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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

INDIANA STATE DISTRICT COUNSEL)
LABORERS AND HOD CARRIERS)
PENSION FUND, Derivatively on Behalf)
of Electronics for Imaging, Inc., *et al.*,)
Plaintiffs,)
v.)
GUY GECHT, *et al.*,)
Defendants.)
and)
ELECTRONICS FOR IMAGING, INC., a)
Delaware Corporation)
Nominal Defendant.)

Case No. C06-7274 EMC
(Related cases)
(Consolidated case with C07-0698 EMC)

**CONSOLIDATED AMENDED
COMPLAINT**

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TRUEMAN PARISH, et al.,)
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Plaintiffs,)
)
v.)
)
DAN AVIDA, et al.)
)
Defendants.)
)
and)
)
ELECTRONICS FOR IMAGING, INC., a)
Delaware Corporation)
)
Nominal Defendant.)

No. C07-0698 EMC
(Related cases)

(Consolidated case with C06-7274 EMC)

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1 **I. NATURE AND SUMMARY OF THE ACTION**

2 1. This is a shareholder’s derivative action brought for the benefit of Nominal
3 Defendant Electronics for Imaging, Inc. (“EFI” or the “Company”) against certain members of
4 its Board of Directors (the “Board”) and certain of its executive officers seeking to remedy
5 breaches of fiduciary duties, unjust enrichment, statutory violations, and other violations of
6 law.

7 2. As alleged in detail herein, from 1995 to 2006 (the “Relevant Period”), the
8 Individual Defendants (as defined herein) engaged in a scheme and wrongful course of
9 business whereby the Individual Defendants diverted millions of dollars of corporate assets to
10 the Option Recipient Defendants (as defined herein) via the manipulation of the grant dates and
11 associated documentation of stock options granted to EFI insiders. Each of the Individual
12 Defendants participated in the concealment of the option backdating scheme complained of
13 herein and/or refused to pursue the Company’s legal rights to require certain of the Option
14 Recipient Defendants to disgorge the millions of dollars in illicitly obtained incentive
15 compensation and insider trading proceeds.

16 3. A stock option is the right to purchase a stock for a specified period of time at a
17 fixed price, called the “exercise price” or “strike price.” The exercise price is generally fixed to
18 the market price of the stock on the date of grant. If the stock’s market price exceeds the
19 exercise price, the option holder may exercise the stock option, by purchasing the stock from
20 the Company at the exercise price, and resell it at the higher market price, profiting from the
21 difference.

22 4. When the grant date of a stock option is manipulated to an earlier date on which
23 the stock closed at a lower price - *i.e.* when the stock option is “backdated” - the grantee pays
24 less for the stock and the corporation, the counterparty to the stock option grant, receives less
25 when the stock option is exercised. When stock options are backdated in this manner for the
26 benefit of insiders (as they were in this case), the stated purpose behind a stock option plan – to
27 strengthen the Company’s ability to retain key employees and motivate such employees to
28

1 remain focused on long-term stockholder value performance – is undermined to the detriment
2 of the Company and its shareholders, because the stock options are already “in the money.”¹

3 5. As further detailed herein, twelve out of the thirteen discretionary option grants
4 awarded from July 1995 through April 2002 were backdated and all of them were granted to
5 EFI’s top compensated executives.

6 6. By engaging in this scheme, the Individual Defendants were able to conceal that
7 EFI was not recording material compensation expenses and was materially overstating the
8 Company’s net income and earnings for at least 1995 to 2006. From 2000 to 2006, the Option
9 Recipient Defendants collectively realized over \$31 million in illicit proceeds through the sale
10 of EFI stock based on material non-public information regarding defendants’ backdating
11 scheme. By contrast, EFI has suffered, and will continue to suffer, significant financial and
12 non-monetary damages and injuries, several of which were identified in a report issued by the
13 Center for Financial Research and Analysis on May 16, 2006, entitled “Options Backdating –
14 Which Companies Are at Risk?”:

- 15 • SEC investigation risk – The SEC has begun information investigations at
16 many companies in recent months and has also begun to call for improved
disclosures around all areas of executive compensation.
- 17 • Accounting restatement risk – Some companies which have admitted
18 backdating options have accompanied those admissions with financial
restatements impacting both the balance sheet and earnings.
- 19 • Tax/Cash implications – The change in options from the practice of options
20 backdating may force some companies to restate tax positions for the years
in question, which could result in an obligation to pay back taxes.
- 21 • Management credibility risk – If a reputable management team is found to
22 have repeatedly backdated options, thereby enriching themselves at the
expense of shareholder, the reputation of management (and the related stock
23 premium for superior management) could take a hit.

24 7. The Individual Defendants’ backdating scheme not only surreptitiously and
25 illegally lined their own pockets and caused EFI to issue materially false financial statements,

26 _____
27 ¹ “In the money” refers to when the exercise price of a stock option is below the market price of
the underlying stock. *See infra*.

1 but undermined the key purpose of stock option-based executive compensation, i.e., to provide
2 incentive to improve the Company's performance and increase the Company's stock price and
3 market capitalization.

4 8. EFI shareholders routinely relied upon the false proxy statements issued by the
5 Company and voted for and adopted amendments to the Company's stock option plans under
6 which the Individual Defendants manipulated and backdated stock option grants in order to
7 enrich the Option Recipient Defendants at the expense of the Company and its shareholders.

8 9. The Individual Defendants knew, but failed to disclose, that they had engaged in
9 a practice of backdating stock option grants to the Option Recipient Defendants in a manner
10 designed to create immediate and risk-free profits in direct contravention of the Company's
11 stated and shareholder approved stock option plans and proxy statements filed with the
12 Securities and Exchange Commission ("SEC"). Furthermore, the Individual Defendants knew
13 that because the Company had not taken a compensation expense for backdated options, EFI's
14 reported earnings and expenses were false and misleading and not in compliance with
15 Generally Accepted Accounting Principles ("GAAP"). Thus, by falsifying the date on which
16 options were granted, the Individual Defendants materially understated EFI's expenses and
17 overstated its income and falsely represented that it had not incurred any expenses for option
18 grants.

19 10. In sum, as alleged in detail herein, in gross breach of their fiduciary duties as
20 officers and/or directors of EFI, the Individual Defendants colluded with one another to:

- 21 a. improperly backdate grants of EFI stock options to EFI Chief Executive
22 Officer Guy Gecht and several other EFI executives, in violation of the
23 Company's shareholder-approved stock option plans;
- 24 b. improperly record and account for the backdated stock options, in
25 violation of GAAP;
- 26 c. improperly take tax deductions based on the backdated stock options, in
27 violation of Section 162(m) of the Internal Revenue Code; and

1 resides in or maintains executive offices in this district, and defendants have received
2 substantial compensation in this district by engaging in numerous activities and conducting
3 business here, which had an effect in this district.

4 **III. PARTIES**

5 **A. Plaintiffs**

6 18. Lead Plaintiffs Trueman Parish and Kevin Fennimore are, and were at all
7 relevant times, shareholders of Nominal Defendant EFI.

8 **B. Nominal Defendant**

9 19. Nominal Defendant EFI is a Delaware corporation with its principal executive
10 offices located at 303 Velocity Way, Foster City, California 94404. According to its public
11 filings, EFI is a world leader in digital controllers, superwide format printers and inks, and print
12 management solutions.

13 **C. Director Defendants**

14 20. Defendant Guy Gecht (“Gecht”) has served as the Company’s Chief Executive
15 Officer since January 2000 and as Chairman of the Board since 2006. Gecht also served as
16 EFI’s President from July 1999 to January 2000, as Vice President and General Manager of
17 Server Products from January 1999 to July 1999 and as Director of Software Engineering from
18 October 1995 to January 1999.

19 21. Defendant Fred Rosenzweig (“Rosenzweig”) has served as the Company’s
20 President and as a director of EFI since 2000. Rosenzweig also served as the Company’s Chief
21 Operating Officer from July 1999 to April 2004, as Executive Vice President from August
22 1998 to July 1999, as Vice President of Manufacturing and Support from January 1995 to
23 August 1998 and as Director of Manufacturing from May 1993 to January 1995.

24 22. Defendant Gill Cogan (“Cogan”) has served as a director of the Company since
25 1992 and as a member of the Compensation Committee of the Board (“Compensation
26 Committee”) since 2005. Cogan also served as a member of the Audit Committee of the Board
27 (“Audit Committee”) from at least 1996 to 2005.

1 23. Defendant Jean-Louis Gassée (“Gassée”) has served as a director of the
2 Company since 1990 and as a member of the Compensation Committee since at least 1996.

3 24. Defendant James S. Greene (“Greene”) has served as a director of the Company
4 since 2000 and as a member of the Audit Committee since 2000.

5 25. Defendant Dan Maydan (“Maydan”) has served as a director of the Company
6 since 1996 and as a member of the Audit Committee since January 1997.

7 26. Defendant Thomas I. Unterberg (“Unterberg”) has served as a director of the
8 Company since 1990. Unterberg also served as a member of the Compensation Committee
9 from at least 1996 to 2003.

10 27. Collectively, Defendants Gecht, Rosenzweig, Cogan, Gassée, Greene, Maydan
11 and Unterberg are referred to herein as the “Director Defendants.”

12 **D. Option Recipient Defendants**

13 28. Defendant Dan Avida (“Avida”) served as the Company’s President from
14 October 1994 to January 2000, as Chief Executive Officer from July 1995 to January 2000, as
15 Chief Operating Officer from October 1994 to July 1995, as Vice President of Research and
16 Development from July 1993 to October 1994, as Vice President of Hardware Systems from
17 August 1991 to July 1993, as Director of Hardware Systems from January 1991 to August
18 1991, as project manager from December 1989 to January 1991 and as an engineer from July
19 1989 to December 1989.

20 29. Defendant Jeffrey Lenches (“Lenches”) served as the Company’s Executive
21 Vice President from October 1994 to 1998, as Vice President of Sales from August 1993 to
22 October 1994, as Vice President of Fiery Sales from July 1991 to August 1993 and as Director
23 of Sales from July 1990 to July 1991.

24 30. Defendant Eric Saltzman (“Saltzman”) served as the Company’s Chief Financial
25 Officer and Corporate Secretary from August 1998 to April 2000, as Vice President of
26 Strategic Relations from October 1995 to August 1998 and as Director of Commercial Affairs
27 and General Counsel from January 1994 to October 1995.

1 31. Defendant Mark Lee (“Lee”) served as the Company’s Vice President of
2 Worldwide Sales from August 1998 to January 2000, as Vice President of Sales for the Office
3 and Embedded Systems Division from January 1997 to July 1998, as Director of Worldwide
4 Sales for Ricoh & Minolta from October 1995 to January 1997 and as a worldwide OEM
5 account manager for Ricoh & Minolta from October 1994 to September 1995.

6 32. Defendant Janice Smith (“Smith”) served as the Company’s Vice President of
7 Marketing and Human Resources from May 1998 to January 2001, as Vice President of Human
8 Resources from October 1995 to May 1998 and as Director of Human Resources from May
9 1993 to October 1995.

10 33. Defendant Joseph Cutts (“Cutts”) has served as the Company’s Chief Operating
11 Officer since January 2004 and as Corporate Secretary since April 2000. Cutts also served as
12 the Company’s Chief Financial Officer from April 2000 to April 2006, as Vice President of
13 Finance from January 1999 to April 2000 and as Director of Finance from March 1997 to
14 January 1999.

15 34. Collectively, Defendants Gecht, Rosenzweig, Cogan, Gassée, Greene, Maydan,
16 Unterberg, Avida, Lenches, Saltzman, Lee, Smith and Cutts are referred to herein as the
17 “Option Recipient Defendants.”

18 **E. Individual Defendants**

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

21 **IV. DUTIES OF THE DEFENDANTS**

22 36. By reason of their positions as officers and/or directors of the Company and
23 because of their ability to control the business and corporate affairs of the Company, the
24 Individual Defendants owed the Company and its shareholders the fiduciary obligations of
25 good faith, trust, loyalty, and due care, and were and are required to use their utmost ability to
26 control and manage the Company in a fair, just, honest, and equitable manner. The Individual
27 Defendants were and are required to act in furtherance of the best interests of the Company and
28

1 its shareholders so as to benefit all shareholders equally and not in furtherance of their personal
2 interest or benefit. Each director and officer of the Company owes to the Company and its
3 shareholders the fiduciary duty to exercise good faith and diligence in the administration of the
4 affairs of the Company and in the use and preservation of its property and assets, and the
5 highest obligations of fair dealing.

6 37. 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,
8 exercise control over the wrongful acts complained of herein.

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

- 13 a. exercise good faith in ensuring that the affairs of the Company were
14 conducted in an efficient, business-like manner so as to make it possible
15 to provide the highest quality performance of its business;
- 16 b. exercise good faith in ensuring that the Company was operated in a
17 diligent, honest and prudent manner and complied with all applicable
18 federal and state laws, rules, regulations and requirements, including
19 acting only within the scope of its legal authority;
- 20 c. exercise good faith in supervising the preparation, filing and/or
21 dissemination of financial statements, press releases, audits, reports or
22 other information required by law, and in examining and evaluating any
23 reports or examinations, audits, or other financial information
24 concerning the financial condition of the Company;
- 25 d. exercise good faith in ensuring that the Company's financial statements
26 were prepared in accordance with GAAP; and
27

1 e. refrain from unduly benefiting themselves and other Company insiders at
2 the expense of the Company.

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

- 10 a. make and keep books, records, and accounts, which, in reasonable detail,
11 accurately and fairly reflect the transactions and dispositions of the
12 assets of the issuer; and
- 13 b. devise and maintain a system of internal accounting controls sufficient to
14 provide reasonable assurances that:
 - 15 i. transactions are executed in accordance with management's
16 general or specific authorization; and
 - 17 ii. transactions are recorded as necessary to permit preparation of
18 financial statements in conformity with GAAP.

19 40. EFI's Audit Committee Charter provides a list of the Audit Committee's
20 responsibilities and duties which include, among other things, to:

- 21 a. review and discuss with management and the independent auditors the
22 annual audited financial statements and quarterly unaudited financial
23 statements, including the Company's disclosures under "Management's
24 Discussion and Analysis of Financial Condition and Results of
25 Operations," prior to filing the Company's annual report on Form 10-K
26 and Quarterly Reports on Form 10-Q with the Securities and Exchange
27 Commission;

28

1 43. In order to maximize remuneration to its officers and employees, and to attract
2 non-employee executives to the Company's ranks without impacting its reported income, the
3 Individual Defendants engaged in a practice of backdating the issue date of stock options to
4 certain key personnel.

