

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

-----	x	
LOUIS GRASSO, individually and on)	
behalf of all others similarly situated,)	C. A. No.:
)	
Plaintiff,)	<u>CLASS ACTION COMPLAINT</u>
)	
- v. -)	JURY TRIAL DEMANDED
)	
VITESSE SEMICONDUCTOR)	
CORPORATION, DR. VINCENT CHAN,)	
PH.D, JAMES A. COLE, ALEX DALY,)	
MOSHE GAVRIELOV, JOHN C. LEWIS,)	
DR. LOUIS TOMASETTA, PH.D, YATIN)	
MODY, EUGENE F. HOVANEK and)	
EDWARD ROGAS, JR.,)	
)	
Defendants.)	
-----	x	

Plaintiff, individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his complaint, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through his attorneys, which investigation included, among other things, a review of the public documents, Securities and Exchange Commission (“SEC”) filings, analyst reports, news releases and media reports of Vitesse Semiconductor Corporation (“Vitesse” or the “Company”), as follows:

JURISDICTION AND VENUE

1. The claims alleged herein arise under Sections 10(b) and 20 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. §§ 78j(b) and 78t, and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.

2. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. §78aa and 28 U.S.C. §1331 (federal question jurisdiction).

3. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act. Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of materially false and misleading information, occurred in this judicial district.

4. In connection with the acts, transactions and conduct alleged herein, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of a national securities exchange and market.

THE PARTIES

5. Plaintiff Louis Grasso purchased shares of Vitesse common stock during the Class Period, as set forth in the accompanying Certification, and has been damaged as a result of defendants' conduct as alleged herein.

6. Defendant Vitesse is a Delaware corporation with its principal executive offices located at 741 Calle Plano, Camarillo, CA 93012. The Company's most recent fiscal year ended on September 30, 2005. As of November 30, 2005 the Company had outstanding 218,644,332 shares of common stock. Vitesse designs, develops and markets a diverse portfolio of high-performance, cost-competitive semiconductor solutions for communications and storage networks worldwide. The Company's website states that it is a leader in Gigabit Ethernet LAN, Ethernet-over-SONET, Advanced Switching, Fibre Channel, Serial Attached SCSI (SAS), Optical Transport and other applications. Vitesse common stock trades on the NASDAQ under the symbol "VTSS".

7. Vitesse's Code of Business Conduct and Ethics, adopted by the Vitesse Board of Directors, states that the Company is "strongly committed to conducting its business affairs with honesty, integrity and in full compliance with all applicable laws." The Code of Business Conduct and Ethics also states that the Company "is committed to full, fair, accurate, timely and understandable disclosure in its periodic reports filed with the Securities and Exchange Commission and in its other public disclosures."

8. Defendant Vincent Chan, Ph.D., became a Director of the Company in April 2000 and presently serves on the Massachusetts Institute of Technology's faculty as the Joan and Irwin Jacobs Professor of Electrical Engineering and Computer Science and Aeronautics. He is concurrently the Director of MIT's Laboratory for Information and Decision Systems.

9. Defendant James A. Cole has served as a Director of the Company since February 1987. He is currently a General Partner of Windward Ventures, L.P. He was a founder and Executive Vice President of Amplica, Inc., a GaAs microwave IC and sub-system company. Mr. Cole also serves as a Director of Giga-Tronics, Inc. and a number of private companies.

10. Defendant Alex Daly became a Director of the Company in January 1998 and is the founder of ArcSight, Inc., an enterprise network security management company where he serves as Chairman, President & CEO. From 1998 to 2000, he was President & CEO of Cygnus Solutions. From 1995 through 1997, he served as Senior Vice President of Marketing at C-Cube Microsystems, a manufacturer of integrated circuits for consumer electronics, communications and computer applications. Prior to that, Mr. Daly served at Intel Corporation, a semiconductor company, most recently as director of marketing for the mobile computing group.

