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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**

JF

RS

CV 08

5127

15 SECURITIES AND EXCHANGE COMMISSION,
16
17 Plaintiff,
18 v.
19 BLUE COAT SYSTEMS, INC. and
ROBERT P. VERHEECKE,
20 Defendants.

Case No. _____

COMPLAINT

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

23 **SUMMARY OF THE ACTION**

24 1. From at least 2000 through 2005, Blue Coat Systems, Inc. ("Blue Coat" or the
25 "Company"), a Sunnyvale network security company, illegally backdated stock options granted to
26 Blue Coat employees and executives, concealing tens of millions of dollars in expenses from the
27 Company's shareholders. Company Chief Financial Officer Robert P. Verheecke at various times

1 used hindsight to pick dates corresponding to low stock prices for stock option grants, prepared or
2 distributed misleading documents that made it appear as if the options had been granted on the earlier
3 dates, and prepared or approved financial statements and SEC filings that omitted necessary expenses
4 for backdated options and falsely described Blue Coat's option granting practices.

5 2. Well-settled accounting principles required Blue Coat, during the relevant time, to
6 record an expense in its financial statements when it granted stock options to employees and officers
7 "in-the-money" – i.e., with an exercise price below the fair market value of the stock on the grant
8 date. By contrast, Blue Coat was not required to record compensation expense when it granted
9 options "at-the-money" – with an exercise price equal to the fair market value of the stock. Blue
10 Coat's backdating enabled it to attract and retain talent by giving lucrative "in-the-money" options
11 without recording an expense.

12 3. As a result of the backdating, Blue Coat's financial statements and SEC filings were
13 materially misstated. In March 2007, after an internal investigation, Blue Coat restated and adjusted
14 its financial statements for fiscal years 2000 through 2005. It recorded nearly \$50 million in
15 additional stock compensation charges for misdated option grants, resulting in material decreases to
16 Blue Coat's operating and net income.

17 4. Blue Coat and Verheecke violated the antifraud, internal controls, books-and-records,
18 and other provisions of the federal securities laws. The Commission seeks an order enjoining Blue
19 Coat and Verheecke from future violations and requiring Verheecke to pay civil monetary penalties,
20 barring him from serving as an officer or director of a public company, and providing other relief.

21 **JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT**

22 5. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
23 Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77t(b) and 77t(d)] and Sections 21(d) and
24 21(e) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d) and 78u(e)].

25 6. This Court has jurisdiction over this action pursuant to Sections 20(b) and 22(a) of the
26 Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange
27 Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

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1 7. Venue is proper in this District pursuant to Section 22 of the Securities Act [15 U.S.C.
2 § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Blue Coat's principal place of
3 business is in the Northern District of California. Verheecke resides in this District. Acts or
4 transactions constituting the alleged violations occurred in this District.

5 8. Blue Coat and Verheecke, directly or indirectly, made use of the means or
6 instrumentalities of interstate commerce, or of the mails, or of the facilities of a national securities
7 exchange in connection with the alleged transaction, acts, practices, and courses of business.

8 9. Assignment to the San Jose Division is appropriate pursuant to Civil Local
9 Rules 3-2(c) and 3-2(d) because acts and omissions giving rise to the Commission's claims occurred,
10 among other places, in Santa Clara County.

11 **DEFENDANTS**

12 10. Blue Coat is a Delaware corporation with headquarters in Sunnyvale, California. The
13 Company makes appliances to secure and monitor computer networks. It went public in November
14 1999 as CacheFlow, Inc., changing its name to Blue Coat in 2002 (for ease of reference, this
15 complaint uses exclusively the term "Blue Coat" or "Company"). At all relevant times, its common
16 stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act. Until
17 August 20, 2002, Blue Coat shares traded on the Nasdaq National Market under the symbol "CFLO";
18 thereafter, they traded under the symbol "BCSI." Blue Coat's fiscal year ends each year on April 30.

