

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

ZETA GLOBAL HOLDINGS CORP., DAVID  
A. STEINBERG, and CHRISTOPHER  
GREINER,

Defendants.

Case No.

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

**DEMAND FOR JURY TRIAL**

Plaintiff (“Plaintiff”), individually and on behalf of all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning Plaintiff, which are alleged upon personal knowledge. Plaintiff’s information and belief is based upon, among other things, his counsel’s investigation, which includes without limitation: (a) review and analysis of regulatory filings made by Zeta Global Holdings Corp. (“Zeta” or the “Company”) with the United States (“U.S.”) Securities and Exchange Commission (“SEC”); (b) review and analysis of press releases and media reports issued by and disseminated by Zeta; and (c) review of other publicly available information concerning Zeta.

### **NATURE OF THE ACTION AND OVERVIEW**

1. This is a class action on behalf of persons and entities that purchased or otherwise acquired Zeta securities between February 27, 2024 and November 13, 2024, inclusive (the “Class Period”). Plaintiff pursues claims against the Defendants under the Securities Exchange Act of 1934 (the “Exchange Act”).

2. Zeta is a marketing technology company. Zeta operates a cloud-based platform for marketers to identify and target potential consumers across a wide range of digital channels. The Company purports to “offer one of the largest proprietary data sets in the U.S.” composed of “an amalgamation of [] private proprietary data, publicly available data and data provided by [a] partner ecosystem.” As of December 31, 2023, the Company’s data set allegedly “contains more than 240 million opted-in individuals in the U.S. and more than 535 million opted-in individuals globally with an average of more than 2,500 attributes per individual, which may be demographic, behavioral, psychographic, transactional, or indicative of preference.”

3. On November 13, 2024, at approximately 1:00 p.m. Eastern Standard Time, market research group Culper Research published a report entitled “Zeta Global Holdings Corp (ZETA):

Shams, Scams, and Spam.” The report alleged that the “integrity of the Company’s data collection and reported financials” is severely undermined by two factors. First, the report alleged that “Zeta has formed ‘two-way’ contracts with third party consent farms wherein the Company simultaneously acts as both a supplier and a buyer of consumer data,” allowing the Company to “flatter reported revenue growth” and indicating possible “round-tripping” of revenue. Second, the report alleged that Zeta’s collects the majority of its customer data from a network of “sham websites that hoodwink millions of consumers each month into handing their data over to Zeta under false pretenses.” For example, the report alleged the Company and its subsidiaries operate a number of fake job boards which are designed to trick individuals into submitting personal data under the pretense of job applications. The report further alleged that the Company’s “most valuable data” comes from these predatory websites, dubbed consent farms, which are “responsible for almost the entirety of the Company’s growth.”

4. On this news, the Company’s stock price fell \$10.46, or 37.07%, to close at \$17.76 per share on November 13, 2024, on unusually heavy trading volume.

5. Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Zeta used two-way contracts to artificially inflate financial results; (2) that Zeta engaged in round trip transactions to artificially inflate financial results; (3) that Zeta utilized predatory consent farms to collect user data; (4) that these consent farms have driven almost the entirety of Zeta’s growth; and (5) that, as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

6. As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, Plaintiff and other Class members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

7. The claims asserted herein arise 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 thereunder by the SEC (17 C.F.R. § 240.10b-5).

8. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

9. Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)). Substantial acts in furtherance of the alleged fraud or the effects of the fraud have occurred in this Judicial District. Many of the acts charged herein, including the dissemination of materially false and/or misleading information, occurred in substantial part in this Judicial District. In addition, its principal executive offices are located in this District.

10. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of a national securities exchange.

### **PARTIES**

11. Plaintiff as set forth in the accompanying certification, incorporated by reference herein, purchased Zeta securities during the Class Period, and suffered damages as a result of the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

12. Defendant Zeta is incorporated under the laws of Delaware with its principal executive offices located in New York, New York. Zeta’s common stock trades on the New York Stock Exchange (“NYSE”) under the symbol “ZETA.”

13. Defendant David A. Steinberg (“Steinberg”) was the Company’s Chief Executive Officer (“CEO”) at all relevant times.

14. Defendant Christopher Greiner (“Greiner”) was the Company’s Chief Financial Officer (“CFO”) at all relevant times.

15. Defendants Steinberg and Greiner (together, the “Individual Defendants”), because of their positions with the Company, possessed the power and authority to control the contents of the Company’s reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. The Individual Defendants were provided with copies of the Company’s reports and press releases alleged herein to be misleading prior to, or shortly after, their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Because of their positions and access to material non-public information available to them, the Individual Defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the positive representations which were being made were then materially false and/or misleading. The Individual Defendants are liable for the false statements pleaded herein.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

16. Zeta is a marketing technology company. Zeta operates a cloud-based platform for marketers to identify and target potential consumers across a wide range of digital channels. The Company purports to “offer one of the largest proprietary data sets in the U.S.” composed of “an amalgamation of [] private proprietary data, publicly available data and data provided by [a]

partner ecosystem.” As of December 31, 2023, the Company’s data set allegedly “contains more than 240 million opted-in individuals in the U.S. and more than 535 million opted-in individuals globally with an average of more than 2,500 attributes per individual, which may be demographic, behavioral, psychographic, transactional, or indicative of preference.”

