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NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 CV 08 4238

15 SECURITIES AND EXCHANGE COMMISSION,
16 Plaintiff,
17 vs.
18 RAJ P. SABHLOK and MICHAEL C. PATTISON
19 Defendants.

Civil Action No. _____

COMPLAINT

BZ

22 Plaintiff Securities and Exchange Commission (the "Commission") alleges:

23 **SUMMARY OF THE ACTION**

24 1. From 2000 through 2004, Raj. P. Sabhlok, the former chief financial officer of
25 Embarcadero Technologies, Inc. ("Embarcadero" or the "Company") and Michael C. Pattison, the
26 Company's former controller, engaged in a fraudulent scheme to secretly grant backdated stock
27 options to employees and themselves and to hide several million dollars in compensation
28 expenses from the Company's shareholders and others.

1 2. Under well-settled accounting principles then in effect, Embarcadero informed its
2 shareholders that it did not record an expense for options granted to employees at the current
3 market price (at-the-money), while the Company *was* required to record an expense in its financial
4 statements for any options granted below the market price (in-the-money). For sixteen
5 consecutive quarters, from the fourth fiscal quarter of 2000 through the third fiscal quarter of
6 2004, Sabhlok, Pattison and others arranged for employees and certain executives to be granted
7 undisclosed, in-the-money options with exercise prices below the current market price, but failed
8 to report compensation expenses for these grants.

9 3. In order to sidestep the expense reporting requirement, defendants backdated option
10 grants to make them falsely appear as though they had been granted at-the-money on an earlier
11 date. Their scheme hid millions of dollars in expenses from Embarcadero's shareholders and
12 significantly overstated the Company's income in its public statements. On a percentage basis the
13 impact was significant, resulting in the understatement of net losses by over 530 percent in fiscal
14 year 2002, and false reporting of profitability when Embarcadero actually suffered a net loss.

15 4. Defendants concealed the scheme for years. As late as 2006, Sabhlok misled the
16 Company's Audit Committee and auditors when they inquired into Embarcadero's historical
17 options granting practices.

18 5. By engaging in the conduct alleged in this Complaint, defendants, among other
19 things, violated the antifraud provisions of the federal securities laws, falsified books and records,
20 lied to Embarcadero's accountants, and caused Embarcadero to falsely report its financial results.
21 The Commission seeks an order enjoining both defendants from future violations of the securities
22 laws, requiring them to pay civil monetary penalties, and requiring them to disgorge ill-gotten
23 gains with prejudgment interest, and providing other appropriate relief. The Commission also
24 seeks an order requiring Sabhlok to repay pursuant to statute bonuses, incentive compensation,
25 and profits from the sale of Embarcadero stock, and an order barring Sabhlok from serving as an
26 officer or a director of a public company.

1 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

2 6. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
3 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and
4 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and 78u(e)].
5 This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the Securities
6 Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15
7 U.S.C. §§ 78u(d), 78u(e), and 78aa].

8 7. Venue is proper in this district pursuant to Section 22 of the Securities Act [15 U.S.C.
9 § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Acts and transactions constituting
10 violations of the federal securities laws occurred in this district.

11 8. Assignment to the San Francisco Division is appropriate pursuant to Civil Local Rule
12 3-2 because a substantial part of the events and omissions giving rise to the Commission’s claims
13 occurred, among other places, in San Francisco County.

14 **DEFENDANTS**

15 9. Raj. P. Sabhlok, age 44, of Pleasanton, California, served as Embarcadero’s chief
16 financial officer and Senior Vice President of Corporate Development from January 2000 through
17 October 2005. From October 2005 through June 2007, he was Embarcadero’s Senior Vice
18 President of Worldwide Operations, and from June 2007 through November 2007, he was the
19 chief executive officer. Before joining Embarcadero, Sabhlok held executive-level positions at
20 other software companies, including a public company. Sabhlok received a bachelor’s degree in
21 mathematics, and in 2002, he received a Masters in Business Administration.

22 10. Michael C. Pattison, C.P.A., age 43, of Burlingame, California, served as
23 Embarcadero’s controller from approximately April 2000 through October 2005. Pattison is a
24 certified public accountant with an inactive license to practice in California. Prior to joining
25 Embarcadero, Pattison was an accountant at an accounting and auditing firm.

26 **RELEVANT ENTITY**

27 11. Embarcadero Technologies, Inc. is a Delaware corporation headquartered in San
28 Francisco, California. From its initial public offering in April 2000 until June 25, 2007,

1 Embarcadero's common stock was registered under Section 12 of the Exchange Act and was
2 publicly traded on the NASDAQ National Market (or NASDAQ Global Market) under the symbol
3 "EMBT." During that time, Embarcadero's fiscal year ended on December 31. In approximately
4 June 2007, the Company was acquired by a private firm and is currently privately-held. During
5 the period June 2000 through January 2007, Stephen R. Wong, a co-founder of Embarcadero,
6 served as its chief executive officer and Chairman of the Company's board of directors.

7 FACTUAL ALLEGATIONS

8 **A. Embarcadero's Disclosures Regarding Its Stock Option Practices.**

9 12. From late 2000 through 2004, Embarcadero regularly granted stock options to its
10 employees and officers as a form of compensation to recruit, retain, and incentivize them. The
11 Company granted options as new employees and executives were hired, and as retention
12 compensation. Each option gave the grantee the right to buy Embarcadero's common stock from
13 the Company at a set price, called the "exercise" or "strike" price. The option was "at-the-money"
14 when granted if the then-current fair market value of the stock and the exercise price were the
15 same. The option was "in-the-money" when granted (and more valuable to the grantee) if the
16 then-current fair market value of Embarcadero's stock exceeded the option's exercise price.

17 13. As a public company, Embarcadero made disclosures to shareholders about its stock
18 option practices in periodic reports filed with the Commission. Embarcadero's public disclosures
19 from 2000 through 2004 stated that the Company followed an accounting principle that required it
20 to record compensation expenses for any in-the-money options. Embarcadero also represented
21 that options granted after the Company's stock had become publicly traded were granted at-the-
22 money, and therefore the Company recorded no associated compensation expense.

23 14. From 2000 through 2004, Embarcadero reported in its public filings with the
24 Commission that its audited financial statements conformed with generally accepted accounting
25 principles (known as "GAAP"). In its 2000 through 2004 annual reports filed with the
26 Commission on Forms 10-K and in its 2003 through 2004 quarterly reports filed with the
27 Commission on Forms 10-Q, Embarcadero stated that it followed the specific GAAP rule known
28

1 as Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees"
2 ("APB No. 25") in accounting for stock options granted to employees and executives.