11. Defendant Moshe Gavrielov is currently Executive Vice President of Cadence Design Systems, Inc.'s Verification Division. From March 1998 to April 7, 2005, he was Chief

Executive Officer of Verisity Ltd., an EDA company, until the acquisition of Verisity by Cadence. Prior to that, he served in various positions at LSI Logic Corporation for over nine years, most recently as Executive Vice President of LSI's Logic Products Group.

12. Defendant John C. Lewis was appointed Chairman of the Board in December 2002, succeeding Pierre Lamond. Mr. Lewis became a Director of the Company in January 1990. He served as Chairman of the Board of Directors of Amdahl Corporation, a manufacturer of large general-purpose computer storage systems and software products from 1977 to 1999. Before joining Amdahl in 1977, he was President of Xerox Business Systems.

13. Defendant Louis R. Tomasetta, Ph.D., a co-founder of Vitesse, has been President, Chief Executive Officer and a Director since the Company's inception in February 1987. From 1984 to 1987, he served as President of the integrated circuits division of Vitesse Electronics Corporation. Prior to that, Dr. Tomasetta was a director of the Advanced Technology Implementation department at Rockwell International Corporation.

14. Defendant Edward Rogas, Jr. has been a director since January 1, 2006. He served as a Sr. Vice President at Teradyne, Inc., an automated test equipment manufacturer, from 2000 through 2005. From 1976 to 2000 he held various management positions in the semiconductor ATE portion of Teradyne's business, including Vice President from 1984 to 2000. Prior to that, from 1973 to 1976, he served as a Vice President at American Research and Development.

15. Defendant Eugene F. Hovanec, Executive Vice President of Vitesse, joined Vitesse as Vice President, Finance and Chief Financial Officer in December 1993. From 1989 to 1993, Mr. Hovanec served as Vice President, Finance & Administration, and Chief Financial

Officer at Digital Sound Corporation. From 1984 to 1989, he served as Vice President and Controller at Micropolis Corporation.

16. Defendant Yatin Mody, Chief Financial Officer of Vitesse, joined Vitesse in 1992, as Manager of Budgeting and Cost Accounting and was promoted to Controller in 1993, Vice President and Controller in 1998, and Vice President, Finance in 2002. Prior to joining Vitesse, he was at Deloitte & Touche, most recently as a manager.

17. During Fiscal 2005, the Compensation Committee of the Vitesse Board of Directors consisted of Defendants Chan, Cole, and Daly.

18. During Fiscal 2005, the Audit Committee of the Vitesse Board of Directors consisted of Defendants Cole and Lewis for the whole year, with Defendants Daly and Gavriellov serving separately for periods of less than one year.

19. The Audit Committee of Vitesse's Board of Directors is charged with, *inter alia*, oversight of the integrity of the financial statements of the Company. The Compensation Committee of Vitesse's Board of Directors is vested with the responsibility of reviewing and approving for each of the Company's senior executives "his or her (i) annual base salary level, (ii) annual incentive compensation, (iii) long-term incentive compensation, (iv) employment, severance and change-in-control agreements, if any, and (v) any other compensation, ongoing perquisites or special benefit items." The Compensation Committee is required to report the results of its reviews and any action it takes with respect to the compensation of the Company's senior executives to the Board of Directors.

20. Defendants Chan, Cole, Daly, Gavriellov, Lewis, Tomasetta, Rogas, Hovanec and Mody are collectively referred to as the "Individual Defendants."

CLASS ACTION ALLEGATIONS

21. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons who purchased Vitesse common stock during the period October 23, 2003, to April 26, 2006 inclusive (the “Class Period”) and who were damaged thereby (the “Class”). Excluded from the Class are the Company, its officers and directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns, and any entity in which the Company has a controlling interest or of which the Company is a parent or subsidiary.

22. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impractical. The Company has over 218 million shares of common stock outstanding. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, over one thousand members of the Class who held Company stock.

