

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

PLAINTIFF, Individually and on Behalf of
All Others Similarly Situated,

Plaintiff,

v.

DZS INC., CHARLES DANIEL VOGT, and
MISTY KAWECKI,

Defendants.

Case No.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT
FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS

Plaintiff, by and through his counsel, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff's information and belief is based up, *inter alia*, counsel's investigation, which includes review and analysis of: (a) regulatory filings made by DZS, Inc. ("DZS" or the "Company") with the United States Securities and Exchange Commission ("SEC"); (b) press releases and media reports issued and disseminated by the Company; (c) analyst reports concerning DZS; and (d) other public information regarding the Company, including transcripts of earnings calls and conferences held and/or attended by the Company. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This securities class action is brought on behalf of all persons or entities that purchased or otherwise acquired DZS securities between August 2, 2022 and June 1, 2023,

inclusive (the “Class Period”). The claims asserted herein are alleged against DZS and certain of the Company’s senior executives and directors (collectively, “Defendants”), and arise under §§10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and U.S. Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder.

2. Plano, Texas-based DZS is a provider of fiber access and optical telecommunications networking and cloud software technology. DZS generally sells its products and services directly to carriers and service providers that offer voice, data and video services to businesses, government, utilities, and residential subscribers. DZS’s customer base consists of regional, national, and international carriers and services providers.

3. Throughout the Class Period, Defendants issued false and misleading statements and/or failed to disclose adverse facts about the Company’s internal control over financial reporting. When the truth about the Company’s business and operations was revealed, the price of DZS common stock suffered sharp declines. As a result, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

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

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

6. Venue is proper in this Judicial District pursuant to §27 of the Exchange Act. DZS is headquartered in Plano, Texas, which is located within this Judicial District, Defendants conduct

business in this Judicial District, and a significant portion of Defendants' activities took place within this Judicial District.

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

THE PARTIES

8. Plaintiff purchased or otherwise acquired DZS common stock during the Class Period as described in the attached Certification and was damaged thereby. Plaintiff is a resident of the state of Minnesota.

9. Defendant DZS is incorporated under the laws of Delaware and maintains its corporate headquarters at 5700 Tennyson Parkway, Suite 400, Plano, Texas, 75024. The Company's common stock trades in an efficient market on the Nasdaq Global Select Market ("NASDAQ") under the ticker symbol "DZSI."

10. Defendant Charles Daniel Vogt ("Vogt") has served as the Company's President and Chief Executive Officer ("CEO") at all relevant times.

11. Defendant Misty Kawecki ("Kawecki") has served as the Company's Chief Financial Officer ("CFO") at all relevant times.

12. Defendants Vogt and Kawecki are sometimes referred to herein as the "Individual Defendants."

13. The Individual Defendants possessed the power and authority to control the contents of the Company's SEC filings, press releases, and other market communications. The Individual Defendants were provided with copies of the Company's SEC filings and press releases

alleged herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of their positions with DZS, and their access to material information available to them but not to the public, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public, and that the positive representations being made were then materially false and misleading. The Individual Defendants are liable for the false statements and omissions pleaded herein.

14. DZS and the Individual Defendants are collectively referred to herein as “Defendants.”

SUBSTANTIVE ALLEGATIONS

Materially False and Misleading Statements Issued During the Class Period

15. The Class Period begins on August 2, 2022, when the Company filed with the SEC its quarterly report on Form 10-Q for the period ending June 30, 2022 (the “2Q22 10-Q”), claiming that “there were no changes in [DZS’s] internal control over financial reporting that occurred during [the Company’s] last fiscal quarter that have materially affected, or are reasonably likely to materially affect, [DZS’s] internal control over financial reporting.”

16. Attached to the 2Q22 10-Q were certifications signed by Defendants Vogt and Kawecki pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”), which further attested to the effectiveness of the Company’s internal control over financial reporting and the disclosure of all fraud. The 2Q22 SOX certifications stated in relevant part:

1. I have reviewed this Quarterly Report on Form 10-Q of DZS Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

(c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

17. On November 1, 2022, the Company filed with the SEC its quarterly report on Form 10-Q for the period ending September 30, 2022 (the "3Q22 10-Q"). The Company once again led

the market to believe that DZS's internal control over financial reporting was effective, claiming for example, that there "were no changes in [DZS's] internal control over financial reporting...that have materially affected, or are reasonably likely to materially affect, [DZS's] internal control over financial reporting." Similarly, Defendants Vogt and Kawecky signed and submitted SOX certifications, attesting to the design and reliability of the Company's internal control over financial reporting.