3 15. In particular, Embarcadero stated in its 2000 through 2003 annual reports that
4 "[u]nder APB No. 25, compensation expense is based on the difference, if any, on the date of the
5 grant, between the estimated fair value of the Company's shares and the exercise price of options
6 to purchase that stock." Embarcadero's 2004 annual report similarly stated that, following APB
7 No. 25, the Company was required to record a compensation expense equivalent to the difference
8 between the price of the stock when the option was granted and the exercise price of the option.

9 16. Embarcadero's public filings further stated that option grants to its employees and
10 executives were made pursuant to its primary stock option plan. In its annual reports for each of
11 the five years from 2000 through 2004, Embarcadero stated that the effective primary stock option
12 plan required that options would be granted with exercise prices "no less than 100% of the
13 estimated fair value of the shares on the date of the grant." The 2001 through 2003 annual reports
14 further stated that "all stock option grants made during the year were at fair market value, which is
15 defined as the closing share price on the day prior to the option grant date."

16 17. Similarly, Embarcadero's proxy statements announcing the annual meetings with
17 shareholders and filed with the Commission from 2001 through 2005, stated that after the
18 Company's initial public offering in April 2000 through the end of 2004, all of Embarcadero's
19 stock options to its "named executive officers" (including Sabhlok) were granted "at an exercise
20 price at least equal to the fair market value of our common stock[.]" In addition, the proxy
21 statements filed with the Commission from 2003 through 2005 incorporated the description of the
22 stock option plans describing how options granted to employees were priced at the fair market
23 value of the Company's shares on the date of the grant.

24 **B. Sabhlok And Pattison Engaged In A Multi-Year Backdating Scheme To**
25 **Secretly Grant In-The-Money Options.**

26 18. In approximately October 2000, the Compensation Committee of Embarcadero's
27 board of directors authorized the CEO to grant options to non-executive employees. Under the
28 CEO's authorization, from approximately 2000 through 2004, Embarcadero made over 800 option

1 grants, representing over 4 million shares. Most of these grants were backdated as part of the
2 defendants' scheme.

3 19. For sixteen consecutive quarters, from the fourth fiscal quarter of 2000 through the
4 third quarter 2004, Sabhlok and Pattison together with the CEO secretly granted in-the-money
5 options with strike prices selected from among the low closing prices Embarcadero's stock had
6 experienced in the weeks or months prior to the day on which the grant was actually made.
7 Defendants hid this practice by backdating records to make look as if the grants had been made at-
8 the-money on the date corresponding to the low price that was selected as the option's strike price.

9 20. Sabhlok and Pattison each participated in the backdating scheme. At least from late
10 2000 through mid-2001, Sabhlok participated in discussions with the CEO and with Pattison
11 concerning whether to alter previously recorded option grant dates in order to use grant dates
12 corresponding with lower closing prices selected with hindsight. In certain instances, Sabhlok
13 directed Pattison to use grant dates selected with hindsight in order to grant options with lower
14 strike prices.

15 21. From approximately late 2000 through 2004, Pattison routinely collected stock option
16 grant requests from various sources, including Sabhlok, the CEO, other Embarcadero managers,
17 and the Human Resources department. Pattison then prepared spreadsheets listing the names of
18 the grantees and the proposed number of shares for each grant, which he updated as new grant
19 requests came in.

20 22. During approximately late 2000 through mid-2001, Pattison included proposed grant
21 dates in the spreadsheets, and provided the spreadsheets or summaries of them at times to
22 Sabhlok; Pattison then changed the grant dates to follow Sabhlok's requests to alter grant dates to
23 correspond with lower strike prices.

24 23. From approximately mid-2001 through 2004, defendants settled on a practice of
25 waiting until the end of the quarter to select a date for options grants corresponding with the
26 lowest closing price Embarcadero's stock experienced during the prior quarter. For grants to
27 newly-hired employees, defendants selected from the prices Embarcadero's stock experienced

28

1 after the employee's start date through the end of the quarter. Pattison memorialized this practice
2 in spreadsheets he prepared during this period, including spreadsheets he provided to Sabhlok.

3 24. For instance, in 2003, Pattison emailed Sabhlok summaries of grants at the end of two
4 quarters, noting the low closing price for the quarter and the date associated with that price. In
5 one, Pattison further noted that the strike prices for grants to newly hired employees would not be
6 based on the quarterly low, but would rather be backdated to the lowest closing price after the
7 employees' hire dates. Similarly, in 2004, Pattison sent Sabhlok spreadsheets for two quarters
8 which both stated that options were "[t]o be granted at Q low," and one of which further provided
9 that new employees would receive the lowest price of the quarter following their hire dates.

10 25. Once defendants selected the quarterly low price and corresponding date to be used
11 for the grants, Pattison included this information in the spreadsheets and sent them to an external
12 vendor for entry into Embarcadero's stock option database, known as "Equity Edge."

13 26. Embarcadero used the information recorded into Equity Edge to prepare the
14 Company's publicly-reported financial statements. Because the actual dates when the options
15 were granted were omitted from the information entered into the Equity Edge database, no
16 compensation expense was recorded for the backdated options.

17 27. Pattison also sent the spreadsheets describing the options granted to persons in
18 Embarcadero's Human Resources department to prepare stock option agreements for Sabhlok's
19 signature. Sabhlok signed on behalf of the Company agreements for nearly every option grant
20 made; however, these agreements also failed to set forth the true dates on which the options were
21 actually granted, each revealing only the backdated grant date corresponding to the low stock
22 price selected as the option's strike price.

23 28. Pattison also provided the quarterly spreadsheets with the backdated grant dates and
24 corresponding strike prices, as well as the grant approval summaries, to Embarcadero's auditors,
25 in connection with the annual audits of the Company's financial statements. In addition, the
26 auditors were also provided stock option agreements that represented the false grant dates and the
27 corresponding low strike prices.

28

1 29. Sabhlok and Pattison knew, or were reckless in not knowing, that the use of dates in
2 the past selected with hindsight for their corresponding low stock prices, caused Embarcadero to
3 falsely present its compensation expenses and other financial information. They also knew, or
4 were reckless in not knowing, that the backdating scheme was contrary to the Company's public
5 disclosures about how it granted stock options at the "fair market value" of Embarcadero's stock.

6 30. Beginning before and continuing through and after the time that defendants were
7 engaged in the backdating scheme, Sabhlok and Pattison participated in communications
8 internally, and with Embarcadero's external auditors and counsel, regarding the need to record an
9 expense for in-the-money options or the impropriety of backdating.

10 31. For example, in around March 2000, Pattison explained to Sabhlok and the CEO that,
11 because of an Internal Revenue Service restriction, certain options granted prior to the Company's
12 initial public offering would have a less favorable strike price than previously contemplated. The
13 CEO responded to Pattison and Sabhlok acknowledging that the higher strike price would at least
14 "make a small dent in our stock compensation charges."

