

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

Plaintiff,

v.

APPLIED OPTOELECTRONICS, INC., CHIH-  
HSIANG (THOMPSON) LIN, and STEFAN J.  
MURRY,

Defendants.

**VIOLATION OF THE FEDERAL  
SECURITIES LAWS**

**JURY TRIAL DEMANDED**

similarly situated, by Plaintiff's undersigned attorneys, for Plaintiff's complaint against Defendants (defined below), alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and information and belief as to all other matters, based upon, *inter alia*, the investigation conducted by and through Plaintiff's attorneys, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Applied Optoelectronics, Inc. ("Applied Optoelectronics" or the "Company"), analysts' reports and advisories about the Company, and information readily obtainable on the Internet. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

### **NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of a class consisting of all persons and entities other than Defendants who purchased or otherwise acquired the publicly traded common stock and/or call options of Applied Optoelectronics or sold put options of Applied Optoelectronics from July 13, 2017 through August 3, 2017, both dates inclusive (the “Class Period”). Plaintiff seeks to recover compensable damages caused by Defendants’ violations of the federal securities laws and to pursue remedies under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder.

### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant to §§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. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1331 and §27 of the Exchange Act.

4. Venue is proper in this judicial district pursuant to §27 of the Exchange Act (15 U.S.C. §78aa) and 28 U.S.C. §1391(b) the Company’s headquarters are located in this judicial district and as a significant portion of Defendants’ actions took place within this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mail, interstate telephone communications and the facilities of the national securities exchange.

## PARTIES

6. Plaintiff, as set forth in the accompanying Certification, purchased the Company's securities at artificially inflated prices during the Class Period and was damaged upon the revelation of the alleged corrective disclosure.

7. Defendant Applied Optoelectronics develops and manufactures advanced optical products which are the building blocks for broadband and fiber access networks primarily for Internet data center, cable television (CATV), and fiber-to-the-home (FTTH) networking end-market. The Company is incorporated in Delaware and its principal executive offices are located at 13139 Jess Pirtle Blvd., Sugar Land, Texas. The Company's securities trade on NASDAQ under the ticker symbol "AAOI."

8. Defendant Chih-Hsiang (Thompson) Lin ("Lin") has been the Company's Chairman of the Board of Directors, Chief Executive Officer, and President throughout the Class Period.

9. Defendant Stefan J. Murry ("Chung") has been the Company's Chief Financial Officer throughout the Class Period.

10. Defendants Lin and Murry are sometimes referred to herein as the "Individual Defendants."

11. Each of the Individual Defendants:

- (a) directly participated in the management of the Company;
- (b) was directly involved in the day-to-day operations of the Company at the highest levels;
- (c) was privy to confidential proprietary information concerning the Company and its business and operations;

- (d) was directly or indirectly involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein;
- (e) was directly or indirectly involved in the oversight or implementation of the Company's internal controls;
- (f) was aware of or recklessly disregarded the fact that the false and misleading statements were being issued concerning the Company; and/or
- (g) approved or ratified these statements in violation of the federal securities laws.

12. The Company is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all of the wrongful acts complained of herein were carried out within the scope of their employment.

13. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

14. The Company and the Individual Defendants are referred to herein, collectively, as the "Defendants."

## SUBSTANTIVE ALLEGATIONS

### Materially False and Misleading Statements

15. On July 13, 2017, the Company issued a press release announcing the Company's expected financial results for the second quarter of 2017 ending June 30, 2017, stating in relevant part:

**Applied Optoelectronics Expects Second Quarter 2017 Results to Exceed Guidance**  
*- Schedules Second Quarter Conference Call August 3, 2017*

**Sugar Land, TX, July 13, 2017 – Applied Optoelectronics, Inc. (NASDAQ:AAOI)**, a leading provider of fiber-optic access network products for the internet datacenter, cable broadband, fiber-to-the-home (FTTH) and telecom markets, today announced certain preliminary unaudited financial results for its second quarter ended June 30, 2017.

*“I’m pleased to announce that we expect to deliver another record quarter with our top and bottom-line results expected to exceed our guidance,” said Dr. Thompson Lin, Applied Optoelectronics, Inc. founder, president and CEO. “Again this quarter, our results were driven by improvement in our manufacturing costs, capacity expansion and solid execution by our production team. We are pleased with our performance and look forward to sharing the additional details of our second quarter results on our conference call in August.”*

#### **Second Quarter 2017 Preliminary Unaudited Financial Results<sup>+</sup>**

- Revenue of approximately \$117.3 million, above the prior outlook of \$106.0 million to \$112.0 million.
- GAAP and non-GAAP gross margin in the range of 45.0% to 45.4%, above the prior non-GAAP outlook of 41.0% to 42.5%.
- GAAP net income in the range from \$28.0 million to \$29.0 million and non-GAAP net income after tax in the range from \$26.6 million to \$27.6 million, above the prior non-GAAP outlook of \$22.2 million to \$24.3 million.
- GAAP fully diluted earnings per share in the range of \$1.37 to \$1.42 and non-GAAP fully diluted earnings per share in the range of \$1.31 to \$1.36, using a weighted-average fully diluted share count of approximately 20.4 million shares. This is above the prior non-GAAP outlook of \$1.09 to \$1.19 per share, using approximately 20.4 million shares.