### **Materially False and Misleading**

#### **Statements Issued During the Class Period**

17. The Class Period begins on February 27, 2024. On that day, Zeta issued a pressed release announcing its financial results for the fiscal year and quarter ended December 31, 2023. The press release touted the Company’s “Fourth Consecutive Year of 20%+ Revenue Growth in 2023.” Specifically the press release stated the following, in relevant part: <sup>1</sup>

#### **Zeta Delivers Fourth Consecutive Year of 20%+ Revenue Growth in 2023**

*Finished 2023 with 10 straight quarters of beating & raising guidance*

- *Delivered revenue of \$210M, up 20% Y/Y in 4Q’23, and \$729M, up 23% Y/Y in 2023*
- *Increased Scaled Customer count 12% Y/Y and Super-Scaled Customer count 27% Y/Y*
- *Grew Scaled Customer ARPU 10% Y/Y to \$1.57M in 2023*
- *Generated cash flow from operating activities of \$27M in 4Q’23, and \$91M in 2023*
- *Guiding to fifth consecutive year of 20%+ revenue growth*

\* \* \*

#### **Full Year 2023 Highlights**

- Total revenue of \$729 million, increased 23% Y/Y.
- Scaled Customer ARPU of \$1.57 million, increased of 10% Y/Y.
- Super Scaled Customer ARPU of \$4.55 million, increased of 1% Y/Y.
- Direct platform revenue mix of 72% of total revenue, compared to 77% in 2022.
- Net Revenue Retention of 111%, compared to 112% in 2022.
- GAAP cost of revenue percentage of 37.7%, increased 120 basis points Y/Y.

---

<sup>1</sup> Unless otherwise stated, all emphasis in bold and italics hereinafter is added, and all footnotes are omitted.

- GAAP net loss of \$187 million, or 26% of revenue, was driven primarily by \$243 million of stock-based compensation. The net loss in 2022 was \$279 million, or 47% of revenue.
  - GAAP loss per share of \$1.20, compared to a loss per share of \$2.01 in 2022.
  - Cash flow from operating activities of \$91 million, compared to \$78 million in 2022.
  - Free Cash Flow<sup>1</sup> of \$55 million, compared to \$39 million in 2022.
  - Repurchased \$15.4 million worth of shares through our share repurchase program.
  - Adjusted EBITDA<sup>1</sup> of \$129.4 million, an increase of 40% compared to \$92.2 million in 2022.
  - Adjusted EBITDA margin<sup>1</sup> of 17.8%, compared to 15.6% in 2022.
18. On February 28, 2024, the Company submitted its annual report for the fiscal year

ended December 31, 2023 on a Form 10-K filed with the SEC, affirming the previously reported financial results (the “2023 10-K”). The 2023 10-K described the Company’s purported revenue recognition policies and procedures, the purported value of its contract assets, and the purported value of its vendor agreements. Specifically, the 2023 10-K stated, in relevant part, the following:

***Revenues***

***Our revenue primarily arises from use of our technology platform via subscription fees, volume-based utilization fees and fees for professional services. Our platform revenue comprised of a mix of direct platform revenue and integrated platform revenue, which leverages API integrations with third parties. For 2023 and 2022, we derived 72% and 77% of our revenues from direct platform revenue, respectively, and 28% and 23% of our revenues from integrated platform revenue, respectively. Revenues are recognized when control of these services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services. Sales and other taxes collected by us are excluded from revenue. Our revenue recognition policies are discussed in more detail under “Critical Accounting Estimates.”***

\* \* \*

***Revenue recognition***

***Revenue arises primarily from our technology platform via subscription fees, volume-based utilization fees and fees for professional services designed to increase our customers’ usage of our technology platform. Sales and other taxes collected by us concurrent with revenue-producing activities are excluded from revenues.***

\* \* \*

*We have certain revenue contracts with our vendors that involve both the purchase and sale of services with a single counterparty. We perform an assessment of the services transferred to determine the independent nature of both the transactions and accordingly revenue and expense are based on the fair value of the services provided or received.*

19. The 2023 10-K further described the Company’s sales, product, and data collection policies, touting the that the Company has “the industry’s **largest opted-in data set** for omnichannel marketing,” allegedly composed of “more than 240 million **opted-in** individuals in the U.S. and more than 535 million **opted-in** individuals globally.” Specifically, the 2023 10-K stated the following, in relevant part:

Our Zeta Marketing Platform, or ZMP, is the largest omnichannel marketing platform with identity data at its core. The ZMP can analyze billions of structured and unstructured data points to predict consumer intent by leveraging sophisticated machine learning algorithms and the industry’s **largest opted-in data set** for omnichannel marketing. The ZMP acts on these insights by connecting with consumers through native integration of marketing channels and API integration with third parties. The ZMP’s data-driven algorithms and processes learn and optimize each customer’s marketing program in real time, producing a ‘flywheel effect’ that enables our customers to test, learn and improve their marketing programs in real time.

\* \* \*

*We have also dedicated significant resources to the goal of building customer trust by developing and implementing programs designed to protect data privacy and to promote a secure technical environment.* The resources we dedicated to this goal include engineers, analysts, lawyers, policy experts and operations specialists, as well as hardware and software from leading vendors and solutions we have designed and built. In particular, we have implemented a number of technical innovations, process enhancements and industry solutions in response to our increased obligations with respect to our data. *For example, we can identify and implement user consent parameters and opt-in or opt-out as applicable and can evaluate whether such consents apply to our various data sources, products or customers.*

The ZMP is built on the following four pillars:

**1. Opted-in Data Set**



Our data set is an amalgamation of our private proprietary data, publicly available data and data provided by our partner ecosystem.

***Our data set contains more than 240 million opted-in individuals in the U.S. and more than 535 million opted-in individuals globally*** with an average of more than 2,500 attributes per individual, which may be demographic, behavioral, psychographic, transactional, or indicative of preference. On average, we ingest more than one trillion content consumption signals per month on a global basis and synthesize this information into hundreds of intent-based audiences, which can then be used to create marketing programs. All this data is managed through a proprietary database structure that has patented flexibility, speed and scalability.

\* \* \*

***The principal way that we collect individual opted-in data is directly from the consumers when they register or interact with our platform (such as the DISQUS commenting system), or with partners' services.*** We also use various tracking technologies, both proprietary and those provided through third-party suppliers in order to connect to individuals across marketing channels for the purpose of targeting consumers and delivering campaigns.

