 4-month forward-looking basis, giving us better visibility to deliver our product to our customers on time. Furthermore, we have increased the size of our supply chain and manufacturing teams by 57% to provide us with the resources necessary to meet the robust demand we see. And finally, ***we are documenting lessons learned from our teams around the world and providing additional training so they can deliver our Gen 6 product installation and commissioning more effectively.***

47. A presentation referenced by defendant Pérez during the conference call further represented that the "corrective actions" Fluence had implemented to address product installation issues had "[r]ectified issues with customers," as depicted in the following slide:

Q1 Business Update		
Near term challenges identified with corrective actions executed		
	Corrective Actions Taken	
CHALLENGES	IMPLEMENTED	ONGOING
SUPPLY CHAIN DISRUPTIONS	<ul style="list-style-type: none"> <li>Shipping rate increases</li> <li>Shortage of shipping capacity</li> <li>Port congestions, shortage of drivers</li> </ul>	<ul style="list-style-type: none"> <li>Passing through higher rates in new contracts since Q4/FY21</li> <li>Secured shipping capacities for next two months on rolling basis</li> <li>Ramp-up of supply chain organization by 57% in Q1/FY22 (in FTE*)</li> </ul>
COMPOUNDING EFFECTS OF COVID-19	<ul style="list-style-type: none"> <li>Example: Workforce unable to make progress on projects due to site closures or delayed equipment while still incurring costs</li> </ul>	<ul style="list-style-type: none"> <li>Increased vaccination rates of South-East Asian contractors and employees</li> <li>Increased number of sub-contractors</li> <li>Increased efficiency of commissioning</li> </ul>
PROJECT COST OVERRUNS	<ul style="list-style-type: none"> <li>Example: unanticipated excess installation and commissioning costs of initial Gen 6 projects</li> </ul>	<ul style="list-style-type: none"> <li>Rectified issues with customers</li> <li>Documented "lessons learned" and implement for future projects</li> <li>Reduced share of full turn-key projects</li> </ul>
		<ul style="list-style-type: none"> <li>Securing domestic transport availability</li> <li>Reflect any known additional costs into future contract pricing</li> <li>Continuous improvement of on-site processes</li> </ul>

\*FTE = full time equivalent employees

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48. During the call, Fluence's Senior Vice President and Chief Product Officer Rebecca Boll further represented that Fluence's installation cost overruns were "temporary" and assured investors that the Company had "identified the issues" and "implemented the fixes," stating in pertinent part as follows:

And on the cost overruns, they are temporary and they are associated with installation and commissioning. *So the way that we have addressed that is we have done root cause analysis of either operational issues or technical issues that we could optimize to ensure that those cost overruns get to 0 closer to the end of this quarter. We've implemented those fixes either in our field installation manuals or in our factory, and those are in play right now. So we've identified the issues and we've implemented the fixes. We've also hired a significant number of more people to be able to handle the installation and commissioning. So that was one of the lessons learned is that we needed more people, and we have trained those people in the installation procedures and updated our installation manuals.*

49. On February 11, 2022, Fluence filed with the SEC its quarterly report on Form 10-Q for its first fiscal quarter ended December 31, 2021, which was signed by defendants Pérez and Fehr who also filed certifications attesting to the document's accuracy and completeness ("1Q22 Form 10-Q"). The 1Q22 Form 10-Q contained the same financial information reported in the 1Q22 Release.

50. On May 11, 2022, Fluence issued a press release providing the Company's financial results for its second fiscal quarter ended March 31, 2022 ("2Q22 Release"). The 2Q22 Release stated that Fluence generated "[r]ecord" quarterly revenue of \$343 million, representing a 249% increase compared to the prior year quarter. The 2Q22 Release further stated that Fluence achieved a quarterly adjusted gross profit margin of approximately negative 3.3%. In addition, the 2Q22 Release stated that Fluence achieved quarterly adjusted EBITDA of negative \$53 million, compared to negative \$21 million in the prior year quarter.

51. On May 12, 2022, Fluence hosted a conference call with analysts to discuss the Company's financial and operations results for its second fiscal quarter of 2022. During his prepared remarks, defendant Pérez represented that Fluence had "successfully installed" several

“mega site installations,” including the Diablo project in California, stating in pertinent part as follows:

As you can see on Slide 9, I’m pleased to report that we are now fully caught up on our Gen 6 installation schedule. We have successfully installed 10 Gen 6 systems since the beginning of this year with a combined power of about 420 megawatts. This includes several mega site installations such as Diablo and High Desert, both in California.

52. On May 13, 2022, Fluence filed with the SEC its quarterly report on Form 10-Q for its second fiscal quarter ended March 31, 2022, which was signed by defendants Pérez and Fehr who also filed certifications attesting to the document’s accuracy and completeness (“2Q22 Form 10-Q”). The 2Q22 Form 10-Q contained the same financial information reported in the 2Q22 Release.

53. On August 15, 2022, Fluence issued a press release providing the Company’s financial results for its third fiscal quarter ended June 30, 2022 (“3Q22 Release”). The 3Q22 Release stated that Fluence generated quarterly revenue of \$239 million, representing a 14% decrease compared to the prior year quarter. The 3Q22 Release further stated that Fluence achieved a quarterly adjusted gross profit margin of approximately negative 0.7%. In addition, the 3Q22 Release stated that Fluence achieved quarterly adjusted EBITDA of negative \$48 million, compared to negative \$35 million in the prior year quarter.