19 11. Robert P. Verheecke, age 56, resides in Palo Alto, California. He served as Blue
20 Coat's senior vice president, CFO, and secretary from May 2001 through May 2005; he continued to
21 work on special projects for Blue Coat until January 2006. Verheecke obtained his California
22 Certified Public Accountant license in 1977, although it was inactive during his tenure at Blue Coat.
23 Before joining Blue Coat, Verheecke was an auditor at the accounting firm Price Waterhouse LLP
24 from 1979 to 1983. He served as CFO of NetFRAME Systems, Inc. from 1998 to 1993 and Business
25 Objects, S.A. from 1994 to 1997. He also has served as CFO of several private technology
26 companies.

FACTUAL ALLEGATIONS

A. Blue Coat Used Stock Options to Recruit and Retain Talent

12. Throughout the relevant period, Blue Coat, like other technology companies with which it competed, used stock options as a form of compensation to recruit, reward, and retain key employees and officers. Each option gave the recipient the right to buy Blue Coat common stock from the Company at a set price, called the “exercise” or “strike” price, on a future date after the option vested. The option was “at-the-money” when granted if the closing price of Blue Coat’s common stock on the date of the grant and the exercise price were the same. The option was “in-the-money” when granted if the closing price of Blue Coat common stock on the date of the grant exceeded the option’s exercise price.

13. Stock options were particularly important to Blue Coat. The company completed its initial public offering in November 1999, but after a few quarters of dramatic revenue growth (peaking at approximately \$33 million for the quarter ended October 31, 2000), it began experiencing significant difficulties. Its revenue plummeted by more than 50%, its stock price collapsed, and it was forced to terminate approximately two-thirds of its employees. In early to mid-2001, several key employees resigned, including its CFO, controller, vice president of sales, and general counsel. It became imperative for Blue Coat to control expenses and conserve cash. Stock options were an effective means to compensate employees and officers without a cash expenditure.

B. Blue Coat Told Investors It Granted Stock Options at Fair Market Value

14. Under Accounting Principles Board Opinion No. 25, “*Accounting for Stock Issued to Employees*” (“APB 25”), and the accounting rules in effect during Blue Coat’s fiscal years 2000 through 2005, public companies were required to record an expense in their financial statements for the in-the-money portion of an option grant. APB 25 mandated that difference had to be recorded as a compensation expense recognized over the vesting period of the option. Consequently, granting in-the-money options could have a significant impact on the expenses and income (or loss) reported to the shareholders of a public company. APB 25 allowed companies, where the key terms of an option

1 grant were known, to grant stock options without recording any compensation expense so long as the
2 option exercise price was not below the stock's market price on the grant date.

3 15. In annual reports on Form 10-K for fiscal years 2000 through 2005, filed with the SEC
4 and made available to investors, Blue Coat represented that it accounted for stock options in
5 accordance with APB 25. For example, for fiscal 2003, it stated: "We account for stock based
6 awards . . . using the intrinsic value method Under the intrinsic value method, when the exercise
7 price of the Company's employee stock options equals the market price of the underlying stock on the
8 date of grant, no compensation expense is recognized as prescribed by [APB 25]."

9 16. Blue Coat's annual reports also disclosed to investors that the company recorded
10 deferred stock compensation when the exercise price for stock options differed from the market price
11 on the grant date. For example, in a report on Form 10-K for fiscal 2003, Blue Coat stated: "Our
12 deferred stock compensation balance generally represents the difference between the exercise price
13 and the market price of the underlying stock on the date stock options are granted to employees."

14 17. In certain annual reports – for fiscal years 2002 and 2003 – Blue Coat stated that it
15 recorded no deferred stock compensation, adding that it may in the future "if management decides to
16 grant below-market stock options."

17 18. Blue Coat made similar representations in quarterly reports on Form 10-Q between
18 2000 and 2005 filed with the SEC and made available to investors. Blue Coat's quarterly reports on
19 Form 10-Q filed in fiscal 2002 represented that "[o]ur stock compensation balance generally
20 represents the difference between the exercise price and the deemed fair value of stock options and
21 warrants granted to employees . . . on the date such stock awards were granted." Its report for the
22 quarter ended January 31, 2003, stated that "we continue to apply the rules for stock-based
23 compensation contained in [APB 25] using the intrinsic value method." In addition, the reports filed
24 in fiscal 2004 and 2005 represented that "[w]e account for stock-based awards granted to . . .
25 employees and officers using the intrinsic value method [W]hen the exercise price of our
26 employee stock options equals the market price of the underlying stock on the date of grant, no
27 compensation expense is recognized."

