

EMAGIN CORP  
Form 10-K/A  
September 01, 2017

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K/A

(Amendment No. 1)

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2016  
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_  
Commission file number 001-15751

eMAGIN CORPORATION

(Exact name of registrant as specified in its charter)

Delaware 56-1764501  
(State or other jurisdiction of (I.R.S. Employer  
incorporation or organization) Identification No.)

2070 Route 52, Hopewell Junction, NY 12533

(Address of principal executive offices)

(845) 838-7900

Edgar Filing: EMAGIN CORP - Form 10-K/A

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act: Common Stock, \$.001 Par Value Per Share

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark whether the registrant is a well-known seasoned issuer as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 229.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller Reporting Company  Emerging growth company  (Do not check if a smaller reporting company)

---

Edgar Filing: EMAGIN CORP - Form 10-K/A

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined by Rule 12b-2 of the Exchange Act)

Yes      No

As of June 30, 2017, the last business day of the registrant's most recently completed second quarter, the aggregate market value of the issued and outstanding common stock held by non-affiliates of the registrant, based upon the closing price of the common stock as traded on the NYSE American of \$2.45 was approximately \$64.0 million. For purposes of the above statement only, all directors, executive officers and 10% shareholders are assumed to be affiliates. This determination of affiliate status is not necessarily a conclusive determination for any other purpose.

The number of shares of common stock outstanding as of August 29, 2017 was 34,972,580.

DOCUMENTS INCORPORATED BY REFERENCE

None.

Explanatory Note

eMagin Corporation (the "Company") is filing this Amendment No. 1 (the "Amendment") to its Annual Report on Form 10-K for the fiscal year ended December 31, 2016 (the "2016 Form 10-K"), filed with the Securities and Exchange Commission on March 29, 2017, in order to provide a revised Report of Independent Registered Public Accounting Firm (the "Revised Report") clarifying that the Company's Independent Registered Public Accounting Firm conducted its audit of the Company's audited financial statements for the year ended December 31, 2016, which were included in the 2016 Form 10-K, in accordance with the "standards of the Public Company Accounting Oversight Board (United States)."

This Amendment is solely limited to providing the Revised Report. No other information in the 2016 Form 10-K is amended hereby and the Amendment does not in any other way amend or restate the Company's previously reported financial statements included in the 2016 Form 10-K, other than the revision reflected in the Revised Report. This Amendment speaks as of the original date of the 2016 Form 10-K and does not reflect events occurring after the filing of the 2016 Form 10-K. This Amendment should be read in conjunction with the 2016 Form 10-K.

As required by Rule 12b-15 under the Securities Exchange Act of 1934, as amended, new certifications by the Company's principal executive officer and principal financial officer are being filed with this Amendment as Exhibits 31.1, 31.2, 32.1 and 32.2.

eMAGIN CORPORATION

FORM 10-K/A

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2016

INDEX

|  | Page |
|--|------|
| PART II  |      |
| Item 8 Financial Statements and Supplementary Data                               | 1    |
| PART IV  |      |
| Item 15 Exhibits and Financial Statement Schedules                               | 2    |
| Report of Independent Registered Public Accounting Firm and Financial Statements | 3    |
| Signatures   | 24   |
| Exhibits   | 25   |

---

PART II

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

The report of the independent registered public accounting firm and financial statements are included in Item 15 of this Annual Report on Form 10-K.

~

1

---

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Financial Statements and Schedules

1. Financial Statements

The following consolidated financial statements are filed as part of this report under Item 8 of Part II “Financial Statements and Supplementary Data”:

- 4 Consolidated Balance Sheets at December 31, 2016 and 2015.
- 5 Consolidated Statements of Operations for the Years Ended December 31, 2016 and 2015.
- 6 Consolidated Statements of Changes in Shareholders’ Equity for the Years Ended December 31, 2016 and 2015.
- 7 Consolidated Statements of Cash Flows for the Years Ended December 31, 2016 and 2015.
- 8 Notes to the Consolidated Financial Statements

2. Financial Statement Schedules



Financial statement schedules not included herein have been omitted because they are either not required, not applicable, or the information is otherwise included herein.

(b) Exhibits

The exhibits listed in the accompanying Index to Exhibits on pages 26 to 28 are filed or incorporated by reference as part of this Annual Report on Form 10-K.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders  
eMagin Corporation

We have audited the accompanying consolidated balance sheets of eMagin Corporation and Subsidiary (the Company) as of December 31, 2016 and 2015, and the related consolidated statements of operations, changes in shareholders' equity and cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of eMagin Corporation and Subsidiary as of December 31, 2016 and 2015, and the results of their operations and their cash flows for the years then ended, in conformity with U.S. generally accepted accounting principles.

/s/ RSM US LLP

Seattle, Washington

March 28, 2017



## eMAGIN CORPORATION

## CONSOLIDATED BALANCE SHEETS

(In thousands, except share and per share data)

|  | December<br>31, 2016 | December<br>31, 2015 |
|--|----------------------|----------------------|
| <b>ASSETS</b>  |                      |                      |
| Current assets:  |                      |                      |
| Cash and cash equivalents  | \$ 5,241             | \$ 9,273             |
| Accounts receivable, net   | 2,834                | 3,508                |
| Unbilled accounts receivable   | 1,401                | 1,445                |
| Inventories  | 7,435                | 3,901                |
| Prepaid expenses and other current assets  | 1,040                | 489                  |
| Total current assets   | 17,951               | 18,616               |
| Equipment, furniture and leasehold improvements, net   | 8,980                | 9,131                |
| Intangibles and other assets   | 282                  | 336                  |
| Total assets   | \$ 27,213            | \$ 28,083            |
| <b>LIABILITIES AND SHAREHOLDERS' EQUITY</b>  |                      |                      |
| Current liabilities:   |                      |                      |
| Accounts payable   | \$ 1,432             | \$ 1,636             |
| Accrued compensation   | 1,528                | 1,246                |
| Revolving credit facility, net   | 1,689                | —                    |
| Other accrued expenses   | 1,513                | 1,193                |
| Other current liabilities  | 591                  | 602                  |
| Total current liabilities  | 6,753                | 4,677                |
| Commitments and contingencies (Note 11)  |                      |                      |
| Shareholders' equity:  |                      |                      |
| Preferred stock, \$.001 par value: authorized 10,000,000 shares:   |                      |                      |
| Series B Convertible Preferred stock, (liquidation preference of \$5,659,000) stated value \$1,000 per share, \$.001 par value: 10,000 shares designated and 5,659 issued and outstanding as of December 31, 2016 and 2015 | —                    | —                    |
| Common stock, \$.001 par value: authorized 200,000,000 shares, issued 31,788,582 shares as of December 31, 2016 and 29,550,170 shares as of December 31, 2015  | 32                   | 30                   |
| Additional paid-in capital   | 239,915              | 234,814              |

|   |           |           |
|---|-----------|-----------|
| Accumulated deficit   | (218,987) | (210,938) |
| Treasury stock, 162,066 shares as of December 31, 2016 and 2015 | (500)     | (500)     |
| Total shareholders' equity                                      | 20,460    | 23,406    |
| Total liabilities and shareholders' equity                      | \$ 27,213 | \$ 28,083 |

See notes to Consolidated Financial Statements.

## eMAGIN CORPORATION

## CONSOLIDATED STATEMENTS OF OPERATIONS

(In thousands, except share and per share data)

|  | Year Ended<br>December 31, |            |
|--|----------------------------|------------|
|  | 2016                       | 2015       |
| Revenues:                              |                            |            |
| Product                                | \$ 17,265                  | \$ 20,912  |
| Contract                               | 3,132                      | 4,230      |
| License                                | 1,000                      | —          |
| Total revenues, net                    | 21,397                     | 25,142     |
| Cost of revenues:                      |                            |            |
| Product                                | 12,988                     | 15,466     |
| Contract                               | 1,967                      | 2,698      |
| License                                | —                          | —          |
| Total cost of revenues                 | 14,955                     | 18,164     |
| Gross profit                           | 6,442                      | 6,978      |
| Operating expenses:                    |                            |            |
| Research and development               | 6,362                      | 4,353      |
| Selling, general and administrative    | 8,411                      | 6,687      |
| Total operating expenses               | 14,773                     | 11,040     |
| Loss from operations                   | (8,331)                    | (4,062)    |
| Other income (expense):                |                            |            |
| Interest expense, net                  | (30)                       | (43)       |
| Other income, net                      | 313                        | —          |
| Total other income (expense), net      | 283                        | (43)       |
| Loss before provision for income taxes | (8,048)                    | (4,105)    |
| Provision for income taxes             | (1)                        | —          |
| Net Loss                               | \$ (8,049)                 | \$ (4,105) |
| Loss per share, basic                  | \$ (0.27)                  | \$ (0.16)  |
| Loss per share, diluted                | \$ (0.27)                  | \$ (0.16)  |

Weighted average number of shares outstanding:

|         |            |            |
|---------|------------|------------|
| Basic   | 30,172,927 | 25,296,040 |
| Diluted | 30,172,927 | 25,296,040 |

See notes to Consolidated Financial Statements.

