

1 SCHIFFRIN BARROWAY TOPAZ & KESSLER, LLP
Alan R. Plutzik, Of Counsel (Bar No. 077785)
2 Robert M. Bramson, Of Counsel (Bar No. 102006)
L. Timothy Fisher, Of Counsel (Bar No. 191626)
3 2125 Oak Grove Road, Suite 120
Walnut Creek, California 94598
4 Telephone: (925) 945-0770
Facsimile: (925) 945-8792
5

6 Lee D. Rudy
Michael C. Wagner
James A. Maro
7 280 King of Prussia Road
Radnor, PA 19087
8 Telephone: (610) 667-7706
Facsimile: (610) 667-7056
9

10 KELLER ROHRBACK L.L.P.
Lynn Lincoln Sarko
Juli E. Farris (Bar No. 141716)
11 Elizabeth A. Leland
12 1201 Third Avenue, Suite 3200
Seattle, WA 98101-3052
Telephone: (206) 623-1900
13 Facsimile: (206) 623-3394

14 *Counsel for Lead Plaintiffs*

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 SAN JOSE DIVISION

18 IN RE FOUNDRY NETWORKS, INC.
19 DERIVATIVE LITIGATION

Master File No. C-06-05598-RMW

20 THIS DOCUMENT RELATES TO:

**CONSOLIDATED DERIVATIVE
COMPLAINT**

21 All Actions
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1 **I. NATURE AND SUMMARY OF THE ACTION**

2 1. This is a shareholders' derivative action brought for the benefit of nominal
3 defendant Foundry Networks, Inc. ("Foundry" or the "Company") against certain members of
4 its Board of Directors (the "Board") and certain of its executive officers seeking to remedy
5 defendants' breaches of fiduciary duties, unjust enrichment, statutory violations and other
6 violations of law.

7 2. During at least four fiscal years, a majority of Foundry directors, together with its
8 top officers, engaged in a secret scheme to grant undisclosed, "in-the-money"¹ stock options to
9 themselves and others by backdating stock option grants to coincide with historically low
10 closing prices of Foundry's common stock. In fact, all twelve discretionary options granted
11 from May 22, 2000 through April 10, 2003 were backdated.

12 3. A stock option is the right to purchase a stock for a specified period of time at a
13 fixed price, called the "exercise price" or "strike price." The exercise price is generally fixed to
14 the market price of the stock on the date of the grant. If the stock's market price exceeds the
15 exercise price, the option holder may exercise the stock option, by purchasing the stock from
16 the Company at the exercise price, and reselling it at the higher market price, profiting from the
17 difference.

18 4. When the grant date of a stock option is manipulated to an earlier date on which
19 the stock closed at a lower price – i.e. when the stock option is "backdated" – the grantee pays
20 less for the stock and the corporation, the counterparty to the stock option grant, receives less
21 when the stock option is exercised. When stock options are backdated in this manner for the
22 benefit of insiders (as they were in this case), the stated purpose behind a stock option plan – to
23 strengthen the Company's ability to retain key employees and motivate such employees to
24 remain focused on long-term stockholder value performance – is undermined to the detriment of
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26 _____
27 ¹ "In-the-money" refers to when the exercise price of an option is below the market price of the
28 underlying stock.

1 the Company and its shareholders, because the granted stock options are already “in the
2 money.”

3 5. By engaging in this scheme, the Individual Defendants (as defined herein) were
4 able to conceal that Foundry was not recording material compensation expenses and was
5 materially overstating the Company’s net income and earnings for at least 2000 to 2006. In
6 addition to being unjustly enriched by the mere receipt of backdated options, from 2003 to
7 2006, certain of the Individual Defendants collectively realized over \$118 million in illicit
8 proceeds, partially through the exercise of these illegally backdated options grants and
9 subsequent sales of Foundry stock. By contrast, Foundry has suffered, and will continue to
10 suffer, significant financial and non-monetary damages and injuries, several of which were
11 identified in a report issued by the Center for Financial Research and Analysis on May 16,
12 2006, entitled “Options Backdating – Which Companies Are at Risk?”:

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

21 6. Moreover, according to Foundry’s proxy statements issued for years 2000 to
22 2003, which are discussed in more detail below, the overwhelming majority of the options
23 granted to the Option Recipient Defendants, identified below, have yet to expire. Thus, the
24 Option Recipient Defendants are in continued breach of their fiduciary obligations and the
25 opportunity for further unjust enrichment of the Option Recipient Defendants continues.

26 7. The Individual Defendants’ backdating scheme not only surreptitiously and
27 illegally lined their own pockets and caused Foundry to issue materially false financial
28

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

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

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

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

- 22 a. improperly backdate several grants of Foundry stock options to Foundry Chief
23 Executive Officer ("CEO") Bobby R. Johnson and several other Foundry
24 executives, in violation of the Company's shareholder-approved stock option
25 plans;
- 26 b. improperly record and account for the backdated stock options, in violation of
27 GAAP;

1 c. improperly take tax deductions based on the backdated stock options, in violation
2 of Section 162(m) of the Internal Revenue Code, 26 U.S.C. § 162(m) (“Section
3 162(m)”); and

4 d. produce and disseminate to Foundry shareholders and the market false financial
5 statements and other false SEC filings that improperly recorded and accounted for
6 the backdated option grants and concealed the improper backdating of stock
7 options.

8 11. On June 27, 2006, Foundry issued a press release announcing that it had received
9 a grand jury subpoena requesting documents related to its stock options grants as well as an
10 information inquiry letter from the SEC requesting similar documentation. The Company also
11 announced that it had authorized an internal review of its stock option grant practices.

12 12. Foundry eventually *admitted* that certain of its prior option grants were in fact
13 backdated. On September 22, 2006, Foundry issued a press release providing an update on the
14 Company’s review of its stock option grant practices and the Special Committee of the Board’s
15 (Special Committee”) preliminary findings, stating “The Special Committee has preliminarily
16 concluded that actual accounting measurement dates for certain stock option grants awarded
17 during the years 2000-2003 likely differ from recorded grant dates for such awards.”

18 13. On January 22, 2007, the Company issued a press release disclosing that “from
19 fiscal year 1999 through fiscal year 2005, the Company had unrecorded non-cash equity-based
20 compensation charges associated with its equity incentive plans...Accordingly, the Company
21 currently expects to record a pre-tax charge of approximately \$185 million to \$205 million for
22 fiscal years 1999 through 2005. The tax benefit associated with this charge is expected to be
23 approximately \$65 million to \$70 million for a total net charge of approximately \$120 million
24 to \$135 million “ (Foundry Networks Press Release, January 22, 2007; Exhibit 99.1 to Foundry
25 Form 8-K, filed January 22, 2007).

26 14. As discussed below, the Company has admitted that it "lacks contemporaneous
27 evidence supporting a substantial number of the record option grants" among the 107 grant
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1 dates it investigated. It further admits that "in a substantial number of cases" the Company's
2 CEO, Defendant Bobby Johnson, handpicked the grant dates and that then – CFO, Defendant
3 Heffner, oversaw the backdating based on Johnson's dates and, in fact, received options himself.
4 (Foundry Networks, January 22, 2007 Press Release).

5 15. As a result of Individual Defendants' egregious misconduct, Foundry has
6 sustained millions of dollars in damages, and the Option Recipient Defendants have garnered
7 millions of dollars in unlawful profits.

8 **II. JURISDICTION AND VENUE**

9 16. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 in that
10 this Complaint states a federal question. This Court has supplemental jurisdiction over the state
11 law claims asserted herein pursuant to 28 U.S.C. § 1367(a). This action is not a collusive one to
12 confer jurisdiction on a court of the United States which it would not otherwise have.

13 17. Venue is proper in this district because a substantial portion of the transactions
14 and wrongs complained of herein, including the defendants' primary participation in the
15 wrongful acts detailed herein, occurred in this district. One or more of the defendants either
16 resides in or maintains executive offices in this district, and defendants have received
17 substantial compensation in this district by engaging in numerous activities and conducting
18 business here, which had an effect in this district.

19 **III. PARTIES**

20 **A. Lead Plaintiffs**

21 18. Lead Plaintiffs Sunanda A. Desai, Jeanne McDonald and David M. Jackson are,
22 and were at all relevant times, shareholders of nominal defendant Foundry.

23 **B. Nominal Defendant**

24 19. Nominal defendant Foundry is a Delaware corporation with its principal executive
25 offices located at 4980 Great America Parkway, Santa Clara, California 95054. According to
26 its public filings, Foundry designs, develops, manufactures, markets and sells solutions to meet
27 the needs of high performance network infrastructures for Layer-2-7 switching and routing and
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1 wired and wireless local area networks, metropolitan area networks, and the worldwide web.
2 Foundry has deployed its networking products in key enterprise and High Performance
3 Computing (“HPC”) markets that include automotive, energy, retail, healthcare, banking,
4 trading, insurance, aerospace, government agencies, technology, motion picture, video and
5 animation, transportation, e-commerce and universities.

6 **C. Director Defendants**

7 20. Defendant Bobby R. Johnson, Jr. (“Johnson”) has served as the Company’s
8 President, CEO and Chairman of the Board since he co-founded the Company in 1996. Johnson
9 has received material compensation through his employment with the Company which totaled
10 \$2,567,067 from salary, bonuses, and all other compensation for years 2003 through 2005. As
11 the Company has admitted, as CEO, Johnson approved the stock options under all of the stock
12 option plans in place at Foundry, including the 1996 Plan, under which the backdated option
13 grants alleged herein occurred.

14 21. Defendant Alfred J. Amoroso (“Amoroso”) has served as a director of the
15 Company since October 2000 and as a member of the Audit Committee of the Board (“Audit
16 Committee”) since November 2001.

17 22. Defendant C. Nicholas Keating, Jr. (“Keating”) has served as a director of the
18 Company since October 2001, as a member of the Audit Committee since January 2001 and as
19 a member of the Compensation Committee of the Board (“Compensation Committee”) since
20 November 2001.

21 23. Defendant J. Steven Young (“Young”) has served as a director of the Company
22 since October 2000 and as a member of the Compensation Committee since November 2001.

23 24. Collectively, Defendants Johnson, Amoroso, Keating and Young are members of
24 Foundry’s Board, and are referred to herein as the “Director Defendants.”

25 **D. Option Recipient Defendants**

26 25. Defendant Laurence L. Akin (“Akin”) has served as the Company’s Senior Vice
27 President of Worldwide Sales since October 2002. Akin also served as the Company’s Vice
28

1 President of Sales for the Americas from April 2001 to September 2002 and as the Company's
2 Vice President of Sales Operations from November 2000 to March 2001.

3 26. Defendant Timothy D. Heffner ("Heffner") has served as the Company's Vice
4 President, Finance and Administration and Chief Financial Officer ("CFO") since November
5 1996. As CFO, Heffner approved the stock options under all of the stock option plans in place
6 at Foundry, including the 1996 Plan, under which the backdated option grants alleged herein
7 occurred. Indeed, following the Company's investigation of the backdating scheme alleged
8 herein, Heffner resigned from his position as CFO and Vice President Finance. The Board of
9 Directors has nevertheless retained Heffner as the Company's Vice President for Corporate
10 Development.

11 27. Defendant Ken K. Cheng ("Cheng") has served as the Company's Vice President
12 and General Manager, High Value Layer 2/3 Systems Business Unit since January 2003. Cheng
13 also served as the Company's Vice President of Marketing from December 1999 to December
14 2002, and as the Company's Vice President of Product and Program Management from July
15 1998 to November 1999.

16 28. Defendant John P. Burger ("Burger") has served as the Company's Vice President
17 of Hardware Engineering since July 2004. Prior to this position, Burger served as the
18 Company's Director of System Development. Burger joined the Company in 1999.

19 29. Defendant Benjamin D. Taft ("Taft") has served as the Company's Vice President
20 of Marketing Communications since July 2004. Taft joined the Company in September 1999.

21 30. Defendant Paul L. Twombly ("Twombly") has served as the Company's Vice
22 President of Customer Support since April 2001.

23 31. Defendant Richard W. Bridges ("Bridges") has served as the Company's Vice
24 President of Operations since August 2001.

25 32. Defendant Chandra Kopparapu ("Kopparapu") has served as the Company's Vice
26 President for Sales & Marketing, South Asia Pacific. Kopparapu joined the Company in 1999.

1 33. Defendant Ivy Pei Shan Hsu (“Hsu”) serves as the Company’s Vice President and
2 General Manager Service Provider Products.

3 34. Defendant Karl D. Triebes (“Triebes”) served as the Company’s Chief
4 Technology Officer and Vice President of Engineering from January 2003 to August 2004.
5 Triebes also served as the Company’s Vice President of Hardware Engineering from June 2001
6 to January 2003.

7 35. Defendant Lee Chen (“Chen”) served as a senior non-officer employee of the
8 Company from March 2003 to September 2004. Chen also served as the Company’s Vice
9 President, Software Engineering and Quality Assurance from October 1999 to March 2003, and
10 as the Company’s Director of Software Engineering from June 1996 to September 1999.

11 36. Defendant Robert W. Shackleton (“Shackleton”) served as the Company’s Vice
12 President of North American Sales from April 1997 to in or about 2001.

13 37. Defendant William S. Kallaos (“Kallaos”) served as the Company’s Vice
14 President of International Sales from April 1997 to December 2001.

15 38. Defendant Andrew K. Ludwick (“Ludwick”) served as a Director of the Company
16 from May 1999 until 2006. On March 7, 2006, Ludwick notified the Board that he would not
17 stand for re-election at the Company’s 2006 Annual Meeting. Ludwick served as a member of
18 the Audit Committee and Compensation Committee from 1999 to 2005.

19 39. Collectively, Defendants Johnson, Amoroso, Keating, Young, Akin, Heffner,
20 Cheng, Burger, Taft, Twombly, Bridges, Kopparapu, Hsu, Triebes, Chen, Shackleton, Kallaos
21 and Ludwick are referred to herein as the “Option Recipient Defendants.”

22 **E. Individual Defendants**

23 40. Collectively, the Director Defendants and the Option Recipient Defendants are
24 referred to herein as the “Individual Defendants.”

25 **IV. DUTIES OF THE INDIVIDUAL DEFENDANTS**

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

10 42. The Individual Defendants, because of their positions of control and authority as
11 directors and/or officers of the Company, were able to and did, directly and/or indirectly,
12 exercise control over the wrongful acts complained of herein.

13 43. To discharge their duties, the officers and directors of the Company were required
14 to exercise reasonable and prudent supervision over the management, policies, practices, and
15 controls of the Company. By virtue of such duties, the officers and directors of the Company
16 were required to, among other things:

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

1 d. exercise good faith in ensuring that the Company's financial statements were
2 prepared in accordance with GAAP; and

3 e. refrain from unduly benefiting themselves and other Company insiders at the
4 expense of the Company.

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

12 a. make and keep books, records, and accounts, which, in reasonable detail,
13 accurately and fairly reflect the transactions and dispositions of the assets of the
14 issuer; and

15 b. devise and maintain a system of internal accounting controls sufficient to provide
16 reasonable assurances that:

17 i. transactions are executed in accordance with management's general or
18 specific authorization; and

19 ii. transactions are recorded as necessary to permit preparation of financial
20 statements in conformity with GAAP.

21 45. In addition to the applicable duties of care, loyalty and good faith imposed by
22 applicable state laws, Foundry maintains a Code of Ethics, which was adopted by Foundry's
23 Board of Directors, and which was violated by the backdating scheme alleged herein. The Code
24 of Ethics states in part:

25 Pursuant to the Sarbanes-Oxley Act of 2002, and the rules of the SEC and
26 the Nasdaq Stock Market, this Code contains standards for the ethical
27 handling of actual or apparent conflicts of interest between personal and
28 professional relationships; compliance with applicable laws, and accurate
and timely public disclosure. It is applicable to all employees, officer and
directors of the Company.

1 3. Public Company Reporting

2 The Company expects employees, officers and directors to take this
3 responsibility [the Company's filings with the SEC] seriously and to
4 provide prompt and accurate answers to inquiries related to the Company's
5 public disclosure requirements

* * *

6 8. Accountability

7 You will be held accountable for your adherence to this Code. If you are
8 an employee, your failure to observe the terms of this Code may result in
9 disciplinary action, up to and including termination of employment.

Code of Ethics, available at www.foundrynet.com.

10 46. As described in more detail in Section V below, Foundry's Audit Committee
11 Charter provides a list of the Audit Committee's responsibilities and duties which include,
12 among other things:

- 13 a. fulfilling the purpose of the Audit Committee by:
 - 14 i. overseeing the accounting and financial reporting processes, and the
15 internal and external audits of the Company;
 - 16 ii. providing the Board of Directors the results of its examinations and
17 recommendations derived therefrom;
 - 18 iii. outlining to the Board improvements made, or to be made, in internal
19 accounting controls; and
 - 20 iv. providing the Board such additional information and materials as it may
21 deem necessary to make the Board aware of significant financial matters
22 which require Board attention;
- 23 b. meeting separately with the Chief Executive Officer and separately with the Chief
24 Financial Officer of the Company at least quarterly to review the financial affairs
25 of the Company;
- 26 c. meeting with the independent accountants of the Company at least once quarterly,
27 including upon the completion of the annual audit, outside the presence of
28

1 management, and at such other times as it deems appropriate to review the
2 independent accountants' examination and management report; and

- 3 d. taking such actions as may be necessary or desirable to comply with the
4 applicable rules and regulations promulgated under the Sarbanes-Oxley Act or by
5 the SEC or the Nasdaq National Market or by any other applicable governmental
6 agency.

7 V. FACTUAL ALLEGATIONS

8 A. Background

9 47. Under accounting rules in effect prior to 2004, public companies in the United
10 States were permitted to grant stock options to employees without recording an expense, so long
11 as the options' strike price was at or above the market's closing price for the stock on the day
12 the options were granted. If the option granted was priced below the market price on the date
13 granted, known as an "in the money" options grant, SEC regulations required that any publicly
14 traded company recognize and record the difference as a compensation expense in its financial
15 statements. *See, e.g.*, APB 25, superseded in 2004 by FAS 123(R). Accounting rules also
16 required that companies recognize the same compensation expense if "in the money" options
17 were granted to non-employees. Thus while "in the money" stock options are more valuable to
18 those to whom they are granted, the additional expenses, if disclosed, reduce the total amount of
19 net income reported to shareholders of a publicly traded company.

20 48. Stock options granted to company insiders must be approved in advance by the
21 Company's Board of Directors and disclosed in order to comply with SEC regulations and
22 reporting requirements. *See, e.g.*, Regulation S-K. Such approval can be extended through pre-
23 approval of a prescribed option grant plan or through discretionary grants that are individually
24 reviewed and approved.