20. On May 6, 2024, Zeta issued a press release announcing its financial results for the quarter ended March 31, 2024. The press release touted the Company's "Accelerating Growth" including "revenue of \$195M, an increase of 24% Y/Y." Specifically the press release stated the following, in relevant part:

#### **Zeta Beats 1Q'24 and Guides to Accelerating Growth in 2024**

- *Delivered revenue of \$195M, an increase of 24% Y/Y*
- *Grew total Scaled Customer count to 460, an increase of 8 Q/Q, and Super Scaled Customer count to 144, an increase of 13 Q/Q*
- *Expanded quarterly Scaled Customer ARPU 11% Y/Y to \$416K*
- *Generated cash flow from operating activities of \$25M, an increase of 23% Y/Y, and Free Cash Flow of \$15M, an increase of 51% Y/Y*
- *Raising guidance for each quarter of 2024 with the full year revenue growth rate expected to accelerate*

\* \* \*

#### **First Quarter 2024 Highlights**

- Total revenue of \$195 million, increased 24% Y/Y.
- Scaled Customer count increased to 460 from 452 in 4Q'23 and 411 in 1Q'23.
- Super-Scaled Customer count increased to 144 from 131 in 4Q'23 and 110 in 1Q'23.
- Quarterly Scaled Customer ARPU of \$416,000, increased 11% Y/Y.
- Quarterly Super-Scaled Customer ARPU of \$1.12 million, decreased 3% Y/Y.
- Direct platform revenue mix of 67% of total revenue, compared to 73% in 4Q'23, and compared to 71% in 1Q'23.
- GAAP cost of revenue percentage of 39.4%, decreased 80 basis points Q/Q, and increased 490 basis points Y/Y.
- GAAP net loss of \$40 million, or 20% of revenue, driven primarily by \$53 million of stock-based compensation. The net loss in 1Q'23 was \$57 million, or 36% of revenue.
- GAAP loss per share of \$0.23, compared to a loss per share of \$0.38 in 1Q'23.
- Cash flow from operating activities of \$25 million, compared to \$20 million in 1Q'23.
- Free Cash Flow of \$15 million, compared to \$10 million in 1Q'23.
- Repurchased \$3.5 million worth of shares through our share repurchase program.
- Adjusted EBITDA of \$30.5 million, increased 27% Y/Y compared to \$24.0 million in 1Q'23.
- Adjusted EBITDA margin of 15.6%, compared to 15.3% in 1Q'23.

21. On May 7, 2024, the Company submitted its quarterly report for the period ended March 31, 2024 on a Form 10-Q filed with the SEC, affirming the previously reported financial results. The quarterly report described the Company's purported revenue recognition policies, the

purported value of its contract assets, and the purported valued of its vendor agreements.

Specifically, the quarterly report stated, in relevant part:

### **Revenue Recognition**

*Revenue arises primarily from the Company's technology platform via subscription fees, volume-based utilization fees and fees for professional services designed to maximize the customer usage of technology.*

*Revenues are recognized when control of these services is transferred to the customers, in an amount that reflects the consideration we expect to be entitled to an exchange for those services.* Sales and other taxes collected by the Company concurrent with revenue-producing activities are excluded from revenues.

\* \* \*

### **Contract assets and liabilities**

Contract assets represent revenue recognized for contracts that have not been invoiced to customers. *Total contract assets were \$7,770 and \$5,346 as of March 31, 2024 and December 31, 2023*, respectively, and are included in the account receivables, net, in the condensed unaudited consolidated balance sheets.

Contract liabilities consists of deferred revenue that represent amounts billed to the customers in excess of the revenue recognized. Deferred revenue is subsequently recorded as revenues when earned in accordance with the Company's revenue recognition policies. During the three months ended March 31, 2024 and 2023, the Company billed and collected \$3,382 and \$3,096 in advance, respectively, and recognized \$2,228 and \$1,616, respectively, as revenues. As of March 31, 2024 and December 31, 2023, the deferred revenue were \$4,455 and \$3,301, respectively.

22. On July 31, 2024, Zeta issued a press release announcing its financial results for the quarter ended June 30, 2024. The press release touted the Company's "Accelerate[d] Revenue Growth" including "record quarterly revenue of \$228M, up 33% Y/Y." Specifically the press release stated the following, in relevant part:

#### **Zeta Accelerates Revenue Growth and Achieves the "Rule of 50" in 2Q'24**

- *Delivered record quarterly revenue of \$228M, up 33% Y/Y and \$16M better than guidance*
- *Grew total Scaled Customer count to 468, an increase of 8 Q/Q and 43 Y/Y*

- *Increased quarterly Scaled Customer ARPU to \$479K, up 22% Y/Y, 2x faster than 1Q'24*
- *Generated cash flow from operating activities of \$31M, an increase of 51% Y/Y, and Free Cash Flow of \$20M, an increase of 53% Y/Y*
- *Raising 2024 revenue guidance by \$25M to a midpoint of \$925M or 27% Y/Y growth*

\* \* \*

## **Second Quarter 2024 Highlights**

- Total revenue of \$228 million, increased 33% Y/Y.
- Scaled Customer count increased to 468 from 460 in 1Q'24 and 425 in 2Q'23.
- Super-Scaled Customer count of 144 compared to 144 in 1Q'24 and 118 in 2Q'23.
- Quarterly Scaled Customer ARPU of \$479,000, increased 22% Y/Y.
- Quarterly Super-Scaled Customer ARPU of \$1.3 million, increased 18% Y/Y.
- Direct platform revenue mix of 67% of total revenue, compared to 67% in 1Q'24, and 75% in 2Q'23.
- GAAP cost of revenue percentage of 40%, increased 50 basis points Q/Q, and increased 390 basis points Y/Y.
- GAAP net loss of \$28 million, or 12% of revenue, driven primarily by \$52 million of stock-based compensation. The net loss in 2Q'23 was \$52 million, or 30% of revenue.
- GAAP loss per share of \$0.16, compared to a loss per share of \$0.34 in 2Q'23.
- Cash flow from operating activities of \$31 million, compared to \$21 million in 2Q'23.
- Free Cash Flow 1 of \$20 million, compared to \$13 million in 2Q'23.
- Repurchased \$2.9 million worth of shares through our share repurchase program.

