DECLARATION OF RONALD S. BETMAN IN SUPPORT OF MOTION TO EXCLUDE EXPERT TESTIMONY OF ELI BARTOV; Case No. C-01 20418 JW

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re
CISCO SYSTEMS, INC. SECURITIES LITIGATION,
Defendant.

This Document Relates To:
ALL ACTIONS

Case No. C 01-cv-20418 JW
CLASS ACTION

DECLARATION OF RONALD S. BETMAN IN SUPPORT OF MOTION TO EXCLUDE EXPERT TESTIMONY OF ELI BARTOV

Date: September 18, 2006
Time: 3:00 p.m.
Place: Courtroom of the Hon. James Ware
I, Ronald S. Betman, declare:

1. I am an attorney admitted pro hac vice to practice before this Court in this matter. I am a partner in the law firm of Winston & Strawn LLP, attorneys for defendants Cisco Systems, Inc. (“Cisco”), John T. Chambers, Larry R. Carter, Steven M. West, Edward R. Kozel, Donald T. Valentine, Judith L. Estrin, Gary J. Daichendt, Donald L. Listwin, Carl Redfield and Michelangelo Volpi (collectively, the “Cisco Defendants”). I have personal knowledge of the matters set forth herein and, if called as a witness, I could and would testify competently thereto.

2. The Cisco Defendants are filing a Motion and Memorandum of Points and Authorities in Support of their Motion to Exclude Expert testimony of Eli Bartov (“Bartov Motion”). The evidence supporting the Cisco Defendants’ Bartov Motion is cited therein, referred to by exhibit number (“Ex. __”), and attached to this Declaration.

3. The following Exhibits are true and correct copies of excerpts of expert reports produced in this matter, back-up data produced relating to expert reports, declarations made by certain individual defendants in support of the Cisco Defendants’ Motions for Summary Judgment, and excerpts of deposition transcripts:

   Exhibit 1  November 29, 2005 Expert Report of Kevin J. Murphy
   Exhibit 2  January 11, 2006 Expert Report of Eli Bartov, Ph.D.
   Exhibit 3  February 7, 2006 Deposition of Eli Bartov
   Exhibit 4  September 30, 2005 Deposition of Larry Carter
   Exhibit 5  Declaration of Donald J. Listwin in Support of Motion for Summary Judgment
   Exhibit 6  Donald J. Listwin Options and Awards Summary
   Exhibit 7  August 4, 2005 Deposition of Judith L. Estrin
   Exhibit 8  Judith L. Estrin Options and Awards Summary
   Exhibit 9  August 25, 2005 Deposition of Edward R. Kozel
   Exhibit 10 Donald T. Valentine Options and Awards Summary
Exhibit 11 Declaration of Donald T. Valentine in Support of Motion for Summary Judgment

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is being executed on this 7th day of July, 2006, at Chicago, Illinois.

/s/ Ronald S. Betman

Ronald S. Betman
EXHIBIT 1
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

PLUMBERS & PIPEFITTERS NATIONAL
PENSION FUND, et al.,

Plaintiffs,

v.

CISCO SYSTEMS INC., et al.,

Defendants.

Civ. No. 01-20418

Expert Report of Kevin J. Murphy
November 29, 2005

CONFIDENTIAL.
Analysis of Equity-Based Compensation and Shareholdings for Executives and Directors at Cisco Systems, Inc.

I. Introduction and Executive Summary

I, Kevin J. Murphy, have been retained by the law firms of Winston & Strawn, LLP, and Fenwick and West, LLP, attorneys for Cisco Systems, Inc. ("Cisco") and Carol A. Bartz, Larry R. Carter, John T. Chambers, Gary J. Daichendt, Judith Estrin, Edward R. Kozel, Donald J. Listwin, Robert L. Puette, Carl Redfield, Donald Valentine, Michelangelo Volpi, and Steven M. West ("Individual Defendants"). I have been asked to opine on several issues related to equity-based compensation and insider stock transactions at Cisco. Specifically, I have been asked to render opinions on the following issues:

1. Whether and the extent to which Computer-Related firms (as defined below) relied more on stock option compensation than did Other firms (as defined below) during the years 1995 through 2002 (including during the Cisco “Class Period” from August 10, 1999 through February 6, 2001).

2. Whether and to what extent stock options were a particularly important form of compensation for executives in Silicon Valley Computer-Related firms from 1995 through 2002.

3. Whether executive compensation practices at Cisco were in accordance with the customs and practices among Silicon Valley Computer-Related firms.

4. Whether and to what extent executives in Computer-Related firms exercised options during the years 1995 through 2002 (including the Class Period), and whether executives exercising options routinely sell shares obtained upon the exercise.

5. Whether the option exercise and trading patterns of the Individual Defendants were unusual or suspicious (a) given, among other things, Cisco’s trading windows which restricted selling opportunities; (b) compared to exercise and trading patterns for other executives in the industry; and (c) compared to the exercise and trading patterns of the Individual Defendants before the Class Period.

My opinions in this report are based in part on my extensive professional knowledge of executive compensation practices and my research on executive compensation conducted over the past two decades. In addition, my opinions are based on analyses of compensation
data for executives in large publicly traded companies extracted from company proxy statements and Standard and Poor's (S&P's) ExecuComp Database. In forming my opinions, I have also considered and relied upon a variety of legal filings, depositions, and other documents produced in this matter.

If asked to testify in this matter, I anticipate using the tables and figures attached to this report, appropriately modified (if necessary) for use in a courtroom. I also anticipate using additional illustrations and graphics drawn from the body of my report and from the documents I have considered in producing this report.

My analysis begins in Section II with an examination of the use of executive stock options in "Computer-Related" firms, based on analyses of executive compensation data for companies listed in the S&P 500 from 1995 through 2002. Throughout my analysis, I define "Computer-Related" as firms operating in the following businesses: application software; communications equipment; computer hardware; computer storage and peripherals; data processing and outsourced services; electronic equipment manufacturers; home entertainment software; internet retail; internet software and services; IT consulting and other services; office electronics; and semiconductors.¹ "Other" firms are defined as firms in other industries.²

My analysis demonstrates that Computer-Related firms grant their executives more stock options (measured both as a percentage of outstanding common shares and using the grant-date "Black-Scholes" value) than do Other firms. In addition, executives in Computer-Related firms receive lower levels of total compensation (excluding options) than do their counterparts in Other firms. Finally, I show that, even within Computer-Related firms, option-based compensation is especially prevalent for firms located in the Silicon Valley relative to firms outside the Silicon Valley. Based on these analyses, it is my opinion that stock options constituted an essential component of competitive compensation packages for executives in Computer-Related firms from the mid-1990s through 2002, and that offering large option grants was not only a competitive necessity, but was critical in attracting and

¹ More specifically, Computer-Related firms are defined as companies with primary SIC designations of 3570 (Computer & Office Equipment); 3571 (Electronic Computers); 3572 (Computer Storage Devices); 3576 (Computer Communication Equipment); 3577 (Computer Peripheral Equipment); 3674 (Semiconductor, Related Device); 3679 (Electronic Components); 5045 (Computers & Software-Wholesale); 7370 (Computer Programming/Data Processing); 7371 (Computer Programming Service); and 7372 (Prepackaged Software).

² Throughout this report, I exclude firms in financial services (SIC designations between 6000 and 6999) and regulated utilities (SIC designations between 4900 and 4999).
retaining its top executives and in aligning the interest of executives with those of shareholders.

In Section III, I analyze compensation practices for the Chief Executive Officer (CEO) and other top-level executives at Cisco. I show that total compensation (excluding options) for Cisco’s top executive was substantially below the median of that received by similarly situated executives and that, expressed as a fraction of common shares outstanding, Cisco’s use of options was also modest relative to other Computer-Related firms. In particular, I show that from 1995 through 2002, Cisco’s CEO John T. Chambers received total compensation (excluding options) averaging $625,900 annually, which was at approximately the 14th percentile for other CEOs in S&P 500 Computer-Related firms. In addition, Mr. Chambers received, on average, options to purchase 0.085 percent of Cisco’s common shares annually, which was at approximately the 23rd percentile of grants to similarly situated executives. Overall, it is my opinion that executive compensation practices at Cisco were in accordance with competitive norms within Silicon Valley Computer-Related firms.

Section IV analyzes option exercises and sales by executives in Computer-Related firms. I focus primarily on option exercises, since most insider sales (at Cisco and among all Computer-Related firms) coincide with exercises of stock options, and since vested and unvested option holdings for top executives are typically very large compared to direct shareholdings. I discuss why executives routinely exercise options prior to their expiration, and why they almost always sell the stock acquired through option exercises. I show that, on average, top executives exercise about fifteen percent of their vested options each fiscal year and exercise about eight percent of all options held (including unvested options). In addition, executives are more likely to exercise early when options are well in the money, which implies increased exercise activity following run-ups in the stock price. It is my opinion that these behaviors are normal, predictable, and appropriate responses given the structure of traditional stock option plans.

Section V analyzes option exercises and sales for executives and directors at Cisco. I begin by describing the option exercise patterns for Cisco executives. I show that the exercise patterns are well within the competitive norms for executives in Computer-Related firms. I then describe the “Trading Windows” employed by Cisco and document that Cisco executives adhered to these company policies. The Trading Windows were typically open from the third day following Cisco’s quarterly earnings announcements through the first fiscal day of the last month of each quarter. However, at the instruction of the top
management or board of directors, these windows would often be closed for additional periods resulting in very limited trading opportunities for Cisco’s executives and directors. In addition, company policy explicitly prohibits executives from trading any time they are in possession of material nonpublic information regardless of whether the Trading Window is opened or closed.

I then analyze the option and stock holdings and exercising and selling behavior for each Individual Defendant from 1995 though 2002. I show that, in spite of the stock-price appreciation that would generally lead to increased sales, several Individual Defendants increased their stock and option holdings during the Class Period. In addition, while different Individual Defendants displayed different investment behaviors (some, for example, tended to exercise options as they became vested, while others held options until near expiration), the behaviors of the Individual Defendants during the Class Period were generally consistent with their behaviors prior to the Class Period. Overall, it is my opinion that there is nothing unusual, suspicious or inappropriate about the Individual Defendants’ exercise and trading patterns during the Class Period; their behavior is largely consistent with both their trading histories and with the exercise and trading patterns for other executives in Computer-Related firms.

Next, I note that the August 1999 trades (constituting nearly 40 percent of the trades challenged by Plaintiffs) occurred at a time when Plaintiffs’ expert concludes that Cisco’s stock price was not artificially inflated. In my opinion, there is no basis on which to challenge these trades.

Finally, in addition to analyzing the holdings and trading patterns for the Individual Defendants, I also analyze the holdings and trading activities of Cisco’s Chairman and largest individual shareholder, John P. Morgridge (who would presumably be privy to the same inside information allegedly possessed by the Individual Defendants). I show that Mr. Morgridge sold few shares during the Class Period (largely attributable to gift transactions from the Morgridge Family Trust and the Morgridge Family Foundation), and that Mr. Morgridge stood by and watched his entire portfolio fall in value by more than $4 billion from March 27, 2000 to the end of the Class Period.

I find no evidence that, in my opinion, supports allegations that Cisco insiders were exploiting material nonpublic information during the Class Period by disposing of Cisco stock. Rather, the trading activity during the Class Period is fully consistent with established trading patterns and readily explained by the rational actions of executives who have
liquidity needs and diversification concerns, and who face restrictive Trading Windows that limit trading opportunities. The fact that Mr. Morgridge (and the trusts and foundations associated with Mr. Morgridge) sold so few shares during the Class Period, while having both the information and the obvious incentives to do so, further supports my opinion.

My qualifications are described in Section VI, “Author’s Statement and Qualifications,” and I have attached my curriculum vitae at the end of this report as Exhibit A. A list of cases in which I have testified or given depositions within the last four years is attached as Exhibit B. The documents and other information that I have considered, including legal filings, depositions, and documents produced in this matter, are listed in Exhibit C. I am being compensated for my work on this matter at my usual and customary rate of $550 per hour.

II. Executive Compensation in Computer-Related Firms

An executive stock option conveys to the recipient the right, but not the obligation, to purchase one share of stock at a predetermined “exercise price” for a predetermined period. Stock options have become a ubiquitous component of compensation for executives and employees in publicly traded U.S. corporations. The increase in executive stock options has occurred across a wide range of industries, but is especially pronounced in the so-called “new economy” sector related to computers, software, the Internet, and networking. In this section, I will describe and analyze stock option compensation within Computer-Related firms, and compare the importance of stock-option compensation in Computer-Related and Other firms.

My results are based upon my expertise and own research in the area and also on analyses of executive compensation data for a large sample of publicly traded companies during fiscal years from 1995 through 2002. My primary data source is Standard and Poor’s (S&P’s) ExecuComp Database, which provides details of executive compensation extracted from company proxy statements for companies in the S&P 500, the S&P MidCap 400, and

EXPERT REPORT OF

ELI BARTOV, Ph.D.

In re Cisco Systems, Inc., Securities Litigation

United States District Court, Northern District of California
Case No. C-01-20418-JW (PVT)
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Rebuttal of Mr. Murphy’s Expert Report and Analysis of Patterns in Stock Option Exercises of Executives at Cisco Systems, Inc.

I. Nature of Assignment and Executive Summary

I, Eli Bartov, have been retained by Lerach Coughlin Stoia Geller Rudman & Robbins LLP, to provide expert testimony regarding:

a. Whether the opinions stated by Mr. Kevin J. Murphy in his Expert Report dated November 29, 2005, are valid.

b. Whether the option exercise patterns of 12 executives and directors of Cisco Systems, Inc. during the 18-month Class Period, August 10, 1999 – February 6, 2001 (Original Class Period), were unusual.

c. Whether the option exercise patterns of 12 executives and directors of Cisco Systems, Inc. during the 15-month Class Period, November 10, 1999 – February 6, 2001 (Modified Class Period), were unusual.

My opinions in this report are based on scientific evidence produced by performing statistical analyses of data retrieved from the following two sources: (1) Cisco’s Options and Awards Summary Files, and (2) Standard and Poor’s (S&P’s) ExecuComp Executive Compensation Database. My opinions are also based on my extensive research on executive compensation in general and patterns in executive stock option exercises and earnings manipulations in particular. I also considered the documents listed in Exhibit A, attached hereto.

If requested to testify in this matter, I anticipate using selected exhibits attached to this report and documents considered in connection with their preparation, enhanced graphic versions of selected exhibits included in this report, and additional graphics illustrating concepts described in this report.
In the next section I provide a brief summary of my qualifications. In Section III, I assess the validity of Mr. Murphy's opinions that (1) "Cisco's use of options was also modest relative to other Computer-Related firms" and (2) "there is nothing unusual, suspicious or inappropriate about the Individual Defendants' exercise and trading patterns during the Class Period." My conclusion is that Mr. Murphy's opinions are unsubstantiated, as they are based on flawed methodology and superficial analysis, and are not supported by credible evidence.

Given this, in Section IV, I re-examine the exercise patterns of 12 executives and directors of Cisco Systems, Inc. My examination differs from that of Mr. Murphy in that I first develop a scientific methodology and then analyze statistically the data by using both two-sample t-tests and regression analyses. The analysis covers the 18-month Original Class Period (August 10, 1999 – February 6, 2001) as well as the 15-month Modified Class Period (November 10, 1999 – February 6, 2001). For each of the two Class Periods, three consecutive periods of equal length leading up to the Class Period under investigation are also analyzed. As expected, the results are somewhat sensitive to the choice of the Class Period's length. Still, overall, the evidence indicates unusually high stock option exercises for nearly all executives and directors considered in both periods that are inconsistent with their exercise history. Additional analysis performed, for only five executives (due to data limitations) shows that this behavior is not attributable to portfolio diversification needs and consistent with foreknowledge of a looming price decline of Cisco's stock. Based on this evidence I conclude that Mr. Murphy's opinion—that "there is nothing unusual, suspicious or inappropriate about the Individual Defendants' exercise and trading patterns during the Class Period"—is erroneous.