5 44. On information and belief, the Compensation Committee members, including
6 Defendants Gassée and Unterberg, who issued the grants, and the EFI insider who received
7 each grant, would determine the date upon which stock prices were significantly below the
8 current market price. They would then falsify the relevant documents to make it appear as if
9 the stock options were granted on the earlier date.

10 45. As a result, the executive or director to whom the options were granted could
11 realize the gain observed between the historical and actual grant date while the Company's
12 records would appear to show no difference between the option price and the market price on
13 the purported date of the grant, thereby avoiding both the reporting requirement and the
14 additional compensation expense.

15 46. This practice of backdating stock options, though widespread among public
16 companies, remained virtually undetected until academic research revealed patterns of stock
17 option grants that could not be explained by chance. These studies noted the frequency with
18 which stock option grants occurred just after a drop in stock price and immediately before the
19 price rose, often at the lowest price of the year. Such timing could not be statistically explained
20 by random selection of grant dates. One study hypothesized that the dates of the grants had
21 been selected retroactively. Such retroactive dating, or "backdating" would permit the grantor
22 to select the most advantageous price for the stock option and in effect create an "in the
23 money" stock grant (one in which the actual stock price exceeds the option price on the day
24 granted), that would appear as if it was granted while the stock price was low. Since
25 companies are required to report "in the money" grants as compensation to the recipient and as
26 a charge to the corporation, the practice of backdating would provide a means to confer
27 additional stock value, or compensation, to officers and employees that was not detectable,
28

1 thereby permitting the Company to conceal the additional compensation and forego reporting
2 or recording the charge.

3 47. The academic research did not identify specific companies that had engaged in
4 these practices, although it apparently triggered increased scrutiny by the SEC and other
5 government officials.

6 48. The practice was publicly disclosed on March 18, 2006, when The Wall Street
7 Journal published an article entitled *The Perfect Payday*, in which it described stock option
8 backdating practices by a number of companies at which executives had achieved stock
9 paydays the likelihood of which far exceeded that of winning the lottery, which defied random
10 chance. The Wall Street Journal, together with finance professors Eric Lie, of the Tippie
11 College of Business at the University of Iowa, David Yermack, of New York University Stern
12 School of Business, and Professor John Emerson, a statistician at Yale University, studied
13 patterns of particularly favorable stock grants at certain companies and calculated the
14 probability of such patterns occurring randomly and concluded that the odds were improbable.
15 The Journal reported, for example, that all six of the stock options granted by ACS to its former
16 CEO Jeffrey Rich displayed a pattern of profitability that could not be explained by chance:

17 In a striking pattern all six of his stock-option grants from 1995 to 2002
18 were dated just before a rise in the stock price, often at the bottom of a
steep drop.

19 Just lucky? A Wall Street Journal analysis suggests the odds of this
20 happening by chance are extraordinarily remote – around one in 300
billion. The odds of winning the multistate Powerball lottery with a \$1
21 ticket are one in 146 million.

22 Suspecting such patterns aren't due to chance, the Securities and
Exchange Commission is examining whether some options carry favorable
23 grant dates for a different reason: They were backdated.

24 Charles Forelle and James Bandler, *The Perfect Payday*, The Wall Street Journal, March 18,
25 2006.

26 49. Since the date of The Wall Street Journal article, more than 130 companies have
27 reported internal and/or governmental investigations of their backdating practices. *Perfect*

1 *Payday Options Scorecard*, The Wall Street Journal (updated regularly, available at
2 <http://online.wsj.com/public/resources/documents/info-optionscore06-full.html>).

3 50. Additional research by Professor Lie suggests that between 1996 and 2005,
4 18.9% of unscheduled “in the money” option grants to top executives were backdated or
5 manipulated, by nearly one-third of the companies investigated.

6 51. Revelations of backdated stock options have been made by companies across
7 several business sectors and geographic regions. A disproportionate number of these
8 revelations, however, have come from technology companies in Silicon Valley, where stock
9 options are frequently used to attract employees and increasingly lavished upon executives.
10 Rank and file employees who received backdated options have now found themselves subject
11 to unforeseen tax liabilities and, in some instances, barred from exercising their own vested
12 securities. As reported by the San Jose Mercury News:

13 Across Silicon Valley and the nation, hundreds of thousands of
14 workers who played no role in manipulating options nonetheless
15 could pay a price, from lost stock options and lost investment
16 opportunities to looming tax bills. And dozens of companies have
imposed indefinite “blackout” periods While companies
struggle to restate past earnings and report current financial results.

17 Mark Schwanhauser, *Average Worker Takes A Hit: Tax Bill Headaches Looming For Rank-*
18 *and-File*, San Jose Mercury News, January 29, 2007, available online at
19 http://www.mercurynews.com/search/ci_5110094.

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

1 53. Like the stock options examined by The Wall Street Journal, the pattern of
2 option grants to the EFI Option Recipient Defendants is more than randomly fortuitous. The
3 more likely reason for the extraordinary pattern exhibited by EFI is that the Option Recipient
4 Defendants' stock options were improperly backdated, as alleged herein.

5 **B. EFI's Stock Plans**

6 54. According to the Company's Proxy statements for the time period 1995 to 2002,
7 EFI maintained two active stock plans: the 1990 Stock Plan (the "1990 Plan") and the 1999
8 Equity Incentive Plan (the "1999 Plan").

9 55. During the relevant time period, Lead Plaintiffs believe and therefore allege that
10 all discretionary stock options granted by the Company to the Option Recipient Defendants
11 were granted under the 1990 Plan or the 1999 Plan.

12 56. Thus, for the purposes of this action, the effective stock option plans are the
13 1990 Plan and the 1999 Plan (collectively "the Plans").

14 57. According to its filings with the SEC, "[t]he Company's Stock Plans are long-
15 term incentive plans for all employees. These plans are intended to align stockholder and
16 employee interests by creating a direct link between long-term rewards and the value of the
17 Company's shares. The Compensation Committee believes that long-term stock ownership by
18 executive officers and all employees is an important factor in achieving above average growth
19 in share value and in retaining valued employees." Moreover, "the Compensation Committee
20 believes that options motivate executive officers and employees to manage the Company in a
21 manner which will benefit all stockholders."

22 58. According to the Company's proxy statements during the relevant period, "[t]he
23 1990 Plan is currently being administered by the Compensation Committee."

24 59. Pursuant to the 1990 Plan, "[t]he exercise price under the 1990 Plan is
25 determined by the Board of Directors or its committee and ... may not be less than 100% of the
26 fair market value of the Company's Common Stock on the date the option is granted.
27 However, in the case of options grants to any person who owns 10% or more of the combined
28

1 voting power of the Company's Common Stock, the per share exercise price must be no less
2 than 110% of the fair market value of the Company's Common Stock."

3 60. Pursuant to the 1990 Plan, "Fair Market Value" means "as of any date ... the
4 closing sales price for such stock ... as reported in the Wall Street Journal or such other source
5 as the Administrator deems reliable."

6 61. Pursuant to the 1999 Plan, "the exercise price of each Incentive Stock Option
7 shall not be less than one hundred percent (100%) of the Fair Market Value of the stock,"
8 where "Fair Market Value" is defined as, "the closing sales price for such stock (or closing bid,
9 if no sales were reported) as quoted on such exchange or market on the last market trading day
10 prior to the day of determination."

11 62. Thus, as EFI common stock was traded on the NASDAQ during the entire
12 relevant time period, the fair market value of stock options granted to the Option Recipient
13 Defendants were required to have a grant price equal to the NASDAQ closing price of EFI
14 common stock on the day prior to the date of the grant.

15 63. As detailed below, for those stock options granted between 1995 and 2003, the
16 Company's proxy statements represent that the exercise price per share of each option was
17 equal to the fair market value of the Company's common stock on the date of grant.

18 64. The Plans permitted grants of stock options, up to a specified maximum, at the
19 discretion of the administrator, to officers or key employees of the Company.

20 65. According to EFI's Proxy Statements for the relevant period, the Plans and,
21 more specifically, the grant of stock options under the Plans, were administered by the
22 Compensation Committee. The Plans gave broad powers to the Compensation Committee, as
23 set forth below.

24 **C. The EFI Compensation Committee**

25 66. According to the Company's proxy statements for the relevant period, the EFI
26 Board of Directors had delegated the primary authority for administration of the Plans to the
27 Compensation Committee: "The Compensation Committee consists of Directors Gasse and
28

1 Unterberg and undertook its actions by unanimous written consent during 2000. The
2 Compensation Committee reviews and approves the Company's executive compensation policy
3 and administers the Company's Stock Plans.”

4 67. Pursuant to EFI's Proxy Statements during the relevant period, the
5 Compensation Committee was directly responsible for determining the stock option awards that
6 are the subject of this litigation, in the amounts set forth below.

7 68. According to the Company's Proxy Statement filed with the SEC during the
8 relevant period, the Compensation Committee consisted of defendants Gasee and Unterberg,
9 who reviewed and approved the Company's executive compensation policy and administered
10 the Plans. Thus, pursuant to the 1990 Plan, the Compensation Committee, and specifically
11 defendants Gasee and Unterberg, had the following authority:

12 (i) to determine the Fair Market Value of the Common Stock, in
13 accordance with Section 2(k) of the Plan;

14 (ii) to select the officers, Consultants and Employees to whom
15 Options and Stock Purchase Rights may from time to time be
granted hereunder;

16 (iii) to determine whether and to what extent Options and Stock
Purchase Rights or any combination thereof, are granted hereunder;

17 (iv) to determine the number of shares of Common Stock to be
18 covered by each such award granted hereunder;

19 (v) to approve forms of agreement for use under the Plan;

20 (vi) to determine the terms and conditions, not inconsistent with
21 the terms of the Plan, of any award granted hereunder (including,
22 but not limited to, the share price of any restriction or limitation, or
23 any vesting acceleration or waiver of forfeiture restrictions
regarding any Option or other award and/or the shares of Common
Stock relating thereto, based in each case on such factors as the
Administrator shall determine, in its sole discretion);

24 (vii) to determine whether and under what circumstances an Option
25 may be settled in cash under subsection 9(f) instead of Common
Stock;

26 (viii) to determine whether, to what extent and under what
27 circumstances Common Stock and other amounts payable with
28 respect to an award under this Plan shall be deferred either
automatically or at the election of the participant (including
providing for and determining the amount, if any, of any deemed

1 earnings on any deferred amount during any deferral period);

2 (ix) to reduce the exercise price of any Option to the then current
3 Fair Market Value if the Fair Market Value of the Common Stock
4 covered by such Option shall have declined since the date the
5 Option was granted; and

6 (x) to determine the terms and restrictions applicable to Stock
7 Purchase Rights and the Restricted Stock purchased by exercising
8 such Stock Purchase Rights.

9 69. Pursuant to the 1999 Plan, the Compensation Committee, and specifically
10 defendants Gasse and Unterberg, had the following authority:

11 (i) To determine from time to time which of the persons eligible
12 under the Plan shall be granted Stock Awards; when and how each
13 Stock Award shall be granted; what type or combination of types
14 of Stock Award shall be granted; the provisions of each Stock
15 Award granted (which need not be identical), including the time or
16 times when a person shall be permitted to receive stock pursuant to
17 a Stock Award; and the number of shares with respect to which a
18 Stock Award shall be granted to each such person.

19 (ii) To construe and interpret the Plan and Stock Awards granted
20 under it, and to establish, amend and revoke rules and regulations
21 for its administration. The Board, in the exercise of this power,
22 may correct any defect, omission or inconsistency in the Plan or in
23 any Stock Award Agreement, in a manner and to the extent it shall
24 deem necessary or expedient to make the Plan fully effective.

25 (iii) To amend the Plan as provided in Section 12.

26 (iv) Generally, to exercise such powers and to perform such acts as
27 the Board deems necessary or expedient to promote the best
28 interests of the Company which are not in conflict with the
provisions of the Plan.

D. The EFI Audit Committee

70. During the relevant period, Defendants Cogan, Greene and Maydan served on the Audit Committee, which was to be comprised of at least three directors who satisfied the independence and experience requirements of the Company and applicable NASDAQ rules. As stated in the 2000 Proxy Statement, the EFI Audit Committee Charter required that at least one member of the Committee have accounting or related financial management expertise.

71. As members of the Audit Committee, Defendants Cogan, Greene and Maydan had a duty to know and understand the material information regarding stock option grants as set out in the Audit Committee's charter including oversight of the integrity of the Company's

1 financial statements and the Company's compliance with legal and regulatory requirements,
2 and assisting the Board of Directors in its oversight of the Company's financial reporting,
3 among other duties.

4 72. The members of the Audit Committee knew or should have known that EFI's
5 financial statements contained materially false or misleading statements and made and/or
6 omitted material facts regarding Defendants' options backdating practices.

7 **E. Backdating of Stock Option Grants to the Option Recipient Defendants**

8 73. Pursuant to Accounting Principles Board Opinion No. 25 ("APB 25), the
9 applicable GAAP provision at the time of the foregoing stock option grants, if the market price
10 on the date of grant exceeds the exercise price of the options, the Company must recognize the
11 difference as an expense.

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

22 75. From 1995 to 2003, the Compensation Committee, which, according to the
23 Company's proxy statements, was responsible to administer the Plans and with the knowledge
24 and approval of the other members of the Board, knowingly and deliberately violated the terms
25 of the Plans, APB 25 and Section 162(m) by knowingly and deliberately backdating grants of
26 stock options to make it appear as though the grants were made on dates when the market price
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1 of EFI stock was lower than the market price on the actual grant dates, thereby unduly
2 benefiting the recipients of the backdated options.