- Adjusted EBITDA 1 of \$38.5 million, increased 44% Y/Y compared to \$26.8 million in 2Q'23.
- Adjusted EBITDA margin 1 of 16.9%, compared to 15.6% in 2Q'23.

23. On August 1, 2024, the Company submitted its quarterly report for the period ended June 30, 2024 on a Form 10-Q filed with the SEC, affirming the previously reported financial results. The quarterly report described the Company's purported revenue recognition policies, the purported value of its contract assets, and the purported valued of its vendor agreements. Specifically, the quarterly report stated, in relevant part:

### **Revenue Recognition**

*Revenue arises primarily from the Company's technology platform via subscription fees, volume-based utilization fees and fees for professional services designed to maximize the customer usage of technology.*

*Revenues are recognized when control of these services is transferred to the customers, in an amount that reflects the consideration we expect to be entitled to an exchange for those services.* Sales and other taxes collected by the Company concurrent with revenue-producing activities are excluded from revenues.

*When the Company enters into contracts with third parties in which the Company is acting as both a vendor and a customer, the Company performs an assessment of the services transferred to determine the independent nature of both the transactions. The Company presents the revenue and expense based on the fair value of the services provided or received.*

### *Contract assets and liabilities*

Contract assets represent revenue recognized for contracts that have not been invoiced to customers. ***Total contract assets were \$7,985 and \$5,346 as of June 30, 2024 and December 31, 2023, respectively,*** and are included in the account receivables, net, in the condensed unaudited consolidated balance sheets.

Contract liabilities consists of deferred revenues that represent amounts billed to the customers in excess of the revenue recognized. Deferred revenues are subsequently recorded as revenues when earned in accordance with the Company's revenue recognition policies. ***During the six months ended June 30, 2024 and 2023, the Company billed and collected \$7,878 and \$4,249 in advance, respectively, and recognized \$7,496 and \$3,096, respectively, as revenues. As of June 30, 2024 and December 31, 2023, the deferred revenues were \$3,683 and \$3,301, respectively.***

24. On November 11, 2024, Zeta issued a press release announcing its financial results for the quarter ended September 30, 2024. The press release touted the Company’s “accelerate[d] Revenue Growth to 42%” and “record revenue of \$268M, an increase of 42% Y/Y.” Specifically the press release stated the following, in relevant part:

**Zeta Accelerates Revenue Growth to 42% and  
Achieves the “Rule of 60” in 3Q’24**

- *Delivered record revenue of \$268M, an increase of 42% Y/Y*
- *Grew Direct revenue 41% Y/Y and increased Direct revenue mix by 300 bps Q/Q to 70%*
- *Increased Scaled Customer ARPU to \$557K, a record increase of 33% Y/Y*
- *Generated cash flow from operating activities of \$34M, an increase of 51% Y/Y, and Free Cash Flow of \$26M, an increase of 93% Y/Y*
- *Raising 4Q24 revenue growth guidance to 40% Y/Y*

\* \* \*

**Third Quarter 2024 Highlights**

- Total revenue of \$268.3 million, increased 42% Y/Y, up 31% Y/Y excluding political candidate revenue.
- Scaled Customer count increased to 475 from 468 in 2Q’24 and 440 in 3Q’23.
- Super-Scaled Customer count of 144 compared to 144 in 2Q’24 and 124 in 3Q’23.
- Quarterly Scaled Customer ARPU of \$557,231, increased 33% Y/Y.
- Quarterly Super-Scaled Customer ARPU of \$1.6 million, increased 30% Y/Y.
- Direct platform revenue grew 41% Y/Y at a mix of 70% of total revenue, compared to 67% in 2Q’24, and 70% in 3Q’23.
- GAAP cost of revenue percentage of 39%, decreased 60 basis points Q/Q, and increased 50 basis points Y/Y.

- GAAP net loss of \$17.4 million, or 6% of revenue, driven primarily by \$47.2 million of stock-based compensation. The net loss in 3Q'23 was \$43.1 million, or 23% of revenue.
- GAAP loss per share of \$0.09, compared to a loss per share of \$0.27 in 3Q'23.
- Cash flow from operating activities of \$34.4 million, compared to \$22.8 million in 3Q'23.
- Free Cash Flow 1 of \$25.7 million, compared to \$13.4 million in 3Q'23.
- Repurchased \$3.9 million worth of shares through our share repurchase program.
- Adjusted EBITDA 1 of \$53.6 million, increased 59% Y/Y compared to \$33.7 million in 3Q'23.
- Adjusted EBITDA margin 1 of 20.0%, compared to 17.9% in 3Q'23.

25. On November 12, 2024, the Company submitted its quarterly report for the period ended September 30, 2024 on a Form 10-Q filed with the SEC, affirming the previously reported financial results. The quarterly report described the Company's purported revenue recognition policies, the purported value of its contract assets, and the purported valued of its vendor agreements. The quarterly report further described the Company's acquisition related liabilities including "projections for businesses acquired in its Apptness, [ ] and ArcaMax acquisitions." Specifically, the quarterly report stated, in relevant part:

### **Revenue Recognition**

*Revenue arises primarily from the Company's technology platform via subscription fees, volume-based utilization fees and fees for professional services designed to maximize the customer usage of technology.*

*Revenues are recognized when control of these services is transferred to the customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services.* Sales and other taxes collected by the Company concurrent with revenue-producing activities are excluded from revenues.

*When the Company enters into contracts with third parties in which the Company is acting as both a vendor and a customer, the Company performs an assessment*

*of the services transferred to determine the independent nature of both the transactions. The Company presents the revenue and expense based on the fair value of the services provided or received.*

*Contract assets and liabilities*

Contract assets represent revenue recognized for contracts that have not been invoiced to customers. *Total contract assets were \$11,998 and \$5,346 as of September 30, 2024 and December 31, 2023, respectively*, and are included in the account receivables, net, in the condensed unaudited consolidated balance sheets.