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

3 50. On information and belief, the Compensation Committee members, including
4 Defendants Keating and Young, who issued the grants and the Option Recipient Defendants
5 who received each grant would review historical stock prices before issuing stock options to
6 determine the date upon which stock prices were significantly below the current market price.
7 They would then falsify the relevant documents to make it appear as if the stock options were
8 granted on the earlier date.

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

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

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

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

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

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

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

25 Charles Forelle and James Bandler, *The Perfect Payday*, The Wall Street Journal, March 18,
26 2006.

27 55. Since the date of The Wall Street Journal article, more than 130 companies have
28 reported internal and/or governmental investigations of their backdating practices. *Perfect
Payday Options Scorecard*, The Wall Street Journal (updated regularly, available at
<http://online.wsj.com/public/resources/documents/info-optionscore06-full.html>).

1 56. Additional research by Professor Lie suggests that between 1996– and 2005,
2 18.9% of unscheduled “in the money” option grants to top executives were backdated or
3 manipulated, by nearly one-third of the companies investigated.

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

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

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

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

28 59. Like the stock options examined by The Wall Street Journal, the pattern of option
grants to the Foundry Option Recipient Defendants is more than randomly fortuitous. The more

1 likely reason for the extraordinary pattern exhibited by Foundry is that the Option Recipient
2 Defendants' stock options were improperly backdated, as alleged herein.

3 **B. The Foundry Stock Option Plan**

4 60. According to the Company's Proxy statements for the time period 2000 to 2003,
5 Foundry maintained four active stock plans for employees, consultants and directors: the 1996
6 Stock Plan (the "1996 Plan" or the "Plan"), the 1999 Employee Stock Purchase Plan, the 1999
7 Directors' Stock Option Plan (the "Directors' Plan") and the 2000 Non-Executive Stock Option
8 Plan (the "2000 Plan"). The 1996 Plan permits issuance of both incentive stock and non-
9 statutory stock options to officers.² Only non-statutory stock options may be issued under the
10 Directors' Plan and the 2000 Plan. The 2000 Plan was adopted by the board of directors in
11 November 2000 and permits options grants to employees and consultants of the Company
12 except officers and directors.³

13 61. During the relevant time period, Plaintiffs believe and therefore allege that all
14 stock options granted by the Company to the Option Recipient Defendants were granted under
15 the 1996 Plan. See Foundry 2000 Proxy Statement, Form DEF 14A (filed April 26, 2001);
16 Foundry 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002); Foundry 2002 Proxy
17 Statement, Form DEF 14A (filed April 30, 2003); Foundry 2003 Proxy Statement, Form DEF
18 14A (filed April 30, 2004).

19
20 ² Under the Foundry Networks, Inc. 1996 Stock Plan, an "incentive stock option" means an
21 option intended to qualify as an incentive stock option within the meaning of I.R.C. § 422, 26
22 U.S.C. § 422, as designated in an applicable written option agreement; a "nonstatutory stock
23 option" means an option not intended to qualify as an incentive stock option, as designated in
an applicable written option agreement. Plan § (2)(o), (r).

24 ³ As of April 28, 2006, the Company's Board of Directors adopted the Foundry Networks, Inc.
25 2006 Stock Incentive Plan (the "2006 Plan") which became effective on June 16, 2006 upon its
26 approval by the Company's stockholders. The 2006 Stock Plan replaces the 1996 Plan and no
27 further grants will be made under the 1996 Plan. Employees (including executive officers) and
28 consultants of the Company, and any parent, subsidiary or affiliate of the Company, as well as
non-employee directors of the Company are eligible to participate in the 2006 Plan. See
Foundry Press Release, Form 8-K (filed June 22, 2006).

1 62. Thus, for the purposes of this action, the effective stock option plan is the
2 Foundry Networks, Inc. 1996 Stock Plan.⁴ The 1996 Plan was originally adopted by the Board
3 and approved by the Company's stockholders in July 1996. See Foundry Registration
4 Statement, Form S-1 (filed September 9, 1999).

5 63. According to its filings with the SEC, the Company's compensation policy "is
6 designed to attract and retain qualified executives critical to the Company's growth and long-
7 term success." See 2000 Proxy Statement, Form DEF 14A (filed April 26, 2001); Foundry 2001
8 Proxy Statement, Form DEF 14A (filed April 30, 2002); 2002 Proxy Statement, Form DEF 14A
9 (filed April 30, 2003); 2003 Proxy Statement, Form DEF 14A (filed April 30, 2004).

10 Moreover:

11 "[t]he Company's compensation philosophy for executive officers serves
12 two principal purposes: (i) to provide a total compensation package for
13 executive officers that is competitive with the current market for executive
14 talent and enables the Company to attract and retain key executive and
employee talent needed to achieve the Company's business objectives and
(ii) to link overall executive compensation to improvements in Company
performance."

15
16 *Id.*

17 64. The Company awarded substantial stock option grants to its executive officers:
18 "the Company has relied substantially on long-term equity-based compensation as the principal
19 means of compensating and incentivizing its executive officers." *Id.*

20 ⁴ Unless otherwise specified, references are to the Foundry Networks, Inc. 1996 Stock Plan (the
21 "1996 Plan" or the "Plan"). See Company's 1999 Proxy Statement, Form DEF 14A (filed June
22 28, 2000); Company's 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002). Plaintiffs
23 believe that, except where indicated, the relevant provisions of the Plan remained the same
24 during the relevant time period until the Plan was replaced by the 2006 Plan as discussed *supra*
25 at n.3. During the relevant time period, the Company also maintained the Foundry Networks,
26 Inc. 1999 Directors' Stock Option Plan (the "Directors' Plan"), which provided for each non-
27 employee Director to receive an automatic grant of an option to purchase 225,000 shares of
common stock upon appointment or election and annual grants to purchase 60,000 shares of
28 common stock. The Directors' Plan provides that the exercise price of all stock options is to
equal to the fair market value of a share of common stock on the date of grant of the option.
The Foundry Networks, Inc. 1999 Directors' Stock Option Plan is attached as an Exhibit to the
Company's 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002).

1 65. Under the effective Plan documents during the relevant period, it is the
2 Administrator who has authority to determine the “Fair Market Value of the Common Stock;”
3 however in accordance with Plan provision § (2)(n), the “Fair Market Value” means, as of any
4 date, the fair market value of Foundry common stock is determined by one of the following
5 methods: (i) the closing sales price for the stock on any established stock exchange or national
6 market system; (ii) if no closing price is reported, the mean between the high and low asked
7 prices for the stock on the last market trading day prior as reported in The Wall Street Journal;
8 or (iii) in good faith by the Administrator in the absence of an established market for Foundry
9 stock. See 1996 Plan § (2)(n)(i)-(iii) (as amended through July 8, 1999), attached as Exhibit
10 10.1 to Foundry Registration Statement S-1 (filed July 9, 1999); see also 1996 Plan § (2)(n)(i)-
11 (iii) (as amended August 11, 2000), attached as exhibit to 1999 Proxy Statement Form DEF
12 14A (filed June 28, 2000) (containing identical language); 1996 Plan § (2)(n)(i)-(iii) (as
13 amended June 14, 2002), attached as exhibit to 2001 Proxy Statement Form DEF 14A (filed
14 April 30, 2002) (same).

15 66. Thus, as Foundry common stock was traded on the NASDAQ during the entire
16 relevant time period, the fair market value of stock options granted to Defendants were required
17 to have a grant price equal to the NASDAQ closing price of Foundry common stock on the day
18 of the grant under the Plan.

19 67. As detailed below, for those stock options granted between 2000 and 2003, the
20 Company’s proxy statements represent that the exercise price per share of each option was
21 equal to the fair market value of the Company’s common stock on the date of grant. See
22 Foundry 2000 Proxy Statement, Form DEF 14A (filed April 26, 2001) (“the exercise price per
23 share of each option was equal to the fair market value of our common stock on the date of
24 grant based on the closing price of the Company’s common stock as listed on the Nasdaq
25 National Market on that date.”); Foundry 2001 Proxy Statement, Form DEF 14A (filed April
26 30, 2002) (stating that “the exercise price per share of each option was equal to the fair market
27 value of our common stock on the date of grant as determined by our Board of Directors”);
28

1 Foundry 2002 Proxy Statement, Form DEF 14A (filed April 30, 2003) (same); Foundry 2003
2 Proxy Statement, Form DEF 14A (filed April 30, 2004) (“options were granted at an exercise
3 price equal to the fair market value of our common stock on the date of grant.”).

4 68. Foundry’s proxy statements for the relevant period also reveal that “the Company
5 generally issues non-statutory stock options under both the 1996 Plan and 2000 Plan, and *all*
6 *incentive stock options under the 1996 Plan at 100% of fair market value.*” See e.g. Foundry
7 2003 Proxy Statement, Form DEF 14A (filed April 30, 2004) (emphasis added).

8 69. Furthermore, “[i]t is the Company’s practice to set option exercise prices for
9 officers *at not less than 100% of the fair market value of the Company’s common stock on*
10 *the date of grant.*” Foundry 2000 Proxy Statement, Form DEF 14A (filed April 26, 2001);
11 Foundry 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002); Foundry 2002 Proxy
12 Statement, Form DEF 14A (filed April 30, 2003); Foundry 2003 Proxy Statement, Form DEF
13 14A (filed April 30, 2004) (emphasis added).

14 70. As detailed in Section VII below, the Company’s annual reports filed with the
15 SEC reiterate this representation: “Incentive stock options granted under the Plan must be
16 issued at a price at least equal to the fair market value of Foundry’s common stock at the date of
17 grant.” See 2000 Annual Report, Form 10-K (filed March 29, 2001); 2001 Annual Report,
18 Form 10-K (filed April 1, 2002); 2002 Annual Report, Form 10-K (filed March 31, 2003); 2003
19 Annual Report, Form 10-K (filed March 15, 2004) (and adding “[i]n 2003 and 2002, all options
20 grants under the Plan were granted at a price equal to the fair market value of our common stock
21 on the date of grant”).

22 71. The 1996 Plan permitted grants of stock options, up to a specified maximum, at
23 the discretion of the administrator, each fiscal year to officers or key employees of the Company
24 or an affiliate of the Company.

25 72. According to Foundry’s Proxy Statements for the relevant period, the Plan and,
26 more specifically, the grant of stock options under the Plan, were administered by the
27
28

1 Compensation Committee of the Foundry Networks, Inc. Board of Directors. The 1996 Plan
2 gave broad powers to the Compensation Committee, as set forth below.

3 **C. The Foundry Compensation Committee**

4 73. The Plan is “administered by the Board or a Committee, or a combination thereof,
5 as determined by the Board.” Plan at § (4)(a). Thus, under the Plan, either the Board, or a
6 committee to the extent such duties were delegated by the Board, had the following authority:

7 (i) to determine the Fair Market Value of the Common Stock, in
8 accordance with Section 2(n) of the Plan;

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

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

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

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

14 (vi) to determine the terms and conditions (including, without limitation,
15 vesting schedules), not inconsistent with the terms of the Plan, of any
award granted hereunder;

16 (vii) to determine whether and under what circumstances an Option may
17 be settled in cash under Section 10(f) instead of Common Stock;

18 (viii) to reduce the exercise price of any Option to the then current Fair
19 Market Value if the Fair Market Value of the Common Stock covered by
such Option shall have declined since the date the Option was granted;

20 (ix) to determine the terms and restrictions applicable to Stock Purchase
21 Rights and the Restricted Stock purchased by exercising such Stock
Purchase Rights;

22 (x) to construe and interpret the terms of the Plan and awards granted
pursuant to the Plan; and

23 (xi) in order to fulfill the purposes of the Plan and without amending the
24 Plan, to modify grants of Options or Stock Purchase Rights to participants
25 who are foreign nationals or employed outside of the United States in
order to recognize differences in local law, tax policies or customs.

26 Plan § (4)(c)(i)-(xi).

1 74. According to the Company's proxy statements for the relevant period, the
2 Foundry Board of Directors had delegated the primary authority for administration of the 1996
3 Plan to the Compensation Committee: "[t]he compensation committee establishes and
4 administers the Company's policies regarding annual executive salaries, cash incentives, and
5 equity incentive plans." See Foundry 2000 Proxy Statement, Form DEF 14A (filed April 26,
6 2001); Foundry 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002); Foundry 2002
7 Proxy Statement, Form DEF 14A (filed April 30, 2003); Foundry 2003 Proxy Statement, Form
8 DEF 14A (filed April 30, 2004).

9 75. Furthermore, the Compensation Committee:

10 reviews, recommends and approves changes to the Company's
11 compensation policies and benefits programs, establishes and monitors
12 specific compensation levels for executive officers, administers the
13 Company's stock option plans, including approving stock option grants,
 and otherwise seeks to ensure that the Company's compensation
 philosophy is consistent with the Company's best interests and is properly
 implemented.

14 *Id.*

15 76. The Compensation Committee purportedly considered various criteria for
16 determining the number stock options to grant officers and under what vesting schedules,
17 including: (i) the individual officers' responsibilities; (ii) their expected future contributions to
18 the Company; (iii) the number of shares owned by the officer which are not subject to vesting;
19 (iv) the number of shares or options held by the officer which continue to be subject to vesting
20 and the vesting schedules and exercise prices of such options; (v) the level of equity incentives
21 held by each officer relative to other officers' equity positions and their tenure, responsibilities,
22 experience and value to the Company." See Foundry 2000 Proxy Statement, Form DEF 14A
23 (filed April 26, 2001); Foundry 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002);
24 Foundry 2002 Proxy Statement, Form DEF 14A (filed April 30, 2003); Foundry 2003 Proxy
25 Statement, Form DEF 14A (filed April 30, 2004).

26 77. During the relevant period, Defendants Young, Keating and Ludwick served on
27 the Compensation Committee. See Foundry 2000 Proxy Statement, Form DEF 14A (filed April
28

1 26, 2001); Foundry 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002); Foundry
2 2002 Proxy Statement, Form DEF 14A (filed April 30, 2003); Foundry 2003 Proxy Statement,
3 Form DEF 14A (filed April 30, 2004).

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

7 **D. The Foundry Audit Committee**

8 79. During the relevant period, Defendants Keating, Amoroso and Ludwick served on
9 the Audit Committee, which was to be comprised of at least three directors who satisfied the
10 independence and experience requirements of the Company and applicable NASDAQ rules. As
11 of the 2000 Proxy Statement, the Charter for the Audit Committee of the Board of Directors of
12 Foundry Networks, Inc. ("2000 Audit Committee Charter") also required that at least one
13 member of the committee have past employment experience in finance or accounting, including
14 a current or past position as a chief executive, financial officer or other senior officer with
15 financial oversight responsibilities. *See* 2000 Audit Committee Charter, attached as Appendix
16 A to the Company's 2000 Proxy Statement, Form DEF 14A (filed April 26, 2001). The 2002
17 Audit Committee Charter filed with the Company's 2002 Proxy Statement, contains no such
18 requirement. *See* Charter for the Audit Committee of the Board of Directors of Foundry
19 Networks, Inc. ("2002 Audit Committee Charter"), 2002 Proxy Statement, Form DEF 14A
20 (filed April 30, 2003).

21 80. The Board's Audit Committee is responsible, among other things, for monitoring
22 the Company's financial reporting, including compensation reporting. Indeed, the stated
23 purpose of the Audit Committee was as follows in the 2000 Audit Committee Charter:

24 The purpose of the Audit Committee of the Board of Directors of Foundry
25 Networks, Inc. and its subsidiaries (the "Company"), shall be to make
26 such examinations as are necessary to monitor the Company's system of
27 internal controls, to provide the Company's Board of Directors with the
28 results of its examinations and recommendations derived therefrom, to
outline to the Board of Directors improvements made, or to be made, in
internal accounting controls, to nominate independent auditors and to
provide to the Board of Directors such additional information and

1 materials as it may deem necessary to make the Board of Directors aware
2 of significant financial matters which require the Board of Director's
attention.

3 In addition, the Audit Committee will undertake those specific duties and
4 responsibilities listed below and such other duties as the Board of
Directors from time to time prescribe.

5 2000 Audit Committee Charter, attached as Appendix A to the Company's 2000 Proxy
6 Statement, Form DEF 14A (filed April 26, 2001).

7 81. The stated purpose in the 2002 Audit Committee Charter is somewhat altered:

8 The purpose of the Audit Committee established by this charter will be to
9 oversee the accounting and financial reporting processes, and the internal
10 and external audits of Foundry Networks, Inc. (the "Company"), to
11 provide to the Board of Directors (the "Board") the results of its
12 examinations and recommendations derived therefrom, to outline to the
13 Board improvements made, or to be made, in internal accounting controls,
14 to appoint, compensate and oversee the Company's independent
15 accountants, to supervise the finance function of the Company (which will
16 include, among other matters, the Company's investment activities) to
engage and compensate independent counsel and other advisors as it
17 deems necessary to carry out its duties, to grant pre-approvals of audit
services and non-audit services, to establish procedures for the
18 confidential, anonymous submission by employees of the Company of
19 concerns regarding questionable accounting, internal accounting controls
20 or auditing matters and the receipt, retention and treatment of such
21 complaints, and to provide the Board such additional information and
22 materials as it may deem necessary to make the Board aware of significant
23 financial matters which require Board attention.

24 2002 Audit Committee Charter, attached as Appendix A to 2002 Proxy Statement, Form DEF
25 14A (filed April 30, 2003).

26 82. The 2000 Audit Committee Charter provides the Audit Committee with broad
27 authority and responsibility for the Company's financial reporting, including the following:

- 28 1. Reviewing on a continuing basis the adequacy of the Company's system
of internal controls;
2. Reviewing the independent auditors' proposed audit scope and
approach;
3. Reviewing and providing guidance with respect to the external audit
and the Company's relationship with its external auditors by (i) selecting
and evaluating the performance of the independent auditors; (ii) reviewing
the independent auditors' fee arrangements, proposed audit scope and
approach; (iii) obtaining a statement from the independent auditors
regarding relationships and services with the Company which may impact
independence and presenting this statement to the board, and to the extent

1 there are relationships, monitoring and investigating them; (iv) reviewing
2 the independent auditors' peer review conducted every three years; and (v)
3 discussing with the Company's independent auditors the financial
4 statements and audit findings, including any significant adjustments,
5 management judgments and accounting estimates, significant new
6 accounting policies and disagreements with management and any other
7 matters described in SAS No. 61, as may be modified or supplemented;

8 4. Conducting a post-audit review of the financial statements and audit
9 findings, including any significant suggestions for improvements provided
10 to management by the independent auditors;

11 5. Reviewing before release, and recommending to the Board of Directors
12 for inclusion in the Company's annual report on Form 10-K, the audited
13 financial statements and Management's Discussion and Analysis of
14 Financial Condition and Results of Operations;

15 6. Ensuring that the Company's independent auditors review the
16 Company's interim financial statements included in quarterly reports on
17 Form 10-Q, using professional standards and procedures for conducting
18 such reviews;

19 7. Reviewing before release the unaudited quarterly operating results in
20 the Company's quarterly earnings release;

21 8. Overseeing compliance with the requirements of the Securities and
22 Exchange Commission for disclosure of auditor's services and audit
23 committee members and activities;

24 9. Reviewing management's monitoring of compliance with the
25 Company's standards of business conduct and with the Foreign Corrupt
26 Practices Act;

27 10. Reviewing, in conjunction with counsel, any legal matters that could
28 have a significant impact on the Company's financial statements;

11. Providing oversight and review of the Company's asset management
policies, including an annual review of the Company's investment policies
and performance for cash and short-term investments;

12. Reviewing the Company's compliance with employee benefit plans;

13. Overseeing and reviewing the Company's policies regarding
information technology and management information systems;

14. If necessary, instituting special investigations and, if appropriate,
hiring special counsel or experts to assist;

15. Reviewing related party transactions for potential conflicts of interest;

16. Reviewing its own structure, processes and membership requirements;

1 17. Providing a report in the Company's proxy statement in accordance
2 with the requirements of Item 306 of Regulation S-K and Item 7(e)(3) of
Schedule 14A; and

3 18. Performing other oversight functions as requested by the full Board of
4 Directors.

