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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re BEA SYSTEMS, INC. DERIVATIVE)
LITIGATION)

This Document Relates To:)
All Actions)
_____)

Master File No. C-06-4459 (RMW)

**SECOND AMENDED
CONSOLIDATED
SHAREHOLDER CLASS AND
DERIVATIVE COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiffs Musto Family Trust, Vincent Musto, Trustee, George T. Barcheski, Catherine
2 Molner, by the undersigned attorneys, submit this Amended Consolidated Shareholder Derivative
3 Complaint (the “Complaint”) against the defendants named herein.

4 **NATURE AND SUMMARY OF THE ACTION**

5 1. This is a shareholder’s derivative action brought for the benefit of nominal defendant
6 BEA Systems, Inc. (“BEA Systems” or the “Company”) against certain members of its Board of
7 Directors (the “Board”) and certain of its executive officers seeking to remedy defendants’ breaches
8 of fiduciary duties, unjust enrichment, statutory violations, and other violations of law relating to
9 defendants’ option backdating scheme.

10 2. This Complaint also asserts a class claim against Defendants relating to a recently-
11 announced proposed transaction by Oracle Corporation (“Oracle”) to acquire the Company’s
12 outstanding stock for \$17 per share (the “Oracle Offer”). As a result of the defendants’ backdating
13 scheme and defendants’ failure to adequately pursue the Company’s claims against the unjustly
14 enriched individuals, defendants have failed fully inform themselves as to BEA System’s true value.
15 Therefore, Defendants are incapable of fulfilling their fiduciary duty to make an informed decision
16 to accept or reject the Oracle Offer.

17 3. For several years, a majority of BEA Systems directors, together with its top officers,
18 engaged in a secret scheme to grant undisclosed, in-the-money stock options¹ to themselves and
19 others by backdating, or otherwise manipulating, stock option grants to coincide with historically
20 low closing prices of BEA Systems common stock. Every year of the relevant period, the
21 defendants consistently selected grant dates at or near quarterly lows and/or yearly lows. Moreover,
22 at least 20 out of 24 options granted from late-1998 through 2002 were backdated, eighteen of which
23 were granted to BEA Systems’ top five compensated executives.

24 _____
25 ¹ A stock option is a contract that gives the holder the option to purchase a designated quantity of shares of a
26 company’s stock at a set price called the exercise or strike price. When the option is exercised, the holder acquires a
27 restricted number of shares at the stated price, regardless of the stock’s contemporaneous market price. A stock option
28 is “in-the-money” when the exercise price of an option is below the market price of the underlying stock on the date of
grant.

1 4. As demonstrated below, these perfectly-timed option grants could not have been the
2 result of mere coincidence. They were, in reality, the result of improper and opportunistic option
3 granting practices. Because the Company failed to comply with the Generally Accepted Accounting
4 Principles (“GAAP”) governing the expensing of stock option grants, the backdating scheme had a
5 material effect on BEA’s financial statements from 1998 through the present. As explained *infra*, to
6 the extent the Company failed to record, as a compensation expense, the difference between the
7 price of BEA stock on the date of the actual grant and the “backdated” exercise price of the options,
8 this deliberate omission resulted in the material understatement of the Company’s reported
9 compensation expense measures and a material overstatement of its reported income measures
10 throughout the relevant period.

11 5. The Individual Defendants (defined herein) knowingly and deliberately engaged in a
12 practice of backdating stock option grants to the Option Recipient Defendants (defined herein) in a
13 manner designed to create immediate and risk-free rewards for such recipients in direct
14 contravention of the Company’s shareholder-approved stock option plans and disclosures in
15 Securities and Exchange Commission (“SEC”) filings. By falsifying the date on which options were
16 granted, the Individual Defendants caused the Company to materially understate BEA Systems’
17 expenses and overstate its net income. The Individual Defendants knew, or recklessly disregarded,
18 that because the Company had not recognized a compensation expense for the backdated options,
19 BEA Systems’ reported earnings and expenses were false and misleading and not in compliance
20 with GAAP.

21 6. Indeed, BEA Systems has *admitted* that its officers and directors approved and/or
22 received backdated options. Specifically, in a February 14, 2007 press release (the “February 14,
23 2007 Press Release”), BEA Systems *admitted, among other things, that “the grant date recorded*
24 *by the Company was not the appropriate accounting measurement date, resulting in*
25 *compensation expense that, in most instances, was not recorded.”* (emphasis added).
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28

1 7. As part of the backdating scheme, Defendants falsified the Company's financial
2 statements and proxy statements for at least fiscal 1998 through Q1 Fiscal 2007. In the February 14,
3 2007 Press Release, the Company announced that it expects to "restate its financial statements from
4 Fiscal 1998 through Fiscal 2007, and that it will record non-cash compensation expense, on a pre-tax
5 basis, of between \$340 and \$390 million, with the majority of this expense relating to grants made in
6 the Fiscal 1999 through Fiscal 2002 period."

7 8. Subsequently, on October 10, 2007, the Company admitted that the Company's
8 financial reports will likely be restated to account for approximately *\$425 million* in compensation
9 expenses resulting from the Company's failure to properly account for backdated stock options.
10 This amount represented a significant increase from the prior estimated range of between \$340 and
11 \$390 million.

12 9. By engaging in this scheme, Defendants were able to successfully conceal that BEA
13 was not recording material compensation expenses and was materially overstating the Company's
14 net income and earnings per share and understating its net losses and losses per share.

15 10. In addition to being unjustly enriched by the mere receipt of backdated options,
16 Defendants sold more than 7.8 million shares of BEA Systems stock and collectively realized over
17 \$16 million in gross proceeds, partially through the exercise of these illegally backdated stock option
18 grants and subsequent sales of BEA Systems stock.

19 11. BEA Systems has suffered, and will continue to suffer, significant financial and non-
20 monetary damages and injuries, several of which were identified in a May 16, 2006 report issued by
21 the Center for Financial Research and Analysis, entitled "Options Backdating – Which Companies
22 Are at Risk?":

- 23 • Securities Exchange Commission ("SEC") investigation risk – The SEC
24 has begun information investigations at many companies in recent months
25 and has also begun to call for improved disclosures around all areas of
 executive compensation.
- 26 • Accounting restatement risk – Some companies which have admitted
27 backdating options have accompanied those admissions with financial
 restatements impacting both the balance sheet and earnings.

- 1 • Tax/Cash implications – The change in options from the practice of options
2 backdating may force some companies to restate tax positions for the years
3 in question, which could result in an obligation to pay back taxes.
- 4 • Management credibility risk – If a reputable management team is found to
5 have repeatedly backdated options, thereby enriching themselves at the
6 expense of shareholder, the reputation of management (and the related
7 stock premium for superior management) could take a hit.

8 12. The Individual Defendants’ backdating scheme, not only surreptitiously and illegally
9 lined their own pockets and caused BEA Systems to issue materially false financial statements, but
10 undermined the key purpose of stock option-based executive compensation, *i.e.*, to provide incentive
11 to improve the Company’s performance and increase the Company’s stock price and market
12 capitalization. By manipulating options such that they carried a strike price lower than the trading
13 price of the stock on the date of grant, BEA Systems insiders profited immediately upon the award
14 of the options without doing anything to improve the Company’s business or financial condition – a
15 situation which government officials found clearly improper and illegal.

16 13. In sum, as alleged in detail herein, in gross breach of their fiduciary duties as officers
17 and/or directors of BEA Systems, the Individual Defendants colluded with one another to:

- 18 a. improperly backdate dozens of grants of BEA Systems stock options to BEA
19 Systems Chief Executive Officer Alfred S. Chuang and several other
20 Company executives, in violation of the Company’s shareholder-approved
21 stock option plans;
- 22 b. improperly record and account for the backdated stock options, in violation of
23 GAAP;
- 24 c. improperly take tax deductions based on the backdated stock options, in
25 violation of Section 162(m) of the Internal Revenue, 26 U.S.C. § 162(m)
26 (“Section 162(m)”); and
- 27 d. produce and disseminate to BEA Systems shareholders and the market false
28 financial statements and other false SEC filings that improperly recorded and
accounted for the backdated option grants and concealed the improper
backdating of stock options.

14. As a result of the Individual Defendants’ egregious misconduct, BEA Systems has
sustained millions of dollars in damages, and the recipients of the backdated stock options have
garnered millions of dollars in unlawful profits.

1 19. Nominal defendant BEA Systems is a Delaware corporation with its principal
2 executive offices located at 2315 North First Street, San Jose, California 95131. According to its
3 public filings, BEA Systems is a world leader in enterprise application and service infrastructure
4 software. At all relevant times, BEA Systems had over 500 shareholders of record.

5 **Option Recipient Defendants**

6 20. Defendant Thomas M. Ashburn (“Ashburn”) has served as President, Worldwide
7 Field Organization of the Company since May 2006. Ashburn also served as its Executive Vice
8 President, Worldwide Field Organization from August 2004 to May 2006, as its Executive Vice
9 President, Worldwide Services from February 2002 to August 2004, and as an advisor to the
10 Company for Worldwide Services from August 2001 to February 2002.

11 21. Defendant Carol A. Bartz (“Bartz”) served as a director of BEA Systems from
12 November 1995 to June 2005 and as a member of the Compensation Committee of the Board (the
13 “Compensation Committee”) from 1997 to 2005. Bartz also served as Chief Executive Officer,
14 President, and Chairman of the Board of Directors of Autodesk, Inc., another company that has
15 admitted to actual options backdating, and she has also served as a director and a member of the
16 compensation committee of the Board of Directors of Network Appliance, Inc., another company
17 where options backdating occurred.

18 22. Defendant Barbara J. Britton (“Britton”) served as the Company’s President of E-
19 Commerce Integration Division from August 1999 to 2001. Britton also served in a variety of
20 capacities from 1997 to August 1999, including Vice President of Worldwide Services.

21 23. Defendant Mark T. Carges (“Carges”) has served as Executive Vice President,
22 Business Interactive Division of the Company since October 2005. Carges also served as the Chief
23 Technology Officer of the Company from August 2004 to October 2005 and as the Company’s
24 Executive Vice President of Strategic Global Accounts from January 2003 to August 2004. He also
25 held various positions from February 1996 to January 2003, including head of the Enterprise
26 Framework Division.

1 24. Defendant Sam Cece (“Cece”) served as the Company’s President, Worldwide
2 Services from 2001 to February 2002. Cece also served in a variety of positions with the Company
3 from 1996 to 2001, including President of its E-Commerce Services Division and Vice President and
4 General Manager of the Company's e-commerce server products.

5 25. Defendant Alfred S. Chuang (“Chuang”) co-founded the Company in 1995 and has
6 served as the Company’s Chief Executive Officer since October 2001 and as Chairman of the Board
7 since August 2002. Chuang also served in various capacities at BEA Systems from 1995 to 2001,
8 including President and Chief Operating Officer, President of Worldwide Field Operations,
9 President of BEA WebXpress, Executive Vice President of Product Development, and Chief
10 Technology Officer.

11 26. Defendant William T. Coleman, III (“Coleman”), a founder of the Company, served
12 as the Company’s Chief Customer Advocate from August 2002 to September 2003 and as a
13 consultant from September 2003 to January 2005. Coleman also served as a director of BEA
14 Systems from 1995 to July 2004 and as Chairman of the Board from 1995 to August 2002. Coleman
15 also served as its Chief Executive Officer from 1995 to October 2001 and as its Chief Strategy
16 Officer from October 2001 to August 2002.

17 27. Defendant Mark P. Dentinger (“Dentinger”) has served as Executive Vice President
18 and Chief Financial Officer of the Company since February 2005 and previously served as its Senior
19 Vice President of Finance, Corporate Controller and Principal Accounting Officer. Dentinger also
20 held various positions since February 1999, including Vice President of Finance for Worldwide
21 Services and Vice President of Corporate Finance.

22 28. Defendant Matthew S. Green (“Green”) served as the Company’s President,
23 Worldwide Sales from May 2001 to November 2002. Green also served as a Vice President of the
24 Company in several sales and operations positions from 1996 to May 2001, including Vice President
25 of Worldwide Operations.

26 29. Defendant William M. Klein (“Klein”), according to the February 14, 2007 Press
27 Release, no longer serves as Executive Vice President but will remain at BEA Systems in the
28

1 position of Vice President of Business Planning and Corporate Development. He served as the
2 Company's Executive Vice President of Corporate Development from February 2005 to February
3 2007. Klein also served as Executive Vice President and Chief Financial Officer of the Company
4 from January 2000 to February 2005.

5 30. Defendant Ivan M. Koon ("Koon") served as President of the Company's E-
6 Commerce Application Components Division from November 1999 to July 2002.

7 31. Defendant Joseph H. Menard ("Menard") served as Vice President of the Company's
8 E-Commerce Services Division from October 1999 to January 2000. Menard also served as Vice
9 President of Sales for the Company's Europe, Middle East and Africa region from 1996 to October
10 1999.

11 32. Defendant Tod Nielsen ("Nielsen") served as the Company's Executive Vice
12 President and Chief Marketing Officer from November 2001 to August 2004. Nielsen also served as
13 the Company's Senior Vice President, Developer Programs from August 2001 to November 2001.

14 33. Defendant Edward W. Scott, Jr. ("Scott"), a founder of the Company, served as the
15 Company's President from February 1999 to September 1999. Scott also served as a director from
16 January 1995 to September 1999 and as Executive Vice President of Worldwide Field Operations
17 from January 1995 to February 1999.

18 34. Defendant Robert A. Shipp ("Shipp") served as the Company's President of
19 Worldwide Sales from December 1999 to October 2001.

20 35. Defendant Deborah Stanley ("Stanley") served as President of the Company's
21 eSolutions business unit from 1999 to January 2000 and as its Senior Vice President of Worldwide
22 Field Operations from September 1995 to 1999.

23 36. Defendant Jeanne K. Wu ("Wu") has served as Senior Vice President, Human
24 Resources of the Company since September 2004 and previously served as the Company's Vice
25 President of Human Resources and Director of Human Resources from October 1995 to September
26 2004. According to the February 14, 2007 Press Release, the "Human Resources department will be
27 restructured, and a new Human Resources leader will be recruited. The current Senior Vice
28

1 President of Human Resources will remain with the Company as an employee through a mutually
2 agreed upon transition period.”

3 37. Collectively, defendants Ashburn, Bartz, Britton, Carges, Cece, Chuang, Coleman,
4 Dentinger, Green, Klein, Koon, Menard, Nielsen, Scott, Shipp, Stanley and Wu are referred to
5 herein as the “Option Recipient Defendants.”

6 **Director Defendants**

7 38. Defendant Stewart Gross (“Gross”) has served as a director of BEA Systems since
8 September 1995 and as a member of the Audit Committee of the Board (“Audit Committee”) since
9 at least 1997.

10 39. Defendant William H. Janeway (“Janeway”) has served as a director of BEA Systems
11 since September 1995 and as a member of the Compensation Committee since at least 1997.

12 40. Defendant Dean O. Morton (“Morton”) has served as a director of BEA Systems
13 since March 1996 and as a member of the Audit Committee since at least 1997. Morton also served
14 as a director of KLA Tencor Corp., another company that has also admitted to actual options
15 backdating and expects to restate its financial statements to account for \$400 million in additional
16 stock-based compensation expenses.

17 41. Collectively, defendants Chuang, Gross, Janeway and Morton are referred to herein
18 as the “Director Defendants.”

19 **Individual Defendants**

20 42. Collectively, the Option Recipient Defendants and Director Defendants are referred
21 to herein as the “Individual Defendants.”

22 **DUTIES OF THE INDIVIDUAL DEFENDANTS**

23 43. By reason of their positions as officers and/or directors of the Company and because
24 of their ability to control the business and corporate affairs of the Company, the Individual
25 Defendants owed the Company and its shareholders the fiduciary obligations of good faith, trust,
26 loyalty, and due care, and were and are required to use their utmost ability to control and manage the
27 Company in a fair, just, honest, and equitable manner. The Individual Defendants were and are
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1 required to act in furtherance of the best interests of the Company and its shareholders so as to
2 benefit all shareholders equally and not in furtherance of their personal interest or benefit. Each
3 director and officer of the Company owes to the Company and its shareholders the fiduciary duty to
4 exercise good faith and diligence in the administration of the affairs of the Company and in the use
5 and preservation of its property and assets, and the highest obligations of fair dealing.

6 44. The Individual Defendants, because of their positions of control and authority as
7 directors and/or officers of the Company, were able to and did, directly and/or indirectly, exercise
8 control over the wrongful acts complained of herein.