I am being compensated at my usual and customary rate of $625 per hour. The opinions expressed in this report are based on my work to date. I reserve the right to amend or supplement the opinions expressed in this report.
II. Summary of Author’s Qualifications

My name is Eli Bartov and I am currently the Director of the Accounting Doctoral Program and a Research Professor of Accounting at the Leonard N. Stern School of Business, New York University. I have been at the Accounting Department of New York University’s Leonard N. Stern School of Business since 1992 and a Full Professor of accounting since 2001. From 1989 to 1992 I was an Assistant Professor of accounting at the University of Rochester’s William E. Simon Graduate School of Business Administration. A more complete summary of my background is attached as Exhibit B to this report.

I received my Ph.D. degree in accounting from the University of California at Berkeley, in 1989. My honors from the University of California at Berkeley include a Coopers & Lybrand Foundation Doctoral Student Fellowship, a University of California at Berkeley Graduate School Grants and Waivers Fellowship, and a University of California at Berkeley Doctoral Student Fellowship. I received my B.A. degree in accounting and economics, respectively, from the Faculty of Management and the Faculty of Social Sciences of Tel-Aviv University in 1977, where I was honored by being included on The Rector’s Honor List, and The Dean’s Honor List. I obtained my C.P.A. certification in Israel in 1979, where I was a practicing accountant until 1985 dealing primarily with auditing, tax planning, and designing of financial accounting systems for small- to medium-size business organizations.

At New York University’s Stern School of Business I teach courses in financial accounting and reporting, financial statement analysis, international accounting and financial statement analysis, and empirical research in financial accounting at the MBA and Ph.D. levels. I have been supervising doctoral students since 1997. I placed my most recent graduate, Dr. Yonca Ertimur, at Stanford University’s Graduate School of Management as an Assistant Professor. I have also taught at the University of Rochester, University of California at Berkeley, University of California at Los Angeles, Insead, Paris, and City University of Hong Kong.
My research focuses on executive stock options, earnings manipulations, earnings expectation manipulations, and various aspects of equity valuation. In recent years executive compensation has been my primary research interest. I wrote a number of papers in the area, including a paper that has a direct bearing on issues analyzed in this report, entitled "Private Information, Earnings Manipulations, and Executive Stock Option Exercises," which was published last year in The Accounting Review, a journal considered by many to be the leading academic accounting journal in the world. My research has been widely cited by other academics as well as by the financial press. I have been invited frequently to lecture on executive stock options, earnings manipulations, equity valuation, and related topics before academic audiences not only in the U.S., but also in Canada, Asia, Europe, the Middle East, and Australia.

I served as a committee member of the AAA/FASB Financial Accounting Standards Committee in the three-year period of 2001-2004. This committee, whose members are appointed by the President of the American Accounting Association (AAA), advises the Financial Accounting Standards Board (FASB) on contemporary accounting issues. As a member of this committee, I advised the FASB in promulgating the new accounting standard on employee stock options and other share-based payments (Statement of Accounting Standard No. 123R). As part of advising the FASB on this matter, I had written with two other members of the committee a comment letter to the FASB that later was published as a paper, entitled "Evaluation of the FASB’s Proposed Accounting and Disclosure Requirements for Share-Based Payment."

I have been serving on a myriad of other American Accounting Association committees, including the 2004-2005 Deloitte & Touche Wildman Medal Award Committee, the 2002 International Accounting Section Mid-Year Meeting Committee, and the 2000-2001 Financial-Reporting-Issues Conference Committee. I have also been serving on a number of editorial boards of academic journals, including The Accounting Review, and the International Journal of Disclosure and Governance, as well as an ad hoc reviewer for virtually all of the top tier accounting and finance academic journals.
I communicate regularly with the investing community by consulting with financial analysts and professional money managers from such firms as Citadel Investment Group, Goldman Sachs Distressed Proprietary Investing, Viking Global Investors, and SAC Capital Advisors. I have also been invited frequently to lecture before investors, bankers, financial analysts, and money managers by such firms as Fidelity Investments, Wellington Management, Standard Chartered Bank, Schroder Salomon Smith Barney, and Prudential Securities.

III. Assessment of Mr. Murphy’s Expert Report

Mr. Murphy’s two primary opinions are: (1) “Cisco’s use of options was also modest relative to other Computer-Related firms … Mr. Chambers received, on average, options to purchase 0.085 percent of Cisco’s common shares annually, which was at approximately the 23rd percentile of grants to similarly situated executives” (see page 3 of his report), and (2) “there is nothing unusual, suspicious or inappropriate about the Individual Defendants’ exercise and trading patterns during the Class Period; their behavior is largely consistent with both their trading histories and with the exercise and trading patterns for other executives in Computer-Related firms” (see page 4 of his report).

Mr. Murphy based his first opinion on a comparison of “sharing rates” as opposed to “Black Scholes Values.”\(^1\) This measure, however, provides little indication for the extent of the use of executive stock options by a firm. Executive stock options are a form of compensation, and thus must be measured by their dollar value not by their sheer number, just like cash compensation is measured by its dollar value, not by the number of bills paid. Using the number of options (or the number of bills) rather than their value

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\(^1\) Mr. Murphy defined “sharing rate” as the number of options granted as a percentage of common shares outstanding, and “Black-Scholes Value” as the dollar value of an option derived from the option pricing model developed in Fischer Black and Myron Scholes (a Nobel Laureate), “The pricing of options and corporate liabilities,” *Journal of Political Economy* 81, 1973, pp. 637 – 659.
inevitably results in significantly distorted measures that are likely to lead to erroneous conclusions.

Consider for example the results in Table 4 of Mr. Murphy’s report. Based on the number of options granted, Mr. Murphy documented that Cisco’s CEO “was at approximately the 23rd percentile of grants to similarly situated executives.” This finding led Mr. Murphy to opine that the CEO was compensated modestly. In contrast, using the appropriate measure for executive-stock-option compensation, i.e., dollar value at grant date, Cisco’s CEO was at the 95th percentile of grants to similarly situated executives (see rightmost column of Table 4). This finding no doubt leads to an opposite conclusion that Cisco’s CEO stock-option compensation was extremely generous.

Mr. Murphy seemed to have realized this weakness of his methodology. On pp. 7-8 he explained in detail the reasons why he chose “sharing rate,” not the “Black-Scholes Value” of the options on the grant date, as a measure for the extent of option use. One reason he provided is that firms determined compensation levels for their top executives based on the number of options granted, not their values. This is a strange and unconvincing argument that is at odds even with Cisco’s strategy of granting options. Specifically, I note that Cisco’s Compensation Committee used dollar values of executive stock options, not their numbers, when performing on October 30th, 2000, a competitive analysis to determine option grant to Cisco’s Chief Executive Officer (CEO).2 In its analysis, the target market position for option grant for the CEO was the 90th percentile, which is quite close to the actual standing of the CEO when the appropriate measure for executive stock option grant, i.e., its dollar value, is used.

Another reason he provided is that the “Black-Scholes Value” contains substantial error. While the limitations underlying the Black-Scholes Model are well known, it is still considered quite reliable by regulators, U.S. corporations, and academics. For example, Statement of Financial Accounting Standard (SFAS) No. 123, “Accounting for Stock-

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2 Cisco document, CIS-PPNPF-HC_0026926.
Based Compensation,” the accounting standard in effect during the Class Period, allows the use of the Black-Scholes Model to value executive stock options (paragraph 19), “The fair value of a stock option (or its equivalent) granted by a public entity shall be estimated using an option-pricing model (for example, the Black-Scholes or a binomial model) ....” To be sure, while SFAS No. 123 offers firms a menu of alternative approaches for valuing their executive option valuation, the “sharing rate” is not included in this menu. Furthermore, the Black-Scholes Model has been widely used by U.S. companies to value their executive stock options when measuring stock option cost for financial reporting purposes. For example, Cisco Systems, Inc. states on its 2000 annual report (p. 40, Note 10): “The fair value of each option grant is estimated on the date of grant using the Black-Scholes option pricing model ....” And, when Cisco’s Board of Directors evaluated the possible impact of executive-stock-option-cost recognition on Cisco’s income statement on May 1999, the compensation charge was measured based on Black-Scholes values, not the “sharing rate.”

Conversely, the “sharing rate” does not even attempt to value options and to my knowledge has never been used by companies in reporting option value or option cost. Interestingly, even Mr. Murphy has used in his own academic work “Black-Scholes Values,” not “sharing rate” to compare the relative importance of stock option pay. For example, in Panels B and C of Table 2 of his paper, “Stock-based pay in new economy firms,” published in the Journal of Accounting and Economics 34, 2003, pp. 129-148, Mr. Murphy compares values of option grants per employee over time and across two groups of firms. On p. 133, Mr. Murphy explains how he computed the numbers in Table 2, “For each company, I computed the average Black-Scholes value for option granted to the top-five executives ....” There is thus no question that the “Black-Scholes Value,” notwithstanding its limitations, is far superior to the “sharing rate.”

In addition, Mr. Murphy claimed (p. 8), “when a company grants an option to an employee it incurs no outlay of cash and (prior to recent changes in accounting rules)

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3 Cisco documents, CIS-PPNPF-HC062639-44.
bears no accounting charge.” Again, an unconvincing argument given that since 1996 companies must disclose in a footnote the cost of option grants and their impact on earnings. For example, Cisco Systems, Inc. reports in its 2000 annual report (p. 40, Note 10) $2.668 billion net income-as-reported and $1.549 billion net income-pro forma; that is, Cisco’s option grants cost to all employees in 2000 amounted to $1.119 billion (the difference between the two numbers, 2.668 and 1.549). Furthermore, empirical accounting research has shown that investors consider this cost as if it were recognized as an expense in the income statement when valuing firms. In addition, since 2003 hundreds of US companies including such large companies as GE, Coca-Cola, and Microsoft have been recognizing executive-stock-option cost in their income statements. This is inconsistent with Mr. Murphy’s claim that prior to recent accounting change, which became effective for most US firms in January 1, 2006, option grants were not associated with an accounting charge.

Mr. Murphy based his second opinion on “evidence” produced by simply inspecting visually 12 figures (his Figures 16-27), which depict the number of shares and options held by the executives over the period 1995-2002. Three serious problems underlie this approach.

First, Mr. Murphy casually inspected figures visually rather than performing a carefully designed statistical analysis to indicate the significance of the change in holdings, so it is impossible to ascertain whether the exercise behavior in the Class Period is unusual. In fact, this approach would be unacceptable in the academic community, and I am unaware of even one academic study published in a top-tier finance or accounting journal that uses this type of approach.

Second, in order to ascertain whether exercises are unusual, actual exercises must be examined, not changes in holdings measured as the change in the number of shares and

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Eli Bartov 8
options held. For example, holdings as measured by Mr. Murphy may increase, not decrease, in a period of unusually high exercises due to new grants of little value that more than offset the number of the highly valuable options exercised. More generally, the holdings numbers as calculated by Mr. Murphy are nearly impossible to interpret because options from different grants have different values. In other words, aggregating numbers of options from different grants is analogous to adding up US dollars, Japanese Yen, and Euros or apples and oranges. It is important to note that since the value of exercises is easy to measure accurately, Mr. Murphy’s justifications for using the number of options granted rather than their Black-Scholes values at the grant date due to measurement errors discussed above do not apply to option values at the exercise date whatsoever. I also note that the dollar value of exercises has been used in the academic literature.\footnote{See, “Private Information, Earnings Manipulations, and Executive Stock Option Exercises,” The Accounting Review 79, October 2004, pp. 889 – 920, by Eli Bartov and Partha Mohanram.}

Third, Mr. Murphy provides no sensitivity analysis of his results. It is standard to assess the validity of the findings by examining the question on hand using alternative methodologies. The goal is to demonstrate that the conclusions are robust, that is conclusions that are insensitive to the choice of methodology.\footnote{See, for example, pp. 10-11 in Introductory Econometrics with Applications, by Ramu Ramanathan, Harcourt Brace Jovanovich, Inc., 1989.} For example, in their article, “Financial performance surrounding CEO turnover,” published in the Journal of Accounting and Economics 1-3, 1993, Mr. Murphy and his coauthor stated (p. 310), “This section presents additional tests to determine if the earlier results are robust to omitted correlated variables and alternative variable definitions. Section 4.1 reports that our previous inferences are insensitive to controlling for CEOs who leave early in the transition year. Section 4.2 reports that our conclusions are not sensitive to different definitions of accruals.” Mr. Murphy’s failure to provide sensitivity analysis of his findings renders them subject to multiple interpretations.

In summary, based on my analysis of Mr. Murphy’s report, I conclude that his opinions—that “Cisco’s use of options was also modest relative to other Computer-Related firms”
and that "there is nothing unusual, suspicious or inappropriate about the Individual Defendants' exercise and trading patterns during the Class Period"--are unsupported for the three reasons discussed above and summarized below. First, he does not use the appropriate methodology to measure the value of executive stock option exercises, i.e., their dollar value at grant or exercise date, relying instead on the number of options and shares held. Second, he provides no statistical tests of his results, relying instead on casual inspection of various figures that, in themselves, are flawed. Third and finally, he provides no sensitivity analyses of his results, rendering them subject to multiple interpretations.

Mr. Murphy's flawed and superficial analysis provides no credible basis for his opinions. In the next section I thus perform scientific analyses of the patterns of stock options exercises of 12 executives and directors at Cisco during the Class Period so as to ascertain whether these exercises were unusual.

IV. Analysis of Patterns of Stock Options Exercises of Executives at Cisco

a. Methodology

My analysis of patterns of stock options exercises of executives at Cisco covers the exercise behavior of 12 executives and directors: Larry R. Carter, John T. Chambers, Gary J. Daichendt, Donald J. Listwin, Carl Redfield, Carol A. Bartz, Judith L. Estrin, Edward R. Kozel, Robert L. Puette, Donald T. Valentine, Michelangelo Volpi, and Steven M. West. The analysis for the first five is reported in Section b below and for the other seven in Section c below. I present the results for the two groups in separate sections because the data required for the regression analysis described below in Section b were not available for the seven defendants on the ExecuComp Database. The ExecuComp Database collects data for no more than nine executives for a given year from a company's annual proxy statement (most companies only report five though).
The analysis covers two alternative Class Periods: the Original Class Period that spans 18 months, August 10, 1999 – February 6, 2001, and the Modified Class Period that spans 15 months, November 10, 1999 – February 6, 2001. It begins by assessing whether the 12 Cisco executives and directors exercised unusually large number of stock options in each Class Period.

As in any science, financial economists make inferences about economic behavior based on statistical tests. A statistical test concerns a decision rule that selects one of two inferences, either the change in a variable is not sufficiently large to render it unusual (i.e., the change is statistically insignificant), or the change is sufficiently large and it is thus unusual (i.e., the change is statistically significant). In the current context, an unusual stock option exercise in a period occurs if the increase in net value of the exercise during the period relative to prior periods is statistically significant. If the change in exercise between current and prior periods is statistically insignificant, unusual exercise is rejected. Net value of the exercise is the product of the difference in value between Cisco's stock price and the exercise price (called an option's intrinsic value) at the time of exercise and the number of options exercised.

