UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE OPENWAVE SYSTEMS SECURITIES LITIGATION, This Document Relates to ALL ACTIONS.	**CIVIL ACTION NO. 07-CV-1309** CONSOLIDATED AMENDED CLASS ACTION COMPLAINT **JURY TRIAL DEMANDED**

CONSOLIDATED AND AMENDED CLASS ACTION COMPLAINT

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I. INTRODUCTION

1. Court-appointed Lead Plaintiff, the Arkansas Teacher Retirement System ("Arkansas Teachers" or "Lead Plaintiff"), brings this federal securities law class action on behalf of itself and all other persons or entities, other than Defendants and their affiliates, who purchased or acquired the common stock of Openwave Systems, Inc. ("Openwave" or the "Company") between September 30, 2002 through and including October 26, 2006 (the "Class Period"), either on the open market or through the Company's Offering (defined below) conducted in December 2005, and were damaged by the conduct asserted herein. Lead Plaintiff alleges the following facts upon knowledge, with respect to its own acts, and with respect to all other facts, including evidence obtained from several confidential witnesses, based on an investigation conducted by its counsel.

2. This action involves an ***admitted*** fraudulent scheme that spanned more than seven years. At the crux of the fraudulent scheme was a practice whereby the Company Defendants intentionally manipulated stock option grants to the Company's officers, directors and employees in order to provide the recipients with a more profitable exercise price and to underreport Company expenses. As a result of this scheme, ***the Company has been forced to restate its previously filed financial statements for fiscal years 2000 through the third quarter of 2006 by over $182 million*** (the "Restatement"). The Company Defendants' scheme caused the Company's financial statements issued during the Class Period to be materially false and misleading, resulting in an artificial inflation of the Company's stock price. By engaging in this scheme, the Company Defendants concealed that Openwave was not recording material compensation expenses and was materially overstating its net income and earnings per share, resulting in the Company understating its net losses and losses per share, in violation of generally accepted accounting principles ("GAAP"). When these backdated grants and the improper

accounting concealing them were finally revealed to the public, the price of Openwave stock declined dramatically, causing substantial damage to investors. As a result of the Company Defendants' false statements, contrivances and manipulative acts, Openwave's publicly traded securities traded at artificially inflated prices during the Class Period, with its common stock reaching a high of $23.19 per share on February 9, 2006, as Openwave reported outstanding financial results. Certain of the Company Defendants took advantage of Openwave's artificially inflated stock price, and sold thousands of shares of Openwave stock for illegal insider trading proceeds of over $54.9 million in ill-gotten gains that were materially enhanced due to the improper "backdating" and "spring loadings" of their options to purchase Openwave stock. These same Company Defendant also pocketed millions more in unjustified bonus payments enhanced in part by Openwave's falsified profits. As the artificial inflation of Openwave's stock price began to be removed, Openwave's stock price declined to a low of $6.09 per share on July 20, 2006.

3. A stock option granted to an employee of a corporation allows the employee to purchase the specified number of shares of company stock at a specified price – referred to as the "exercise price" or "strike price" – for a certain period of time. Stock options are granted by public companies as part of compensation packages for executives – supposedly to create incentives for them to boost long-term corporate performance and profitability. When the executive exercises the option, he or she purchases the stock from the company at the exercise price, regardless of the stock's price at the time the option is exercised. Options are generally priced at the market price on the date of grant – so if the stock price goes up ***over time*** (typically ten years), the executive makes a profit. If the system is abused by "backdating," which refers to picking an option-grant date earlier than the actual date the option was granted – a date when the

stock price was lower than the actual grant date – or by "spring-loading," *i.e.*, granting the stock option just before the company issues positive news which will likely push the stock price up, the executive gets an instant, guaranteed and riskless profit.

4. Stock option manipulation and, in particular, the practice of granting an option with an exercise price tied to a date prior to the actual grant date is fraudulent where: (a) the backdating of grant dates violates the terms of the company's stock option plan; (b) the company misrepresents how the options are priced; or (c) the company fails to properly record expenses associated with these option grants under GAAP. All three of these circumstances existed here.

5. As Harvey Pitt, former Chairman of the Securities and Exchange Commission ("SEC"), recently stated, "[t]hose who backdate options grants violate federal and state law. And those on whose watch this conduct occurs are also potentially liable: If they knew about the backdating, they're participants in fraudulent and unlawful conduct. If they didn't know about the backdating, the question will be: Should they have done more to discover it?"

6. The Company Defendants' manipulation of – and, in particular, the backdating of – stock option grants was not permitted under the contractual terms of the Company's stock option plans. Instead, the Company Defendants' manipulation of Openwave's stock option grants was the linchpin of a broader fraudulent scheme to personally profit from increases in the Company's stock price with the benefit of hindsight, and to misrepresent and hide material information from the public about the Company Defendants' backdating of options. In furtherance of this fraudulent scheme, the Company Defendants engaged in the following misconduct:

(a) In direct contravention of fundamental GAAP principles, the Company Defendants failed to report expenses associated with the backdated options and thereby materially understated Openwave's expenses and materially overstated its net income and earning per share. If options are priced below a stock's fair market value when they are awarded, there is an instant gain. Pursuant to Accounting Principles Board ("APB") Opinion No. 25, "*Accounting for Stock Issued to Employees*" ("APB 25"), which was in effect through June 2005, the Company was obligated to recognize this gain as compensation expense over the vesting period of the option. After June 2005, Statement of Financial Accounting Standards ("SFAS") 123, "*Accounting for Stock-Based Compensation*" ("SFAS 123"), required that the Company recognize the entire value of all option grants on the grant date amortized over the vesting period of the option. However, as the Company has now admitted, "it did not properly account for its backdated option grants."