15 32. In around October 2000, Embarcadero's auditor informed Sabhlok about the
16 accounting treatment for options granted to employees of a company Embarcadero acquired,
17 describing how options granted to employees of the newly-acquired company would be subject to
18 requirements of APB No. 25. Similarly, in around January 2001, Embarcadero's auditor sent to
19 Sabhlok and Pattison a description of the "Accounting Consequences if Option Price is less than
20 FMV." The description stated that if options were granted at less than fair market value on the
21 grant date, a "compensation expense will be charged to earnings."

22 33. In around December 2002, Embarcadero's auditor provided materials with
23 explanations of the relevant accounting requirements to Pattison, which noted that the
24 "[s]implicity of the basic principle of APB 25 (i.e., stock compensation of an award is equal to its
25 intrinsic value on the date of the grant) is perhaps its most touted benefit."

26 34. Again in around October 2004, Sabhlok was specifically informed by Embarcadero's
27 outside counsel that options should "[a]bsolutely not" be granted "retroactively," with a grant date
28 earlier than the date of actual approval of the grant.

1 **Examples of Backdated Grants**

2 ***Backdated Options With The Fictitious "April 5, 2001" Grant Date***

3 35. On April 4, 2001, Embarcadero's stock price closed at a then all-time low of
4 approximately \$10.625 per share. That price remained the lowest closing price for the Company's
5 stock through mid-August 2001. On several occasions from approximately mid-April 2001
6 through August 2001, Sabhlok and Pattison participated in the backdating of stock options to
7 employees and executives, using the fictitious April 5, 2001 grant date, which under
8 Embarcadero's option plan corresponded to the low April 4, 2001 closing price.

9 36. Thus, on around April 10, 2001, as they were closing the books for Embarcadero's
10 first quarter of 2001 (ended March 31, 2001), Sabhlok instructed Pattison to grant options to
11 approximately 17 employees using a date during the first week of April 2001 that corresponded to
12 a lower share price. Each of the options had already been granted and entered into Embarcadero's
13 Equity Edge record system during the first quarter. Most had originally been recorded with grant
14 dates of March 6, 2001, with a corresponding strike price of \$22.69 per share, or March 19, 2001,
15 with a corresponding strike price of \$14.94 per share. However, on approximately April 10, 2001,
16 when Embarcadero's stock closed at approximately \$17.82 per share, Sabhlok instructed Pattison
17 to "take out the March grants to the first week of April. We should be able to get them around
18 \$10 or \$11."

19 37. Pattison did as Sabhlok instructed and backdated the grants to correspond to the
20 \$10.625 closing price experienced in the prior week. However, because the grants had already
21 been recorded in Equity Edge, on around April 18, 2001, Pattison claimed to the outside vendor
22 that the grants needed to be "correct[ed]," and instructed the vendor to change the Equity Edge
23 database to reflect the April 5, 2001 grant date and more favorable \$10.625 per share strike price.
24 Pattison omitted from his instructions the fact that the grants were not made until after April 5,
25 2001, and were instead backdated.

26 38. Pattison was among the approximately 17 employees listed as recipients of the
27 previously recorded options for which he changed the grant date to obtain the lower strike price.

1 Sabhlok also instructed Pattison to increase Pattison's own grant from 2,000 to 5,000 shares, and
2 Pattison did as instructed.

3 39. Throughout the next several months until approximately mid-August 2001, Pattison
4 repeatedly backdated grants to April 5, 2001. In a June 2001 email, Pattison attached a list of the
5 grants backdated to April 5, 2001, and summarized their composition: "The April 5, 2001 grants
6 are comprised of three distinct blocks— 1) Performance grants made in March that were pushed
7 back to April; 2) New hire grants if they were hired in March; and 3) Performance grants (existing
8 employees) that were made in the 2nd Q [that] were deemed to have been made on April 5, 2001
9 regardless of when the manager requested them[.]"

10 40. Among the grants described in Pattison's June 2001 email was a backdated option for
11 25,000 shares to Sabhlok. On approximately May 11, 2001, when Embarcadero's stock price
12 closed at approximately \$29.97 per share, Pattison directed the recording of the option to Sabhlok,
13 with the April 5, 2001 grant date and the \$10.625 strike price. Although Sabhlok was an
14 executive officer, the grant was not authorized by the Compensation Committee as required under
15 Embarcadero's stock option plan.

16 41. During the year-end audit of Embarcadero's financial statements, Pattison provided
17 the auditors with a spreadsheet listing the backdated April 5, 2001 grants.

18 *Backdated Options With The Fictitious "August 13, 2004" Grant Date*

19 42. During the third quarter of 2004, Pattison summarized how options to be granted that
20 quarter would be backdated, and he provided the summary to Sabhlok. Pattison's summary
21 specified, in bold type, that options to newly hired, non-officer employees were "**TO BE ISSUED**
22 **AT LOW IN QUARTER—BUT NOT BEFORE START DATE**"; that options to existing non-
23 officer employees were "**TO BE ISSUED AT LOW OF QUARTER**"; and that an executive
24 officer's grant "**REQUIRES A COMP COMMITTEE MEETING TO GET ISSUED.**"

25 43. In an email discussion among the CEO, Sabhlok, Pattison and the Vice President of
26 Sales during approximately October 1 to October 4, 2004, they discussed the grants with respect
27 to two recipients. First, the CEO described how fortuitous the grants were:
28

1 Actually, [the two recipients of the August 13, 2004 grants] made out like bandits—
2 because they are not VPs, I have the discretion to make their grants. By some strange
3 coincidence, this happened at the low price for the quarter (<\$6).

4 Unfortunately, you . . . have to go through a different process, which gets recorded and
5 validated. . . . Let's see how things trade next week before I make the option grant
6 official.

7 Hope this makes the weekend a bit more pleasant.

8 44. Then, upon receipt of this email, Sabhlok monitored the grants and prompted Pattison
9 to “nail[] down” the terms of the options. On around October 6, 2004, when Embarcadero’s stock
10 closed at approximately \$9.67 per share, Pattison responded to Sabhlok with the precise terms for
11 the Vice President’s two subordinates, including the \$5.95 per share strike price representing the
12 closing price of Embarcadero’s stock on August 13, 2004, the lowest closing price during the third
13 quarter (ended September 30, 2004).

14 45. Also on around October 6, 2004, Pattison emailed Embarcadero’s outside vendor to
15 record into Equity Edge the options granted to the Vice President’s subordinates, along with
16 approximately 35 other persons, all of which were backdated to August 13, 2004. The
17 spreadsheet Pattison provided falsely described the \$5.95 strike price as equal to the purported
18 “Grant Date Market Value” and omitted the fact that the options had not actually been granted
19 until several weeks after August 13, 2004, when the options were already in-the-money. Later,
20 Sabhlok signed the stock option agreements bearing the false August 13, 2004 grant date.