54. That same day, Fluence filed with the SEC its quarterly report on Form 10-Q for its third fiscal quarter ended June 30, 2022, which was signed by defendants Pérez and Fehr who also filed certifications attesting to the document’s accuracy and completeness (“3Q22 Form 10-Q”). The 3Q22 Form 10-Q contained the same financial information reported in the 3Q22 Release.

55. On December 12, 2022, Fluence issued a press release providing the Company’s financial results for its fourth fiscal quarter and full year ended September 30, 2022 (“4Q22 Release”). The 4Q22 Release stated Fluence generated “[r]ecord revenue” of \$1.2 billion and \$442 million for the full year and fourth quarter, respectively, representing an increase of approximately

76% from the prior year, and an increase of approximately 85% from the prior year quarter. The 4Q22 Release stated that Fluence achieved adjusted gross profit margin of approximately negative 0.2% for the year and 3% for the fourth quarter. The 4Q22 Release further stated that Fluence achieved adjusted EBITDA of approximately negative \$184 million for fiscal year 2022 and negative \$40 million in the quarter compared to negative \$65 million in fiscal 2021 and negative \$15 million in the prior quarter, respectively. The 4Q22 Release quoted defendant Nebreda who emphasized Fluence's purportedly ““strong quarter”” that he claimed ““positioned”” the Company to ““cement”” itself as an ““industry leader.”” The 4Q22 Release also quoted defendant Sial who highlighted, in relevant part, Fluence's improvements to ““overall project execution”” and represented he was ““confident”” that the ““headwinds”” experienced in 2022 were ““largely behind”” the Company.

56. On December 13, 2022, Fluence hosted a conference call with analysts to discuss the Company's financial and operational results for its fourth fiscal quarter and full year 2022. During his prepared remarks, defendant Nebreda emphasized Fluence's purported “industry-leading experience” and “ability to solve highly complex problems” and credited these features for enabling the Company to secure a \$500 million project contract, stating in pertinent part as follows:

I am pleased to report we recently signed a contract for more than \$500 million dollars with Orsted, under which we will deliver a 1.2 gigawatt hour energy storage facility in the United States complete with our Gen 6 Gridstack solution. By further increasing our scale we will be able to better capture value from our supply chain. We also note that Orsted *selected us as they were looking for a trusted partner with strong experience delivering complex solutions. As a comprehensive solutions provider, we continue to outpace our competition due to our scale, industry-leading experience, and our ability to solve highly complex problems. We are quickly establishing ourselves as a leader among the mega project segment.*

57. During the call, an analyst inquired why a company like Orsted would select Fluence as its energy storage supplier. In response, defendant Nebreda represented that Fluence had been

selected based on its purported ability “to manage complexity” and the “safety” of its products, which he claimed had “proven to be very, very safe,” stating in pertinent part as follows:

Thank you, Ben. No kind of maybe the rule of thumb is a part of it. Okay. As you go up with the complexity scale, competition gets less – gets softer. So if you go to a simpler solution where you see a lot of these stars, there’s a lot of competition as you go up the scale either *because the projects are very big or they need specific characteristics or features that we can only deliver then the competition kind of windows a little bit* and (inaudible) you always need to find. And I think that why do people pay cost, which is a little bit – why do they select us.

I guess the reasons that we have – we talk to our customers as our ability to manage complexity, both in terms of project or product. *Our safety features. We have a product which is very – it has proven to be very, very safe.* We have gone through burn tests, we have done all the testing on the safety that people are really present.

And then our end-to-end solution, the fact that when people hire, they know they will have a partner for the next one year that will deliver, and we have seen it today with new regulations coming in place in Europe, in the U.K. this year, we were out there, it released the app and helping our customers, ensuring that they will be meet with regulations and take advantage of these opportunities.

*So I would say those are the 3 things: complexity, both on product and project; safety;* and they are – they see us as a partner that will offer them – will compete with them and that’s the driver.

58. Also during the call, defendant Sial attributed Fluence’s “record” revenues to its “strong project execution.” Defendant Sial further claimed that Fluence had “improved execution on product rollout,” including specifically its “lab to test and debug solutions.” Defendant Sial represented that Fluence was undergoing a pivotal “turning point” and noted that the Company’s execution issues were “now largely behind” them.

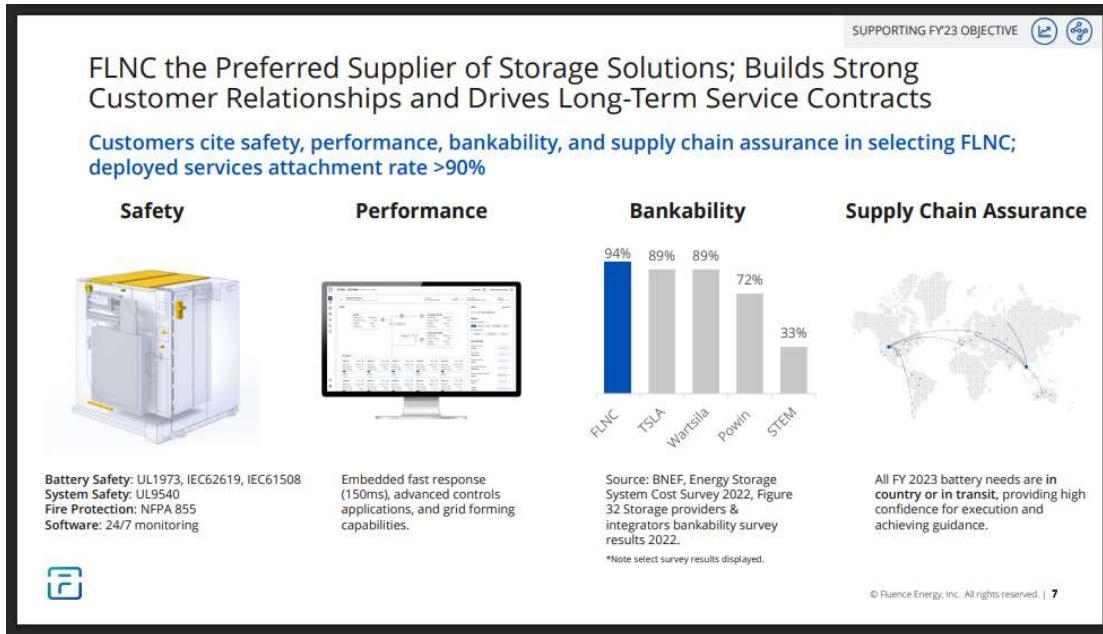
59. On December 14, 2022, Fluence filed with the SEC its annual report on Form 10-K for the fiscal year ended September 30, 2022, which was signed by defendants Nebreda and Sial who also filed certifications attesting to the document’s accuracy and completeness (“4Q22 Form 10-K”). The 4Q22 Form 10-K contained the same financial information reported in the 4Q22 Release.

