

STEPHEN WONG January 6, 2010

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4
5
6 SECURITIES AND EXCHANGE)
7 COMMISSION,)
8 Plaintiff,) Civil Action No. CV08-4238
9 VS.)
10 RAJ P. SABHLOK and) Pages 1-271
11 MICHAEL C. PATTISON,)
12 Defendants.)
13 _____)

14
15
16 VIDEOTAPED DEPOSITION OF:
17 STEPHEN WONG
18 WEDNESDAY, JANUARY 6, 2010
19 9:07 A.M.

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22
23
24 Reported by: LINDA NICKERSON
25 CSR No. 8746

STEPHEN WONG January 6, 2010

Page 2	<p>1 Videotaped deposition of STEPHEN WONG, the 2 witness, taken on behalf of the Defendant Michael C. 3 Pattison, on WEDNESDAY, JANUARY 6, 2010, 9:07 a.m., at 4 445 South Figueroa Street, Thirty-First Floor, Los 5 Angeles, California, before LINDA NICKERSON, CSR 6 No. 8746, pursuant to NOTICE. 7 8 APPEARANCES OF COUNSEL: 9 10 FOR PLAINTIFF: 11 U.S. SECURITIES AND EXCHANGE COMMISSION 12 BY: ROBERT L. TASHJIAN, ESQ. 13 SUSAN F. LaMARCA, ESQ. 14 44 Montgomery Street 15 Twenty-Sixth Floor 16 San Francisco, California 94104 17 (415) 705-1101 18 19 FOR DEFENDANT MICHAEL C. PATTISON: 20 NOSSAMAN, LLP 21 BY: PATRICK J. RICHARD, ESQ. 22 50 California Street 23 Thirty-Fourth Floor 24 San Francisco, California 94111 25 (415) 398-3600</p>	Page 4
Page 3	<p>1 APPEARANCES OF COUNSEL (Continued): 2 3 FOR DEFENDANT RAJ P. SABHLOK: 4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP 5 BY: RONDA J. MCKAIG, ESQ. 6 300 South Grand Avenue 7 Los Angeles, California 90071-3144 8 (213) 687-5000 9 10 FOR THE WITNESS: 11 LATHAM & WATKINS, LLP 12 BY: DAVID SCHINDLER, ESQ. 13 DANIEL R. SELTZER, ESQ. 14 355 South Grand Avenue 15 Los Angeles, California 90071-1560 16 (213) 485-1234 17 18 ALSO PRESENT: 19 PAUL HISCHIER/Videographer 20 21 22 23 24 25</p>	Page 5

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1 E X H I B I T S (continued)

2

3 PREVIOUSLY MARKED EXHIBITS:

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1 MR. SELTZER: Dan Seltzer with Latham & Watkins for

2 Mr. Wong.

3 MR. SCHINDLER: David Schindler from Latham & Watkins

4 on behalf of Mr. Wong.

5 THE VIDEOGRAPHER: The court reporter today is Linda

6 Nickerson of Merrill Legal Solutions.

7 Would the reporter please swear in the witness.

8

9 STEPHEN WONG,

10 having been first duly sworn, was

11 examined and testified as follows:

12

13 THE VIDEOGRAPHER: Please begin.

14

15 EXAMINATION

16 BY MR. RICHARD:

17 Q Good morning, Mr. Wong.

18 A Good morning.

19 Q We met off the record briefly. My name is

20 Patrick Richard, and I represent one of the defendants in

21 this case, Michael Pattison.

22 How are you this morning?

23 A Very well, thanks.

24 Q Good. Any reason you can't give us accurate,

25 truthful testimony this morning?

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1 LOS ANGELES, CALIFORNIA

2 WEDNESDAY, JANUARY 6, 2010; 9:07 A.M.

3

4 THE VIDEOGRAPHER: Here begins Volume I, Videotape

5 Number One in the deposition of Stephen Wong in the

6 matter of the Securities and Exchange Commission versus

7 Sabhlok and Pattison in the U.S. District Court, Northern

8 District of California, San Francisco Division. The

9 civil action number is CV08-4238.

10 Today's date is January 6, 2010, and the time on

11 the video monitor is 9:07. The video operator today is

12 Paul Hischer, a notary public, contracted by Merrill

13 Legal Solutions.

14 This deposition is taking place at Nossaman at

15 445 South Figueroa Street in Los Angeles, California and

16 was noticed by Patrick Richard of Nossaman.

17 Counsel, please voice identify yourselves and

18 state whom you represent.

19 MR. RICHARD: Patrick Richard of the Nossaman law firm

20 on behalf of Mr. Michael Pattison.

21 MS. McKAIG: Ronda McKaig of Skadden, Arps on behalf

22 of Raj Sabhlok.

23 MR. TASHJIAN: Robert Tashjian for the SEC.

24 MS. LaMARCA: Susan LaMarca with the Securities and

25 Exchange Commission.

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1 A No.

2 Q You understand that even though we're in a

3 somewhat chilly conference room here today, that the

4 testimony you give is under oath?

5 A Yes, I do.

6 Q And that it has the same force and effect as

7 though we were in Judge Byer's courtroom?

8 A Yes.

9 Q Before we get to Embarcadero Technologies, can

10 you tell us a bit about your educational background?

11 A Sure. I went to college, earned an AB from

12 Harvard College in 1981 and went back to Harvard Business

13 School where I got an MBA in 1985.

14 Q And what was your undergrad course of study?

15 A Economics was my concentration.

16 Q And can you give us a description of your work

17 history before Embarcadero Technologies?

18 A After college, I worked in New York on Wall

19 Street for two years, went back to business school.

20 After business school, I entered the venture capital

21 field, first working during business school with a small

22 firm in Boston affiliated with Pioneer Investments.

23 When I graduated from HBS, I moved to San

24 Francisco and worked for some venture funds affiliated

25 with the old Montgomery Securities that focused on

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1 medical technology.
 2 Q And when you say "the venture capital field,"
 3 can you describe for us and, I guess more specifically
 4 for the jury, what you mean by that?
 5 A The basic business was to invest in small
 6 private companies that we thought had an opportunity to
 7 introduce, you know, break-through medical products in
 8 the case of these particular funds which would yield on
 9 one hand a nice return to investors and on the other hand
 10 hopefully improve medical treatment for patients.
 11 Q And how did you go about deciding which of those
 12 small private companies to invest in?
 13 A That could take the whole day. It's an art
 14 form. It's really finding the intersection of the right
 15 people, first and foremost, the right market
 16 opportunities because that ultimately, you know,
 17 constrains, you know, what the opportunity ultimately can
 18 become and, of course, execution is critical.
 19 So we would be the providers of the capital, but
 20 we would rely very heavily on the entrepreneurs and the
 21 people who worked in these companies to make ideas rea
 22 basically.
 23 Q So essentially it was your job, when you were in
 24 the venture capital field, to review or evaluate small
 25 companies to decide whether it made sense for a

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1 particular fund to invest in that small company?
 2 A Correct.
 3 Q And one of the things you looked at would be
 4 whether that small private company had the right people?
 5 A Absolutely.
 6 Q What do you mean by that, have the right people?
 7 A It's -- it's -- it's all contextual. So it
 8 depends on the particular role they also play. So if
 9 we're looking at a scientist, do they have the requisite
 10 technical background, do they have experience in the
 11 field of invention.
 12 If we're looking at general management, then
 13 have they had responsibility for a full what we call P&L,
 14 you know, understanding that they are the stewards of,
 15 you know, investors' money and do they have the
 16 experience in building an organization and leading it.
 17 Q And did you say that you were working while you
 18 were going to business school?
 19 A Correct.
 20 Q And can you give us a sense of any professional
 21 groups you belong to or currently belong to?
 22 A I'm pretty much -- I've been active in the
 23 alumni affairs with my alma mater, but currently I'm not
 24 very active in a lot of the other organizations I've
 25 belonged to in the past.

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1 Q What were some of those organizations that you
 2 belong to?
 3 A Young Presidents Organization. It's an
 4 international affiliation of general managers or CEOs of
 5 companies. There's certain criteria to, you know, obtain
 6 membership. I was a member of that for, you know, four
 7 or five years.
 8 Q And roughly when was that?
 9 A Probably 2002 to about beginning of 2007.
 10 Q I didn't ask you, but the jury may be
 11 interested, can you tell us where you went to high
 12 school?
 13 A My -- I went to high school in Los Angeles, a
 14 public school in Highland Park. It was a school called
 15 Benjamin Franklin High School.
 16 Q And do you come from a large family?
 17 A Yes, I'm eighth out of nine children.
 18 Q Congratulations.
 19 A We had our own baseball team.
 20 Q What position did you play?
 21 A They probably didn't want to choose me.
 22 Q Turning to Embarcadero Technologies, can you
 23 tell us how that company got started?
 24 A I was approached by two guys who were
 25 consultants on a project in a company that I had invested

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1 in.
 2 They were working on some IT projects which
 3 pertained to some database work, and because I had
 4 oversight responsibilities for this particular project,
 5 you know, I try to keep tabs on it.
 6 Towards the end of their engagement, they came
 7 to me and they said, "Jeez, you know, this project would
 8 have gone a lot faster and a lot more smoothly if we had
 9 the right tools."
 10 I said, "Well, what do you mean by that?"
 11 So they explained to me the whole notion of how
 12 database was still at its relevant -- I wouldn't say
 13 infancy but maybe its adolescence, and it was still far
 14 too difficult in their opinion to -- to work with
 15 databases to develop programs on them, to optimize them.
 16 So they made me a pitch where they said, jeez,
 17 you know, you have experience in knowing how to help
 18 start up companies, would you, you know, give us, you
 19 know, some backing or -- and some coaching as to how we
 20 could get this off the ground. So I agreed to do that.
 21 Q That was over what, the 1990s?
 22 A That was the '93, '94 time frame, I believe.
 23 Q And were you one of the founders of Embarcadero
 24 Technologies?
 25 A Yes, I was. My brother and I provided the seed

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1 funding for it, and we were fortunate in that the -- that
 2 our partners were able to execute, you know, pretty well,
 3 and so we had, you know, a commercial product by the end
 4 of the first year, and they kind of hit enough of the
 5 sweet spot that we found ready clientele pretty quickly.
 6 So, you know, the company just started to unfold from
 7 there.

8 Q Can you explain for us what these software tools
 9 were? You mentioned that the consultant said if they had
 10 the right tools and that was related to databases. Can
 11 you explain that a little bit?

12 A Sure. You know, some of the big databases that
 13 are out there -- let me start with that -- you know,
 14 Oracle. There was a company called CyBase that used to
 15 be a pretty healthy competitor of Oracle at the time.
 16 Microsoft was entering the business.

17 So this was an area where the databases were
 18 needed to store corporate information. So most of the --
 19 most of the applications that you see large companies use
 20 to handle transactions -- and it will vary, you know,
 21 what those transactions are by industry -- there's
 22 probably a database sitting underneath it.

23 And at the time, which was, you know, the early
 24 '90s, you really didn't go to, you know, school -- you
 25 know, computer science, for example, at Berkeley or

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1 Stanford to learn about database programming.
 2 That was relatively arcane then. So it was very
 3 largely a school -- you know, a field where people
 4 learned on the job. The learning curve was very steep.
 5 It's very complicated technology.

6 So there was a need, just like there's a need
 7 for power tools for mechanics, to, you know, make your --
 8 make your job a lot more productive. So that's what we
 9 did.

10 We had tools that helped these database
 11 developers and administrators design database
 12 applications, develop the database code that would run on
 13 them, and the administrative tools to keep them up and
 14 running, you know, do very mundane things like backups
 15 and tuning, things like that.

16 Q Can you give us an example or tell us what the
 17 DB Artisan product was?

18 A DB Artisan was an administration product. So,
 19 you know, there's -- there's a fairly large class of IT
 20 personnel in large companies that have the role of what
 21 they call DBAs, which means database administrator, and
 22 these are the men and women who are responsible for
 23 keeping your applications running.

24 So we used to joke that the only time a DBA ever
 25 got its name known in the executive suite is if something

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1 failed. So that wasn't a good thing. So our job was to
 2 keep them anonymous, keep their jobs running very
 3 smoothly with all the backup and tuning and whatnot, you
 4 know, running very smoothly.

5 Q And can you give us an idea some of the
 6 challenges that faced -- by the way, what was your
 7 position once -- Embarcadero Technologies became a
 8 company, right?

9 A Right.

10 Q And once it became a company, what was your
 11 position within the company?

12 A I was by default the CEO.

13 Q Why do you say "by default"?

14 A I'm an entrepreneur without a doubt. I love the
 15 process of helping to put ideas and people together, but
 16 I've never viewed myself as a professional manager.
 17 That's not something I ever aspired to.

18 Now it's a role I played before. I'm kind of
 19 the kickoff returner for new companies, but in the past,
 20 I'd always found someone who was going to be far more
 21 qualified and experienced than I to take my position and
 22 build a much bigger and more successful company. So that
 23 was my typical game plan.

24 So during this, you know, fledgling period where
 25 we didn't know if we had, A, a product, let alone a

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1 company, I said no need to go and hire a headhunter and
 2 find some big gun which we probably couldn't afford
 3 anyway, so I'll play that role. And so I became the CEO
 4 by default, as I said, and tried to baby-sit the company
 5 through its infancy.

6 Q And you did that for quite a few years, right,
 7 while that was a public -- I mean a private company?

8 A Yes. I always had one door -- one eye on trying
 9 to find my successor. In fact, I had tried a few times,
 10 but, you know, for whatever reason, the job just stuck to
 11 me, and I tried to be very objective about, you know,
 12 what I'm good or not good at and felt that the day would
 13 come where there had to be professional management in
 14 place.

15 Q Can you give us a -- an idea of some of the
 16 challenges in the first few years of this startup company
 17 that has a software product and an industry that you've
 18 described as somewhat in its infancy that is managing
 19 these databases?

20 A Well, I think the biggest challenge is really to
 21 be ruthlessly objective because we're walking down a --
 22 kind of a dark hall where we really don't know all the
 23 twists and turns as to how the business will develop
 24 because, you know, the industry was relatively new and
 25 certainly we were new at it.

5 (Pages 14 to 17)

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1 And so we had to keep our ears to the ground and
 2 stay very close to our customers to really get feedback
 3 from them in terms of what the problems they faced were
 4 and what they liked about our products and just even more
 5 importantly what they didn't like about it.
 6 So the initial challenge was about creating
 7 great software or the best software we possibly could and
 8 finding a way to efficiently reach the market.
 9 At that time, the standard model for corporate
 10 software as far as sales and marketing was kind of the
 11 IBM model where you would have a big expensive sales
 12 force, you know, men and women in blue suits and white
 13 shirts with all the overhead who would give you a big
 14 corporate pitch about, you know, they're IBM and if you
 15 give us your money, you know, you'll go to bed at night
 16 and Mr. DBA, you know, your CEO will never know your
 17 name.
 18 Clearly, we weren't that. We were the complete
 19 opposite. So ours was more of, you know, kind of a
 20 gorilla marketing, I guess, is what they ultimately
 21 called it where we had to go directly to the end users,
 22 the ones who would be working the late nights and finding
 23 a way to convince them to take a trial of our product.
 24 So our initial sales model was what we called
 25 download and go. It was also at the dawn of the

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1 popularization of the Internet. So we made it very easy
 2 for people to get our software. With IBM, you would have
 3 to go through a lot of hoops, and with us, go to our
 4 website, fill out a form, download a trial of the
 5 software, it's a full working version for 30 days.
 6 During those 30 days, we would, you know, send
 7 you e-mails or call you to say, hey, have you tried it,
 8 how's it going, do you need any tips or hints on how to
 9 be effective in the use of the software, and this was
 10 kind of the secret to our early success because we made
 11 it available to the worker bee, so to speak.
 12 They embraced the -- there's almost a cult
 13 following in the early days around our product, and we
 14 converted a remarkably high percentage of trials into
 15 paying customers.
 16 Q ~~One of the things you mentioned was creating~~
 17 ~~great software.~~
 18 Is it fair to say that while you were head of
 19 the company, the company devoted a fair amount of
 20 resources to research and development?
 21 A Absolutely. I felt that as a small, fragile
 22 company, you know, we couldn't claim any of the corporate
 23 resumes. So we had to lead, and we needed to finish with
 24 our product. We had to have without a doubt, you know, a
 25 product that demonstrated its utility out of the box.

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1 Q Fair to say that you were proud of the company
 2 that you helped start?
 3 A Oh, absolutely, really measured by the people
 4 who work there and the customers we had and how long they
 5 stuck with our products.
 6 Q Well, let's talk about some of the -- when you
 7 say the people we had there, let's talk about the
 8 employees that Embarcadero Technologies had.
 9 Was it important to you as the CEO to have some
 10 employee ownership?
 11 A Oh, yes. You wanted them to feel the spirit of
 12 ownership and pride in the company. You know, the
 13 investors might say, hey, you want to align their
 14 interests with yours, but to me -- and it was very much
 15 part of the Silicon Valley ethos. So as Silicon Valley
 16 was becoming more and more prominent, I think it became
 17 more of a standard of compensation in the valley.
 18 Q And what are some of the ways that a company
 19 like Embarcadero Technologies can have employees become
 20 part owners?
 21 A Well, it would be through demonstrated
 22 performance. You know, clearly we wanted them to feel as
 23 though they had earned it. Unfortunately, that became
 24 harder over time because, as I said, the competitive, you
 25 know, marketplace was that particularly if you were

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1 hiring developers out of Berkeley or Stanford, they
 2 expected it as part of the up-front package.
 3 Q What is it that they came to expect as part of
 4 the up-front package?
 5 A You know, some stock option grants. It got to
 6 the point even during the bubble where they would ask for
 7 signing bonuses.
 8 And these were not the kind of practices that,
 9 you know, really sat well with me, you know, because I
 10 felt that you needed to earn your way into it, but it
 11 wasn't for me to decide because the market was the
 12 market.
 13 Q When you say "the market was the market," you
 14 mean that's how other businesses were attracting talent?
 15 A Yes, yes, and it was a very -- it was a very
 16 tight market, particularly for developers.
 17 Q In what time frame?
 18 A You know, almost throughout the -- my whole
 19 tenure with the company.
 20 Q When you say it was a very tight market,
 21 especially for developers, you're talking about software
 22 developers?
 23 A Yes, yes, sorry.
 24 Q You mentioned stock options. Let's go through a
 25 couple terms here.

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1 Can you tell us what restricted stock is?
 2 A Restricted stock is -- is shares that you are
 3 given potential ownership of. When I say "potential,"
 4 what I mean by that is that you had to vest them.
 5 So different companies might have different
 6 practices, but basically, you know, you would have to
 7 work at the company over some period of time in order to
 8 vest or quote -- or to earn these -- these shares.
 9 Q And is restricted stock one way that a company
 10 like Embarcadero Technologies could help employees become
 11 part owners of the company?
 12 A Yes. This didn't become commonplace until, you
 13 know, much, much later. Initially, you know, the
 14 standard practice was through stock options.
 15 Q Okay. Why don't you tell us what a stock option
 16 is.
 17 A It's basically a right to purchase shares in a
 18 company on some pre -- preset terms.
 19 Q And while you were CEO of Embarcadero
 20 Technologies, did the company issue stock options to any
 21 of its employees?
 22 A Yes.
 23 Q And was there -- for the rank-and-file
 24 employees -- when I say "rank and file," I mean folks who
 25 are not officers or board members.

Page 23

1 A Sure.
 2 Q Do you understand that?
 3 A Yes, it's a term I use.
 4 Q Okay. Good. Then we're on the same page.
 5 For the rank-and-file employees who -- to whom
 6 the company issued stock options, were those stock
 7 options -- could they immediately go out and use those?
 8 A No.
 9 Q Why not?
 10 A Typically -- well, we -- we used them as a
 11 retention tool, okay. So typically the stock options
 12 would vest over four years, and so there might be --
 13 there might be some, you know, period of time before
 14 you're entitled to any options. Then it would vest pro
 15 rata over, you know, whatever the vesting period was. I
 16 think for us it was typically four years.
 17 Q And was there a period during their first few
 18 months or year of employment where they could not, that
 19 is, the rank-and-file employees couldn't exercise their
 20 options at all?
 21 A Correct.
 22 Q Was that one-year period called something like a
 23 cliff period or --
 24 A Yeah, I think that's what it's called.
 25 Q And at some point in the year 2000, did

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1 Embarcadero Technologies go public --
 2 A Yes.
 3 Q -- to use the vernacular?
 4 A Yes.
 5 Q Can you tell us what that means?
 6 A We hired some investment bankers to list the
 7 company on the NASDAQ.
 8 Q And at that point, then members of the public
 9 could buy and sell shares of the company?
 10 A Correct. As part of the offering, we sold a
 11 small percentage of the company to public shareholders.
 12 They were typically institutional investors.
 13 Q And even after the company went public, can you
 14 tell us who some of the major shareholders of the company
 15 were?
 16 A I was the single largest shareholder, and my
 17 brother, who had also been the -- kind of a silent
 18 partner in this, was also a major shareholder.
 19 Q And so in 2000 --
 20 A Basically the cofounders owned the majority of
 21 the company even after it went public.
 22 Q Was that unusual?
 23 A No. For companies that went public with our
 24 profile, typically you would only sell, you know, a small
 25 percentage of the company in the IPO itself.

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1 Q And so you and your brother owned, you say, a
 2 majority of the stock even after the company went public?
 3 A No, not a majority, but we owned a healthy
 4 chunk. Probably between the two of us, we owned -- I
 5 don't know, my guess is probably 40 percent or something
 6 like that. But with the other two cofounders who were --
 7 one of which was no longer active in the business, we
 8 would have definitely had a majority.
 9 Q Okay. At some point after the company went
 10 public in 2000, did the -- the company had a board of
 11 directors?
 12 A Yes.
 13 Q And can you tell us -- tell the jury what the
 14 point of having a board of directors of Embarcadero
 15 Technologies was?
 16 A Well, all corporations will have a board of
 17 directors. I think when you become public, it becomes,
 18 you know, particularly important because you want to make
 19 sure you have a -- you know, the right collection of
 20 professionals that can help look out for the best
 21 interests of the company.
 22 Q And at some point in the year 2000, did the
 23 board of directors of Embarcadero Technologies give you
 24 as the CEO discretion to issue stock options of some
 25 number?

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1 A I don't remember the exact date, but, yes, I was
 2 given authority at some point.
 3 Q And was that authority to grant executives stock
 4 options?
 5 A No, in your parlance, only to rank and file.
 6 Q Okay. And were you part of the discussions or
 7 the decision-making process, in other words, do you
 8 understand why the board decided to delegate to you as
 9 the CEO authority to issue some number of stock options
 10 to the rank-and-file employees of the company?
 11 A Administrative efficiency. We were hiring
 12 people all the time. So it would have been very
 13 cumbersome and impractical basically to, you know,
 14 present -- we might hire people on Tuesday, Thursday, you
 15 know, Friday, and so they felt that whereas they wanted
 16 oversight of the officers and directors, that it didn't
 17 make sense for them administratively as far as the rank
 18 and file. SEC
 19 Q Okay. And how were those stock options priced,
 20 that is, the ones that you could issue to the employees?
 21 You mentioned there's a new hire. You want to issue them
 22 or you negotiate some number of stock options for them.
 23 How do you -- typically, how are those priced?
 24 A Well, I focused on the number of grants that
 25 they would get. So, you know, if we were interviewing

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1 somebody that was going to join the company, you know,
 2 maybe for a particular position, the range would be, you
 3 know, 5,000 to 10,000 options.
 4 So, you know, I'd figure out what seemed to be
 5 fair and talk with the people who would be their direct
 6 managers and work out, okay, you know, John Smith is
 7 going to get 4,000 options or whatever the number is.
 8 Q And each option would have an exercise price; is
 9 that right?
 10 A Yeah, yes.
 11 Q And that would allow the employee some time down
 12 the road after the one-year period where they couldn't
 13 exercise any of the options and then over the next four
 14 years, as those options vested, there would be an
 15 exercise price, right?
 16 A Correct.
 17 Q And so if a company did well and its stock went
 18 up, that would be a benefit to that employee?
 19 A Yes.
 20 Q Okay. And if the stock went down, it wouldn't
 21 be?
 22 A Right.
 23 Q Okay. And so was there a point in time where
 24 you made that decision to issue stock options on a
 25 quarterly basis?

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1 MR. TASHJIAN: Objection; vague.
 2 MR. RICHARD: I'll rephrase it.
 3 Q You mentioned that the company was hiring a
 4 number of employees to whom you thought it was
 5 appropriate to include stock options as part of their
 6 compensation.
 7 Did I get that right?
 8 A Right.
 9 Q Okay. When would you typically give your final
 10 approval to those stock option grants to those employees?
 11 A Typically, it would be, I think, near the end of
 12 each quarter. I would be getting feedback throughout the
 13 quarter from various hiring managers -- and this is not
 14 just for new hires. It's also for existing employees for
 15 performance grants, and at some point, we would have to,
 16 you know, make the, you know, final decisions.
 17 So there would be -- there might be a healthy
 18 amount of dialogue with hiring managers over, you know,
 19 particular situations, but, you know, there came a time
 20 where we would have to, you know, generate a list and
 21 then say, hey, this is -- this is what we're going with.
 22 Q Okay. So that was a -- to some extent a
 23 consensus or collaborative process?
 24 A Yes, yes.
 25 Q And then once you got the list, you would what,

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1 sign that or approve it?
 2 A If it was -- if I was in agreement with all of
 3 it, then I would -- I would, you know, as far as the
 4 amount of the grants and the individuals, then, yes, I
 5 would approve it.
 6 Q And how were -- how was the -- was there some
 7 relationship between the trading price of the company's
 8 stock throughout the quarter and the exercise price and
 9 the grants for the rank-and-file employees?
 10 A I believe that the exercise prices were a
 11 function of the date that the options were granted.
 12 Q Okay. And -- by the way, at the time of the
 13 board's delegation of authority to you, did the board
 14 give you any direction as to how you should document the
 15 decisions that you'd be making for the rank-and-file
 16 grants?
 17 A Not to my recollection, no.
 18 Q And do you recall that there was an attorney for
 19 the company at that time?
 20 A We had some outside counsel.
 21 Q And did those outside legal advisors typically
 22 attend the board meetings?
 23 A Yes.
 24 Q And at the time of the board grant, did the
 25 outside legal advisors give you any advice as to how you

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1 should document your decisions to grant stock options to
 2 the rank-and-file employees of the company?
 3 A Typically, they would just -- they didn't give
 4 any specific instructions on it that I remember, but
 5 there would be minutes which are typical as part of a
 6 board process where you would approve the minutes of
 7 various meetings. And so I believe that the stock option
 8 grants would have been, you know, exhibits to some of
 9 these minutes.
 10 Q For the decisions you made, though, you weren't
 11 required to have a board meeting to approve the stock
 12 option grants to the rank-and-file employees, were you?
 13 A That's right. *SEC*
 14 Q And so -- let me see if I have one of those.
 15 Can you tell us whether at some point in time, if you had
 16 employees starting on different dates throughout the
 17 quarter, how would you decide what the exercise price
 18 should be for their options when it came time to make
 19 your final decision near the end of the quarter?
 20 A You know, my recollection on that stuff is
 21 pretty hazy, but as you can imagine, if we're hiring
 22 people throughout the -- you know, every week, then it
 23 became administratively burdensome to keep track of it
 24 all. I wasn't so much involved in the mechanics of how
 25 that was recorded, but --

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1 Q Okay. One of the things we get to do in a
 2 deposition, just like at trial, is to mark some documents
 3 and have you take a look at those.
 4 And so I understand you haven't looked at --
 5 you're no longer with the company; is that right?
 6 A No, I haven't been for a couple of years.
 7 Q Okay. So you may not have looked at some of
 8 these records for some period of time.
 9 I'm going to show you what was previously marked
 10 as Exhibit 187 in these proceedings. I'll give a copy to
 11 the court reporter just so we can actually attach it to
 12 this deposition, but -- actually why don't you look at
 13 this and when we're done, we'll just give that to the
 14 court reporter. I see we're missing one.
 15 MS. MCKAIG: I will share.
 16 BY MR. RICHARD:
 17 Q So Exhibit 187, can you tell us -- take a minute
 18 to look at it, and just for the record for the prior
 19 deposition, we attempted to block out the Social Security
 20 number for the individuals on this document, but can you
 21 tell us what this document is?
 22 A It looks like a list of the stock options
 23 granted during the quarter. The print is pretty small.
 24 So I can't really see the dates, but, yeah, it's a
 25 list -- and it's broken down into three groups. At the

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1 top would be directors. In the middle, the two names
 2 there would be officers and then at the bottom are our
 3 employees.
 4 Q Okay. So for the rank-and-file employees, how
 5 were the -- is that your signature, by the way?
 6 A Yes, it is.
 7 Q And so this would be for the first quarter
 8 grants in the year 2003?
 9 A I guess. I can't --
 10 Q Can you read up top where it says from
 11 January 1, 2003 to March 31, 2003?
 12 A Your eyesight is a little better than mine.
 13 Q How about the date underneath your signature?
 14 A Yeah, okay, yeah.
 15 Q Are you able to tell us the date underneath your
 16 signature?
 17 A It looks like April 1 of '03.
 18 Q And was there -- so by signing this, you were
 19 what, approving those rank-and-file grants?
 20 MR. TASHJIAN: Objection; leading.
 21 BY MR. RICHARD:
 22 Q When you signed this, what did you think you
 23 were approving where it says "Approved"?
 24 A Really the rank and file because the -- I
 25 wouldn't have determined the upper two groups.

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1 Q Okay. And do you know whether the -- for the
 2 price of the stock, say, on March 7, 2003, do you know
 3 whether that was -- it looks like it's \$4.83 -- was that
 4 a relative low for the trading price of the stock?
 5 A It's been some time, so it may have been, but I
 6 couldn't tell you sitting here today.
 7 Q Okay. Was there a point in time where you
 8 understood that you were approving stock options for the
 9 rank-and-file employees that were in any way favorably
 10 priced, you know, for employees so that if one employee
 11 was starting on a Monday of the week and one was starting
 12 on a Friday, they both got the same exercise price?
 13 MR. TASHJIAN: Objection; vague.
 14 BY MR. RICHARD:
 15 Q Does that sound familiar -- I'll rephrase. *SEC*
 16 Do you have some -- before we get into all the
 17 documents, do you have some memory that employees
 18 starting within a short period of time, new hires -- are
 19 you with me so far?
 20 A Yes.
 21 Q -- that new hires starting within a short period
 22 of time, if they were both to be issued stock option by
 23 the company -- stock options by the company, that those
 24 would be priced at the same exercise price?
 25 A Yeah, that could well have been the case.

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1 Q And why was that?

2 A Partially administrative, you know, efficiency

3 and, yes, we wanted to give options to employees that

4 hopefully would really count to them.

5 Q Okay. What do you mean by that?

6 A Well, if you're going to give someone ownership

7 in -- in a company, hopefully they're really going to

8 value it, and unfortunately options became a very big

9 part of the -- the whole perceived compensation package

10 by employees when we were competing with other companies

11 for -- for personnel.

12 And so post 9-11 when the -- you know, when the

13 tech bubble burst, the stock market was very volatile

14 then, and in my opinion, far too much time was wasted by

15 employees not only at Embarcadero but at other companies

16 about, oh, you know, poor me, all of my options are

17 underwater.

18 And so we wanted them, if we were going to go

19 through the trouble of diluting our share base to give

20 options to employees, that they would really value.

21 Q Was there in your mind any consideration of

22 equity or fairness in having employees have stock options

23 exercisable at the same price if they started on

24 different dates?

25 A Well, I mean, the stock market had been bouncing

MP

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1 Q Okay. Why don't we just for the benefit of the

2 jury tell us what an earnings call is.

3 A Each quarter the company -- you know, a public

4 company has to put out a report about its quarterly

5 performance in terms of sales, profits, cash flow, what

6 its assets and liabilities looks like.

7 Q Why?

8 A So that if -- so the investing public can remain

9 informed.

10 Q Okay. And then you referred to analysts. Are

11 these outside analysts? What's an analyst?

12 A An analyst is, you know, a specialist, in our

13 case in the software field, that might work for one of

14 the brokerage firms or investment banks that have

15 clientele that are interested in investing in companies

16 like Embarcadero.

17 Q And can you tell us typically while you were CEO

18 and the company was publicly traded the types of

19 questions that analysts would ask?

20 A They would want to get into details about our

21 sales performance, you know, maybe the composition of our

22 sales, you know, what the, quote, outlook for the

23 business was in terms of, you know, customer demand for

24 different products of ours. They'd want to get into, you

25 know, questions about the quality of our earnings.

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1 around a lot. So it didn't seem very fair to me if Susie

2 was hired on Monday and got one price and Bob was hired

3 on Tuesday and got a different price and then three days

4 later -- and they all worked together, because that would

5 set up automatically a situation where there could be,

6 you know, a lot of mistrust or unhappiness.

7 Q Okay. And so whose decision was it that those

8 stock options for those employees who were hired within

9 a -- you know, relatively same time frame should simply

10 be the same exercise price?

11 A Generally, that would be me.

12 Q Okay. And that made sense to you at the time?

13 A It seemed fair to me.

14 Q Let's shift gears for a second.

15 When you were CEO of the company, from time to

16 time, would you participate in calls with analysts?

17 A Yes.

18 Q Can you tell us what the purpose of calls with

19 analysts was?

20 A They would -- they would basically want to have

21 an opportunity to interrogate management about, you know,

22 the performance of the business following our earnings

23 release. So this gave them a chance to ask more in-depth

24 questions they might have been able to do on the earnings

25 call itself.

MP

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1 Q When you were CEO of Embarcadero Technologies,

2 did you understand what noncash expenses were?

3 A Yes.

4 Q And how -- can you tell us what your

5 understanding of a noncash expense was?

6 A Well, probably the best example would be

7 depreciation, where, you know, you buy a computer which

8 was very typical for us and, you know, you would write

9 off -- write that asset down over the course of a couple

10 of years, whatever the standard was for that class of

11 asset.

12 And so you would take a -- an expense charge for

13 that amount of the write-off, but it really wouldn't

14 affect your bank balances, so to speak.

15 Q When you say you would take an expense charge,

16 where would you take that? What does that mean?

17 A You would take an expense against your earnings.

18 Q And that's something then that gets reflected in

19 a company's financial statements?

20 A Yes.

21 Q And in these conversations you had with the

22 analysts who would follow Embarcadero Technologies on

23 behalf of the investing public, did they ever ask you

24 questions about the company's noncash expenses or express

25 interest in noncash expenses?