18. The statements in ¶¶15-17 above falsely assured the market that DZS maintained adequate and effective internal controls, when, in fact, DZS had ongoing undisclosed issues with its internal controls over financial reporting.

19. On March 10, 2023, DZS filed with the SEC its Annual Report on Form 10-K for the year ended December 31, 2022 (the "2022 10-K"), which included as attachments SOX certifications signed by Defendants Vogt and Kawecky. In the 2022 10-K, DZS stated that the Company:

[M]aintain[s] disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed in [its] reports filed or submitted pursuant to the Securities Exchange Act of 1934 (the "Exchange Act") is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officers, as appropriate to allow for timely decisions regarding required disclosures.

20. Notwithstanding the presence of these controls, the 2022 10-K revealed that management, including the CEO and CFO, "concluded that [DZS's] disclosure controls and procedures were not effective as of December 31, 2022, due to a material weakness in internal control over financial reporting." Specifically the 2022 10-K explained in relevant part:

In the fourth quarter of 2022, the Company entered [into] a significant sales agreement with an existing customer which was subject to unique delivery terms. In reviewing the accounting for the revenue transaction, our management

identified a deficiency in the effectiveness of a control intended to properly document and review relevant facts in connection with revenue recognition related to such transaction. Accordingly, a material error was detected in recorded revenue in our 2022 preliminary consolidated financial statements as a result of this misapplication of U.S. GAAP. *The December 31, 2022 consolidated financial statements included in this Annual Report on Form 10-K and in our earnings press release filed on February 16, 2023 with our Current Report on Form 8-K have been corrected prior to issuances.*

[Emphasis added.]

21. The 2022 10-K also included the following purported risk warning:

The existence of one or more material weaknesses or significant deficiencies *could* result in errors in our financial statements, and substantial costs and resources *may* be required to rectify any internal control deficiencies. *If* we cannot produce reliable financial reports, investors *could* lose confidence in our reported financial information, we *may* be unable to obtain additional financing to operate and expand our business and our business and financial condition *could* be harmed.

[Emphasis added.]

22. The statements in ¶¶19-21 above, however, were false and misleading because the Company's improper revenue recognition was not an isolated incident resulting from issues with "unique delivery terms," but rather because of DZS's ongoing lack of effective internal controls. Moreover, the Company's discussion of risk factors related to a lack of internal controls were themselves materially misleading because they provided generic statements of potential or contingent risk, yet failed to disclose that the potential future adverse impacts described were already occurring. For example, errors already existed in the Company's financial reports for the period ending December 31, 2022.

23. On May 8, 2023, the Company filed with the SEC a press release on Form 8-K announcing its first quarter 2023 financial results, stating in relevant part:

Q1 revenue of \$91 million resulted in an 18% increase year-over-year and 23% increase on a constant currency basis. While near-term macroeconomic conditions, slower than expected government disbursements, and timing with certain deployment schedules are impacting maximum growth potential, DZS

continues to make encouraging progress in positioning the company to benefit from what will be a long-term secular growth trend,” said Charlie Vogt, President and CEO of DZS. *“While we remain relentlessly focused on our customers and prospective customers, balancing our near-term investments to deliver revenue growth, gross margin expansion and sustainable earnings is our number one priority.*

CFO Misty Kawecki added, *“Q1 revenue was within the guidance range of \$90-100 million.* We continue to pull forward lower margin product shipments which comprise of higher component cost absorbed during the pandemic. Of our remaining RPOs of \$304 million and forecasted in-year revenue conversion, we anticipate that Q1 represents the low end of our gross margin outlook. Furthermore, our accelerated cost saving will translate into improved profitability during the second half of the year.”

Q1 2023 Financial Highlights

- ✓ Orders of \$80 million compared to \$101 million in Q1 2022
- ✓ ***Revenue of \$91 million increased 18% compared to \$77 million in Q1, 2022 and 23% on a constant currency basis.***

[Emphasis added.]

24. The following day, on May 9, 2023, DZS filed with the SEC its quarterly report on Form 10-Q for the period ended March 31, 2023 (the “1Q23 10-Q”). Attached to the 1Q23 10-Q were SOX certifications signed by Defendants Vogt and Kawecki.

