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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MATTHEW CARNES, Individually and
on Behalf of All Others Similarly
Situated,

Plaintiff,

v.

DEXCOM INC., KEVIN R. SAYER,
and JEREME M. SYLVAIN,

Defendants.

Case No. '24CV1809 RBM DDL

CLASS ACTION

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

DEMAND FOR JURY TRIAL

1 Plaintiff Matthew Carnes (“Plaintiff”), individually and on behalf of all other
2 persons similarly situated, by her undersigned attorneys, alleges in this Complaint
3 for violations of the federal securities laws (the “Complaint”) the following based
4 upon knowledge with respect to her own acts, and upon facts obtained through an
5 investigation conducted by her counsel, which included, *inter alia*: (a) review and
6 analysis of relevant filings made by DexCom, Inc. (“DexCom” or the “Company”)
7 with the United States Securities and Exchange Commission (the “SEC”); (b) review
8 and analysis of DexCom’s public documents, conference calls, press releases, and
9 stock chart; (c) review and analysis of securities analysts’ reports and advisories
10 concerning the Company; and (d) information readily obtainable on the internet.

11 Plaintiff believes that further substantial evidentiary support will exist for the
12 allegations set forth herein after a reasonable opportunity for discovery. Most of the
13 facts supporting the allegations contained herein are known only to the defendants
14 or are exclusively within their control.

15 NATURE OF THE ACTION

16 1. This is a federal securities class action on behalf of all investors who (i)
17 purchased or otherwise acquired DexCom securities between January 8, 2024 to July
18 25, 2024, inclusive (the “Class Period”) and (ii) sold DexCom put option contracts
19 during the Class Period, seeking to recover damages caused by Defendants’
20 violations of the federal securities laws (the “Class”).

21 2. Defendants provided investors with material information concerning
22 DexCom’s expected revenue for the fiscal year 2024. Defendants’ statements
23 included, among other things, confidence in the DexCom’s ability to capitalize on
24 its growth potential to reach the projected record number of new patients and
25 simultaneously outpace the prior fiscal year’s gross margins, while scaling customer
26 conversion to the new G7 platform.

1 to them, each of these Individual Defendants knew that the adverse facts specified
2 herein had not been disclosed to, and were being concealed from, the public, and
3 that the positive representations which were being made were then materially false
4 and/or misleading. The Individual Defendants are liable for the false statements
5 pleaded herein, as those statements were each “group-published” information, the
6 result of the collective actions of the Individual Defendants.

7 16. DexCom is liable for the acts of the Individual Defendants, and its
8 employees under the doctrine of respondeat superior and common law principles of
9 agency as all the wrongful acts complained of herein were carried out within the
10 scope of their employment with authorization.

11 17. The scienter of the Individual Defendants, and other employees and
12 agents of the Company are similarly imputed to DexCom under respondeat superior
13 and agency principles.

14 **SUBSTANTIVE ALLEGATIONS**

15 **A. Company Background**

16 18. DexCom is an international company that develops, manufactures, and
17 distributes continuous glucose monitoring systems for diabetes management.

18 19. DexCom’s G7 continuous glucose monitoring system, designed and
19 distributed as an upgrade over the prior G6 model, was launched in early 2023.

20 **B. The Defendants Materially Misled Investors Concerning** 21 **DexCom’s Revenue Outlook for Fiscal Year 2024**

22 *January 8, 2024*

23 20. On January 8, 2024, Defendants issued a press release announcing
24 preliminary results for Q4 and the full year 2023, as well as first publishing their
25 fiscal 2024 guidance, expecting “total revenue of approximately \$4.15 billion to
26 \$4.35 billion, representing expected organic growth of approximately 16% to 21%
27 over 2023.”
28

1 21. The same day, during the Company's presentation at the J.P. Morgan
2 42nd Annual Healthcare Conference 2024, DexCom's Executive VP, CFO, and
3 CAO, Jereme M. Sylvain elaborated on their justifications for the guidance during
4 the question-and-answer period, stating, in pertinent part:

5 <Q: Robert Justin Marcus – JPMorgan Chase & Co. – Analyst> All
6 right. I want to shift the focus a little bit forward. And you gave 2024
7 guidance today, 16% to 21% sales growth year-over-year, 63% to 64%
8 gross margin and about a 20% operating margin. So really healthy
9 metrics down the P&L sales, a little above at the upper end where the
10 Street is, operating margin above where the Street is. Maybe just talk
11 about, one, what's incorporated at the low and the high end of the sales
12 guidance range, what's in the gross margin that came just a hair below
13 where consensus was. And then operating margin, you're clearly getting
14 good OpEx leverage, again, what's in there?