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1 A They would, but it would be actually the
 2 inverse. They wanted to get down to essentially what
 3 were cash earnings.
 4 Q And as someone coming out of the venture capital
 5 background, did you understand why cash earnings might be
 6 important to potential investors?
 7 A I think in their mind, it gave them a more
 8 fundamental sense of the quality of earnings.
 9 Q When you were -- by the way, what do you mean "a
 10 more fundamental sense of the quality of earnings"?
 11 A The software business is relatively simple
 12 compared to a lot of other industries as far as its --
 13 you know, how its income statement works.
 14 You know, other industries are much more
 15 complicated because they'll have real manufacturing, you
 16 know, cost of goods sold, inventory, a lot of things that
 17 involve a lot, you know, more complicated analysis to get
 18 to what earnings were.
 19 For software, you know, while there is a cost of
 20 goods, it's negligible. It's the cost of, you know, CDs
 21 essentially, and the biggest expense that you have in any
 22 software company is payroll.
 23 So they wanted to kind of cut to the quick to
 24 say, hey, you know, show us what your fundamental sales
 25 were and what your fundamental expenses, meaning cash

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1 expenses, against those sales were, and that's how they
 2 would, I guess, take their pulse of our business.
 3 Remember, they were independent analysts. So this is --
 4 this was their model for evaluating the health of our
 5 business.
 6 Q And at the time that you were the CEO of
 7 Embarcadero Technologies, did you understand that there
 8 was any relationship between the value of the company and
 9 the anticipated future cash flows of the company?
 10 A Yes.
 11 Q And what was your understanding as to the
 12 relationship between the value of a company and the
 13 anticipated future cash flows?
 14 A Well, the more growth that people could see and
 15 the more cash flow that people could see over time, then
 16 presumably the more valuable the company would become in
 17 their mind.
 18 Q In any of these calls -- by the way, for what
 19 period of time would you be having calls with the
 20 analysts regarding the financial condition of Embarcadero
 21 Technologies?
 22 A I'm sorry. I don't --
 23 Q Over how many years would you have those types
 24 of conversations?
 25 A Throughout our tenure as a public company.

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1 Q So roughly 2000 through 2006, 2007?
 2 A Yes, yes.
 3 Q And at any point, say, between 2000 and the end
 4 of 2004, did any of the analysts say, hey, Stephen, how's
 5 the company accounting for those noncash expenses of
 6 employee stock options?
 7 A What they would specifically ask is to break out
 8 that number so they could remove it from their earnings
 9 models.
 10 Q And are those called pro formas or something
 11 else? What --
 12 A Different people would call it different things.
 13 Q Okay. So can you explain for us when you say
 14 that typically the analysts would pull out -- or I think
 15 you said remove noncash expenses, explain that to us.
 16 A You know, it would -- it's kind of hard for me
 17 to answer on behalf of these analysts. Everyone might --
 18 each one of them might have a slightly different
 19 approach, and I think you can get copies of their reports
 20 because they were public or available for at least their
 21 clientele at some point in time.
 22 Q Okay. That's fair enough.
 23 A It's hard for me to say, you know, John analyst
 24 did this or did that specifically.
 25 Q Can you -- the company itself would provide the

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1 public with information regarding Embarcadero
 2 Technologies, right?
 3 A Yes, yes.
 4 Q And one of the ways it would do that would be in
 5 the company's annual reports, what are called the 10-Ks?
 6 A Yes.
 7 Q And to the best of your memory, was there some
 8 information regarding the stock awards and stock option
 9 awards to employees reflected in the company's 10-Ks?
 10 A Well, you would have the fully diluted share
 11 count, and I believe that there was a footnote or
 12 something in the financial notes that would kind of help
 13 indicate how many options had been granted or stock or
 14 things that had been cancelled.
 15 So that would reflect, you know, what happened
 16 as far as the option grants. With respect to, you know,
 17 what you were referring to earlier as the stock
 18 compensation charge, I think there were also notes on
 19 that.
 20 Q And from your perspective, what was important
 21 for the investing public to understand about the
 22 company's stock option practices between 2000 and the end
 23 of 2004? You mentioned that there was something about a
 24 fully diluted share --
 25 A Yes, I think the most important thing was for

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1 them to understand how many shares were outstanding
 2 because if -- if you're part owner in a company, you want
 3 to know if you own one-tenth or one-twentieth, you know,
 4 how many ways is the pie split.
 5 Q And from your perspective, would the specific
 6 grant date of a stock option be relevant to that fully
 7 diluted share count?
 8 A I didn't -- not to my knowledge. You know, I'm
 9 not an expert on those sorts of things. I figured the
 10 share count should reflect the outstanding options. I
 11 don't think that the number of outstanding options would
 12 have been affected by, you know, whatever the date was.
 13 Q Okay. To the best of your knowledge, was the
 14 specific information identified, say, for this first
 15 quarter 2003 for these rank-and-file stock option grants
 16 with the grant date and the exercise price and the
 17 individuals and the number of stock options and the
 18 number of shares, was this list disclosed or, you know,
 19 attached to the 10-K?
 20 A No, you wouldn't burden shareholders with all
 21 this detail. Plus some of this is very sensitive
 22 competitive information. You wouldn't want our --
 23 because otherwise headhunters could start calling our
 24 people and say, oh, jeez, now we have a target list. So
 25 the only thing you would really get is the impact of the

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1 overall issuance of options.
 2 Q Okay. So --
 3 A So the officers, I think, that would have to be
 4 individually disclosed, but for the rank and file, that
 5 would not be the case.
 6 Q Okay. So did the auditors -- by the way, did
 7 the company have a big firm that helped audit its public
 8 filings?
 9 A Yes.
 10 Q And who is that?
 11 A PwC.
 12 Q PricewaterhouseCoopers?
 13 A Correct.
 14 Q Did PricewaterhouseCoopers ever say, Stephen,
 15 you really need to list the grant date for each of the
 16 rank-and-file employees in your annual or quarterly
 17 statements?
 18 A No.
 19 MR. TASHJIAN: Objection; leading.
 20 BY MR. RICHARD:
 21 Q Did PwC, the company's outside auditors, ever
 22 give the company any advice, to the best of your
 23 knowledge, as to whether the specific grant information
 24 reflected in Exhibit 187 for the rank-and-file employees
 25 should be included in any of the company's public

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1 filings?
 2 MR. TASHJIAN: Objection; leading.
 3 MR. SCHINDLER: You can answer.
 4 THE WITNESS: No.
 5 BY MR. RICHARD:
 6 Q You mentioned that the company had a board of
 7 directors.
 8 Did the board of directors of Embarcadero
 9 Technologies ever suggest to you that the annual filings
 10 or quarterly filings with the Securities and Exchange
 11 Commission should identify the particular grant dates of
 12 any particular options to the rank-and-file employees?
 13 MR. TASHJIAN: Objection; leading.
 14 THE WITNESS: No.
 15 BY MR. RICHARD:
 16 Q One of the employees that the company hired was
 17 Mr. Michael Pattison.
 18 Do you recall that?
 19 A Yes.
 20 Q And were you the fellow that decided to hire --
 21 ultimately decided to hire Mr. Pattison?
 22 A Yes.
 23 Q And is it fair to say that it wasn't important
 24 to you at the time that you decided to hire him whether
 25 Mr. Pattison had a background in auditing publicly traded

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1 companies?
 2 A I'm sorry. Could you re --
 3 Q Sure. Was it important to you at the time
 4 whether Mr. Pattison had ever worked at any publicly
 5 traded company?
 6 A Not -- it was obviously desirable, but not the
 7 overwhelming decision maker.
 8 Q And did you understand that he had not worked at
 9 a publicly traded company?
 10 A Yes.
 11 Q And to the best of your knowledge, had
 12 Mr. Pattison worked at one of the Big 4 accounting firms?
 13 A I don't believe so.
 14 Q Do you know whether he had ever audited publicly
 15 traded companies?
 16 A I don't believe so.
 17 Q Do you know whether he had any experience
 18 administering a publicly traded company's stock options
 19 or stock plans?
 20 A No.
 21 Q Were you expecting Mr. Pattison to run the human
 22 resources department of the company?
 23 A No.
 24 Q Did you have someone to do that?
 25 A Yes.

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1 Q At the time you hired Mr. Pattison or decided to
 2 hire him for the company, the company already had a stock
 3 plan?
 4 A Yes, as a private company.
 5 Q Right. When it was a private company, was that
 6 the 1993 stock plan?
 7 A I believe so.
 8 Q And was Mr. Pattison involved in drafting that
 9 1993 stock plan?
 10 A No. SEC
 11 Q Were you looking to Mr. Pattison to tell you how
 12 to interpret the 1993 stock plan?
 13 A Not to interpret it, but to administer it.
 14 Q And what aspects of the plan were you expecting
 15 Mr. Pattison to administer?
 16 A All of the mechanics of the stock option grants.
 17 Q When you say "mechanics," you don't mean the
 18 ability to decide who got what grants?
 19 A No, the actual paperwork, keeping track of, you
 20 know, how many shares were in the plan, how many had been
 21 issued, how many had been cancelled, how many had been
 22 exercised. With the amount of employee hiring and
 23 turnover we had, it was considerable.
 24 Q And at the time Mr. Pattison was hired, do you
 25 recall whether you gave him a written job description?

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1 A I don't remember, no.
 2 Q Mr. Pattison, was he an officer of the company?
 3 A No.
 4 Q Is it fair to say he took direction from you and
 5 the CFO?
 6 A Yes.
 7 Q And he worked for the company for how many
 8 years?
 9 A Probably six years is my guess.
 10 Q And you spoke to him from time to time?
 11 A Yes.
 12 Q Can you give us an idea of some of
 13 Mr. Pattison's job responsibilities?
 14 A A lot of the activity would revolve around sales
 15 activities because we had a lot of sales transactions.
 16 So that consumed most of the time, I think, of most of
 17 the people in finance, just handling orders.
 18 Of course, he would be responsible for helping
 19 to close the books, the bank, you know, reconciliations,
 20 working with the CFO to generate the preliminary
 21 financial statements, working with the auditors to, you
 22 know, help them, you know, review whatever they felt was
 23 appropriate.
 24 Q Did he assist with the cash flow analysis?
 25 A Yes.

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1 Q Did he assist with budget management functions?
 2 A Yes.
 3 Q How about monitoring monthly operating results
 4 against budget, did he assist with that?
 5 A Yes.
 6 MR. TASHJIAN: I'm sorry. If there's any chance for a
 7 break, I would appreciate it.
 8 MR. RICHARD: Okay. Just a couple more questions
 9 about Mr. Pattison.
 10 MR. Q He assisted with the daily operations of the
 11 finance department?
 12 A Yes.
 13 Q And how about with preparation of the company's
 14 reports regarding the revenues, transfers, expenses, you
 15 expected him to assist with those reports?
 16 A Yes.
 17 Q And I think you mentioned sales activities.
 18 What about financial analysis for any contract
 19 negotiations, including potential mergers or
 20 acquisitions, did you expect Mr. Pattison to assist with
 21 that financial analysis?
 22 A He would, but we really didn't have much of
 23 that.
 24 MR. Q How about -- I think you mentioned the company's
 25 outside auditors, Mr. Pattison would assist with requests

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1 for documents from those folks?
 2 A Right.
 3 Q And how about tax issues such as what the
 4 appropriate credit would be on an R&D expense for one of
 5 the company's subsidiaries?
 6 A Yes.
 7 Q And the company had subsidiaries outside the
 8 United States?
 9 A We had very few, but yes.
 10 Q Was there one in the United Kingdom?
 11 A Right.
 12 Q Canada?
 13 A Yes.
 14 Q Australia?
 15 A Yes, eventually there was.
 16 Q And just before we take our break today, it
 17 seems like a good time to ask you, you were with the
 18 company, you put in long hours?
 19 A Absolutely.
 20 Q Sometimes even after you went home, you spent
 21 time working on company matters?
 22 A Never left your mind.
 23 Q And fair to say Mr. Pattison also worked hard at
 24 his job?
 25 A Very much so.

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1 Q You understand he was putting in long hours?
 2 A Yes.
 3 Q Along the number of the things you just listed
 4 for us?
 5 A Yes.
 6 Q And many of those things had nothing to do with
 7 the company's stock option practices?
 8 A Right.
 9 MR. RICHARD: Why don't we take our break.
 10 THE VIDEOGRAPHER: Watch your mikes. Going off the
 11 record, the time is 10:03.
 12 (Recess taken.)
 13 THE VIDEOGRAPHER: Back on the record, the time is
 14 10:18.
 15 BY MR. RICHARD:
 16 Q We were discussing some of the many different
 17 tasks that Mr. Pattison would have been involved in with
 18 respect to the company's records and tracking budget and
 19 preparing reports and things of that nature.
 20 I wanted to ask you, at some point in time, do
 21 you recall that Mr. Pattison actually had to travel to
 22 England for an issue involving the U.K. company or the
 23 U.K. subsidiary's revenue recognition issue?
 24 A Yes.
 25 Q What do you recall -- by the way, does that --

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1 when was that? Does the fall of 2004 sound familiar?
 2 A I thought it was a little later than that, but
 3 that could have been.
 4 Q And what do you recall about just in general why
 5 Mr. Pattison had to go to England for that particular
 6 issue?
 7 A We needed him to really investigate what really
 8 happened and what course of action we needed to take.
 9 Q And what was the revenue recognition issue just
 10 very generally?
 11 A There was a sale to a -- I don't know if it was
 12 a distributor or some sort of partner company that I
 13 wasn't familiar with where I don't think it met all of
 14 the tests for -- of revenue recognition, and so, you
 15 know, this became a red flag, and Michael was sent out to
 16 investigate.
 17 Q And with respect to the company's stock option
 18 practices between 2000 and 2004, did -- to the best of
 19 your memory, did the outside auditors, PwC, ever raise
 20 any red flags with you or the board?
 21 MR. TASHJIAN: Objection; vague, leading.
 22 BY MR. RICHARD:
 23 Q You just mentioned red flags, that a red flag
 24 came up in connection with this revenue recognition issue
 25 for this company in England.

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1 I'm just asking you, did PwC, the company's
 2 outside auditors, raise any red flags before the end of
 3 2004 with respect to stock options?
 4 A No.
 5 MR. TASHJIAN: Same objections.
 6 THE WITNESS: Not that I know of, SEC
 7 BY MR. RICHARD:
 8 Q I'm going to show you what was previously marked
 9 in these proceedings as Exhibit 120, and, again, we'll
 10 just when we're done with it -- I guess I was expecting
 11 them to share.
 12 This is a document entitled "Minutes of Meeting
 13 of the Compensation Committee of Board of Directors of
 14 Embarcadero Technologies, Inc., October 12, 2000."
 15 Do you see that?
 16 A Yes.
 17 Q And is this a meeting that you attended?
 18 A Yes.
 19 Q And can you tell us -- item 2 refers to a
 20 "Delegation of Authority to Make Option Grants to
 21 Employees"?
 22 A Right.
 23 Q And have you ever reviewed this before?
 24 A It's been quite some time since I've seen this
 25 document, but yes.

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1 Q Would it have been your practice to review it at
 2 the time?
 3 A Yes.
 4 Q And at the time -- then at page 3, do you
 5 recognize -- do you know who the secretary of the meeting
 6 was?
 7 A My guess is it was Stephen Ferruolo.
 8 Q Okay. And assuming that Mr. Ferruolo said that
 9 he, in fact, was the secretary of this meeting?
 10 A Right.
 11 Q At the time of this delegation to you on
 12 October 12, 2000, at any time -- by the way, did you know
 13 that this delegation was under discussion or in the
 14 works?
 15 A Yes.
 16 Q And what do you recall of that discussion?
 17 A That the board thought it would make more sense
 18 if they delegated the issuance of -- or granting of stock
 19 options to the rank and file to me.
 20 Q Okay. And did you understand at the time that
 21 for each stock option grant, ultimately there would be a
 22 stock option agreement signed by the company and by the
 23 employee?
 24 A Yes.
 25 Q And at the time of this board meeting on

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1 October 12, 2000, did Mr. Ferruolo, the company's outside
 2 counsel, say anything to you at all, Mr. Wong, as to the
 3 timing of when that stock option agreement needed to be
 4 signed in order for there to be a valid stock option
 5 grant?
 6 MR. TASHJIAN: Objection; vague.
 7 THE WITNESS: No.
 8 BY MR. RICHARD:
 9 Q Was there ever a point in time before the --
 10 well, let's take the 2000, 2001 time frame.
 11 At some point after this board delegation, did
 12 you make the decision to issue stock options to some of
 13 the rank-and-file employees?
 14 A Yes.
 15 Q And did Mr. Ferruolo, the company's outside
 16 counsel, ever say, Stephen, you need to have a
 17 contemporaneous approval document showing that you and
 18 the employee agreed on a certain date to the stock
 19 option?
 20 A No.
 21 MR. TASHJIAN: Objection; vague, leading.
 22 BY MR. RICHARD:
 23 Q Did Mr. Ferruolo give you any advice on or about
 24 October 12, 2000 as to how the company ought to document
 25 decisions to make stock option awards to the

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1 rank-and-file employees?
 2 A Not that I remember.
 3 Q Did any of the board members of the compensation
 4 committee on October 12, 2000 say -- provide any guidance
 5 at all as to how you ought to go about documenting the
 6 exercise of this new authority they had given you?
 7 A Not that I remember, no.
 8 Q Was there ever a point in time where anyone on
 9 the board said, Stephen, you cannot make decisions once a
 10 quarter unless the grant date for each of the stock
 11 options is the same date as your approval on that written
 12 quarterly summary?
 13 A No, not that I remember.
 14 MR. TASHJIAN: Objection; foundation.
 15 BY MR. RICHARD:
 16 Q Did anybody on the compensation committee ask
 17 you for a detailed report from time to time referred to
 18 in item 3 of the resolution at the bottom of page 2 going
 19 over to page 3, do you see where it says (iii), "The
 20 President and Chief Executive Officer shall from time to
 21 time report to the Committee the number of shares covered
 22 by each Option granted pursuant to the authority granted
 23 hereby and identity of optionees who receive such
 24 Options."
 25 Do you see where I am?

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1 A Yes.
 2 Q And did you do that?
 3 A Yes.
 4 Q And at any point after you provided the report
 5 as to the number of shares and the identity of the
 6 optionees, how would you do that? Would you use this --
 7 a document like Exhibit 187?
 8 A Yes.
 9 Q And when you made that report to the
 10 compensation committee, did anyone say -- did anyone
 11 comment at all on the fact that the approval date was
 12 obviously different than the grant date?
 13 MR. TASHJIAN: Objection; leading, lacks foundation.
 14 THE WITNESS: No, not that I remember.
 15 BY MR. RICHARD:
 16 Q Would you agree with me that the signed approval
 17 date is different than the listed grant dates?
 18 A Yes.
 19 Q Okay. How about the outside auditors, did you
 20 understand that the outside auditors reviewed and tested
 21 on more than one occasion the quarterly approval sheet
 22 like the one that's been marked as Exhibit 187?
 23 MR. TASHJIAN: Objection; vague, leading.
 24 THE WITNESS: You know, I wasn't involved with the
 25 process of, you know, furnishing the information, but I

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1 assumed that they were -- had access to all this
 2 information if they wanted it.
 3 BY MR. RICHARD:
 4 Q Did you have any understanding at all that one
 5 of the areas that the outside auditors looked at was the
 6 company's equity practices?
 7 MR. TASHJIAN: Objection; vague, leading.
 8 THE WITNESS: Yes.
 9 BY MR. RICHARD:
 10 Q At the time, did you have an understanding as to
 11 whether equity included stock and stock options?
 12 MR. TASHJIAN: Objection; leading.
 13 THE WITNESS: Yes.
 14 BY MR. RICHARD:
 15 Q In your view, what did the term "equity"
 16 include?
 17 A This goes back to the fully diluted shares
 18 again. So it would include shares outstanding plus
 19 option grants.
 20 Q Okay. And at any point in time, did you hear
 21 either directly or indirectly that the auditors had
 22 raised any concern at all as to the fact that the
 23 approval date was different than the grant date on these
 24 quarterly approval sheets?
 25 MR. TASHJIAN: Objection; lacks foundation, leading,

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1 vague.
 2 THE WITNESS: No.
 3 BY MR. RICHARD:
 4 Q Was it your practice to -- for how many years,
 5 are we talking 15, 16 quarters, where you would have made
 6 decisions on rank-and-file employees on a quarterly
 7 basis?
 8 MR. TASHJIAN: Objection; leading.
 9 THE WITNESS: That sounds about right.
 10 BY MR. RICHARD:
 11 Q For what period of time do you believe you made
 12 decisions to grant rank-and-file stock options on a
 13 quarterly basis?
 14 MR. TASHJIAN: Objection; vague.
 15 THE WITNESS: Five years approximately.
 16 BY MR. RICHARD:
 17 Q And during those five years, sir, did you think
 18 you were doing anything improper?
 19 MR. TASHJIAN: Objection; vague.
 20 MR. SCHINDLER: Excuse me. Hang on one second.
 21 I want to be clear, my client's prepared to
 22 answer questions, but I want to make sure that there's no
 23 objection from the SEC that his answering questions in
 24 this line would run afoul of the settlement with the SEC.
 25 So I want a stipulation that his testimony here

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1 and his truthful answers to any questions that may be
 2 asked of him on this particular line of questioning won't
 3 be deemed by the SEC to be a violation of the settlement
 4 agreement, in particular, the gag rule provisions of
 5 paragraph 11.
 6 MR. TASHJIAN: Well, I think we'd object to the term
 7 "gag rule." Number two, I don't think we can stipulate
 8 because I don't know what his answer is.
 9 MR. SCHINDLER: Well --
 10 MR. TASHJIAN: He's here under subpoena, and he has to
 11 answer truthfully.
 12 MR. SCHINDLER: Well, I'm not going to allow my
 13 client -- if the SEC is going to take the position that
 14 his truthful answers to this question violate paragraph
 15 11 of his settlement agreement with the SEC, I won't
 16 allow him to answer.
 17 I mean, I'm not going to put him in peril. You
 18 hold the ability to allow him to answer and to stipulate
 19 that his truthful testimony won't be deemed a violation
 20 of paragraph 11.
 21 But I don't want there to be any ambiguity on
 22 that question. I don't want there to be a suggestion in
 23 the future by the SEC that his truthful answers to a
 24 question about whether he thought he was doing anything
 25 wrong runs afoul of his settlement agreement.

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1 MS. LaMARCA: First of all, let me just say, this is
 2 the first we're hearing of this issue from your side. I
 3 mean, I'm just telling you.
 4 So we don't really know fully what you're
 5 talking about, like what is it that's going to run afoul.
 6 We're supposed to be guessing at testimony we haven't
 7 heard that might or might not comport with something and
 8 whether or not we have the power to suggest that he is or
 9 isn't running afoul of a court order.
 10 We can go off the record for a second if there's
 11 a stipulation you would like us to make.
 12 MR. RICHARD: Yeah. Before we go off the record, I
 13 would like to say I think that we do have two
 14 representatives here from the SEC, and if we can get an
 15 agreement, counsel said that his client is willing to
 16 testify so long as the SEC is not going to take some
 17 position that his testimony breaches his settlement.
 18 We need to resolve that today, and I assume we
 19 can do that in fairly short order or else call Judge Byer
 20 and see if he can sort it out.
 21 But I don't think the issue is that complicated
 22 in terms of if the SEC is going to say that this witness
 23 is breaching some agreement. So I'm happy to go off the
 24 record so that we can -- we can resolve it, if we can.
 25 Why don't we give ourselves a few minutes to do

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1 that.
 2 MS. LaMARCA: And let me just point out that the
 3 reason we need to go off the record is I don't know what
 4 it is that the witness's counsel thinks might be
 5 breached. So I'd like to see it and see what you're
 6 referring to.
 7 MR. SCHINDLER: Sure.
 8 MR. RICHARD: Okay. Off the record.
 9 THE VIDEOGRAPHER: Going off the record, the time is
 10 10:31.
 11 (Discussion held off the record.)
 12 THE VIDEOGRAPHER: Back on the record, the time is
 13 10:40.
 14 MR. SCHINDLER: Okay. While we were off the record, I
 15 had a meet and confer briefly with counsel for the SEC,
 16 and I believe I'm going to accurately summarize the
 17 parties' stipulation; that pursuant to the consent that
 18 Mr. Wong entered into to the entry of final judgment, in
 19 particular, pursuant to paragraph 11 of that consent,
 20 that Mr. Wong's testimony here today would fall within
 21 the exception delineated on page 4 of nothing in the
 22 paragraph affecting his testimonial obligations and,
 23 therefore, that by virtue of testifying in response to
 24 questions here, the SEC will not take the position that
 25 by virtue of testifying here, he has breached the

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1 provisions of paragraph 11 and, in particular, the
 2 provision that indicates that he will not -- that he
 3 understands and agrees to comply with the commission's
 4 policy, quote, not to permit a defendant or respondent to
 5 consent to a judgment or order that imposes a sanction
 6 while denying the allegation in the complaint for order
 7 for proceedings.
 8 Is that an accurate stipulation?
 9 MS. LaMARCA: I think so.
 10 MR. TASHJIAN: Yeah, I believe that's accurate. I
 11 just -- you know that the consent was filed in the case
 12 with a docket number 08 CV04 --
 13 THE REPORTER: I'm sorry. CV08?
 14 MR. TASHJIAN: I'm sorry. 08 CV04-239 CW, the
 15 Securities and Exchange Commission versus Stephen Wong
 16 filed in the Northern District of California on
 17 September 9th, 2008.
 18 MR. RICHARD: Okay.
 19 THE WITNESS: Just so I'm clear, I can answer then?
 20 MR. RICHARD: I'll ask a new question.
 21 MR. SCHINDLER: Destroying the background here.
 22 THE VIDEOGRAPHER: Go ahead. That's fine.
 23 MR. SCHINDLER: Is that all right?
 24 MR. RICHARD: I'll ask a new series of questions.
 25 Q Who is Lorraine Gnecco?

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1 A She was in charge of our personnel -- HR
 2 department.
 3 Q And from time to time, would you discuss the
 4 granting of employee stock options with Ms. Gnecco?
 5 A Yes.
 6 Q And would you expect Ms. Gnecco to communicate
 7 information regarding employee stock options with
 8 employees?
 9 A Yes.
 10 Q And who is Wayne Williams?
 11 A Wayne Williams was our chief technology officer.
 12 Q And after you left the company, did he have
 13 another role with the company, to your knowledge?
 14 A He's currently the CEO of the company.
 15 Q I'm going to show you what was previously marked
 16 in these proceedings as Exhibit 167 --
 17 A Uh-huh.
 18 Q -- and this is an e-mail, it appears to be
 19 from -- the top e-mail appears to be from you to
 20 Ms. Gnecco and Mr. Williams on Monday, December 23, 2002.
 21 If you could take a minute to review the e-mail
 22 and tell me when you've had a chance to do so.
 23 A Sure.
 24 MR. SCHINDLER: Hang on one second. Okay.
 25 BY MR. RICHARD:

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1 Q And the re line appears to be Nate.
 2 Who was Nate; someone's employee?
 3 A He was a -- I think at that time he might have
 4 been in the development organization.
 5 Q And does this look like an e-mail that you sent,
 6 sir?
 7 A Yes.
 8 Q And you would have sent this e-mail in the
 9 ordinary course of business?
 10 A Yes.
 11 Q And is it fair to say that it is -- was true and
 12 accurate at the time?
 13 A Yes.
 14 Q And can you tell us what you mean when you say
 15 "I'm also giving him 5K options at the low for the
 16 quarter (\$4.13)"?
 17 A I was giving him 5,000 options at that
 18 particular price which was the low of the quarter.
 19 Q And was that unusual that an employee would
 20 receive stock options at the low of the quarter?
 21 A No.
 22 Q And did you think you were doing anything wrong
 23 by issuing stock options to an employee that had a
 24 favorable exercise price?
 25 MR. TASHJIAN: Objection; leading and vague.

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1 THE WITNESS: No, no.
 2 BY MR. RICHARD:
 3 Q At the time you wrote this e-mail in December
 4 2002, did you think you were doing anything wrong?
 5 A No, I didn't.

6 MR. TASHJIAN: Same objections.
 7 BY MR. RICHARD:
 8 Q ~~I apologize for the need to ask you these~~
 9 ~~questions, but~~ was there a point after the board
 10 delegation in October 2000 giving you authority to issue
 11 stock options to the rank-and-file employees that you and
 12 Mr. Pattison and Mr. Sabhlok entered into a secret scheme
 13 to defraud the shareholders of the company with respect
 14 to the company's stock option practices?
 15 A No.
 16 Q Did you ever tell Mr. Pattison not to talk to
 17 anyone about any aspect of the company's stock option
 18 practices?
 19 A No.
 20 Q Did, to the best of your knowledge, Mr. Pattison
 21 enter into a scheme with anyone in the year 2000 to cover
 22 up expenses of the company as to defraud the company's
 23 shareholders?
 24 A No, not that I know of.
 25 Q For any period of time, do you believe that you

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1 entered into a secret scheme with anyone to defraud the
2 shareholders of the company that you founded and guided
3 for so many years?

4 A No.

5 Q Did you ever tell Mr. Pattison not to tell
6 Ms. Gnecco in human resources how employee stock options
7 were priced?

8 A No.

9 Q ~~Again, I do apologize for having to ask you~~
10 ~~these questions~~, but did you ever tell Mr. Pattison even
11 once that the company could manipulate its reported
12 earnings by misstating any aspect of the employee stock
13 option practices?

14 A No, not at all.

15 Q Did you and Ms. Gnecco and Mr. Williams enter
16 into any secret scheme to defraud the shareholders of
17 Embarcadero Technologies in connection with the company's
18 stock option practices?

19 A Absolutely not.

20 Q And is your answer the same for the entire
21 period of 2000 through 2004?

22 A Yes.

23 Q Did you ever direct Mr. Pattison to falsify any
24 company records?

25 A No.

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1 Q To the best of your knowledge, did Mr. Pattison
2 ever falsify any of the company's financial records?

3 A No.

4 Q Do you believe that Mr. Pattison caused the
5 company to materially misstate its financial records?

6 A No.

7 Q Are you aware of any secret scheme to defraud
8 shareholders that should have been disclosed in the year
9 2000?

10 A No.

11 MR. TASHJIAN: Objection; leading.

12 BY MR. RICHARD:

13 Q If Mr. Ferruolo comes to trial at the end of
14 this month and tells the jury that you repeatedly asked
15 him in the year 2000, 2001, 2002 whether you could
16 backdate stock options, would that be consistent with
17 your memory?

18 A No, not at all.

19 MR. TASHJIAN: Objection; misstates the evidence,
20 lacks foundation, leading.

21 THE WITNESS: No, not at all.

22 BY MR. RICHARD:

23 Q Do you have any specific memory of Mr. Ferruolo
24 or anyone from his law firm ever advising you that your
25 decisions regarding employee stock options needed to be

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1 documented in a certain way?

2 MR. TASHJIAN: Objection; leading.

3 THE WITNESS: No, not that I remember.

4 BY MR. RICHARD:

5 Q Do you have any specific memory of discussing
6 with any lawyers for the company prior to the end of 2004
7 how the company ought to document the award of stock
8 options?

9 MR. TASHJIAN: Objection; leading.

10 THE WITNESS: No, not that I remember.

11 BY MR. RICHARD:

12 Q Did Mr. Ferruolo or the other outside lawyers
13 for the company ever give you any warning or advice as to
14 how stock options should be priced?

15 MR. TASHJIAN: Objection; leading.

16 THE WITNESS: No.

17 BY MR. RICHARD:

18 Q Do you have any memory that any of the lawyers
19 ever told you that the 1993 stock option plan allowed you
20 to pick grant dates in the future but not in the past as
21 compared to the date you were actually making or
22 finalizing the decision?

23 MR. TASHJIAN: Objection; leading.

24 THE WITNESS: Could you say that again, please?

25 MR. SCHINDLER: I'm not sure I understand the

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1 question.

2 MR. RICHARD: Sure. I'm not sure I understood it
3 either.

4 Q I'm going to show you what was previously marked
5 as Exhibit 138.

6 And just very briefly, do you recognize
7 Exhibit 138?

8 A Yes.

9 Q Can you tell us what it is?

10 A The amended and restated 1993 stock option plan.

11 Q And at some point in time, did you review this
12 document?

13 A Yes, it's been quite some time, but, yes, I've
14 seen it before.

15 Q If you could turn to page 3, paragraph 5.2.

16 A Okay.

17 Q Do you see where it says "Date of Option"?

18 A Yes.

19 Q Did you ever discuss paragraph 5.2 with
20 Mr. Ferruolo?

21 A No.

22 Q Do you see where it says, "The date of grant of
23 an Option shall be the date on which the Administrator
24 makes the determination to grant such Option unless
25 otherwise specified by the Administrator."

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1 Do you see where I am there?
 2 A Yes.
 3 Q Did Mr. Ferruolo ever tell you that the language
 4 "unless otherwise specified by the Administrator" meant
 5 that the administrator could select dates in the future
 6 but not in the past?
 7 A No.
 8 Q Any lawyers ever tell you that?
 9 A No.
 10 Q Did you understand at the time that you were
 11 making decisions to grant stock options to the
 12 rank-and-file employees on a quarterly basis, that the
 13 stock option agreement wouldn't be signed at the same
 14 date -- did you have any understanding as to when the
 15 stock option agreement would be signed relative to when
 16 you were actually making the decisions?
 17 MR. TASHJIAN: Objection; vague and compound.
 18 THE WITNESS: No, I wouldn't -- I wouldn't have any
 19 idea how quickly the paperwork would get issued or that
 20 they would have a chance to sign it.
 21 BY MR. RICHARD:
 22 Q Okay. Well, did any of the auditors -- let's
 23 take a look at Exhibit 187 again, if you would.
 24 At any point in time, to the best of your
 25 knowledge, did any of the outside professionals beginning

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1 with the auditors ever tell you, Mr. Wong, you need a
 2 stock option agreement signed by the employee and the
 3 company on March 7th because that's one of the grant
 4 dates you have here on this document?
 5 A No, I don't remember that.
 6 Q To the best of your knowledge, did the company
 7 ever have the employee sign a stock option agreement that
 8 was dated the same date as the grant?
 9 MR. TASHJIAN: Objection; vague.
 10 THE WITNESS: I wouldn't know specifically. I suppose
 11 it could happen, but it might not.
 12 BY MR. RICHARD:
 13 Q Okay. And do you know whether human resources
 14 had any role in obtaining employee signatures on the
 15 stock option agreements?
 16 MR. TASHJIAN: Objection; vague.
 17 THE WITNESS: I would assume that they're the ones who
 18 would have to, you know, get the signed copies back from
 19 the employee.
 20 BY MR. RICHARD:
 21 Q Is it fair to say that the specific type of
 22 documentation that was needed for stock option grants,
 23 that is, for your approval of stock option grants to the
 24 employees was something that after 2000 really wasn't on
 25 anyone's radar at the company?