25. The 1Q23 10-Q provides the following tables purportedly showing the Company’s net revenues, gross profit, cash flows, and sources of revenue:

RESULTS OF OPERATIONS					
The table below presents the historical consolidated statement of comprehensive income (loss) as a percentage of revenues and year-over-year changes (dollars in thousands).					
	Three months ended March 31,				Increase (Decrease)
	2023	% of net revenue	2022	% of net revenue	
Net revenue	\$ 90,812	100 %	\$ 77,040	100 %	17.9 %
Cost of revenue	60,985	67 %	50,215	65 %	21.4 %
Gross profit	29,827	33 %	26,825	35 %	11.2 %
Operating expenses:					
Research and product development	14,851	16 %	11,844	15 %	25.4 %
Selling, marketing, general and administrative	24,781	27 %	17,742	23 %	39.7 %
Restructuring and other charges	4,152	5 %	436	1 %	852.3 %
Amortization of intangible assets	1,271	1 %	294	1 %	332.3 %
Total operating expenses	45,055	49 %	30,316	40 %	48.6 %
Operating loss	(15,228)	(16)%	(3,491)	(5)%	336.2 %
Interest expense, net	(792)	(1)%	(90)	—%	780.0 %
Other income (expense), net	728	1 %	(800)	(1)%	(191.0)%
Loss before income taxes	(15,292)	(16)%	(4,381)	(6)%	249.1 %
Income tax provision	1,843	2 %	(1,333)	(2)%	(238.3)%
Net loss	\$ (17,135)	(18)%	\$ (3,048)	(4)%	462.2 %

DZS INC. AND SUBSIDIARIES
Unaudited Condensed Consolidated Statements of Cash Flows
(In thousands)

	Three months ended March 31,	
	2023	2022
Cash flows from operating activities:		
Net loss	\$ (17,135)	\$ (3,048)
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:		
Depreciation and amortization	2,465	1,081
Amortization of deferred financing costs	60	—
Stock-based compensation	4,486	2,671
Provision for inventory write-down	1,086	705
Bad debt expense, net of recoveries	(184)	(752)
Provision for sales returns	541	1,448
Provision for warranty	70	121
Unrealized loss (gain) on foreign currency transactions	1,396	874
Subsidiary dissolution	—	(68)
Loss on disposal of property, plant and equipment	40	—
Changes in operating assets and liabilities:		
Accounts receivable	11,033	2,761
Other receivable	(5,511)	126
Inventories	7,051	(10,931)
Contract assets	(29)	1,261
Prepaid expenses and other assets	(3,138)	(7,577)
Accounts payable	(13,875)	1,586
Contract liabilities	(3,493)	(1,446)
Accrued and other liabilities	131	456

Net Revenue

The following table presents our revenues by product technology (dollars in thousands):

	Three Months Ended March 31,		Increase (Decrease)
	2023	2022	
Access Networking Infrastructure	\$ 79,459	\$ 72,462	9.7 %
Cloud Software & Services	11,353	4,578	148.0 %
Total	\$ 90,812	\$ 77,040	17.9 %

Our revenue from sales of access networking infrastructure products includes Access Edge, Optical Edge, and Subscriber Edge network solutions. Our cloud software and services revenue represents revenue from our Cloud Software solutions including DZS Xtreme, Express and CloudCheck software, and revenue from maintenance and other professional services associated with product shipments.

For the three months ended March 31, 2023, access networking infrastructure revenue increased by 9.7% or 7.0 million to \$79.5 million from \$72.5 million in the same period last year. The increase was primarily attributable to higher spending levels from our major customers in Asia. The increase in cloud software and services revenue was primarily due to the increased product and software sales and revenue related to the ASSIA Acquisition.

The following table presents our revenues by geographical concentration (dollars in thousands):

	Three Months Ended March		Increase (Decrease)
	2023	2022	
Americas	\$ 24,855	\$ 23,061	7.8 %
Europe, Middle East, Africa	19,182	18,649	2.9 %
Asia	46,775	35,330	32.4 %
Total	\$ 90,812	\$ 77,040	17.9 %

Our geographic diversification reflects the combination of market demand, a strategic focus on capturing market share through new customer wins and new product introductions.

26. The 1Q23 10-Q also provides the following with respect to the Company's revenue recognition during the quarter:

Contract Balances

The Company records contract assets when it has a right to consideration and records accounts receivable when it has an unconditional right to consideration. Contract liabilities consist of cash payments received (or unconditional rights to receive cash) in advance of fulfilling performance obligations. The majority of the Company's performance obligations in its contracts with customers relate to contracts with duration of less than one year.

