INTRODUCTION

This is a federal class action on behalf of purchasers of the common stock of Witness Systems Inc ("Witness Systems" or the "Company") between April 23, 2004, and August 11, 2006, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act"). As alleged herein, defendants published a series of materially false and misleading statements that defendants knew and/or with severe recklessness disregarded were materially false and misleading at the time of such publication and/or that omitted
to reveal information necessary to make defendants' statements, in light of such omissions, not materially false and misleading.

OVERVIEW

1. Witness Systems is a company based in Roswell, Georgia that provides software and services designed to assist businesses in recording and utilizing customer data and to promote workforce efficiency and performance optimization. The Company's products purport to allow businesses to monitor compliance, manage workforces, and enhance employee and management performance. Primarily deployed in contact centers -- as well as the remote, branch and back offices of global organizations -- the Company's workforce optimization solutions purport to capture, analyze and enable users to share information across an enterprise.

2. Throughout the Class Period, Witness Systems presented itself as a company that was meeting or exceeding earnings guidance and which had adopted controls and procedures necessary to assure the accuracy and completeness of its financial statements and operational reports. During this time, defendants repeatedly stated that Witness Systems maintained systems, procedures, and controls that enabled it to obtain purported "record" earnings and profits and that the Company
would foreseeably continue to meet guidance in the near-term. Defendants also certified the accuracy of their financial reports.

3. The representations concerning the systems and controls in place at Witness Systems and the accuracy of the Company’s financial reports were either patently untrue or were made with severe recklessness because defendants, throughout the Class Period, had failed to disclose that they had engaged in extensive backdating of options from 2000-2002 and had failed to account properly for the compensation expenses flowing therefrom.

4. Backdating of options involves the granting of options and retroactively assigning them a grant date -- one that usually coincides with the yearly trading low in the price of a company’s stock. The backdating of options transfers profits from a company directly into the hands of the options grantee, results in compensation expenses and, if not disclosed and accounted for properly, results in the falsification of financial statements and reports to the Securities and Exchange Commission (“SEC”).

5. Defendant Gould, who has served as the Chief Executive Officer of the Company throughout the Company’s existence as a publicly traded company (since February 2000), was a direct recipient of back dated options in 2000, 2001, and/or 2002, as were many other senior officers of the Company. Notwithstanding
Gould's and others' receipt of back-dated options, every Proxy Statement ever
issued by the Company claimed that options granted by the Company "were granted
with an exercise price equal to the fair market value of our common stock on the
date of the grant." For every year in which backdated options were granted, this was
patently untrue.

6 Generally Accepted Accounting Principles ("GAAP") require the
recording of compensation expense every quarter when backdated options are in the
money based on the fair market value of the underlying share, even if the option is
not yet exercised. Defendants failed to record the requisite expenses caused by the
backdating. As a result, the financial statements issued by Defendants during the
Class Period were materially false and misleading. So too were Defendants'
representations concerning the sufficiency of their disclosures and controls.

7. The market had no warning prior to July 27, 2006 that Witness
Systems' prior financial statements and results of operations might be inaccurate in
any way.

8 On July 27, 2006, Defendant Evans, the Company's Chief Financial
Officer, mentioned in an offhand remark that the Company was reviewing its stock
option grants. In the conference call following the Company's July 27, 2006
earnings release, Evans said "speaking of stock-option compensation, the company
has recently initiated a voluntary internal review of stock option grants for the 2000-2002 time period. This review is ongoing, and not complete at this time. Depending on the results of the review, there may or may not be adjustments to prior periods and stockholders’ equity."

9. Then, On August 8, 2006, the Company announced that its Board had formed a special committee of independent directors to investigate stock option practices and grants as a result of the identification of “a number of instances in which a discrepancy appeared in the recorded grant dates of such awards.” Pending the review, the Company delayed the filing of its Form 10-Q for the period ending June 30, 2006. The Company admitted, however, “based on its preliminary internal review, the company believes it will need to record additional non-cash charges for stock-based compensation expense in prior periods ... [which] will total approximately $10 million.”

10. Though the Company was also reviewing the tax implications involved, it had not estimated them to date. As a result, the Board had determined that the Company’s previously issued financial statements, earnings press releases and similar communications concerning the results of its operations from February 2000 through June 30, 2006 “should no longer be relied upon.”
Notwithstanding the backdating investigation, the Company stood behind its officers and effectively engaged in damage control. The August 9, 2006 press release stated, for example, that the Company's Board remains fully confident in the management team and the business outlook for the company. In an apparent attempt to deflect attention away from the executives, the release noted that “[m]any of these options were distributed widely among employees and were not granted to executives.” Nowhere does the Company admit that Defendant Gould, as shown herein, was a prime beneficiary of the backdating practice.

On August 11, 2006 the Company filed a Form 8-K in which it admitted that it intends to restate prior financials, though still no detail was provided concerning which periods would be restated in what amounts. The Company also revealed that NASDAQ informed it on August 11 that the Company may be subject to delisting as a result of the problems arising from the backdating and improper accounting therefor.

As a result of the foregoing disclosures, the price of Witness Systems, Inc. common stock, which trades on the NASDAQ exchange under the symbol “WITS”, has fallen from its July 25, 2006 closing price of $18.19 per share to as low as $12.76 per share. The stock closed at $12.91 per share on August 11, 2006. According to Yahoo! Finance, the average daily trading volume in WITS over the
past three months is approximately 433,738 shares. On July 28, 2006, over 5,000,000 shares traded on news of the internal review. Nearly 3,000,000 shares have traded since the August 9 disclosure that discrepancies in the recording of options dates had been found.

14. As a result of the foregoing disclosures, Witness Systems’ investors learned, in part, the following:

- At all times during the Class Period, it was not true that the Company’s purported strong financial performance -- that consistently met or exceeded guidance -- was the result of defendants’ competent management or the success of Witness Systems’ sales organization when, in fact, throughout the Class Period, defendants had propped up the Company’s results by manipulating the Company’s accounting for options and employment expenses.

- At all times during the Class Period, unbeknownst to investors, defendants had materially overstated the Company’s profitability by under-reporting Witness Systems’ true compensation expenses and had failed to disclose that the Company had engaged in backdating of options despite their prior representations to the contrary.

- Throughout the Class Period, it was also not true that Witness Systems contained adequate systems of internal operational or financial controls, such that Witness Systems’ reported financial statements were true, accurate or reliable.

- As a result of the foregoing, throughout the Class Period, it also was not true that the Company’s financial statements and reports were prepared in accordance with GAAP and SEC rules.

- As a result of defendants’ undisclosed backdating of options, and also of their failure to properly account for such options grants, throughout
the Class Period, defendants lacked any reasonable basis to claim that Witness Systems was operating according to plan or that the Company could achieve guidance sponsored and/or endorsed by defendants.

15 Defendants were motivated to and did conceal the true operational and financial condition of Witness Systems and materially misrepresented and failed to disclose the conditions that were adversely affecting Witness Systems throughout the Class Period because it allowed them. (i) to deceive the investing public regarding Witness Systems’ business, operations, management, and the intrinsic value of Witness Systems common stock, (ii) to obtain hundreds of thousands of Witness Systems shares through the exercise, or grants of, improperly backdated options; (iii) to overstate earnings and understate expenses and cause Witness Systems to violate GAAP and SEC reporting rules, (iv) to exercise options and/or sell millions of dollars of their privately held Witness Systems shares while in possession of material adverse non-public information about the Company, (v) to use the Company’s inflated stock for currency in connection with a Class Period acquisition of another company, and (vi) to cause Plaintiff and other members of the Class to purchase Witness Systems common stock at artificially inflated prices.

**JURISDICTION AND VENUE**
16. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the SEC, 17 C.F.R § 240 lOb-5

17. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C §§ 1331 and 1337, and Section 27 of the Exchange Act, 15 U.S.C § 78aa.

18. Venue is proper in this District pursuant to Section 27 of the Exchange Act, and 28 U.S.C § 1391(b). Witness Systems maintains its principal place of business in this District, and many of the acts and practices complained of herein occurred in substantial part in this District.

19. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

PARTIES

20. Plaintiff Ruth Rosenberg, as set forth in the accompanying certification, incorporated by reference herein, purchased the common stock of Witness Systems at artificially inflated prices during the Class Period and has been damaged thereby.
21 Defendant Witness Systems Inc. is a Delaware corporation with its principal place of business located at 300 Colonial Center Parkway, Roswell, Georgia 30076. According to the Company’s profile, Witness Systems provides software and services that assist businesses capture customer intelligence and optimize their workforce performance.

22 Defendant David B. Gould (“Gould”) is, and during the Class Period was, Chairman, Chief Executive Officer, and a member of the Options Committee of the Board of Directors of the Company. During the Class Period, defendant Gould signed the Company’s SEC filings, including but not limited to Witness Systems’ Form(s) 10-Q, Form(s) 10-K, and Forms(s) Def-14.

23 Defendant Nicholas Discombe (“Discombe”) is, and during the Class Period was, Chief Operating Officer of the Company. During the Class Period, defendant Discombe signed the Company’s SEC filings, including but not limited to Witness Systems’ Form(s) 10-K.

24 Defendant William Evans (“Evans”) is, and during the Class Period was, Chief Financial Officer, Executive Vice President, and Chief Administrative Officer of the Company. During the Class Period, defendant Evans signed the Company’s SEC filings, including but not limited to Witness Systems’ Form(s) 10-Q and Form(s) 10-K.
25 Defendant Joel G. Katz ("Katz") is, and during the Class Period was, a member of the Board of Directors and Chairman of the Audit Committee of the Company. During the Class Period, defendant Katz signed the Company's SEC filings, including but not limited to Witness Systems' Form(s) 10-K.

26 Defendant Thomas J. Crotty ("Crotty") is, and during the Class Period was, a member of the Board of Directors and Chairman of the Compensation Committee and a member of the Audit Committee of the Company. During the Class Period, defendant Crotty signed the Company's SEC filings, including but not limited to Witness Systems' Form(s) 10-K.

27 Defendant Loren Wimpfheimer ("Wimpfheimer") is, and during the Class Period was, Senior Vice President and General Counsel of the Company. During the Class Period, defendant Wimpfheimer signed the Company's SEC filings, including but not limited to Witness Systems' Forms(s) Def-14 as well as SEC Forms 4 as Attorney in Fact for defendant Gould.

28 The defendants referenced above in ¶¶ 22-27 are referred to herein as the "Individual Defendants." The Individual Defendants other than defendants Crotty and Katz are referred to herein as the "Officer Defendants."

29 Because of the Individual Defendants' positions with the Company, they had access to the adverse undisclosed information about its business,
operations, products, operational trends, financial statements, markets, and present
and future business prospects via access to internal corporate documents (including the Company's operating plans, budgets and forecasts, and reports of actual operations compared thereto), conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof, and/or via reports and other information provided to them in connection therewith.

30 It is appropriate to treat the Individual Defendants as a group for pleading purposes and to presume that the false, misleading, and incomplete information conveyed in the Company's public filings, press releases, and other publications as alleged herein are the collective actions of the narrowly defined group of defendants identified above. Each of the above officers of Witness Systems, by virtue of their high-level positions with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels and was privy to confidential proprietary information concerning the Company and its business, operations, products, growth, financial statements, and financial condition, as alleged herein. Said defendants were involved in drafting, producing, reviewing and/or disseminating the false and misleading statements and information alleged herein,
were aware, or recklessly disregarded, that the false and misleading statements were being issued regarding the Company, and approved or ratified these statements, in violation of the federal securities laws.

31 As Officer Defendants or in the case of defendants Crotty and Katz members of the Compensation Committee, the Individual Defendants are controlling persons of a publicly-held company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was and is traded on the Nasdaq National Market Exchange (the "Nasdaq"), and was and is governed by the provisions of the federal securities laws. The Individual Defendants each had a duty to disseminate promptly accurate and truthful information with respect to the Company's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and, present and future business prospects, and to correct any previously-issued statements that had become materially misleading or untrue so that the market price of the Company's publicly-traded common stock would be based upon truthful and accurate information. The Individual Defendants' misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

32 The Individual Defendants participated in the drafting, preparation, and/or approval of the various public and shareholder and investor reports and other
communications complained of herein and were aware of, or recklessly disregarded, the misstatements contained therein and omissions therefrom, and were aware of their materially false and misleading nature. Because of their Board membership and/or executive and managerial positions with Witness Systems, each of the Individual Defendants had access to the adverse undisclosed information about Witness Systems' business prospects and financial condition and performance as particularized herein and knew (or recklessly disregarded) that these adverse facts rendered the positive representations made by or about Witness Systems and its business issued or adopted by the Company materially false and misleading.