5

---

## eMAGIN CORPORATION

## CONSOLIDATED STATEMENTS OF CHANGES IN SHAREHOLDERS' EQUITY

(In thousands, except share data)

|   | Preferred<br>Shares | Preferred<br>Stock | Common<br>Shares | Common<br>Stock | Additional<br>Paid-in<br>Capital | Accumulated<br>Deficit | Treasury<br>Stock | Total<br>Shareholders'<br>Equity |
|---|---------------------|--------------------|------------------|-----------------|----------------------------------|------------------------|-------------------|----------------------------------|
| Balance, December 31,<br>2014                             | 5,659               | \$ —               | 25,195,107       | \$ 25           | \$ 228,380                       | \$ (206,833)           | \$ (500)          | \$ 21,072                        |
| Exercise of common<br>stock options                       | —                   | —                  | 254,351          | 1               | 266                              | —                      | —                 | 267                              |
| Stock based<br>compensation                               | —                   | —                  | —                | —               | 606                              | —                      | —                 | 606                              |
| Common stock issued<br>for cash, net of issuance<br>costs | —                   | —                  | 4,100,712        | 4               | 5,562                            | —                      | —                 | 5,566                            |
| Net loss  | —                   | —                  | —                | —               | —                                | (4,105)                | —                 | (4,105)                          |
| Balance, December 31,<br>2015                             | 5,659               | —                  | 29,550,170       | 30              | 234,814                          | (210,938)              | (500)             | 23,406                           |
| Exercise of common<br>stock options                       | —                   | —                  | 21,912           | —               | 45                               | —                      | —                 | 45                               |
| Exercise of Warrants                                      | —                   | —                  | 2,216,500        | 2               | 4,285                            | —                      | —                 | 4,287                            |
| Stock based<br>compensation                               | —                   | —                  | —                | —               | 771                              | —                      | —                 | 771                              |
| Net loss  | —                   | —                  | —                | —               | —                                | (8,049)                | —                 | (8,049)                          |
| Balance, December 31,<br>2016                             | 5,659               | \$ —               | 31,788,582       | \$ 32           | \$ 239,915                       | \$ (218,987)           | \$ (500)          | \$ 20,460                        |

See notes to Consolidated Financial Statements.



## eMAGIN CORPORATION

## CONSOLIDATED STATEMENTS OF CASH FLOWS

(In thousands)

|   | Year Ended<br>December 31, |            |
|---|----------------------------|------------|
|   | 2016                       | 2015       |
| Cash flows from operating activities:                                       |                            |            |
| Net loss  | \$ (8,049)                 | \$ (4,105) |
| Adjustments to reconcile net loss to net cash used in operating activities: |                            |            |
| Depreciation and amortization   | 1,641                      | 1,530      |
| Reduction in provision for doubtful accounts                                | —                          | (543)      |
| Increase (reduction) in inventory reserve                                   | (49)                       | 1,253      |
| Stock-based compensation  | 771                        | 606        |
| Loss on sale of asset   | 1                          | 12         |
| Changes in operating assets and liabilities:                                |                            |            |
| Accounts receivable   | 674                        | (87)       |
| Unbilled accounts receivable  | 44                         | (279)      |
| Inventories   | (3,485)                    | (567)      |
| Prepaid expenses and other current assets                                   | (551)                      | 155        |
| Accounts payable, accrued expenses, and other current liabilities           | 387                        | 764        |
| Net cash used in operating activities                                       | (8,616)                    | (1,261)    |
| Cash flows from investing activities:                                       |                            |            |
| Purchase of equipment   | (1,437)                    | (1,189)    |
| Maturities of investments   | —                          | 750        |
| Net cash used in investing activities                                       | (1,437)                    | (439)      |
| Cash flows from financing activities:                                       |                            |            |
| Proceeds from warrant exercise, net   | 4,287                      | —          |
| Proceeds from sale of common stock  | —                          | 5,566      |
| Borrowings under revolving line of credit, net                              | 1,689                      | —          |
| Payments made in financing of intangibles                                   | —                          | (150)      |
| Proceeds from exercise of stock options                                     | 45                         | 267        |
| Net cash provided by financing activities                                   | 6,021                      | 5,683      |
| Net increase (decrease) in cash and cash equivalents                        | (4,032)                    | 3,983      |
| Cash and cash equivalents, beginning of period                              | 9,273                      | 5,290      |
| Cash and cash equivalents, end of period                                    | \$ 5,241                   | \$ 9,273   |
| Cash paid for interest  | \$ 29                      | \$ 13      |
| Cash paid for income taxes  | \$ 1                       | \$ —       |

See notes to Consolidated Financial Statements.



eMAGIN CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

Note 1 – Nature Of Business

eMagin Corporation and its wholly owned subsidiary, Virtual Vision, Inc. (the “Company”) designs, manufactures and supplies OLED-on-silicon microdisplays and virtual imaging products which utilize OLED microdisplays. The Company’s products are sold mainly in North America, Asia, and Europe.

Note 2 – Significant Accounting Policies

Basis of presentation

The accompanying consolidated financial statements include the accounts of eMagin Corporation and its wholly owned subsidiary. All intercompany transactions have been eliminated in consolidation. The Company manages its operations on a consolidated, integrated basis in order to optimize its equipment and facilities and to effectively service its global customer base, and concludes that it operates in a single business segment.

Use of estimates

In accordance with accounting principles generally accepted in the United States of America, management utilizes certain estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an on-going basis, management evaluates its estimates and judgments related to, among others, allowance for doubtful accounts, warranty reserves, inventory reserves, stock-based compensation expense, deferred tax asset valuation allowances, litigation and other loss contingencies. Management bases its estimates and judgments on historical experience and on various other assumptions that are believed to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results could differ from those estimates.

## Revenue and cost recognition

Revenue is recognized when persuasive evidence of an arrangement exists, delivery has occurred, selling price is fixed or determinable and collection is reasonably assured. Product revenue is generally recognized when products are shipped to customers.

The Company also earns revenues from certain research and development (“R&D”) activities (contract revenues) under both firm fixed-price contracts and cost-type contracts. Revenues relating to firm fixed-price contracts and cost-type contracts are generally recognized on the percentage-of-completion method of accounting as costs are incurred (cost-to-cost basis). Progress is generally based on a cost-to-cost approach; however, an alternative method may be used such as physical progress, labor hours or others depending on the type of contract. Physical progress is determined as a combination of input and output measures as deemed appropriate by the circumstances. Contract costs include all direct material and labor costs and an allocation of allowable indirect costs as defined by each contract, as periodically adjusted to reflect revised agreed upon rates. These rates are subject to audit by the other party.

## Product warranty

The Company offers a one-year product replacement warranty. In general, the standard policy is to repair or replace the defective products. The Company accrues for estimated returns of defective products at the time revenue is recognized based on historical experience as well as for specific known product issues. The determination of these accruals requires the Company to make estimates of the frequency and extent of warranty activity and estimate future costs to replace the products under warranty. If the actual warranty activity and/or repair and replacement costs differ significantly from these estimates, adjustments to cost of revenue may be required in future periods.

The following table provides a summary of the activity related to the Company's warranty liability, included in other current liabilities, during the years ended December 31, 2016 and 2015 (in thousands):

|                   | Year Ended<br>December 31, |        |
|-------------------|----------------------------|--------|
|                   | 2016                       | 2015   |
| Beginning balance | \$ 599                     | \$ 663 |
| Warranty accruals | 375                        | 455    |
| Warranty claims   | (390)                      | (519)  |
| Ending balance    | \$ 584                     | \$ 599 |

#### Research and development expenses

Research and development costs are expensed as incurred.

#### Cash and cash equivalents

All highly liquid instruments with an original maturity of three months or less at the date of purchase are considered to be cash equivalents.

#### Accounts receivable

The majority of the Company's commercial accounts receivable are due from Original Equipment Manufacturers ("OEM's"). Credit is extended based on an evaluation of a customer's financial condition and, generally, collateral is not required. Accounts receivable are payable in U.S. dollars, are due within 30-90 days and are stated at amounts due from customers net of an allowance for doubtful accounts. Any account outstanding longer than the contractual payment terms is considered past due.

#### Unbilled accounts receivable

Unbilled receivables principally represent revenues recorded under the percentage-of-completion method of accounting that have not been billed to customers in accordance with the contractual terms of the arrangement. We anticipate that the majority of the balance at December 31, 2016 will be collected during the 2017 fiscal year. As of December 31, 2016 and 2015, unbilled accounts receivable was \$1.4 million and \$1.4 million, respectively.

#### Allowance for doubtful accounts

The allowance for doubtful accounts reflects an estimate of probable losses inherent in the accounts receivable balance. The allowance is determined based on a variety of factors, including the length of time receivables are past due, historical experience, the customer's current ability to pay its obligation, and the condition of the general economy and the industry as a whole. The Company will record a specific reserve for individual accounts when the Company becomes aware of a customer's inability to meet its financial obligations, deterioration in the customer's operating results or financial position, or deterioration in the customer's credit history. If circumstances related to customers change, the Company would further adjust estimates of the recoverability of receivables. Account balances, when determined to be uncollectible, are charged against the allowance.

