

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MOUSSA YEROUSHALAMI and NECA- IBEW PENSION FUND (THE DECATUR PLAN), On Behalf of Themselves and All Others Similarly Situated,	:	Civil Action No.
	:	
	:	<u>CLASS ACTION</u>
	:	
Plaintiffs,	:	COMPLAINT FOR VIOLATION OF THE FEDERAL SECURITIES LAWS
	:	
vs.	:	
	:	
DHB INDUSTRIES INC., DAVID H. BROOKS, SANDRA HATFIELD and DAWN M. SCHLEGEL,	:	
	:	
Defendants.	:	
	:	<u>DEMAND FOR JURY TRIAL</u>

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Plaintiffs allege the following based upon the investigation of plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by DHB Industries Inc. ("DHB" or the "Company"), as well as regulatory filings and reports, securities analysts' reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE CASE**

1. This is a securities class action on behalf of plaintiffs and all other persons or entities, except for defendants, who purchased or otherwise acquired the publicly traded securities of DHB ("the "Class") between April 21, 2004 and August 29, 2005, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

### **JURISDICTION AND VENUE**

2. Jurisdiction is conferred by §27 of the Exchange Act. The claims asserted herein arise under §§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).

3. Venue is proper in this District pursuant to §27 of the Exchange Act. The corporate headquarters of DHB are located in the District.

4. In connection with the acts and conduct alleged herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce.

### **PARTIES**

5. (a) Plaintiff Moussa Yeroushalami, as set forth in the accompanying certification, incorporated by reference herein, purchased shares of DHB stock at artificially inflated prices during the Class Period and was damaged thereby.

(b) Plaintiff NECA-IBEW Pension Fund (The Decatur Plan), as set forth in the accompanying certification, incorporated by reference herein, purchased shares of DHB stock at artificially inflated prices during the Class Period and was damaged thereby.

6. Defendant DHB designs, manufactures and markets protective armor, through its subsidiaries, Point Blank Body Armor, Inc. (“Point Blank”) and Protective Apparel Corporation of America (“PACA”). DHB maintains its corporate and administrative offices at 400 Post Avenue, Suite 303, Westbury, NY 11590.

7. Defendant David H. Brooks (“Brooks”) is Chairman and Chief Executive Officer of DHB.

8. Defendant Sandra Hatfield (“Hatfield”) is Chief Operating Officer of DHB.

9. Defendant Dawn M. Schlegel (“Schlegel”) is Chief Financial Officer of DHB.

10. The individuals named as defendants in ¶¶7-9 are referred to herein as the “Individual Defendants.”

#### **FRAUDULENT SCHEME AND COURSE OF BUSINESS**

11. Each defendant is liable for (a) making false statements, *or* (b) failing to disclose adverse facts known to him about DHB. Defendants’ fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of DHB publicly traded securities was a success, as it (a) deceived the investing public regarding DHB’s prospects and business; (b) artificially inflated the prices of DHB’s publicly traded securities; and (c) caused plaintiffs and other members of the Class to purchase DHB’s publicly traded securities at inflated prices.

12. On April 21, 2004, the Company issued a press release entitled, “Shareholder Derivative Lawsuit Against DHB Industries Discontinued.” The press release stated in part:

DHB Industries Inc., the market leader in the rapidly growing protective body armor industry, announced today a second shareholder derivative action against DHB and six of its officers and directors brought in October of 2002 has been discontinued

with prejudice. On March 13, 2003, DHB announced the dismissal of another shareholder derivative action against DHB and six of its officers and directors brought by the Plumbers & Pipefitters Local 112 Pension Fund in October of 2002.

With the conclusion of this suit, there are no remaining shareholders or derivative lawsuits outstanding against DHB.

Commenting on the end of the lawsuit, David H. Brooks, Chief Executive Officer of DHB Industries Inc. stated, . . . ***“We will continue to focus on producing the best protective soft body armor in the world and maximizing shareholder value.”***

13. On June 8, 2004, the Company issued a press release entitled, “DHB Industries Announces \$239.4 Million Contract – Award Is the Largest Contract for Armor Ever Issued in the History of Body Armor – Company’s Backlog Swells to a Record \$415 Million.”

14. Defendants disclosed the following in their Form 10-K/A, filed on March 17, 2005:

On January 3, 2005, a class action lawsuit was filed against us in the Circuit Court of the Seventeenth Judicial Circuit in Broward County, Florida by a police organization and individual police officers, because of concerns regarding the effectiveness and durability of body armor with high concentrations of Zylon in the Company’s bullet-resistant soft body armor (vests). In February 2005, we reached a preliminary settlement with respect to the class action lawsuit filed, subject to final court approval. The Company does not expect this settlement to have a material adverse effect on its financial position.