15 <A: Jereme M. Sylvain> Yes. So I think when you think about
16 guidance, there's a couple of different things in there. So first and
17 foremost, what is now excluded in that number, the raw top line number
18 is our non-CGM business, with the expectation that, that comes out of
19 the business. So there is an assumption there.

20 ***In terms of that growth, it does assume another year of record new
21 patients. So I think global record new patients.*** I think you can
22 presume that there it does, when Kevin said a modest contribution from
23 our non-insulin product, our 15-day product, we assume about 1 point
24 of revenue associated with that. So that gives you some context around
25 that.

26 And the rest is healthy growth really across the board in basal and the
27 intensive population globally. ***As you move down the line, you think
28 about gross margin, if you rewind back to 2023, we really started 2023
with a 62% to 63% gross margin, and we're going to outpace that this
year.*** Some of that is just due to the timing of transition from G6 to G7.
So Kevin alluded to it earlier. The expectation is, as we move through
that transition, there's a little bit of that. So some of that's embedded. It
doesn't change our long-term plans. Ultimately, we are on track for the
cost profile we would expect on G7 at \$10 sensor. And I would expect
us to continue to make progress.

1 There is no 15-day intensive insulin or G-Series product assumptions
2 on gross margin in there. So hopefully, that's a little bit helpful. And
3 then the continuation of leverage through the P&L, I think you'd expect
4 to continue to see us do that. ***We had a really strong year in 2022, 2023
in terms of driving leverage. That leverage continues as we move into
2024.***

5
6 (Emphasis added).

7 February 8, 2024

8 22. On February 8, 2024, Defendants published their final results for Q4
9 and the full year 2023, upholding their guidance published the month prior.

10 23. During the same-day earnings call, CFO Sylvain stated, in pertinent
11 part:

12 Turning to 2024 guidance. As we stated last month, we anticipate total
13 revenue to be in the range of \$4.15 billion to \$4.35 billion, representing
14 organic growth of 16% to 21% for the year. This guidance assumes
15 continued momentum in the type 2 basal-only population in the U.S.,
16 the expansion of Dexcom ONE on the G7 platform into new
17 geographies, and the launch of Stelo in the summer of 2024. It also
18 assumes the divestiture of our non-diabetes distribution business in
19 Australia and New Zealand this quarter, which represented around \$30
20 million of revenue in 2023.

21 From a margin perspective, we expect full year non-GAAP gross profit
22 margin to be in a range of 63% to 64%, operating profit margin to be
23 approximately 20%, and adjusted EBITDA of approximately 29%. ***Our
gross margin guidance reflects the ongoing conversion from G6 to
G7 within our customer base and the associated scale that comes with
that process.*** Below gross margin, we'll continue to be very diligent
24 with our spend in 2024, while investing strategically behind multiple
25 growth opportunities.

26 March 5, 2024

27 24. On March 5, 2024, Defendants presented at the 45th Annual Raymond
28 James Institutional Investors Conference 2024.

1 25. During the presentation, Defendants again reiterated their annual
2 guidance, focusing on their faith in the G7 product. In pertinent part, DexCom’s
3 Director of Corporate Affairs and Head of Investor Relations, Sean Christensen,
4 stated the following:

5 For 2024, we expect this significant growth to continue. We've guided
6 our top line growth for the year to 16% to 21% organic growth. Gross
7 margin for the year is 63% to 64%, which is relatively flat, slightly
8 down versus 2023. ***Really, we're in the process of transitioning from***
9 ***our G6 hardware platform to our G7. And so as we build volumes,***
10 ***that will help us to scale and drive greater margin efficiency at the***
11 ***gross margin level***, continued operating margin expansion to about
12 20% and adjusted EBITDA margin of 29% forecast for this year. You
see some of the assumptions there. But I think for us, this is a year in
which we build on the access expansion that we had last year and
continue to capitalize both within the U.S. and internationally.

13 If you think about then how do we execute on this vision and the strong
14 growth opportunity, it really starts with an excellent product, and that's
15 what we have in G7. With DexCom G7, we have what we believe to be
16 new standard in CGM technology around the world. G7 is the most
17 accurate CGM that has been cleared by the FDA and offering that
standard DexCom performance that people have come to expect and
trust over the years

18 ...