5 In addition to the above responsibilities, the Audit Committee will
undertake such other duties as the Board of Directors delegates to it.

6 2000 Audit Committee Charter, attached as Appendix A to the Company's 2000 Proxy
7 Statement, Form DEF 14A (filed April 26, 2001).

8 83. The 2002 Audit Committee Charter provides that:

9 In addition to the responsibilities describe elsewhere in this Charter the
10 Audit Committee shall take such actions as may be necessary or desirable
11 to comply with applicable rules and regulations promulgated under the
Sarbanes-Oxley Act or by the SEC or the Nasdaq National Market or by
any other applicable government agency.

12 In addition, the Audit Committee will undertake such other duties as the
13 Board delegates to it or that are required by other applicable laws, rules
and regulations.

14 2002 Audit Committee Charter, attached as Appendix A to 2002 Proxy Statement, Form DEF
15 14A (filed April 30, 2003).

16 84. As members of the Audit Committee, Defendants Keating, Amoroso and Ludwick
17 had a duty to know and understand the material information regarding stock option grants as set
18 out in the Audit Committee's charter including oversight of the integrity of the Company's
19 financial statements and the Company's compliance with legal and regulatory requirements, and
20 assisting the Board of Directors in its oversight of the Company's financial reporting, among
21 other duties.

22 85. The members of the Audit Committee knew or should have known that Foundry's
23 financial statements contained materially false or misleading statements and made and/or
24 omitted material facts regarding Defendants' options backdating practices.

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

26 86. Pursuant to Accounting Principles Board Opinion No. 25 ("APB 25), the
27 applicable GAAP provision at the time of the foregoing stock option grants, if the market price
28

1 on the date of grant exceeds the exercise price of the options, the Company must recognize the
2 difference as an expense.

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

13 88. From 2000 to 2003, the Compensation Committee, which, according to the
14 Company's proxy statements, was responsible for making "recommendations to the Board
15 concerning the granting of options under the Company's 1996 Stock Option Plan," with the
16 knowledge and approval of the other members of the Board, knowingly and deliberately
17 violated the terms of the 1996 Plan, APB 25 and Section 162(m) by knowingly and deliberately
18 backdating grants of stock options to make it appear as though the grants were made on dates
19 when the market price of Foundry stock was lower than the market price on the actual grant
20 dates, thereby unduly benefiting the recipients of the backdated options.

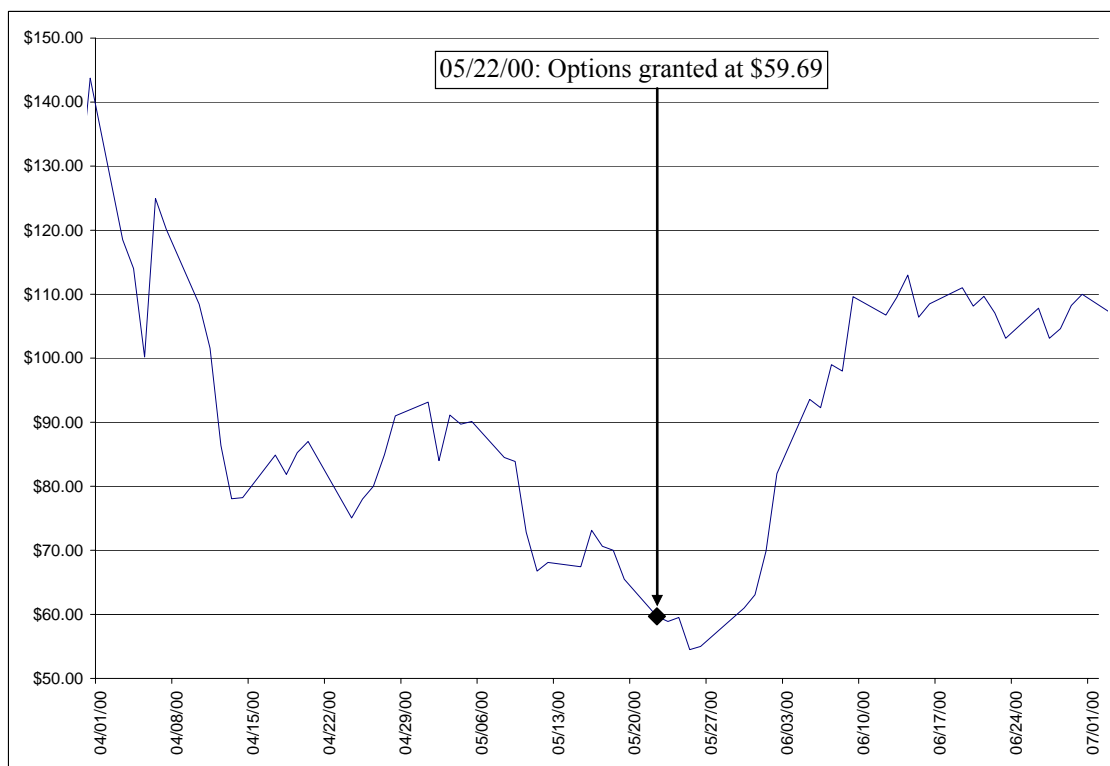
21 89. The members of the Board who were not on the Compensation Committee had
22 actual knowledge of the backdating and knew that it violated the terms of the 1996 Plan, APB
23 25 and Section 162(m). All of the members of the Board knew that the publicly reported grant
24 dates and statements that the Company followed APB 25 and granted options with exercise
25 prices equal to the fair market value of Foundry stock on the date of grant were false because
26 the grants were in fact backdated. The entire Board knowingly and deliberately approved the
27
28

1 backdating scheme with knowledge of its consequences, *e.g.*, its effects on Foundry’s financial
 2 statements.

3 **1. Fiscal Year 2000 Option Grants**

4 90. Shackleton, Kallaos, Chen and Cheng, four of the five most highly compensated
 5 executives at the time, were purportedly granted stock options by the Compensation Committee
 6 on May 22, 2000, at an exercise price of \$59.69, *one of the lowest prices of Foundry stock for*
 7 *the second fiscal quarter of 2000.* Indeed, in ten trading days following the purported grant
 8 date the Foundry stock price increased 65.86%, and by the end of the fiscal quarter, the price of
 9 Foundry stock increased to \$111.00 – *an 86% increase*, as demonstrated in the following graph:

10 **Second Fiscal Quarter of Fiscal Year 2000**

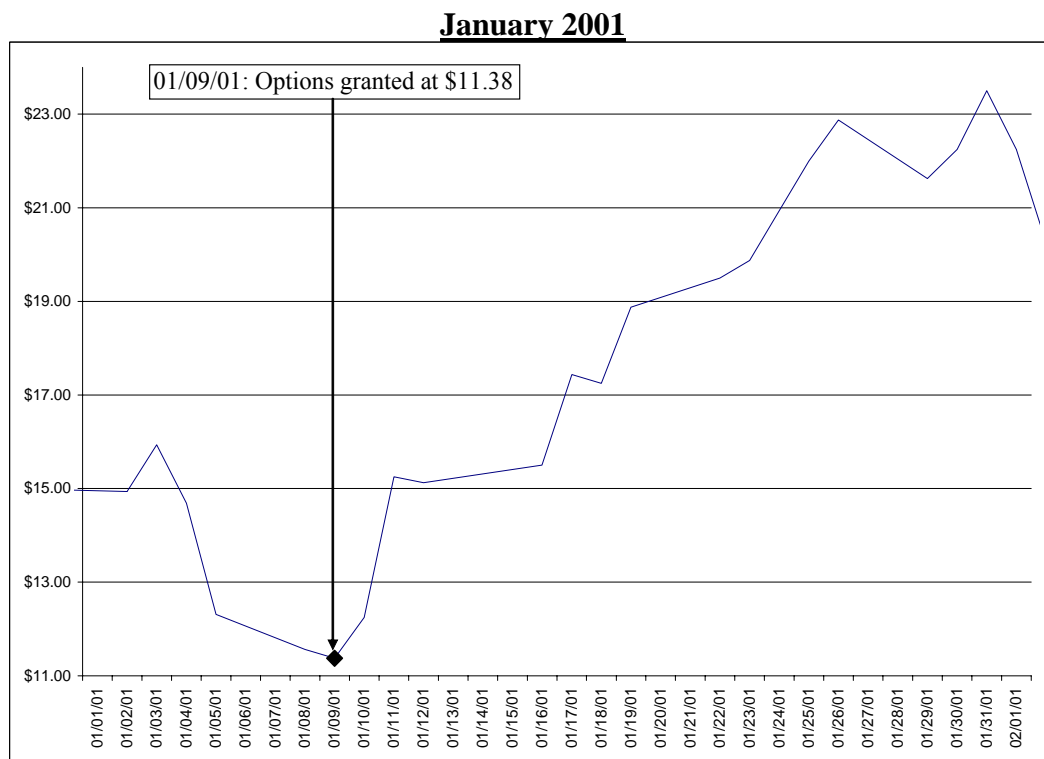


23

Purported Grant Date	Name	Exercise Price	Number of Options
05/22/00	Shackleton	\$59.69	80,000
	Kallaos	\$59.69	80,000
	Chen	\$59.69	200,000
	Cheng	\$59.69	80,000

2. Fiscal Year 2001 Option Grants

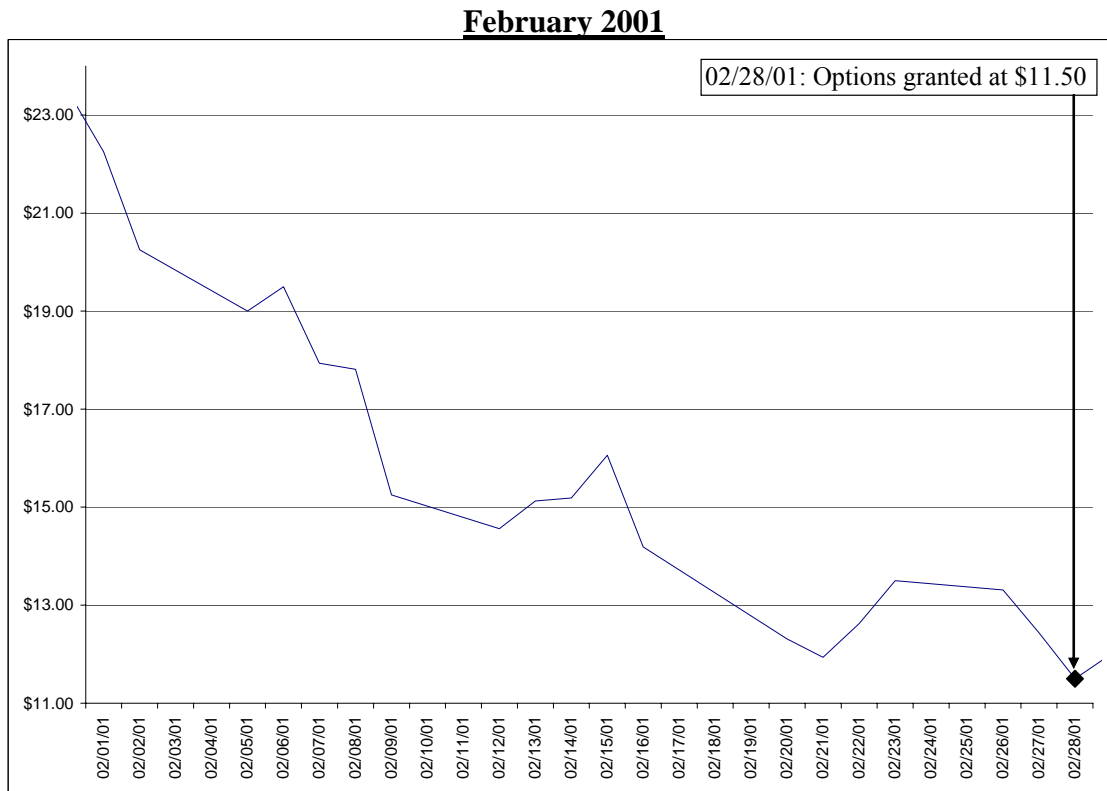
91. At least six Option Recipient Defendants were purportedly granted stock options by the Compensation Committee on January 9, 2001, at an exercise price of \$11.38, *the lowest price for Foundry stock for the entire month*. Indeed, in ten trading days following the purported grant date the Foundry stock price increased 84%, as demonstrated in the following graph:



Purported Grant Date	Name	Exercise Price	Number of Options
01/09/01	Akin	\$11.38	42,500
	Kallaos	\$11.38	85,000
	Chen	\$11.38	85,000
	Cheng	\$11.38	85,000
	Hsu	\$11.38	at least ⁵ 4,000
	Kopparapu	\$11.38	at least 9,846

⁵ Throughout the Complaint, where the total number of options is unknown, *i.e.* where the phrase “at least” is utilized, the stock option grant did not appear in any proxy statements filed by the Company but were first disclosed in Form 4 filings, which only included the number of options that were exercised on the transaction date and the exact number of options granted could not be ascertained.

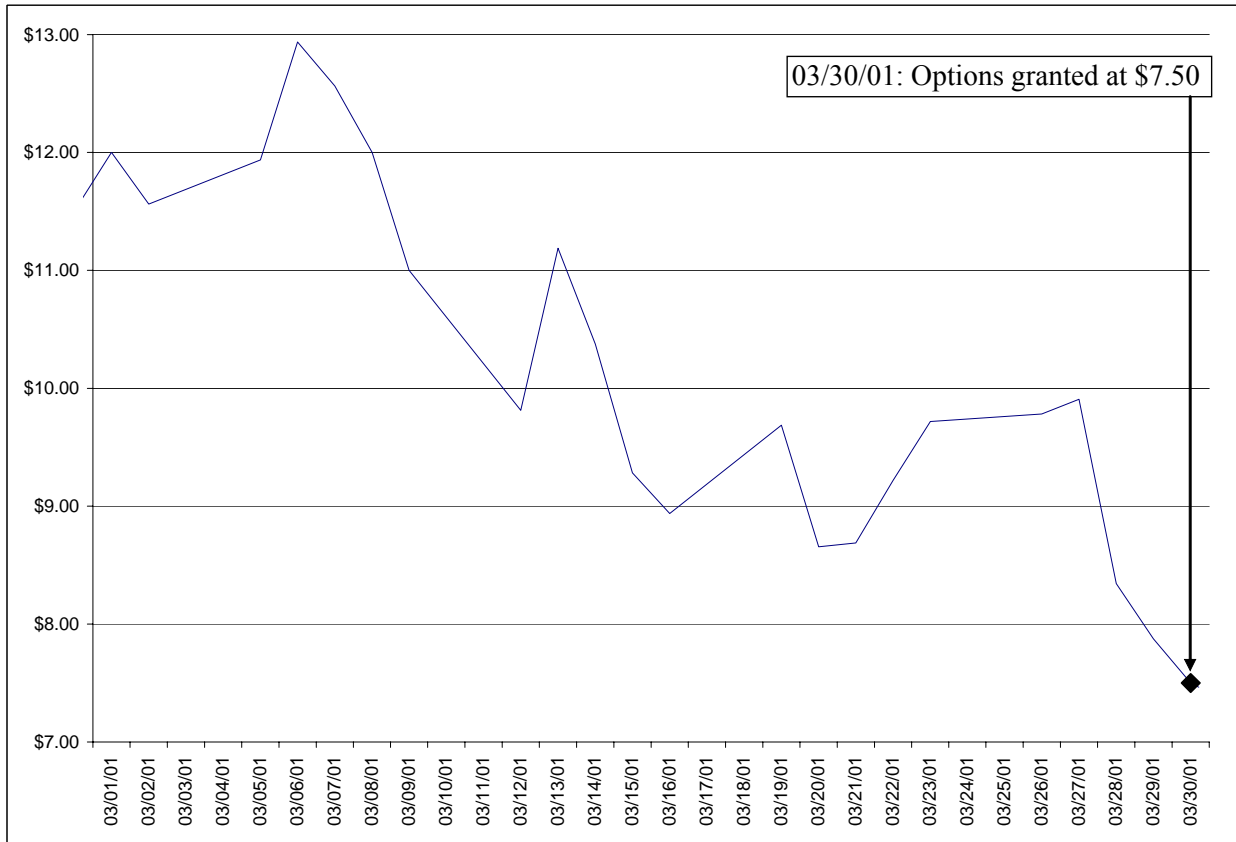
92. Amoroso, Keating, Young and Ludwick were purportedly granted stock options by the Compensation Committee on February 28, 2001, at an exercise price of \$11.50, *the lowest price for Foundry stock for the entire month of February*, as demonstrated below:



Purported Grant Date	Name	Exercise Price	Number of Options
02/28/01	Amoroso	\$11.50	112,500
	Keating	\$11.50	112,500
	Young	\$11.50	112,500
	Ludwick	\$11.50	20,000

93. Akin and Kallaos were purportedly granted stock options by the Compensation Committee on March 30, 2001, at an exercise price of \$7.50, *the lowest price for Foundry stock for the entire month of March*. Indeed, in ten trading days following the purported grant date the Foundry stock price increased 23.2%.