The opening and closing balances of current and long-term contract assets and contract liabilities related to contracts with customers are as follows:

	Contract assets	Contract liabilities
December 31, 2022	\$ 576	\$ 29,641
March 31, 2023	\$ 605	\$ 29,225

The decrease in contract liabilities during the three months ended March 31, 2023 was primarily due to the revenue recognition criteria being met for previously deferred revenue, partially offset by invoiced amounts that did not yet meet the revenue recognition criteria. The amount of revenue recognized in the three months ended March 31, 2023 that was included in the prior period contract liability balance was \$7.4 million. This revenue consists of services provided to customers who had been invoiced prior to the current year. We expect to recognize approximately 75% of outstanding contract liabilities as revenue over the next 12 months and the remainder thereafter.

The balance of contract cost deferred as of March 31, 2023 and December 31, 2022 was \$0.5 million and \$1.0 million, respectively. During the three months ended March 31, 2023, the Company recorded \$0.5 million in amortization related to contract cost deferred as of December 31, 2022.

27. In addition, the 1Q23 10-Q stated that management “has begun implementing a remediation plan to reassess the design of [the Company’s] controls and modify [its] processes related to the accounting for significant revenue transactions as well as enhancing monitoring and oversight controls in the application of accounting guidance related to such transactions.” Notwithstanding, the 1Q23 10-Q again represented that “there were no changes in [DZS’s] internal control over financial reporting . . . that have materially affected, or are reasonably likely to materially affect, [DZS’s] internal control over financial reporting.”

28. The statements in ¶¶23-27 above were materially false and/or misleading because they misrepresented and failed to disclose adverse facts known to Defendants about the Company’s business, operations, and financial reporting. Specifically, Defendants knew (or recklessly disregarded) that DZS’s internal control over financial reporting was patently defective, resulting in the issuance of financial statements that contained material errors.

The Truth Emerges

29. On June 1, 2023, before the market opened, DZS filed a Current Report on Form 8-K with the SEC, revealing the discovery of an accounting error relating to the timing of revenue recognition with respect to certain customer projects. Specifically, the 8-K provided in relevant part:

Item 4.02 Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review

On May 31, 2023, the Audit Committee (the “Audit Committee”) of the Board of Directors of DZS Inc. (the “Company”), in consultation with the Company’s management, *determined that the Company’s previously issued unaudited condensed consolidated financial statements as of and for the three months ended March 31, 2023 (the “Subject Period”) contained an accounting error relating to the timing of revenue recognition with respect to two customer projects for the Subject Period. The value of the revenue to be restated is approximately \$15 million, of which the Company anticipates the majority will be recognized during the three months ending June 30, 2023 and the three months ending*

September 30, 2023. As a result of this error, the Audit Committee determined that the Company's unaudited condensed consolidated financial statements for the Subject Period should no longer be relied upon and should be restated. Similarly, any previously issued or filed reports, press releases, earnings releases, investor presentations or other communications of the Company describing the Company's financial results or other financial information relating to the Subject Period should no longer be relied upon.

The required adjustments were identified during a recent internal review of the transactions regarding the applicable customers.

As a result of the accounting error, the Company intends to (a) restate its unaudited condensed consolidated financial statements and the notes thereto with respect to the Subject Period in an amendment to the Company's Quarterly Report on Form 10-Q for the three months ended March 31, 2023 (the "Amended 10-Q") to be filed with the Securities and Exchange Commission (the "SEC") and (b) amend, among other related disclosures, its Management's Discussion and Analysis of Financial Condition and Results of Operations for the Subject Period in the Amended 10-Q. The adjustments to such financial statement items will be set forth through expanded disclosure in the financial statements included in the Amended 10-Q, including further describing the restatement and its impact on previously reported amounts.

Although the Company cannot at this time estimate when it will file its restated financial statements and the Amended 10-Q, it is diligently pursuing completion of the restatement and intends to make such filing as soon as reasonably practicable.

The description in this report of the accounting error, the required adjustments and the expected impacts of the restatement are preliminary, unaudited and subject to further change in connection with the ongoing review of the accounting error and the completion of the restatement. Accordingly, there can be no assurance that the actual effects of the restatement will be only as described above.

The Company's management and the Audit Committee have discussed, and continue to discuss, the matters disclosed in this Item 4.02 with the Company's independent registered public accounting firm, Ernst & Young LLP.