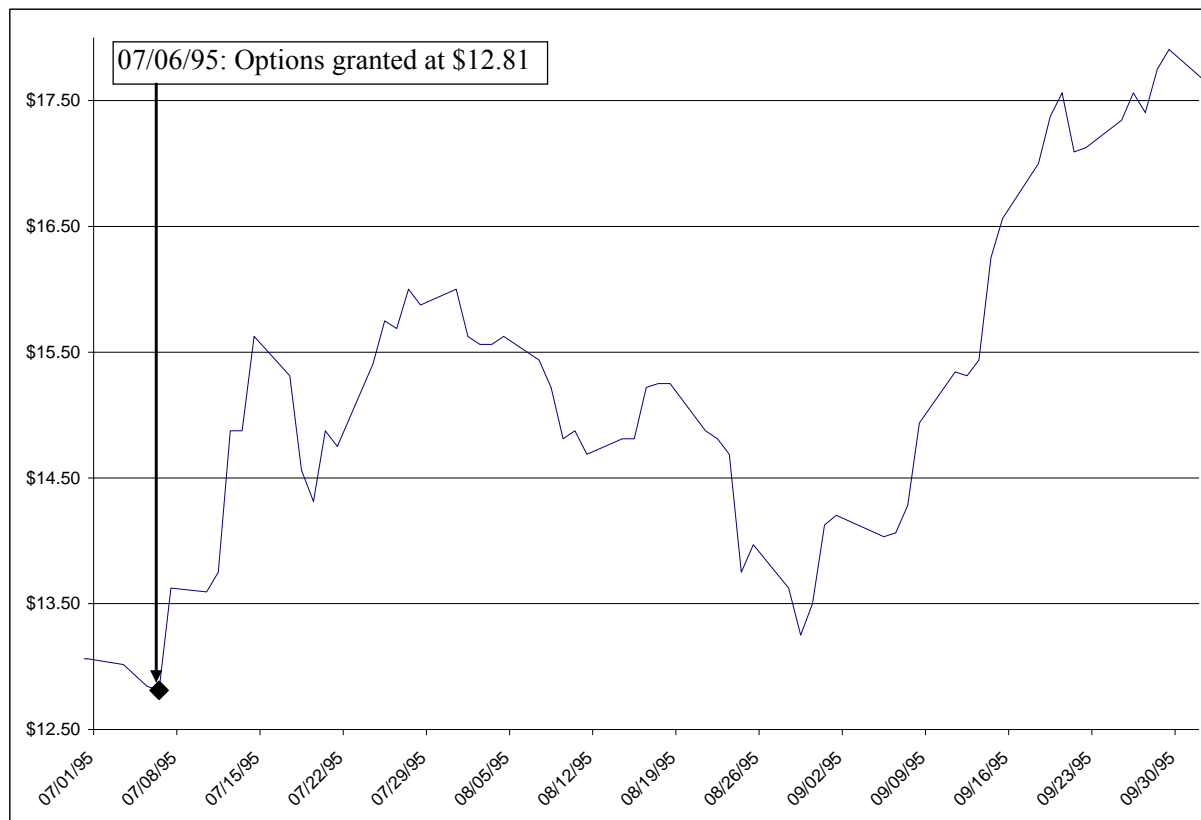
3 76. The members of the Board who were not on the Compensation Committee had
4 actual knowledge of the backdating and knew that it violated the terms of the Plans, ABP 25
5 and Section 162(m). All of the members of the Board knew that the publicly reported grant
6 dates and statements that the Company followed APB 25 and granted options with exercise
7 prices equal to the fair market value of EFI stock on the date of grant were false because the
8 grants were in fact backdated. The entire Board knowingly and deliberately approved the
9 backdating scheme with knowledge of its consequences, *e.g.*, its effects on EFI's financial
10 statements.

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1. 1995 Option Grants

77. Rosenzweig, one of the Company's top five compensated executives, was granted stock options purportedly on July 6, 1995 at an exercise price of \$12.81, when EFI stock price was *at a fiscal quarter low*, as demonstrated below:²

Third Fiscal Quarter 1995



Purported Grant Date	Name	Adjusted Exercise Price ³	Adjusted Number of Options
07/06/95	Rosenzweig	\$12.81	5,000

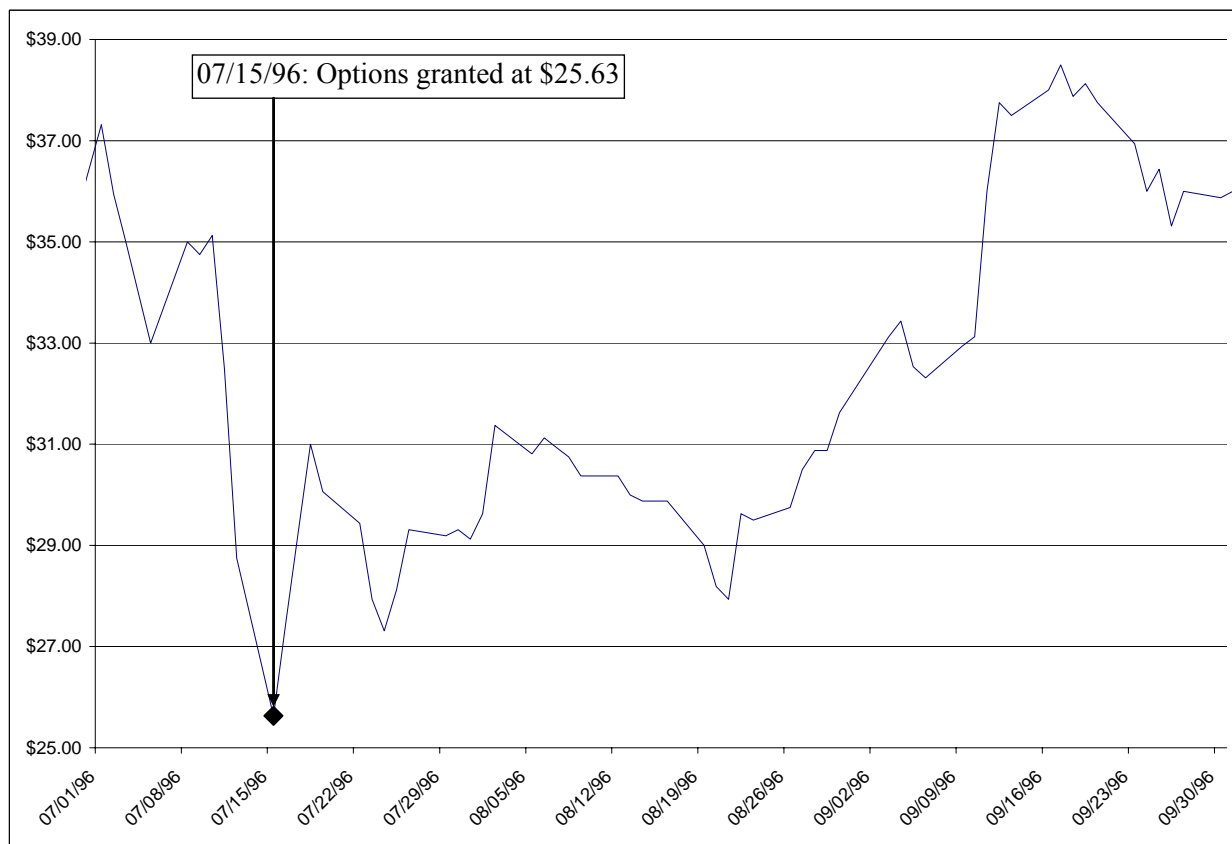
² All graphs in the Complaint use adjusted exercise prices and adjusted closing prices.

³ The adjusted exercise prices and adjusted numbers of options are adjusted for the Company's 2-for-1 stock split effective December 1, 1995 and 2-for-1 stock split effective February 21, 1997.

2. 1996 Option Grants

78. The Individual Defendants' backdating was particularly egregious as to the stock options granted to the top five compensated executives purportedly on July 15, 1996 at an exercise price of \$25.63, which was dated to coincide with *EFT's lowest closing price for the fiscal quarter*, as demonstrated in the following graph:

Third Fiscal Quarter 1996

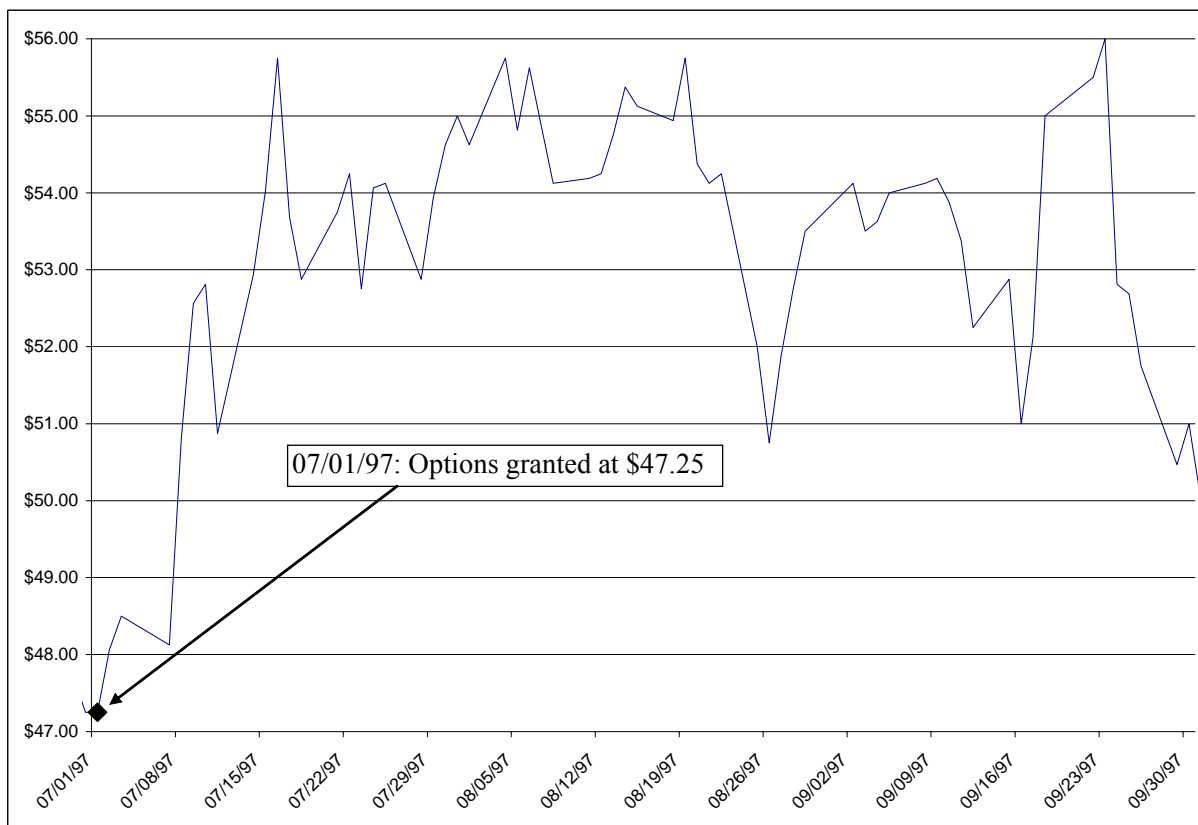


Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
07/15/96	Avida	\$25.63	150,000
	Lenches	\$25.63	44,000
	Rosenzweig	\$25.63	44,000
	Saltzman	\$25.63	30,000
	Gecht	\$25.63	3,000

3. 1997 Option Grants

79. The Compensation Committee purportedly granted options to the top six compensated executives, dated July 1, 1997 at an exercise price of \$47.25, which was dated to coincide with EFI's *lowest closing price of the fiscal quarter*, as demonstrated in the following graph:

Third Fiscal Quarter 1997



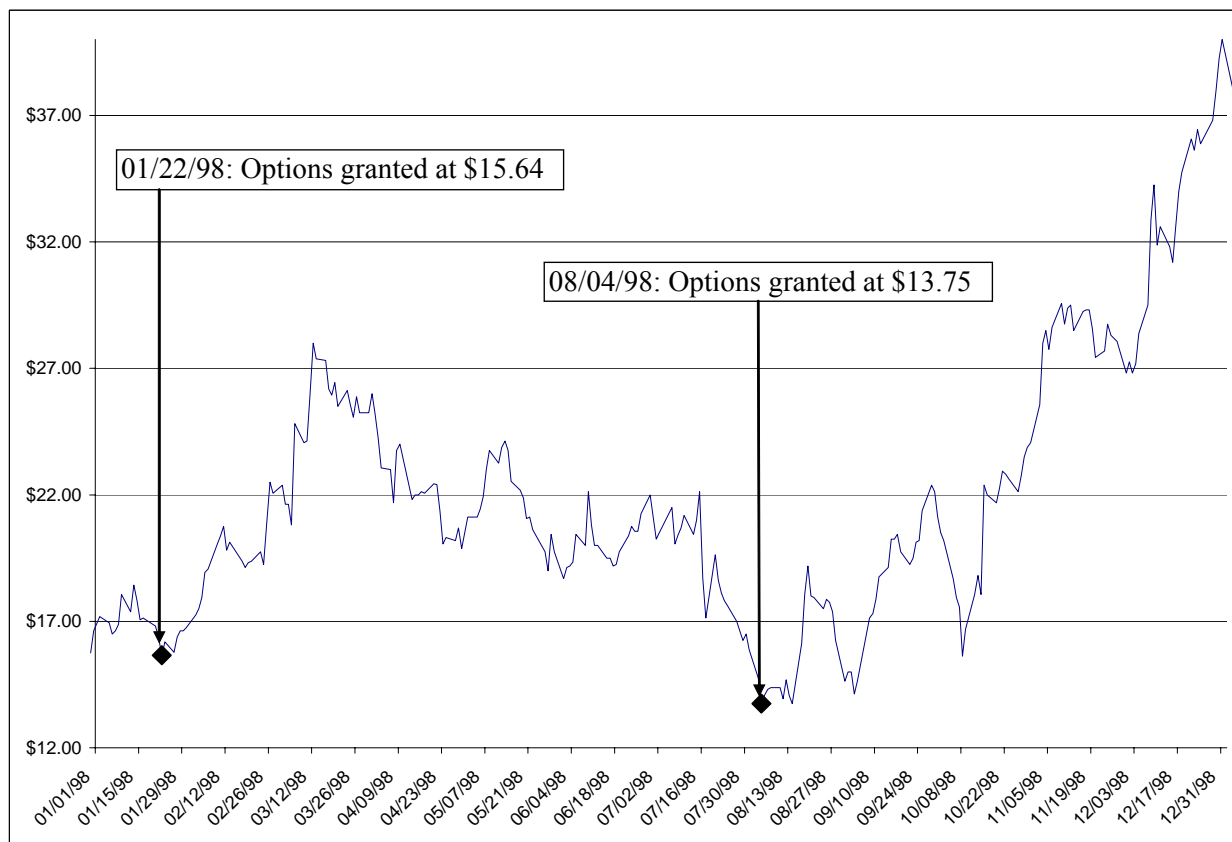
Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
07/1/97	Avida	\$47.25	90,000
	Lenches	\$47.25	26,000
	Rosenzweig	\$47.25	26,000
	Saltzman	\$47.25	17,000
	Gecht	\$47.25	18,500
	Cutts	\$47.25	at least 4,100

4. 1998 Option Grants

80. During fiscal year 1998, the Compensation Committee purportedly granted options to Defendants Gecht, Lee and Cutts, dated January 22, 1998 at an exercise price of \$15.64, which was dated to coincide with one of *EFI's lowest stock prices of the first fiscal quarter*.