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1 MR. TASHJIAN: Objection; vague, leading.
 2 THE WITNESS: Yeah. Could you clarify that?
 3 BY MR. RICHARD: SEC
 4 Q Sure. Do you have any memory in, say, the years
 5 2001, 2002, 2003 sitting around and talking with
 6 Mr. Pattison or Mr. Sabhlok every quarter where the topic
 7 was how should we document the approval of stock option
 8 grants?
 9 A No.
 10 Q Would it make sense that you would have that
 11 type of discussion every quarter?
 12 MR. TASHJIAN: Objection; vague.
 13 THE WITNESS: I just assumed that the paperwork was
 14 being done, and this was all being tracked.
 15 BY MR. RICHARD:
 16 Q Did the outside auditors ever tell you -- prior
 17 to the end of 2004, did they ever sit down and talk to
 18 you about any potential areas of concern regarding
 19 expenses on the company's books in connection with the
 20 granting of stock options to the rank-and-file employees?
 21 MR. TASHJIAN: Objection; vague.
 22 THE WITNESS: No, not that I remember.
 23 BY MR. RICHARD:
 24 Q Do you have any memory, sir, at some point in
 25 time you had issued too many stock options to employees

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1 and that the board had to ratify your decision? Does
 2 that sound at all familiar?
 3 MR. TASHJIAN: Objection; vague.
 4 THE WITNESS: Vaguely, yes.
 5 BY MR. RICHARD:
 6 Q And did you have an understanding in general of
 7 what ratification meant if you issued stock options that
 8 you didn't have authority to issue?
 9 MR. TASHJIAN: Objection; leading and vague.
 10 THE WITNESS: That if I went over the budget, then
 11 they would have to come back and approve it, "they"
 12 meaning the board.
 13 BY MR. RICHARD:
 14 Q Did you believe you had authority to select and
 15 approve grant dates at the time you were making decisions
 16 for employee stock option awards?
 17 MR. TASHJIAN: Objection; compound, vague.
 18 THE WITNESS: Yes, I thought that was fine.
 19 BY MR. RICHARD:
 20 Q And why did you think that?
 21 MR. TASHJIAN: Same objections.
 22 THE WITNESS: Well, the board would look to me to make
 23 determination about specific employees, and being the
 24 largest shareholder, you know, I was trying to do what I
 25 thought was in the best interest of all the shareholders.

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1 So, yeah, very often we would pick the loads of
 2 the month or the quarter because going back to an earlier
 3 statement, we were trying to make sure that these were
 4 options that the employee would value and therefore be
 5 motivated.
 6 BY MR. RICHARD:
 7 Q When you say very often we would pick the loads
 8 of the quarter for employee stock options, can you tell
 9 us, as best you can, why you thought that was -- why that
 10 made sense to you?
 11 A Well, I think I've made the first, you know, key
 12 point which is that if you're going to give employees
 13 some stock options, have him or her really value those
 14 options.
 15 Also, we didn't want an explosion in our diluted
 16 share count. That didn't make a lot of sense to me
 17 because it would be very hard for investors to kind of
 18 sort through, jeez, you know, what is -- what do all
 19 these option grants mean. They just see a big number out
 20 there and feel that, you know, somehow, you know, the
 21 dilution was pretty significant.
 22 Q And so how would you address that issue?
 23 A Well, if you can give employees options that
 24 have real value, then the premise might be that you don't
 25 have to issue as many.

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1 Q And did you understand at the time that the
 2 company described in its annual filing something called
 3 the fair value of the stock options under FAS, financial
 4 account standard 123R?
 5 A You know, I'm not an accounting expert. I
 6 assumed that all of the reporting was done, you know,
 7 appropriately.
 8 Q At the time you were the CEO of Embarcadero
 9 Technologies, did you understand that any other tech
 10 companies had delegated to their CEOs the discretion to
 11 issue employee stock option?
 12 MR. TASHJIAN: Objection; calls for speculation and
 13 vague and leading.
 14 THE WITNESS: What we had heard through the rumor mill
 15 would be that this was pretty commonplace in the Silicon
 16 Valley.
 17 BY MR. RICHARD:
 18 Q What had you heard prior to 2005 through the
 19 rumor mill was pretty commonplace?
 20 A That companies would try to, you know, give
 21 their -- give their employees, you know, well-priced
 22 options.
 23 THE REPORTER: I'm sorry. Well-priced options?
 24 THE WITNESS: Yes.
 25 BY MR. RICHARD:

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1 Q And did the fact that you had heard that give
 2 you any comfort level with respect Embarcadero's company
 3 practices as a new company?
 4 MR. TASHJIAN: Objection; vague, leading.
 5 THE WITNESS: Well, you know, I think that just gave
 6 us a data point that this was going on out there, and, in
 7 fact, I vaguely remember even hearing it from potential
 8 hires like, you know, what are you going to do for me if
 9 I come and sign up.
 10 BY MR. RICHARD:
 11 Q Okay. Can you think of other examples where you
 12 may have been asked to sign a document that had an
 13 earlier as of or an earlier deemed effective date?
 14 MR. TASHJIAN: Objection; vague.
 15 THE WITNESS: I'm sorry. Could you clarify?
 16 MR. RICHARD: Sure.
 17 Q Do you know -- do you know what a written
 18 consent or unanimous written consent is?
 19 A Yes.
 20 Q Can you tell the jury what a unanimous written
 21 consent is?
 22 A It's when all the people who are -- I guess when
 23 you say -- you're talking in reference to the board or
 24 something, dealing with the board, that any of the voting
 25 members of that body would have all agreed that this was,

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1 you know, approved.
 2 Q And in your experience at Embarcadero
 3 Technologies, were those approvals as reflected in a
 4 written consent ever given after the date of approval?
 5 MR. TASHJIAN: Objection; vague, leading.
 6 MR. SCHINDLER: I'm sorry. I'm not sure I understand
 7 that question.
 8 THE WITNESS: Can you be more specific?
 9 BY MR. RICHARD:
 10 Q Did you ever hear something -- let me just show
 11 you what was previously marked as Exhibit 78. It appears
 12 to be an e-mail from February 2000 with an attachment and
 13 the attachment is entitled "Action By Unanimous Written
 14 Consent of the Board of Directors of Embarcadero
 15 Technologies." I'll be sure not to give you the one I
 16 wrote on. I have an extra one.
 17 And if you could just take a look at the
 18 attachments to Exhibit 78, you'll see that there are a
 19 number of signature lines, Ellen Taylor, Dennis Wong,
 20 Stephen Wong, Frank Polestra.
 21 A Yes.
 22 Q And have you seen these types of documents
 23 before, action by unanimous written consent?
 24 A Yes.
 25 Q Typically who would send you these documents?

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1 A It would be Heller Ehrman that typically drafted
 2 them.
 3 Q Do you see the language above your signature
 4 line where it says, "In witness whereof, each of the
 5 directors below has executed this written consent as of
 6 this 15th day of January 2000."
 7 A Yes.
 8 Q Did the good folks at Heller Ehrman ever tell
 9 you, Stephen, it's important that you sign this document
 10 on January 15, 2000?
 11 MR. TASHJIAN: Objection; leading.
 12 THE WITNESS: No.
 13 BY MR. RICHARD:
 14 Q Typically, the written consents would be sent to
 15 you weeks or a month after the date reflected in the
 16 document that the company's counsel had prepared?
 17 MR. TASHJIAN: Objection; lacks foundation, it's
 18 leading.
 19 THE WITNESS: I think very often the -- you know, any
 20 of these kind of minutes or consents would be packaged up
 21 in anticipation of a board meeting. So we would have
 22 a -- you know, a full set of documents at the meeting.
 23 BY MR. RICHARD:
 24 Q Right. My question is: When lawyers provided
 25 you a document that said it was being -- you were

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1 provided consent as a board member as of a certain
 2 date --
 3 A Right.
 4 Q -- was it your expectation that you would be
 5 signing on that date or it was okay to sign some time
 6 after that date?
 7 MR. TASHJIAN: Objection; vague, compound, leading.
 8 THE WITNESS: I would assume that if they're sending
 9 it to me, that I can sign it when I received it. So it
 10 might be that date. It might be afterwards.
 11 BY MR. RICHARD:
 12 Q Okay. And same question with the stock option
 13 agreements, would it have been unusual to -- for the
 14 company to sign a stock option agreement some weeks or
 15 months after the grant date described in the stock option
 16 agreement?
 17 MR. TASHJIAN: Objection; lacks foundation, leading,
 18 vague.
 19 THE WITNESS: That could occur, but I would hope that
 20 we're a little more efficient than, you know, taking
 21 months to get the work -- paperwork filed.
 22 BY MR. RICHARD:
 23 Q Assume that one of the company's outside
 24 auditors, Karen Shum (phonetic), testified that from her
 25 perspective as an auditor, the company and the employee

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1 needed to sign the stock option agreement on the same day
 2 that the decision was made to grant the stock options.
 3 Are you with me so far?
 4 MR. TASHJIAN: Objection --
 5 MR. SCHINDLER: You're just asking him -- you're
 6 representing that this was testimony that was provided
 7 previously?
 8 MR. RICHARD: Yes.
 9 MR. TASHJIAN: And I'd object on the grounds that it
 10 improperly calls for one witness to comment on the
 11 testimony of another.
 12 BY MR. RICHARD:
 13 Q Okay. Well, assume that an auditor in this case
 14 has already testified and will testify at trial that, in
 15 her view, in order for there to be a valid stock option
 16 grant, the stock option agreement needed to be signed the
 17 same day that you made the decision to issue the stock
 18 options to a particular employee.
 19 Are you with me so far?
 20 MR. TASHJIAN: Same objection.
 21 MR. RICHARD: I haven't finished my question.
 22 Q Are you with me so far?
 23 A Yes.
 24 MR. TASHJIAN: Same objection.
 25 BY MR. RICHARD:

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1 Q Did any of the auditors for the company ever
 2 share that view with you, sir?
 3 MR. TASHJIAN: Same objection.
 4 THE WITNESS: Not that I remember.
 5 BY MR. RICHARD:
 6 Q Well, do you think that if any of the company's
 7 outside advisors had ever said, Mr. Wong, you've been
 8 issuing stock options improperly because the employee and
 9 the company are not signing the stock option agreement on
 10 the same date that you made the decision, do you think
 11 that's the kind of thing you would remember?
 12 MR. TASHJIAN: Objection; vague.
 13 THE WITNESS: Yeah, I think I would.
 14 BY MR. RICHARD:
 15 Q Okay. Can you think of -- from time to time,
 16 would the auditors bring to your attention or the board's
 17 attention internal controls that the company could
 18 improve?
 19 MR. TASHJIAN: Objection; vague, leading.
 20 THE WITNESS: They would -- they would typically do it
 21 to the board and more specifically to the audit
 22 committee.
 23 BY MR. RICHARD:
 24 Q Then would it have been the company's practice
 25 to follow the advice of its auditors and address any

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1 internal control needs?
 2 A Yes.
 3 MR. TASHJIAN: Objection; vague.
 4 BY MR. RICHARD:
 5 Q Can you think of any example where the board of
 6 directors or the audit committee of the board of
 7 directors for Embarcadero Technologies did not follow the
 8 recommendations of their outside auditors?
 9 A No.
 10 Q To the best of your memory, did Mr. Ferruolo
 11 ever tell you prior to 2005 that he was aware of other
 12 attorneys in Silicon Valley telling their clients that
 13 picking or selecting stock option prices with the benefit
 14 of hindsight was acceptable?
 15 MR. TASHJIAN: Objection; misstates.
 16 THE WITNESS: No, I don't recall any such thing.
 17 BY MR. RICHARD:
 18 Q Do you recall something called the SOX or
 19 Sarbanes-Oxley?
 20 A Yes.
 21 Q Do you remember the company at some point in
 22 2004 prepared a number of written descriptions of various
 23 practices of the company?
 24 A I don't remember the exact timing, but, yeah, I
 25 remember SOX.

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1 Q Do you remember documents called narratives that
 2 described certain controls, internal processes at the
 3 company?
 4 A Not specifically the narratives. I wasn't
 5 really involved with whatever documentation we had to
 6 prove -- to produce for SOX compliance, but, you know,
 7 sitting here today with your description of it wouldn't
 8 surprise me.
 9 Q Okay. I'm going to show you a portion of a
 10 document that was previously marked as Exhibit 131. I
 11 have an extra one there. Exhibit 131 itself appears to
 12 be an e-mail from Mr. Pattison to Mr. Bakas.
 13 Have you ever heard of someone called Saulius
 14 Bakas?
 15 A Vaguely.
 16 Q Do you know who he was?
 17 A I'm guessing he was one of the staff members
 18 with PwC. We had a lot of turnover with PwC. So there
 19 were a lot of different people over the years.
 20 Q If you could turn to page 3 of 10 of the
 21 attachment to Exhibit 131 --
 22 A Yep.
 23 Q -- it begins Roman numeral II, "Stock Option
 24 Grants."
 25 A Yep.

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1 Q And feel free to read as much of this as you
 2 need to to answer my question, but my question is simply
 3 whether the process that's described beginning about
 4 halfway down the page, "Approximately 2-3 weeks prior to
 5 quarter end, where the Controller reminds all executives
 6 to forward to HR their nominations/recommendations for
 7 performance/bonus options grants," do you see where I am
 8 there?
 9 A Yes.
 10 Q And then the next paragraph refers to HR.
 11 Do you know what HR refers to?
 12 A Human resources.
 13 MR. TASHJIAN: Objection; calls for speculation to the
 14 extent the witness hasn't testified yet that he's seen
 15 this document, lacks foundation.
 16 BY MR. RICHARD:
 17 Q Was it common to refer to human resources as HR?
 18 A Yes.
 19 MR. TASHJIAN: Objection; vague.
 20 BY MR. RICHARD:
 21 Q Was it common within Embarcadero Technologies,
 22 to the best of your memory, to refer to human resources
 23 as HR?
 24 A Yes.
 25 Q And is that description in these paragraphs

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1 regarding the preparation of a proposed -- a list of
 2 proposed grants consistent with your memory of the
 3 process?
 4 MR. TASHJIAN: Objection; calls for speculation, lacks
 5 foundation.
 6 THE WITNESS: Yes.
 7 BY MR. RICHARD:
 8 Q And is it true that typically the controller
 9 would forward that list of proposed grants to you for
 10 your consideration?
 11 MR. TASHJIAN: Same objection.
 12 THE WITNESS: Yes.
 13 BY MR. RICHARD:
 14 Q And is it an accurate description that the
 15 approved list -- that the proposed list of grants would
 16 become an approved list when you signed indicating your
 17 approval?
 18 MR. TASHJIAN: Same objection.
 19 THE WITNESS: Yes.
 20 BY MR. RICHARD:
 21 Q Was that the customary procedure at the company?
 22 MR. TASHJIAN: Same objection.
 23 THE WITNESS: Yes.
 24 BY MR. RICHARD:
 25 Q Is it true that sometimes you would inform

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1 Ms. Gnecco rather than Mr. Pattison that you had approved
 2 certain stock option grants through employees?
 3 MR. TASHJIAN: Objection; leading.
 4 THE WITNESS: I'm sorry. Could you say that again? I
 5 didn't hear.
 6 MR. RICHARD: Sure.
 7 Q Do you know whether it was your practice to
 8 inform Lorraine Gnecco, head of human resources, as to
 9 any of your decisions regarding stock option grants to
 10 the employees?
 11 A Sure.
 12 Q Then would you expect that Ms. Gnecco would
 13 understand that the customary procedure was that the
 14 stock options would be priced at the low of the quarter?
 15 MR. TASHJIAN: Objection; leading, vague.
 16 THE WITNESS: I think she would have knowledge of
 17 that.
 18 MR. TASHJIAN: Calls for speculation, too.
 19 BY MR. RICHARD:
 20 Q Did you ever tell Ms. Gnecco not to tell any of
 21 the employees with whom she was interfacing, not to tell
 22 any of the employees at the company --
 23 A Oh, no.
 24 Q I'm sorry.
 25 -- to select favorable prices for their stock

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1 options?
 2 MR. SCHINDLER: You guys were talking over each other.
 3 THE WITNESS: Sorry.
 4 MR. RICHARD: Sure. You're doing pretty well.
 5 Q To the best of your memory, did you ever give
 6 any instructions to Ms. Gnecco one way or the other as to
 7 whether she should tell employees that the company had a
 8 practice -- customary procedure of selecting favorable
 9 pricing for their stock option grants?
 10 MR. TASHJIAN: Objection; leading, vague.
 11 THE WITNESS: No.
 12 BY MR. RICHARD:
 13 ~~Q And if asked, would you expect Ms. Gnecco would~~
 14 ~~explain the customary procedure?~~
 15 ~~MR. TASHJIAN: Same objection.~~
 16 ~~THE WITNESS: I'm sorry. That she would explain to~~
 17 ~~whom?~~
 18 BY MR. RICHARD:
 19 ~~Q An employee who wanted to know who had a~~
 20 ~~question about their stock options.~~
 21 ~~MR. TASHJIAN: Same objection.~~
 22 ~~THE WITNESS: You know, yeah, I couldn't really tell~~
 23 ~~you what she would specifically say to any employee on~~
 24 ~~any grant, but I don't think it was any secret.~~
 25 BY MR. RICHARD: --

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1 ~~Q Sure. When you say "I don't think it was any~~
 2 ~~secret," what are you referring to?~~
 3 ~~A I didn't tell her to, you know, keep it a secret~~
 4 ~~or anything like that.~~
 5 ~~Q And as I understood your testimony, that in some~~
 6 ~~cases it was helpful for the employee to understand that~~
 7 ~~they might have a favorably priced stock option?~~
 8 ~~A Yes.~~
 9 THE REPORTER: I'm sorry. Your objection?
 10 MR. TASHJIAN: Vague. I'm sorry.
 11 THE WITNESS: Yes.
 12 BY MR. RICHARD:
 13 Q I'm going to show you what was previously marked
 14 as Exhibit 166 in these proceedings.
 15 A Okay.
 16 Q And you see -- assume that Ms. Gnecco advised an
 17 employee Greg Keller in November 2002 that the company
 18 wouldn't award stock options until the end of the quarter
 19 so that the company could pick the best price.
 20 Are you with me so far?
 21 MR. TASHJIAN: Objection; assumes facts not in
 22 evidence.
 23 THE WITNESS: Okay.
 24 BY MR. RICHARD:
 25 Q Would such an explanation from Ms. Gnecco to one

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1 of the company's employees have been outside her scope of
 2 authority from your perspective as the chief executive
 3 officer of the company?
 4 MR. TASHJIAN: Objection; vague, leading, calls for
 5 speculation.
 6 THE WITNESS: No, I mean, she's the one who's
 7 interfacing with the employees on these grants.
 8 BY MR. RICHARD:
 9 Q Okay. I'm going to show you what was previously
 10 marked as Exhibit 165 in these proceedings.
 11 First, can you tell us who Nichole Cerles is or
 12 was?
 13 A She worked for Lorraine. She was an admin.
 14 MR. SCHINDLER: Can you give us one second to look at
 15 it?
 16 MR. RICHARD: Absolutely.
 17 Q Take a minute to look at Exhibit 165.
 18 MR. TASHJIAN: Is there a pending question?
 19 MR. SCHINDLER: No, I asked if I could have a moment
 20 to review the document.
 21 BY MR. RICHARD:
 22 Q The pending question is: Can you please look at
 23 Exhibit 165 and tell me when you've had a chance to do
 24 so?
 25 MR. TASHJIAN: Thank you.

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1 THE WITNESS: Okay.
 2 BY MR. RICHARD:
 3 ~~Q Would you expect Ms. Cerles and Ms. Gnecco to~~
 4 ~~field questions from employees from time to time~~
 5 ~~regarding the employee's benefits?~~
 6 A Yes.
 7 Q And those benefits in some cases would include
 8 stock option grants?
 9 A Sure.
 10 Q And do you see in Exhibit 165, paragraph 1 at
 11 page 1 of this proposed communication to Shanthi -- by
 12 the way, do you recognize the name of Shanthi -- her full
 13 name is on page 2 -- Gadiraju?
 14 A I don't recognize the employee.
 15 Q Okay.
 16 A I won't even try to pronounce the name.
 17 Q Fair to say that by August 2002, the company had
 18 between 2 and 300 employees?
 19 A Probably 300, closer to 300.
 20 Q And would you expect that over a hundred of
 21 those employees would be in R&D?
 22 A Yes, that sounds right.
 23 Q And assume that human resources folks told one
 24 of the employees, "Your stock will be granted in your
 25 first quarter of work. The date will not be earlier than

1 the procedure for issuing and documenting and accounting
 2 for stock option grants to officers was different than
 3 employees?
 4 A Yes. I mean, it's kind of the complement to the
 5 delegation I had for the rank and file. So for directors
 6 and officers, the board wanted to have oversight.
 7 Q Before we run out of tape, I'm going to show you
 8 what was previously marked as Exhibit 132. I just have a
 9 couple quick questions.
 10 A Okay.
 11 Q Does that reflect your signature at page 1 of
 12 Exhibit 132?
 13 A Yes, it does.
 14 Q And were you approving stock option grants to
 15 employees at the company?
 16 MR. TASHJIAN: Objection; leading.
 17 THE WITNESS: Yes.
 18 BY MR. RICHARD:
 19 Q And this particular document, your approval is
 20 not dated, is it?
 21 A I don't see a date here.
 22 Q And I want you to assume, sir, that PwC actually
 23 reviewed and tested this particular document.
 24 A I couldn't tell you specifically, but I would --
 25 they would have --

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1 your start date and will be no later than the last day of
 2 the quarter. This enables us to grant your stock at the
 3 most favorable price at the quarter."
 4 Would that communication be consistent with your
 5 understanding of the practice at the time?
 6 MR. TASHJIAN: Objection; calls for speculation, lacks
 7 foundation.
 8 THE WITNESS: Well, I don't know what their practice
 9 would have been in communicating to employees, but, you
 10 know, we did pick favorable dates.
 11 BY MR. RICHARD:
 12 Q Okay. When I refer to "the practice," I was
 13 referring to the practice of the stock option decision.
 14 A Okay. Not how they communicate with this
 15 employee?
 16 Q Right.
 17 A Okay.
 18 ~~Q So, yes, that description would be consistent~~
 19 ~~with your understanding of the practice for stock option~~
 20 ~~grants to the employees?~~
 21 A Yes.
 22 MR. TASHJIAN: Objection; leading, calls for
 23 speculation, lacks foundation.
 24 BY MR. RICHARD:
 25 Q Was there a point in time where you thought that

1 MR. SCHINDLER: Hang on. He asked you to assume that
 2 they did something, so there's no question pending.
 3 Go ahead.
 4 BY MR. RICHARD:
 5 Q I'm asking you to assume --
 6 A Okay.
 7 Q -- since we have other witnesses in this case
 8 who will explain that little notation --
 9 A Sorry.
 10 Q -- so just assume that PricewaterhouseCoopers,
 11 the company's outside auditors, one of the big accounting
 12 firms auditing numerous publicly traded companies
 13 reviewed this document.
 14 Are you with me so far?
 15 MR. TASHJIAN: Objection --
 16 THE WITNESS: Yes.
 17 MR. TASHJIAN: Objection; lacks foundation.
 18 BY MR. RICHARD:
 19 Q Did they ever -- did anyone from
 20 PricewaterhouseCoopers ever suggest to you that your
 21 approval of stock option grants needed to be dated?
 22 A No.
 23 MR. RICHARD: I think we can go on the record and
 24 change the tape.
 25 THE VIDEOGRAPHER: One moment. This marks the end of

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1 Videotape Number One in the deposition of Stephen Wong.
 2 Going off the record, the time is 11:24.
 3 (Recess taken.)
 4 THE VIDEOGRAPHER: All right. Back on the record.
 5 Here marks the beginning of Videotape Number Two in the
 6 deposition of Stephen Wong. The time is 11:38.
 7 BY MR. RICHARD:
 8 Q At some point in time while you were still with
 9 the company, Mr. Wong, did the procedure for documenting
 10 stock option grants to employees change from the
 11 quarterly approval process that you've described for us?
 12 MR. TASHJIAN: Objection; vague.
 13 THE WITNESS: Yes, I believe it did because, you know,
 14 we were always trying to improve our processes, and, you
 15 know, if we were getting advice from, you know, any of
 16 the advisors in terms of how we need to, you know, change
 17 or improve whatever we're doing, then I would think we
 18 would try to do it.
 19 BY MR. RICHARD:
 20 Q I'm going to show you what was previously marked
 21 as Exhibit 162 in these proceedings. It's a couple of
 22 pages of e-mails.
 23 If you could take a minute to look at it,
 24 especially the one from you to Mr. Shahbazian, it's dated
 25 December 15, 2005.

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1 A Yes.
 2 Q And, first of all, can you tell us who
 3 Mr. Shahbazian is or was?
 4 A He was the CFO of the company at the time.
 5 Q And can you tell us the context of these
 6 e-mails, what was going on in December 2005 --
 7 MR. TASHJIAN: Objection; lacks foundation.
 8 BY MR. RICHARD:
 9 Q -- that prompted you to write the e-mail you
 10 wrote?
 11 A It looks like there was a discussion in finance
 12 about refining the procedure for stock option grants to
 13 new hires.
 14 Q Okay. And so at some point in this time frame
 15 in December 2005, can you describe that consensus for us?
 16 A It looks like there was some internal discussion
 17 in finance about including HR, Lorraine, about -- on new
 18 hires whether we should use hire date or start date for
 19 the grants -- for the new hire grants.
 20 Q Okay. And did you write the e-mail that says --
 21 that begins "I am not sure why we changed but Jin or Raj
 22 probably do"?
 23 A Yes.
 24 Q And what change were you referring to there?
 25 I'm trying to understand if we can get a clear record on

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1 the changes that occurred over time to the company's
 2 stock option practices.
 3 A I think probably what I was referring to was
 4 instead of, you know, picking, you know, some low for the
 5 month or the quarter, let's pin down the new hire grants
 6 to when we hire them or when they start their official
 7 employment.
 8 Q Do you believe you ever had a firm understanding
 9 of what all it meant to say that a stock option had a
 10 grant date?
 11 A Well, I mean, there has to be a date on an
 12 option because there's a -- there's a life of an option.
 13 So that would be the start clock as far as when you would
 14 vest and, you know, how long this option runs.
 15 Q Okay. And if the grant date -- first of all, is
 16 it fair to say that as of this December 2005 time frame,
 17 it looks like the same date, you wrote, "OK, let's go
 18 with hire date then."
 19 Do you see where I am there?
 20 A Yes.
 21 Q What does that mean?
 22 A Use the hire date for issuance of new hire stock
 23 option grants.
 24 Q So would that be the grant date for those stock
 25 options?

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1 A I assume so.
 2 Q And did anyone in December 2005, including
 3 Mr. Shahbazian, say, wait a minute, I'm not sure that
 4 makes sense because the approval date might be after the
 5 hire date?
 6 A I don't remember that. I mean, you can see he's
 7 in this trail of e-mails. So I assume he's in the loop
 8 here.
 9 Q Okay. And do you know what, if anything,
 10 prompted this change to at least for the new hires, use
 11 the hire date as the date for valuing the strike price of
 12 new option grants?
 13 A I'm not sure what the -- what the impetus was.
 14 I don't know if this was Mike and -- Mike Shahbazian and
 15 Anne Kroger talking about refining the practice or
 16 whether they, you know, had some feedback from PwC or I'm
 17 not really sure.
 18 Q Well, for the existing employees, what would be
 19 the option date or what's described here as the date for
 20 valuing the strike price?
 21 A For existing -- I don't think this e-mail is
 22 about that. Isn't this about new hires?
 23 Q Right. So my question is: In December 2005, do
 24 you have an understanding as to what the procedure was
 25 for valuing the strike price for option grants to

MP

OR

OR

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1 existing employees?
 2 A I'm not sure, you know, if we had made any
 3 process change at the same time as this string of
 4 e-mails.
 5 Q And typically when would you approve the number
 6 of grants to a new hire?
 7 MR. TASHJIAN: Objection; vague as to time.
 8 BY MR. RICHARD:
 9 Q Would you ever -- that's fair, new question
 10 In December 2005 or after that time frame,
 11 what's your understanding as to when you would actually
 12 approve the number of stock options to new employees?
 13 A It would be on a rolling basis now based on hire
 14 date.
 15 Q Can you describe that for me in terms of would
 16 you actually sign something each time the person was
 17 hired?
 18 A You know, I don't -- I don't remember that I
 19 would be presented with daily or weekly new hire
 20 paperwork.
 21 I think this -- you know, I'm not certain, but
 22 my guess is I still got a master list for the quarter,
 23 but that finance or HR were coordinating to, you know,
 24 use the hire date per this e-mail to say this is now the
 25 operative date for the grant.

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1 Q And at some point after December 2005, did you
 2 learn that this new procedure needed to be changed?
 3 A Not specifically, no.
 4 Q I'm going to show you what was previously marked
 5 in these proceedings as Exhibit 178.
 6 A Uh-huh.
 7 Q I apologize. I thought we had extra copies for
 8 any of these. I can make a whole set at lunch if that
 9 would be helpful.
 10 MR. TASHJIAN: I think we're all right.
 11 BY MR. RICHARD:
 12 Q Okay. Are you one of the folks who was copied
 13 on this e-mail of August 2006?
 14 A Yes.
 15 Q Would it have been your practice to review it at
 16 the time?
 17 A Yes.
 18 Q Do you see where it says "Importance: High"?
 19 A Yes.
 20 Q Okay. And does this help you recall that the
 21 practice we just described from December 2005 --
 22 A Right.
 23 Q -- needed to be changed or was, in fact,
 24 changed?
 25 MR. TASHJIAN: I'm sorry. Vague as to which process.

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1 BY MR. RICHARD:
 2 Q You just told us that in the December 2005 time
 3 frame, a consensus was reached that for new hires, the
 4 grant date would be the date of --
 5 A Hire.
 6 Q -- hire.
 7 Does the e-mail of August 2006 suggest that the
 8 outside auditors made recommendations to change that
 9 process?
 10 MR. TASHJIAN: Objection; calls for speculation, lacks
 11 foundation.
 12 THE WITNESS: Yes, that seems to be what this e-mail
 13 is saying.
 14 BY MR. RICHARD:
 15 Q Can you help me understand -- do you remember
 16 reading this -- first of all, do you know who prepared
 17 the attachment here where it says "Issue - PwC has
 18 indicated that the current practice does not meet all
 19 criteria of measurement date"? Do you see where I'm
 20 reading here?
 21 A Yep.
 22 Q First of all, does that sound familiar that PwC
 23 had, in fact, indicated at some point in 2006, that the
 24 company's practice at that time did not meet all criteria
 25 of measurement date?

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1 A That's -- that's what this is saying. See they
 2 would have made this recommendation, I believe, to the
 3 audit committee. I wasn't a member of the audit
 4 committee, but eventually the board would hear on
 5 whatever the audit committee at PwC would have worked
 6 out.
 7 Q Okay. And, by the way, Mr. Pattison was no
 8 longer with the company in 2006; is that right?
 9 A Correct.
 10 Q And so do you think you would have read the
 11 attachment to this e-mail that said "Importance: High"
 12 at the time you received it in 2006?
 13 A Yes.
 14 Q Can you explain for us, had anyone to your
 15 attention explained to you that "Measurement date is set
 16 when CEO signs the list of monthly option grants at the
 17 end of the month"?
 18 A Not until I would have gotten this advice.
 19 Q Was there a point in time, do you believe, that
 20 you moved from a quarterly approval to a monthly
 21 approval?
 22 A Yeah, I vaguely remember that -- that may have
 23 occurred during this earlier period from the last e-mail.
 24 Q The December 2005 time frame?
 25 A Yeah.

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1 Q Okay. Now help us understand here, there's this
 2 reference to FAS 123R.
 3 Do you see that?
 4 A Yes.
 5 Q Had you -- when do you believe the first time
 6 you understood that measurement date -- first of all, had
 7 you heard the term "measurement date" before this 2005,
 8 2006 time frame?
 9 A No, I don't think so.
 10 Q And it says, "Measurement date is The date at
 11 which an employer and an employee reach a mutual
 12 understanding of the key terms and conditions of a
 13 share-based payment award."
 14 Do you see where I am there?
 15 A Yes.
 16 Q Did anyone on this e-mail of August 2006, Jin
 17 Jiang, Nichole Cerles, Lorraine Gnecco, or
 18 Mr. Shahbazian, discuss with you the fact that your
 19 monthly or quarterly approval of stock options wouldn't
 20 actually be a mutual understanding between the company
 21 and the employee?
 22 A I don't specifically remember any meeting, but I
 23 imagine based on this recommendation from PwC, which was
 24 adopted by the audit committee, they would have come to
 25 talk to me about it at that time.

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1 Q And you see there's a recommendation here,
 2 page 3 of Exhibit 178?
 3 A Yes.
 4 Q And was this change that begins by saying "Price
 5 of option grant set twice a month on the 15th and on the
 6 last day of the month for new hires," do you see that?
 7 A Yes.
 8 Q Do you know whether that was implemented at the
 9 company?
 10 A It probably was. If this was the recommendation
 11 of the auditors, then we would have adopted it.
 12 Q Okay. Do you have a memory of what the practice
 13 was for existing employees as distinguished from new
 14 hires in 2006 for the granting of stock options, *SEC*
 15 specifically the timing of your approval?
 16 A No, I don't have any, you know, specific, you
 17 know, recollection -- I mean nothing, you know, this
 18 detailed as to what the process would have been, but I
 19 imagine based on this new -- new hire grants, that we
 20 would have probably gone away from a quarterly to more of
 21 a real-time or a monthly approval process.
 22 Q Do you have any memory of PricewaterhouseCoopers
 23 providing written recommendations or guidance to the
 24 company as to how stock option grants should be priced
 25 prior to the end of 2004?

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1 A No, I don't.
 2 Q At any point prior to the end of 2004, do you
 3 have any memory of anyone on the board discussing with
 4 you even the potential need to revise how the stock
 5 options were accounted for as a potential expense in the
 6 company's financial records?
 7 A No.
 8 Q Did it occur to you at any point prior to the
 9 end of 2004 that the company had materially misstated its
 10 employee compensation expenses in connection with the
 11 stock option awards?
 12 MR. TASHJIAN: Objection; leading.
 13 THE WITNESS: No, I figured we were following whatever
 14 the guidelines were. I didn't get involved in the
 15 accounting of this since I'm not an expert.
 16 BY MR. RICHARD:
 17 Q I'm going to show you one more document before
 18 we take our lunch break. This is previously marked as
 19 Exhibit 204.
 20 Can you tell us who Mr. Haroian was in the
 21 August 2004 time frame?
 22 A He was on the board -- he was one of the outside
 23 directors, and he was chairman of the audit committee.
 24 Q For what period of time roughly was Mr. Haroian
 25 chairman of the audit committee?