Contract liabilities consists of deferred revenues that represent amounts billed to the customers in excess of the revenue recognized. Deferred revenues are subsequently recorded as revenues when earned in accordance with the Company's revenue recognition policies. *During the nine months ended September 30, 2024 and 2023, the Company billed and collected \$19,104 and \$4,724, respectively, in advance, and recognized \$18,819 and \$4,620, respectively, as revenues. As of September 30, 2024 and December 31, 2023, the deferred revenues were \$3,586 and \$3,301, respectively.*

26. The above statements identified in ¶¶ 17-25 were materially false and/or misleading, and failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that Zeta used two-way contracts to artificially inflate financial results; (2) that Zeta engaged in round trip transactions to artificially inflate financial results; (3) that Zeta utilized predatory consent farms to collect user data; (4) that these consent farms have driven almost the entirety of Zeta's growth; and (5) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

**Disclosures at the End of the Class Period**

27. On November 13, 2024, at approximately 1:00 p.m. eastern standard time, market research group Culper Research published a report entitled "Zeta Global Holdings Corp (ZETA): Shams, Scams, and Spam." (the "Culper Report"). The Culper Report alleged that the "integrity of the Company's data collection and reported financials" is severely undermined by two factors. First, the Culper Report alleged that "Zeta has formed 'two-way' contracts with third party consent



farms wherein the Company simultaneously acts as both a supplier and a buyer of consumer data” allowing the Company to “flatter reported revenue growth” and indicating possible “round-tripping” of revenue. Second, the Culper Report alleged that Zeta’s collects the majority of its customer data from a network of “sham websites that hoodwink millions of consumers each month into handing their data over to Zeta under false pretenses.” For example, the Culper Report alleged the Company and its subsidiaries operate a number of fake job boards which are designed to trick individuals into submitting personal data under the pretense of job applications. The Culper Report further alleged that the Company’s “most valuable data” comes from these predatory websites, dubbed consent farms, which are “responsible for almost the entirety of the Company’s growth.”

28. Specifically, the Culper Report stated, as follows, in relevant part:

**Zeta Global Holdings Corp (ZETA): Shams, Scams, and Spam**

We are short Zeta Global Holdings Corp (“ZETA”, “the Company”) for two distinct, but related reasons, each of which we believe undermine the integrity of the Company’s data collection and reported financials. *First, we believe Zeta has formed “two-way” contracts with third party consent farms wherein the Company simultaneously acts as both a supplier and a buyer of consumer data, not only allowing the Company to flatter reported revenue growth, but raising round tripping concerns. Second, we believe that Zeta has quietly spun up its own network of consent farms i.e., sham websites that hoodwink millions of consumers each month into handing their data over to Zeta under false pretenses, baited by job applications, stimulus money, or other rewards that simply do not exist.* We believe that these consent farms have driven almost the entirety of Zeta’s growth over the past 2+ years and now represent 56% of reported Adj. EBITDA.

\* \* \*

*Our report presents substantial evidence to suggest that Zeta holds additional “two-way” contracts with its advertising partners, many of which are other consent farms.* For example, Zeta-run websites disclose that the Company sells customer data to Digital Media Solutions (“DMS”), which went bankrupt in September 2024. We uncovered an October 2024 bankruptcy filing in which DMS names “Zeta: Apptness” as a “major customer”, suggesting that *the two groups are selling data back and forth, i.e., de facto round-tripping.* Zeta has not disclosed the extent of these “two-way” contracts – after all, the Company has kept quiet about its massive consent farm operation in the first place – but we counted at least 20 consent farming websites that Zeta lists among its partners.

\* \* \*

We uncovered at least 40 websites run by Apptness and Arcamax – with names such as higherincomejobs.com, onlygreatjobs.com, stimmoney.com, and unclaimedmoneyinfo.com – that ***bait visitors into disclosing data to Zeta under the promise of job applications, stimulus checks, or other rewards that don't actually exist.*** These are massive operations: SimilarWeb data reveals that these sites have received an astounding 158.7 million visits from 85.9 million unique visitors in the past year alone.

\* \* \*

We believe these consent farms have become critical to Zeta's business. One former employee told us that on a combined basis, Apptness and Arcamax were internally expected to generate \$300 million in revenues after 2 years under Zeta's control.

\* \* \*

***[Using a reverse website lookup service, we found that Apptness Media owns at least 3 websites, each of which appear to be job board websites, including higherincomejobs.com and higherincomejobs.net. In December 2023, Apptness filed a Florida fictitious name registration for "Higher Income Jobs", corroborating its ownership:***

The image shows two screenshots side-by-side. The left screenshot is titled "Reverse Whois results for apptness" and lists three domains: bestonlygreatjobs.com (created 2020-02-04), higherincomejobs.net (created 2017-03-20), and onlygreatjobssolutions.com (created 2020-01-20). The domain higherincomejobs.net is highlighted with a red box. A red arrow points from this box to the right screenshot. The right screenshot is titled "Fictitious Name to be Registered: HIGHER INCOME JOBS" and contains registration details for Apptness Media Group, LLC, including the mailing address (160 W CAMINO REAL #682, BOCA RATON, FL 33432), Florida County of Principal Place of Business (MULTIPLE), and the filing date (Dec 05, 2023) by the Secretary of State.