9 45. To discharge their duties, the Individual Defendants as officers and directors of the
10 Company were required to exercise reasonable and prudent supervision over the management,
11 policies, practices and controls of the Company. By virtue of such duties, the Individual Defendants
12 were required to, among other things:

- 13 a. exercise good faith in ensuring that the affairs of the Company
14 were conducted in an efficient, business-like manner so as to
15 make it possible to provide the highest quality performance of its
16 business;
- 17 b. exercise good faith in ensuring that the Company was operated in
18 a diligent, honest and prudent manner and complied with all
19 applicable federal and state laws, rules, regulations and
20 requirements, including acting only within the scope of its legal
21 authority;
- 22 c. to fully inform themselves of BEA Systems' market value before
23 taking, or agreeing to refrain from taking, action;
- 24 d. to act in the interests of the equity owners;
- 25 e. to maximize shareholder value;
- 26 f. to obtain the best financial and other terms when the Company's
27 independent existence will be materially altered by a transaction;
- 28 g. to act in accordance with their fundamental duties of due care,
good faith and loyalty;
- h. exercise good faith in supervising the preparation, filing and/or
dissemination of financial statements, press releases, audits,
reports or other information required by law, and in examining
and evaluating any reports or examinations, audits, or other

1 financial information concerning the financial condition of the
2 Company;

- 3 i. exercise good faith in ensuring that the Company's financial
4 statements were prepared in accordance with GAAP; and
5 j. refrain from unduly benefiting themselves and other Company
6 insiders at the expense of the Company.

7 46. The Individual Defendants, especially the executive officers and the Audit Committee
8 members, were responsible for maintaining and establishing adequate internal accounting controls
9 for the Company and to ensure that the Company's financial statements were based on accurate
10 financial information. According to GAAP, to accomplish the objectives of accurately recording,
11 processing, summarizing, and reporting financial data, a corporation must establish an internal
12 accounting control structure. Among other things, the Individual Defendants were required to:

- 13 a. make and keep books, records, and accounts, which, in reasonable
14 detail, accurately and fairly reflect the transactions and
15 dispositions of the assets of the issuer; and
16 b. devise and maintain a system of internal accounting controls
17 sufficient to provide reasonable assurances that –
18 (1) transactions are executed in accordance with
19 management's general or specific authorization; and
20 (2) transactions are recorded as necessary to permit
21 preparation of financial statements in conformity with
22 [GAAP].

23 47. BEA Systems' Audit Committee Charter provides that the Audit Committee shall,
24 among other things:

- 25 a. Review the annual audited financial statements with management
26 and the independent auditor, including major issues regarding
27 accounting and auditing principles and practices as well as the
28 adequacy of internal controls that could significantly affect the
Company's financial statements. Recommend to the Board of
Directors that the audited financial statements be included in the
Annual Report and on Form 10-K;
b. Discuss with management the Company's earnings press releases,
including the use of "pro-forma" or "adjusted" non-generally
accepted accounting principles ("GAAP") information, as well as
financial information and earnings guidance provided to analysts
and rating agencies; and

- 1 c. Review disclosures made to the Audit Committee by the
2 Company's Chief Financial Officer and Chief Executive Officer
3 during their certification process for the Form 10-K and Form 10-
4 Q concerning any significant deficiencies in the design or
5 operation of internal controls or material weaknesses therein and
6 any fraud involving management or other employees who have a
7 significant role in the Company's internal controls.

8 **FACTUAL ALLEGATIONS**

9 **Backdating at BEA**

10 48. Over the last eighteen months, numerous companies have come under scrutiny for
11 their stock option granting practices. The secret practice of backdating stock options was exposed
12 on March 18, 2006, when *The Wall Street Journal* published an article entitled "The Perfect
13 Payday," which described stock option backdating practices by a number of companies where their
14 executives had achieved extremely fortuitous stock option paydays -- the likelihood of which defied
15 random chance. *The Wall Street Journal's* analysis focused on financial filings from several high-
16 tech companies and was an extension of recent academic articles which suggested that "backdating
17 [stock options] was widespread, particularly from the start of the tech-stock boom in the 1990s
18 through the Sarbanes-Oxley corporate reform act of 2002."

19 49. As the Securities and Exchange Commission ("SEC") Chairman Christopher Cox
20 testified before the U.S. Senate Committee on Banking, Housing and Urban Affairs on September 6,
21 2006, "backdating" is a practice by which a stock option is publicly reported as having been granted
22 on one date, but is actually backdated weeks or months to a date where the stock price was trading at
23 a lower price. Such backdating allows company executives and stock option grantees to realize
24 immediate and unearned and undisclosed financial gains at the expense of the company and its
25 shareholders.

26 50. On September 6, 2006, at the U.S. Senate Committee Hearing, the Senate Finance
27 Committee Chairman, Senator Chuck Grassley stated that options backdating "is behavior that, to
28 put it bluntly, is disgusting and repulsive. It is behavior that ignores the concept of an 'honest day's
work for an honest day's pay' and replaces it with a phrase that we hear all too often today, 'I'm

1 going to get mine.’ . . . [S]hareholders and rank-and-file employees were ripped off by senior
2 executives who rigged stock option programs – through a process called ‘back-dating’ – to further
3 enrich themselves. And as we have found far too often in corporate scandals of recent years, boards
4 of directors were either asleep at the switch, or in some cases, willing accomplices themselves. . . .”

5 51. In his statement before the Senate Finance Committee, Deputy Attorney General Paul
6 J. McNulty stated that stock option backdating “can only be seen as a brazen abuse of corporate
7 power to artificially inflate the salaries of corporate wrongdoers at the expense of shareholders,” and
8 that, as a result, “corporate reputations have been tarnished and shareholder value has diminished
9 substantially. . . .”

10 52. As the public scrutiny has intensified, backdating has been revealed not only as a
11 practice to maximize the grant recipients’ gain, while concealing company expenses, but also as a
12 tax avoidance vehicle for some executives. Reporting on an analysis written by an economist at the
13 SEC, the *San Jose Mercury News* reported, “[i]n a new wrinkle in the scandal over backdating stock
14 options, an analyst has found evidence that some executives manipulated the exercise dates of their
15 options in order to cheat on their taxes.” Marcy Gordon, SEC: Backdating Done to Avoid Paying
16 More Taxes, *San Jose Mercury News*, December 13, 2006, available online at
17 http://www.mercurynews.com/search/ci_4831931.

18 53. Indeed, like the stock option grants examined by *The Wall Street Journal*, the pattern
19 of option grants identified at BEA Systems is more than randomly fortuitous, and the more likely
20 reason for the extraordinary pattern is that the stock options were improperly backdated.
21

22 **BEA Systems’ Stock Option Granting Process**

23 54. According to the Company’s proxy statements, the Compensation Committee
24 “review[ed] and approve[d] the compensation and benefits for the Company’s executive officers
25 [and] administer[ed] the Company’s stock plans.” The Compensation Committee Charter states that
26 the Compensation Committee has the responsibility, among other things: “[t]o review and approve
27 the level of compensation, including salaries, fees, benefits, executive incentive plans, and
28

1 prerequisites, of the Chief Executive officer and the other executive officers of the Company,
2 including named executive officers,” and “[to] administer the Company's Stock Option and Stock
3 Purchase Plans as in effect and as adopted from time to time by the Board of Directors.”

4 55. According to the Company’s shareholder-approved stock option plans (the “Plans”),
5 including the 1997 Stock Incentive Plan, the exercise price of options “*shall be not less than one*
6 *hundred percent (100%) of the Fair Market Value per Share on the date of grant,*” where fair
7 market value is defined as “the closing price for a Share for the last market trading day prior to the
8 time of the determination.” (emphasis added).

9 56. According to the February 14, 2007 Press Release, “[m]ost options granted between
10 June 1997 and June 2006 were approved via Unanimous Written Consents (“UWCs”).” The
11 effective dates on the UWCs did not always reflect the date of the Compensation Committee’s
12 approval. The Company explained that “[d]uring that time period, the majority of grants were not
13 final as of the effective date stated on the face of the UWC. As a result, the grant date recorded by
14 the Company was not the appropriate accounting measurement date, resulting in compensation
15 expense that, in most instances, was not recorded.”

16 57. Also, in contrast to the Company’s public filings and the Plans, as stated in the
17 February 14, 2007 Press Release, “[i]n some instances, grants were given to . . . officers *without the*
18 *approval of the Compensation Committee,* as required by the Company’s stock option plan and
19 Compensation Committee charter.” (emphasis added).

20 58. Furthermore, “some members of senior management appear to have chosen grant
21 dates with the benefit of hindsight and submitted those grants for approval through UWCs to be
22 executed by the Chief Executive Officer.” By using hindsight, they were able to choose grant dates
23 when the BEA Systems stock price was historically low and therefore favorable to the option
24 recipients. This was also in direct violation of the Plans, not only because they improperly selected
25 the grants dates and determine the grant amount to themselves and other executive officers, but also
26 because the exercise prices of the stock options were lower than fair market value on the actual date
27 of grant.

1 59. Pursuant to APB 25, the applicable GAAP provision at the time of the foregoing
2 stock option grants, if the market price on the date of grant exceeds the exercise price of the options,
3 the company must recognize the difference as an expense.

4 60. Pursuant to Section 162(m), compensation in excess of \$1 million per year, including
5 gains on stock options, paid to a corporation's five most highly-compensated officers is tax
6 deductible only if: (i) the compensation is payable solely on account of the attainment of one or
7 more performance goals; (ii) the performance goals are determined by a compensation committee
8 comprised solely of two or more outside directors; (iii) the material terms under which the
9 compensation is to be paid, including the performance goals, are disclosed to shareholders and
10 approved by a majority of the vote in a separate shareholder vote before the payment of the
11 compensation; and (iv) before any payment of such compensation, the compensation committee
12 certifies that the performance goals and any other material terms were in fact satisfied.

13 61. From at least 1998 to 2003, the current and former CEOs, Chuang and Coleman, and
14 the Compensation Committee members, with the knowledge and approval of the entire Board,
15 knowingly and deliberately violated the terms of the Plans, APB 25 and Section 162(m) by
16 knowingly and deliberately backdating grants of stock options to make it appear as though the grants
17 were made on dates when the market price of BEA Systems stock was lower than the market price
18 on the actual grant dates, thereby benefiting the recipients of the backdated options. The entire
19 Board knowingly and deliberately approved the backdating scheme with knowledge of its
20 consequences, *e.g.*, its effects on BEA Systems' financial statements.

21 **Other Deficiencies in BEA Systems' Stock Option Grants**

22 62. The February 14, 2007 Press Release also revealed that some option grant dates,
23 made prior to April 2003, were incorrect and reflected an earlier "effective date" rather than the
24 actual date of approval. The Company explained that "administrative errors prevented some option
25 grants from being approved in a timely fashion. These errors were subsequently remedied by
26 providing the affected employees with grants effective as of the date the grant would have occurred
27 had no errors been made. . . . The appropriate accounting measurement date for these delayed grants

1 was the date the grants were actually approved, not the earlier date. Recording the appropriate
2 accounting measurement date in many instances would have resulted in compensation expense.”

3 63. Moreover, BEA Systems’ disclosed in the February 14, 2007 Press Release that
4 certain employees were granted stock options before they actually began work at the Company.
5 “[E]mployees were permitted to begin a leave of absence upon being hired, allowing the employees
6 to receive a stock option grant and specific exercise price as of their start date without providing
7 service during the leave of absence.” The Company admitted that this practice violated GAAP,
8 which “requires compensation expense be recorded when options are granted under such
9 circumstances”

10 64. In the February 14, 2007 Press Release, the Company also disclosed that, instead of
11 severance payments, departing employees were given leaves of absence, separation agreements or
12 termination agreements, some of which extended option vesting and exercising privileges. As
13 indicated by the Company, “[u]nder GAAP, such agreements constitute modifications to the original
14 option grants and . . . [t]he Company failed to record the required compensation expense.”

15 65. In further violation of GAAP, as indicated in the February 14, 2007 Press Release,
16 the Company failed to record compensation expenses resulting from the repricing of stock options.
17 “Certain employees were granted options that were later cancelled and either immediately or shortly
18 thereafter reissued at a lower price.” The Company acknowledged that the “purpose appears to have
19 been to give the grantee a lower exercise price.”

20 66. As stated in the February 14, 2007 Press Release, the deficiencies described above
21 “were applicable broadly across the Company’s employee base.”

22 **Backdating of BEA Stock Option Grants**

23 67. As discussed below, sixteen (16) of the twenty (20) total grants from October 14,
24 1998 through July 26, 2002 were backdated as the pattern of grants was more than fortuitous – nine
25 were dated to coincide with the lowest prices of the fiscal year and seven were dated to coincide
26 with the lowest prices of the fiscal quarter.

1 68. From 1998 to 2006, the Compensation Committee, including Defendants Bartz and
2 Janeway, knowingly and deliberately violated the terms of the Plans, APB 25 and Section 162(m) by
3 knowingly and deliberately backdating grants of stock options to make it appear as though the grants
4 were made on dates when the market price of BEA stock was lower than the market price on the
5 actual grant dates, thereby unduly benefiting the recipients of the backdated options. Defendants
6 knew that the publicly reported grant dates and statements that the Company followed APB 25 and
7 granted options with exercise prices equal to the fair market value of BEA stock on the date of grant
8 were false because the grants were in fact backdated. Defendants knowingly and deliberately
9 approved the backdating scheme with knowledge of its consequences, *e.g.*, its effects on BEA's
10 financial statements.

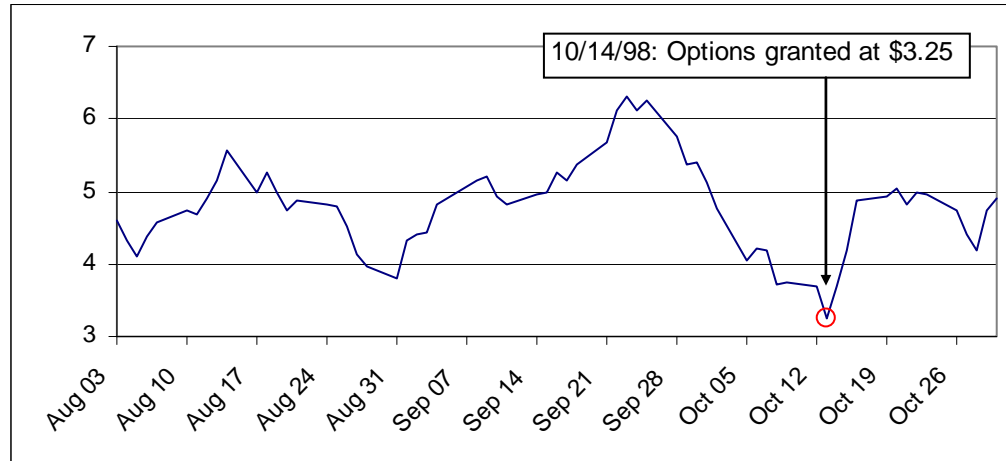
11 69. Between 1998 and 2006, Defendants repeated in proxy statements that the stock
12 option grants made during that period carried an exercise price that was "equal the fair market value
13 per share on the date of grant." However, until 2007, Defendants concealed that the stock option
14 grants were repeatedly and consciously backdated to ensure that the strike price associated with the
15 option grants was below fair market value. Upon information and belief, the Board members and
16 the Compensation Committee members, who issued the grants, and certain defendants (listed
17 herein), would review historical stock prices before issuing stock options to select a grant date when
18 the stock prices was significantly below the current market price. They would then falsify the
19 relevant documents to make it appear as if the stock options were granted on the earlier date.

20 70. As a result, the executive to whom the options were granted could realize the gain
21 observed between the historical and actual grant date while the Company's records would appear to
22 show no difference between the option price and the market price on the purported date of the grant,
23 thereby avoiding both the reporting requirement and the additional compensation expense.

24 71. In addition, in order to maximize remuneration to its officers and employees, and to
25 attract non-employee executives to the Company's ranks without impacting its reported income, the
26 Defendants engaged in a practice of backdating the issue date of stock options to certain key
27 personnel and other BEA employees as admitted in the Company's February 14, 2007 press release.