21 46. Shortly after they recorded this backdatd grant but before Embarcadero’s quarterly
22 financial statements reflecting the options were publicly filed, on around October 21, 2004,
23 Sabhlok asked Embarcadero’s outside counsel: “Can [the CEO] grant awards retroactively? In
24 other words, the grant date is earlier than the date that he approves the grant?” The outside
25 counsel responded, “No. Absolutely not.” Sabhlok forwarded this email to Pattison. Despite this,
26 the publicly-filed financial statements reflected no compensation expenses for the options, and
27 falsely stated that the options were priced at the fair market value on the grant dates.

28 47. During Embarcadero’s annual audit for 2004, the auditors were provided the Equity
Edge data together with Pattison’s grant spreadsheet, which misleadingly suggested that the

1 August 13, 2004 grants were made at-the-money. The auditors were also provided the stock
2 option agreements bearing false grant dates.

3 **C. Sabhlok and Pattison Received Backdated Grants.**

4 48. Sabhlok received backdated grants on at least two occasions, which together were in-
5 the-money by approximately \$1.184 million at the time they were granted. In the grant backdated
6 to April 5, 2001 (as described above) Sabhlok received options for 25,000 shares with a strike
7 price of approximately \$10.625; on approximately May 11, 2001, when the options appear to have
8 actually been granted, they were in-the-money by approximately \$484,000.

9 49. Similarly, on about January 8, 2002, Sabhlok was granted options backdated to
10 October 2, 2001 for 40,000 shares with a strike price of approximately \$7.00, rendering the shares
11 in-the-money by approximately \$700,000.

12 50. As he was an executive officer, grants to Sabhlok were required to be authorized by
13 the Compensation Committee of Embarcadero's board of directors. In around January 2002,
14 Sabhlok and Pattison prepared Compensation Committee minutes to falsely suggest a meeting
15 occurred on October 2, 2001, which Sabhlok signed as secretary. No Compensation Committee
16 meeting took place on that date, nor was the grant approved during any such meeting.

17 51. Sabhlok was required to report stock option grants to himself in reports filed with the
18 Commission, which set forth terms including the date of the grant. In February 2002, Sabhlok
19 filed or caused to be filed reports, signed by him, in which he falsely represented that the options
20 he received were granted on April 5, 2001 and October 2, 2001, although both were actually
21 backdated.

22 52. Pattison received backdated options on at least five occasions, with purported grant
23 dates of April 5, 2001, October 2, 2001, October 17, 2002, July 2, 2003 and October 3, 2003.
24 These options were for a total of approximately 41,166 shares and when granted were, together,
25 in-the-money by approximately \$287,000.

1 **D. Sabhlok and Pattison Caused Embarcadero to Falsely Report Its Financial**
2 **Results.**

3 53. From late 2000 through early 2005, Sabhlok and Pattison also made materially
4 misleading statements and omissions of fact that were communicated to Embarcadero's
5 shareholders and to others in public statements, including periodic reports that the Company filed
6 with the Commission.

7 54. Embarcadero publicly filed with the Commission annual audited financial statements,
8 certified by the Company's outside auditors. As defendants knew, or were reckless in not
9 knowing, Embarcadero was required to record a compensation expense for in-the-money options
10 granted to employees and executives, but failed to do so in these financial statements. Instead,
11 defendants caused the Company to materially understate losses and overstate its net income.
12 Because expenses that should have been recorded for the in-the-money options continued to affect
13 the financial statements as employees became eligible to exercise their options, misstatements of
14 expenses and income continued until 2006.

15 55. In particular, Embarcadero filed with the Commission annual reports on Forms 10-K
16 for the fiscal years ended December 31, 2000 (filed March 20, 2001); December 31, 2001 (filed
17 March 26, 2002); December 31, 2002 (filed March 26, 2003); December 31, 2003 (filed March
18 12, 2004); and December 31, 2004 (filed April 7, 2005), which included audited financial
19 statements. As a result of the failure to record compensation expenses for backdated options
20 granted during those periods, as well as the ongoing failure to record expenses for backdated
21 options granted in earlier periods, the financial statements included with each of those reports
22 materially understated Embarcadero's expenses and overstated its net income. In 2002 alone, the
23 company understated its net losses by over approximately 530 percent.

24 56. Furthermore, Embarcadero filed with the Commission quarterly reports on Forms 10-
25 Q for the quarters ended March 31, 2001 (filed May 11, 2001); June 30, 2001 (filed August 6,
26 2001); October 31, 2001 (filed on November 9, 2001); March 31, 2002 (filed on May 14, 2002);
27 June 30, 2002 (filed on August 13, 2002); October 31, 2002 (filed on November 8, 2002); March
28 31, 2003 (filed on May 12, 2003); June 30, 2003 (filed on August 11, 2003 and amended January

1 18, 2005); October 31, 2003 (filed on November 10, 2003); March 31, 2004 (filed on May 10,
2 2004 and amended on January 18, 2005); June 30, 2004 (filed on August 9, 2004); and September
3 30, 2004 (filed on January 18, 2005), each of which included Embarcadero's quarterly financial
4 statements. The financial statements included with each of these reports were also materially
5 misleading, as they failed to record expenses for backdated options, and each therefore materially
6 understated Embarcadero's expenses and overstated its net income.

7 57. As chief financial officer from the end of 2000 through 2005, Sabhlok was
8 responsible for ensuring the integrity of Embarcadero's financial statements, and the processes the
9 Company used to report its financial condition to its shareholders and others. To prepare each of
10 the above Forms 10-K and 10-Q Embarcadero filed with the Commission, Sabhlok established
11 procedures to obtain the information that was disclosed in the reports, and he also designed
12 controls to ensure that material information was made known to him. Sabhlok further reviewed
13 each of the above reports filed on Forms 10-K and 10-Q for each of the periods, and he
14 communicated regularly with Embarcadero's external auditors in connection with their quarterly
15 reviews and annual audits of the Company's financial statements. Sabhlok also signed each of the
16 above reports filed with the Commission on Forms 10-K and 10-Q.

17 58. From the end of 2000 through early 2005, Pattison was responsible for carrying out
18 the majority of the day-to-day accounting functions at Embarcadero, including the accounting
19 functions upon which the misstated expenses were based. In particular, Pattison provided the
20 false information about options grants that were entered into Equity Edge and used as the basis for
21 preparing Embarcadero's financial statements for options-related compensation expenses.
22 Pattison was further responsible for preparing Embarcadero's financial statements that were
23 attached to each of the Company's reports filed with the Commission on Forms 10-K and 10-Q,
24 described above. Pattison also reviewed each of the above reports filed on Forms 10-K and 10-Q,
25 including the financial statements, and communicated regularly with the Company's external
26 auditors in connection with their annual audits and quarterly reviews of the financial statements.