#### Inventories

Inventories are stated at the lower of cost or market. Cost is determined using the first-in first-out method. Cost includes materials, labor, and manufacturing overhead related to the purchase and production of inventories. The Company regularly reviews inventory quantities on hand, future purchase commitments with the Company's suppliers, and the estimated utility of the inventory. If the Company review indicates a reduction in utility below carrying value, the inventory is reduced to a new cost basis.

#### Equipment, furniture and leasehold improvements

Equipment, furniture and leasehold improvements are stated at cost. Depreciation on equipment is calculated using the straight-line method of depreciation over the estimated useful life ranging from three to 10 years. Amortization of leasehold improvements is calculated by using the straight-line method over the shorter of their estimated useful lives or lease terms. Expenditures for maintenance and repairs are charged to expense as incurred.

The Company performs impairment tests on its long-lived assets when circumstances indicate that their carrying amounts may not be recoverable. If required, recoverability is tested by comparing the estimated future undiscounted cash flows of the asset or asset group to its carrying value. Impairment losses, if any, are recognized based on the excess of the assets' carrying amounts over their estimated fair values.

#### Intangible assets

Included in the Company's intangible assets are patents that are recorded at purchase price as of the date acquired and amortized over the expected useful life which is generally the remaining life of the patent. In 2014, the Company purchased several patents for \$290 thousand which are being amortized over their remaining useful life. As of December 31, 2016 and 2015, intangible assets were \$355 thousand less accumulated amortization of \$166 thousand and \$112 thousand, respectively. As of December 31, 2016, the weighted average remaining useful life of the patents was approximately 5.3 years.

Total intangible amortization expense was approximately \$54 thousand and \$58 thousand for each of the years ended December 31, 2016 and 2015, respectively. Estimated future amortization expense as of December 31, 2016 is as follows (in thousands):

| Fiscal Years ending December 31, | Total Amortization |
|----------------------------------|--------------------|
| 2017                             | \$ 54              |
| 2018                             | 54                 |
| 2019                             | 32                 |
| 2020                             | 9                  |
| 2021                             | 8                  |
| Later years                      | 32                 |
|                                  | \$ 189             |

#### Advertising

Costs related to advertising and promotion of products are charged to sales and marketing expense as incurred. There was no advertising expense for the years ended December 31, 2016 and 2015.

#### Shipping and handling fees

The Company includes costs related to shipping and handling in cost of goods sold.

#### Income taxes

The Company accounts for income taxes under an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the Company's financial statements or tax returns. The effect on deferred tax assets and liabilities of changes in tax rates will be recognized as income or expense in the period that the change occurs. A valuation allowance for deferred tax assets is recorded when it is more likely than not that some or all of the benefit from the deferred tax asset will not be realized. Changes in circumstances, assumptions and clarification of uncertain tax regimes may require changes to any valuation allowances associated with the Company's deferred tax assets.

Due to the Company's operating loss carryforwards, all tax years remain open to examination by the major taxing jurisdictions to which the Company is subject. In the event that the Company is assessed interest or penalties at some point in the future, it will be classified in the financial statements as tax expense.

#### Income (loss) per common share

Basic income (loss) per share ("Basic EPS") is computed by dividing net income (loss) by the weighted average number of common shares outstanding during the reporting period. Diluted income (loss) per share ("Diluted EPS") is computed by dividing the net income (loss) by the weighted average number of common shares outstanding during the reporting period while also giving effect to all potentially dilutive common shares that were outstanding during the reporting period.



Edgar Filing: EMAGIN CORP - Form 10-K/A

In accordance with ASC 260, entities that have issued securities other than common stock that participate in dividends with the common stock (“participating securities”) are required to apply the two-class method to compute basic EPS. The two-class method is an earnings allocation method under which EPS is calculated for each class of common stock and participating security as if all such earnings had been distributed during the period. On December 22, 2008, the Company issued Convertible Preferred Stock – Series B which participates in dividends with the Company’s common stock and is therefore considered to be a participating security. The participating convertible preferred stock is not required to absorb any net loss. The Company uses the more dilutive method of calculating the diluted earnings per share, either the two class method or “if-converted” method. Under the “if-converted” method, the convertible preferred stock is assumed to have been converted into common shares at the beginning of the period.

For the years ended December 31, 2016 and 2015, the Company reported a net loss and as a result, basic and diluted loss per common share are the same. Therefore, in calculating net loss per share amounts, shares underlying the potentially dilutive common stock equivalents were excluded from the calculation of diluted net income per common share because their effect was anti-dilutive.

The following is a table of the potentially dilutive common stock equivalents for the years ended December 31, 2016 and 2015 that were not included in diluted EPS as their effect would be anti-dilutive:

|   | For the Year Ended |            |
|---|--------------------|------------|
|   | December 31,       |            |
|   | 2016               | 2015       |
| Options   | 5,055,741          | 4,218,139  |
| Warrants  | 3,331,449          | 2,600,000  |
| Convertible preferred stock                         | 7,545,333          | 7,545,333  |
| Total potentially dilutive common stock equivalents | 15,932,523         | 14,363,472 |

Comprehensive income (loss)

Comprehensive income (loss) refers to net income (loss) and other revenue, expenses, gains and losses that, under generally accepted accounting principles, are recorded as an element of shareholders’ equity but are excluded from the calculation of net income (loss).

The Company's operations did not give rise to any material items includable in comprehensive income (loss), which were not already in net income (loss) for the years ended December 31, 2016 and 2015. Accordingly, the Company's comprehensive income (loss) is the same as its net income (loss) for the periods presented.

#### Stock-based compensation

The Company uses the fair value method of accounting for share-based compensation arrangements. The fair values of stock options are estimated at the date of grant using the Black-Scholes option valuation model. Stock-based compensation expense is reduced for estimated forfeitures and is amortized over the vesting period using the straight-line method.

#### Concentration of credit risk

The majority of eMagin's products are sold throughout North America, Asia, and Europe. Sales to the Company's recurring customers are generally made on open account while sales to occasional customers are typically made on a prepaid basis. eMagin performs periodic credit evaluations on its recurring customers and generally does not require collateral. An allowance for doubtful accounts is maintained for credit losses.

Financial instruments which potentially subject the Company to concentrations of credit risk consist of cash and cash equivalents and short-term investments. The Company's cash and cash equivalents are deposited with financial institutions which, at times, may exceed federally insured limits. The Company invests surplus cash in a government money market fund that consists of U.S Government obligations and repurchase agreements collateralized by U.S. Government Obligations, which is not insured. To date, the Company has not experienced any loss associated with this risk.

#### Evaluation of Ability to Maintain Current Level of Operations

In connection with preparing the consolidated financial statements for the year ended December 31, 2016, management evaluated whether there were conditions and events, considered in the aggregate, that raised substantial doubt about the Company's ability to continue as a going concern and meet its obligations as they became due for the next twelve months from the date of issuance of its 2016 financial statements. Management assessed that there were such conditions and events, including a history of recurring operating

losses and negative cash flows from operating activities. The Company incurred a net loss of \$8.0 million and used cash in operating activities of \$8.6 million for 2016. In addition, at December 31, 2016, the Company had cash and cash equivalents of \$5.2 million, outstanding borrowings under its ABL debt facility of \$1.9 million, gross of debt issuance costs, and borrowing availability under the facility of \$2.0 million.

Management evaluated the significance of these conditions in relation to the Company's ability to meet its obligations as they become due. The Company's ability to continue current operations and to execute on management's plans is dependent on its ability to generate sufficient cash flows from operations. The Company expects that it may need additional capital to fund its operations in the next twelve months from the date of issuance of its 2016 financial statements. In March 2017, the Company entered into an unsecured debt financing arrangement with Stillwater Trust LLC, a significant investor in the Company (see Note 14). Under the financing agreement, the Company may borrow through June 30, 2018, up to \$2 million for general working capital purposes and up to an additional \$3 million should the Company's existing lender not provide borrowing availability under its normal terms and conditions through its ABL debt facility. Management's plans also include the ability to reduce certain discretionary expenses and delay capital expenditures if necessary to provide additional sources of capital.

Management believes that its plan of obtaining this additional source of capital under the Stillwater Trust LLC agreement, and its ability to take actions to reduce certain discretionary expenses and delay capital expenditures if necessary to provide additional sources of capital, alleviates the substantial doubt about the Company's ability to continue as a going concern. Based on the Company's current operating plan, management anticipates that, given current working capital levels, current financial projections, and the ability to borrow under its ABL debt facility and its credit facility with its largest investor, the Company will be able to meet its financial obligations as they become due over the next twelve months from the date of issuance of its 2016 financial statements and to continue as a going concern over the same period.

#### Recently issued accounting standards

In March 2016, the Financial Accounting Standards Board ("FASB") issued guidance which simplifies the accounting for share-based payment transactions including the income tax consequences, classification of awards as either equity or liabilities, financial statement presentation of excess tax benefits or deficiencies, and classification in the Consolidated Statement of Cash Flows. The guidance is effective for interim and annual reporting periods beginning after December 15, 2016, although early adoption is permitted. The Company has elected to early adopt this guidance on a prospective basis as of December 31, 2016. The adoption of the new accounting guidance did not have a material impact on its financial statements.

