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

10 TAMMY NEUMAN, on behalf of herself and ) CIVIL ACTION NO.  
11 all others similarly situated, )  
12 )  
Plaintiff, ) CLASS ACTION COMPLAINT FOR  
13 ) VIOLATIONS OF FEDERAL  
v. ) SECURITIES LAWS  
14 )  
VITESSE SEMICONDUCTOR )  
15 CORPORATION, LOUIS R. TOMASETTA, )  
YATIN MODY, EUGENE F. HOVANEC, )  
16 JOHN LEWIS, JAMES A. COLE, ALEX )  
DALY, MOSHE GAVRIELOV, VINCENT )  
17 CHAN and KPMG LLP, )  
18 )  
Defendants. ) JURY TRIAL DEMANDED

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1 Plaintiff, Tammy Neuman, on behalf of herself and all other persons similarly situated, by  
2 plaintiff's undersigned attorneys, for plaintiff's Complaint, alleges upon the investigation made by  
3 and through plaintiff's counsel, which included, *inter alia*, a review of relevant public filings made  
4 by Vitesse Semiconductor Corporation ("Vitesse" or the "Company") with the Securities and  
5 Exchange Commission ("SEC"), as well as, tele-conferences, press releases, news articles, analyst  
6 reports and media reports concerning the Company. This complaint is based upon plaintiff's  
7 personal knowledge as to plaintiff's own acts, and upon information and belief as to all other  
8 matters, based upon the aforementioned investigation.

9 **I. SUMMARY OF ACTION**

10 1. This is a class action on behalf of all persons, other than defendants, who  
11 purchased, Vitesse securities between January 28, 2003 and April 26, 2006, inclusive (the "Class  
12 Period") to recover damages caused by defendants' violations of the federal securities law.

13 2. Defendant Vitesse describes itself as a provider of healthcare staffing services to  
14 hospitals and other healthcare facilities.

15 3. Throughout the Class Period, defendants issued numerous, positive press releases,  
16 statements and quarterly financial reports filed with the SEC that described the Company's  
17 financial performance. These statements were materially false and misleading because they failed  
18 to disclose and misrepresented the following adverse facts, among others: (a) that there were  
19 issues concerning the credits issued to or requested by customers (for returned products or  
20 otherwise) and the related accounting treatment; (b) that the Company improperly applied  
21 payments received to the proper accounts receivable; (c) that the Company's accounts receivable  
22 and revenues may have been misstated; (d) that there was misuse of stock option grants, the timing  
23 of such grants, and other related accounting and documentation issues; (e) that the Management  
24 Report on Internal Control over Financial Reporting as of September 30, 2005 could not be relied  
25 upon; (f) that the Company lacked adequate internal controls and was therefore unable to  
26 ascertain its true financial condition; and (g) that as a result of the foregoing, defendants engaged  
27 in improper accounting practices.

28 4. As detailed herein, Vitesse recently admitted that its prior financial reports were

1 materially false and misleading and that “based on findings to date, the Board of Directors  
2 determined that the Company's previously reported financial statements for the three months  
3 ended December 31, 2005 and the three years ended September 30, 2005 and possibly earlier  
4 periods should not be relied upon.”

5 5. On April 18, 2006, Vitesse issued a press release first announcing the appointment  
6 of a “Special Committee of independent directors to conduct an internal investigation relating to  
7 past stock option grants, the timing of such grants and related accounting and documentation. The  
8 Special Committee is being assisted by independent outside legal counsel.”

9 6. On April 20, 2006, the Company issued another statement announcing cancellation  
10 of its scheduled earnings call and a delay of its quarterly filing with the SEC.

11 7. On April 26, 2006, the Company revealed that the Board of Directors retained  
12 special counsel to conduct an investigation into a series of issues and further stated that the  
13 amounts of money concerned and the length of time of the malfeasance at issue could change as  
14 the investigation continues and that the Company expects to restate its prior financial reports.

15 8. Following this news, shares of the Company’s common stock fell over 27% to  
16 close at \$1.82 per share, on unusually heavy trading volume of almost 59 million shares traded.

## 17 **II. JURISDICTION AND VENUE**

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

21 10. This Court has jurisdiction over the subject matter of this action pursuant to 28  
22 U.S.C. §§ 1331 and 1337 and Section 27 of the Exchange Act [15 U.S.C. § 78aa].

23 11. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28  
24 U.S.C. § 1391(b). Many of the acts and practices complained of herein occurred in substantial  
25 part in this District. Defendant Vitesse maintains its corporate headquarters in this District at 741  
26 Calle Plano, Camarillo, CA, 93012.

27 12. In connection with the acts alleged in this complaint, defendants, directly or  
28 indirectly, used the means and instrumentalities of interstate commerce, including, but not limited

1 to, the mails, interstate telephone communications and the facilities of the national securities  
2 markets.

3 **III. PARTIES**

4 13. Plaintiff, Tammy Neuman, purchased the common stock of Vitesse as set forth  
5 more fully in the annexed certificate and suffered economic damages.

6 14. Defendant KPMG LLP (“KPMG”) is the U.S. member of a global network of  
7 professional firms providing Audit, Tax and Advisory services, operating in 144 countries and  
8 having over 6,700 partners, 76,000 client service professionals, and 21,000 administration and  
9 support staff working in member firms around the world. KPMG has provided auditing services  
10 to Vitesse at all times relevant to this action. KPMG maintains offices in this district at KPMG  
11 Tower, Suite 2000, 355 S. Grand Avenue, Los Angeles CA 90071-1568.

12 15. Vitesse is incorporated under the laws of the State of Delaware. The Company  
13 maintains its headquarters at 741 Calle Plano, Camarillo, CA, 93012. Vitesse Semiconductor was  
14 co-founded as Vitesse Electronics Corporation in 1984 by defendant Louis Tomasetta and changed  
15 its name to Vitesse Semiconductor Corporation in 1987.

16 16. The Company engages in the design, development, manufacturing, and marketing  
17 of integrated circuits (ICs) for systems manufacturers in the communications and storage  
18 industries. The Company provides laser drivers, transimpedance amplifiers, and post amplifiers  
19 that serve as the physical connection to the fiber optic cable. It offers physical layer devices that  
20 convert high-speed analog signals from the physical media devices to digital signals; and involve  
21 in clock and data regeneration, and multiplexing/demultiplexing for the fiber channel and gigabit  
22 Ethernet markets. The Company provides network processors; software-programmable  
23 microprocessors for networking and communications functions, such as classification, filtering,  
24 policing, grooming, forwarding, and routing; and traffic management ICs that reside on a line card  
25 between the network processor and the switch fabric, as well as perform the policing, queuing, and  
26 buffering functions. It also offers switches for receiving data from a line card and routing it to its  
27 proper destination; enterprise local area network (LAN) products, such as transceivers, switches,  
28 and media access controllers that address gigabit Ethernet applications in the LAN; and storage

1 and serial backplane products, such as serialisers and deserialisers, transceivers, retimers, and port  
2 bypass circuits, as well as switches, expanders, enclosure management devices, and RAID  
3 controllers. The Company markets its product in the United States, Japan, Canada, Singapore,  
4 Hong Kong, and the United Kingdom.