Usual exercises are likely to follow from diversification, liquidity, or consumption needs. Conversely, unusual exercises may follow from private knowledge of bad news about the future stock price because an option represents a long position in the underlying stock, and exercising options and selling the acquired stock prior to a stock price decline allows the option holder to receive higher value for his/her holdings.

It is important to note that because executive stock options are nontransferable, the only

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way executives are able to cash out is by exercising options and selling the acquired stock; in particular they are unable to cash out by selling the options directly. This is important because exercising options early (i.e., before they expire) and selling the acquired stock is quite costly to the option holder. This follows because the fair value of an option (the price of an unexercised option) always exceeds its intrinsic value (the value when exercised), because an option allows its holder to fully benefit from a price appreciation of the underlying stock but limits losses in case of a stock price decline. In other words, by exercising options early an option holder foregoes the option value which may be substantial.

To calibrate the loss in value associated with an early option exercise, consider a tradable option on Cisco’s stock with a strike price of $25.00 and an expiration date of January 18, 2003. On December 5, 2000, this option was traded for $33.31 and Cisco’s stock price was $52.13. If exercised early on December 5, 2000, the value of this option is only $27.13 ($52.13 minus $25.00) vis-à-vis the current market value of $33.31. Thus, an early exercise in this case would result in a loss of $6.18 per option ($33.31 minus $27.13), which is approximately 23% of the option value. Since Cisco’s executives typically forwent approximately four years of option life (more than the 2.5 months in the example above), the loss in value, absent benefits from prior knowledge of a future stock price decline, was likely even higher.

The phenomenon of early exercising of unusually large number of executive stock options and selling the acquired stock due to private negative information has been documented in the academic literature. For example, it has been documented that company managers inflate earnings to (temporarily) mask their firms’ poor performance, and then exercise unusually large number of options and sell the acquired stock prior to

---

9 The strike price is how much an option holder has to pay to acquire the underlying stock. It is set at the time the option is initially written.

10 The option data used in this example are retrieved from the Ivy DB OptionMetrics Database, which contains data on all U.S. exchange-listed and NASDAQ equities and market indices, as well as all U.S.-listed index and equity options, starting from January 1996.
the inevitable release to the market of the unfavorable news.\textsuperscript{11} This behavior is known on Wall Street as a “pump and dump” strategy. Related academic literature has also documented that the income-increasing non-cash component of earnings (i.e., income-increasing accruals) is less persistent when preceded by abnormally large insider selling activity, which the researchers partly attributed to opportunistic earnings manipulations.\textsuperscript{12}

Still, unfavorable private information may not be the sole reason for executives to exercise unusually large numbers of options. Another reason may be an unusual need (relative to the prior three years) to rebalance (diversify) their portfolios due, for example, to a run-up in their firms’ stock price. In fact, a portfolio diversification need was offered frequently by Cisco’s directors and executives as an explanation for their exercise patterns.\textsuperscript{13} I note that Mr. Murphy also claimed that the exercise patterns of the executives were consistent with their diversification strategy (see, for example, p. 24 of his report). Unfortunately, Mr. Murphy provided no evidence, other than the executives’ own testimony, to support his claim. I thus examine more closely the extent to which the need for portfolio diversification explains the exercises in the Class Period.\textsuperscript{14}

To estimate the incremental effect that diversification needs had on exercises in the Class Period, I employ the following regression model:

\[ \text{Exercise}_{i,t} = a_0 + a_1 \text{Holdings}_{i,t} + \varepsilon_{i,t} \] (1)


\textsuperscript{13} See, e.g., Deposition of Carol Bartz at 45:24-46:25; 83:8-84:21; Deposition of Larry Carter at 412:23-413:5; Deposition of Judith Estrin at 61:16-63:8.

\textsuperscript{14} The unusually high option exercises in the Class Period may also follow from unusually high liquidity or consumption needs in that period relative to the prior three years. Clearly, this possibility does not apply here. The documents that defendants produced regarding the reason for their sales do not support liquidity or consumption as a reason for the sales in the Class Period (see CIS-PPNPF-HC_0056542-641). I also note that Mr. Murphy has not considered this possibility in his report.
Where:

Exercise is net value realized from exercising options, which equals the difference in value between Cisco's stock price and the exercise price at time of exercise;

Holdings is the natural logarithm of the value of the shares and exercisable in-the-money options held. The value of the shares held is calculated as the number of shares (excluding stock options) held at the end of the fiscal year (variable SHROWN in the ExecuComp database) times the closing price of the company's stock at the end of the fiscal year (variable PRCCF in the ExecuComp Database). The value of exercisable in-the-money options represents the value that would have been realized at year-end if all vested options that had an exercise price below the market price had been exercised (variable INMONEX in the ExecuComp database);

ε is the residual, and i and t subscripts represent, respectively, the i executive (i = 1 ... 5) and the t period (t = 0 ... -3), where 0 is the Class Period.

Regression analysis is commonly used by financial economists to determine whether a relation exists between one dependent variable (in this case, stock option exercises by Cisco's executives) and one or more explanatory variables (in this case, share and option holdings by Cisco's executives). The results of this regression analysis are used to determine the predicted value of stock option exercises by an executive in the Class Period given his/her exercise history and diversification needs but absent private knowledge of forthcoming unfavorable news and thus stock price declines. The difference between the actual value of the exercises in the Class Period and their predicted value generated by Equation (1) is a measure of exercises that cannot be explained by exercise history or diversification needs and may be due to private knowledge of forthcoming bad news and stock price declines.

I estimate Equation (1) over the three consecutive periods leading up to the Class Period. For the Original Class Period the three 18-month periods are: February 9, 1998 - August 9, 1999 (OCP-1), August 11, 1996 - February 8, 1998 (OCP-2), and February 11, 1995 - August 10, 1996 (OCP-3). For the Modified Class Period the three 15-month periods are:

I then use the estimated model to derive the predicted value of stock option exercises for each of the five executives with available data in the Class Period. This predicted value is then compared to the actual value. If the latter exceeds the former and the difference is statistically significant, then the unusual exercise is above and beyond what implied by exercise history and in particular any need to rebalance the portfolio due to diversification needs and may be attributable to private information held by the executive.

b. Findings and Opinions

Since nearly all of the shares sold by the Cisco’s executives during both the Original Class Period and the Modified Class Period were in connection with exercises of executive stock options, my analyses focus on stock option exercises. I begin by examining stock option exercises in both Class Periods relative to those in the three consecutive periods leading to that period. First, I evaluate the exercise behavior of Larry R. Carter and then proceed alphabetically.

Larry R. Carter exercised stock options with a net realized value of over $77 million during the Original Class Period (see Table 1). Conversely, in the three periods leading up to the Original Class Period, Mr. Carter’s exercises were substantially smaller, ranging from approximately $20 million in OCP-1 to $3 million in OCP-3 (see Table 1 and Figure 1). On the average, in the three periods prior to the Original Class Period, Mr. Carter’s exercises amounted to $11 million per year, which is in sharp contrast to the value of his exercises in the Original Class Period of $77 million.

Still, skeptics may wonder: Should this seven-fold increase in stock option exercises in the Class Period relative to prior years be considered unusual? To answer this question I
perform statistical analysis, a common approach among financial economists addressing this type of question. The statistical analysis yields a t-statistic of 13.143, which is statistically significant at a level better than 1% (p-value = 0.0057). This means that the chance is less than 1% that the increase in exercises by Mr. Carter in the Class Period is not unusual. Given the convention among financial economists that a level of 5% or better is required for an inference to be reliable, it is my opinion that Mr. Carter's exercises in the Original Class Period were indeed unusual.

However, in the Modified Class Period, Mr. Carter exercised stock options with a net realized value of only $29 million, which is only marginally higher than the $27 million he exercised, on the average, in the three periods before (see Table 1M and Figure 1M). It is thus my opinion that relative to his exercise history, Mr. Carter's exercises in the Modified Class Period were not unusual.

John T. Chambers' stock option exercises in the Original Class Period and the three prior periods are displayed in Table 2 and portrayed in Figure 2. While the value of net exercises in the Original Class Period was nearly $156 million, the average value of net exercises in the three preceding periods was less than $54 million. This nearly three-fold increase in exercises in the Original Class Period is no doubt substantial. However, the statistical procedure I employ indicates that there is a 10.25% chance (p-value = 0.1025) that this increase is not unusual. Given the convention among financial economists that a significance level of 5% or better is required for an inference to be reliable, it is my opinion that so far the evidence--presented in Table 2 and Figure 2 regarding stock option exercises by Mr. Chambers in the Original Class Period and prior periods--is suggestive of unusual exercises in the Class Period, but it is not conclusive.

However, the evidence is conclusive when the Modified Class Period is considered. For that period exercises were as before, $156 million, whereas the average exercises for the three periods leading to the Modified Class Period was only $40.25 million (see Table 2M and Figure 2M). The difference between the two numbers is statistically significant at conventional levels of 4.32% (p-value = 0.0432). Based on this evidence my opinion
is that during the Modified Class Period Mr. Chambers’ stock option exercises were unusual.

Gary J. Daichendt’s exercise patterns in the four consecutive periods ending in the Original Class Period are presented in Table 3 and Figure 3. The evidence shows a substantial increase in exercises in the Original Class Period. Specifically, Mr. Daichendt’s net proceeds from exercising executive stock options in the Original Class Period, nearly $86 million, were more than four-fold higher than those in the prior period (approximately $20 million). A comparison of the Original Class Period exercises with the average exercise in the prior three periods shows an even more dramatic increase in option exercise during the Class Period of nearly eight-fold ($86 million vis-à-vis $11.3 million). Is this increase unusual? The answer from the statistical procedure, which produces a t-statistic of 16.171 and a significance level of 0.4 percent, is yes.

The results still hold when exercises in the Modified Class Period are considered. As the evidence in Table 3M and Figure 3M shows, exercises in that period, $63.31 million, are considerably higher than those in the previous period, $27.07 million. The average exercise over the three periods prior to the Modified Class Period is only $17.89 million, which is significantly lower at a 1.70% level than the exercises in the Modified Class Period (p-value = 0.0170). It is thus my opinion that Mr. Daichendt’s executive stock option exercises in the Original Class Period as well as in the Modified Class period were unusual relative to his exercise history.

Donald Listwin exercised nearly $164 million executive stock options in the Original Class Period. As the data displayed in Table 4 and depicted in Figure 4 clearly show, this is inconsistent with his exercise history. For example, the value of Mr. Listwin’s net exercises in the period just prior to the Original Class Period was only $54.84 million, which is approximately one third of the amount exercised in the Original Class Period. Furthermore, the average net value of exercises over the last three periods leading to the Original Class Period was even less, only $22.45 million. Thus, relative to the last three periods, exercises increased by nearly eight-fold in the Original Class Period. Is this
substantial increase in exercises during the Original Class Period unusual? Straightforward intuition says the answer is yes, and so does the statistical procedure, which yields a t-statistic of 8.728 that is significant at 1.3%.

Considering the Modified Class Period does not change the inference. Specifically, as the evidence in Table 4M and Figure 4M clearly demonstrates, exercises in the Modified Class Period increased dramatically relative to both exercises in the previous year and the average exercise over the prior three years. Again, the difference between exercises in the Modified Class Period, $162.50 million, and the average exercise over the prior three periods, $21.75 million, is highly statistically significant at a 0.4% level (p-value = 0.0040). Thus, it is my opinion that relative to his exercise history Mr. Listwin exercised an unusually large number of executive stock options in the Original Class Period and in the Modified Class Period.

Carl Redfield’s stock option exercise behavior in the Original Class Period is not much different than that of the four executives examined so far. That is, the evidence displayed in Table 5 and Figure 5 clearly indicates a substantial increase in exercises in the Original Class Period. Specifically, in the period just prior to the Original Class Period the net value of Mr. Redfield’s exercises was $33.19 million, and in the three years prior to the Class Period the average value of net exercises was $16.79 million. In sharp contrast, in the Original Class Period, Mr. Redfield cashed out $55.71 million from option exercises. This substantially higher exercise in the Original Class Period relative to the average exercise in the last three prior periods is statistically significant at a 4.6% level. Quite similar patterns in exercises are observed also for the Modified Class Period (see Table 5M and Figure 5M). However, the difference between exercises in the Modified Class Period, $47.36 million, and the average exercises in the preceding three periods, $19.28 million, is only marginally significant (p-value = 0.1069). Overall, it is my opinion that the evidence clearly indicates that during the Original Class Period Mr. Redfield’s exercises are unusual relative to his exercise history, whereas during the Modified Class Period the evidence is only suggestive of such behavior.
Are the unusual exercises observed in the Class Period due to nonpublic information held by the executives or to their portfolio diversification needs following the run-up in Cisco’s stock price?

To examine this issue I first estimate Equation (1) using data from the three periods prior to the Class Period. The results from this procedure—for the Original Class Period, displayed in Table 6, and for the Modified Class Period, displayed in Table 6M—indicate that portfolio diversification is indeed an important determinant of exercises. This follows because for both Class Periods the parameter estimate on Holdings (my proxy for portfolio diversification needs) is, as expected, positive and highly significant. The Adjusted $R^2$ for both periods is 46%, indicating that diversification needs explain a substantial portion (nearly one half) of the cross executive variation in stock option exercises. Overall, this evidence is consistent with our model being economically important.

Tables 7 and 7M display the results from the regression analysis, respectively, for the Original Class Period and the Modified Class Period, which compares the actual exercises of each executive to his/her expected exercises absent negative private information about the future stock price, given the executive’s holdings of shares and options and exercise history. Consider first the results in Table 8 for the Original Class Period, which show that for all five executives actual exercises in the Class Period exceed substantially the predicted ones absent private information. While Mr. Daichendt’s actual net proceeds from exercises was $85.96 million, the expected value of exercises given his shares and options holdings and his exercise history was $35.80 million. The difference between the actual and expected exercises, $50.15 million, which is statistically significant at a level better than 1%, is the portion of exercises that is not attributable to diversification. Similarly, the net proceeds from exercises that are not attributable to diversification for Mr. Chambers is $67.22 million, for Mr. Listwin $99.18 million, for Mr. Carter $16.89 million, and for Mr. Redfield $1.17 million. However, the results for the last two executives are only suggestive as the statistical significance (p-
value) is above the 5% threshold. Likewise, for the Modified Class Period the results indicate significantly higher actual net proceeds from exercises than the expected ones for Messrs. Chambers, Daichendt, and Listwin.

Comparing Figures 6 to 7 and Figures 6M to 7M further illustrates the findings that in the Class Period all executives exercised executive stock options far beyond what would be expected statistically for diversification. For example, Figure 6 demonstrates that in the three periods prior to the Original Class Period about half of the exercises (6 exercises) are above the regression line, i.e., unusually high, whereas the other half (7 exercises) are below the line, i.e., unusually low. This finding should be expected when exercises are not related to nonpublic information, as it demonstrates that unusually high exercises by some executives get canceled out by unusually low exercises by other executives. Conversely, Figure 7 shows that in the Class Period exercises of all five executives are above the line, indicating unusually high exercises in that period for every single executive.

In summary, the picture that emerges from considering the totality of the evidence presented above is that it is more likely than not that the unusually high stock option exercises of all five executives in the Original Class Period as well as in the Modified Class Period are only partially explained by their exercise history and diversification needs, and are thus consistent with the use of nonpublic information to time the exercises. This evidence is inconsistent with Mr. Murphy's opinion—that "there is nothing unusual, suspicious or inappropriate about the Individual Defendants' exercise and trading patterns during the Class Period."