(b) By retroactively pricing the options, the Company Defendants caused the Company to issue options with terms that violated the express requirements of the Company's stock option plans, which rendered the Company's public representations that options were issued in compliance with the Company's stock option plans materially false and misleading. Specifically, the Company's stock option plans expressly states that the exercise price of incentive stock options shall not be less than 100% of the fair market value of the stock on the date of the grant. However, where, as here, options are backdated, the exercise price of the stock options is lower than the fair market value on the true date of the grant.

(c) The Company Defendants repeatedly mislead investors by affirmatively representing in the Company's SEC filings that the purpose of its stock option plans and stock option grants to executives was to "align the financial interests of the executive officers with the performance of the Company business objectives, and reward executives for their ongoing contributions to the organization."

(d) The Company Defendants expressly misrepresented the value of officer compensation in various Company filings. Specifically, in identifying specific options granted to officers, the Company Defendants falsely stated that such options were granted with an exercise price equal to the fair market value of the stock on the grant date when, in fact, the options granted were backdated and "in-the-money" when granted.

7. Openwave's Restatement of December 1, 2006 effectively acknowledges that its previously reported financial results were materially false and misleading when made because such statements omitted material facts regarding, and failed to take account of, the financial effect of the backdated option grants. Moreover, the Company has expressly admitted in its annual report on Form 10-K for the fiscal year ended June 30, 2006 ("2006 Form 10-K), that the fraud has had a material impact on the Company and its shareholders. Among other things, the Company now acknowledges:

- We face risks related to the SEC and US Attorney inquiries regarding our historic and current stock option grants and practices, which have required significant management time and attention, caused us to incur significant accounting and legal expense and could require us to pay fines or other penalties.

- We have also incurred expenses relating to legal, accounting, tax and other professional services in connection with these matters and expect to continue to incur significant expenses in the future, which may adversely affect our results of operations and cash flows.

- The Special Committee[1] identified certain circumstances in which the grant date used by the Company as the "measurement date" for accounting purposes preceded the appropriate measurement date.

[1] The "Special Committee" is a committee of the Company's Board of Directors tasked with investigating the Company's stock option grants and practices.

- The Special Committee found evidence to conclude that there were deficiencies in the process by which many options were granted.

8. This extensive fraud injured Lead Plaintiff and members of the Class. The market reacted strongly to the news of Openwave's Restatement, and the Company's stock price has fallen as the prior artificial inflation has been removed from the value of Openwave's securities.

II. NATURE OF THE ACTION

9. On March 18, 2006, *The Wall Street Journal* published an article questioning whether several public companies had been manipulating stock option grants to enrich executives by backdating those grants to lower prices or granting options to executives ahead of the release of positive corporate news. Soon thereafter, a number of incidents involving stock option "backdating" and "spring loading" by public companies surfaced, including Securities and Exchange Commission ("SEC") investigations, executive resignations and financial restatements.

10. On May 22, 2006, Openwave issued a press release announcing that the SEC had opened an informal inquiry into the Company's past stock option grants. In this press release, however, Openwave stressed that "the SEC letter states that the informal inquiry should not be construed as an indication by the SEC or its staff that any violation of law has occurred, or as an adverse reflection upon any person, entity, or security."

11. On July 5, 2006, Openwave filed with the SEC a Regulation FD disclosure on Form 8-K stating that it had received subpoenas from the United States Attorneys for the Northern District of California and for the Southern District of New York requesting documents relating to the Company's historical stock option practices.

12. On October 4, 2006, Openwave announced that an internal investigation by a "Special Committee" of the Board of Directors had discovered irregularities related to the

issuance of certain stock option grants made between fiscal years 2000 through 2005. Openwave further disclosed that, because the Company would likely need to restate its historical financial statements for fiscal years 2000 through 2005 to record additional, material non-cash charges for stock-based compensation, "financial statements previously issued by the Company should no longer be relied upon."

13. Just three weeks later, on October 26, 2006, in a press release reporting financial results for its fiscal 2007 first quarter ended September 30, 2006, Openwave admitted that "the measurement dates for financial accounting purposes for certain stock option grants differ from recorded grant dates for certain awards."