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1 A I think he joined the board that year or maybe
 2 at the end of 2003 was on the board and chair of the
 3 audit committee until the company was sold.
 4 Q How about Mr. Roberts, who was he?
 5 A Mike Roberts was on the faculty at Harvard
 6 Business School, and he was one of the first outside
 7 directors. So he joined us in the 2000 time frame.
 8 Q And Timothy Chou, who was he?
 9 A Timothy Chou was also an outside director, and I
 10 don't remember if he was one of the initial outside
 11 directors, but he didn't join us, you know, long after
 12 our IPO, maybe within a year or so.
 13 Q How about Frank Polestra?
 14 A Frank Polestra was a venture capitalist in
 15 Boston, and he -- he was one of the original outside
 16 directors.
 17 Q Okay. Now, we looked at this attachment earlier
 18 today, and I'm just going to refer you again to page 3 of
 19 10 of the narrative that describes stock option grants.
 20 Do you have that in front of you?
 21 A Yes.
 22 Q You've already told us that the description of
 23 the process of proposed grants becoming approved grants
 24 is consistent with your memory of the approval process,
 25 right?

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1 A Yes.
 2 Q Was there a point after August 4th, 2004 where
 3 any of these board members contacted you and said
 4 anything at all about the company's -- and let's limit it
 5 to, you know, within a month or two of August 4, 2004 --
 6 did they call you to discuss the attachment at all?
 7 A Not that I remember.
 8 MR. TASHJIAN: Objection; leading as well as to the
 9 prior question, leading as well.
 10 BY MR. RICHARD:
 11 Q I'm sorry. Did any of the recipients of this
 12 e-mail call you to discuss the attachment?
 13 MR. TASHJIAN: Same objection.
 14 THE WITNESS: Not that I remember.
 15 BY MR. RICHARD:
 16 Q Do you believe that any or all of these board
 17 members were involved in a secret scheme to defraud the
 18 shareholders of Embarcadero Technologies?
 19 MR. TASHJIAN: Objection; leading.
 20 THE WITNESS: No.
 21 BY MR. RICHARD:
 22 Q It's almost offensive to ask the question, isn't
 23 it?
 24 A Yes.
 25 MR. TASHJIAN: Objection; argumentative.

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1 BY MR. RICHARD:
 2 ~~Q Has it ever made sense to you on any level how~~
 3 ~~favorable selection of stock options granted to~~
 4 ~~rank-and-file employees, whether or not they were~~
 5 ~~accounted for properly as a noncash expense, could~~
 6 ~~reflect a scheme to defraud the shareholders of the~~
 7 ~~company?~~
 8 MR. TASHJIAN: Objection; leading, vague,
 9 argumentative.
 10 THE WITNESS: No, at the --
 11 MR. SCHINDLER: Let him finish.
 12 THE WITNESS: Okay. At the time -- at the time, I
 13 ~~thought we were doing everything by the book, but, you~~
 14 ~~know, these -- these records of the sheets that I signed~~
 15 ~~and all that were available for review by, you know, the~~
 16 ~~board, the auditors, and, you know, our guys were taking~~
 17 ~~care of whatever the proper accounting treatment was.~~
 18 BY MR. RICHARD:
 19 Q But assume that the stock options had value,
 20 that they should have been accounted for as an expense at
 21 the time.
 22 Are you with me?
 23 A Uh-huh.
 24 Q By the way, were you familiar with APB 25 at the
 25 time?

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1 A No.
 2 MR. TASHJIAN: Objection; vague as to time.
 3 BY MR. RICHARD:
 4 Q Okay. Do you have any memory of discussing with
 5 Mr. Pattison whether an expense should be reflected on
 6 the books of the company in connection with stock option
 7 grants to the company's rank-and-file employees?
 8 A No, I mean, that was outside of my, you know,
 9 knowledge base.
 10 Q But assume that the company should have reported
 11 some expense if, in fact, the approval date was different
 12 than the grant date and that the employees arguably
 13 received something of value that was not cash, but they
 14 could nonetheless have value.
 15 Are you with me so far?
 16 A Yes.
 17 Q As a major shareholder of the company, can you
 18 think of how that expense would have any impact on the
 19 cash revenues of the company?
 20 MR. TASHJIAN: Objection; calls for speculation.
 21 THE WITNESS: It wouldn't.
 22 BY MR. RICHARD:
 23 Q Would it have any impact on the potential
 24 dilution of the equity owners of the company?
 25 A Yes.

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1 Q Can you explain that?
 2 A Well, if you issue a grant, then you potentially
 3 have more shares outstanding.
 4 Q Okay. And that's true whether or not the
 5 company takes a noncash expense in connection with those
 6 stock options, right?
 7 A Right.
 8 MR. TASHJIAN: Objection; leading.
 9 MR. RICHARD: I think we'll pick it up after lunch on
 10 these scintillating topics. Thank you.
 11 THE VIDEOGRAPHER: Going off the record, the time is
 12 12:00.
 13 (Luncheon recess taken.)
 14 THE VIDEOGRAPHER: Back on the record, the time is
 15 1:05.
 16 BY MR. RICHARD:
 17 Q Good afternoon, Mr. Wong. How are you?
 18 A Good.
 19 Q I didn't tell you at the outset, but if you need
 20 to take a break, sometimes afternoons after lunch can
 21 seem a little more tedious than when we had that energy
 22 in the morning, so just let us know and we'll accommodate
 23 you. All right?
 24 A Thank you.
 25 Q Sure. We were talking about Mr. Pattison this

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SEC

1 morning.
 2 Was there a point in time where you discussed
 3 with Mr. Pattison your sense that he would likely need to
 4 be replaced as the company continued to grow?
 5 A There was discussion that -- I think it first
 6 started through the audit committee that we need to
 7 strengthen the control positions, yeah, that did occur at
 8 some point.

9 **MR** Q And was there a point where you thought that
 10 because of Michael's limited background in dealing with
 11 publicly traded companies, that he might be in a bit over
 12 his head as Embarcadero grew and as SOX came out and
 13 things of that nature?
 14 MR. TASHJIAN: Objection; leading.
 15 THE WITNESS: I don't know if I would put it that way.
 16 I knew that he hadn't had the prior experience, but
 17 Michael was a very hard-working, diligent guy and, you
 18 know, pretty capable. So I guess I had hoped that he
 19 would grow into the role.
 20 BY MR. RICHARD:
 21 Q Okay. And are you able to share with us what
 22 any of the audit committee members said to you in the
 23 context of their view that the company needed to
 24 strengthen its control arena?
 25 A That basically they wanted to hire someone with

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1 all of the right credentials and experience, so public
 2 company experience, you know, CPA, things like that.
 3 Q And are you able to place in time for us when
 4 those discussions occurred between you and the audit
 5 committee?
 6 A Not precisely, but it would have come after the
 7 incident in the U.K.

8 Q And you're talking about the revenue recognition
 9 issue?
 10 A Right.
 11 Q And was that in connection with an acquisition
 12 that the company made?
 13 A Not really. We had a distributor in the U.K.
 14 that we had a partial ownership in, and we kind of had a
 15 staged buyout of the entire concern. So it wasn't some
 16 discrete event where all of a sudden we acquired some
 17 third-party company.
 18 Q And in any of your -- can you explain that a
 19 little bit more about what it was about -- was it the
 20 complexity of the revenue recognition issue, some thought
 21 that the finance department should have been on top of it
 22 sooner? Can you explain that for us?
 23 A The feeling was that, jeez, why didn't we have,
 24 you know, better oversight as to what was going on, how
 25 do we prevent it going forward. It wasn't so much about,

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1 you know, the past as how do we make sure this doesn't
 2 repeat itself. I think that's what the audit committee
 3 was very much focused on.
 4 Q And so was that the late 2004, early 2005 time
 5 frame?
 6 A That sounds about right.
 7 **MR** Q In any of the discussions you had with the audit
 8 committee to strengthen the finance department of the
 9 company, was there any words ever spoken to you by any of
 10 the audit committee members that gave a hint of any
 11 concern about Mr. Pattison's integrity?
 12 A No, no.
 13 Q Okay. Was there similar discussion at some
 14 point between you and the audit committee with respect to
 15 Mr. Sabhlok who was the company's chief financial
 16 officer?
 17 A I'm sorry. Could you clarify further?
 18 Q Sure. What was Mr. Sabhlok's position with the
 19 company?
 20 A He was the CFO and a senior vice president.
 21 Q And at some point in time, did you and the audit
 22 committee discuss -- well, let me step back. **SEC**
 23 Did you ever discuss with Mr. Sabhlok that his
 24 position within the company might change?
 25 A It was actually a dialogue because Raj had been

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1 wanting to move into the COO position, and that had been
 2 for quite some time, and, you know, in our discussion, I
 3 said, well, you know, this is not just a decision I can
 4 make unilaterally, this is something that the board has
 5 to buy into, and so it's going to be a process for us to
 6 decide whether you're, you know, the right guy for it.
 7 You know, I certainly endorsed him for that
 8 position and, you know, we of course have to find a
 9 **MR** replacement for you as far as the CFO position.

10 Q And did Mr. Sabhlok express to you why he
 11 thought a COO position might be better for him than a CFO
 12 position?
 13 A I think he felt that he had, you know, earned
 14 his opportunity to move up in the ranks. I mean, he
 15 initially came in with a desire to be, you know, in that
 16 type of a role, but we were a small company, much smaller
 17 certainly at the time that he first joined the company,
 18 and, you know, that sort of position just didn't make
 19 sense.
 20 Q The chief operating officer?
 21 A Right.
 22 Q But as the chief financial officer in 2000,
 23 Mr. Sabhlok didn't have a CPA, did he? He wasn't a CPA?
 24 A No, he didn't.
 25 Q How would you describe his strengths or

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1 background when he came to the company in 2000?
 2 A He came from one of our competitors, a very
 3 large, well-established concern in Houston called BMC
 4 Software, and Raj, I think, at that time had a, you know,
 5 position in business development.
 6 I think he ran the business development
 7 activities at BMC, and he reported to the guy who -- I'm
 8 not sure if he was CFO quite yet, but this guy later
 9 became the CFO. He was an attorney by background.
 10 So, you know, at that time, our business in
 11 particular was a pretty straightforward, cash business.
 12 We didn't have complicated customer contracts like a BMC
 13 would have.
 14 Basically people downloaded our software, they
 15 paid either with a credit card or they paid within
 16 30 days. Our biggest expense was payroll which was
 17 outsourced and, you know, we didn't have a whole bunch of
 18 different offices or subsidiaries.
 19 So one thing that Raj did bring was a very good
 20 appreciation of the corporate software area and database
 21 software, in particular, and he knew how to do, you know,
 22 licensing and negotiate with partners and things like
 23 that, which was one of the things that we wanted to do as
 24 far as building the company, but, quite frankly, we
 25 couldn't justify at that time a dedicated -- or at least,

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1 in my opinion, a dedicated business development person in
 2 senior management.
 3 So we said, hey, you know software, you know all
 4 the players in the field, you know, you're going to be
 5 very effective in investor relations which, you know, we
 6 felt would be an important part of the role of a CFO once
 7 we went public and you can handle the licensing and we'll
 8 have to, you know, build a department below you.
 9 Q Help me understand with respect to the finance
 10 department from Embarcadero Technologies, over time did
 11 the needs of the company change with respect to what it
 12 needed out of its finance department?
 13 A Yeah, the business grew. It became more
 14 complicated, and certainly there were more and more
 15 guidelines that, you know, we would have to take note of.
 16 Q So when you say "there were more and more
 17 guidelines," you're talking about compliance issues?
 18 A Yes.
 19 Q So is it fair to say that both Embarcadero
 20 Technologies' needs changed over time because its
 21 business was growing and there were more guidelines from
 22 regulators and whatnot that also changed the needs of the
 23 finance department?
 24 MR. TASHJIAN: Objection; leading and compound.
 25 THE WITNESS: Yes.

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1 BY MR. RICHARD:
 2 Q Can you describe for us as between -- what the
 3 factors were from your perspective as the CEO that
 4 changed the demands on the finance department?
 5 A Number one, we were a bigger company. Number
 6 two, we had a more complicated business because we had a
 7 couple of subsidiaries. We had made a push
 8 internationally to build more of our revenue stream from
 9 overseas sources. Certainly, there were more regulatory
 10 compliance issues.
 11 Q And at some point, the culmination of those
 12 developments, the growing business, the more complicated
 13 regulatory environment, and the other things you've
 14 described led to a discussion between you and the audit
 15 committee for the need to strengthen the company's
 16 finance department?
 17 MR. TASHJIAN: Objection; leading.
 18 THE WITNESS: Yes.

19 BY MR. RICHARD:
 20 Q Without consulting with someone, would you be
 21 able to tell us, for example, if the company acquired a
 22 subsidiary in Canada and there were certain R&D expenses,
 23 whether those would need to be capitalized or expensed?
 24 A I would --
 25 MR. TASHJIAN: Objection; assumes facts not in

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1 evidence.
 2 THE WITNESS: We did acquire a --
 3 MR. SCHINDLER: I'm sorry. I think the question is
 4 he's asking a hypothetical about your ability to
 5 determine something; is that the --
 6 MR. RICHARD: Yes.
 7 THE WITNESS: No, that would be outside of my
 8 expertise.
 9 BY MR. RICHARD:
 10 Q Okay. Did the company acquire a subsidiary in
 11 Canada?
 12 A Yes, we did.
 13 Q And it had certainly research and development
 14 expenses?
 15 A Yes.
 16 Q With respect to this revenue recognition issue
 17 for the U.K. entity, was there a specific decision that
 18 you thought Mr. Pattison should have made, you know, that
 19 he zigged when he should have zagged? Are you able to
 20 tell us if there was a specific decision he made or was
 21 it just some other impression of how that matter was
 22 handled?
 23 MR. TASHJIAN: Objection; vague and calls for
 24 speculation and compound.
 25 MR. RICHARD: I'll rephrase it.

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1 THE WITNESS: Okay.
 2 THE REPORTER: Wait. I didn't get the full objection.
 3 MR. TASHJIAN: I'm sorry. Compound.
 4 MR. RICHARD: I'll rephrase it. **SEC**
 5 Q I don't understand from your testimony what it
 6 was about the issue of revenue recognition in the United
 7 Kingdom and that led to a discussion with the audit
 8 committee as to Mr. Pattison's abilities within the
 9 finance department.
 10 A I think it was the oversight role that, while we
 11 didn't expect him to, you know, do all of the bookkeeping
 12 in the U.K., the people who were doing that there would
 13 have reported to him, so how did this occur, you know,
 14 under his watch.
 15 Q Okay. When did the bookkeepers in the United
 16 Kingdom subsidiary begin reporting to Mr. Pattison?
 17 A I think from whenever we had acquired that --
 18 finished acquiring that company.
 19 Q Can you give us a time frame on when you
 20 finished acquiring that company?
 21 A I think it was probably around 2001.
 22 Q And for what period of time did this revenue
 23 recognition issue cover?
 24 A The specific event was one transaction, and I
 25 forget the details, but I think after there was some

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1 investigation, there were a couple of others that were
 2 flagged, like accounts where, you know, we didn't feel
 3 they followed the guidelines.
 4 Q Whose decision was it to hire a big accounting
 5 firm like PwC?
 6 A It was mine and the board's.
 7 Q What was your expectation and the reasoning
 8 behind hiring a big accounting firm for the company that
 9 was a newly public company?
 10 A That they would, you know, make sure that we,
 11 you know, were in compliance as a public company.
 12 Q Can you give us an idea as to the type of
 13 issues, if any, that you thought the outside accountants
 14 at this large public accounting firm would address?
 15 A Issues of financial reporting, internal
 16 controls.
 17 Q And how often would you, as a board member, hear
 18 from the outside auditors?
 19 A Typically once a quarter at the board meeting.
 20 Q Do you remember meeting the engagement partner?
 21 A There were a number of different ones over the
 22 years, but, yes, they -- in the earlier days, they
 23 didn't -- they weren't quite as rigorous as far as the
 24 sitting down and meeting at least with me. They would,
 25 you know, obviously have regular interactions with the

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1 CFO and the finance department.
 2 Q Was there a point in time where you met more
 3 frequently than quarterly with any of the folks from PwC?
 4 A No.
 5 Q At any of the quarterly meetings -- and if you
 6 close your eyes and think back on those quarterly
 7 meetings, are you able to remember any concerns regarding
 8 the company's stock option practices that the engagement
 9 partner or any of the other professionals from PwC
 10 brought to the board's attention?
 11 MR. TASHJIAN: Objection; vague.
 12 THE WITNESS: I'm sorry. In what time frame?
 13 BY MR. RICHARD:
 14 Q 2000 from when the company became public through
 15 the end of 2004.
 16 A No, not that I remember.
 17 Q We talked before lunch a bit about the
 18 recommendations in 2006 that the outside auditors were
 19 making with respect to how the company documented its
 20 employee stock options at least for new hires.
 21 Do you recall that?
 22 A Right. **SEC**
 23 Q Was there a point in those discussions in 2006
 24 where Mr. Shahbazian he was the new CFO; is that right?
 25 A Yes.

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1 Q And did he work out for the company?
 2 A I'm sorry?
 3 Q Did he work out okay for the company?
 4 A I certainly felt that he did.
 5 MR. TASHJIAN: Objection; vague.
 6 BY MR. RICHARD:
 7 Q Was there a point in 2006 where Mr. Shahbazian
 8 said, Stephen, I have been looking at the company's
 9 historical stock option practices and I think we have a
 10 big problem that's going to result in a restatement?
 11 A No, I don't remember any such thing.
 12 Q Do you remember the auditors saying to you,
 13 Stephen -- again, this is the 2006 time frame -- we've
 14 looked at the company's historical stock option practices
 15 and we think you're headed for a big restatement?
 16 A No.
 17 Q At some point in time, did you learn that there
 18 might be a restatement at Embarcadero Technologies?
 19 A Yeah, this was later on.
 20 Q 2007?
 21 A 2007.
 22 Q Had you heard of other companies having
 23 restatements?
 24 A Yes.
 25 Q At the time based on your experience as an

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1 investment banker and as the CEO of Embarcadero
 2 Technologies, did you think the fact that Embarcadero
 3 Technologies was going to have a restatement was some
 4 indication of an undisclosed fraudulent scheme?
 5 A First, I was never an investment banker.
 6 Q Sorry. Venture capitalist?
 7 A Okay. Fair enough.
 8 Q Do you still have the question in mind with that
 9 clarification?
 10 MR. SCHINDLER: I'm sorry. What's the question?
 11 BY MR. RICHARD:
 12 Q Given your background, sir, your professional
 13 background and your familiarity with restatements, when
 14 you learned that there might be a restatement at
 15 Embarcadero Technologies, did you believe that that would
 16 be an indication of a undisclosed fraudulent scheme?
 17 A I mean as far as I was concerned, we had been,
 18 you know, keeping the books, I assumed, properly all
 19 along. So, you know, when the issue of the restatement
 20 came up, obviously it was not a happy day for me, but,
 21 you know, I had thought we had been, you know, by the
 22 book up to that point.
 23 Q And when you -- do you remember who you learned
 24 about the possibility of a restatement from?
 25 A No, I would speculate it would have been the

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1 audit committee or the CFO.
 2 Q Okay. And Mr. Pattison had already left the
 3 company by then?
 4 A Yes.
 5 Q When you learned the basis for the possible
 6 restatement, did you conclude that, ~~oh, my goodness,~~
 7 Mr. Pattison was in charge of a secret scheme to defraud
 8 the shareholders of my company?
 9 A No, that didn't enter my mind.
 10 Q Why not?
 11 A If you know Michael, he's a very honest guy,
 12 very, you know, straightforward. He's not the kind of
 13 person you would think would, you know, engage in this
 14 type of deceit or cover-up or what have you.
 15 Q Okay. Do you believe there was deceit or a
 16 cover-up?
 17 A No.
 18 Q I'm going to show you what was previously marked
 19 as Exhibit 2 in these proceedings.
 20 Can you guys share? I don't know how you want
 21 to do this. I guess I could bring all 400 exhibits in
 22 the case?
 23 I'm not going to spend a lot of time on this,
 24 but I suspect that my colleagues from the SEC may show
 25 you some of these documents.

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1 Can you tell us if you recognize Exhibit 2? ^{SEC}
 2 A Sure. It's the 10-K for fiscal year ended 2003.
 3 Q And at the very last page of this Exhibit 2 --
 4 A Yes.
 5 Q -- there appears to be a space for your
 6 signature?
 7 A Yes.
 8 Q And did you understand that you were certifying
 9 the accuracy of the company's 10-K?
 10 A Yes.
 11 Q By the way, do you know -- do you know what a
 12 cheap stock charge is?
 13 THE REPORTER: Cheap?
 14 MR. RICHARD: Cheap.
 15 THE WITNESS: Sitting here today, yes, I do. At that
 16 point in time, no.
 17 BY MR. RICHARD:
 18 Q Okay. Can you turn to page -- well, let's start
 19 with page 48, if you could take a minute to look at the
 20 information that appears on this page sufficiently to
 21 tell us whether this has some bearing on the topic you
 22 were discussing earlier with respect to stock options and
 23 potential dilution on existing shareholders.
 24 MR. TASHJIAN: Objection; vague.
 25 THE WITNESS: Could you clarify a little bit?

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1 BY MR. RICHARD:
 2 Q Sure. Did you have any idea why this particular
 3 information appears in the company's 10-K for the year
 4 ending 2003?
 5 MR. TASHJIAN: Objection; vague.
 6 THE WITNESS: I assume we're complying with reporting
 7 requirements.
 8 BY MR. RICHARD:
 9 Q Okay. How about -- do you see the reference
 10 where it says, "A total of 400,000 shares of common stock
 11 have been authorized for issuance"?
 12 A Yes.
 13 Q And then there's a table there about options
 14 granted, options exercised, options cancelled?
 15 A Right.
 16 Q And then there's some information about weighted
 17 average exercise price, number of outstanding options?
 18 A Right.
 19 Q Other than that you believe this information was
 20 required, otherwise it wouldn't be in this lengthy
 21 document, do you have any understanding why this type of
 22 information would have been disclosed in your company's
 23 10-K?
 24 MR. TASHJIAN: Objection; vague.
 25 THE WITNESS: That would have been a reporting

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1 requirement.
 2 BY MR. RICHARD:
 3 Q Do you have an understanding as to how this
 4 information -- whether it would or would not have been
 5 helpful to potential investors in the company?
 6 MR. TASHJIAN: Objection; calls for speculation.
 7 THE WITNESS: Well, it would tell you how many options
 8 were granted, and I guess it gives you some pricing
 9 information.
 10 BY MR. RICHARD:
 11 Q Okay. Do you know who prepared this particular
 12 chart for this 10-K?
 13 A It would have been the finance department. SEC
 14 Q Okay. And if you could flip over to page 40 of
 15 the same document --
 16 A Okay.
 17 Q -- do you see the reference to stock-based
 18 compensation?
 19 A Yes.
 20 Q There's a reference to SFAS number 123,
 21 "Accounting for Stock-Based Compensation"?
 22 A Yes.
 23 Q Can you tell us whether you ever read that
 24 particular financial accounting standard?
 25 A No, I didn't. It would be something that's --

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1 that would be difficult for me to understand all the
 2 nuances of.
 3 Q What role, if any, did you expect the outside
 4 auditors from PwC to have in the preparation of the
 5 company's 10-K?
 6 A That they would review the financial statements
 7 and whatever the information underpinning it was.
 8 Q Was there ever a point in time where the
 9 engagement partner in any of those quarterly reports to
 10 the board ever advised you that there was information
 11 that they had asked for regarding the company's stock or
 12 stock option practices that they had not obtained?
 13 A No, if -- I think if that would have occurred,
 14 they would have made it into a pretty significant issue
 15 for the board, not only for me.
 16 Q Likely that's something you could remember
 17 sitting here today?
 18 A Yes.
 19 Q Did anyone from PwC ever tell you after 2007
 20 when you found out that your company might be headed
 21 towards a restatement, did anyone ever tell you that they
 22 had dozens of other clients who were headed for a
 23 restatement also related to their stock option practices?
 24 MR. TASHJIAN: Objection; vague --
 25 THE WITNESS: No.

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1 MR. TASHJIAN: -- and calls for speculation.
 2 MR. RICHARD: Take a look at my questions here. I
 3 think we're done with Exhibit 2 for now. Thanks.
 4 Q Who approved stock options provided to
 5 Mr. Pattison?
 6 A It would have been me.
 7 Q Did Mr. Pattison have the authority from the
 8 board to grant stock options to anybody?
 9 A No.
 10 Q Did you ever make a deal with Mr. Pattison that
 11 you would approve a certain number of stock options to
 12 him if he would go along with some internal scheme?
 13 A No.
 14 Q On what basis did you decide on the number of
 15 stock options to award to Mr. Pattison?
 16 A Based on his performance.
 17 Q What do you mean?
 18 A Whether I felt he was, you know, working hard at
 19 his job and being productive, his loyalty to the company,
 20 you know, things like that.
 21 Q And from time to time, did the board grant stock
 22 options to Mr. Sabhlok?
 23 A Yes.
 24 Q Do you believe any of the stock options to
 25 Mr. Sabhlok were falsely dated?

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1 A No.
 2 Q Did you ever direct Mr. Pattison to falsely date
 3 any stock option grant documentation in connection with
 4 Mr. Sabhlok's options?
 5 A No.
 6 Q Did you ever direct Mr. Pattison to falsify any
 7 compensation committee minutes?
 8 MR. TASHJIAN: Objection; leading.
 9 THE WITNESS: No.
 10 BY MR. RICHARD:
 11 Q To your knowledge, did Mr. Pattison ever falsify
 12 any compensation committee meeting minutes?
 13 MR. TASHJIAN: Objection; leading.
 14 THE WITNESS: No, not to my knowledge.
 15 BY MR. RICHARD:
 16 Q Was Mr. Pattison on the compensation committee?
 17 A No.
 18 Q Did anyone from PwC ever tell you or the board,
 19 to your knowledge, that the term "grant date" was more of
 20 a legal term than an accounting term?
 21 MR. TASHJIAN: Objection; vague and leading.
 22 THE WITNESS: No.
 23 BY MR. RICHARD:
 24 Q At the time between 2000 -- say October 2000 and
 25 the end of 2004, did you personally have an understanding

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1 as to whether the term "grant date" or "date of grant"
 2 was a legal term, an accounting term, or some other type
 3 of term?
 4 MR. TASHJIAN: Objection; leading, vague.
 5 THE WITNESS: No.
 6 BY MR. RICHARD: SEC
 7 Q Do you believe you had a firm understanding of
 8 what the term "grant date" or "date of grant" meant in
 9 the year 2000?
 10 MR. TASHJIAN: Objection; vague.
 11 THE WITNESS: You mean my -- my view was that it was a
 12 date that I made an agreement with the employee to give
 13 them an option grant.
 14 BY MR. RICHARD:
 15 Q Do you believe you had a firm understanding of
 16 what the term "determination date" or "date of
 17 determination" meant in 2001 in connection with employee
 18 stock options?
 19 MR. TASHJIAN: Objection; vague.
 20 THE WITNESS: No.
 21 BY MR. RICHARD:
 22 Q Assuming that in three weeks the SEC tells the
 23 jury that it should have been completely obvious to you
 24 that the company was failing to take compensation
 25 expenses and therefore materially misstating its

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1 financials in the years 2000, 2001, 2002, 2003, 2004,
 2 would you agree with that?
 3 A Sitting here today, yes.
 4 Q At the time?
 5 A No, I thought that we were, you know, doing what
 6 was appropriate.
 7 Q If the SEC were to tell the jury in three weeks
 8 that there was a secret scheme to defraud the
 9 shareholders, would you agree with that?
 10 MR. TASHJIAN: Objection; leading.
 11 THE WITNESS: No.
 12 MR. RICHARD: I may have a couple follow-on questions,
 13 but I want to save time for my colleagues today,
 14 Mr. Sabhlok's attorney and the Securities and Exchange
 15 Commission, but in case I forget later, thank you again
 16 for coming and taking the time to be with us today.
 17 THE WITNESS: You're welcome.
 18 MR. RICHARD: Do you want to sit here?
 19 MS. MCKAIG: Yeah.
 20 MR. TASHJIAN: Go off the record while we switch?
 21 MR. RICHARD: Sure.
 22 THE VIDEOGRAPHER: Going off the record, the time is
 23 1:35.
 24 (Brief break.)
 25 THE VIDEOGRAPHER: Back on the record, the time is

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1 1:41.
 2 EXAMINATION
 3 BY MS. MCKAIG:
 4 Q Good afternoon, Mr. Wong. We met briefly off
 5 the record. My name is Ronda McKaig, and I represent Raj
 6 Sabhlok.
 7 I'm just going to be -- sorry if it seems like
 8 I'm jumping around a little bit, but I'd like to ask some
 9 follow-up questions to the questions that Mr. Richard
 10 asked you today and cover a couple of new areas as well.
 11 The first thing I wanted to ask you is to put
 12 your microphone on, please, or would you.
 13 A I knew I was going to trip on it at some point.
 14 MS. MCKAIG: Is that okay?
 15 THE VIDEOGRAPHER: Yes.
 16 MS. MCKAIG: Great.
 17 Q The first thing I wanted to ask you is whether
 18 or not prior to becoming a public company, Embarcadero
 19 had a chief financial officer?
 20 A No, we didn't.
 21 Q So was there a need to fill that role sometime
 22 prior to becoming a public company?
 23 A Yes, because the business had been growing at a
 24 pretty rapid rate. In the earlier days, it was a
 25 pretty -- as I had said before, a pretty simple business,

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1 but, you know, about the time we went public, we were
 2 growing 50 or a hundred percent a year.
 3 Q In terms of revenues or employees?
 4 A Revenues, revenues, probably employees as well.
 5 Q Okay. And how many -- were you primarily in
 6 charge of finding and hiring a CFO?
 7 A Yes.
 8 Q And was there anyone assisting you with that?
 9 A My brother did who was also a significant
 10 shareholder and a board member.
 11 Q How many candidates did you interview for the
 12 CFO position roughly?
 13 A One.
 14 Q Okay. And who is that?
 15 A Mr. Sabhlok.
 16 MR. RICHARD: Good question.
 17 BY MS. MCKAIG:
 18 Q And you testified earlier that you met
 19 Mr. Sabhlok in connection with negotiations with a
 20 company called BMC.
 21 Do I have that correct?
 22 A I actually didn't meet Raj through that
 23 negotiation. I probably heard his name, but, you know,
 24 we knew of each other, but we didn't meet -- we didn't
 25 meet in that particular context.

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1 Q Okay. So tell us a little bit more, if you
 2 would, about how you met.
 3 A I had interviewed another -- one of Raj's peer
 4 in a different area of the company -- of BMC for a
 5 potential VP of sales job for us.
 6 And then through that, I met another guy who
 7 eventually did become our vice president of sales, and I
 8 guess Raj knew these two gentlemen and heard what they
 9 were up to, and they -- he called me and said, hey, I
 10 want to introduce myself and throw my hat into the ring.
 11 Q For any particular position?
 12 A I think he wanted to come in as the -- in a
 13 similar capacity, but more senior title that he had at
 14 BMC, which would have been business development or
 15 corporate development.
 16 Q And did he interview for that position?
 17 A He flew out to come and see me. I just wanted
 18 to meet him to find out what kind of a person he was and
 19 what kind of, you know, knowledge he had about the
 20 industry, but I was pretty clear from the start that at
 21 our then stage of development, I felt it was too much of
 22 a luxury to have someone that was dedicated solely to
 23 business development.
 24 THE VIDEOGRAPHER: The cables, don't touch it, the
 25 cables.

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1 BY MS. MCKAIG:
 2 Q Okay. And so -- so Raj flew out to California
 3 and met with you?
 4 A Yes.
 5 Q And what was your impression of him?
 6 A He seemed like a very knowledgeable, dynamic
 7 young guy.
 8 Q And did you check into his background at all?
 9 A I did, yes. I, you know, spoke to some of his
 10 colleagues at BMC and did some research in terms of what
 11 people in the industry might know about him.
 12 Q And what did you find out?
 13 A Good guy, you know, very hard working, was kind
 14 of on the fast track at BMC. He was relatively young for
 15 the position that I think he had at BMC, so it all looked
 16 pretty positive.
 17 Q Did you have an understanding as to what his
 18 prior experience was with respect to finance and/or
 19 accounting?
 20 A I knew that he had limited experience in
 21 accounting.
 22 Q So let me just take you through that. Did you
 23 understand that he had no prior accounting experience?
 24 A Yes.
 25 Q And I think you already testified you knew at

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1 that time that he was not a CPA, correct?
 2 A Yes.
 3 Q You knew he never had responsibility for public
 4 reporting?
 5 A Yes.
 6 Q And that he had never had responsibility for
 7 stock options or stock option accounting?
 8 MR. TASHJIAN: Objection; leading.
 9 THE WITNESS: Yes.
 10 BY MS. MCKAIG:
 11 Q And at some point, you decided to offer Raj a
 12 position with the company, correct?
 13 A Right.
 14 Q And that was the CFO position?
 15 A Right. It was CFO and senior vice president of
 16 corporate development.
 17 Q And why in your mind was Raj qualified for that
 18 position?
 19 A Well, I think I spoke to it earlier. Investor
 20 relations was going to be an important part of the job
 21 responsibilities. I thought that he would do a very good
 22 job on that.
 23 With respect to accounting, I knew, you know, it
 24 wasn't his background. So he would need to build the
 25 department below him to handle it, and our business was

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1 far smaller and a lot simpler then.
 2 Q And did -- did Raj express any reservations or
 3 concerns about being the CFO in light of his lack of
 4 accounting experience?
 5 A He -- he just said, jeez, you know, it sounds
 6 like an exciting opportunity, but you realize I haven't
 7 done this before.
 8 Q And did you respond to his statement in that
 9 regard?
 10 A You know, I would speculate on what I might have
 11 said to him. I don't know exactly what the conversation
 12 was, but I probably told him, you know, jeez, you know,
 13 you have to ask yourself whether you feel like you're
 14 capable of growing into the role. You know, we can't
 15 employ you as just a business development executive. So
 16 if you want to find a role within Embarcadero, you know,
 17 this would be it.
 18 Q And do you believe you communicated to him that
 19 a finance department would be built beneath him?
 20 A Yeah.
 21 Q Had you hired Mr. Pattison by the time you hired
 22 Mr. Sabhlok?
 23 A I'm not certain, but I think we did.
 24 Q Do you know -- who did you expect to handle the
 25 accounting for Embarcadero?