Backdating of Stock Option Grants

72. The stock options purportedly granted on October 14, 1998 were dated to coincide with BEA Systems’ lowest closing price of the third fiscal quarter of fiscal year 1998, as demonstrated in the following chart:

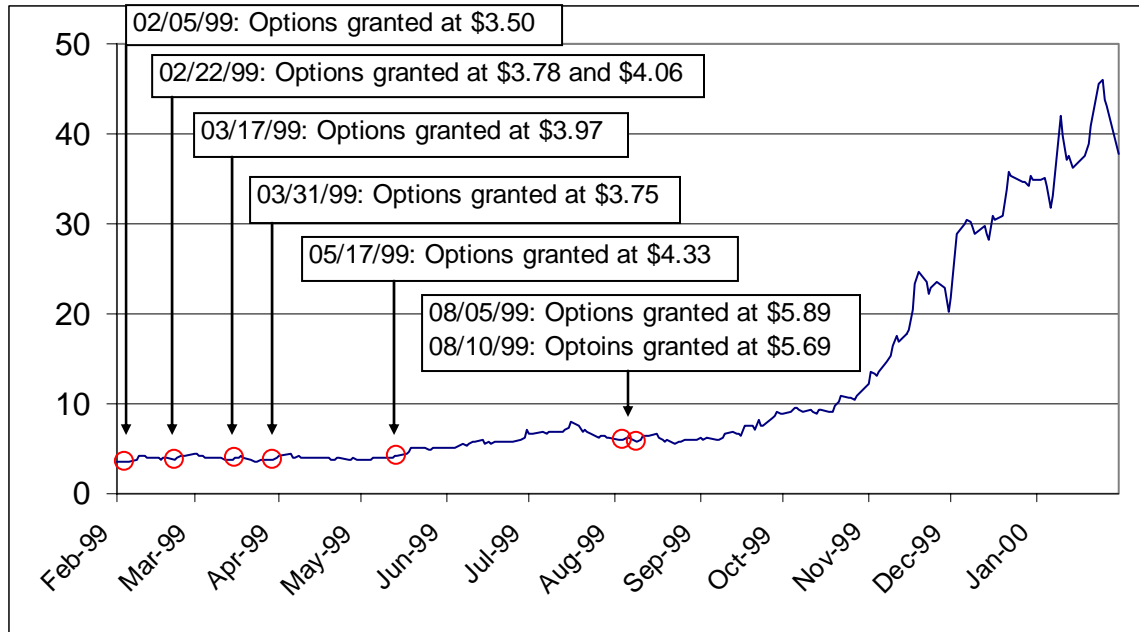


Purported Date of Grant	Name	Exercise Price	Number of Options ²	Adjusted Exercise Price ³	Adjusted Number of Options
10/14/98	Green	\$13.00	25,000	\$3.25	100,000
	Menard	\$13.00	10,000	\$3.25	40,000

73. The Individual Defendants’ backdating was particularly egregious in fiscal year 1999 as the stock option grants purportedly dated February 5, 1999, February 22, 1999, March 17, 1999, March 31, 1999, May 17, 1999, August 5, 1999, and August 10, 1999 were dated at or near BEA Systems’ lowest closing prices of the fiscal year, as demonstrated in the following chart:

² Where the total number of options is unknown, *i.e.* where the phrase “at least” is utilized, the stock option grant did not appear in any proxy statements filed by the Company but was first disclosed in Form 4 filings, which only included the number of options pursuant to the grant that were exercised and left unexercised on the transaction date.

³ The adjusted exercise price and the adjusted number of options have been adjusted for the Company’s 2-for-1 stock splits effective December 20, 1999 and April 25, 2000. All graphs are based on the adjusted exercises prices and adjusted closing prices.



Purported Date of Grant	Name	Exercise Price	Number of Options ⁴
02/05/99	Britton	\$3.50	520,000
	Menard	\$3.50	100,000
	Stanley	\$3.50	400,000
02/22/99 ⁵	Britton	\$3.78	20,000
	Dentinger	\$4.06	at least 74,136
03/17/99	Coleman	\$3.97	300,000
	Chuang	\$3.97	200,000
	Scott	\$3.97	200,000
	Bartz	\$3.97	at least 40,000
03/31/99	Dentinger	\$3.75	at least 18,086
05/17/99	Chuang	\$4.33	2,000,000

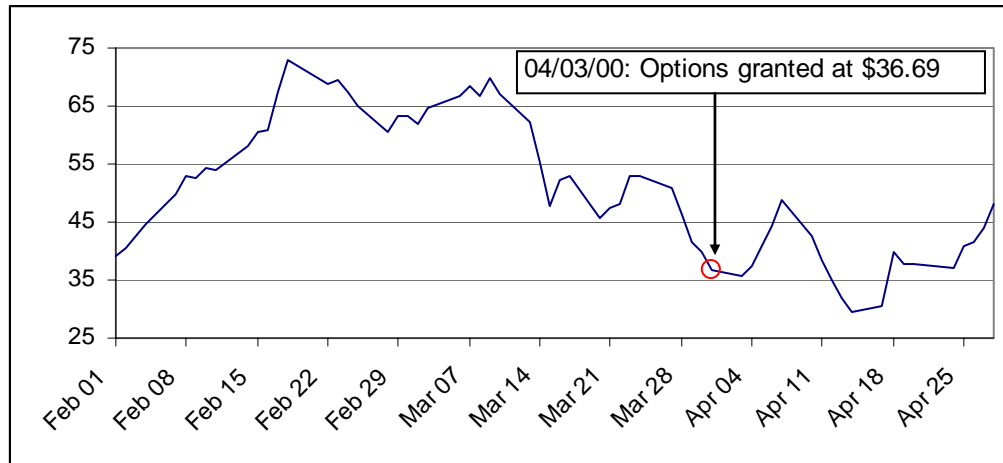
⁴ Where the total number of options is unknown, *i.e.* where the phrase “at least” is utilized, the stock option grant did not appear in any proxy statements filed by the Company but was first disclosed in Form 4 filings, which only included the number of options pursuant to the grant that were exercised and left unexercised on the transaction date.

⁵ The closing price on February 22, 1999 was \$3.78, and the closing price on February 19, 1999 was \$4.06.

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	Cece	\$4.33	20,000
	Wu	\$4.33	at least 4,984
08/05/99	Britton	\$5.89	400,000
	Menard	\$5.89	400,000
	Stanley	\$5.89	400,000
08/10/99	Cece	\$5.69	480,000

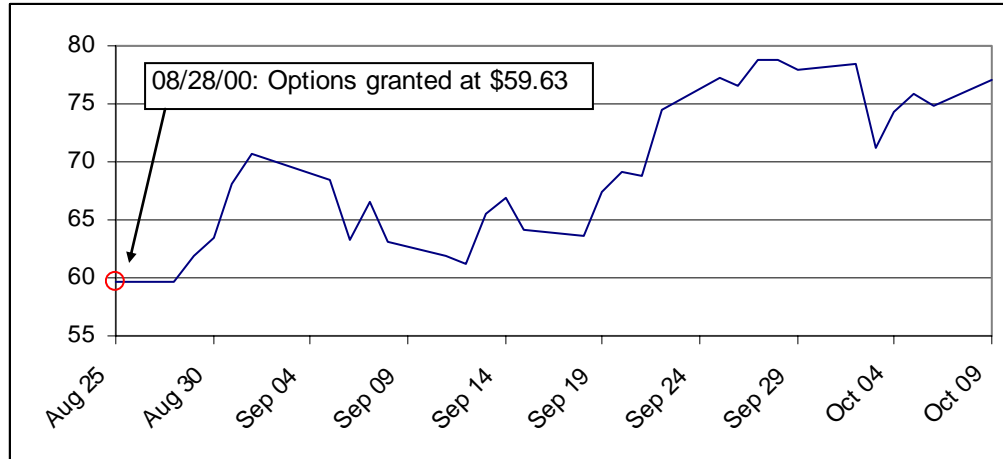
74. Moreover, Coleman, co-founder of the Company, was granted 1,000,000 stock options purportedly dated April 3, 2000, which coincides with one of BEA Systems' lowest closing price of the first fiscal quarter of fiscal year 2000, as demonstrated in the following chart:



Purported Date of Grant	Name	Exercise Price	Number of Options
04/03/00	Coleman	\$36.69	1,000,000

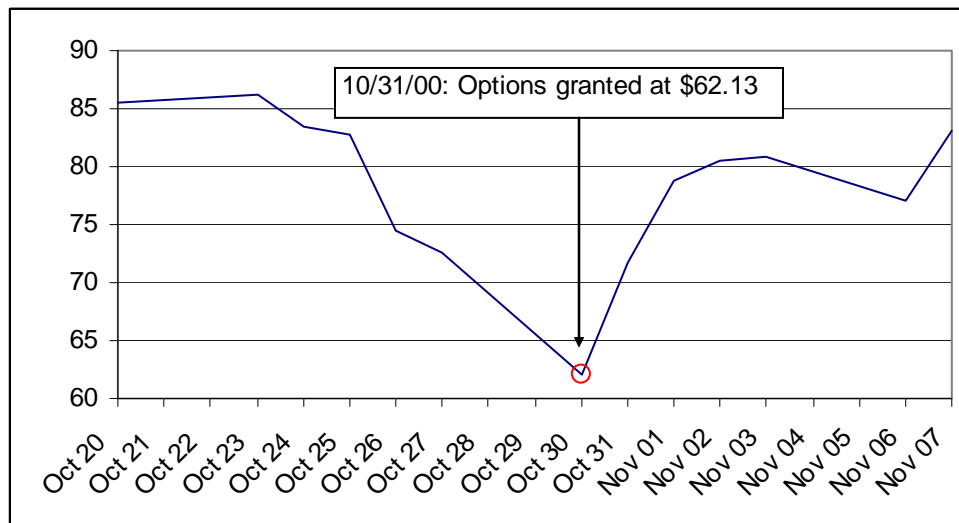
75. Defendant Shipp received stock options purportedly granted on August 28, 2000 after which BEA Systems' stock price rose \$17.50, or 29.35%, in 30 trading days and continued to rise thereafter:

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Purported Date of Grant	Name	Exercise Price	Number of Options
08/28/00	Shipp	\$59.63	100,000

76. Moreover, the stock options purportedly granted on October 31, 2000 were dated when BEA Systems' stock price had dropped significantly before October 31, 2000 and rose \$20.94, or 33.70%, in six trading days following the purported grant date, as demonstrated in the following chart:

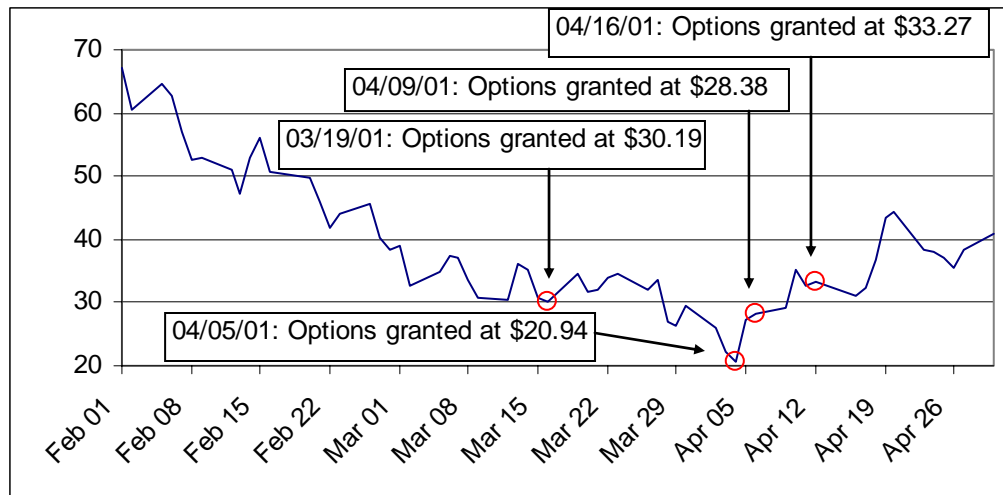


Purported Date of Grant	Name	Exercise Price	Number of Options

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10/31/00	Cece	\$62.13	40,000
	Koon	\$62.13	25,000

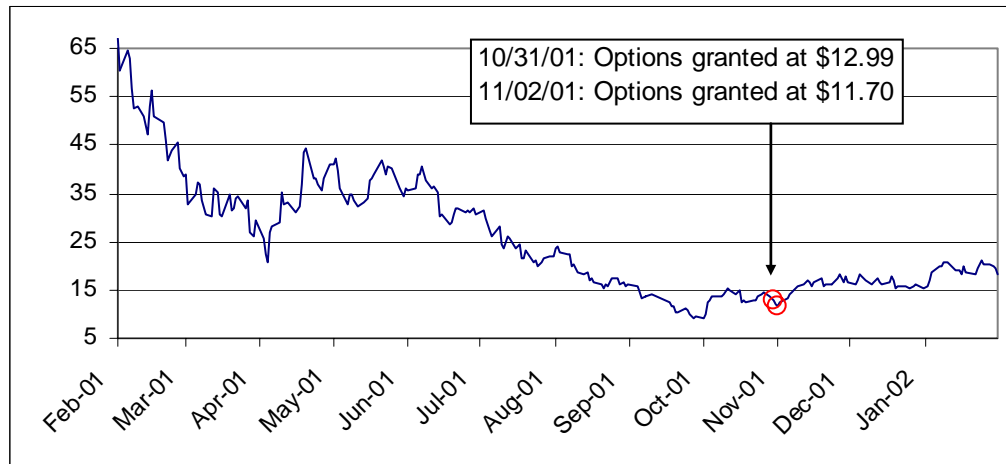
77. The stock options purportedly granted on March 19, 2001, April 5, 2001, April 9, 2001 and April 16, 2001 were dated at or near the lowest prices of the first fiscal quarter of fiscal year 2001, as demonstrated in the following chart:



Purported Date of Grant	Name	Exercise Price	Number of Options
03/19/01	Klein	\$30.19	50,000
	Green	\$30.19	25,000
	Cece	\$30.19	25,000
04/05/01	Coleman	\$20.94	300,000
	Chuang	\$20.94	250,000
	Klein	\$20.94	100,000
	Green	\$20.94	30,000
	Cece	\$20.94	30,000
04/09/01	Cece	\$28.38	75,000
04/16/01	Green	\$33.27	750,000

78. Moreover, the stock option grants purportedly dated October 31, 2001 and November 2, 2001 were dated to coincide with BEA Systems' lowest closing prices of the entire fiscal year, as

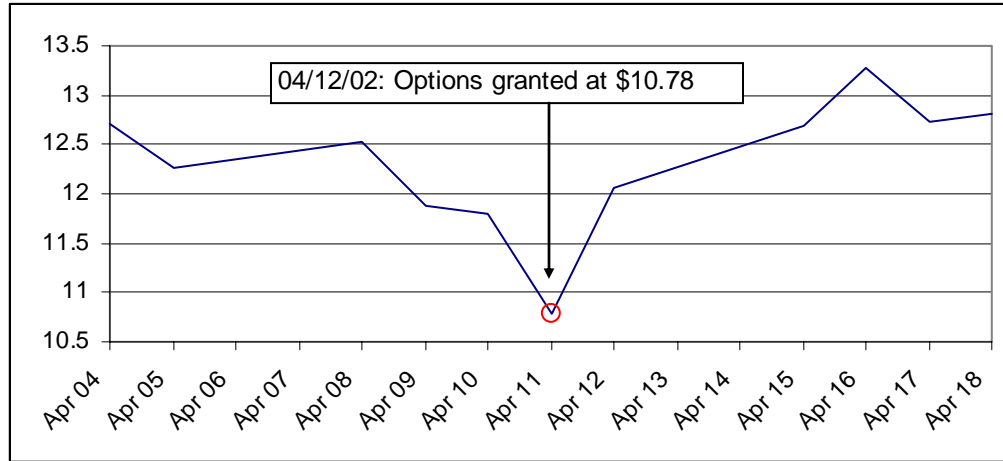
1 demonstrated in the chart below. Over 3.6 million stock options purportedly dated November 2,
 2 2001 were granted to Coleman, Chuang and other Company executive officers.