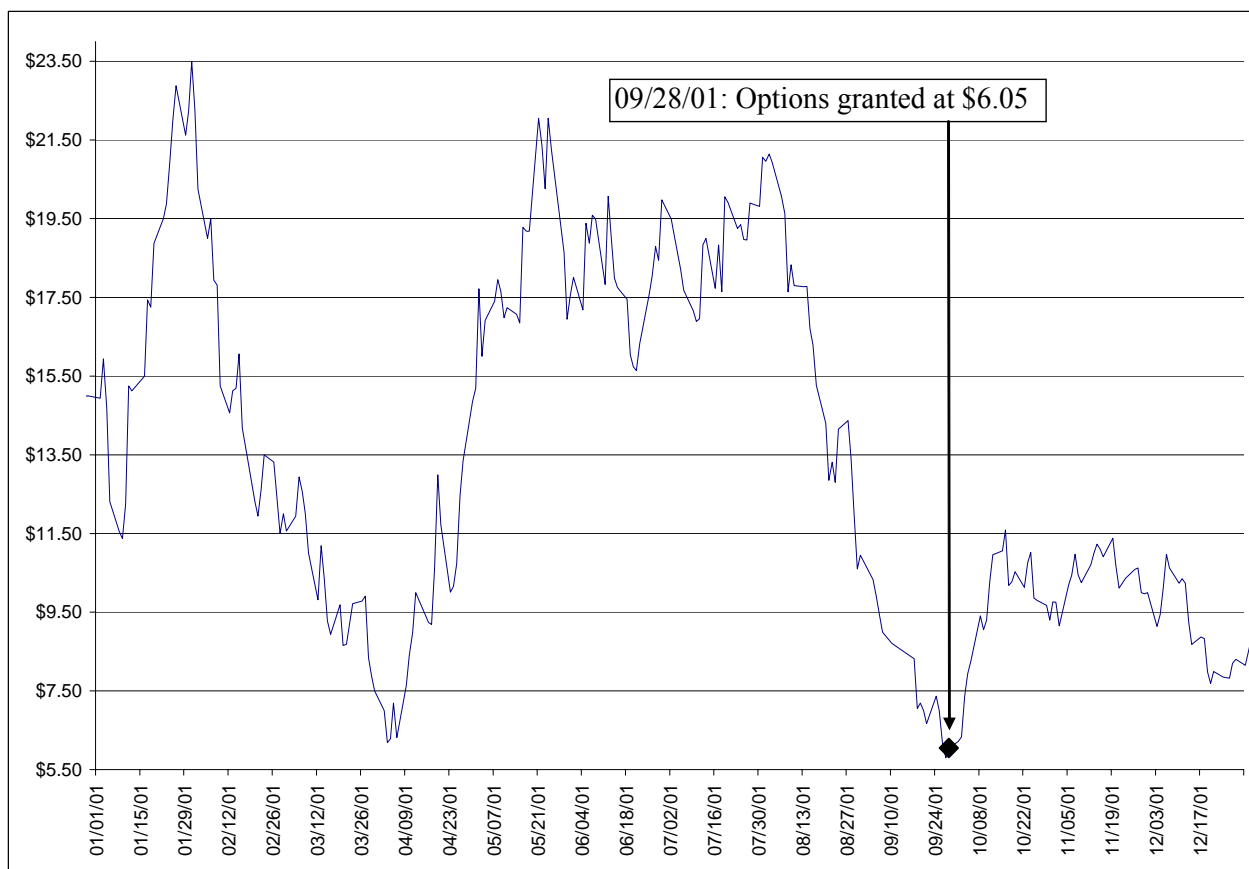
March 2001



Purported Grant Date	Name	Exercise Price	Number of Options
03/30/01	Akin	\$7.50	50,000
	Kallaos	\$7.50	40,000

94. Bridges, Triebes and Twombly were purportedly granted stock options by the Compensation Committee on September 28, 2001, at an exercise price of \$6.05, *one of the lowest prices for Foundry stock for the entire fiscal year*. Indeed, in ten trading days following the purported grant date, the price of Foundry stock increased to \$10.96 – *an 81.16% increase*, as demonstrated in the following graph:

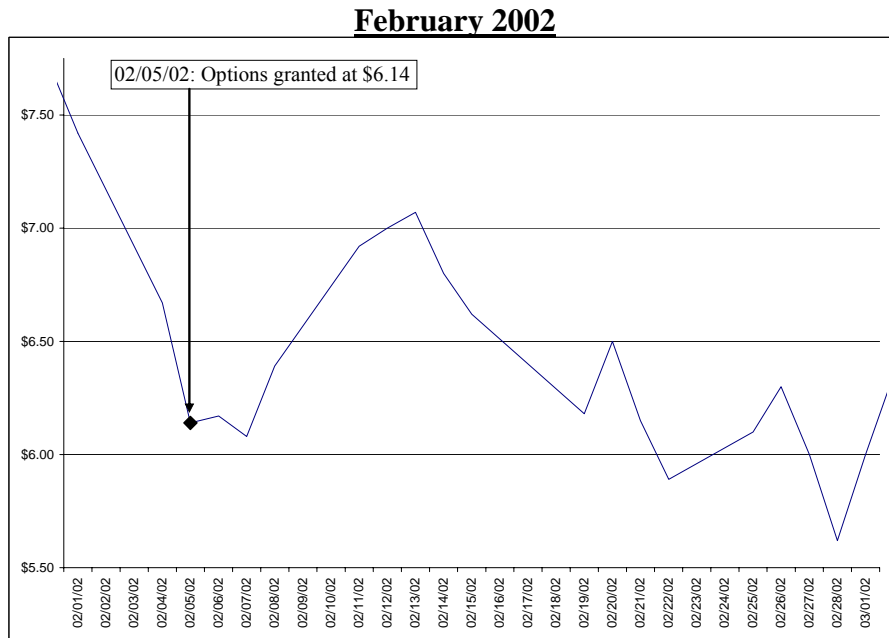
Fiscal Year 2001



Purported Grant Date	Name	Exercise Price	Number of Options
09/28/01	Bridges	\$6.05	at least 83,264
	Triebes	\$6.05	at least 27,000
	Twombly	\$6.05	at least 25,000

3. Fiscal Year 2002 Option Grants

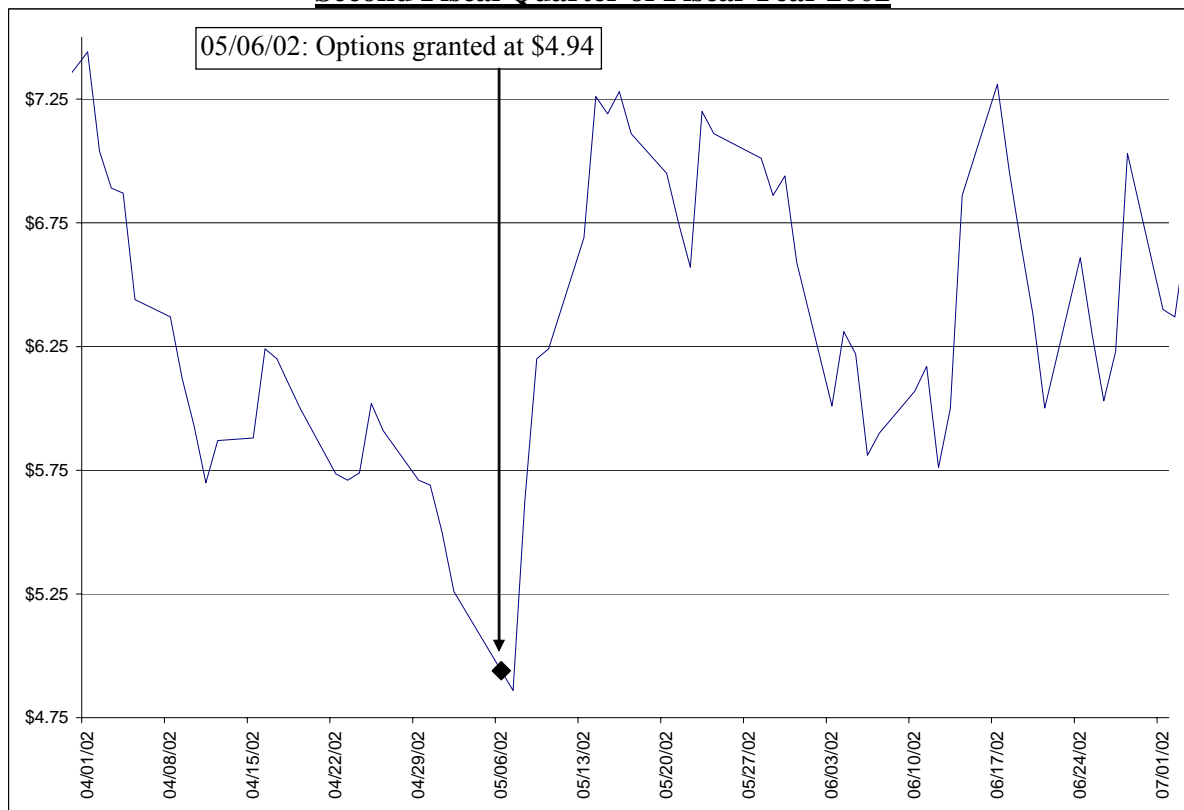
95. The fifteen Option Recipient Defendants listed in the chart below were purportedly granted stock options by the Compensation Committee on February 5, 2002, at an exercise price of \$6.14, *one of the lowest prices for Foundry stock for the entire month.* Indeed, in ten trading days following the purported grant date the Foundry stock price increased 5.86%, as demonstrated in the following graph:



Purported Grant Date	Name	Exercise Price	Number of Options
02/05/02	Akin	\$6.14	100,000
	Chen	\$6.14	250,000
	Cheng	\$6.14	150,000
	Heffner	\$6.14	125,000
	Triebes	\$6.14	105,000
	Twombly	\$6.14	at least 30,000
	Young	\$6.14	at least 60,000
	Bridges	\$6.14	at least 15,000
	Burger	\$6.14	at least 8,166
	Keating	\$6.14	at least 60,000
	Kopparapu	\$6.14	at least 3,472
	Ludwick	\$6.14	at least 60,000
	Taft	\$6.14	at least 5,208
	Amoroso	\$6.14	at least 30,000

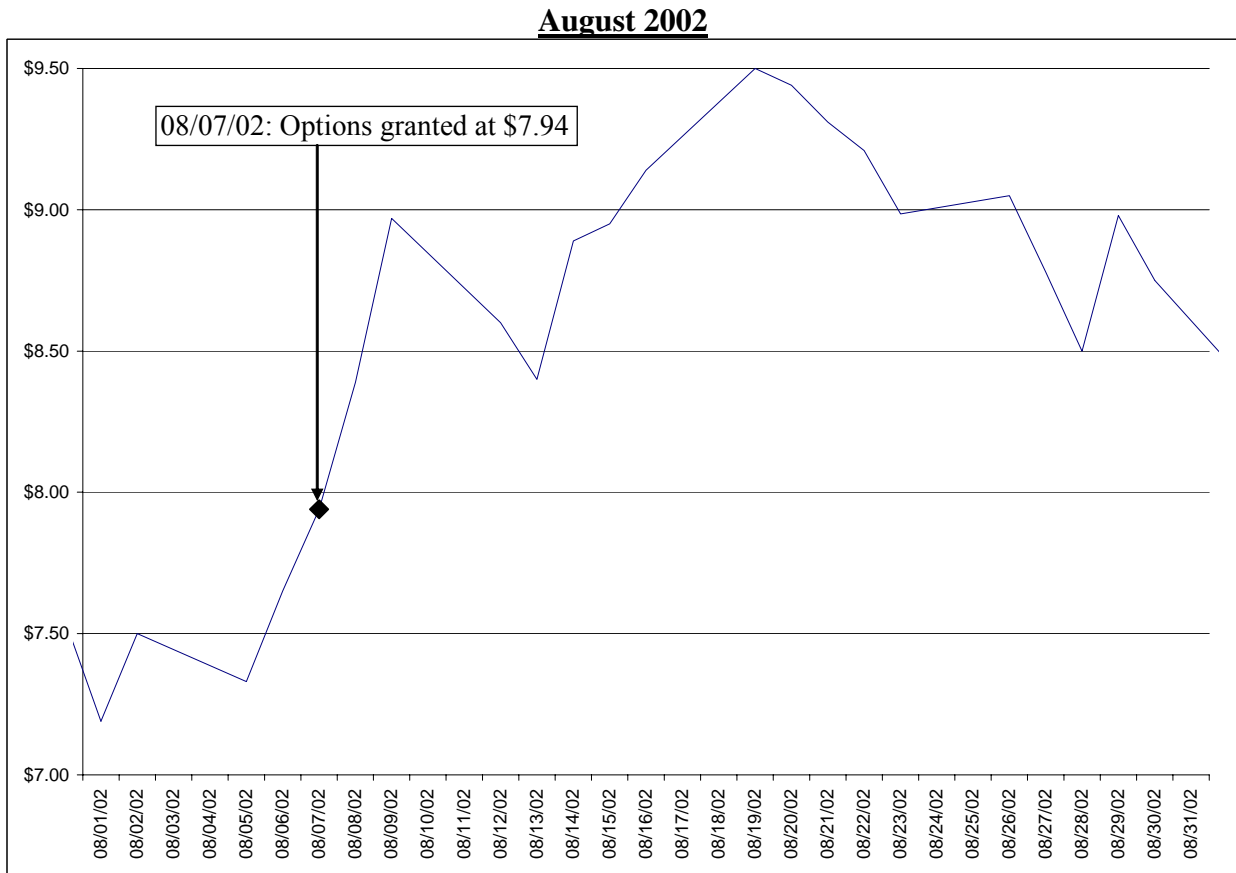
96. At least nine Option Recipient Defendants, identified in the chart below, were purportedly granted stock options by the Compensation Committee on May 6, 2002, at an exercise price of \$4.94, *one of the lowest prices for Foundry stock for the second fiscal quarter of 2002*. Indeed, in ten trading days following the purported grant date the Foundry stock price increased 40.67%, as demonstrated in the following graph:

Second Fiscal Quarter of Fiscal Year 2002



Purported Grant Date	Name	Exercise Price	Number of Options
05/06/02	Akin	\$4.94	180,000
	Chen	\$4.94	300,000
	Cheng	\$4.94	175,000
	Heffner	\$4.94	150,000
	Triebes	\$4.94	180,000
	Twombly	\$4.94	at least 34,375
	Bridges	\$4.94	at least 17,500
	Kopparapu	\$4.94	at least 2,604
	Taft	\$4.94	at least 9,583

1 97. Defendant Johnson was purportedly granted stock options by the Compensation
 2 Committee on August 6, 2002, at an exercise price of \$7.94, *one of the lowest prices of*
 3 *Foundry stock for the entire month of August*. Indeed, in ten trading days following the
 4 purported grant date the Foundry stock price increased 17.25%, as demonstrated in the
 5 following graph:



Purported Grant Date	Name	Exercise Price	Number of Options
08/07/02	Johnson	\$7.94	600,000

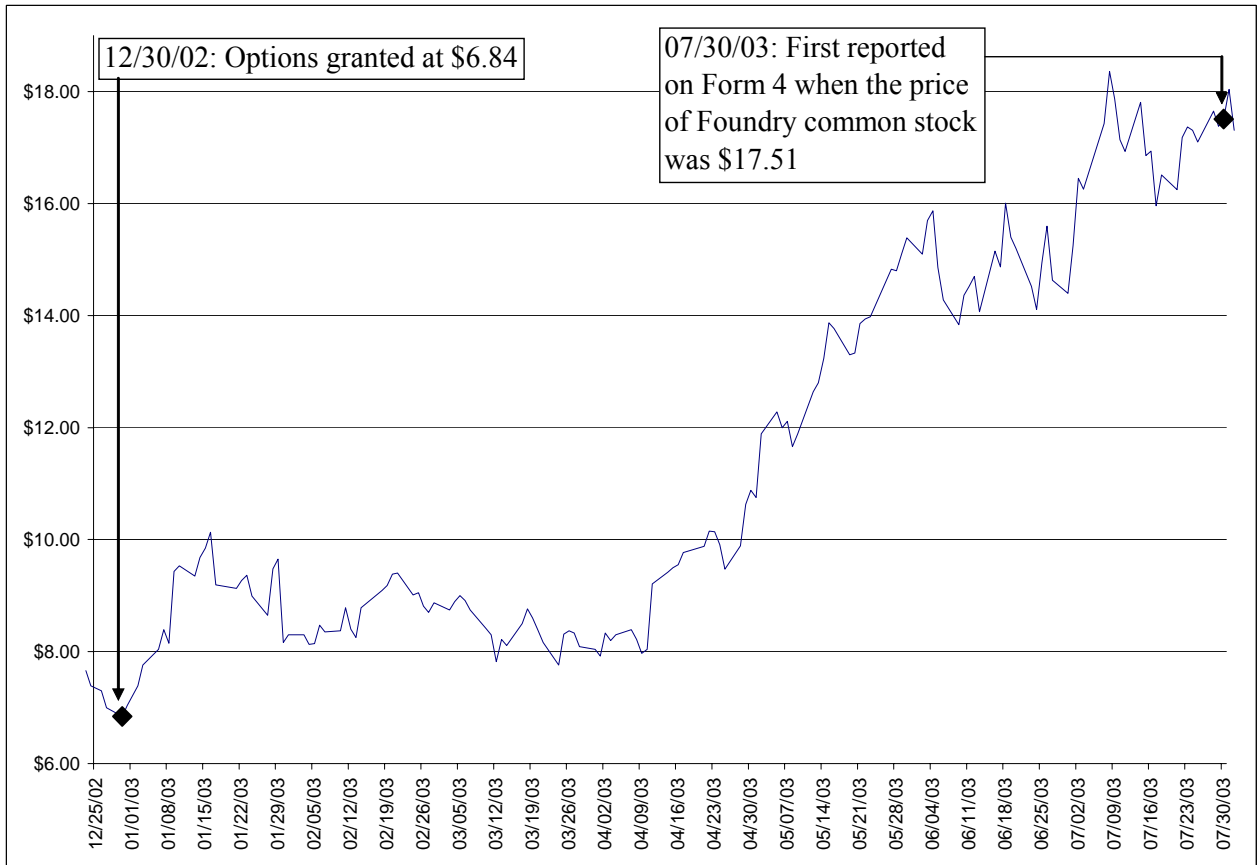
VI. POST-SOX GRANTS

1
2 98. Prior to the enactment of the Sarbanes-Oxley Act of 2002 (“SOX”), the Individual
3 Defendants were able to engage in backdating of option grants with relative ease because under
4 federal law they were only required to report option grants to the SEC once a year. Pursuant to
5 SOX, beginning on August 29, 2002, executives were required to report option grants to the
6 SEC within two days of the grant.

7 99. In a report released on October 20, 2006, the research firm of Glass Lewis
8 conducted an extensive study surrounding the belief that late Form 4 filings can be one of the
9 signs of post-SOX stock option backdating (the “Glass Lewis Report”). Specifically, according
10 to the Glass Lewis Report, the research firm noted that “when we find late Form 4 filings where
11 the price of the underlying stock increased materially between the purported grant date and the
12 day the Form 4 was filed, we believe this raises legitimate questions about whether the grant
13 was backdated.”