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15 Mr. Listwin exercised all his options and sold the acquired stock on September 7, 2000, his last official day at Cisco. In his deposition, 212:9-13, he claimed this follows because he had to exercise all options by December 7, 2000, i.e., 90 days from the day he left Cisco, and because of a diversification need. I note that the need to exercise the options within 90 days might explain the timing of exercise. However, it does not explain why the acquired stock was sold.
c. **Supplementary Analysis**

In this section, I investigate the stock option exercises of seven Cisco executives and directors in both Class Periods relative to those in the three consecutive periods leading to that period. Unfortunately, I am unable to perform regression analysis for this group due to data limitations. I evaluate first the exercise behavior of Carol Bartz, and then, as before, proceed alphabetically.

**Carol Bartz** exercised $2.1 million stock options in the Original Class Period. As the data displayed in Table 8 and depicted in Figure 8 show, this is inconsistent with her exercise history. For example, Ms. Bartz exercised no options in the two periods preceding the Original Class Period, and the average net value of exercises over the last three periods leading to the Original Class Period was only $0.074 million, less than 5% of the net exercises in the Original Class Period. In other words, relative to the last three periods exercises increased by approximately 27-fold in the Original Class Period. Is this substantial increase in exercises during the Original Class Period unusual? Straightforward intuition says the answer is yes, and so does the statistical procedure, which yields a t-statistic of 27.155 that is significant at 0.14% (p-value = 0.0014).

In the Modified Class Period the exercise patterns somewhat changed. While the evidence reported in Table 8M and depicted in Figure 8M indicates a substantial increase in exercises in the Modified Class Period relative to both the previous period and the average over the last three periods, the statistical test produced only a marginally significant difference at 12.55% (p-value = 0.1255). It is thus my opinion that relative to her exercise history Ms. Bartz exercised unusually large number of options in the Original Class Period, and that the evidence seems suggestive but not conclusive for the Modified Class Period.

**Judith Estrin**’s exercises for the Original Class Period and the three prior periods are displayed in Table 9 and Figure 9, and exercises for the Modified Class Period and the three prior periods in Table 9M and Figure 9M. The exercise patterns in both Class
Periods are identical: Zero exercises in the three periods leading to the Class Period, and a total liquidation of all exercisable options in the Class Period ($42.79 million), well before Ms. Estrin had to sell due to her resignation from Cisco. While statistical tests cannot be performed in this case, straightforward intuition suggests that Ms. Estrin's exercises in both class periods relative to her exercise history were indeed unusual. Interestingly, while Ms. Estrin testified that these exercises were part of her diversification strategy, Mr. Murphy offered a different explanation, not offered by Ms. Estrin, for her exercise patterns (p. 25): "The exercises were likely in anticipation of her planned resignation from Cisco two months later." As before, Mr. Murphy's explanation is not convincing and he provides no evidence to support it.

Edward Kozel’s stock option exercises in the Original Class Period and the three prior periods are reported in Table 10 and portrayed in Figure 10. While the value of net exercises in the Original Class Period was nearly $51 million, the average value of net exercises in the three preceding periods was only $14.18 million. This nearly four-fold increase in exercises in the Original Class Period is no doubt substantial. The statistical test indeed confirmed that exercises in the Original Class Period were unusual, as it indicated that there was only a 0.7% chance (p-value = 0.0071) that this increase was not unusual.

The evidence in Table 10M and Figure 10M for the Modified Class Period leads to a similar inference. Specifically, exercises in the Modified Class Period, $42.58 million, exceeds substantially those in each of the prior three periods considered, as well as the average exercise over the three periods of $15.01 million. The difference between the exercises in the Modified Class Period and the three preceding years is statistically significant at 4.43% (p-value = 0.0443). Based on this evidence my opinion is that during both the Original Class Period and the Modified Class Period Mr. Kozel’s stock option exercises were unusual.

\[^{16}\text{Deposition of Judith Estrin, p. 60.}\]
Robert L. Puette's exercise history clearly indicates an unusual stock option exercise in both the Original Class Period and the Modified Class Period. Consider first exercises in the Original Class Period, $23.36 million, and in the three preceding years: $2.65 million in OCP-1, $0.00 in OCP-2, and $3.49 million in OCP-3 (Table 11 and Figure 11). Clearly, there is a substantial increase in exercises in the Original Class Period relative to each of the prior three periods. In fact, exercises in the Original Class Period exceed by nearly four-fold the exercises in all prior three periods combined. As expected, the statistical test yielded a significance level of 0.24% (p-value = 0.0024) indicating that there is less than a 1% chance that exercises in the Original Class Period were not unusual.

Reviewing the results in Table 11M and Figure 11M, which provide data of Mr. Puette's exercise patterns in the Modified Class Period and in the prior three years, I note that the exercise patterns in the Modified Class Period are nearly identical to those in the Original Class Period. It is thus my opinion that during both the Original Class Period and the Modified Class Period Mr. Puette's stock option exercises were unusual.

Donald T. Valentine exercised stock option with a net value of $29.51 million in the Original Class Period (see Table 12 and Figure 12). In contrast, in the three preceding periods his net exercises were, on average, only $3.48 million. This nearly ten-fold increase in exercises in the Original Class Period relative to the average over the previous three years is significant at the 1.74% level (p-value = 0.0174). It is thus my opinion that Mr. Valentine's exercises in the Original Class Period were unusually high relative to his exercise history. However, I hasten to add that the results displayed in Table 12M and Figure 12M for the Modified Class Period and the three preceding periods are inconclusive.

Michelangelo Volpi exercised stock options with a net realized value of nearly $34 million during the Original Class Period (see Table 13). Conversely, in the three periods leading up to the Original Class Period, Mr. Volpi's exercises were substantially smaller: $0.305 million in OCP-1 and $0.00 in both OCP-2 and OCP-3 (see Table 13 and Figure 13).
13). On the average, in the three periods prior to the Original Class Period Mr. Volpi’s exercises amounted to only $0.101 million per year, which is in sharp contrast to the value of his exercises in the Original Class Period. As expected the difference between exercises in the Original Class Period and the three preceding periods is highly significant at a level better than 0.01% (p-value < 0.0001).

In the Modified Class Period Mr. Volpi’s exercise patterns given in Table 13M and Figure 13M are only slightly different than those in the Original Class Period. Specifically, in the Modified Class Period Mr. Volpi exercised $32.66 million, where as in the three preceding periods his exercises ranged from $0.00 to $1.39 million. Again, the average exercise over the three periods of $0.465 million is significantly lower than the exercises in the Modified Class Period. Given this evidence, it is my opinion that Mr. Volpi’s exercises in both the Original Class Period and the Modified Class Period were unusual.

Steven M. West’s exercise patterns for the four periods ending at the end of the Original Class Period and at the end of the Modified Class Period are, respectively, displayed in Table 14 and Table 14M and depicted in Figure 14 and Figure 14M. The evidence in these tables and figures, which is quite similar, clearly indicates unusual exercises in both the Original Class Period and the Modified Class Period. For example, the evidence in Table 14 shows that in the Original Class Period Mr. West’s exercises generated $9.83 million, which represents a nearly five-fold increase in exercises relative to those in the three preceding periods combined. The difference between exercises in the Original Class Period and the average exercises over the three preceding periods (only $0.479 million) is highly significant at the 0.26% level (p-value = 0.0026), as is this difference for the Modified Class Period. It is thus my opinion that Mr. West’s exercises in both the Original Class Period and the Modified Class Period were unusual.

DATED: January 11, 2006

ELI BARTOV, Ph.D.
TABLE 2M
Stock Options Exercised by John T. Chambers,
in the Modified Class Period and Three Prior Periods

<table>
<thead>
<tr>
<th>Period</th>
<th>Stock Options Exercised (in USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCP</td>
<td>155,980,290.00</td>
</tr>
<tr>
<td>MCP-1</td>
<td>85,656,560.00</td>
</tr>
<tr>
<td>MCP-2</td>
<td>35,100,221.82</td>
</tr>
<tr>
<td>MCP-3</td>
<td>0.00</td>
</tr>
<tr>
<td>Mean (MCP-1, MCP-2, MCP-3)</td>
<td>40,252,260.61</td>
</tr>
<tr>
<td>MCP vs. Mean (MCP-1, MCP-2, MCP-3)</td>
<td>4.655</td>
</tr>
<tr>
<td>t-stat</td>
<td></td>
</tr>
<tr>
<td>p-value (two-tailed)</td>
<td>(0.0432)</td>
</tr>
</tbody>
</table>

Notes:

MCP-1 = One period prior to the Modified Class Period, i.e. August 12, 1998 – November 9, 1999.
MCP-2 = Two periods prior to the Modified Class Period, i.e. May 14, 1997 – August 11, 1998.
MCP-3 = Three periods prior to the Modified Class Period, i.e. February 14, 1996 – May 13, 1997.
Stock Options Exercised = Net value realized from exercising options, which equals the difference in value between Cisco’s stock price and the exercise price at time of exercise.
### TABLE 12M

*Stock Options Exercised by Donald T. Valentine, in the Modified Class Period and Three Prior Periods*

<table>
<thead>
<tr>
<th>Period</th>
<th>Stock Options Exercised (in USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCP</td>
<td>8,201,250.00</td>
</tr>
<tr>
<td>MCP-1</td>
<td>31,769,340.00</td>
</tr>
<tr>
<td>MCP-2</td>
<td>0.00</td>
</tr>
<tr>
<td>MCP-3</td>
<td>0.00</td>
</tr>
<tr>
<td>Mean (MCP-1, MCP-2, MCP-3)</td>
<td>10,589,780.00</td>
</tr>
<tr>
<td>MCP vs. Mean (MCP-1, MCP-2, MCP-3)</td>
<td></td>
</tr>
<tr>
<td>t-stat</td>
<td>-0.226</td>
</tr>
<tr>
<td>p-value (two-tailed)</td>
<td>(0.8425)</td>
</tr>
</tbody>
</table>

**Notes:**


*MCP-1* = One period prior to the Modified Class Period, i.e. August 12, 1998 – November 9, 1999.

*MCP-2* = Two periods prior to the Modified Class Period, i.e. May 14, 1997 – August 11, 1998.

*MCP-3* = Three periods prior to the Modified Class Period, i.e. February 14, 1996 – May 13, 1997.

*Stock Options Exercised* = Net value realized from exercising options, which equals the difference in value between Cisco's stock price and the exercise price at time of exercise.
TABLE 13M
Stock Options Exercised by Michelangelo Volpi,
in the Modified Class Period and Three Prior Periods

<table>
<thead>
<tr>
<th>Period</th>
<th>Stock Options Exercised (in USD)</th>
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</thead>
<tbody>
<tr>
<td>MCP</td>
<td>32,661,220.11</td>
</tr>
<tr>
<td>MCP-1</td>
<td>1,397,742.64</td>
</tr>
<tr>
<td>MCP-2</td>
<td>0.00</td>
</tr>
<tr>
<td>MCP-3</td>
<td>0.00</td>
</tr>
<tr>
<td>Mean (MCP-1, MCP-2, MCP-3)</td>
<td>465,914.21</td>
</tr>
<tr>
<td>MCP vs. Mean (MCP-1, MCP-2, MCP-3)</td>
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<tr>
<td>t-stat</td>
<td>69.101</td>
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<tr>
<td>p-value (two-tailed)</td>
<td>(0.0002)</td>
</tr>
</tbody>
</table>

Notes:

MCP-1 = One period prior to the Modified Class Period, i.e. August 12, 1998 – November 9, 1999.
MCP-2 = Two periods prior to the Modified Class Period, i.e. May 14, 1997 – August 11, 1998.
MCP-3 = Three periods prior to the Modified Class Period, i.e. February 14, 1996 – May 13, 1997.
Stock Options Exercised = Net value realized from exercising options, which equals the difference in value between Cisco's stock price and the exercise price at time of exercise.
<table>
<thead>
<tr>
<th>Period</th>
<th>Stock Options Exercised (in USD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>MCP</td>
<td>9,837,675.50</td>
</tr>
<tr>
<td>MCP-1</td>
<td>0.00</td>
</tr>
<tr>
<td>MCP-2</td>
<td>1,437,273.00</td>
</tr>
<tr>
<td>MCP-3</td>
<td>0.00</td>
</tr>
<tr>
<td>Mean (MCP-1, MCP-2, MCP-3)</td>
<td>479,091.00</td>
</tr>
<tr>
<td>MCP vs. Mean (MCP-1, MCP-2, MCP-3)</td>
<td></td>
</tr>
<tr>
<td>t-stat</td>
<td>19.534</td>
</tr>
<tr>
<td>p-value (two-tailed)</td>
<td>(0.0026)</td>
</tr>
</tbody>
</table>

**Notes:**


*MC-1* = One period prior to the Modified Class Period, i.e. August 12, 1998 – November 9, 1999.

*MC-2* = Two periods prior to the Modified Class Period, i.e. May 14, 1997 – August 11, 1998.

*MC-3* = Three periods prior to the Modified Class Period, i.e. February 14, 1996 – May 13, 1997.

*Stock Options Exercised* = Net value realized from exercising options, which equals the difference in value between Cisco's stock price and the exercise price at time of exercise.
FIGURE 2M
Net Value of Stock Options Exercised by John T. Chambers,
in the Modified Class Period and Three Prior Periods

Notes:
MCP-1 = One period prior to the Modified Class Period, i.e. August 12, 1998 – November 9, 1999.
MCP-2 = Two periods prior to the Modified Class Period, i.e. May 14, 1997 – August 11, 1998.
MCP-3 = Three periods prior to the Modified Class Period, i.e. February 14, 1996 – May 13, 1997.
Stock Options Exercised = Net value realized from exercising options, which equals the difference in value between Cisco’s stock price and the exercise price at time of exercise.
FIGURE 6M
Predicting Stock Options Exercises: Estimation of the Model

\[ \text{Exercise}_{i,t} = a_0 + a_1 \times \text{Holdings}_{i,t} + e_{i,t} \]

Notes:
- The subscripts \( i \) and \( t \) represent, respectively, the \( i \) executive \((i = 1 \ldots 5)\) and the \( t \) period \((t = -1, -2, -3)\), where -1 refers to MCP-1 (one period prior to the Modified Class Period, i.e. August 12, 1998 – November 9, 1999), -2 refers to MCP-2 (two periods prior to the Modified Class Period, i.e. May 14, 1997 – August 11, 1998), and -3 refers to MCP-3 (three periods prior to the Modified Class Period, i.e. February 14, 1996 – May 13, 1997).
- Observations are executive and period-specific. For the estimation period, i.e. MCP-1 to MCP-3, a total of 15 observations are available, of which 3 have missing holdings data (for executives Listwin in period MCP-3 and Redfield in periods MCP-1 and MCP-2). Thus, 12 observations are used.
- **Exercise** = Net value (in thousands of US dollars) realized from exercising options, which equals the difference in value between Cisco’s stock price and the exercise price at time of exercise.
- **Holdings** = Natural logarithm of the value (in thousands of US dollars) of the shares and exercisable in-the-money options held. The value of the shares held is calculated as the number of shares (excluding stock options) held at the end of the fiscal year (variable SHOWN in the ExecuComp database) times the closing price of the company’s stock at the end of the fiscal year (variable PRCF in the ExecuComp database). The value of exercisable in-the-money options represents the value that would have been realized at year-end if all vested options that had an exercise price below the market price had been exercised (variable INMONEX in the ExecuComp database).
- Since Holdings can only be calculated at the end of each fiscal year, in each period, the level of Holdings at the end of the fiscal year falling within the period is used (i.e. for each executive, Holdings at the end of fiscal years 1999 and 1998 are used respectively in MCP-1 and MCP-2). Due to lack of available reliable data for fiscal year 1996, and for consistency, Holdings at the end of fiscal year 1997 is used in MCP-3.
FIGURE 7M
Estimating Expected and Unusual Stock Options Exercises in the Modified Class Period

Expected Exercise\(_{i,MCP}\) = -143,906 + 14,992*HOLDINGS\(_{i,MCP}\)

Deviation\(_{i,MCP}\) = Actual Exercise\(_{i,MCP}\) - Expected Exercise\(_{i,MCP}\)

Notes:
The subscript \(i\) represents the \(i\) executive \((i = 1 \ldots 5)\).