27 59. In addition to including false financial statements, each of the annual reports on
28 Forms 10-K for fiscal years 2000 through 2004 falsely stated that options granted to employees

1 had been made pursuant to a plan requiring strike prices “no less than 100% of the estimated fair
2 value of the shares on the date of the grant.” This claim was false because options were routinely
3 granted with strike prices well below the market price of the Company’s shares on the date of
4 grant. Furthermore, the annual reports on Forms 10-K for fiscal years 2001 through 2003 falsely
5 represented that “all stock option grants made during the year were at fair market value, which is
6 defined as the closing share price on the day prior to the option grant date”; in fact, stock options
7 were routinely granted with strike prices well below the defined fair market value.

8 60. Each of Embarcadero’s annual reports on Forms 10-K for the fiscal years 2000
9 through 2004 also misleadingly stated that the Company accounted for its employee stock options
10 pursuant to the GAAP principle, APB No. 25, which required a compensation expense based on
11 the difference between the estimated fair value of the Company’s shares on the date of the grant
12 and the option’s exercise price; however, the reports failed to disclose that the requisite
13 compensation expense had not been recorded.

14 61. In addition to signing each of Embarcadero’s annual reports filed on Forms 10-K for
15 the fiscal years 2000 through 2004, Sabhlok signed certifications for Embarcadero’s annual
16 reports filed for fiscal years 2002 through 2004. In those certifications, Sabhlok represented that
17 he had reviewed the annual reports; that the annual reports fairly presented, in all material aspects,
18 the financial condition and results of operation of the Company; and that the annual reports did
19 not contain any untrue statements of a material fact or omit to state a material fact necessary to
20 make the statements made, in light of the circumstances under which such statements were made,
21 not misleading. As Sabhlok knew or was reckless in not knowing, those representations were
22 false due to defendants’ backdating scheme.

23 62. Sabhlok also signed a certification for Embarcadero’s quarterly report filed on Form
24 10-Q for the quarter ended June 30, 2002, in which he falsely represented that the quarterly
25 reports fairly represented Embarcadero’s financial condition and results of operation. This
26 statement was false and misleading in light of the Company’s failure to record the requisite
27 expenses for in-the-money options granted during that period and in earlier periods.

28

1 63. Sabhlok also signed certifications for Embarcadero's quarterly reports filed on Forms
2 10-Q (and 10-Q/A) for quarters ended October 31, 2002; March 31, 2003; June 30, 2003; October
3 31, 2003; March 31, 2004; June 30, 2004; and September 30, 2004, in which he represented,
4 among other things, that he had reviewed the quarterly reports, and that the quarterly reports did
5 not contain any untrue statements of a material fact or omit to state a material fact necessary to
6 make the statements made, in light of the circumstances under which such statements were made,
7 not misleading. Those representations were misleading, for the reasons described above.

8 64. In addition, Embarcadero filed with the Commission current reports on Forms 8-K on
9 April 22, 2003; July 24, 2003; October 16, 2003; January 27, 2004; April 20, 2004; and July 20,
10 2004, each of which included a press release announcing the Company's financial results for the
11 most recently completed quarter. In addition, Embarcadero filed a Form 8-K on January 18, 2005,
12 announcing the Company's financial results for the quarter ended September 30, 2004. Each of
13 these current reports contained materially false and misleading financial information due to the
14 failure to record compensation expenses associated with backdated stock options.

15 65. Sabhlok was responsible for preparing the content of the current reports on Forms 8-K
16 and he signed each of these current reports. Pattison drafted the misleading financial information
17 that was communicated in each of the current reports or in the attachments to the filing. In
18 addition, Pattison was responsible for reviewing the filings and verifying their accuracy.

19 66. In addition, Sabhlok participated in publicly disclosed "earnings calls" with analysts
20 regarding each of earnings announcements described in the above current reports filed on Forms
21 8-K, during which Sabhlok presented the financial results, describing the falsely understated
22 expenses and overstated income. Sabhlok also reviewed and approved a script he used to present
23 information during the earnings call. Pattison also reviewed and prepared information that was
24 used for Sabhlok's script and a similar script used by the CEO during the call.

25 67. Embarcadero also offered and sold securities pursuant to registration statements filed
26 with the Commission on Forms S-8. Thus, Embarcadero filed registration statements on August
27 14, 2003 (incorporating the Form 10-K for the year ended December 31, 2002 and the Forms 10-
28 Q for the quarters ended March 31, 2003 and June 30, 2003); and August 5, 2004 (incorporating

1 the Form 10-K for the year ended December 31, 2003; the Form 10-Q for the quarter ended March
2 31, 2004; and the Forms 8-K filed on January 27, 2004; April 20, 2004; and July 20, 2004).
3 Those registration statements were materially false and misleading because, among other things,
4 they incorporated financial statements that were false and misleading because they failed to
5 disclose expenses related to backdated options. Sabhlok signed the registration statements on
6 Forms S-8 filed on August 14, 2003 and August 5, 2004. In addition, Sabhlok and Pattison signed
7 letters to Embarcadero's auditors in connection with the filing of the registration statements which
8 falsely represented that the Company's past financial statements were fair and in conformity with
9 GAAP.

10 68. Embarcadero also filed with the Commission proxy statements announcing the annual
11 meetings with shareholders on April 26, 2002, April 23, 2003, April 29, 2004, and June 1, 2005.
12 Each of these proxy statements included materially misleading representations about stock option
13 grants, and omitted the fact that they were backdated.

14 69. Thus, the proxy statement filed with the Commission on April 26, 2002 falsely stated
15 that the previous year's stock option grants to executive officers, including Sabhlok, were granted
16 "at an exercise price at least equal to the fair market value of our common stock[.]" However,
17 Sabhlok actually received two backdated options in that year, dated April 5, 2001 and October 2,
18 2001.

19 70. The proxy statements filed with the Commission on April 23, 2003, April 29, 2004,
20 and June 1, 2005 incorporated the misleading description of the stock option plans from the
21 annual reports which represented that options granted to employees were required to be granted at
22 no less than 100 percent of the fair market value of Embarcadero's stock on the date of grant. The
23 April 23, 2003 and April 29, 2004 proxy statements were also false and misleading because they
24 specifically referenced and incorporated from the notes to the previous year's financial statements
25 attached to the Company's annual reports filed on Form 10-K, the representation that
26 Embarcadero's employee stock options were granted with strike prices equivalent to the fair
27 market value of the stock when granted; the statements were false and misleading due to the
28 defendants' backdating.

1 71. The misrepresentations contained in the proxy statements were material, and were
2 important to items on which the Company sought shareholder votes. For instance, the 2003 and
3 2004 proxy statements sought approval of new stock option plans, based in part on these false
4 representations and omissions.