33. The Individual Defendants, because of their positions of control and authority as officers and/or directors of the Company, were able to and did control the content of the various SEC filings, press releases and other public statements pertaining to the Company during the Class Period. Each Individual Defendant was provided with copies of the documents alleged herein to be misleading prior to or shortly after their issuance and/or had the ability and/or opportunity to prevent their issuance or cause them to be corrected. Accordingly, each of the Individual Defendants is responsible for the accuracy of the public reports and releases detailed herein and is therefore primarily liable for the representations contained therein.
Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Witness Systems common stock by disseminating materially false and misleading statements and/or concealing material adverse facts.

**PLAINTIFF’S CLASS ACTION ALLEGATIONS**

35. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all those who purchased or otherwise acquired the common stock of Witness Systems between April 23, 2004 and August 11, 2006, inclusive (the “Class”) and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which defendants have or had a controlling interest.

36. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Witness Systems common shares were actively traded on the Nasdaq. As of April 30, 2006, the Company had over 33 million shares of common stock issued and outstanding. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds
or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Witness Systems or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

37 Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

38 Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

39 Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations, and management of Witness Systems; and
(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

40. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

Defendants’ Materially False and Misleading Statements Made During the Class Period

41. The Class Period begins on April 23, 2004, the first day following the Company’s 5:00 p.m. conference call on April 22, 2004 discussing the Company’s 1Q 04 Results. In response to the Company’s April 22, 2004 conference call, over one million shares of WITS stock traded on April 23, 2004. The stock opened at $13.10 per share, representing a nearly 5% increase over the prior day’s closing price of $12.45 per share.

42. “Great Start” 1Q:04 Results. On April 22, 2004, defendant Gould announced that Witness Systems was off to a “great start in 2004.” Gould failed to
mention that he had, that very quarter, sold shares despite his knowledge that he had obtained hundreds of thousands of backdated options contrary to his and the Company's misrepresentations in the 2000-2002 Proxy Statements that the exercise price for options was set on the date the options were granted. Gould's insider selling continued weekly, virtually interrupted, through the end of the Class Period. Curiously, though Gould sold stock every week, he stopped his weekly selling pattern briefly, in March 2006, when the market became focused on backdating options.

43 The Company's April 22, 2004 earnings conference call reported revenue of $330 million, compared to $17.2 million in the first quarter of 2003, and net income under GAAP in the first quarter was $470,000 or $0.02 per share. In the call, the Company also gave its earnings estimate for the upcoming quarter.

44. On August 9, 2006, the Company admitted that its prior financial reports and earnings releases "should not be relied upon" and on August 11, the Company further admitted that prior financial statements would be restated. The representations in the April 22, 2004 earnings conference call concerning the Company's financial results, earnings estimates, disclosures and controls were false and misleading for the reasons articulated in paragraph 14.
45. **Record 2Q:04 Results.** On July 22, 2004, Witness Systems published a release announcing purported "record" results for the second quarter ended June 30, 2006. Under GAAP, the Company represented second quarter revenue was $34.4 million and net income was $1.5 million, or $0.06 per share, up from $0.02 per share in the first quarter and a loss the previous year. The Company also reported non-GAAP adjusted results, explaining that the company's internal reporting and performance measurement programs are established on a basis that excludes certain non-cash (such as amortization of intangibles) and acquisition-related charges required under GAAP. Such reporting, the Company said, was intended to "provide more meaningful information regarding those aspects of current operating performance that can be effectively managed." The Company claimed it had developed its internal reporting and compensation systems using these non-GAAP financial measures to facilitate investors' understanding of the company's historical operating trends, provide a basis for more relevant comparisons to other companies in the industry and enable investors to evaluate the company's operating performance in a manner consistent with the company's internal basis of measurement. These representations were false and misleading for the reasons articulated in paragraph 14.
46. **“Record” 3Q:04 Results** On October 21, 2004, Witness Systems published a release announcing purported “record” setting results for the third quarter ended September 30, 2004. For 3Q:04 Witness Systems reported purported “record” revenue of $35.3 million and net income of $2.9 million, or $0.11 per share, up from a reported $0.06 per share sequentially, and from a loss of $0.11 per share year over year.

47. In addition to the foregoing, the Company’s November 3, 2004 release also provided purported guidance, in part, as follows:

**Financial Results and Outlook**

“We experienced strong operating results during the third quarter. We continue to demonstrate our ability to achieve consistent, improving financial performance. We generated approximately $7 million in cash flow from operations and ended the quarter with approximately $63 million in cash and short-term investments,” said William Evans, CFO for Witness Systems.

The company currently expects to achieve fourth quarter revenue, excluding hardware, in the range of $34.5 to $35.5 million and non-GAAP adjusted earnings (which excludes amortization of intangibles and merger-related expenses and assumes pro-forma taxes) of $0.11 to $0.12 per share. For the year, the company expects revenue, excluding hardware, to be in the range of $131.5 million to $132.5 million and for non-GAAP adjusted earnings in the range of $0.37 to $0.38 per share. On a GAAP basis, the company currently expects to report earnings for the fourth quarter of $0.10 to $0.11 per share and for the entire year of $0.29 to $0.30 per share.

Looking forward to 2005, the company currently expects to achieve annual revenue, excluding hardware, in the range of $148 to $152
milion and GAAP earnings of $0.56 to $0.60 per share, or $0.52 to $0.56 per share of non-GAAP adjusted earnings (which excludes amortization of intangibles and pro-forma taxes).

48. **3Q:04 Form 10-Q.** On or about November 5, 2004, defendants filed with the SEC the Company’s 3Q 04 Form 10-Q for the quarter ended September 30, 2004, signed and certified by defendants Gould and Evans. In addition to making substantially similar statements concerning the Company earnings and expenses as were contained in the Company’s October 21, 2004 release, the Company’s 3Q:04 Form 10-Q also stated, in part, the following:

1. **Basis of Presentation**

   The financial statements included herein have been prepared in accordance with the requirements of Form 10-Q and, therefore, do not include all information and footnotes required by generally accepted accounting principles in the United States of America. However, in the opinion of management, all adjustments necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year. These financial statements should be read in conjunction with the summary of significant accounting policies and the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2003, as amended and filed with the U.S. Securities and Exchange Commission.

49. **Options Policies, Accounting & Cost of Revenues.** The 3Q:04 Form 10-Q also contained statements concerning the Company’s policies regarding
its options grants and its accounting for such options grants. These statements
included, in part, the following:

Critical Accounting Policies and Estimates

Stock-Based Compensation. We generally do not record compensation expense for options granted to our employees because all options granted under our stock option plans have an exercise price equal to the market value of the underlying common stock on the date of grant.

* * *

Cost of Revenues

Cost of services revenue for installation, training, consulting and maintenance services include personnel costs and related expenses and allocated overhead Personnel costs include salaries, bonuses and benefits

50 Controls. The Company’s 3Q.04 Form 10-Q also contained representations which attested to the purported effectiveness and sufficiency of the Company’s controls and procedures, as follows:

Item 4. Controls and Procedures
Evaluation of Disclosure Controls and Procedures

The Company conducted an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934), as of the end of the period covered by this quarterly report This evaluation was conducted under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer Based on this evaluation, as of the quarter ended September 30, 2004, the Company's Chief Executive Officer and Chief Financial Officer have concluded the Company's disclosure controls and procedures are effective. There were no changes in
internal controls over financial reporting that occurred during the period covered by this quarterly report that have materially affected, or that are reasonably likely to materially affect, our internal controls over financial reporting.

51 Certifications. In addition to the foregoing, the Company’s 3Q·04 Form 10-Q also contained certifications by defendants Gould and Evans, that attested to the purported accuracy and completeness of the Company’s financial and operational reports, as follows:

CERTIFICATE OF THE CHIEF EXECUTIVE OFFICER

I, the Chief Executive Officer, of Witness Systems, Inc (the "registrant"), certify that

1. I have reviewed this report on Form 10-Q of the registrant for the quarter ended September 30, 2004,

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have
(a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5 The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting

Dated: November 5, 2004

BY: /s/ DAVID B. GOULD
David B. Gould
Chairman of the Board and Chief Executive Officer
CERTIFICATE OF THE CHIEF FINANCIAL OFFICER

I, the Chief Financial Officer, of Witness Systems, Inc (the "registrant"), certify that.

1. I have reviewed this report on Form 10-Q of the registrant for the quarter ended September 30, 2004,

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared,

   (b) evaluated the effectiveness of the registrant's disclosures controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
(c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors:

(a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Dated: November 5, 2004
BY: s/ WILLIAM F EVANS
William F. Evans
Chief Financial Officer [Emphasis added.]

(a) The statements contained in Witness Systems’ October 21, 2004 release and those statements contained in the Company’s 3Q:04 Form 10-Q, referenced above, were each materially false and misleading when made, and were known by defendants to be false or were recklessly disregarded as such thereby, for the reasons set forth in paragraph 14 above.
2.1M Share Asset Acquisition. Taking further advantage of the artificial inflation in the price of Company shares caused in substantial part as a result of defendants' publication of false statements and as a result of their material omissions, on December 17, 2004, defendants also announced the Company's intended partial-stock acquisition of Blue Pumpkin Software. According to a release published that day by defendants, the Company intended to acquire Blue Pumpkin for total consideration of $75 million -- consisting of at least $35 million in Witness Systems common stock. In connection with this acquisition, Witness Systems issued at least 2.1 million shares to the former shareholders of Blue Pumpkin.

"Record" 4Q & FY:2004 Results. On February 1, 2005, Witness Systems published a release announcing results for the fourth quarter and full year ended December 31, 2004. This release stated, in part, the following:

Witness Systems Announces Record Results in 2004

ATLANTA (February 1, 2005) – Witness Systems (NASDAQ: WITS), a leading global provider of workforce optimization software and services, today announced financial results for the fourth quarter and year ended December 31, 2004 Under generally accepted accounting principles (GAAP), fourth quarter revenue was a record $38.7 million and net income was a record $4.5 million, or $0.17 per share, up from revenues of $33.6 million and a loss of ($0.09) per share in the fourth quarter of last year.

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"Witness Systems capped another record year, with a strong fourth quarter," said Dave Gould, chair-man and chief executive officer of Witness Systems. "We benefited from the continual move to IP Telephony, leveraging our strong market position and a growing acceptance of our actionable learning solutions. During 2004, we achieved four consecutive quarters of increased revenues and earnings, and we are well positioned as we enter 2005."

54. In addition to the foregoing, this release also provided purported guidance, in part, as follows

Completes Blue Pumpkin Acquisition

Last week, Witness Systems completed its acquisition of Blue Pumpkin Software, a leader in the workforce management market...

Operating Results and Outlook

"We experienced strong operating results and cash flows during the fourth quarter. Our operating margin has expanded during 2004 as we leverage revenue growth and expense management into improved profitability. We also generated approximately $12 million in positive cash flow from operations during the quarter and ended the year with over $76 million in cash and short-term investments, compared to $41 million at the end of last year," said William Evans, CFO for Witness Systems.

For the year 2005, now that the Blue Pumpkin acquisition has been completed, Witness Systems is increasing its estimate of annual revenue to a range of $176 to $180 million, excluding hardware, and is also increasing its estimate of non-GAAP adjusted earnings (which excludes amortization of intangibles, merger-related expenses and stock option charges, but includes pro forma income taxes of 36 percent) to $0.55 to $0.59 per share. The company currently expects to achieve first quarter revenue, excluding hardware, in the range of $39 to $40 million and non-GAAP adjusted earnings of $0.11 to $0.12 per share. The 2005 guidance excludes the expected impact of
the GAAP fair value adjustment to services revenue, currently estimated at $3.5 million, resulting from the Blue Pumpkin acquisition. The company is currently unable to provide earnings guidance on a GAAP basis due to the significance of the in-process R&D charge and additional amortization expense and merger costs arising from the Blue Pumpkin acquisition, as well as the expensing of stock options that is currently expected to be required beginning in the third quarter of 2005, all of which are difficult to reasonably estimate at this time.