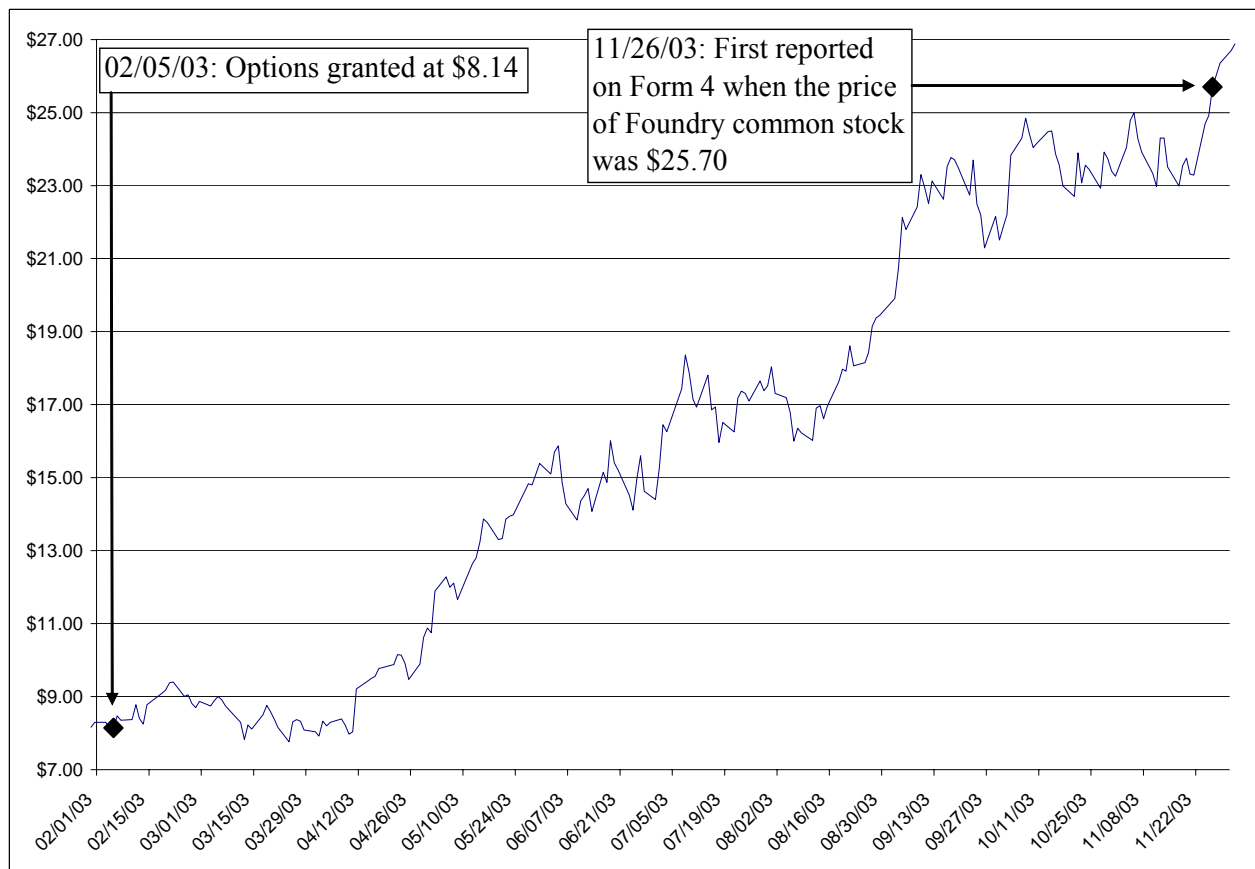
14 100. Although the Option Recipient Defendants who received the option grants were
15 required to report them to the SEC within two days of the grants pursuant to SOX, they often
16 did not do so. In fact, the Option Recipient Defendants did not comply with the two day
17 reporting requirement of SOX for the first four stock option grants made after SOX was
18 enacted.

1 101. In this regard, Kopparapu and Taft were purportedly granted stock options by the
 2 Compensation Committee on December 30, 2002, at an exercise price of \$6.84, *the lowest price*
 3 *of Foundry stock for the month*. Kopparapu did not report his purported December 30, 2002
 4 option grant on Form 4 until July 30, 2003, when the price of Foundry stock was \$17.51 and
 5 well after the required 2 day reporting period, as demonstrated in the following graph:



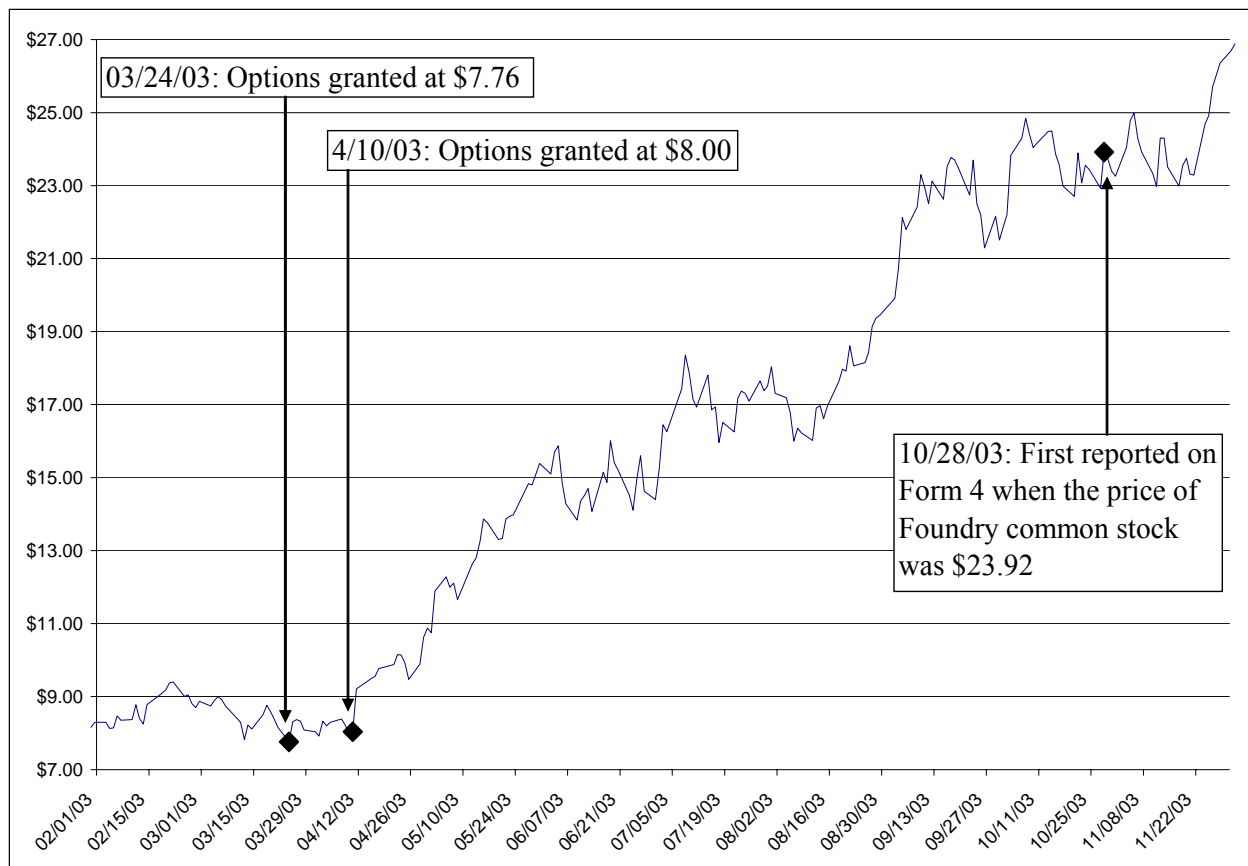
Purported Grant Date	Name	Exercise Price	Number of Options
12/30//02	Kopparapu	\$6.84	at least 10,417
	Taft	\$6.84	at least 7,500

1 102. At least five Option Recipient Defendants were purportedly granted stock options
 2 by the Compensation Committee on February 5, 2003, at an exercise price of \$8.14, *the lowest*
 3 *price for Foundry stock for the entire month of February*. These Option Recipient Defendants
 4 did not report the purported option grant on Form 4 until November 26, 2003, when the price of
 5 Foundry stock was \$25.70 and well after the required two day reporting period, as demonstrated
 6 in the following graph:



Purported Grant Date	Name	Exercise Price	Number of Options
02/05/03	Akin	\$8.14	240,000
	Cheng	\$8.14	240,000
	Heffner	\$8.14	240,000
	Triebes	\$8.14	260,000
	Twombly	\$8.14	180,000

1 103. Defendant Kopparapu was purportedly granted stock options by the
 2 Compensation Committee on March 24, 2003, at an exercise price of \$7.76 and on April 10,
 3 2003, at an exercise price of \$8.00. Kopparapu did not report his purported option grants on
 4 Form 4 until October 28, 2003, when the price of Foundry stock was \$23.92 and well after the
 5 required 2 day reporting period, as demonstrated in the following graph:



Purported Grant Date	Name	Exercise Price	Number of Options
03/24/03	Kopparapu	\$7.76	at least 15,416
04/10/03	Kopparapu	\$8.00 ⁶	at least 50,000

⁶ The closing price of Foundry stock on April 10, 2003 was actually \$8.04. Thus, in addition to backdating the April 10, 2003 option grant, the Compensation Committee under-priced the option grant to Kopparapu.

1 104. From May 22, 2000 to April 10, 2003, the Compensation Committee purportedly
2 granted option awards on fifteen different dates. Twelve of the fifteen option grants were
3 discretionary option awards that were suspiciously dated to coincide either with the lowest
4 closing price of Foundry's stock during the fiscal period in which they were granted, to precede
5 a substantial rise in Foundry's stock price, and/or to follow a substantial drop in Foundry's
6 stock price.

7 105. Of the three remaining option grants during this time period, two of the option
8 grants were made only to non-employee directors of the company. Pursuant to the Company's
9 1999 Directors Stock Option Plan, each non-employee director was automatically granted a
10 non-statutory stock option to purchase shares of Foundry Common Stock on the date of each
11 annual meeting of the Company's stockholders and thus, the ability to manipulate such grants
12 was eliminated.

13 106. The remaining option grant was made solely to Defendant Akin, purportedly
14 dated April 27, 2001, in connection with the commencement of his employment as the
15 Company's Vice President of Sales Operations. The option grant made solely to Akin does not
16 appear to have been a discretionary stock award and thus is not claimed to have been backdated.

17 107. The reason for the extraordinary pattern set forth in the preceding paragraphs is
18 that the purported grant dates on all twelve discretionary stock options granted during this
19 period were not the actual dates on which the stock option grants were made. Rather, at the
20 behest of the Option Recipient Defendants, the Compensation Committee, with the knowledge
21 and approval of the other members of the Board, knowingly and deliberately contravened the
22 1996 Plan by backdating stock options to make it appear as though the grants were made on
23 dates when the market price of Foundry stock was lower than the market price on the actual
24 grant dates thereby unduly benefiting the Option Recipient's who received backdated stock
25 options. This improper backdating, which violated the terms of the Company's shareholder
26 approved stock option plan, resulted in option grants with lower exercise prices, which
27
28

1 improperly increased the value of the options to the Option Recipient Defendants and
2 improperly reduced the amounts they had to pay the Company upon exercise of the options.

3 **A. The Individual Defendants' Dissemination of False Financial Statements and**
4 **Concealment of Misconduct**

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

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

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

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

- 26 a. violated the terms of the 1996 Plan by granting stock options with
27 exercise prices less than the fair market value of the stock on the actual
28 date of grant;

1 b. violated GAAP by failing to recognize compensation expenses
2 incurred when the improperly backdated options were granted;

3 c. violated Section 162(m) by taking tax deductions based on stock
4 option grants that were not payable solely on account of the attainment of
5 one or more performance goals and violated the terms of the 1996 Plan;
6 and

7 d. produced and disseminated to Foundry shareholders and the
8 market false financial statements that improperly recorded and accounted
9 for the backdated option grants, and thereby understated compensation
10 expenses and overstated net income.

11 112. For instance, with respect to deductibility of executive compensation, including
12 options, Foundry stated the following, which was materially false and misleading due to the
13 options backdating alleged herein:

14 Stock-Based Compensation

15 In October 1995, the FASB issued SFAS No. 123, "Accounting for Stock-
16 Based Compensation." This accounting standard permits the use of either
17 a fair value based method or the method defined in Accounting Principles
18 Board Opinion No. 25, "Accounting for Stock Issued to Employees" (APB
19 Opinion 25) to account for stock-based compensation arrangements.
20 Companies that elect to employ the valuation method provided in APB
21 Opinion 25 are required to disclose the pro forma net income (loss) that
22 would have resulted from the use of the fair value based method. Foundry
23 has elected to determine the value of stock-based compensation
24 arrangements under the provisions of APB Opinion 25, and accordingly,
25 the pro forma disclosures required under SFAS No. 123 have been
26 included in Note 6.

27 2000 Annual Report, Form 10-K (filed March 29, 2001); 2001 Annual Report, Form 10-K (filed
28 April 1, 2002); *see also* similar language contained in 2002 Annual Report, Form 10-K (filed
March 31, 2003); 2003 Annual Report, Form 10-K (filed March 15, 2004).

113. According to Foundry's 2001 10-K, the Company "accounts for stock options
issued to employees under APB Opinion 25 whereby the difference between the exercise price
and the fair value at the date of grant is recognized as compensation expense." Furthermore,
"Foundry is required under SFAS No. 123 to disclose pro forma information regarding option
grants made to its employees based on specified valuation techniques that produce estimated
compensation charges." *See* 2001 Annual Report, Form 10-K (filed April 1, 2002). However,

1 the Company made no such disclosures for fiscal year 2001, as it claimed to have granted
2 employees stock options equal to the market value of the underlying stock on the grant date.

3 114. With respect to stock options granted to officers and directors, the Plan provides
4 that stock options may be granted so as to qualify as performance based compensation under
5 IRC § 162(m) and to receive exemption under Rule 16-3, but the Plan does not require that
6 stock options be granted as such. *See* Plan at § (4)(c). However, the Company repeatedly
7 issued the following statement to the SEC and shareholders in each proxy statement for the
8 period 2000-2003:

9 The compensation committee has considered the impact of Section 162(m)
10 of the Code adopted under the Omnibus Budget Reconciliation Act of
11 1993, which section disallows a deduction for any publicly held
12 corporation for individual compensation exceeding \$1 million in any
13 taxable year for the CEO and four other most highly compensated
14 executive officers, respectively, unless such compensation meets the
15 requirements for the “performance-based” exception to Section 162(m).
16 As the cash compensation paid by the Company to each of its executive
17 officers is expected to be below \$1 million and the compensation
18 committee believes that options granted under the Company’s 1996 Stock
19 Plan to such officers will meet the requirements for qualifying as
20 performance-based, the compensation committee believes that Section
21 162(m) will not affect the tax deductions available to the Company with
22 respect to the compensation of its executive officers. It is the
23 compensation committee’s policy to qualify, to the extent reasonable, its
24 executive officers’ compensation for deductibility under applicable tax
25 law. However, the Company may from time to time pay compensation to
26 its executive officers that may not be deductible.

19 2003 Proxy Statement, Form DEF 14A (filed April 30, 2004). Virtually identical language was
20 contained in the following Foundry SEC filings and proxy solicitations: 2002 Proxy Statement,
21 Form Def 14A (filed April 30, 2003); 2001 Proxy Statement, Form Def 14A (filed April 30,
22 2002); 2000 Proxy Statement, Form Def 14A (filed April 26, 2001). On information and belief,
23 this statement was materially false and misleading in light of the options backdating alleged
24 herein. Because of the options backdating, Plaintiff believes and therefore alleges that Foundry
25 violated I.R.C. § 162(m) by taking tax deductions based on stock option grants that were not
26

1 payable solely on account of the attainment of one or more performance goals, and therefore
2 violated the terms of the Plan.

3 115. Moreover, the Compensation Committee reports contained in the Company's
4 Proxy Statements falsely stated that "[i]t is the Company's practice to set option exercise prices
5 for officers at not less than 100% of the fair market value of the Company's common stock on
6 the date of grant. Thus, the value of the stockholders' investment in the Company must
7 appreciate before an optionee receives any financial benefit from the option," when in fact the
8 backdated stock options provided the option recipients with immediate profits regardless of the
9 Company's stock performance. *See* Foundry 2000 Proxy Statement, Form DEF 14A (filed
10 April 26, 2001); Foundry 2001 Proxy Statement, Form DEF 14A (filed April 30, 2002);
11 Foundry 2002 Proxy Statement, Form DEF 14A (filed April 30, 2003); Foundry 2003 Proxy
12 Statement, Form DEF 14A (filed April 30, 2004).

13 116. The Individual Defendants knew or reasonably should have known of these
14 misstatements and omissions and failed to prevent or correct them.

15 117. On April 26, 2001, the Company, with the effect of concealing the improper
16 option backdating, filed with the SEC and disseminated to Foundry's shareholders the 2000
17 Proxy Statement, which provided, among other things, notice of and information for Foundry's
18 annual shareholders' meeting to be held June 6, 2001. The 2000 Proxy Statement falsely
19 reported as May 22, 2000 the dates of stock option grants to Option Recipient Defendants
20 Johnson, Shackleton, Kallaos, Chen and Cheng and stated that the incentive options issued to
21 the Option Recipient Defendants were issued at "100% of fair market value" and that "[t]he
22 exercise price per share of each option was equal to the fair market value of [Foundry's]
23 common stock on the date of the grant based on the closing price of the Company's common
24 stock as listed on the Nasdaq National Market on that date." These statements were materially
25 false and misleading in light of the backdating alleged herein.

26 118. The 2000 Proxy Statement failed to report the true value of the compensation paid
27 to the Officer Defendants or that the options were backdated as alleged herein, rather than
28

1 issued on the date at which the stock traded at the market value identified in the proxy
2 statement. Thus, backdated stock options provided undisclosed compensation to the executive
3 officers on the date of the grant.

4 119. In the 2000 Proxy Statement, the Foundry Board recommended that shareholders
5 elect six directors, including Defendants Johnson, Ludwick, Amoroso, Keating, and Young, to
6 serve until the next Annual Meeting or until their respective successors were elected and
7 qualified.

8 120. In addition, in the Report of the Audit Committee included in the 2000 Proxy
9 Statement, the Audit Committee recommended that “the Board include the audited consolidated
10 financial statements in the Company’s Annual report on Form 10-K for the year ended
11 December 31, 2000 filed with the Securities and Exchange Commission.” The Audit
12 Committee members knew or reasonably should have known that these financial statements
13 were materially false and misleading due to the options backdating alleged herein.

14 121. Notably, the 2000 Proxy Statement disclosed that, although stock options were
15 granted to certain Option Recipient Defendants pursuant to the 1996 Plan, the Compensation
16 Committee did not meet separately from the Board even once during fiscal 2000.