60. The 4Q22 Form 10-K represented that Fluence’s “Sixth-Generation Technology Stack” delivered “safe” and “cost-effective” products, stating in pertinent part as follows:

The Tech Stack, which is comprised of our Fluence Cube, Fluence OS, and Fluence IQ, builds upon 14 years of development in prior generations, reflecting ongoing safety and design improvements. The Fluence Cube is a modular, factory-built, approximately 8'x8'x8' building block that delivers safe, scalable, cost-effective products. Our battery and supplier-agnostic system architecture allows us to deliver optimized solutions for our customers on a global scale while incorporating the latest technology components.

61. On February 8, 2023, Fluence issued a release providing the Company's financial results for its first fiscal quarter ended December 31, 2022 ("1Q23 Release"). The 1Q23 Release stated that Fluence generated quarterly revenues of \$310 million, representing a 78% increase compared to the prior year quarter. The 1Q23 Release further stated that Fluence's quarterly adjusted gross profit margin improved to approximately 4.7% compared to negative 4.8% in the prior year quarter. The 1Q23 Release also stated that Fluence achieved quarterly adjusted EBITDA of negative \$25 million compared to negative \$43 million in the prior year quarter. The 1Q23 Release quoted defendant Sial who claimed that Fluence continued to "make strides in [its] execution," including through "stronger risk management" and "improved processes and controls" with its "customers."

62. On February 9, 2023, Fluence hosted a conference call with analysts to discuss the Company's financial and operational results for its first fiscal quarter of 2023. During his prepared remarks, defendant Nebreda represented that Fluence had succeeded in "improving our project execution." Defendant Nebreda also referenced a presentation slide deck that highlighted Fluence's "[s]trong [c]ustomer [r]elationships" and claimed that the purported "[s]afety" and "[p]erformance" of the Company's products were drivers of its business generation, as depicted in the following slide:



63. Defendant Nebreda similarly claimed that Fluence's products were "safe" and performed at a "high level," and represented that these qualities competitively differentiated Fluence, stating in pertinent part as follows:

*On Slide 7, we have highlighted some of the reasons why our customers choose us to provide their energy storage solution. They are looking for someone who can provide them with a safe product. We are proud to be one of the market leaders in safety and have surpassed the industry standards. Time after time, our customers tell us that safety is their top priority when selecting an energy source. We will continue to make safety our highest priority when developing additional solutions.*

*Second, performance. Our customers demand not only a safe product but one that performs at high level.* To that point, we are pleased to have deployed the world's fastest responding battery and storage facility. Our team has achieved the demand response times below 150 milliseconds (inaudible).

64. Defendant Nebreda continued in pertinent part as follows:

*Our track record of safety and performance, our standing with bank and other lenders and the steps we have taken to significantly reduce supply chain risk allows us to continue attracting some of the world's largest infrastructure players as our customers.* These customers are seeking a long-term relationship that begins with storage solutions and often the opportunity for long-term services and digital contracts that provide recurring revenue. This is happening greater than 90% of our storage deployed has a long-term service contract.

65. On February 10, 2023, Fluence filed with the SEC its quarterly report on Form 10-Q for its first fiscal quarter ended December 31, 2022, which was signed by defendants Nebreda and Sial who also filed certifications attesting to the document's accuracy and completeness ("1Q23 Form 10-Q"). The 1Q23 Form 10-Q contained the same financial information reported in the 1Q23 Release.

66. On May 10, 2023, Fluence issued a release providing the Company's financial results for its second fiscal quarter ended March 31, 2023 ("2Q23 Release"). The 2Q23 Release stated that Fluence generated "[r]ecord" quarterly revenue of approximately \$698 million, representing an increase of 104% compared to the prior year quarter. The 2Q23 Release also stated that Fluence's quarterly adjusted gross profit margin "improved" to approximately 4.6%, compared to approximately negative 3.3% in the prior year quarter. The 2Q23 Release further stated that Fluence achieved quarterly adjusted EBITDA of negative \$24.8 million, compared to negative \$53.2 million in the prior year quarter. The 2Q23 Release quoted defendant Nebreda who credited Fluence's "record quarter" to its success in "accelerating project execution." The 2Q23 Release also quoted defendant Sial who likewise praised Fluence's improved project execution, representing that the Company was making "notable progress in [its] execution" and "improving cycle times on select projects."

