

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TODD FENER,

Plaintiff,

vs.

ASPEN TECHNOLOGY, INC., LAWRENCE  
B. EVANS, LISA W. ZAPPALA, DAVID L.  
MCQUILLIN AND CHARLES F. KANE,

Defendants.

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) No.

)  
) CLASS ACTION COMPLAINT FOR  
) VIOLATIONS OF FEDERAL SECURITIES  
) LAWS

) JURY TRIAL DEMANDED

Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Aspen Technology, Inc. ("AspenTech" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of purchasers of the common stock of AspenTech between August 8, 2000 and October 29, 2004, inclusive (the "Class Period"), seeking to pursue remedies 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. § 1337 and Section 27 of the Exchange Act [15 U.S.C. §78aa].

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C. §1391(b), as and many of the acts and practices complained of herein occurred in substantial part in this District.

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

## PARTIES

6. Plaintiff Todd Fener, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of AspenTech at artificially inflated prices during the Class Period and has been damaged thereby.

7. (a) Defendant AspenTech is a Delaware corporation with its principal place of business located at Ten Canal Park Cambridge, Massachusetts 02141. The Company supplies software products and services for the analysis, design and automation of process manufacturing facilities. The Company's software and services are used by companies in the chemical, petroleum, pharmaceuticals, pulp and paper, and metal industries.

(b) Defendant Lawrence B. Evans ("Evans") is, and was at all relevant times, AspenTech's Chairman and was its Chief Executive Officer ("CEO") from the beginning of the Class Period to October 1, 2002.

(c) Defendant Lisa W. Zappala ("Zappala") was AspenTech's Chief Financial Officer ("CFO") from the beginning of the Class Period to July 1, 2003.

(d) Defendant David L. McQuillin ("McQuillin") has been AspenTech's President and CEO since October 1, 2002.

(e) Defendant Charles F. Kane ("Kane") has been AspenTech's CFO since July 1, 2003.

(f) Defendants Evans, Zappala, McQuillin and Kane are collectively referred to herein as the "Individual Defendants."

8. Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about the Company's business, operations, operational trends, financial statements, markets and present and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts and reports of

actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

9. It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading and incomplete information conveyed in the Company's public filings, press releases and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of AspenTech, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein, were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

10. As officers and controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was, and is, traded on the NASDAQ National Market ("NASDAQ"), and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly, accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, markets, management, earnings and present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly-traded common stock would be based

upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

11. The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with AspenTech, each of the Individual Defendants had access to the adverse undisclosed information about AspenTech's business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about AspenTech and its business issued or adopted by the Company materially false and misleading.

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

13. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of AspenTech common stock by disseminating materially false and misleading statements and/or concealing material adverse facts.

The scheme: (i) deceived the investing public regarding AspenTech's business, operations, management and the intrinsic value of AspenTech common stock; (ii) enabled the Company to acquire ICARUS Corp. using its artificially inflated shares as partial consideration; (iii) enabled the Company to complete a private placement of its common stock for gross proceeds of approximately \$30 million; (iv) enabled the Company to complete a private placement of its common stock for gross proceeds of approximately \$50 million and use those proceeds to acquire Hyprotech Ltd.; (v) enabled the Company to sign a definitive agreement for \$100 million in private equity financing on favorable terms; and (vi) caused plaintiff and other members of the Class to purchase AspenTech's common stock at artificially inflated prices.

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

14. 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 those who purchased or otherwise acquired the common stock of AspenTech between August 8, 2000 and October 29, 2004, inclusive ("the Class") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

15. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, AspenTech common shares were actively traded on the NASDAQ. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there 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 AspenTech or its transfer agent and may be notified of the

pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

16. 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.

17. 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.

18. 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 federal securities laws were 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, operations and management of AspenTech; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

19. 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.

## SUBSTANTIVE ALLEGATIONS

20. Defendant AspenTech describes itself as the “leading supplier of integrated software and services to the process industries, which consist of oil and gas, petroleum, chemicals, pharmaceuticals and other industries that manufacture and produce products from a chemical process.” The Company develops and markets software and services to companies in the process industries.

21. Throughout the Class Period, defendants issued numerous positive statements and filed quarterly reports with the SEC which described the Company’s increasing financial performance. These statements were materially false and misleading because they failed to disclose and misrepresented the following adverse facts, among others: (i) that the Company had improperly and prematurely recognized revenue for certain software license and service agreement transactions entered into with certain alliance partners and other customers during fiscal years 2000-2002 and possibly other periods; (ii) that the Company lacked adequate internal controls and was therefore unable to ascertain its true financial condition; and (iii) that as a result of the foregoing, the values of the Company’s revenues, earnings, assets and/or liabilities for fiscal years 2000-2002 and possibly other periods were materially overstated and may have to be restated.

22. On October 27, 2004, the Company shocked the market when it issued a press release announcing that its Audit Committee had undertaken a detailed review of the accounting for certain software license and service agreement transactions entered into with certain alliance partners and other customers during fiscal years 2000-2002. The Committee is reassessing the time periods in which revenue was recognized for these transactions and whether any of these transactions have prior or current material financial statement impact. The review could lead to a restatement. The press release continued, in pertinent part, as follows:

Based on its preliminary review to date, the Audit Committee believes that one software license transaction in fiscal third quarter 2000 and two transactions in fiscal second quarter 2001 were included in AspenTech's results for such periods without reflecting the impacts of associated arrangements between AspenTech and those customers, which may require revised accounting treatment.

The Committee has also identified a potential contingency associated with a fourth transaction recorded in the fourth fiscal quarter of 2001 which was not reflected in prior accounting, which may require revised accounting treatment.

23. Upon this shocking news, on October 28, 2004, shares of the Company's stock fell to an intraday low of \$5.50 per share, or approximately 20%, before closing at \$6.68 per share, on unusually heavy trading volume.