5 72. Sabhlok was responsible for reviewing and commenting on drafts of the proxy
6 statements. In addition, Sabhlok was appointed as substitute representative for certain
7 shareholders at the proxy meetings associated with these statements. Sabhlok also provided
8 information used to prepare each the proxy statements in "SEC Information Questionnaire[s]" that
9 he filled out and signed, in which he represented that there was no undisclosed information of
10 significance to the Company's shareholders. For the preparation of the proxy statement filed in
11 2002, Sabhlok falsely represented that options he received that were backdated to April 5, 2001
12 and October 2, 2001 had accurate stock award dates and market values on the award dates.

13 73. Pattison was responsible for reviewing the proxy statements, and collecting comments
14 on the proxy statements from the Company's counsel and Audit Committee Chairman. Pattison
15 also provided a false spreadsheet in support of the 2002 proxy statement listing Sabhlok's falsely
16 dated April 5, 2001 and October 2, 2001 grants.

17 74. Sabhlok and Pattison each knew, or were reckless in not knowing, that Embarcadero's
18 stock option compensation expenses were not accurately stated in its publicly filed financial
19 statements included with its public filings. Sabhlok and Pattison also knew, or were reckless in
20 not knowing, that the backdating scheme rendered the disclosures in Embarcadero's public filings
21 about how options were granted false and misleading.

22 75. Sabhlok and Pattison also created false grant documentation to circumvent
23 Embarcadero's internal controls and to make it appear as though Embarcadero was not required to
24 record an expense for its in-the-money options. As defendants were aware, the grant
25 documentation describing false grant dates was provided to the Company's external auditors in
26 connection with the audits and reviews of Embarcadero's financial statements from approximately
27 2000 through early 2005.

28

1 76. Neither Sabhlok nor Pattison informed Embarcadero's board of directors of the
2 backdating. Sabhlok, as CFO, personally presented Embarcadero's false annual financial results
3 for the fiscal years 2000, 2001, and 2004 to the Company's Audit Committee or its full board of
4 directors. Sabhlok also presented Embarcadero's false quarterly results for certain quarters in
5 each of the years from 2000 through 2004. Pattison was present for most of meetings during
6 which the financial results were presented.

7 77. From 2000 through mid-2005, Sabhlok and Pattison signed at least 19 letters to
8 Embarcadero's external auditors used in the preparation of the Company's annual audited
9 financial statements or the quarterly reviews of financial statements, in which they each made
10 false or misleading representations. Each of these letters (identified in the Appendix) contained
11 one or more of the following misleading statements: (1) that Embarcadero's financial statements
12 adhered to GAAP; (2) that Sabhlok and Pattison had provided to the auditors all financial records
13 and related data; (3) that Sabhlok and Pattison acknowledged their responsibilities for the design
14 and implementation of controls to detect and prevent fraud, and there were no significant
15 deficiencies in these internal controls; and (4) that there were no instances of fraud involving
16 management or material transactions that had not been properly recorded.

17 **E. During Embarcadero's 2006 Internal Investigation, Sabhlok Failed to**
18 **Disclose The Options Backdating Scheme.**

19 78. In or around July 2006, Embarcadero's Audit Committee asked the Company's
20 management to investigate the Company's historical stock option granting practices to determine
21 whether the Company had backdated any stock option grants. Sabhlok participated in the internal
22 investigation along with other accountants at the Company; however, Sabhlok continued to
23 conceal the backdating scheme and to mislead other persons, including Embarcadero's Audit
24 Committee. Although repeatedly alerted to questions about grants, Sabhlok did not inform the
25 persons gathering information for the internal investigation, or the persons to whom the
26 information was reported, that the grant dates were selected with hindsight based on the
27 corresponding low stock prices.

1 79. Instead, Sabhlok supplied information in response to questions raised about particular
2 option grants to misleadingly suggest the validity of the purported grant dates. Sabhlok was also
3 aware that other persons provided misleading information to suggest the validity of options that
4 had been backdated to April 5, 2001 and October 2, 2001, including a copy of the false October
5 2001 Compensation meeting minutes which he signed.

6 80. Also, when Sabhlok received drafts of the written conclusions of the persons
7 investigating for the Audit Committee, he did not correct or challenge any of the findings that
8 suggested that options grants had not been backdated. Sabhlok was aware that the drafts were
9 sent to Embarcadero's external auditors, its Audit Committee, and its outside counsel. Based in
10 part on the misleading information, the Company initially concluded that its historical stock
11 option grants generally had "appropriate approval and measurement dates."

12 **F. Embarcadero Ultimately Restated Its Financial Results.**

13 81. Notwithstanding the efforts to conceal the backdating scheme, in late November and
14 December 2006, the Company announced that its Audit Committee had discovered evidence of
15 backdating from 2000 to 2005, that it was expanding the scope of its investigation, and had
16 formed a Special Committee to complete the investigation. From around November 2006 through
17 May 2007, the Company refrained from making its required public filings so that it could
18 investigate the financial impact of the backdating.

19 82. Sabhlok refused to be interviewed by the Company's Audit Committee or Special
20 Committee. In around January 2007, the Company limited Sabhlok's involvement with financial
21 reporting, including restricting Sabhlok's ability to undertake any material decisions affecting the
22 general management, business or operations at the Company.

23 83. On around May 24, 2007, Embarcadero filed an annual report on Form 10-K for its
24 2006 fiscal year in which it restated its previously filed annual financial statements for fiscal years
25 2002 through 2005 and quarterly financial statements for the first two quarters of 2006, based on
26 previously unreported stock compensation expenses incurred from 2000 through 2005, and
27 informed the Company's shareholders that previously filed annual financial statements for 2000
28 through 2005 should not be relied upon. Embarcadero adjusted its stock compensation expenses

1 for the restated periods to account for the backdated in-the-money options, setting forth a net
2 understated compensation expense of approximately \$14.6 million. The previously unreported
3 compensation expenses resulted in understated net losses in 2000 of approximately 14.4 percent,
4 understated net losses in 2001 of approximately 64.4 percent, understated net losses in 2002 of
5 approximately 536 percent, overstated net income in 2003 of approximately 68.6 percent, and
6 overstated net income in 2004 of approximately 5.5 percent. Additionally, in 2002, due to the
7 unreported compensation expenses, Embarcadero had falsely reported that it was profitable, when
8 it was actually operating at a loss.

9 84. The Commission pursued its own investigation upon Embarcadero's disclosure that
10 prior representations in its public filings might not be accurate. During the Commission's
11 investigation, Sabhlok and Pattison each refused to answer questions regarding how and when
12 stock options at Embarcadero were priced and granted, their role in preparing the Company's
13 financial statements and public filings, their enrichment resulting from the backdating scheme,
14 and their awareness of the wrongfulness of the backdating scheme, based on assertions of their
15 Fifth Amendment privilege against self-incrimination.