In February 2016, the FASB issued guidance which changes the accounting for leases. The guidance requires lessees to recognize a right-of-use asset, which is an asset that represents the lessee's right to use, or control the use of, a specified asset for the lease term and, a lease liability, which is a lessee's obligation to make lease payments arising from a lease, measured on a discounted basis for all leases (with the exception of short-term leases). Under the new guidance, leases previously defined as operating leases will be presented on the balance sheet. As a result, these leases will be recorded as an asset and a corresponding liability at the present value of the total lease payments. The asset

will be decremented over the life of the lease on a pro-rata basis resulting in lease expense while the liability will be decremented using the interest method (ie. principal and interest). As such, the Company expects the new guidance will materially impact the asset and liability balances of the Company's financial statements and related disclosures at the time of adoption. Since the new guidance is effective January 1, 2019, there will be no immediate impact on the Company's financial statements.

In November 2015, the FASB issued guidance which requires deferred tax liabilities and assets be classified as noncurrent in the statement of financial position. This guidance requires entities with a classified balance sheet to present all deferred tax assets and liabilities as non-current. The guidance is effective for annual and interim periods beginning after December 15, 2016 and can be applied prospectively or retrospectively to adjustments with early adoption permitted at the beginning of an interim or annual reporting period. The Company does not expect the adoption of the new accounting guidance to have a material impact on its financial statements.

In July 2015, the FASB issued guidance on the measurement of inventory, which requires that inventory be measured at the lower of cost or net realizable value. The updated standard should be adopted prospectively and is effective for annual reporting periods (including interim periods therein) beginning after December 15, 2016 with early adoption permitted. The Company does not expect the adoption of the new accounting guidance to have a material impact on its financial statements.

In April 2015, the FASB issued guidance about whether a cloud computing arrangement includes a software license. If a cloud computing arrangement includes a software license, then the customer should account for the software license element of the arrangement consistent with the acquisition of other software licenses. If a cloud computing arrangement does not include a software license, the customer should account for the arrangement as a services contract. All software licenses recognized under this guidance will be accounted for consistent with other licenses of intangible assets. The guidance was effective January 1, 2016 and the Company adopted it on a prospective basis. The guidance did not have a material impact on the Company's financial statements.

In April 2015, the FASB issued guidance that simplifies the presentation of debt issuance costs. The guidance requires that debt issuance costs related to a recognized debt liability be presented in the balance sheet as a direct deduction from the carrying amount of that debt liability, consistent with debt discounts. The Company adopted this guidance in the first quarter of 2016 and has presented its revolving credit facility debt net of unamortized debt issuance costs in the accompanying consolidated balance sheet.

In November 2014, the FASB issued guidance to eliminate the diversity in practice for the accounting for hybrid financial instruments issued in the form of a share. The guidance requires management to consider all terms and features, whether stated or implied, of a hybrid instrument when determining whether the nature of the instrument is more akin to a debt instrument or an equity instrument. Embedded derivative features, which are accounted for separately from host contracts, should also be considered in the analysis of the hybrid instrument. The Company adopted the guidance effective January 1, 2016 and it did not have an impact on its financial statements.

In August 2014, the FASB issued guidance which defines management's responsibility to assess an entity's ability to continue as a going concern, and to provide related footnote disclosures if there is substantial doubt about its ability to continue as a going concern. The pronouncement was effective for annual reporting periods ending after December 15, 2016 with early adoption permitted. The Company has provided an assessment and related disclosures in Note 2 to the Consolidated Financial Statements.

In May 2014, the FASB issued guidance on the recognition of revenue from contracts with customers, which will require an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The updated standard will replace most existing revenue recognition guidance in U.S. Generally Accepted Accounting Principles (GAAP) when it becomes effective and permits the use of either the retrospective or cumulative effect transition method. In July 2015, the FASB voted to defer the effective date for annual reporting periods beginning after December 15, 2017 (including interim reporting periods within those periods) and permitted early adoption of the standard, but not before the original effective date of December 15, 2016. The Company expects the updated standard to become effective for it in the first quarter of fiscal 2018. The Company has not yet selected a transition method and is currently evaluating the effect that the updated standard will have on its financial statements.

### Note 3 – Accounts Receivable, net

Accounts receivable consisted of the following (in thousands):

|                                      | December<br>31, 2016 | December<br>31, 2015 |
|--------------------------------------|----------------------|----------------------|
| Accounts receivable                  | \$ 2,961             | \$ 3,635             |
| Less allowance for doubtful accounts | (127)                | (127)                |
| Accounts receivable, net             | \$ 2,834             | \$ 3,508             |

Note 4 – Inventories, net

The components of inventories were as follows (in thousands):

|                        | December<br>31 2016 | December<br>31, 2015 |
|------------------------|---------------------|----------------------|
| Raw materials          | \$ 3,619            | \$ 2,595             |
| Work in process        | 1,576               | 1,369                |
| Finished goods         | 3,740               | 1,486                |
| Total inventories      | 8,935               | 5,450                |
| Less inventory reserve | (1,500)             | (1,549)              |
| Total inventories, net | \$ 7,435            | \$ 3,901             |

## Note 5 – Prepaid Expenses and Other Current Assets

Prepaid expenses and other current assets consist of the following (in thousands):

|   | December 31, |        |
|---|--------------|--------|
|   | 2016         | 2015   |
| Vendor prepayments                              | \$ 601       | \$ 51  |
| Other prepaid expenses                          | 439          | 438    |
| Total prepaid expenses and other current assets | \$ 1,040     | \$ 489 |

## Note 6 – Equipment, Furniture and Leasehold Improvements

Equipment, furniture and leasehold improvements consist of the following (in thousands):

|   | December 31, |          |
|---|--------------|----------|
|   | 2016         | 2015     |
| Computer hardware and software                        | \$ 1,471     | \$ 1,440 |
| Lab and factory equipment                             | 16,369       | 15,868   |
| Furniture, fixtures and office equipment              | 344          | 344      |
| Assets under capital leases                           | 66           | 66       |
| Construction in progress                              | 1,180        | 277      |
| Leasehold improvements                                | 473          | 473      |
| Total equipment, furniture and leasehold improvements | 19,903       | 18,468   |
| Less: accumulated depreciation                        | (10,923)     | (9,337)  |
| Equipment, furniture and leasehold improvements, net  | \$ 8,980     | \$ 9,131 |

Depreciation expense was \$1.6 million and \$1.5 million for the years ended December 31, 2016 and 2015, respectively. Assets under capital leases are fully amortized.

## Note 7– Debt

|                                      | December<br>31 2016 | December<br>31, 2015 |
|--------------------------------------|---------------------|----------------------|
| Revolving credit facility            | \$ 1,852            | \$ —                 |
| Less unamortized debt issuance costs | (163)               | —                    |
| Revolving credit facility, net       | \$ 1,689            | \$ —                 |

On December 21, 2016, the Company entered into a revolving credit facility with a lender that provides for up to a maximum amount of \$5 million based on a borrowing base equivalent of 85% of eligible accounts receivable plus the lesser of \$2 million or 50% of eligible inventory, (the “ABL facility”). The interest on the ABL facility is equal to the Prime Rate plus 3% but may not be less than 6.5% with a minimum monthly interest payment of \$2 thousand. The Company shall pay the lender a monthly administrative fee of \$1 thousand and an annual facility fee equal to 1% of the maximum amount borrowable under the facility. The ABL facility will automatically renew on December 31, 2019 for a one-year term unless written notice to terminate the agreement is provided by either party. In conjunction with entering into the financing, the Company incurred \$163 thousand of debt issuance costs including lender and legal costs that will be amortized over the life of the ABL facility. In accordance with recently issued accounting guidance, the revolving credit facility balance is presented net of these unamortized debt issuance costs on the accompanying Consolidated Balance Sheet.

The ABL facility is secured by a lien on all receivables, property and the proceeds thereof, credit insurance policies and other insurance relating to the collateral, books, records and other general intangibles, inventory and equipment, proceeds of the collateral and accounts, instruments, chattel paper, and documents. Collections received on accounts receivable are directly used to pay down the outstanding borrowings on the credit facility.



The ABL facility contains customary representations and warranties, affirmative and negative covenants and events of default. The Company is required to maintain a minimum tangible net worth of \$13 million and a minimum working capital balance of \$4 million at all times. As of December 31, 2016, we had unused borrowing availability of \$2.0 million and were in compliance with all debt covenants.

Our former credit facility with a lender expired on August 31, 2016 and was not renewed. The facility provided for up to a maximum of \$3 million in borrowings based on 75% of eligible accounts receivable, as defined in the agreement. The interest on the credit facility was equal to the prime rate plus 4% but could not be less than 7.25% with a minimum monthly interest payment of \$1 thousand. The credit facility contained customary representations and warranties as well as affirmative and negative covenants. We were in compliance with all debt covenants. We did not draw on the credit facility at any time since its inception in September 2010 and there was no outstanding balance at the expiration date.