24. Then, on October 29, 2004, the Company announced that federal prosecutors launched a probe into the Company's accounting practices from 2000 through 2002. The Company said it received a subpoena from the U.S. Attorney's Office for the Southern District of New York requesting documents relating to transactions that it entered into during those years, and other documents dating from January 1, 1999.

25. Upon this shocking news, shares of the Company's stock fell an additional \$0.67, or approximately 10%, to close at \$6.01, on unusually heavy trading volume.

26. Prior to disclosing these adverse facts to the investing public, AspenTech: (i) acquired ICARUS Corp. using its overvalued shares as partial consideration; (ii) completed a private placement of its common stock for gross proceeds of approximately \$30 million; (iii) completed a private placement of its common stock for gross proceeds of approximately \$50 million and used those proceeds to acquire Hyprotech Ltd.; and (iv) enabled the Company to sign a definitive agreement for \$100 million in private equity financing on favorable terms.

**Materially False and Misleading  
Statements Issued During The Class Period**

27. The Class Period begins on August 8, 2000. On that day, AspenTech issued a press release announcing its financial results for the fourth quarter and year end of fiscal 2000, the period ending June 30, 2000. For the fiscal year, excluding one-time charges, AspenTech reported total revenues of \$268.1 million and net income of \$6.5 million or \$0.21 per diluted share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

We are pleased to have exceeded our goals for both growth and profitability in the fourth quarter and fiscal year. The rapid growth in our license revenues continued to be driven by strong demand for our integrated Enterprise Optimization(TM) and supply chain solutions, as process manufacturers increasingly invest in technology to improve their manufacturing productivity and optimize their supply chains. We are unique in the industry as the only company with a proven integrated solution, and our domain expertise and process knowledge enable us to deploy mission-critical solutions that other vendors cannot provide.

In the fourth quarter, we saw good strength across multiple process industry sectors, geographies, and product offerings. In addition to a number of significant fourth quarter Enterprise Optimization transactions, we won a highly competitive, enterprise-wide supply chain deal with BP Chemicals, as well as several other large supply chain deals, extending our position as the market leader for process industry supply chain implementations. We are pleased with the performance of our supply chain solutions this past year, where license revenue more than doubled, and we are excited about our prospects for the year ahead.

As we move into fiscal 2001, we believe we are strategically positioned to provide critical technologies that will allow process manufacturers to seamlessly link to digital e-marketplaces and participate in direct materials procurement over the Internet. In this way, we are confident we can offer a customer annual savings that will often exceed tens of millions of dollars by streamlining their business processes and optimizing their operations.

28. AspenTech's financial results for the fourth quarter and year end of 2000, the period ending June 30, 2000, were repeated in the Company's Report on Form 10-K405 filed with the SEC on or about September 28, 2000, which was signed by defendants Evans and Zappala, among others. Concerning the Company's revenue recognition policies, the 10-K405 stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally

recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence exists for all undelivered elements to allow allocation of the total fee to all delivered and undelivered elements of the arrangement. Revenues under such arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient vendor specific objective evidence for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

29. On September 5, 2000, the Company announced that it closed a transaction to acquire ICARUS Corporation, the market leader in providing software that is used by the process manufacturing industries to estimate plant capital costs and evaluate project economics for \$24.5 million in a combination of cash and stock.

30. On October 24, 2000, AspenTech issued a press release announcing its financial results for the first quarter of fiscal 2001, the period ending September 30, 2000. For the quarter, the Company reported total revenues of \$69.5 million and, excluding the one-time in-process research and development charge, the Company reported a net loss of \$0.2 million or \$0.01 per share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

Our supply chain solutions were a primary driver of our growth in the first quarter, as we won a number of important deals in our target markets. In addition, we saw a strong contribution from our Aspen Engineering Suite. We are also continuing to gain momentum in the process industries as the only e-business software vendor with an end-to-end solution that integrates all facets of a corporation and its extended enterprise, from the digital marketplace to the plant floor.

In the first quarter, we announced several important initiatives to help our customers address the critical areas of their e-business strategies: improve their internal processes with our infrastructure solutions such as Plantelligence and eSupply Chain suite, connect seamlessly to e-marketplaces using our netmarket solution and tie in external business partners through our B2B Foundation solution.

31. AspenTech's financial results for the first quarter of fiscal 2001, the period ending September 30, 2000, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 14, 2000, which was signed by defendant Zappala. Concerning the Company's recognition policies, the 10-Q stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence exists for all undelivered elements to allow allocation of the total fee to all delivered and undelivered elements of the arrangement. Revenues under such arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient vendor specific objective evidence for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as

unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

32. On January 24, 2001, AspenTech issued a press release announcing its financial results for the second quarter of fiscal 2001, the period ending December 31, 2000. For the quarter, the Company reported total revenues of \$81.7 million and, excluding amortization of goodwill, in-process research and development and write-off of investments, net income of \$3.1 million, or \$0.10 per diluted share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

We were pleased to see continued strong license revenue growth this quarter across a broad base of business. Our supply chain and engineering applications were the largest contributors in the quarter, with the petroleum sector again being the strongest segment of our end-user customer markets. Services revenue and profitability showed dramatic year-over-year improvement as a result of investments we have made to expand our supply chain implementation capacity and productivity.

We are steadily gaining market share among process manufacturers worldwide as customers continue to standardize on our best-in-class technologies and recognize our differentiated position in the industry. As we move into the second half of the fiscal year, we are excited about our growth prospects and the opportunity to enhance our position as the leading e- business solutions provider for the process industries.

