

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS**

\_\_\_\_\_, Individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

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

Defendants.

**Case No:**

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

**JURY TRIAL DEMANDED**

Plaintiff \_\_\_\_\_ (“Plaintiff”), individually and on behalf of all other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and belief as to all other matters, based upon, among other things, the investigation conducted by and through his attorneys, which included, among other things, a review of the Defendants’ public documents, public filings, wire and press releases published by and regarding DZS Inc. (“DZS” or the “Company”), and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a class action on behalf of persons or entities who purchased or otherwise acquired publicly traded DZS securities between May 8, 2023 and May 31, 2023, inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).

## **JURISDICTION AND VENUE**

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

3. 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).

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants (defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

## **PARTIES**

6. Plaintiff, as set forth in the accompanying certification, incorporated by reference herein, purchased DZS securities during the Class Period and was economically damaged thereby.

7. Defendant DZS purports to be a “global provider of access and optical networking infrastructure and cloud software solutions that enable the emerging hyper-connected, hyper-broadband world and broadband experiences. The Company provides a wide array of reliable, cost-effective networking technologies and software to a diverse customer base.”

8. Defendant DZS is incorporated in Delaware and its head office is located at 5700 Tennyson Parkway Suite 400, Plano, Texas, 75024. DZS securities trade on NASDAQ under the ticker symbol “DZSI.”

9. Defendant Charles Daniel Vogt (“Vogt”) has served as the Company’s President and Chief Executive Officer (“CEO”) since August 2020.

10. Defendant Misty Kawecki (“Kawecki”) has served as the Company’s Chief Financial Officer since 2021.

11. Defendants Vogt and Kawecki are collectively referred to herein as the “Individual Defendants.”

12. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;
- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company’s internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or

(g) approved or ratified these statements in violation of the federal securities laws.

13. DZS is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

14. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to DZS under *respondeat superior* and agency principles.

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

**SUBSTANTIVE ALLEGATIONS**  
**Materially False and Misleading**  
**Statements Issued During the Class Period**

16. On May 8, 2023, the Company filed with the SEC a press release on Form 8-K announcing its 1Q23 financial results. It stated, in pertinent part, the following:

[The Company] today announced financial results for its first quarter ended March 31, 2023.

*“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 Kawecky 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***
- Book-to-Bill ratio of 0.9
- \$304 million of RPOs inclusive of backlog and deferred Software & Service Q1 compared with \$252 million at the end of Q1 2022
- GAAP gross margin of 32.8% compared to 32.8% compared to 34.8% in Q1 2022
- Adjusted gross margin (1) of 33.3% compared to 35.2% in Q2 2022
- GAAP operating expenses of \$45 million compared to \$30 million in Q1 2022
- Adjusted EBITDA (1) loss of \$(4) million compared to \$(0) million in Q1 2022
- Net income (loss): \$(17) million GAAP; \$(2) million adjusted (1)
- Diluted Net income (loss) per share of \$(0.55) on a GAAP basis compared to \$(0.11) in Q1 2022
- Adjusted EPS (1) was a loss of \$(0.06) compared to \$(0.01) in Q1 2022

(1) Item represents a non-GAAP financial measure; see discussion below, as well as a reconciliation to the comparable GAAP measure in the financial tables in this earnings press release.

(Emphasis added).

17. Then, on May 9, 2023, DZS filed with the SEC its Quarterly Report on Form 10-Q for the Quarter ended March 31, 2023 (the “1Q23 Report”). Attached to the 1Q23 Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Vogt and Kawecky attesting to the accuracy of any material changes to the Company’s internal control over financial reporting, and the disclosure of all fraud.