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

- (a) Whether defendants engaged in acts or conduct in violation of the federal securities laws as alleged herein;
- (b) Whether defendants had a duty to disclose certain information;
- (c) Whether defendants acted negligently, knowingly or recklessly in making materially false and misleading statements or in failing to correct such statements upon learning that they were materially false and misleading during the Class Period;
- (d) Whether the market price of the Company’s common stock during the Class Period was artificially inflated because of defendants’ conduct complained of herein; and

(e) Whether members of the Class have sustained damages and, if so, the proper measure of damages.

24. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

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

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

Fraud on the Market Presumption

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

(a) Defendants made public misrepresentations or failed to disclose material facts regarding Vitesse's financial situation during the Class Period;

(b) the omissions and misrepresentations were material;

(c) the securities of the Company traded at all relevant times on the American Stock Exchange, an efficient and open market;

(d) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and

(e) Plaintiff and the members of the Class, without knowledge of the misrepresented facts, purchased their Vitesse securities between the time defendants failed to disclose and/or misrepresented material facts and the time the truth was disclosed.

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

The Safe Harbor Provision is Inapplicable

29. 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. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward-looking, they were not adequately identified as "forward-looking statements" when made, there were no statements made with respect to any of those representations forming the basis of the complaint that actual results "could differ materially from those projected," and 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 is intended to 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 had actual knowledge that the particular forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized and/or

approved by an executive officer of Vitesse who knew that those statements were false when made.

SUBSTANTIVE ALLEGATIONS

30. A stock option granted to an employee of a corporation allows the employee to purchase company stock at a specified price – referred to as the “exercise price” – for a specified period of time. Stock options are granted as part of employee compensations packages as a means to create incentives to boost profitability and stock value. When the employee exercises the option, he or she purchases the stock from the company at the exercise price, regardless of the stock’s price at the time the option is exercised. If the exercise price is lower than it should be, the employee pays less and the company get less when the stock option is exercised. When shares rise above that price, the holder can profit by buying shares at the lower exercise price and selling them at the higher market price, profiting from the difference, less transaction costs and taxes.

31. The practice of manipulating stock options dates not only potentially lines the pockets of the Individual Defendants but may also result in the overstatement of Vitesse’s net income, operating income and retained earnings. This is because options priced below the stock fair market value when they are awarded bring the recipient an instant paper gain. Under accounting rules, that is the equivalent of additional compensation and thus must be treated as a cost to the company. Vitesse did not properly account for the options granted. As a result of the Company manipulating the actual dates of measurement for stock options, Vitesse has announced that its financial statements for the three years ending September 30, 2005 as well as the quarter ending December 31, 2005 “should not be relied upon.”

32. On October 23, 2003, Vitesse issued a press release announcing its financial results for the fourth quarter and fiscal year ended September 30, 2003. The Company reported in part as follows:

Revenues on a generally accepted accounting principles (GAAP) basis in the fourth quarter of fiscal 2003 were \$42.8 million (which excludes \$3.5 million from discontinued operations, as discussed below), compared to \$35.6 million in the fourth quarter of fiscal 2002 (which excludes \$2.5 million from discontinued operations) and \$39.7 million in the third quarter of fiscal 2003 (which excludes \$3.4 million from discontinued operations). GAAP revenues for the year ended September 30, 2003 were \$156.4 million (which excludes \$11.5 million from discontinued operations), compared to \$151.7 million in the year ended September 30, 2002 (which excludes \$10.6 million from discontinued operations). Pro-forma revenues (which includes revenues from discontinued operations) in the fourth quarter of fiscal 2003 were \$46.3 million, an increase of 22% from the \$38.1 million in the fourth quarter of fiscal 2002 and an increase of 7% from the \$43.2 million in the third quarter of fiscal 2003. Pro-forma revenues for the year ended September 30, 2003 were \$167.9 million, an increase of 3% from the \$162.4 million in the year ended September 30, 2002.