Domain Name	Creation Date
bestonlygreatjobs.com	2020-02-04
higherincomejobs.net	2017-03-20
onlygreatjobssolutions.com	2020-01-20

**Fictitious Name to be Registered: HIGHER INCOME JOBS**

Mailing Address of Business: 160 W CAMINO REAL #682 BOCA RATON, FL 33432

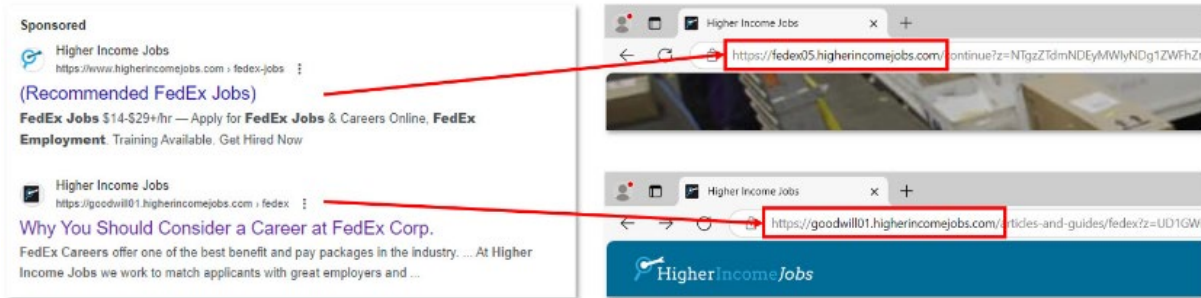
Florida County of Principal Place of Business: MULTIPLE

FEI Number:

Owner(s) of Fictitious Name:  
APPTNESS MEDIA GROUP, LLC  
399 NW 2ND AVE, STE#100  
BOCA RATON, FL 33432  
Florida Document Number: L15000129486  
FEI Number: 61-1124388

**FILED  
Dec 05, 2023  
Secretary of State**

At first glance, higherincomejobs.com appears to be a run-of-the-mill job board. However, the vast majority of website visitors do not land directly on the higherincomejobs.com home page, as one might expect from someone using the website like they do LinkedIn. Instead, SimilarWeb data shows that 98% of inbound website visitors land on subdomains such as “amazon03.higherincomejobs.com”, “fedex05.higherincomejobs.com” or “goodwill01.higherincomejobs.com” as illustrated below:



*Once visitors land on one of these pages, they are baited into submitting their personal information, as the sites blatantly rip off logos from would-be employers such as FedEx, despite having no affiliation with the employer.*

We visited numerous higherincomejobs.com listings, and rather than being met with genuine job applications, *every single link we followed led us instead to “dummy” pages designed to reap our personal information*

\* \* \*

*We cross-referenced common addresses, phone numbers, and corporate records to find at least 40 websites that appear to be run by Apptness*

\* \* \*

[For example] unclaimedmoneyinfo.com [which] dangles the prospect of “unclaimed money” to its visitors, only to collect users’ data, much like we saw of the sham job listings offered by higherincomejobs.com.



*SimilarWeb data further estimates that in total, over the last twelve months (ended October 2024) these websites collectively received an astounding 158.7 million from 85.9 million unique visitors.*

#	Website	Date Registered	Last Updated	LTM Visits (Ms)	LTM Unique Visitors (Ms)
1	higherincomejobs.com	Sep-16	Sep-24	62.2	36.2
2	onlygreatjobs.com	Dec-17	Nov-23	43.0	20.1
3	stimmoney.com	Mar-20	Feb-24	14.7	7.4
4	freshcareerfinder.com	Aug-16	Jul-24	12.7	6.1
5	unclaimedmoneyinfo.com	Jul-20	Jun-24	9.8	5.6
6	apptrck.com	Mar-20	Feb-24	8.7	5.7
7	eligibilitylookup.com	Sep-20	Aug-24	2.0	1.3
8	arcamaxjobs.com	Apr-22	Apr-23	1.6	1.2
11	jobzoodle.com	Nov-21	Oct-24	1.2	0.8
9	topjobofferstoday.com	May-23	Apr-24	0.9	0.4
10	signupconfirmed.com	Jun-22	May-24	0.8	0.6
14	bingearcamax.com	Sep-22	Jul-24	0.5	0.3
13	localcareerz.com	Dec-20	Nov-23	0.3	0.2
12	mybestjobmatch.com	May-23	Apr-24	0.3	0.2
15	americanjobfinder.com	Dec-20	Nov-23	n/a	n/a
16	yourmorningtea.com	Feb-21	Dec-23	n/a	n/a
17	americanresourcehub.com	Feb-21	Jan-24	n/a	n/a
18	welcomeconfirmation.com	Jun-22	May-24	n/a	n/a
19	<b>betterincomesearch.com</b>	Sep-22	Aug-24	n/a	n/a
20	<b>hijnow.com</b>	Feb-23	Jan-24	n/a	n/a
21	<b>getmorehigherincomejobs.com</b>	Feb-23	Jan-24	n/a	n/a
22	<b>higherincomeplans.com</b>	Mar-23	Feb-24	n/a	n/a
23	<b>higherincomejobsworld.com</b>	Mar-23	Feb-24	n/a	n/a
24	<b>finesthigherincomejobsonline.com</b>	Mar-23	Feb-24	n/a	n/a
25	<b>preferablehigherincomejobs.com</b>	Mar-23	Feb-24	n/a	n/a
26	getworkfromhomejobs.com	May-23	Apr-24	n/a	n/a
27	searchjobsdirect.com	May-23	Apr-24	n/a	n/a
28	topdollarcareers.com	May-23	Apr-24	n/a	n/a
29	<b>higherjobupdates.com</b>	Jul-23	Jun-24	n/a	n/a
30	<b>moreincomejobs.com</b>	Jul-23	Jul-24	n/a	n/a
31	<b>earnhigherincomes.com</b>	Jul-23	Jul-24	n/a	n/a
32	<b>gohigherincomejobsprime.com</b>	Oct-23	Nov-24	n/a	n/a
33	<b>higherincomejobscareers.com</b>	Oct-23	Nov-24	n/a	n/a
34	<b>gethigherincomejobonline.com</b>	Mar-24	Mar-24	n/a	n/a
35	<b>highincomecareeroptions.com</b>	Apr-24	Apr-24	n/a	n/a
36	<b>eliteearningopportunities.com</b>	Apr-24	Apr-24	n/a	n/a
37	<b>tophigherincomejobsforu.com</b>	May-24	May-24	n/a	n/a
38	<b>higherincomejobsupdate.com</b>	May-24	May-24	n/a	n/a
39	<b>higherincomejobsresult.com</b>	May-24	May-24	n/a	n/a
40	registerednursingcareers.com	Jun-24	Jun-24	n/a	n/a
<b>TOTAL</b>				<b>158.7</b>	<b>85.9</b>

\* *bolded domains auto-redirect to higherincomejobs.com or other ZETA websites*

*n/a listed are redirects and/or insignificant web traffic less than 100,000 visits in the LTM*

\* \* \*

**We Estimate Zeta’s Consent Farms Have Driven Almost the Entirety of Revenue Growth Since Being Acquired, Now Represent 56% of EBITDA.**

We believe that Zeta’s consent farming network, spearheaded by Apptness and Arcamax and bolstered by share gains in the wake of the FTC’s charges against Fluent, have driven almost the entirety of Zeta’s revenue growth since being acquired, and now represent 56% of LTM Adjusted EBITDA. A summary of our estimates are shown in the table, with our full commentary below.