81. Additional option grants were awarded to several Option Recipient Defendants purportedly dated August 4, 1998 at an exercise price of \$13.75, *the lowest price for EFI common stock for the fiscal year*, as demonstrated in the following graph:

Fiscal Year 1998



Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
1/22/1998	Gecht	\$15.64	21,500
	Lee	\$15.64	10,000
	Cutts	\$15.64	at least 3,750 ⁴
8/4/1998	Avida	\$13.75	100,000
	Rosenzweig	\$13.75	37,000
	Saltzman	\$13.75	30,000
	Lee	\$13.75	15,000
	Smith	\$13.75	30,000
	Maydan	\$13.75	7,700
	Gassee	\$13.75	15,000
	Cogan	\$13.75	15,000
	Unterberg	\$13.75	15,000

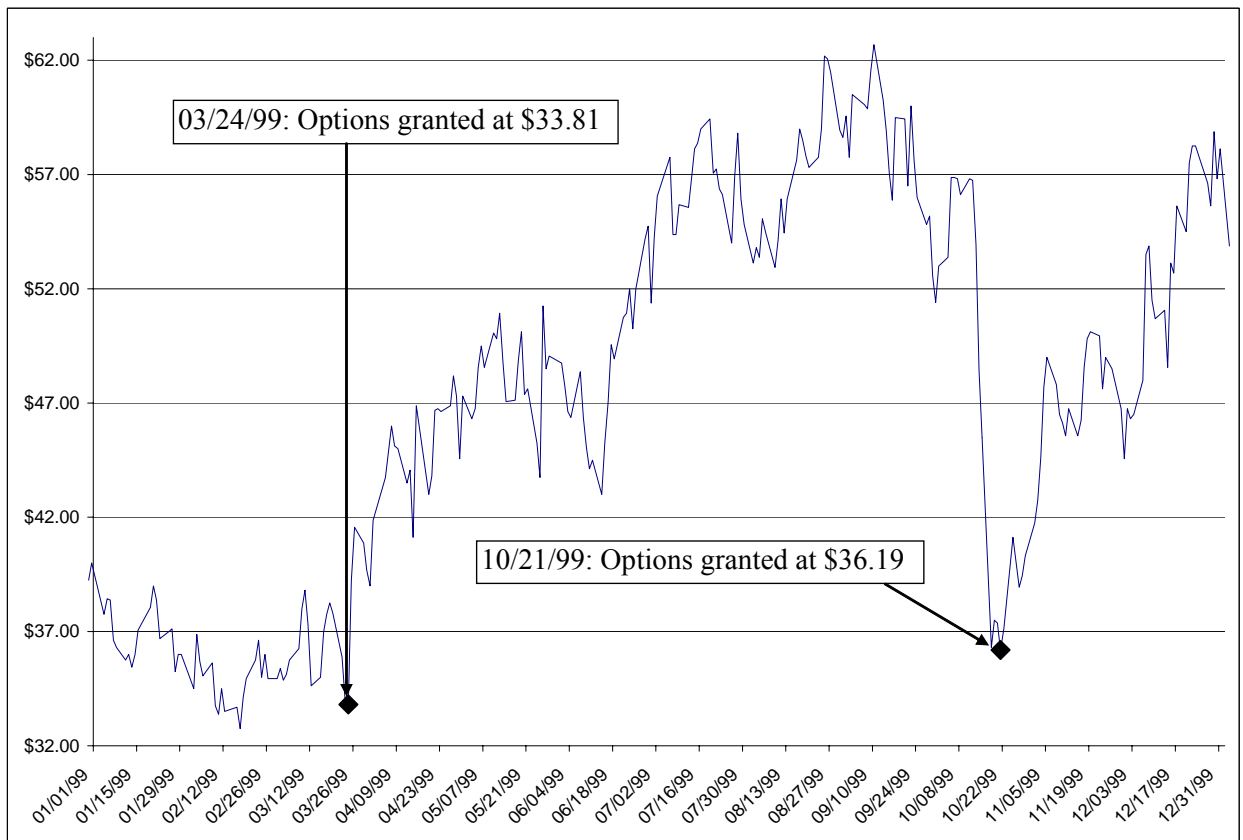
⁴ Where the total number of options is unknown, *i.e.* where the phrase “at least” is utilized, the stock option grant did not appear in any proxy statements filed by the Company but was first disclosed in Form 4 filings, which only included the number of options pursuant to the grant that were exercised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

5. 1999 Option Grants

82. Several Option Recipient Defendants received stock options purportedly granted on March 24, 1999 at an exercise price of \$33.81, *one of the lowest prices for EFI common stock for the fiscal year.*

83. Furthermore, an additional option grant was awarded to Defendant Cutts dated October 21, 1999 at an exercise price of \$36.19, *the lowest price for EFI common stock for the fiscal quarter.* EFI stock traded between \$36.19 and \$58.25 per share in fourth fiscal quarter, as demonstrated in the following graph:

Fiscal Year 1999



Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
3/24/1999	Gecht	\$33.81	110,000
	Avida	\$33.81	130,000
	Rosenzweig	\$33.81	110,000
	Saltzman	\$33.81	60,000
	Lee	\$33.81	50,000
	Cutts	\$33.81	22,500
	Maydan	\$33.81	18,000
	Gassee	\$33.81	18,000
	Cogan	\$33.81	18,000
Unterberg	\$33.81	18,000	
10/21/1999	Cutts	\$36.19	6,000

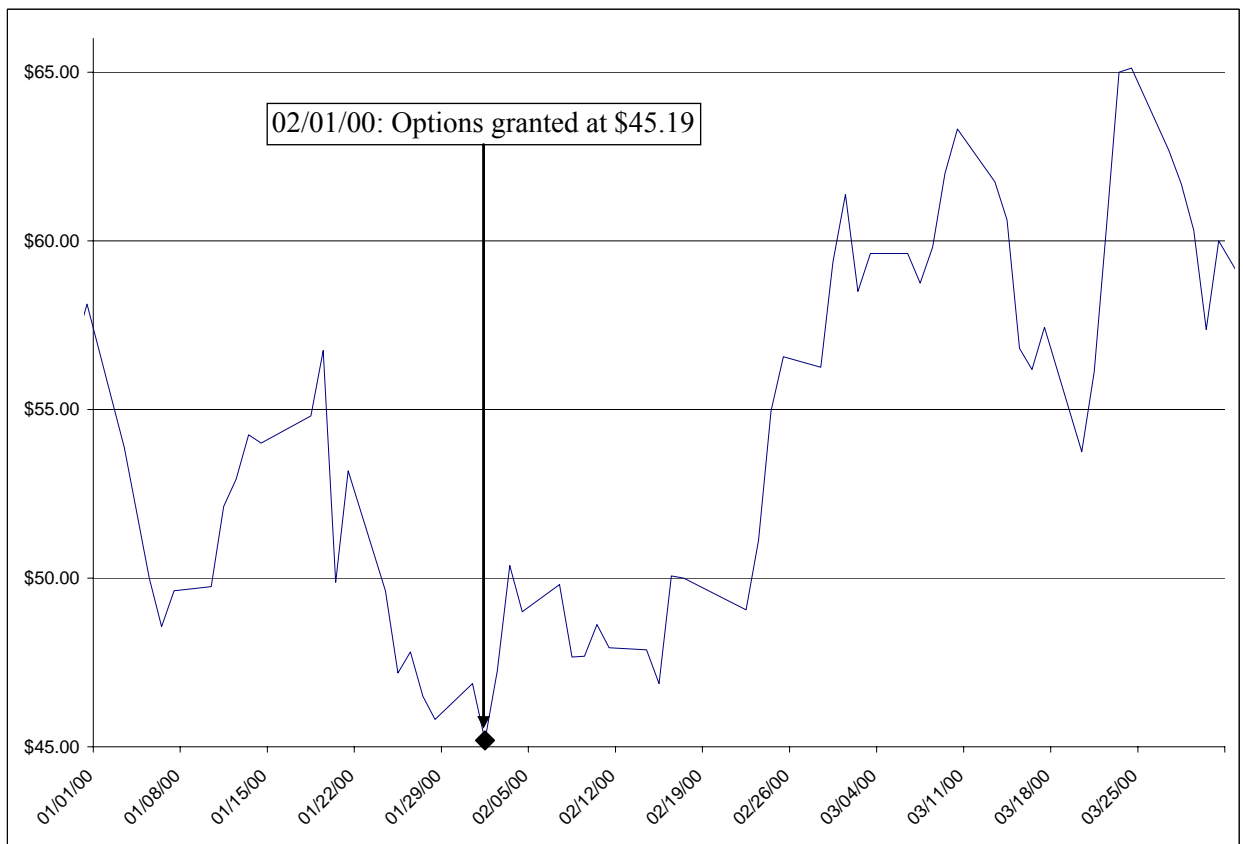
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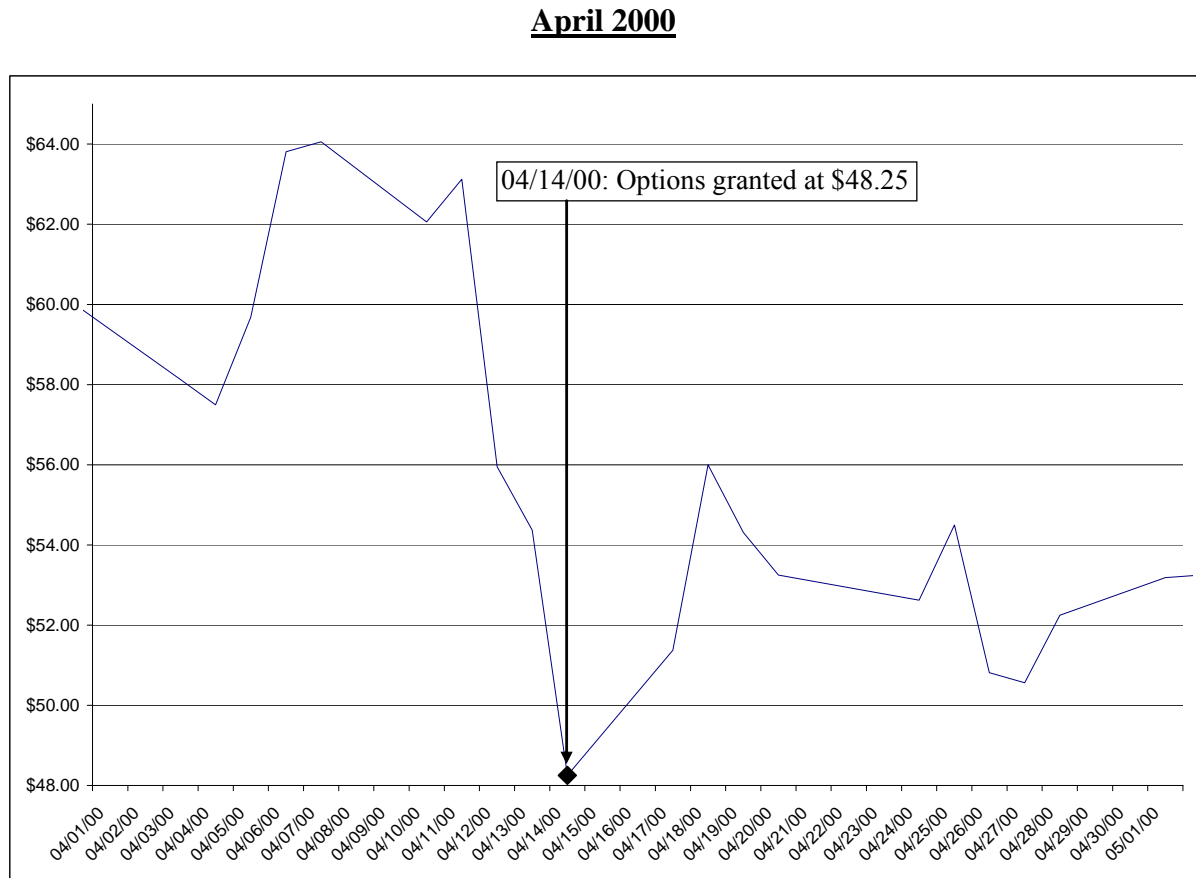
6. 2000 Option Grants

84. During fiscal year 2000, the Compensation Committee purportedly granted options to several Option Recipient Defendants dated as of February 1, 2000 at an exercise price of \$45.19 per share, *the lowest price for EFI common stock for the fiscal quarter*. EFI stock traded between \$45.19 and \$65.13 per share during the first fiscal quarter 2000, as demonstrated in the following graph:

First Fiscal Quarter 2000



1 85. Furthermore, an additional option grant was awarded to Defendant Greene dated
 2 April 14, 2000 at an exercise price of \$48.25, *the lowest price for EFI common stock for the*
 3 *month of April*, as demonstrated in the following graph:

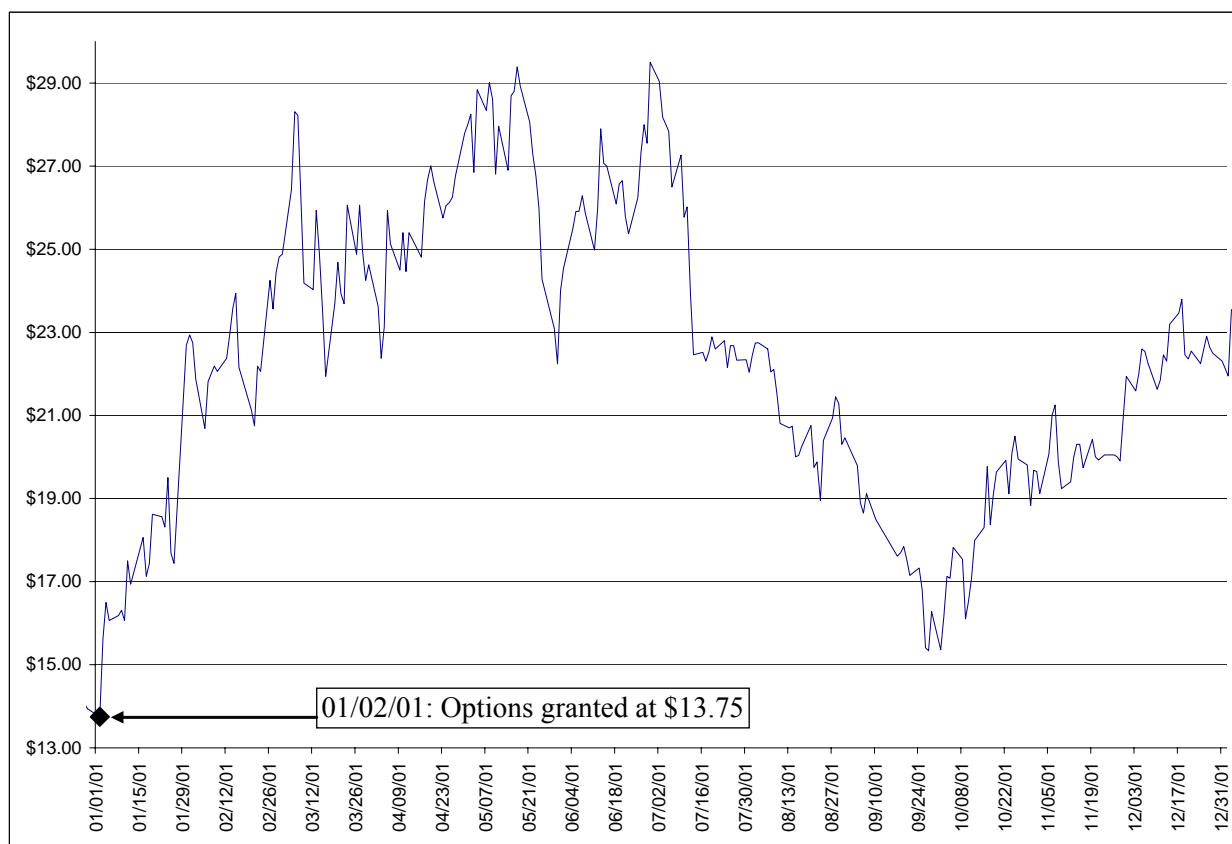


Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
2/1/2000	Gecht	\$45.19	135,000
	Rosenzweig	\$45.19	125,000
	Saltzman	\$45.19	70,000
	Smith	\$45.19	60,000
	Cutts	\$45.19	45,000
	Maydan	\$45.19	25,000
	Gassee	\$45.19	25,000
	Unterberg	\$45.19	25,000
	Cogan	\$45.19	25,000
04/14/00	Greene	\$48.25	25,000

7. 2001 Option Grants

86. During fiscal year 2001, the Compensation Committee purportedly granted options to several Option Recipient Defendants dated as of January 2, 2001 at an exercise price of \$13.75 per share, *the lowest price for EFI common stock for the fiscal year*, as demonstrated in the following graph:

Fiscal Year 2001



Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
1/2/2001	Gecht	\$13.75	175,000
	Rosenzweig	\$13.75	140,000
	Cutts	\$13.75	75,000
	Gassee	\$13.75	20,000
	Cogan	\$13.75	20,000
	Maydan	\$13.75	20,000
	Greene	\$13.75	20,000

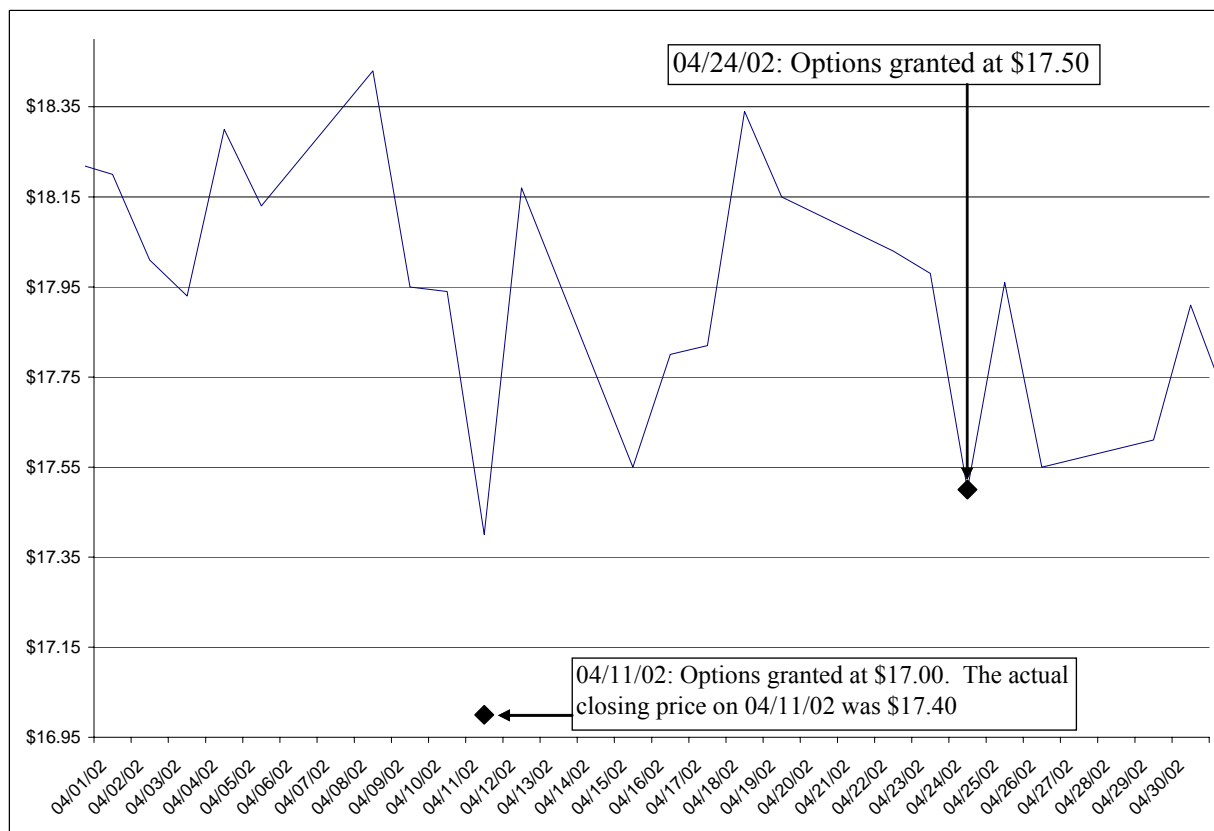
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8. 2002 Option Grants

87. Defendant Cutts received stock options purportedly dated April 11, 2002, when the price of EFI common stock was *at a monthly low*. In fact, the exercise price on this grant was \$17.00, which was \$0.40 lower than the actual closing price on April 11, 2002.

88. Furthermore, the Compensation Committee purportedly granted options to several Option Recipient Defendants dated as of April 24, 2002, at an exercise price of \$17.50 per share, *the second lowest price for EFI common stock for the month*, as demonstrated below:

April 2002



Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
4/11/2002	Cutts	\$17.00	30,000
4/24/2002	Gecht	\$17.50	145,000
	Rosenzweig	\$17.50	100,000
	Cutts	\$17.50	50,000
	Unterberg	\$17.50	16,668
	Cogan	\$17.50	16,668
	Greene	\$17.50	16,668

89. Each and every one of the aforementioned stock option grants were dated just before a significant increase in EFI stock price and/or at or near EFI's lowest closing stock price of the pertinent fiscal year, fiscal quarter and/or month.

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

91. From 1995 to 2002, The Compensation Committee purportedly granted sixteen option grants. At least 12 out of 13 of the pre-SOX discretionary grants made during the relevant period were dated to coincide with particularly low closing prices, which is strongly indicative of backdating. The remaining three option grants awarded during the relevant period were made solely to one individual and in connection with that individual's commencement of employment with the Company or for some other non-discretionary reason.⁵ Therefore, these three option grants were not discretionary stock awards and thus are not claimed to have been backdated.

⁵ An option grant was made solely to Defendant Gecht on October 30, 1995 in connection with the commencement of Gecht's employment as the Company's Director of Software Engineering. An option grant was made solely to Defendant Maydan on May 2, 1996 which was made on the date of the Company's Annual Stockholders' meeting and was not discretionary. An option grant was made solely to Defendant Cutts on March 3, 1997 in connection with the commencement of Cutts' employment as the Company's Director of Finance.

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

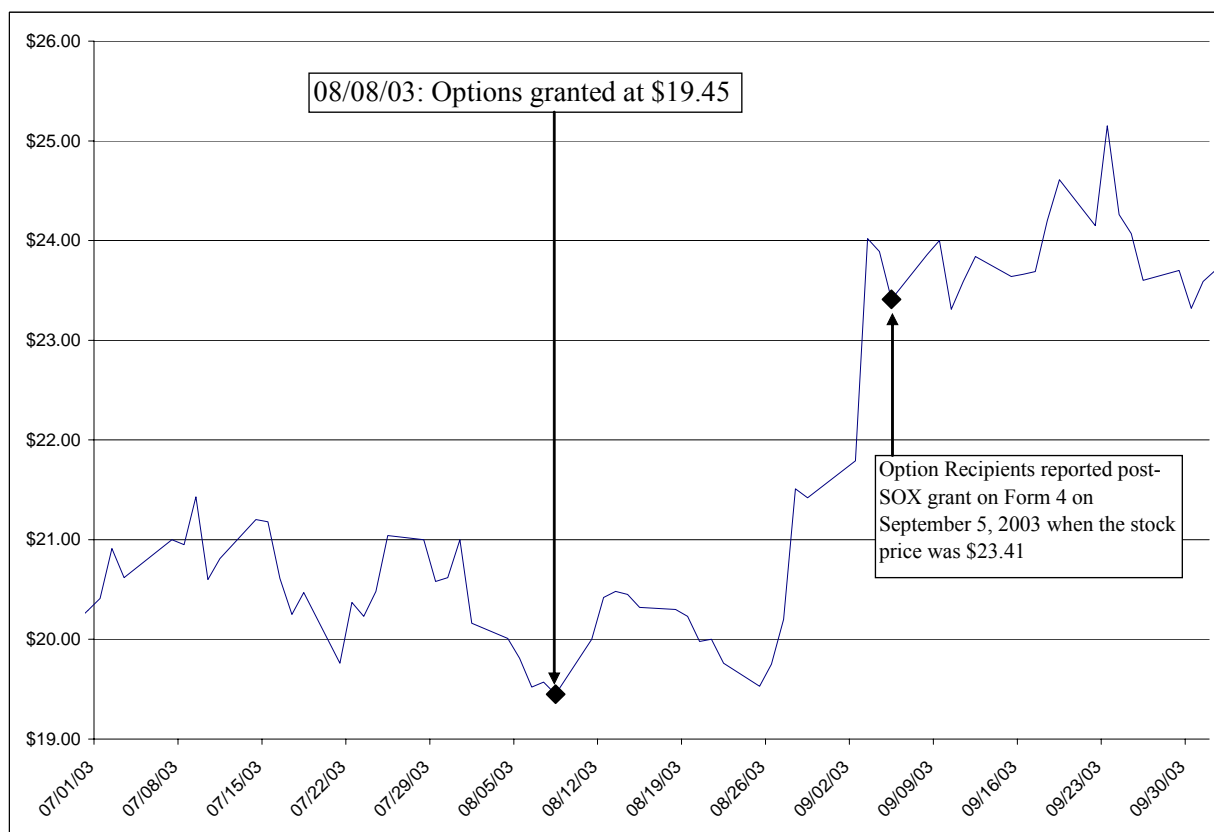
11 93. Pursuant to SOX, beginning on August 29, 2002, executives and directors were
12 required to report option grants to the SEC within two days of the grant. With this new
13 reporting requirement in place, with one exception, the pattern of backdating options seen
14 previously from 1995 through 2002 came to an end. This is further evidence that backdating is
15 the most likely explanation for the pattern of the pre-SOX grants.

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9. 2003 Option Grants

94. The one time after SOX was enacted that defendants did not comply with the two-day reporting requirement, it is clear that back-dating was utilized in selecting the grant date. In this regard, on August 8, 2003 option grants were purportedly awarded to several Option Recipients at an exercise price of \$19.45, *the lowest price for EFI common stock for the fiscal quarter*. The Option Recipient Defendants reported the August 8, 2003 option grant on Form 4 on September 5, 2003, nineteen trading days following the purported grant date, as demonstrated in the following graph:

Third Fiscal Quarter 2003



Purported Grant Date	Name	Adjusted Exercise Price	Adjusted Number of Options
8/8/2003	Gecht	\$19.45	175,000
	Rosenzweig	\$19.45	150,000
	Cutts	\$19.45	87,000

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F. The Individual Defendants' Dissemination of False Financial Statements

95. As a result of the Individual Defendants' backdating of stock options, the Company issued materially false and misleading financial statements and reports, including but not limited to annual reports, filed with the SEC and disseminated to shareholders and the public as Forms 10-K, proxy statements, filed with the SEC and disseminated to shareholders and the public as Forms DEF-14A, and other quarterly and interim reports.

96. EFI's proxy statements that were disseminated to shareholders by the Individual Defendants annually in connection with the annual shareholders' meeting typically concerned the election of directors, the approval and adoption of EFI's stock option plans, the authorization to reserve shares for future issuance under the stock option plan, and the ratification of the selection of EFI's auditor. Each proxy statement disseminated to shareholders during this period contained materially false and misleading disclosures or omitted information about EFI's stock option practices, as detailed herein.

97. Moreover, the Individual Defendants prepared, approved and/or signed EFI's annual and quarterly SEC reports, as specified herein, during the relevant period. The Individual Defendants knowingly and deliberately caused the Company to disseminate materially false and misleading statements in the periodic filings that the Individual Defendants prepared, approved, and/or signed. Each of the Individual Defendants knew or should have known that these statements were false and either knowingly participated in their dissemination or failed to prevent or correct them.

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

- a. violated the terms of the Plans by granting stock options with exercise prices less than the fair market value of the stock on the actual date of grant;

- 1 b. violated GAAP by failing to recognize compensation expenses incurred
- 2 when the improperly backdated options were granted;
- 3 c. violated Section 162(m) by taking tax deductions based on stock option
- 4 grants that were not payable solely on account of the attainment of one
- 5 or more performance goals and violated the terms of the Plans; and
- 6 d. produced and disseminated to EFI shareholders and the market false
- 7 financial statements that improperly recorded and accounted for the
- 8 backdated option grants, and thereby understated compensation expenses
- 9 and overstated net income.