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1 19. Blue Coat also filed and made available to investors proxy statements in 2002, 2003,
2 and 2004 describing its option practices for officers and the incentive effect of the options: “Each
3 grant allows the officer to acquire shares of the Company’s Common Stock at a fixed price per share
4 (the market price on the grant date) over a specified period of time. . . . Accordingly, the option will
5 provide a return to the executive officer only if he or she remains in the Company’s employ, and then
6 only if the market price of the Company’s Common Stock appreciates over the option term.”

7 **C. Blue Coat Backdated Employee and Officer Option Grants**

8 20. During the relevant period, Blue Coat’s board vested authority to award stock options
9 to Blue Coat employees and officers in a compensation committee consisting of two directors. The
10 committee approved grants on recommendations from Blue Coat management. While CFO,
11 Verheecke played a role in forming Blue Coat management’s recommendations for stock option
12 grants, selecting the exercise price, and preparing the related paperwork.

13 21. From at least 2001, Blue Coat had a practice of using hindsight to select the exercise
14 price for stock option grants to employees and officers. Typically, either Blue Coat’s human
15 resources or finance department each quarter (and sometimes multiple times per quarter) prepared a
16 list of proposed grant recipients. While the list was pending, Verheecke, either alone or in
17 consultation with other Blue Coat senior management, in certain circumstances, selected an historical,
18 low stock option price to use as the exercise price for the options. After the exercise price for the
19 options had been selected, Verheecke drafted, or had others draft, a unanimous written consent
20 (“UWC”) for the Blue Coat compensation committee to sign, evidencing the committee approved the
21 grant. The UWCs stated that the consent was “effective as of the date set forth below,” provided that
22 the exercise price for the options was equal to the price on “the date of this meeting,” and that the
23 signatories had “executed this [UWC] to be effective as of” a particular date. Before sending UWCs
24 to the committee, Verheecke filled in the “effective as of” date with the date corresponding to the
25 historical, low stock price that had been selected. Blue Coat used the “effective as of” date as the
26 measurement and grant date for accounting purposes.

1 22. Verheecke described the backdating process to one Blue Coat salesman, noting that
2 “we usually wait for the stock to hit a low price and then prepare a Written Consent of the
3 Compensation Committee” and that Blue Coat could “go back and prepare these in hindsight.”

4 23. On another occasion, Verheecke said he was “waiting to see when the most attractive
5 price occurs” and then would “back date the board resolution to the low point within a reasonable
6 timeframe.” In addition, Verheecke noted: “[We] just need to do it before quarter end so we can
7 provide the minutes to the auditors. We can date the Comp Committee minutes effective the day of
8 the low, it was \$.89 last week, so that is the day we would use.”

9 24. Blue Coat’s use of hindsight is illustrated by a number of grants dated between 2002
10 and 2004. For example, in mid-January 2003, when Blue Coat stock traded for about \$5.35,
11 Verheecke advised a human resources employee “[w]e are going to do a grant dated December 24,
12 2002 when the stock was at 3.21.” Verheecke directed the human resources department to prepare
13 the necessary paperwork, and Blue Coat ultimately granted tens of thousands of options at the lower,
14 backdated price without recording any expense.

15 25. On November 24, 2003, after Blue Coat’s stock had experienced a sharp rise to
16 \$19.36, Verheecke directed Blue Coat’s human resources department to prepare options paperwork
17 dated November 18, 2003, when the stock traded at \$15.20. Blue Coat ultimately granted tens of
18 thousands of options at the lower, backdated price and again failed to record any expense.

19 26. On April 2, 2004, when Blue Coat’s stock closed at \$58.50, Verheecke recommended
20 awarding grants dated as of February 23, March 1, March 15, March 22, and March 29, 2004 (when
21 the stock traded at \$41.20, \$41.47, \$42.60, \$44.44, and \$50.80, respectively), to newly hired
22 employees. Blue Coat ultimately granted the options at the lower, backdated price and again failed to
23 record any expense.