<b>Culper Est. ZETA Consent Farm Business</b>	<b>\$ millions</b>
Est. Revenues: Apptness	\$230
Est. Revenues: Arcamax	\$110
Est. Revenues: Fluent share gain	\$63
<b>Est. Total: Consent Farm Revenues</b>	<b>\$403</b>
Est. EBITDA Margin Contribution	23%
<b>Est. Consent Farm EBITDA</b>	<b>\$94</b>
Reported Revenues, LTM ended Q3 2024	\$901
Reported Revenues, LTM ended Q4 2021	\$458
Revenue Growth: Q4 2021 to Q3 2024	\$443
Reported Adj. EBITDA, LTM ended Q3 2024	\$167
<b>Consent Farms as % of Revenue Growth</b>	<b>91%</b>
<b>Consent Farms as % of Adj. EBITDA</b>	<b>56%</b>

\* \* \*

**Zeta’s “Two-Way” Relationships with Third Party Consent Farms Raise Revenue Round-Tripping Concerns, In Our View**

We are not only concerned by the problematic ways in which Zeta appears to collect customer data and its significant impact on the business, but by the Company’s “two-way” relationships with third-party consent farms, which we believe raises revenue round-tripping concerns.

**Kubient: Sources Suggest Zeta is Customer-1 in DOJ Round-Tripping Fraud Complaint**

In September 2024, former Kubient (OTC:KBNT) CEO Paul Roberts pled guilty to accounting fraud charges in connection with Kubient’s scheme to “improperly recognize more than \$1.3 million in fraudulent revenue” representing “over 94% of Kubient’s reported revenue” ahead of its 2020 IPO. According to the complaint, in October 2019, Kubient formed an agreement with an unnamed “Company-1” to round-trip revenues between the two companies, without either company ever actually providing services to the other.

\* \* \*

Zeta disclosed in its Q2 2023 Form 10-Q that:

*“We and members of our senior executive team have received subpoenas from the Securities and Exchange Commission in connection with an investigation into Kubient, Inc., a company we worked with prior to our initial public offering, and from the United States Attorney’s Office for the Southern District of New York, which is conducting a parallel investigation. The amount of business that we conducted with Kubient was quantitatively insignificant to Zeta and we have not worked with Kubient since 2020. We are cooperating with the investigation.”*

Based on this disclosure as well as conversations with those familiar, *we find it highly probable that Zeta is the unnamed “Company-1” mutual beneficiary referenced in the DOJ complaint.* We also note that the now-charged Roberts and Steven Gerber, Current President and COO at Zeta, previously worked together at Tranzact Media, which was also co-founded by Zeta’s former President Michael Dimaio.

\* \* \*

### **Zeta’s Own Disclosures Confirm: The Company Has Two-Way Deals With Many Other Consent Farms, Many of Which Have Incestuous Relationships with Zeta**

Zeta holds itself out to investors as servicing large enterprises, yet our review of the Company’s customers – as disclosed by the Company itself – reveals that Zeta also sells leads to third party consent farms, many of whom also appear to serve as suppliers to Zeta. See for example that Higher Income Jobs discloses its list of third party advertising partners, while this same list can be found on other Apptness-run websites. As shown, many of Zeta’s “third party advertising partners” are themselves consent farms[.]

\* \* \*

### **In 2023, Zeta’s Auditor Identified a Critical Audit Matter Related to Revenue Recognition on these Two-Way Contracts. Further Language Suggests They are Numerous**

In Zeta’s 2023 Form 10-K, the Company disclosed for the first time a critical audit matter related to revenue recognition “on contracts with third parties in which the Company is acting as both a vendor and a customer.

\* \* \*

Zeta’s auditor E&Y then states that the group addressed the critical audit matter by “selecting a sample of contracts for detailed testing wherein the Company is acting as both a vendor and customer...” and “making inquiries of management regarding the nature of the arrangement” among other checks. Setting this aside, *the very fact that Zeta has enough contracts of this nature such that auditors can only evaluate a sample of these contracts corroborates our view that contracts of this nature are widespread.*

*In total, we found at least 20 other consent farming websites that Zeta lists as among its “third party advertising partners.”*

\* \* \*

**Zeta CEO Previously Ran InPhonic, Which Was Charged by the FTC for Misleading Customers, and Formers Were Later Charged with “Round-Tripping” Transactions to Inflate Financials**

We find Zeta’s predatory consent farms and two-way contracts particularly interesting in light of two sets of fraud charges levied against Zeta CEO David Steinberg’s prior company, InPhonic Inc.

Zeta’s long-time CEO and, per his Instagram, full-time socialite David Steinberg co-founded InPhonic Inc alongside Zeta Chairman John Sculley in the dot-com era. InPhonic sold wireless devices and services online until it went bankrupt in 2007. In April 2007, the FTC charged InPhonic, alleging that the company used rebates to bait its consumers into making purchases, then “among other things, failed to provide promised documents needed to obtain rebates, to send out rebate checks in the time promised, and to disclose adequately certain material terms and conditions prior to purchase.”

29. On this news, the Company’s stock price fell \$10.46, or 37.07%, to close at \$17.76 per share on November 13, 2024, on unusually heavy trading volume.

30. On November 13, 2024, after the market closed, Zeta issued a press release denying the allegations of the Culper report based on a “preliminary review and evaluation of the report.”