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1 A Basically, Raj would have oversight of finance.
 2 The actual accounting would be done by Michael and his
 3 team.
 4 Q And what is oversight -- what did that entail in
 5 your mind?
 6 A Well, he had to be a manager. He had to make
 7 sure that they were doing their jobs.
 8 Q And what would that require?
 9 A You know, review meetings, discussions with them
 10 as to, you know, what their priorities were, what their
 11 activities were, and, you know, look into some of the
 12 work that they were producing.
 13 Q Would you expect him to learn all the applicable
 14 accounting rules?
 15 A That would take some time, but I would think
 16 over time he would acquire more specific knowledge about
 17 accounting.
 18 Q And is that -- is there any area that you would
 19 expect him to focus on more than another?
 20 A With -- I'm sorry.
 21 Q With respect to accounting.
 22 A Basically financial reporting.
 23 Q What about revenue recognition?
 24 A That was a very big part of -- in software, it's
 25 a -- it's probably the single largest activity by far of

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1 any finance department.
 2 Q And do you know whether Embarcadero did anything
 3 to get Raj up to speed on, for example, revenue
 4 recognition accounting issues?
 5 MR. TASHJIAN: Objection; vague.
 6 THE WITNESS: I think there were courses and materials
 7 that were offered up by the auditors on this, and he may
 8 have gone to some of these symposiums.
 9 BY MS. MCKAIG:
 10 Q And do you know whether Embarcadero did anything
 11 to get Mr. Sabhlok up to speed on stock option accounting
 12 issues?
 13 A This is a bit of speculation, but I would think
 14 that there were also seminars and things like that
 15 offered by PwC as well. I couldn't tell you sitting here
 16 today, you know, what he attended or what he didn't.
 17 Q Do you have any knowledge that PwC indeed
 18 offered any stock option accounting guidance to anyone at
 19 Embarcadero?
 20 MR. TASHJIAN: Objection; vague, leading.
 21 THE WITNESS: Not specifically.
 22 BY MS. MCKAIG:
 23 Q What tasks did you expect Raj to be involved
 24 with at Embarcadero?
 25 A Well, the financial reporting, the investor

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1 relations, any of our partnering and oversight of, you
 2 know, the finance department in general.
 3 Q Switching gears a little bit -- let me actually
 4 just stick to that.
 5 How did you feel Raj did in carrying out those
 6 tasks?
 7 A I thought he was growing into the role. He --
 8 you know, he's a very diligent guy.
 9 Q And you were happy with his performance?
 10 A Yes, he seemed to have a good, you know, working
 11 relationship with the auditors, and there seemed to be a
 12 healthy dialogue and, you know, exchange of information
 13 and the people who worked for him seemed to look up to
 14 him as a boss.
 15 Q How many employees did Embarcadero have at the
 16 time it went public approximately?
 17 A I would guess about a hundred and twenty-five.
 18 Q And how many employees did the company have when
 19 you left in 2007?
 20 A Probably close to 300.
 21 Q As a new company, did Embarcadero start out with
 22 a lot of documented internal processes?
 23 MR. TASHJIAN: Objection; vague.
 24 THE WITNESS: No, we didn't.
 25 BY MS. MCKAIG:

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1 Q And do you know what I mean by "internal
 2 processes" or can you tell me what that means to you?
 3 MR. TASHJIAN: Objection; personally calls for
 4 speculation.
 5 THE WITNESS: I think you're referring to like
 6 operating procedures where we would write a memo and say
 7 that in order to, I don't know, process a sales order,
 8 you need to do A, B, C, and D.
 9 BY MS. MCKAIG:
 10 Q And why didn't Embarcadero have documented
 11 internal processes as a new company?
 12 A I think it's -- it was almost -- again, our
 13 business was very simple. We didn't have an elaborate
 14 sales force. Customers basically got to use the products
 15 directly. We would encourage them to buy it, and if they
 16 bought it, then we got paid pretty promptly.
 17 So it's not as though we had to go and do big
 18 presentations and, you know, go bid on -- on projects.
 19 It was very straightforward. Our transaction sizes were
 20 very small. So in comparison to, you know, where Raj
 21 came from where they may have done multimillion-dollar
 22 deals or couple-hundred-thousand-dollar deals, ours were
 23 a few thousand dollars at a crack, and so it was a very
 24 simple, you know, efficient operation.
 25 Q As the company grew and its business became more

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1 complex, who did it rely upon to -- to help guide it
 2 through that process?
 3 MR. TASHJIAN: Objection; vague as to time and vague.
 4 THE WITNESS: That would be responsibility of, you
 5 know, the outside advisors, the board. That's why we
 6 wanted to have a good variety of people with different
 7 experiences to give us, you know, insight into how we
 8 grow up as a company.
 9 BY MS. MCKAIG:
 10 Q By "outside advisors," can you just clarify for
 11 me who you're -- who you're referring to?
 12 A Our outside counsel and the auditor.
 13 Q And you talked a little bit about how often your
 14 communications -- how often you had communications with
 15 the auditors.
 16 I wanted to ask you how often you had
 17 communications with your outside counsel.
 18 A It would be sporadic, but it would be probably
 19 every couple of weeks. It would be, you know, specific
 20 to a certain -- like if they were helping us with a
 21 document, then that would be the occasion to talk to
 22 them, but we really didn't have, you know, check-in calls
 23 where there wasn't a stated agenda. It was always, you
 24 know, some task-oriented thing.
 25 Q If we could back up a bit, you testified earlier

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1 that your outside counsel was Heller Ehrman, correct?
 2 A Right.
 3 Q Did Embarcadero have inside counsel?
 4 A No.
 5 Q So it was relying entirely on outside counsel
 6 for legal advice; is that right?
 7 MR. TASHJIAN: Objection; leading.
 8 THE WITNESS: Yes.
 9 BY MS. MCKAIG:
 10 Q And who selected Heller Ehrman as outside
 11 counsel?
 12 A I did.
 13 Q Did the board have any input on that?
 14 A I think we hired Heller before -- certainly we
 15 hired them before we went public because they helped us
 16 prepare the initial -- the prospectus and associated
 17 documents.
 18 No, it was basically my brother and I had
 19 interviewed, I think, a couple of firms, and we liked
 20 Heller the best.
 21 Q Why is that?
 22 A A lot of it had to do with the engagement
 23 partner, you know, whether they had the experience with
 24 IPOs, the stability of the firm, and just how much
 25 attention we thought they would pay to such a small

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1 account.
 2 Q And the engagement partner for Embarcadero was
 3 who?
 4 A Stephen Ferruolo.
 5 Q You were impressed with his background?
 6 A Yes.
 7 Q Did you ever attempt to hide anything from
 8 Mr. Ferruolo or anyone at Heller Ehrman?
 9 A No.
 10 Q Did you ever direct anyone at Embarcadero to
 11 hide anything from Mr. Ferruolo or Heller Ehrman?
 12 MR. TASHJIAN: Objection; vague -- I'm sorry --
 13 leading.
 14 THE WITNESS: No.
 15 BY MS. MCKAIG:
 16 Q Did you expect Mr. Ferruolo to be proactive
 17 about his legal advice to the company?
 18 MR. TASHJIAN: Objection; vague.
 19 THE WITNESS: It's hard for me to say what I think
 20 Mr. Ferruolo -- you know, how he should conduct himself.
 21 I mean, he was there as our counsel, and, you know, I
 22 think we had a very good working relationship with him.
 23 So as far as I was concerned, the door was always open.
 24 BY MS. MCKAIG:
 25 Q Let me ask this way. If you assume that

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1 Mr. Ferruolo was aware of an issue that came up
 2 frequently for, let's say, technology companies in
 3 Silicon Valley, would you expect him to at least discuss
 4 it with you?
 5 A Yes.
 6 MR. TASHJIAN: Objection; calls for speculation, lacks
 7 foundation.
 8 THE WITNESS: Yes, yes, I would.
 9 MS. MCKAIG: I'm sorry.
 10 Q What about the auditors, same question with
 11 respect to the auditors?
 12 A I think it's the same answer.
 13 Q Do you recall how much the auditors were paid
 14 from 2000 to 2006 roughly?
 15 A Well, the bills grew over time, but it was one
 16 of -- it became one of our largest expenses. So my guess
 17 is it was a few hundred thousand to begin with, and later
 18 on, it was probably in excess of a million dollars in
 19 total.
 20 Q What about Heller Ehrman, do you recall how much
 21 they were paid over that same time period?
 22 A Also pretty healthy fees, at least a couple
 23 hundred thousand dollars a year.
 24 Q In advising Embarcadero, did you expect them to
 25 consider that the company was a fairly new company?

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1 A Yes.
 2 Q And did you expect them to consider the
 3 experience and expertise of the executive team?
 4 MR. TASHJIAN: Objection; vague and leading.
 5 THE WITNESS: Yes, I mean they had open access to us.
 6 BY MS. MCKAIG:
 7 Q You talked a little bit earlier -- or
 8 Mr. Richard asked you earlier about your familiarity, I
 9 think, with APB 25. I just wanted to ask you whether or
 10 not you ever discussed APB 25 with Raj.
 11 A Not that I remember.
 12 Q And what about the more general concepts that
 13 options with an exercise price at less than fair market
 14 value on the date of grant require a compensation charge,
 15 did you ever discuss that general concept with Raj?
 16 MR. TASHJIAN: Objection; vague.
 17 THE WITNESS: No, we didn't.
 18 BY MS. MCKAIG:
 19 Q Shifting gears to the pricing practices for
 20 stock option grants to rank-and-file employees at
 21 Embarcadero from the time period 2000 to 2004, did you
 22 tell Raj when you made your pricing decisions for those
 23 stock option grants?
 24 MR. TASHJIAN: Objection; vague.
 25 THE WITNESS: You know, it's hard for me to remember

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1 after all these years specific incidents, but, you know,
 2 I think we went through it in some of the earlier
 3 questions with Mr. Richard. There would be a list that
 4 was compiled. I would look at the list. I may agree or
 5 disagree. Once it was finalized, then it would be
 6 approved.
 7 BY MS. MCKAIG:
 8 Q So let me ask it this way. Do you recall
 9 discussing your pricing decisions or when you made your
 10 pricing decisions with Raj?
 11 MR. TASHJIAN: Objection; vague.
 12 THE WITNESS: Not specifically.
 13 BY MS. MCKAIG:
 14 Q Do you recall ever telling Raj that you priced
 15 options by deeming the grant date to be the same date
 16 that coincided with the low stock price of a quarter?
 17 MR. TASHJIAN: Objection; leading.
 18 THE WITNESS: Yeah, I think Raj was aware that we
 19 were, you know, picking dates to give valuable options to
 20 customers -- I mean to our employees, but, you know, I
 21 can't pinpoint a specific, you know, conversation.
 22 BY MS. MCKAIG: SEC
 23 Q Well, let's talk a little bit about what his
 24 role was in the process.
 25 So you testified earlier that you had the

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1 delegated authority to --
 2 A Right.
 3 Q -- grant stock options to rank-and-file
 4 employees?
 5 A Right.
 6 Q Raj didn't have that authority, correct?
 7 A No.
 8 Q And then you testified that Michael Pattison
 9 handled the mechanics of the option grants to
 10 rank-and-file employees?
 11 A Yes.
 12 Q So what was Raj's role in the option grants to
 13 rank-and-file employees?
 14 A Well, he -- he would have seen the final list,
 15 you know, at least because it would become part of the
 16 board package when the minutes were compiled, and, you
 17 know, Michael worked for Raj.
 18 Q Okay. So just to make sure I understand your
 19 testimony on this, Mr. Wong, he would see the same list
 20 that the board of directors saw that documented who was
 21 to receive option grants --
 22 A Yes.
 23 Q -- the grant date and the exercise price?
 24 MR. TASHJIAN: I'm sorry. Objection; misstates and
 25 asked and answered and leading.

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1 BY MS. MCKAIG:
 2 Q Is that correct?
 3 A He would see those documents, yes.
 4 Q As part of the board package, correct?
 5 MR. TASHJIAN: Objection; leading.
 6 THE WITNESS: Well, in preparation of the board
 7 package.
 8 BY MS. MCKAIG:
 9 Q He prepared the board package?
 10 A Well, he would see it because we would have to
 11 distribute it before the board meeting.
 12 Q Distribute it to board members --
 13 A Yes.
 14 Q -- and whoever attended the board meeting?
 15 A Yes.
 16 Q I see. And then you also mentioned that he was
 17 Michael Pattison's supervisor, correct?
 18 A Right.
 19 Q And so are -- beyond those two things, do you
 20 have any other knowledge of what Raj's role was in the
 21 option grants to rank-and-file employees?
 22 A Could you clarify?
 23 Q I'm just wondering beyond -- beyond being
 24 Mr. Pattison's supervisor and reviewing option grant
 25 lists that were part of the board package --

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1 A Right.
 2 Q -- if you have any other information that Raj
 3 was otherwise in any way involved with option grants to
 4 rank-and-file employees?
 5 MR. TASHJIAN: Objection; vague.
 6 THE WITNESS: As a hiring manager, he would have been
 7 involved with the grants for his own people.
 8 BY MS. MCKAIG:
 9 Q In other words, he would have made
 10 recommendations --
 11 A Right, he would have made recommendations to me.
 12 MR. SCHINDLER: Let's not talk over each other for the
 13 reporter.
 14 THE WITNESS: Sorry.
 15 BY MS. MCKAIG:
 16 Q Okay. Understood. Aside from that, anything
 17 else that you can recall?
 18 A No.
 19 Q Any other way he would have been involved?
 20 A No.
 21 Q Okay. So I have a set of ugly questions to ask
 22 you as well, and I apologize in advance.
 23 Did you engage in any scheme to defraud
 24 Embarcadero shareholders with Raj Sabhlok?
 25 A No.

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1 MR. TASHJIAN: I'm sorry. Objection; leading.
 2 BY MS. MCKAIG:
 3 Q And did you ever talk to Raj about engaging in a
 4 scheme to defraud by secretly granting in-the-money stock
 5 options?
 6 MR. TASHJIAN: Objection; leading.
 7 THE WITNESS: No.
 8 BY MS. MCKAIG:
 9 Q Do you know what I mean by "in-the-money stock
 10 options"?
 11 A Yes.
 12 Q What does that mean to you?
 13 A That the exercise price is below the current
 14 price.
 15 MR. SCHINDLER: You mean does he have knowledge of
 16 that today?
 17 MS. MCKAIG: Yes.
 18 Q Did you ever discuss with Raj that the options
 19 you granted required a compensation charge but that the
 20 charge should be concealed from the shareholders?
 21 MR. TASHJIAN: Objection; vague and leading.
 22 THE WITNESS: No.
 23 BY MS. MCKAIG:
 24 Q Did you ever discuss with Raj that company
 25 documents should be falsified to make it appear as if

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1 options were granted at fair market value on the grant
 2 date when that was not the case?
 3 MR. TASHJIAN: Objection; vague and leading.
 4 THE WITNESS: No.
 5 BY MS. MCKAIG:
 6 Q Setting aside -- let's just talk about the
 7 period 2000 to 2005.
 8 Do you recall ever discussing with Raj the
 9 practice of backdating?
 10 A No.
 11 Q To the best of your knowledge, did Embarcadero
 12 take compensation charges when it believed they were
 13 required?
 14 MR. TASHJIAN: Objection; vague and leading.
 15 THE WITNESS: As far as I knew.
 16 BY MS. MCKAIG:
 17 Q To the best of your knowledge, did you ever
 18 discuss with Raj whether there were any accounting
 19 implications of granting in-the-money options?
 20 MR. TASHJIAN: Objection; leading.
 21 THE WITNESS: No.
 22 BY MS. MCKAIG:
 23 Q We talked today with Mr. Richard about granting
 24 options on a quarterly basis and using the low price in
 25 the quarter to price those options. At some point, the

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1 practices changed.
 2 Do you recall what prompted those changes?
 3 A Well, I think with the new hire, we've seen some
 4 of the documents that, you know, they were
 5 recommendations from the new CFO and the new controller.
 6 And then later on, there was also, you know, guidance
 7 from the audit committee who had been in dialogue with
 8 PwC.
 9 Q Do you recall who Jefferson Wells is?
 10 A They were an outside -- I don't know if they
 11 were an accounting firm, but they came in to -- to audit
 12 our -- our SOX compliance.
 13 Q And around when did that take place, to the best
 14 of your recollection?
 15 A 2005 and '6 time frame.
 16 Q And what -- what was -- what was the purpose
 17 of -- or what prompted this retaining Jefferson Wells?
 18 A I think that was considered a best practice, and
 19 it was probably recommended by the auditors and the audit
 20 committee.
 21 Q And I think you mentioned just a moment ago SOX
 22 compliance?
 23 A Right.
 24 Q What is SOX compliance?
 25 A Sarbanes-Oxley.

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1 Q And that's a piece of legislation that was
 2 passed in around 2002?
 3 A Yeah, I don't know the exact timing, but that
 4 sounds about right.
 5 Q And why was Embarcadero trying to be SOX
 6 compliant in 2004, '5 or '6 or whenever it retained
 7 Jefferson Wells?
 8 A I think that the recommendation would have come
 9 from, you know, either the audit committee or the
 10 auditors that we should have a third party -- I don't
 11 know if there was even specific guidance that said you
 12 needed to have an independent firm audit the work of your
 13 audit firm.
 14 Q So Jefferson Wells worked with
 15 PricewaterhouseCoopers and the company --
 16 A Yes.
 17 Q -- In an effort to make sure the company was SOX
 18 compliant?
 19 MR. TASHJIAN: Objection; leading.
 20 THE WITNESS: As far as I knew, yes.
 21 BY MS. MCKAIG:
 22 Q And did you meet anyone from Jefferson Wells?
 23 A Yes.
 24 Q Who did you meet?
 25 A I don't remember their names. I didn't have

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1 much involvement with them, but I had met the engagement
 2 manager.
 3 Q And what was your understanding of what
 4 Jefferson Wells was specifically doing for the company?
 5 A To tell you the truth, I couldn't give you the
 6 details of what specific, you know, audit they were
 7 supposed to perform.
 8 Q You understood they were auditing the company's
 9 internal controls; is that fair to say?
 10 A Right, yeah.
 11 Q Would that include the stock option processes?
 12 A I would think so.
 13 Q Do you know whether any questions or concerns
 14 about Embarcadero's stock option processes were raised as
 15 part of the SOX compliance efforts?
 16 A I don't think anything was ever brought to my
 17 attention.
 18 Q Do you know whether or not Mr. Sabhlok ever
 19 spoke to Mr. Ferruolo about the company's retroactive
 20 granting processes?
 21 MR. TASHJIAN: Objection; leading, calls for
 22 speculation, vague.
 23 THE WITNESS: It's hard for me to know what, you know,
 24 Raj spoke to Stephen about.
 25 BY MS. MCKAIG:

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1 Q I'm just going to show you a document, see if I
 2 can refresh your recollection.
 3 A Okay.
 4 Q This has been previously marked as Exhibit 24.
 5 I'm just going to show it to you.
 6 Take a minute to look this over and tell me when
 7 you've had a chance to review it.
 8 A Okay.
 9 Q Have you ever seen this document before?
 10 A Only, you know, through this deposition.
 11 Q Okay. Do you see here the bottom e-mail from
 12 Raj Sabhlok to Stephen Ferruolo sent Thursday,
 13 October 21, 2004 at 12:14 p.m., Raj is asking Stephen,
 14 "Can Stephen grant awards retroactively? In other words,
 15 the grant date is earlier than the date he approves the
 16 grant. Raj."
 17 And then there's a reply at the top from
 18 Mr. Ferruolo, it says, "No. Absolutely not. The vesting
 19 can be retroactive, however. Let's discuss."
 20 Do you see that?
 21 A Yes.
 22 MR. TASHJIAN: Objection; lacks foundation, calls for
 23 speculation.
 24 BY MS. MCKAIG:
 25 Q Do you recall having any conversation with

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1 Mr. Sabhlok about this subject matter?
 2 A No.
 3 MR. TASHJIAN: Objection; vague, lacks -- calls for
 4 speculation, lacks foundation.
 5 THE WITNESS: No, not at this time.
 6 BY MS. MCKAIG:
 7 Q At a later time, do you recall having
 8 conversation with Mr. Sabhlok about this?
 9 MR. TASHJIAN: Same objection.
 10 THE WITNESS: Once there was an investigation into it.
 11 BY MS. MCKAIG:
 12 Q Okay. Are you aware that the quarter low option
 13 pricing practices stopped shortly after this e-mail?
 14 MR. TASHJIAN: Objection; vague.
 15 THE WITNESS: No, not specifically.
 16 BY MS. MCKAIG:
 17 Q Assuming that -- I'd like you to assume for
 18 purposes of this question that that's a fact, that the
 19 option -- the quarter low option pricing practices
 20 stopped after this e-mail.
 21 A Okay.
 22 Q Would that lead you to believe that you may have
 23 had a conversation with Raj about whether or not it was
 24 proper to retroactively grant stock options?
 25 MR. TASHJIAN: Objection; calls for speculation, lacks

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1 foundation.
 2 THE WITNESS: It's certainly possible, but I don't
 3 remember specifically.
 4 BY MS. MCKAIG:
 5 Q Sure. You talked to Mr. Richard a bit about
 6 Raj's transition out of the CFO role, and I just wanted
 7 to ask a few follow-up questions about that.
 8 First, do you recall any conversations with any
 9 board members about Raj's qualifications to be the CFO?
 10 A At which point in time?
 11 Q At any point in time.
 12 A It became an issue later on, probably around the
 13 same time frame that, you know, we discussed
 14 strengthening the finance department and same discussions
 15 with Michael Pattison.
 16 Q And who, in particular, on the board did you
 17 have those discussions with?
 18 A It would have been the audit committee members,
 19 probably Gary Haroian would be the one.
 20 Q Who about Sam Spadafora?
 21 A Yes, I think Sam was on the audit committee, and
 22 Sam probably did talk to me about that as well.
 23 Q Do you recall anything specific about those
 24 conversations?
 25 A No, just the general, you know, theme was, hey,

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1 Embarcadero's arrived at a stage of development where we
 2 need to have a stronger, more traditional CFO.
 3 Q And did you hear from the audit committee
 4 members that the company's outside auditors had raised
 5 similar concerns?
 6 MR. TASHJIAN: Objection; calls for speculation, lacks
 7 foundation.
 8 THE WITNESS: Yes, I believe I did.
 9 BY MS. MCKAIG:
 10 Q Can you tell us anything more about what you
 11 heard in that regard?
 12 A That would be speculative on my part because it
 13 would have been second or thirdhand, but, you know,
 14 because those conversations were between the audit
 15 committee and the auditor, so if Sam or Gary came to talk
 16 to me about Raj, then they would be, you know, kind of
 17 conveying the notion that the auditors also wanted to see
 18 somebody different.
 19 Q And did the transition of Raj out of the CFO
 20 role have anything to do with Raj's integrity?
 21 A No.
 22 Q The United Kingdom revenue recognition issue
 23 that you talked to Mr. Patrick about -- Mr. Richard about
 24 earlier, was Raj involved in investigating that issue as
 25 well?

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1 A Yes, he was.
 2 Q And --
 3 A In fact, he was the one that raised it to my
 4 attention, and together the two of us raised it to the
 5 audit committee.
 6 Q And how did you find his -- his handling of that
 7 situation to be?
 8 A He had great integrity about it.
 9 Q I wanted to switch gears to the 2006 time frame.
 10 Do you recall at some point in 2006 Embarcadero
 11 did an internal review of certain stock option practices?
 12 A Yes.
 13 Q And what prompted that internal review, if you
 14 recall?
 15 A I'm not sure specifically what the impetus was,
 16 but one was -- one was done.
 17 Q How did you learn about it?
 18 A Through -- through the CFO.
 19 Q And what did he tell you about the internal
 20 stock option review of the company's stock option
 21 practices?
 22 A That I guess the audit committee and he had
 23 conferred, and they had commissioned an internal
 24 investigation which the controller would be conducting.
 25 Q And the controller being whom?

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1 A Her name was Jin.
 2 Q Is that Jin Jiang?
 3 A Yes.
 4 Q Was Mr. Shahbazian also involved in conducting
 5 that review?
 6 A He would have, you know, managed -- he managed
 7 Jin, but Jin did the actual work. So he must have
 8 reviewed it.
 9 Q Okay. What was the scope of that review?
 10 A I couldn't tell you specifically since, you
 11 know, I -- that was -- that was for Jin and Michael
 12 Shahbazian and the audit committee and PwC to decide, but
 13 they had started doing testing of stock options in
 14 general.
 15 Q Do you know whether they were reviewing stock
 16 option grants to rank-and-file employees?
 17 A I don't believe that that's what the focus was.
 18 Q What do you believe the focus was?
 19 A I think it was for directors and officers.
 20 Q And what was your role in the review, if any?
 21 A I tried to steer clear of it. I figured that
 22 the best thing I could do is recuse myself from it and
 23 let it run its due course.
 24 Q Were you asked to provide any information in
 25 connection with the review?

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1 A They didn't ask me for reports or anything that
 2 I can remember.
 3 Q And do you know what Raj's role was in the
 4 review, if anything?
 5 A They may have talked to him about it, but I
 6 don't really know specifically what his role might have
 7 been. I didn't get the impression he was involved in it.
 8 Q Do you know whether a memorandum was produced as
 9 a result of the review?
 10 A Yes, there was.
 11 Q And who drafted that memorandum?
 12 A I think it was Jin.
 13 Q Did you receive it?
 14 A Yeah, I did.
 15 Q Did you ever discuss that memorandum with Raj?
 16 A Not that I remember.
 17 Q At some point, the review turned into a formal
 18 investigation; is that right?
 19 A Right.
 20 Q Can you tell us what prompted that, how that
 21 came about?
 22 A Again, I wasn't involved in those deliberations,
 23 but I guess once this report was reviewed by the audit
 24 committee and the auditors, they felt that they needed to
 25 take it a step further so --

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1 Q And who -- who conducted the formal
 2 investigation?
 3 A An outside law firm.
 4 Q And what did the outside law firm -- what was
 5 the scope of their investigation, if you know?
 6 A I don't -- you know, I wasn't involved in
 7 defining their scope. That was strictly the purview of
 8 the audit committee.
 9 Q But do you know what it was?
 10 A They were looking into stock option granting
 11 practices in general.
 12 Q So beyond option grants to executives and
 13 directors?
 14 A I believe so, yes.
 15 Q And did you have any discussions with Raj about
 16 that formal investigation?
 17 MR. TASHJIAN: Objection; vague as to time.
 18 THE WITNESS: If we talked about it, it was probably
 19 that we had to steer clear of it and let the investigator
 20 do his work.
 21 BY MS. MCKAIG:
 22 Q I think I just have one question before I turn
 23 it over to the folks at the SEC, and, that is, Mr. Wong,
 24 do you believe that Raj always acted in the best
 25 interests of Embarcadero?

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1 MR. TASHJIAN: Objection; leading, vague.
 2 THE WITNESS: Yes.
 3 MS. MCKAIG: Should we go off the record, switch
 4 places?
 5 THE VIDEOGRAPHER: Going off the record, the time is
 6 2:19.
 7 (Recess taken.)
 8 THE VIDEOGRAPHER: Back on the record, the time is
 9 2:36.
 10
 11 EXAMINATION
 12 BY MR. TASHJIAN:
 13 Q Good afternoon, Mr. Wong. My name is Robert
 14 Tashjian. I'm joined by Susan LaMarca. We're attorneys
 15 for the Securities and Exchange Commission. We
 16 appreciate your time this afternoon and today and also
 17 appreciate the fact that you came here from Hong Kong to
 18 answer some questions.
 19 A Sure.
 20 Q I want to ask you about your -- your position or
 21 your job in between college and business school. I think
 22 you said you worked on Wall Street?
 23 A Yes.
 24 Q Where did you work?
 25 A Bank of America.

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1 Q What did you do for them?
 2 A I was in their -- initially in their training
 3 program for what they call the World Banking Division.
 4 Q And what did you do?
 5 A I was the backup to an account officer on a
 6 number of accounts where Bank of America had global
 7 relationships, so depository and also lending.
 8 Q And did you do that for the entire time before
 9 you went to business school?
 10 A Actually the summer before I went to business
 11 school, I had interned with a venture capital firm in
 12 Boston. So I, you know, had a very short stint before
 13 school started.
 14 Q And then after business school, you said that
 15 you worked for venture companies -- venture funds --
 16 A Right.
 17 Q -- is that right?
 18 A Yes.
 19 Q And correct me if I'm wrong, you worked on
 20 behalf of small companies seeking -- seeking funding; is
 21 that right?
 22 A No, we -- we were a partnership with funding
 23 from institutional investors where they wanted to
 24 allocate some portion of their assets to, you know,
 25 high-risk venture capital type investments, and our group

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1 specialized in medical technology.
 2 Q Did you actually work at the medical technology
 3 companies that you helped fund?
 4 A That would be the exception, not the rule, but
 5 over time -- normally we would -- the normal business
 6 model would be there would be companies that would look
 7 for funding. They'd write a business plan, submit it to
 8 their firm. We would review it.
 9 If it looked interesting, we would do some due
 10 diligence on it, and then the partners would make a
 11 decision, but one of the things that occurred was that we
 12 started an incubator, and I was in charge of the
 13 incubator to actually start our own companies.
 14 So we would, you know, find interesting
 15 commercial areas, license technology from medical
 16 schools, and see if we could make a go of them. So in
 17 those instances, I would be involved in these companies,
 18 at least at the outset, typically for no more than a
 19 year.
 20 Q These incubators, were the companies public at
 21 that point?
 22 A Oh, no.
 23 Q Prior to Embarcadero, had you worked at a public
 24 company?
 25 A No.

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1 Q Had you --
 2 A Well, Bank of America is a public company but --
 3 Q Good point. Had you ever been a CEO of a public
 4 company before?
 5 A No.
 6 Q When did you become the CEO or the chief
 7 executive officer of Embarcadero Technologies?
 8 A When we started the company.
 9 Q And that was roughly 1993?
 10 A '93, '94, yeah.
 11 Q And you were -- were you on the board when you
 12 started the company as well?
 13 A Yes.
 14 Q And what was your position on the board?
 15 A I was chairman.
 16 Q So you were the chief executive officer and the
 17 chairman of Embarcadero Technologies; is that right?
 18 A Right.
 19 Q And Embarcadero Technologies went public in
 20 2000?
 21 A Right. SEC
 22 Q What was your role at the company when
 23 Embarcadero Technologies went public?
 24 A I was CEO and chairman.
 25 Q And what was the advantage, if there was any, of

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1 the firm Embarcadero Technologies to go public?
 2 MS. MCKAIG: Objection; compound.
 3 THE WITNESS: Our rationale for going public was -- we
 4 were competing against much better established companies
 5 than ourselves, you know, such as BMC Software. So it
 6 was a way to convince our large corporate clientele that
 7 we were a company that was going to be around.
 8 BY MR. TASHJIAN:
 9 Q By going public, did -- did the company receive
 10 any proceeds from the sale of its stock?
 11 A Yes.
 12 Q So would you characterize it -- is it fair to
 13 say that that was one of the advantages for the company
 14 by going public?
 15 A We didn't really do it for financing reasons
 16 because we were cash flow positive. We had consistently
 17 generated positive cash flow, and we didn't have any big
 18 acquisitions immediately in mind.
 19 I mean, that was a possibility, and one of the
 20 things we thought about with the proceeds from the IPO,
 21 but we didn't need it to sustain our operations. The key
 22 thing for us was really about making a statement to our
 23 strategic customers that, you know, we were now a company
 24 that was going to be around.
 25 Q How much money did Embarcadero Technologies

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1 raise in the IPO?
 2 A I think -- it was a pretty small offering. I
 3 think it was about 40 million.
 4 Q \$40 million?
 5 A Right. SEC
 6 Q And prior to the initial public offering, how
 7 many shareholders did Embarcadero -- Embarcadero
 8 Technologies have?
 9 A I think we had five.
 10 Q And after the IPO?
 11 A I couldn't tell you how many there were in the
 12 IPO itself, but they tended to be larger institutions.
 13 Q You mentioned that earlier. What do you mean by
 14 "larger institutions"?
 15 A Basically, you know, mutual funds, pension
 16 funds, hedge funds.
 17 Q Okay. The mutual funds, for example, Vanguard
 18 manages mutual funds; is that right?
 19 A Those type of funds. I don't think Vanguard was
 20 one. They would tend to be ones that focused on
 21 technology and even more so on software.
 22 Q And what kind of -- which mutual funds placed
 23 money within Embarcadero -- or invested in Embarcadero
 24 Technologies?
 25 A Let's see. In -- let's see. Let's just say in

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1 Los Angeles, Trust Company of the West, TCW, was an
 2 investor. Capital Group was an investor. There were --
 3 I think Fidelity was not, but Putnam -- I couldn't
 4 remember all the names, but, you know, a number of them
 5 were recognizable names if you're in that field.
 6 Q And you mentioned pension funds. Which pension
 7 funds invested in Embarcadero Technologies after the
 8 initial public offering?
 9 A I can't think of a specific name. It probably
 10 would have been through some other institution. So they
 11 might -- the pension fund invests in some other fund, and
 12 they place money, and they allocate some of the
 13 technology.
 14 Q Following the initial public offering,
 15 Embarcadero filed reports with the Securities and
 16 Exchange Commission; is that right?
 17 A Yes.
 18 Q And among those reports would be annual reports
 19 filed on Forms 10-K; is that right?
 20 A Yes.
 21 Q And quarterly reports filed on Forms 10-Q?
 22 A Yes.
 23 Q As well as proxy statements, invitations to
 24 shareholder meetings and shareholder votes; is that
 25 right?

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1 A Right.
 2 Q And while you were the chairman and chief
 3 executive officer, did Embarcadero do that on a regular
 4 basis?
 5 A Yes.
 6 Q It made those filings?
 7 A Yes.
 8 Q And those filings were made available to the
 9 companies' investors; is that right?
 10 A Yes.
 11 Q With regard to the annual reports on Forms 10-K
 12 and the quarterly reports on Forms 10-Q, those contained
 13 financial statements describing the financial condition
 14 of Embarcadero Technologies; is that right?
 15 A That's correct.
 16 Q And you've signed -- as the chief executive
 17 officer and as the chairman, you signed those Forms 10-K
 18 and 10-Q; is that right?
 19 A That's right.
 20 Q Who else signed those reports?
 21 A The CFO would also sign, I believe, and, of
 22 course, the auditors would have to have an opinion
 23 letter.
 24 Q Who was the chief financial officer who signed
 25 the Forms 10-K and 10-Q between 2000 and 2005?