14. Shortly thereafter, on December 1, 2006, Openwave announced the completion of its internal investigation and filed its 2006 Form 10-K with the SEC restating Openwave's historical financial results since 1999—***more than seven years***. In a press release circulated via the Internet and attached to the 2006 Form 10-K, Openwave acknowledged that the scope of the backdating scheme was, in fact, far worse than previously disclosed. According to the Company's press release:

> The Special Committee identified certain circumstances in which the grant date used by the Company as the "measurement date" for accounting purposes ***preceded the appropriate measurement date***.
>
> In light of these findings by the Special Committee, Openwave re-measured certain stock option grants which resulted in additional non-cash charges for stock-based compensation and associated payroll tax expense for fiscal years 2000 through 2005, totaling approximately ***$182 million***...
>
> Openwave has not amended, and does not intend to amend, its previously filed annual reports on form 10-K or quarterly reports on form 10-Q for the periods affected by the restatements. The financial information that has been previously filed or otherwise reported for the periods from fiscal 1999 through fiscal 2005 is superseded by the information in the form 10-K for fiscal 2006. As a result, the financial statements and related financial information

> contained in such previously filed reports should no longer be relied upon. Additional details, including related disclosures, are available in the Company's form 10-K, filed today.

(Emphasis added).

15. As SEC Chairman Christopher Cox testified before the U. S. Senate Committee on Banking, Housing and Urban Affairs on September 6, 2006, backdating is a practice whereby companies "granted in-the-money options – that is, an option with an exercise price lower than that day's market price. They did this by misrepresenting the date of the option grant, to make it appear that the grant was made on an earlier date when the market value was lower. . . The purpose of disguising an in-the-money option through backdating is to allow the person who gets the option grant to realize larger potential gains—without the company having to show it as compensation on the financial statements."

16. Lynn Turner, the SEC's former Chief Accountant, described backdating as follows: "It's like allowing people to place bets on a horse race after the horses have crossed the finish line." Similarly, U.S. District Court Judge James M. Rosenbaum, in denying defendants' motions to dismiss a securities class action captioned as *In re UnitedHealth Group PSLRA Litig.*, 2007 U.S. Dist. LEXIS 40623 (D. Minn. June 4, 2007), regarding similar practices at UnitedHealth, compared backdating to "playing a game with a stacked deck. When awarded (sic) options, with deliberately selected grant dates which were already in the money, defendants were playing a game they knew they could not lose; and, unsurprisingly, defendants won."

17. Arthur Levitt, former Chairman of the SEC, described backdating as stealing: "It is ripping off shareholders in an unconscionable way" and "represents the ultimate in greed."

18. Harvey Pitt, former Chairman of the SEC, recently opined that "backdating" plainly violates both the federal securities laws and state corporate fiduciary laws:

> What's so terrible about backdating options grants? For one thing, it likely renders a company's proxy materials false and misleading. Proxies typically indicate that options are granted at fair market value. But if the grant is backdated, the options value isn't fair – at least not from the vantage point of the company and its shareholders.
>
> For another, backdating means a corporate document used to permit access to corporate assets has been falsified, a violation of the Foreign Corrupt Practices Act. Moreover, if backdating occurs without the compensation committee's knowledge, illegal insider trading may also have occurred.
>
> Securities law violations are not the only potential problems with backdating options grants. Backdating may violate the Internal Revenue Code, and companies may not be able to deduct the options payments. On the state level, backdating could involve a breach of fiduciary duty, a waste of corporate assets and even a usurpation of a corporate opportunity.
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> * * *
>
> More fundamentally, the financial statements of a company that has engaged in backdating may require restatement. The options may not be deductible, and the expenses, as well as the various periods to which they may have been allocated, may also be incorrect. . . .
>
> More to the point, what does this kind of conduct say about those who do it and those who allow it to occur (either wittingly or unwittingly)?

Harvey Pitt, "The Next Big Scandal," Forbes.com, May 26, 2006.

19. Defendants' backdating scheme not only surreptitiously and illegally lined certain Company Defendants' pockets and caused Openwave to issue materially false financial statements, but undermined the key purpose of stock option-based executive compensation – to provide incentives to executives to improve the Company's performance. By manipulating options such that they carried a strike price lower than the trading price of the stock on the date of grant, Openwave insiders profited immediately upon the award of the options without doing anything to improve the Company's business or financial condition.

20. Before the recent disclosure of the Company Defendants' stock option backdating scheme, Openwave stock traded at prices as high as $23.19 per share, propelled in large part by the admittedly false financial statements that the Company Defendants had caused Openwave to issue. While the price of Openwave stock was artificially inflated, certain of the Company Defendants engaged in a massive insider trading bailout, selling more than $54.8 million worth of Openwave stock in violation of the securities laws. For example, Openwave's former CEO, Defendant Listwin, alone sold 1.6 million Openwave shares for unlawful insider trading proceeds of $21 million; former Executive Vice President and COO, Defendant Snyder, sold more than 715,000 Openwave shares for unlawful insider trading proceeds of $13.7 million, while Openwave's former CFO, Defendant Pace, sold 83,439 Openwave shares for unlawful insider trading proceeds of $1.2 million. Likewise, Openwave's former CFO, Defendant Black, sold 89,898 Openwave shares for unlawful insider trading proceeds of $6.2 million, while Openwave's current Chairman and CEO, Defendant Peterschmidt, sold 106,250 Openwave shares for unlawful insider trading proceeds of over $1.7 million.