For the years ended December 31, 2016 and 2015, interest expense includes interest paid, capitalized or accrued of approximately \$30 thousand and \$43 thousand, respectively, on outstanding debt.

## Note 8 – Income Taxes

Net loss before income taxes consists of the following (in thousands):

|                   | For the Years Ended<br>December 31, |            |
|-------------------|-------------------------------------|------------|
|                   | 2016                                | 2015       |
| Domestic, current | \$ (8,048)                          | \$ (4,105) |
| Total             | \$ (8,048)                          | \$ (4,105) |

The tax effects of significant items comprising the Company's deferred taxes as of December 31 are as follows (numbers are in thousands):

|   | For the Years Ended<br>December 31, |           |
|---|-------------------------------------|-----------|
|   | 2016                                | 2015      |
| Deferred tax assets:                                  |                                     |           |
| Federal and state net operating loss carryforwards    | \$ 43,083                           | \$ 38,943 |
| Research and development tax credit carryforwards     | 2,196                               | 2,279     |
| Stock based compensation                              | 4,438                               | 4,057     |
| Other provision and expenses not currently deductible | 1,335                               | 1,297     |
| Total deferred tax assets                             | 51,052                              | 46,576    |
| Deferred tax liabilities:                             |                                     |           |
| Depreciation and amortization                         | (1,141)                             | (965)     |
| Prepaid expenses                                      | (95)                                | (116)     |
| Total deferred liabilities                            | (1,236)                             | (1,081)   |
| Less valuation allowance                              | (49,816)                            | (45,495)  |
| Net deferred tax asset                                | \$ —                                | \$ —      |

The Company accounts for income taxes under an asset and liability approach that requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been recognized in the Company's financial statements or tax returns. The effect on deferred tax assets and liabilities of changes in tax rates will be recognized as income or expense in the period that the change occurs. A valuation allowance for deferred tax assets is recorded when it is more likely than not that some or all of the benefit from the deferred tax asset will not be realized. Changes in circumstances, assumptions and clarification of uncertain tax regimes may require changes to any valuation allowances associated with the Company's deferred tax assets.

As of December 31, 2016, the Company's deferred tax assets were generated primarily from the federal and state net operating loss, stock based compensation and research and development tax credits. In assessing the realizability of deferred tax assets, management determined that it is more likely than not that none of the deferred tax assets will be realized. Therefore, the Company has provided a full valuation allowance against the deferred tax assets at December 31, 2016 and 2015.

As of December 31, 2016 and 2015, the Company had net deferred tax assets before its valuation allowance of approximately \$50 million and \$45 million, respectively.

During the year ended December 31, 2016, the Company did not utilize its prior years' net operating loss carryforwards. As of December 31, 2016, eMagin has federal and state net operating loss carryforwards of approximately \$125.7 million and \$7.6 million, respectively. The federal research and development tax credit carryforwards are approximately \$2.2 million. The federal net operating losses and tax credit carryforwards will expire as follows:

|           | Net<br>Operating<br>Losses<br>(in thousands) | Research and<br>Development<br>Tax Credits |
|-----------|--|--|
| 2018-2021 | \$ 44,639                                    | \$ 809                                     |
| 2022-2025 | 42,814                                       | -  |
| 2026-2036 | 38,294                                       | 1,387                                      |
|           | \$ 125,747                                   | \$ 2,196                                   |

## Edgar Filing: EMAGIN CORP - Form 10-K/A

The utilization of net operating losses is subject to a limitation due to the change of ownership provisions under Section 382 of the Internal Revenue Code and similar state provisions. Such limitation may result in the expiration of the net operating losses before their utilization. The Company has done an analysis regarding prior year ownership changes, and it has been determined that the Section 382 limitation on the utilization of net operating losses will currently not materially affect the Company's ability to utilize its net operating losses.

The difference between the statutory federal income tax rate on the Company's pre-tax loss and the Company's effective income tax rate is summarized as follows:

|   | For the Years |      |
|---|---------------|------|
|   | Ended         |      |
|   | December 31,  |      |
|   | 2016          | 2015 |
| U.S. Federal income tax benefit at federal statutory rate | 34 %          | 34 % |
| Change in valuation allowance                             | (37)          | (36) |
| Credits   | 3             | 2    |
| Effective tax rate  | - %           | - %  |

The Company did not have unrecognized tax benefits at December 31, 2016 and 2015. The Company recognizes interest accrued and penalties related to unrecognized tax benefits in tax expense. During the years ended December 31, 2016 and 2015, the Company recognized no interest and penalties.

The Company files income tax returns in the U.S. federal jurisdiction, California, Florida, New York and Massachusetts. Due to the Company's operating losses, all tax years remain open to examination by major taxing jurisdictions to which the Company is subject.

### Note 9 – Shareholders' Equity

#### Preferred Stock - Series B Convertible Preferred Stock (“the Preferred Stock – Series B”)

The Company has designated 10,000 shares of the Company's preferred stock as Preferred Stock – Series B at a stated value of \$1,000 per share. The Preferred Stock – Series B is convertible into common stock at a conversion price of \$0.75 per share. The holders of the Preferred Stock – Series B are not entitled to receive dividends unless the Company's Board of Directors declare a dividend for holders of the Company's common stock and then the dividend shall be equal to the amount that such holder would have been entitled to receive if the holder converted its Preferred Stock – Series B into shares of the Company's common stock. In the event of a liquidation, dissolution, or winding up

of the Company, the Preferred Stock – Series B is entitled to receive liquidation preference before the Common Stock. The Company may at its option redeem the Preferred Stock – Series B by providing the required notice to the holders of the Preferred Stock – Series B and paying an amount equal to \$1,000 multiplied by the number of shares for all of such holder’s shares of outstanding Preferred Stock – Series B to be redeemed.

As of December 31, 2016 and 2015, there were 5,659 shares of Preferred Stock – Series B issued and outstanding.

#### Common Stock

On December 17, 2015, the Company entered into a Securities Purchase Agreement (the “Purchase Agreement”) pursuant to which the Company sold and issued 3,999,996 shares of the Company’s common stock, par value of \$0.001 per share, at a price of \$1.50 per share. The net proceeds received after expenses were \$5.5 million. In connection with the sale of the shares, the Company issued warrants to purchase an additional 2,600,000 shares of common stock exercisable at a price of \$2.05 per share beginning June 23, 2016 and expiring on June 23, 2021.

On September 3, 2015, the Company entered into an at the Market Offering Agreement (the “agreement”) with an investment bank as sales agent, pursuant to which the Company was to offer and sell shares of its common stock having an aggregate offering price of up to \$4,500,000. The agreement was terminated effective December 17, 2015. As of December 17, 2015, the Company sold 100,716 shares at sales prices ranging from \$2.25 to \$2.49 per share, resulting in \$90 thousand in net proceeds.

The Company received approximately \$45 thousand and \$267 thousand from the exercise of 21,912 and 254,351 stock options during the years ended December 31, 2016 and 2015, respectively.

In August 2011, our Board of Directors approved a stock repurchase plan authorizing us to repurchase our common stock not to exceed \$2.5 million in total value. No shares were repurchased subsequent September 2012. As of December 31, 2016, authorization to repurchase \$2.0 million in value of our common stock remained under this plan.

## Warrant Transactions

On August 18, 2016, we entered into letter agreements with certain of our warrant holders pursuant to which such warrant holders agreed to exercise warrants to purchase a total of 2,216,500 shares of our common stock, at an exercise price of \$2.05 per share, which they acquired in December 2015.

On August 24, 2016, in consideration for the exercise of the 2,216,500 warrant shares, we issued new common stock purchase warrants (the “New Warrants”) to purchase 2,947,949 shares of our common stock which is equal to 133% of the 2,216,500 warrant shares exercised. The New Warrants have an exercise price of \$2.60 per share, and are not exercisable for six months from the date of issuance, and have a term of five and a half years from the issuance date.

We raised approximately \$4.3 million in net proceeds from the transaction, which will be used for general corporate purposes.

The issuance of the New Warrants was exempt from federal and state registration requirements. During 2016, the Company filed a resale registration statement to register the shares of our common stock issuable upon the exercise of the New Warrants.

At December 31, 2016, there were New Warrants outstanding to purchase 2,947,949 shares of our common stock at an exercise price of \$2.60 per share, which expire in February 2022. In addition, warrants to purchase 383,500 shares remaining from the December 2015 issuance were outstanding at December 31, 2016 at an exercise price of \$2.05 per share, which expire in June 2021.

## Note 10 – Stock Compensation

### Employee stock purchase plan

In 2005, the shareholders approved the 2005 Employee Stock Purchase Plan (“ESPP”). The ESPP provides the Company’s employees with the opportunity to purchase common stock through payroll deductions. Employees may purchase stock semi-annually at a price that is 85% of the fair market value at certain plan-defined dates. At December 31, 2016, the number of shares of common stock available for issuance was 300,000. As of December 31, 2016, the plan had not been implemented.