17 122. On April 30, 2002, the Company, with the effect of concealing the improper
18 option backdating, filed with the SEC and disseminated to Foundry’s shareholders the 2001
19 Proxy Statement, which provided, among other things, notice of and information for Foundry’s
20 annual shareholders’ meeting to be held June 14, 2002. The 2001 Proxy Statement falsely
21 reported the dates of stock option grants to Option Recipient Defendants, including the
22 purported January 9, 2001 date for stock options granted to Akin, Kallaos, Chen and Cheng, and
23 the purported March 30, 2001 date for stock options granted to Akin and Kallaos, stating on
24 several occasions that the option price for each grant was the fair market value of the
25 Company’s stock on the date of the grant. For example, the 2001 Proxy stated that the incentive
26 options issued to the Option Recipient Defendants were issued at “100% of fair market value,”
27 that “the exercise price per share of each option was equal to the fair market value of
28

1 [Foundry's] common stock on the date of the grant as determined by our Board of Directors,"
2 and that that the exercise price of the incentive options issued to the Option Recipient
3 Defendants "must be at least equal to the fair market value of the shares on the date of grant, in
4 the case of incentive options, as determined by the Administrator [i.e., the Compensation
5 Committee], based upon the closing sales price on the Nasdaq National Market on the date of
6 grant."⁷ These statements were materially false and misleading in light of the backdating
7 alleged herein. The 2001 Proxy Statement failed to report the true value of the compensation
8 paid to the Option Recipient Defendants or that the options were backdated as alleged herein,
9 rather than issued on the date at which the stock traded at the market value identified in the
10 proxy statement. Thus, backdated stock options provided undisclosed compensation to the
11 executive officers on the date of the grant.

12 123. The 2001 Proxy further stated that "[o]ptions granted under the 1996 Plan may be
13 either incentive stock options, which are intended to qualify for the special tax treatment
14 provided by Section 422 of the Code, or nonstatutory stock options, which will not qualify." In
15 order to qualify for treatment as an incentive option under Code Section 422, the option price
16 may not be "less than the fair market value of the stock at such time as the option is granted."
17 I.R.C. § 422, 26 U.S.C. § 422.

18 124. In the 2001 Proxy Statement, the Foundry Board recommended that shareholders
19 elect five directors – Defendants Johnson, Ludwick, Amoroso, Keating and Young, to serve
20 until the next Annual Meeting or until their respective successors were elected and qualified.
21
22
23

24 ⁷ Based on Foundry's 2000 to 2003 Proxy Statements, Plaintiffs believe, and therefore allege,
25 that the Board of Directors delegated its authority regarding awarding stock options to
26 Foundry's officers to the members of the Compensation Committee; however Plaintiffs reserve
27 their right to amend this Complaint should additional information come to light which suggests
28 the Foundry Board of Directors, or some other individuals or entity, had authority regarding the
Company's award of stock option grants to its executives.

1 125. In the 2001 Proxy Statement, the Directors also recommended that Foundry's
2 stockholders "amend the Company's 1996 Stock Plan to provide for the reservation of
3 2,000,000 additional shares for issuance thereunder."

4 126. In addition, in the Report of the Audit Committee included in the 2001 Proxy
5 Statement, the Audit Committee recommended that "the Board include the audited consolidated
6 financial statements in the Company's Annual report on Form 10-K for the year ended
7 December 31, 2001 filed with the Securities and Exchange Commission." The Audit
8 Committee members knew or reasonably should have known that these financial statements
9 were materially false and misleading due to the options backdating alleged herein.

10 127. The 2001 Proxy Statement also disclosed that although stock options were
11 granted to certain Option Recipient Defendants pursuant to the 1996 Plan, the Compensation
12 Committee never met, and only took action by the form of written consent on two occasions.
13 Yet options were granted to Option Recipient Defendants, as noted above, on at least three
14 occasions during the year: January 9, March 30, and April 27.

15 128. On April 30, 2003, the Company, with the effect of concealing the improper
16 option backdating, filed with the SEC and disseminated to Foundry's shareholders the 2002
17 Proxy Statement, which provided, among other things, notice of and information for Foundry's
18 annual shareholders' meeting to be held June 12, 2003. The 2002 Proxy Statement falsely
19 reported the dates of stock option grants to Option Recipient Defendants, including the
20 purported February 5, 2002 grant to Akin, Chen, Cheng, Heffner and Triebes, the purported
21 May 6, 2002 grant to Akin, Chen, Cheng, Heffner and Triebes, and the purported August 6,
22 2002 grant to Johnson, stating that the option price for each grant was the fair market value of
23 the Company's stock on the date of the grant.

24 129. The 2002 Proxy Statement reported that: "the exercise price per share of each
25 option was equal to the fair market value of [Foundry's] common stock on the date of the grant
26 as determined by our Board of Directors," which was materially false and misleading in light of
27 the backdating alleged herein. The 2002 Proxy Statement failed to report the true value of the
28

1 compensation paid to the Option Recipient Defendants or that the options were backdated as
2 alleged herein, rather than issued on the date at which the stock traded at the market value
3 identified in the proxy statement. Thus, backdated stock options provided undisclosed
4 compensation to the executive officers on the date of the grant.

5 130. In the 2002 Proxy Statement, the Foundry Board recommended that shareholders
6 elect five directors – including Defendants Johnson, Ludwick, Amoroso, Keating and Young to
7 serve until the next Annual Meeting, or until their respective successors were elected and
8 qualified.

9 131. In addition, in the Report of the Audit Committee included in the 2002 Proxy
10 Statement, the Audit Committee recommended that “the Board include the audited consolidated
11 financial statements in the Company’s Annual report on Form 10-K for the year ended
12 December 31, 2002 filed with the Securities and Exchange Commission.” The Audit
13 Committee members, including Defendants Amoroso and Keating, knew or reasonably should
14 have known that these financial statements were materially false and misleading due to the
15 options backdating alleged herein.

16 132. On April 30, 2004, the Company, with the effect of concealing the improper
17 option backdating, filed with the SEC and disseminated to Foundry’s shareholders the 2003
18 Proxy Statement, which provided, among other things, notice of and information for Foundry’s
19 annual shareholders’ meeting to be held June 1, 2004. The 2003 Proxy Statement falsely
20 reported as February 5, 2003, the date of stock option grants to Option Recipient Defendants
21 Akin, Cheng, Heffner, Tribes and Twombly, stating that the option price for each grant was the
22 fair market value of the Company’s stock on the date of the grant.

23 133. The 2003 Proxy stated that the incentive options issued to the Option Recipient
24 Defendants under the 1996 Plan “were granted at an exercise price equal to the fair market
25 value of [Foundry’s] common stock on the date of the grant,” which was materially false and
26 misleading in light of the backdating alleged herein. The 2003 Proxy Statement failed to report
27 the true value of the compensation paid to the Option Recipient Defendants, or that the options
28

1 were backdated as alleged herein, rather than issued on the date at which the stock traded at the
2 market value identified in the proxy statement. Thus, backdated stock options provided
3 undisclosed compensation to the executive officers on the date of the grant.

4 134. In the 2003 Proxy Statement, the Foundry Board recommended that shareholders
5 elect a board of six directors including Defendants Johnson, Ludwick, Amoroso, Keating, and
6 Young to serve until the next Annual Meeting or until their respective successors were elected
7 and qualified.

8 135. In addition, in the Report of the Audit Committee included in the 2003 Proxy
9 Statement, the Audit Committee “recommended to the Board of Directors that [Foundry’s]
10 audited financial statements be included in the Company’s Annual report on Form 10-K for the
11 year ended December 31, 2003 filed with the Securities and Exchange Commission.” The
12 Audit Committee members, including Defendants Amoroso and Keating, knew or reasonably
13 should have known that these financial statements were materially false and misleading due to
14 the options backdating alleged herein.

15 136. Notably, the 2003 Proxy Statement disclosed that, although stock options were
16 granted to certain Option Recipient Defendants pursuant to the 1996 Plan, the Compensation
17 Committee did not meet during 2003.

18 137. In addition, the Company, with the knowledge, approval, and participation of
19 each of the Individual Defendants, disseminated its false financial statements in, *inter alia*, the
20 following Form 10-K filings:

- 21 a. Form 10-K for the fiscal year ended December 31, 1999, filed with
22 the SEC on March 20, 2000 and signed by defendants Johnson,
Heffner and Ludwick;
- 23 b. Form 10-K/A for the fiscal year ended December 31, 1999, filed
24 with the SEC on April 12, 2000 and signed by defendants Johnson,
Heffner and Ludwick;
- 25 c. Form 10-K for the fiscal year ended December 31, 2000, filed with
26 the SEC on March 29, 2001 and signed by defendants Johnson,
Heffner, Ludwick, Amoroso, Keating and Young;
- 27 d. Form 10-K for the fiscal year ended December 31, 2001, filed with
28 the SEC on April 1, 2002 (signatures not included in filing);

- 1 e. Form 10-K for the fiscal year ended December 31, 2002, filed with
2 the SEC on March 31, 2003 and signed by defendants Johnson,
3 Heffner, Ludwick, Amoroso, Keating and Young;
4 f. Form 10-K for the fiscal year ended December 31, 2003, filed with
5 the SEC on March 15, 2004 and signed by defendants Johnson,
6 Heffner, Ludwick, Amoroso and Young;
7 g. Form 10-K for the fiscal year ended December 31, 2004, filed with
8 the SEC on March 11, 2005 and signed by defendants Johnson,
9 Heffner, Ludwick, Amoroso, Keating and Young; and
10 h. Form 10-K for the fiscal year ended December 31, 2005, filed with
11 the SEC on March 15, 2006 and signed by defendants Johnson,
12 Heffner, Ludwick, Amoroso, Keating and Young.

13 138. Specifically, in the Company's annual reports on Forms 10-K for fiscal years
14 2000 to 2003, the Individual Defendants caused Foundry to falsely state that "Foundry has
15 elected to determine the value of stock-based compensation arrangements under the provisions
16 of APB 25, and accordingly, the pro forma disclosures required under SFAS No. 123 have been
17 included in Note 6." Under APB 25, if the exercise price of the Company's stock options is not
18 less than the market price of the underlying stock on the date of grant, no compensation expense
19 is recognized. Such statements were materially false and misleading in each of these years
20 because Foundry had granted stock options at prices that were below fair market value on the
21 date of the grant and failed to account for the in-the-money options as required by APB 25.

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

140. The Individual Defendants' secret option backdating scheme caused each of
Foundry's Forms 10-K for the relevant period to materially understate Foundry's compensation
expense and materially overstate the Company's net income or materially understate its net loss,

1 because the Individual Defendants failed to expense the “in-the-money” portion of Foundry’s
2 stock option grants during the period as required by APB 25.

3 141. Additionally, Foundry’s materially false and misleading financial statements for
4 fiscal years 2000 to 2003 were included in its Forms 10-K filed for subsequent fiscal years. For
5 this reason, and to the extent they included financials from earlier periods, Foundry’s annual
6 reports on Form 10-K for fiscal years 2004 and 2005 were also materially false and misleading.
7 By participating in the secret backdating scheme, and by reviewing and/or signing these
8 subsequent annual reports, the Individual Defendants knew, or were reckless in not knowing,
9 that the financial statements in these later filings were materially false and misleading.

10 142. Defendants Johnson and Heffner also filed false Certifications of Chief Executive
11 Officer pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the
12 Sarbanes-Oxley Act of 2002 (the “Certification”), certifying that each Annual Report of
13 Foundry on Forms 10-K “fully complies with the requirements of section 13(a) or 15(d) of the
14 Securities Exchange Act of 1934; and [t]he information contained in the Report fairly presents,
15 in all material respects, the financial condition and results of operations of the Company.”

16 Defendants Johnson and Heffner signed the following false Certifications:

- 17 a. Form 10-K for the fiscal year ended December 31, 2004, filed with
18 the SEC on March 11, 2005; and
- 19 b. Form 10-K for the fiscal year ended December 31, 2005, filed with
20 the SEC on March 15, 2006.

21 143. Furthermore, from 2003 to 2006, Foundry, with the knowledge, approval, and
22 participation of each of the Individual Defendants, for the purpose and with the effect of
23 concealing the improper option backdating, filed with the SEC numerous Form 4s that falsely
24 reported the dates of stock option grants to the Option Recipient Defendants, as summarized in
25 detail in Exhibit “A.” The Individual Defendants knew or should have known about these
26 misstatements and omissions and failed to prevent or correct them.

1 **B. Backdating Admitted at Foundry**

2 144. On June 27, 2006, Foundry issued a press release announcing that it had received
3 a grand jury subpoena requesting documents related to its stock option grants as well as an
4 information inquiry letter from the SEC requesting similar documentation. The Company also
5 announced that it had authorized an internal review of its stock option grant practices:

6 Foundry Networks™, Inc. (Nasdaq: FDRY), today announced that
7 it has received a grand jury subpoena issued by the U.S. District
8 Court for the Northern District of California requesting documents
9 related to the Company's granting of stock options from 1995
10 through the present. The Company has also received an
information inquiry letter from the Securities and Exchange
Commission requesting documents related to the same subject
matter.

11 * * *

12 Foundry Networks' Board of Directors has authorized a review of
13 the company's stock option grant practices, which is being
conducted by a Special Committee of the Board with the assistance
14 of outside independent legal counsel.

15 145. Foundry eventually *admitted* that certain of its prior option grants were in fact
16 backdated. On September 22, 2006, Foundry issued a press release providing an update on the
17 Company's review of its stock option grant practices and the Special Committee's preliminary
18 findings, stating:

19 Foundry Networks, Inc. (Nasdaq: FDRY), provided an update
20 today on its voluntary review of its historical practices in granting
stock options.

21 As previously announced on June 27, 2006, a Special Committee
22 of the Board of Directors is conducting an independent review of
23 Foundry's stock option practices. The Special Committee is
24 assisted by independent legal counsel and independent forensic
accounting consultants. The Special Committee has neither
25 completed its work nor reached final conclusions.

26 The Special Committee has preliminarily concluded that *actual*
27 *accounting measurement dates for certain stock option grants*
awarded during the years 2000-2003 likely differ from recorded
28 *grant dates for such awards* [Emphasis added]. Based on the

1 Special Committee's preliminary findings, Foundry expects to
2 restate historical financial statements to record additional non-cash
3 charges for stock-based compensation expense related to past
4 option grants. The Company has not yet determined the amount of
5 such charges, although it believes the charges will be material. The
6 Company also has not determined the amount of the resulting tax
7 impact, or which specific periods require restatement. Accordingly,
8 the Company will file a Form 8-K with the SEC stating that the
9 financial statements and all earnings, press releases and similar
10 communications issued by the Company relating to periods
11 beginning on or after January 1, 2000 should not be relied upon.

12 The Company will make every effort to file its restated financial
13 statements as soon as practicable after the completion of the
14 review.

15 146. In addition, due to this internal investigation, the Company has delayed the filing
16 of both its Form 10-Q for the period ended June 30, 2006 and its Form 10-Q for the period
17 ended September 20, 2006 until the impact on the stock-based compensation charges and
18 related tax matters has been determined. As a result of Foundry's failure to timely file these
19 financial statements, Foundry has received two Nasdaq Staff Determination letters, on August
20 14, 2006 and November 14, 2006, indicating that the Company is not in compliance with
21 Nasdaq listing requirements and faces the possibility of the delisting of its common stock. In
22 response to the August 14, 2006 letter, Foundry initiated an appeal process by requesting a
23 hearing before the Nasdaq Listing Qualifications Panel, and the matter is currently being
24 considered by the panel. The panel will also consider the Company's failure to file its Form 10-
25 Q for the period ended September 30, 2006, as evidenced by the November 14, 2006 letter, in
26 making its determination.

27 147. On January 22, 2007, the Company issued another press release announcing that
28 the backdating scheme affected the Company's financial results dating back to 1999 (when the
Company was first publicly traded) and would require the Company's re-statement of its
financial results dating back to 1999 and its need to record a pre-tax charge approximating \$200
million due to the improper dating

1 148. The Company's January 22, 2007 press release confirms the Individual
2 Defendants' longstanding practice of backdating of stock option grants, personally run by the
3 Company's most senior executive officers, and condoned by the Directors' sustained failure to
4 oversee a finance environment wholly devoid of the requisite internal controls.

5 149. Indeed, the Company's January 22, 2007 press release admits that:

- 6 • The Company has no contemporaneous supporting documentation for a "substantial
7 number" of the 107 grant dates (between September 1999 and May 31, 2006);
- 8 • In some instances, the option grants were finalized weeks after the option grant dates
9 recorded in Company records;
- 10 • Defendant Johnson personally selected grant dates and approved option grant awards
11 after the dates recorded in Company records;
- 12 • Defendant Heffner, as CFO, communicated the retroactively selected dates to the
13 Company's stock option administrators and oversaw the implementation of the
14 backdating;
- 15 • Defendant Heffner himself received backdated options grants;
- 16 • Directors received at least one backdated option grant;
- 17 • The backdating scheme resulted in the Company's understatement of compensation
18 expenses by approximately \$185 million to \$205 million for fiscal years 1999 through
19 2005; and
- 20 • The backdating scheme may have subjected employees to unforeseen tax liabilities,
21 which the Company may absorb at its expense.

22 150. The Company's remedial measures are equally noteworthy for what the Board of
23 Directors has refused to do:

- 24 • Despite his protracted personal involvement and repeated signature on the Company's
25 materially false and misleading SEC filings, as well as materially false and misleading
26 SOX certifications, Defendant Johnson remains CEO and has not been asked to
27
28

1 compensate the Company for the damages he has caused it, including investigation costs,
2 restatement costs and other related damages;

- 3 • Despite his protracted personal involvement and repeated signature on the Company's
4 materially false and misleading SEC filings, as well as materially false and misleading
5 SOX certifications, Defendant Heffner remains an officer of the Company, having been
6 transitioned to another executive position after his involvement in the backdating scheme
7 came to light; and
- 8 • Although the Board admitted that a "substantial number" of the 107 grant dates appear to
9 be backdated, it has not taken any action to recover on the Company's behalf the
10 substantial amount of money unjustly received by the Option Recipient Defendants.

11 151. Although the Company stated in its January 22, 2007 Press Release that it
12 expected to complete its restatement in time to file the Company's Form 10-K for the fiscal year
13 ended December 31, 2006, on March 1, 2007, the Company still has not completed its
14 restatement or filed its required financial reports. On March 6, 2007, the Company received an
15 Additional Staff Determination letter advising that Foundry's failure to file its Annual Report is
16 another basis for delisting the Company's securities from the Nasdaq Stock Market. As the date
17 of this Complaint, the backdating scheme has resulted in the Company's failure timely to file
18 three consecutive reports required by applicable SEC regulations.