55 2004 Form 10-K. On or about March 8, 2005, defendants filed with the SEC the Company’s 2004 Form 10-K for the fourth quarter and full year ended December 31, 2004, signed and certified by defendants Gould and Evans. In addition to making substantially similar statements as had been made by defendants previously concerning the Company operations, costs and expenses, and its purported controls and procedures, the Company’s 2004 Form 10-K also stated, in part, the following:

**Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make certain estimates and judgments that affect our reported assets, liabilities, revenues and expenses, and our related disclosure of contingent assets and liabilities. On an on-going basis, we re-evaluate our estimates, including those related to revenue recognition, the collectibility of receivables, accounting for acquisitions, impairment of long-lived assets, income taxes and stock-based compensation. We base our estimates on historical experience and on various assumptions that we
believe to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions. A summary of our critical accounting policies follows.

56. **Options Policies, Accounting & Cost of Revenues.** The 2004 Form 10-K also contained statements concerning the Company’s policies regarding its options grants and its accounting for such options grants. These statements included, in part, the following:

**Stock-Based Compensation.** *We generally do not record compensation expense for options granted to our employees because all options granted under our stock option plans have an exercise price equal to the market value of the underlying common stock on the date of grant.*

* * *

**Cost of Revenues**

*Cost of services revenue for installation, training, consulting and maintenance services include personnel costs and related expenses and allocated overhead. Personnel costs include salaries, bonuses and benefits.* [Emphasis added]

57. **Options Grants.** Regarding the Company’s Options Grants, the 2004 Form 10-K also stated, in part, the following:

1. **Summary of Significant Accounting Policies**

**Stock-Based Compensation** - - *We generally do not record compensation expense for options granted to our employees because all options granted under our stock option plans have an exercise price equal to the market value of the underlying common stock on the date of grant.*

* * *
11. Employee Benefit Plans

Stock Incentive Plans—We have three stock incentive plans (i) the 1999 Stock Incentive Plan (the "1999 Plan"), (ii) the 2003 Broad Based Option Plan (the "2003 Plan"), and (iii) the 2003 Non-employee Director Stock Option Global Plan (the "Director Plan")

1999 Plan—Under the 1999 Plan, we may grant shares of common stock in the form of stock options, restricted stock awards, or stock appreciation rights to employees and key persons affiliated with Witness, as defined. In 2001, our stockholders modified a provision to increase, without further approval required, the number of shares authorized each year beginning on January 1, 2002 by a number equal to the lesser of 10% of the total number of shares of common stock then outstanding or 3,000,000 shares. During 2004, 2,276,254 stock options were granted under the 1999 Plan. At December 31, 2004, there were 12,892,232 shares authorized for issuance, of which 836,404 shares remain available for future grant (See Note 15 for additional awards granted in 2005 in association with an acquisition)

In 2003, we adopted the Director and Key Executive Stock Ownership Incentive Policy (the "Policy") under the 1999 Plan. The Policy intended to promote the interests of Witness and its stockholders by encouraging members of the Board of Directors and key executives to purchase shares of our common stock. Under the Policy, an eligible person who purchased at least 500 shares and up to 3,000 shares of our common stock in the open market was automatically and immediately granted five options from our 1999 Plan for each share purchased, with an exercise price equal to the closing price of our common stock on the date of purchase. One-half of the options vest on the first anniversary of the grant date, and the remaining options vest in 12 equal monthly installments thereafter. The Policy expired on June 15, 2004. As of December 31, 2004, 122,500 options were granted under this Policy, which are included in the 1999 Plan.

2003 Plan—In connection with the Eyretel acquisition, we established the 2003 Plan for former Eyretel employees. The 2003 Plan became effective in June 2003, allowing us to grant shares of
common stock in the form of stock options. During 2004, no stock options were granted to former Eyretel employees under the 2003 Plan. At December 31, 2004, there were 1,600,000 shares authorized for issuance, of which 425,319 shares remain available for future grant. We do not anticipate increasing the number of shares available for issuance under the 2003 Plan.

Director Plan — The Director Plan became effective in 2003 and grants continuing non-employee members of the Board of Directors non-qualified options to purchase shares of our common stock pursuant to a formula award. During 2004, 40,000 stock options were granted under the Director Plan. At December 31, 2004, there were 500,000 shares authorized for issuance, of which 436,000 shares remain available for future grant.

Each plan remains in effect until the earlier of the tenth anniversary of its effective date or the date on which all reserved shares have been issued or are no longer available for use. Options granted under these plans during 2004, 2003 and 2002 were non-qualified stock options that were granted at a price greater than or equal to the fair value of the stock on the grant date. Option vesting terms typically range from two to four years. In June 2004, the Compensation Committee of our Board of Directors directed that the term of stock options issued under the 1999 Plan be fixed at five years for all grants made subsequent to July 1, 2004. Options granted prior to July 1, 2004 have ten-year terms from the date of the grant. These plans provide for accelerated option vesting terms in connection with a change in control. To the extent that this occurs, we may have a future charge.

We incurred $0.1 million for each of the years ended December 31, 2004, 2003 and 2002, in deferred stock compensation charges for certain option grants issued under the Policy and certain 1999 stock grants. There was no unamortized deferred stock compensation balance at December 31, 2004 and 2003.

The following summarizes stock option activity under all stock option plans.
<table>
<thead>
<tr>
<th></th>
<th>Number of shares</th>
<th>Weighted-average exercise price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2001</td>
<td>5,370,147</td>
<td>$7.82</td>
</tr>
<tr>
<td>Granted</td>
<td>1,383,607</td>
<td>8.65</td>
</tr>
<tr>
<td>Exercised</td>
<td>(378,017)</td>
<td>2.37</td>
</tr>
<tr>
<td>Cancelled</td>
<td>(769,620)</td>
<td>9.82</td>
</tr>
<tr>
<td>Balance at December 31, 2002</td>
<td>5,606,117</td>
<td>8.12</td>
</tr>
<tr>
<td>Granted</td>
<td>4,362,150</td>
<td>4.27</td>
</tr>
<tr>
<td>Exercised</td>
<td>(284,843)</td>
<td>3.58</td>
</tr>
<tr>
<td>Cancelled</td>
<td>(1,061,194)</td>
<td>7.60</td>
</tr>
<tr>
<td>Balance at December 31, 2003</td>
<td>8,622,230</td>
<td>6.39</td>
</tr>
<tr>
<td>Granted</td>
<td>2,316,254</td>
<td>11.12</td>
</tr>
<tr>
<td>Exercised</td>
<td>(2,223,636)</td>
<td>5.66</td>
</tr>
<tr>
<td>Cancelled</td>
<td>(992,689)</td>
<td>7.81</td>
</tr>
<tr>
<td>Balance at December 31, 2004</td>
<td>7,722,159</td>
<td>7.83</td>
</tr>
</tbody>
</table>
The following table summarizes information about stock options outstanding at December 31, 2004:

<table>
<thead>
<tr>
<th>Range of Exercise Prices</th>
<th>Number Outstanding</th>
<th>Weighted-Average Exercise Price</th>
<th>Weighted-Average Remaining Life</th>
<th>Number of shares</th>
<th>Weighted Average Exercise Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>$ 0.66 - $ 4.56</td>
<td>2,514,037</td>
<td>$ 3.55</td>
<td>7.8 years</td>
<td>1,023,076</td>
<td>$ 3.00</td>
</tr>
<tr>
<td>$ 4.60 - $ 8.86</td>
<td>2,607,362</td>
<td>7.24</td>
<td>6.7 years</td>
<td>1,054,827</td>
<td>7.15</td>
</tr>
<tr>
<td>$ 8.94 - $ 13.32</td>
<td>1,981,394</td>
<td>11.55</td>
<td>6.6 years</td>
<td>474,251</td>
<td>12.20</td>
</tr>
<tr>
<td>$13.42 - $34.00</td>
<td>619,366</td>
<td>15.79</td>
<td>6.1 years</td>
<td>311,511</td>
<td>16.17</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>7,722,159</td>
<td>7.83</td>
</tr>
</tbody>
</table>

The following are the fair values and assumptions used in calculating the pro forma option expense amounts under SFAS No. 123 which are disclosed in Note 1. The weighted-average fair value of stock options granted during 2004, 2003, and 2002 was $5.77, $2.31 and $5.58 per share, respectively, on the date of grant using the Black-Scholes option-pricing model with the following weighted-average assumptions: 2004—volatility of 93%, expected dividend yield of 0%, risk-free interest rate of 2.52%, and an expected life of 2.4 years; 2003—volatility of 100%, expected dividend yield of 0%, risk-free interest rate of 2.37%, and an expected life of 2.8 years; 2002—volatility of 120%, expected dividend yield of 0%, risk-free interest rate of 3.25%, and an expected life of 2.5 years. [Emphasis added]
Controls. The Company’s 2004 Form 10-K also contained representations which attested to the purported effectiveness and sufficiency of the Company’s controls and procedures, as follows.

**Item 9A. Controls and Procedures.**

**Evaluation of Disclosure Controls and Procedures.** We maintain disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed in the periodic reports we file with the SEC is recorded, processed, summarized and reported accurately and within the time periods specified in the rules of the SEC. We carried out an evaluation as of December 31, 2004, under the supervision and the participation of our management, including our chief executive officer and chief financial officer, of the design and operation of these disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(c). Based upon that evaluation, our chief executive officer and chief financial officer concluded that our disclosure controls and procedures are effective in timely alerting them to material information relating to the company (including our consolidated subsidiaries) required to be included in our periodic SEC filings.

**Changes in Internal Controls** There was no change in internal control over financial reporting that occurred during the three months ended December 31, 2004 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

* * *

**Management's Report on Internal Control over Financial Reporting**

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934.
The Company maintains accounting and internal control systems which are intended to provide reasonable assurance that assets are safeguarded against loss from unauthorized use or disposition, transactions are executed in accordance with management's authorization and accounting records are reliable for preparing financial statements in accordance with accounting principles generally accepted in the United States

Internal control over financial reporting cannot provide absolute assurance of achieving financial reporting objectives because of its inherent limitations. Internal control over financial reporting is a process that involves human diligence and compliance and is subject to lapses in judgment and breakdowns resulting from human failures. Internal control over financial reporting also can be circumvented by collusion or improper management override. Because of such limitations, there is a risk that material misstatements may not be prevented or detected on a timely basis by internal control over financial reporting. However, these inherent limitations are known features of the financial reporting process. Therefore, it is possible to design into the process safeguards to reduce, though not eliminate, this risk.

The Company's management assessed the effectiveness of the Company's internal control over financial reporting as of December 31, 2004. In making this assessment, the Company's management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control—Integrated Framework. Based on our assessment, management believes that, as of December 31, 2004, the Company's internal control over financial reporting is effective based on those criteria.

Management's assessment of the effectiveness of internal control over financial reporting as of December 31, 2004 has been audited by KPMG LLP, the independent registered public accounting firm who also audited the Company's consolidated financial statements. Their report appears immediately after this report.
59. **Certifications.** In addition to the foregoing, the Company’s 2004 Form 10-K also contained certifications by defendants Gould and Evans, that attested to the purported accuracy and completeness of the Company’s financial and operational reports, as follows:

**Certifications Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

Pursuant to 18 U.S.C. §1350, each of the undersigned officers of Witness Systems, Inc (the "Company"), hereby certify to such officer's knowledge and belief that the Annual Report on Form 10-K of the Company for the year ended December 31, 2004 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: March 15, 2005  
BY: /S/ DAVID B. GOULD  
David B. Gould  
Chairman of the Board and Chief Executive Officer

Dated: March 15, 2005  
BY: /S/ WILLIAM F. EVANS  
William F. Evans  
Chief Financial Officer

60. Thereafter, on March 17, 2005, defendants also published a release that purported to announce that the Company had achieved compliance with Section
According to this release, defendants stated that Witness Systems had then achieved compliance with Sarbanes-Oxley Act requirements related to the Company's effective control structure for reporting financial results. According to the Company, by that time, defendants had assessed the effectiveness of Witness Systems' internal control over financial reporting and concluded that the Company had no material weaknesses and that its controls were effective as of December 31, 2004.

61. The statements contained in Witness Systems' February 1, 2005 and March 17, 2005 releases and those statements contained in the Company's 2004 Form 10-K, referenced above, were each materially false and misleading when made, and were known by defendants to be false or were recklessly disregarded as such thereby, for the reasons stated herein in paragraph 14, supra.