19 And DexCom CGM with G7 is also the most covered CGM in the U.S.
20 We fought incredibly hard to ensure that our patients not only have
21 access to the technology, but have as low of an out-of-pocket cost as
22 possible, given that they rely on this for managing a complex condition.
23 And in doing so, we've been able to really expand our coverage and
24 lead the industry with robust coverage. But we're not sitting still on
25 DexCom G7. We continue to expand and innovate. And so we've talked
26 about expanding the sensor wear from the current 10.5 day to what we
27 hope will be a 15-day sensor wear. That has entered kind of the clinical
28 testing phase that we talked about last year when we introduced these
enhancements to the G7 platform at our Investor Day, so we continue
to build. And obviously, that would be a nice benefit for our users and

1 certainly for us from a cost perspective, if we can move from a 3 sensor
2 per month to 2 sensor per month dynamic.

3 We also continue to make sure that we're driving the most volume to
4 our G7 platform so that we can get the most out of the automated lines
5 and manufacturing scale that we've built out in our San Diego, Mesa,
6 Arizona and Malaysia manufacturing facilities.

7 April 25, 2024

8 26. On April 25, 2024, Defendants issued a press release publishing their
9 Q1 FY24 results and positively updated their full-year 2024 guidance, wherein
10 Executive Chairman, CEO, and President Kevin R. Sayer stated the following:

11 Dexcom is off to a great start in 2024, delivering another quarter of
12 strong financial results while advancing several key strategic
13 initiatives . . . This is shaping up to be another exciting year for Dexcom
14 as we launch new product innovations and work to improve access to
15 Dexcom CGM around the world.

16 27. During the same-day earnings call, CFO Sylvain detailed the
17 Company's FY24 guidance adjustment, stating, in pertinent part:

18 **Turning to guidance. *We are raising the midpoint of our revenue***
19 ***guidance with an updated range of \$4.20 billion to \$4.35 billion,***
20 ***representing organic growth of 17% to 21% for the year. For***
21 ***margins, we are reaffirming our prior full year guidance* of non-**
22 **GAAP gross profit margin in a range of 63% to 64%, non-GAAP**
23 **operating margin of approximately 20% and adjusted EBITDA margin**
24 **of approximately 29%.**

25 (Emphasis added).

26 28. A question-and-answer period followed where CFO Sylvain elaborated
27 specifically on the lack of a corresponding increase to the Company's projected
28 gross margin, stating, in pertinent part:

29 <Q: Robert Justin Marcus – JPMorgan Chase & Co. – Analyst>
30 Congrats on a nice quarter. I wanted to talk about the leverage we saw
31 down the P&L. It was pretty impressive. It will be by like 150 bps on

1 operating margin. So just wanted to see how we should think about
2 gross margin progression, operating margin progression throughout the
3 year, I saw the reiterated guidance but just trying to think about
4 cadence, especially in light of the Stelo launch and the key drivers of
5 that upside in the quarter and how we should think about that moving
6 through the year?

6 <A: Jereme M. Sylvain> Yes. Sure, Robbie. Thanks for the question.
7 *The way to think about gross margin and is that of course over the*
8 *course of the year, we talked -- when we set guidance that this was*
9 *going to look a little bit like a more typical year. And in a more typical*
10 *year, you generally see 300 to 400 basis points of expansion over the*
11 *course of the year. And that's what I'd expect to see over the course*
12 *of this year.*

11 A lot happened last year with the transition from G6 to G7. It's not a
12 typical year. We had a new manufacturing facility coming online. But
13 as you kind of go back into years prior to that, you see that sort of
14 cadence. That's how we're thinking about it, at least over the course of
15 the year right now. And so that gives you some context for that cadence
16 from an op margin perspective or at least an OpEx spend perspective,
17 we've already made the investment in the sales force. And so that you
18 see playing through in the first quarter. And to your point, you saw
19 some nice leverage in the first quarter.

18 We will be making investments, further investments in Japan here as
19 we go live in the second quarter, and that will play out over the course
20 of the year. And then obviously, associated with the launch of Stelo
21 over the course of the summer, we'll be making investments there. So
22 while we won't get the same leverage that you ultimately saw in the first
23 quarter over the balance of the year. You should expect some leverage
24 over the course of the year, and that ultimately contributes down to what
25 you'd see as an expansion of op margin despite a gross margin guide,
26 that's about a bit of a click back from the prior year. So that's the way
27 to think about it.

