



**JURISDICTION AND VENUE**

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, and 1367, and Section 27 of the Securities Exchange Act of 1934 (the “Exchange Act”) (15 U.S.C. § 78aa).

3. This action arises under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated under Section 10(b) (17 C.F.R. § 240.10b-5).

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b). Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District.

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

**PARTIES**

6. Plaintiff purchased DG FastChannel common stock during the Class Period, as set forth in the certification attached hereto.

7. DG FastChannel provides digital technology services that enable the electronic delivery of advertisements, syndicated programs, and video news releases to traditional broadcasters, online publishers, and other media outlets. The company is incorporated in Delaware and its principal executive office is located in Irving, Texas. DG FastChannel common stock is traded in an efficient market on the NASD stock market under the symbol “DGIT”.

8. Defendant Scott Ginsburg (“Ginsburg”) is DG FastChannel’s Chairman of the Board of Directors (the “Board”) and Chief Executive Officer.

9. Defendant Neil Nguyen (“Nguyen”) is President and Chief Operating Officer.

10. Defendants Ginsburg and Nguyen are herein collectively referred to as the “Individual Defendants”.

11. The Individual Defendants, who were among the Company’s principal officers, controlled DG FastChannel and its public disclosures. Each of them made false and misleading statements and/or failed to disclose material adverse information concerning the Company’s business and operations during the Class Period, as detailed herein. Because of the Individual Defendants’ positions with the Company, they had access to the adverse undisclosed information about its business, operations, products, operational trends, financial statements, markets, and present and future business prospects via access to internal corporate documents (including the Company’s operating plans, budgets, and forecasts and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and/or Board meetings and committees thereof, and via reports and other information provided to them in connection therewith.

12. As officers and/or directors and controlling persons of a publicly held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, traded on the NASD, and governed by the provisions of the federal securities laws, the Individual Defendants each had a duty to disseminate promptly accurate and truthful information with respect to the Company’s financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings, and present and future business prospects, and to correct any previously issued statements that had become materially misleading

or untrue, so that the market price of the Company's common stock would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. Each of the Defendants is liable as a participant in a wrongful scheme and course of business that operated as a fraud or deceit on those who purchased or otherwise acquired DG FastChannel common stock during the Class Period by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme deceived the investing public regarding DG FastChannel business, operations, and the intrinsic value of the Company's common stock, and caused plaintiff and other members of the Class to purchase DG FastChannel common stock at artificially inflated prices.

#### **CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of all persons who purchased DG FastChannel securities during the Class Period. Excluded from the Class are Defendants, officers and directors of the Company, members of the immediate families of the Individual Defendants and each of their legal representatives, heirs, successors or assigns and any entity in which any Defendant has or has had a controlling interest.

15. This action is properly maintainable as a class action because:

a. the members of the proposed Class in this action are dispersed throughout the United States and are so numerous that joinder of all Class members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that Class members number in the thousands;

b. Plaintiff's claims are typical of those of all members of the Class because all have been similarly affected by Defendants' actionable conduct in violation of federal securities laws as alleged herein;

c. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel competent and experienced in class action litigation. Plaintiff has no interests antagonistic to, or in conflict with, the Class that Plaintiff seeks to represent;

d. A class action is superior to other available methods for the fair and efficient adjudication of the claims asserted herein because joinder of all members is impracticable. Furthermore, because the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation make it virtually impossible for Class members to redress the wrongs done to them. The likelihood of individual Class members prosecuting separate claims is remote;

e. Plaintiff anticipates no unusual difficulties in the management of this action as a class action; and

f. the questions of law and fact common to the members of the Class predominates over any questions affecting individual members of the Class.

16. Among the questions of law and fact common to the Class are:

a. whether Defendants' acts and/or omissions as alleged herein violated the federal securities laws;

b. whether the Company's Class Period public statements and disclosures misrepresented and/or omitted material facts;

c. whether Defendants acted with knowledge or with reckless disregard for the truth in misrepresenting and/or omitting material facts;

d. whether Defendants participated in and pursued the common course of conduct complained of herein;

e. whether the market price of DG FastChannel securities was inflated artificially as a result of Defendants' material misrepresentations and/or omissions during the Class Period; and

f. to what extent the members of the Class have sustained damages and the proper measure of damages.

**SUBSTANTIVE ALLEGATIONS COMMON TO ALL COUNTS**

17. On August 4, 2010, the Individual Defendants participated in the second quarter 2010 DG FastChannel earnings conference call. The Individual Defendants touted the Company's performance for the second quarter, and did not reveal that the Company had any significant business problems that should have been disseminated to the investing public.