On a GAAP basis, net loss for the fourth quarter of fiscal 2003 was \$36.0 million or \$0.17 loss per share compared to net income of \$3.7 million or \$0.02 income per share in the fourth quarter of fiscal 2002 and net loss of \$95.0 million or \$0.47 loss per share in the third quarter of fiscal 2003. Net loss for the twelve months ended September 30, 2003 was \$167.2 million or \$0.82 loss per share compared to net loss of \$883.5 million or \$4.45 loss per share for the twelve months ended September 30, 2002.

In the fourth quarter of fiscal 2003, the Company sold its line of optical module products to Avanex Corporation for 1.37 million shares of Avanex stock. In accordance with GAAP, results of operations for the optical module business and the loss on disposal of the related net assets have been recorded as discontinued operations for all periods presented. The net loss for the fourth quarter of fiscal 2003 and the year ended September 30, 2003, includes \$1.6 million and \$22.1 million, respectively in loss from discontinued operations, net of tax benefit.

* * *

Pro-forma net loss for the fourth quarter of fiscal 2003 was \$7.1 million or \$0.03 loss per share, compared to pro-forma net loss of \$18.7 million or \$0.09 loss per share in the fourth quarter of fiscal 2002 and pro-forma net loss of \$9.1 million or \$0.04 loss per share in the prior quarter. Pro-forma net loss for the year ended September 30, 2003 was \$40.0 million or \$0.20 loss per share, compared to pro-forma net loss of \$85.0 million or \$0.43 loss per share in the year ended

September 30, 2002. Pro forma net loss, as detailed in the attached reconciliation table, excludes the asset impairment and in-process research and development charges detailed above, the amortization of intangible assets and acquisition-related deferred stock-based compensation, other severance and restructuring charges, the write down of investments, tax adjustments, loss from discontinued operations, as well as, in the case of the results for the year ended September 30, 2002 and 2003, an inventory obsolescence charge and gain on extinguishment of debt.

33. On December 16, 2003, Vitesse filed with the SEC its Annual Report on Form 10-K for the period ending September 30, 2003. In connection with such report, the Company submitted to the Securities and Exchange Commission the certifications of the principal executive officer and the principal financial officer of the Company as required pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

34. The Form 10-K for the fiscal year ended September 30, 2003 was materially false and misleading as a result of defendants knowingly or recklessly allowing defendants to fraudulently manipulate the grant dates on employee stock options in order to enrich themselves by receiving more favorable strike prices on the options. Defendants' actions caused the Company's financial statement to under report charges to its stock based compensation expense, which in turn inflated the Company's net income during the Class Period.

35. On February 14, 2004, Vitesse filed with the SEC its Form 10-Q for the first quarter ending December 31, 2003. Defendants Tomasetta and Hovanec each signed certifications pursuant to Securities Exchange Act Rule 13A – 14 and 15D – 14 Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, and Certification Pursuant to 18 U.S.C Section 1350, falsely certifying that they reviewed the Form 10-Q; that the report did not contain any untrue statements of material fact; and that the financial statements fairly presented in all material respects the financial condition, results or operations and cash flows of the Company.

36. On December 10, 2004, Vitesse filed with the SEC its Annual Report on Form 10-K for the period ending September 30, 2004. In connection with such report, the Company submitted to the Securities and Exchange Commission the certifications of the principal executive officer and the principal financial officer of the Company as required pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

37. The Form 10-K for the fiscal year ended September 30, 2004 was materially false and misleading as a result of defendants knowingly or recklessly allowing defendants to fraudulently manipulate the grant dates on employee stock options in order to enrich themselves by receiving more favorable strike prices on the options. Defendants' actions caused the Company's financial statement to under report charges to its stock based compensation expense, which in turn inflated the Company's net income during the Class Period.