62. "Record" 1Q:05 Results. On April 26, 2005, Witness Systems published a release announcing purported "record" setting results for the first quarter ended March 31, 2005. In addition to raising guidance for the remainder of the year, this release also stated, in part, the following.

Witness Systems Reports Record First Quarter Results

ATLANTA (April 26, 2005) – Witness Systems (NASDAQ: WITS), a leading global provider of workforce optimization software and services, today announced financial results for the first quarter of 2005. Under generally accepted accounting principles (GAAP), first
quarter revenue was a record $41.2 million and the net loss was $0.36 per share. The GAAP loss was attributed to the acquisition of Blue Pumpkin Software, which was completed on January 24, 2005. In accounting for this acquisition, the company recorded a charge of $9.0 million for in-process research and development and substantial increases in merger costs and amortization expense.

“We delivered another quarter of solid revenue growth and operating performance,” said Dave Gould, CEO for Witness Systems. “Sales of our workforce optimization solutions have been solid on the strength of our broad and unique solution set and proven customer and business impact. We are well positioned to continue expanding our leadership in the workforce optimization market.”

Adjusted Results of Operations

Total adjusted revenue in the first quarter of 2005 was a record $41.0 million, a 34 percent increase from 2004 first quarter revenue, excluding hardware, of $30.7 million. Adjusted first quarter earnings were a record $0.13 per share, up from $0.07 per share in the prior year. The company had previously provided first quarter guidance estimating adjusted revenue in the range of $39 to $40 million and adjusted earnings of $0.11 to $0.12 per share.

* * *

Financial Outlook for 2005

“We are pleased with the financial results of the first quarter, which exceeded our expectations, especially given that the first quarter is traditionally a soft quarter in the software industry. The Blue Pumpkin acquisition uniquely positions us to lead a market transformation from point systems to a holistic workforce optimization solution. With the acquisition complete and the integration well underway, we are increasing our revenue and earnings guidance for the remainder of 2005,” said William Evans, Chief Financial Officer for Witness Systems.
The company currently expects to achieve adjusted revenue in the range of $44.5 to $45.5 million and non-GAAP adjusted earnings of $0.14 to $0.15 per share during the second quarter. For the year 2005, Witness Systems is increasing its estimate of adjusted revenue to a range of $178 to $181 million and is also increasing its estimate of non-GAAP adjusted earnings to $0.59 to $0.62 per share. Adjusted revenue excludes hardware revenue but includes the full value of maintenance contracts. Adjusted earnings excludes the impact of in-process R&D, merger costs and amortization of intangibles arising from acquisitions, but includes a pro forma tax expense. The company expects that these additional expenses will result in a GAAP loss for the year 2005 in the range of $0.11 to $0.14 per share.

63 1Q:05 Form 10-Q. On or about May 10, 2005, defendants filed with the SEC the Company’s 1Q:05 Form 10-Q for the quarter ended March 31, 2005, signed and certified by defendants Gould and Evans. In addition to making substantially similar statements concerning the Company earnings and expenses as were contained in its April 26, 2005 release, the Company’s 1Q:05 Form 10-Q also stated, in part, the following:

Basis of Presentation

The financial statements herein have been prepared in accordance with the requirements of Form 10-Q and, therefore, do not include all information and footnotes required by generally accepted accounting principles in the United States of America. However, in the opinion of management, all adjustments necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year. These financial statements should be read in conjunction with the summary of significant accounting policies and the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended
December 31, 2004, filed with the U.S. Securities and Exchange Commission.

* * *

Item 4. Controls and Procedures
Evaluation of Disclosure Controls and Procedures

We conducted an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934), as of the end of the period covered by this quarterly report. This evaluation was conducted under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer. Based on this evaluation, as of the quarter ended March 31, 2005, the Company's Chief Executive Officer and Chief Financial Officer have concluded the Company's disclosure controls and procedures are effective. There were no changes in internal controls over financial reporting that occurred during the period covered by this quarterly report that have materially affected, or that are reasonably likely to materially affect, our internal controls over financial reporting.

* * *

Certifications Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. §1350, each of the undersigned officers of Witness Systems, Inc. (the "Company"), hereby certify to such officer's knowledge and belief that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended March 31, 2005 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.
64 The statements contained in Witness Systems’ April 26, 2005 release and those statements contained in the Company’s 1Q.05 Form 10-Q, referenced above, were each materially false and misleading when made, and were known by defendants to be false or were recklessly disregarded as such thereby, for the reasons stated herein in paragraph 14, supra.

65. “Record” 2Q:05 Results. On July 27, 2005, Witness Systems published a release announcing purported “record” results for the second quarter ended June 30, 2005. This release also stated, in part, the following:

ATLANTA (July 27, 2005) – Witness Systems (NASDAQ. WITS), a leading global provider of workforce optimization software and services, today announced financial results for the second quarter of 2005. Under generally accepted accounting principles (GAAP), second quarter revenue was a record $46.2 million and net income was $0.02 per share. Software license revenue, excluding hardware, was $17.0 million in the second quarter, an increase of 40 percent from $12.2 million in the second quarter of 2004 and an increase of 13 percent from $15.1 million reported in the first quarter of 2005.
Year-to-date, GAAP revenue was $87.3 million, compared to $67.4 million in the first half of 2004. Earnings per share for the first six months of 2005 were a loss of $0.33 per share compared to net income of $0.08 per share in the first half of 2004. The GAAP loss in 2005 is attributable to the acquisition of Blue Pumpkin Software, which was completed during the first quarter. In accounting for this acquisition, the company recorded a charge of $9.0 million for in-process research and development and incurred substantial increases in merger costs and amortization expense.

"The company delivered another quarter of record revenue and core earnings," said Dave Gould, CEO for Witness Systems.

* * *

**Financial Outlook for 2005**

"We're very pleased with the financial results for the second quarter," said William Evans, CFO for Witness Systems. "Our revenue growth and successful integration of acquisitions enabled us to increase operating margins to 16 percent and report record adjusted earnings per share in the second quarter."

The company currently expects to achieve adjusted revenue in the range of $46 to $47 million and non-GAAP adjusted earnings of $0.16 to $0.17 per share during the third quarter. For the year 2005, Witness Systems is increasing its estimate of adjusted revenue to a range of $181 to $183 million and is also increasing its estimate of non-GAAP adjusted earnings to $0.64 to $0.66 per share. Adjusted revenue excludes hardware revenue but includes the full value of maintenance contracts. Adjusted earnings excludes the impact of in-process R&D, merger costs and amortization of intangibles arising from acquisitions, but includes a pro forma tax expense of 36 percent. The company expects that these additional expenses will result in a GAAP loss for the year 2005 in the range of $0.17 to $0.19.
66.  **2Q:05 Form 10-Q.** On or about August 9, 2005, defendants filed with the SEC the Company’s 2Q 05 Form 10-Q for the quarter ended June 30, 2005, signed and certified by defendants Gould and Evans. In addition to making substantially similar statements concerning the Company’s earnings and expenses as were contained in its July 27, 2005 release, the Company’s 2Q.05 Form 10-Q also stated, in part, the following:

**Basis of Presentation**

The financial statements herein have been prepared in accordance with the requirements of Form 10-Q and, therefore, do not include all information and footnotes required by generally accepted accounting principles in the United States of America. However, in the opinion of management, all adjustments necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year. These financial statements should be read in conjunction with the summary of significant accounting policies and the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2004, filed with the U.S. Securities and Exchange Commission.

*   *   *

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

The Company conducted an evaluation of the effectiveness of the Company’s disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934), as of the end of the period covered by this quarterly report. This evaluation was conducted under the supervision and with the participation of the
Company’s management, including the Chief Executive Officer and Chief Financial Officer. Based on this evaluation, as of the quarter ended June 30, 2005, the Company’s Chief Executive Officer and Chief Financial Officer have concluded the Company’s disclosure controls and procedures are effective. There were no changes in internal controls over financial reporting that occurred during the period covered by this quarterly report that have materially affected, or that are reasonably likely to materially affect, our internal controls over financial reporting.

* * *

Certifications Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. §1350, each of the undersigned officers of Witness Systems, Inc. (the “Company”), hereby certify to such officer’s knowledge and belief that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended June 30, 2005 (the “Report”) fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: August 8, 2005
BY. /S/ DAVID B. GOULD
David B. Gould
Chairman of the Board and Chief Executive Officer

Dated: August 8, 2005
BY. /S/ WILLIAM F. EVANS
William F. Evans
Chief Financial Officer
“Record” 3Q:05 Results. On October 26, 2005, Witness Systems published a release announcing purported “record” results for the third quarter ended September 30, 2005. This release also stated, in part, the following:

Under generally accepted accounting principles (GAAP), third quarter revenue was a record $47.1 million and net income was $0.02 per share.

* * *

Financial Outlook

“The strong results posted this quarter are particularly gratifying,” said William Evans, CFO for Witness Systems. “Revenue and margins both reached record levels. The continued growth in adjusted earnings is a testament to the hard-working and dedicated talent across the global Witness Systems organization.

The company currently expects to achieve adjusted revenue in the range of $48 to $49 million and non-GAAP adjusted earnings of $0.19 to $0.20 per share during the fourth quarter. Adjusted revenue excludes hardware revenue but includes the full value of maintenance contracts. Adjusted earnings excludes the impact of inprocess R&D, merger costs and amortization of intangibles arising from acquisitions, but includes a pro forma tax expense of 36 percent. For 2006, the company expects to achieve adjusted revenue in the range of $208 to $213 million and non-GAAP adjusted earnings in the range of $0.81 to $0.85 per share.

3Q:05 Form 10-Q. On or about November 7, 2005, defendants filed with the SEC the Company’s 3Q:05 Form 10-Q for the quarter ended August 30, 2005, signed and certified by defendants Gould and Evans. In addition to making substantially similar statements concerning the Company earnings and expenses as
were contained in its October 26, 2005 release, the Company's 3Q-05 Form 10-Q also stated, in part, the following:

**Basis of Presentation**

The financial statements herein have been prepared in accordance with the requirements of Form 10-Q and, therefore, do not include all information and footnotes required by generally accepted accounting principles in the United States of America. However, in the opinion of management, all adjustments necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year. These financial statements should be read in conjunction with the summary of significant accounting policies and the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the year ended December 31, 2004, filed with the U.S. Securities and Exchange Commission.

* * *

**Item 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

The Company conducted an evaluation of the effectiveness of the Company's disclosure controls and procedures (as defined in Rules 13a-15 and 15d-15 under the Securities Exchange Act of 1934), as of the end of the period covered by this quarterly report. This evaluation was conducted under the supervision and with the participation of the Company's management, including the Chief Executive Officer and Chief Financial Officer. Based on this evaluation, as of the quarter ended September 30, 2005, the Company's Chief Executive Officer and Chief Financial Officer have concluded the Company's disclosure controls and procedures are effective. There were no changes in internal controls over financial reporting that occurred during the period covered by this quarterly report that have materially affected,
or that are reasonably likely to materially affect, our internal controls over financial reporting

* * *

Certifications Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. §1350, each of the undersigned officers of Witness Systems, Inc (the “Company”), hereby certify to such officer’s knowledge and belief that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended September 30, 2005 (the “Report”) fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated: November 7, 2005
BY /s/ DAVID B GOULD
David B. Gould
Chairman of the Board and Chief Executive Officer

Dated: November 7, 2005
BY /s/ WILLIAM F EVANS
William F. Evans
Chief Financial Officer

69. The statements contained in Witness Systems’ October 26, 2005 release and those statements contained in the Company’s 3Q.05 Form 10-Q, referenced above, were each materially false and misleading when made and were known by defendants to be false or were recklessly disregarded as such thereby, for the reasons stated herein in paragraph 14, supra.
70. **4.1M Share Secondary Offering.** Taking further advantage of the artificial inflation in the price of Company shares caused in substantial part as a result of their publication of defendants’ false statements and as a result of their material omissions, on December 8, 2005, defendants announced that the Company had offered 4.1 million shares of common stock priced at $20.00 per share, in addition to granting underwriters an option to purchase an additional 615,000 shares to cover over-allotments. In total, by December 14, 2005, defendants sold a total of 4.175 million shares of common stock, reaping gross proceeds of at least $835 million.

71. **“Record” 4Q & FY:05 Results.** On January 31, 2006, Witness Systems published a release announcing purported “record” results for the fourth quarter ended December 31, 2005. This release also stated, in part, the following:

Under generally accepted accounting principles (GAAP), fourth quarter revenue was a record $50.9 million and net income was $0.15 per share.