These are preliminary financial results and remain subject to the completion of the company's customary quarterly close and review procedures. Material adjustments may arise between the date of this press release and the dates on which Applied Optoelectronics announces its second quarter 2017 results and files its Form 10-Q with the SEC.

<sup>(+)</sup>Please refer to the note below on forward-looking statements and the risks involved with such statements as well as the note on non-GAAP financial measures. The prior outlook referenced above was provided in the company’s press release on May 4, 2017.

(Emphasis added).

16. The statements referenced in ¶15 above were materially false and/or misleading because they misrepresented and failed to disclose the following adverse facts pertaining to the Company’s business, operational and financial results, which were known to Defendants or

recklessly disregarded by them. Specifically, Defendants made false and/or misleading statements and/or failed to disclose that: (1) a major customer was reducing its purchases of the Company's 40G receivers; (2) the loss of this major customer's business would have a severe negative impact on the Company's financial performance; and (3) as a result, the Company's public statements were materially false and misleading at all relevant times.

### **The Truth Emerges**

17. On August 3, 2017, the Company issued a press release during after market hours announcing the final financial results for the second quarter of 2017 ending June 30, 2017 stating in relevant part:

#### **Applied Optoelectronics Reports Second Quarter 2017 Results**

**Sugar Land, Texas, Aug. 03, 2017 – Applied Optoelectronics, Inc. (NASDAQ: AAOI)**, a leading provider of fiber-optic access network products for the internet datacenter, cable broadband, fiber-to-the-home (FTTH) and telecom markets, today announced financial results for its second quarter ended June 30, 2017.

"AOI achieved another record performance driven by strong demand for our market-leading datacenter products and continued improvement in our manufacturing costs and capacity expansion," said Dr. Thompson Lin, Applied Optoelectronics, Inc. founder, president and CEO. "Our record gross margin and earnings demonstrate the strength of our business model and deep manufacturing know-how. We believe our ability to leverage our vertical integration and proprietary manufacturing processes to drive greater efficiencies and shorten our production cycle times sets AOI apart from others in the industry."

Lin continued, "We are pleased with our team's continued solid execution in the quarter, which marked our ninth consecutive quarter of generating record datacenter revenue. *However, as we look into the third quarter, we see softer than expected demand for our 40G solutions with one of our large customers that will offset the sequential growth and increased demand we expect in 100G.* We believe AOI has a leading position in the advanced optics market and we continue to expand within our existing customer base as well as engage with new customers for 100G technologies and beyond."

#### **Second Quarter 2017 Financial Summary**

- Total revenue increased to \$117.4 million, up 112% compared with \$55.3 million in the second quarter 2016 and up 22% compared with \$96.2 million in the first quarter of 2017.
- GAAP gross margin increased to 45.4%, up from 31.3% in the second quarter 2016 and 43.1% in the first quarter of 2017. Non-GAAP gross margin increased to 45.5%, up from 31.4% in the second quarter 2016 and 43.2% in the first quarter of 2017.
- GAAP net income increased to \$29.1 million, or \$1.43 per diluted share, compared with net income of \$0.6 million, or \$0.03 per diluted share in the second quarter 2016, and net income of \$19.8 million, or \$1.00 per diluted share in the first quarter of 2017. The effective GAAP income tax rate for the quarter was 15%.
- Non-GAAP net income increased to \$31.3 million, or \$1.54 per diluted share, compared with non-GAAP net income of \$2.8 million, or \$0.16 per diluted share in the second quarter 2016, and non-GAAP net income of \$21.8 million, or \$1.10 per diluted share in the first quarter of 2017.

A reconciliation between all GAAP and non-GAAP information referenced above is contained in the tables below. Please also refer to “Non-GAAP Financial Measures” below for a description of these non-GAAP financial measures.

### **Third Quarter 2017 Business Outlook <sup>(+)</sup>**

For the third quarter of 2017, the company currently expects:

- Revenue in the range of \$107 million to \$115 million.
- Non-GAAP gross margin in the range of 43.0% to 44.5%.
- Non-GAAP net income in the range of \$26.6 million to \$29.4 million, and non-GAAP fully diluted earnings per share in the range of \$1.30 to \$1.43 using approximately 20.5 million shares.