5 17. The defendants listed below served, during the period specified, as senior officers  
6 and/or directors of Vitesse:

7 (a) Defendant Louis R. Tomasetta (“Tomasetta”) is a co-founder of Vitesse and  
8 has been President, Chief Executive Officer and a Director since the company's inception in  
9 February 1987. On April 18, 2006, defendant Tomasetta was placed on administrative leave.

10 (b) Defendant Yatin Mody (“Mody”) joined Vitesse in 1992, as Manager of  
11 Budgeting and Cost Accounting and was promoted to Controller in 1993, Vice President and  
12 Controller in 1998, and Vice President, Finance in 2002. On April 18, 2006, defendant Mody was  
13 placed on administrative leave.

14 (c) Defendant Eugene F. Hovanec (“Hovanec”) joined Vitesse as Vice  
15 President, Finance and Chief Financial Officer in December 1993. On April 18, 2006, defendant  
16 Hovanec was placed on administrative leave.

17 (d) Defendant John Lewis (“Lewis”) was appointed Chairman of the Board in  
18 December 2002. Mr. Lewis became a Director of the Company in January 1990 and served on the  
19 Audit Committee of the Board of Directors in 2003, 2004 and 2005.

20 (e) Defendant James A. Cole (“Cole”) became a Director of the Company in  
21 February 1987 and served on the Audit Committee of the Board of Directors in 2003, 2004 and  
22 2005. Mr. Cole also served on the Compensation Committee of the Board of Directors in 2003,  
23 2004 and 2005.

24 (f) Defendant Alex Daly (“Daly”) became a Director of the Company in  
25 January 1998 and served on the Audit Committee of the Board of Directors in 2003 and 2004. Mr.  
26 Daly also served on the Compensation Committee of the Board of Directors in 2003, 2004 and  
27 2005. In 2005 Mr. Daly was Chairman of the Compensation Committee.

28 (g) Defendant Moshe Gavriellov (“Gavriellov”) became a Director of the

1 Company in 2005 and served on the Audit Committee of the Board of Directors in 2005.

2 (h) Defendant Vincent Chan (“Chan”) became a Director of the Company in  
3 April 2000. Mr. Chan served on the Compensation Committee of the Board of Directors in 2003,  
4 2004 and 2005.

5 18. Messrs. Tomasetta, Mody, Hovanec, Lewis, Cole, Daly, Gavriellov and Chan are  
6 sometimes referred to herein as the “Individual Defendants.” Because of the Individual  
7 Defendants’ positions with the Company, each had access to the adverse undisclosed information  
8 about the Company’s business, operations, operational trends, financial statements, markets and  
9 present and future business prospects via access to internal corporate documents (including the  
10 Company’s operating plans, budgets and forecasts and reports of actual operations compared  
11 thereto), conversations and connections with other corporate officers and employees, attendance at  
12 management and/or Board of Directors meetings and committees thereof and via reports and other  
13 information provided to them in connection therewith.

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

26 20. As officers and controlling persons of a publicly-held company whose common  
27 stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the  
28 NASDAQ market, and governed by the provisions of the federal securities laws, the defendants

1 each had a duty to disseminate promptly, accurate and truthful information with respect to the  
2 Company's financial condition and performance, growth, operations, financial statements,  
3 business, products, markets, management, earnings and present and future business prospects, and  
4 to correct any previously-issued statements that had become materially misleading or untrue, so  
5 that the market price of the Company's publicly-traded securities would be based upon truthful and  
6 accurate information. The Individual Defendant's misrepresentations and omissions during the  
7 Class Period violated these specific requirements and obligations.

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

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

25         23. Each of the defendants is liable as a participant in a fraudulent scheme and course  
26 of business that operated as a fraud or deceit on purchasers of Vitesse securities by disseminating  
27 materially false and misleading statements and/or concealing material adverse facts. The scheme:  
28 (i) deceived the investing public regarding Vitesse's business, operations, management and the

1 intrinsic value of Vitesse' common stock; and (ii) caused plaintiffs and other members of the Class  
2 to purchase Vitesse's securities at artificially inflated prices.

3 **IV. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

4 24. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil  
5 Procedure 23(a) and (b)(3) on behalf of all those who purchased Vitesse securities during the  
6 Class Period and who suffered damages (the "Class"). Excluded from the Class are defendants,  
7 the officers and directors of the Company, at all relevant times, members of their immediate  
8 families and their legal representatives, heirs, successors, or assigns and any entity in which  
9 defendants have or had a controlling interest.

10 25. The members of the Class are so numerous that joinder of all members is  
11 impracticable. According to the Company's financial report filed February 8, 2006 on Form 10-Q  
12 with the SEC, as of January 31, 2006, Vitesse had approximately 221,430,002 shares of common  
13 stock outstanding. While the exact number of Class members is unknown to plaintiff at this time  
14 and can only be ascertained through appropriate discovery, plaintiff believes that there are  
15 hundreds or thousands of members in the proposed Class. Record owners and other members of  
16 the Class may be identified from records maintained by Vitesse or its transfer agent and may be  
17 notified of the pendency of this action by mail, using the form of notice similar to that customarily  
18 used in securities class actions.

19 26. Plaintiff's claims are typical of the claims of the members of the Class as all  
20 members of the Class are similarly affected by defendant's wrongful conduct in violation of  
21 federal law that is complained of herein.

22 27. Plaintiff will fairly and adequately protect the interests of the members of the Class  
23 and has retained counsel competent and experienced in class and securities litigation.

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

27 (a) whether the federal securities laws were violated by defendant's acts as  
28 alleged herein;

1 (b) whether statements made by defendants to the investing public during the  
2 Class Period misrepresented material facts about the business, operations, financial condition and  
3 management of Vitesse; and

4 (c) whether defendants acted knowingly or recklessly in making materially  
5 false and misleading statements during the Class Period;

6 (d) whether the market prices of the Company's common stock was artificially  
7 inflated or distorted during the Class Period because of defendant's conduct complained of herein;  
8 and

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

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

17 **V. FACTUAL BACKGROUND**

18 30. The Company was founded in Camarillo, California in 1984 and incorporated  
19 under the laws of the State of Delaware in 1987. In addition to the corporate offices, the  
20 Camarillo facility houses final test operations, various product development and marketing  
21 functions. Vitesse has other offices located throughout the world to assist with manufacturing and  
22 ongoing development efforts. These facilities, employing approximately 800 people worldwide,  
23 promote the entire Vitesse product portfolio, and offer local support to customers.

24 31. The Company touts its technological innovations. For example, Vitesse has been  
25 awarded over 50 patents with additional patents pending. The Company credits these innovations,  
26 used in the design and manufacture of products, as a result of Vitesse's commitment to continuous  
27 improvement.

28 32. In December 2002, the Board adopted a new Nominating and Corporate

1 Governance Committee Charter, Corporate Governance Guidelines and a Code of Business  
2 Conduct and Business Ethics. As detailed below, defendants caused the Company to violate  
3 important parts of these governing corporate guidelines.

#### 4 **VI. SUBSTANTIVE ALLEGATIONS**

5 33. The Class Period begins on January 28, 2003, the first day of trading after the  
6 Company issued a post-market-close January 27, 2003 press release announcing its results for the  
7 first quarter of fiscal 2003, ended December 31, 2002. The press release stated that the  
8 Company's revenues for the first quarter of fiscal 2003 were \$38.2 million and that accounts  
9 receivables (net) amounted to almost \$35 million. This information was false and misleading  
10 when issued because the Company lacked adequate internal controls and was therefore unable to  
11 ascertain its true financial condition, was unable to accurately report either its receivables or its  
12 revenues. Vitesse stock rose 7% on this release to close at \$2.23 per share.