16 **G. Sabhlok And Pattison Benefited From The Scheme.**

17 85. Defendants Sabhlok and Pattison personally benefited from the backdating scheme,
18 and from the material misstatement of the Company's financial position. Sabhlok received
19 options backdated to April 4, 2001 and October 1, 2001, which were secretly in-the-money when
20 granted. Also, from 2000 through 2005, Sabhlok received other incentive stock options, certain of
21 which he exercised and thereafter sold the underlying shares.

22 86. Further, Sabhlok sold shares of Embarcadero stock, including shares that he received as
23 compensation from the exercise of stock options granted to him by the Company and other shares he
24 received. Sabhlok also received annual bonuses tied in part to the Company's achievements and
25 profitability.

26 87. Pattison received in-the-money options, as described above. Pattison exercised certain
27 of these options and sold the shares he received. From 2000 through 2005, Pattison also sold shares
28 of Embarcadero stock.

1 **FIRST CLAIM FOR RELIEF**

2 *Violations of Exchange Act Section 10(b) and Rule 10b-5 by Sabhlok and Pattison*

3 88. The Commission realleges and incorporates by reference paragraphs 1 through 87.

4 89. By engaging in the conduct described above, Sabhlok and Pattison, directly or
5 indirectly, in connection with the purchase or sale of securities, by the use of means or
6 instrumentalities of interstate commerce, or the mails, with scienter:

7 (a) Employed devices, schemes, or artifices to defraud;

8 (b) Made untrue statements of material facts or omitted to state material facts necessary
9 in order to make the statements made, in the light of the circumstances under which
10 they were made, not misleading; and

11 (c) Engaged in acts, practices, or courses of business which operated or would operate as
12 a fraud or deceit upon other persons, including purchasers and sellers of securities.

13 90. By reason of the foregoing, Sabhlok and Pattison have violated and, unless restrained
14 and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
15 Rule 10b-5 [17 C.F.R. § 240.10b-5].

16 **SECOND CLAIM FOR RELIEF**

17 *Aiding and Abetting Violations of Exchange Act Section 10(b) and Rule 10b-5*
18 *by Sabhlok and Pattison*

19 91. The Commission realleges and incorporates by reference paragraphs 1 through 87.

20 92. By engaging in the conduct described above, Embarcadero and/or other persons,
21 directly or indirectly, in connection with the purchase or sale of securities, by the use of means or
22 instrumentalities of interstate commerce, or the mails, with scienter:

23 (a) Employed devices, schemes, or artifices to defraud;

24 (b) Made untrue statements of material facts or omitted to state material facts
25 necessary in order to make the statements made, in the light of the circumstances
26 under which they were made, not misleading; and

27 (c) Engaged in acts, practices, or courses of business which operated or would operate
28 as a fraud or deceit upon other persons, including purchasers and sellers of
securities.

1 93. Sabhlok and Pattison knowingly provided substantial assistance to Embarcadero's
2 and/or other persons' violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and
3 Rule 10b-5 [17 C.F.R. § 240.10b-5], and therefore are liable as aiders and abettors pursuant to
4 Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)].

5 94. Unless restrained and enjoined, Sabhlok and Pattison will continue to violate and to
6 aid and abet violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5
7 [17 C.F.R. § 240.10b-5].

8 **THIRD CLAIM FOR RELIEF**

9 *Violations of Securities Act Section 17(a) by Sabhlok and Pattison*

10 95. The Commission realleges and incorporates by reference Paragraphs 1 through 87.

11 96. By engaging in the conduct described above, Sabhlok and Pattison directly or
12 indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or
13 communication in interstate commerce or by use of the mails, with scienter, employed devices,
14 schemes, or artifices to defraud; obtained money or property by means of untrue statements of
15 material fact or by omitting to state a material fact necessary in order to make the statements
16 made, in light of the circumstances under which they were made, not misleading; and engaged in
17 transactions, practices, or courses of business which operated or would operate as a fraud or deceit
18 upon purchasers.

19 97. By reason of the foregoing, Sabhlok and Pattison violated and, unless restrained and
20 enjoined, will continue to violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

21 **FOURTH CLAIM FOR RELIEF**

22 *Aiding and Abetting Violations of Exchange Act Section 13(a) and Rules 12b-20, 13a-1, 13a-11, and 13a-13 by Sabhlok and Pattison*

23 98. The Commission realleges and incorporates by reference Paragraphs 1 through 87.

24 99. Based on the conduct alleged above, Embarcadero violated Section 13(a) of the
25 Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17
26 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], which obligate issuers of
27 securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the
28

1 Commission periodic reports, including annual, current, and quarterly reports with information
2 that is accurate and not misleading.

3 100. By engaging in the acts and conduct alleged above, Sabhlok and Pattison knowingly
4 provided substantial assistance to Embarcadero's filing of misleading reports with the
5 Commission.

6 101. By reason of the foregoing, Sabhlok and Pattison aided and abetted Embarcadero's
7 violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1,
8 13a-11, and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], and,
9 unless restrained and enjoined, will continue to aid and abet such violations.

10 **FIFTH CLAIM FOR RELIEF**

11 *Aiding and Abetting Violations of Exchange Act Section 13(b)(2)(A) by Sabhlok and Pattison*

12 102. The Commission realleges and incorporates by reference Paragraphs 1 through 87.

13 103. Based on the conduct alleged above, Embarcadero violated Section 13(b)(2)(A) of
14 the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered
15 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records,
16 and accounts which, in reasonable detail, accurately and fairly reflect the transactions and
17 dispositions of the assets of the issuer.

18 104. By engaging in the acts and conduct alleged above, Sabhlok and Pattison knowingly
19 provided substantial assistance to Embarcadero's failure to make and keep books, records, and
20 accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions
21 of its assets.

22 105. By reason of the foregoing, Sabhlok and Pattison have aided and abetted violations
23 by Embarcadero of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], and,
24 unless restrained and enjoined, will continue to aid and abet such violations.

25 **SIXTH CLAIM FOR RELIEF**

26 *Aiding and Abetting Violations of Section 13(b)(2)(B) of the Exchange Act by
27 Sabhlok and Pattison*

28 106. The Commission realleges and incorporates by this reference Paragraphs 1 through
87.

1 107. Based on the conduct alleged above, Embarcadero violated Section 13(b)(2)(B) of
2 the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered
3 pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient
4 system of internal accounting controls.

5 108. By engaging in the acts and conduct alleged above, Sabhlok and Pattison knowingly
6 provided substantial assistance to Embarcadero's failure to devise and maintain a sufficient
7 system of internal accounting controls.

8 109. By reason of the foregoing, Sabhlok and Pattison aided and abetted violations by
9 Embarcadero of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)], and, unless
10 restrained and enjoined, Sabhlok and Pattison will continue to aid and abet such violations.