67. On May 11, 2023, Fluence hosted a conference call with analysts to discuss the Company's financial and operational results for its second fiscal quarter of 2023. During the call, defendant Sial represented that Fluence had "improved execution" and, as a result, was "seeing faster progress" on certain projects, stating in pertinent part as follows:

While we expect that most of our projects will be executed within the 15- to 18-month time frame that we have previously discussed, ***we are seeing faster progress on certain projects compared to prior expectations and thus expect this trend to continue in the future, benefiting both the second half of this year as well as fiscal year 2024.***

***This improvement is attributable to better supply chain visibility and improved execution as we leverage lessons learned from prior projects.*** We are also coming into the third quarter with 100% of our second half 2023 expected revenue in our backlog.

68. Defendant Sial further claimed that due to “better execution” in the quarter, among other things, Fluence was able to “pull forward” progress on certain projects, leading to enhanced financial performance in the back half of fiscal 2023 and in fiscal 2024.

69. During the call, an analyst inquired as to what customers were focused on during business negotiations. In response, defendant Nebreda represented that Fluence’s customers were focused on selecting products they were “sure . . . were going to be delivered” and that “perform[ed]” according to specifications, and stated that exceptional performance and reliability was what Fluence “offer[s],” stating in pertinent part as follows:

***We look for customers that value what we offer, that value, clearly, products that are – that we – that they are sure that they were going to be delivered, that they’re going to perform as we tell them that they’re going to perform, that will provide services that will keep this solutions up to date, and that will have them running for them when they need it, that they can ensure it very well and that they can finance it.***

So the customers who care about that are the customers we work with. For some of them, price is very more important than others. For some of them is ensuring the performance. For some of them means, “Hey, especially where the regulatory systems are going to change, I need somebody who will know will help me adopt my systems to it.”

70. Also on May 11, 2023, Fluence filed with the SEC its quarterly report on Form 10-Q for its second fiscal quarter ended March 31, 2023, which was signed by defendants Nebreda and Sial who also filed certifications attesting to the document’s accuracy and completeness (“2Q23 Form 10-Q”). The 2Q23 Form 10-Q contained the same financial information reported in the 2Q23 Release.

71. On August 9, 2023, Fluence issued a press release providing the Company’s financial results for its third fiscal quarter ended June 30, 2023 (“3Q23 Release”). The 3Q23 Release stated that Fluence generated quarterly revenue of approximately \$536 million, representing an increase of

approximately 124% compared to the prior year quarter. The 3Q23 Release also stated that Fluence's quarterly adjusted gross profit margin improved to approximately 4.4%, compared to approximately negative 1.1% in the prior year quarter. The 3Q23 Release further stated that Fluence achieved adjusted EBITDA of approximately negative \$26 million compared to approximately negative \$53 million in the prior year quarter. The 3Q23 Release quoted defendant Nebreda, who credited Fluence's “timely project execution” for its strong quarterly performance. The 3Q23 Release also quoted defendant Sial, who highlighted Fluence's project execution, stating that “[w]e have done an admirable job of executing our legacy low-margin backlog.”

72. On August 10, 2023, Fluence hosted a conference call with analysts to discuss the Company's financial and operational results for its third fiscal quarter of 2023. During his prepared remarks, defendant Sial represented that Fluence “continue[d] to execute well” on its legacy backlog.

73. Also during the call, defendant Nebreda claimed that product “performance” was among the “type of guarantees” that Fluence provided to ensure customer satisfaction, stating in pertinent part as follows:

I'm going to say far away but far from the point where the industry consolidates in a way that we are a limited number of players that I don't say we're there, too. So for us, competitiveness is a driver internally to ensure that we did everybody on price, but not only on price, prices, are drivers not the main driver on ensuring our customers have a product that meets their needs. Price being one, ***our performance, what we do, how they can bank or finance our investments, the type of guarantees we provide them to ensure that they feel comfortable on in our assets going forward.***

74. Also on August 10, 2023, Fluence filed with the SEC its quarterly report on Form 10-Q for its third fiscal quarter ended June 30, 2023, which was signed by defendants Nebreda and Sial who also filed certifications attesting to the document's accuracy and completeness (“3Q23 Form 10-Q”). The 3Q23 Form 10-Q contained the same financial information reported in the 3Q23 Release.

75. On November 28, 2023, Fluence issued a press release providing the Company's financial results for its fourth fiscal quarter and full year ended September 30, 2023 ("4Q23 Release"). The 4Q23 Release represented that Fluence generated "[r]ecord" annual revenue and achieved a "[q]uarterly [p]rofitability [m]ilestone." The 4Q23 Release stated that Fluence generated annual revenues of \$2.2 billion and quarterly revenue of \$673 million, representing an increase of approximately 85% compared to the prior fiscal year and an increase of 25% compared to the prior quarter, respectively. The 4Q23 Release stated that Fluence achieved adjusted gross profit margin of 6.6% for the fiscal year and 11.6% in the quarter, representing an improvement from negative 4.5% in fiscal year 2022 and an improvement from 2.8% in the prior year quarter, respectively. The 4Q23 Release further stated that Fluence achieved adjusted EBITDA of approximately negative \$61 million for fiscal year 2023 and \$20 million in the quarter compared to negative \$235 million in fiscal year 2022 and negative \$43 million in the prior year quarter, respectively. The 4Q23 Release quoted defendant Nebreda who emphasized Fluence's "profitability" milestone and claimed the achievement was a "testament" to the Company's purported "unwavering commitment to operational excellence," stating in pertinent part as follows:

"I'm pleased to report that we reached a transformative milestone in the fourth quarter, achieving profitability for the first time. This momentous achievement is a testament to our ***unwavering commitment to operational excellence***, and to our team's relentless dedication.