25 In terms of the over performance in the Q1, I think you're alluding to
26 the beat in terms of op margin. I think the takeaway here is it's an
27 encouraging sign for us. *We've demonstrated over the past few years,*
28 *we can drive leverage into this business. This year is no exception.* All
of the efforts that we've been talking about in prior years continue.

1 However, it's a little early to change how we're thinking about the full
2 year first quarter. And as you mentioned, a nice start to the first quarter,
3 and we'll keep you updated on progress as the year progresses.

4 (Emphasis added).

5 June 5, 2024

6 29. On June 5, 2024, Defendants spoke further on their updated guidance
7 at the 44th Annual William Blair Growth Stock Conference. Specifically, during
8 the question-and-answer period, CFO Sylvain was asked to elaborate on the second
9 quarter's progress with respect to the full-year guidance:

10 <Q: Malgorzata Maria Kaczor Andrew – William Blair & Company
11 LLC – Partner & Research Analyst> And so maybe just to wrap all of
12 that up, as we think about your guidance both for the second quarter,
13 you did have some comments, maybe you're not specific as much for
14 guidance for Q2. But walk us through what you said on Q2, full year
15 and what was contemplated in that? And then third piece, how does that
16 compare to the Street estimates and whether you're comfortable with
17 that?

18 <A: Jereme M. Sylvain> Sure. Yes. I think last time we spoke, the
19 question was how you think about the estimates in Q2. We don't guide
20 the quarters. So we said things are reasonable. I think it's a reasonable
21 outcome. ***And in terms of the full year, as of the last quarter, when we
22 issued our earnings, we raised our guidance.*** And so that should give
23 -- ***we obviously beat the Street expectations in the first quarter, raised
24 guidance and continue to do well.*** So I think from that point of view, ***I
25 think we're happy with where we are. We're happy with our full year
26 guidance.*** We don't guide to the quarters, but we were very comfortable
27 with where folks are sitting for the quarter.

28 (Emphasis added).

30. The above statements in Paragraphs 20 to 29 were false and/or
materially misleading. Defendants created the false impression that they possessed
reliable information pertaining to the Company's projected revenue outlook and
anticipated growth while also minimizing risk from seasonality and macroeconomic

1 fluctuations. In truth, DexCom’s optimistic reports of growth, earnings potential,
2 and anticipated margins fell short of reality as they relied far too heavily on the
3 Company’s ability to attract new customers while keeping existing distribution
4 channels afloat. DexCom was simply not equipped to execute on their perceived
5 growth potential.

6 **C. The Truth Emerges during DexCom’s Second Quarter Earnings**
7 **Report**

8 July 25, 2024

9 31. On July 25, 2024, Defendants released their Q2FY24 results below
10 expectations and lowered FY24 projections as follows:

11 Second Quarter 2024 Financial Highlights:

- 12 • Revenue grew 15% year-over-year to \$1.004 billion on a reported
- 13 basis and 16% year-over-year on an organic basis.
- 14 • U.S. revenue grew 19% and international revenue grew 7% on a
- 15 reported basis and 10% on an organic basis, all on a year-over-year
- 16 basis.
- 17 • GAAP operating income of \$158.0 million or 15.7% of revenue, an
- 18 increase of 100 basis points compared to the second quarter of 2023.
- 19 Non-GAAP operating income of \$195.4 million or 19.5% of
- 20 reported revenue, an increase of 130 basis points compared to the
- 21 second quarter of 2023

22 ...

23 Third Quarter and 2024 Annual Guidance and \$750 Million Share
24 Repurchase Program

25 ...

- 26 • Revenue of approximately \$4.00 - 4.05 billion (11 - 13% organic
- 27 growth)
- 28 • Non-GAAP Gross Profit Margin of approximately 63%
- Non-GAAP Operating Margin of approximately 20%
- Adjusted EBITDA Margin of approximately 29%

1 In addition, to account for certain unique items impacting 2024
2 seasonality, the company is establishing guidance for third quarter
3 2024 Revenue of approximately \$975 million to \$1.00 billion (1 - 3%
4 organic growth).

5 The company also announced a \$750 million share repurchase
6 program in conjunction with second quarter results.

7 32. Acknowledging the setback, CEO Sayer stated: “While Dexcom
8 advanced several key strategic initiatives in the second quarter, our execution did
9 not meet our high standards.”