24 27. By backdating, Blue Coat made in-the-money options appear as if they had been
25 granted at-the-money. Blue Coat did not take a compensation charge for the difference between the
26 fair market value of the options on the date of the grant and the exercise price at which they were
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1 granted. It did not disclose the backdating practice to its independent auditors, who concluded, based
2 on the misleading UWCs, that no expense was required.

3 28. In January 2005, Blue Coat began approving option grants according to a fixed
4 calendar system, which required it to grant options on specific dates twice a month.

5 **D. As a Result of the Backdating, Blue Coat Publicly Reported False and Misleading**
6 **Financial Information and Inaccurately Described Its Stock Option Practices.**

7 29. As required of all public companies, Blue Coat filed with the SEC annual reports on
8 Form 10-K for the fiscal years ended April 30, 2000 (filed July 28, 2000), April 30, 2001 (filed July
9 16, 2001), April 30, 2002 (filed July 29, 2002), April 30, 2003 (filed July 29, 2003), April 30, 2004
10 (filed July 14, 2004), and April 30, 2005 (filed July 14, 2005), which included financial statements
11 audited by Blue Coat's independent auditors.

12 30. Verheecke signed Blue Coat's reports on Form 10-K for fiscal years 2002 through
13 2004, and signed Sarbanes-Oxley certifications for the fiscal 2003 and 2004 reports, certifying
14 (among other things) that the reports contained no untrue statements and omitted no material facts
15 and that the financial statements fairly presented in all material respects Blue Coat's financial
16 condition.

17 31. In notes to its audited financial statements, which were included in its annual reports
18 for fiscal years 2000 through 2005, and elsewhere in the annual reports, Blue Coat falsely stated that
19 the Company accounted for stock options in accordance with APB 25 and that it recorded deferred
20 stock compensation when the exercise price for stock options differed from the market price on the
21 grant date. In the fiscal 2002 and 2003 reports, Blue Coat misleadingly represented it recorded no
22 deferred stock compensation but that it might in the future "if management decides to grant below-
23 market stock options." In fact, Blue Coat had granted below-market stock options and failed to
24 record the necessary expense.

25 32. In financial statements accompanying its annual reports, Blue Coat failed to record
26 compensation expenses for the backdated, in-the-money option grants, thus understating its expenses
27 in fiscal years 2000 through 2005.
28

1 33. The financial misstatements were material. Blue Coat understated its compensation
2 expenses by a cumulative total of nearly \$50 million between 2000 and 2005. The financial
3 misstatements were material on an annual basis as well. Blue Coat materially overstated its operating
4 income in the financial statements included in its annual reports by more than 10% in fiscal years
5 2003, 2004, and 2005, and by more than 6% in fiscal year 2001. Although most of the nearly \$50
6 million misstatement related to grants prior to May 2001, the omitted expenses attributable to options
7 granted between May 2001 and fiscal 2005, when Verheecke served as CFO, caused Blue Coat to
8 overstate its operating income in fiscal years 2004 and 2005 by more than 10% and by 4% in fiscal
9 2003.

10 34. Blue Coat also filed with the Commission quarterly reports on Form 10-Q between
11 March 16, 2000, and March 11, 2005. The quarterly reports contained financial statements that were
12 materially false or misleading because Blue Coat failed to record compensation expenses associated
13 with in-the-money options. The quarterly reports filed in fiscal 2002 misrepresented that “[o]ur stock
14 compensation balance generally represents the difference between the exercise price and the deemed
15 fair value of stock options and warrants granted to employees . . . on the date such stock awards were
16 granted.” Its report for the quarter ended January 31, 2003 falsely stated that “we continue to apply
17 the rules for stock-based compensation contained in [APB 25] using the intrinsic value method.”
18 And the reports filed in fiscal 2004 and 2005 misrepresented that “[w]e account for stock-based
19 awards granted to . . . employees and officers using the intrinsic value method [W]hen the
20 exercise price of our employee stock options equals the market price of the underlying stock on the
21 date of grant, no compensation expense is recognized.”

22 35. Verheecke signed Blue Coat’s quarterly reports on Form 10-Q filed between fiscal
23 2002 and 2005, and signed Sarbanes-Oxley certifications for the reports filed between fiscal 2003 and
24 2005.