38. On December 14, 2005, Vitesse filed with the SEC its Annual Report on Form 10-K for the period ending September 30, 2005. In connection with such report, the Company submitted to the Securities and Exchange Commission the certifications of the principal executive officer and the principal financial officer of the Company as required pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

39. The Form 10-K for the fiscal year ended September 30, 2005 was materially false and misleading as a result of defendants knowingly or recklessly allowing defendants to fraudulently manipulate the grant dates on employee stock options in order to enrich themselves by receiving more favorable strike prices on the options. Defendants' actions caused the Company's financial statement to under report charges to its stock based compensation expense, which in turn inflated the Company's net income during the Class Period.

40. Under the Company's 2001 Stock Incentive Plan, adopted by the Company's shareholders on January 23, 2001,

[O]n January 1 of each year beginning in 2002, each non-employee director receives nonstatutory options to purchase 40,000 Shares (except for the Chairman, who receives options to purchase 60,000 Shares). These options become available for exercise in installments of two percent of the total number of shares granted at the end of each month beginning January 31 after the date of grant. Each non-employee director who is nominated or elected to the Board during the term of the Plan receives nonstatutory options to purchase 40,000 Shares (except for the Chairman, who receives options to purchase 60,000 Shares) on the date of such election or nomination. The options become available for exercise in installments of two percent of the total number of shares granted for each full month that expires following the date of grant. The options are for a ten-year term and the exercise price of the options must be at least 100% of the fair market value of the common stock on the Nasdaq National Market on the date of grant. The options may be exercised only (1) while the individual is serving as a director on the Board, (2) within six months after termination by death or disability, or (3) within three months after the individual's term as director ends.

41. According to Vitesse's December 14, 2005 Proxy, Defendant Tomasetta received option grants for 1,800,000 shares in the fiscal year ending September 30, 2005, an amount equal to 10.89% of the total number of options granted to all employees of the Company in that year.

42. According to Vitesse's December 14, 2005 Proxy, Defendant Hovanec received option grants for 450,000 shares in the fiscal year ending September 30, 2005, and amount equal to 2.72% of the total number of options granted to all employees of the Company in that year.

43. According to Vitesse's December 14, 2005 Proxy, Defendant Mody received option grants for 400,000 shares in the fiscal year ending September 30, 2005, and amount equal to 2.42% of the total number of options granted to all employees of the Company in that year.

44. During fiscal 2005, Mr. Lewis, Chairman of the Board, was granted options to purchase 60,000 shares of common stock and Messrs. Chan, Cole and Daly each were granted

options to purchase 40,000 shares of common stock. Mr. Gavriellov was granted options to purchase 40,000 shares of common stock.

45. On February 28, 2006, Vitesse filed with the SEC its Form 10-Q for the first quarter ending December 31, 2005. Defendants Tomasetta and Mody each signed certifications pursuant to Securities Exchange Act Rule 13A – 14 and 15D – 14 Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002, and Certification Pursuant to 18 U.S.C Section 1350, falsely certifying that they reviewed the Form 10-Q; that the report did not contain any untrue statements of material fact; and that the financial statements fairly presented in all material respects the financial condition, results or operations and cash flows of the Company.

46. The Form 10-Q for the fiscal year ended December 31, 2005 was materially false and misleading as a result of defendants knowingly or recklessly allowing defendants to fraudulently manipulate the grant dates on employee stock options in order to enrich themselves by receiving more favorable strike prices on the options. Defendants' actions caused the Company's financial statement to under report charges to its stock based compensation expense, which in turn inflated the Company's net income during the Class Period.

47. On March 18, 2006, the Wall Street Journal ran an article discussing backdating of options, and analyzed the timing of options granted to executives that were made at extremely beneficial times for those executives, for instance, the day before the price of the company's stock fell for various reasons.