Purported Date of Grant	Name	Exercise Price	Number of Options
10/31/01	Cece	\$12.99	1,000
11/02/01	Coleman	\$11.70	1,000,000
	Chuang	\$11.70	1,500,000
	Klein	\$11.70	400,000
	Green	\$11.70	250,000
	Cece	\$11.70	250,000
	Nielsen	\$11.70	200,000
	Dentinger	\$11.70	at least 24,331

79. Several Option Recipient Defendants, including Chuang and Coleman, were granted
 21 stock options purportedly on April 12, 2002 when BEA Systems' stock price was at a low price. It
 22 had dropped significantly before April 12, 2002 and rose \$2.03, or 18.83%, in five trading days
 23 following the purported grant date, as demonstrated in the following chart:

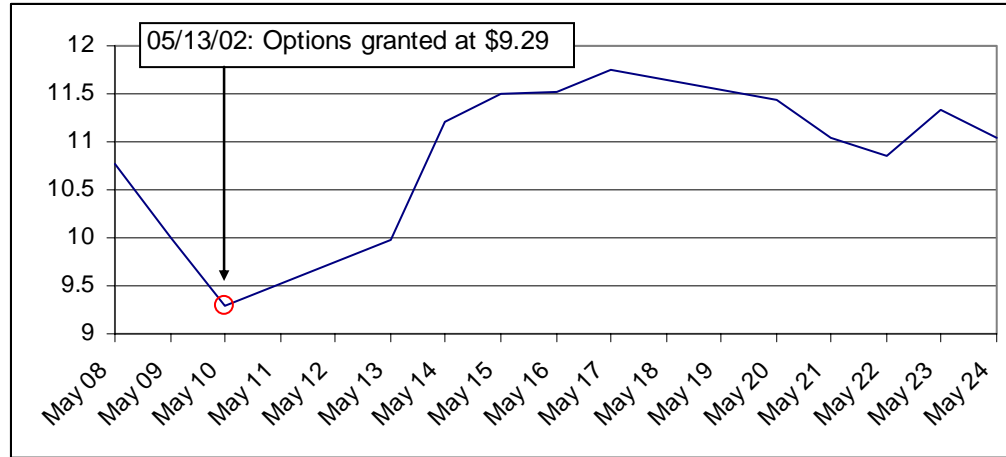
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Purported Date of Grant	Name	Exercise Price	Number of Options
04/12/02	Chuang	\$10.78	300,000
	Coleman	\$10.78	100,000
	Klein	\$10.78	100,000
	Green	\$10.78	75,000
	Nielsen	\$10.78	100,000
	Ashburn	\$10.78	50,000

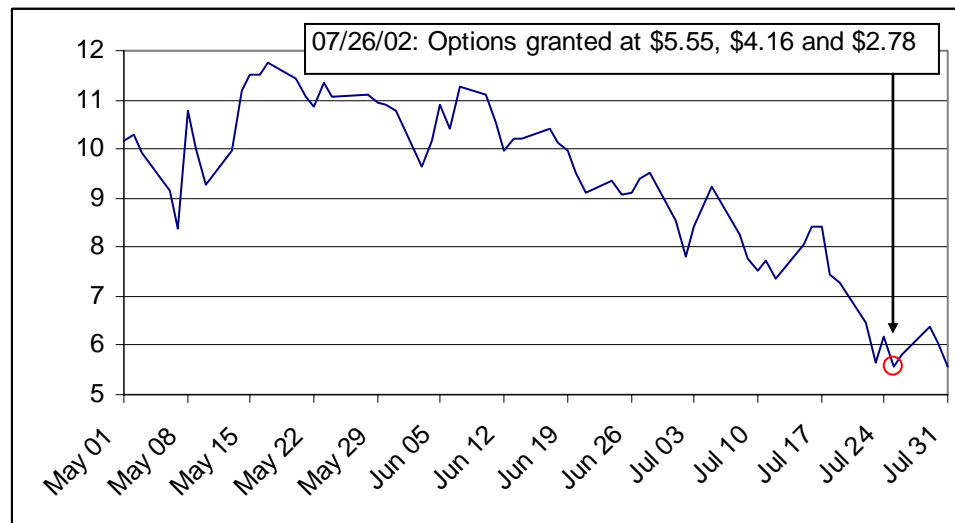
80. Similarly, defendant Dentinger received stock options purportedly granted on May 13, 2002 when BEA Systems' stock price had dropped significantly before May 13, 2002 and rose \$1.76, or 18.94%, in ten trading days following the purported grant date, as demonstrated in the following chart:

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Purported Date of Grant	Name	Exercise Price	Number of Options
05/13/02	Dentinger	\$9.29	at least 5,757

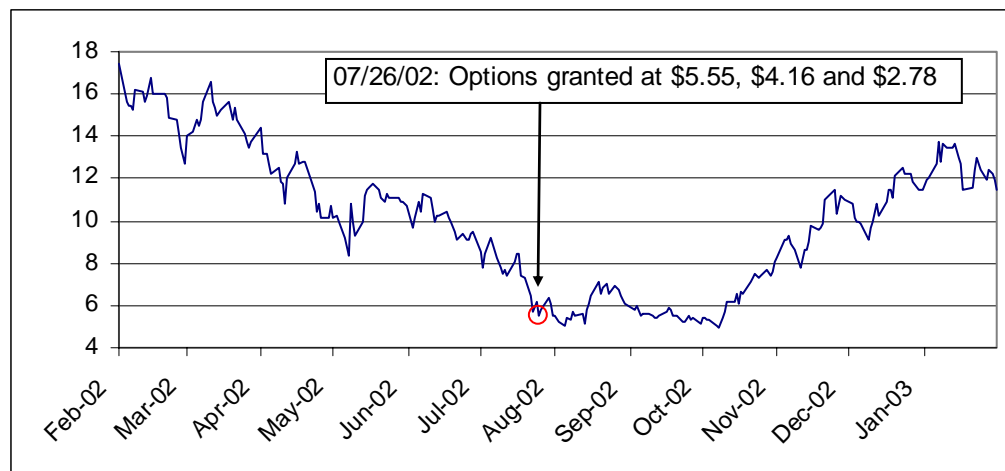
81. Over 5.9 million stock options purportedly dated July 26, 2002 were granted to Chuang, Klein and other Company executive officers. These stock option grants were dated to coincide with BEA Systems' lowest closing price of the second fiscal quarter of fiscal year 2002, as demonstrated in the following chart:



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Purported Date of Grant	Name	Exercise Price	Number of Options
07/26/02 ⁶	Chuang	\$5.55	1,200,000
		\$2.78	1,100,000
	Klein	\$5.55	500,000
		\$2.78	700,000
	Nielsen	\$5.55	500,000
		\$2.78	400,000
	Ashburn	\$5.55	500,000
		\$2.78	400,000
	Carges	\$5.55	at least 111,951
		\$4.16	at least 68,612
	Wu	\$5.55	at least 124,074
		\$4.16	at least 320,000

82. In addition, the purported July 26, 2002 option grant was dated at one of the lowest prices of the entire fiscal year, as demonstrated in the following chart:



⁶ Chuang, Klein, Nielsen and Ashburn purportedly received additional July 26, 2002 stock options with an exercise price discounted 50% of the fair market value on the date of grant, and Carges and Wu purportedly received additional July 26, 2002 stock options with an exercise price discounted 25% of fair market value on the date of grant.

1 83. Each and every one of the aforementioned stock option grants were dated just before
2 a significant increase in BEA Systems' stock price and/or near or at BEA Systems' lowest closing
3 stock price of the pertinent fiscal quarter and/or fiscal year. For instance, 16 of the 20 total grants
4 were dated at or near the lowest price of the fiscal quarter or fiscal year. Specifically, 9 were dated
5 to coincide with the lowest prices of the fiscal year (¶¶ 73, 78, 82), and 7 were dated to coincide with
6 the lowest prices of the fiscal quarter. (¶¶ 72, 74, 77, 81)

7 84. The reason for the extraordinary pattern set forth in the preceding paragraphs is that
8 the purported grant dates set forth therein were not the actual dates on which the stock option grants
9 were made. Rather, the Compensation Committee members, with knowledge and approval of the
10 other members of the Board, knowingly and deliberately backdated the stock option grants to make
11 it appear as though the grants were made on dates when the market price of BEA Systems stock was
12 lower than the market price on the actual grant dates. This improper backdating, which violated the
13 terms of the Plans, resulted in option grants with lower exercise prices, which in turn improperly
14 increased the value of the options to the Option Recipient Defendants and improperly reduced the
15 amounts the Option Recipient Defendants had to pay the Company upon exercise of the options.

16 85. In addition, prior to the enactment of the Sarbanes-Oxley Act of 2002 ("SOX"),
17 Individual Defendants were able to engage in backdating of option grants with relative ease because
18 under federal law they were only required to report option grants to the SEC once a year.

19 86. Further, the pre-SOX grants made from late-1998 to 2002 that were disclosed in
20 proxy statements and Form 4s were dated to coincide with particularly low closing prices, which is
21 strongly indicative of backdating. Furthermore, 18 of the backdated grants were made to the
22 Company's top five highly compensated executives whose grants are disclosed in the Company's
23 proxy statements.

24 87. Pursuant to SOX, beginning on August 29, 2002, executives and directors were
25 required to report option grants to the SEC within two days of the grant. With this new reporting
26 requirement in place, the pattern of backdating options seen previously from 1998 through 2002
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1 came to an end. This indicates that backdating can be the only explanation for the pattern of the pre-
2 SOX grants.

3 Merrill Lynch Analysis

4 88. The subject of options backdating has been the focus of numerous financial analysts
5 and experts. One reputable source, Merrill Lynch, has set forth an analytical framework to
6 determine whether options were backdated. The Merrill Lynch analysis is set forth in a May 22,
7 2006 report. The analysis examines the twenty day performance of each option grant reported in a
8 company's proxy statements during the relevant backdating period and then calculates the
9 annualized return each grant would yield averaging these annualized returns for all grants in a given
10 calendar year. That annualized return for each calendar year is then compared to the annualized
11 return that investors of the company experienced for each calendar year and throughout then entire
12 relevant period.

13 Accordingly, Plaintiff analyzed the stock option grants disclosed in BEA's proxy statements using
14 the same analysis as Merrill Lynch. Applying the Merrill Lynch analysis, the average annualized
15 return to management on the option grants identified in the relevant proxy statements for calendar
16 years 1998 to 2002 is 299%, as compared to 200% average annualized return to investors – a
17 difference of 98%.

18 89. The vast discrepancies between the annualized management and annualized
19 investors' returns demonstrate that BEA Systems stock options were opportunistically granted to the
20 Individual Defendants in order to provide them with greater financial gains on their BEA stock
21 options than were achieved in the open market. Such a dramatically beneficial pattern of option
22 grant dates can only reasonably be explained by backdating.

23 BEA Systems' Admissions of Backdating and the Internal Investigation

24 90. BEA's backdating problems surfaced publicly on August 16, 2006, when the
25 Company publicly announced that an internal investigation had begun involving the Company's
26 historical stock option granting practices. On that day, BEA Systems filed a Form 8-K and publicly
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1 announced that the Company's Audit Committee "has commenced an internal review of BEA's
2 historical stock option grants" with the assistance of outside legal counsel.

3 91. On February 14, 2007, BEA Systems publicly announced that the SEC was
4 conducting an informal inquiry into the Company's stock option grant practices and issued a press
5 release providing the preliminary conclusions of its stock option review:.

6 In August 2006, the Company announced that its Board of Directors had
7 asked its Audit Committee to review the Company's historic stock option
8 grant practices. The Audit Committee retained independent legal counsel,
9 Simpson Thacher & Bartlett LLP, to assist it in its review, which is now
10 substantially complete. The review encompassed the period January 1996
11 through June 2006. It involved examining more than 4.5 million pages of
12 documents, more than 470 granting actions relating to over 30,000 option
13 grants to more than 12,000 Company employees, and conducted 30 interviews
14 of current and former officers, directors, employees and outside advisors.

15 The principal findings of the review are:

- 16 • Most options granted between June 1997 and June 2006 were approved via
17 Unanimous Written Consents ("UWCs"). The Company used the effective
18 date on the UWC as the grant date, and as per the Company's stock option
19 plans used the closing price of the trading day immediately prior to the
20 grant date as the exercise price for the options. During that time period, the
21 majority of grants were not final as of the effective date stated on the face
22 of the UWC. As a result, the grant date recorded by the Company was not
23 the appropriate accounting measurement date, resulting in compensation
24 expense that, in most instances, was not recorded.
- 25 • With respect to a number of grants, most made prior to 2003 when certain
26 improvements were made to the stock option granting process, some
27 members of senior management appear to have chosen grant dates with the
28 benefit of hindsight and submitted those grants for approval through UWCs
to be executed by the Chief Executive Officer. The UWC approving such
grants reflects the chosen date of the grant rather than the date of the
approval. As a result, the grant date recorded by the Company was not the
appropriate accounting measurement date, resulting in compensation
expense that, in most instances, was not recorded.
- Prior to April 2003, administrative errors prevented some option grants
from being approved in a timely fashion. These errors were subsequently
remedied by providing the affected employees with grants effective as of
the date the grant would have occurred had no errors been made. The
grants were either made in a subsequent UWC or Board Resolution with an
earlier "effective date" or by amendment to a prior UWC or Board
Resolution. The appropriate accounting measurement date for these
delayed grants was the date the grants were actually approved, not the
earlier date. Recording the appropriate accounting measurement date in
many instances would have resulted in compensation expense.

- 1 • The Company did not grant options to employees prior to an employee's
2 start date. However, in certain instances, employees were permitted to
3 begin a leave of absence upon being hired, allowing the employees to
4 receive a stock option grant and specific exercise price as of their start date
5 without providing service during the leave of absence. Generally accepted
6 accounting principles ("GAAP") requires compensation expense be
7 recorded when options are granted under such circumstances; however, the
8 Company failed to record the required expense.
- 9 • For much of the period under investigation, departing employees
10 frequently were given leaves of absence, separation agreements or
11 termination agreements in lieu of severance payments. For certain of these
12 termination arrangements, it appears the purpose was to provide the
13 employees extended option vesting and exercising privileges. Under
14 GAAP, such agreements constitute modifications to the original option
15 grants and compensation expense must be recorded. The Company failed
16 to record the required compensation expense.
- 17 • Certain employees were granted options that were later cancelled and
18 either immediately or shortly thereafter reissued at a lower price. For some
19 of these grants, the purpose appears to have been to give the grantee a
20 lower exercise price. Under GAAP this is a re-pricing that requires
21 compensation expense to be recognized and adjusted quarterly for as long
22 as the re-priced option remains outstanding. In most instances, the
23 Company failed to record this expense.
- 24 • The actions described in the categories listed above were applicable
25 broadly across the Company's employee base.
- 26 • In some instances, grants were given to Section 16 officers without the
27 approval of the Compensation Committee, as required by the Company's
28 stock option plan and Compensation Committee charter.

On December 4, 2006, the Company announced that it expected changes in measurement dates to result in material, non-cash compensation expenses, and therefore that its historic financial statements should no longer be relied upon and that certain financial statements would need to be restated. *At this time, the Company expects that it will restate its financial statements from Fiscal 1998 through Fiscal 2007, and that it will record non-cash compensation expense, on a pre-tax basis, of between \$340 and \$390 million*, with the majority of this expense relating to grants made in the Fiscal 1999 through Fiscal 2002 period. Approximately \$270 million of these pre-tax expenses result from correcting the accounting measurement dates for grants, while the remainder relates to the termination expenses that should have been recorded. The Company is working with its independent auditors, Ernst & Young LLP, to complete its restatement and become current with its public filings as soon as possible. (emphasis added).

1 92. On September 7, 2007, the Company filed a Form 8-K announcing that the Company
2 finalized the repayment of \$2.45 million from its chief executive, Defendant Chuang, to cover the
3 amount of improper gain he received exercising and selling shares from three backdated option
4 grants in 1998 and 1999.

5 93. In connection with its review, the Audit Committee determined that “the original
6 exercise prices of the options granted to Mr. Chuang in 1998 and 1999 were incorrect because there
7 was insufficient evidence to determine that the grants had been approved on the dates March 19,
8 1998, March 17, 1999 and May 17, 1999.”

9 94. In the 8-K, the Company stated:

10 [i]n order to return to the Company the gains realized as a result of the
11 mispricings described above, Mr. Chuang and the Company entered into
12 an agreement on September 3, 2007 cancelling outstanding options to
13 purchase 423,605 shares of Company common stock, which options
14 remained unexercised from the grant made to Mr. Chuang on May 17,
15 1999. The value of these options has been deemed to equal the
16 approximately \$2.45 million in pre-tax gains that Mr. Chuang realized
17 based on the difference between the increased exercise price of \$6.875 per
18 share and the \$12.70 per share closing price of the Company’s common
19 stock on February 8, 2007, the date on which the Board of Directors met
20 and accepted Mr. Chuang’s agreement to repay. Following this
21 cancellation, Mr. Chuang will have options to purchase 601,255 shares of
22 Company common stock outstanding under the May 17, 1999 grant. As
23 previously disclosed, Mr. Chuang has agreed to reprice his outstanding
24 options to the appropriate price as determined by the Audit Committee.
25 For his outstanding options under the May 17, 1999 grant, this price will
26 be \$6.875 per share.