For the year, GAAP revenue was $185.4 million, compared to $141.3 million in 2004. In 2005, earnings per share were a loss of $0.12 per share compared to net income of $0.36 per share in 2004. The GAAP loss in 2005 is attributable to the acquisition of Blue Pumpkin Software, which was completed during the first quarter. In accounting for this acquisition, the company recorded a charge of $9.0 million for in-process research and development and incurred substantial increases in merger costs and amortization expense.
“In 2005, we delivered our third consecutive year of exceptional growth, resulting in record revenue that has grown more than 170 percent during this period,” said Dave Gould, CEO for Witness Systems. “Our strong financial performance in 2005 was driven by the successful launch of Impact 360™, our integrated workforce optimization solution, leadership in VoIP recording software, and our growing success with strategic partners.”

* * *

Financial Outlook

“We recorded another exceptionally strong performance in the fourth quarter of 2005, continuing our consistent record of growth and profitability,” said William Evans, CFO for Witness Systems. “During December, we completed the sale of an additional 4.7 million shares of common stock, adding over $89 million of cash to our already strong balance sheet. We believe we are well-positioned to continue to grow our business.”

In October 2005, the company issued initial guidance for 2006, indicating that it expected to achieve non-GAAP adjusted earnings in the range of $0.81 to $0.85 per share. . .

Initial company guidance issued in October 2005 $0.81 to $0.85
Initial guidance adjusted for follow-on stock offering $0.76 to $0.80
Updated company guidance being issued today $0.80 to $0.83

For the first quarter of 2006, the company currently expects to achieve adjusted revenue in the range of $49 to $50 million and non-GAAP adjusted earnings of $0.18 to $0.19 per share, reflecting the dilutive impact of the additional shares outstanding. Adjusted revenue excludes hardware revenue but includes the full contract value of maintenance contracts. Adjusted earnings for 2006 exclude the impact of stock-based compensation, inprocess R&D, merger costs and amortization of intangibles arising from acquisitions, but includes a pro forma tax expense of 36 percent.
72. **2005 Form 10-K.** On or about March 17, 2006, defendants filed with the SEC the Company’s 2005 Form 10-K for the fourth quarter and year-ended December 31, 2005, which was signed by all defendants and certified by defendants Gould and Evans. In addition to making substantially similar statements concerning the Company earnings and expenses as were contained in its January 31, 2006 release, the Company’s 2005 Form 10-K also stated, in part, the following:

**Critical Accounting Policies and Estimates**

The discussion and analysis of our financial condition and results of operations is based upon our consolidated financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires us to make certain estimates and judgments that affect our reported assets, liabilities, revenue and expenses, and our related disclosure of contingent assets and liabilities. On an on-going basis, we re-evaluate our estimates, accounting policies and judgments including those related to revenue recognition, the collectibility of receivables, accounting for acquisitions, impairment of long-lived assets, income taxes and stock-based compensation to ensure that our financial statements are presented fairly and in accordance with Generally Accepted Accounting Principles (“GAAP”). We base our estimates on historical experience and on various assumptions that we believe to be reasonable under the circumstances. However, because future events and their effects cannot be determined with certainty, actual results may differ from these estimates under different assumptions or conditions and such differences could be material. Management believes that the following accounting policies and estimates are critical to understanding and evaluating our reported financial results. Management has reviewed these critical accounting policies and estimates with the Audit Committee of our Board of Directors.
Certifications Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

Pursuant to 18 U.S.C. §1350, each of the undersigned officers of Witness Systems, Inc. (the “Company”), hereby certify to such officer’s knowledge and belief that the Annual Report on Form 10-K of the Company for the year ended December 31, 2005 (the “Report”) fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated March 16, 2006
BY: /S/ DAVID B. GOULD
David B. Gould
Chairman of the Board and Chief Executive Officer
Dated. March 16, 2006
BY: /S/ WILLIAM F. EVANS
William F. Evans
Chief Financial Officer

In the Company’s 2005 Form 10-K, the Company noted that defendants had discovered a material weakness in Witness Systems’ reporting systems, but this disclosure in no way can be said to have revealed that backdating of options had occurred or that every one of the Company’s previously issued financial statements or earnings releases should not be relied upon, as was revealed in mid-August a few weeks later.

The weakness in reporting to which defendants referred in the 2005 Form 10-K was discussed in Management’s Report on Internal Control Over
Financial Reporting on page F-2 where the defendants said "Our policies and procedures over account reconciliations and management’s review of estimates and account balances were not designed to a sufficient level of precision to prevent or detect misstatements that could have a material effect on the consolidated financial statements. As a result, there were errors to the consolidated financial statements that were not identified or recorded by management. This deficiency resulted in more than a remote likelihood that a material misstatement to the consolidated financial statements would not be prevented or detected."

75. As to these deficiencies, of which management indicated it had been unaware, defendants reported also in the 2005 Form 10-K that they had already taken measures to cure them. In this regard, the 2005 Form 10-K stated, in part, the following:

**Item 9A. Controls and Procedures.**

**Evaluation of Disclosure Controls and Procedures.** We maintain disclosure controls and procedures designed to provide reasonable assurance that information required to be disclosed in the periodic reports we file with the Securities and Exchange Commission ("SEC") is recorded, processed, summarized and reported accurately and within the time periods specified in the rules of the SEC. We carried out an evaluation as of December 31, 2005, under the supervision and the participation of our management, including our chief executive officer and chief financial officer, of the design and operation of these disclosure controls and procedures pursuant to Exchange Act Rule 13a-15(c). Based upon that evaluation, our chief executive officer and chief financial officer concluded that our
Disclosure controls and procedures were not effective due to a material weakness discussed in Management’s Report on Internal Control Over Financial Reporting on page F-2 hereof.

Changes in Internal Controls. There was no change in internal control over financial reporting that occurred during the three months ended December 31, 2005 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

We are currently in the process of implementing the following remediation steps to address the material weakness referenced above:

- Revise our policies and procedures related to the capitalization and depreciation of property and equipment including the addition of control procedures over the review of information input into our accounting system;

- Revise our control procedures through the addition of more effective controls to ensure the accrual of certain period-end operating expenses; and

- Implement formal policies, including quantitative and qualitative analysis, over the documentation and evaluation of unsubstantiated differences that individually or in the aggregate should be timely recorded. [Emphasis added ]

76. The statements contained in Witness Systems’ January 31, 2006 release and those statements contained in the Company’s 2005 Form 10-K, referenced above, were each materially false and misleading when made. and were known by defendants to be false or were recklessly disregarded as such thereby, for the reasons stated herein in paragraph 14, supra.
The very next day, the Wall Street Journal reported its discovery that several high technology companies had engaged in the backdating of stock options.

**How the Journal Analyzed Stock-Option Grants**

The Wall Street Journal asked Erik Lie, an associate professor of finance at the University of Iowa who has studied backdating, to generate a list of companies that made stock-option grants that were followed by large gains in the stock price.

The Journal examined a number of the companies, looking at all of their option grants to their top executive from roughly 1995 through mid-2002. Securities-law changes in 2002 curtailed the potential for backdating a grant. Executives typically receive option grants annually.

Mr. Lie and other academics say a pattern of sharp stock appreciation after grant dates is an indication of backdating; by chance alone, grants ought to be followed by a mixed bag of stock performance -- some rises, some declines.

To quantify how unusual a particular pattern of grants is, the Journal calculated how much each company's stock rose in the 20 trading days following each grant date. The analysis then ranked that appreciation against the stock performance in the 20 days following all other trading days of the year. It ranked all 252 or so trading days in a given year according to how much the stock rose or fell following them.

For instance, Affiliated Computer Services Inc. reported an option grant to its then-president, Jeffrey Rich, dated Oct 8, 1998. In the succeeding 20 trading days -- equal to roughly a month -- ACS stock rose 60.2%. That huge gain was the best 20-trading-day performance all year for ACS. So the Journal ranked Oct 8 No. 1 for ACS for 1998.

It is very unlikely that several grants spread over a number of years would all fall on high-ranked days.
But all six of Mr. Rich's did. Another of his option grants also fell on the No. 1-ranked day of a year, March 9, 1995. Two grants fell on the second-ranked day, those in 1996 and 1997. In 2002, his options grant was on the third-ranked day of the year, and in 2000, his grant came on the fourth-ranked day.

If a year has 252 trading days, the probability of a single options grant coming on the top-ranked day of that year would be one in 252. The chance of it coming on a day ranked No. 8 or better would be eight in 252.

The analysis then used the probability of each grant to figure how likely it is that an executive's overall multiyear grant pattern, or one more extreme than the actual pattern, occurred merely by chance. The more high-ranked days in the pattern, the longer the odds and the more likely it is that some factor other than chance influenced those dates.

Two companies said they did use something other than chance—they made grants on days when they thought the stock was temporarily low. This could explain results that differ somewhat from chance, but it wouldn't account for the extreme patterns of consistent post-grant rises.

John Emerson, an assistant professor of statistics at Yale, reviewed the methodology and developed a computer program to calculate the probabilities for all of the executives' grants except those to UnitedHealth CEO William McGuire. Because the number of his grants and complexity of his pattern made a computational method infeasible, the Journal used an estimate for his probability that Mr. Emerson said is conservative. Mr. Emerson said the figures for all six executives surpass a standard threshold statisticians use to assess the significance of a result.

For Mr. Rich's grants, the Journal's methodology puts the overall odds of a chance
occurrence at about one in 300 billion -- less likely than flipping a coin 38 times and having it come up "heads" every time.

Exceedingly long odds also turned up in the Journal's analysis of grant-date patterns at several other companies. "It's very, very, very unlikely that they could have produced such patterns just by choosing random dates," said Mr. Lie.

David Yermack, an associate professor of finance at New York University, reviewed the Journal's methodology and said it was a reasonable way to identify suspicious patterns of grants. But Mr. Yermack also said the odds shouldn't be thought of as precise figures, largely because they depend on assumptions in the method used to determine which grant dates are more favorable than others.

Because nobody actually authorizing the grant on a given day could have known how the stock would do in the future, the Journal's analysis used post-grant price surges as an indication of possible backdating. Academics theorize that the most effective way to consistently capture low-price days for option grants is to wait until after a stock has risen, then backdate a grant to a day prior to that rise.

The decision to look at 20 trading days after each grant was arbitrary. But Messrs. Yermack and Lie said it was a reasonable yardstick to detect possible backdating. Using a longer period, such as a year, wouldn't be a good way to spot backdating of a few days or weeks because the longer-term trading would overwhelm any backdating effect.

The 20-day price rises don't present an immediate opportunity to profit, since options can't usually be exercised until held a year or more. But when the options do become exercisable, they'll be more valuable if they were priced when the stock was low.

Notwithstanding the Wall Street Journal article and their disclosure of other deficiencies and the steps put in place to cure them just the day before,
defendants made no indication that the Company had engaged in exactly the same type of behavior as those other companies identified by the _Wall Street Journal_ report. Instead, however, as indicated herein, one or more of the defendants appear to have accelerated the pace of their sales of privately held shares of the Company.

79. **"Record" 1Q:06 Results.** On April 26, 2006, Witness Systems published a release announcing purported “record” results for the first quarter ended March 31, 2006. This release stated, in part, the following:

Under generally accepted accounting principles (GAAP), first quarter revenue was a record $51.5 million, and net income was $0.06 per share.

* * *

**Financial Outlook**

“We are pleased with the results of the first quarter, which were in line with our expectations,” said William Evans, CFO for Witness Systems. “We continued to achieve consistent top line growth, and we saw marked improvement in cash flow, with our cash and investment balances growing to $156 million and deferred revenue increasing by over $10 million during the quarter.”

For the second quarter of 2006, the company currently expects to achieve adjusted revenue in the range of $51.5 to $52.5 million and non-GAAP adjusted earnings of $0.20 to $0.21 per share. For the 2006 year, the company is increasing its adjusted earnings guidance to a range of $0.82 to $0.84 per share while maintaining its annual revenue guidance at $210 to $213 million. Adjusted revenue excludes hardware revenue but includes the full contract value of maintenance contracts. Adjusted earnings for 2006 excludes the impact of stock-based compensation, in-process R&D, merger costs and amortization of intangibles arising from acquisitions, but includes a pro forma tax
expense of 36 percent. The company expects that these additional expenses will result in GAAP net income per share in the range of $0.11 to $0.12 in the second quarter and $0.46 to $0.48 per share for the year. With the inclusion of hardware sales, Witness Systems currently expects annual revenue on a GAAP basis to be in the range of $214 to $220 million.