Our ***strong execution reaffirms*** our position as a leader in the energy storage industry. It demonstrates our ability to navigate challenges, drive towards success, and deliver solutions to our customers. As we look ahead, our market outlook is more robust than ever. We see a world hungry for sustainable energy solutions, and we believe that Fluence is at the forefront, ready to meet that demand head-on as evidenced by our recently launched Gridstack Pro product."

(Footnote omitted.)

76. On November 29, 2023, Fluence hosted a conference call with analysts to discuss the Company's financial and operational results for its fourth fiscal quarter and full year 2023. During his prepared remarks, defendant Nebreda highlighted Fluence's achievements over the past fiscal

year and claimed Fluence had “delivered on our commitments to the market” due in relevant part to “improved execution,” stating in pertinent part as follows:

I’d like to highlight some of our accomplishments of the past fiscal year. As you may recall, a year ago, *we embarked on the transformation of our business. I’m pleased to report that we delivered on our commitments to the market.* We grew our annual revenue by 85% and achieved our first profitable quarter. *Importantly, we exceeded our regional [sic] annual revenue guidance by more than \$600 million, thanks to improved execution,* easing supply chains and project time line acceleration.

77. Defendant Sial similarly represented that Fluence “continue[d] to execute well” and attributed the Company’s favorable financial results to exceptional project execution, stating in pertinent part as follows:

*We continue to execute well as we were able to accelerate some of our legacy backlog previously anticipated for fiscal year 2024, resulting in higher-than-expected revenue for the fourth quarter.* We continue to expect a small portion of our legacy contracts will be recognized in the first quarter of 2024.

78. During the call, defendant Nebreda represented that Fluence had established itself as the “preferred choice” for utility-scale energy storage solutions and claimed its “competitive advantage” was due in part to the “safety” of its products, stating in pertinent part as follows:

We established ourselves as the preferred choice for utility-scale storage solution. *Our competitive advantage is fortified by being able to offer our customers* a full breadth of features, including bankability scale and supply chain management, power electronic engineering and innovation, digital software, services, *safety* and cybersecurity. While some of our competitors may focus on only a couple of these elements, *we often win because we aim to excel in all and provide them universally to our customers.*

79. Also on November 29, 2023, Fluence filed with the SEC its annual report on Form 10-K for the fiscal year ended September 30, 2023, which was signed by defendants Nebreda and Sial who also filed certifications attesting to the document’s accuracy and completeness (“4Q23 Form 10-K”). The 4Q23 Form 10-K contained the same financial information reported in the 4Q23 Release.

80. The 4Q23 Form 10-K represented that Fluence’s “Sixth-Generation Technology [Stack]” allowed customers to deploy storage “faster” and more “cost effectively,” stating in pertinent part as follows:

Fluence’s sixth generation energy storage products are built on more than 14 years of development in prior generations, and reflecting, among other things, ***ongoing safety and design improvements***. Fluence’s energy storage products make it simpler for customers to deploy storage ***faster and more cost effectively without sacrificing quality and configurability***.

81. The 4Q23 Form 10-K stated that, in October 2023, Fluence had filed a complaint against Diablo Energy Storage, LLC and others seeking monetary damages arising from the supply and construction of an energy storage facility, and that Diablo Energy Storage, LLC had filed a cross-complaint against Fluence seeking damages and other monetary relief in November 2023. The 4Q23 Form 10-K emphasized that Fluence denied the allegations and intended to “vigorously defend against them,” stating in pertinent part as follows:

In October 2023, Fluence filed a complaint in the Superior Court of California, Contra Costa County, against Diablo Energy Storage, LLC, Empire Business Park, LLC, the Bank of New York Mellon and others, seeking approximately \$37.0 million in damages arising from the supply and construction of an energy storage facility for the defendants. On or about November 10, 2023, Defendant Diablo Energy Storage, LLC filed a cross-complaint against Fluence, seeking a minimum of \$25.0 million of alleged damages and disgorgement of all compensation received by Fluence for the project, in the amount of approximately \$230.0 million. ***Fluence denies the allegations in the cross-complaint and intends to vigorously defend against them and to enforce our claims against the defendants***. We are currently not able to estimate the impact, if any, that this litigation may have on our reputation or financial results, or on market adoption of our products.

82. The statements referenced in ¶¶39-81 above were materially false and/or misleading when made because they failed to disclose the following adverse facts pertaining to the Company’s business, operations, and financial condition, which were known to defendants or recklessly disregarded by them as follows:

(a) that a material portion of Fluence’s energy storage products suffered from defective design, installation, operational, and/or maintenance issues;

(b) that Fluence had repeatedly failed to adequately address known product defects and installation errors, and/or failed to honor outstanding warranty obligations the Company owed to its customers;

(c) that the efficacy and safety of Fluence's energy storage products and the Company's ability to timely deliver projects to its customers' satisfaction had been materially overstated;

(d) that as a result of (a)-(c), Fluence's adjusted EBITDA, adjusted gross profit, and adjusted gross profit margins were artificially inflated throughout the Class Period; and

(e) that as a result of (a)-(d), Fluence was exposed to material undisclosed risks of reputational and financial harm, including through loss of business from current and/or prospective clients.