21. Openwave's current and former directors also profited handsomely from the backdating scheme. For example, Defendant Kennedy sold 725,369 Openwave shares for unlawful insider trading proceeds of $9.7 million; Defendant Verhalen sold 181 Openwave shares for unlawful insider trading proceeds of $9,310.28 million; and Defendant Puckett sold 17,166 Openwave shares for unlawful insider trading proceeds of $248,397.

22. Moreover, during the Class Period, the Company conducted a secondary offering of stock (the "Offering"). In December 2005, the Company filed with the SEC a shelf Registration Statement on Form S-3ASR, a Preliminary Prospectus Supplement and a Prospectus Supplement (the "Offering Documents"). The Offering Documents contained a summary of

consolidated financial data for the fiscal years ended June 30, 2003 through 2005, and incorporated by reference the Company's annual report on Form 10-K for the year ended June 30, 2005 and a letter from Defendant KPMG addressed to the Board of Directors of Openwave consenting to Openwave's use of KPMG's September 12, 2005 audit report in the Registration Statement and Openwave's referral to KPMG as "Experts" in the Registration Statement. The Offering Documents offered an option to purchase 15,600,000 primary share of common stock, plus an option to purchase an additional 2,340,000 shares to cover over-allotments, if any. The sole book-running manager of the Offering was Merrill Lynch & Co., the co-lead manager was Lehman Brothers and the co-managers of the Offering were JP Morgan and Thomas Weisel Partners LLC.

23. Lead Plaintiff brings this action seeking to recover damages caused by Openwave's and the Individual Defendants' violations of Sections 10(b), 20(a) and 20A of the Securities Exchange Act of 1934 ("Exchange Act"), and the rules and regulations promulgated thereunder, including SEC Rule 10b-5. In addition, Lead Plaintiff brings this action under Sections 11, 12(a)(2) and 15 of the Securities Act of 1933 (the "Securities Act"). The Securities Act claims are asserted against the Defendants who are statutorily responsible for untrue statements in the Offering Documents pursuant to which Openwave issued common stock to the public in December 2005. The Securities Act claims are exclusively strict liability and negligence claims, and expressly disclaim any claim of fraud or intentional misconduct (including any such allegations contained in this introduction) in these ***non-fraud*** claims.

III. JURISDICTION AND VENUE

24. Certain claims asserted herein arise under §§10(b), 20(a) and 20A of the Exchange Act, 15 U.S.C. §§78j(b), 78t(a) and 78t-1, and the rules and regulations promulgated

thereunder, including SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 ("Rule 10b-5"). Certain other non-fraud claims asserted herein arise under Sections 11, 12(a)(2) and 15 of the Securities Act, 15 U.S.C. §§ 77k, 77l(a)(2) and 77o.

25. Jurisdiction exists pursuant to §22 of the Securities Act, 15 U.S.C. §§77v, and §27 of the Exchange Act, 15 U.S.C. §78aa, and 28 U.S.C. §§1331 and 1337.

26. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, 28 U.S.C. §1391(b) and (c) and Section 22 of the Securities Act, 15 U.S.C. §77v. In addition, venue is proper in this District due to the fact that the Office of the United States Attorney for the Southern District of New York (the "U.S. Attorney") and the Securities and Exchange Commission (the "SEC") each are conducting investigations into the Company's stock option granting practices, which comprise a substantial part of the wrongful conduct alleged herein.

27. In connection with the wrongful acts and conduct alleged herein, Defendants, directly and/or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the United States mails, interstate communications and the facilities of the NASDAQ Stock Market, a national securities market located in this District.

IV. THE PARTIES

A. LEAD PLAINTFF

28. Plaintiff Arkansas Teacher Retirement System is a public pension fund organized in 1937 for the benefit of the current and retired public school teachers of the State of Arkansas. Arkansas Teachers is headquartered in Little Rock, Arkansas and has total assets of approximately $10 billion. Arkansas Teachers purchased shares of common stock of Openwave during the Class Period, and suffered damages as a result of the violations of the federal

securities laws alleged herein. On May 29, 2007, the Court appointed Arkansas Teacher as Lead Plaintiff for this litigation.

B. ADDITIONAL NAMED PLAINTIFF

29. Plaintiff Fresno County Employees Retirement Association ("FCERA") is an entity formed under the State of California's County Employees' Retirement Law of 1937. FCERA invests funds for the exclusive purpose of providing retirement compensation, death benefits and disability benefits to participants in the pension or retirement system for Fresno County employees and their beneficiaries. As of June 30, 2006, it had approximately 13,800 active members, retirees and other beneficiaries, and over $2.5 billion in assets. FCERA purchased shares of common stock of Openwave through its Offering, and suffered damages as a result of the violations of the federal securities laws alleged herein. FCERA joins in this action as a named plaintiff.

C. THE SECURITIES ACT DEFENDANTS

1. The Company

30. Defendant Openwave is a Delaware corporation with its principal executive offices located at 2100 Seaport Blvd., Redwood City, California. Openwave develops software products and services for the telecommunications industry. As of November 30, 2006 there were 94,612,874 shares of Openwave common stock outstanding. Throughout the Class Period, Openwave operated on a fiscal year ending on June 30. During the Class Period, Openwave was listed on the NASDAQ exchange, where its stock was publicly traded under the symbol "OPWV."