80   **1Q:06 Form 10-Q.** On or about May 9, 2006, defendants filed with the SEC the Company’s 1Q:06 Form 10-Q, for the quarter ended March 31, 2006, signed and certified by defendants Gould and Evans. In addition to making substantially similar statements concerning the Company earnings and expenses as were contained in its April 26, 2006 release, the Company’s 1Q:06 Form 10-Q also stated, in part, the following:

The financial statements herein have been prepared in accordance with the requirements of Form 10-Q and, therefore, do not include all information and footnotes required by accounting principles generally accepted in the United States of America. However, in the opinion of management, all adjustments necessary for a fair presentation of the results of operations for the relevant periods have been made. Results for the interim periods are not necessarily indicative of the results to be expected for the year. These financial statements should be read in conjunction with the summary of significant accounting policies and the notes to the consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2005, filed with the U.S. Securities and Exchange Commission.

* * *

**Certifications Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**
Pursuant to 18 U.S.C. §1350, each of the undersigned officers of Witness Systems, Inc (the "Company"), hereby certify to such officer's knowledge and belief that the Quarterly Report on Form 10-Q of the Company for the quarterly period ended March 31, 2006 (the "Report") fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Dated May 9, 2006
BY: /s/ DAVID B. GOULD
David B. Gould
Chairman of the Board and Chief Executive Officer

Dated May 9, 2006
BY: /s/ WILLIAM F. EVANS
William F. Evans
Chief Financial Officer

In addition to the foregoing, while the Company’s 1Q:06 Form 10-Q again reported that defendants had discovered a material weakness in Witness Systems’ reporting systems, at that time defendants stated that they had already taken measures to be reasonably assured that such material deficiencies were being cured. In this regard, the 1Q:06 Form 10-Q stated, in part, the following:

Item 4. Controls and Procedures
Evaluation of Disclosure Controls and Procedures

We conducted an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-14 and 15d-14 under the Securities Exchange Act of 1934), as of the end of the period covered by this quarterly report. This evaluation was conducted under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer.
Based on this evaluation, as of the quarter ended March 31, 2006, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are not effective due to the material weakness discussed below.

The following was the material weakness, as originally reported in our Annual Report on Form 10-K for the year ended December 31, 2005:

Our policies and procedures over account reconciliations and management's review of estimates and account balances were not designed to a sufficient level of precision to prevent or detect misstatements that could have a material effect on the consolidated financial statements. As a result, there were errors to the consolidated financial statements that were not identified or recorded by management. This deficiency resulted in more than a remote likelihood that a material misstatement to the consolidated financial statements would not be prevented or detected.

In the quarter ended March 31, 2006, management made significant progress in remediating the material weakness by:

- Revising our policies and procedures related to the capitalization and depreciation of property and equipment including the addition of control procedures over the review of information input into our accounting system;

- Revising our control procedures through the addition of more effective controls to ensure the accrual of certain period-end operating expenses; and

- Implementing formal policies, including quantitative and qualitative analysis, over the documentation and evaluation of unsubstantiated differences that individually or in the aggregate should be timely recorded.
82. The statements contained in Witness Systems’ April 26, 2006 release and those statements contained in the Company’s 1Q:06 Form 10-Q, referenced above, were each materially false and misleading when made, and were known by defendants to be false or were recklessly disregarded as such thereby, for the reasons stated herein in ¶14, supra.

THE TRUE FINANCIAL AND OPERATIONAL CONDITION OF WITNESS SYSTEMS BEGINS TO BE DISCLOSED

83. Initial Partial Disclosure. On July 27, 2006, Witness Systems published a release announcing results for the second quarter ended June 30, 2006, that were below many analysts and investors expectations. That day, defendants published a release that stated, in part, the following

Under generally accepted accounting principles (GAAP), second quarter revenue was a record $54.8 million, and net income was $0.13 per share. Software license revenue, excluding hardware, was $19.2 million in the quarter, up from $17.0 million in the second quarter of 2005. Adjusted results of operations are presented in the following section.

Year-to-date, GAAP revenue was $106.3 million, compared to $87.3 million in the first half of 2005. Earnings per share for the first six months of 2006 were $0.19 per share compared to a net loss of ($0.33) per share in 2005. The GAAP loss in 2005 was attributable to the acquisition of Blue Pumpkin Software during the first quarter of that year.

*   *   *

Financial Outlook
For the third quarter of 2006, the company expects to achieve adjusted revenue in the range of $52 to $53 million and non-GAAP adjusted earnings of $0.21 to $0.22 per share. For the full year, the company expects to achieve adjusted revenue of $211 to $213 million and adjusted earnings in the range of $0.83 to $0.85 per share. Adjusted revenue excludes hardware revenue but includes the full contract value of maintenance contracts. Adjusted earnings for 2006 excludes the impact of stock-based compensation, in-process R&D, merger costs and amortization of intangibles arising from acquisitions, but includes a pro forma tax expense of 36 percent. The company expects that these additional expenses will result in GAAP net income per share in the range of $0.13 to $0.14 in the third quarter and $0.47 to $0.49 per share for the year. With the inclusion of hardware sales, Witness Systems currently expects annual revenue on a GAAP basis to be in the range of $218 to $222 million.

84. Though no mention was made of it in the earnings release, in the conference call later that day, defendant Evans mentioned in a passing two sentence remark that the Company had initiated a voluntary internal review of stock option grants in the 2000-2002 time period, which was ongoing and that depending on the results, there may or may not be adjustments to prior periods. When asked why the Company was conducting the review, defendants gave no indication that trouble was ahead. Analyst Daniel Ives asked “Now just to understand, because it’s not so much the investigation, but I guess there’s a valid question Was this provoked by – and I’m just trying to understand. It is just a lot of companies are looking at it? You’re just looking at your option practices? I just want to – if you could elaborate on that.”
In reply, Evans said “I think in light of the recent publicity, it’s good governance on our part to go back and look at these practices.”

85. The July 27, 2006 partial disclosure sent shares of the Company reeling. Following the publication of the Company’s July 27, 2006 earnings, Witness Systems shares plummeted -- falling to a low of $13.36 per share before closing at $15.71 per share, compared to a close of $18.19 the prior trading day. Almost 6 million shares traded, many times the Company’s average daily trading volume.

86. By August 10, 2006, however, shares of the Company would trade below $13.00 per share, after defendants revealed on August 9, 2006 to investors preliminary details about the results of the internal review and the resulting formation of a special committee of independent directors. At that time, defendants published a release that revealed -- for the first time -- that the Company had found discrepancies in the recording of options. The August 9, 2006 release stated, in part, the following:

**Witness Systems Announces Special Committee for Stock Option Grant Review**

*Atlanta, GA* -- The Witness Systems (NASDAQ: WITS - News) board of directors announced today that the company has voluntarily formed a special committee of independent directors to review stock option practices and grants during the period from the date of the company's IPO in February.
2000 through the end of August 2002 when the Sarbanes-Oxley Act became effective. As a result of a recent preliminary internal review, the company has identified a number of instances in which a discrepancy appeared in the recorded grant dates of such awards. As a result of these developments, the company will delay the filing of its quarterly report on Form 10-Q for the quarter ended June 30, 2006 until the special committee completes its review.

The company's board of directors formed the special committee to focus on resolving these issues as quickly and credibly as possible. The preliminary internal review conducted by the company before the formation of the special committee identified a number of different deficiencies in the company's practices, procedures, and documentation related to the company's granting of stock options during the period reviewed. Many of these options were distributed widely among employees and were not granted to executives.

At this time, based upon the instances identified to date, management does not anticipate any material adjustment to the previously disclosed 2005 or 2006 financial results of operations. However, based on its preliminary internal review, the company believes it will need to record additional non-cash charges for stock-based compensation expense in prior periods. The amount of these charges will be determined by the special committee, but the company expects at this time that these charges, which relate to option grants in the February 2000-August 2002 period, will total approximately $10 million, which in turn increases both paid-in capital and accumulated deficit reported in the stockholder's equity line on the balance sheet.

The company is also reviewing the tax implications of these adjustments, but has not yet completed that review. Consequently, the financial statements reported by the company in SEC filings and elsewhere, and the earnings press releases and similar communications issued by the company, should not be relied upon. Also, the company now expects to incur substantial additional costs associated with conducting an independent review of this type. [Emphasis added.]
87. Based on the revelation that the Company would be forced to take additional charges of at least $10 million, shares of the Company continued to trade lower, falling to below $13.00 per share following this belated disclosure.

88. On August 11, 2006, the Company admitted it would be restating some prior periods, though the details as to which periods and in what amounts were still not revealed. On August 11, 2006, the stock closed at $12.91 per share, after trading as low as $12.76 per share.

Applicability Of Presumption Of Reliance: Fraud-On-The-Market Doctrine

89. At all relevant times, the market for Witness Systems’ common stock was an efficient market for the following reasons, among others:

(a) Witness Systems’ stock met the requirements for listing, and was listed and actively traded on the Nasdaq national market exchange, a highly efficient and automated market,

(b) As a regulated issuer, Witness Systems filed periodic public reports with the SEC and the Nasdaq;

(c) Witness Systems regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services.
and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Witness Systems was followed by several securities analysts employed by major brokerage firm(s) who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firm(s). Each of these reports was publicly available and entered the public marketplace.

90. As a result of the foregoing, the market for Witness Systems securities promptly digested current information regarding Witness Systems from all publicly available sources and reflected such information in Witness Systems stock price. Under these circumstances, all purchasers of Witness Systems common stock during the Class Period suffered similar injury through their purchase of Witness Systems common stock at artificially inflated prices, and a presumption of reliance applies.

CAUSATION AND ECONOMIC LOSS

91. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market, and a course of conduct that artificially inflated Witness Systems' security prices and operated as a fraud or deceit on Class Period purchasers of Company securities by misrepresenting Witness Systems' financial results and by backdating its options. Defendants improperly inflated the Company's financial results by failing to disclose that it had backdated options and
by failing to properly account for compensation expenses resulting when such options were “in the money.”

92. When defendants’ prior misrepresentations and fraudulent conduct began to be revealed to investors, shares of Witness Systems declined precipitously - evidence that the prior artificial inflation in the price of Witness Systems’ shares was erased. As a result of their purchases of Witness Systems securities during the Class Period, plaintiff and other members of the Class suffered economic losses, i.e. damages under the federal securities laws

93. By improperly characterizing the Company’s financial results and prospects and by failing to disclose that the Company had in fact backdated options, the defendants presented a misleading image of Witness Systems’ business and operations

94. As a direct result of investors learning of defendants’ improper options backdating, faulty disclosures and controls and false accounting, shares of the Company declined precipitously. Accordingly, Witness Systems stock traded from approximately $18.00 per share prior to any news of options backdating reaching the market, and to a Class Period high of above $25.00 per share, to approximately $13.00 per share after defendants announced that the Company
would be forced to take charges and then restate prior period as a result of the Company’s undisclosed activities and faulty accounting.

95 In sum, as the truth about defendants’ fraudulent course of conduct became known to investors, in part, and as artificial inflation in the price of Witness Systems shares was eliminated, plaintiff and the other members of the Class were damaged, suffering an economic loss thus far of approximately $5.00 per share.

96 The decline in Witness Systems’ securities prices at the end of the Class Period was a direct result of the nature of defendants’ fraud being revealed to investors and to the market. The timing and magnitude of Witness Systems’ stock price decline negates any inference that the losses suffered by plaintiff and the other members of the Class was caused by changed market conditions, macroeconomic or industry factors, or even Company-specific facts unrelated to defendants’ fraudulent conduct. During the same period in which Witness Systems’ share price fell over 25% as a result of defendants’ fraud being revealed, the Standard & Poor’s 500 securities index was relatively unchanged.

97. The economic loss, i.e., damages suffered by plaintiff and other members of the Class, was a direct result of defendants’ fraudulent scheme to artificially inflate the price of Witness Systems’ stock and the subsequent significant
decline in the value of the Company’s securities when defendants’ prior misstatements and other fraudulent conduct was revealed in part.