83. Then, on December 20, 2023, *Energy Storage News* published a news article revealing that Fluence's work on the Diablo project suffered from a "litany of 'defects, deficiencies, and failures.'" The article detailed the numerous alleged defects and failures that plagued Fluence's work, including that: (i) Fluence's project control system responded slowly or inaccurately to the California Independent System Operator ("CAISO") – the non-profit entity responsible for managing the flow of electricity and operator of the State's wholesale energy market – prompting CAISO to remove the project from the service market for several weeks; (ii) Fluence's proprietary Human-Machine Interface had failed to function properly, which required Diablo to use an alternative technology not designed for that purpose, resulting in operational inefficiencies; (iii) Fluence's Auxiliary Control System frequently failed; (iv) Fluence's inverters failed repeatedly – including 27 inverter failures within a 1-month period just 2 months after delivery; and (v) the occurrence of 2 arc flashes posed a risk of serious harm and injury. The *Energy News Storage* article further revealed that Fluence had completed the Diablo project approximately eight months past the contracted

delivery date and that Fluence had failed to address and resolve related warranty claims on the defective work.

84. On this news, the price of Fluence Class A common stock fell from \$27.22 per share on December 19, 2023 to \$23.01 per share on December 20, 2023, or approximately 15%, on above-average trading volume of more than 10 million shares traded. However, the price of Fluence Class A common stock continued to be artificially inflated as defendants continued to make material misstatements and omissions and to conceal the full truth regarding the Company's business and operations as detailed herein.

85. On February 7, 2024, Fluence issued a press release providing the Company's financial results for its first fiscal quarter ended December 31, 2023 ("1Q24 Release"). The 1Q24 Release stated that Fluence generated quarterly revenues of approximately \$364 million, representing an increase of approximately 17% compared to the prior year quarter. The 1Q24 Release stated that Fluence achieved quarterly adjusted gross profit margin of approximately 10.5% representing an improvement from approximately 4.2% in the prior year quarter. The 1Q24 Release stated that Fluence achieved adjusted EBITDA of approximately negative \$18 million in the quarter compared to negative \$26 million in the prior year quarter.

86. On February 8, 2024, Fluence hosted a conference call with analysts and investors to discuss the Company's financial and operational results for its first fiscal quarter of 2024. During his prepared remarks, defendant Nebreda denied the allegations revealed in the *Energy Storage News* article, claiming that the Diablo project was "performing very well and has delivered availability or uptime above its contractual requirement during 2023."

87. Also on February 8, 2024, Fluence filed with the SEC its quarterly report on Form 10-Q for its first fiscal quarter ended December 31, 2023, which was signed by defendant Nebreda who also filed certifications attesting to the document's accuracy and completeness ("1Q24 Form

10-Q"). The 1Q24 Form 10-Q contained the same financial information reported in the 1Q24 Release.

88. The 1Q24 Form 10-Q also stated that, in October 2023, Fluence had filed a complaint against Diablo Energy Storage, LLC and others seeking monetary damages arising from the supply and construction of an energy storage facility, and that Diablo Energy Storage, LLC had filed a cross-complaint against Fluence seeking damages and other monetary relief in November 2023. The Form 10-Q emphasized that Fluence denied the allegations and intended to "vigorously defend against them," stating in pertinent part as follows:

In October 2023, Fluence filed a complaint in the Superior Court of California, Contra Costa County, against Diablo Energy Storage, LLC, Empire Business Park, LLC, the Bank of New York Mellon and others, seeking approximately \$37.0 million in damages arising from the supply and construction of an energy storage facility for the defendants, including for the defendants' nonpayment of contractual amounts owed. On or about November 10, 2023, Defendant Diablo Energy Storage, LLC filed a cross-complaint against Fluence, seeking a minimum of \$25.0 million of alleged damages and disgorgement of all compensation received by Fluence for the project, in the amount of approximately \$230.0 million. The disgorgement claim was based upon an alleged deficiency in Fluence's contractor license. ***Fluence denies the allegations in the cross-complaint and intends to vigorously defend against them and to enforce our claims against the defendants.*** We are currently not able to estimate the impact, if any, that this litigation may have on our reputation or financial results, or on market adoption of our products.

89. The statements referenced in ¶¶85-88 above were materially false and/or misleading when made because they failed to disclose the following adverse facts pertaining to the Company's business, operations, and financial condition, which were known to defendants or recklessly disregarded by them as follows:

(a) that a material portion of Fluence's energy storage products suffered from defective design, installation, operational, and/or maintenance issues;

(b) that Fluence had repeatedly failed to adequately address known product defects and installation errors, and/or failed to honor outstanding warranty obligations the Company owed to its customers;

(c) that the efficacy and safety of Fluence's energy storage products and the Company's ability to timely deliver projects to its customers' satisfaction had been materially overstated;

(d) that as a result of (a)-(c), Fluence's adjusted EBITDA, adjusted gross profit, and adjusted gross profit margins were artificially inflated throughout the Class Period; and

(e) that as a result of (a)-(d), Fluence was exposed to material undisclosed risks of reputational and financial harm, including through loss of business from current and/or prospective clients.

90. Then on February 22, 2024, analysts at Blue Orca Capital published a research report revealing that Fluence's operational mishaps were far worse than previously revealed. In particular, the research report revealed that Siemens Energy, Inc. – an affiliate of Fluence's major shareholder Siemens – had filed a lawsuit against Fluence accusing the company of fraud, misrepresentations, and a “laundry list” of engineering and design failures related to a Company project in Antioch, California. The report disclosed that Fluence's work for Siemens Energy, Inc. had been late and defective. Siemens claimed that, in order to avoid safety concerns exposed by an explosion on another Fluence project, the Company had unilaterally altered the design of its original proposal. According to the report, this redesign resulted in significant operational problems requiring other portions of the project to be redesigned and reengineered to fit Fluence's undisclosed alterations. Despite the follow-on work, Fluence's completed system failed performance tests administered in May 2022.