2. The Officer Defendants

31. Defendant David C. Peterschmidt ("Peterschmidt") was the Company's President, Chief Executive Officer ("CEO") and a Director from November 2004 through March 2007. Peterschmidt signed the Company's false Offering Documents.

32. Defendant Harold L. Covert, Jr. ("Covert") has been Chief Financial Officer ("CFO") and Executive Vice-President of Openwave since October 2005. Previously, Covert served as a Director and Chairman of the Audit Committee of the Company from April 2003 to September 2005. Covert signed the Company's false Offering Documents.

3. The Director Defendants

33. Defendant M. Bernard Puckett ("Puckett") served as a Director of the Company from November 2000 to October 2002, and has since served as Chairman of the Board of Directors of Openwave. From November 2000 to October 2002, Puckett served as a Director of the Company. Puckett signed the Company's false Offering Documents.

34. Defendant Kenneth D. Denman ("Denman") has been a Director of Openwave since April 2004. Denman signed the Company's false Offering Documents.

35. Defendant Bo C. Hedfors ("Hedfors") has been a Director of Openwave since April 2002. Hedfors signed the Company's false Offering Documents.

36. Defendant Gerald Held ("Held") has been a Director of Openwave since April 2005. Held signed the Company's false Offering Documents.

37. Defendant Masood Jabbar ("Jabbar") has served as a Director of Openwave since August 2003. Jabbar signed the Company's false Offering Documents.

38. Because of their positions with the Company, the Officer and Director Defendants (collectively, with Defendant Openwave, the "Company Defendants") knew the adverse non-

public information about their stock option backdating scheme, as well as Openwave's finances, excessive compensation payments, markets and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

4. The Underwriter Defendants

39. The Defendants listed below, collectively referred to as the "Underwriter Defendants," provided underwriting services for Openwave's December 2005 Offering of 15,600,000 shares, with an option to purchase up to 2,340,000 additional shares, of Openwave common stock. The Underwriter Defendants collectively received $12,753,000 in underwriting fees and commissions for the Offering. The Offering Documents disclosed that each Underwriter Defendant was serving as an underwriter for the Offering. As part of their duties as underwriters, the Underwriter Defendants, collectively and individually, were required to conduct, prior to the Offering, a reasonable investigation of the Company to ensure that the statements contained in the Offering Documents contained no material misstatements or omissions of material fact. The Underwriter Defendants failed to fulfill their duty to the investing public in this regard.

40. Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch)" is a global investment bank with headquarters in New York, New York. Merrill Lynch was sole bookrunner and co-lead manager of Openwave's Offering. Pursuant to the Offering Documents, Merrill Lynch sold and distributed 7,800,000 shares of Openwave common stock, and additional shares allocated in an over-allotment option, to the investing public. Merrill Lynch was paid approximately $6,376,500, or 5% of the funds it raised, for its underwriting services in

connection with the Secondary Offering. During the Class Period, Merrill Lynch also provided equity research coverage of Openwave.

41. Defendant Lehman Brothers Inc. ("Lehman Brothers") is a global investment bank with headquarters in New York, New York. Pursuant to the Offering Documents, Lehman Brothers sold and distributed 1,560,000 shares of Openwave common stock, and additional shares allocated in an over-allotment option, to the investing public. Lehman Brothers was paid approximately $1,275,300 for its underwriting services in connection with the Offering, not including additional compensation related to the shares sold pursuant to the overallotment option. During the Class Period, Lehman Brothers also provided equity research coverage of Openwave.

42. Defendant J.P. Morgan Securities Inc. ("J.P. Morgan") is a global investment bank with headquarters in New York, New York. Pursuant to the Offering Documents, JP Morgan sold and distributed 1,560,000 shares of Openwave common stock, and additional shares allocated in an over-allotment option, to the investing public. J.P. Morgan was paid approximately $1,275,300 for its underwriting services in connection with the Offering, not including additional compensation related to the shares sold pursuant to the overallotment option. During the Class Period, J.P. Morgan also provided equity research coverage of Openwave.

43. Defendant Thomas Weisel Partners LLC ("Thomas Weisel") is a global investment bank with headquarters in San Francisco, California. Pursuant to the Offering Documents, Thomas Weisel sold and distributed 1,560,000 shares of Openwave common stock, and additional shares allocated in an over-allotment option, to the investing public. Thomas Weisel was paid approximately $1,275,300, or 5% of the funds it raised, for its underwriting

services in connection with the Offering, not including additional compensation related to the shares sold pursuant to the overallotment option. During the Class Period, Thomas Weisel also provided equity research coverage of Openwave.

5. The Auditor Defendant

44. Defendant KPMG LLP ("KPMG"), with U.S. Executive Offices in New York, New York, is a global network of professional firms providing Audit, Tax, and Advisory services. KPMG was Openwave's auditor throughout the Class Period. For each of the fiscal years ended June 30, 2001 through June 30, 2006, KPMG issued an unqualified audit opinion on the Company's consolidated financial statements which was included with the Company's filings on Forms 10-K for each fiscal year. For example, KPMG's "clean" auditor's report, dated July 19, 2002, on Openwave's financial statement as of and for the fiscal year ended June 30, 2002, included the following language:

> In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Openwave Systems Inc. and subsidiaries as of June 30, 2002 and 2001, and the results of their operations and their cash flows for each of the years in the three-year period ended June 30, 2002, in conformity with accounting principles generally accepted in the United States of America.