27 95. Subsequently, on October 10, 2007, the Company announced the results of the
28 Company’s internal investigation, and reported that, as a result of the Company’s admitted
backdating, BEA Systems would have to increase the estimated restated amount as announced on
February 14, 2007. The Company announced that the total cumulative stock compensation expense
resulting from the improper backdating amounted to approximately ***\$425 million***.

1 96. Despite the fact that the backdating scheme at BEA resulted in harm to the Company
2 totaling hundreds of millions of dollars, the Individual Defendants still have not gotten more than a
3 pittance from Defendant Chuang and the other Individual Defendants.

4 **Restatement of BEA Systems' Financial Statements**

5 97. The practice of backdating stock options not only lined the pockets of the Company's
6 executives at the direct expense of the Company but also resulted in the overstatement of the
7 Company's net income. This is because options priced below the stock's fair market value when
8 they were awarded brought the recipient an instant paper gain that must be accounted for as
9 additional compensation and treated as an expense to the Company.

10 98. On December 4, 2006, the Company announced that it expected changes in certain
11 stock option measurement dates to result in material, non-cash compensation expense, and,
12 therefore, that its previously issued financial statements "should no longer be relied upon" and that it
13 would restate its financial statements from *Fiscal 1998 through Q1 Fiscal 2007* as necessary.

14 99. On September 14, 2007, the Company reported that due to the delay in the filing its
15 second quarter 10-Q report, the Company received notice from the NASDAQ exchange indicating
16 that the Company is out of compliance with the exchange's filing requirements, and hence its
17 common stock continues to be subject to delisting from the NASDAQ Global Select Market.

18 100. On October 10, 2007, the Company announced that, as a result of the Company's
19 admitted backdating, the Company would have to record a total cumulative stock compensation
20 expense resulting from the improper backdating in the amount of approximately ***\$425 million***.

21 101. The Company further stated that it has been working with its independent auditors,
22 Ernst & Young LLP, to complete its restatement, and expects to submit its proposed restated
23 financial statements and related materials to the Office of the Chief Accountant (the "OCA") at the
24 SEC. The Company noted that it intends to file its restated financial statements, as soon as
25 practicable after receiving comments from the OCA.
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1 102. Because the Company has not filed their final audited statements and because the
2 Company is only obligated to disclose option grants to certain executive officers in its proxy filings,
3 the full breadth of the unlawful stock options and false financial reporting scheme is not yet known.

4 103. In addition to the serious and adverse tax consequences, which resulted from the
5 Company's failure to record additional non-cash stock-based compensation, BEA Systems faces
6 millions in costs associated with the Audit Committee's review and the related restatements. The
7 Company also will likely admit to material weakness in its financial controls resulting in a qualified
8 opinion from its outside auditor.

9 **The Individual Defendants' Dissemination of False Financial Statements**

10 104. As a result of the improper backdating of stock options, the Company, with the
11 knowledge, approval, and participation of each of the Individual Defendants,

- 12 a. violated the terms of the Plans by granting stock options with
13 exercise prices less than the fair market value of the stock on the
14 actual date of grant;
- 15 b. violated APB 25 by failing to recognize compensation expenses
16 incurred when the improperly backdated options were granted;
- 17 c. violated Section 162(m) by taking tax deductions based on stock
18 option grants that were not payable solely on account of the
19 attainment of one or more performance goals and violated the
20 terms of the Plans; and
- 21 d. produced and disseminated to BEA Systems shareholders and the
22 market false financial statements and other false SEC filings that
23 improperly recorded and accounted for the backdated option
24 grants, and thereby understated compensation expenses and
25 overstated net income.

26 105. The Company, with the knowledge, approval, and participation of each of the
27 Individual Defendants, disseminated its false financial statements in, inter alia, the following Form
28 10-K filings:

- 29 a. Form 10-K405 for the year ended January 31, 1999, filed with the SEC on
30 May 3, 1999 and signed by defendants Coleman, Scott, Bartz, Gross,
31 Janeway, and Morton;

- 1 b. Form 10-K for the year ended January 31, 2000, filed with the SEC on May 1,
2 2000 and signed by defendants Coleman, Chuang, Klein, Bartz, Gross,
3 Janeway, and Morton;
- 4 c. Form 10-K for the year ended January 31, 2001, filed with the SEC on May 1,
5 2001 and signed by defendants Coleman, Chuang, Klein, Bartz, Gross,
6 Janeway, and Morton;
- 7 d. Form 10-K for the year ended January 31, 2002, filed with the SEC on April
8 23, 2002 and signed by defendants Klein, Coleman, Chuang, Bartz, Gross,
9 Janeway, and Morton;
- 10 e. Form 10-K for the year ended January 31, 2003, filed with the SEC on April
11 30, 2003 and signed by defendants Coleman, Chuang, Bartz, Gross, Janeway,
12 and Morton;
- 13 f. Form 10-K for the year ended January 31, 2004, filed with the SEC on April
14 15, 2004 and signed by defendants Coleman, Chuang, Gross, Janeway, and
15 Morton;
- 16 g. Form 10-K for the year ended January 31, 2005, filed with the SEC on April
17 18, 2005 and signed by defendants Chuang, Bartz, Gross, Janeway, and
18 Morton; and
- 19 h. Form 10-K for the year ended January 31, 2006, filed with the SEC on April
20 14, 2006 and signed by defendants Chuang, Gross, Janeway, and Morton.

21 106. Specifically, the Individual Defendants caused BEA Systems to falsely state in the
22 Company's annual reports on Form 10-K for fiscal years 1998 to 2002, that "[t]he Company has
23 elected to follow Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to
24 Employees ('APB 25') and related interpretations in accounting for stock awards to employees.
25 Accordingly, no compensation expense is recognized in the Company's financial statements in
26 connection with employee stock awards where the exercise price of the award is equal to the fair
27 market value of the stock at the date of the award." Such statements were materially false and
28 misleading in each of these years because BEA Systems had granted stock options at prices that
 were below fair market value on the date of the grant and failed to account for the in-the-money
 options as required by APB 25.

 107. Moreover, defendants Chuang, Klein and Dentinger filed false Certifications of Chief
Executive Officer and Chief Financial Officer Pursuant to Section 906 of the Sarbanes-Oxley Act of
2002 ("Certification"), certifying that the financial reports of BEA Systems on 10-Ks "fully
complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange

1 Act of 1934, and the information contained in the Report fairly presents, in all material respects, the
 2 financial condition and results of operations of the Company at the dates and for the periods
 3 indicated.” Defendants Chuang, Klein and Dentinger signed the following false Certifications:

- 4 a. Chuang and Klein signed false Certifications for the Form 10-K for the fiscal
 5 year ended January 31, 2003 filed on April 30, 2003;
- 6 b. Chuang and Klein signed false Certifications for the Form 10-K for the fiscal
 7 year ended January 31, 2004 filed on April 15, 2004;
- 8 c. Chuang and Dentinger signed false Certifications for the Form 10-K for the
 9 fiscal year ended January 31, 2005 filed on April 18, 2005; and
- d. Chuang and Dentinger signed false Certifications for the Form 10-K for the
 fiscal year ended January 31, 2006 filed on April 14, 2006.

10 **The Individual Defendants’ Concealment of Their Misconduct**

11 108. From 1999 to 2003, the Company, with the knowledge, approval, and participation of
 12 each of the Individual Defendants, for the purpose and with the effect of concealing the improper
 13 option backdating, disseminated to shareholders and filed with the SEC annual proxy statements that
 14 falsely reported the dates of stock option grants to the Option Recipient Defendants and falsely
 15 stated that the exercise price of the options granted to the Option Recipient Defendants “represented
 16 the fair value of the underlying shares of Common Stock . . . at the date the options were granted:”

- 17 a. BEA Systems’ proxy statement filed with the SEC on June 1, 1999 falsely
 18 reported that options granted to Green and Menard were granted on October
 14, 1998;
- 19 b. BEA Systems’ proxy statement filed with the SEC on May 23, 2000 falsely
 20 reported that options granted to Britton, Menard and Stanley were granted on
 21 February 5, 1999, options granted to Britton were granted on February 22,
 1999, options granted to Coleman, Chuang and Scott were granted on March
 22 17, 1999, options granted to Chuang and Cece were granted on May 17, 1999,
 options granted to Britton, Menard and Stanley were granted on August 5,
 1999, and options granted to Cece were granted on August 10, 1999;
- 23 c. BEA Systems’ proxy statement filed with the SEC on May 30, 2001 falsely
 24 reported that options granted to Coleman were granted on April 3, 2000,
 options granted to Shipp were granted on August 28, 2000, and options
 25 granted on Cece and Koon were granted on October 31, 2000;
- 26 d. BEA Systems’ proxy statement filed with the SEC on May 22, 2002 falsely
 27 reported that options granted to Klein, Green and Cece were granted on
 March 19, 2001, options granted to Coleman, Chuang, Klein, Green and Cece
 were granted on April 5, 2001, options granted to Cece were granted on April
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1 9, 2001, options granted to Green were granted on April 16, 2001, options
2 granted to Cece were granted on October 31, 2001, and options granted to
Coleman, Chuang, Klein, Green, Cece and Nielsen were granted on
November 2, 2001; and

- 3 e. BEA Systems' proxy statement filed with the SEC on May 30, 2003 falsely
4 reported that options granted to Chuang, Coleman, Klein, Green, Nielsen and
5 Ashburn were granted on April 12, 2002, and options granted to Chuang,
Klein, Nielsen, Ashburn, Carges and Wu were granted on July 26, 2002.

6 109. Moreover, the Reports of the Compensation Committee disclosed in the Company's
7 proxy statements filed between 1999 and 2003 falsely stated that stock option grants are intended to
8 "motivate executive officers to manage the Company in a manner that is consistent with stockholder
9 interests," and "to focus the attention of the recipient on the Company's long-term performance,
10 which the Company believes results in improved stockholder value, and to retain the services of the
11 executive officers in a competitive job market by providing significant long-term earnings
12 potential," when in fact the backdated stock options provided the officers with immediate rewards
13 regardless of the Company's performance.

14 110. From 2003 to 2006, the Company, with the knowledge, approval, and participation of
15 each of the Individual Defendants, for the purpose and with the effect of concealing the improper
16 option backdating, filed with the SEC Form 4s that falsely reported the dates of stock option grants
17 to the Option Recipient Defendants, as follows:

- 18 a. Bartz's Form 4 filed with the SEC on April 10, 2003 falsely reported that
19 options granted to Bartz had been granted on March 17, 1999;
20 b. Chuang's Form 4s filed with the SEC on May 22, 2003 falsely reported that
21 options granted to Chuang had been granted on May 17, 1999;
22 c. Ashburn's Form 4s filed with the SEC on August 20, 2003 falsely reported
23 that options granted to Ashburn had been granted on July 26, 2002;
24 d. Coleman's Form 4 filed with the SEC on August 21, 2003 falsely reported that
25 options granted to Coleman had been granted on March 17, 1999;
26 e. Chuang's Form 4 filed with the SEC on August 21, 2003 falsely reported that
27 options granted to Chuang had been granted on May 17, 1999;
28 f. Chuang's Form 4s filed with the SEC on August 24, 2003 and August 25,
2003 falsely reported that options granted to Chuang had been granted on July
26, 2002;

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- g. Klein's Form 4 filed with the SEC on August 25, 2003 falsely reported that options granted to Klein had been granted on July 26, 2002;
- h. Coleman's Form 4 filed with the SEC on September 4, 2003 falsely reported that options granted to Coleman had been granted on March 17, 1999;
- i. Nielsen's Form 4 filed with the SEC on September 5, 2003 falsely reported that options granted to Nielsen had been granted on July 26, 2002;
- j. Chuang's Form 4s filed with the SEC on November 25, 2003 falsely reported that options granted to Chuang had been granted on July 26, 2002;
- k. Klein's Form 4s filed with the SEC on November 25, 2003, December 3, 2003, December 4, 2003, February 26, 2004, March 1, 2004 and March 2, 2004 falsely reported that options granted to Klein had been granted on July 26, 2002;
- l. Ashburn's Form 4 filed with the SEC on March 1, 2004 falsely reported that options granted to Ashburn had been granted on July 26, 2002;
- m. Chuang's Form 4s filed with the SEC on March 2, 2004, May 20, 2004 and May 21, 2004 falsely reported that options granted to Chuang had been granted on May 17, 1999;
- n. Ashburn's Form 4 filed with the SEC on May 26, 2005 falsely reported that options granted to Ashburn had been granted on July 26, 2002;
- o. Chuang's Form 4s filed with the SEC on May 26, 2005 and August 26, 2005 falsely reported that options granted to Chuang had been granted on July 26, 2002;
- p. Klein's Form 4s filed with the SEC on August 26, 2005 falsely reported that options granted to Klein had been granted on July 26, 2002;
- q. Wu's Form 4 filed with the SEC on August 30, 2005 falsely reported that options granted to Wu had been granted on May 17, 1999;
- r. Wu's Form 4 filed with the SEC on August 30, 2005 falsely reported that options granted to Wu had been granted on July 26, 2002;
- s. Carges' Form 4s filed with the SEC on October 5, 2005, October 7, 2005 and November 25, 2005 falsely reported that options granted to Carges had been granted on July 26, 2002;
- t. Chuang's Form 4s filed with the SEC on November 25, 2005, November 28, 2005 and November 29, 2005 falsely reported that options granted to Chuang had been granted on July 26, 2002;
- u. Carges' Form 4s filed with the SEC on December 5, 2005 and December 29, 2005 falsely reported that options granted to Carges had been granted on July 26, 2002;

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- v. Ashburn's Form 4 filed with the SEC on December 9, 2005 falsely reported that options granted to Ashburn had been granted on July 26, 2002;
- w. Wu's Form 4 filed with the SEC on March 7, 2006 falsely reported that options granted to Wu had been granted on July 26, 2002;
- x. Klein's Form 4s filed with the SEC on March 8, 2006 falsely reported that options granted to Klein had been granted on July 26, 2002;
- y. Chuang's Form 4s filed with the SEC on March 9, 2006, March 10, 2006 and March 13, 2006 falsely reported that options granted to Chuang had been granted on July 26, 2002;
- z. Klein's Form 4s filed with the SEC on March 9, 2006, March 10, 2006 and March 13, 2006 falsely reported that options granted to Klein had been granted on July 26, 2002;
- aa. Carges' Form 4 filed with the SEC on March 28, 2006 falsely reported that options granted to Carges had been granted on July 26, 2002;
- bb. Wu's Form 4 filed with the SEC on March 28, 2006 falsely reported that options granted to Wu had been granted on July 26, 2002;
- cc. Dentinger's Form 4 filed with the SEC on May 24, 2006 falsely reported that options granted to Dentinger had been granted on February 22, 1999 and March 31, 1999;
- dd. Ashburn's Form 4 filed with the SEC on May 25, 2006 falsely reported that options granted to Ashburn had been granted on July 26, 2002;
- ee. Chuang's Form 4s filed with the SEC on May 25, 2006, May 26, 2006 and May 30, 2006 falsely reported that options granted to Chuang had been granted on July 26, 2002;
- ff. Klein's Form 4 filed with the SEC on May 30, 2006 falsely reported that options granted to Klein had been granted on July 26, 2002;
- gg. Chuang's Amended Form 4s filed with the SEC on June 5, 2006 falsely reported that options granted to Chuang had been granted on July 26, 2002;
- hh. Dentinger's Form 4 filed with the SEC on August 23, 2006 falsely reported that options granted to Dentinger had been granted on March 31, 1999 and November 2, 2001;
- ii. Dentinger's Form 4 filed with the SEC on August 24, 2006 falsely reported that options granted to Dentinger had been granted on February 22, 1999 and November 2, 2001;
- jj. Chuang's Form 4s filed with the SEC on August 24, 2006 and August 25, 2006 falsely reported that options granted to Chuang had been granted on July 26, 2002; and

1 kk. Dentinger's Form 4 filed with the SEC on September 5, 2006 falsely reported
2 that options granted to Dentinger had been granted on February 22, 1999,
3 November 02, 2001 and May 13, 2002.

4 111. The Individual Defendants continued to conceal their foregoing misconduct until
5 August 16, 2006 when the Company issued a press release, stating "BEA also announced today that
6 the Audit Committee of its Board of Directors has commenced an internal review of BEA's historical
7 stock option grants. This internal review will be assisted by independent legal counsel. Facts may
8 come to light once the review is completed that may require us to change our accounting treatment
9 of stock options granted in prior periods, which may or may not have a material adverse effect on
10 our results of operations for those periods or other periods."

