UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE COMMISSION 100 F Street NE Washington, DC 20549, Plaintiff, v. BRIAN K. HUTCHISON c/o Davis Wright Tremaine 1001 G Street NW, Seventh Floor Washington, DC 20001, Defendant.	Case No. 22-CV-2296 **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff Securities and Exchange Commission ("SEC") alleges as follows:

SUMMARY

1. This is a disclosure fraud and accounting fraud case in which Brian K. Hutchison ("Hutchison"), the CEO of RTI Surgical Holdings ("RTI"), masked disappointing sales numbers from Q1 2015 through Q2 2016 (the "Relevant Period") by urging his subordinates to ship future orders ahead of schedule and report the revenue early. Recognizing revenue for early shipments jeopardized RTI's ability to meet its revenue guidance for future quarters and alienated its customers, who demanded discounts to accept product early and reduced their subsequent orders, putting RTI further behind its aggressive revenue projections. Hutchison then repeatedly misled the market, in both RTI's periodic filings and his own public statements, to conceal the truth behind RTI's seemingly robust revenues.

2. Throughout 2015, Hutchison approved a series of aggressive quarterly revenue targets that RTI announced to investors and the market. Hutchison knew that he would receive

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bonus compensation in the form of cash and stock awards if RTI hit its revenue targets. But Hutchison found RTI repeatedly unable to reach its revenue targets with sales from the quarter. Desperate to reach his targets, Hutchison urged his managers to ship products that were not due to be sent until the next quarter — weeks or months in advance. By recognizing revenue for these orders in the quarter they were shipped, not the quarter when RTI's customers wanted them to be delivered, RTI found a way to show investors that it had met its revenue targets. But this practice of "pulling forward" revenue merely postponed the inevitable. RTI found it more and more difficult to meet its quarterly guidance as it stripped more and more revenue from future quarters.

3. In 2016, Hutchison faced a cascade of problems that placed his position as CEO in jeopardy. Although he had publicly announced an ambitious goal of achieving $500 million in annual revenue, RTI's reported revenue was only $282 million in 2015. Hutchison's allies on the Board of Directors resigned, and when the next Chairman of the Board was selected, Hutchison was passed over. An influential Board member unexpectedly announced that he would not support an acquisition championed by Hutchison. And an RTI investor launched a proxy fight, blaming Hutchison for RTI's poor financial performance. In the midst of these challenges, RTI's stock price dropped to a two-year low in Q1 2016.

4. At Hutchison's direction, RTI continued to scour its order books at quarter-end for orders that were scheduled to be delivered in future quarters, to ship those orders early, and then to book the revenue in the current quarter. Although Hutchison knew that RTI was depleting future orders, angering customers, and in some instances violating accounting rules, he publicly and falsely attributed RTI's apparent success to growth in orders, claiming that RTI had

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benefited from "higher-than-expected orders," "industry consolidation," or orders that "just keep coming in."

5. Hutchison was ultimately unable to save his job. In August 2016, at the request of RTI's Board of Directors, Hutchison announced his resignation. In December 2016, he formally stepped down.

6. On March 16, 2020, following the start of an investigation by the SEC, RTI announced that it would begin an internal investigation into its "revenue recognition practices regarding the timing of revenue." Over the next two days, RTI's stock price dropped more than 27%, from $2.75 to $1.99. RTI's investigation culminated in a five-year restatement, issued in June 2020. In its restatement, RTI acknowledged improperly recognizing revenue for shipments sent early to customers without advance approval. RTI also determined that its disclosure controls and procedures were ineffective and that there were material weaknesses in its internal controls over financial reporting.

7. Hutchison has not reimbursed RTI for the bonuses and other incentive- and equity-based compensation he received from RTI, or for his substantial profits from sales of RTI stock after he left RTI.

8. By engaging in the misconduct described herein, Hutchison violated antifraud, internal accounting controls, and books-and-records provisions of the Securities Exchange Act of 1934 ("Exchange Act"), Securities Act of 1933 ("Securities Act"), and Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"), and the rules thereunder, and he aided and abetted violations by RTI.

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9. The SEC seeks injunctive relief, civil penalties, disgorgement, a reimbursement to RTI of Hutchison's incentive-based compensation and profits from his sales of RTI stock, and other appropriate and necessary equitable relief.

JURISDICTION AND VENUE

10. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the Securities Act [15 U.S.C. §§ 77t and 77v], Sections 21 and 27 of the Exchange Act [15 U.S.C. §§ 78u and 78aa], and 28 U.S.C. § 1331.

11. Venue is proper in this Court pursuant to Section 22(a) and (c) of the Securities Act [15 U.S.C. § 77v(a), (c)] and Section 27(a) and (b) of the Exchange Act [15 U.S.C. § 78aa(a), (b)], because certain of the acts, practices, and courses of conduct constituting the violations alleged herein occurred within the District of Columbia. Hutchison and RTI filed with the SEC in this judicial district multiple materially false and misleading documents. Additionally, Hutchison made false and misleading statements and omissions in at least five different Forms 8-K that were filed with the SEC in this judicial district.

12. Hutchison, directly and indirectly, made use of means or instruments of transportation or communication in interstate commerce, or of the mails, or of any facility of a national securities exchange in connection with the acts, practices, and courses of conduct alleged herein.

DEFENDANT

13. **Brian K. Hutchison ("Hutchison")**, age 63, resides in Asheville, North Carolina. Hutchison served as RTI's Chief Executive Officer and as a member of its Board of Directors from 2001 through December 2016, when he left RTI. As RTI's CEO, Hutchison

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signed each of RTI's Forms 10-Q and Forms 10-K and participated in each of RTI's earnings calls during the Relevant Period.

OTHER RELEVANT ENTITY

14. The following entity relevant to this action has been charged by the SEC in a separate action and proceeding: **Surgalign Holdings, Inc.** (formerly known as **RTI Surgical Holdings, Inc.** and **RTI Surgical, Inc.** ("**RTI**")) is a Delaware corporation with its principal place of business in Deerfield, Illinois. During the Relevant Period, RTI's common stock was registered with the SEC pursuant to Section 12(b) of the Exchange Act and traded on the NASDAQ exchange, under the symbol "RTIX."

BACKGROUND

A. RTI Manufactured, Sold, and Shipped Medical Products to Large Distributors.

15. RTI manufactured and sold surgical implants, such as orthopedic and spinal implants. Its Commercial division, which generated a significant portion of RTI's revenue, primarily sold RTI's products to large distributors for resale.

16. RTI's Commercial division primarily relied on advance orders from major customers, which typically placed orders three months in advance of their requested delivery dates. This gave RTI considerable visibility into its book of future orders. RTI's customers specified their delivery dates based on their predictions of the demand for RTI's products, their capacity to inspect and store the RTI products, and other factors.

17. RTI typically recognized revenue upon shipment of its products. Under Generally Accepted Accounting Principles ("GAAP"), and specifically Accounting Standards Codification ("ASC") 605-15, which was in effect during the relevant period, RTI was required to satisfy four elements at the time it recognized revenue: (1) there must be persuasive evidence of an arrangement; (2) collectability must be reasonably assured: (3) delivery must have

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