13 34. The Form 10-Q filed by Vitesse with the SEC on February 14, 2003, reiterated the  
14 results stated in the press release. These results were false and misleading when issued because  
15 the Company lacked adequate internal controls and was therefore unable to ascertain its true  
16 financial condition and was unable to accurately report either its receivables or its revenues.

17 35. On April 22, 2003, after the market close, Vitesse announced its results for the  
18 second quarter of fiscal 2003, ended March 31, 2003. The Company reported revenues of \$40.2  
19 million and that accounts receivables (net) amounted to almost \$35 million. This information was  
20 false and misleading when issued because the Company lacked adequate internal controls and was  
21 therefore unable to ascertain its true financial condition and was unable to accurately report either  
22 its receivables or its revenues. Vitesse stock rose on this release to close at \$2.71.

23 36. On May 13, 2003, Vitesse reiterated these results in a Form 10-Q filed with the  
24 SEC. These results were false and misleading when issued because the Company lacked adequate  
25 internal controls and was therefore unable to ascertain its true financial condition and was unable  
26 to accurately report either its receivables or its revenues.

27 37. On June 9, 2003, the Company announced that it was acquiring Multilink  
28 Technology Corporation in exchange for \$22.9 million in Vitesse stock.

1           38.     After the market closed on July 22, 2003, Vitesse announced its results for the third  
2 quarter of fiscal 2003 ended June 30, 2003. The Company reported revenues in the third quarter  
3 of fiscal 2003 were \$39.7 million and that accounts receivables (net) amounted to over \$36  
4 million. This information was false and misleading when issued because the Company lacked  
5 adequate internal controls and was therefore unable to ascertain its true financial condition and  
6 was unable to accurately report either its receivables or its revenues. Vitesse stock rose 13% on  
7 this release to close at \$6.512 per share on volume of 13,105,649 shares traded.

8           39.     On August 11, 2003, Vitesse reiterated these results in a Form 10-Q filed with the  
9 SEC. These results were false and misleading when issued because the Company lacked adequate  
10 internal controls and was therefore unable to ascertain its true financial condition and was unable  
11 to accurately report either its receivables or its revenues.

12           40.     On August 21, 2003, after the market closed, Vitesse announced the completion of  
13 its acquisition of Multilink Technology Corporation for approximately 4.2 million shares of  
14 Vitesse common stock. Vitesse stock rose the next day to close at \$6.74 per share on over 12.9  
15 million shares traded.

16           41.     On October 23, 2003, after the market close, Vitesse announced its results for the  
17 fourth quarter and full fiscal year ended September 30, 2003. The Company reported that  
18 revenues, on a generally accepted accounting principles (GAAP) basis, in the fourth quarter of  
19 fiscal 2003 were \$42.8 million, and that GAAP revenues for the year ended September 30, 2003  
20 were \$156.4 million. Vitesse President and CEO, Lou Tomasetta, commented, "I am pleased to  
21 report another quarter of sequential revenue growth. We expect that revenues from continuing  
22 operations will increase by approximately \$5 million to about \$48 million in the first quarter of  
23 fiscal 2004." These results and statements were false and misleading when issued because the  
24 Company lacked adequate internal controls and was therefore unable to ascertain its true financial  
25 condition and was unable to accurately report its revenues. Vitesse stock closed at \$6.36 per share  
26 on this release.

27           42.     On December 16, 2003, Vitesse reiterated these results in a Form 10-K filed with  
28 the SEC that contained certifications pursuant to sections 302 and 906 of the Sarbanes Oxley Act

1 of 2002 signed by defendants Tomasetta and Hovanec. The certifications stated in pertinent part:

- 2 a. I have reviewed this annual report on Form 10-K of Vitesse  
3 Semiconductor Corporation (the “registrant”);
- 4 b. Based on my knowledge, this annual report does not contain any  
5 untrue statement of a material fact or omit to state a material fact  
6 necessary to make the statements made, in light of the  
7 circumstances under which such statements were made, not  
8 misleading with respect to the period covered by this annual report;
- 9 c. Based on my knowledge, the financial statements, and other  
10 financial information included in this annual report, fairly present  
11 in all material respects the financial condition, results of operations  
12 and cash flows of the registrant as of, and for, the periods  
13 presented in this annual report;
- 14 d. The registrant’s other certifying officers and I are responsible for  
15 establishing and maintaining disclosure controls and procedures  
16 (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for  
17 the registrant and have:
- 18 i. designed such disclosure controls and procedures, or  
19 caused such disclosure controls and procedures to be  
20 designed under our supervision, to ensure that material  
21 information relating to the registrant, including its  
22 consolidated subsidiaries, is made known to us by others  
23 within those entities, particularly during the period in  
24 which this annual report is being prepared;
- 25 ii. evaluated the effectiveness of the registrant’s disclosure  
26 controls and procedures and presented in this report our  
27 conclusions about the effectiveness of the disclosure  
28 controls and procedures, as of the end of the period covered  
by this report based on such evaluation;
- iii. disclosed in this report any change in the registrant’s  
internal control over financial reporting that occurred  
during the registrant’s fourth fiscal quarter that has  
materially affected, or is reasonably likely to materially  
affect, the registrant’s internal control over financial  
reporting; and
- e. The registrant’s other certifying officers and I have disclosed,  
based on our most recent evaluation of internal control over  
financial reporting, to the registrant’s auditors and the audit  
committee of registrant’s board of directors (or persons performing  
the equivalent functions):
- i. all significant deficiencies and material weaknesses in the  
design or operation of internal control over financial  
reporting which are reasonably likely to adversely affect

1 the registrant's ability to record, process, summarize and  
2 report financial information; and

- 3 ii. any fraud, whether or not material, that involves  
4 management or other employees who have a significant  
5 role in the Company's internal control over financial  
6 reporting.

7 These certifications were false and misleading when issued because the Company lacked adequate  
8 internal controls and was therefore unable to ascertain its true financial condition.

9 43. The Form 10-K also contained a report prepared and signed by defendant KPMG  
10 (the Company's auditor) stating, in pertinent part:

11 THE BOARD OF DIRECTORS AND SHAREHOLDERS VITESSE  
12 SEMICONDUCTOR CORPORATION:

13 We have audited the accompanying consolidated financial statements of  
14 Vitesse Semiconductor Corporation and subsidiaries as listed in the  
15 accompanying index. In connection with our audits of the consolidated financial  
16 statements, we also have audited the financial statement schedule as listed in the  
17 accompanying index. These consolidated financial statements and financial  
18 statement schedule are the responsibility of the Company's management. Our  
19 responsibility is to express an opinion on these consolidated financial statements  
20 and financial statement schedule based on our audits.

21 We conducted our audits in accordance with auditing standards generally  
22 accepted in the United States of America. Those standards require that we plan  
23 and perform the audit to obtain reasonable assurance about whether the financial  
24 statements are free of material misstatement. An audit includes examining, on a  
25 test basis, evidence supporting the amounts and disclosures in the financial  
26 statements. An audit also includes assessing the accounting principles used and  
27 significant estimates made by management, as well as evaluating the overall  
28 financial statement presentation. We believe that our audits provide a reasonable  
basis for our opinion.