25 36. In addition, Blue Coat filed with the SEC nine current reports on Form 8-K between
26 May 29, 2003, and February 24, 2005, each of which announced the Company’s financial results for a
27 prior quarter or fiscal year. These current reports contained materially false and misleading financial
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1 information because Blue Coat failed to record compensation expenses associated with undisclosed
2 grants of in-the-money stock options. Verheecke signed the nine current reports on Blue Coat's
3 behalf.

4 37. Blue Coat's 2002, 2003, and 2004 proxy statements (which were signed by Verheecke,
5 sent to shareholders, and filed with the SEC) also made materially false representations about Blue
6 Coat's stock option grants. Blue Coats's proxy statements falsely asserted that the officer grants were
7 priced at the market price on the grant date, and that officers would only benefit if the market price of
8 the stock appreciated when, in fact, they would benefit even if the stock price did not change.

9 38. Blue Coat also sold securities pursuant to offering documents, including registration
10 statements on Form S-8, which incorporated Blue Coat's false and misleading financial statements.
11 Blue Coat filed the registration statements on February 15, 2002, March 12, 2004, December 3, 2004,
12 and March 10, 2005, to register shares issued pursuant to its employee stock purchase plan and its
13 stock option plans. Verheecke signed the Forms S-8. The forms incorporated by reference Blue
14 Coat's false and misleading information that was included in its annual and quarterly reports.

15 39. Verheecke signed management representation letters to Blue Coat's independent
16 auditors for fiscal years 2002 through 2004. Those letters falsely represented that Blue Coat's
17 financial statements were consistent with GAAP.

18 40. Verheecke knew or was reckless in not knowing that Blue Coat's statements in its
19 public disclosures were false and misleading.

20 **E. Blue Coat Restates Its Financial Statements**

21 41. On May 17, 2006, an analyst issued a research report discussing the potential that
22 stock option backdating occurred at various technology companies, including Blue Coat. Blue Coat
23 voluntarily began a review of its option practices, eventually determining to create a special
24 committee to investigate.

25 42. On July 14, 2006, Blue Coat publicly disclosed the investigation and the special
26 committee's preliminary conclusions that Blue Coat had understated its stock option expense and that
27 the measurement dates for certain stock options differed from the recorded grant dates for the options.

1 Blue Coat's stock price declined nearly 17%. On March 28, 2007, Blue Coat restated its financial
2 statements for fiscal years 2004 and 2005, and recorded adjustments affecting its previously reported
3 financial statements for fiscal years 2000 through 2003, to include omitted expenses related to in-the-
4 money options. Blue Coat concluded that 112 of 127 grant dates between November 1999 and May
5 2006 were established based on a stated "effective date," or grant date, that differed from the date on
6 which the options appear to have been actually approved.

7 **F. Verheecke Was Unjustly Enriched.**

8 43. Blue Coat granted Verheecke options with exercise prices equal to the stock price on
9 July 10, 2002. Verheecke knew or was reckless in not knowing that these options were priced with
10 the benefit of hindsight. Blue Coat concluded the appropriate measurement date for the options was
11 August 19, 2002. Verheecke filed a Form 4 for the grant on December 11, 2002, describing the
12 "transaction date[s]" as July 10, 2002. Verheecke exercised the options on various dates in 2004 and
13 2005, and realized \$30,000 in gains due to the backdating.

14 **FIRST CLAIM FOR RELIEF**

15 *(Violations of Exchange Act Section 10(b) and Rule 10b-5 Thereunder by Both Defendants)*

16 44. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

17 45. By engaging in the conduct described above, Blue Coat and Verheecke, directly or
18 indirectly, in connection with the purchase or sale of securities, by the use of means or
19 instrumentalities of interstate commerce, or the mails, with scienter:

- 20 a. Employed devices, schemes, or artifices to defraud;
- 21 b. Made untrue statements of material facts or omitted to state material facts
22 necessary in order to make the statements made, in the light of the
23 circumstances under which they were made, not misleading; and
- 24 c. Engaged in acts, practices, or courses of business which operated or would
25 operate as a fraud or deceit upon other persons, including purchasers and
26 sellers of securities.
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1 46. By reason of the foregoing, Blue Coat and Verheecke have violated and, unless
2 restrained and enjoined, will continue to violate Section 10(b) of the Exchange Act [15 U.S.C.
3 § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

4 **SECOND CLAIM FOR RELIEF**

5 *(Violations of Securities Act Section 17(a)(1) by Both Defendants)*

6 47. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

7 48. By engaging in the conduct described above, Blue Coat and Verheecke, directly or
8 indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or
9 communication in interstate commerce or by use of the mails, with scienter, employed devices,
10 schemes, or artifices to defraud.