Each of KPMG's "clean" auditor's reports dated July 24, 2003 (for Openwave's 2003 financial statements), July 30, 2004 (for Openwave's 2004 financial statements), and September 12, 2005 (for Openwave's 2005 financial statements) contained the same quoted language. On November 29, 2005, KPMG also consented to Openwave using KPMG's September 12, 2005 audit report in the Registration Statement.

D. THE EXCHANGE ACT DEFENDANTS

1. The Company

45. Defendant Openwave is a Delaware corporation with its principal executive offices located at 2100 Seaport Blvd., Redwood City, California. Openwave develops software products and services for the telecommunications industry. As of November 30, 2006 there were 94,612,874 shares of Openwave common stock outstanding. Throughout the Class Period, Openwave operated on a fiscal year ending on June 30. During the Class Period, Openwave was listed on the NASDAQ exchange, where its stock was publicly traded under the symbol "OPWV."

2. The Officer Defendants

46. Defendant Donald J. Listwin ("Listwin") served as Openwave's President, CEO and Director from September 2000 through April 2003. As an executive and a member of the Board of Directors, he authorized and approved certain backdated stock options grants at issue in this case. Listwin signed Openwave's false Forms 10-K for fiscal years 2000 through 2004, the Company's reports on Forms 10-Q for each quarter from 2000 through 2004 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As an executive of the Company, Listwin received certain backdated stock options that are at issue in this case. During the Class Period, Listwin reaped illegal insider selling proceeds of $21 million by selling 1.6 million Openwave shares of his Openwave stock.

47. Defendant Alan J. Black ("Black") previously served as Senior Vice President of Finance and Administration, CFO and Treasurer at Openwave. As an executive, he authorized and approved certain backdated stock options grants at issue in this case. Black signed

Openwave's false Forms 10-K for fiscal years 1999 through 2002, the Company's reports on Forms 10-Q for each quarter from 1999 through 2002 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As an executive of the Company, Black received certain backdated stock options that are at issue in this case. Prior to the Class Period, but during the time of Openwave's backdating of options, Black reaped illegal insider selling proceeds of $6.2 million by selling 89,898 shares of his Openwave stock.

48. Defendant Joshua A. Pace ("Pace") previously served as Vice President of Finance and as the Company's Chief Accounting Officer. As an executive, he authorized and approved certain backdated stock options grants at issue in this case. Pace signed Openwave's false Forms 10-K for fiscal years 2003 through 2005 and the Company's quarterly reports on Forms 10-Q from 3Q 2003 through 3Q 2005, and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As an executive of the Company, Pace received certain backdated stock options that are at issue in this case. During the Class Period, Pace reaped illegal selling proceeds of $1.2 million by selling 83,439 shares of his Openwave stock.

49. Defendant Allen E. Snyder ("Snyder") was Chief Operations Officer ("COO") of Openwave until November 30, 2006. Previously, Snyder served in a variety of executive positions since joining the Company in December 2002. As an executive, he authorized and approved certain backdated stock options grants at issue in this case. As an executive of the Company, Snyder received certain backdated stock options that are at issue in this case. During the Class Period, Snyder reaped illegal selling proceeds of $13.7 million by selling 715,004 shares of his Openwave stock.

50. Defendant Steve Peters ("Peters") was Executive Vice President and Chief Administrative Officer of Openwave since October 2004. Peters resigned from those positions and remained as Openwave's advisor until December 23, 2006. Peters had been Senior Vice President, CAO and Legal Officer since April 2003 and previously was Vice President and General Counsel of the Company from February 1999. As an executive, he authorized and approved certain backdated stock options grants at issue in this case. As an executive of the Company, Peters received certain backdated stock options that are at issue in this case. During the Class Period, Peters reaped illegal selling proceeds of $4.9 million by selling 300,798 shares of his Openwave stock.

51. Defendant Alain Rossmann ("Rossmann") previously was Chairman and CEO at Openwave until June 2001. As an executive, he authorized and approved certain backdated stock options grants at issue in this case. Rossmann signed Openwave's false Form 10-K405 in fiscal 2000. As alleged herein, he received certain backdated stock option grants at issue in this case. Prior to the Class Period, but during the time of Openwave's backdating of options, Rossmann reaped illegal selling proceeds of more than $2.7 million by selling 45,000 shares of his Openwave stock.

52. Defendant Simon Wilkinson ("Wilkinson") served as Vice-President of Sales and Client Business from July 2004 through January 2005, and as Senior Vice-President and General Manager of Openwave from January 2005 to the present. As an executive of the Company, Wilkinson was issued certain backdated stock options that are at issue in this case. During the Class Period, Wilkinson reaped illegal selling proceeds of more than $2.1 million by selling 128,403 shares of his Openwave stock.