33. AspenTech's financial results for the second quarter of fiscal 2001, the period ending December 31, 2000, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about February 14, 2001, which was signed by defendant Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence exists for all undelivered elements to allow allocation of the total fee to all delivered and undelivered elements of the arrangement. Revenues under such arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and

subsequently recognized when earned. The Company has established sufficient vendor specific objective evidence for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

34. On April 24, 2001, AspenTech issued a press release announcing its financial results for the third quarter of fiscal 2001, the period ending March 31, 2001. For the quarter, the Company reported total revenues of \$76.4 million and, excluding expenses relating to PetroVantage and amortization of goodwill, an AspenTech subsidiary providing software to optimize the trading and logistics of crude oil and refined products, a pro forma net loss of \$3.2 million or \$0.11 per basic share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

We saw a number of customers make significant investments in our technology during the quarter because of the tremendous value our solutions provide, closing ten deals that were greater than \$1 million with customers such as Air Liquide, ConAgra Beef, Dupont, Mitsui Chemicals and PetroCanada. However, due to the uncertainty surrounding the economy, we saw a number of customers delay making software purchasing decisions at the end of March, which caused a shortfall in license revenues.

In response to the current economic environment, we are taking steps to reduce our expenses, which we believe will help us to return to profitability in the near-term. We will continue to focus on initiatives that will drive our future growth, further our technology leadership position and advance our excellence in customer support. We expect to resume higher levels of investment when growth rates return to more

attractive levels. Over the long term, AspenTech remains strategically positioned to deliver solutions that drive extraordinary value for our customers in the process industries because of the breadth of our solutions, our unparalleled domain expertise and the dramatic and the proven returns-on-investment our technology provides.

35. AspenTech's financial results for the third quarter of fiscal 2001, the period ending March 31, 2001, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 15, 2001, which was signed by defendant Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor specific objective evidence (VSOE) exists for all undelivered elements to allow allocation of the total fee to all delivered and undelivered elements of the arrangement. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customers when they sell their consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenues under such arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include only unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

36. On August 7, 2001, AspenTech issued a press release announcing its financial results for the fourth quarter and year end of 2001, the period ending June 30, 2001. For the quarter, the Company reported total revenues of \$83.0 million and, excluding charges and expenses relating to PetroVantage, the company's wholly owned subsidiary providing software to optimize the trading and logistics of crude oil and refined products, pro forma net income of \$0.4 million or \$0.01 per diluted share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

We are pleased to have exceeded expectations for both revenues and profitability this quarter in what remains a very difficult environment. During the quarter, we solidified our leadership position in the process industries with the launch of Aspen ProfitAdvantage(TM), which focuses on profit improvement strategies for our customers, and the creation a new alliance with Accenture. In addition, Rohm & Haas standardized on our manufacturing and supply chain planning technologies and we closed significant multimillion dollar transactions with Jacobs Engineering, Pemex, SASOL in South Africa, Valero Refining and Yukos, a large Russian oil company. However, we continued to see customers delay software purchases at the end of the quarter, which limits our near-term visibility.

In light of economic uncertainties, we anticipate making additional expense reductions to improve our efficiency and return to profitability as soon as possible. These actions include reducing our worldwide workforce, which numbered 1,900 at the end of June, by approximately 5 percent. Our management team has valuable experience executing in difficult environments, which we believe will help us to maintain our leadership in providing enterprise-wide software solutions to process manufacturers.

37. AspenTech's financial results for the fourth quarter and year end of fiscal 2001, the period ending June 30, 2001, were repeated in the Company's Report on Form 10-K filed with the

SEC on or about September 28, 2001, which was signed by defendants Evans and Zappala, among others. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition

The Company recognizes revenue in accordance with Statement of Position (SOP) No. 97-2, "Software Revenue Recognition," as amended and interpreted. License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customers when they sell their consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include only unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided

currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

38. On October 25, 2001, AspenTech issued a press release announcing its financial results for the first quarter of fiscal 2002, the period ending September 30, 2001. For the quarter, the Company reported total revenues of \$61.2 million, with services revenues of \$42.0 million and license revenues of \$19.2 million, and a pro forma loss of \$12.5 million or \$0.39 per share, which excludes a one-time restructuring charge. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

An uncertain economic environment, combined with the impact of the September 11th attacks, negatively affected our close rate for a number of software license deals at the end of September. Due to slower activity during the summer months, a larger portion of our first quarter revenues close in September, which made last month's terrorist attacks particularly disruptive to several end-of-quarter transactions in an already challenging business climate. Fortunately, these license delays were largely offset by stronger-than-expected services revenues, where we continued to maintain gross margins in excess of forty percent, and by carefully controlled spending.

Some of our largest customers have expressed intentions to close significant license transactions in the second quarter. These indications make us cautiously optimistic, as customers focus on spending year-end budget surpluses in an environment where some of our end-user markets are showing early signs of stabilizing. We believe that stronger license revenues and continued operating efficiencies from our previously announced cost-cutting efforts will enable us to approach breakeven operations in the second quarter.

Defendant Zappala added, in pertinent part, as follows:

Our strong services revenue and expanding services backlog, which increased to \$125 million this quarter, are indicative of continued investment by our customers in our solutions. This investment gives us confidence that demand for our software solutions will improve in the coming months, as these major transactions are evidence of the compelling return on investment that AspenTech's solutions provide.

39. AspenTech's financial results for the first quarter of fiscal 2002, the period ending September 30, 2001, were repeated in the Company's Report on Form 10-Q filed with the SEC on or

about November 14, 2001, which was signed by defendant Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

The Company recognizes revenue in accordance with Statement of Position (SOP) No. 97-2, "Software Revenue Recognition," as amended and interpreted. License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customers when they sell their consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include only unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been

performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

40. On January 23, 2002, AspenTech issued a press release announcing its financial results for the second quarter of fiscal 2002, the period ending December 31, 2001. For the quarter, the Company reported total revenues of \$81.9 million and earnings per share, excluding expenses of the PetroVantage investment, of \$0.06 in the quarter. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

In spite of an economy that continues to be challenging, I am very pleased with our performance this quarter as revenue growth significantly exceeded our expectations. A key factor in this performance was a significant rebound in our business from the chemicals industry, as customers made major investments in our solutions to improve their productivity and profitability. In addition to the chemicals industry, continued strength in the petroleum and pharmaceutical sectors enabled us to achieve a greater revenue contribution from larger license transactions, which had not occurred in the past few quarters.