Specifically, the Company stated, in relevant part:

Zeta is confident in its data collection practices, policies and processes to ensure compliance with applicable laws. We do not operate so-called “consent farms”. Zeta has made significant investments in its data protection, data governance, and privacy oversight and is regularly audited and reviewed by partners and clients. In addition, Zeta reviews the opt-in/opt-out processes and privacy policies of its data partners.

Contrary to the report, the total contribution of Apptness and ArcaMax to Zeta’s business is not material. Together, through the third quarter of 2024, their year-to-date revenue contribution is less than 3% and they make up less than 1% of Zeta’s data assets. These contributions have trended down. As further evidence of the inaccuracies of the report, Digital Media Solutions is not a material customer or partner, as demonstrated by its trailing twelve-month revenue being less than \$200,000 as of September 30, 2024.

## CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class, consisting of all persons and entities that purchased or otherwise acquired Zeta securities between February 27, 2024 and November 13, 2024, inclusive, and who were damaged thereby (the “Class”). Excluded from the Class are Defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendants have or had a controlling interest.

32. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Zeta’s shares actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class. Millions of Zeta shares were traded publicly during the Class Period on the NYSE. Record owners and other members of the Class may be identified from records maintained by Zeta or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

33. Plaintiff’s claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants’ wrongful conduct in violation of federal law that is complained of herein.

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

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



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

(b) whether statements made by Defendants to the investing public during the Class Period omitted and/or misrepresented material facts about the business, operations, and prospects of Zeta; and

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

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

#### **UNDISCLOSED ADVERSE FACTS**

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

38. During the Class Period, Defendants materially misled the investing public, thereby inflating the price of Zeta's securities, by publicly issuing false and/or misleading statements and/or omitting to disclose material facts necessary to make Defendants' statements, as set forth herein, not false and/or misleading. The statements and omissions were materially false and/or

misleading because they failed to disclose material adverse information and/or misrepresented the truth about Zeta's business, operations, and prospects as alleged herein.

39. 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 and/or misleading statements about Zeta's financial well-being and prospects. These material misstatements and/or omissions had the cause and effect of creating in the market an unrealistically positive assessment of the Company and its financial well-being and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and/or 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 when the truth was revealed.

#### **LOSS CAUSATION**

40. Defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

41. During the Class Period, Plaintiff and the Class purchased Zeta's securities at artificially inflated prices and were damaged thereby. The price of the Company's securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

#### **SCIENTER ALLEGATIONS**

42. As alleged herein, Defendants acted with scienter since Defendants knew that the public documents and statements issued or disseminated in the name of the Company were

materially false and/or misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, the Individual Defendants, by virtue of their receipt of information reflecting the true facts regarding Zeta, their control over, and/or receipt and/or modification of Zeta's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Zeta, participated in the fraudulent scheme alleged herein.

### **APPLICABILITY OF PRESUMPTION OF RELIANCE**

#### **(FRAUD-ON-THE-MARKET DOCTRINE)**

43. The market for Zeta's securities was open, well-developed and efficient at all relevant times. As a result of the materially false and/or misleading statements and/or failures to disclose, Zeta's securities traded at artificially inflated prices during the Class Period. On November 11, 2024, the Company's stock price closed at a Class Period high of \$36.74 per share. Plaintiff and other members of the Class purchased or otherwise acquired the Company's securities relying upon the integrity of the market price of Zeta's securities and market information relating to Zeta, and have been damaged thereby.

44. During the Class Period, the artificial inflation of Zeta's shares was caused by the material misrepresentations and/or omissions particularized in this Complaint causing 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 and/or misleading statements about Zeta's business, prospects, and operations. These material misstatements and/or omissions created an unrealistically positive assessment of Zeta and its business, operations, and prospects, thus causing the price of the Company's securities to be artificially inflated at all

relevant times, and when disclosed, negatively affected the value of the Company shares. Defendants' materially false and/or misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at such artificially inflated prices, and each of them has been damaged as a result.

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

(a) Zeta shares met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Zeta filed periodic public reports with the SEC and/or the NYSE;

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

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

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

47. A Class-wide presumption of reliance is also appropriate in this action under the Supreme Court’s holding in *Affiliated Ute Citizens of Utah v. United States*, 406 U.S. 128 (1972), because the Class’s claims are, in large part, grounded on Defendants’ material misstatements and/or omissions. Because this action involves Defendants’ failure to disclose material adverse information regarding the Company’s business operations and financial prospects—information that Defendants were obligated to disclose—positive proof of reliance is not a prerequisite to recovery. All that is necessary is that the facts withheld be material in the sense that a reasonable investor might have considered them important in making investment decisions. Given the importance of the Class Period material misstatements and omissions set forth above, that requirement is satisfied here.

#### **NO SAFE HARBOR**

48. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward looking, they were not identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. In the alternative, to the extent that the statutory safe harbor is determined 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 Zeta who knew that the statement was false when made.

**FIRST CLAIM**

**Violation of Section 10(b) of The Exchange Act and  
Rule 10b-5 Promulgated Thereunder**

**Against All Defendants**

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

50. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Zeta's securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, and each defendant, took the actions set forth herein.

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

52. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Zeta's financial well-being and prospects, as specified herein.

53. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Zeta's value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Zeta and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities during the Class Period.

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

55. Defendants had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to

ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Zeta's financial well-being and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by Defendants' overstatements and/or misstatements of the Company's business, operations, financial well-being, and prospects throughout the Class Period, Defendants, if they did not have actual knowledge of the misrepresentations and/or omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

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

57. At the time of said misrepresentations and/or omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Zeta was experiencing, which were not disclosed by Defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Zeta securities, or, if they had



acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

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

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

## **SECOND CLAIM**

### **Violation of Section 20(a) of The Exchange Act**

#### **Against the Individual Defendants**

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

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

62. In particular, Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

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

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (d) Such other and further relief as the Court may deem just and proper.

#### **JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.