11 112. On December 5, 2006, BEA Systems issued a press release in which the Company
12 admitted to actual backdating of stock options:

13 BEA Systems, Inc., a world leader in enterprise infrastructure software, today
14 provided an update on its internal stock option review.

15 As previously announced, the Audit Committee of the Board of Directors of
16 BEA Systems, Inc. (the "Company") is conducting a review of the Company's
17 historical stock option grants. The Audit Committee, with the assistance of
18 independent legal and forensic accounting experts, has reached a
19 determination that, ***under applicable accounting principles, the actual
20 measurement dates for certain stock options differed from the recorded
21 measurement dates for such stock options.*** The Company expects that the
22 difference in these measurement dates will result in material non-cash, stock-
23 based compensation expenses. Accordingly, on Nov. 30, 2006, the
24 Company's Audit Committee, after consultation with the Company's
25 management and Board of Directors, determined that the Company's
26 previously issued financial statements should no longer be relied upon.
27 Consequently, the Company will restate previously issued financial
28 statements as necessary.

The Audit Committee has not completed its work nor reached final
conclusions, and is continuing its review of the circumstances that gave rise to
the differences in option measurement dates. The Audit Committee has not
reviewed all stock options for which the accounting measurement dates may
have been incorrectly determined, nor determined the final aggregate amount
of additional stock-based compensation expenses that may need to be
recorded or the amount of such expenses that may need to be recorded in any
specific prior period or in any future period.

The Audit Committee has not yet determined the tax consequences that may
result from these matters or whether tax consequences will give rise to
liabilities on behalf of the Company which may have to be satisfied in any
future period.

1 The Audit Committee and the Company's management have discussed these
2 matters with Ernst & Young LLP, the Company's independent registered
3 public accounting firm.

4 The Audit Committee is making every effort to complete its review, and the
5 Company will make every effort to become current in its public filings as
6 soon as practicable following the completion of the Audit Committee's
7 review.

8 (emphasis added).

9 113. On February 14, 2007, BEA Systems issued a press release admitting, among other
10 things, that BEA Systems executives used hindsight to select grant dates of company stock option,
11 and announcing its expectation to restate its financial statements to account for compensation
12 expenses between \$340 and \$390 million.

13 114. On that same date, the Company announced that the SEC has initiated its own
14 investigation of the Company's historical stock option granting practices.

15 115. Subsequently, on October 10, 2007, BEA Systems announced an update to the
16 Company's internal investigation into the stock option granting practices. Specifically, the
17 Company announced that the amount of the restatement of the Company's financial statements had
18 ballooned to *\$425 million* in additional compensation expenses in order to account for backdated
19 stock option grants. The Company stated:

20 [a]t this time, and as a result of the Company's continuing work on the
21 restatement of its financial statements from Fiscal 1998 through Q1 Fiscal
22 2007, the Company estimates that it will record an aggregate non-cash
23 compensation expense, on a pre-tax basis, of approximately \$425 million,
24 which represents an increase from the prior estimated range of between
25 \$340 and \$390 million.

26 * * *

27 As previously disclosed, the aggregate pre-tax expense that the Company
28 expects to record results principally from correcting the accounting
measurement dates for stock option grants, as well as accounting for
employee severance arrangements that extended or altered stock option
vesting and exercising privileges

The Individual Defendants' Insider Selling

116. During the relevant period, certain of the Individual Defendants (collectively, the
"Insider Selling Defendants"), while in possession of materially adverse non-public information

1 regarding the backdating of stock options and the false financial statements resulting therefrom, sold
2 more than 7.8 million shares of BEA Systems stock with a total proceeds of \$91 million, a
3 significant portion of which was obtained through the exercise of improperly backdated stock
4 options, as demonstrated in the table attached as Exhibit A.

5
6 **The Board Has Failed to Inform Itself of the Company's True Value in a**
7 **Potential Sale of the Company**

8 117. As described in detail herein, the Company and shareholder value have been harmed
9 by the rampant stock option backdating at the Company. Management has been cognizant of the
10 backdating issue at BEA Systems since at least July 20, 2006, when Plaintiffs first filed this
11 derivative action. On August 16, 2006 – *more than fourteen months ago* – the Company then
12 announced an internal investigation into the Company's stock option granting practices.

13 118. Indeed, in February 2007, the Company announced widespread and material
14 deficiencies in stock options granting practices, prompting executives to repay profits from their
15 receipt of backdated stock options back to the Company, triggering demotions of top executives, and
16 forcing the Company to restate earnings back to 1998 in the amount of approximately \$425 million.

17 119. As a result of the stock option backdating scandal, the pending restatement and
18 slowed growth, the Company's shares have been trading at artificially depressed levels.

19 120. On September 14, 2007, the Company's largest shareholder and billionaire investor
20 Carl Icahn ("Icahn") and Icahn Partners LP announced that they had raised their holdings in BEA
21 Systems to 8.53%. According to the September 14, 2007 SEC filing "a strategic acquirer could
22 utilize greater resources and market presence" to cut costs and increase revenue growth.

23 121. Additionally, the September 14, 2007, SEC filing stated Icahn intends "to seek to
24 meet with management of the [Company] to discuss the potential for such a transaction, as well as
25 the [Company's] business and operations generally."

1 122. Over the next few weeks, Icahn substantially raised his stake in BEA Systems,
2 announcing on October 4, 2007 that he controlled 13.22% of the Company, as he continued to call
3 for a sale of the Company.

4 **The Oracle Offer**

5 123. On October 12, 2007, Oracle publicly announced that on October 9, 2007, it had
6 made an unsolicited bid (the "Oracle Offer") to purchase BEA Systems for \$6.7 billion, or \$17 per
7 share for all outstanding shares of the Company. This offer represented a 25% premium over BEA
8 Systems' closing share price of \$13.62 on October 11, 2007, the day before the Oracle Offer was
9 made public.

10 124. The announcement followed months of speculation in the media that Oracle had been
11 actively negotiating a possible bid for BEA Systems. In fact, according to the *Associated Press*, on
12 October 12, 2007, "Oracle ha[d] been stalking San Jose-based BEA for years, but has been
13 consistently rebuffed in its overtures."

14 125. After Oracle's Offer was made public on the morning of October 12, 2007, BEA
15 Systems' stock soared 38%, closing at \$18.82 per share.

16 126. Also on October 12, 2007, and in response to Oracle's public announcement of its
17 Offer for the Company, BEA Systems published its October 11, 2007, response to the Oracle Offer
18 stating, part:

19 It is apparent to our Board, however, that BEA is worth substantially more
20 to Oracle, to others and, importantly, to our shareholders than the price
21 indicated in your letter. As we have indicated to you previously, we
22 believe that the absence of current financial information in the public
23 markets limits investor visibility into our performance. We expect that this
24 will be corrected in the near future when we become current on our SEC
25 filings, and can communicate more fully with the investment community.

26 127. After the Company rejected the Offer, the Company's largest shareholder, Icahn,
27 demanded that the Company "use the momentum afforded by the Oracle proposal to seek to sell the
28 Company either (a) in an auction process in an expeditious manner to the highest credible bidder or
(b) by accepting a preemptive bid at a compelling valuation."

1 128. On October 23, 2007, Oracle sent another letter to BEA Systems' Board urging the
2 Board to sign an acquisition agreement with Oracle and allow the shareholders to vote on the
3 acquisition. In its letter, Oracle reiterated that \$17 per share was a "generous" price, representing a
4 "21% premium to BEA's closing price of \$14.05 on the date before [the proposal was made]."
5 Oracle stated that their offer would expire on October 28, 2007.

6 129. The same day, BEA Systems responded to Oracle's October 23, 2007 letter, stating
7 that BEA Systems was "unanimous in its view that [the] unsolicited proposal to acquire BEA at \$17
8 per share is not in the best interests of BEA shareholders. BEA is worth significantly more than \$17
9 to Oracle, to others, and most importantly to BEA shareholders." The letter further stated:

10 BEA's Board and management are committed to creating value for
11 shareholders and regularly assess how best to accomplish this fundamental
12 goal. Despite your statement that Oracle will withdraw its proposal, we
13 simply cannot accept an offer that seriously undervalues BEA.

14 BEA's Board has not indicated that it would be opposed to a
15 transaction that appropriately reflects BEA's value, reached through a
16 reasonable process. To the contrary, the Board is keenly aware of its
17 fiduciary duties to shareholders and is acting accordingly. Indeed,
18 BEA presented to Oracle standard and customary terms under which BEA
19 would share information regarding a potential transaction, assuming
20 Oracle were to propose a reasonable price, but Oracle has rejected
21 such a process.

19 **Defendants Have Failed to Fully Inform Themselves of BEA Systems' Value**

20
21 130. In any sale of a public company, as is contemplated by the Oracle Offer, the
22 Company's directors have an affirmative fiduciary obligation to maximize shareholder value and are
23 obligated to fully inform themselves of the Company's true value before agreeing to or rejecting an
24 offer to purchase the Company.

25 131. Despite the Company's admissions of backdating and an anticipated massive
26 restatement, Defendants have not taken sufficient remedial efforts beyond the insignificant
27 givebacks and repricings to recover the full amount of damages from the Individual Defendants.

1 132. Recovering the full amount of backdating damages from each of the Individual
2 Defendants would materially affect the Company's intrinsic value and share price, and would also
3 materially affect the price that any suitor for BEA Systems' might be willing or able to pay.

4 133. The rejection of the Oracle Offer must be considered premature since the Board and
5 management have no concept of the true value of the Company due to their failure to recover the full
6 amount of backdating damages and their failure to inform themselves of the true value. Indeed, until
7 October 10, 2007, BEA Systems' Board and management had underestimated the Company's
8 restatement by approximately \$35 to \$85 million.

9
10 **BEA SYSTEMS' FALSE FINANCIAL REPORTING**
11 **IN VIOLATION OF GAAP, SEC REGULATIONS AND IRS RULES**

12 134. As a result of the Individual Defendants' improper backdating of stock options, the
13 Individual Defendants caused BEA Systems to violate GAAP, SEC regulations and IRS rules and
14 regulations.

15 135. BEA Systems' financial results for 1998 through 2003 were included in reports filed
16 with the SEC and in other shareholder reports. In these reports, the Individual Defendants
17 represented that BEA Systems' financial results were presented in a fair manner and in accordance
18 with GAAP.

19 136. The Individual Defendants' representations were false and misleading as to the
20 financial information reported, as such financial information was not prepared in conformity with
21 GAAP, nor was the financial information "a fair presentation" of the Company's financial condition
22 and operations, causing the financial results to be presented in violation of GAAP and SEC rules.

23 137. GAAP consists of those principles recognized by the accounting profession as the
24 conventions, rules, and procedures necessary to define accepted accounting practice at the particular
25 time. Regulation S-X, to which the Company is subject as a registrant under the Exchange Act, 17
26 C.F.R. §210.4-01(a)(1), provides that financial statements filed with the SEC, which are not
27 prepared in compliance with GAAP, are presumed to be misleading and inaccurate.

1 **Violations of GAAP**

2 138. During the relevant period, the Individual Defendants caused the Company to
3 understate its compensation expense by not properly accounting for its stock options under GAAP
4 and thus overstated the Company's net earnings.

5 139. Under well-settled accounting principles in effect throughout the relevant period,
6 BEA Systems did not need to record an expense for options granted to employees at the current
7 market price (at-the-money). The Company was, however, required to record an expense in its
8 financial statements for any options granted below the current market price (in-the-money). In order
9 to provide BEA Systems executives and employees with far more lucrative in-the-money options,
10 while avoiding having to inform shareholders about millions of dollars incurred by the Company in
11 compensation expenses (and without paying the IRS millions of dollars in employment taxes), the
12 Individual Defendants systematically falsified Company records to create the false appearance that
13 options had been granted at the market price on an earlier date.

14 140. Throughout the relevant period, BEA Systems accounted for stock options using the
15 intrinsic method described in APB 25, "Accounting for Stock Issued to Employees." Under APB
16 25, employers were required to record as an expense on their financial statements the "intrinsic
17 value" of a fixed stock option on its "measurement date." An option that is in-the-money on the
18 measurement date has intrinsic value, and the difference between its exercise price and the quoted
19 market price must be recorded as compensation expense to be recognized over the vesting period of
20 the option. Options that are at-the-money or out-of-the-money on the measurement date need not be
21 expensed. Excluding non-employee directors, APB 25 required employers to record compensation
22 expenses on options granted to non-employees irrespective of whether they were in-the-money or
23 not on the date of grant.

24 **BEA Systems' GAAP Violations Were Material**

25 141. BEA Systems' false and misleading relevant period statements and omissions
26 regarding its accounting were material, particularly in light of SEC guidance on materiality. SEC
27 Staff Accounting Bulletin ("SAB") Topic 1M, Materiality, summarizes GAAP definitions of
28

1 materiality. Among other items, SAB Topic 1M says: “A matter is ‘material’ if there is a substantial
2 likelihood that a reasonable person would consider it important.” It also stresses that materiality
3 requires qualitative, as well as quantitative, considerations. For example, if a known misstatement
4 would cause a significant market reaction, that reaction should be taken into account in determining
5 the materiality of the misstatement.

6 142. SAB Topic 1M further states:

7 among the considerations that may well render material a quantitatively small
8 misstatement of a financial statement item are –

9 * * *

10 whether the misstatement masks a change in earnings or other trends

11 whether the misstatement hides a failure to meet analysts’ consensus expectations for
12 the enterprise

13 * * *

14 whether the misstatement concerns a segment or other portion of the registrant’s
15 business that has been identified as playing a significant role in the registrant’s operations or
16 profitability.

17 143. SAB Topic 1M also says that an intentional misstatement of even immaterial items
18 may be illegal and constitute fraudulent financial reporting.

19 144. BEA Systems’ misstatements satisfy these criteria and thus were material from both a
20 quantitative and qualitative perspective.

21 **BEA Systems’ Financial Statements Violated Fundamental Concepts of GAAP**

22 145. Due to these accounting improprieties, the Company presented its financial results
23 and statements in a manner that violated GAAP, which are described by the following statements:

- 24 a. The principle that interim financial reporting should be based
25 upon the same accounting principles and practices used to prepare
26 annual financial statements (APB No. 28, ¶10);
- 27 b. The principle that financial reporting should provide information
28 that is useful to existing and potential investors and creditors and
other users in making rational investment, credit and similar
decisions (FASB Statement of Concepts No. 1, ¶34);
- c. The principle that financial reporting should provide information
about the economic resources of an enterprise, the claims to those

1 resources, and the effects of transactions, events and
2 circumstances that change resources and claims to those resources
(Financial Accounting Standards Board (“FASB”) Statement of
3 Concepts No. 1, ¶40);

4 d. The principle that financial reporting should provide information
5 about how management of an enterprise has discharged its
6 stewardship responsibility to stockholders for the use of enterprise
7 resources entrusted to it. To the extent that management offers
8 securities of the enterprise to the public, it voluntarily accepts
9 wider responsibilities for accountability to prospective investors
10 and to the public in general (FASB Statement of Concepts No. 1,
11 ¶50);

12 e. The principle that financial reporting should be reliable in that it
13 represents what it purports to represent (FASB Statement of
14 Concepts No. 2, ¶¶58-59);

15 f. The principle of completeness, which means that nothing is left
16 out of the information that may be necessary to insure that it
17 validly represents underlying events and conditions (FASB
18 Statement of Concepts No. 2, ¶79); and

19 g. The principle that conservatism be used as a prudent reaction to
20 uncertainty to try to ensure that uncertainties and risks inherent in
21 business situations are adequately considered (FASB Statement of
22 Concepts No. 2, ¶¶95, 97).

23 146. Further, the undisclosed adverse information concealed by the Individual Defendants
24 during the relevant period is the type of information which, because of SEC regulations, regulations
25 of the national stock exchanges and customary business practice, is expected by investors and
26 securities analysts to be disclosed and is known by corporate officials and their legal and financial
27 advisors to be the type of information which is expected to be and must be disclosed.

28 **BEA Systems’ Financial Statements Violated SEC Regulations**

147. During the relevant period, the Individual Defendants caused BEA Systems to violate
SEC regulations by failing to disclose that the Company’s senior executives had been granted
backdated stock options.