10 33. During the same-day earnings call, CEO Sayer further elaborated on
11 the Q2 issues that resulted in the missed projections and guide-down, pertinently
12 stating:

13 First, as we've worked through our U.S. sales force realignment
14 expansion, *we have seen our share of new customers fall short of our*
15 *expectations* despite still strong absolute customer additions. Second,
16 *our U.S. revenue per customer has stepped down faster than expected*
17 based on 2 primary drivers: rebate eligibility and channel mix

18 ...

19 U.S. customer growth has remained strong in our pharmacy business as
20 we expand our reach into primary care and type 2 diabetes more
21 broadly. *However, our growth in the DME channel has trailed our*
22 *plan. The DME distributors remain important partners for us in our*
23 *business, and we've not executed well this quarter against these*
24 *partnerships. We need to refocus on those relationships.*

25 Finally, *our international performance was also lighter than*
26 *expectations in the quarter.* While we delivered strong performance in
27 some of our core markets such as the U.K. and France, we saw category
28 growth soften in certain geographies as type 1 penetration advances in
these regions.

(Emphasis added).

1 34. While elaborating on the Company's reduced full-year guidance for
2 2024, Executive VP, CFO, and Chief Accounting Officer Jereme M. Sylvain
3 reiterated these issues, stating, in pertinent part:

4 Turning to guidance. Starting with full year 2024, we are decreasing
5 our revenue guidance to a range of \$4.00 billion to \$4.05 billion,
6 representing organic growth of 11% to 13% for the year. As mentioned
7 earlier, *the compounding effect of our slower-than-expected new*
8 *customer growth in the U.S. DME channel and international*
9 *business as well as increased pharmacy eligibility resulted in the need*
10 *to recalibrate the guide. Our updated guidance reflects these*
11 *dynamics and assumes a longer ramp in productivity in our U.S. sales*
12 *force*. For margins, we are reducing our non-GAAP gross profit margin
guidance to approximately 63%, while maintaining our prior guidance
on non-GAAP operating margin and adjusted EBITDA at
approximately 20% and 29%, respectively.

13 In addition to our annual guidance, we are providing 2 additional data
14 points to help investors and analysts understand some of the unique
15 elements impacting our revised guidance in 2024. First, the impact to
16 new patients from our sales force initiative combined with our revenue
17 per customer trends that Kevin detailed will change the historical
18 seasonality pattern that we have typically experienced. These impacts
19 are expected to reach their peak in the third quarter, with total revenue
20 expected to be between \$975 million and \$1 billion. In conjunction with
21 this revenue outlook, we thought it would be helpful to provide a
22 midyear update on our global active customer base, which we now
23 estimate to be between 2.5 million and 2.6 million. This represents
strong growth over where we finished 2023, though the growth
percentage has decelerated slightly. Our hope is these updates will
provide additional visibility as our team works to implement several of
the areas of focus that we have aligned on over the past month and as
our sales force continues to ramp their efficiency

24 (Emphasis added).

25
26 35. The aforementioned press releases and statements made by the
27 Individual Defendants are in direct contrast to statements they made during the
28 February 8, March 5, April 25, and June 5, 2024 earnings and shareholder calls. On

1 those calls, Defendants continually praised their alleged growth, foreseeing record
2 numbers of new patients and outpacing their prior fiscal year's gross margins, while
3 continually minimizing the risks associated with scaling their customer transition to
4 the G7 platform, as well as those associated with seasonality and the potential impact
5 of the macroeconomic environment on the Company's profitability.

6 36. Investors and analysts reacted immediately to DexCom's revelation.
7 The price of DexCom's common stock declined dramatically. From a closing market
8 price of \$107.85 per share on July 25, 2024, DexCom's stock price fell to \$64.00
9 per share on July 26, 2024, a decline of about 40.66% in the span of just a single
10 day.

11 37. A number of well-known analysts who had been following DexCom
12 lowered their price targets in response to DexCom's disclosures. For example, J.P.
13 Morgan, while dropping their "overweight" rating to neutral and cutting their price
14 target nearly in half, noted that "[t]here's no getting away from the fact that this
15 Thursday's update was a sharp turn in the wrong direction for Dexcom. The number
16 of dynamics that contributed to the shortfall is significant." Ultimately, the analyst
17 concluded that "[w]hile we still walked away from earnings with some unanswered
18 questions, we feel very confident that this is due to multiple self-inflicted issues
19 rather than a market growth issue."

20 38. Similarly, William Blair highlighted their belief that "the reasons for
21 the miss and guide down are (painfully) self-inflicted."