## Incentive compensation plans

The Amended and Restated 2003 Employee Stock Option Plan (the “2003 Plan”) provided for grants of shares of common stock and options to purchase shares of common stock to employees, officers, directors and consultants. The 2003 Plan terminated July 2, 2013. No additional options can be granted from the plan though options granted before the 2003 Plan terminated may be exercised until the grant expires.

The 2008 Incentive Stock Plan (the “2008 Plan”) adopted and approved by the Board of Directors on November 5, 2008 provides for grants of common stock and options to purchase shares of common stock to employees, officers, directors and consultants. The 2008 Plan has an aggregate of 2 million shares. In 2016, there were 221,024 options granted from the 2008 Plan.

The 2011 Incentive Stock Plan (the “2011 Plan”) was approved by the Company’s shareholders on November 3, 2011. The 2011 Plan provides for grants of common stock and options to purchase common stock to employees, officers, directors and consultants. The Board of Directors reserved 1.4 million shares of common stock for issuance under the 2011 Plan. On June 7, 2012, at the Company’s Annual Meeting, the shareholders approved an Amended and Restated 2011 Incentive Stock Plan which eliminated the evergreen provision and prohibits the repricing or exchange of stock options without shareholder approval. In 2016, there were 458,000 options granted from the 2011 Plan.

The 2013 Incentive Stock Plan (the “2013 Plan”) adopted and approved by the shareholders on May 17, 2013 provides for grants of common stock and options to purchase shares of common stock to employees, officers, directors and consultants. The 2013 Plan has an aggregate of 1.5 million shares. In 2016, there were 631,073 options granted from this plan.

During the fourth quarter of 2016, the Company granted options to purchase 125,000 shares of common stock to employees, that are subject to approval of a 2017 plan by the shareholders at the next annual meeting.

Edgar Filing: EMAGIN CORP - Form 10-K/A

Vesting terms of the options range from immediate vesting to a ratable vesting period of 5 years. Option activity for the year ended December 31, 2016 and 2015 is summarized as follows:

|   | Number of<br>Shares | Weighted<br>Average<br>Exercise<br>Price | Weighted<br>Average<br>Remaining<br>Contractual<br>Life (In<br>Years) | Aggregate<br>Intrinsic<br>Value |
|---|---------------------|--|---|---------------------------------|
| Outstanding at December 31, 2015                    | 4,218,139           | \$ 3.75                                  |   |                                 |
| Options granted                                     | 1,435,097           | 2.45                                     |   |                                 |
| Options exercised                                   | (21,912)            | 2.10                                     |   |                                 |
| Options forfeited                                   | (52,781)            | 2.02                                     |   |                                 |
| Options cancelled or expired                        | (522,802)           | 7.44                                     |   |                                 |
| Outstanding at December 31, 2016                    | 5,055,741           | \$ 3.00                                  | 4.46  | \$ 875,225                      |
| Vested or expected to vest at December 31, 2016 (1) | 5,035,622           | \$ 3.00                                  | 4.46  | \$ 875,030                      |
| Exercisable at December 31, 2016                    | 4,049,888           | \$ 3.08                                  | 4.01  | \$ 865,475                      |

(1) The expected to vest options are the result of applying the pre-vesting forfeiture rate assumptions to total unvested options.

At December 31, 2016, there were 108,428 shares available for grant under the 2013, 2011, and 2008 Plans.

The aggregate intrinsic value in the table above represents the difference between the exercise price of the underlying options and the quoted price of the Company's common stock on December 31, 2016 for the options that were in-the-money. As of December 31, 2016 there were 1,824,351 options that were in-the-money. The Company's closing stock price was \$2.15 as of December 31, 2016. The Company issues new shares of common stock upon exercise of stock options. The intrinsic value of the 2016 options exercised was \$7 thousand.

#### Stock- based compensation

The Company uses the fair value method of accounting for share-based compensation arrangements. The fair value of stock options is estimated at the date of grant using the Black-Scholes option valuation model. Stock-based compensation expense is reduced for estimated forfeitures and is amortized over the vesting period using the straight-line method.

The following table summarizes the allocation of non-cash stock-based compensation to the Company's expense categories for the years ended December 31, 2016 and 2015 (in thousands):



|                                     | For the Year<br>Ended<br>December 31, |        |
|-------------------------------------|---------------------------------------|--------|
|                                     | 2016                                  | 2015   |
| Cost of revenues                    | \$ 25                                 | \$ 51  |
| Research and development            | 164                                   | 118    |
| Selling, general and administrative | 582                                   | 437    |
| Total stock compensation expense    | \$ 771                                | \$ 606 |

At December 31, 2016, total unrecognized compensation costs related to stock options was approximately \$1.0 million, net of estimated forfeitures. Total unrecognized compensation cost will be adjusted for future changes in estimated forfeitures and is expected to be recognized over a weighted average period of approximately 3.1 years.

## Edgar Filing: EMAGIN CORP - Form 10-K/A

The following key assumptions were used in the Black-Scholes option pricing model to determine the fair value of stock options granted:

|                          | For the Year Ended<br>December 31, |   |              |   |
|--------------------------|------------------------------------|---|--------------|---|
|                          | 2016                               |   | 2015         |   |
| Dividend yield           | 0                                  | % | 0            | % |
| Risk free interest rates | 0.71-1.41                          | % | 0.84 – 1.56  | % |
| Expected volatility      | 49.1 to 59.4                       | % | 51.2 to 63.9 | % |
| Expected term (in years) | 3.5 to 5.0                         |   | 3.5 to 5.0   |   |

The weighted average fair value per share for options granted in 2016 and 2015 was \$1.00 and \$1.17, respectively.

There were no dividends declared or paid in 2016 or 2015. Though the Company paid a special one-time dividend in 2012, the Company does not expect to pay dividends in the near future; therefore, it used an expected dividend yield of 0%. The risk-free interest rate used in the Black-Scholes option pricing model is based on the implied yield at the time of grant available on U.S. Treasury securities with an equivalent term. Expected volatility is based on the weighted average historical volatility of the Company's common stock for the equivalent term. The expected term of options represents the period that the Company's stock-based awards are expected to be outstanding and was determined based on historical experience and vesting schedules of similar awards.

### Note 11 – Commitments and Contingencies

#### Operating Leases

The Company leases office facilities and office, lab and factory equipment under operating leases. Certain leases provide for payments of monthly operating expenses. The Company currently has lease commitments for space in Hopewell Junction, New York, Santa Clara, California and Bellevue, Washington.

The Company's corporate headquarters and manufacturing facilities are located in Hopewell Junction, New York. The Company leases approximately 37,000 square feet to house its equipment for OLED microdisplay fabrication, for research and development, and for administrative offices. The lease expires in May 2024. The Company leases approximately 2,000 square feet of office space for design and product development in Santa Clara, California and the lease expires in October 2017. In Bellevue, Washington, eMagin leases approximately 1,800 square feet of office space for administrative offices and the lease expires in October 2017.

Rent expense was approximately \$1.0 million and \$0.9 million for the years ended December 31, 2016 and 2015, respectively. The future minimum lease payments for the years 2017 through 2023 are \$0.9 million annually and for 2024, \$0.4 million.

#### Equipment Purchase Commitments

The Company has committed to equipment purchases of approximately \$0.6 million at December 31, 2016.

#### Employee benefit plans

eMagin has a defined contribution plan (the 401(k) Plan) under Section 401(k) of the Internal Revenue Code, which is available to all employees who meet established eligibility requirements. Employee contributions are generally limited to 15% of the employee's compensation. Under the provisions of the 401(k) Plan, eMagin may match a portion of the participating employees' contributions. For the years ended December 31, 2016 and 2015, there was no employer match.

#### Employment and separation agreements

On September 14, 2015, Jeffrey P. Lucas was elected to serve as eMagin's Chief Financial Officer by the Company's Board of Directors. Pursuant to an offer letter, Mr. Lucas (i) is paid a base salary of \$345,000; (ii) is eligible for a bonus of up to 20% of his base salary based on the Company's performance; (iii) was granted options to purchase 75,000 shares at a exercise price of \$2.50 with a term of 5 years and vesting over 3 years; (iv) has a relocation allowance of \$13 thousand; and (v) in the event of termination, will receive severance pay equal to 6 months of Mr. Lucas's salary at the time of termination.

Effective September 14, 2015, Paul C. Campbell resigned as Chief Financial Officer. Mr. Campbell and eMagin entered into a Separation Agreement and General Release in which the Company agreed to pay the remainder of the compensation, \$103 thousand, due to Mr. Campbell under his employment agreement and an additional six months of Mr. Campbell's base salary, \$168 thousand, paid on June 30, 2016. These amounts were expensed in the quarter ended September 30, 2015.

## Litigation

From time to time, the Company is subject to various legal proceedings and claims that arise in the ordinary course of business. The Company accrues for losses related to litigation when a potential loss is probable and the loss can be reasonably estimated. Significant judgment is required to determine the probability that a liability has been incurred and whether such liability is reasonably estimable. All estimates are based on the best information available at the time which can be highly subjective.