We were also pleased with our transaction with Dow Chemical, which represents a milestone agreement for AspenTech, as Dow looks to leverage its ERP investment and improve its manufacturing efficiency. We believe that this agreement validates the strength of our solution for enabling process manufacturers to integrate their manufacturing processes with their enterprise-wide supply chains. As we look ahead, we remain confident about our prospects in the coming quarters and we believe we are well-positioned for growth and profitability.

41. AspenTech's financial results for the second quarter of fiscal 2002, the period ending December 31, 2001, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about February 14, 2002, which was signed by defendant Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

License revenue, including license renewals, consists primarily of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customer when they sell their consulting services separately. For an

element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license agreements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair market value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include only unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

42. On February 7, 2002, the Company issued a press release announcing that it had completed a private placement of redeemable convertible preferred stock from which the Company received gross proceeds of \$30.0 million.

43. On April 25, 2002, AspenTech issued a press release announcing its financial results for the third quarter of fiscal 2002, the period ending March 31, 2002. For the quarter, the Company reported total revenues of \$83.5 million and an operating loss of \$6.9 million, resulting in a pro

forma loss of \$0.15 per diluted share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

We are one hundred percent committed to doing whatever it takes to restore AspenTech to sustained profitability. Due to the current economic environment, we have taken difficult, but necessary, short-term actions that should enable us to make money in the current quarter. Our fourth quarter is seasonally our strongest and we possess a robust pipeline of sales opportunities that we believe will close by the end of June.

In addition, we have implemented a number of strategic and tactical programs that we believe will enhance our profitability longer-term. In recent months, we have significantly strengthened our balance sheet and expanded our partner relationship with Accenture to deliver enterprise-wide software solutions. Our product offering, competitive position and the value we deliver to our customers have never been stronger. Given these factors, we feel confident that in a moderate economic expansion our revenue and earnings growth will provide investors attractive returns.

44. AspenTech's financial results for the third quarter of fiscal 2002, the period ending March 31, 2002, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 15, 2002, which was signed by defendant Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

License revenue, including license renewals, consists primarily of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customer when the Company sells its consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license agreements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair market value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software

is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include only unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenues are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated condensed balance sheets.

45. On May 10, 2002, the Company issued a press release announcing that it had agreed to a private placement of common stock to a small group of current institutional and new individual investors, raising gross proceeds of approximately \$50 million. The Company further stated that it intends to use the proceeds from the private placement, together with approximately \$50 million of its cash on hand, to fund the acquisition of Hyprotech, Ltd., a leading supplier of process simulation and engineering software and services to the petroleum industry.

46. On August 15, 2002, AspenTech issued a press release announcing its financial results for the fourth quarter and year end of fiscal 2002, the period ending June 30, 2002. For the quarter, the Company reported total revenues of \$84.0 million and a pro forma net loss of \$11.7 million, or \$0.34 per share. Defendant Evans commented on the Company's performance, stating, in pertinent part, as follows:

We have taken aggressive actions intended to return us to operating profitability and positive cash flow by the end of this calendar year. In the near-term, we have cut expenses to breakeven at quarterly revenue of \$88 million. We have also sharpened our focus on two core product lines: Engineering and Supply Chain Manufacturing. This streamlined approach will enable us to better match revenue and spending until the IT spending environment strengthens, while maintaining our key customer support and development activities.

We have also made significant changes in our sales and product development leadership and improved our organizational efficiency. We believe this will add more predictability to our financial results, while allowing us to develop and market our solutions more rapidly and efficiently. AspenTech's reputation for technical excellence and process industry expertise has never been stronger, and in the year ahead we are committed to delivering financial results that reflect this valuable industry leadership.

47. AspenTech's financial results for the fourth quarter and year end of fiscal 2002, the period ending June 30, 2002, were repeated in the Company's Report on Form 10-K filed with the SEC on or about September 30, 2002, which was signed by defendants Evans and Zappala, among others. Concerning the Company's revenue recognition policies, the 10-K stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) of fair value exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customers when the Company sells its consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Modification of SOP 97-2, Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenue is recognized under the residual method in arrangements in which software is licensed with professional services,

training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include telephone support and unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets.

48. On October 24, 2002, AspenTech issued a press release announcing its financial results for the first quarter of fiscal 2003, the period ending September 30, 2002. For the quarter, the Company reported total revenues of \$77.3 million and a net loss of \$10.7 million, or \$0.28 per share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

Our new organization, which is focused around our two major product lines, has helped to streamline our operations and will set the foundation for improved efficiency in the coming quarters. We achieved our expense reduction targets across the company, cutting spending to \$88 million in the first quarter. Our Engineering business hit our revenue targets and was profitable in the quarter. However, our Manufacturing/Supply Chain business fell short and did not meet our expectations. While we saw solid results from our foundation products, demand for our integrated, enterprise products continued to be weak.

As a result, we are realigning our expenses within the Manufacturing/Supply Chain business to focus on near-term opportunities. These actions are intended to restore the Manufacturing/Supply Chain business, and AspenTech as a whole, to profitability in the third quarter of fiscal 2003. Since we will only achieve a partial

quarter of benefits in the current quarter, our target is to break even for the three months ending December 31, 2002.