48. The Wall Street Journal article stated that Defendant Tomasetta had "reaped tens of millions of dollars" from options that were given with "propitious timing." The article further stated that:

Mr. Tomasetta got a grant in March 1997 that, adjusted for later stock splits,

gave him the right to buy 600,000 shares at \$5.625 each. The date they were priced coincided with a steep fall in Vitesse's stock, to what turned out to be its low for the year. He pocketed \$23.1 million in profit when he exercised most of these options between 1998 and 2001. Had the grant come 10 days earlier, when the stock price was much stronger, he would have made \$1.4 million less.

In eight of Mr. Tomasetta's nine option grants from 1994 to 2001, the grants were dated just before double-digit price surges in the next 20 trading days. The odds of such a pattern occurring by chance are about one in 26 billion.

Alex Daly, a member of Vitesse board's compensation committee, said a review of the grants found “nothing extraordinary” about their timing, and “absolutely no grants have been made to anyone, least of all the CEO, that are out of sequence with our normal grant policy.” Vitesse's finance chief, Yatin Mody, said the grants were “reviewed and approved” by the compensation committee, “and the exercise price set as of the date of the approval, as documented by the related minutes.” He declined to provide a copy of those minutes. Mr. Tomasetta said the grants were “approved by the board and the price set at the close of the day of approval.”

(emphasis added)

49. However, in a press release dated April 18, 2006, the Company all but repudiated the representations of Defendants Daly and Tomasetta. Vitesse announced that on April 17, 2006, Defendant Tomasetta (the Company's Chief Executive Officer), Defendant Hovanec (the Company's Executive Vice President) and Defendant Mody (the Company's Chief Financial Officer) were placed on administrative leave while the company investigated potentially irregular stock option transactions.

50. Specifically, the Company announced that:

The Company's Board of Directors has appointed a Special Committee of independent directors to conduct an internal investigation relating to past stock option grants, the timing of such grants and related accounting and documentation. The Special Committee is being assisted by independent outside legal counsel. Although the Company is unable to determine at this time whether it will need to restate its financial results for prior periods, this investigation could cause the Company to undertake such a restatement.

51. As a direct result of this news, on April 19, 2006, the first day of trading after the news, the Vitesse's dropped 26%, from \$3.11 to \$2.31. On that day, Vitesse was the most actively traded company after Yahoo, with an unusually high volume of 60,452,900 on April 19 (compared to 8,642,100 on April 17, the last day before the announcement).

52. On April 18, 2006, again as a direct result of this news, trading of Vitesse shares was halted on the NASDAQ for the day.

53. On April 20, 2006 Vitesse announced that it had canceled its earnings call for the Second Quarter and "will not be in a position" to file its quarterly 10-Q report for the three months ending March 31, 2006 by the due date of May 10, 2006.

54. Vitesse also announced that the administrative leaves for Defendants Tomasetta, Mody and Hovanec, previously announced on April 18, 2006, "were imposed because of such individuals' involvement with issues related to the integrity of documents relating to Vitesse's stock option grant process."

55. According to a Los Angeles Times Article dated April 19, 2006, Arnab Chanda, an analyst who follows Vitesse for Lehman Brothers, stated:

It's a bit of a surprise. I've never had this happen with any of the companies I cover. . . . With the CEO, the current CFO and previous CFO, it is certainly serious. The stock's going to get hurt . . . no question about that.

56. According to a Dow Jones Newswires article dated April 19, 2006, Deutsch Bank analyst Ram Ganesh wrote that the investigation will "add significant uncertainty in the coming days." Ganesh further noted "the stock has had a nice run-up in recent weeks."

57. On April 26, 2006, Vitesse revealed that its prior financial reports for the the three years ended September 2005 plus the quarter ended December 2005 "should not be relied upon."