On May 5, 2015, Kimchuk, Inc. ("Kimchuk"), a former supplier, commenced action against the Company in the U.S. District Court, District of Connecticut, asserting breach of contract and seeking to recover approximately \$389,000 in alleged damages. The Company filed its response and counter-complaint on August 11, 2015 wherein the Company denied the material allegations asserted by Kimchuk and sought approximately \$3.5 million in damages from Kimchuk. The Company recorded an accrual for the litigation and estimated settlement in the quarter ended September 30, 2015.

On June 1, 2016, the Company entered into a settlement agreement with Kimchuk whereby, eMagin paid Kimchuk \$227,000, and Kimchuk agreed to dismiss the matter, provide parts and material to eMagin and settle outstanding accounts payable. The Company did not incur any additional settlement expense during 2016.

During 2015, the Company received a letter from an attorney representing a former employee claiming damages for age discrimination and wrongful termination. In September 2016, this former employee commenced action against the Company in Superior Court for the State of Washington. In February 2017, the former employee's counsel sent a discovery request to the Company. The Company believes the assertions contained in this action are baseless and without merit and will defend its position vigorously.

## Note 12 – Concentrations

The following is a schedule of revenue by geographic location (in thousands):

|                                 | Year Ended<br>December 31, |           |
|---------------------------------|----------------------------|-----------|
|                                 | 2016                       | 2015      |
| North and South America         | \$ 12,664                  | \$ 16,182 |
| Europe, Middle East, and Africa | 7,293                      | 6,950     |
| Asia Pacific                    | 1,440                      | 2,010     |
| Total                           | \$ 21,397                  | \$ 25,142 |

|               | Year Ended<br>December 31, |      |
|---------------|----------------------------|------|
|               | 2016                       | 2015 |
| Domestic      | 58 %                       | 63 % |
| International | 42 %                       | 37 % |

The Company purchases principally all of its silicon wafers from two suppliers supplier located in Taiwan and Korea, respectively.

In 2016, there was one customer that accounted for 11% of total revenues and 4% of accounts receivable as of December 31, 2016. In 2015, there were 2 customers that accounted for 12% and 11% of total revenues and 5% and zero, respectively, of accounts receivable at December 31, 2015.

At December 31, 2016 and 2015, there were ten customers who comprised 65% and 62%, respectively, of accounts receivable. At December 31, 2016, the Company had 2 customers that accounted for 17% and 12% of accounts receivable and, at December 31, 2015, one customer that accounted for 12% of accounts receivable.

## Note 13 – Quarterly Financial Information (Unaudited)

Summarized quarterly financial information for 2016 and 2015 are as follows (in thousands except share data):

|   | Quarters Ended    |                  |                       |                      |
|---|-------------------|------------------|-----------------------|----------------------|
|   | March 31,<br>2016 | June 30,<br>2016 | September 30,<br>2016 | December 31,<br>2016 |
| Revenues  | \$ 7,001          | \$ 5,533         | \$ 4,305              | \$ 4,558             |
| Gross profit  | \$ 3,335          | \$ 1,335         | \$ 1,282              | \$ 490               |
| Net (loss) income before income tax                     | \$ 14             | \$ (2,164)       | \$ (2,430)            | \$ (3,468)           |
| Net (loss) income                                       | \$ 14             | \$ (2,164)       | \$ (2,431)            | \$ (3,468)           |
| Net (loss) income per share - basic                     | \$ -              | \$ (0.07)        | \$ (0.08)             | \$ (0.11)            |
| Net (loss) income per share - diluted                   | \$ -              | \$ (0.07)        | \$ (0.08)             | \$ (0.11)            |
| Weighted average number of shares outstanding - basic   | 29,388,104        | 29,388,104       | 30,292,166            | 31,623,334           |
| Weighted average number of shares outstanding - diluted | 29,637,804        | 29,388,104       | 30,292,166            | 31,623,334           |

|   | Quarters Ended    |                  |                       |                      |
|---|-------------------|------------------|-----------------------|----------------------|
|   | March 31,<br>2015 | June 30,<br>2015 | September 30,<br>2015 | December 31,<br>2015 |
| Revenues  | \$ 5,989          | \$ 7,034         | \$ 5,405              | \$ 6,714             |
| Gross profit  | \$ 2,360          | \$ 2,608         | \$ 1,106              | \$ 904               |
| Net (loss) income before income tax                     | \$ 320            | \$ (66)          | \$ (2,234)            | \$ (2,125)           |
| Net (loss) income                                       | \$ 320            | \$ (66)          | \$ (2,234)            | \$ (2,125)           |
| Net (loss) income per share - basic                     | \$ 0.01           | \$ —             | \$ (0.09)             | \$ (0.08)            |
| Net (loss) income per share - diluted                   | \$ 0.01           | \$ —             | \$ (0.09)             | \$ (0.08)            |
| Weighted average number of shares outstanding - basic   | 25,041,380        | 25,142,371       | 25,287,849            | 25,712,562           |
| Weighted average number of shares outstanding - diluted | 25,747,631        | 25,142,371       | 25,287,849            | 25,712,562           |

## Note 14 – Subsequent Events

On March 24, 2017, the Company entered into an unsecured debt financing arrangement with Stillwater Trust LLC, an investor who with affiliates collectively control approximately 46% of the Company's outstanding common stock. Under the financing agreement, the Company may borrow, through June 30, 2018, up to \$2 million for general working capital purposes and up to an additional \$3 million should the Company's lender not provide borrowing availability under its normal terms and conditions through its ABL facility. The agreement expires and borrowings become due upon the earlier of June 30, 2020; the completion of one or a series of equity financings which raise collectively \$5 million or greater of gross proceeds; or an event of default, as defined in the agreement. Amounts borrowed under the financing agreement, once repaid, cannot be reborrowed.

The amounts drawn on the line accrue interest at 6% per annum payable at maturity, and are subject to an upfront drawdown fee of 2% of the amount drawn and a quarterly interest surcharge of 2% paid upfront and due commencing on the 180-day anniversary of each draw regardless of whether the draw is still outstanding and then a 2% quarterly interest surcharge until the draws are repaid. In connection with the financing commitment, the investor received a \$50,000 commitment fee and a warrant to purchase 100,000 shares of common stock at an exercise price of \$2.25 per share, the closing market price of the Company's common stock on the date the arrangement was executed. In the event the Company does not raise at least \$5 million in gross proceeds from an equity offering within 180 days of the first draw on the facility, it will be required to file a registered rights offering with the Securities and Exchange Commission within 45 days of the 180-day period to all holders of securities of the Company. In connection with the facility, the Company, its lender and the investor entered into an intercreditor agreement.

Mr. Christopher Brody, a member of the Company's board of directors, is also the President and Managing Director of Stillwater Holdings LLC and is the Vice President of Stillwater Trust LLC, which is the Company's largest stockholder. The decision of Stillwater Trust LLC to enter into the financing arrangement was made independently of Mr. Brody and the financing was not required or suggested by Mr. Brody. The terms of the financing were determined solely by negotiation among the Company and Stillwater Trust LLC. Mr. Brody did not participate in the deliberations of the Company's board of directors or the special committee of the Company's board formed to review the terms of the financing with respect to the approval of the financing and abstained from voting thereon.



SIGNATURES

In accordance with Section 13 or 15(d) of the Exchange Act, the registrant caused this report to be signed on its behalf by the undersigned, thereunto duly authorized on this 1st day of September, 2017.

eMAGIN CORPORATION

By: /s/ Andrew G. Sculley  
Andrew G. Sculley  
Chief Executive Officer

eMAGIN CORPORATION

INDEX TO EXHIBITS

| Exhibit<br>Number | Description  |
|-------------------|--|
| <u>2.1</u>        | <u>Agreement and Plan of Merger between Fashion Dynamics Corp., FED Capital Acquisition Corporation and FED Corporation dated March 13, 2000 (incorporated by reference to exhibit 2.1 to the Registrant's Current Report on Form 8-K/A filed on March 17, 2000).</u>  |
| <u>3.1</u>        | <u>Amended and Restated Certificate of Incorporation (incorporated by reference to an appendix to the Registrant's Definitive Proxy Statement filed on September 21, 2006).</u>  |
| <u>3.2</u>        | <u>Certificate of Amendment of Amended and Restated Certificate of Incorporation (incorporated by reference to an appendix to the Registrant's Definitive Proxy Statement filed on October 26, 2010).</u>  |
| <u>3.3</u>        | <u>Bylaws of the Registrant (incorporated by reference to exhibit 99.3 to the Registrant's Definitive Proxy Statement filed on June 14, 2001).</u>   |
| <u>3.4</u>        | <u>Certificate of Designations of Series B Convertible Preferred Stock (incorporated by reference to Exhibit 4.2 of the Registrant's current report on Form 8-K filed on December 23, 2008).</u>   |
| <u>4.1</u>        | <u>Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's current report on Form 8-K filed on December 23, 2008).</u>   |
| <u>4.2</u>        | <u>Form of Common Stock Purchase Warrant (incorporated by reference to Exhibit 4.1 to the Registrant's current report on Form 8-K filed on December 18, 2015).</u>   |
| <u>4.3</u>        | <u>Form of Letter Agreement (incorporated by reference to exhibit 4.1 of the Registrant's Current Report on Form 8-K filed on August 24, 2016).</u>  |
| <u>4.4</u>        | <u>Form of Common Stock Purchase Warrant (incorporated by reference to exhibit 4.2 of the Registrant's Current Report on Form 8-K filed on August 24, 2016).</u>   |
| <u>10.1</u>       | <u>Form of Agreement for Stock Option Grant pursuant to 2000 Stock Option Plan (incorporated by reference to exhibit 99.1 to the Registrant's Registration Statement on Form S-8 filed on March 14, 2000).*</u>  |
| <u>10.2</u>       | <u>Nonexclusive Field of Use License Agreement relating to OLED Technology for miniature, high resolution displays between the Eastman Kodak Company and FED Corporation dated March 29, 1999 (incorporated by reference to exhibit 10.6 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2000 filed on March 30, 2001).</u> |
| <u>10.3</u>       | <u>Amendment Number 1 to the Nonexclusive Field of Use License Agreement relating to the LED Technology for miniature, high resolution displays between the Eastman Kodak Company and FED Corporation dated March 16, 2000 (incorporated by reference to exhibit 10.7 to the Registrant's Annual</u>   |