In our opinion, the consolidated financial statements referred to above  
present fairly, in all material respects, the financial position of Vitesse  
Semiconductor Corporation and subsidiaries as of September 30, 2003 and 2002,  
and the results of their operations and their cash flows for each of the years in the  
three-year period ended September 30, 2003 in conformity with accounting  
principles generally accepted in the United States of America. Also in our  
opinion, the related financial statement schedule, when considered in relation to  
the basic consolidated financial statements taken as a whole, presents fairly, in all  
material respects, the information set forth therein.

(signed) KPMG LLP, Los Angeles, California, October 23, 2003

44. Defendant KPMG's report was false and misleading because (a) there were  
undisclosed issues concerning credits issued to or requested by customers (for returned products or

1 otherwise) and the related accounting treatment; (b) there were apparent discrepancies in the  
2 application of payments received to the proper accounts receivable; (c) the Company's accounts  
3 receivable and revenues were misstated; (d) there was misuse of stock option grants, the timing of  
4 such grants and other related accounting and documentation issues.

5 45. On January 22, 2004, after the market close, Vitesse announced its results for the  
6 first quarter of 2004 ended December 31, 2003. The Company reported that revenues in the first  
7 quarter of fiscal 2004 were \$50.3 million and that accounts receivables (net) amounted to  
8 approximately \$36.6 million. This information was false and misleading when issued because the  
9 Company lacked adequate internal controls and was therefore unable to ascertain its true financial  
10 condition and was unable to accurately report either its receivables or its revenues. Vitesse stock  
11 rose 12% on this release to close at \$8.78 on volume of 26,095,273 shares traded.

12 46. On February 13, 2004 Vitesse reiterated these results in a Form 10-Q filed with the  
13 SEC. These results were false and misleading when issued because the Company lacked adequate  
14 internal controls and was therefore unable to ascertain its true financial condition and was unable  
15 to accurately report either its receivables or its revenues.

16 47. On April 22, 2004, after the market close, Vitesse announced its results for the  
17 second quarter of fiscal year 2004 ended March 31, 2003. The Company reported revenues in the  
18 second quarter of fiscal 2004 were \$56 million and that accounts receivables (net) amounted to  
19 approximately \$39 million. Vitesse President and CEO, Lou Tomasetta, commented, "I'm pleased  
20 to report another quarter of continuing revenue growth and improving pro-forma profitability.  
21 Revenues increased sequentially, once again driven by strength in our Metro and Enterprise  
22 product lines. We expect that in the third quarter of fiscal 2004, revenues will increase  
23 approximately 8% over the second quarter." This information was false and misleading when  
24 issued because the Company lacked adequate internal controls and was therefore unable to  
25 ascertain its true financial condition and was unable to accurately report either its receivables or its  
26 revenues. Over nineteen million shares were traded as a result of this news.

27 48. On May 17, 2004 Vitesse reiterated these results in a Form 10-Q filed with the  
28 SEC. These results were false and misleading when issued because the Company lacked adequate

1 internal controls and was therefore unable to ascertain its true financial condition and was unable  
2 to accurately report either its receivables or its revenues.

3 49. After the market close on July 22, 2004, Vitesse announced its results for the third  
4 quarter of fiscal 2004 ended June 30, 2004. The Company reported that revenues in the third  
5 quarter of fiscal 2004 were \$60.4 million and that accounts receivables (net) amounted to  
6 approximately \$42 million. Defendant Tomasetta was quoted saying, “revenues grew in the  
7 quarter, driven by continued strength in the metro and enterprise market. I am pleased to report  
8 that we grew cash during the quarter by approximately \$9 million.” This information was false  
9 and misleading when issued because the Company lacked adequate internal controls and was  
10 therefore unable to ascertain its true financial condition and was unable to accurately report either  
11 its receivables or its revenues. Over 15.7 million shares traded on this news.

12 50. On August 3, 2004 Vitesse reiterated these results in a Form 10-Q filed with the  
13 SEC. These results were false and misleading when issued because the Company lacked adequate  
14 internal controls and was therefore unable to ascertain its true financial condition and was unable  
15 to accurately report either its receivables or its revenues.

16 51. On October 26, 2004, after the market close, Vitesse announced its results for the  
17 fourth quarter and full fiscal year ended September 30, 2004. The Company reported that  
18 revenues in the fourth quarter of fiscal 2004 were \$52 million, and that revenues for the year  
19 ended September 30, 2004 were \$218.8 million. These results and statements were false and  
20 misleading when issued because the Company lacked adequate internal controls and was therefore  
21 unable to ascertain its true financial condition and was unable to accurately report its revenues.  
22 The news resulted in a slight increase in the price Vitesse stock on over 10.7 million shares traded.

23 52. On December 10, 2004, Vitesse reiterated these results in a Form 10-K filed with  
24 the SEC that contained certifications pursuant to sections 302 and 906 of the Sarbanes Oxley Act  
25 of 2002 signed by defendants Tomasetta and Hovanec. The certifications stated in pertinent part:

- 26 a. I have reviewed this annual report on Form 10-K of Vitesse  
27 Semiconductor Corporation (the “registrant”);  
28 b. Based on my knowledge, this annual report does not contain any  
untrue statement of a material fact or omit to state a material fact

1 necessary to make the statements made, in light of the  
2 circumstances under which such statements were made, not  
misleading with respect to the period covered by this annual report;

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

6 d. The registrant's other certifying officers and I are responsible for  
7 establishing and maintaining disclosure controls and procedures  
8 (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for  
the registrant and have:

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

13 ii. evaluated the effectiveness of the registrant's disclosure  
14 controls and procedures and presented in this report our  
15 conclusions about the effectiveness of the disclosure  
controls and procedures, as of the end of the period covered  
by this report based on such evaluation;

16 iii. disclosed in this report any change in the registrant's  
17 internal control over financial reporting that occurred  
18 during the registrant's fourth fiscal quarter that has  
19 materially affected, or is reasonably likely to materially  
affect, the registrant's internal control over financial  
reporting; and

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

23 i. all significant deficiencies and material weaknesses in the  
24 design or operation of internal control over financial  
25 reporting which are reasonably likely to adversely affect  
the registrant's ability to record, process, summarize and  
report financial information; and

26 ii. any fraud, whether or not material, that involves  
27 management or other employees who have a significant  
28 role in the Company's internal control over financial  
reporting.

1 These certifications were false and misleading when issued because the Company lacked adequate  
2 internal controls and was therefore unable to ascertain its true financial condition.

3 53. The Form 10-K also contained a report prepared and signed by defendant KPMG  
4 (the Company's auditor) stating, in pertinent part:

5 THE BOARD OF DIRECTORS AND SHAREHOLDERS VITESSE  
6 SEMICONDUCTOR CORPORATION:

7 We have audited the accompanying consolidated financial statements of  
8 Vitesse Semiconductor Corporation and subsidiaries as listed in the  
9 accompanying index. In connection with our audits of the consolidated financial  
10 statements, we also have audited the financial statement schedule as listed in the  
11 accompanying index. These consolidated financial statements and financial  
12 statement schedule are the responsibility of the Company's management. Our  
13 responsibility is to express an opinion on these consolidated financial statements  
14 and financial statement schedule based on our audits.