18. Indeed, the Individual Defendants also provided specific guidance for the third quarter of 2010. In response to the question, "One is just looking at how Q-3 is tracking, does it look better or the same as the Q-2," Individual Defendant Ginsburg stated:

I think it's a little early in the quarter to give a firm up or down on that. But I must tell you that our perspective on Q-3 is very positive. We think that it's going to do well. We gave some of those reasons earlier both in terms of the robust advertising environment, the political, our Internet business is doing well. So all of the signs at this point in the quarter indicate that we will have a – I can't use the word – I don't want to use the word "similar" but I want to use the word very robust quarter. And we expect that we'll do extremely well.

19. Further in response to a question about the integration of the Company's subsidiary, Pathfire, Defendant Nguyen stated that the integration and expansion of Pathfire was progressing, that Pathfire had gone out and won new customers and the Pathfire platform was

being fully deployed in the relevant HD market. There was no dissemination of anything negative concerning Pathfire.

20. Then, on August 30, 2010, the Company shocked the market by reporting that for the third quarter of 2010 it expects revenues of \$51-53 million and EBITDA of \$23-24 million, far less than the market was anticipating, and in marked contrast to what defendants had represented just a few weeks earlier. Rather, the Company revealed a major shortfall with its major SD transmission business, and subpar performance at its Pathfire subsidiary.

21. On this news, the price of DG FastChannel's stock plummeted 38%. The decline in DG FastChannel's stock price was a direct result of the nature and extent of defendants' false statements being revealed to investors and the market.

22. Defendant Ginsburg sold 42,498 shares, yielding proceeds of \$1,620,449 as late as August 2, 2010, and sold 400,000 shares, for proceeds of \$17,139,233, on June 1, 2010. Throughout fiscal 2010, he sold hundreds of thousands of shares, reaping approximately \$40 million in proceeds.

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

23. The market for DG FastChannel's 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, DG FastChannel's securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired DG FastChannel securities relying upon the integrity of the market price of DG FastChannel's securities and market information relating to DG FastChannel, and have been damaged thereby.

24. During the Class Period, defendants materially misled the investing public, thereby inflating the price of DG FastChannel's 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, its business and operations, as alleged herein

25. 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 DG FastChannel'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 DG FastChannel and its business, prospects and operations, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein

26. At all relevant times, the market for DG FastChannel's securities was an efficient market for the following reasons, among others:

- (a) DG FastChannel's stock met the requirements for listing, and was listed and actively traded on the NASD, a highly efficient and automated market;
- (b) As a regulated issuer, DG FastChannel filed periodic public reports with the SEC; and
- (c) DG FastChannel regularly communicated with public investors by established market communication mechanisms, including through regular disseminations of

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

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

### **COUNT I**

#### **For Violations of Sections 10(b) of The Exchange Act And SEC Rule 10b-5 Against All Defendants**

28. Plaintiff repeats and realleges paragraphs 1 through 27, as if set forth fully herein.

29. In connection with the sale of DG FastChannel securities throughout the Class Period, Defendants participated, directly or by acquiescence, despite a duty to act, in the preparation and/or issuance of materially false and misleading statements and omissions.

30. Defendants knew, or were reckless in not knowing, that the statements contained in DG FastChannel's disclosures were materially false and misleading. Plaintiff and the Class relied, directly or indirectly by reliance on the integrity of the market, on Defendants' misstatements and/or omissions and were damaged as a result. But for Defendants' misrepresentations and/or omissions, Plaintiff and the Class would not have purchased DG FastChannel securities or would have purchased them at non-artificially inflated prices.

**COUNT II**

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

31. Plaintiff repeats and realleges each of the preceding paragraphs 1 through 30 as if fully set forth herein.

32. This claim is brought against the Individual Defendants.

33. The Individual Defendants were control persons within the meaning of the Exchange Act.

34. As set forth above, these Defendants violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder, by their acts and omissions as alleged in this complaint. By virtue of their positions as control persons, the Section 20(a) Defendants, each of whom violated Section 10(b) and Rule 10b-5, are liable pursuant to Section 20(a) of the Exchange Act.

35. As a direct and proximate result of the Individual Defendants' wrongful conduct, Plaintiff and the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**NO SAFE HARBOR**

36. 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, 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. In the alternative, 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 speaker had actual knowledge that the forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of DG FastChannel who knew that the statement was false when made.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of himself and all other Class members, prays for judgment as follows:

- A. A determination that this action is a proper class action and a certification of the Class under Rule 23 of the Federal Rules of Civil Procedure;
- B. An award of compensatory damages in favor of Plaintiff and the other Class members against all Defendants for damages sustained as a result of Defendants' wrongdoing, including interest thereon;
- C. An award to Plaintiff and the Class of their reasonable costs and expenses incurred in this action, including counsel fees, expert fees and other disbursements; and
- D. A grant of such other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury.

Dated: September 1, 2010