19 **C. Individual Defendants' Insider Selling**

20 152. From 2003 to 2006, Individual Defendants Akin, Amoroso, Bridges, Burger,
21 Cheng, Heffner, Hsu, Johnson, Keating, Kopparapu, Ludwick, Taft, Triebes, Twombly and
22 Young, while in possession of materially adverse non-public information regarding the
23 backdating of stock options and the false financial statements resulting therefrom, sold more
24 than \$118 million in Foundry stock, as summarized, below:

NAME	DATES OF TRANSACTION	SHARES DISPOSED	PROCEEDS
Akin	8/20/03 – 11/29/05	225,000	\$4,573,836
Amoroso	11/04/03	197,500	\$4,844,280
Bridges	8/19/03 – 2/27/04	71,689	\$1,641,039
Burger	1/31/06 – 2/16/06	46,954	\$690,923
Cheng	2/27/03 – 5/4/06	408,854	\$6,661,676
Heffner	2/18/03 – 5/8/06	297,700	\$5,483,406
Hsu	5/18/05 – 11/29/05	19,000	\$218,000
Johnson	7/28/03 – 5/11/04	3,600,000	\$69,158,896
Keating	8/26/03 – 4/25/06	217500	\$4,105,476
Kopparapu	7/29/03 – 2/18/04	94,000	\$1,903,034
Ludwick	2/24/03 – 5/9/06	746,000	\$10,839,002
Taft	5/9/06	22,291	\$344,953
Triebes	7/28/03 – 10/15/04	282,534	\$4,896,605
Twombly	8/19/03 – 2/27/06	89,375	\$1,686,614
Young	4/25/06 – 5/1/06	116,250	\$1,687,084
TOTAL	2/18/03 – 5/9/06	6,434,647	\$118,734,823

VII. FOUNDRY'S FALSE FINANCIAL REPORTING IN VIOLATION OF GAAP, SEC REGULATIONS AND IRS RULES

153. As a result of the Individual Defendants' improper backdating of stock options, the Individual Defendants caused Foundry to violate GAAP, SEC regulations and Internal Revenue Service ("IRS") rules and regulations.

154. Foundry's financial results for 2000 through 2003 were included in reports filed with the SEC and in other shareholder reports. In these reports, the Individual Defendants represented that Foundry's financial results were presented in a fair manner and in accordance with GAAP.

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

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

3 156. GAAP consists of those principles recognized by the accounting profession as the
4 conventions, rules, and procedures necessary to define accepted accounting practice at the
5 particular time. Regulation S-X, to which the Company is subject as a registrant under the
6 Securities Exchange Act of 1934 (“Exchange Act”), 17 C.F.R. §210.4-01(a)(1), provides that
7 financial statements filed with the SEC, which are not prepared in compliance with GAAP, are
8 presumed to be misleading and inaccurate.

9 **A. Violations of GAAP**

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

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

23 159. Throughout the relevant period, Foundry accounted for stock options using the
24 intrinsic method described in APB 25, “Accounting for Stock Issued to Employees.” Under
25 APB 25, employers were required to record as an expense on their financial statements the
26 “intrinsic value” of a fixed stock option on its “measurement date.” An option that is “in-the-
27 money” on the measurement date has intrinsic value, and the difference between its exercise
28

1 price and the quoted market price must be recorded as compensation expense to be recognized
 2 over the vesting period of the option. Options that are “at-the-money” or “out-of-the-money”⁸
 3 on the measurement date need not be expensed. Excluding non-employee directors, APB 25
 4 required employers to record compensation expenses on options granted to non-employees
 5 irrespective of whether they were in-the-money or not on the date of grant.

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

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

15 161. SAB Topic 1M further states:

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

18 * * *

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

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

23 * * *

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

27 ⁸ “Out-of-the-money” refers to when the exercise price of an option is above the market price of
 28 the underlying stock.

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

3 163. Foundry's misstatements satisfy these criteria and thus were material from both a
4 quantitative and qualitative perspective.

5 **C. Foundry's Financial Statements Violated Fundamental Concepts of GAAP**

6 164. Due to these accounting improprieties, the Company presented its financial results
7 and statements in a manner that violated GAAP, which are described by the following
8 statements:

- 9 a. The principle that interim financial reporting should be based upon the same
10 accounting principles and practices used to prepare annual financial statements
11 (APB No. 28, ¶10);
- 12 b. The principle that financial reporting should provide information that is useful to
13 existing and potential investors and creditors and other users in making rational
14 investment, credit and similar decisions Financial Accounting Standard Board
15 ("FASB") Statement of Concepts No. 1, ¶34);
- 16 c. The principle that financial reporting should provide information about the
17 economic resources of an enterprise, the claims to those resources, and the effects
18 of transactions, events and circumstances that change resources and claims to
19 those resources (FASB Statement of Concepts No. 1, ¶40);
- 20 d. The principle that financial reporting should provide information about how
21 management of an enterprise has discharged its stewardship responsibility to
22 stockholders for the use of enterprise resources entrusted to it. To the extent that
23 management offers securities of the enterprise to the public, it voluntarily accepts
24 wider responsibilities for accountability to prospective investors and to the public
25 in general (FASB Statement of Concepts No. 1, ¶50);
- 26 e. The principle that financial reporting should be reliable in that it represents what
27 it purports to represent (FASB Statement of Concepts No. 2, ¶¶58-59);
- 28

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

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

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

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

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

17 167. Under SEC Regulations, Item 8 of Form 14-A and Item 11 of Form 10-K, an
18 issuer must furnish information required by Item 402 of Regulation S-K [17 C.F.R. §229.303].
19 Item 402(b) and (c) require a company to provide both a Summary Compensation Table and an
20 Option/SAR Grants table identifying the compensation of the named executive officers – the
21 Company's CEO and its next four most highly compensated executives. Item 402 requires
22 particularized disclosures involving a company's stock option grants in the last fiscal year. In
23 the summary compensation table, the issuer must identify in a column "other annual
24 compensation" received by the named executives that is not properly categorized as salary or
25 bonus, including any "[a]bove market or preferential earnings on restricted stock, options, SARs
26 or deferred compensation" paid to the officer during the period. Item 402(b)(2)(iii)(C)(2). In
27 the option grant table, the issuer must identify in a column "[t]he per-share exercise or base
28

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

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

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

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

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

24 171. Section 162(m), known as the \$1 million rule, was enacted in 1993 in order to tie
25 top executives’ soaring pay packages more closely to a company’s performance. This change in
26 the tax law turned compensation practices for a company’s top executives away from straight
27 salary based compensation to performance-based compensation, including stock options.

1 According to former SEC Chairman Harvey Pitt: “What [162[m]] did was create incentives to
2 find other forms of compensation so people could get over the \$1 million threshold without
3 running afoul of the code.”

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

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

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

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

4 176. The chart below illustrates Foundry's false and misleading fiscal and quarterly
 5 financial results which materially understated its compensation expenses and thus overstated its
 6 earnings or understated its losses:

Fiscal Year	Reported Earnings	Reported Basic Earnings Per Share
2000	\$88,121,000	\$0.80
2001	\$2,886,000	\$0.02
2002	\$22,537,000	\$0.19
2003	\$75,082,000	\$0.60
2004	\$47,967,000	\$0.35
2005	\$56,013,000	\$0.40

VIII. INDIVIDUAL DEFENDANTS' BREACHES OF FIDUCIARY DUTIES

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

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

1 178. The Individual Defendants’ foregoing misconduct was not, and could not have
2 been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly
3 benefit the Option Recipient Defendants at the expense of the Company.

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

13 180. On May 26, 2006, Forbes, in an article titled, “The Next Big Scandal,” quoted
14 Former SEC Chairman Harvey L. Pitt, as saying “[w]hat’s so terrible about backdating options
15 grants? For one thing, it likely renders a company’s proxy materials false and misleading.
16 Proxies typically indicate that options are granted at fair market value. But if the grant is
17 backdated, the options value isn’t fair – at least not from the vantage point of the company and
18 its shareholders.”

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

23 182. On July 22, 2006, The San Francisco Chronicle recounted SEC Chairman
24 Christopher Cox’s announcement in San Francisco on July 20, 2006 where he said,
25 “[backdating in many cases] makes a hash of (companies’) financial statements . . . [and is]
26 poisonous [to efficient markets]. . . . It is securities fraud if you falsify books and records. It is
27 securities fraud if you present financial statements to the SEC that do not comply with generally
28

1 accepted accounting principles. There is no requirement that (the defendant) personally profit
2 [to prove that a crime occurred.]”

3 183. On September 6, 2006, MarketWatch, in an article titled “SEC Probing more than
4 100 firms on options: Cox,” quoted the Chairman of the United States Senate Committee on
5 Banking, Housing and Urban Affairs (“Senate Banking Committee”), Senator Richard Shelby,
6 saying that manipulation of options grant dates “appears to be a black-and-white example of
7 securities fraud,” and “[c]orporate officers and directors engaging in this practice are cheating
8 the owners of the company and should be held accountable to the fullest extent possible.”

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

21 185. Further, at the hearing, SEC Chairman Christopher Cox, stated, “[r]ather
22 obviously, this fact pattern [of backdating options] results in a violation of the SEC’s disclosure
23 rules, a violation of accounting rules, and also a violation of the tax laws.” The Commissioner
24 of the IRS, Mark Everson, agreed and further stated, “[p]icking a date on which the stock price
25 was low in comparison with the current price gives the employee the largest potential for gain
26 on the option and makes it possible for the employee to benefit from corporate performance that
27 occurred before the option was granted.”

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

7 187. In addition to the foregoing, a recent academic study revealed that outside
8 directors of companies were also benefiting from backdating and were recipients of manipulated
9 stock option grants, as detailed in The Wall Street Journal article published on December 18,
10 2006 below:

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

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

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

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

 The new study examined nearly 29,000 option grants awarded to
outside directors at 6,577 firms between 1996 and 2005. It found
that 9% of the grants fell on days when the stock price was equal to
a monthly low. A random selection would lead to about 5% of
grants being awarded at monthly lows. In addition, 3.8% of the
grants were awarded when the share price was at the lowest price
of the calendar quarter, also higher than would be expected based
on random selection

1 Steve Stecklow, *Outside Directors' Options Role Is Cited in Backdating Study*, The Wall Street
2 Journal, Dec. 18, 2006.

3
4 **IX. DERIVATIVE AND DEMAND EXCUSED ALLEGATIONS**

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

8 189. Lead Plaintiffs are owners of Foundry common stock and were owners of
9 Foundry common stock at all times relevant hereto.

10 190. Lead Plaintiffs will adequately and fairly represent the interests of the Company
11 and its shareholders in enforcing and prosecuting its rights.

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

16 192. At the time this action was commenced, the Board consisted of five directors:
17 defendants Johnson, Amoroso, Keating, Young and director Alan L. Earhart. The following
18 directors are incapable of independently and disinterestedly considering a demand to commence
19 and vigorously prosecute this action:

- 20 a. Johnson, Amoroso, Keating and Young, because, as recipients of backdated
21 options, they are directly interested in the improperly backdated stock option
22 grants complained of herein. Accordingly, Johnson, Amoroso, Keating and
23 Young are incapable of independently and disinterestedly considering a demand
24 to commence and vigorously prosecute this action against the Individual
25 Defendants;
- 26 b. Keating and Young, because, as members of the Compensation Committee at all
27 relevant times hereto, they knowingly and deliberately backdated stock option
28

1 grants, as alleged herein. Moreover, by colluding with the Option Recipient
2 Defendants and others, as alleged herein, Keating and Young have demonstrated
3 that they are unable or unwilling to act independently of the Individual
4 Defendants. Accordingly, Keating and Young are incapable of independently and
5 disinterestedly considering a demand to commence and vigorously prosecute this
6 action against the Individual Defendants;

7 c. Amoroso and Keating, because, as members of the Audit Committee at all
8 relevant times hereto, knowingly and deliberately participated in and approved the
9 filing of false financial statements and other false SEC filings as alleged herein
10 and knowingly and deliberately participated in and approved the Company's
11 violations of GAAP and Section 162(m), as alleged herein, and therefore are
12 substantially likely to be held liable for the misconduct complained of herein.
13 Accordingly, Amoroso and Keating are incapable of independently and
14 disinterestedly considering a demand to commence and vigorously prosecute this
15 action against the Individual Defendants;

16 d. Johnson, because his principal professional occupation is his position as President
17 and CEO of the Company and in his position as such, he stands to earn millions of
18 dollars in annual salary, bonuses and other compensation, all of which must be
19 approved by Defendants Keating and Young, who currently serve as members of
20 the Compensation Committee. Furthermore, demand is excused because the
21 misconduct complained of herein was not, and could not have been, an exercise of
22 good faith business judgment. As represented in Foundry's proxy statements, the
23 stated purpose of the 1996 Plan was to "more closely align the interests of the
24 executive with the long-term interests of the shareholders." However, by granting
25 stock options to the Option Recipient Defendants with backdated exercise prices,
26 the Individual Defendants undermined the purpose of the stock option plans by
27 awarding employees compensation that had intrinsic value regardless of
28

1 Foundry's performance. In effect, this practice was nothing more than a number
2 of secret handouts to executives and employees at the expense of unsuspecting
3 shareholders and the Company; and

- 4 e. All of the defendants currently on the Board of Directors, including Johnson,
5 Amoroso, Keating, and Young, because, as discussed above, the Company's
6 investigation revealed unequivocal evidence that Defendants Johnson and Heffner
7 regularly and personally participated in the backdating of stock option grants.
8 Despite these findings, the CEO and CFO's pattern of misconduct was *de facto*
9 excused by the Board, which permitted both to remain as executives of the
10 Company. The Board's reluctance or inability to enforce the Company's Code of
11 Ethics and to merit out any penalties for the protracted wrongdoing underscores
12 the fact that the Board cannot vigorously prosecute this action on behalf of the
13 Company and its shareholders.⁹

14 193. The Individual Defendants could have achieved the stated purpose of attracting
15 and retaining executives by granting those employees additional stock options under their
16 incentive plans, or by granting stock options at a price less than the fair market value on the date
17

18 ⁹ The remaining current Foundry Director, Alan L. Earhart, has served as a Director and as a
19 member and Chairman of the Audit Committee since August 2003. As an Audit Committee
20 member and Chair, who was designated as an "audit committee financial expert" as defined by
21 SEC rules, Mr. Earhart had a duty to know and understand the material information regarding
22 stock option grants, to oversee the integrity of the Company's financial statements and the
23 Company's compliance with legal and regulatory requirements, and to assist the Board in its
24 oversight of the Company's financial reporting, among other duties. As a member of the Audit
25 Committee from 2003 to the present, Mr. Earhart participated in and approved the Company's
26 violations of GAAP and Section 162(m), as alleged herein. Mr. Earhart knew or should have
27 known that Foundry's financial statements contained materially false or misleading statements
28 and made and/or omitted material facts regarding Defendants' options backdating practices, yet
recommended to the Board of Directors that these financial statements be included in the
Company's Annual report on Form 10-K for each fiscal year beginning in 2003 and, from 2003
forward, signed each of the Form 10-Ks which contained the material false and misleading
financial statements and information described herein. For these reasons, as well as due to his
potential liability for his actions described herein, Mr. Earhart is also incapable of considering
a demand.

1 of the grant and simply disclosing and expensing these grants. Instead, the Individual
2 Defendants backdated stock option grants in violation of the Plans and improperly reported
3 these grants in their financial disclosures to improve their bottom line.

4 194. The practice of backdating stock options cannot be a valid exercise of business
5 judgment because it has subjected Foundry to potentially massive liability. Foundry will likely
6 suffer tax liabilities for the additional compensation it will have to expense, and it has tarnished
7 its reputation in the investment community through this deliberate and calculated conduct.

8
9 **X. CAUSES OF ACTION**

10 **A. COUNT I: Against the Individual Defendants for Violations of § 10(b) and Rule**
11 **10b-5 of the Securities Exchange Act**

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

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

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

23 198. The Individual Defendants acted with scienter in that they either had actual
24 knowledge of the fraud set forth herein, or acted with reckless disregard for the truth in that they
25 failed to ascertain and to disclose the true facts, even though such facts were available to them.
26 The Individual Defendants were among the senior management and directors of the Company
27 and were therefore directly responsible for the fraud alleged herein.

1 199. The Company relied upon the Individual Defendants' fraud in granting the Option
2 Recipient Defendants options to purchase shares of the Company's common stock, as alleged
3 herein.

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

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

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

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

22 203. The proxy statements described herein violated §14(a) and Rule 14-A-9 because
23 they omitted material facts, including the fact that the Individual Defendants were causing the
24 Company to engage in an option backdating scheme, a fact which the Individual Defendants
25 were aware of and participated in from at least 2000.

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

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

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

8
9 **C. COUNT III: Against Johnson and the Director Defendants for Violations of §20(a)**
10 **of the Securities Exchange Act**

11 207. Lead Plaintiffs incorporate by reference and reallege each and every allegation set
12 forth above, as though fully set forth herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 224. Lead Plaintiffs incorporate by reference and reallege each and every allegation set
3 forth above as though fully set forth herein.

4 225. As a result of the acts alleged herein, the stock option contracts between the
5 Option Recipient Defendants and the Company entered into during the relevant period were
6 obtained through the Individual Defendants' fraud, deceit, and abuse of control. Further, the
7 backdated stock options were illegal grants and thus invalid as they were not authorized in
8 accordance with the terms of the Company's shareholder-approved stock option plans.

9 226. All contracts which provide for stock option grants to the Option Recipient
10 Defendants and were entered into during the relevant period should, therefore, be rescinded,
11 with all sums paid under such contracts returned to the Company, and all such executory
12 contracts cancelled and declared void.

13 **H. COUNT VIII: Against the Individual Defendants for Corporate Waste and Gift**

14 227. Plaintiffs incorporate by reference and reallege each and every allegation
15 contained above, as though fully set forth herein.

16 228. By failing to properly consider the interests of the Company and its public
17 shareholders and by failing to conduct proper supervision, the Individual Defendants, without
18 any valid corporate purpose, have caused Foundry to waste valuable corporate assets solely for
19 the financial gain of the Option Recipient Defendants.

20 229. In return for such wrongful diversion of corporate assets, Foundry received no
21 consideration, or consideration so disproportionately small, as to lie beyond the range at which
22 any reasonable person might be willing to accept, rendering the transactions in effect a gift to
23 the Individual Defendants.

24 230. The conduct of the Individual Defendants, and each of them, was not in good
25 faith, nor did the Individual Defendants make any judgment, in the exercise of good faith, that
26 based on the circumstances of which they were fully aware the transactions were worthwhile to
27
28

1 Foundry. Rather the Individual Defendants intentionally and directly diverted Foundry's assets
2 to their own use or benefit.