**Exercise** = Net value (in thousands of US dollars) realized from exercising options, which equals the difference in value between Cisco's stock price and the exercise price at time of exercise.

**HOLDINGS** = Natural logarithm of the value (in thousands of US dollars) of the shares and exercisable in-the-money options held. The value of the shares held is calculated as the number of shares (excluding stock options) held at the end of the fiscal year (variable SHROWN in the ExecuComp database) times the closing price of the company's stock at the end of the fiscal year (variable PRCCF in the ExecuComp database). The value of exercisable in-the-money options represents the value that would have been realized at year-end if all vested options that had an exercise price below the market price had been exercised (variable INMONEX in the ExecuComp database). Since HOLDINGS can only be calculated at the end of each fiscal year, for the Modified Class Period and for each executive, HOLDINGS at the end of fiscal year 2000 is used.
EXHIBIT B

December 12, 2005

ELI BARTOV

Research Professor of Accounting
Director, Accounting Doctoral Program
New York University
Leonard N. Stern School of Business
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New York, NY 10012
(212) 998-0016
ebartov@stern.nyu.edu
http://www.stern.nyu.edu/~ebartov/

EDUCATION:

- Ph.D., Business Administration (concentration in Accounting), Graduate School of Business Administration, University of California at Berkeley, 1985 – 1989.

- B.A., Accounting and Economics, Faculty of Management and Faculty of Social Sciences, Tel - Aviv University, Israel, 1974-1977.

PROFESSIONAL ACADEMIC EXPERIENCE:

- Professor of Accounting, Leonard N. Stern School of Business, New York University (at Stern since 1992).

- Visiting Associate Professor, Anderson Graduate School of Management, UCLA, Fall 1998.

- Visiting Assistant Professor, Walter A. Haas School of Business, University of California at Berkeley, Spring 1996.

- Assistant Professor, William E. Simon Graduate School of Business Administration, University of Rochester, 1989 - 1992.

PROFESSIONAL QUALIFICATIONS:

- C.P.A certification, 1979.
PROFESSIONAL BUSINESS EXPERIENCE:

- Consulting activities: advising money managers and financial analysts on financial reporting, analysis, and valuation, 1996 - Present.

- Litigation support: expert witness and consulting concerning a variety of accounting issues related primarily to securities fraud and consumer fraud, 1992 – Present.

Class Action Lawsuits for which I wrote an Expert Report:

**Tomas Greenberger et al., On Behalf of Themselves and All Other Similarly Situated vs. Copelco Capital, INC and Copelco Credit Corp.,** Superior Court of New Jersey Law Division: Bergen County, Docket No. L-3107-98.

**Michael Nasoff et al., On Behalf of Themselves and All Other Similarly Situated vs. General Electric Corporation, General Electric Capital Auto Lease, Inc., and General Electric Capital Auto Financial Services, Inc.,** State of New York, Supreme Court of County of New York, Index No. 97/605609.

Lawsuits for which I served as a consultant:

**Stephen G. Gerzof and Richard E. Gerzof vs. Lerner Sibling Partnership and FMV Smithtown Associates,** Supreme Court of the State of New York County of Nassau, Index No. 00-020703.

**Vincent L. Promuto et al., vs. Waste Management, Inc.,** United State District Court, Southern District of New York, Index No. 98 Civ. 3552 (wcc).

- Eli Bartov C.P.A (Israel), self employed. I was involved primarily in auditing, tax planning, and designing financial accounting systems for small- to medium-size business organizations, 1979 - 1985.


RESEARCH INTERESTS:

Executive stock options
Executive compensation
Earnings management
Earnings expectations management
Equity valuation
Market efficiency and accounting information
International accounting

TEACHING:

- Undergraduate: Have taught an introductory financial accounting course.

- MBA: Have taught introductory financial accounting, financial statement analysis, and international accounting & financial statement analysis courses.

- Executive MBA: Have taught introductory financial accounting and international accounting & financial statement analysis courses in the U.S., Europe, and Asia.

- Ph.D.: Have taught empirical accounting research courses and served as a member on several dissertation committees.

**Chairman of Dissertation Committees:**

Ertimur, Yonca (Stanford University), “Financial information environment and loss firms” (September 2003, NYU).

PROFESSIONAL ACTIVITIES AND AFFILIATIONS:

Invited Presentations at Faculty Workshops:


“When cash flow is king.” *SmartMoney.com*, November 18, 1999.

**SERVICE – NEW YORK UNIVERSITY:**

Member, Global Business Curriculum Committee, 2004 - present

Member, Dean’s Faculty Advisory Committee, 2003 – Present.

Chair, departmental Recruiting Committee, 2003 - Present.

Director, Accounting Doctoral Program, 2001 - Present.

Member, Stern’s Research Resources Committee, 2001 - 2002.

Member, departmental Executive Committee, 1999 - 2002.

Member, departmental Recruiting Committee, 1999 – 2001.

Member, departmental P & T Committee, 1997 - Present.

**PUBLICATIONS:**

**Journal Articles:**


4. “Discussion of ‘investor sophistication and the mispricing of accruals,’” *Review*


Comment Letters:


**Working Papers:**

“Change in Investor Sentiment: Revising Stock Option Accounting,” November 2005, with Carla Hayn.


Other Publications:


AWARDS, GRANTS, AND HONORS:

Peat Marwick Faculty Fellowship, Leonard N. Stern School of Business, New York University, September 2001 – August 2004.


Member of “Club 6” of NYU’s Stern School of Business - Undergraduate College (excellence in teaching), Fall 1997 and Fall 1999.


Member of “6.0 Club” of UC Berkeley’s Haas School of Business (high student evaluations of teaching), Spring 1996.


EXHIBIT 3
CONFIDENTIAL

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In Re: Cisco Systems, Inc.

) No. C-01-20418-JW (PVT)

SECURITIES LITIGATION

This document relates to:

ALL ACTIONS.

CONFIDENTIAL

DEPOSITION OF ELI BARTOV

New York, New York

Tuesday, February 7, 2006

REPORTED BY: BARBARA R. ZELTMAN
CONFIDENTIAL

Q During your work as a student at University of Tel Aviv, did you take any courses touching on any executive compensation issues? 09:25:16

MS. WEAVER: Objection. Vague. 09:25:24

A I did take a few -- a number of -- I think two major accounting courses that's part of the course managerial compensation was discussed definitely. 09:25:26

Q You took no courses where the primary focus of the course was executive compensation; is that accurate? 09:25:38

A No. 09:25:42

Q And prior to going to the University of Tel Aviv, did you attend school in Israel? 09:25:47

A Yes. I attended elementary school and high school. 09:25:49

Q You grew up in Israel; is that correct? 09:25:52

A That's correct. 09:25:55

Q You lived there for how long? 09:25:58

A I lived there until 1985. 09:25:59

Q What is your first language? 09:26:00

A Hebrew. 09:26:03

Q Is English your second language? 09:26:05
A Yes. 09:26:09

MS. WEAVER: Objection. Relevance. 09:26:10

Q After graduating from the University of Tel Aviv you then went to work for an organization called Sagi and Company; is that correct? 09:26:19

A Yes. 09:26:22

Q Is that a CPA firm in Israel? 09:26:25

A Yes. 09:26:29

Q And you were there for two years? 09:26:29

A That's right. 09:26:30

Q Did that firm do business only in Israel? 09:26:37

A Yes. 09:26:39

Q And it did CPA work in Israel? 09:26:41

A Auditor. I was an auditor. 09:26:44

Q You were an auditor at that firm? You didn't have your CPA license at that time, though; is that right? 09:26:47

MS. WEAVER: Objection. Vague. 09:26:49

A Well, in Israel you have to pass like what you call a bar exam and then you have to work for two years in a CPA firm and after that you are qualified to get your license. So I passed my exams on the first time 1997. 09:26:52

EASTWOOD-STEIN
Deposition Management (800) 514-2714
I worked in the CPA firm until 1999.  

Q  Do you mean '77 and '79?  

A  '77 and '79.  

I received my CPA certification in '79, and I went to open my own CPA firm.  

Q  Then in 1979 after you received your license to be a CPA, you opened your own CPA firm; is that correct?  

A  That's correct.  

Q  And that was in Israel as well?  

A  That's correct.  

Q  And you had your own firm in Israel for six years?  

A  That's correct.  

Q  And you were doing what type of work at that time?  

A  I was doing auditing and tax planning.  

Q  Did anyone else work with you in your office?  

MS. WEAVER: Objection. Vague and ambiguous.  

Do you understand the question?  

A  I do understand the question. And I'm willing to answer this question.  

I had the secretary that worked for me
and occasionally would hire people, CPAs, to help me when I got overloaded work. But primarily it was a very small firm that I worked primarily by myself.

Q And you weren't giving anyone any advice on executive compensation issues during those six years when you had your own accounting firm; is that correct?


A That's correct.

Q Did you ever receive a CPA license or certification in the United States?

A No.

Q Did you ever take the exam for certification in the United States?

A Never.

Q You closed your accounting practice in Israel in 1985; is that correct?

A Yes.

Q Why did you do that?

A I moved to UC Berkeley to work on my doctorate.

Q Is that the first time you moved to the United States, in 1985?

A I was there before for a visit for two
A  All my research span both accounting and finance. So this is thesis was published and it was published in one of the top accounting journals, the Journal of Accounting & Economics.

(Reporter requests clarification)

A  I said my research span both the finance literature and the accounting literature. I'm working in both areas.

My dissertation was related also to both areas and it was published in the Journal of Accounting and Economics.

Q  So your dissertation related to both areas?

A  Yes. I think so.

Q  Your thesis had nothing to do with executive compensation or stock options; is that correct?

A  That's true.

Q  Was your thesis published?

A  Yes.

Q  Your Ph.D. course work did not focus on executive compensation either; is that correct?

A  Well, I took classes in agency theory
and definitely covered topics in executive compensation in my Ph.D. program, definitely.

Q: And agency theory you say?

A: Yes.

Q: That's an accounting class?

A: We offer it in accounting, some people offer it in economics. The accounting Ph.D. courses in Berkeley at the time included a class in agency theory, management compensation, incentive contract and so on and so forth, so I have quite extensive exposure to this literature.

Q: Did you take any course during your Ph.D. work where the primary focus of the course was executive compensation?

MS. WEAVER: Objection. Asked and answered.

A: There was not course like this available at Berkeley at the time. And I am not aware even now that a course like this on executive compensation only exists. But I did not take a course like that that only focused on executive compensation. I didn't.

Q: And your Ph.D. course work touched on issues of executive compensation as it
Q  So that was to MBA students?  09:38:03
A  MBA, yes.  09:38:05
Q  That was an accounting class?  09:38:05
A  It was an accounting class.  09:38:07
Q  Did you teach any other courses while  09:38:07
you were there?
A  I think I co-taught, yeah, I co-taught 09:38:11
one time a Ph.D. level class.
Q  I'm sorry, what?  09:38:20
A  I co-taught.
Q  Co-taught?
A  I co-taught a Ph.D. class one time.  09:38:26
Q  What was that class?
A  Research method in accounting.  09:38:28
Q  Why did you leave Simon Graduate  09:38:31
School in 1992?
A  Because I didn't like the area. I  09:38:31
didn't like Rochester. We wanted to move to
New York City.
Q  And so upon leaving Simon, you sought  09:38:36
a job elsewhere?
A  Well, I actually while I was at Simon 09:38:48
I received many, many job offers. Even 09:38:53
before I went to Simon I received many, many 09:38:55
job offers from every school in the country.
MIT, Northwestern, NYU, many, many schools were looking to hire me. And I decided to go to Rochester at the time because the faculty there in accounting, the school was declining, but in accounting for a short period of time they had good faculty. So I decide to go there. But we realized very quickly, my wife and I, that we cannot live in this geographical area. So we wanted to leave very soon. And we left the first opportunity to leave.

Q And then you became associated with the Leonard Stern Business School at New York University?

A That's true.

Q And that was in '92?

A That's true.

Q And you've been employed at that business school ever since?

A That's true.

Q That's located in New York City?

A That's true.

Q And your curriculum vitae says you are a professor at Stern; is that correct?

A Yes. Full professor.
Q: And you became a full professor in 2001; is that correct?

A: Yes.

Q: You began your career at Stern as an assistant professor?

A: That's true.

Q: For the first nine years you were not a full professor at NYU?

A: Yes. I was assistant. Then I was associate. And then I became full professor.

Q: Do you have tenure at NYU?

A: Of course.

Q: When did you receive tenure?

A: I believe it was '96, maybe '97. I'm not sure.

Q: What courses do you currently teach at Stern?

A: I teach introductory level accounting for MBA, introductory level accounting for executive MBA and two Ph.D. courses in accounting research.

Q: Have you taught any courses that primarily focus on executive compensation?

A: Primarily focus on executive compensation, can you define for me what you...
mean by executive compensation. I don't know what you mean by that.

Q Do you know what compensation means?

A No. Tell me what compensation means in your mind.

Q You tell me what you understand it to mean.

A To me compensation means stock options, cash, bonuses and every other form of perks and benefits that executive get from the corporation.

If this is your definition of executive compensation, I've been teaching executive compensation substantially. And I have written many papers in executive compensation.

If you exclude options from executive compensation, then I did not teach executive compensation.

Q And the teaching you've done in executive compensation relating to stock options, that's in the context of accounting classes that you've taught?

A This is in the context of Ph.D. accounting class that I've been teaching at
NYU. And I've been invited to speak on these issues around the world. 09:42:13

I just came back from China. I taught executive compensation the way I define it, which is executive stock options and related issues, to a hundred Ph.D. students in a consortium together with the three other leading accounting researchers in the world. 09:42:20

And then I gave a lecture about the executive compensation in China to top officials in China. 09:42:23

And after I finished my lecture, the president of the university that hosts this event went to the podium and said when we design executive contracts for managers in Chinese companies, we must take into account what Professor Bartov told us today. That's 09:42:29

what he said.

Q And all of your teaching in connection with executive compensation has been on stock options; is that correct? 09:42:33

MS. WEAVER: Objection. Vague. 09:42:36

A Stock options and related issues. 09:42:39

Q What are the related issues? 09:42:42

A Incentives, cash compensation,
Q  In the last five years, approximately 
how many hours a year have you spent doing 
consulting work on an annual basis? 

A  It varies from year to year. As I 
said, I started with a small number of hours 
and it went up, so some years I spend 20 
hours, some years I spend 200 hours. 

Q  In your curriculum vitae it says that 
you advise money managers. What does that 
entail? 

A  That entails hedge fund manager, 
mutual fund manager calling me up and 
consulting with me about accounting-related 
issues. In the recent year it was primarily 
about actually stock options, extensive stock 
options, executive stock options, how this 
will affect financial numbers and then so on. 
Sometimes they ask me to look at 10K, 10Q and 
identify for them possible accounting risks 
and so on. 