11 **SEVENTH CLAIM FOR RELIEF**

12 *Violation of Section 13(b)(5) of the Exchange Act by Sabhlok and Pattison*

13 110. The Commission realleges and incorporates by reference Paragraphs 1 through 87.

14 111. By the conduct alleged above, Sabhlok and Pattison violated Section 13(b)(5) of the
15 Exchange Act [15 U.S.C. § 78m(b)(5)] which prohibits anyone from knowingly circumventing a
16 system of internal accounting controls, or knowingly falsifying required books, records, and
17 accounts.

18 112. Sabhlok and Pattison have violated and, unless restrained and enjoined, will continue
19 to violate, Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

20 **EIGHTH CLAIM FOR RELIEF**

21 *Violation of Rule 13b2-1 under the Exchange Act by Sabhlok and Pattison*

22 113. The Commission realleges and incorporates by this reference Paragraphs 1 through
23 87.

24 114. By engaging in the conduct described above, Sabhlok and Pattison falsified or caused
25 to be falsified Embarcadero's required books, records, and accounts, in violation of Rule 13b2-1
26 under the Exchange Act [17 C.F.R. § 240.13b2-1]

27 115. Sabhlok and Pattison have violated and, unless restrained and enjoined, will continue
28 to violate Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

1 **NINTH CLAIM FOR RELIEF**

2 *Violation of Rule 13b2-2 under the Exchange Act by Sabhlok*

3 116. The Commission realleges and incorporates by this reference Paragraphs 1 through
4 87.

5 117. By engaging in the acts and conduct alleged above, Sabhlok, as an officer, directly or
6 indirectly, made or caused to be made a materially false or misleading statement or omitted to
7 state or caused another person to omit to state, material facts necessary in order to make a
8 statement made, in light of the circumstances under which such statements was made, not
9 misleading to an accountant in connection with an audit or examination of the financial statements
10 of an issuer required to be made, or the preparation or filing of reports required to be filed, by the
11 issuer with the Commission.

12 118. By reason of the foregoing, Sabhlok has violated and, unless restrained and enjoined,
13 will continue to violate Rule 13b2-2 [17 C.F.R. § 240.13b2-2].

14 **TENTH CLAIM FOR RELIEF**

15 *Violations of Rule 13a-14 of the Exchange Act by Sabhlok*

16 119. The Commission realleges and incorporates by this reference Paragraphs 1 through
17 87.

18 120. Sabhlok signed certifications, which were required to be made pursuant to Rule 13a-
19 14 of the Exchange Act that were included in Embarcadero's Forms 10-K, as well as its quarterly
20 reports filed on Forms 10-Q. but which were false or misleading when made.

21 121. By reason of the foregoing, Sabhlok violated, and unless restrained and enjoined will
22 continue to violate, Exchange Act Rule 13a-14 [17 C.F.R. § 240.13a-14].

23 **ELEVENTH CLAIM FOR RELIEF**

24 *Aiding and Abetting Violations of Section 14(a) of the Exchange Act and Rule 14a-9
by Sabhlok and Pattison*

25 122. The Commission realleges and incorporates by this reference Paragraphs 1 through
26 87.

27 123. Based on the conduct alleged above, Embarcadero violated Section 14(a) of the
28 Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9], which

1 prohibit solicitations by means of a proxy statement, form of proxy, notice of meeting, or other
2 communication, written or oral, that contains a statement which, at the time and in the light of the
3 circumstances under which it was made, was false or misleading with respect to any material fact,
4 or which omits to state any material fact necessary in order to make the statements therein not
5 false or misleading or necessary to correct any statement in any earlier communication with
6 respect to the solicitation of a proxy for the same meeting or subject matter which had become
7 false or misleading.

8 124. By engaging in the acts and conduct alleged above, Sabhlok and Pattison knowingly
9 provided substantial assistance to Embarcadero's solicitation by means of a misleading proxy
10 statement.

11 125. By reason of the foregoing, Sabhlok and Pattison violated Section 14(a) of the
12 Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 [17 C.F.R. § 240.14a-9, and, unless restrained
13 and enjoined, will continue to violate those provisions.

14 **TWELFTH CLAIM FOR RELIEF**

15 *Violations of Section 16(a) of the Exchange Act and Rule 16a-3 by Sabhlok*

16 126. The Commission realleges and incorporates by this reference Paragraphs 1 through
17 87.

18 127. Based on the conduct alleged above, Sabhlok violated Section 16(a) of the Exchange
19 Act [15 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. § 240.16a-3] requiring officers
20 of issuers of equity security registered pursuant to Exchange Act Section 12 [15 U.S.C. §78I] to
21 file a report with the Commission disclosing any change of beneficial ownership of those
22 securities.

23 128. By reason of the foregoing, Sabhlok violated Section 16(a) of the Exchange Act [15
24 U.S.C. § 78p(a)] and Exchange Act Rule 16a-3 [17 C.F.R. 240.16a-3], and, unless restrained and
25 enjoined will, continue to violate those provisions.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

I.

Permanently enjoin defendants Sabhlok and Pattison from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] and Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C. §§ 78j(b), and 78m(b)(5)], and Rules 10b-5 and 13b2-1 thereunder [17 C.F.R. §§ 240.10b-5 and 240.13b2-1], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9] thereunder; and permanently enjoin Sabhlok from directly or indirectly violating Section 16(a) of the Exchange Act [15 U.S.C. § 78p(a)] and Exchange Act Rules 16a-3 [17 C.F.R. § 240.16a-3], 13a-14 [17 C.F.R. § 240.13a-14], and 13b2-2 [17 C.F.R. § 240.13b2-2].

III.

Prohibit Sabhlok, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from serving as an officer or director of any entity having a class of securities registered with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

IV.

Order Sabhlok and Pattison to disgorge all wrongfully obtained benefits, including prejudgment interest.

V.

Order Sabhlok and Pattison to pay civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

VI.

Order Sabhlok to repay bonuses, incentive compensation, and profits from the sale of stock, pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 [15 U.S.C. § 7243].

VII.

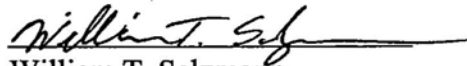
Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VIII.

Grant such other and further relief as this Court may determine to be just and necessary.

DATED: September 9, 2008

Respectfully Submitted,



William T. Salzmänn

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

APPENDIX

Letters to Embarcadero's external auditors signed by Raj P. Sabhlok and Michael C. Pattison, regarding the preparation of Embarcadero's public filings, or its annual audits or quarterly reviews of financial statements, and bearing the following dates:

March 20, 2001
August 6, 2001
November 9, 2001
March 25, 2002
August 12, 2002
November 8, 2002
November 7, 2003
March 21, 2003
May 9, 2003
August 11, 2003
August 14, 2003
November 7, 2003
March 11, 2004
May 7, 2004
August 5, 2004
August 6, 2004
January 17, 2004
April 6, 2005
April 22, 2005