15 We conducted our audits in accordance with the standards of the Public  
16 Company Accounting Oversight Board. Those standards require that we plan and  
17 perform the audit to obtain reasonable assurance about whether the financial  
18 statements are free of material misstatement. An audit includes examining, on a  
19 test basis, evidence supporting the amounts and disclosures in the financial  
20 statements. An audit also includes assessing the accounting principles used and  
21 significant estimates made by management, as well as evaluating the overall  
22 financial statement presentation. We believe that our audits provide a reasonable  
23 basis for our opinion.

24 In our opinion, the consolidated financial statements referred to above  
25 present fairly, in all material respects, the financial position of Vitesse  
26 Semiconductor Corporation and subsidiaries as of September 30, 2004 and 2003,  
27 and the results of their operations and their cash flows for each of the years in the  
28 three-year period ended September 30, 2004 in conformity with accounting  
principles generally accepted in the United States of America. Also in our  
opinion, the related financial statement schedule, when considered in relation to  
the basic consolidated financial statements taken as a whole, presents fairly, in all  
material respects, the information set forth therein.

(signed) KPMG LLP, Los Angeles, California, October 28, 2004

54. Defendant KPMG's report was false and misleading because (a) there were  
undisclosed issues concerning credits issued to or requested by customers (for returned products or  
otherwise) and the related accounting treatment; (b) there were apparent discrepancies in the  
application of payments received to the proper accounts receivable; (c) the Company's accounts  
receivable and revenues were misstated; (d) there was misuse of stock option grants, the timing of  
such grants and other related accounting and documentation issues.

1           55.     On January 25, 2005, after the market close, Vitesse announced its results for the  
2 first quarter of 2005 ended December 31, 2004. The Company reported revenues in the first  
3 quarter of fiscal 2005 were \$44.5 million and that accounts receivables (net) amounted to  
4 approximately \$39 million. This information was false and misleading when issued because the  
5 Company lacked adequate internal controls and was therefore unable to ascertain its true financial  
6 condition and was unable to accurately report either its receivables or its revenues. On this  
7 release, trade volume tripled to 18,542,699 shares traded.

8           56.     On February 8, 2005 Vitesse reiterated these results in a Form 10-Q filed with the  
9 SEC. These results were false and misleading when issued because the Company lacked adequate  
10 internal controls and was therefore unable to ascertain its true financial condition and was unable  
11 to accurately report either its receivables or its revenues.

12           57.     On April 21, 2005, after the market close, Vitesse announced its results for the  
13 second quarter of fiscal year 2005 ended March 31, 2004. The Company reported revenues in the  
14 second quarter of fiscal 2005 were \$47.2 million and that accounts receivables (net) amounted to  
15 approximately \$39 million. Defendant Tomasetta was quoted as saying, "I am encouraged to see  
16 our revenues rebounding after going through a steep decline in the second half of calendar 2004.  
17 Storage revenues were particularly strong in the March quarter, growing 18% sequentially.  
18 Additionally, our Ethernet business continued to grow with some key products entering a  
19 production ramp. We expect that both these businesses will continue to grow in the current  
20 quarter." This information was false and misleading when issued because the Company lacked  
21 adequate internal controls and was therefore unable to ascertain its true financial condition and  
22 was unable to accurately report either its receivables or its revenues.

23           58.     On May 10, 2005 Vitesse reiterated these results in a Form 10-Q filed with the  
24 SEC. These results were false and misleading when issued because the Company lacked adequate  
25 internal controls and was therefore unable to ascertain its true financial condition and was unable  
26 to accurately report either its receivables or its revenues.

27           59.     After the market close on July 21, 2005, Vitesse announced its results for the third  
28 quarter of fiscal 2004 ended June 30, 2005. The Company reported revenues in the third quarter

1 of fiscal 2005 were \$51 million and that accounts receivables (net) amounted to over \$33 million.  
2 Defendant Tomasetta was quoted as saying, “In the third quarter we continued to grow revenues in  
3 all of our end markets. Financially, we made significant progress towards narrowing our losses,  
4 and I am pleased to report that in the quarter we achieved our goal of being cash flow break-even.”  
5 This information was false and misleading when issued because the Company lacked adequate  
6 internal controls and was therefore unable to ascertain its true financial condition and was unable  
7 to accurately report either its receivables or its revenues.

8 60. On August 9, 2005 Vitesse reiterated these results in a Form 10-Q filed with the  
9 SEC. These results were false and misleading when issued because the Company lacked adequate  
10 internal controls and was therefore unable to ascertain its true financial condition and was unable  
11 to accurately report either its receivables or its revenues.

12 61. On October 27, 2005, after the market close, Vitesse announced its results for the  
13 fourth quarter and full fiscal year ended September 30, 2005. The Company reported that  
14 revenues in the fourth quarter of fiscal 2005 were \$48.2 million, and that revenues for the year  
15 ended September 30, 2005 were \$190.8 million. These results and statements were false and  
16 misleading when issued because the Company lacked adequate internal controls and was therefore  
17 unable to ascertain its true financial condition and was unable to accurately report its revenues.

18 62. On December 14, 2005, Vitesse reiterated these results in a Form 10-K filed with  
19 the SEC that contained certifications pursuant to sections 302 and 906 of the Sarbanes Oxley Act  
20 of 2002 signed by defendants Tomasetta and Mody. The certifications stated in pertinent part:

- 21 a. I have reviewed this annual report on Form 10-K of Vitesse  
22 Semiconductor Corporation (the “registrant”);
- 23 b. Based on my knowledge, this annual report does not contain any  
24 untrue statement of a material fact or omit to state a material fact  
25 necessary to make the statements made, in light of the  
26 circumstances under which such statements were made, not  
27 misleading with respect to the period covered by this annual report;
- 28 c. Based on my knowledge, the financial statements, and other  
financial information included in this annual report, fairly present  
in all material respects the financial condition, results of operations  
and cash flows of the registrant as of, and for, the periods  
presented in this annual report;

1 d. The registrant's other certifying officers and I are responsible for  
2 establishing and maintaining disclosure controls and procedures  
3 (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for  
4 the registrant and have:

5 i. designed such disclosure controls and procedures, or  
6 caused such disclosure controls and procedures to be  
7 designed under our supervision, to ensure that material  
8 information relating to the registrant, including its  
9 consolidated subsidiaries, is made known to us by others  
10 within those entities, particularly during the period in  
11 which this annual report is being prepared;

12 ii. evaluated the effectiveness of the registrant's disclosure  
13 controls and procedures and presented in this report our  
14 conclusions about the effectiveness of the disclosure  
15 controls and procedures, as of the end of the period covered  
16 by this report based on such evaluation;

17 iii. disclosed in this report any change in the registrant's  
18 internal control over financial reporting that occurred  
19 during the registrant's fourth fiscal quarter that has  
20 materially affected, or is reasonably likely to materially  
21 affect, the registrant's internal control over financial  
22 reporting; and

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

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

ii. any fraud, whether or not material, that involves  
management or other employees who have a significant  
role in the Company's internal control over financial  
reporting.

These certifications were false and misleading when issued because the Company lacked adequate  
internal controls and was therefore unable to ascertain its true financial condition.

63. The Form 10-K also contained a report prepared and signed by defendant KPMG  
(the Company's auditor) stating, in pertinent part:

THE BOARD OF DIRECTORS AND SHAREHOLDERS VITESSE  
SEMICONDUCTOR CORPORATION:

1 We have audited the consolidated financial statements of Vitesse  
2 Semiconductor Corporation and subsidiaries (the “Company”) as listed in the  
3 accompanying index. In connection with our audits of the consolidated financial  
4 statements, we also have audited the financial statement schedule as listed in the  
5 accompanying index. These consolidated financial statements and financial  
6 statement schedule are the responsibility of the Company’s management. Our  
7 responsibility is to express an opinion on these consolidated financial statements  
8 and financial statement schedule based on our audits.