I also give lectures. I just came 
back from San Francisco and gave a lecture to 
Franklin Templeton, a money managing company. 
So there were the PM and the financial 
analysts.
Fidelity and so on. Unless you ask me the same question as before I don't understand the question.

Q Outside of that work that you mentioned and the stock option-related advice, have you given any other advice to companies on executive compensation?

MS. WEAVER: Objection. Ambiguous.

You've got a new definition of executive compensation, Counsel?

A I can just repeat my prior answer that I gave advice about, among other things, executive compensation to money managers and financial analysts.

Q You are aware that board of directors of companies often have compensation committees?

A Yes.

Q Have you ever been retained by a compensation committee to act as a consultant?

A No.

Q You are aware that executives from time to time retain compensation consultants for executive compensation advice?
A: Definitely.  
Q: And have you ever been retained by any executive to provide such advice?  
A: No.  
Q: Are you aware that human resources divisions of companies often hire executive compensation consultants to provide them with advice on executive compensation issues and benefits issues?  

MS. WEAVER: Objection. Vague and ambiguous.  
A: I'm aware of that.  
Q: Have you ever done any such work?  
A: No.  
Q: You've been doing litigation support type work since 1992; is that correct?  
A: Yes.  
Q: And as I understand your testimony, you've been -- you've done litigation support work in six different cases; is that correct, since 1992?  
A: Yes.  
Q: The four cases listed on your vitae here and the two cases that are currently pending?
A  Yes. 09:58:06
Q  Has any court ever made any findings 09:58:16
or rulings accepting you as an expert witness 09:58:20
in any case?
A  I was never considered as an expert by 09:58:27
any court.
Q  No court ever considered you as an 09:58:31
expert witness?
A  I was never a candidate. If I was not 09:58:47
a candidate how are they going to find me an 09:58:49
expert.
Q  You were never a candidate, is that 09:58:53
what you said?
A  I was never a candidate to become an 09:58:54
expert witness. No court ever considered me as an expert witness, so it's obvious that if I'm not even considered I am not even approved or disapproved.

MS. WEAVER: I am going to object to the question as vague and ambiguous.

Q In any of the cases in which you were hired that you listed here in your resume, these four cases, were you hired to potentially provide expert testimony?

A Yes.

Q Which cases?

A All of them.

Q And it was the understanding when you were retained that you might provide expert testimony in those cases?

A Yes.

Q What was the nature of the Greenberger case that's listed in your resume there?

A Greenberger case? So this was a class action suit that was leveled against Copelco which I believe was a subsidiary of CitiGroup. And Copelco Credit Corporation is a leasing company. They lease equipment.

And when the customer lease equipment for the
company, they have to pay amongst the payment 10:00:15
to cover the lease and if they are late in 10:00:17
their payment, they have to pay a late 10:00:21
payment fee.

The case was about Copelco 10:00:27
overcharging their customers for the late 10:00:29
payment fee.

Q What was the nature of the litigation 10:00:38
support or advice that you were going to 10:00:43
provide in the case?

A I wrote an expert report, first of 10:00:48
all, determining that indeed the late fee 10:00:51
charge, the late payment fee or the charge 10:00:57
was excessive, and second, I compute the 10:01:01
number by how much this charge was excessive. 10:01:06
I provided this report to the plaintiff 10:01:11
lawyer.

Q That case had nothing to do with 10:01:16
executive compensation or stock options?

A Nothing.

Q Who were the attorneys that hired you 10:01:21
in that case?

A Steve Wittel and Jeremy Hauser.

Q Of what firm?

A I don’t know.
Q Were you working for the plaintiff in that case? 10:01:35
A Yes, I worked for the plaintiff. 10:01:37
Q What was the outcome of that case, do you know? 10:01:46
A I do know. There was a settlement. Immediately in this case I wrote the report and there was an arbitration, and I was invited by the arbitrator to make a presentation. And the two sides were in a room like this, Midtown somewhere, I made a two-hour presentation and a few weeks later, they settled. 10:02:01
Q The Nasoff case that you have -- N-a-s-o-f-f -- 10:02:13
A Right. 10:02:17
Q Which side hired you in that case, plaintiff or defendant? 10:02:17
A These are the same lawyers, the same side. Same type of case. 10:02:20
Q Same type of issues that you described earlier about a late payment? 10:02:27
A Exactly. 10:02:30
Q Did you provide the same type of report? 10:02:32
A  Yes.  

Q  Was it the identical report?  

A  No report is identical. Every case is different. But in nature, it was the same type of findings. Again, there was excessive charge and I compute the amount. And again they settled. 

Q  And that case again had nothing to do with executive compensation or stock options? 

A  Nothing at all to do with executive compensation or stock options. 

Q  And the Gerzof case, what side did you work for in the Gerzof case, plaintiff or defendant? 

A  You know, I'm embarrassed to say I don't remember which side I took here. This was a very small lawsuit about the partnership that went bad and the dispute was how to split the profit from this partnership. And there was some issue related -- accounting-related issues, so I provided an affidavit about how to split certain profits between the partners. But, honestly, it was a small case, I spent only a few hours on it, and I don't
remember the details.  
Q And that case had nothing to do with  
stock options?  
A Nothing to do with stock options.  
Q Nothing to do with executive  
compensation?  
A Nothing to do with executive  
compensation.  
Q And what about the Vincent Promuto  
case, P-r-o-m-u-t-o, who hired you there,  
plaintiff or defendant?  
A Plaintiff.  
Q Who were the lawyers that hired you  
there?  
A You know, again, this one I spent only  
a few hours. This was a law firm from  
Philadelphia. I have the name in the office  
because I billed them so I can find the name.  
I don't remember the name right now.  
And I just -- I didn't have a chance  
to write a report because they -- we spoke a  
few times, I gave him some advice, and they  
actually asked me to rebut an expert report,  
and this has to do with liability damages as  
a result of accounting fraud that resulted in
a large drop in the stock price. And I think 10:04:44
that the story there was that the expert saw 10:04:50
the report mentioned my name as an expert in 10:04:53
the area or rely on one of my papers in 10:04:58
developing his methodology so this guy -- 10:04:58
these people called me up, and they told me 10:04:59
the story, and they say would I be willing to 10:05:03
go look at the report. And they sent me the 10:05:06
report, I looked at it, I spent a few hours, 10:05:08
we had a couple of phone conversations and 10:05:12
ey they settled. I didn't have a chance to 10:05:14
write a report.

Q    Did you write a report in the Gerzof 10:05:18
case either, right?

A    In the Gerzof case I did write an 10:05:20
affidavit.

Q    And you never testified at a 10:05:25
deposition nor trial as an expert in any of 10:05:36
those cases?

A    Never testified.

Q    What is your hourly rate for 10:05:53
litigation support work currently?

MS. WEAVER: Objection. Vague. 10:05:58

A    In this case? $625 per hour. 10:06:01

Q    What about in other cases? 10:06:05
Q  Have you ever been a member or affiliated with any of those organizations?  
A  No.  
Q  Have you ever served on any committees or participated in any conferences or seminars or events in any of these organizations?  
A  This type of organization, the ones you just mentioned?  
Q  Yes. The ones I just mentioned.  
A  No.  
Q  You've mentioned that from time to time you have given speeches and lectures; is that correct?  
A  That's true.  
Q  Is it fair to say that the vast majority of those speeches concern issues related to accounting?  
A  Accounting and finance. Yes.  
Q  You list on your resume that at some point you developed a research interest in executive stock option and executive compensation; is that correct?  
A  Yes.
Q Approximately when did you start researching those issues in your career?
A Well, I was following this literature for many years obviously and I taught these issues for many years, but I started writing in this area maybe four or five years ago.
Q You've never authored any books, have you?
A No. I'm an academic. I am not a practitioner, and I focus primarily on original research, not recycling what other people did.
Q How many peer reviewed, refereed publications have you written on issues concerning executive compensation?
A Peer review, I wrote maybe five papers. One of them got published already in the Accounting Review. And this is exactly about the accounting fraud and exercises. The other paper that I wrote are still pending in the peer process, it's taking three, four years.
Q The one that you wrote is that called, "Private Information, Earnings Manipulations and Executive Stock Options Exercise"?
My means, what you call means analysis already, I think, show decisively and unquestionably that Professor Murphy's opinion that there was no unusual exercise during the class period is obviously false. But then if you want what I did, I took extra step because I want to be fair to the defendants and to the class people, not only to the defendant and not only to the class period, so to be fair to the defendants, I gave them the benefit of the doubt and say, hey, they claimed that they sold additional stock or they sold stock in the class period because of the diversification needs. So let's formulate a particular test which obviously totally absent from Professor Murphy report at all. Professor Murphy doesn't have any type of analysis like that. But I say I don't want to jump to conclusions too early, so I want to model particularly the reason that the defendant gave for their trading activities. And I want to show to myself and to the lawyers and to the class and to you because I'm an objective expert. I have no interest
in the outcome. I just want to find out the
truth. So I want to see whether the
diversification needs the defendant mentioned
the reason for trading whether this can explain all the extra trading observed during
the class period.

Q     Professor Murphy opines in his report
that the trading activities of the defendants
during the class period are not unusual,
correct? You are aware of that?

MS. WEAVER: Objection. The document
speaks for itself.

A     I'm aware of that.

Q     And your means analysis test you felt
was sufficient to show that that conclusion
by Professor Murphy was incorrect?

MS. WEAVER: Objection.

Q     Is that right?

MS. WEAVER: Objection. Misstates his
testimony. Asked and answered.

A     In my view?

Q     Yes.

A     In my view the means analysis already
show that Mr. Murphy conclusion is wrong.

Q     The means analysis shows that the
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AFTERNOON SESSION

ELI BARTOV,

resumed, having been previously duly sworn, was exa

and testified further as follows:

CONTINUED EXAMINATION BY MR. MICHELS:

THE VIDEOGRAPHER: Time is 1:35 p.m.

Q Professor Bartov, do you agree that
executives routinely exercise stock options
as a general matter?

A What does this mean?

Q Do you think there's anything
inherently unusual with an executive
exercising stock options?

A Many times there is nothing unusual.

Sometimes it is unusual.

Q Is it true that there are many
legitimate and reasonable explanations why
executives may choose to exercise stock
options?

A Absolutely. There are many reasons
for executives to exercise their stock
options, and I believe you are talking about
exercise the stock options early.

Q Yes.

13:34:17

13:37:03

13:37:21

13:37:25

13:37:35

13:37:39

13:37:43

13:37:44

13:37:47

13:37:49

13:37:52

13:37:56

13:37:58

13:38:02

13:38:05

13:38:07

13:38:11

13:38:14

13:38:18

13:38:21
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A So you didn't say early. So you're talking about exercise early before the expiration date, if that's what you are talking about, yes, there are many reasons for that.

Q One reason, in fact, is to do just that, to exercise an option before it expires, correct? That would be a reasonable reason why an executive would exercise an option?

A Upon expiration they have no choice, so the choice we are talking about when an option expires they must exercise it. So we are talking about exercise option early, as I said before, there are many reasons for executives and employees to exercise their options early.

Q And one reason is that if the option is about to expire and the option is in the money, the executive would have a financial interest in exercising the option and thereby securing some financial benefit from it than just simply letting it expire and foregoing the financial benefit; is that correct?

A No. The executive in the money can
certainly wait until the expiration date and exercise it on the expiration date. They don't have to exercise it before the expiration date.

Q  Before or on the expiration date?
A  Yes.

Q  A reasonable explanation why an executive might exercise an option is to avoid the option from expiring, correct?
A  Yes.

Q  Another reasonable explanation why an employee might exercise his stock options is to diversify himself in the marketplace, is that correct?
A  This is correct.

Q  Is it generally true that the more senior an executive and the longer he's been tenured with the company, the more likely it is that he's going to have larger option grants over time?
A  Generally speaking, it's true.

Q  And when we say diversification, we are talking about investing in different companies and/or in different markets so that you as an investor, an employee holding stock...
options, would not have all of your eggs in one basket, right?

A  That is correct.

Q  Are liquidity needs also sometimes a basis for an employee to make a decision to exercise stock options?

A  Early. Yes.

Q  And is the risk of forfeiture of the option sometimes a reasonable explanation why an executive may decide to exercise an option early?

A  Yes.

Q  And one of the things that may cause an executive to forfeit his or her options would be if the executive was leaving the firm?

A  Depends on the contracts. Sometimes you leave the firm you have 90 days, 180 days a year to exercise the option, sometimes you have to exercise it on the day that you left. It depends on the particular contract between the executive and the firm.

Q  And whatever those parameters are, whatever the contract provides for the executive, it's a reasonable decision for an
executive to make to exercise an option before it forfeits pursuant to whatever contract he has or parameters he has?

Q  Is the run-up in stock price at a company also a explanation why an executive may decide to exercise options early?

A  Definitely.

Q  By run-up in a stock price, you understand that would mean a substantial increase in the stock price over some period of time?

A  Yes. This is my understanding.

Q  And sometimes stock price runs up or has substantial increases over time due to nothing wrong or illegal going on at the company; is that correct?

A  Oh, for sure.

Q  It could be because the company's in an industry that's doing very well, correct?

A  Definitely.

Q  It could be because the company itself is doing well in the marketplace, having success with sales, for example?

A  For sure.
Q Here you didn’t assume it was unusual, though, here you said it was inconclusive. A Inconclusive meaning that they are not unusual. This is the way I -- this is the way I -- they are inconclusive which is the purpose of this analysis because they are inconclusive, I give them the benefit of the doubt and I cannot say they were unusual. So for me they were usual.

Q So for you in this report, then, inconclusive means not unusual?

A Not unusual, yes.

Q Turning back to Carter, then, for a minute, on Page 16.

A Yes.

Q You actually, for Mr. Carter, reached a conclusion, as we talked about earlier, that for his exercises in the modified class period, you actually say not unusual.

A Right. Same language. You know, sometimes you express the same idea, you know, academics don’t like to repeat themselves. So this is kind of the same language. Inconclusive, not unusual. I’m glad you asked me because it may be
confusing. So I use this opportunity to clarify.

Q And then for Mr. - if you look at Mr. Chambers on Page 16, you used the phrase not conclusive. Isn't that the same as --

A What table are you looking at?

Q No. I'm looking at Page 16.

A Right.

Q John Chambers, second full paragraph down.

A Right.

Q At the end of the paragraph you say, "It is not conclusive as to whether his" --

A I say it's suggestive. You have to read the full sentence. I say suggestive but not conclusive because here the statistics is marginally significant so I say suggestive. So there are different levels of certainty that I'm trying to communicate. Suggestive but not conclusive is one level of certainty. Statistically significant is the second level, the higher level of certainty. And inconclusive or not unusual is the third level of certainty.

Q So those are the three designations
seems, undoubtedly seems unusual, but --

MS. WEAVER: And I'll object for the record because it's not Table 9 or 9-M. It's Page 22 where he provides evidence which includes evidence other than just the data in the table.

A I recognize it in my report that statistical test cannot be performed, but if you want to base your conclusion on intuition, which I am not recommending doing, but I'm saying since this has been done before, if you want to do that, if you press me and say, you know what, tell me what's your gut feeling, and this is the criteria that was used by the other expert, I would say my gut feeling is this is indeed unusual, but I, as you said, I'm not feeling very comfortable saying that.

Q Are you comfortable testifying under oath in a federal court proceeding where Ms. Estrin is charged with insider trading; that her trading activity is unusual in this case?