[Emphasis added.]

30. That same day, the Company issued a second press release revealing that the discovery also required the Company to downward adjust its previously-issued guidance, stating

in

relevant

part:

DZS to Restate First Quarter 2023 Financial Statements and Updates Full Year 2023 Guidance

DALLAS, Texas, USA, June 01, 2023 – DZS (Nasdaq: DZSI), a global leader of access, optical and cloud-controlled software defined solutions, today announced that *it will restate its previously issued financial statements for the first quarter of 2023, which ended March 31, 2023. The restatement relates to timing of revenue recognition with respect to two customer projects. The value of the revenue to be restated is approximately \$15 million, of which the company anticipates the majority will be recognized during the second and third quarters of 2023.* The associated customer relationships are in good standing, and the customers have begun paying the amounts due to the Company.

Full Year 2023 Guidance

“We are withdrawing the Q2 earnings guidance issued on May 8, 2023 and will provide updated Q2 guidance once we have clarity regarding the timing of the recognition for the restated Q1 revenue and adjusted EBITDA,” said Misty Kawecki, Chief Financial Officer of DZS. *“The most significant of the two revenue restatements is with a long standing, highly valued customer. We are focused on completing the restatement process as quickly as practicable. At the end of March 2023, our total RPOs were valued at \$304 million. We remain encouraged and optimistic about the second half of 2023 and into 2024 aligned with a strong sales pipeline and validated by numerous Tier I/II trials around the world. Finally, we are adjusting our full-year guidance, taking into consideration the risk that customers may take longer to deploy their current inventory.* For additional information regarding our market opportunity, product portfolio and growth pillars, visit our investor relations page to view our investor day presentations.”

Full Year 2023

- Net revenue of approximately \$370 million vs. approximately \$400 million previously
- Adjusted gross margin¹ remains in a range of 35%-37%
- Adjusted operating expenses¹ of approximately \$115 million vs. \$115-120 million previously
- Adjusted EBITDA¹ of approximately \$15-22 million vs. \$22-27 million previously

(1) Item represents a non-GAAP measure

[Emphasis added.]

31. On this news, the Company's stock declined \$2.17 per share, or 36%, to close at \$3.82 per share on June 1, 2023.

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

PLAINTIFF'S CLASS ACTION ALLEGATIONS

33. Plaintiff brings this action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all those who purchased or otherwise acquired DZS securities during the Class Period and were damaged thereby (the "Class"). Excluded from the Class are the Defendants named herein, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

34. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, DZS common stock was actively traded on the NASDAQ exchange. While the exact number of Class members is unknown to Plaintiff at this time, and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by DZS or its transfer agent and/or NASDAQ and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

35. Plaintiff's claims are typical of the claims of the members of the Class, as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

36. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

37. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the Exchange Act was violated by Defendants' acts as alleged herein;
- (b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of DZS;
- (c) whether Defendants' public statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether the Individual Defendants caused DZS to issue false and misleading statements during the Class Period;
- (e) whether Defendants acted knowingly or recklessly in issuing false and misleading statements;
- (f) whether the prices of DZS securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and

- (g) whether the members of the Class have sustained damages, and, if so, what is the proper measure of damages.

38. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

39. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

PRESUMPTION OF RELIANCE

40. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- (a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) DZS securities are traded in an efficient market;
- (d) the Company's shares are liquid and traded with moderate to heavy volume during the Class Period;
- (e) the Company's common stock traded on the NASDAQ exchange in the United States;
- (f) the Company was covered by securities analysts;
- (g) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(h) Plaintiff and members of the Class purchased, acquired, and/or sold DZS securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed without knowledge of the omitted or misrepresented facts.

41. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

42. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of Utah v. U.S.*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

COUNT I
Violations of §10(b) of the Exchange Act and Rule 10b-5
(Against All Defendants)

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

44. This Count is asserted against Defendants and is based upon §10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

45. During the Class Period, Defendants engaged in a plan, scheme, conspiracy, and course of conduct pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and courses of business that operated as a fraud and deceit upon Plaintiff and the other members of the Class; made various untrue statements of material facts and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and employed devices, schemes, and artifices to defraud in connection with the purchase and sale of securities. Such scheme was intended to, and,

throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and the other Class members, as alleged herein; (ii) artificially inflate and maintain the market price of DZS securities; and (iii) cause Plaintiff and other members of the Class to purchase or otherwise acquire DZS securities at artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct, Defendants, and each of them, took the actions set forth herein.