22 39. The fact that these analysts, and others, discussed DexCom's shortfall
23 and below-expectation projections suggests the public placed significant weight on
24 DexCom's prior revenue and sales estimates. The frequent, in-depth discussion of
25 DexCom's guidance confirms that Defendants' statements during the Class Period
26 were material.

27 **D. Loss Causation and Economic Loss**
28

1 40. During the Class Period, as detailed herein, Defendants made
2 materially false and misleading statements and engaged in a scheme to deceive the
3 market and a course of conduct that artificially inflated the price of DexCom's
4 common stock and operated as a fraud or deceit on Class Period purchasers of
5 DexCom's common stock by materially misleading the investing public. Later,
6 Defendants' prior misrepresentations and fraudulent conduct became apparent to the
7 market, the price of DexCom's common stock materially declined, as the prior
8 artificial inflation came out of the price over time. As a result of their purchases of
9 DexCom's common stock during the Class Period, Plaintiff and other members of
10 the Class suffered economic loss, *i.e.*, damages under federal securities laws.

11 41. DexCom's stock price fell in response to the corrective event on July
12 25, 2024, as alleged *supra*. On July 25, 2024, Defendants disclosed information that
13 was directly related to their prior misrepresentations and material omissions
14 concerning DexCom's forecasting processes and growth guidance.

15 42. In particular, on July 25, 2024, DexCom announced results for the
16 second quarter of fiscal year 2024 below expectations and further reduced their own
17 prior guidance for fiscal year by more than significantly below-market growth
18 expectations, reducing their own prior revenue guidance for fiscal year 2024 by more
19 than 6%.

20 **E. Presumption of Reliance; Fraud-On-The-Market**

21 43. At all relevant times, the market for DexCom's common stock was an
22 efficient market for the following reasons, among others:

23 (a) DexCom's common stock met the requirements for listing and was
24 listed and actively traded on the NASDAQ during the Class Period, a highly efficient
25 and automated market;

26 (b) DexCom communicated with public investors via established market
27 communication mechanisms, including disseminations of press releases on the
28 national circuits of major newswire services and other wide-ranging public

1 disclosures, such as communications with the financial press and other similar
2 reporting services;

3 (c) DexCom was followed by several securities analysts employed by
4 major brokerage firms who wrote reports that were distributed to the sales force and
5 certain customers of their respective brokerage firms during the Class Period. Each
6 of these reports was publicly available and entered the public marketplace; and

7 (d) Unexpected material news about DexCom was reflected in and
8 incorporated into the Company's stock price during the Class Period.

9 44. As a result of the foregoing, the market for DexCom's common stock
10 promptly digested current information regarding the Company from all publicly
11 available sources and reflected such information in DexCom's stock price. Under
12 these circumstances, all purchasers of DexCom's common stock during the Class
13 Period suffered similar injury through their purchase of DexCom's common stock
14 at artificially inflated prices, and a presumption of reliance applies.

15 45. Alternatively, reliance need not be proven in this action because the
16 action involves omissions and deficient disclosures. Positive proof of reliance is not
17 a prerequisite to recovery pursuant to ruling of the United States Supreme Court in
18 *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972). All that is
19 necessary is that the facts withheld be material in the sense that a reasonable investor
20 might have considered the omitted information important in deciding whether to buy
21 or sell the subject security.

22 **F. No Safe Harbor; Inapplicability of Bespeaks Caution Doctrine**

23 46. The statutory safe harbor provided for forward-looking statements
24 under certain circumstances does not apply to any of the material misrepresentations
25 and omissions alleged in this Complaint. As alleged above, Defendants' liability
26 stems from the fact that they provided investors with revenue projections while at
27 the same time failing to maintain adequate forecasting processes. Defendants
28 provided the public with forecasts that failed to account for this decline in sales

1 and/or adequately disclose the fact that the Company at the current time did not have
2 adequate forecasting processes.

3 47. To the extent certain of the statements alleged to be misleading or
4 inaccurate may be characterized as forward looking, they were not identified as
5 “forward-looking statements” when made and there were no meaningful cautionary
6 statements identifying important factors that could cause actual results to differ
7 materially from those in the purportedly forward-looking statements.