58. On this news Vitesse shares dropped from \$2.51 to \$1.82.

59. The Individual Defendants, who directed the preparation and dissemination of the Company's public statements alleged to be false and misleading herein, were responsible for ascertaining that it was materially accurate. As detailed above, the public statements were materially false and misleading because, inter alia, the company's operating results disclosed therein were overstated by virtue of misstated compensation expenses. The Individual Defendants knowingly engaged in the improper conduct alleges herein. Defendants has access to all internal data concerning the Company's stock option plans, directed the administration or the grant dates used to determine the exercises price of the stock options; received the stock options and knew or recklessly disregarded information that the internal controls surrounding the administration of the stock option plan were inadequate and produced financial statements not in conformity with Generally Accepted Accounting Standards.

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

61. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Vitesse securities, 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, the issuance of executive stock options and its business and operations, as alleged herein.

62. 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 Vitesse'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 Vitesse and the issuance of its stock options to defendants, its business, its prospects and its 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 or otherwise obtaining the Company's securities at artificially inflated prices, thus causing the damages complained of herein

COUNT 1

For Violations of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5

63. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

64. During the Class Period, defendants, individually and in concert, engaged in a plan, scheme, and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon Plaintiff and other members of the Class, and made various untrue and deceptive statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and other Class members.

The purpose and effect of this scheme was to induce plaintiff and the Class to purchase Vitesse common stock at artificially inflated prices.

65. During the Class Period, defendants, pursuant to their plan, scheme and unlawful course of conduct, knowingly and/or recklessly issued, or caused to be issued statements to the investing public as described above, including the Class Period press releases and the Class Period SEC Filings.

66. Defendants knew and/or recklessly disregarded the falsity of the foregoing statements. As senior officers and/or directors of the Company, involved in its business and operations, the Individual Defendants had access to the non-public information detailed above, by virtue of their receipt of periodic internal reports detailing actual sales, advertising revenues and other financial information.

67. Throughout the Class Period, Vitesse acted through the Individual Defendants, whom it portrayed and represented to the press and public as its valid representatives. The willfulness, motive, knowledge, and recklessness of the Individual Defendants are therefore imputed to Vitesse which is primarily responsible for the securities law violations of the Individual Defendants while acting in their official capacities as Company representatives, or, in the alternative, which is liable for the acts of the Individual Defendants under the doctrine of *respondent superior*.

68. Each of the defendants knew or recklessly disregarded the fact that the above acts and practices, misleading statements, and omissions would adversely affect the integrity of the market in Vitesse's common stock. Had the adverse facts defendants concealed been properly disclosed, Vitesse's stock would not have sold at the artificially inflated prices it did during the Class Period.

69. The value of Vitesse common stock declined materially upon public disclosure of the truth concerning the Company's financial circumstances, financial circumstances which had been misrepresented or concealed, as alleged in this complaint. Plaintiff and other members of the Class have suffered substantial damages as a result of the wrongs alleged herein.

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

71. By reason of their status as officers and/or members of management and as directors of Vitesse the Individual Defendants were "controlling persons" of Vitesse within the meaning of Section 20 of the Exchange Act and had the power and influence to cause Vitesse to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Vitesse's business, the information contained in its filings with the SEC and public statements about its business.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues.

WHEREFORE, plaintiff on his own behalf and on behalf of the Class prays for judgment as follows:

A. Declaring this action to be a proper class action maintainable pursuant to Rule 23 of the Federal Rules of Civil Procedure and plaintiff to be a proper class representative and his counsel lead counsel;

B. Awarding plaintiff and the Class compensatory damages, together with appropriate prejudgment interest at the maximum rate allowable by law;

C. Awarding plaintiff and the Class their costs and expenses for this litigation including reasonable attorneys' fees and other disbursements; and

D. Granting such other and further relief as this Court deems to be just and proper.

Dated: May 1, 2006.

ABBAY SPANIER RODD ABRAMS &
PARADIS, LLP
Arthur N. Abbey
Nancy Kaboolian (NK 6346)
Orin Kurtz (OK 7334)
212 East 39th Street
New York, NY 10016
Tel. (212) 889-3700
Fax (212) 684-5191

Attorneys for Plaintiff