11 49. By reason of the foregoing, Blue Coat and Verheecke have violated and, unless
12 restrained and enjoined, will continue to violate Section 17(a)(1) of the Securities Act [15 U.S.C.
13 § 77q(a)(1)].

14 **THIRD CLAIM FOR RELIEF**

15 *(Violations of Securities Act Section 17(a)(2) and (3) by Both Defendants)*

16 50. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

17 51. By engaging in the conduct described above, Blue Coat and Verheecke, directly or
18 indirectly, in the offer or sale of securities, by use of the means or instruments of transportation or
19 communication in interstate commerce or by use of the mails, obtained money or property by means
20 of untrue statements of material fact or by omitting to state a material fact necessary in order to make
21 the statements made, in light of the circumstances under which they were made, not misleading and
22 engaged in transactions, practices, or courses of business which operated or would operate as a fraud
23 or deceit upon purchasers.

24 52. By reason of the foregoing, Blue Coat and Verheecke have violated and, unless
25 restrained and enjoined, will continue to violate Section 17(a)(2) and (3) of the Securities Act
26 [15 U.S.C. § 77q(a)(2) and (3)].

1 **FOURTH CLAIM FOR RELIEF**

2 *(False Periodic Reports—Direct and Aiding and Abetting Violations of Exchange Act Section 13(a)*
3 *and Rules 12b-20, 13a-1, 13a-11, and 13a-13 Thereunder by Both Defendants)*

4 53. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

5 54. Based on the conduct alleged above, Blue Coat violated Section 13(a) of the Exchange
6 Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R.
7 §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], which obligate issuers of securities
8 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] to file with the Commission
9 accurate periodic reports, including annual, current, and quarterly reports. Unless restrained and
10 enjoined, Blue Coat will continue to violate these provisions of the Exchange Act.

11 55. By engaging in the acts and conduct alleged above, Verheecke knowingly provided
12 substantial assistance to Blue Coat's filing of materially false and misleading reports with the
13 Commission.

14 56. By reason of the foregoing, Verheecke aided and abetted Blue Coat's violations of
15 Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11, and
16 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13] thereunder. Unless
17 restrained and enjoined, Verheecke will continue to aid and abet such violations.

18 **FIFTH CLAIM FOR RELIEF**

19 *(False Sarbanes-Oxley Certifications—Violations of Exchange Act Rule 13a-14 by Verheecke)*

20 57. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

21 58. Verheecke signed, as Blue Coat's principal accounting officer, false certifications
22 pursuant to Rule 13a-14 of the Exchange Act that were included in Blue Coat's fiscal 2003 and 2004
23 annual reports filed on Forms 10-K, as well as its quarterly reports filed in fiscal 2003, 2004, and
24 2005.

25 59. In the certifications included with the annual reports, Verheecke falsely stated, among
26 other things, that: (a) each report did not contain any untrue statement of material fact or omit to state
27 a material fact necessary to make the statements made, in light of the circumstances under which such
28 statements were made, not misleading; (b) the financial statements, and other financial information

1 included in the report, fairly presented in all material respects the financial condition, results of
2 operations, and cash flows of Blue Coat as of, and for, the periods presented in the report; and (c) he
3 had disclosed to Blue Coat's auditor and audit committee all significant deficiencies and material
4 weaknesses in the design or operation of internal control over financial reporting and any fraud,
5 whether or not material, that involved management or other employees who had a significant role in
6 Blue Coat's internal control over financial reporting.