148. Under SEC Regulations, Item 8 of Form 14-A and Item 11 of Form 10-K, an issuer
must furnish information required by Item 402 of Regulation S-K [17 C.F.R. §229.303]. Item
402(b) and (c) require a company to provide both a Summary Compensation Table and an
Option/SAR Grants table identifying the compensation of the named executive officers – the

1 Company's CEO and its next four most highly paid executives. Item 402 requires particularized
2 disclosures involving a company's stock option grants in the last fiscal year. In the summary
3 compensation table, the issuer must identify in a column "other annual compensation" received by
4 the named executives that is not properly categorized as salary or bonus, including any "[a]bove
5 market or preferential earnings on restricted stock, options, SARs or deferred compensation" paid to
6 the officer during the period. Item 402(b)(2)(iii)(C)(2). In the option grant table, the issuer must
7 identify in a column "[t]he per-share exercise or base price of the options. . . . If such exercise or
8 base price is less than the market price of the underlying security on the date of grant, a separate,
9 adjoining column shall be added showing market price on the date of grant. . . ." Item 402(c)(2)(iv).

10 149. The Individual Defendants caused BEA Systems to violate SEC regulations by failing
11 to disclose that the Company's named executive officers had been granted options with exercise
12 prices below the market value on the date the Board or Compensation Committee approved the
13 grant.

14 **Violations of IRS Rules and Regulations**

15 150. During the relevant period, the Individual Defendants further caused BEA Systems to
16 violate IRS rules and regulations due to its improper accounting for the backdated stock options. As
17 a result, the Company's tax liabilities were understated, exposing BEA Systems to potential amounts
18 owed for back taxes, penalties and interest to the IRS for improperly reporting compensation.

19 151. The Individual Defendants caused the Company to violate IRS Code §162(m), which
20 generally limits a publicly traded company's tax deductions for compensation paid to each of its
21 named executive officers to \$1 million unless the pay is determined to be "performance-based." In
22 order for compensation to be performance-based, the Compensation Committee must have set pre-
23 established and objective performance goals. The goals must then be approved by the shareholders.
24 Section 162(m) defines stock options as performance-based provided they are issued at an exercise
25 price that is no less than the fair market value of the stock on the date of the grant. Accordingly,
26 properly issued stock options do not have to be taken into account in calculating whether an
27 executive's compensation has exceeded the \$1 million compensation cap.

1 152. Section 162(m), known as the \$1 million rule, was enacted in 1993 in order to tie top
2 executives' soaring pay packages more closely to a company's performance. This change in the tax
3 law turned compensation practices for a company's top executives away from straight salary-based
4 compensation to performance-based compensation, including stock options. According to former
5 SEC Chairman Harvey Pitt: "What [Section 162(m)] did was create incentives to find other forms of
6 compensation so people could get over the \$1 million threshold without running afoul of the code."

7 153. The Individual Defendants caused BEA Systems to violate Section 162(m) by
8 providing backdated options to the Company's named executive officers, which were granted with
9 exercise prices that were less than the fair market value of the stock on the date of the grant. As a
10 result all of the income resulting from the exercise of the options must be included for purposes of
11 calculating whether the named executive's compensation exceeds the \$1 million cap for federal tax
12 purposes.

13 154. The Individual Defendants further caused the Company to violate IRS rules and
14 regulations in order to avoid having to withhold income and FICA tax from its executives and
15 employees upon the exercise of BEA Systems' stock options by improperly accounting for its
16 Nonqualified Stock Options ("NSOs") as Incentive Stock Options ("ISOs").

17 155. ISOs are a form of equity compensation that may be provided to a company's
18 employees. ISOs are required to be granted at an exercise price that is no less than the fair market
19 value of the stock on the date of the grant and are entitled to preferential tax treatment as they are not
20 subject to income tax upon exercise of the options but only upon sale of the stock (except for the
21 possible imposition of alternative minimum tax on the option spread at the time of exercise). Stock
22 options that do not qualify as ISOs are considered to be NSOs. NSOs are not entitled to preferential
23 treatment as they are subject to income tax and FICA withholding upon exercise. As a result, a
24 company that fails to withhold income tax and/or FICA upon the exercise of NSOs by its employees
25 would be liable for the amount of the income tax and FICA that the company failed to withhold
26 upon exercise of the options, in addition to interest and penalties.

156. By improperly treating its backdated options as ISOs, the Individual Defendants failed to provide proper income tax and FICA withholdings upon the exercise of its options by its executives and employees in violation of IRS rules and regulations. The chart below illustrates BEA Systems' false and misleading fiscal and quarterly financial results, which materially understated its compensation expenses and thus overstated its earnings:

Fiscal Year	Reported Earnings (Loss)	Reported Basic Earnings (Loss) Per Share
1998	(\$22.912 million)	(\$0.11)
1999	(\$51.582 million)	(\$0.18)
2000	(\$19.574 million)	(\$0.06)
2001	\$17.082 million	\$0.05
2002	(\$35.678 million)	(\$0.09)
2003	\$83.876 million	\$0.21
2004	\$118.674 million	\$0.29
2005	\$131.056 million	\$0.32
2006	\$142.743 million	\$0.37

157. BEA Systems expects to restate its financial statements due to errors in accounting for its historical stock option grants. The Company has yet to do so, which would decrease its reported earnings and earnings per share by a material amount to be determined.

**THE INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTIES
RELATING TO THE BACKDATING**

158. Former SEC Chairman Harvey L. Pitt was quoted, saying "What's so terrible about backdating options grants? For one thing, it likely renders a company's proxy materials false and misleading. Proxies typically indicate that options are granted at fair market value. But if the grant is backdated, the options value isn't fair – at least not from the vantage point of the company and its shareholders."

1 159. SEC Chairman Christopher Cox has announced that “[backdating in many cases]
2 makes a hash of (companies’) financial statements . . . [and is] poisonous [to efficient markets]. . . .
3 It is securities fraud if you falsify books and records. It is securities fraud if you present financial
4 statements to the SEC that do not comply with generally accepted accounting principles. There is no
5 requirement that (the defendant) personally profit [to prove that a crime occurred.]” He has further
6 stated, “Rather obviously, this fact pattern [of backdating options] results in a violation of the SEC’s
7 disclosure rules, a violation of accounting rules, and also a violation of the tax laws.” The
8 Commissioner of the IRS Mark Everson agreed and has further stated, “Picking a date on which the
9 stock price was low in comparison with the current price gives the employee the largest potential for
10 gain on the option and makes it possible for the employee to benefit from corporate performance that
11 occurred before the option was granted.”

12 160. In addition, Senator Chuck Grassley has stated: “[Options backdating] is behavior
13 that, to put it bluntly, is disgusting and repulsive. It is behavior that ignores the concept of an
14 ‘honest day’s work for an honest day’s pay’ and replaces it with a phrase that we hear all too often
15 today, ‘I’m going to get mine.’ . . . [S]hareholders and rank-and-file employees were ripped off by
16 senior executives who rigged stock option programs – through a process called ‘back-dating’ – to
17 further enrich themselves. And as we have found far too often in corporate scandals of recent years,
18 boards of directors were either asleep at the switch, or in some cases, willing accomplices
19 themselves”

20 161. In addition to the foregoing, a recent academic study revealed that outside directors of
21 companies were also benefiting from backdating and were recipients of manipulated stock option
22 grants, as detailed in the following Wall Street Journal article published on December 18, 2006:

23 A new academic study suggests that many outside directors received
24 manipulated stock-option grants, a finding that may help explain why the
25 practice of options backdating wasn’t stopped by the boards of some
26 companies.

27 The statistical study, which names no individuals or firms, estimates that
28 1,400 outside directors at 460 companies received questionable option grants,
 suggesting the widespread practice extended well beyond the executive suite.

1 The study is notable because it suggests that outside, or independent, directors
2 -- who are supposed to play a special role safeguarding against cozy board
3 relationships with management -- may have been co-opted in options
backdating by receiving manipulated grants themselves. The New York Stock
Exchange requires that a majority of board seats, and all compensation- and
audit-committee members, be independent

4 The evidence "contributes to understanding the possible factors that led to or
5 enabled manipulation to occur," states the unpublished study, which was
6 conducted by professors at Harvard and Cornell universities and the French
business school Insead

7 162. In a misguided effort to attract and retain employees in a competitive environment,
8 the Individual Defendants exceeded the bounds of the law and legitimate business judgment by
9 perpetrating their backdating scheme. The Individual Defendants' misconduct was unjustifiable and
10 constituted a gross breach of their fiduciary duties by:

- 11 a. colluding with the each other to backdate stock option grants;
- 12 b. colluding with the each other to violate GAAP and Section 162(m);
- 13 c. colluding with each other to produce and disseminate to BEA
14 Systems shareholders and the market false financial statements
15 that improperly recorded and accounted for the backdated option
grants and concealed the improper backdating of stock options;
and
- 16 d. colluding with each other to file false proxy statements, false
17 financial statements, and false Form 4s in order to conceal the
improper backdating of stock options.

18 163. The Individual Defendants' foregoing misconduct was not, and could not have been,
19 an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit the
20 Option Recipient Defendants at the expense of the Company.

21 164. As a direct and proximate result of the Individual Defendants' foregoing breaches of
22 fiduciary duties, the Company has sustained millions of dollars in damages, including, but not
23 limited to, the additional compensation expenses and tax liabilities the Company will be required to
24 incur, the loss of funds paid to the Company upon the exercise of stock options resulting from the
25 difference between the fair market value of the stock option on the true date of grant and the price
26 that was actually paid as a result of the backdated stock option grant, costs and expenses incurred in

1 connection with the Company's internal investigation and restatement of historical financial
2 statements, and costs and expenses incurred in connection with the SEC investigation.

3 165. As alleged herein, the Option Recipient Defendants have exercised hundreds of
4 thousands of backdated options at improperly low prices and have then sold the shares for hundreds
5 of millions in proceeds. Consequently, the Option Recipient Defendants have been unjustly
6 enriched by garnering millions of dollars in illicit profits and depriving the Company of millions of
7 dollars in payments that the Company should have received upon exercise of the options.

8 **DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

9 166. Plaintiffs bring this action derivatively in the right and for the benefit of the Company
10 to redress the Individual Defendants' breaches of fiduciary duties, unjust enrichment and other
11 violations of law.

12 167. Plaintiffs are owners of BEA Systems common stock and were owners of BEA
13 Systems common stock at all times relevant hereto.

14 168. Plaintiffs will adequately and fairly represent the interests of the Company and its
15 shareholders in enforcing and prosecuting its rights.

16 169. As a result of the facts set forth herein, Plaintiffs have not made any demand on the
17 BEA Systems Board of Directors to institute this action against the Individual Defendants. Such
18 demand would be a futile and useless act because the Board is incapable of making an independent
19 and disinterested decision to institute and vigorously prosecute this action.

20 170. At the time this action was commenced, the Board consisted of eight directors:
21 defendants Chuang, Gross, Janeway, and Morton, and directors L. Dale Crandall, Bruce A.
22 Pasternack, George Reyes ("Reyes"), Richard T. Schlosberg, III ("Schlosberg"). None of these
23 directors have demonstrated their ability to independently and disinterestedly consider a demand to
24 commence or vigorously prosecute this action, as demonstrated by their total failure, over more than
25 fourteen months, to remedy the misconduct described herein, despite their ongoing "investigation."
26 Moreover, as described herein, their failure to remedy the backdating misconduct has rendered them
27 unable to fulfill their fiduciary obligations in response to the Oracle Offer. Thus, because each of
28

1 these eight directors faces individual liability for their breaches of fiduciary duty relating to the
2 Oracle Offer, none of them can adequately consider a demand relating to the backdating.

3 171. Moreover, the following directors (6 out of 8) are incapable of independently and
4 disinterestedly considering a demand to commence and vigorously prosecute this action:

- 5 a. Chuang, because as an Option Recipient Defendant, he is directly interested in
6 the improperly backdated stock option grants complained of herein. Also, as
7 a director of the Company, he knowingly and deliberately participated in and
8 approved the improper backdating of stock options, as alleged herein, and
9 knowingly and deliberately participated in and approved the Company's filing
10 of false financial statements and other false SEC filings, as alleged herein, and
11 therefore is substantially likely to be held liable for the misconduct
12 complained of herein. Moreover, by colluding with the other Option
13 Recipient Defendants and others, as alleged herein, Chuang has demonstrated
14 that he is unable or unwilling to act independently of the other Option
15 Recipient Defendants. Also, his principal professional occupation is his
16 position as President and Chief Executive Officer of the Company. In his
17 position as President and Chief Executive Officer of the Company, Chuang
18 stands to earn hundreds of thousands of dollars in annual salary, bonuses, and
19 other compensation, all of which must be approved by defendant Janeway and
20 directors Schlosberg and Reyes, who currently serve as members of the
21 Compensation Committee. Chuang is also substantially likely to be held
22 liable for failing to inform himself of the Company's true value prior to
23 rejecting the Oracle Offer. Accordingly, Chuang is incapable of
24 independently and disinterestedly considering a demand to commence and
25 vigorously prosecute this action against the Individual Defendants;
- 26 b. Janeway, because as a member of the Compensation Committee at all relevant
27 times hereto, Janeway knowingly and deliberately participated in and
28 approved the improper backdating of stock options, as alleged herein, and as a
director, he knowingly and deliberately participated in and approved the
Company's filing of false financial statements and other false SEC filings, as
alleged herein, and therefore is substantially likely to be held liable for the
misconduct complained of herein. Janeway is also substantially likely to be
held liable for failing to inform himself of the Company's true value prior to
rejecting the Oracle Offer. Moreover, by colluding with the Option Recipient
Defendants and others, as alleged herein, Janeway has demonstrated that he is
unable or unwilling to act independently of the Option Recipient Defendants;
- c. Gross, because as a member of the Audit Committee at all relevant times, he
knowingly and deliberately participated in and approved the filing of false
financial statements and other false SEC filings as alleged herein and
knowingly and deliberately participated in and approved the Company's
violations of GAAP and Section 162(m), as alleged herein, and therefore is
substantially likely to be held liable for the misconduct complained of herein.
Gross is also substantially likely to be held liable for failing to inform himself
of the Company's true value prior to rejecting the Oracle Offer. Moreover, by
colluding with the Option Recipient Defendants and others, as alleged herein,
Gross has demonstrated that he is unable or unwilling to act independently of
the Option Recipient Defendants;

- 1 d. Morton, because as a member of the Audit Committee at all relevant times, he
2 knowingly and deliberately participated in and approved the filing of false
3 financial statements and other false SEC filings as alleged herein and
4 knowingly and deliberately participated in and approved the Company's
5 violations of GAAP and Section 162(m), as alleged herein, and therefore is
6 substantially likely to be held liable for the misconduct complained of herein.
7 Moreover, by colluding with the Option Recipient Defendants and others, as
8 alleged herein, Morton has demonstrated that he is unable or unwilling to act
9 independently of the Option Recipient Defendants. Morton is also not
10 disinterested because he was a director of KLA Tencor Corp., which has
11 admitted to backdating of company stock option grants and expects to restate
12 its financial statements to account for \$400 million in additional stock-based
13 compensation expenses. Morton is also substantially likely to be held liable
14 for failing to inform himself of the Company's true value prior to rejecting the
15 Oracle Offer. Accordingly, Morton cannot be considered independent and
16 disinterested in considering a demand to commence and vigorously prosecute
17 this action against the Individual Defendants for the same misconduct;
- 18 e. Janeway and Gross, because they share a longstanding personal and
19 professional relationship, especially with regard to their work at Warburg
20 Pincus ("Warburg"). Gross was a partner at Warburg from 1987 to 2005, and
21 Janeway joined Warburg in 1988 and currently serves as its Vice Chairman.
22 Accordingly, Janeway and Gross are incapable of independently and
23 disinterestedly considering a demand to commence and vigorously prosecute
24 this action against each other;
- 25 f. Chuang and Reyes, because they share a longstanding personal and
26 professional relationship with each other and Coleman, Scott and Bartz with
27 respect to their work at Sun Microsystems ("Sun"). Reyes served as Vice
28 President and Treasurer of Sun until 2001, and Coleman, Scott and Chuang,
held various positions at Sun before they formed BEA in 1995. Moreover,
Bartz was Vice President of Worldwide Field Operations and an Executive
Officer at Sun from 1990 to 1992. Accordingly, Chuang and Reyes are
incapable of independently and disinterestedly considering a demand to
commence and vigorously prosecute this action against each other and
Coleman, Scott and Bartz;
- g. Morton, because he shares a longstanding personal and professional
relationship with Ashburn and Klein especially with respect to their work at
Hewlett Packard ("HP"). Morton retired from HP in 1992 as Vice President
and Chief Operating Officer, having started in 1960, and Ashburn worked at
HP for 33 years as, among other things, Vice President. Klein is also a former
HP Vice President who worked there for 13 years. Accordingly, Morton is
incapable of independently and disinterestedly considering a demand to
commence and vigorously prosecute this action against Ashburn and Klein;
- h. Morton and Schlosberg, because they share a personal relationship as they
both served on the Board of Trustees of The David and Lucile Packard
Foundation. Accordingly, Morton and Schlosberg are incapable of
independently and disinterestedly considering a demand to commence and
vigorously prosecute this action against each other;
- i. Janeway and Reyes, because they share a personal and professional
relationship outside of BEA Systems as they were both on the board of

1 Veritas Software, Inc. Accordingly, Janeway and Reyes are incapable of
2 independently and disinterestedly considering a demand to commence and
3 vigorously prosecute this action against each other; and

- 4 j. Reyes, because he shares a personal and professional relationship with
5 Coleman outside of BEA Systems, as they are both current directors of
6 Symantec Corp. Accordingly, Reyes is incapable of independently and
7 disinterestedly considering a demand to commence and vigorously prosecute
8 this action against Coleman.