53. As detailed above, Defendant David C. Peterschmidt ("Peterschmidt") was the Company's President, Chief Executive Officer ("CEO") and a Director from November 2004 through March 2007. Peterschmidt signed Openwave's false Form 10-K for fiscal year 2005, the Company's reports on Form 10-Q for each quarter in 2005 and 2006 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As an executive and a member of the Board of Directors, he authorized and approved certain backdated stock options grants at issue in this case. During the Class Period, Peterschmidt reaped illegal insider selling proceeds of $1.7 million by selling 106,250 shares of his Openwave stock.

54. As detailed above, Defendant Harold L. Covert, Jr. ("Covert") has been Chief Financial Officer ("CFO") and Executive Vice-President of Openwave since October 2005. Previously, Covert served as a Director and Chairman of the Audit Committee of the Company from April 2003 to September 2005. Covert signed Openwave's false Forms 10-K for fiscal years 2003 and 2004, and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As an executive and a member of the Board of Directors, he authorized, and approved certain backdated stock options grants at issue in this case.

55. Defendant Kevin J. Kennedy ("Kennedy") was a Director of Openwave from October 2002 until June 2005. In addition, Kennedy served as Chief Operating Officer for Openwave from August 2001 through September of 2003. Kennedy continued to serve as an advisor to Openwave's CEO from October 2003 through June 2005. As an executive and member of the Board of Directors, Kennedy approved and was involved in the issuance of certain backdated stock options at issue in this case. Kennedy signed Openwave's false Forms

10-K for fiscal years 2003 and 2004 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As an executive of the Company, Kennedy received certain backdated stock options that are at issue in this case. During the Class Period, Kennedy reaped illegal selling proceeds of more than $9.7 million by selling 725,369 shares of his Openwave stock.

3. The Director Defendants

56. As detailed above, Defendant M. Bernard Puckett ("Puckett") served as a Director of the Company from November 2000 to October 2002, and has since served as Chairman of the Board of Directors of Openwave. From November 2000 to October 2002, Puckett served as a Director of the Company. Puckett signed Openwave's false Forms 10-K for fiscal years 2000 through 2005 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results. As a member of the Audit and Compensation Committees, Defendant Puckett enabled the stock option backdating scheme to succeed and remain undetected until mid-2006. During the Class Period, Puckett reaped illegal selling proceeds of more than $248,397 by selling 17,166 shares of his Openwave stock.

57. As detailed above, Defendant Kenneth D. Denman ("Denman") has been a Director of Openwave since April 2004. As a member of the Board of Directors and as a member of the Audit and Compensation Committees, Defendant Denman authorized and approved certain backdated stock option grants at issue in this case. Denman signed Openwave's false Forms 10-K for fiscal years 2004 and 2005 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results.

58. As detailed above, Defendant Bo C. Hedfors ("Hedfors") has been a Director of Openwave since April 2002. As a member of the Board of Directors and as a member of the

Compensation Committee, Defendant Hedfors authorized and approved certain backdated stock option grants at issue in this case. Hedfors signed Openwave's false Forms 10-K for fiscal years 2001 through 2005 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results.

59. As detailed above, Defendant Gerald Held ("Held") has been a Director of Openwave since April 2005. As a member of the Board of Directors, he authorized and approved certain backdated stock option grants at issue in this case. Held signed Openwave's false Form 10-K for fiscal year 2005 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results.

60. As detailed above, Defendant Masood Jabbar ("Jabbar") has served as a Director of Openwave since August 2003. As a member of the Board of Directors and as a member of the Audit Committee, he approved the Company's false financial disclosures, as alleged herein. Jabbar signed Openwave's false Forms 10-K for fiscal years 2003 through 2005 and made false and misleading statements regarding Openwave's executive compensation, stock option plans and financial results.

61. Defendant Roger L. Evans ("Evans") served as Director for the Company from 1995 through 2003. As a member of the Board of Directors and Audit Committee, Evans approved the Company's false financial disclosures and the backdated stock option grants at issue in this case. Evans signed Openwave's false Forms 10- K for fiscal years 1999 through 2002.

62. Defendant Andrew W. Verhalen ("Verhalen") served as a Director of the Company from 1995 through June 2002. As a member of the Board of Directors and the Audit and Compensation Committees, Verhalen approved the Company's false financial disclosures

and the backdated stock option grants at issue in this case. Verhalen signed Openwave's false Forms 10-K for fiscal years 1999 through 2001.

63. Because of their positions with the Company, the Officer and Director Defendants (collectively, with Defendant Openwave, the "Company Defendant") knew the adverse non-public information about their stock option backdating scheme, as well as Openwave's finances, excessive compensation payments, markets and present and future business prospects, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and Board of Directors meetings and committees thereof and via reports and other information provided to them in connection therewith.

V. CLASS ACTION ALLEGATIONS

64. Lead Plaintiff brings this action on its own behalf and as a class action pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of all persons or entities (the "Class") who purchased or acquired Openwave common stock during the period from September 30, 2002 through October 26, 2006, inclusive ("the Class Period") and suffered damages as a result.