10 99. The Company, with the knowledge, approval, and participation of each of the
11 Individual Defendants, disseminated its false financial statements in, *inter alia*, the following
12 Form 10-K filings:

- 13 a. Form 10-K for the fiscal year ended December 31, 1996, filed with the
- 14 SEC on March 31, 1997 and signed by defendants Avida, Gassée,
- 15 Cogan, Unterberg, and Maydan;
- 16 b. Form 10-K for the fiscal year ended December 31, 1997, filed with the
- 17 SEC on March 31, 1998 and signed by defendants Avida, Gassée,
- 18 Cogan, Unterberg, and Maydan;
- 19 c. Form 10-K for the fiscal year ended December 31, 1998, filed with the
- 20 SEC on March 18, 1999 and signed by defendants Avida, Saltzman,
- 21 Gassée, Cogan, Unterberg, and Maydan;
- 22 d. Form 10-K for the fiscal year ended December 31, 1999, filed with the
- 23 SEC on March 17, 2000 and signed by defendants Avida, Saltzman,
- 24 Gecht, Gassée, Cogan, Unterberg, and Maydan;
- 25 e. Form 10-K for the fiscal year ended December 31, 2000, filed with the
- 26 SEC on March 29, 2001 and signed by defendants Rosenzweig, Gecht,
- 27 Cutts, Gassée, and Maydan;

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- 1 f. Form 10-K for the fiscal year ended December 31, 2001, filed with the
- 2 SEC on March 29, 2002 and signed by defendants Rosenzweig, Gecht,
- 3 Cutts, Gassée, Cogan, Unterberg, Greene, and Maydan;
- 4 g. Form 10-K for the fiscal year ended December 31, 2002, filed with the
- 5 SEC on March 31, 2003 and signed by defendants Rosenzweig, Gecht,
- 6 Cutts, Gassée, Cogan, Unterberg, Greene, and Maydan;
- 7 h. Form 10-K for the fiscal year ended December 31, 2003, filed with the
- 8 SEC on March 15, 2004 and signed by defendants Rosenzweig, Gecht,
- 9 Cutts, Gassée, Cogan, Unterberg, Greene, and Maydan;
- 10 i. Form 10-K for the fiscal year ended December 31, 2004, filed with the
- 11 SEC on March 15, 2005 and signed by defendants Rosenzweig, Gecht,
- 12 Cutts, Gassée, Cogan, Unterberg, Greene, and Maydan; and
- 13 j. Form 10-K for the fiscal year ended December 31, 2005, filed with the
- 14 SEC on March 16, 2006 and signed by defendants Rosenzweig, Gecht,
- 15 Cutts, Gassée, Cogan, Unterberg, Greene, and Maydan.

16 100. Specifically, in the Company’s annual reports on Form 10-K for fiscal years
17 1996 to 2003, the Individual Defendants caused EFI to falsely state that “the Company has
18 elected to follow Accounting Principles Board Opinion No. 25, ‘Accounting for Stock Issued to
19 Employees’ (‘APB 25’), and related interpretations, in accounting for its employee and director
20 stock option and stock incentive plans. Under APB 25, if the exercise price of the Company's
21 stock options is not less than the market price of the underlying stock on the date of grant, no
22 compensation expense is recognized.” Such statements were materially false and misleading in
23 each of these years because EFI had granted stock options at prices that were below fair market
24 value on the date of the grant and failed to account for the in-the-money options as required by
25 APB 25.

26 101. As alleged previously, APB 25 required the Individual Defendants to record
27 compensation expense for options that were in-the-money on the date of grant. However, they
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1 did not do so, thereby materially understating EFI's compensation expense and materially
2 overstating EFI's net income or materially understating its net loss. These statements were
3 designed to conceal, and did in fact conceal, the fact that the Individual Defendants were
4 engaged in a continuous and systematic scheme of backdating stock option grants to EFI
5 insiders in violation of state and federal laws.

6 102. Additionally, EFI's materially false and misleading financial statements for
7 fiscal years 1996 to 2003 were included in its Forms 10-K filed for subsequent fiscal years. For
8 this reason, and to the extent they included financials from earlier periods, EFI's annual reports
9 on Form 10-K for fiscal years 2004 to 2005 were also materially false and misleading. By
10 participating in the secret backdating scheme, and by reviewing and/or signing these
11 subsequent annual reports, the Individual Defendants knew, or were reckless in not knowing,
12 that the financial statements in these later filings were materially false and misleading.

13 103. Furthermore, Defendants Gecht and Cutts also filed false Certifications of Chief
14 Executive Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted
15 Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (the "Certification"), certifying that
16 each Annual Report of EFI on Form 10-Ks "fully complies with the requirements of section
17 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and (2) the information
18 contained in the Report fairly presents, in all material respects, the financial condition and
19 results of operations of the Company." Defendants Gecht and Cutts signed the following false
20 Certifications:

- 21 a. for the Form 10-K for the year ended December 31, 2003, filed with the
22 SEC on March 15, 2004;
- 23 b. Form 10-K for the fiscal year ended December 31, 2004, filed with the
24 SEC on March 15, 2005; and
- 25 c. for the Form 10-K for the year ended December 31, 2005, filed with the
26 SEC on March 16, 2006.

27 **G. Defendants' Concealment of Their Misconduct**

1 104. The Individual Defendants caused EFI to send shareholders proxy statements in
2 connection with the Company's annual shareholder meetings and periodically for special
3 shareholder meetings during the relevant period. The Individual Defendants prepared and/or
4 reviewed each proxy statement between 1997 and 2006. Moreover, they knew, or were
5 deliberately reckless in not knowing, that the proxies were materially false and misleading.

6 105. The EFI proxy statements that were sent to shareholders by the Individual
7 Defendants annually in connection with annual shareholders' meeting typically concerned the
8 election of directors, the approval and adoption of EFI's stock option plan and authorization to
9 reserve shares for future issuance under the stock option plans, and ratification of the selection
10 of EFI's auditor. Each proxy statement sent to shareholders during this period contained
11 materially false and misleading disclosures or omitted information about EFI's stock option
12 practices, as detailed above.

13 106. From 1997 to 2004, the Company, with the knowledge, approval, and
14 participation of each of the Individual Defendants, for the purpose and with the effect of
15 concealing the improper option backdating, disseminated to shareholders and filed with the
16 SEC annual proxy statements that falsely reported the dates of stock option grants to the Option
17 Recipient Defendants and falsely stated that options were granted to the Option Recipient
18 Defendants with "an exercise price equal to the fair market value on the date of grant," as
19 follows:

- 20 a. EFI's proxy statement filed with the SEC on April 7, 1997, falsely
21 reported that options granted to Avida, Lenches, Rosenzweig and
22 Saltzman were granted on July 15, 1996;
- 23 b. EFI's proxy statement filed with the SEC on April 3, 1998, falsely
24 reported that options granted to Avida, Lenches, Rosenzweig and
25 Saltzman were granted on July 1, 1997;
- 26 c. EFI's proxy statement filed with the SEC on April 7, 1999, falsely
27 reported that options granted to Lee were granted on January 22, 1998

- 1 and options granted to Avida, Lee, Rosenzweig, Saltzman and Smith
- 2 were granted on August 4, 1998;
- 3 d. EFI's proxy statement filed with the SEC on April 5, 2000, falsely
- 4 reported that options granted to Avida, Gecht, Lee, Rosenzweig and
- 5 Saltzman were granted on March 24, 1999;
- 6 e. EFI's proxy statement filed with the SEC on April 10, 2001, falsely
- 7 reported that options granted to Cutts, Gecht, Smith, Rosenzweig and
- 8 Saltzman were granted on February 1, 2000;
- 9 f. EFI's proxy statement filed with the SEC on April 12, 2002, falsely
- 10 reported that options granted to Gecht, Rosenzweig and Cutts were
- 11 granted on January 2, 2001;
- 12 g. EFI's proxy statement filed with the SEC on April 17, 2003, falsely
- 13 reported that options granted to Gecht, Rosenzweig and Cutts were
- 14 granted on April 24, 2002; and
- 15 h. EFI's proxy statement filed with the SEC on April 29, 2004, falsely
- 16 reported that options granted to Gecht, Rosenzweig and Cutts were
- 17 granted on August 8, 2003.

18 107. Moreover, in the Compensation Committee Reports in the Company's proxy
19 statements filed in 1997 to 2003, the Company falsely stated that the Plans are "intended to
20 align stockholder and employee interests by creating a direct link between long-term rewards
21 and the value of the Company's shares," when in fact the backdated stock options provided the
22 option recipients with immediate profits regardless of the Company's stock performance.

23 108. From 2000 to 2006, EFI, with the knowledge, approval and participation of each
24 of the Individual Defendants, for the purpose and with the effect of concealing the improper
25 option backdating, filed with the SEC Form 4's that falsely reported the dates of stock option
26 grants to the Option Recipient Defendants, as follows:

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- a. Maydan's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Maydan had been granted on August 04, 1998;
- b. Cogan's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Cogan had been granted on February 01, 2000;
- c. Unterberg's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Unterberg had been granted on February 01, 2000;
- d. Gasee's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Gasee had been granted on February 01, 2000;
- e. Maydan's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Maydan had been granted on February 01, 2000;
- f. Gecht's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Gecht had been granted on February 01, 2000;
- g. Smith's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Smith had been granted on February 01, 2000;
- h. Greene's Form 4 filed with the SEC on June 08, 2000 falsely reported that options granted to Greene had been granted on April 14, 2000;
- i. Rosenzweig's Form 4 filed with the SEC on June 09, 2000 falsely reported that options granted to Rosenzweig had been granted on February 01, 2000;
- j. Gecht's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Gecht had been granted on July 15, 1996;
- k. Gecht's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Gecht had been granted on July 01, 1997;
- l. Cutts's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Cutts had been granted on July 01, 1997;

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- m. Gecht's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Gecht had been granted on January 22, 1998;
- n. Cutts's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Cutts had been granted on January 22, 1998;
- o. Gecht's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Gecht had been granted on March 24, 1999;
- p. Cutts's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Cutts had been granted on March 24, 1999;
- q. Cutts's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Cutts had been granted on October 21, 1999;
- r. Gecht's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Gecht had been granted on January 02, 2001;
- s. Cutts's Form 4 filed with the SEC on March 11, 2002 falsely reported that options granted to Cutts had been granted on January 02, 2001;
- t. Gecht's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Gecht had been granted on July 15, 1996;
- u. Cutts's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Cutts had been granted on July 01, 1997;
- v. Gecht's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Gecht had been granted on July 01, 1997;
- w. Cutts's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Cutts had been granted on January 22, 1998;
- x. Gecht's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Gecht had been granted on January 22, 1998;
- y. Cutts's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Cutts had been granted on March 24, 1999;

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- z. Gecht's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Gecht had been granted on March 24, 1999;
- aa. Cutts's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Cutts had been granted on October 21, 1999;
- bb. Cutts's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Cutts had been granted on January 02, 2001;
- cc. Gecht's Form 4 filed with the SEC on March 19, 2002 falsely reported that options granted to Gecht had been granted on January 02, 2001;
- dd. Cutts's Form 4 filed with the SEC on August 30, 2002 falsely reported that options granted to Cutts had been granted on April 24, 2002;
- ee. Gecht's Form 4 filed with the SEC on September 05, 2003 falsely reported that options granted to Gecht had been granted on January 22, 1998;
- ff. Cutts's Form 4 filed with the SEC on September 05, 2003 falsely reported that options granted to Cutts had been granted on January 22, 1998;
- gg. Cutts's Form 4 filed with the SEC on September 05, 2003 falsely reported that options granted to Cutts had been granted on January 02, 2001;
- hh. Cutts's Form 4 filed with the SEC on September 05, 2003 falsely reported that options granted to Cutts had been granted on January 02, 2001;
- ii. Gecht's Form 4 filed with the SEC on September 05, 2003 falsely reported that options granted to Gecht had been granted on August 08, 2003;

- 1 jj. Maydan's Form 4 filed with the SEC on October 17, 2003 falsely
- 2 reported that options granted to Maydan had been granted on August 04,
- 3 1998;
- 4 kk. Maydan's Form 4 filed with the SEC on October 17, 2003 falsely
- 5 reported that options granted to Maydan had been granted on January
- 6 02, 2001;
- 7 ll. Rosenzweig's Form 4 filed with the SEC on December 03, 2003 falsely
- 8 reported that options granted to Rosenzweig had been granted on July
- 9 06, 1995;
- 10 mm. Rosenzweig's Form 4 filed with the SEC on December 03, 2003 falsely
- 11 reported that options granted to Rosenzweig had been granted on August
- 12 04, 1998;
- 13 nn. Rosenzweig's Form 4 filed with the SEC on December 03, 2003 falsely
- 14 reported that options granted to Rosenzweig had been granted on
- 15 January 02, 2001;
- 16 oo. Rosenzweig's Form 4 filed with the SEC on December 04, 2003 falsely
- 17 reported that options granted to Rosenzweig had been granted on
- 18 January 02, 2001;
- 19 pp. Gecht's Form 4 filed with the SEC on January 07, 2004 falsely reported
- 20 that options granted to Gecht had been granted on January 02, 2001;
- 21 qq. Rosenzweig's Form 4 filed with the SEC on January 21, 2004 falsely
- 22 reported that options granted to Rosenzweig had been granted on
- 23 January 02, 2001;
- 24 rr. Gecht's Form 4 filed with the SEC on January 21, 2004 falsely reported
- 25 that options granted to Gecht had been granted on April 24, 2002;
- 26 ss. Cutts's Form 4 filed with the SEC on January 21, 2004 falsely reported
- 27 that options granted to Cutts had been granted on April 24, 2002;
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- tt. Rosenzweig's Form 4 filed with the SEC on July 01, 2004 falsely reported that options granted to Rosenzweig had been granted on January 02, 2001;
- uu. Gecht's Form 4 filed with the SEC on September 07, 2004 falsely reported that options granted to Gecht had been granted on January 02, 2001;
- vv. Greene's Form 4 filed with the SEC on October 25, 2005 falsely reported that options granted to Greene had been granted on January 02, 2001;
- ww. Maydan's Form 4 filed with the SEC on November 02, 2005 falsely reported that options granted to Maydan had been granted on January 02, 2001;
- xx. Gassee's Form 4 filed with the SEC on December 05, 2005 falsely reported that options granted to Gassee had been granted on August 04, 1998;
- yy. Gassee's Form 4 filed with the SEC on December 05, 2005 falsely reported that options granted to Gassee had been granted on January 02, 2001;
- zz. Cutts's Form 4 filed with the SEC on January 06, 2006 falsely reported that options granted to Cutts had been granted on January 02, 2001;
- aaa. Cutts's Form 4 filed with the SEC on January 06, 2006 falsely reported that options granted to Cutts had been granted on April 24, 2002;
- bbb. Cutts's Form 4 filed with the SEC on February 02, 2006 falsely reported that options granted to Cutts had been granted on April 11, 2002;
- ccc. Cutts's Form 4 filed with the SEC on April 06, 2006 falsely reported that options granted to Cutts had been granted on April 11, 2002;
- ddd. Cutts's Form 4 filed with the SEC on April 20, 2006 falsely reported that options granted to Cutts had been granted on April 11, 2002;

1 109. The Individual Defendants continued to conceal their foregoing misconduct
2 until August 16, 2006, when Plaintiff Trueman Parish filed the initial shareholder derivative
3 complaint on behalf of Nominal Defendant EFI.⁶

4 110. Plaintiff Kevin Fennimore filed a shareholder derivative complaint in the
5 Superior Court of the State of California on September 11, 2006.