9 172. Furthermore, demand is excused because the misconduct complained of herein was
10 not, and could not have been, an exercise of good faith business judgment. As represented in BEA
11 Systems' proxy statements, the stated purpose of the Plans is to attract, retain, motivate and reward
12 employees by providing compensation that reflects the Company's stock performance and is
13 "consistent with stockholder interests." However, by granting options with backdated exercise
14 prices, the Individual Defendants undermined the purpose of the Plans by awarding employees
15 compensation that had intrinsic value regardless of BEA Systems' stock performance. In effect, this
16 practice was nothing more than secret handouts to executives and employees at the expense of
17 unsuspecting shareholders and the Company.

18 173. The Individual Defendants could have achieved the stated purpose of attracting,
19 retaining, motivating and rewarding "key personnel who possess the necessary leadership and
20 management skills" by granting them additional options under its incentive plans, or by granting
21 options at a price less than the fair market value on the date of grant and simply disclosing and
22 expensing these grants. Instead, the Individual Defendants backdated option grants in violation of
23 the Plans and improperly reporting these grants in their financial disclosures to improve their bottom
24 line.

25 174. Moreover, the practice of backdating stock options cannot be a valid exercise of
26 business judgment because it has subjected BEA Systems to substantial liability. BEA Systems
27 conducted an internal investigation and admitted to, among other things, backdating option grants.
28 The SEC has also initiated an informal investigation into the Company's historical option grants.
BEA Systems will likely suffer tax liabilities for the additional compensation they will have to

1 expense, and it has tarnished its reputation in the investment community through this deliberate and
2 calculated conduct.

3 **CLASS ACTION ALLEGATIONS**

4 175. Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23 on behalf of
5 all BEA Systems common stock holders. Excluded from the Class are the Individual Defendants,
6 members of the immediate families of the Individual Defendants, their heirs and assigns, BEA
7 Systems, and those in privity with any and all of them.

8 176. The members of the Class are so numerous that joinder of all of them would be
9 impracticable. While the exact number of Class members is unknown to Plaintiffs, and can be
10 ascertained only through appropriate discovery, Plaintiffs believe there are hundreds if not thousands
11 of Class members. As of October 16, 2007, BEA Systems had approximately 388 million shares of
12 stock outstanding in the public float.

13 177. Plaintiffs' claims are typical of the claims of the Class, since Plaintiffs and the other
14 members of the Class have and will sustain damages arising out of the Individual Defendants'
15 breaches of their fiduciary duties. Plaintiffs do not have any interests that are adverse or
16 antagonistic to those of the Class. Plaintiffs will fairly and adequately protect the interests of the
17 Class. Plaintiffs are committed to the vigorous prosecution of this action and have retained counsel
18 competent and experienced in this type of litigation.

19 178. There are questions of law and fact common to the members of the Class that
20 predominate over any questions which, if they exist, may affect individual class members. The
21 predominant questions of law and fact include, among others:
22

- 23 (a) Whether the Individual Defendants have and are breaching their fiduciary
24 duties to the detriment BEA Systems' shareholders;
- 25 (b) Whether the Class has been damaged and the extent to which members of the
26 Class have sustained damages; and
- 27 (c) The proper measure of those damages.
- 28

1
2 179. A class action is superior to all other available methods to the fair and efficient
3 adjudication of this controversy, since joinder of all members is impracticable. Further, as the
4 individual damages may be relatively small for most members of the Class, the burden and expense
5 of prosecuting litigation of this nature makes it unlikely that members of the Class would prosecute
6 individual actions. Plaintiffs anticipate no difficulty in the management of this action as a class
7 action. Further, the prosecution of separate actions by individual members of the Class would create
8 a risk of inconsistent or varying results, which may establish incompatible standards of conduct for
9 the Individual Defendants.

10 180. The Individual Defendants have acted, or refused to act, on grounds generally
11 applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief
12 and/or damages on behalf of the Class as a whole is appropriate.

13 **COUNT I**
14 **Derivatively Against the Individual Defendants for**
15 **Violations of § 10(b) and Rule 10b-5 of the Securities Exchange Act**

16 181. Plaintiffs incorporate by reference and reallege each and every allegation set forth
17 above, as though fully set forth herein.

18 182. Throughout the relevant period, the Individual Defendants individually and in
19 concert, directly and indirectly, by the use and means of instrumentalities of interstate commerce
20 and/or of the mails, intentionally or recklessly employed devices, schemes, and artifices to defraud
21 and engaged in acts, practices, and a course of business which operated as a fraud and deceit upon
22 the Company.

23 183. The Individual Defendants, as top executive officers and/or directors of the Company,
24 are liable as direct participants in the wrongs complained of herein. Through their positions of
25 control and authority as officers and/or directors of the Company, each of the Individual Defendants
26 was able to and did control the conduct complained of herein.

27 184. The Individual Defendants acted with scienter in that they either had actual
28 knowledge of the fraud set forth herein, or acted with reckless disregard for the truth in that they

1 failed to ascertain and to disclose the true facts, even though such facts were available to them. The
2 Individual Defendants were among the senior management and directors of the Company and were
3 therefore directly responsible for the fraud alleged herein.

4 185. The Company relied upon the Individual Defendants' fraud in granting the Option
5 Recipient Defendants options to purchase shares of the Company's common stock, as alleged herein.

6 186. As a direct and proximate result of the Individual Defendants' foregoing breaches of
7 fiduciary duties, the Company has sustained millions of dollars in damages, including, but not
8 limited to, the additional compensation expenses and tax liabilities the Company will be required to
9 incur, the loss of funds paid to the Company upon the exercise of stock options resulting from the
10 difference between the fair market value of the stock option on the true date of grant and the price
11 that was actually paid as a result of the backdated stock option grant, costs and expenses incurred in
12 connection with the Company's internal investigation and restatement of historical financial
13 statements, and costs and expenses incurred in connection with the SEC investigation.

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17 **COUNT II**

18 **Derivatively Against the Individual Defendants for**
19 **Violations of §14(a) of the Securities Exchange Act**

20 187. Plaintiffs incorporate by reference and reallege each and every allegation set forth
21 above, as though fully set forth herein.

22 188. Rule 14-A-9, promulgated pursuant to §14(a) of the Exchange Act, provides that no
23 proxy statement shall contain "any statement which, at the time and in the light of the circumstances
24 under which it is made, is false or misleading with respect to any material fact, or which omits to
25 state any material fact necessary in order to make the statements therein not false or misleading." 17
C.F.R. §240.14-A-9.

26 189. The proxy statements described herein violated §14(a) and Rule 14-A-9 because they
27 omitted material facts, including the fact that the Individual Defendants were causing the Company
28

1 to engage in an option backdating scheme, a fact which the Individual Defendants were aware of and
2 participated in from at least 1998 to 2002.

3 190. In the exercise of reasonable care, the Individual Defendants should have known that
4 the proxy statements were materially false and misleading.

5 191. The misrepresentation and omissions in the proxy statements were material. The
6 proxy statements were an essential link in the accomplishment of the continuation of the Individual
7 Defendants' unlawful stock option backdating scheme, as revelations of the truth would have
8 immediately thwarted a continuation of shareholders' endorsement of the directors' positions, the
9 executive officers' compensation, and the Company's compensation policies.

10 192. The Company was damaged as a result of the material misrepresentations and
11 omissions in the proxy statements.

12 **COUNT III**

13 **Derivatively Against Coleman, Dentinger and Klein and the Director Defendants for**
14 **Violations of §20(a) of the Securities Exchange Act**

15 193. Plaintiffs incorporate by reference and reallege each and every allegation set forth
16 above, as though fully set forth herein.

17 194. Coleman, Dentinger and Klein and the Director Defendants, by virtue of their
18 positions with the Company and their specific acts, were, at the time of the wrongs alleged herein,
19 controlling persons of the Company within the meaning of §20(a) of the Exchange Act. They had
20 the power and influence and exercised the same to cause the Company to engage in the illegal
21 conduct and practices complained of herein.

22 **COUNT IV**

23 **Derivatively Against the Individual Defendants for Accounting**

24 195. Plaintiffs incorporate by reference and reallege each and every allegation set forth
25 above, as though fully set forth herein.

26 196. As alleged in detail herein, each of the Individual Defendants had a fiduciary duty to,
27 among other things, refrain from unduly benefiting themselves and other Company insiders at the
28 expense of the Company.

1 197. As alleged in detail herein, the Individual Defendants breached their fiduciary duties
2 by, among other things, engaging in a scheme to grant backdated stock options to themselves and/or
3 certain other officers and directors of the Company and cover up their misconduct.

4 198. The Individual Defendants possess complete and unfettered control over the
5 improperly issued stock option grants and the books and records of the Company concerning the
6 details of such improperly backdated stock option grants.

7 199. As a result of the Individual Defendants' misconduct, the Company has been
8 damaged financially and is entitled to a recovery as a result thereof.

9 200. Plaintiffs demand an accounting be made of all stock option grants made to any of the
10 Option Recipient Defendants, including, but not limited to, the dates of the grants, the amounts of
11 the grants, the value of the grants, the recipients of the grants, the dates the options were exercised,
12 as well as the disposition of any proceeds received by any of the Option Recipient Defendants via
13 sale or other exercise of the grants.

14
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16 **COUNT V**

17 **Derivatively Against the Individual Defendants for**
18 **Breach of Fiduciary Duty and/or Aiding and Abetting**

19 201. Plaintiffs incorporate by reference and reallege each and every allegation set forth
20 above, as though fully set forth herein.

21 202. As alleged in detail herein, each of the Individual Defendants had a fiduciary duty to,
22 among other things, refrain from unduly benefiting themselves and other Company insiders at the
23 expense of the Company.

24 203. As alleged in detail herein, the Individual Defendants breached their fiduciary duties
25 by, among other things, engaging in a scheme to grant backdated stock options to themselves and/or
26 certain other officers and directors of the Company and cover up their misconduct.
27
28

1 Company, including the information set forth herein regarding the true adverse facts of the
2 Company's option backdating, improper accounting, and false financial statements.

3 215. At the time of such sales, that information was not generally available to the public or
4 the securities markets. Had such information been generally available, it would have significantly
5 reduced the market price of the Company's shares at that time.

6 216. The Insider Selling Defendants, and each of them, had actual knowledge of material,
7 adverse non-public information regarding the Company, and thus sold their shares of the Company's
8 common stock in California in violation of California Corporations Code § 25402.
9 Pursuant to California Corporations Code § 25502.5, the Insider Selling Defendants, and each of
10 them, are liable to the Company for damages in an amount up to three times the difference between
11 the price at which the stock was sold by these defendants, and each of them, and the market value
12 which the stock would have had at the time of the sale if the information known to these defendants
13 had been publicly disseminated prior to that time and a reasonable time had elapsed for the market to
14 absorb the information.

15 **COUNT IX**

16 **Class Claim against the Director Defendants for**
17 **Breach of Fiduciary Duty Relating To The Oracle Offer**

18 217. Plaintiffs incorporate by reference and reallege each and every allegation set forth
19 above, as though fully set forth herein.

20 218. As described herein, the Director Defendants have failed to fully inform themselves
21 of BEA Systems' true value prior to rejecting the Oracle Offer and the Director Defendants have
22 thereby violated fiduciary duties of due care, good faith and loyalty owed to the public shareholders
23 of BEA Systems.

24 219. Unless an order is entered by the Court directing the Director Defendants to
25 implement a proper procedure or process to determine BEA Systems' true value and thereby obtain
26 the highest possible price for shareholders, the Director Defendants will continue to breach their
27 fiduciary duties owed to Plaintiffs and the members of the Class.

1 220. By reason of the foregoing, Plaintiffs and each member of the Class are suffering
2 irreparable injury, including injury for which there is no adequate remedy at law.

3 WHEREFORE, Plaintiffs demand judgment as follows:

- 4 A. Against all of the Individual Defendants and in favor of the
5 Company for the amount of damages sustained by the Company
6 as a result of the Individual Defendants' misconduct;
- 7 B. Ordering the Option Recipient Defendants to disgorge to the
8 Company all of the backdated stock options they received,
9 including the proceeds of any such options that have been
10 exercised, sold, pledged, or otherwise monetized, and imposing a
11 constructive trust thereover;
- 12 C. Awarding the Company treble damages against the Insider Selling
13 Defendants as provided by California Corporations Code §
14 25502.05;
- 15 D. Granting appropriate equitable relief to remedy Individual
16 Defendants' breaches of fiduciary duties;
- 17 E. Ordering that this action may be maintained as a class action and
18 certifying Plaintiffs as Class Representatives.
- 19 F. Declaring that the Director Defendants have breached their
20 fiduciary and other duties to Plaintiffs and the other members of
21 the Class;
- 22 G. Directing the Company to take all necessary actions to reform and
23 improve its corporate governance and internal control procedures
24 to comply with applicable law, including, but not limited to,
25 putting forward for a shareholder vote resolutions for amendments
26 to the Company's By-Laws or Articles of Incorporation and
27 taking such other action as may be necessary to place before
28 shareholders for a vote adoption of the following Corporate
Governance policies:
- (a) a proposal requiring that the office of CEO of the Company and Chairman of the Board be permanently held by separate individuals and that the Chairman of the Board meets rigorous "independent" standards;
 - (b) a proposal to strengthen the Board's supervision of operations and develop and implement procedures for greater shareholder input into the policies and guidelines of the Board;
 - (c) appropriately test and then strengthen the internal audit and control functions;

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- (d) rotate independent auditing firms every five years;
 - (e) control and limit insider stock selling and the terms and timing of stock option grants; and
 - (f) reform executive compensation;
- H. Awarding to Plaintiffs the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and
- I. Granting such other and further relief as the Court deems just and proper.

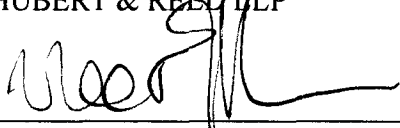
JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury.

Dated: 11/9/07

Respectfully submitted,

SCHUBERT & REED LLP



Robert C. Schubert (S.B.N. 62684)
 Juden Justice Reed (S.B.N. 153748)
 Willem F. Jonckheer (S.B.N. 178748)
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Counsel for Plaintiffs

VERIFICATION

I, George Barcheski, hereby verify that I have authorized the filing of the attached Complaint, that I have reviewed the Complaint, and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

DATE: Oct 22, 2007


GEORGE BARCHESKI

VERIFICATION

I, Catherine Molner, hereby verify that I have authorized the filing of the attached Complaint, that I have reviewed the Complaint, and that the facts therein are true and correct to the best of my knowledge, information and belief. I declare under penalty of perjury that the foregoing is true and correct.

DATE: 10/20/07

Catherine Molner
CATHERINE MOLNER

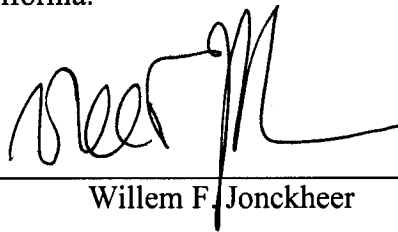
VERIFICATION

I, Willem F. Jonckheer, hereby declare:

1. I am one of the counsel for Plaintiff Musto Family Trust, Vincent Musto, Trustee in the captioned matter. Plaintiff is absent from the county where this action is pending and from the county in which I maintain my offices, and for that reason I am making this verification for and on his behalf.

2. I have read the foregoing complaint and know its contents. I am informed and believe and on that ground allege that the matters stated therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of November, 2007 in San Francisco, California.



Willem F. Jonckheer