3 231. As a result of the Individual Defendants' wrongful conduct, and the wrongful
4 conduct of each of them, Foundry has suffered and continues to suffer economic losses and non-
5 economic losses, all in an amount to be determined according to proof at the time of trial.
6 Foundry is also entitled to disgorgement of the compensation obtained by the Individual
7 Defendants as stock, options, salaries, bonuses, and other economic and non-economic
8 compensation which would not have been paid but for their wrongful conduct.

9 WHEREFORE, Lead Plaintiffs demand judgment as follows:

10 A. Against all of the Individual Defendants and in favor of the Company for the
11 amount of damages sustained by the Company as a result of the Individual Defendants'
12 misconduct;

13 B. Ordering the Option Recipient Defendants to disgorge to the Company all of the
14 backdated stock options they received, including the proceeds of any such options that have been
15 exercised, sold, pledged, or otherwise monetized, and imposing a constructive trust thereover;

16 C. Granting appropriate equitable relief to remedy Individual Defendants' breaches
17 of fiduciary duties;

18 D. Awarding to Lead Plaintiffs the costs and disbursements of the action, including
19 reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

20 E. Granting such other and further relief as the Court deems just and proper.

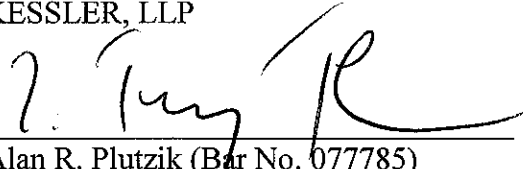
21 **XI. JURY TRIAL DEMANDED**

22 Lead Plaintiffs demand a trial by jury.
23
24
25
26
27
28

1 DATED THIS 26th DAY OF March, 2007.

2 Respectfully submitted,

3 SCHIFFRIN BARROWAY TOPAZ &
4 KESSLER, LLP

5 
6 _____

7 Alan R. Plutzik (Bar No. 077785)
8 Robert M. Bramson (Bar No. 102006)
9 L. Timothy Fisher (Bar No. 191626)
10 2125 Oak Grove Road, Suite 120
11 Walnut Creek, California 94598
12 Telephone: (925) 945-0200
13 Facsimile: (925) 945-8792

14 SCHIFFRIN BARROWAY TOPAZ &
15 KESSLER, LLP

16 Lee D. Rudy
17 Michael C. Wagner
18 James A. Maro
19 280 King of Prussia Road
20 Radnor, PA 19087
21 Telephone: (610) 667-7706
22 Facsimile: (610) 667-7056

23 KELLER ROHRBACK L.L.P.

24 Lynn Lincoln Sarko
25 Juli E. Farris (Bar No. 141716)
26 Elizabeth A. Leland
27 1201 Third Avenue, Suite 3200
28 Seattle, WA 98101-3052
Telephone: (206) 623-1900
Facsimile: (206) 623-3394

Counsel for Lead Plaintiffs

EXHIBIT "A"

- a. Kopparapu's Form 4 filed with the SEC on July 30, 2003 falsely reported that options granted to Kopparapu had been granted on January 09, 2001;
- b. Kopparapu's Form 4 filed with the SEC on July 30, 2003 falsely reported that options granted to Kopparapu had been granted on January 09, 2001;
- c. Kopparapu's Form 4 filed with the SEC on July 30, 2003 falsely reported that options granted to Kopparapu had been granted on February 05, 2002;
- d. Kopparapu's Form 4 filed with the SEC on July 30, 2003 falsely reported that options granted to Kopparapu had been granted on May 06, 2002;
- e. Kopparapu's Form 4 filed with the SEC on July 30, 2003 falsely reported that options granted to Kopparapu had been granted on December 30, 2002;
- f. Triebes's Form 4 filed with the SEC on August 01, 2003 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- g. Triebes's Form 4 filed with the SEC on August 04, 2003 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- h. Triebes's Form 4 filed with the SEC on August 14, 2003 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- i. Twombly's Form 4 filed with the SEC on August 19, 2003 falsely reported that options granted to Twombly had been granted on September 28, 2001;
- j. Bridges's Form 4 filed with the SEC on August 19, 2003 falsely reported that options granted to Bridges had been granted on May 06, 2002;
- k. Bridges's Form 4 filed with the SEC on August 19, 2003 falsely reported that options granted to Bridges had been granted on May 06, 2002;
- l. Akin's Form 4 filed with the SEC on August 20, 2003 falsely reported that options granted to Akin had been granted on May 06, 2002;
- m. Akin's Form 4 filed with the SEC on August 20, 2003 falsely reported that options granted to Akin had been granted on May 06, 2002;
- n. Akin's Form 4 filed with the SEC on August 20, 2003 falsely reported that options granted to Akin had been granted on May 06, 2002;
- o. Bridges's Form 4 filed with the SEC on August 21, 2003 falsely reported that options granted to Bridges had been granted on May 06, 2002;

- p. Triebes's Form 4 filed with the SEC on August 28, 2003 falsely reported that options granted to Triebes had been granted on September 28, 2001;
- q. Triebes's Form 4 filed with the SEC on August 28, 2003 falsely reported that options granted to Triebes had been granted on September 28, 2001;
- r. Keating's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Keating had been granted on February 28, 2001;
- s. Triebes's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- t. Kopparapu's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Kopparapu had been granted on May 06, 2002;
- u. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- v. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- w. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- x. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- y. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- z. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- aa. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- bb. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- cc. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- dd. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- ee. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;

- ff. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- gg. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- hh. Johnson's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Johnson had been granted on August 06, 2002;
- ii. Kopparapu's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Kopparapu had been granted on December 30, 2002;
- jj. Kopparapu's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Kopparapu had been granted on March 24, 2003;
- kk. Kopparapu's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Kopparapu had been granted on March 24, 2003;
- ll. Kopparapu's Form 4 filed with the SEC on October 28, 2003 falsely reported that options granted to Kopparapu had been granted on April 10, 2003;
- mm. Triebes's Form 4 filed with the SEC on October 31, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- nn. Triebes's Form 4 filed with the SEC on October 31, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- oo. Triebes's Form 4 filed with the SEC on October 31, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- pp. Triebes's Form 4 filed with the SEC on October 31, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- qq. Triebes's Form 4 filed with the SEC on October 31, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- rr. Akin's Form 4 filed with the SEC on November 03, 2003 falsely reported that options granted to Akin had been granted on March 30, 2001;
- ss. Akin's Form 4 filed with the SEC on November 03, 2003 falsely reported that options granted to Akin had been granted on March 30, 2001;
- tt. Akin's Form 4 filed with the SEC on November 03, 2003 falsely reported that options granted to Akin had been granted on May 06, 2002;

- uu. Bridges's Form 4 filed with the SEC on November 04, 2003 falsely reported that options granted to Bridges had been granted on September 28, 2001;
- vv. Kopparapu's Form 4 filed with the SEC on November 04, 2003 falsely reported that options granted to Kopparapu had been granted on February 05, 2002;
- ww. Kopparapu's Form 4 filed with the SEC on November 04, 2003 falsely reported that options granted to Kopparapu had been granted on December 30, 2002;
- xx. Kopparapu's Form 4 filed with the SEC on November 04, 2003 falsely reported that options granted to Kopparapu had been granted on March 24, 2003;
- yy. Amoroso's Form 4 filed with the SEC on November 05, 2003 falsely reported that options granted to Amoroso had been granted on February 28, 2001;
- zz. Amoroso's Form 4 filed with the SEC on November 05, 2003 falsely reported that options granted to Amoroso had been granted on February 05, 2002;
- aaa. Bridges's Form 4 filed with the SEC on November 06, 2003 falsely reported that options granted to Bridges had been granted on September 28, 2001;
- bbb. Triebes's Form 4 filed with the SEC on November 06, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- ccc. Triebes's Form 4 filed with the SEC on November 06, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- ddd. Triebes's Form 4 filed with the SEC on November 12, 2003 falsely reported that options granted to Triebes had been granted on September 28, 2001;
- eee. Triebes's Form 4 filed with the SEC on November 12, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- fff. Triebes's Form 4 filed with the SEC on November 12, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2002;

- ggg. Triebes's Form 4 filed with the SEC on November 12, 2003 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- hhh. Triebes's Form 4 filed with the SEC on November 12, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- iii. Akin's Form 4 filed with the SEC on November 13, 2003 falsely reported that options granted to Akin had been granted on March 30, 2001;
- jjj. Akin's Form 4 filed with the SEC on November 13, 2003 falsely reported that options granted to Akin had been granted on May 06, 2002;
- kkk. Keating's Form 4 filed with the SEC on November 17, 2003 falsely reported that options granted to Keating had been granted on February 28, 2001;
- lll. Heffner's Form 4 filed with the SEC on November 20, 2003 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- mmm. Heffner's Form 4 filed with the SEC on November 21, 2003 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- nnn. Keating's Form 4 filed with the SEC on November 24, 2003 falsely reported that options granted to Keating had been granted on February 28, 2001;
- ooo. Heffner's Form 4 filed with the SEC on November 24, 2003 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- ppp. Twombly's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Twombly had been granted on September 28, 2001;
- qqq. Bridges's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Bridges had been granted on September 28, 2001;
- rrr. Twombly's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Twombly had been granted on February 05, 2002;

- sss. Bridges's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Bridges had been granted on February 05, 2002;
- ttt. Akin's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Akin had been granted on February 05, 2002;
- uuu. Heffner's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- vvv. Heffner's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- www. Twombly's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Twombly had been granted on May 06, 2002;
- xxx. Triebes's Form 4 filed with the SEC on November 26, 2003 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- yyy. Keating's Form 4 filed with the SEC on February 03, 2004 falsely reported that options granted to Keating had been granted on February 28, 2001;
- zzz. Bridges's Form 4 filed with the SEC on February 05, 2004 falsely reported that options granted to Bridges had been granted on September 28, 2001;
- aaaa. Triebes's Form 4 filed with the SEC on February 17, 2004 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- bbbb. Keating's Form 4 filed with the SEC on February 19, 2004 falsely reported that options granted to Keating had been granted on February 28, 2001;
- cccc. Triebes's Form 4 filed with the SEC on February 19, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- dddd. Triebes's Form 4 filed with the SEC on February 19, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- eeee. Triebes's Form 4 filed with the SEC on February 19, 2004 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- ffff. Kopparapu's Form 4 filed with the SEC on February 19, 2004 falsely reported that options granted to Kopparapu had been granted on March 24, 2003;

- gggg. Kopparapu's Form 4 filed with the SEC on February 19, 2004 falsely reported that options granted to Kopparapu had been granted on April 10, 2003;
- hhhh. Akin's Form 4 filed with the SEC on February 25, 2004 falsely reported that options granted to Akin had been granted on February 05, 2003;
- iiii. Akin's Form 4 filed with the SEC on February 26, 2004 falsely reported that options granted to Akin had been granted on February 05, 2003;
- jjjj. Bridges's Form 4 filed with the SEC on March 01, 2004 falsely reported that options granted to Bridges had been granted on September 28, 2001;
- kkkk. Bridges's Form 4 filed with the SEC on March 01, 2004 falsely reported that options granted to Bridges had been granted on February 05, 2002;
- llll. Twombly's Form 4 filed with the SEC on March 01, 2004 falsely reported that options granted to Twombly had been granted on February 05, 2002;
- mmmm. Twombly's Form 4 filed with the SEC on March 01, 2004 falsely reported that options granted to Twombly had been granted on May 06, 2002;
- nnnn. Triebes's Form 4 filed with the SEC on May 24, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- oooo. Triebes's Form 4 filed with the SEC on May 24, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- pppp. Triebes's Form 4 filed with the SEC on May 24, 2004 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- qqqq. Triebes's Form 4 filed with the SEC on May 24, 2004 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- rrrr. Triebes's Form 4 filed with the SEC on August 02, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- ssss. Bridges's Form 4 filed with the SEC on August 13, 2004 falsely reported that options granted to Bridges had been granted on September 28, 2001;
- tttt. Triebes's Form 4 filed with the SEC on September 10, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- uuuu. Triebes's Form 4 filed with the SEC on September 23, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;

- vvvv. Triebes's Form 4 filed with the SEC on September 30, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- www. Triebes's Form 4 filed with the SEC on September 30, 2004 falsely reported that options granted to Triebes had been granted on May 06, 2002;
- xxxx. Triebes's Form 4 filed with the SEC on October 04, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- yyyy. Triebes's Form 4 filed with the SEC on October 05, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- zzzz. Triebes's Form 4 filed with the SEC on October 05, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- aaaa. Triebes's Form 4 filed with the SEC on October 07, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- bbbb. Triebes's Form 4 filed with the SEC on October 07, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- cccc. Triebes's Form 4 filed with the SEC on October 08, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- dddd. Triebes's Form 4 filed with the SEC on October 08, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- eeee. Triebes's Form 4 filed with the SEC on October 08, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2003;
- ffff. Triebes's Form 4 filed with the SEC on October 15, 2004 falsely reported that options granted to Triebes had been granted on February 05, 2002;
- gggg. Heffner's Form 4 filed with the SEC on October 29, 2004 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- hhhh. Heffner's Form 4 filed with the SEC on November 02, 2004 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- iiii. Heffner's Form 4 filed with the SEC on November 02, 2004 falsely reported that options granted to Heffner had been granted on May 06, 2002;

- jjjj. Heffner's Form 4 filed with the SEC on November 05, 2004 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- kkkk. Heffner's Form 4 filed with the SEC on November 15, 2004 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- llll. Heffner's Form 4 filed with the SEC on November 15, 2004 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- mmmm. Cheng's Form 4 filed with the SEC on November 24, 2004 falsely reported that options granted to Cheng had been granted on May 06, 2002;
- nnnn. Cheng's Form 4 filed with the SEC on November 24, 2004 falsely reported that options granted to Cheng had been granted on May 06, 2002;
- oooo. Cheng's Form 4 filed with the SEC on November 24, 2004 falsely reported that options granted to Cheng had been granted on May 06, 2002;
- pppp. Cheng's Form 4 filed with the SEC on November 24, 2004 falsely reported that options granted to Cheng had been granted on May 06, 2002;
- qqqq. Heffner's Form 4 filed with the SEC on February 17, 2005 falsely reported that options granted to Heffner had been granted on February 05, 2002;
- rrrr. Heffner's Form 4 filed with the SEC on February 17, 2005 falsely reported that options granted to Heffner had been granted on May 06, 2002;
- ssss. Akin's Form 4 filed with the SEC on March 01, 2005 falsely reported that options granted to Akin had been granted on May 06, 2002;
- tttt. Hsu's Form 4 filed with the SEC on November 29, 2005 falsely reported that options granted to Hsu had been granted on January 09, 2001;
- uuuu. Akin's Form 4 filed with the SEC on November 29, 2005 falsely reported that options granted to Akin had been granted on May 06, 2002;
- vvvv. Heffner's Form 4 filed with the SEC on December 01, 2005 falsely reported that options granted to Heffner had been granted on February 05, 2002;
- wwww. Twombly's Form 4 filed with the SEC on December 01, 2005 falsely reported that options granted to Twombly had been granted on May 06, 2002;

xxxxx. Heffner's Form 4 filed with the SEC on February 01, 2006 falsely reported that options granted to Heffner had been granted on February 05, 2002;

yyyyy. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

zzzzz. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

aaaaa. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

bbbbb. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

ccccc. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

ddddd. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

eeeee. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

fffff. Burger's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Burger had been granted on February 05, 2002;

ggggg. Keating's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Keating had been granted on February 05, 2002;

hhhhh. Keating's Form 4 filed with the SEC on February 17, 2006 falsely reported that options granted to Keating had been granted on February 05, 2002;

iiiiii. Ludwick's Form 4 filed with the SEC on February 23, 2006 falsely reported that options granted to Ludwick had been granted on February 05, 2002;

jjjjj. Keating's Form 4 filed with the SEC on February 23, 2006 falsely reported that options granted to Keating had been granted on February 05, 2002;

kkkkk. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on February 05, 2002;

lllll. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on February 05, 2002;

mmmmm. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on February 05, 2002;

nnnnn. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on February 05, 2002;

ooooo. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on February 05, 2002;

ppppp. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on February 05, 2002;

qqqqq. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on May 06, 2002;

rrrrr. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on May 06, 2002;

sssss. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on May 06, 2002;

ttttt. Twombly's Form 4 filed with the SEC on February 28, 2006 falsely reported that options granted to Twombly had been granted on May 06, 2002;

uuuuu. Young's Form 4 filed with the SEC on April 26, 2006 falsely reported that options granted to Young had been granted on February 05, 2002;

vvvvv. Young's Form 4 filed with the SEC on April 26, 2006 falsely reported that options granted to Young had been granted on February 05, 2002;

wwwww. Young's Form 4 filed with the SEC on April 26, 2006 falsely reported that options granted to Young had been granted on February 05, 2002;

xxxxxx. Young's Form 4 filed with the SEC on April 26, 2006 falsely reported that options granted to Young had been granted on February 05, 2002;

yyyyyy. Young's Form 4 filed with the SEC on April 26, 2006 falsely reported that options granted to Young had been granted on February 05, 2002;

zzzzzz. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

aaaaaa. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

bbbbbb. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

cccccc. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

dddddd. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

eeeeee. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

ffffff. Cheng's Form 4 filed with the SEC on May 03, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

gggggg. Heffner's Form 4 filed with the SEC on May 08, 2006 falsely reported that options granted to Heffner had been granted on February 05, 2002;

hhhhhh. Cheng's Form 4 filed with the SEC on May 08, 2006 falsely reported that options granted to Cheng had been granted on May 06, 2002;

iiiiii. Heffner's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Heffner had been granted on February 05, 2002;

jjjjjj. Heffner's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Heffner had been granted on February 05, 2002;

kkkkkk. Heffner's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Heffner had been granted on February 05, 2002;

llllll. Heffner's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Heffner had been granted on February 05, 2002;

mmmmmmm. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on February 05, 2002;

nnnnnnn. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on February 05, 2002;

ooooooo. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on February 05, 2002;

ppppppp. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on May 06, 2002;

qqqqqqq. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on May 06, 2002;

rrrrrrr. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on May 06, 2002; and

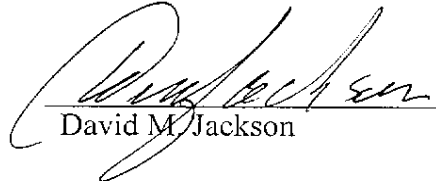
sssssss. Taft's Form 4 filed with the SEC on May 09, 2006 falsely reported that options granted to Taft had been granted on December 30, 2002.

VERIFICATION

I, David M. Jackson, hereby verify that I have authorized the filing of the attached Consolidated Derivative Complaint, that I have reviewed the Complaint, and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the forgoing is true and correct.

DATE:

March 24, 07

David M Jackson

VERIFICATION

I, Jeanne McDonald, hereby verify that I have authorized the filing of the attached Consolidated Derivative Complaint, that I have reviewed the Complaint, and that the facts therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

DATE: 2-27-07



Jeanne McDonald