A You know, I have to consider it. I didn't look at it this way, but probably not.
Probably I won’t be able to feel confident enough to say that her trading was unusual given this data alone, no. Because, as I said before, for me, I rely on statistical analysis. I have to -- in order for me to feel comfortable, as you said, I must back my conclusion up by statistical analysis and here, I don’t have that.

Q Professor Bartov, when you plug numbers into the statistical formula that was applied in this case, the formula doesn't know anything about what those numbers represent in the real world; is that true?

MS. WEAVER: Objection. Vague and ambiguous.

A The formula doesn't know anything. It's not a human being. The formula cannot think. The formula doesn't know anything.

Q And you don't -- when you plug numbers into the formula, there's nothing taken into consideration in the formula about whether those numbers are, for example, value of stock options traded or points in a basketball game or number of people that attended a concert or what those numbers

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number in the other time periods, correct? 15:51:13
A Depending under what circumstances. 15:51:16
In this case I would do that. In your 15:51:18
example of basketball, I may not do this. It 15:51:20
would depend on the circumstances.
Q Why would you not do it in the other 15:51:24
example?
A Because in your hypothetical example 15:51:27
it doesn't apply at all. You suggest there 15:51:29
is a time series pattern and in your 15:51:31
suggestion is by your story that this time 15:51:34
pattern really exists. So, obviously, if 15:51:38
there is a time pattern in the one you 15:51:39
presented, then the T statistic test may not 15:51:41
be valid.
Q Do you know if there is a time pattern 15:51:45
until you do the test?
A What test?
Q The statistical test.
A Which statistical test?
Q The one that you used in this case.
Can you tell whether there is a pattern or 15:51:54
not from the data in the sequence?
A Let me explain to you how I did the 15:51:59
analysis.

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There is not one word in his work about time trend. There is not one word in the defendant's deposition about time trends. So you come up with an explanation that has never been discussed before.

Q I didn't come up with any explanation. I'm simply asking you questions whether this was considered in your analysis.

A It was considered.

Q Does the statistical test take into account or can it determine in any way whether there was any sequence or pattern that may explain the data?

A Well, the regression analysis does take this into account in a way.

Q With respect to the seven defendants for which there was no regression analysis, is there anything in the statistical test that takes into account or can determine in any way whether there was any sequence or pattern that may explain the data?

A No.

MS. WEAVER: Objection. Asked and answered.

Q And you mentioned in the course of
A No, it doesn't tell you why. It just tells you it's statistically different or statistically higher. But it doesn't give you the reason, no.

And I made a point -- again, I have two different research questions. One is the question was whether the numbers are different. And my conclusion was yes, they are different. The regression analysis provide insight more about the reason why there is unusual. So there are two questions. One, is there unusual trading activity? The answer is yes. I don't know why. It may be for diversification purposes.

Q But the answer is yes only with respect to some of the defendants in some periods, right?

A Yes. That's true. That's true. But I don't know the reason.

Q But in terms of the why, since you didn't perform the regression analysis for seven of the defendants, there was no subsequent analysis of any reasons why their trades may have been usual or not?

A Absolutely. That's why I mentioned it
Q  I don't want to waste my own time  patient
asking questions at times when I'm having  patient
trouble following you.

Is it true, Professor Bartov, that  patient
there could be a number of reasons and
legitimate reasons having nothing to do with
any insider trading or accounting fraud or
any other wrongdoing why the dollar value of
the defendant's option exercises would be
significantly and statistically greater in
the original class period or modified class
period than it was in the estimation periods?  patient

A  Theoretically, yes.  patient

Q  And is it true that one factor that
may cause the dollar value of the defendant's
option exercises to increase in the original
class period and modified class period may be
the fact that over time, Cisco's stock price
increased therefore making the options that
existed of a higher dollar value?

A  For sure. For sure. This is
definitely an explanation and I explore it
within the regression analysis.

Q  So if the stock price increases, then
when the Cisco defendants sell the same  patient

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number of options in later periods, those sales would generate larger dollar amounts of exercises; is that correct?
A For sure.
Q And that would be true even if the defendants had nothing to do with the stock price increasing over time, correct?
A For sure.
Q Even if the stock price increase wasn't as a result of any wrongdoing or accounting fraud or anything else, was just the result of a booming industry or good work on behalf of Cisco or whatever, correct?
A For sure.
Q Have you examined whether during the period of 95 to '02 there was a stock price increase at Cisco?
A Yes. I have examined it, and it's true, the price went up.
Q There was a substantial increase; is that correct?
A This is absolutely correct.
Q And so when the statistical formula suggests to you the conclusion that the stock -- the dollar value of the stock option
exercises in the original class period or modified class period were statistically greater than they were in the estimation periods, the statistical formula can't tell you and doesn't indicate in any way whether those -- whether those unusual or statistically significant determinations are the result of any stock price run-up?

MS. WEAVER: Object to form. Vague and ambiguous.

A I agree. I agree. That's why I performed the regression analysis. But it does tell me -- so, again, let me just clarify because -- let me just clarify because you asked the same questions 40 times now, so -- and it's really annoying, so let me explain.

The analysis consists of two steps. Step number one is to assess whether there was unusual trade during the class period regardless of the motive. Once I find that there was an unusual trade for whatever reason in the class period, I then performed additional analysis to determine the motive.

Q But that additional -- first of all,
to the class period. And I'll also respectfully note that we weren't guessing. Do you understand the question?

THE WITNESS: No. I do understand the question.

Q Did you say you do or you don't?

A I do. I do understand the question. And I think, you know, if you pick a random company, if you pick a random company, and you do this type of a thing, I think it's unlikely that you would find 12 executives and directors that all have this unusual trading activity in one period. Because if the trading activity is random based on legitimate reasons such as diversification or liquidity needs or whatever, then they will not be that strong statistically. They will not be that strong of a correlation across these 12 executives.

Let me just finish.

So if you told me the peak period where one or two people, maybe the COO by chance sold more and they called it the class period and they build a case against, I say this is possible. To pick 12 like that, it's
possible, but it’s unlikely. But this is my educated guess because I never had an experience with this kind of a situation.

Q Let me ask you this, sir: Is it true that -- we talked about this earlier. If there is a run-up in the stock price, then that makes it more likely and more attractive to executives to exercise more stock options at that time; is that correct?

A This is correct.

Q And that’s true even if there’s nothing wrong going on with the company. We talked about that, right?

A Absolutely correct.

Q Even if it’s just a run-up based on a fortunate and favorable set of circumstances for the company or for the industry, correct?

A Correct.

Q And if that happens, if there’s a stock run-up in the company, isn’t it true that that same principle would apply to all of the executives in the company, correct?

A Correct.

Q And isn’t it true that if I then looked for a stock run-up in the company and
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But let me just tell you something to save time. But the regression analysis was dictated also by data availability. So, for example, I didn’t analyze -- I had 12 defendants. I analyzed only five because there was no data for the other seven.

Q    That’s not saving time because I’m not asking you about that. I am only asking to be a member of the class of persons who was in the regression analysis, you have to be a defendant in this case, correct?

A    Absolutely.

Q    It’s not the top five people in the company who were selected to be in the regression analysis, correct?

A    I don’t know who they are. I was given the names.

Q    Do you know who John Morgridge is?

A    I don’t know. Maybe I read it -- I don’t remember.

Q    He is the chairman of the board.

A    Okay.

Q    And --

A    A director.

Q    He is not in the regression analysis,

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that?  17:25:50
A  No. This is not unusual at all. This 17:25:50
is what economic theory would suggest.  17:25:52
This is what economic theory would 17:25:56
predict.  17:25:56
Q  Take a look at Table 7.  17:26:07
A  Okay.  17:26:09
Q  You run the regression analysis on the 17:26:11
five individuals listed in the table, 17:26:13
correct?  17:26:15
A  Yes.  17:26:15
Q  And you determine, based on the 17:26:16
regression analysis, that the expected number 17:26:18
of stock option exercises on dollar value 17:26:21
basis pursuant to regression analysis would 17:26:25
be what you list in the column of that table 17:26:27
on Page 38, Table 7, which is labeled 17:26:30
"Expected Stock Option Exercises in Thousands 17:26:34
of U.S. Dollars."
A  Yes.  17:26:37
Q  And that column is where you list 17:26:39
what, pursuant to the running of the 17:26:53
regression analysis, you have concluded you 17:26:53
would expect the dollar amount of exercises 17:26:53
to be for each of those five individuals?  17:26:53
Q  And then you compare that to the actual stock option exercises that occurred in the -- is that -- what period is that? Is that the original class period those numbers in actual stock option exercises?

A  Yes. It says it on the top of Table 7, the title, and it says in the original class period.

Q  That's Table 7?

A  You referred me to Page 38.

Q  You are correct. I turned to the page inadvertently while we were talking. And then Page 39, 7-M, that's a listing of what you would expect in the first column, expected stock option exercises in a dollar value base when you run the analysis on those five individuals, correct?

A  Yes.

Q  And then you list next to that the actual stock option exercises on a dollar basis in the modified class period?

A  Yes.

Q  And then for each of these two charts you then run the statistical test to
Q  Can you cite to any treatise or paper which suggests that in a statistical test such as this you should log one side of the equation and not the other?

MS. WEAVER: Objection. Vague and ambiguous.

A  There is no paper to attend specifically for these instances, but if you look on any statistical textbook and look up log transformation, you will find out this is a very legitimate way of running a regression.

Q  You didn’t log exercises, right?

A  Of course not.

Q  You just logged holdings?

A  Exactly. Of course.

Q  And you think that’s supported in any statistical textbook?

A  Oh, for sure.

Q  Why is that?

A  Because it’s the way to do it. As I said before, when you have outliers you want to get rid of the outliers by using logs and when the relationship is linear the way they are here, you also want to use a log.
EXHIBIT 4
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

In re: )
CISCO SYSTEMS, INC., )
SECURITIES LITIGATION, ) No. C-01-20418-JW (PVT)
)----------------------
This document relates to ) VOLUME II
ALL ACTIONS. )
)----------------------

Continued Videotaped Deposition of
LARRY CARTER, taken at 100 Pine Street,
San Francisco, California, commencing at
8:04 a.m., Friday, September 30, 2005,
before Janice Schutzman, CSR No. 9509

PAGES 208 - 426
shows your options that you were awarded during that

time period?

A. That's correct.

Q. And then the last exhibit, 2079 shows the

bonuses you received during that time period, correct?

A. Yes.

Q. And for, going back to the first exhibit,

2077, I think it is, the stock options that you

exercised in August of 2000, do you see those two

transactions for a total of 500,000 shares?

A. Yes, I do.

Q. And you received approximately $32 million

for those option exercises?

A. I did.

Q. And they cost you approximately $2.7

million, is that correct?

A. Yes.

Q. So you had a profit of approximately $28

million, is that correct?

A. Before taxes, yes.

Q. Before taxes.

What was the reason why you exercised the

options and sold the stock in August of 2000?

A. I regularly exercise options throughout my

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career at Cisco. I would do this within a trading
window that was established by our legal department.
And I would do this for diversification of my
personal asset portfolio. All my wealth was in
Cisco, and so I would regularly exercise.

Q. And how did you decide which fiscal quarter
you would exercise your options in?
A. Again, I just do it on a regular basis.
There was, I just tried to do it on a regular basis.
And that's all I can say.

Occasionally there might have been, I can't
remember which one of these there was. On one
occasion I knew that the options were going to
expire. And, given the number of windows that we
would have, I couldn't get locked out and lose the
option.

Q. That wasn't the case with respect to those
August 2000 sales, was it?
A. No, I don't believe so. But I think there
were some other sales that had to do with expiration
of options.

MR. BURKHOLZ: All right, why don't we take
our last break.

THE VIDEOGRAPHER: We're off the record at
3:17 p.m.
EXHIBIT 5
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Michelangelo Volpi

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re CISCO SYSTEMS, INC.
SECURITIES LITIGATION

Case No. C-01-20418-JW

This Document Relates To:
ALL ACTIONS.

DECLARATION OF DONALD J. LISTWIN IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

Date: June 12, 2006
Time: 9:00 a.m.
Place: Courtroom of the Honorable James Ware
I, Donald J. Listwin, declare:

1. I am a former Executive Vice President of Corporate Marketing, Service Provider and Consumer Lines of Business at Cisco Systems, Inc. ("Cisco" or the "Company"). I submit this declaration in support of defendants’ motions for summary judgment. I have personal knowledge of the facts stated below, and could testify competently to such facts.

2. I joined Cisco in 1990, where I began as a product manager for router software. In the following years, I worked in various product management and marketing positions at Cisco, and by June of 1998 was elevated to the position of Executive Vice President, where I oversaw Cisco’s Service Provider and Consumer lines of business, as well as Cisco’s marketing department.

3. On August 8, 2000, I announced on Cisco’s quarterly earnings conference call that I would be resigning from the company to accept a position as the President and Chief Executive Officer of Phone.com, which subsequently merged with Software.com in November of 2000 to become Openwave Systems, Inc. My last day with Cisco was in September 2000, and I served as President and CEO of Openwave until November of 2004.

4. I now serve as Founder and Chairman of the Canary Foundation, a public non-profit organization dedicated to supporting the development of early cancer detection technologies.

5. I understand that plaintiffs have alleged that I am responsible, along with all other defendants, for certain Cisco press releases issued between November 9, 1999 and November 6, 2000. These press releases concerned (1) Cisco’s quarterly earnings; (2) purchases by two customers of Cisco equipment that including the VCO/4K programmable switch, referred to by plaintiffs as the Summa switch, on January 31, 2000 (PowerNet Global) and May 30, 2000 (Telekom Austria); and (3) Cisco’s acquisition of Pirelli Optical Systems ("Pirelli") announced on December 20, 1999, Plaintiffs’ allegation is incorrect.

6. I did not participate in the preparation or dissemination of any of the aforementioned press releases, with the exception of the Pirelli press release. Indeed, one of press releases was issued by Cisco on November 6, 2000, which was well after I had left the Company.
With regard to the Pirelli release, I provided a quote discussing a number of the future benefits that I believed would accrue to Cisco through the acquisition, specifically that "Pirelli's optical business delivers innovative technology and systems from an early stage company and provides Cisco with additional European channel and sales support...[w]ith this capability, Cisco becomes the only company in the world capable of delivering an end-to-end 10 gigabit—or OC-192—Internet based optical network."

7. I believed my statements in the Pirelli press release to be true. I was unaware of any facts that would have rendered those statements misleading in any way, and believed that the acquisition was in the best interests of Cisco and its shareholders. More generally, I do not believe that any of the aforementioned press releases were misleading in any respect. At no time did I believe that any public statement made by Cisco or its management was false, inaccurate or misleading.

8. I also understand that plaintiffs have alleged that I made certain misstatements during Cisco's quarterly earnings calls with analysts – specifically on the November 9, 1999, May 9, 2000, and August 8, 2000 conference calls. This is incorrect. While I was present on those calls, I did not make any of the statements attributed by plaintiffs to me. Moreover, I did not believe that any speaker on any of those calls made any misstatements, and I was not aware of any facts suggesting they had done so. The only alleged misstatement which even approximates what I actually said is plaintiffs' claim that I noted on November 9, 1999 that "Cisco was enjoying accelerating strong demand from the SP segment." While I do not recall saying those words, I certainly believed that to be true. Demand for Cisco's products from the service provider segment was strong and accelerating at that time, as demonstrated by, among other things, the actual performance of Cisco's Service Provider business and internal forecasts showing rapid growth in that segment. In fact, Service Provider product bookings grew about 99% in fiscal 2000.