49. AspenTech's financial results for the first quarter of fiscal 2003, the period ending September 30, 2002, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 14, 2002, which was signed by defendants McQuillin and Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition—Software Licenses

We recognize software license revenue in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition", as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;
- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

#### Revenue Recognition—Consulting Services

We recognize revenue associated with fixed-fee service contracts in accordance with AICPA SOP No. 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts", using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning the estimation of the total costs to complete the contract, considering a number of factors, including the experience of the personnel that are performing the services and the overall complexity of the project. Should changes and conditions cause actual results to differ significantly

from management's estimates, revenue recognized in future periods could be adversely affected.

50. On January 30, 2003, AspenTech issued a press release announcing its financial results for the second quarter of fiscal 2003, the period ending December 31, 2002. For the quarter, the Company reported total revenues of \$83.0 million and a net loss of \$136.9 million, or \$3.59 per share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

We met or exceeded all of our key operational objectives in the December quarter, which enabled us to restore the company to operating profitability, excluding charges, a quarter earlier than we anticipated. Solid customer demand, particularly in the refining and oil & gas sectors, coupled with improved execution, led to sequential top-line growth. Expenses were down substantially from last quarter, as we realized the benefit of headcount reductions and cost control measures implemented earlier in the year.

In addition, we ended the quarter with more cash than we had forecasted, due to an increase in the sale of installment receivables and improved collection activity. Our success in the second quarter was an important milestone for the company and gives us confidence that we can sustain this improved execution, as we move toward achieving our revenue and profitability targets for the rest of this fiscal year.

51. AspenTech's financial results for the second quarter of fiscal 2003, the period ending December 31, 2002, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about February 14, 2003, which was signed by defendants McQuillin and Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition—Software Licenses

We recognize software license revenue in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition", as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;

- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

#### Revenue Recognition—Consulting Services

We recognize revenue associated with fixed-fee service contracts in accordance with AICPA SOP No. 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts", using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning the estimation of the total costs to complete the contract, considering a number of factors, including the experience of the personnel that are performing the services and the overall complexity of the project. Should changes and conditions cause actual results to differ significantly from management's estimates, revenue recognized in future periods could be adversely affected.

52. On April 29, 2003, AspenTech issued a press release announcing its financial results for the third quarter of fiscal 2003, the period ending March 31, 2003. For the quarter, the Company reported total revenues of \$79.7 million and a net loss to common shareholders of \$2.0 million, or \$0.05 per share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

I am pleased to have met our financial objectives again this quarter, particularly in a difficult macroeconomic environment. We hit our license revenue target, further reduced our operating expenses, and significantly improved pro forma profitability. This sequential improvement is solid evidence that the actions we took last autumn to streamline both our organization and our product focus are having a positive effect on our execution, which is enabling us to operate profitably.

In terms of the key operational highlights, the geographic composition of our license revenue was well-balanced and our Engineering product line exceeded its objectives. We continue to see steady demand for our Manufacturing/Supply Chain solutions, although primarily for individual Foundation technologies. From an end-user

perspective, the petroleum refining and oil and gas sectors were again important contributors in the third quarter, as integrated refiners sought to optimize their asset productivity and upstream divisions launched large engineering projects. Major customers continue to express their confidence in our solutions for Enterprise Operations Management, which provide proven, rapid, and substantial returns on investment, enabling customers to consistently improve their profitability.

53. AspenTech's financial results for the third quarter of fiscal 2003, the period ending March 31, 2003, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about May 15, 2003, which was signed by defendants McQuillin and Zappala. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition—Software Licenses

We recognize software license revenue in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition", as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;
- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

#### Revenue Recognition—Consulting Services

We recognize revenue associated with fixed-fee service contracts in accordance with AICPA SOP No. 81-1, "Accounting for Performance of Construction-Type and Certain Production-Type Contracts", using the percentage-of-completion method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning the estimation of the total costs to

complete the contract, considering a number of factors, including the experience of the personnel that are performing the services and the overall complexity of the project. Should changes and conditions cause actual results to differ significantly from management's estimates, revenue recognized in future periods could be adversely affected.

54. On August 7, 2003, AspenTech issued a press release announcing its financial results for the fourth quarter and year end of fiscal 2003, the period ending June 30, 2003. For the quarter, the Company reported total revenues of \$82.8 million and a net loss to common shareholders of \$18.2 million, or \$0.47 per share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

Our fourth quarter sequential license growth was driven by a substantial increase in contribution from our manufacturing/supply chain solutions, which exceeded our expectations for the first time in fiscal 2003. Our performance was well balanced by geography and end-user market--a testament to improved sales force productivity. We believe this validates our actions over the past year to streamline our operations and enhance our organizational leadership.

I am very proud of the dramatic turnaround the company has made over the past nine months, improving operational performance in the midst of a very difficult environment for enterprise software providers. The best evidence of this improvement was the signing of a definitive agreement with Advent International for a \$100 million private equity financing, which is subject to shareholder approval. We believe these financial resources will help us to show year-on-year improvement in earnings and cash flow in fiscal 2004.

55. On August 13, 2003, the Company issued a press release announcing the results of voting at its special meeting of stockholders. At the special meeting, stockholders approved the Company's proposed \$100 million private equity investment from funds managed by Advent International Corporation.

56. AspenTech's financial results for the fourth quarter and year end of fiscal 2003, the period ending June 30, 2003, were repeated in the Company's Report on Form 10-K filed with the SEC on or about September 29, 2003, which was signed by defendants McQuillin and Kane, among

others. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) of fair value exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates, which the Company charges its customers when the Company sells its consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Modification of SOP 97-2, Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenues are recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include telephone support and unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the proportional performance method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated

balance sheets. In accordance with the Emerging Issues Task Force (EITF) released Issue No. 01-14, "Income Statement Characterization of Reimbursements Received for 'Out-of-Pocket' Expenses Incurred," reimbursement received for out-of-pocket expenses is recorded as revenue and not as a reduction of expenses.