9 We conducted our audits in accordance with the standards of the Public  
10 Company Accounting Oversight Board (United States). Those standards require  
11 that we plan and perform the audit to obtain reasonable assurance about whether  
12 the financial statements are free of material misstatement. An audit includes  
13 examining, on a test basis, evidence supporting the amounts and disclosures in the  
14 financial statements. An audit also includes assessing the accounting principles  
15 used and significant estimates made by management, as well as evaluating the  
16 overall financial statement presentation. We believe that our audits provide a  
17 reasonable basis for our opinion.

18 In our opinion, the consolidated financial statements referred to above  
19 present fairly, in all material respects, the financial position of Vitesse  
20 Semiconductor Corporation and subsidiaries as of September 30, 2005 and 2004,  
21 and the results of their operations and their cash flows for each of the years in the  
22 three-year period ended September 30, 2005, in conformity with U.S. generally  
23 accepted accounting principles. Also in our opinion, the related financial  
24 statement schedule, when considered in relation to the basic consolidated  
25 financial statements taken as a whole, present fairly, in all material respects, the  
26 information set forth therein.

27 We also have audited, in accordance with the standards of the Public  
28 Company Accounting Oversight Board (United States), the effectiveness of  
Vitesse Semiconductor Corporation’s and subsidiaries internal control over  
financial reporting as of September 30, 2005, based on the criteria established in  
Internal Control—Integrated Framework issued by the Committee of Sponsoring  
Organizations of the Treadway Commission (COSO)”, and our report dated  
December 12, 2005 expressed an unqualified opinion on management’s  
assessment of, and the effective operation of, internal control over financial  
reporting.

(signed) KPMG LLP, Los Angeles, California, December 12, 2005

64. Defendant KPMG’s report was false and misleading because (a) there were  
undisclosed issues concerning credits issued to or requested by customers (for returned products or  
otherwise) and the related accounting treatment; (b) there were apparent discrepancies in the  
application of payments received to the proper accounts receivable; (c) the Company’s accounts  
receivable and revenues were misstated; (d) there was misuse of stock option grants, the timing of  
such grants and other related accounting and documentation issues.

65. On January 23, 2006, after the market close, Vitesse announced its results for the

1 first quarter of 2006 ended December 31, 2005. The Company reported that revenues in the first  
2 quarter of fiscal 2006 were \$53 million and that accounts receivables (net) amounted to  
3 approximately \$33 million. The Company reported that in the first quarter of fiscal 2006, it had  
4 “adopted Statement of Financial Accounting Standards No. 123 (Revised), ‘Share-Based  
5 Payment’ (SFAS 123R). As a result, the company recorded stock option expense related to its  
6 stock option and employee stock purchase plans in the aggregate amount of \$3.7 million. Of this  
7 expense \$0.2 million is included under Cost of Revenues, \$1.8 million under Engineering,  
8 research and development expenses and \$1.8 million under Selling, general and administrative  
9 expenses in both the GAAP and non-GAAP statements of operations for the period ended  
10 December 31, 2005.” This information was false and misleading when issued because the  
11 Company lacked adequate internal controls and was therefore unable to ascertain its true financial  
12 condition and was unable to accurately report either its receivables or its revenues. Additionally,  
13 unknown to investors, there was misuse of Vitesse stock option grants regarding the timing of  
14 such grants and other related accounting and documentation issues. On this release Vitesse stock  
15 rose 23% on over 44 million shares traded.

16 66. On February 8, 2006, *Vitesse* reiterated these results in a Form 10-Q filed with the  
17 SEC. These results were false and misleading when issued because the Company lacked adequate  
18 internal controls and was therefore unable to ascertain its true financial condition and was unable  
19 to accurately report either its receivables or its revenues.

20 67. On March 18, 2006, *The Wall Street Journal*, in a front page story entitled, “*The*  
21 *Perfect Payday — Some CEOs reap millions by landing stock options when they are most*  
22 *valuable. Luck — or something else?;*” reports that an analysis of grant dates and stock  
23 movements of several companies, including Vitesse, suggests wildly improbable option-grant  
24 patterns. “While this doesn't prove chicanery, it shows something very odd: Year after year, some  
25 companies’ top executives received options on unusually propitious dates. In eight of Mr.  
26 Tomasetta's nine option grants from 1994 to 2001, the grants were dated just before double-digit  
27 price surges in the next 20 trading days. The odds of such a pattern occurring by chance are about  
28 *one in 26 billion.*” [emphasis added]

1           68.     According to the article, even as the stock price of Vitesse declined, defendant  
2 Tomasetta “reaped tens of millions of dollars from stock options.” Vitesse denied these  
3 allegations. “Alex Daly, a member of the Vitesse board’s compensation committee, said a review  
4 of the grants found ‘nothing extraordinary’ about their timing, and ‘absolutely no grants have been  
5 made to anyone, least of all the CEO, that are out of sequence with our normal grant policy.’  
6 Vitesse’s finance chief, Yatin Mody, said the grants were ‘reviewed and approved’ by the  
7 compensation committee, ‘and the exercise price set as of the date of the approval, as documented  
8 by the related minutes.’ He declined to provide a copy of those minutes. Mr. Tomasetta said the  
9 grants were ‘approved by the Board and the price set at the close of the day of approval.’ Vitesse  
10 stock rose a few cents on the following trading day to close at \$3.48 per share.

11     **VII. THE MARKET BEGINS TO BECOME APPRISED OF DEFENDANTS’**  
12     **MALFEASANCE**

13           69.     On April 18, 2006, the Company shocked the market when it issued a press release  
14 announcing that it had commenced an investigation and retained outside counsel. The press release  
15 stated in pertinent part:

16           CAMARILLO, Calif. — April 18, 2006 — Vitesse Semiconductor Corporation  
17 (NASDAQ: VTSS) today announced that the Company’s Board of Directors has  
18 appointed a Special Committee of independent directors to conduct an internal  
19 investigation relating to past stock option grants, the timing of such grants and  
20 related accounting and documentation. The Special Committee is being assisted  
21 by independent outside legal counsel.

22           Vitesse also announced today that Louis R. Tomasetta, the Company’s  
23 Chief Executive Officer, Eugene F. Hovanec, the Company’s Executive Vice  
24 President and Yatin Mody, the Company’s Chief Financial Officer have been  
25 placed on administrative leave.

26           Vitesse further announced today that its Board of Directors has appointed  
27 Chris Gardner as Acting President and Chief Executive Officer. Mr. Gardner  
28 joined Vitesse in 1986. He served as Vice President and Chief Operating Officer  
from November 2000 to June 2002. Since June 2002, Mr. Gardner has served as  
Vice President and General Manager of the Network Products Division. Mr.  
Gardner received his B.S.E.E. from Cornell University and his M.S.E.E. from the  
University of California at Berkeley.

          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.

1           70.     Following the above disclosures of the Company's malfeasance and accounting  
2 improprieties, shares of the Company's stock fell \$0.6333 per share (or 20%) to close at \$2.48 per  
3 share on unusually heavy trading volume of over 60 million shares traded.