18. The 1Q23 Report provided the following, in pertinent part, regarding the Company’s net revenues and cash flows:

**DZS INC. AND SUBSIDIARIES**  
**Unaudited Condensed Consolidated Statements of Comprehensive Income (Loss)**  
(In thousands, except per share data)

|  | Three Months Ended<br>March 31, |            |
|--|---------------------------------|------------|
|  | 2023                            | 2022       |
| Net revenue                                    | \$ 90,812                       | \$ 77,040  |
| Cost of revenue                                | 60,985                          | 50,215     |
| Gross profit                                   | 29,827                          | 26,825     |
| Operating expenses:                            |                                 |            |
| Research and product development               | 14,851                          | 11,844     |
| Selling, marketing, general and administrative | 24,781                          | 17,742     |
| Restructuring and other charges                | 4,152                           | 436        |
| Amortization of intangible assets              | 1,271                           | 294        |
| Total operating expenses                       | 45,055                          | 30,316     |
| Operating loss                                 | (15,228)                        | (3,491)    |
| Interest expense, net                          | (792)                           | (90)       |
| Other income (expense), net                    | 728                             | (800)      |
| Loss before income taxes                       | (15,292)                        | (4,381)    |
| Income tax provision (benefit)                 | 1,843                           | (1,333)    |
| Net loss                                       | (17,135)                        | (3,048)    |
| Foreign currency translation adjustments (a)   | (2,051)                         | (268)      |
| Actuarial loss                                 | (60)                            | —          |
| Comprehensive loss                             | \$ (19,246)                     | \$ (3,316) |
| Net loss per share                             |                                 |            |
| Basic  | \$ (0.55)                       | (0.11)     |
| Diluted  | \$ (0.55)                       | (0.11)     |
| Weighted average shares outstanding            |                                 |            |
| Basic  | 31,045                          | 27,530     |
| Diluted  | 31,045                          | 27,530     |

(a) Includes net gain of \$0.2 million and net loss of \$0.4 million on intra-entity foreign currency transactions that are of a long-term investment nature for three months ended March 31, 2023 and 2022.

See accompanying notes to unaudited condensed consolidated financial statements.

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

|  | Three months ended<br>March 31, |                  |
|--|---------------------------------|------------------|
|  | 2023                            | 2022             |
| <b>Cash flows from operating activities:</b>   |                                 |                  |
| 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 cash used in operating activities  | <u>(15,006)</u>                 | <u>(10,732)</u>  |
| <b>Cash flows from investing activities:</b>   |                                 |                  |
| Proceeds from disposal of property, plant and equipment and other assets                               | 1,790                           | —                |
| Purchases of property, plant and equipment   | (775)                           | (1,317)          |
| Net cash provided by (used in) investing activities  | <u>1,015</u>                    | <u>(1,317)</u>   |
| <b>Cash flows from financing activities:</b>   |                                 |                  |
| Repayments of long-term borrowings   | (313)                           | —                |
| Proceeds from short-term borrowings and line of credit, net  | 8,918                           | —                |
| Proceeds from related party term loan  | 4,059                           | —                |
| Repayments of related party term loan  | (5,845)                         | —                |
| Payments for debt issue costs  | (122)                           | (178)            |
| Proceeds from exercise of stock awards and employee stock plan purchases                               | (87)                            | 156              |
| Net cash provided by (used in) financing activities  | <u>6,610</u>                    | <u>(22)</u>      |
| Effect of exchange rate changes on cash, cash equivalents and restricted cash                          | (67)                            | (903)            |
| Net change in cash, cash equivalents and restricted cash   | <u>(7,448)</u>                  | <u>(12,974)</u>  |
| Cash, cash equivalents and restricted cash at beginning of period                                      | 38,464                          | 53,639           |
| Cash, cash equivalents and restricted cash at end of period  | <u>\$ 31,016</u>                | <u>\$ 40,665</u> |
| <b>Reconciliation of cash, cash equivalents and restricted cash to statement of financial position</b> |                                 |                  |
| Cash and cash equivalents  | \$ 28,892                       | \$ 34,160        |
| Restricted cash  | 1,975                           | 6,343            |
| Long-term restricted cash  | 149                             | 162              |
|  | <u>\$ 31,016</u>                | <u>\$ 40,665</u> |
| <b>Supplemental disclosure of cash flow information:</b>   |                                 |                  |
| Cash paid during the period for:   |                                 |                  |
| Interest - bank and trade facilities   | \$ 660                          | \$ 36            |
| Interest - related party   | \$ 64                           | \$ —             |
| Income taxes   | \$ 480                          | \$ 283           |

See accompanying notes to unaudited condensed consolidated financial statements.