6 111. Following the filing of the Parish and Fennimore shareholder derivative
7 complaints, on October 24, 2006, EFI announced in its Form 8-K that EFI had initiated an
8 internal investigation of its historical stock option grants:

9 The Company also announced today that a Special Committee of
10 its Board of Directors has commenced an independent
11 investigation of EFI's historical stock option grants. The
12 independent investigation was recommended by management
13 based on a voluntary review of past option grant practices in which
14 potential errors were discovered related to certain historical grants.
15 The Special Committee will be assisted by independent legal
16 counsel. As part of this process, the Company has voluntarily
17 contacted the staff of the SEC to inform them about the ongoing
18 review.

19 Facts may come to light once the investigation is completed that
20 may require the Company to change its accounting treatment of
21 stock options granted in prior periods. This may or may not have a
22 material adverse effect on its results for those periods or other
23 periods. Because the investigation has only recently commenced,
24 we cannot make any predictions or provide further information
25 about its potential findings at this time. The Company will make a
26 future announcement about the results of the investigation as its
27 findings are known.

28 The Company also announced that two shareholder derivative suits
were filed on August 16, and September 11, 2006, in the Superior
Court in San Mateo, California. The complaints allege, among
other things, that certain of its current and past officers and
directors breached their fiduciary duty to the Company by
improperly backdating certain grants of EFI stock options to
officers of the Company and violating the terms of EFI's stock
option plans, violating generally accepted accounting practices by
failing to recognize compensation expenses with respect to certain
option grants during the years 1996-2001, and disseminating
inaccurate financial statements. As a result of the ongoing

⁶ Trueman Parish originally filed a shareholder derivative complaint on behalf of Nominal Defendant EFI in the Superior Court of the State of California in San Mateo County. The Parish and Fennimore Complaints have been voluntarily withdrawn from Superior Court.

1 investigation, the Company will delay the filing of its Form 10-Q
 2 for the quarter ended September 30, 2006. The Company is
 3 focused on resolving any potential issues as quickly as possible and
 4 plans to file its Form 10-Q as soon as possible following
 5 completion of the investigation.

6 **H. Defendants' Insider Selling**

7 112. From 2003 to 2006, certain of Individual Defendants, while in possession of
 8 materially adverse non-public information regarding the backdating of stock options and the
 9 false financial statements resulting therefrom, sold more than \$31 million in EFI stock, a
 10 significant portion of which was obtained through the exercise of improperly backdated stock
 11 options, as demonstrated below:

12 Defendant	13 Dates of Sales	14 Shares Sold	15 Proceeds
16 Cutts	09/09/03 to 04/18/06	263,239	\$7,183,018.68
17 Gasee	05/04/00 to 09/19/06	191,501	\$8,300,931.28
18 Gecht	09/03/03 to 02/01/06	306,516	\$7,829,207.20
19 Greene	10/21/05	20,000	\$466,456.00
20 Maydan	05/05/00 to 02/06/06	68,484	\$1,898,697.32
21 Rosenzweig	12/01/03 to 1/31/06	179,400	\$5,027,870.00
22 Smith	04/28/00 to 05/05/00	7,000	\$373,680.00
23 TOTAL	04/28/00 to 09/19/06	1,036,140	\$31,079,860.48

24 **VI. EFI'S FALSE FINANCIAL REPORTING IN VIOLATION OF GAAP, SEC REGULATIONS AND IRS RULES AND REGULATIONS**

25 113. As a result of the Individual Defendants' improper backdating of stock options,
 26 the Individual Defendants caused EFI to violate GAAP, SEC regulations and IRS rules and
 27 regulations.

28 114. EFI's financial results for 1995 through 2002 were included in reports filed with
 the SEC and in other shareholder reports. In these reports, the Individual Defendants
 represented that EFI's financial results were presented in a fair manner and in accordance with
 GAAP.

115. The Individual Defendants' representations were false and misleading as to the
 financial information reported, as such financial information was not prepared in conformity
 with GAAP, nor was the financial information "a fair presentation" of the Company's financial

1 condition and operations, causing the financial results to be presented in violation of GAAP
2 and SEC rules.

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

9 **A. Violations of GAAP**

10 117. During the relevant period, the Individual Defendants caused the Company to
11 understate its compensation expense by not properly accounting for its stock options under
12 GAAP and thus overstated the Company's net earnings.

13 118. Under well-settled accounting principles in effect throughout the relevant
14 period, EFI did not need to record an expense for options granted to employees at the current
15 market price ("at the money"). The Company was, however, required to record an expense in
16 its financial statements for any options granted below the current market price ("in the
17 money"). In order to provide EFI executives and employees with far more lucrative "in the
18 money" options, while avoiding having to inform shareholders about millions of dollars
19 incurred by the Company in compensation expenses (and without paying the IRS millions of
20 dollars in employment taxes), the Individual Defendants systematically falsified Company
21 records to create the false appearance that options had been granted at the market price on an
22 earlier date.

23 119. Throughout the relevant period, EFI accounted for stock options using the
24 intrinsic method described in APB No. 25, "Accounting for Stock Issued to Employees."
25 Under APB No. 25, employers were required to record as an expense on their financial
26 statements the "intrinsic value" of a fixed stock option on its "measurement date." An option
27 that is in-the-money on the measurement date has intrinsic value, and the difference between its
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1 exercise price and the quoted market price must be recorded as compensation expense to be
2 recognized over the vesting period of the option. Options that are at-the-money or out-of-the-
3 money on the measurement date need not be expensed. Excluding non-employee directors,
4 APB No. 25 required employers to record compensation expenses on options granted to non-
5 employees irrespective of whether they were in-the-money or not on the date of grant.

6 **B. EFI’s GAAP Violations Were Material**

7 120. EFI’s false and misleading relevant period statements and omissions regarding
8 its accounting were material, particularly in light of SEC guidance on materiality. SEC Staff
9 Accounting Bulletin (“SAB”) Topic 1M, Materiality, summarizes GAAP definitions of
10 materiality. Among other items, SAB Topic 1M says: “A matter is ‘material’ if there is a
11 substantial likelihood that a reasonable person would consider it important.” It also stresses
12 that materiality requires qualitative, as well as quantitative, considerations. For example, if a
13 known misstatement would cause a significant market reaction, that reaction should be taken
14 into account in determining the materiality of the misstatement.

15 121. SAB Topic 1M further states:

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

18 * * *

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

20 whether the misstatement hides a failure to meet analysts’ consensus
21 expectations for the enterprise

22 * * *

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

26 122. SAB Topic 1M also says that an intentional misstatement of even immaterial
27 items may be illegal and constitute fraudulent financial reporting.

28 123. EFI’s misstatements satisfy these criteria and thus were material from both a
quantitative and qualitative perspective.

C. EFI’s Financial Statements Violated Fundamental Concepts of GAAP

1 124. Due to these accounting improprieties, the Company presented its financial
2 results and statements in a manner that violated GAAP, which are described by the following
3 statements:

- 4 a. The principle that interim financial reporting should be based upon the
5 same accounting principles and practices used to prepare annual
6 financial statements (APB No. 28, ¶10);
- 7 b. The principle that financial reporting should provide information that is
8 useful to existing and potential investors and creditors and other users in
9 making rational investment, credit and similar decisions (FASB
10 Statement of Concepts No. 1, ¶34);
- 11 c. The principle that financial reporting should provide information about
12 the economic resources of an enterprise, the claims to those resources,
13 and the effects of transactions, events and circumstances that change
14 resources and claims to those resources (Financial Accounting Standards
15 Board (“FASB”) Statement of Concepts No. 1, ¶40);
- 16 d. The principle that financial reporting should provide information about
17 how management of an enterprise has discharged its stewardship
18 responsibility to stockholders for the use of enterprise resources
19 entrusted to it. To the extent that management offers securities of the
20 enterprise to the public, it voluntarily accepts wider responsibilities for
21 accountability to prospective investors and to the public in general
22 (FASB Statement of Concepts No. 1, ¶50);
- 23 e. The principle that financial reporting should be reliable in that it
24 represents what it purports to represent (FASB Statement of Concepts
25 No. 2, ¶¶58-59);
- 26 f. The principle of completeness, which means that nothing is left out of
27 the information that may be necessary to insure that it validly represents
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1 underlying events and conditions (FASB Statement of Concepts No. 2,
2 ¶79); and
3 g. The principle that conservatism be used as a prudent reaction to
4 uncertainty to try to ensure that uncertainties and risks inherent in
5 business situations are adequately considered (FASB Statement of
6 Concepts No. 2, ¶¶95, 97).

7 125. Further, the undisclosed adverse information concealed by the Individual
8 Defendants during the relevant period is the type of information which, because of SEC
9 regulations, regulations of the national stock exchanges and customary business practice, is
10 expected by investors and securities analysts to be disclosed and is known by corporate
11 officials and their legal and financial advisors to be the type of information which is expected
12 to be and must be disclosed.

13 **D. EFI's Financial Statements Violated SEC Regulations**

14 126. During the relevant period, the Individual Defendants caused EFI to violate SEC
15 regulations by failing to disclose that the Company's senior executives had been granted
16 backdated stock options.

17 127. Under SEC Regulations, Item 8 of Form 14-A and Item 11 of Form 10-K, an
18 issuer must furnish information required by Item 402 of Regulation S-K [17 C.F.R. §229.303].
19 Item 402(b) and (c) require a company to provide both a Summary Compensation Table and an
20 Option/SAR Grants table identifying the compensation of the named executive officers – the
21 Company's CEO and its next four most highly paid executives. Item 402 requires
22 particularized disclosures involving a company's stock option grants in the last fiscal year. In
23 the summary compensation table, the issuer must identify in a column "other annual
24 compensation" received by the named executives that is not properly categorized as salary or
25 bonus, including any "[a]bove market or preferential earnings on restricted stock, options,
26 SARs or deferred compensation" paid to the officer during the period. Item
27 402(b)(2)(iii)(C)(2). In the option grant table, the issuer must identify in a column "[t]he per-

1 share exercise or base price of the options. . . . If such exercise or base price is less than the
2 market price of the underlying security on the date of grant, a separate, adjoining column shall
3 be added showing market price on the date of grant. . . .” Item 402(c)(2)(iv).

4 128. The Individual Defendants caused EFI to violate SEC regulations by failing to
5 disclose that the Company’s named executive officers had been granted options with exercise
6 prices below the market value on the date the Compensation Committee approved the grant.

7 **E. Violations of IRS Rules and Regulations**

8 129. During the relevant period, the Individual Defendants further caused EFI to
9 violate IRS rules and regulations due to its improper accounting for the backdated stock
10 options. As a result, the Company’s tax liabilities were understated, exposing EFI to potential
11 amounts owed for back taxes, penalties and interest to the IRS for improperly reporting
12 compensation.

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

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

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

9 133. The Individual Defendants further caused the Company to violate IRS rules and
10 regulations in order to avoid having to withhold income and FICA tax from its executives and
11 employees upon the exercise of EFI’s stock options by improperly accounting for its
12 Nonqualified Stock Options (“NSOs”) as Incentive Stock Options (“ISOs”).

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

24 135. By improperly treating its backdated options as ISOs, the Individual Defendants
25 failed to provide proper income tax and FICA withholdings upon the exercise of its options by
26 its executives and employees in violation of IRS rules and regulations.

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1 136. The chart below illustrates EFI's false and misleading fiscal and quarterly
 2 financial results which materially understated its compensation expenses and thus overstated its
 3 earnings:

Fiscal Year	Reported Earnings (Loss) in Thousands	Reported Basic Earnings (Loss) Per Share
1995	\$37,500	\$0.76
1996	\$62,184	\$1.23
1997	\$64,882	\$1.24
1998	\$47,821	\$0.89
1999	\$95,283	\$1.74
2000	\$54,358	\$0.99
2001	\$38,940	\$0.73
2002	\$15,968	\$0.29
2003	26,508	\$0.49
2004	\$38,019	\$0.71
2005	(\$4,067)	(\$0.07)

14 **VII. DEFENDANTS' BREACHES OF FIDUCIARY DUTIES**

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

- a. colluding with each other to backdate stock option grants;
- b. colluding with each other to violate GAAP and Section 162(m);
- c. colluding with each other to produce and disseminate to EFI
 21 shareholders and the market false financial statements that improperly
 22 recorded and accounted for the backdated option grants and concealed
 23 the improper backdating of stock options; and
- d. colluding with each other to file false proxy statements, false financial
 25 statements and other false SEC filings in order to conceal the improper
 26 backdating of stock options.

1 138. The Individual Defendants’ foregoing misconduct was not, and could not have
2 been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly
3 benefit the Individual Defendants who received backdated options at the expense of the
4 Company.

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

13 140. Defendants Cutts, Gasse, Gecht, Greene, Maydan, Rosenzweig and Smith have
14 exercised hundreds of thousands of backdated options at improperly low prices and have then
15 sold the shares for substantial profits. Consequently, these Defendants have been unjustly
16 enriched by garnering millions of dollars in illicit profits and depriving the Company of
17 millions of dollars in payments that the Company should have received upon exercise of the
18 options.

19 141. On May 26, 2006, *Forbes*, in an article titled, “The Next Big Scandal,” quoted
20 Former Securities and Exchange Commission (“SEC”) Chairman Harvey L. Pitt, saying
21 “What’s so terrible about backdating options grants? For one thing, it likely renders a
22 company’s proxy materials false and misleading. Proxies typically indicate that options are
23 granted at fair market value. But if the grant is backdated, the options value isn’t fair – at least
24 not from the vantage point of the company and its shareholders.”

25 142. On June 18, 2006, in an article titled, “Options Scandal Brewing in Corporate
26 World,” SEC Chairman Christopher Cox was quoted, saying “[Backdating options] isn’t a
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1 question about ‘Whoops, I may have (accidentally) crossed a line here’ . . . It’s a question of
2 knowingly betting on a race that’s already been run.”