7 60. For the quarterly reports, Verheecke falsely stated in the certifications, among other
8 things, that the quarterly reports fully complied with the requirements of Section 13(a) or 15(d) of the
9 Exchange Act and that information contained therein fairly presented in all material respects the
10 financial condition and results of operations of Blue Coat. Verheecke falsely stated in the
11 certifications, among other things, that: (a) each report did not contain any untrue statement of
12 material fact or omit to state a material fact necessary to make the statements made, in light of the
13 circumstances under which such statements were made, not misleading; (b) each financial statement,
14 and other financial information included in each report, fairly presented in all material respects the
15 financial condition, results of operations, and cash flows of Blue Coat as of, and for, the period
16 presented in the report; and (c) he had disclosed to Blue Coat's auditor and audit committee all
17 significant deficiencies and material weaknesses in the design or operation of internal control over
18 financial reporting and any fraud, whether or not material, that involved management or other
19 employees who had a significant role in Blue Coat's internal control over financial reporting.

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

22 **SIXTH CLAIM FOR RELIEF**

23 *(False Books and Records—Direct and Aiding and Abetting Violations*
24 *of Exchange Act Section 13(b)(2)(A) by Both Defendants)*

24 62. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

25 63. Based on the conduct alleged above, Blue Coat violated Section 13(b)(2)(A) of the
26 Exchange Act [15 U.S.C. § 78m(b)(2)(A)], which obligates issuers of securities registered pursuant to
27 Section 12 of the Exchange Act [15 U.S.C. § 78l] to make and keep books, records, and accounts
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1 which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets
2 of the issuer. Unless restrained and enjoined, Blue Coat will continue to violate this provision of the
3 Exchange Act.

4 64. By engaging in the acts and conduct alleged above, Verheecke knowingly provided
5 substantial assistance to Blue Coat's failure to make and keep books, records, and accounts which, in
6 reasonable detail, accurately and fairly reflect its transactions and dispositions of its assets.

7 65. By reason of the foregoing, Verheecke aided and abetted violations by Blue Coat of
8 Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)]. Unless restrained and
9 enjoined, Verheecke will continue to aid and abet such violations.

10 **SEVENTH CLAIM FOR RELIEF**

11 *(Inadequate Internal Accounting Controls—Direct and Aiding and Abetting Violations*
12 *of Exchange Act Section 13(b)(2)(B) by Both Defendants)*

12 66. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

13 67. Based on the conduct above, Blue Coat violated Section 13(b)(2)(B) of the Exchange
14 Act [15 U.S.C. § 78m(b)(2)(B)], which obligates issuers of securities registered pursuant to
15 Section 12 of the Exchange Act [15 U.S.C. § 78l] to devise and maintain a sufficient system of
16 internal accounting controls. Unless restrained and enjoined, Blue Coat will continue to violate
17 Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)].

18 68. By engaging in the acts and conduct alleged above, Verheecke knowingly provided
19 substantial assistance to Blue Coat's failure to devise and maintain a sufficient system of internal
20 accounting controls.

21 69. By reason of the foregoing, Verheecke aided and abetted violations by Blue Coat of
22 Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)]. Unless restrained and
23 enjoined, Verheecke will continue to aid and abet such violations.

24 **EIGHTH CLAIM FOR RELIEF**

25 *(Falsifying Books and Records or Circumventing Internal Accounting Controls—*
26 *Violations of Exchange Act Section 13(b)(5) by Verheecke)*

26 70. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

1 71. By the conduct alleged above, Verheecke violated Section 13(b)(5) of the Exchange
2 Act [15 U.S.C. § 78m(b)(5)], which prohibits any person from knowingly circumventing a system of
3 internal accounting controls or knowingly falsifying certain books, records, and accounts.

4 72. By reason of the foregoing, Verheecke violated and, unless restrained and enjoined,
5 will continue to violate Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)].

6 **NINTH CLAIM FOR RELIEF**

7 *(Falsifying Books and Records—Violations of Exchange Act Rule 13b2-1 by Verheecke)*

8 73. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

9 74. By engaging in the conduct described above, Verheecke falsified or caused to be
10 falsified Blue Coat's books, records, and accounts in violation of Rule 13b2-1 under the Exchange
11 Act [17 C.F.R. § 240.13b2-1].