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1 A Raj Sabhlok.
 2 Q You just mentioned an opinion letter from the
 3 auditors.
 4 Did the auditors actually draft the company's
 5 financial statements in the first instance?
 6 A No.
 7 Q What was the auditor's role with respect to
 8 reviewing or -- I'm sorry. Let me withdraw that
 9 question.
 10 What was the auditor's role? Did they simply
 11 review and audit the financial statements; is that right?
 12 MR. RICHARD: Objection; compound and leading.
 13 THE WITNESS: Yes.
 14 BY MR. TASHJIAN:
 15 Q Counsel, Mr. Pattison's attorney, asked you at
 16 some point today about the Form 10-K, the annual report
 17 that was filed for the fiscal year 2000.
 18 MR. SCHINDLER: I think you misspoke because you said
 19 "counsel." So I don't think he asked me. You meant
 20 Mr. Wong?
 21 MR. TASHJIAN: Counsel -- what I meant was counsel
 22 asked Mr. Wong. Maybe I did misstate.
 23 MR. RICHARD: You can call me Mr. Patrick.
 24 MS. LaMARCA: It's a term of endearment.
 25 MR. RICHARD: I've got two here. You don't need to --

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1 MS. LaMARCA: It's two.
 2 MR. RICHARD: Okay. Thank you.
 3 BY MR. TASHJIAN:
 4 Q In any event, wherever I left off, I want to ask
 5 you about Exhibit 2, which we looked at earlier today.
 6 A Okay. SEC
 7 Q Exhibit 2 is the annual report filed on Form
 8 10-K for fiscal year 2003. I believe it was filed
 9 sometime in early 2004.
 10 If I could ask you to turn to the last page of
 11 Exhibit 2, you'll see a certification?
 12 A Yes.
 13 Q You'll see a signature line for Mr. Sabhlok. Is
 14 that the certification that you were referring to,
 15 Mr. Sabhlok signed this certification as well as you did;
 16 is that right?
 17 A Yes.
 18 Q And on page 53 of Exhibit 2, you'll see a
 19 signature by Mr. Sabhlok as the senior vice president of
 20 finance and corporate development?
 21 MR. RICHARD: What page was that?
 22 MR. TASHJIAN: 53.
 23 MR. RICHARD: Thank you.
 24 THE WITNESS: Yes.
 25 BY MR. TASHJIAN:

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1 Q Before signing -- and I'm sorry. You also see
 2 your signature down there further underneath the "Power
 3 of Attorney" section on page 53; is that right?
 4 A Right.
 5 Q And you signed as the chairman and president and
 6 chief executive officer of the company; is that right?
 7 A Right.
 8 Q Before signing the annual report here that's
 9 been marked as Exhibit 2, did you review the document at
 10 all?
 11 MS. MCKAIG: Objection; vague as to "review."
 12 THE WITNESS: Yes, I would have a look at the report,
 13 and there would also be something that would be reviewed
 14 by the board and presumably the auditors.
 15 BY MR. TASHJIAN:
 16 Q What did Mr. Sabhlok do to -- before he signed
 17 the Form 10-K that we see here marked as Exhibit
 18 Number 2?
 19 MS. MCKAIG: Objection; lacks foundation, calls for
 20 speculation.
 21 THE WITNESS: I would assume he reviewed it.
 22 BY MR. TASHJIAN:
 23 Q And why do you make that assumption?
 24 A That would have been one of his job
 25 responsibilities.

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1 Q On the first page of Exhibit 2, down towards the
 2 bottom, you'll see -- you'll see a section that says,
 3 "Number of shares of Common Stock outstanding at
 4 March 3, 2004."
 5 Do you see that?
 6 A Yes.
 7 Q There's 27,122,115 shares of stock outstanding;
 8 is that right?
 9 A Yes.
 10 Q On page 10 of Exhibit 2, there's a line that
 11 says, "We had approximately 37 stockholders of record as
 12 of December 31, 2003."
 13 MR. SCHINDLER: I'm sorry. What page?
 14 MR. TASHJIAN: Page 10.
 15 MR. SCHINDLER: Okay. Got it.
 16 BY MR. TASHJIAN:
 17 Q "We had approximately 37 stockholders of record
 18 as of December 31, 2003. However, we believe there are
 19 significantly more beneficial holders of our common
 20 stock."
 21 What does that phrase mean?
 22 A I'm sorry. Which --
 23 Q The phrase "beneficial owners."
 24 A I believe it would refer to investors where they
 25 invested through another entity.

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1 Q For example, through a mutual fund?
 2 A Yeah, sure.
 3 Q Or if the shareholders held -- had a brokerage
 4 account, they would be considered to hold their shares in
 5 street name? Have you heard that phrase before?
 6 MR. RICHARD: Objection; leading, improper expert
 7 testimony from this witness.
 8 THE WITNESS: I'm sorry. Could you --
 9 BY MR. TASHJIAN:
 10 Q Have you heard the term "street" -- hold
 11 somebody's share in street name before?
 12 A Yes, I've heard the term.
 13 Q And what do you understand it to mean?
 14 MR. RICHARD: Same objection; lacks foundation, calls
 15 for speculation, improper expert testimony from this
 16 witness.
 17 THE WITNESS: I believe it means that it's held in the
 18 name of a brokerage firm.
 19 BY MR. TASHJIAN:
 20 Q How did you come to that understanding of what
 21 that meant?
 22 MR. RICHARD: Same objections.
 23 THE WITNESS: I couldn't tell you.
 24 BY MR. TASHJIAN:
 25 Q I mean you went to business school, right?

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1 A Sure.
 2 Q You worked on Wall Street?
 3 A Right.
 4 Q You worked at a venture firm before you started
 5 your own company?
 6 A Right.
 7 Q You ran a public company; is that right?
 8 A Yes.
 9 Q And you spoke -- it sounds like from your
 10 testimony earlier today, you spoke regularly with
 11 analysts on earnings calls; is that right?
 12 A Yes.
 13 Q Do you think that the phrase "to hold in street
 14 name" was something that you heard while you were the
 15 chairman and chief executive officer of Embarcadero
 16 Technologies?
 17 A I couldn't tell you specifically. Could well
 18 have happened. I think that this wasn't a phrase that
 19 came up commonly in discussions with investors or
 20 analysts.
 21 Q Put it another way, did you -- when you were the
 22 CEO of Embarcadero, did you think the company had only 37
 23 investors?
 24 MR. RICHARD: Objection; argumentative.
 25 THE WITNESS: To be honest, sitting here today, I'm

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1 kind of surprised it only said 37 because, yeah, I would
 2 think the number of holders would be larger.
 3 BY MR. TASHJIAN:
 4 Q And why is that?
 5 A It seemed like we had a fair number of -- of
 6 investors, just an impression.
 7 Q I think we'll return to Exhibit 2 in a few
 8 minutes. I do want to ask you first about the reasons
 9 behind issuing stock options to employees.
 10 A Right. SEC
 11 Q Did you believe that -- as you testified
 12 earlier, that granting stock options to employees aligned
 13 the interests of employees with the company's public
 14 shareholders?
 15 A Yes.
 16 Q And why was that?
 17 A Because hopefully they would think about
 18 spending money as though it was their own money.
 19 Q Was there -- were there any other benefits that
 20 you could think of in granting stock options to
 21 employees?
 22 A Well, I would hope it would be a motivational
 23 tool, that they could go home and say, hey, I'm a
 24 principal in this company that I work for. I'm not just
 25 a salary man.

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1 Q Motivational in what way?
 2 A Just -- just what I mentioned, you know, I think
 3 it -- hopefully it feels better to you to say that I'm a
 4 part owner in what I devote 8, 10, 12 hours a day to than
 5 I'm just here for a paycheck. SEC
 6 Q Is it fair to say that one of the benefits of
 7 granting stock options at a certain exercise price to
 8 employees would be that the employees would capture the
 9 upside of the stock if the stock appreciated?
 10 A Sure.
 11 Q And how is that?
 12 A I'm sorry?
 13 Q How is it that employees would -- would capture
 14 the upside? What does that mean?
 15 A Well, if the company continued to thrive and the
 16 stock price went up, then hopefully their stock options
 17 would have some financial value to them.
 18 Q Okay. What did you mean when you discussed
 19 dilution of shareholder interest by granting stock
 20 options?
 21 A There would be more shares outstanding. So if
 22 you owned, you know, a fixed number of shares today and
 23 the company issued stock options, then your percentage
 24 ownership of the company would be reduced.
 25 Q You spoke with analysts on a regular basis, it

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1 sounds like; is that right?
 2 A Sure.
 3 Q Did analysts ask you about the dilution of
 4 Embarcadero stock?
 5 A They would ask about the shares outstanding.
 6 Q And -- and by asking about the shares
 7 outstanding, did you respond by taking into account the
 8 number of stock options that had been granted as well?
 9 A Typically the number they'd want to hear is the
 10 fully diluted number.
 11 Q And what do you mean by that?
 12 A The outstanding shares plus the options that had
 13 been granted.
 14 Q Was it important to you as the chief executive
 15 officer to keep the dilution as low as possible?
 16 A Yes.
 17 Q And why was that?
 18 A I think it's very similar to, you know, if you
 19 have so many dollars in this case, it would be shares,
 20 you want to make sure you try to maximize their value.
 21 So the more shares you have, the more ways that you split
 22 the pie, so to speak.
 23 Q So in other words, there was an incentive for
 24 you as the CEO to limit the number of shares that were
 25 granted in stock options to employees; is that fair to

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1 say?
 2 MS. MCKAIG: Objection; leading.
 3 THE WITNESS: Yes, I -- I would -- I should be
 4 judicious in how those -- those grants are given so that
 5 we're not, you know, increasing the share base
 6 dramatically or unnecessarily, I should say.
 7 BY MR. TASHJIAN:
 8 Q In what way did stock options help retain
 9 employees at the company?
 10 A Through the vesting.
 11 Q And how was that?
 12 A When you received a stock option grant, it
 13 didn't mean that, you know, you immediately had the right
 14 to go and buy the shares and go sell them on the open
 15 market because that would be shooting ourselves in the
 16 foot.
 17 You wanted to use it as a tool to say that, hey,
 18 you know, here's part ownership in the company, but you
 19 have to, quote, earn it, and earn it typically meant a
 20 time-based vesting.
 21 Q So the longer that somebody stayed at the
 22 company --
 23 A Sure.
 24 Q -- the more shares that would vest; is that
 25 right?

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1 A Sure, right, because retention --
 2 MR. SCHINDLER: Hang on. You guys were talking over
 3 each other, so slow down.
 4 THE WITNESS: Sorry.
 5 BY MR. TASHJIAN:
 6 Q The longer an employee would stay at a company,
 7 the more shares that would vest; is that right?
 8 A Yes.
 9 Q And would you -- did you consider the ratio of
 10 vested to unvested shares that any particular employee
 11 had when you were considering their ability to retain
 12 that employee's services?
 13 A Yes.
 14 Q And in what way did you do that?
 15 A Well, we would look at -- when we -- when there
 16 might be an opportunity to review their stock options,
 17 we'd say, well, jeez, how much have they vested versus
 18 unvested, you know, what is their incentive to stay.
 19 Q And if they had a higher proportion of vested
 20 stock options, what would that mean to you?
 21 A We probably have a running greater risk that
 22 this employee might decide to leave.
 23 Q Would that be an incentive for you to grant more
 24 stock options to that employee?
 25 MR. RICHARD: Objection; incomplete hypothetical.

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1 MR. SCHINDLER: Rob, you're -- you're --
 2 THE WITNESS: I'm sorry.
 3 MR. TASHJIAN: Why don't we go off the record and
 4 we'll -- even though the question is pending, I'll bring
 5 it back and we'll start again.
 6 THE VIDEOGRAPHER: This marks the end of Videotape
 7 Number Two in the deposition of Stephen Wong. Going off
 8 the record, the time is 2:58 p.m.
 9 (Recess taken.)
 10 THE VIDEOGRAPHER: Back on the record. Here marks the
 11 beginning of Videotape Number Three in the deposition of
 12 Stephen Wong. The time is 3:05.
 13 MR. TASHJIAN: And I apologize for running right up
 14 against the end of the tape. I guess I got a little
 15 over-excited.
 16 MR. SCHINDLER: Scintillating topic.
 17 BY MR. TASHJIAN:
 18 Q Mr. Wong, during your tenure as the chief
 19 executive officer, you were involved in the granting
 20 process of stock options to employees; is that right?
 21 A Yes.
 22 Q Before the break, we were discussing the
 23 retention value as it related to the vesting schedule.
 24 Do you recall that line of questioning?
 25 A Right, right, yes.

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1 Q Among the decisions that you made in terms of
 2 granting operations, did you consider the proportion of
 3 vested to unvested options that employees held when you
 4 were making your decisions?
 5 A Yes.
 6 Q And how did the -- how did that ratio of vested
 7 to unvested stock options affect your decision in
 8 granting -- in deciding to grant more options to an
 9 employee who had a larger proportion of unvested options?
 10 A If -- if an employee had very few unvested
 11 options left, then we would be probably more likely,
 12 assuming that they were performing and someone that we
 13 really wanted to retain, give them an additional option
 14 grant. *SEC*
 15 Q Can I ask you to turn back to Exhibit 2, which
 16 is the annual report on Form 10-K for Embarcadero for
 17 2003.
 18 A Sure.
 19 Q If I can ask you to turn to page 47, you'll see
 20 on that page, we're deep in the notes on the financial
 21 statement, and I'm interested in note 10 on page 47. It
 22 says, "Stock Option Plans."
 23 A Okay.
 24 Q The second paragraph from the bottom of page 47
 25 reads, "Since the date of the initial public stock

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1 offering, all stock option grants made during the year
 2 were at fair market value, which is defined as the
 3 closing share price on the day prior to the option grant
 4 date."
 5 Do you see that?
 6 A Yes.
 7 Q At the time you reviewed and signed Exhibit 2,
 8 were you aware that Embarcadero made that disclosure in
 9 its 10-K?
 10 A Yes, I must have seen this, yes.
 11 Q Do you see anyplace in note 10 where Embarcadero
 12 informed investors in its Form 10-K that the company
 13 granted stock options to employees at the low of the
 14 quarter?
 15 MS. McKAIG: Objection; argumentative.
 16 THE WITNESS: No.
 17 BY MR. TASHJIAN: *SEC*
 18 Q Do you see anyplace in note 10 where Embarcadero
 19 told investors that it granted stock options at the end
 20 of the quarter retroactively?
 21 MR. RICHARD: Objection.
 22 MS. McKAIG: Same objection.
 23 THE WITNESS: Answer?
 24 MR. SCHINDLER: If you understand the question.
 25 THE WITNESS: Yeah.

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1 No.

2 BY MR. TASHJIAN:

3 Q Do you see any portion in note 10 where

4 Embarcadero informed its investors that it granted

5 in-the-money stock options to its employees?

6 MR. RICHARD: Objection; assumes facts not in

7 evidence, argumentative, lacks foundation. SEC

8 THE WITNESS: No.

9 BY MR. TASHJIAN:

10 Q Do you know of any -- do you know of anyplace in

11 the Form 10-K filed for fiscal year 2003 where

12 Embarcadero made any of those disclosures? SEC

13 MR. RICHARD: Objection; assumes facts not in

14 evidence, overbroad, compound. SEC

15 THE WITNESS: Not that I'm aware of.

16 BY MR. TASHJIAN:

17 Q At any -- in any of the Form 10-Ks that -- Forms

18 10-K that you reviewed and signed as the chief executive

19 officer, can you think of any of them prior to 2006 that

20 informed investors that the company granted stock options

21 to employees at the low of the quarter?

22 A No.

23 MS. MCKAIG: Objection; assumes facts not in evidence,

24 lacks foundation, calls for speculation.

25 BY MR. TASHJIAN:

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1 Q Can you think of any filing that Embarcadero

2 made with the Securities and Exchange Commission prior to

3 2006 in which the company disclosed that it granted stock

4 options at the low of the quarter?

5 MS. MCKAIG: Same objections.

6 MR. RICHARD: Also misstates the testimony and it's

7 vague when you say "stock options."

8 THE WITNESS: No.

9 BY MR. TASHJIAN:

10 Q Embarcadero had outside advisors; is that right?

11 A Yes.

12 Q Among those were legal advisors?

13 A Correct. SEC

14 Q Who was -- who was the lawyer -- the outside

15 lawyer who provided advice to Embarcadero during the time

16 that you were the chief executive officer?

17 A Stephen Ferruolo.

18 Q Did you ever ask Mr. Ferruolo if the company

19 needed to disclose to its investors that it granted

20 share -- stock options to its employees at the low of the

21 quarter?

22 A No, I did not.

23 Q You didn't seek that advice from Mr. Ferruolo?

24 A No, I didn't.

25 Q What about any other lawyer that worked on

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1 behalf of Embarcadero?

2 A No.

3 Q Do you know if Mr. Sabhlok asked Mr. Ferruolo if

4 it were permissible under -- under the law for

5 Embarcadero to grant stock options to employees at the

6 low of the quarter?

7 MR. SCHINDLER: I'm going to object to the legal

8 conclusion that you're asking for and to the suggestion

9 that it's not legal to do so.

10 MS. MCKAIG: And I object. It lacks foundation, calls

11 for speculation.

12 THE WITNESS: Hard for me to say what, you know, Raj

13 did or didn't do.

14 BY MR. TASHJIAN:

15 Q Do you know whether Mr. Sabhlok ever asked

16 advice from Mr. Ferruolo about whether it was permissible

17 to grant stock options to employees at the low of the

18 quarter?

19 MR. SCHINDLER: Again, objection to the

20 characterization that it's somehow impermissible to do

21 so.

22 MS. MCKAIG: I'll also object; calls for a legal

23 conclusion and it's vague.

24 THE WITNESS: Not that I know of. I was shown an

25 earlier exhibit today about an e-mail that he had with

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1 Mr. Ferruolo.

2 BY MR. TASHJIAN:

3 Q You're referring to Exhibit 24?

4 A I don't remember the exhibit number, but --

5 Q If I could ask you to turn to Exhibit Number 24.

6 A Yes, that's it.

7 Q Is there anything in Exhibit 24 that you see

8 where Mr. Sabhlok is informing Mr. Ferruolo that

9 Embarcadero granted stock options at the low of the

10 quarter?

11 A From this e-mail, he's asking the question.

12 Q And what's the question?

13 A "Can Stephen grant awards retroactively?"

14 Q And do you see anyplace in the Exhibit 24 where

15 Mr. Sabhlok informs Mr. Ferruolo that, in fact,

16 Embarcadero had granted stock options retroactively?

17 MR. SCHINDLER: The document speaks for itself.

18 MS. MCKAIG: Objection; argumentative.

19 THE WITNESS: Yeah, I mean, it may be a matter of

20 semantics.

21 BY MR. TASHJIAN:

22 Q What do you mean by that?

23 A How someone that read this might interpret it.

24 Q Did Mr. Sabhlok ever tell you that he had told

25 Mr. Ferruolo that, in fact, Embarcadero granted stock

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1 options retroactively?
 2 A Not that I know of.
 3 Q What about Mr. Pattison, did he ever tell you
 4 that he had told Mr. Ferruolo that Embarcadero granted
 5 stock options retroactively?
 6 MR. RICHARD: Objection; vague and argumentative as to
 7 "retroactively," also contrary to the prior testimony.
 8 MR. SCHINDLER: Do you know what retroactive means?
 9 THE WITNESS: In the past --
 10 MR. SCHINDLER: Okay.
 11 THE WITNESS: -- after the fact.
 12 Not that I know of.
 13 BY MR. TASHJIAN: SEC
 14 Q Ask you to turn back to Exhibit 2, page 37.
 15 Again, it's a note to -- a footnote in the financial
 16 statements, note 1, "Organization and Summary of
 17 Significant Accounting Policies."
 18 Do you see that?
 19 A Yes.
 20 Q One of the significant accounting policies
 21 you'll see on page 40 under the heading "Stock-based
 22 compensation" in its Form 10-K that it filed in the
 23 fiscal year 2003, Embarcadero informed investors that
 24 "The Company accounts for employee stock options under
 25 Accounting Principles Board Opinion ('APB') No. 25,

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1 'Accounting for Stock Issued to Employees,' and follows
 2 the disclosure-only provisions of SFAS No. 123."
 3 Do you see that?
 4 A Yes.
 5 Q At the time you reviewed and signed Exhibit 2,
 6 were you aware that Embarcadero made that disclosure that
 7 it followed that particular significant accounting
 8 policy?
 9 A You know, I don't recall the specific, you know,
 10 guidelines, but I knew that there was, you know, some
 11 reference to some guidelines.
 12 Q And what do you mean by "guidelines"?
 13 A This SFAS number 123 and the other accounting
 14 opinion that you referred to.
 15 Q What was your accounting experience prior to
 16 starting Embarcadero?
 17 A Limited. I took accounting in business school.
 18 Q Were you a certified public accountant?
 19 A No.
 20 Q Did Embarcadero employ any certified public
 21 accountants?
 22 A At which point in time?
 23 Q After it went public in 2000.
 24 A I don't believe so, no.
 25 Q You don't know whether Michael Pattison was a

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1 CPA?
 2 A I don't believe he was at the time, no.
 3 Q At the time in 2001 -- do you believe at some
 4 point he became a CPA?
 5 A It's possible, but I don't know as a fact.
 6 Q Let's talk a little bit about the finance
 7 department.
 8 A Okay. SEC
 9 Q As the chief executive officer, did you -- did
 10 you roll up the financial statements each quarter?
 11 MS. MCKAIG: Objection; vague as to "roll up."
 12 THE WITNESS: You mean --
 13 MR. RICHARD: Vague as to time.
 14 THE WITNESS: -- did I prepare the financial
 15 statements?
 16 BY MR. TASHJIAN:
 17 Q That's right.
 18 A No.
 19 Q Who did in Embarcadero between 2000 and 2005?
 20 A It would have been the finance department.
 21 Q Who led the finance department?
 22 A Well, Raj was the CFO, and Michael Pattison was
 23 the controller.
 24 Q And why do you mention those two as the finance
 25 department?

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1 MS. MCKAIG: Objection; mischaracterizes the
 2 testimony.
 3 THE WITNESS: They were both performing financial
 4 functions.
 5 BY MR. TASHJIAN:
 6 Q Is it fair to say that Mr. Sabhlok was the head
 7 of the finance department as the chief financial officer
 8 between 2000 and 2005?
 9 MS. MCKAIG: Objection; leading.
 10 THE WITNESS: Yes, I think it would be. SEC
 11 BY MR. TASHJIAN:
 12 Q And we've heard some questions today about
 13 Mr. Sabhlok's accounting experience.
 14 Who did Mr. Sabhlok rely on to provide him with
 15 the accounting know-how at Embarcadero?
 16 MR. RICHARD: Objection; overbroad, lacks foundation,
 17 calls for speculation, vague as to time. SEC
 18 THE WITNESS: I think he would rely on Michael
 19 Pattison and others who worked for Michael.
 20 BY MR. TASHJIAN:
 21 Q Why do you mention Michael Pattison?
 22 A Because he was the controller.
 23 Q What was the controller's job between 2000 and
 24 2005?
 25 A He was pretty involved with preparing the

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1 financial reports.
 2 Q As the chief executive officer of Embarcadero
 3 Technologies, would you have expected the controller to
 4 be familiar with the significant accounting policies that
 5 Embarcadero informed investors it followed?
 6 A Yes, I would think so.
 7 Q What about Mr. Sabhlok, as the chief financial
 8 officer, would you have the same expectation?
 9 A Yes.
 10 Q Are you familiar today with the term "cheap
 11 stock charge"?
 12 A Yes.
 13 Q What's your understanding of what that means?
 14 MR. RICHARD: Objection; improper expert testimony.
 15 The witness's knowledge today is not relevant and not
 16 admissible in trial, lacks foundation.
 17 THE WITNESS: That there's some accounting treatment
 18 for -- for valuing a stock option, and that, you know,
 19 there's a charge as a result of how the pricing of an
 20 option was established.
 21 BY MR. TASHJIAN:
 22 Q When did you come to that understanding?
 23 MR. RICHARD: Same objections.
 24 THE WITNESS: I couldn't tell you specifically, you
 25 know, a date, but I would assume it's in the, you know,

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1 2007 time frame.
 2 BY MR. TASHJIAN: *SEC*
 3 Q Prior to 2007 when you were the chief executive
 4 officer, did you have any awareness of whether
 5 Embarcadero Technologies took a deferred compensation --
 6 deferred stock-based compensation charge on its financial
 7 statements?
 8 A Yes, I was.
 9 Q And how did you come to that awareness?
 10 A Well, it would be in the -- it would be in our
 11 financial reports.
 12 Q Did analysts ask you about stock-based
 13 compensation charges?
 14 A Yes, they did.
 15 Q When? On these calls that you would have
 16 quarterly?
 17 A Often they would ask what the charges might be.
 18 Q Is it fair to say then that during the time you
 19 were the chief executive officer of Embarcadero
 20 Technologies, you were familiar with the concept of stock
 21 compensation charges?
 22 A The concept, yes.
 23 Q I'd like to show you an exhibit that's been
 24 previously marked as Number 8. It's an e-mail exchange.
 25 At the top, it's dated March 16, 2000.

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1 MR. RICHARD: Thank you.
 2 BY MR. TASHJIAN:
 3 Q I'm going to give you a minute or two --
 4 A Sure.
 5 Q -- as much time as you need to review it.
 6 A Okay.
 7 Q Do you recognize the e-mail exchange that's been
 8 marked as Exhibit Number 8?
 9 A Now I do, yes.
 10 Q Is it fair to say that this was an exchange you
 11 had with Mr. Pattison in March 2000 prior to the
 12 company's initial public offering?
 13 A Yes.
 14 Q What was Mr. Pattison telling you about in his
 15 e-mail?
 16 A Well, he was raising an issue where a stock
 17 option grant that I had been given when the company was
 18 still private under whatever review that he and the
 19 auditors or the law firm had done, that I would need to
 20 change the pricing of it, and basically I'm responding to
 21 him that it's fine, if that's what makes sense for the
 22 company, that's fine.
 23 Q And specifically you wrote "At least it will
 24 make a small dent in our stock compensation charges."
 25 Do you see that under the --

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1 A Yes, yes.
 2 Q What did you mean by that?
 3 A Well, I'm responding to his reference here
 4 about, you know, these -- these charges.
 5 Q Is it fair to say that you're saying because the
 6 stock price -- because your shares would be repriced to
 7 something higher, the company would have a smaller stock
 8 compensation charge?
 9 A I think that's what he was suggesting. He was
 10 making a recommendation to me based on whatever this
 11 guideline is that I had to be at 110 percent, and for
 12 whatever reason, they determined it was an extra nickel.
 13 Q At the time that you replied to Mr. Pattison in
 14 March 2000, was it your expectation Mr. Pattison
 15 understood what you meant by "stock compensation
 16 charges"?
 17 A In this specific context, yes, because, you
 18 know, he's citing very specific things. I presume he
 19 probably got this advice from counsel.
 20 Q After the company went public -- that was in
 21 April 2000; is that right?
 22 A Yes.
 23 Q -- the company kept on its books for a period of
 24 time stock compensation charges related to pre-IPO stock
 25 and option grants; is that right?

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1 A I don't remember. That could have been the
 2 case.
 3 Q You don't recall at this point?
 4 A I don't -- yeah, I don't recall at this point.
 5 Q Do you recall speaking to any analysts about the
 6 amortization of the company's stock -- stock-based
 7 compensation prior to the IPO?
 8 A No.
 9 Q Do you have any reason to dispute that you did?
 10 MR. RICHARD: Objection; totally vague and ambiguous.
 11 THE WITNESS: I'm sorry. I don't understand.
 12 BY MR. TASHJIAN:
 13 Q If we come across an analyst's transcript call
 14 where you or Mr. Sabhlok were questioned on the company's
 15 deferred compensation expenses that it took related to
 16 pre-IPO shares, do you have any reason to dispute that
 17 the company was questioned about those charges by
 18 analysts?
 19 MR. SCHINDLER: Objection as to form, compound in
 20 reference to both him and Mr. Sabhlok.
 21 MR. RICHARD: It also assumes facts not in evidence
 22 and the witness's prior answer that he doesn't remember
 23 suggests that he has a reason, so argumentative, lacks
 24 foundation.
 25 THE WITNESS: It's possible, but I don't remember

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1 anything specifically.
 2 MR. TASHJIAN: I'd like to ask you some questions
 3 about an e-mail exchange you had with Mr. Pattison in
 4 July 2000. I have a one-page printout of an exchange
 5 that we received from the company in its production to
 6 the SEC. It's one page, Bates numbered EMBT0285376.
 7 May I have this marked as Exhibit 350.
 8 MR. RICHARD: Couldn't go 275, huh?
 9 THE WITNESS: It's a nice round number.
 10 (The document referred to was marked by the
 11 Reporter as Deposition Exhibit 350 for identification and
 12 is attached hereto.)
 13 BY MR. TASHJIAN:
 14 Q Mr. Wong, could you take a look at Exhibit 350
 15 and tell me if you recognize the e-mail?
 16 A Yes.
 17 Q Is it fair to say it's an e-mail exchange you
 18 had with Mr. Pattison on July 8, 2000?
 19 A Yes.
 20 Q Can you tell me why Mr. Pattison -- if you know,
 21 why Mr. Pattison at the end of the paragraph in the
 22 middle of the page "we can take the advantage" -- I'm
 23 sorry -- "we can take the average of the high/low and
 24 grant the shares at \$12.80"?
 25 A I think it speaks for itself. He's saying, you

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1 know, there may be a possibility of giving him a
 2 different price.
 3 Q A different price than the date -- than Mr. Chou
 4 was appointed to the board of directors; is that right?
 5 A Apparently.
 6 Q Why was Mr. Pattison recommending a price for
 7 the stock options to you?
 8 A Hard for me to say.
 9 Q You reply back, "Thanks, unfortunately, we'll
 10 have to use July 5th which is when we formally appointed
 11 him to the Board."
 12 Do you see that?
 13 A Yes.
 14 Q Why did -- why did you -- why did the company
 15 have to record the grant date as July 5th?
 16 MS. MCKAIG: Objection; misstates the document,
 17 misstates his testimony.
 18 THE WITNESS: I believe it was because the grants to
 19 officers and directors had to be reviewed and approved by
 20 the board. So there would have been minutes, you know,
 21 appointing him to the board.
 22 BY MR. TASHJIAN:
 23 Q Is it -- we looked earlier at Exhibit 120 which
 24 were the minutes of the compensation committee of the
 25 board of directors. I have extra copies here --

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1 A Let me find it.
 2 Q -- if you don't have it in front of you.
 3 A Okay.
 4 Q Do you see it?
 5 A Yes.
 6 Q Counsel, I have an extra copy.
 7 Who -- who came up with the idea of appointing
 8 you as the committee of one to grant options to
 9 employees?
 10 A I think it was a dialogue with me and the board
 11 because, you know, we were hiring people pretty
 12 regularly, and it just became very cumbersome to have to
 13 run to the board, you know, every other day to ask for
 14 approvals.
 15 Q Mr. Ferruolo was the lawyer for the company from
 16 Heller Ehrman at the time of this meeting on October 12,
 17 2000?
 18 A Yes, yes.
 19 Q Did you ask Mr. Ferruolo about what the correct
 20 method was for granting stock options to employees?
 21 MR. SCHINDLER: Objection to the vague and ambiguous
 22 "correct."
 23 MR. TASHJIAN: That's fair enough.
 24 Q Did you ask Mr. Ferruolo about how you should
 25 grant options to employees now that you had been

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1 delegated this authority by the board?
 2 A No, I did not.
 3 Q Why not?
 4 A Because we had been granting options for a
 5 couple of quarters as a public company and, you know, he
 6 had seen the paperwork of -- or the -- what we had done
 7 as far as past grants in the other quarters.
 8 Q Did you ask -- now, I'm sorry -- in 2000, who is
 9 the independent auditor for the -- for Embarcadero
 10 Technologies?
 11 A PwC.
 12 Q Did you ask PwC about how to grant options to
 13 employees now that you had been delegated this authority
 14 in October 2000?
 15 MR. SCHINDLER: Objection; vague when you say -- if he
 16 asked how to do it, it's vague. I'm not sure I
 17 understand the question, the methodology, the --
 18 MR. TASHJIAN: That's fair enough.
 19 Q Did you ask PwC about how to grant stock options
 20 to employees after you had been delegated the authority
 21 in October 2000?
 22 A No, I didn't.
 23 Q Why not?
 24 A It just didn't occur to me.
 25 Q So you did not ask PwC about how to account for

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1 stock options that you approved to employees if you had
 2 granted them at the low of the quarter in October 2000?
 3 A I'm sorry. Could you --
 4 Q I'm sorry. I'll rephrase. **SEC**
 5 So when you were delegated the authority to
 6 grant options to employees --
 7 A Yes.
 8 Q -- did you ask PwC about how to account for them
 9 if you granted them at the low of the quarter?
 10 A No, I didn't.
 11 Q Why not?
 12 A That's outside of my area of expertise. I
 13 assume that, you know, our financial department would get
 14 their arms around that.
 15 Q And why did you assume that the finance
 16 department would get their arms around that?
 17 A Well, because they had given, you know, anything
 18 that PwC would ask for as far as documentation, they had
 19 access to, and it was an open-door policy as far as PwC
 20 and any of the officers of the company.
 21 Q When you say the finance department in October
 22 2000, are you referring to people that included the chief
 23 financial officer, Mr. Sabhlok?
 24 A Yes.
 25 Q And were you referring also to the controller,

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1 Mr. Pattison?
 2 A Sure.
 3 Q You'll see on the last page of Exhibit 120 a
 4 list of stock option plans with a date 10-12-2000.
 5 Do you see that?
 6 A Yes.
 7 MR. RICHARD: Excuse me.
 8 BY MR. TASHJIAN:
 9 Q What -- what was the purpose of attaching this
 10 particular list to Exhibit 120; do you know?
 11 A Not specifically. It looks like it's a
 12 document --
 13 MR. SCHINDLER: Don't guess. He's asking you a
 14 question.
 15 THE WITNESS: Okay. I'm sorry. I don't know.
 16 MR. TASHJIAN: That's fair enough.
 17 Q I can turn your attention to number 1 on the
 18 first one. It says, "Mr. S. Wong made recommendations to
 19 the Board of stock option grants for new employees."
 20 Do you see the section that follows the resolved
 21 section and makes reference to an Exhibit A?
 22 A Okay. Yeah.
 23 Q Do you see that?
 24 A Yes.
 25 Q Was it your expectation that the stock options