**ADDITIONAL SCIENTER ALLEGATIONS**

98 As alleged herein, defendants acted with scienter in that each defendant knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading, knew that such statements or documents would be issued or disseminated to the investing public, and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Witness Systems, their control over, and/or receipt and/or modification of Witness Systems’ allegedly materially misleading misstatements and/or their associations with the Company, which made them privy to confidential proprietary information concerning Witness Systems, participated in the fraudulent scheme alleged herein.

99 Defendants were motivated to materially misrepresent to the SEC and investors the true financial condition of the Company because doing so enabled defendants: (i) to deceive the investing public regarding Witness Systems’ business, operations, management, and the intrinsic value of Witness Systems securities; (ii)
to backdate millions of dollars in options granted to the senior officers and directors of the Company; (iii) to sell millions of dollars of their privately held Witness Systems shares while in possession of material adverse non-public information about the Company; (iv) to use artificially inflated stock for currency in connection with the Blue Pumpkin acquisition, and (v) to cause plaintiff and other members of the Class to purchase Witness Systems securities at artificially inflated prices.

While WITS’s top insiders and directors were issuing favorable, yet false and misleading, statements about WITS, many of the Insider Selling Defendants sold shares of their WITS stock, for more than $30 million to personally profit from the artificial inflation in WITS’s stock price. Notwithstanding their access to material non-public information and their duty to disclose the same before acquiring or selling WITS stock, certain of the defendants who had obtained option grants at artificially low prices or knew news of the Company’s prior backdating and faulty accounting would ultimately be revealed, they sold significant amounts of their WITS stock at artificially inflated prices and at highly suspicious times. This insider selling by the Insider Selling Defendants was highly unusual, both in its timing and in its amount and occurred when these defendants knew of the stock option contrivances and then the internal review of same and that as a result, WITS’s publicly reported financial results and metrics were overstated.
101. The insider selling of defendants Discombe, the Company’s President, and Wimpfheimer, the Company’s Senior Vice President and General Counsel, after the March 18, 2006 Wall Street Journal about stock option backdating, compared to their insider selling during the Class Period prior to that date is illustrative.

### Insider Trading

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### Nicholas Discombe (President)

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### Loren Wimpfheimer (General Counsel)

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<th>Proceeds</th>
<th>Percentage</th>
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<td>$7,810,536.00</td>
<td>71.92%</td>
</tr>
<tr>
<td>Prior to 3/18/06</td>
<td>169,800</td>
<td>$3,049,193.26</td>
<td>28.08%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>511,125</td>
<td>$10,859,729.26</td>
<td></td>
</tr>
</tbody>
</table>
102. Similarly, defendant Gould's insider selling is telling. Gould had sold shares on a weekly basis from the beginning of 2004 through February 2006. Then, in March 2006, he stopped temporarily and resumed again in April, 2006. His pace of selling after the *Wall Street Journal* article was much more rapid than his pace of selling prior thereto. Indeed, his Form 4 dated July 31, 2006 and signed by defendant Wimpfheimer, who was acting as his attorney-in-fact, shows that Gould owned less than 43,000 shares directly, and less than 86,000 shares directly or indirectly as of July 31, 2006.

103. The Proxy Statements filed by the Company with the SEC for fiscal years 2000 and 2001 show, for example, that defendant Gould was granted options on April 14, 2000 (along with four other then senior executives) and on March 20, 2001. According to the historical prices that are publicly available on Yahoo:

<table>
<thead>
<tr>
<th>Date</th>
<th>Shares Sold</th>
<th>Proceeds</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>3/18/06</td>
<td>740,071</td>
<td>$16,404,244.00</td>
<td>47.41%</td>
</tr>
<tr>
<td>Prior to</td>
<td>1,103,745</td>
<td>$18,199,247.82</td>
<td>52.59%</td>
</tr>
<tr>
<td>Total</td>
<td>1,843,816</td>
<td>$34,603,491.82</td>
<td></td>
</tr>
</tbody>
</table>
Finance for WITS common stock, both of these days were the days on which WITS common stock traded at its lowest price for the entire respective fiscal year.

104 At the time Defendants were engaging in insider selling, they were in possession of material non-public adverse facts. Defendants knew, or with severe recklessness disregarded, that the Company had engaged in extensive backdating of options between 2000-2002, that the representations it made to the contrary in its Proxy Statements for such fiscal years was false, and that the Company during the Class Period failed to correct such prior misrepresentations, failed to disclose the backdating, and failed to account properly for the expenses flowing therefrom.

VIOLATIONS OF GAAP AND SEC REPORTING RULES

105 During the Class period, defendants materially misled the investing public, thereby inflating the price of the Company's securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth therein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its financial performance, accounting, reporting, and financial condition in violation of the federal securities laws and GAAP.
GAAP consists of those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practice at the particular time. Regulation S-X, to which the Company is subject as a registrant under the Exchange Act, 17 C.F.R. 210.4-01(a)(1), provides that financial statements filed with the SEC that are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. SEC Rule 13a-13 requires issuers to file quarterly reports.

SEC Rule 12b-20 requires that periodic reports contain such further information as is necessary to make the required statements, in light of the circumstances under which they are made, not misleading.

The fact that WITS has admitted on August 11, 2006 that it will restate prior financial statements and that such financial statements should no longer be relied upon is an admission that the financial statements originally issued were false and that the overstatement of income was material. Pursuant to GAAP, as set forth in Accounting Principles Board Opinion ("APB") No. 20, the type of restatement announced by WITS was to correct for material errors in its previously issued financial statements. See APB No. 20, 7-13. Moreover, FASB Statement of Financial Accounting Standard ("SFAS") No. 154, Accounting Changes and Error Corrections, states: "Any error in the financial statements of a prior period
discovered subsequent to their issuance shall be reported as a prior-period adjustment by restating the prior-period financial statements. "Thus, GAAP provides that financial statements should be restated in order to correct an error in previously issued financial statements. WITS's restatement is due to an error. Thus, the restatement is an admission by WITS that its previously issued financial results and its public statements regarding those results were false.

109. In addition, Item 303 of Regulation S-K requires that, for interim periods, the Management Discussion and Analysis Section ("MD&A") must include, among other things, a discussion of any material changes in the registrant's results of operations with respect to the most recent fiscal year-to-date period for which an income statement is provided. Instructions to Item 303 require that the this discussion identify any significant elements of the registrant's income or loss from continuing operations that are not necessarily representative of the registrant's ongoing business. Item 303(a)(2)(i) to Regulation S-K requires the following discussion in the MD&A of a company's publicly filed reports with the SEC.

Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations. If the registrant knows of events that will cause a material change in the relationship between costs and revenues (such as known future increases in costs of labor or materials or price increases or inventory adjustments), the change in relationship shall be disclosed. [Emphasis added]
Paragraph 3 of the Instructions to Item 303 states in relevant part:

The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This would include descriptions and amounts of (A) matters that would have an impact on future operations and have not had an impact in the past.

110. The GAAP requirement for recognition of an adequate provision for foreseeable costs and an associated allowance applies to interim financial statements as required by APB No. 28. Paragraph 17 of this authoritative pronouncement states that:

The amounts of certain costs and expenses are frequently subjected to year-end adjustments even though they can be reasonably approximated at interim dates. To the extent possible such adjustments should be estimated and the estimated costs and expenses assigned to interim periods so that the interim periods bear a reasonable portion of the anticipated annual amount.

111. The Company's financial statements contained in the Company's Form(s) 10-K and/or the interim reports filed with the SEC pursuant to Form(s) 10-Q throughout the Class Period were presented in a manner that violated the principle of fair financial reporting and the following GAAP rules, among others.

(a) The principle that financial reporting should provide information that is useful to present and potential investors and creditors and other
users in making rational investment, credit and similar decisions (FASB Statement of Concepts No. 1);

(b) The principle that financial reporting should provide information about an enterprise's financial performance during a period (FASB Statement of Concepts No. 1);

(c) The principle that financial reporting should be reliable in that it represents what it purports to represent (FASB Statement of Concepts No. 2);

(d) The principle of completeness, which means that nothing material is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions (FASB Statement of Concepts No. 2),

(e) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered (FASB Statement of Concepts No. 2),

(f) The principle that contingencies and other uncertainties that affect the fairness of presentation of financial data at an interim date shall be disclosed in interim reports in the same manner required for annual reports (APB Opinion No. 28);
(j) The principle that disclosures of contingencies shall be repeated in interim and annual reports until the contingencies and have been removed, resolved, or have become immaterial (APB Opinion No. 28); and

(k) The principle that management should provide commentary relating to the effects of significant events upon the interim financial results (APB Opinion No. 28).

112 In addition, during the Class Period, defendants violated SEC disclosure rules:

(a) defendants failed to disclose the existence of known trends, events or uncertainties that they reasonably expected would have a material, unfavorable impact on net revenues or income or that were reasonably likely to result in the Company's liquidity decreasing in a material way, in violation of Item 303 of Regulation S-K, 17 C.F.R. 229.303, and that failure to disclose the information rendered the statements that were made during the Class Period materially false and misleading; and

(b) by failing to file financial statements with the SEC that conformed to the requirements of GAAP, such financial statements were presumptively misleading and inaccurate pursuant to Regulation S-X, 17 C.F.R. '210.4-01(a)(1).
Defendants were required to disclose in the Company's financial statements the existence of the material facts described herein and to appropriately recognize and report assets, revenues, and expenses in conformity with GAAP. The Company failed to make such disclosures and to account for and to report its financial statements in conformity with GAAP. Defendants knew, or were reckless in not knowing, the facts that indicated that the Company's year end and interim financial statements, press releases, public statements, and filings with the SEC, which were disseminated to the investing public during the Class Period, were materially false and misleading for the reasons set forth herein. Had the true financial position and results of operations of the Company been disclosed during the Class period, the Company's common stock would have traded at prices well below that which it did. In addition, members of the Class would not have purchased shares of Witness Systems in the December 2005 Offering at $20.00 per share, or thereafter at as high as 25.00 per share, if at all.

NO SAFE HARBOR

The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were
any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Witness Systems who knew that those statements were false when made.

**BASIS OF ALLEGATIONS**

115 Plaintiff has alleged the following based upon the investigation of plaintiff’s counsel, which included a review of SEC filings by Witness Systems, as well as regulatory filings and reports, securities analysts’ reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.
FIRST CLAIM

Violation Of Section 10(b) Of
The Exchange Act And Rule 10b-5
Promulgated Thereunder Against All Defendants

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

117 During the Class Period, defendants carried out a plan, scheme and course of conduct that was intended to and, throughout the Class Period, did: (i) deceive the investing public regarding Witness Systems' business, operations, management reporting, and the intrinsic value of Witness Systems common stock; (ii) enable defendants to obtain hundreds of thousands of Witness Systems shares through the exercise or grants of improperly and illegally priced options; (iii) enable defendants to overstate earnings and understate expenses and cause Witness Systems to violate GAAP and SEC reporting rules; (iv) enabled Witness Systems insiders to exercise options and/or sell millions of dollars of their privately held Witness Systems shares while in possession of material adverse non-public information about the Company, and (v) cause plaintiff and other members of the Class to purchase Witness Systems common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan, and course of conduct, defendants, jointly and individually (and each of them), took the actions set forth herein.
Defendants. (a) employed devices, schemes, and artifices to defraud, (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business, which operated as a fraud and deceit upon the purchasers of the Company’s common stock in an effort to maintain artificially high market prices for Witness Systems’ common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

Defendants, individually and in concert, directly and indirectly, by the use, means, or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Witness Systems as specified herein.

These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Witness Systems’ value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of
material facts and omitting to state material facts necessary in order to make the statements made about Witness Systems and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices, and a course of business, which operated as a fraud and deceit upon the purchasers of Witness Systems common stock during the Class Period.

121. Each of the Individual Defendants' primary liability and/or controlling person liability arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of his responsibilities and activities as a senior officer and/or director of the Company was privy to and participated in the creation, development, and reporting of the Company’s internal budgets, plans, projections, and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of and had access to other members of the Company’s management team, internal reports, and other data and information about the Company’s finances, operations, and sales at all relevant times; and (iv) each of these defendants was aware of the Company’s dissemination
of information to the investing public that they knew or recklessly disregarded was materially false and misleading.

122 The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with severely reckless disregard for the truth in that they failed to ascertain and to disclose such facts. Such defendants' material misrepresentations and/or omissions were done knowingly or with severe recklessness for the purpose and effect of concealing Witness Systems' operating condition and future business prospects from the investing public and supporting the artificially inflated price of its common stock. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations, and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were severely reckless in failing to obtain such knowledge by recklessly refraining from taking those steps necessary to discover whether those statements were false or misleading.