91. Citing interviews with former Fluence employees, the report further revealed that AES had become “frustrated” with its obligations under its purchasing agreement with Fluence, which required AES to purchase all of its energy storage products at the same prices offered to other smaller players. This provision reportedly prevented AES from obtaining more favorable pricing commensurate with its size and negotiating leverage. The report indicated that AES intended to sell down its position below the requisite contractual threshold that would enable AES to withdraw its sizeable revenue contributions from Fluence’s business, a claim corroborated by AES’s partial divestiture of Fluence in December 2023.

92. The report further revealed that Fluence had prematurely launched its sixth-generation technology and sold the product to customers before designs were finalized. This rushed launch had resulted in a host of operational issues at installed project sites, including most notably the Diablo site that was reportedly among the first locations where the technology was rolled out. The report disclosed that the engineering team Fluence had tasked to remediate the defects and operational failures at the Diablo project were “very green,” underprepared, and not capable of properly addressing the defects.

93. On this news, the price of Fluence Class A common stock fell from \$17.01 per share on February 21, 2024 to \$14.73 per share on February 22, 2024, more than 13%, on above-average trading volume of more than 18 million shares traded. However, the price of Fluence stock continued to be artificially inflated as the full truth regarding the Company’s business, operations, and financial results continued to be concealed.

94. Then on November 25, 2024, Fluence issued a press release providing the Company’s financial results for its fourth fiscal quarter and full year 2024 (“4Q24 Release”). The 4Q24 Release issued annual revenue guidance for fiscal 2025 of approximately \$3.6 billion to \$4.4 billion, representing year-over-year growth of approximately 48% at the midpoint of the range. The 4Q24

Release revealed that only 65% of Fluence’s fiscal 2025 revenue guidance (at the midpoint) was “covered by the Company’s current backlog,” indicating that Fluence did not have sufficient work contracted and would need to secure additional new orders to meet its revenue targets. During the corresponding conference call held the following day, Fluence’s then-CFO Ahmed Pasha further revealed that Fluence’s fiscal 2025 revenue would be “back-end loaded,” with the Company recognizing approximately 80% of all revenues during the second half of fiscal 2025, while only 20% of its annual revenue would be recognized in the first half of fiscal 2025.

95. On this news, the price of Fluence Class A common stock fell from \$23.50 per share on November 25, 2024 to \$18.37 per share on November 27, 2024, a decline of approximately 22% over a two-day trading period, on above-average trading volume. However, the price of Fluence stock continued to be artificially inflated as the full truth regarding the Company’s business, operations, and financial results continued to be concealed.

96. Then on February 10, 2025, Fluence issued a press release providing the Company’s financial results for its first fiscal quarter of 2025 (“1Q25 Release”). The 1Q25 Release revealed that Fluence was reducing its fiscal 2025 revenue guidance from a range of \$3.6 billion to \$4.4 billion to a range of \$3.1 billion to \$3.7 billion, representing a reduction of approximately \$600 million at the midpoint. The 1Q25 Release further revealed that the guidance revision was the result of ““customer driven delays”” in executing outstanding contracts and ““competitive pressures.”” The 1Q25 Release further revealed that quarterly revenue of \$187 million significantly missed consensus estimates of \$363 million by nearly 48%, representing a significant departure from the already muted expectations set by the Company’s “back-end loaded” revenue cadence disclosed during the prior quarter.

97. On this news, the price of Fluence Class A common stock fell from \$13.07 per share on February 10, 2025 to \$6.18 per share on February 13, 2025, a more than 52% decline over a three-day trading period, on above-average trading volume.

98. As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of Fluence Class A common stock, plaintiff and other Class members have suffered significant losses and damages under the federal securities laws.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

99. As alleged herein, defendants acted with scienter in that defendants knew, or recklessly disregarded, that the public documents and statements they issued and disseminated to the investing public in the name of the Company, or in their own name, during the Class Period were materially false and misleading. Defendants knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements and documents as primary violations of the federal securities laws. Defendants, by virtue of their receipt of information reflecting the true facts regarding Fluence, and their control over and/or receipt and/or modification of Fluence's materially false and misleading statements, were active and culpable participants in the fraudulent scheme alleged herein.

100. Defendants knew or recklessly disregarded the false and misleading nature of the information they caused to be disseminated to the investing public. The fraudulent scheme described herein could not have been perpetuated during the Class Period without the knowledge and complicity of, or at least the reckless disregard by, personnel at the highest levels of the Company, including the Individual Defendants.

101. The Individual Defendants, because of their positions with Fluence, controlled the contents of Fluence's public statements during the Class Period. The Individual Defendants were each provided with or had access to the information alleged herein to be false and misleading prior to

or shortly after its issuance and had the ability and opportunity to prevent its issuance or cause it to be corrected. Because of their positions and access to material, non-public information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations that were being made were false and misleading.

102. Fluence's defective products and installation errors jeopardized the Company's business, client relations, and financial health, which were among the most important issues facing the Company and the focus of Fluence management, including the Individual Defendants. Notably, defendants Nebreda and Sial were appointed to their executive positions at Fluence amid the height of the Company's operational turmoil. Indeed, the Individual Defendants repeatedly held themselves out as the persons most knowledgeable regarding Fluence's energy storage products, project execution, client relations, and cost structure.