12 75. By reason of the foregoing, Verheecke has violated and, unless restrained and enjoined,
13 will continue to violate Rule 13b2-1 under the Exchange Act [17 C.F.R. § 240.13b2-1].

14 **TENTH CLAIM FOR RELIEF**

15 *(False Statements and Omissions to Accountants and Auditors—
16 Violations of Exchange Act Rule 13b2-2 by Verheecke)*

16 76. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

17 77. By engaging in the conduct described above, Verheecke, directly or indirectly, made or
18 caused to be made a materially false or misleading statement, or omitted to state or caused another
19 person to omit to state material facts necessary in order to make statements made, in light of the
20 circumstances under which such statements were made, not misleading to an accountant in
21 connection with an audit or examination of the financial statements of Blue Coat required to be made
22 or the preparation or filing of reports required to be filed by Blue Coat with the Commission.

23 78. By reason of the foregoing, Verheecke has violated and, unless restrained and enjoined,
24 will continue to violate Rule 13b2-2 under the Exchange Act [17 C.F.R. § 240.13b2-2].

25 **ELEVENTH CLAIM FOR RELIEF**

26 *(False Proxy Statements—Direct and Aiding and Abetting Violations
27 of Exchange Act Section 14(a) and Rule 14a-9 by Both Defendants)*

27 79. The Commission realleges and incorporates by reference Paragraphs 1 through 43.

1 80. Based on the conduct alleged above, Blue Coat violated Section 14(a) of the Exchange
2 Act [15 U.S.C. § 78n(a)] and Rule 14a-9 thereunder [17 C.F.R. § 240.14a-9], which prohibit
3 solicitations by means of a proxy statement, form of proxy, notice of meeting, or other
4 communication, written or oral, that contains a statement which, at the time and in the light of the
5 circumstances under which it was made, was false or misleading with respect to any material fact, or
6 which omits to state any material fact necessary in order to make the statements therein not false or
7 misleading or necessary to correct any statement in any earlier communication with respect to the
8 solicitation of a proxy for the same meeting or subject matter which had become false or misleading.

9 81. By reason of the foregoing, Blue Coat violated and, unless restrained and enjoined,
10 will continue to violate Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9
11 [17 C.F.R. § 240.14a-9] thereunder.

12 82. By engaging in conduct described above, Verheecke knowingly provided substantial
13 assistance to Blue Coat's false proxy solicitations.

14 83. By reason of the foregoing, Verheecke aided and abetted violations by Blue Coat of
15 Section 14(a) of the Exchange Act [15 U.S.C. § 78n(a)] and Rule 14a-9 [17 C.F.R. § 240.14a-9]
16 thereunder. Unless restrained and enjoined, Verheecke will continue to aid and abet such violations.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, the Commission respectfully requests that this Court:

19 I.

20 Permanently enjoin Blue Coat from directly or indirectly violating Section 17(a) of the
21 Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the
22 Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)], and
23 Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 [17 C.F.R. §§ 240.10b-5, 240.12b-20,
24 240.13a-1, 240.13a-11, 240.13a-13 and 240.14a-9] thereunder.

25 II.

26 Permanently enjoin Verheecke from directly or indirectly violating Section 17(a) of the
27 Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 13(b)(5) of the Exchange Act [15 U.S.C.
28

1 §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder [17 C.F.R.
2 §§ 240.10b-5, 240.13a-14, 240.13b2-1, and 240.13b2-2], and from aiding and abetting violations of
3 Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act [15 U.S.C. §§ 78m(a),
4 78m(b)(2)(A), 78m(b)(2)(B), and 78n(a)] and Rules 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9
5 [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, and 240.14a-9] thereunder.

6 III.

7 Order Verheecke to pay a civil penalty pursuant to Section 20(d) of the Securities Act
8 [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)].

9 IV.

10 Order Verheecke to disgorge any wrongfully obtained benefits, including prejudgment
11 interest.

12 V.

13 Prohibit Verheecke, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C.
14 § 78u(d)(2)], from serving as an officer or director of any entity having a class of securities registered
15 with the Commission pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required
16 to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

17 VI.

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

VII.

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

DATED: November 10, 2008

Respectfully Submitted,



Robert L. Tashjian
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION

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