(Emphasis added).

18. On this news, shares of the Company fell by \$33.39 per share or over 34% from its previous closing price to close at \$64.60 per share on August 4, 2017, damaging investors.

19. 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.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

20. 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 those who purchased or otherwise acquired the publicly traded common stock and/or call options of Applied Optoelectronics or sold put options of Applied Optoelectronics during the Class Period (the "Class"); and were damaged upon the revelation of the alleged corrective disclosure. Excluded from the Class are Defendants herein, 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.

21. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, the Company's securities were actively traded on NASDAQ. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by the Company 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.

22. 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.

23. 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. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

24. 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 Defendants' acts as alleged violated the federal securities laws;
- (b) whether Defendants' statements to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of the Company;
- (c) whether Defendants' statements to the investing public during the Class Period omitted material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (d) whether the Individual Defendants caused the Company to issue false and misleading SEC filings and public statements during the Class Period;
- (e) whether Defendants acted knowingly or recklessly in issuing false and misleading SEC filings and public statements during the Class Period;
- (f) whether the prices of the Company's securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- (g) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

25. 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 make 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.

26. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- (a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) the Company's securities are traded in efficient markets;
- (d) the Company's securities were liquid and traded with moderate to heavy volume during the Class Period;
- (e) the Company traded on the NASDAQ, and was covered by multiple analysts;
- (f) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; Plaintiff and members of the Class purchased and/or sold the Company's securities between the time the Defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts; and
- (g) Unexpected material news about the Company was rapidly reflected in and incorporated into the Company's stock price during the Class Period.

27. Based upon the foregoing, Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

28. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 92 S. Ct. 2430 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information, as detailed above.

## COUNT I

### **Violation of Section 10(b) of The Exchange Act and Rule 10b-5 Against All Defendants**

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

30. This Count is asserted against the Company and the Individual Defendants and is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

31. During the Class Period, the Company and the Individual Defendants, individually and in concert, directly or indirectly, 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.

32. The Company and the Individual Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that they: employed devices, schemes and artifices to defraud; 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; and/or engaged in acts, practices and a course of business that operated as a fraud or deceit upon

plaintiff and others similarly situated in connection with their purchases of the Company's securities during the Class Period.

33. The Company and the Individual Defendants acted with scienter in that they knew that the public documents and statements issued or disseminated in the name of the Company were materially false and 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 securities laws. These defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of the Company's allegedly materially misleading statements, and/or their associations with the Company which made them privy to confidential proprietary information concerning the Company, participated in the fraudulent scheme alleged herein.

34. Individual Defendants, who are the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other personnel of the Company to members of the investing public, including Plaintiff and the Class.

35. As a result of the foregoing, the market price of the Company's securities was artificially inflated during the Class Period. In ignorance of the falsity of the Company's and the Individual Defendants' statements, Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of the Company's securities during the Class Period in purchasing the Company's securities at prices that were artificially

inflated as a result of the Company's and the Individual Defendants' false and misleading statements.

36. Had Plaintiff and the other members of the Class been aware that the market price of the Company's securities had been artificially and falsely inflated by the Company's and the Individual Defendants' misleading statements and by the material adverse information which the Company's and the Individual Defendants did not disclose, they would not have purchased the Company's securities at the artificially inflated prices that they did, or at all.

37. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

38. By reason of the foregoing, the Company and the Individual Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the Plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchases of the Company's securities during the Class Period.

## **COUNT II**

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

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

40. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of the Company's business affairs. Because of their senior positions, they knew the adverse non-public information regarding the Company's business practices.

41. As officers and/or directors of a publicly owned company, the Individual Defendants had a duty to disseminate accurate and truthful information with respect to the

Company's financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

42. Because of their positions of control and authority as senior officers, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period. Throughout the Class Period, the Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. The Individual Defendants therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of the Company's securities.

43. Each of the Individual Defendants, therefore, acted as a controlling person of the Company. By reason of their senior management positions and/or being directors of the Company, each of the Individual Defendants had the power to direct the actions of, and exercised the same to cause, the Company to engage in the unlawful acts and conduct complained of herein. Each of the Individual Defendants exercised control over the general operations of the Company and possessed the power to control the specific activities which comprise the primary violations about which Plaintiff and the other members of the Class complain.

44. By reason of the above conduct, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendants as follows:

A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative;

B. Requiring Defendants to pay damages sustained by Plaintiff and the Class by reason of the acts and transactions alleged herein;

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

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

**DEMAND FOR TRIAL BY JURY**

Plaintiff hereby demands a trial by jury.