Edgar Filing: EMAGIN CORP - Form 10-K/A

Report on Form 10-K for the year ended December 31, 2000 filed on March 30, 2001).

- 10.4 Lease between International Business Machines Corporation (“IBM”) and FED Corporation dated May 28, 1999 (incorporated by reference to exhibit 10.9 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2000 filed on March 30, 2001).
- 10.5 Amendment Number 1 to the Lease between IBM and FED Corporation dated July 9, 1999 (incorporated by reference to exhibits 10.8 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2000 filed on March 30, 2001)
- 10.6 Amendment Number 2 to the Lease between IBM and FED Corporation dated January 29, 2001 (incorporated by reference to exhibit 10.11 to the Registrant’s Annual Report on Form 10-K for the year ended December 31, 2000 filed on March 30, 2001).
- 10.7 Amendment Number 3 to Lease between IBM and FED Corporation dated May 28, 2002 (incorporated by reference to exhibit 10.8 to the Company’s Form S-1/A as filed November 12, 2008).
- 10.8 Amendment Number 4 to Lease between IBM and FED Corporation dated December 14, 2004 (incorporated by reference to exhibit 4.1 to the Registrant’s Current Report on Form 8-K filed on December 20, 2004).
- 10.09 Amended and Restated 2003 Stock Option Plan, filed September 1, 2005, as filed in the Registrant’s Definitive Proxy Statement, incorporated herein by reference.\*
- 10.10 2005 Employee Stock Purchase Plan, filed September 1, 2005, as filed in the Registrant’s Definitive Proxy Statement, incorporated herein by reference.\*
- 10.11 2004 Amended and Restated Non-Employee Compensation Plan, filed September 21, 2006, as filed in the Registrant's Definitive Proxy Statement incorporated herein by reference.\*
- 10.12 Securities Purchase Agreement, dated December 18, 2008 (incorporated by reference to exhibit 99.1 of the Registrant’s Current Report on Form 8-K filed on December 23, 2008).

- 10.13 Registration Rights Agreement, dated December 18, 2008 (incorporated by reference to exhibit 99.2 of the Registrant's Current Report on Form 8-K filed on December 23, 2008).
- 10.14 Exchange Agreement, dated December 18, 2008 (incorporated by reference to exhibit 99.3 of the Registrant's Current Report on Form 8-K filed on December 23, 2008).
- 10.15 Amendment Number 6 to the lease between IBM and eMagin Corporation dated May 27, 2009 (incorporated by reference to exhibit 99.1 to the Registrant's Current Report on Form 8-k filed on June 19, 2009).
- 10.16 Lease between Northup Building LLC and eMagin dated May 28, 2009 (incorporated by reference to exhibit 99.2 to the Registrant's Current Report on Form 8-K filed on June 19, 2009).
- 10.17 Amended and Restated Employment Agreement between the Company and Andrew G. Sculley dated January 1, 2014 (incorporated by reference to exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on January 3, 2014).
- 10.18 Amended and Restated Employment Agreement between the Company and Paul Campbell dated as January 1, 2014 (incorporated by reference to exhibit 99.2 of the Registrant's Form 8-K filed on January 3, 2014).
- 10.19 2011 Incentive Stock Plan (incorporated by reference to exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on November 8, 2011).\*
- 10.20 2013 Incentive Stock Plan, filed April 2, 2013, as filed in the Registrant's Definitive Proxy Statement incorporated herein by reference.\*
- 10.21 Employment Agreement, dated as of April 30, 2013, by and between the Company and Gabriel G. Matus (incorporated by reference to exhibit 99.1 of the Registrant's Form 8-K filed on May 6, 2013).
- 10.22 Amendment Number 7 to the lease between IBM and eMagin Corporation dated May 2, 2014 (incorporated by reference to exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on May 8, 2014).
- 10.23 Amended and Restated Employment Agreement between the Company and Jerome T. Carollo dated as of May 13, 2014 (incorporated by reference to exhibit 10.1 of the Registrant's Form 8-K filed on May 16, 2014).
- 10.24 At the Market Offering Agreement, dated as of September 3, 2015, by and between the Company and Craig-Hallum Capital Group LLC (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on September 4, 2015).
- 10.25 Lucas Offer Letter, dated as of September 9, 2015, by and between the Company and Jeffrey P. Lucas (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on September 17, 2015).
- 10.26 Separation Agreement and General Release, dated as of September 16, 2015, by and between the Company and Paul C. Campbell (incorporated by reference to exhibit 10.2 of the Registrant's Current Report on Form 8-K filed on September 17, 2015).
- 10.27 Securities Purchase Agreement, dated as of December 17, 2015 (incorporated by reference to exhibit 10.1 of the Registrant's Current Report on Form 8-K filed on December 18, 2015).
- 10.28

Placement Agency Agreement, dated as of December 17, 2015 (incorporated by reference to exhibit 10.2 of the Registrant's Current Report on Form 8-K filed on December 18, 2015).

- 10.29 8th Lease Amendment between International Global Foundries U.S. 2 LLC and eMagin Corporation, effective as of March 21, 2016 (incorporated by reference to exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on May 9, 2016).
- 10.30 Executive Employment Agreement, dated as of July 1, 2016, by and between the Company and Andrew G. Sculley, Jr. (incorporated by reference to exhibit 99.1 of the Registrant's Current Report on Form 8-K filed on July 7, 2016).
- 10.31 Financing Agreement, dated as of March 24, 2017, by and between the Company and Rosenthal & Rosenthal, Inc. (incorporated by reference to exhibit 10.31 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016 filed on March 29, 2017).
- 10.32 Letter Agreement re: Line of Credit, dated as of March 24, 2017, by and between the Company and Stillwater Trust LLC (incorporated by reference to exhibit 10.32 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016 filed on March 29, 2017).
- 10.33 Promissory Note, dated as of March 24, 2017, by and between the Company and Stillwater Trust LLC (incorporated by reference to exhibit 10.33 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016 filed on March 29, 2017).
- 10.34 Subordination Agreement, dated as of March 24, 2017, by and among the Company, Stillwater Trust LLC and Rosenthal & Rosenthal, Inc. (incorporated by reference to exhibit 10.34 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016 filed on March 29, 2017).
- 21.1 Subsidiaries of the Company (incorporated by reference to exhibit 21.1 to the Registrant's Annual Report on Form 10-K for the year ended December 31, 2016 filed on March 29, 2017).

|             |  |
|-------------|--|
| <u>23.1</u> | <u>Consent of Independent Registered Public Accounting Firm (filed herewith).</u>                        |
| <u>31.1</u> | <u>Certification by Chief Executive Officer pursuant to Sarbanes Oxley Section 302 (filed herewith).</u> |
| <u>31.2</u> | <u>Certification by Chief Financial Officer pursuant to Sarbanes Oxley Section 302 (filed herewith).</u> |
| <u>32.1</u> | <u>Certification by Chief Executive Officer pursuant to 18 U.S.C. Section 1350 furnished herewith).</u>  |
| <u>32.2</u> | <u>Certification by Chief Financial Officer pursuant to 18 U.S.C. Section 1350 (furnished herewith).</u> |
| 101.INS     | XBRL Instance Document (filed herewith).   |
| 101.SCH     | XBRL Taxonomy Extension Schema Document (filed herewith).  |
| 101.CAL     | XBRL Taxonomy Extension Calculation Linkbase Document (filed herewith).                                  |
| 101.DEF     | XBRL Taxonomy Extension Definition Linkbase Document (filed herewith).                                   |
| 101.LAB     | XBRL Taxonomy Extension Label Linkbase Document (filed herewith).  |
| 101.PRE     | XBRL Taxonomy Extension Presentation Linkbase Document (filed herewith).                                 |

\* Each of the Exhibits noted by an asterisk is a management compensatory plan or arrangement.