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1 that are attached on the list to Exhibit 120 would be
 2 dated and priced as of October 12, 2000?
 3 A I would think so.
 4 Q And why is that?
 5 A Because that's the date on the exhibit.
 6 Q So, for example, on the list, you'll see a
 7 person named Nestor Andaya who is to receive 1,000
 8 shares?
 9 A Yes.
 10 Q You would expect that Mr. Andaya's stock grant
 11 would be dated October 12, 2000 and priced that day?
 12 A Yes.
 13 MS. MCKAIG: Objection; that's inconsistent with prior
 14 testimony about the pricing and dating of option plans.
 15 MR. RICHARD: I'm just going to object. I think you
 16 misspoke. You said stock instead of stock options.
 17 MR. TASHJIAN: I'll revise and extend my question to
 18 mean stock options if I actually said stock.
 19 Q Mr. Wong, you were asked earlier about
 20 Exhibit 178 which may be in the pile to your left.
 21 A Okay. Yes.
 22 Q You recall that Exhibit 178 is an e-mail from
 23 Jin Jiang in August 2006 that forwards on recommendations
 24 from PricewaterhouseCoopers about the proper mechanics
 25 for new recommendations for granting to newly hired

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1 employees?
 2 A Yes.
 3 Q So specifically on page -- the third page of
 4 Exhibit 120, you'll see the recommendation, that's price
 5 of option -- I'm sorry -- price of option grant set twice
 6 a month on the 15th and on the last day of the month for
 7 new hires.
 8 Do you see that?
 9 A Yes.
 10 Q Mr. Pattison made that same recommendation in
 11 the year 2000, six years before Exhibit 178, didn't he?
 12 A I don't remember that.
 13 MR. TASHJIAN: Let me show you an e-mail that's dated
 14 October 20, 2000. It's a three-page printout of a
 15 message and attachment. It's Bates labeled EMBT0299193
 16 through 95.
 17 May I have this marked as Exhibit 351, please.
 18 (The document referred to was marked by the
 19 Reporter as Deposition Exhibit 351 for identification and
 20 is attached hereto.)
 21 BY MR. TASHJIAN:
 22 Q Mr. Wong, do you --
 23 MR. SCHINDLER: Hang on a second. Can I look at it?
 24 MR. TASHJIAN: Oh, sure.
 25 MR. SCHINDLER: Was this cut off? There's nothing on

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1 the "to" line.
 2 MR. TASHJIAN: This is how it was produced to us.
 3 I'll make that representation.
 4 MR. RICHARD: No, but you do point, though, that
 5 counsel represented that this was sent to the witness is
 6 really quite misleading, and his last question was
 7 Mr. Pattison made that same recommendation six years
 8 earlier. So I'll object. It's misleading, lacks
 9 foundation, suggests that to this witness based on this
 10 document.
 11 BY MR. TASHJIAN:
 12 Q Well, Mr. Wong, I certainly didn't mean to
 13 mislead you. I don't believe I said that this e-mail was
 14 sent to you. I wanted to ask you questions about the
 15 e-mail.
 16 A Okay. SEC
 17 Q Do you recognize the document that's been marked
 18 as Exhibit 351?
 19 A No.
 20 Q Do you recognize any part of it, including the
 21 attachment -- the two pages that appear to follow the
 22 e-mail?
 23 A No, I don't.
 24 Q So you have no -- you have no recollection then
 25 that Mr. Pattison in October 2000, shortly after you were

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1 delegated the authority to grant options, recommended
 2 that grants would be approved on the 15th and the last
 3 day of every month?
 4 A No, I don't remember this.
 5 Q Putting Exhibit 351 aside, do you have any
 6 recollection of Mr. Pattison bringing that recommendation
 7 to your attention in the time period of the fall 2000?
 8 MR. SCHINDLER: Asked and answered.
 9 THE WITNESS: No, I don't remember it.
 10 BY MR. TASHJIAN:
 11 Q Mr. Wong, I think you testified that you were
 12 not involved in the mechanics of the stock granting --
 13 stock option granting process; is that fair?
 14 A Yes.
 15 Q What did you mean by that?
 16 A The generation of the paperwork. To tell you
 17 the truth, I wouldn't know what is involved once I had,
 18 you know, approved a set of stock option grants what
 19 happened after that.
 20 Q Who did you believe, when you were the chief
 21 executive officer, was responsible for the mechanics of
 22 the stock option granting process between 2000 and 2005?
 23 A Michael Pattison.
 24 Q Why do you say that?
 25 A He was the guy who had been, you know,

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1 generating the paperwork.
 2 Q When you say "paperwork," what do you mean?
 3 A The actual grant.
 4 Q What do you mean by "the actual grant"?
 5 A So if -- you know, I think you referenced Nestor
 6 Andaya -- if Nestor Andaya got a thousand shares, he
 7 would generate the stock option grant with his name on it
 8 with a thousand.
 9 Q There was some documentation called a stock
 10 option agreement, I believe I have the phrase right,
 11 looked like a contract between the company and the
 12 grantee.
 13 Is that what you're referring to?
 14 A Yes, yes.
 15 Q And that stock option agreement was signed on
 16 behalf of the company by Mr. Sabhlok; is that correct?
 17 A I don't remember.
 18 Q Did you sign those documents on behalf of the
 19 company?
 20 A I could have, yes.
 21 Q Do you recall doing that?
 22 A Certainly could have happened. I don't, you
 23 know, remember specific incidents. I'm sure that's easy
 24 to find out. SEC
 25 Q Other than the stock option agreements, what

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1 other mechanics was Mr. Pattison responsible for, if any?
 2 A Keeping a tally of the total number of -- of
 3 options in the -- in the option grant pool.
 4 Q And how would he know how many to tally up?
 5 A Through the list that we would compile each
 6 quarter and that I would sign.
 7 Q Where did Mr. Pattison receive the information
 8 about the potential recipients of the stock option
 9 grants?
 10 MR. RICHARD: Objection; overbroad.
 11 MR. TASHJIAN: From 2000 to 2005.
 12 MR. SCHINDLER: I didn't understand the question. Can
 13 you repeat that?
 14 MR. TASHJIAN: Sure. Maybe it would be helpful to
 15 look at a specific document.
 16 If you don't mind, why don't we just take a
 17 short break, if we could go off the record.
 18 THE VIDEOGRAPHER: Going off the record, the time is
 19 3:42.
 20 (Recess taken.)
 21 THE VIDEOGRAPHER: Back on the record, the time is
 22 3:51.
 23 BY MR. TASHJIAN: SEC
 24 Q Mr. Wong, I want to ask you about the human
 25 resources department.

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1 Who is Lorraine Gnecco?
 2 A She was the manager of the human resources
 3 department.
 4 Q What role did Ms. Gnecco have in preparing the
 5 financial statements for Embarcadero Technologies?
 6 A I don't think she had any role.
 7 Q She had no role in preparing the financial
 8 statements for Embarcadero Technologies?
 9 MR. RICHARD: Objection; loud.
 10 THE WITNESS: She's not an accountant --
 11 MR. SCHINDLER: Stop.
 12 MR. TASHJIAN: It was a legitimate question. SEC
 13 Q You said that she's not an accountant; is that
 14 right?
 15 A Right.
 16 Q Was she in the finance department?
 17 A No.
 18 Q What about Ms. Cerles, what was her role?
 19 A She didn't have a direct role either.
 20 Q What -- what was her position at the company
 21 between 2000 and 2005?
 22 A She was basically the administrator in human
 23 resources.
 24 Q She was one of the employees that you've
 25 referred to as a rank-and-file employee?

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1 A Yes.
 2 Q Sorry for the loudness. I'll go back to being
 3 quiet.
 4 MR. RICHARD: I get one a day.
 5 MS. LaMARCA: That was a good objection. I'll give
 6 you that one. It made me wake up.
 7 MR. TASHJIAN: I have a one-page printout of an e-mail
 8 exchange dated November 5th and 6th, 2000. It was
 9 produced to us by Embarcadero Technologies. It's Bates
 10 labeled EMBT0285562.
 11 May I have this marked as Exhibit 352.
 12 (The document referred to was marked by the
 13 Reporter as Deposition Exhibit 352 for identification and
 14 is attached hereto.)
 15 BY MR. TASHJIAN:
 16 Q Mr. Wong, could you take a look at Exhibit 352?
 17 A Sure.
 18 Q Okay. Do you recognize the e-mail exchange
 19 that's printed out in Exhibit 352?
 20 A Yes.
 21 Q Is it fair to say it's an e-mail exchange that
 22 you had with Mr. Pattison in November 2000?
 23 A Yes.
 24 Q Mr. Pattison wrote on November 5, 2000 to you,
 25 "Hi, Stephen, attached is the list of current grants that

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1 need to be approved."
 2 How -- I'm sorry -- do you know why Mr. Pattison
 3 is sending you a list of grants that needed to be
 4 approved?
 5 A Very often the list would come from -- from --
 6 would be collated through Lorraine to Michael, and then
 7 they would come forward with a list of recommendations
 8 for the court or from the hiring managers.
 9 Q This collation of the list, is that one of the
 10 mechanics you're referring to earlier in your testimony?
 11 A No, I was referring more to the issuance of the
 12 paperwork after approval was granted.
 13 Q Okay. The collation of these lists, though, was
 14 that one of the responsibilities of Mr. Pattison between
 15 2000 and 2005?
 16 A Yes.
 17 Q Mr. Pattison also wrote, "Based on the closing
 18 prices, approval dates for the options should be
 19 October 10th, October 17th, and October 30th."
 20 Why was Mr. Pattison recommending approval dates
 21 to you?
 22 A I'm not really sure. I mean, it's hard for me
 23 to put context around that particular statement.
 24 Q Do you have an understanding as to why
 25 Mr. Pattison made a reference to the closing prices in

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1 reference to the dates?
 2 A I assume he used the closing prices as the price
 3 for any given day.
 4 Q Okay. Is it -- is it fair to say that he's
 5 referring to the low prices for the quarter in the fourth
 6 quarter 2000?
 7 MS. MCKAIG: Objection; leading.
 8 THE WITNESS: I can't tell from this.
 9 MR. TASHJIAN: Okay. That's fair enough.
 10 Mr. Wong, I have another e-mail exchange that
 11 I'd like to show you. It's dated April 2nd, 2002. It's
 12 a one-page printout Bates labeled EMBT0258372.
 13 May I have this marked as Exhibit 353. I'm
 14 sorry. Counsel, you get the one with the staple at the
 15 top.
 16 MR. SCHINDLER: That's okay.
 17 THE WITNESS: Okay.
 18 (The document referred to was marked by the
 19 Reporter as Deposition Exhibit 353 for identification and
 20 is attached hereto.)
 21 BY MR. TASHJIAN: SEC
 22 Q Mr. Wong, do you recognize Exhibit 353?
 23 A Yes.
 24 Q Fair to say that it's an e-mail exchange that
 25 you had with Mr. Pattison on April 2nd, 2002?

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1 A Yes.
 2 Q When was the end of the first quarter 2002?
 3 A March 31st or whatever the closest business date
 4 to that.
 5 Q And what do you mean by that?
 6 A If it was a Saturday or Sunday that was the
 7 31st, we wouldn't be open for business.
 8 Q So when -- I'll represent to you that the 30th
 9 and 31st were a Saturday and Sunday -- March 30th and
 10 31st, 2001 were a Saturday and Sunday.
 11 So what would be the last day of the quarter --
 12 first quarter 2001?
 13 A That would be the 29th then.
 14 Q So is it fair to say that this e-mail exchange
 15 occurred in the days after the end of the first quarter
 16 2002?
 17 A Yes.
 18 Q Okay. What was Mr. Pattison informing you of in
 19 his e-mail?
 20 A I think he's telling me -- giving me a quick
 21 status on the number of grants -- approximate number of
 22 grants for that quarter.
 23 Q And that total, according to his e-mail, is just
 24 under -- I'm sorry -- a quick glance under 70,000; is
 25 that what you're referring to?

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1 A Yes.
 2 Q He also refers to a price for the -- can you
 3 tell me why he was referring to a price?
 4 MS. MCKAIG: Objection; calls for speculation.
 5 THE WITNESS: Yeah, I couldn't tell you, but he's
 6 referencing the 28th.
 7 BY MR. TASHJIAN:
 8 Q Okay. Is it fair to say that he's referencing
 9 the price for the stock options to be granted in the
 10 first quarter 2001 -- I'm sorry -- 2001?
 11 MS. MCKAIG: Same objection.
 12 MR. TASHJIAN: I said 2001 because you said 2001 at
 13 the end of his e-mail apparently.
 14 Q At the end of the first quarter, March 29, 2002.
 15 MS. MCKAIG: Same objection.
 16 BY MR. TASHJIAN:
 17 Q Do you see what I'm referring to?
 18 A Yeah. I mean, I think that's the implication,
 19 but I can't tell you for sure from this.
 20 Q Okay. What did you mean when you wrote back,
 21 "OK, I may want to top it up a bit"?
 22 A There may have been other -- other, you know,
 23 adjustments to the number of grants for particular
 24 employees, and so I wanted to make sure we had the proper
 25 share count.

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1 Q You weren't saying that you wanted to make
 2 additional grants above and beyond the 70,000 that had
 3 been tallied up so far?
 4 A No, that -- that was a possibility.
 5 Q Did you ask PwC whether there would be any
 6 accounting consequences for adding additional shares
 7 after the end of the quarter?
 8 A I'm sorry. Could you --
 9 Q Sure. If -- it looks -- if I understood your
 10 testimony, you wanted to add to the number of shares that
 11 had been granted in 2001 -- first quarter 2001 -- '2 --
 12 I'm sorry.
 13 If I understood your testimony correctly, you
 14 wanted to add to the number of shares that had been
 15 authorized or granted in the first quarter 2002?
 16 MS. MCKAIG: Objection; misstates the witness's
 17 testimony. He said it was only a possibility.
 18 THE WITNESS: Yes. It sounds like I was considering
 19 it.
 20 BY MR. TASHJIAN:
 21 Q Okay. In your consideration, did you -- as part
 22 of your consideration, did you ask PwC if there were any
 23 accounting consequences for making those additions?
 24 MS. MCKAIG: Objection; lacks foundation, assumes
 25 facts, incomplete hypothetical.

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1 THE WITNESS: You know, I assume that this would all
 2 be taken care of properly. I mean, you know, the number
 3 of shares would be in the schedule and, you know, the
 4 prices and all of that. So, you know, I assumed it would
 5 all be handled appropriately.
 6 BY MR. TASHJIAN:
 7 Q And by whom?
 8 A By the finance department.
 9 Q And that would include Mr. Sabhlok; is that
 10 right?
 11 A Sure.
 12 Q And Mr. Pattison as the controller?
 13 A Sure. SEC
 14 Q Mr. Wong, I'd like to show you a document that's
 15 been previously marked Exhibit 27. It's an e-mail
 16 exchange on the same date in April 2002.
 17 A Okay.
 18 Q Do you recognize Exhibit 27?
 19 A Yes.
 20 Q What is it?
 21 A It's an e-mail.
 22 Q It's an e-mail exchange between you and
 23 Mr. Pattison on or about April 2nd, 2002?
 24 A Right.
 25 Q What did you mean when you wrote -- well, I'm

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1 sorry.
 2 What was Mr. Pattison telling you in the e-mail
 3 that's reflected in Exhibit 27?
 4 A I think he's giving me the latest list of option
 5 grants.
 6 Q And in response, you wrote, "OK. If it doesn't
 7 cause EPS to slip, then I would like to sock away 50,000
 8 in reserve."
 9 What did you mean by that?
 10 A That this might be a good opportunity for us to
 11 consider giving additional grants to deserving employees,
 12 and I didn't want to understate the number of, you know,
 13 options that we might grant. So let's be conservative
 14 and put 50,000 out there.
 15 Q Put 50,000 out there how?
 16 A For potential, you know, allocation to specific
 17 employees.
 18 Q In 2002, was your authority to grant options to
 19 employees limited in any -- by number in any particular
 20 quarter?
 21 A There was a limit as far as the total budget per
 22 quarter, yes.
 23 Q And what was that limit?
 24 A I don't remember. It was probably -- my guess
 25 is 200,000, something like that.

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1 Q Okay. And by writing "sock away 50,000 in
 2 reserve," did you -- were you saying that you wanted to
 3 be able to use 50,000 that you hadn't used -- I'm sorry.
 4 Let me ask a different way.
 5 In writing your e-mail, were you making
 6 reference in any way to the limit that -- that was on you
 7 in the number of shares you could grant in any particular
 8 quarter?
 9 MR. SCHINDLER: I'm sorry. That's vague. I don't
 10 understand the question.
 11 THE WITNESS: Yeah.
 12 BY MR. TASHJIAN: SEC
 13 Q In your e-mail, were you suggesting to
 14 Mr. Pattison that you wanted to be able to grant extra
 15 shares in the first quarter that you could reserve to
 16 award employees in the second or subsequent quarters in
 17 2002?
 18 A If I understand you correctly, what I'm saying
 19 here is that there may -- I haven't had enough time to
 20 make all of the considerations of the various employees
 21 and what they might or might not deserve. So I wanted to
 22 make sure that we would have a conservative number as far
 23 as total shares outstanding.
 24 Q What did you refer -- what did you mean when you
 25 wrote EPS?

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1 A Earnings per share.
 2 Q How did that factor into your calculation as to
 3 the number of options to grant in that first quarter
 4 2002?
 5 A Well, the number of shares -- the fully diluted
 6 share count would affect earnings per share.
 7 Q Is it fair to say that by socking away 50,000 in
 8 reserve, you hadn't yet determined as of April 2nd, 2002
 9 who was to receive the option grants for the first
 10 quarter 2002?
 11 A Yes.
 12 MR. TASHJIAN: I have a one-page printout. It reads
 13 "Embarcadero Stock Options and Awards Granted." There's
 14 a date on it, 31 March 2002. It's Bates -- a one-page
 15 printout. It's Bates labeled ETSC 02059.
 16 Have this marked as Exhibit 354.
 17 (The document referred to was marked by the
 18 Reporter as Deposition Exhibit 354 for identification and
 19 is attached hereto.)
 20 BY MR. TASHJIAN: SEC
 21 Q Mr. Wong, do you recognize Exhibit 354?
 22 A Yes.
 23 Q What is it?
 24 A It's the quarterly list of stock option grants.
 25 Q Whose signature appears on the page?

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1 A That's mine.
 2 Q Who -- did you type or prepare Exhibit 354?
 3 A No.
 4 Q Who did?
 5 A I couldn't tell you.
 6 Q Who gave it to you?
 7 A You know, it's hard for me to remember after all
 8 those years specifically who handed this to me.
 9 Q I understand you may not remember for the first
 10 quarter or second quarter 2002.
 11 Counsel asked you earlier today about lists that
 12 looked similar to this one with your signature?
 13 A Sure, sure.
 14 Q Who was responsible for preparing these lists
 15 with your signature?
 16 A That happened below me, but generally it would
 17 be Michael.
 18 Q Michael Pattison?
 19 A Yes.
 20 Q Who wrote the date on the page that appears
 21 below your name? That's the 31 March 2002 date.
 22 MR. RICHARD: Objection; calls for speculation.
 23 THE WITNESS: Yeah, I mean, again, I'm not sure who
 24 specifically generated this particular one. So I
 25 couldn't tell you who put the date.

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1 BY MR. TASHJIAN:
 2 Q You didn't put the date, though, did you?
 3 A No.
 4 Q Did you sign Exhibit 354 on March 31, 2002?
 5 A I don't remember if I did.
 6 Q In light of the previous exhibits we've looked
 7 at, Exhibits 353 and 352, do you believe that you signed
 8 Exhibit 354 on March 31st, 2002?
 9 A Probably not.
 10 Q Why do you say that?
 11 A Well, these are dated April 2nd.
 12 Q You'll see a line item on Exhibit 354 for
 13 somebody named Kent Scantland.
 14 Do you see that?
 15 A Yes.
 16 Q Who is Mr. Scantland?
 17 A I don't remember.
 18 Q According to Exhibit 354, he received a grant of
 19 75,000 shares.
 20 Do you see that?
 21 A Yes.
 22 Q Is it fair to say that 75,000 shares is a fairly
 23 large number for any one particular employee at
 24 Embarcadero in 2002?
 25 A Yeah, it's a pretty meaningful grant.

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1 Q Would you say that an ordinary grant to
 2 rank-and-file employees was as high as -- typically as
 3 high as 75,000?
 4 A It would be unusual. If it was a -- you know, a
 5 very highly-sought-after developer, it's possible.
 6 Q Do you know whether Mr. Scantland was actually
 7 employed at Embarcadero on March 31, 2002?
 8 A No, I couldn't tell you today.
 9 Q Do you know whether he was actually terminated
 10 shortly prior to the quarter, the end of the first
 11 quarter 2002?
 12 MS. MCKAIG: Objection; lacks foundation, calls for
 13 speculation.
 14 THE WITNESS: Yeah, again, I wouldn't -- I wouldn't
 15 know specifically.
 16 BY MR. TASHJIAN: SEC
 17 Q Mr. Wong, I'd like to show you a document that's
 18 been previously marked as Exhibit Number 28.
 19 Do you recognize Exhibit 28?
 20 A I'm not quite done. Excuse me.
 21 Q Take your time.
 22 A Okay.
 23 Q Do you recognize Exhibit 28?
 24 A Yes.
 25 Q What is it?

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1 A It's an e-mail.
 2 Q It's an e-mail from Mr. Pattison to you on
 3 July 3rd, 2002?
 4 A Right.
 5 Q When did the second quarter 2002 end?
 6 A June 30th.
 7 Q Is it fair to say that July 3rd, 2002 is after
 8 the end of the second quarter 2002?
 9 A Yes.
 10 Q Why did Mr. Pattison tell you what the Q -- Q2
 11 low was?
 12 A Because we very often gave people the low of the
 13 quarter.
 14 Q What was Mr. Pattison's role in determining the
 15 low of the quarter?
 16 A You know, it wasn't his decision. He just was
 17 matter of fact.
 18 Q Did you -- at Embarcadero, were you the one that
 19 went back through the historical stock prices for the
 20 quarter to find out what the low of the quarter was?
 21 MR. RICHARD: Objection; assumes facts not in
 22 evidence.
 23 THE WITNESS: Typically, no.
 24 BY MR. TASHJIAN:
 25 Q How did Mr. Pattison determine what the low --

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1 low of the quarter was?
 2 MS. MCKAIG: Objection; lacks foundation, calls for
 3 speculation.
 4 THE WITNESS: I would assume he would look it up.
 5 MR. SCHINDLER: Don't assume.
 6 THE WITNESS: I'm sorry.
 7 MR. SCHINDLER: Do you know what he did?
 8 THE WITNESS: No, I couldn't tell you specifically.
 9 BY MR. TASHJIAN:
 10 Q Is it fair to say Mr. Pattison on a routine
 11 basis informed you as the delegated authority to grant
 12 stock options what the low of the quarter was?
 13 MS. MCKAIG: Objection; vague and ambiguous.
 14 THE WITNESS: It's certainly possible.
 15 BY MR. TASHJIAN:
 16 Q Okay. You'll see on the second page of
 17 Exhibit 28 what appears to be the attachment to the
 18 e-mail.
 19 Do you recognize the attachment?
 20 A No, I mean, this is a -- this looks different.
 21 Q What looks different to you about it?
 22 A This block here (indicating).
 23 Q The top block or the bottom block?
 24 A It doesn't look like the other lists you've
 25 shown.

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1 Q Do you -- fair enough.
 2 Do you recognize the line item on that page that
 3 says 75,000 to Sharma Summet?
 4 A Yes.
 5 Q Why is it that you recognize it?
 6 A Because you just pointed me to it -- oh, I'm
 7 sorry. I mean, I can see it.
 8 Do I remember it? No.
 9 Q Who's -- I believe the employee's name is Summet
 10 Sharma.
 11 Do you know who Summet Sharma was?
 12 A No, I don't remember.
 13 Q Do you remember approving a developer grant to
 14 Mr. Sharma?
 15 A Not specifically.
 16 Q When you received Exhibit 28, were you aware
 17 that Mr. Sharma had been terminated involuntarily from
 18 the company on July 3rd, 2002?
 19 MR. RICHARD: Objection; counsel's testifying again,
 20 assumes facts not in evidence, lacks foundation. That's
 21 an ultimate question for trial.
 22 THE WITNESS: I don't remember this employee. So I
 23 couldn't tell you, you know, when he was or wasn't
 24 employed.
 25 BY MR. TASHJIAN:

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1 Q Are you familiar with the term "placeholder" as
 2 it relates to stock option grants?
 3 A I'm sorry. Could you clarify?
 4 Q I'm just asking you if you recognize the term
 5 "placeholder" as it referred to stock option grants to
 6 Embarcadero employees between 2000 and 2005.
 7 A Generally.
 8 Q What did it mean?
 9 A It was -- it was the -- it was a mechanism to
 10 hold some shares in reserve, some options, I should say,
 11 in reserve in case I wanted to, you know, change the
 12 allocations to other employees.
 13 Q Did you ask PwC in 2002 whether there was any --
 14 whether there were any accounting consequences for
 15 changing the allocations to employees, as you just
 16 suggested?
 17 A Could you clarify?
 18 Q Did you ask PwC -- did you tell PwC that you
 19 changed the allocations to employees?
 20 MS. MCKAIG: Objection; misstates the testimony.
 21 MR. RICHARD: I'd join.
 22 MR. TASHJIAN: I don't want to misstate his testimony.
 23 Could you read back the witness's answer.
 24 (The record was read as follows:
 25 "A It was -- it was the -- it was a mechanism

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1 to hold some shares in reserve, some options, I
 2 should say, in reserve in case I wanted to, you
 3 know, change the allocations to other
 4 employees.")
 5 BY MR. TASHJIAN:
 6 Q Did you ask PwC whether there would be any
 7 accounting consequences if you changed the allocation to
 8 other employees as you just testified?
 9 A No, I didn't -- I didn't think there would be
 10 any issues since if there were 50,000 options, did it
 11 matter if it was Bob or Jane or Tommy.
 12 Q So you didn't think it mattered?
 13 A No.
 14 Q Did you tell PwC -- I'm sorry. Let me rephrase.
 15 Can you recall any instances between 2000, 2005
 16 when you actually did change the allocations from one
 17 employee to another employee as you've suggested?
 18 MR. SCHINDLER: At what time? At any time?
 19 MR. TASHJIAN: Between 2000 and 2005.
 20 MR. SCHINDLER: I mean, when he got the initial list,
 21 he would make changes all the time, right?
 22 MR. RICHARD: Objection; vague as to what point in the
 23 process.
 24 BY MR. TASHJIAN:
 25 Q You've -- Mr. Wong, we were just looking at

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1 the -- a -- we were -- I'm sorry -- we were talking about
 2 the placeholder grants.
 3 Did you tell PwC that you used placeholder
 4 grants to change the allocation to employees?
 5 A No.
 6 Q And why not?
 7 A As I stated earlier, I thought that if the share
 8 count was right, then it would be accounted for. I
 9 didn't think it mattered whether it was accounted for,
 10 you know, allocation to employee X versus employee Y.
 11 Q Did you ask Mr. Pattison whether there would be
 12 any accounting consequences for changing allocations?
 13 A No, I didn't.
 14 Q What about Mr. Sabhlok?
 15 A No, I didn't.
 16 Q As far as you know, did Mr. Sabhlok ask PwC
 17 whether there would be any accounting consequences for
 18 changing the allocations?
 19 MS. MCKAIG: Objection; assumes facts, calls for
 20 speculation.
 21 THE WITNESS: Hard for me to speculate.
 22 BY MR. TASHJIAN:
 23 Q So is your answer no, you don't know?
 24 A I don't know.
 25 Q What about Mr. Pattison, did he ask Mr. -- did

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1 he ask PwC?
 2 A I wouldn't know.
 3 MR. TASHJIAN: I'm going to show you the same document
 4 as Exhibit 28 with -- it was produced a number of times
 5 to us. Perhaps you'd recognize the attachment. May I
 6 have an e-mail printout dated July 3rd, 2002, Bates
 7 labeled EMBT0147878 through 170 -- I'm sorry.
 8 MR. SCHINDLER: He's handing you a new exhibit.
 9 THE WITNESS: Isn't that the same?
 10 MR. TASHJIAN: You're right. The first page -- the
 11 e-mail will be the same. The attachment is Bates labeled
 12 EMBT0258167 through 170.
 13 May I have this document marked as Exhibit 355.
 14 (The document referred to was marked by the
 15 Reporter as Deposition Exhibit 355 for identification and
 16 is attached hereto.)
 17 BY MR. TASHJIAN:
 18 Q Mr. Wong, before counsel accuses me of trying to
 19 mislead you again, you'll note that the --
 20 MR. RICHARD: I'll be sensitive.
 21 MR. TASHJIAN: Well, it's happened a number of times
 22 so --
 23 MR. RICHARD: There's justification to that. The
 24 record will show.
 25 MR. TASHJIAN: Perhaps, but I doubt it.

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1 MR. RICHARD: Just ask the question. If you want to
 2 argue, we'll do it when Mr. Wong is on his way home.
 3 BY MR. TASHJIAN:
 4 Q The attachment -- or what I believe to be the
 5 attachment is not sequentially numbered with the first
 6 page Bates number on Exhibit 355.
 7 So you see Exhibit 355 has one Bates number?
 8 A Okay.
 9 Q And then the attachment has a different Bates
 10 number.
 11 A Okay.
 12 Q And I'll represent to you that that's -- that
 13 the electronic database that Embarcadero produced to us
 14 in the course of the investigation and afterwards
 15 indicates that, in fact, the second two pages of
 16 Exhibit 355 or the last remaining pages after the first
 17 page are all part or attached to the e-mail.
 18 Do you recognize the charts that appear on the
 19 second page of Exhibit 355?
 20 MR. RICHARD: I need to object to all of the
 21 preparatory comments before the actual question as
 22 testimonial evidence of that foundation.
 23 THE WITNESS: No, I mean, it looks like it's in a
 24 different format than what I customarily obtained.
 25 BY MR. TASHJIAN:

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1 Q And when you say you obtained one customarily,
 2 what are you referring to?
 3 A Something more -- that looks more like what you
 4 showed me earlier, I guess, 354.
 5 Q I see.
 6 A So the format, it looks -- looks different.
 7 Q So you don't recall receiving e-mails from
 8 Michael Pattison at or after the end of the quarter -- of
 9 each quarter between 2000, 200- -- the end of 2004 in
 10 which Mr. Pattison attached spreadsheets of option
 11 grants?
 12 A Sure, he sent me e-mails with spreadsheets on
 13 them.
 14 Q Okay. And the exhibits that have been marked
 15 either as Exhibit 28 or 355, you're saying those don't
 16 look to you like the e-mails that Mr. Pattison would send
 17 to you at the end of a quarter with an attached
 18 spreadsheet?
 19 A This e-mail was five years ago. So for me to
 20 remember ah-ha, this is the exact format that I
 21 recognize --
 22 MR. SCHINDLER: It's eight years ago.
 23 THE WITNESS: Yeah, it's hard for me to -- my memory
 24 is decent, but not that good.
 25 BY MR. TASHJIAN:

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1 Q And fair enough. The other thing is I assume
 2 that you received these electronically, not printed out;
 3 is that right?
 4 A Yes.
 5 Q When I say "these," I'm referring to the
 6 spreadsheets that Mr. Pattison would send to you attached
 7 to his e-mails. You received those electronically?
 8 A Right, yes.
 9 Q Mr. Wong, I have an e-mail that's been
 10 previously marked as Exhibit 29 in this matter. You can
 11 take a look at it.
 12 A Okay.
 13 Q Do you recognize Exhibit 29?
 14 A Yes.
 15 Q What is it?
 16 A It's an e-mail from Michael to me.
 17 Q Okay. On July 3rd, 2002?
 18 A Right.
 19 Q Did you discuss the placeholder grants with
 20 Mr. Pattison?
 21 A Yes, you can see that in this e-mail trail.
 22 MR. TASHJIAN: I have a one-page document that says,
 23 "Stock Award" -- "Stock Options Awards Granted." It's
 24 Bates labeled ETSC 02077.
 25 Would this be marked as Exhibit 356.

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1 (The document referred to was marked by the
 2 Reporter as Deposition Exhibit 356 for identification and
 3 is attached hereto.)
 4 BY MR. TASHJIAN:
 5 Q Do you recognize Exhibit 356, Mr. Wong?
 6 A Yes.
 7 Q What is it?
 8 A It's a schedule of stock option grants.
 9 Q All right. Do you -- do you recognize the
 10 signature on the page?
 11 A That's mine.
 12 Q There's some handwriting underneath your
 13 signature. It reads, "Approved - Stephen Wong."
 14 Do you see that?
 15 A Yes.
 16 Q Whose handwriting is that?
 17 A I don't know.
 18 Q There's a date underneath that. It says
 19 6-29-02.
 20 Do you see that?
 21 A Yes.
 22 Q Whose handwriting -- who wrote the date on
 23 Exhibit 356?
 24 A I don't know.
 25 Q Is that your handwriting?

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1 A No.
 2 Q You've referred to documents like Exhibit 356 as
 3 schedules; is that right?
 4 A Yes.
 5 Q Did you provide Exhibit 356 to PwC?
 6 A I wouldn't have provided it.
 7 Q Who would have?
 8 A They would have had access through the finance
 9 department.
 10 Q Who in finance would have been responsible for
 11 providing Exhibit 356 to PwC?
 12 MR. RICHARD: Objection; assumes facts not in evidence
 13 and actually misstates what the witness just said. I
 14 know it's late in the day, but -- that isn't what the
 15 witness said.
 16 THE WITNESS: I couldn't tell you specifically, but
 17 they would have access to this. They could ask, you
 18 know, any of the people in the department for it.
 19 BY MR. TASHJIAN:
 20 Q Okay. Who kept in the finance department -- I'm
 21 sorry.
 22 Do you know where Exhibit 356 was kept?
 23 A No, I don't.
 24 Q Do you know if it was kept in the finance
 25 department?