103. Defendant AES also had the motive and opportunity to carry out the fraud alleged herein. Within one week of Fluence's announcement that it had achieved its "milestone" of generating positive net income, defendant AES caused Fluence to conduct a registered secondary public offering that enabled AES to dump more than \$156 million in Fluence stock at artificially inflated prices. The timing of the sale was also highly suspicious as it occurred approximately one week after Siemens Energy Inc. had initiated its lawsuit against Fluence and before the truth regarding the misrepresentations detailed herein were revealed to investors.

104. Defendants' scienter is further underscored by the mandated certifications under the Sarbanes-Oxley Act of 2002 of the Individual Defendants filed during the Class Period, which acknowledged their responsibility to investors for establishing and maintaining controls to ensure that material information about Fluence was made known to them and that the Company's disclosure-related controls were operating effectively.

## **NO SAFE HARBOR**

105. Fluence's "Safe Harbor" warnings accompanying its reportedly forward-looking statements ("FLS") issued during the Class Period were ineffective to shield those statements from liability. To the extent that projected revenues and earnings were included in the Company's financial reports prepared in accordance with GAAP, including those filed with the SEC on Form 8-K, they are excluded from the protection of the statutory Safe Harbor. 15 U.S.C. §78u-5(b)(2)(A).

106. Defendants are also liable for any false or misleading FLS pled because, at the time each FLS was made, the speaker knew the FLS was false or misleading and the FLS was authorized and approved by an executive officer of Fluence who knew that the FLS was false. None of the historic or present tense statements made by defendants were assumptions underlying or relating to any plan, projection, or statement of future economic performance, as they were not stated to be such assumptions underlying or relating to any projection or statement of future economic performance when made, nor were any of the projections or forecasts made by defendants expressly related to or stated to be dependent on those historic or present tense statements when made.

## **APPLICATION OF PRESUMPTION OF RELIANCE: FRAUD ON THE MARKET**

107. At all relevant times, the market for Fluence Class A common stock was an efficient market for the following reasons, among others:

- (a) Fluence Class A common stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;
- (b) according to the Company's Form 10-K for the fiscal year ended September 30, 2024, Fluence had over 129 million shares of Class A common stock outstanding as of November 20, 2024;
- (c) as a regulated issuer, Fluence filed periodic public reports with the SEC;

- (d) Fluence regularly communicated with public investors via established market communication mechanisms, including the regular dissemination of press releases on national circuits of major newswire services, the Internet, and other wide-ranging public disclosures; and
- (e) unexpected material news about Fluence was rapidly reflected in and incorporated into prices for the Company's shares during the Class Period.

108. As a result of the foregoing, the market for Fluence Class A common stock promptly digested current information regarding Fluence from publicly available sources and reflected such information in the price of Fluence Class A common stock. Under these circumstances, all purchasers of Fluence Class A common stock during the Class Period suffered similar injury through their purchases of Fluence Class A common stock at artificially inflated prices, and a presumption of reliance applies.

109. A presumption of reliance is also appropriate in this action under the Supreme Court's holding in *Affiliated Ute Citizens v. United States*, 406 U.S. 128 (1972), because plaintiff's claims are based, in significant part, on defendants' material omissions. Because this action involves defendants' failure to disclose material adverse information regarding Fluence's business, operations, and risks, 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 defendants' material misstatements and omissions set forth above, that requirement is satisfied here.

### **LOSS CAUSATION/ECONOMIC LOSS**

110. During the Class Period, as detailed herein, defendants made false and misleading statements and engaged in a scheme to deceive the market and a course of conduct that artificially inflated the price of Fluence Class A common stock and operated as a fraud or deceit on Class Period purchasers of Fluence Class A common stock by misrepresenting the value of the Company's

business and prospects in the Company's operations. As defendants' misrepresentations and fraudulent conduct became apparent to the market, the price of the Company's Class A common stock fell precipitously on numerous occasions as the prior artificial inflation came out of the stock's price, as detailed herein. As a result of their purchases of Fluence Class A common stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

### **CLASS ACTION ALLEGATIONS**

111. 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 purchasers of Fluence Class A common stock during the Class Period (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.

112. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Fluence Class A common stock was 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 could be hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Fluence 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.

113. 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.

114. 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.

115. 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 Exchange Act was violated by defendants as alleged herein;
- (b) whether statements made by defendants misrepresented material facts about the business and operations of Fluence; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

116. 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 individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **COUNT I**

### **For Violation of §10(b) of the Exchange Act and Rule 10b-5 Against All Defendants Except AES**

117. Plaintiff incorporates ¶¶1-116 by reference.

118. During the Class Period, the defendants named herein disseminated or approved the statements specified above, which they knew or deliberately disregarded were false and misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

119. The defendants named herein violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

- (a) employed devices, schemes, and 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 light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of Fluence common stock during the Class Period.

120. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for Fluence Class A common stock. Plaintiff and the Class would not have purchased Fluence Class A common stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

## COUNT II

### **For Violation of §20(a) of the Exchange Act Against All Defendants**

121. Plaintiff incorporates ¶¶1-120 by reference.

122. The Individual Defendants acted as controlling persons of Fluence within the meaning of §20(a) of the Exchange Act. By reason of their positions with the Company, the Individual Defendants had the power and authority to cause Fluence to engage in the wrongful conduct complained of herein. Defendant AES controlled Fluence and the Individual Defendants for the reasons detailed herein, including its ownership of a majority of Fluence voting stock, influence over Fluence's management, historical relationship with the Company, and the various agreements that these defendants had caused the Company to enter into. Fluence controlled the Individual

Defendants and all of its employees. By reason of such conduct, defendants are liable pursuant to §20(a) of the Exchange Act.

**PRAYER FOR RELIEF**

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

- A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;
- 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. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

DATED: April 15, 2025