19. Further, the 1Q23 Report contained the follow graph and additional information regarding revenue recognition:

#### 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<br>assets | Contract<br>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.

20. The 1Q23 Report contained the follow graph and additional information regarding the sources of its revenue, as well as revenue accrued through different segments of its business:

#### (e) Disaggregation of Revenue

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

|                                  | Three Months Ended March 31, |           |
|----------------------------------|------------------------------|-----------|
|                                  | 2023                         | 2022      |
| Access Networking Infrastructure | \$ 79,459                    | \$ 72,462 |
| Cloud Software & Services        | 11,353                       | 4,578     |
| Total                            | \$ 90,812                    | \$ 77,040 |

The following table present revenues by geographical concentration (in thousands):

|                             | Three Months Ended March 31, |           |
|-----------------------------|------------------------------|-----------|
|                             | 2023                         | 2022      |
| Americas                    | \$ 24,855                    | \$ 23,061 |
| Europe, Middle East, Africa | 19,182                       | 18,649    |
| Asia                        | 46,775                       | 35,330    |
| Total                       | \$ 90,812                    | \$ 77,040 |

21. The 1Q23 Report did not disclose the ongoing issues with the Company's internal controls as it related to revenue recognition, instead focusing on prior issues where the errors had been corrected before issuance of financial statements to the public. The Company stated, in pertinent part, the following:

#### Disclosure Controls and Procedures

We are required to maintain disclosure controls and procedures designed to provide reasonable assurance of achieving the objective that information required to be disclosed in our reports filed or submitted pursuant to 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 principal executive officer and principal financial officer, as appropriate to allow for timely decisions regarding



required disclosures. Our disclosure controls and procedures include those components of our internal control over financial reporting intended to provide reasonable assurance that transactions are recorded as necessary to permit preparation of financials in accordance with U.S. GAAP. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives, and management applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

As required by Rule 13a-15(b) under the Exchange Act, we conducted an evaluation of the effectiveness of our disclosure controls and procedures as of March 31, 2023, the end of the period covered by this Quarterly Report on Form 10-Q. ***The evaluation was done under the supervision and with the participation of management, including our principal executive officer and principal financial officer. In the course of the evaluation of our disclosure controls and procedures, our principal executive officer and principal financial officer concluded that, because a material weakness in the Company's internal control over financial reporting existed at December 31, 2022 and had not been remediated by the end of the period covered by this Quarterly Report on Form 10-Q, the Company's disclosure controls and procedures were not effective as of March 31, 2023.*** This material weakness in the Company's internal control over financial reporting and the Company's remediation efforts are described below.

#### *Material Weakness*

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim consolidated and combined financial statements will not be prevented or detected on a timely basis.

In the fourth quarter of 2022, the Company entered 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 the 2022 Form 10-K filed on March 10, 2023 and in our earnings press release filed on February 16, 2023 with our Current Report on Form 8-K were corrected prior to issuance.***

#### *Remediation Plan*

***Management has begun implementing a remediation plan to reassess the design***

*of our controls and modify our 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.*

The remediation plan includes the following:

- Training with operational personnel to ensure potential unique revenue transactions are identified and communicated to accounting personnel in advance so the accounting for such transactions can be evaluated and business terms addressed as necessary;
- Implementing specific review procedures designed to enhance our revenue recognition controls;
- Strengthening our revenue recognition control with improved documentation standards, technical oversight and training.

We currently plan to have our enhanced review procedures and documentation standards in place and operating in the first half of fiscal 2023.

### **Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during our last fiscal quarter that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

(Emphasis added).

22. The statements contained in ¶¶ 16-21 were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company's business, operations and prospects, which were known to Defendants or recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) DZS' financial statements from March 31, 2023 to the present included certain errors; (2) as a result, DZS would need to restate its previously filed quarterly financial statement for the period ending March 31, 2023; (3) the Company had ongoing undisclosed issues with its internal controls over financial reporting; and (4) as a result, Defendants' statements about its business, operations, and prospects, were materially false and misleading and/or lacked a reasonable basis at all relevant times.