15. On April 15, 2005, defendants issued SEC Form 8K, entitled “Change in Accountant.” The filing stated in part:

On April 8, 2005, DHB Industries, Inc. (the “Company”) was notified that Weiser LLP (“Weiser”) had declined to stand for re-election as the Company’s principal independent accountants. Weiser had served as the Company’s principal independent accountants since August 27, 2003. Notwithstanding its decision not to stand for re-election, Weiser has advised the Company that it intends to complete its audit of the Company’s internal control over financial reporting as of December 31, 2004 and upon completion of such audit, to provide its opinion regarding such controls as of such date (the “Weiser Opinion”).

16. Throughout the Class Period, DHB emphasized the quality of its vests.

17. During the Class Period, defendants knew and concealed that:

(a) continued sales of its body armor product lines could result in substantial costs based on the potential for liability claims;

(b) in spite of indications of the potentially unsafe and defective nature of its body armor, the Company falsely represented the quality and safety of its body armor products;

(c) the Company was unprepared to determine the true financial impact of withdrawal of any of its products; and

(d) shareholder value would be negatively impacted once the true facts about the Company's body armor products became known.

18. Recently, DHB announced it would stop manufacturing and selling certain of its vests due to their being decertified by a government agency and took a write-off. DHB's stock declined on adverse disclosures during the Class Period.

#### COUNT I

##### **For Violation of §10(b) of the Exchange Act and Rule 10b-5 Against All Defendants**

19. Plaintiffs incorporate ¶¶1-18 by reference.

20. During the Class Period, defendants disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

21. Defendants violated §10(b) of the Exchange Act and Rule 10b-5 in that they:

(a) Employed devices, schemes, and artifices to defraud;

(b) Made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) Engaged in acts, practices, and a course of business that operated as a fraud or deceit upon plaintiffs and others similarly situated in connection with their purchases of DHB publicly traded securities during the Class Period.

22. Plaintiffs and the Class have suffered damages in that, in reliance on the integrity of the market, they paid artificially inflated prices for DHB publicly traded securities. Plaintiffs and the Class would not have purchased DHB publicly traded securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' misleading statements.

23. As a direct and proximate result of these defendants' wrongful conduct, plaintiffs and the other members of the Class suffered damages in connection with their purchases of DHB publicly traded securities during the Class Period.

## **COUNT II**

### **For Violation of §20(a) of the Exchange Act Against All Defendants**

24. Plaintiffs incorporate ¶¶1-23 by reference.

25. The Individual Defendants acted as controlling persons of DHB within the meaning of §20(a) of the Exchange Act. By reason of their positions as officers and/or directors of DHB, and their ownership of DHB stock, the Individual Defendants had the power and authority to cause DHB to engage in the wrongful conduct complained of herein. DHB controlled each of the Individual Defendants and all of its employees. By reason of such conduct, the Individual Defendants and DHB are liable pursuant to §20(a) of the Exchange Act.

### **CLASS ACTION ALLEGATIONS**

26. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of all persons who purchased DHB publicly traded securities (the "Class") on the open market during the Class Period. Excluded from the Class are defendants.

27. The members of the Class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court. DHB had more than 45 million shares of stock outstanding, owned by hundreds if not thousands of persons.

28. There is a well-defined community of interest in the questions of law and fact involved in this case. Questions of law and fact common to the members of the Class which predominate over questions which may affect individual Class members include:

- (a) Whether the Exchange Act was violated by defendants;
- (b) Whether defendants omitted and/or misrepresented material facts;
- (c) Whether defendants' statements omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) Whether defendants knew or deliberately disregarded that their statements were false and misleading;
- (e) Whether the prices of DHB's publicly traded securities were artificially inflated; and
- (f) The extent of damage sustained by Class members and the appropriate measure of damages.

29. Plaintiffs' claims are typical of those of the Class because plaintiffs and the Class sustained damages from defendants' wrongful conduct.

30. Plaintiffs will adequately protect the interests of the Class and have retained counsel who are experienced in class action securities litigation. Plaintiffs have no interests which conflict with those of the Class.

31. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray for judgment as follows:

- A. Declaring this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;
- B. Awarding plaintiffs and the members of the Class damages, interest and costs, including counsel fees and expert fees; and
- C. Awarding such equitable/injunctive or other relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiffs demand a trial by jury.

DATED: September \_\_, 2005

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