3 143. On July 22, 2006, *The San Francisco Chronicle* recounted SEC Chairman
4 Christopher Cox’s announcement in San Francisco on July 20, 2006 where he said,
5 “[backdating in many cases] makes a hash of (companies’) financial statements . . . [and is]
6 poisonous [to efficient markets]. . . . It is securities fraud if you falsify books and records. It is
7 securities fraud if you present financial statements to the SEC that do not comply with
8 generally accepted accounting principles. There is no requirement that (the defendant)
9 personally profit [to prove that a crime occurred.]”

10 144. On September 6, 2006, MarketWatch, in an article titled “SEC Probing more
11 than 100 firms on options: Cox,” quoted the Senate Banking Committee Chairman, Senator
12 Richard Shelby, saying that manipulation of options grant dates “appears to be a **black-and-**
13 **white example of securities fraud**,” and “Corporate officers and directors engaging in this
14 practice are cheating the owners of the company and should be held accountable to the fullest
15 extent possible.”

16 145. Shortly thereafter, on September 6, 2006, the United States Senate Committee
17 on Finance held a hearing on “Executive Compensation: Backdating to the Future/Oversight of
18 current issues regarding executive compensation including backdating of stock options; and tax
19 treatment of executive compensation, retirement and benefits.” At the Senate Finance
20 Committee Hearing, the Senate Finance Committee Chairman, Senator Chuck Grassley, in his
21 opening statement, stated: “[Options backdating] is behavior that, to put it bluntly, is disgusting
22 and repulsive. It is behavior that ignores the concept of an ‘honest day’s work for an honest
23 day’s pay’ and replaces it with a phrase that we hear all too often today, ‘I’m going to get
24 mine.’ . . . [S]hareholders and rank-and-file employees were ripped off by senior executives
25 who rigged stock option programs – through a process called ‘back-dating’ – to further enrich
26 themselves. And as we have found far too often in corporate scandals of recent years, boards
27

1 of directors were either asleep at the switch, or in some cases, willing accomplices themselves.
2 ...”

3 146. Further, at the Senate Finance Committee Hearing, SEC Chairman Christopher
4 Cox, stated, “Rather obviously, this fact pattern [of backdating options] results in a violation of
5 the SEC’s disclosure rules, a violation of accounting rules, and also a violation of the tax laws.”
6 The Commissioner of the IRS Mark Everson agreed and further stated, “Picking a date on
7 which the stock price was low in comparison with the current price gives the employee the
8 largest potential for gain on the option and makes it possible for the employee to benefit from
9 corporate performance that occurred before the option was granted.”

10 147. In his statement before the Senate Finance Committee, Deputy Attorney General
11 Paul J. McNulty described the practice of stock option backdating “as a brazen abuse of
12 corporate power to artificially inflate the salaries of corporate wrongdoers at the expense of
13 shareholders,” and said “for some of those companies that have now disclosed backdated
14 grants, corporate reputations have been tarnished and shareholder value has diminished
15 substantially. . . .”

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

20 A new academic study suggests that many outside directors
21 received manipulated stock-option grants, a finding that may help
22 explain why the practice of options backdating wasn't stopped by
the boards of some companies.

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

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

audit-committee members, be independent . . .

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

VIII. DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS

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

150. Plaintiffs are owners of EFI common stock and were owners of EFI common stock at all times relevant hereto.

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

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

153. At the time this action was commenced, the Board consisted of eight directors: Defendants Gecht, Rosenzweig, Gassée, Cogan, Unterberg, Greene and Maydan, and director Christopher B. Paisley. The following directors (7 out of 8) are incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action:

- a. Gecht, because his principal professional occupation is his position as Chief Executive Officer of the Company. In his position as Chief Executive Officer of the Company, Gecht stands to earn hundreds of thousands of dollars in annual salary, bonuses, and other compensation, all of which must be approved by Defendants Gassee and Cogan, who currently serve as members of the Compensation Committee. In fiscal year ended December 2005, Gecht received over \$1.7 million in salary, bonuses and other compensation. Moreover, as an Option Recipient

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Defendant, Gecht is directly interested in the improperly backdated stock option grants complained of herein. Accordingly, Gecht is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against the Individual Defendants;

b. Rosenzweig, because as an Option Recipient Defendant he is directly interested in the improperly backdated stock option grants complained of herein. Accordingly, Rosenzweig is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against the Individual Defendants;

c. Gassée, because as an Option Recipient Defendant he is directly interested in the improperly backdated stock option grants complained of herein. Moreover, Gassée also served as a member of the Compensation Committee at times relevant hereto and knowingly and deliberately backdated grants of stock options, as alleged herein. Accordingly, Gassée is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against the Individual Defendants;

d. Cogan, because as an Option Recipient Defendant he is directly interested in the improperly backdated stock option grants complained of herein. Moreover, Cogan also served as a member of the Audit Committee at times relevant hereto and knowingly and deliberately participated in and approved the filing of false financial statements and other false SEC filings as alleged herein and directly participated in and approved the Company's violations of GAAP, as alleged herein. Accordingly, Cogan is incapable of independently and disinterestedly

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considering a demand to commence and vigorously prosecute this action against the Individual Defendants;

e. Unterberg, because as an Option Recipient Defendant he is directly interested in the improperly backdated stock option grants complained of herein. Moreover, Unterberg also served as a member of the Compensation Committee at times relevant hereto and knowingly and deliberately backdated grants of stock options, as alleged herein Accordingly, Unterberg is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against the Individual Defendants;

f. Greene, because as an Option Recipient Defendant he is directly interested in the improperly backdated stock option grants complained of herein. Moreover, Greene also served as a member of the Audit Committee at times relevant hereto and knowingly and deliberately participated in and approved the filing of false financial statements and other false SEC filings as alleged herein and directly participated in and approved the Company's violations of GAAP, as alleged herein. Accordingly, Greene is incapable of independently and disinterestedly considering a demand to commence and vigorously prosecute this action against the Individual Defendants; and

g. Maydan, because as an Option Recipient Defendant he is directly interested in the improperly backdated stock option grants complained of herein. Moreover, Maydan also served as a member of the Audit Committee at times relevant hereto knowingly and deliberately participated in and approved the filing of false financial statements and other false SEC filings as alleged herein and directly participated in and approved the Company's violations of GAAP, as alleged herein.

1 Accordingly, Maydan is incapable of independently and disinterestedly
 2 considering a demand to commence and vigorously prosecute this action
 3 against the Individual Defendants.

4 154. Defendants Gecht, Rosenzweig, Gassée, Cogan, Unterberg, Greene and
 5 Maydan's positions during the relevant period are summarized in the table below:

Defendant	Recipient of Back-Dated Option Grant(s)	Member of Compensation Committee at time of back-dated option grants	Member of Audit Committee at time of back-dated option grants	Insider Sales
Gecht	x			x
Rosenzweig	x			x
Cogan	x		x	x
Gassée	x	x		x
Greene	x		x	x
Maydan	x		x	x
Unterberg	x	x		x

16 155. Furthermore, demand is excused because the misconduct complained of herein
 17 was not, and could not have been, an exercise of good faith business judgment. As represented
 18 in EFI's proxy statements, the stated purposes of the Plans are to attract and retain executives
 19 by "align[ing] stockholder and employee interests by creating a direct link between long-term
 20 rewards and the value of the Company's shares. The Board of Directors believes that long-term
 21 stock ownership by executive officers and all employees is an important factor in achieving
 22 above-average growth in share value and in retaining valued employees." However, by
 23 granting EFI stock options with backdated exercise prices, the Individual Defendants
 24 undermined the purpose of the shareholder-approved stock option plans by awarding
 25 employees compensation that had intrinsic value regardless of EFI's performance. In effect,
 26 this practice was nothing more than secret handouts to executives and employees at the expense
 27 of unsuspecting shareholders and the Company.

1 156. The Individual Defendants could have achieved the stated purpose of attracting
2 and retaining executives by granting those employees additional stock options under their
3 incentive plans as approved by the shareholders, or by granting stock options at a price less
4 than the fair market value on the date of the grant and simply disclosing and expensing these
5 grants. Instead, the Individual Defendants backdated stock option grants in violation of the
6 Plans and improperly reported these grants in their financial disclosures to improve their
7 bottom line.

8 157. The practice of backdating stock options cannot be a valid exercise of business
9 judgment because it has subjected EFI to potentially massive liability. EFI will likely suffer tax
10 liabilities for the additional compensation it will have to expense, and it has tarnished its
11 reputation in the investment community through this deliberate and calculated conduct.

12 **IX. CAUSES OF ACTION**

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

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

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

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

26 161. The Individual Defendants acted with scienter in that they either had actual
27 knowledge of the fraud set forth herein, or acted with reckless disregard for the truth in that
28 they failed to ascertain and to disclose the true facts, even though such facts were available to

1 them. The Individual Defendants were among the senior management and directors of the
2 Company and were therefore directly responsible for the fraud alleged herein.

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

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

14 **B. COUNT II: Against the Individual Defendants for Violations of §14(a) of the**
15 **Securities Exchange Act**

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

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

23 166. The proxy statements described herein violated §14(a) and Rule 14-A-9 because
24 they omitted material facts, including the fact that the Individual Defendants were causing the
25 Company to engage in an option backdating scheme, a fact which Defendants were aware of
26 and participated in from at least 1995 to 2003.

27 167. In the exercise of reasonable care, the Individual Defendants should have known
28 that the proxy statements were materially false and misleading.

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

6 169. The Company was damaged as a result of the material misrepresentations and
7 omissions in the proxy statements.

8 **C. COUNT III: Against Defendants Cutts, Gasee, Gecht, Greene, Maydan and**
9 **Rosenzweig for Violations of §20(a) of the Securities Exchange Act**

10 170. Plaintiffs incorporate by reference and reallege each and every allegation set
11 forth above, as though fully set forth herein.

12 171. Defendants Cutts, Gasee, Gecht, Greene, Maydan and Rosenzweig, by virtue of
13 their positions with the Company and their specific acts, were, at the time of the wrongs alleged
14 herein, controlling persons of the Company within the meaning of §20(a) of the Exchange Act.
15 They had the power and influence and exercised the same to cause the Company to engage in
16 the illegal conduct and practices complained of herein.

17 **D. COUNT IV: Against the Individual Defendants for Accounting**

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

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

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

1 175. The Individual Defendants possess complete and unfettered control over the
2 improperly issued stock option grants and the books and records of the Company concerning
3 the details of such improperly backdated stock option grants.

4 176. As a result of the Individual Defendants' misconduct, the Company has been
5 damaged financially and is entitled to a recovery as a result thereof.

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

11 **E. COUNT V: Against the Individual Defendants for Breach of Fiduciary Duty**
12 **and/or Aiding and Abetting**

13 178. Plaintiffs incorporate by reference and reallege each and every allegation set
14 forth above, as though fully set forth herein.

15 179. As alleged in detail herein, each of the Individual Defendants had a fiduciary
16 duty to, among other things, refrain from unduly benefiting themselves and other Company
17 insiders at the expense of the Company.

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

22 181. In breach of their fiduciary duties of loyalty and good faith, the Individual
23 Defendants agreed to and did participate with and/or aided and abetted one another in a
24 deliberate course of action designed to divert corporate assets to themselves and/or other
25 Company insiders.

26 182. The Individual Defendants' foregoing misconduct was not, and could not have
27 been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly
28

1 benefit the Individual Defendants who received backdated options at the expense of the
2 Company.

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

11 **F. COUNT VI: Against the Option Recipient Defendants for Unjust Enrichment**

12 184. Plaintiffs incorporate by reference and reallege each and every allegation set
13 forth above, as though fully set forth herein.

14 185. The Option Recipient Defendants were unjustly enriched by their receipt and
15 retention of backdated stock option grants and the proceeds they received through exercising
16 backdated stock options, as alleged herein, and it would be unconscionable to allow them to
17 retain the benefits thereof.

18 186. To remedy the Option Recipient Defendants' unjust enrichment, the Court
19 should order them to disgorge to the Company all of the backdated stock options they received,
20 including the proceeds of any such options that have been exercised, sold, pledged, or
21 otherwise monetized.

22 **G. COUNT VII: Against the Option Recipient Defendants for Rescission**

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

25 188. As a result of the acts alleged herein, the stock option contracts between the
26 Option Recipient Defendants and the Company entered into during the relevant period were
27 obtained through the Option Recipient Defendants' fraud, deceit, and abuse of control. Further,
28

1 the backdated stock options were illegal grants and thus invalid as they were not authorized in
2 accordance with the terms of the Plans.

3 189. All contracts which provide for stock option grants to the Option Recipient
4 Defendants and were entered into during the relevant period should, therefore, be rescinded,
5 with all sums paid under such contracts returned to the Company, and all such executory
6 contracts cancelled and declared void.

7 WHEREFORE, Plaintiffs demand judgment as follows:

- 8 A. Against all of Defendants and in favor of the Company for the amount of
9 damages sustained by the Company as a result of Defendants’
10 misconduct;
- 11 B. Ordering the Defendants who received backdated options to
12 disgorge to the Company all of the backdated stock options
13 they received, including the proceeds of any such options that
14 have been exercised, sold, pledged, or otherwise monetized,
15 and imposing a constructive trust thereover;
- 16 C. Granting appropriate equitable relief to remedy Defendants’
17 breaches of fiduciary duties;
- 18 D. Awarding to Plaintiffs the costs and disbursements of the
19 action, including reasonable attorneys’ fees, accountants’ and
20 experts’ fees, costs, and expenses; and
- 21 E. Granting such other and further relief as the Court deems just
22 and proper.

23 **X. JURY TRIAL DEMANDED**

24 Plaintiffs demand a trial by jury.

25 Dated: May 24, 2007

26 Respectfully submitted,

27 SCHIFFRIN BARROWAY
28 TOPAZ & KESSLER, LLP

/s/ Alan R. Plutzik
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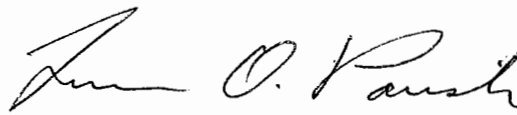
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VERIFICATION

I, Trueman Parish, hereby verify that I have authorized the filing of the attached Consolidated Amended 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: 5/12/07

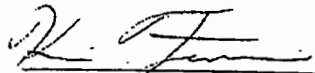

Trueman Parish

VERIFICATION

I, Kevin Fennimore, hereby verify that I have authorized the filing of the attached Consolidated Amended 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: 5-18-07



Kevin Fennimore