### **THE TRUTH EMERGES**

23. On June 1, 2023, before the market opened, the Company announced that it would restate its financial statements from May 9, 2023 to the present, stating the following, in pertinent part, in its current report filed with the SEC on Form 8-K:

#### **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).

24. Also on June 1, 2023, the Company posted a press release on its website entitled “DZS to Restate First Quarter 2023 Financial Statements and Updates Full Year 2023 Guidance”. This press release was included in a second Form 8-K, which the Company filed with the SEC before market hours on June 1, 2023. It stated, in pertinent part:

“[The Company] 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 margin (1) remains in a range of 35%-37%
- Adjusted operating expenses (1) of approximately \$115 million vs. \$115-120 million previously
- Adjusted EBITDA (1) *of approximately \$15-22 million vs. \$22-27 million previously*

(1) Item represents a non-GAAP financial measure; see discussion below, as well as a reconciliation to the comparable GAAP measure in the financial tables in this press release.

(Emphasis added).

25. On this news, the price of DZS stock plummeted by \$2.17 per share, or 36%, to close at \$3.82 on June 1, 2023, on extremely high trading volume. The next day, the price of DZS stock declined another \$0.42, or 10.8%, to close at \$3.46.

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

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

27. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons other than defendants who acquired DZS securities publicly traded on NASDAQ during the Class Period, and who were damaged thereby (the "Class"). Excluded from the Class are Defendants, the officers and directors of DZS, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

28. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, DZS securities were actively traded on NASDAQ. 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, if not thousands of members in the proposed Class.

29. 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.

30. 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.

31. 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:

- whether the Exchange Act was violated by Defendants' acts as alleged herein;
- whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the business and financial condition of DZS;
- 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;
- whether the Defendants caused DZS to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of DZS securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

32. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

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

- DZS shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;
- As a public issuer, DZS filed periodic public reports;
- DZS regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- DZS' securities were liquid and traded with moderate to heavy volume during the Class Period; and
- DZS was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

34. Based on the foregoing, the market for DZS securities promptly digested current information regarding DZS from all publicly available sources and reflected such information in

the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

35. 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 the State of Utah v. United States*, 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**  
**For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**  
**Against All Defendants**

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

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

38. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

39. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they:

- employed devices, schemes and artifices to defraud;
- made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or



- engaged in acts, practices and a course of business that operated as a fraud or deceit upon plaintiff and others similarly situated in connection with their purchases of DZS securities during the Class Period.

40. Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of DZS were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated, or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These defendants by virtue of their receipt of information reflecting the true facts of DZS, their control over, and/or receipt and/or modification of DZS' allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning DZS, participated in the fraudulent scheme alleged herein.

41. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other DZS personnel to members of the investing public, including Plaintiff and the Class.

42. As a result of the foregoing, the market price of DZS securities was artificially inflated during the Class Period. In ignorance of the falsity of Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of DZS securities during the Class Period in purchasing DZS securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

43. Had Plaintiff and the other members of the Class been aware that the market price of DZS securities had been artificially and falsely inflated by Defendants' misleading statements and by the material adverse information which Defendants did not disclose, they would not have purchased DZS securities at the artificially inflated prices that they did, or at all.

44. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

45. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of DZS securities during the Class Period.

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

46. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

47. 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 DZS' business affairs. Because of their senior positions, they knew the adverse non-public information about DZS' false financial statements.

48. 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 DZS' financial condition and results of operations, and to correct promptly any public statements issued by DZS which had become materially false or misleading.

49. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press

releases and public filings which DZS disseminated in the marketplace during the Class Period concerning DZS' results of operations. 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 Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of DZS securities.

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

#### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff, on behalf of himself and the Class, prays for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and designating plaintiff's counsel as Lead Counsel;

(b) awarding damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, together with interest thereon;

awarding plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

#### **JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated:

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