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1 A I would think so.
 2 Q And why do you think that?
 3 A Because it's a financial report.
 4 Q Who in the finance department would have
 5 provided access to PwC to Exhibit 356?
 6 MR. SCHINDLER: It was asked and answered.
 7 THE WITNESS: Yeah, I think I answered that before.
 8 BY MR. TASHJIAN:
 9 Q Well, then I'm sorry, I missed it.
 10 Was it Mr. Pattison?
 11 A I couldn't tell you for sure. It's possible,
 12 but I couldn't tell you with certainty.
 13 MR. TASHJIAN: I've got a two-page printout of an
 14 e-mail exchange, October 22nd, 2002. The document is
 15 Bates labeled EMBT0149264 through 265.
 16 I'll have this marked as the next exhibit in
 17 order.
 18 MR. RICHARD: I'm going to go home with more paper
 19 than I came with.
 20 MS. LaMARCA: As will we.
 21 MR. RICHARD: Is that possible?
 22 (The document referred to was marked by the
 23 Reporter as Deposition Exhibit 357 for identification and
 24 is attached hereto.)
 25 BY MR. TASHJIAN:

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1 Q The document has been marked as Exhibit 357,
 2 Mr. Wong. When you've had an opportunity to take a look
 3 at Exhibit 357, if you could tell me if you recognize the
 4 exchange.
 5 A Yes. SEC
 6 Q Does Exhibit 357 reflect an e-mail exchange
 7 between you and Mr. Pattison on October 22nd, 2002?
 8 A Right.
 9 Q Do you know why Mr. Pattison was asking you what
 10 to do about the 75K place marker under Kent Scantland?
 11 A I think he's saying we didn't -- we didn't
 12 allocate it, so what do you want me to do with it.
 13 Q Do you know why Mr. Pattison wrote "PwC tends to
 14 spend a fair deal of time on the options (grants, terms,
 15 exercises) as it is part of equity and it is easy testing
 16 so it keeps their staff people busy"?
 17 A I couldn't tell you.
 18 Q What did you mean when you wrote "If you can
 19 wipe it, then we should since it is out of the money"?
 20 MS. MCKAIG: Objection; misstates the document.
 21 MR. TASHJIAN: I can re-read that for you, if you'd
 22 like.
 23 Q Why did you write "If you can wipe it, then we
 24 should do so since it is out of the money"?
 25 A I think I'm saying since it isn't used, let's

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1 just cancel it.
 2 Q Did you tell PwC -- I'm sorry.
 3 Did you ask PwC if there were any accounting
 4 consequences for wiping stock option grants?
 5 A No, I didn't.
 6 Q Do you know whether the Kent Scantland stock
 7 option grant was wiped?
 8 MS. MCKAIG: Objection; vague and ambiguous.
 9 THE WITNESS: No, I don't.
 10 MS. MCKAIG: Sorry.
 11 THE WITNESS: Sorry.
 12 No, I don't.
 13 BY MR. TASHJIAN:
 14 Q Who did you expect to wipe the grant, as you put
 15 it?
 16 A It would be Michael.
 17 Q And why is that?
 18 A Well, because he was the person that maintained
 19 the overall, you know, tally of the stock options.
 20 Q Do you know whether Mr. Pattison asked PwC for
 21 any accounting advice about wiping the Kent Scantland
 22 grant?
 23 A Hard for me to know what Michael did or didn't
 24 do.
 25 Q You never heard that he did?

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1 A I didn't.
 2 MR. SCHINDLER: We've been going for about an hour.
 3 MR. TASHJIAN: That's a good point. Why don't we take
 4 a break.
 5 THE VIDEOGRAPHER: Going off the record, the time is
 6 4:32.
 7 (Recess taken.)
 8 THE VIDEOGRAPHER: Back on the record, the time is
 9 4:44.
 10 BY MR. TASHJIAN:
 11 Q Mr. Wong, I want to ask you about the sale of
 12 Embarcadero Technologies.
 13 When -- were you involved in the decision to
 14 sell the company in 2006?
 15 A Yes.
 16 Q How did that decision come about?
 17 A We looked at the company's long-term prospects,
 18 industry conditions, and basically what our strategic
 19 options might be, and we decided that the best thing to
 20 do would be to sell the company.
 21 Q When did you -- what was the process for trying
 22 to sell the company?
 23 A We hired an investment banking firm to look at,
 24 you know, different avenues, who might be interested in
 25 buying the company.

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1 Q At some point, did you give Embarcadero the
 2 investment banker -- that was Morgan Stanley, right?
 3 A Yes.
 4 Q Did Embarcadero and Morgan Stanley begin
 5 shopping the company around?
 6 A I wouldn't use the term "shopping." It was done
 7 very discretely because we didn't want our competitors to
 8 find out about it and to use it against us. SEC
 9 Q When -- when did Embarcadero make the decision
 10 to -- to explore selling itself?
 11 A It was something that we regularly evaluated.
 12 So at that particular time we decided to move forward
 13 with it, that would have been in, I think, the early --
 14 the first half of 2006.
 15 Q The company announced on September 7th, 2006
 16 that it was going to be acquired; is that right?
 17 A I think that's right.
 18 Q What was the price per share for the
 19 acquisition?
 20 A It was \$7 and change. I forget the exact number
 21 now.
 22 Q Was that the -- that wasn't the price in 2006.
 23 I think that that was the price later in 2007.
 24 A Oh, I'm sorry. Yeah, I don't remember the exact
 25 price of the original deal.

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1 Q Would looking at the press release for the
 2 announced acquisition refresh your recollection?
 3 A Sure.
 4 MR. TASHJIAN: I have a -- a report on Form 8-K filed
 5 with the Securities and Exchange Commission by
 6 Embarcadero Technologies. It attaches a press release
 7 dated September 7th, 2006.
 8 May I have this document marked as Exhibit 358.
 9 (The document referred to was marked by the
 10 Reporter as Deposition Exhibit 358 for identification and
 11 is attached hereto.)
 12 BY MR. TASHJIAN:
 13 Q Does looking at Exhibit 358 refresh your
 14 recollection as to what the share price that was
 15 announced on September 7, 2006?
 16 A Sure.
 17 Q What was it?
 18 A \$8.38.
 19 Q Now, how many shares of Embarcadero Technologies
 20 did you own on September 7, 2006?
 21 A I forget the specific number.
 22 Q Embarcadero filed a proxy in connection with the
 23 acquisition; is that right?
 24 A Right.
 25 Q And in the -- did you have any role in helping

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1 prepare the proxy?
 2 A No, I wasn't involved in drafting it, no.
 3 Q Okay. According to the proxy, you held nearly
 4 5.5 million shares.
 5 Does that sound accurate to you?
 6 A Sounds about right.
 7 Q What percentage of the company was that?
 8 A Probably just under 20 percent.
 9 Q Does 20.1 percent sound right to you?
 10 A Okay. If that's what you say.
 11 Q That's what the proxy says.
 12 A Okay. Sorry my memory isn't clearer.
 13 Q As a shareholder in Embarcadero on September 7,
 14 2006, what was the price per share that you were to
 15 receive in the acquisition?
 16 A The same.
 17 Q \$8.38 per share?
 18 A Yes.
 19 Q After the acquisition, did you plan to retain
 20 any position at the company?
 21 A No.
 22 Q What were your plans following the acquisition?
 23 A To do what I had done in the past, move on and
 24 start other companies.
 25 Q So you were going to leave Embarcadero?

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1 A Yes.
 2 Q When did you make that decision?
 3 A I made that known to the board probably as early
 4 as 2006.
 5 Q Before the acquisition?
 6 A Yeah.
 7 Q Before the acquisition was announced?
 8 A Sure.
 9 Q Would you say it was around the time the company
 10 made the decision to explore selling itself?
 11 A Actually, it predated that quite a bit. I never
 12 viewed myself -- my -- my goal in life was not to be the
 13 CEO of a public company. I was an entrepreneur and
 14 investor by background.
 15 In fact, in 1999, I tried to hire, you know, my
 16 replacement. Unfortunately, it didn't work out at that
 17 time. So it was no secret to the board that I didn't
 18 view myself as the long-term CEO.
 19 Q You've referred to an internal review of the
 20 company's stock option granting practices in which
 21 Ms. Jiang and Mr. Shahbazian were involved?
 22 A Yes.
 23 Q Ms. Jiang wrote up a report for their review; is
 24 that right?
 25 A Right.

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1 Q You received a copy of that report?
 2 A Yes.
 3 MR. TASHJIAN: If I show you an -- an e-mail with an
 4 attachment that's Bates labeled EMBT0296627 through 32,
 5 may I have this marked as 359.
 6 THE WITNESS: Thank you.
 7 (The document referred to was marked by the
 8 Reporter as Deposition Exhibit 359 for identification and
 9 is attached hereto.)
 10 BY MR. TASHJIAN:
 11 Q Mr. Wong, do you recognize Exhibit 359, the
 12 e-mail and the attachment?
 13 A Yes.
 14 Q What is it?
 15 A It's an e-mail from Jin to me and others.
 16 Q Do you recognize the memo that's attached to the
 17 e-mail?
 18 A Yes.
 19 Q What is it?
 20 A It was Jin's report on her -- on her testing. SEC
 21 Q You'll see in the e-mail that's on the first
 22 page of Exhibit 359. Ms. Jiang asks you and Mr. Sabhlok,
 23 she writes, "Please validate the factual accuracy of the
 24 facts and circumstances presented in the memo, and if you
 25 have anything else which you would like to add please let

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1 me know and we can add to the memo."
 2 Do you see that line?
 3 A Sure.
 4 Q Did you respond to Ms. Jiang?
 5 A Not that I remember.
 6 Q You don't recall sending her an e-mail?
 7 A No, I don't remember sending anything back to
 8 her.
 9 Q I'll show you an e-mail and you can tell me if
 10 you recognize it. It's an e-mail from you dated
 11 November 1st, 2006.
 12 A Okay.
 13 MR. TASHJIAN: It's a one-page printout that's Bates
 14 labeled EMBT0295914.
 15 Have this marked as Exhibit 360.
 16 THE WITNESS: Okay.
 17 (The document referred to was marked by the
 18 Reporter as Deposition Exhibit 360 for identification and
 19 is attached hereto.)
 20 BY MR. TASHJIAN:
 21 Q Do you recognize Exhibit 360?
 22 A Yes.
 23 Q What is it?
 24 A It's an e-mail from me to Jin.
 25 Q You wrote "Very nice job."

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1 Do you see that?
 2 A Sure.
 3 Q Had you read -- I assume that you had read the
 4 memo that Ms. Jiang attached to her e-mail marked as
 5 Exhibit 357?
 6 A Yes.
 7 Q You saw that her memo was entitled "Stock Option
 8 Backdating Test Memo."
 9 Do you see that on the title page of her -- of
 10 the memo, the second page of Exhibit 359?
 11 MR. RICHARD: Does he recall what, the title?
 12 MR. TASHJIAN: For lack of a better word, it's the
 13 title at the top of the page of the memo.
 14 THE WITNESS: Okay.
 15 BY MR. TASHJIAN:
 16 Q Did you -- did you have any other response to
 17 Ms. Jiang other than the e-mail that you see in
 18 Exhibit 360?
 19 A Not that I know of.
 20 Q Did you tell Ms. Jiang after you received and
 21 reviewed her memo that the company had a practice of
 22 granting at the low of the quarter between 2000 and 2004?
 23 MR. RICHARD: Objection; argumentative and misstates
 24 the testimony with respect to this subject line. That's
 25 not the title, the subject line of this memo. So I do

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1 think that's misleading and misstates the witness's
 2 testimony. This memo says, "Executive Stock Option
 3 Grant."
 4 THE WITNESS: I'm sorry. Could you restate it again?
 5 MR. TASHJIAN: Sure, perhaps -- I'm sorry. I'm going
 6 to impose on the court reporter to read back the
 7 question.
 8 (The record was read as follows:
 9 "Q Did you tell Ms. Jiang after you received
 10 and reviewed her memo that the company had a
 11 practice of granting at the low period (sic) of
 12 the quarter between 2000 and 2004?")
 13 MS. MCKAIG: Just make an objection; overbroad.
 14 THE WITNESS: I mean, at that point, I hadn't talked
 15 to the lawyer. I felt very conflicted about this, and I
 16 felt that the best thing I could do was to recuse myself
 17 from the process.
 18 BY MR. TASHJIAN:
 19 Q Why did you feel conflicted?
 20 A Well, because now it dawned on me that there was
 21 an issue with our past practices which I thought up to
 22 that point had been handled properly.
 23 Q Did you tell Ms. Jiang that in between 2000 and
 24 2004 the company had a practice of granting stock options
 25 to employees at the low price of the quarter?

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1 MS. MCKAIG: Objection --
 2 MR. SCHINDLER: Yeah, just to be clear, are we talking
 3 about executives or are we talking about rank and file?
 4 MR. TASHJIAN: I'm talking about stock options to
 5 anyone, including rank and file.
 6 THE WITNESS: So you're saying everybody?
 7 BY MR. TASHJIAN:
 8 Q Uh-huh.
 9 A No, I didn't.
 10 Q Did you tell Mr. Shahbazian?
 11 A No, I didn't.
 12 Q Did you -- you didn't tell Mr. Shahbazian then
 13 that you thought you had granted properly in your words?
 14 A I'm sorry.
 15 Q I'm sorry. I'll rephrase.
 16 Earlier today in response to questions from
 17 counsel, you said that you thought that you hadn't done
 18 anything improper in terms of selecting the dates and the
 19 prices for grants to employee -- for employee stock
 20 options.
 21 Is that a fair summary of your testimony?
 22 A Yes, at that point in time, I thought that what
 23 we were doing was fine.
 24 Q When you received Ms. Jiang's memo in late
 25 October, early November 2006, did you tell either

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1 Ms. Jiang or Mr. Shahbazian that you didn't think that
 2 you had done anything improper in terms of pricing and
 3 dating stock options to employees?
 4 A No, I didn't say anything.
 5 THE REPORTER: I'm sorry. No, I didn't --
 6 THE WITNESS: No, I didn't say anything.
 7 BY MR. TASHJIAN:
 8 Q Who was the company that was acquiring
 9 Embarcadero Technologies in 2006?
 10 A It was a leveraged buyout from Thoma Cressey.
 11 Q Do you know somebody named Orlando Bravo?
 12 A Sure.
 13 Q Who is Orlando Bravo?
 14 A He was the partner in charge of this particular
 15 transaction. SEC
 16 Q When you received Ms. Jiang's memo in late
 17 October 2006, did you tell Mr. Bravo that the company had
 18 a practice of granting stock options to employees at the
 19 low of the quarter between 2000 and 2004?
 20 MS. MCKAIG: Objection; overbroad.
 21 THE WITNESS: No, I didn't.
 22 BY MR. TASHJIAN:
 23 Q Why not?
 24 A Well, as I said earlier, I felt that the
 25 appropriate thing for me to do was to remove myself from

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1 anything having to do with this investigation, let it run
 2 its due course. You know, Shahbazian and Jin were
 3 professionals and, you know, as you can see, I forwarded
 4 it to Ferruolo for his review.
 5 So this was something that was open for everyone
 6 to look into and looking into hindsight, they figured out
 7 what happened.
 8 Q So in Exhibit 360, you're referring to a line in
 9 your memo -- in your e-mail where you said "I have also
 10 forwarded your memo to Stephen Ferruolo for his review"?
 11 A Right.
 12 Q Did you tell Mr. Ferruolo in late October, early
 13 November 2006 that you had approved stock option grants
 14 to employees at the low of the quarter in the past?
 15 MS. MCKAIG: Objection; overbroad.
 16 THE WITNESS: No, I didn't.
 17 BY MR. TASHJIAN:
 18 Q At some point, the audit committee decided to
 19 hire outside counsel to help it review the historical
 20 option granting practices; is that right?
 21 A Right.
 22 Q Hired a law firm called O'Melveny & Myers; is
 23 that right?
 24 A Right.
 25 Q And the board of directors formed a special

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1 committee to look into the historical granting practices;
 2 is that right?
 3 A Right.
 4 Q Did the special committee or its attorneys from
 5 O'Melveny & Myers ask you to sit for an interview about
 6 your role in the historical option granting practices at
 7 Embarcadero?
 8 A Yes.
 9 MR. SCHINDLER: Well, let's not -- you're not asking
 10 him to get into conversations he had with counsel.
 11 THE WITNESS: Right.
 12 MR. SCHINDLER: So everything you're asking at this
 13 point happened through counsel, just so you understand.
 14 BY MR. TASHJIAN:
 15 Q Did you understand that the special committee
 16 made a request for you to be interviewed about your role
 17 in the historical option granting practices?
 18 MR. SCHINDLER: Don't talk about conversations --
 19 other than conversations you had with me, so if you had
 20 conversations with me, don't answer the question. Other
 21 than conversations you had with me.
 22 THE WITNESS: I took it under advisement.
 23 MR. TASHJIAN: I don't want to get into the substance
 24 of your conversation. I certainly don't want to
 25 intervene in that relationship.

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1 THE WITNESS: Right, right.
 2 MR. TASHJIAN: And I don't want to get into the
 3 substance of the communication. I'm just asking if
 4 Mr. Wong understood that that request had been made.
 5 MR. SCHINDLER: And, again, other than conversation --
 6 to the extent you can answer that question other than
 7 through conversations you and I had, do so, but if the
 8 only way you can answer that question is via
 9 conversations you and I had, then I'm instructing you not
 10 to answer.
 11 THE WITNESS: Then I can't answer.
 12 BY MR. TASHJIAN:
 13 Q Did you sit for an interview with the special
 14 committee or its advisors from O'Melveny & Myers in
 15 November or December 2006?
 16 A Again, at this point, I had counsel. So all of
 17 that would have been through --
 18 MR. SCHINDLER: Just answer yes or no. Just yes or no
 19 if you sat for an interview.
 20 THE WITNESS: No.
 21 BY MR. TASHJIAN: SEC
 22 Q At any point, did you -- did you tell the
 23 special committee or its advisors at O'Melveny & Myers
 24 what your role was in the historical option granting
 25 practices to employees?

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1 MR. SCHINDLER: Again, don't -- I'm instructing you
 2 not to answer to the extent that that involves
 3 communications that came through me.
 4 So there were communications through counsel,
 5 but he's asking apart from any conversations you and I
 6 had, did you have any conversations with anybody at
 7 O'Melveny? **SEC**
 8 THE WITNESS: No.
 9 BY MR. TASHJIAN:
 10 Q At some point, the Securities and Exchange
 11 Commission began investigating the option granting
 12 practices.
 13 Did you appear for testimony under oath at the
 14 Securities and Exchange Commission in regard to your role
 15 at the -- in the historical option granting practices in
 16 Embarcadero?
 17 MR. RICHARD: Objection; calls for comments and
 18 assumes facts not in evidence.
 19 MR. TASHJIAN: That's fair enough. **SEC**
 20 Q Did you -- did you appear for testimony at the
 21 SEC regarding Embarcadero's option granting processes?
 22 A Yes.
 23 Q Did you answer questions put to you about your
 24 role and -- about your role in the option granting
 25 practices?

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1 A Could you clarify?
 2 Q Did you answer questions substantively about
 3 your role in the option granting practices at
 4 Embarcadero?
 5 MR. SCHINDLER: Let me short-circuit this because I
 6 think he may be confused by your question.
 7 MR. TASHJIAN: Sure.
 8 MR. SCHINDLER: I hadn't had an opportunity to visit
 9 with Mr. Wong and so on advice of counsel, as reflected
 10 in the record there, I instructed him not to answer any
 11 questions and informed the SEC staff that after I had an
 12 opportunity to visit with him and adequately prepare,
 13 that we might come back and sit. Between that time,
 14 there was a settlement.
 15 So it's hard for him to answer the question. He
 16 did indeed answer the questions, but by my advice failed
 17 to answer substantively.
 18 BY MR. TASHJIAN:
 19 Q In fact, you invoked your Fifth Amendment
 20 privilege in response to questions put to you about
 21 Embarcadero's historical option granting processes?
 22 MR. SCHINDLER: Again, I'm going to object to the line
 23 of questioning that suggests that it was somehow improper
 24 for him to exercise his constitutional right.
 25 MR. TASHJIAN: I'm not making that assertion. I'm

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1 just asking a factual question.
 2 MR. SCHINDLER: And, again, as I've indicated on the
 3 record, I instructed him because I hadn't had an
 4 opportunity to consult with him. I asked for an
 5 extension. The SEC declined to grant it because I only
 6 had a few hours to visit with him. So he did not answer
 7 any questions substantively on my advice.
 8 BY MR. TASHJIAN:
 9 Q Your attorney adequately and accurately
 10 explained your responses to questions put to you about
 11 Embarcadero's option granting processes?
 12 A Are you asking me about conversations I had with
 13 my counsel?
 14 Q No. I'm saying your attorney just stated for
 15 the record an assertion that you invoked your Fifth
 16 Amendment privilege. **SEC**
 17 Did you invoke your Fifth Amendment privilege
 18 when the SEC asked you questions?
 19 A Yes.
 20 Q The -- Embarcadero was eventually sold in 2007
 21 to Thoma Cressey; is that right?
 22 A Right.
 23 Q What was the price per share?
 24 A It was lower.
 25 Q How much lower?

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1 A I forget the exact price, but it was a little
 2 over \$7, I think.
 3 Q What was the price that -- did you, as a large
 4 shareholder, receive the same price as all the other
 5 shareholders in the 2007 acquisition?
 6 A Yes.
 7 Q You didn't sell your shares for less or more?
 8 A No.
 9 MR. TASHJIAN: Thank you very much for your time. I
 10 reserve the right to ask any follow-up questions. I know
 11 counsel has some questions for you.
 12 THE WITNESS: Sure.
 13 MS. LaMARCA: I'd just like to take two minutes to do
 14 the swap.
 15 MR. RICHARD: Sure.
 16 THE VIDEOGRAPHER: Go off the record?
 17 MR. TASHJIAN: Yeah.
 18 THE VIDEOGRAPHER: Going off the record, the time is
 19 5:05.
 20 (Brief break.)
 21 THE VIDEOGRAPHER: Back on the record, the time is
 22 5:07.
 23 ///
 24 ///
 25 ///

OR

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MP

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1 FURTHER EXAMINATION
 2 BY MR. RICHARD:
 3 Q It's late in the day. How are you doing,
 4 Mr. Wong?
 5 A I'm doing fine. Thank you.
 6 Q The videotape will show that you started to
 7 slump down in your chair.
 8 A I was hoping I was getting taller.
 9 Q I just -- I really do just have a couple of
 10 areas to follow up on.
 11 Mr. Tashjian, the attorney for the government,
 12 used a phrase "committee of one."
 13 Do you recall that he was asking that you became
 14 the committee of one as a result of the board of
 15 directors delegation of authority to you in October 2000
 16 to issue stock options to the rank-and-file employees?
 17 A Right, yes.
 18 Q At the time in October 2000 when the board
 19 exercised its discretion and delegated authority to you,
 20 did you actually think of yourself as a board committee
 21 of one member?
 22 A No, it's kind of an odd -- awkward concept.
 23 Q Well, why do you say that?
 24 A Because while I was the one who signed off on
 25 the grants, the whole process of -- would come up --

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1 filter up through the ranks through the hiring managers
 2 as to who they thought would be worthy of consideration
 3 of stock option grants.
 4 Q In fact, if you were a board committee of one, a
 5 board committee would maintain minutes, for example,
 6 right?
 7 A Right.
 8 Q There would be a certain formality to a board
 9 committee even if it was just a board committee of one
 10 member, right?
 11 A Okay.
 12 Q Did you feel at the time, that is, at any point
 13 after October 12, 2000 that when you were issuing stock
 14 options to your employees, that you needed to operate
 15 with the formality of a board committee or subcommittee?
 16 A No, it didn't occur to me.
 17 Q One of the other things counsel for the
 18 government asked you was whether you relied on
 19 Mr. Pattison to track down the share price, the low share
 20 price of the quarter for you, and the thought occurred to
 21 me, would you actually have to call upon your Harvard
 22 education to look up the company share price?
 23 A You know, looking up historical stock price is
 24 not difficult. It's just a matter of who has the time,
 25 you know, to go and generate the schedules.

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1 Q Okay. You were at the very end asked some
 2 questions by the attorney for the government and your
 3 counsel mentioned that there had been a settlement at
 4 some point.
 5 I don't know what arguments the government may
 6 make at trial about what happened before this action
 7 against my client was filed, but they may make some
 8 argument about whether you asserted your constitutional
 9 rights or whether you settled and tried to have the jury
 10 draw some adverse inference. So I need to ask you --
 11 MR. TASHJIAN: What was that about preparatory
 12 comments?
 13 MR. RICHARD: Context, in the nature of an apology for
 14 this question.
 15 Q Can you tell us, you did settle before a lawsuit
 16 was filed by the government against you?
 17 A Right.
 18 Q And did you at the time of this settlement
 19 believe that you were making any admission of guilt?
 20 A No, I think the agreement specifically says I'm
 21 not admitting and I can't deny it.
 22 Q Are you at liberty to tell us why you settled or
 23 the reasons that caused you to settle?
 24 I don't want to infringe on any attorney-client
 25 communications, but, again, it's something the jury may

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1 wonder.
 2 A Sure. I was -- my family and I were moving to
 3 Asia, and it would have been very disruptive, you know,
 4 such as coming here to Los Angeles for this deposition,
 5 to, you know, be involved in a case where it would
 6 consume a lot of my time, just very difficult. I wanted
 7 to put it behind me for the sake of my family and just
 8 move on.
 9 Q Okay. The final area I wanted to ask you,
 10 counsel showed you some documents from 2006 and asked you
 11 whether Jin Jiang -- she was what, the controller at some
 12 point in time?
 13 A Yes.
 14 Q -- asked you whether she knew -- or whether you
 15 told her that the company granted employee stock options
 16 at the quarterly low.
 17 Do you know whether she already knew that based
 18 on her dealings with Lorraine Gnecco in 2005?
 19 MR. TASHJIAN: Objection; calls for speculation.
 20 BY MR. RICHARD:
 21 Q Let me show you a document and ask you if it
 22 refreshes your memory.
 23 A Okay.
 24 Q First of all, do you know without looking at
 25 some document one way or another what Jin Jiang already

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1 knew in 2006 regarding the company's stock option
 2 practices?
 3 MR. TASHJIAN: Same objections.
 4 THE WITNESS: No, I wouldn't -- I wouldn't know what
 5 she knew.
 6 BY MR. RICHARD:
 7 Q I'm going to show you what was previously marked
 8 in these proceedings as Exhibit 160, lest there be some
 9 confusion on this point, and understanding that you're
 10 not an author or recipient, assume that Jin JIang wrote
 11 to Lorraine Gnecco in August 2005 and said, "From talking
 12 to Nichole, the customary procedure was to grant employee
 13 stock option at the lowest price in the quarter of hire.
 14 This grant conformed to the process."
 15 Do you have any reason to believe that Jin JIang
 16 did not, in fact, know of the company's practice at least
 17 in that respect by August 2005?
 18 MR. TASHJIAN: Objection; lacks foundation, calls for
 19 speculation.
 20 THE WITNESS: Yeah, I wasn't party to this e-mail
 21 stream, but from -- I mean, I think what she writes here
 22 speaks for itself.
 23 MR. RICHARD: It does, but we always like it if the
 24 witness also speaks.
 25 Q It wouldn't surprise you if Jin JIang and

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1 Lorraine Gnecco and a host of the other folks understood
 2 full well by August 2005 the two sentences I just read to
 3 you, that doesn't surprise you, would it?
 4 MR. TASHJIAN: Objection; argumentative, calls for
 5 speculation, lacks foundation.
 6 THE WITNESS: I didn't know it at the time, but no one
 7 was trying to keep it a secret. I mean, it was pretty
 8 well known how we did it.
 9 MR. RICHARD: I have nothing further. Thanks again
 10 for your time.
 11 Was that less than eight minutes?
 12 MR. SCHINDLER: Yes.
 13
 14 FURTHER EXAMINATION
 15 BY MS. MCKAIG:
 16 Q I just have a few questions. You don't have to
 17 move, if that will reach.
 18 If I could have you look at Exhibit 120, it's
 19 the October 12, 2000 minutes.
 20 A Getting there.
 21 Q Sure.
 22 A Got it.
 23 Q Okay. Mr. Tashjian asked you some questions
 24 about Exhibit A to these minutes, and if you turn to the
 25 last page of this document, Exhibit A appears to be stock

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1 options. It's titled "Exhibit A, Stock Option Grants
 2 10-12-00."
 3 Do you see that?
 4 A Yes.
 5 Q I believe that Mr. Tashjian asked you some
 6 questions about whether or not the options granted in
 7 Exhibit A would have an exercise price and a grant date
 8 as of October 12, 2000.
 9 Do you recall that questioning generally?
 10 A Right.
 11 Q Is it your understanding that options that would
 12 have been granted on October 12, 2000 would have had an
 13 exercise price as of October 11, 2000?
 14 A You mean -- I felt that the day that we
 15 issued -- you know, issued a stock option was the day --
 16 the date of the grant would be the date -- would be the
 17 corresponding price.
 18 Q Okay. Let me have you look at Exhibit 2, if you
 19 would, page 47. It's the 200- -- 2003 10-K, I believe.
 20 A Sure, got it.
 21 Q If you look at page 47 --
 22 A Okay.
 23 Q -- of that document, the second to the last
 24 paragraph, it says, "Since the initial public stock
 25 offering, all stock option grants made during the year

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1 were at fair market value, which is defined as the
 2 closing share price on the day prior to the option grant
 3 date."
 4 Do you see that?
 5 A Yes.
 6 Q Do you recall that being Embarcadero's practice?
 7 A I thought it was the date of the grant.
 8 Q Okay. So in other words, this doesn't look
 9 right to you sitting here today that they actually used
 10 the option price as of the day prior -- the exercise
 11 price equal to the stock price as of the day prior to the
 12 grant date?
 13 MR. TASHJIAN: Objection; vague.
 14 THE WITNESS: Right.
 15 MS. MCKAIG: You're right. That question wasn't
 16 phrased very well.
 17 Q Let me just start over and say -- and ask you
 18 whether or not, sitting here today, is it your -- is it
 19 your recollection that options were granted with an
 20 exercise price equal to the stock price as of the day
 21 prior to the grant date?
 22 A No.
 23 Q In other words, it's your -- it's your
 24 recollection that the exercise price was equal to the
 25 stock price on the day of the grant date?

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1 A Right.
 2 MR. TASHJIAN: Objection; vague, leading.
 3 BY MS. MCKAIG:
 4 Q Assuming that it was Embarcadero's practice to
 5 issue options with exercise prices equal to the stock
 6 price on the day prior to the grant date, do you recall
 7 anyone telling you or anyone else at Embarcadero that you
 8 can't do that; you can't look back a day for an exercise
 9 price?
 10 A No.
 11 Q Turning back to something you testified to
 12 earlier, you mentioned that you were hoping that Raj
 13 would develop or grow into the role of the type of CFO
 14 that was needed at Embarcadero, correct?
 15 A Right.
 16 Q And you also testified that Raj ended up
 17 transitioning out of the CFO role, correct?
 18 A Correct.
 19 Q So is it fair to say he didn't grow and develop
 20 into the CFO role as you hoped?
 21 A Yeah, I think that's a fair statement sitting
 22 here today.
 23 MS. MCKAIG: I don't think I have anything further
 24 other than just to put on the record that I join in any
 25 objections made by any other counsel here today.

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1 MR. SCHINDLER: Can I ask just two questions?
 2 MR. TASHJIAN: Only if they take half an hour.
 3
 4 EXAMINATION
 5 BY MR. SCHINDLER:
 6 Q During the entire time that Embarcadero was
 7 public, how many stock options were you granted?
 8 A Zero.
 9 Q Were you a party to that decision not to
 10 grant -- not to take any stock options?
 11 A Yes.
 12 Q Why?
 13 A In fact, the compensation committee had
 14 recommended option grants to me which I always refused
 15 and told them never to even consider it. I felt that, as
 16 a founder of the company, I owned enough of the company,
 17 and I wanted to demonstrate to the other shareholders
 18 that I was in the same boat as them.
 19 I put up the money to start this company. I
 20 poured in whatever sweat was required to build it, and I
 21 wasn't there for, you know, the additional option grants,
 22 even though it was very commonplace in the valley, even
 23 for guys that had very substantial net worths, nor was I
 24 there for the cash compensation.
 25 MR. SCHINDLER: I have nothing further.

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1 MR. TASHJIAN: Mr. Wong, we appreciate the fact,
 2 again, that you flew in from Hong Kong. Thank you for
 3 your time today.
 4 THE WITNESS: Thank you.
 5 MS. MCKAIG: Thank you, Mr. Wong.
 6 THE VIDEOGRAPHER: This concludes the deposition of
 7 Steve Wong, Volume I. The number of tapes used was
 8 three. The original videotapes will be retained by
 9 Merrill Legal Solutions at 135 Main Street, San
 10 Francisco, California 94105.
 11 Going off the record, the time is --
 12 MR. SCHINDLER: Actually before you -- usual
 13 stipulation in terms of how the transcript --
 14 MR. TASHJIAN: Except we're right up against trial
 15 so --
 16 MR. SCHINDLER: You guys decide what you want to do.
 17 It's fine with us.
 18 MR. RICHARD: We're going to get an expedited copy so
 19 the witness can review it.
 20 MR. TASHJIAN: All right. If you could do it
 21 before -- in the next week or so, I'd appreciate it.
 22 Would you agree to do that?
 23 MR. SCHINDLER: Yeah.
 24 MR. TASHJIAN: Great.
 25 THE VIDEOGRAPHER: Going off the record, the time is

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1 5:20.
 2 THE REPORTER: Is the Securities and Exchange
 3 Commission ordering a copy?
 4 MR. TASHJIAN: Yes, we are.
 5 (Whereupon, at the hour of 5:20 p.m.,
 6 the deposition was concluded.)
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1 STATE OF CALIFORNIA)
 2) ss
 3 COUNTY OF LOS ANGELES)
 4
 5 I, STEPHEN WONG, declare under the penalties
 6 of perjury of the laws of the United States that the
 7 foregoing is true and correct.
 8 Executed this day of ,
 9 2010, at , California.
 10
 11
 12
 13
 14 _____
 15 STEPHEN WONG
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

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1 STATE OF CALIFORNIA)
 2) ss
 3 COUNTY OF LOS ANGELES)
 4 I, LINDA NICKERSON, CSR #8746, in and for
 5 the State of California do hereby certify:
 6 That, prior to being examined, the witness
 7 named in the foregoing deposition was by me duly sworn to
 8 testify the truth, the whole truth, and nothing but the
 9 truth;
 10 That said deposition was taken down by me in
 11 shorthand at the time and place therein named, and
 12 thereafter reduced to typewritten form at my direction,
 13 and the same is a true, correct, and complete transcript
 14 of the testimony at said proceedings.
 15 Before completion of the deposition, review
 16 of transcript [] was [] was not requested. If
 17 requested, any changes made by the deponent (and provided
 18 to the reporter) during the period allowed are appended
 19 hereto.
 20 I further certify that I am not interested
 21 in the event of the action.
 22 WITNESS MY HAND this 9th day of January, 2010.
 23
 24 _____
 25 LINDA NICKERSON, CSR No. 8746

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