8 48. Defendants are also liable for any false or misleading “forward-looking
9 statements” pleaded because, at the time each “forward-looking statement” was
10 made, the speaker knew the “forward-looking statement” was false or misleading
11 and the “forward-looking statement” was authorized and/or approved by an
12 executive officer of DexCom who knew that the “forward-looking statement” was
13 false. Alternatively, none of the historic or present-tense statements made by
14 Defendants were assumptions underlying or relating to any plan, projection, or
15 statement of future economic performance, as they were not stated to be such
16 assumptions underlying or relating to any projection or statement of future economic
17 performance when made, nor were any of the projections or forecasts made by the
18 defendants expressly related to or stated to be dependent on those historic or present-
19 tense statements when made.

20 **CLASS ACTION ALLEGATIONS**

21 49. Plaintiff brings this action as a class action pursuant to Federal Rule of
22 Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who
23 purchased or otherwise acquired DexCom’s common stock during the Class Period
24 (the “Class”); and were damaged upon the revelation of the alleged corrective
25 disclosure. Excluded from the Class are defendants herein, the officers and directors
26 of the Company, at all relevant times, members of their immediate families and their
27 legal representatives, heirs, successors or assigns and any entity in which defendants
28 have or had a controlling interest.

1 50. The members of the Class are so numerous that joinder of all members
2 is impracticable. Throughout the Class Period, DexCom's common stock were
3 actively traded on the NASDAQ. While the exact number of Class members is
4 unknown to Plaintiff at this time and can be ascertained only through appropriate
5 discovery, Plaintiff believes that there are hundreds or thousands of members in the
6 proposed Class. Record owners and other members of the Class may be identified
7 from records maintained by DexCom or its transfer agent and may be notified of the
8 pendency of this action by mail, using the form of notice similar to that customarily
9 used in securities class actions. As of July 18, 2024, there were 400 million shares
10 of the Company's common stock outstanding. Upon information and belief, these
11 shares are held by thousands, if not millions, of individuals located throughout the
12 country and possibly the world. Joinder would be highly impracticable.

13 51. Plaintiff's claims are typical of the claims of the members of the Class
14 as all members of the Class are similarly affected by Defendants' wrongful conduct
15 in violation of federal law that is complained of herein.

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

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

23 (a) whether the federal securities laws were violated by Defendants' acts
24 as alleged herein;

25 (b) whether statements made by Defendants to the investing public during
26 the Class Period misrepresented material facts about the business, operations and
27 management of DexCom;

28

1 (c) whether the Individual Defendants caused DexCom to issue false and
2 misleading financial statements during the Class Period;

3 (d) whether Defendants acted knowingly or recklessly in issuing false and
4 misleading financial statements;

5 (e) whether the prices of DexCom's common stock during the Class Period
6 were artificially inflated because of the Defendants' conduct complained of herein;
7 and

8 (f) whether the members of the Class have sustained damages and, if so,
9 what is the proper measure of damages.

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

16 **COUNT I**

17 ***Against All Defendants for Violations of***

18 **Section 10(b) and Rule 10b-5 Promulgated Thereunder**

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

21 56. This Count is asserted against defendants and is based upon Section
22 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated
23 thereunder by the SEC.

24 57. During the Class Period, Defendants engaged in a plan, scheme,
25 conspiracy and course of conduct, pursuant to which they knowingly or recklessly
26 engaged in acts, transactions, practices and courses of business which operated as a
27 fraud and deceit upon. Plaintiff and the other members of the Class; made various
28 untrue statements of material facts and omitted to state material facts necessary in

1 order to make the statements made, in light of the circumstances under which they
2 were made, not misleading; and employed devices, schemes and artifices to defraud
3 in connection with the purchase and sale of securities. Such scheme was intended to,
4 and, throughout the Class Period, did: (i) deceive the investing public, including
5 Plaintiff and other Class members, as alleged herein; (ii) artificially inflate and
6 maintain the market price of DexCom common stock; and (iii) cause Plaintiff and
7 other members of the Class to purchase or otherwise acquire DexCom's securities at
8 artificially inflated prices. In furtherance of this unlawful scheme, plan and course
9 of conduct, Defendants, and each of them, took the actions set forth herein.

10 58. Pursuant to the above plan, scheme, conspiracy and course of conduct,
11 each of the defendants participated directly or indirectly in the preparation and/or
12 issuance of the quarterly and annual reports, SEC filings, press releases and other
13 statements and documents described above, including statements made to securities
14 analysts and the media that were designed to influence the market for DexCom's
15 securities. Such reports, filings, releases and statements were materially false and
16 misleading in that they failed to disclose material adverse information and
17 misrepresented the truth about the Company.