4           71.     The Company also revealed that, "Vitesse further advises that the administrative  
5 leaves for Chief Executive Officer Louis R. Tomasetta, Chief Financial Officer Yatin Mody and  
6 Executive Vice President Eugene F. Hovanec, previously announced on April 18, 2006, were  
7 imposed because of such individuals' involvement with issues related to the integrity of  
8 documents relating to Vitesse's stock option grant process." The stock dropped almost an  
9 additional 8% to close at \$2.51 per share.

10          72.     On April 26, 2006, the Company filed a Form 8-K with the SEC revealing that its  
11 previously reported financial statements for the three months ended December 31, 2005 and the  
12 three years ended September 30, 2005 and possibly earlier periods should not be relied upon.  
13 After the market close, the Company issued a press release which stated in pertinent part:

14                   **Vitesse Announces That Its Reported Financial Statements Should Not Be**  
15                   **Relied Upon And That It Has Engaged An Acting Chief Financial Officer**

16                   CAMARILLO, Calif. — (BUSINESS WIRE) — April 26, 2006 — Vitesse  
17 Semiconductor Corporation (Nasdaq:VTSS) announced today that its Board of  
18 Directors has determined that its previously reported financial statements for the  
19 three months ended December 31, 2005 and the three years ended September 30,  
20 2005 and possibly earlier periods should not be relied upon. The Board of  
21 Directors also determined that the Management Report on Internal Control over  
22 Financial Reporting as of September 30, 2005 and the Report of KPMG LLP, the  
23 Company's independent registered public accounting firm, relating to the  
24 effectiveness of the Company's internal controls over financial reporting and  
25 management's assessment thereof as of September 30, 2005, both of which reports  
26 are included in the Company's Annual Report on Form 10-K for the year ended  
27 September 30, 2005, should not be relied upon.

28                   As previously disclosed, 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 other related  
accounting and documentation issues. The Special Committee is being assisted by  
independent legal counsel. In the course of its investigation, issues have arisen  
relating to the integrity of documents concerning the Company's stock option  
grants.

During the internal investigation, additional issues have arisen concerning  
the Company's practices in connection with credits issued to or requested by  
customers (for returned products or otherwise) and the related accounting  
treatment, as well as the application of payments received to the proper accounts

1 receivable. The Special Committee is reviewing these issues and, pending further  
2 investigation, believes that the Company's accounts receivable and revenues may  
3 have been misstated during certain periods. Whether the Company's accounts  
4 receivable and revenues were misstated and, if so, the extent of such  
5 misstatements are still under investigation.

6 Although the Special Committee's investigation is in its preliminary  
7 stages, based on findings to date, the Board of Directors has determined that the  
8 Company's previously reported financial statements for the three months ended  
9 December 31, 2005 and the three years ended September 30, 2005 and possibly  
10 earlier periods should not be relied upon. The Board of Directors also determined  
11 that the Management Report on Internal Control over Financial Reporting as of  
12 September 30, 2005 and the Report of KPMG LLP relating to the effectiveness of  
13 the Company's internal controls over financial reporting and management's  
14 assessment thereof as of September 30, 2005, both of which reports are included  
15 in the Company's Annual Report on Form 10-K for the year ended September 30,  
16 2005, should not be relied upon.

17 The Special Committee, with the assistance of independent legal counsel,  
18 are working as expeditiously as possible to complete the internal investigation.

19 The Company also announced that it has engaged Alvarez & Marsal, LLC,  
20 and specifically Shawn C.A. Hassel as acting Chief Financial Officer of the  
21 Company. Mr. Hassel, a Managing Director with Alvarez & Marsal, brings 12  
22 years of experience as an interim manager and financial advisor to under-valued  
23 or under-performing companies and companies in transition.

24 Shares of Vitesse fell even further. Dropping 27.5% from \$2.51 to \$1.82 on almost 59 million  
25 shares traded.

## 26 **VIII. UNDISCLOSED ADVERSE FACTS**

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

74. During the Class Period, defendants materially misled the investing public, thereby  
inflating the price of Vitesse'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

1 about the Company, its business and operations, as alleged herein.

2 75. At all relevant times, the material misrepresentations and omissions particularized  
3 in this Complaint directly or proximately caused or were a substantial contributing cause of the  
4 stock purchases by Plaintiff and other members of the Class.

5 76. Each defendant is liable for (i) making false statements, or (ii) failing to disclose  
6 adverse facts known to him about Vitesse. Defendants' fraudulent scheme and course of business  
7 that operated as a fraud or deceit on purchasers of Vitesse common stock was a success, as it (i)  
8 deceived the investing public regarding Vitesse's prospects and business; (ii) artificially inflated  
9 the prices of Vitesse common stock; and (iii) caused plaintiff and other members of the Class to  
10 purchase Vitesse common stock at inflated prices

11 77. The public statements set forth above, and each of the financial statements  
12 contained in the reports filed with the SEC, were materially false and misleading; and omitted to  
13 set forth facts necessary to make such statements not misleading, for each of the following  
14 reasons:

- 15 a. that there were discrepancies in the Company's practices in  
16 connection with credits issued to or requested by customers (for  
17 returned products or otherwise) and the related accounting  
18 treatment;
- 19 b. that there were apparent discrepancies in the application of  
20 payments received to the proper accounts receivable;
- 21 c. that the Company's accounts receivable and revenues may have  
22 been misstated;
- 23 d. that there was misuse of stock option grants, the timing of such  
24 grants and other related accounting and documentation issues;
- 25 e. that the Management Report on Internal Control over Financial  
26 Reporting as of September 30, 2005 could not be relied upon;
- 27 f. that the Company lacked adequate internal controls and was  
28 therefore unable to ascertain its true financial condition; and
- g. that as a result of the foregoing, the defendants had engaged in  
improper accounting practices.

## 27 **IX. SCIENTER ALLEGATIONS**

28 78. As alleged herein, defendants acted with scienter in that defendants knew that the

1 Company's public documents and statements issued or disseminated by or in the name of the  
2 Company were materially false and misleading; knew or recklessly disregarded that such  
3 statements or documents would be issued or disseminated to the investing public; and knowingly  
4 and substantially participated or acquiesced in the issuance or dissemination of such statements or  
5 documents as primary violators of the federal securities laws. As set forth elsewhere herein in  
6 detail, defendants, by virtue of their receipt of information reflecting the true facts regarding  
7 Vitesse and its business practices, their control over and/or receipt of Vitesse allegedly materially  
8 misleading misstatements and/or their associations with the Company which made them privy to  
9 confidential proprietary information concerning Vitesse, were active and culpable participants in  
10 the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity  
11 and misleading nature of the information which they caused to be disseminated to the investing  
12 public. The ongoing fraudulent scheme described in this complaint could not have been  
13 perpetrated over a substantial period of time, as has occurred, without the knowledge and  
14 complicity of the personnel at the highest level of the Company, including the Individual  
15 Defendants.

16 79. The Individual Defendants engaged in such a scheme to inflate the price of Vitesse  
17 securities in order to protect and enhance their executive positions and the substantial  
18 compensation and prestige they obtained thereby.

19 80. Defendant Tomasetta received 1,260,000 options in 2003, 950,000 options in 2004,  
20 and 1,800,000 options in 2005. These options were valued by the Company at \$1,658,703,  
21 \$10,552,966 and \$7,401,340, respectively.