57. On October 29, 2003, AspenTech issued a press release announcing its financial results for the first quarter of fiscal 2004, the period ending September 30, 2003. For the quarter, the Company reported total revenues of \$77.0 million and diluted earnings per share to common shareholders of \$0.10 per share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

We are extremely pleased to have delivered profitability in the first quarter, which is our seasonally weakest quarter. These results indicate that our focus on improving execution and financial performance is yielding success. With the closing of our private equity financing, a substantial reduction of outstanding debt, and the generation of positive cash flow from operations, we have dramatically improved our balance sheet and put the company in a position to capitalize on improving IT demand in the process industries.

We recently introduced a number of new products for the Enterprise Operations Management (EOM) market with some of our largest customers. We are encouraged by both the growth prospects for these solutions, as well as the demonstrable uptick in customer interest to deploy these types of applications. Given our improved operational execution and lower quarterly expenses, we are positioned to continue our progress and deliver on our objectives for this fiscal year.

58. AspenTech's financial results for the first quarter of fiscal 2004, the period ending September 30, 2003, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about November 14, 2003, which was signed by defendants McQuillin and Kane. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition—Software Licenses

We recognize software license revenue in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition," as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;
- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables, particularly the installments receivable, relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

#### Revenue Recognition—Consulting Services

We recognize revenue associated with fixed-fee service contracts in accordance with the proportional performance method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning the estimation of the total costs to complete the contract, considering a number of factors including the experience of the personnel that are performing the services and the overall complexity of the project. Should changes and conditions cause actual results to differ significantly from management's estimates, revenue recognized in future periods could be adversely affected.

59. On January 22, 2004, AspenTech issued a press release announcing its financial results for the second quarter of fiscal 2004, the period ending December 31, 2003. For the quarter, the Company reported total revenues of \$80.4 million and net income of \$560,000, or \$0.01 per diluted share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

During the second quarter, we continued to build upon the operational performance and financial foundation that we worked hard to establish at AspenTech over the previous four quarters. With the significant structural changes behind us, we have now turned our full attention to focusing on the execution of our business strategy to deliver sustainable, profitable growth for our shareholders. With economic indicators steadily improving, we are beginning to see pockets of strength in our customer base and we are moving aggressively to capitalize on these opportunities.

Our strategy to deliver business value with vertical software solutions to the emerging enterprise operations management (EOM) market is gaining momentum. We are encouraged by our customers' response to the benefits they are receiving from some of our newer products such as Aspen Operations Manager. We have also added new functionality to our supply chain planning solutions over the past year which has strengthened demand for this technology from the petroleum, chemicals and consumer goods markets.

60. AspenTech's financial results for the second quarter of fiscal 2004, the period ending December 31, 2003, were repeated in the Company's Report on Form 10-Q filed with the SEC on or about February 17, 2004, which was signed by defendants McQuillin and Kane. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition—Software Licenses

We recognize software license revenue in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition," as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;
- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables, particularly the installments receivable, relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

#### Revenue Recognition—Consulting Services

We recognize revenue associated with fixed-fee service contracts in accordance with the proportional performance method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning

the estimation of the total costs to complete the contract, considering a number of factors including the experience of the personnel that are performing the services and the overall complexity of the project. We have a significant amount of experience in the estimation of the total costs to complete a contract and have not typically recorded material losses related to these estimates. We do not expect the accuracy of our estimates to change significantly in the future. Should changes and conditions cause actual results to differ significantly from management's estimates, revenue recognized in future periods could be adversely affected.

61. On April 29, 2004, AspenTech issued a press release announcing its financial results for the third quarter of fiscal 2004, the period ending March 31, 2004. For the quarter, the Company reported total revenues of \$80.7 million and net income of \$1.5 million, or \$0.03 per diluted share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

The strength of our business in the chemicals and oil & gas industries, combined with continued operational execution, enabled us to meet or exceed our quarterly targets for revenue and net income for the sixth consecutive quarter. We continue to see modest improvements in the global economic environment and our customer base is actively looking to invest in IT solutions that support their corporate-wide initiatives to improve operational performance.

During the past nine months, we have released nine new products, which we believe will fuel our future growth. Now, our challenge as a company is to focus on capturing the growth opportunities of these new products, as well as maximize the performance of our existing point solutions. As we build our sales pipeline for these products, we plan to reallocate organizational resources into sales and marketing activities that support our plans for profitable, sustainable growth in fiscal 2005 and beyond.

Defendant Kane continued, in pertinent part, as follows:

The company has made significant strides in consistently meeting or exceeding our operational targets and improving our financial performance, as evidenced by the year-over-year increase in our operating margins. As we seek to grow our revenues and hit our long-term operating margin goals, it is necessary to maintain our focus on operational improvement and invest in the areas of the business that will produce the greatest growth opportunities.

62. AspenTech's financial results for the third quarter of fiscal 2004, the period ending March 31, 2004, were repeated in the Company's Report on Form 10-Q filed with the SEC on or

about May 17, 2004, which was signed by defendants McQuillin and Kane. Concerning the Company's revenue recognition policies, the 10-Q stated, in pertinent part, as follows:

#### Revenue Recognition—Software Licenses

We recognize software license revenue in accordance with American Institute of Certified Public Accountants, or AICPA, Statement of Position, or SOP, No. 97-2, "Software Revenue Recognition," as amended by SOP No. 98-4 and SOP No. 98-9, as well as the various interpretations and clarifications of those statements. These statements require that four basic criteria must be satisfied before software license revenue can be recognized:

- persuasive evidence of an arrangement between ourselves and a third party exists;
- delivery of our product has occurred;
- the sales price for the product is fixed or determinable; and
- collection of the sales price is probable.