123 As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Witness Systems common stock was artificially inflated during the Class Period. In ignorance of the fact that market prices of Witness Systems' publicly-traded
common stock were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Witness Systems common stock during the Class Period at artificially high prices and were damaged thereby.

124 At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Witness Systems was experiencing, which were not disclosed by defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Witness Systems common stock, or, if they had acquired such common stock during the Class Period, they would not have done so at the artificially inflated prices which they paid.

125 By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

126 As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with
their respective purchases and sales of the Company’s common stock during the Class Period.

**SECOND CLAIM**

Violation Of Section 20(a) Of The Exchange Act Against Individual Defendants

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

128 The Individual Defendants acted as controlling persons of Witness Systems within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company’s operations and/or intimate knowledge of the false financial statements and operational reports filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading. The Individual Defendants were provided with or had unlimited access to copies of the Company’s reports, press releases, public filings, and other statements alleged by plaintiff to be misleading prior to and/or shortly after these
statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

129. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company with respect to the conduct resulting in the fraud on the market and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

130. As set forth above, Witness Systems and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants’ wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company’s common stock during the Class Period.
PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel,

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon,

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding extraordinary, equitable, and/or injunctive relief as permitted by law, equity, and the federal statutory provisions sued hereunder, pursuant to Rules 64 and 65 and any appropriate state law remedies to assure that the Class has an effective remedy, and

E. Such other and further relief as the Court may deem just and proper
JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: August 14, 2006

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Fax: 404-201-6959

KAHN GAUTHIER SWICK, LLC
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Lewis Kahn
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New Orleans, LA 70130
Telephone. (504) 455-1400
Facsimile: (504) 455-1498

Attorneys for Plaintiff
CERTIFICATION OF NAMED PLAINTIFF
PURSUANT TO FEDERAL SECURITIES LAWS

I, RUTH ROSENBERG ('Plaintiff'), being duly sworn, declares, as to her claims asserted under the federal securities laws on a class action basis against Witness Systems, Inc., et al. that:

1. Plaintiff has reviewed the Complaint and authorized its filing.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.

4. Plaintiff's transactions in the security that is the subject of this action during the Class Period are as follows:

   See Exhibit “A” Attached

5. Plaintiff has not sought to serve as a class representative within the last 3 years.

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond Plaintiff's pro rata share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the class as ordered or approved by the court.
wages) directly relating to the representation of the class as ordered or approved by the court.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 14th day of August, 2006.

RUTH ROSENBERG
## EXHIBIT “A”

### Ruth Rosenberg Transactions in Witness Systems

<table>
<thead>
<tr>
<th>Date of Purchase</th>
<th>Total Number of Share</th>
<th>Price Per Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>July 10, 2006</td>
<td>45</td>
<td>$17.76</td>
</tr>
<tr>
<td>July 13, 2006</td>
<td>10</td>
<td>$17.20</td>
</tr>
<tr>
<td>July 18, 2006</td>
<td>10</td>
<td>$17.02</td>
</tr>
<tr>
<td>July 28, 2006</td>
<td>34</td>
<td>$15.01</td>
</tr>
<tr>
<td>August 3, 2006</td>
<td>17</td>
<td>$15.30</td>
</tr>
</tbody>
</table>
The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required except as provided by local rules of court. This form is required for the use of the Clerk of Court for the purpose of initialing the civil docket record (SEE INSTRUCTIONS ATTACHED)

**I. (a) PLAINTIFF(S)**

Ruth Rosenberg, Individually And On Behalf of All Others Similarly Situated,

**DEFENDANT(S)**

DAVID B GOULD, NICHOLAS DISCOMBE, WILLIAM EVANS, JOEL G KATZ, THOMAS J CROTTY, and WITNESS SYSTEMS, INC.

**II. BASIS OF JURISDICTION**

*(PLACE AN "X" IN ONE BOX ONLY)*

<table>
<thead>
<tr>
<th></th>
<th>PLF</th>
<th>DEF</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>U S GOVERNMENT PLAINTIFF</td>
<td>☑</td>
</tr>
<tr>
<td>2</td>
<td>U S GOVERNMENT DEFENDANT</td>
<td>✓</td>
</tr>
<tr>
<td>3</td>
<td>FEDERAL QUESTION (US GOVERNMENT NOT A PARTY)</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>DIVERSITY (INDICATE CITIZENSHIP OF PARTIES IN ITEM III)</td>
<td></td>
</tr>
</tbody>
</table>

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

*(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)*

*(FOR DIVERSITY CASES ONLY)*

<table>
<thead>
<tr>
<th></th>
<th>PLF</th>
<th>DEF</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>CITIZEN OF THIS STATE</td>
<td>☑</td>
</tr>
<tr>
<td>2</td>
<td>CITIZEN OF ANOTHER STATE</td>
<td>☑</td>
</tr>
<tr>
<td>3</td>
<td>CITIZEN OR SUBJECT OF A FOREIGN COUNTRY</td>
<td>☑</td>
</tr>
<tr>
<td>4</td>
<td>INCORPORATED OR PRINCIPAL PLACE OF BUSINESS IN THIS STATE</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>INCORPORATED AND PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>FOREIGN NATION</td>
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</table>

**IV. ORIGIN**

*(PLACE AN "X" IN ONE BOX ONLY)*

<table>
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<tr>
<th></th>
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<th>DEF</th>
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<tbody>
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<td>1</td>
<td>ORIGINAL PROCEEDING</td>
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</tr>
<tr>
<td>2</td>
<td>REMOVED FROM STATE COURT</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>REMAND FROM APPELLATE COURT</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>REINSTATE OR REOPENED</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>TRANSFERRED FROM ANOTHER DISTRICT (SPECIFY DISTRICT)</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>MULTIDISTRICT LITIGATION</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>APPEAL TO DISTRICT JUDGE FROM MAGISTRATE JUDGE JUDGMENT</td>
<td></td>
</tr>
</tbody>
</table>

**V. CAUSE OF ACTION**

*(CITE THE U S CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE - DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)*

<table>
<thead>
<tr>
<th></th>
<th>PLF</th>
<th>DEF</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Unusually large number of parties</td>
<td>☑</td>
</tr>
<tr>
<td>2</td>
<td>Unusually large number of claims or defenses</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Factual issues are exceptionally complex</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Greater than normal volume of evidence</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Extended discovery period is needed</td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Problems locating or preserving evidence</td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Pending parallel investigations or actions by government</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>Multiple use of experts</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Need for discovery outside United States boundaries</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Existence of highly technical issues and proof</td>
<td></td>
</tr>
</tbody>
</table>

**CONTINUED ON REVERSE**
### VI. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

**CONTRACT - 4 MONTHS DISCOVERY TRACK**
- [ ] 150 Recovery of Overpayment & Enforcement of Judgment
- [ ] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- [ ] 153 Recovery of Overpayment of Veterans Benefits

**CIVIL RIGHTS - 4 MONTHS DISCOVERY TRACK**
- [ ] 441 Voting
- [ ] 442 Employment
- [ ] 443 Housing Accommodations
- [ ] 444 Welfare
- [ ] 445 Other Civil Rights
- [ ] 446 Americans with Disabilities - Other

**PROPERTY - 4 MONTHS DISCOVERY TRACK**
- [ ] 210 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 250 All Other Real Property

**TORTS - PERSONAL INJURY - 4 MONTHS DISCOVERY TRACK**
- [ ] 310 Airplane
- [ ] 315 Airplane Product Liability
- [ ] 320 Assault, Libel & Slander
- [ ] 330 Federal Employers Liability
- [ ] 340 Maritime
- [ ] 345 Maritime Product Liability
- [ ] 350 Motor Vehicle
- [ ] 355 Motor Vehicle Product Liability
- [ ] 360 Other Personal Injury
- [ ] 362 Personal Injury - Medical Malpractice
- [ ] 365 Personal Injury - Product Liability
- [ ] 368 Asbestos Personal Injury Product Liability

**TORTS - PERSONAL PROPERTY - 4 MONTHS DISCOVERY TRACK**
- [ ] 370 Other Fraud
- [ ] 371 Truth in Lending
- [ ] 380 Other Personal Property Damage
- [ ] 385 Property Damage Product Liability

**PROPERTY RIGHTS - 4 MONTHS DISCOVERY TRACK**
- [ ] 620 Copyrights
- [ ] 640 Trademark

**BANKRUPTCY - 4 MONTHS DISCOVERY TRACK**
- [ ] 422 Appeal 26 USC 158
- [ ] 423 Withholding 26 USC 157

**FEDERAL TAX SUITS - 4 MONTHS DISCOVERY TRACK**
- [ ] 601 Taxes (U.S. Plaintiff or Defendant)

**OTHER STATUTES - 4 MONTHS DISCOVERY TRACK**
- [ ] 801 Agricultural Acts
- [ ] 802 Economic Stabilization Act
- [ ] 850 Environmental Matters
- [ ] 860 Energy Allocation Act
- [ ] 865 Freedom of Information Act
- [ ] 866 Appeal of Fee Determination
- [ ] 880 Constitutionality of State Statutes
- [ ] 890 Other Statutory Actions

**SOCIAL SECURITY - 4 MONTHS DISCOVERY TRACK**
- [ ] 1001�/联合会
- [ ] 1002 Black Lung (902)
- [ ] 1003 DMCA (406(g))
- [ ] 1004 DMCA (406(g))
- [ ] 1005 S&Q Title V

**REAL PROPERTY - 4 MONTHS DISCOVERY TRACK**
- [ ] 200 Land Condemnation
- [ ] 220 Foreclosure
- [ ] 230 Rent Lease & Ejectment
- [ ] 240 Torts to Land
- [ ] 245 Tort Product Liability
- [ ] 250 All Other Real Property

**PROPERTY RIGHTS - 4 MONTHS DISCOVERY TRACK**
- [ ] 620 Copyrights
- [ ] 640 Trademark

**BANKRUPTCY - 4 MONTHS DISCOVERY TRACK**
- [ ] 422 Appeal 26 USC 158
- [ ] 423 Withholding 26 USC 157

**FEDERAL TAX SUITS - 4 MONTHS DISCOVERY TRACK**
- [ ] 601 Taxes (U.S. Plaintiff or Defendant)

**OTHER STATUTES - 4 MONTHS DISCOVERY TRACK**
- [ ] 801 Agricultural Acts
- [ ] 802 Economic Stabilization Act
- [ ] 850 Environmental Matters
- [ ] 860 Energy Allocation Act
- [ ] 865 Freedom of Information Act
- [ ] 866 Appeal of Fee Determination
- [ ] 880 Constitutionality of State Statutes
- [ ] 890 Other Statutory Actions

**SOCIAL SECURITY - 4 MONTHS DISCOVERY TRACK**
- [ ] 1001�/联合会
- [ ] 1002 Black Lung (902)
- [ ] 1003 DMCA (406(g))
- [ ] 1004 DMCA (406(g))
- [ ] 1005 S&Q Title V

### VII. REQUESTED IN COMPLAINT:

CHECK IF THIS A CLASS ACTION UNDER F.R.CIV.P.23 DEMAND $ ________________________________

JURY DEMAND [ ] YES [ ] NO (CHECK YES ONLY IF DEMANDED IN COMPLAINT)

### VIII. RELATED/REFILED CASE(S) IF ANY

DOCKET NO. _____________________________

CIVIL CASES ARE DEEMED RELATED IF THE PENDING CASE INVOLVES (CHECK APPROPRIATE BOX)
- [ ] Property Included in an Earlier Numbered Pending Suit
- [ ] Same Issue of Fact or Arises Out of the Same Event or Transaction Included in an Earlier Numbered Pending Suit
- [ ] Validity or infringement of the same patent, copyright or trademark included in an earlier numbered pending suit
- [ ] Appeals arising out of the same bankruptcy case and any case related thereto which I have been decided by the same bankruptcy judge
- [ ] Repetitive cases filed by pro se litigants
- [ ] Companion or related case to case(s) being simultaneously filed (Include abbreviated style of other cases)

Either some or all of the parties and issues in this case were previously involved in case no. _____________________________ which was dismissed. This case is [ ] is not (check one box) substantially the same case

Signature of Attorney of Record: ___________________________ Date: 8-14-06