46. Pursuant to the above plan, scheme, conspiracy, and course of conduct, each of the Defendants participated, directly or indirectly, in the preparation and/or issuance of the annual reports, SEC filings, press releases, and other statements and documents, as described above, including statements made to securities analysts and the media, that were designed to influence the market for DZS securities. Such reports, filings, releases, and statements were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company's business, operations, and financial condition.

47. By virtue of their positions at DZS, Defendants had actual knowledge of the materially false and misleading statements and material omissions alleged herein and intended thereby to deceive Plaintiff and the other members of the Class, or, in the alternative, Defendants acted with reckless disregard for the truth in that they failed or refused to ascertain and disclose such facts as would reveal the materially false and misleading nature of the statements made, although such facts were readily available to Defendants. Said acts and omissions of Defendants were committed willfully or with reckless disregard for the truth. In addition, each Defendant knew or recklessly disregarded that material facts were being misrepresented or omitted, as described above.

48. The Individual Defendants are liable both directly and indirectly for the wrongs complained of herein. Because of their positions of control and authority, the Individual

Defendants were able to, and did, directly or indirectly, control the content of the statements of DZS. As officers and/or directors of a publicly held company, the Individual Defendants had a duty to disseminate timely, accurate, truthful, and complete information with respect to DZS's business. As a result of the dissemination of the aforementioned false and misleading public statements, the market price of DZS securities was artificially inflated throughout the Class Period. In ignorance of the adverse facts concerning the Company's business and financial condition, which were concealed by Defendants, Plaintiff and the other members of the Class purchased or otherwise acquired DZS securities at artificially inflated prices and relied upon the price of the securities, integrity of the market for the securities, and/or statements disseminated by Defendants and were damaged thereby.

49. During the Class Period, DZS securities were traded on an active and efficient market. Plaintiff and the other members of the Class, relying on the materially false and misleading statements described herein, which the Defendants made, issued, or caused to be disseminated, or relying upon the integrity of the market, purchased or otherwise acquired DZS securities at prices artificially inflated by Defendants' wrongful conduct. Had Plaintiff and the other members of the Class known the truth, they would not have purchased or otherwise acquired said securities, or would not have purchased or otherwise acquired them at the inflated prices that were paid. At the time of the purchases and/or acquisitions by Plaintiff and the Class, the true value of DZS shares was substantially lower than the prices paid by Plaintiff and the other members of the Class. The market price of DZS securities declined sharply upon public disclosure of the facts alleged herein to the injury of Plaintiff and Class members.

50. By reason of the conduct alleged herein, Defendants have knowingly or recklessly, directly or indirectly, violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

51. As a direct and proximate result of Defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases, acquisitions, and sales of the Company's stock during the Class Period, upon the disclosure that the Company had been disseminating misrepresented financial statements to the investing public.

COUNT II
Violations of §20(a) of the Exchange Act
(Against the Individual Defendants)

52. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

53. This Claim is brought against the Individual Defendants for control person liability under §20(a) of the Exchange Act.

54. During the Class Period, the Individual Defendants participated in the operation and management of DZS and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions at and/or control of the Company, the Individual Defendants knew the truth about DZS's business and financial condition and the scheme to artificially inflate the Company's stock price.

55. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information, with respect to the Company's business and financial condition, and promptly correct any public statements issued by DZS that had become materially false or misleading.

56. Because of their position of control and authority, as senior directors or officers, the Individual Defendants were able to, and did, control the contents of the various press releases and public filings that DZS disseminated in the marketplace during the Class Period concerning the Company's business and financial condition. Throughout the Class Period, the Individual

Defendants exercised their power and authority to cause DZS to engage in the wrongful acts complained of herein. The Individual Defendants, therefore, were “controlling persons” of DZS within the meaning of §20(a) of the Exchange Act. In these capacities, the Individual Defendants participated in the unlawful conduct alleged herein, which artificially inflated the market price of DZS shares.

57. By reason of the above conduct, the Individual Defendants are liable pursuant to §20(a) of the Exchange Act for the violations committed by DZS.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

- A. Determining that this action is a proper class action;
- B. Award compensatory damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants’ wrongdoing, in an amount to be proved at trial, including interest thereon;
- C. Awarding Plaintiff and the other members of the Class pre- and post-judgment interest, as well as reasonable attorneys’ fees, expert fees, and other costs; and
- D. Awarding such other and further relief as this Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.