9. I am also informed that plaintiffs have alleged that I made a variety of misstatements at the June 7, 2000 SuperComm analyst conference in Atlanta. I did not make any projections at that conference about anticipated revenues or earnings per share for fiscal 2001 or
any other year. I believe that I did state, in effect, that Cisco's growth prospects were strong and that component shortages and long lead times were presenting an issue that would be addressed by building up inventory. Those statements were accurate.

10. In the period between August of 1998 and November of 1999, I sold over 2.4 million shares (split-adjusted) of Cisco stock. During the period from November 1999 until I left Cisco, I did not sell any Cisco stock. After I left the company, I had 90 days to exercise my remaining Cisco stock options, and rather than allow them to expire I exercised them at various times between October and December of 2000. I was forced to sell a portion of my Cisco holdings at that time in order to cover the tax liability I assumed by exercising the aforementioned options. At the time of these sales, I was not aware of any material, non-public information regarding Cisco, and would not have been privy to such given that I was no longer an employee of the Company.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is being executed on this 15th day of March, 2006, at

San Jose, California.

[Signature]

Donald J. Listwin
EXHIBIT 6
# Options and Awards Summary

**As of:** 7/12/2005  
**Current Market Value:** $19,5400

**Donald J Listwin**  
**14170 Balei Ranch Road**  
**Los Altos Hills, CA USA 94022**

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CONFIDENTIAL
# Options and Awards Summary

As of: 7/12/2005  
Current Market Value: $19,5400

**ID:** 000410

**Donald J Listwin**  
14170 Baleri Ranch Road  
Los Altos Hills, CA USA 94022

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CONFIDENTIAL
### Options and Awards Summary

**As of:** 7/12/2005  
**Current Market Value:** $19,5400

**Donald J Listwin**  
14170 Baleri Ranch Road  
Los Altos Hills, CA USA 94022

**ID:** 000410

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**1,350,000**

**CONFIDENTIAL**
# Options and Awards Summary

As of: 7/12/2005  
Current Market Value: $19.5400

Donald J Listwin  
14170 Baleri Ranch Road  
Los Altos Hills, CA USA 94022

**Option No.: 014366  Option Date: 5/7/1996  Shares: 1,125,000  Price: $5.8056  Plan: 87  Type: NQ**

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**Option No.: 025367  Option Date: 10/4/1996  Shares: 450,000  Price: $7.4445  Plan: 87  Type: NQ**

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**Option No.: 027876  Option Date: 4/4/1997  Shares: 1,125,000  Price: $5.6528  Plan: 98  Type: NQ**

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**Option No.: 041407  Option Date: 2/6/1998  Shares: 600,000  Price: $10.5896  Plan: 98  Type: NQ**

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# Options and Awards Summary

**Cisco Systems, Inc.**  
ID: 77-005951  
170 West Tasman Drive  
San Jose, CA 95134-1706

**As of:** 7/12/2005  
**Current Market Value:** $19,5400

**Donald J Listwin**  
14170 Baleri Ranch Road  
Los Altos Hills, CA USA 94022

**ID:** 000410

---

### Option No.: 041407  
**Option Date:** 2/6/1998  
**Shares:** 600,000  
**Price:** $10.9896  
**Plan:** 96  
**Type:** NQ

#### VESTING SCHEDULE

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**Option Date:** 4/27/1998  
**Shares:** 750,000  
**Price:** $11.7396  
**Plan:** 96  
**Type:** NQ

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**Option Date:** 6/5/1998  
**Shares:** 300,000  
**Price:** $12.9063  
**Plan:** 96  
**Type:** NQ

#### VESTING SCHEDULE

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### Option No.: 064647  
**Option Date:** 4/5/1999  
**Shares:** 800,000  
**Price:** $28.6094  
**Plan:** 96  
**Type:** NQ

#### VESTING SCHEDULE

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**CONFIDENTIAL**
### Options and Awards Summary

**As of:** 7/12/2005
**Current Market Value:** $19.5400

**Donald J Listwin**  
14170 Baleri Ranch Road  
Los Altos Hills, CA USA 94022

<table>
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**Total Options Exercisable:** 0  
**Total Price:** $0.00  
**Total Potential Gain:** $0.00

CONFIDENTIAL
EXHIBIT 7
In re: Master File No.

CISCO SYSTEMS, INC., C-01-20418
SECURITIES LITIGATION JW(PVT)

This Document Relates to:

ALL ACTIONS.

Videotaped deposition of
JUDITH L. ESTRIN, taken on behalf of
Plaintiffs, at 100 Pine Street, Suite 2600,
San Francisco, California, commencing at
9:59 a.m., Thursday, August 4, 2005, before
Deirdre F. Cram, C.S.R. 9339
A. I do. Could you re-ask the question you asked me about employment?

Q. What about employment?

A. Agreement.

Q. Whether or not you had an employment contract with Cisco when you left Precept? 10:18:34

A. The answer to employment contract is no. There was an offer letter which I accepted, and so there is some question -- the reason I said no is it was not an official employment contract, but I want to make sure that I clarify and acknowledge that there was an offer letter, the contents of which I accepted that offer.

Q. Was there a term of employment associated with the offer letter? 10:19:01

A. I do not believe so.

Q. So is it correct that you joined Cisco in March of 1998 and left at the end of April of 2000?

A. I don't remember the exact date of my joining employment, but it was around March 1998, and then I left end of April 2000.

Q. Did you have the same position at Cisco during that entire time period?

A. I had the same title.

Q. Did your responsibilities change during 10:19:44

EASTWOOD-STEIN
deposition services & litigation support (800) 514-2714
MR. MONTGOMERY: I'd like to ask the court reporter to mark what will be Exhibit 967.

(Deposition Exhibit No. 967 was marked for identification.)

BY MR. MONTGOMERY:

Q. Is Exhibit 967 another Form 4 filed on your behalf with the SEC?

A. Yes.

Q. Does it indicate that you sold 25,000 shares of Cisco stock on November 12th, 1999?

A. Yes.

Q. Does it also indicate that your spouse also sold 25,000 shares on that same day?

A. Yes.

Q. Do you recall why you sold those shares on that date?

A. No, I don't. I will add as part of this, that this was part of a general diversification strategy, but I don't recall any of the specifics of these trades.

Q. When you're talking about "these trades," you're just talking about the ones --

A. You -- you've only asked me about these two.
EXHIBIT 8
## Options and Awards Summary

As of: 7/12/2005  
Current Market Value: $19,5400

### Judith Estrin  
101 First St. PMB 508  
Los Altos, CA USA 94022  

<table>
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Option Date: 7/27/1998  
Shares: 900,000  
Price: $16.2500  
Plan: 96  
Type: NQ

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### Option No.: 064642  
Option Date: 4/5/1999  
Shares: 640,000  
Price: $28.6004  
Plan: 96  
Type: NQ

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Option Date: 11/5/1999  
Shares: 200,000  
Price: $36.7188  
Plan: 96  
Type: NQ

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Options and Awards Summary

As of: 7/12/2005
Current Market Value: $19.5400

Judith Estrin
101 First St. PMB 508
Los Altos, CA USA 94022

Option No.: 097597
Option Date: 1/12/2000
Shares: 550,000
Price: $51.9663
Plan: NQ

VESTING SCHEDULE

| Granted | Full Vest | Exercisable | Total Price | Expires
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TRANSACTIONS

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Total Options Exercisable: 0
Total Price: $0.00
Total Potential Gain: $0.00

CONFIDENTIAL
EXHIBIT 9
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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In re: ) Master File No.
CISCO SYSTEMS, INC., ) C-01-20418
SECURITIES LITIGATION ) JW(PVT)

This document Relates to:

ALL ACTIONS.

VIDEOTAPED DEPOSITION OF EDWARD R. KOZEL

THURSDAY, AUGUST 25, 2005

es eastwood-stein
deposition services & litigation support
550 West C Street, Suite 600
San Diego, CA 92101
619-235-2400
Does it indicate that on August 13, 1999
you exercised a number of options and sold a number
of shares of Cisco Systems?

MR. MICHEL: Objection to form.

THE WITNESS: I don't recall the exact
transaction, but it certainly appears that I did,
yes.

BY MR. MONTGOMERY:

Q. Do you have any reason to think that the
transactions listed on this form are not correct?

A. I don't have any reason to think it is
incorrect.

Q. Why did you exercise these options and sell
these shares as of these dates?

A. It was part of a regular diversification
process that I had been practicing for a long time.

Q. Was that plan memorialized in any form?

A. No.

Q. And do you recall what you did with the
proceeds of the sales?

A. I recall what I did with some of the
proceeds of the sales. Well, with this particular
sale, no, I can't speak to the proceeds, but at this
point in time we were acquiring some property. We
were beginning the construction of a new house.
## Options and Awards Summary

**As of:** 7/12/2005  
**Current Market Value:** $19,5400

### Donald T. Valentine  
**Sequoia Capital**  
3000 Sand Hill Road  
Suite #4-180  
Menlo Park, CA 94025

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### VESTING SCHEDULE

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**ID:** NE0001
## Options and Awards Summary

**As of:** 7/12/2005  
**Current Market Value:** $19.5400

### Donald T. Valentine  
**Sequoia Capital**  
3000 Sand Hill Road  
Suite #4-180  
Menlo Park, CA 94025

**ID:** NE0001

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**Option Expires in Current Year**

**CONFIDENTIAL**
# Options and Awards Summary

As of: 7/12/2005  
Current Market Value: $19.5400

Donald T. Valentine  
Sequoia Capital  
3000 Sand Hill Road  
Suite #4-180  
Menlo Park, CA 94025

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CONFIDENTIAL
### Options and Awards Summary

**As of:** 7/12/2005  
**Current Market Value:** $19,5400

---

**Donald T. Valentine**  
Sequoia Capital  
3000 Sand Hill Road  
Suite #4-180  
Menlo Park, CA 94025

---

**ID:** NE0001  
**Option No.:** 189333  
**Option Date:** 11/14/2000  
**Shares:** 15,000  
**Price:** $53.1250  
**Plan:** 96  
**Type:** NQ

**Options Detail:**

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**Type:** NQ

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**Type:** NQ

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**Type:** NQ

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**CONFIDENTIAL**
# Options and Awards Summary

**As of: 7/12/2005**  
**Current Market Value: $19,5400**

**Donald T. Valentine**  
**Sequoia Capital**  
**3800 Sand Hill Road**  
**Suite #4-180**  
**Menlo Park, CA 94025**

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**Total Options Exercisable:**  
295,000  

**Total Price:**  
$4,582,983.00  

**Total Potential Gain:**  
$2,291,992.00
DEAN S. KRISTY (State Bar No. 157646)
KEVIN P. MUCK (State Bar No. 120918)
FELIX S. LEE (State Bar No. 197084)
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ROBERT Y. SPERLING (Pro Hac Vice 2/16/05)
ROBERT L. MICHELS (Pro Hac Vice 2/16/05)
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Telephone: (312) 558-5600
Facsimile: (312) 558-5700
c-mail address: rbetman@winston.com

Attorneys for Defendants Cisco Systems, Inc., John T.
Chambers, Larry R. Carter, Carol A. Bartz, Steven M.
West, Edward R. Kozel, Donald T. Valentine, Robert L.
Puette, Judith L. Estrin, Gary J. Daichendt, Donald J.
Listwin, Carl Redfield and Michelangelo Volpi

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re CISCO SYSTEMS, INC.
SECURITIES LITIGATION

DECLARATION OF DONALD T. VALENTINE
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

This Document Relates To:

ALL ACTIONS.

Case No. C-01-20418-JW (PVT)

Date: June 12, 2006
Time: 9:00 a.m.
Location: Courtroom of the Hon. James Ware
I, Donald T. Valentine, declare:

1. I am a former outside director of Cisco Systems, Inc. ("Cisco" or the "Company").

2. I submit this declaration in support of defendants' motions for summary judgment. I have personal knowledge of the facts set forth below, and could testify competently to such facts.

3. I am a founder of Sequoia Capital, one of the premier venture capital firms in the United States. I joined Cisco's board as an outside director in 1987. After many years of service, I retired from the board in 2005.

4. I have never been an employee of Cisco, and I have never had any operational or day-to-day responsibility at the Company.

5. While plaintiffs have not alleged that I made any statements regarding Cisco, I understand they have alleged that I am responsible with all other defendants for certain Cisco press releases issued between November 9, 1999 and November 6, 2000. This allegation is incorrect, as I played no role in the preparation, drafting or dissemination of any press releases by Cisco during that period of time.

6. At no time did I believe that any public statement made by Cisco or its management was false, inaccurate or misleading, nor did I become aware of facts which suggested to me that any public statement made by Cisco or its management was false, inaccurate or misleading. In particular, I did not believe, nor did I ever become aware of facts which led me to believe, that any of Cisco's reported quarterly or annual financial results were inaccurate or misstated, or that Cisco ever misrepresented the state of its business or its prospects, or that Cisco ever misrepresented its technology, product development or information relating to customer orders, or that Cisco ever misstated any aspect of its acquisitions.

7. I understand that plaintiffs allege that Cisco made misrepresentations regarding the Company's acquisition of Pirelli Optical Systems ("Pirelli"), which was announced in December 1999. Although I was not involved in the drafting or preparation of any press release regarding Pirelli, and I was not present at the special meeting of the board of directors at which the Pirelli acquisition was approved, I do not believe that any statement made by Cisco regarding Pirelli or the acquisition was false or misleading in any way. I believed at the time that the acquisition was
in the best interests of Cisco and its shareholders.

7. In August 1999, I had unexercised options which were set to expire in August 1999, October 1999 and November 1999. In the aggregate, these options permitted me to acquire 540,000 shares of Cisco stock (or 1,080,000 shares on a split-adjusted basis). Rather than allow these options to expire and become worthless, I exercised the options and sold the shares on August 13, 1999. At the time of that sale, I was not aware of any material, non-public information regarding Cisco; to the contrary, I believed (consistent with information and forecasts presented to the board of directors) that Cisco’s business would continue to grow, both in the short-term and in the long run. I did not sell any other Cisco stock during the period relevant to this lawsuit. Indeed, throughout the period I beneficially held more than 1.8 million shares of Cisco stock (on a split-adjusted basis). That total does not include vested options, unvested options, or shares held by Sequoia partnerships. Between March 2000 and February 2001, the value of Cisco shares beneficially held by me (not including vested or unvested options) declined by approximately $90 million.

8. On November 10, 2000, I exercised options to acquire an additional 180,000 shares of Cisco stock. These options were set to expire four days later. I decided to hold those shares (rather than sell them) because, consistent with information and forecasts presented to the board of directors, I was optimistic about the state of Cisco’s business and its prospects, both in the short-term and the long run. I made this decision even though I knew that I would incur a substantial tax liability based on the difference between the exercise price of the options ($4.50 per share) and the market price of Cisco’s stock at that time (more than $50 per share). I believed at the time that Cisco’s share price would increase and the value of those shares would appreciate. As of February 7, 2001, I still held those shares.

9. During the relevant period, Cisco acquired several companies in which limited partnerships formed by Sequoia Capital had ownership interests. I was not a general partner of such limited partnerships, but rather was a limited partner. Certain executive officers and directors of Cisco were also limited partners in some of these partnerships. For each such limited partnership, the combined interests of myself and other Cisco directors and executive officers
(and their immediate families) were less than 10% at the time of acquisition.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. This declaration is being executed on this 28th day of February 2006, at Menlo Park, California.

Donald T. Valentine