Our management uses its judgment concerning the satisfaction of these criteria, particularly the criteria relating to the determination of whether the fee is fixed and determinable and the criteria relating to the collectibility of the receivables, particularly the installments receivable, relating to such sales. Should changes and conditions cause management to determine that these criteria are not met for certain future transactions, all or substantially all of the software license revenue recognized for such transactions could be deferred.

#### Revenue Recognition—Consulting Services

We recognize revenue associated with fixed-fee service contracts in accordance with the proportional performance method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount of the anticipated loss is provided currently. Our management uses its judgment concerning the estimation of the total costs to complete the contract, considering a number of factors including the experience of the personnel that are performing the services and the overall complexity of the project. We have a significant amount of experience in the estimation of the total costs to complete a contract and have not typically recorded material losses related to these estimates. We do not expect the accuracy of our estimates to change significantly in the future. Should changes and conditions cause actual results to differ significantly from management's estimates, revenue recognized in future periods could be adversely affected.

63. On August 4, 2004, AspenTech issued a press release announcing its financial results for the fourth quarter and year end of fiscal 2004, the period ending June 30, 2004. For the quarter,

the Company reported total revenues of \$87.6 million and a net loss of \$41.4 million, or \$1.00 per diluted share. Defendant McQuillin commented on the Company's performance, stating, in pertinent part, as follows:

The fundamentals of our business continue to remain solid. We delivered our fifth straight quarter of software license growth and, for the first time since June 1998, generated pro forma (non-GAAP) operating margins for the quarter in the double-digits. Our sales were balanced by both industry and product mix, as we experienced strength from each of the chemicals, petroleum, and oil & gas markets. Additionally, our manufacturing/supply chain product line had its strongest performance in the past two years.

With the potential approval of the Federal Trade Commission (FTC) settlement, we would remove a major external issue that has distracted us from focusing on our business over the past two years. Our attention has now turned to building on our momentum and increasing our operating margins for fiscal 2005. We indicated at the beginning of this year that we would continue to focus our efforts on bringing all of our products together to provide an integrated solution for the Enterprise Operations Management market. The execution of this integration strategy has enabled us to streamline many of our internal processes to drive costs out of the business, as well as curtail our investment in certain products. These changes will enable us to increase our productivity and efficiency, while driving earnings growth in fiscal 2005.

I am proud of the dramatic improvements we have made in the financial performance of the company for fiscal 2004. As we approach AspenWorld, the process industry conference we host every two years, we are excited about our opportunity to showcase how our new, integrated solutions can help customers improve their business processes and capture significant economic value.

Defendant Kane continued, in pertinent part, as follows:

During fiscal 2004 we increased our pro forma (non-GAAP) operating income to \$27.0 million from \$2.5 million in fiscal 2003, reduced our debt by over \$100 million, and generated \$41 million in cash flow from operations. This improvement has been the result of software license revenue growth of nine percent, the reduction of total recurring expenses by more than \$21 million, and lowering our DSOs for billed receivables in the fourth quarter to 54 days, a 31 day year-over-year improvement. We are extremely pleased with this performance and anticipate that over the next twelve months we will generate significantly higher operating margins and have a debt-free balance sheet by the end of fiscal 2005.

64. AspenTech's financial results for the fourth quarter and year end of fiscal 2004, the period ending June 30, 2004, were repeated in the Company's Report on Form 10-K filed with the

SEC on or about September 13, 2004, which was signed by defendants McQuillin and Kane.

Concerning the Company's revenue recognition policies, the 10-K stated, in pertinent part, as follows:

License revenue, including license renewals, consists principally of revenue earned under fixed-term and perpetual software license agreements and is generally recognized upon shipment of the software if collection of the resulting receivable is probable, the fee is fixed or determinable, and vendor-specific objective evidence (VSOE) of fair value exists for all undelivered elements. The Company determines VSOE based upon the price charged when the same element is sold separately. Maintenance and support VSOE represents a consistent percentage of the license fees charged to customers. Consulting services VSOE represents standard rates that the Company charges its customers when the Company sells its consulting services separately. For an element not yet being sold separately, VSOE represents the price established by management having the relevant authority when it is probable that the price, once established, will not change before the separate introduction of the element into the marketplace. Revenue under license arrangements, which may include several different software products and services sold together, are allocated to each element based on the residual method in accordance with SOP 98-9, "Modification of SOP 97-2, Software Revenue Recognition, with Respect to Certain Transactions." Under the residual method, the fair value of the undelivered elements is deferred and subsequently recognized when earned. The Company has established sufficient VSOE for professional services, training and maintenance and support services. Accordingly, software license revenues are recognized under the residual method in arrangements in which software is licensed with professional services, training and maintenance and support services. The Company uses installment contracts as a standard business practice and has a history of successfully collecting under the original payment terms without making concessions on payments, products or services.

Maintenance and support services are recognized ratably over the life of the maintenance and support contract period. Maintenance and support services include telephone support and unspecified rights to product upgrades and enhancements. These services are typically sold for a one-year term and are sold either as part of a multiple element arrangement with software licenses or are sold independently at time of renewal. The Company does not provide specified upgrades to its customers in connection with the licensing of its software products.

Service revenues from fixed-price contracts are recognized using the proportional performance method, measured by the percentage of costs (primarily labor) incurred to date as compared to the estimated total costs (primarily labor) for each contract. When a loss is anticipated on a contract, the full amount thereof is provided currently. Service revenues from time and expense contracts and consulting and training revenue are recognized as the related services are performed. Services that have been performed but for which billings have not been made are recorded as

unbilled services, and billings that have been recorded before the services have been performed are recorded as unearned revenue in the accompanying consolidated balance sheets. In accordance with the Emerging Issues Task Force (EITF) Issue No. 01-14, "Income Statement Characterization of Reimbursements Received for 'Out-of-Pocket' Expenses Incurred," reimbursement received for out-of-pocket expenses is recorded as revenue and not as a reduction of expenses.