18 59. By virtue of their positions at the Company, Defendants had actual
19 knowledge of the materially false and misleading statements and material omissions
20 alleged herein and intended thereby to deceive Plaintiff and the other members of
21 the Class, or, in the alternative, Defendants acted with reckless disregard for the truth
22 in that they failed or refused to ascertain and disclose such facts as would reveal the
23 materially false and misleading nature of the statements made, although such facts
24 were readily available to Defendants. Said acts and omissions of defendants were
25 committed willfully or with reckless disregard for the truth. In addition, each
26 defendant knew or recklessly disregarded that material facts were being
27 misrepresented or omitted as described above.

1 60. Information showing that Defendants acted knowingly or with reckless
2 disregard for the truth is peculiarly within defendants' knowledge and control. As
3 the senior managers and/or directors of the Company, the Individual Defendants had
4 knowledge of the details of DexCom's internal affairs.

5 61. The Individual Defendants are liable both directly and indirectly for the
6 wrongs complained of herein. Because of their positions of control and authority,
7 the Individual Defendants were able to and did, directly or indirectly, control the
8 content of the statements of the Company. As officers and/or directors of a publicly-
9 held company, the Individual Defendants had a duty to disseminate timely, accurate,
10 and truthful information with respect to DexCom's businesses, operations, future
11 financial condition and future prospects. As a result of the dissemination of the
12 aforementioned false and misleading reports, releases and public statements, the
13 market price of DexCom's common stock was artificially inflated throughout the
14 Class Period. In ignorance of the adverse facts concerning the Company which were
15 concealed by Defendants, Plaintiff and the other members of the Class purchased or
16 otherwise acquired DexCom's common stock at artificially inflated prices and relied
17 upon the price of the common stock, the integrity of the market for the common
18 stock and/or upon statements disseminated by Defendants, and were damaged
19 thereby.

20 62. During the Class Period, DexCom's common stock was traded on an
21 active and efficient market. Plaintiff and the other members of the Class, relying on
22 the materially false and misleading statements described herein, which the
23 defendants made, issued or caused to be disseminated, or relying upon the integrity
24 of the market, purchased or otherwise acquired shares of DexCom's common stock
25 at prices artificially inflated by defendants' wrongful conduct. Had Plaintiff and the
26 other members of the Class known the truth, they would not have purchased or
27 otherwise acquired said common stock, or would not have purchased or otherwise
28 acquired them at the inflated prices that were paid. At the time of the purchases

1 and/or acquisitions by Plaintiff and the Class, the true value of DexCom's common
2 stock was substantially lower than the prices paid by Plaintiff and the other members
3 of the Class. The market price of DexCom's common stock declined sharply upon
4 public disclosure of the facts alleged herein to the injury of Plaintiff and Class
5 members.

6 63. By reason of the conduct alleged herein, Defendants knowingly or
7 recklessly, directly or indirectly, have violated Section 10(b) of the Exchange Act
8 and Rule 10b-5 promulgated thereunder.

9 64. As a direct and proximate result of defendants' wrongful conduct,
10 Plaintiff and the other members of the Class suffered damages in connection with
11 their respective purchases, acquisitions and sales of the Company's common stock
12 during the Class Period, upon the disclosure that the Company had been
13 disseminating misrepresented financial statements to the investing public.

14 **COUNT II**

15 *Against the Individual Defendants*

16 for Violations of Section 20(a) of the Exchange Act

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

19 66. During the Class Period, the Individual Defendants participated in the
20 operation and management of the Company, and conducted and participated, directly
21 and indirectly, in the conduct of the Company's business affairs. Because of their
22 senior positions, they knew the adverse non-public information about DexCom's
23 misstatements.

24 67. As officers and/or directors of a publicly owned company, the
25 Individual Defendants had a duty to disseminate accurate and truthful information,
26 and to correct promptly any public statements issued by DexCom which had become
27 materially false or misleading.
28

1 C. Awarding Plaintiff and the other members of the Class pre-judgment
2 and post-judgment interest, as well as their reasonable attorneys' fees, expert fees
3 and other costs; and

4 D. Awarding such other and further relief as this Court may deem just and
5 proper.

6 **DEMAND FOR TRIAL BY JURY**

7 Plaintiff hereby demands a trial by jury.

8
9 Dated: October 9, 2024

Respectfully submitted,

10 **LEVI & KORSINSKY LLP**

11 /s/ Adam Apton

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