22 81. Defendant Mody received 75,000 options in 2004 and 400,000 options in 2005.  
23 These options were valued by the Company at \$833,129 and \$1,644,742, respectively.

24 82. Defendant Hovanec received 350,000 options in 2003, 250,000 options in 2004,  
25 and 450,000 options in 2005. These options were valued by the Company at \$460,751,  
26 \$2,777,096 and \$1,850,335 respectively.

27 83. In 2003, non-employee directors received \$2,000 for each Board meeting attended  
28 in person and \$1,000 for each meeting attended by telephone, and were also reimbursed for

1 customary and usual travel expenses. In 2004, non-employee directors received \$2,000 for  
2 attending the fiscal first quarter meeting in October 2003. On January 26, 2004, the Nominating  
3 and Corporate Governance Committee approved a new Board of Directors Compensation Plan,  
4 effective January 1, 2004. Under the new Compensation Plan, each non-employee director  
5 received an annual fee of \$30,000, paid in equal quarterly installments. In addition, the Chairman  
6 of the Audit Committee received an annual fee of \$10,000, paid in equal quarterly installments.

7 84. In 2003, defendant Lewis, Chairman of the Board, was granted an option to  
8 purchase 60,000 shares of common stock and defendants Chan, Cole and Daly each were granted  
9 an option to purchase 40,000 shares of common stock at an exercise price of \$2.18.

10 85. In 2004, defendant Lewis was granted an option to purchase 60,000 shares of  
11 common stock and defendants Chan, Cole and Daly each were granted an option to purchase  
12 40,000 shares of common stock at an exercise price of \$5.85.

13 86. Additionally, the Company used 4.2 million shares, valued at \$22.9 million, to  
14 acquire Multilink Technology Corporation.

15 87. In 2005, defendant Lewis was granted options to purchase 60,000 shares of  
16 common stock and defendants Chan, Cole and Daly each were granted options to purchase 40,000  
17 shares of common stock at an exercise price of \$3.53. Defendant Gavriellov was granted options  
18 to purchase 40,000 shares of common stock at an exercise price of \$2.15.

19 **X. APPLICABILITY OF PRESUMPTION OF RELIANCE: FRAUD-ON-THE-**  
20 **MARKET DOCTRINE**

21 88. At all relevant times, the market for Vitesse securities was an efficient market for  
22 the following reasons, among others:

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

25 (b) As a regulated issuer, Vitesse filed periodic public reports with the SEC;  
26 and

27 (c) Vitesse regularly communicated with public investors via established  
28 market communication mechanisms, including through regular disseminations of press releases on

1 the national circuits of major newswire services and through other wide-ranging public  
2 disclosures, such as communications with the financial press and other similar reporting services.

3 89. As a result of the foregoing, the market for Vitesse's securities promptly digested  
4 current information regarding Vitesse from all publicly available sources and reflected such  
5 information in Vitesse's stock price. Under these circumstances, all purchasers of Vitesse  
6 securities during the Class Period suffered similar injury through their purchase of Vitesse  
7 securities at artificially inflated prices and a presumption of reliance applies.

#### 8 **XI. NO SAFE HARBOR**

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

#### 20 **FIRST CLAIM**

#### 21 **Violation of Section 10(b) of The Exchange Act And Rule 10b-5** 22 **Promulgated Thereunder Against All Defendants**

23 91. Plaintiff repeats and re-alleges each and every allegation contained above as if fully  
24 set forth herein.

25 92. During the Class Period, defendants carried out a plan, scheme and course of  
26 conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing  
27 public, including plaintiff and other Class members, as alleged herein; and (ii) cause plaintiff and  
28 other members of the Class to purchase Vitesse securities at artificially inflated prices. In

1 furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them,  
2 took the actions set forth herein.

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

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

15 95. These defendants employed devices, schemes and artifices to defraud, while in  
16 possession of material adverse non-public information and engaged in acts, practices, and a course  
17 of conduct as alleged herein in an effort to assure investors of Vitesse value and performance and  
18 continued substantial growth, which included the making of, or the participation in the making of,  
19 untrue statements of material facts and omitting to state material facts necessary to make the  
20 statements made about Vitesse and its business operations and future prospects in the light of the  
21 circumstances under which they were made, not misleading, as set forth more particularly herein,  
22 and engaged in transactions, practices and a course of business which operated as a fraud and  
23 deceit upon the purchasers of Vitesse securities during the Class Period.

24 96. Each of the Individual Defendants' primary liability, and controlling person  
25 liability, arises from the following facts: (i) the Individual Defendants were high-level executives  
26 and/or directors at the Company during the Class Period and members of the Company's  
27 management team or had control thereof; (ii) each of these defendants, by virtue of their  
28 responsibilities and activities as a senior officer and/or director of the Company was privy to and

1 participated in the creation, development and reporting of the Company's internal budgets, plans,  
2 projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and  
3 familiarity with the other defendants and was advised of and had access to other members of the  
4 Company's management team, internal reports and other data and information about the  
5 Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants  
6 was aware of the Company's dissemination of information to the investing public which they  
7 knew or recklessly disregarded was materially false and misleading.

8         97. The defendants had actual knowledge of the misrepresentations and omissions of  
9 material facts set forth herein, or acted with reckless disregard for the truth in that they failed to  
10 ascertain and to disclose such facts, even though such facts were available to them. Such  
11 defendants' material misrepresentations and/or omissions were done knowingly or recklessly and  
12 for the purpose and effect of concealing Vitesse operating condition and future business prospects  
13 from the investing public and supporting the artificially inflated price of its securities. As  
14 demonstrated by defendants' misstatements of the Company's business, operations and earnings  
15 throughout the Class Period, defendants, if they did not have actual knowledge of the  
16 misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by  
17 deliberately refraining from taking those steps necessary to discover whether those statements  
18 were false or misleading.

19         98. As a result of the dissemination of the materially false and misleading information  
20 and failure to disclose material facts, as set forth above, the market price of Vitesse securities was  
21 artificially inflated during the Class Period. In ignorance of the fact that the market prices of  
22 Vitesse publicly-traded securities were artificially inflated, and relying directly or indirectly on the  
23 false and misleading statements made by defendants, or upon the integrity of the market in which  
24 the securities trade, and/or on the absence of material adverse information that was known to or  
25 recklessly disregarded by defendants but not disclosed in public statements by defendants during  
26 the Class Period, plaintiff and the other members of the Class acquired Vitesse securities during  
27 the Class Period at artificially high prices and were damaged thereby.

28         99. At the time of said misrepresentations and omissions, plaintiff and other members

1 of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other  
2 members of the Class and the marketplace known the truth regarding the true financial position  
3 and operating conditions that Vitesse was experiencing, which were not disclosed by defendants,  
4 plaintiff and other members of the Class would not have purchased or otherwise acquired their  
5 Vitesse securities, or, if they had acquired such securities during the Class Period, they would not  
6 have done so at the artificially inflated prices which they paid.

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

9 101. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the  
10 other members of the Class suffered damages in connection with their respective purchases and  
11 sales of the Company's securities during the Class Period.

## 12 **SECOND CLAIM**

### 13 **Violation of Section 20(a) of The Exchange Act** 14 **Against the Individual Defendants**

15 102. Plaintiff repeats and re-alleges each and every allegation contained above as if fully  
16 set forth herein.

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



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