65. The statements referenced above in ¶¶ 25-26, 28-39, 41-42, 44-52 and 54-62 were each materially false and misleading when made because they failed to disclose and/or misrepresented the following adverse facts, among others: (i) that the Company had improperly and prematurely recognized revenue for certain software license and service agreement transactions entered into with certain alliance partners and other customers during fiscal years 2000-2002 and possibly other periods; (ii) that the Company lacked adequate internal controls and was therefore unable to ascertain its true financial condition; and (iii) that as a result of the foregoing, the values of the Company's revenues, earnings, assets and/or liabilities for fiscal years 2000-2002 and possibly other periods were materially overstated and may have to be restated.

### **The Truth Emerges**

66. Then, on October 27, 2004, the Company shocked the market when it issued a press release announcing that its Audit Committee had undertaken a detailed review of the accounting for certain software license and service agreement transactions entered into with certain alliance partners and other customers during fiscal years 2000-2002. The Committee is reassessing the time periods in which revenue was recognized for these transactions and whether any of these transactions have prior or current material financial statement impact. The review could lead to a restatement. The press release continued, in pertinent part, as follows:

Based on its preliminary review to date, the Audit Committee believes that one software license transaction in fiscal third quarter 2000 and two transactions in fiscal second quarter 2001 were included in AspenTech's results for such periods without reflecting the impacts of associated arrangements between AspenTech and those customers, which may require revised accounting treatment.

The Committee has also identified a potential contingency associated with a fourth transaction recorded in the fourth fiscal quarter of 2001 which was not reflected in prior accounting, which may require revised accounting treatment.

67. Upon this shocking news, on October 28, 2004, shares of the Company's stock fell to an intraday low of \$5.50 per share, or approximately 20%, before closing at \$6.68 per share, on unusually heavy trading volume.

68. Then, on October 29, 2004, the Company announced that federal prosecutors launched a probe into the Company's accounting practices from 2000 through 2002. The Company said it received a subpoena from the U.S. Attorney's Office for the Southern District of New York requesting documents relating to transactions that it entered into during those years, and other documents dating from January 1, 1999.

69. Upon this shocking news, shares of the Company's stock fell an additional \$0.67, or approximately 10%, to close at \$6.01, on unusually heavy trading volume.

70. The market for AspenTech's common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, AspenTech's common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired AspenTech common stock relying upon the integrity of the market price of AspenTech's common stock and market information relating to AspenTech, and have been damaged thereby.

71. During the Class Period, defendants materially misled the investing public, thereby inflating the price of AspenTech's common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

72. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about AspenTech's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of AspenTech and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

73. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company 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 federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding AspenTech, their control over, and/or receipt and/or modification of AspenTech's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning AspenTech, participated in the fraudulent scheme alleged herein.

74. Prior to disclosing these adverse facts to the investing public, AspenTech was further motivated to perpetuate this fraud in order to: (i) acquire ICARUS Corp. using its overvalued shares

as partial consideration; (ii) complete a private placement of its common stock for gross proceeds of approximately \$30 million; (iii) complete a private placement of its common stock for gross proceeds of approximately \$50 million and use those proceeds as partial payment for its acquisition of Hyprotech Ltd.; and (iv) enable the Company to sign a definitive agreement for \$100 million in private equity financing on favorable terms.

**Applicability Of Presumption Of Reliance:  
Fraud-On-The-Market Doctrine**

75. At all relevant times, the market for AspenTech's common stock was an efficient market for the following reasons, among others:

(a) AspenTech's stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) as a regulated issuer, AspenTech filed periodic public reports with the SEC and the NASDAQ;

(c) AspenTech regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) AspenTech was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

76. As a result of the foregoing, the market for AspenTech's common stock promptly digested current information regarding AspenTech from all publicly available sources and reflected such information in AspenTech's stock price. Under these circumstances, all purchasers of

AspenTech's common stock during the Class Period suffered similar injury through their purchase of AspenTech's common stock at artificially inflated prices and a presumption of reliance applies.

### **NO SAFE HARBOR**

77. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of AspenTech who knew that those statements were false when made.

### **COUNT I**

#### **Violation of Section 10(b) Of The Exchange Act Against and Rule 10b-5 Promulgated Thereunder Against All Defendants**

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

79. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding AspenTech's business, operations, management and the intrinsic value of AspenTech common stock; (ii) enable the Company to use its artificially inflated stock as partial payment for its acquisition of ICARUS Corp.; (iii) enable the Company to complete a private placement on

favorable terms whereby the Company reaped \$30 million in gross proceeds; (iv) enable the Company to complete a private placement on favorable terms whereby the Company reaped \$50 million in gross proceeds and used those proceeds as partial payment for its acquisition of Hyprotech; (v) enable the Company to complete a \$100 million private equity investment on favorable terms; and (vi) cause plaintiff and other members of the Class to purchase AspenTech's common stock 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.

80. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's common stock in an effort to maintain artificially high market prices for AspenTech's common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

81. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of AspenTech as specified herein.

82. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of AspenTech's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the

statements made about AspenTech and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of AspenTech common stock during the Class Period.

83. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

84. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing AspenTech's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by defendants' overstatements and misstatements of the Company's business,

operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

85. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of AspenTech's common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of AspenTech's publicly-traded common stock were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the common stock trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired AspenTech common stock during the Class Period at artificially high prices and were damaged thereby.

86. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known the truth regarding AspenTech's financial results, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their AspenTech common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

87. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

88. 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 and sales of the Company's common stock during the Class Period.

## **SECOND CLAIM**

### **Violation of Section 20(a) Of The Exchange Act Against the Individual Defendants**

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

90. The Individual Defendants acted as controlling persons of AspenTech within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

91. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

92. As set forth above, AspenTech and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

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

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

(b) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

(c) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: November 9, 2004

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