65. Excluded from the Class are: (i) Defendants; (ii) members of the immediate family of each of the Defendants; (iii) any person who was an executive officer and/or director of Openwave during the Class Period; (iv) any person, firm, trust, corporation, officer, director, or any other individual or entity in which any Defendant has a controlling interest or which is related to or affiliated with any of the Defendants; (v) any person who profited from or actively participated in the wrongdoing at issue and (vi) the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

66. Openwave common stock was actively traded on the NASDAQ Stock Market, which is an efficient market, throughout the Class Period. Numerous securities analysts

published reports about Openwave during the Class Period, including analysts from Cannacord Adams, Deutsche Bank Securities, JP Morgan, Kaufman Brothers, Merrill Lynch, Thomas Weisel, Wachovia Securities, and Wedbush Morgan Securities. Hundreds of thousands of Company shares were traded every day during the Class Period and, on numerous days, over a million Openwave shares were traded.

67. The members of the Class, purchasers on the NASDAQ Stock Market are so numerous that joinder of all members is impracticable. While the exact number of Class members can only be determined by appropriate discovery, Lead Plaintiff believes that Class members number in the thousands, if not higher. As of November 27, 2006, Openwave reported that it had 94,612,874 shares of common stock issued and outstanding.

68. Lead Plaintiff's claims are typical of the claims of members of the Class. Lead Plaintiff and all members of the Class sustained damages as a result of the conduct complained of herein.

69. Lead Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained court-appointed counsel competent and experienced in class and securities litigation. Lead Plaintiff has no interests that are contrary to or in conflict with those of the members of the Class that Lead Plaintiff seeks to represent.

70. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members individually to seek redress for the wrongful conduct alleged herein.

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

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

(b) whether documents, including the Company's SEC filings, press releases and other public statements made by Defendants, during the Class Period contained misstatements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading;

(c) with respect to Plaintiffs' claims under Section 10(b) of the Exchange Act, whether Defendants acted with the requisite state of mind in omitting and/or misrepresenting material facts in the documents filed with the SEC, press releases and public statements;

(d) whether the market price of Openwave stock during the Class Period was artificially inflated due to the material misrepresentations and/or non-disclosures complained of herein;

(e) whether the members of the Class have sustained damages as a result of the misconduct complained of herein and, if so, the appropriate measure thereof;

(f) whether the Offering Documents contained material misrepresentations or omitted to state material information;

(g) whether, and to what extent, the Company's financial statements failed to comply with GAAP during the Class Period;

(h) with respect to Plaintiffs' claims under the Securities Act, whether the Defendants named in those claims can sustain their burden of establishing an affirmative defense to the applicable statute; and

(i) with respect to Plaintiffs' claims pursuant to Section 15 of the Securities Act and Section 20(a) of the Exchange Act, whether the Defendants named in those counts are controlling persons of the Company.

72. Lead Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

73. The names and addresses of the record owners of Openwave shares purchased during the Class Period, are obtainable from information in the possession of the Company's transfer agent(s). Notice can be provided to such record owners via first class mail using techniques and a form of notice similar to those customarily used in class actions.

VI. FACTUAL ALLEGATIONS RELATING TO THE SECURITIES ACT CLAIMS

74. On December 1, 2005, the Company filed with the SEC a shelf Registration Statement on Form S-3ASR, which included a Preliminary Prospectus Supplement. The Registration Statement became effective on December 7, 2005. On December 8, 2005, the Company filed with the SEC a Prospectus Supplement (the "Prospectus") that also constituted part of the Registration Statement. The Registration Statement, Preliminary Prospectus Supplement, and the Prospectus (the "Offering Documents") contained a summary of consolidated financial data for the fiscal years ended June 30, 2003 through 2005. The Offering Documents incorporated by reference the Company's: (1) annual report on Form 10-K for the year ended June 30, 2005; (2) quarterly report on Form 10-Q for the quarter ended September 30, 2005; (3) current reports on Forms 8-K filed on July 18, 2005, August 4, 2005, September 12,

2005, September 29, 2005, October 12, 2005 and October 19, 2005 and Forms 8-K/A filed on August 5, 2005 and November 14, 2005; and (4) registration statements filed on Forms 8-A filed on April 1, 1999 and August 17, 2000 and Form 8-A/A filed on December 8, 2003.

75. Exhibit 23.1 to the Registration Statement, was a November 29, 2005 letter from Defendant KPMG addressed to the Board of Directors of Openwave consenting to Openwave's use of KPMG's: (1) September 12, 2005 audit report with respect to the consolidated balance sheets of Openwave Systems Inc. and subsidiaries as of June 30, 2005 and 2004; (2) the related consolidated statements of operations, stockholders' equity and comprehensive loss and cash flows for each of the years in the three-year period ended June 30, 2005; and (3) management's assessment of the effectiveness of internal control over financial reporting as of June 30, 2005. In addition, in its letter to the Board of Directors of Openwave, KPMG consented to Openwave's referral to KPMG as "Experts" in the Registration Statement. As more fully discussed below, the consolidated financial data and incorporated Form 10-K for the year ended June 30, 2005 (the "2005 10-K") contained in the Offering Documents, which the Company and KPMG expressly consented to incorporation, were all materially false and misleading and presented in violation of GAAP due to the Company's improper accounting of backdated stock options. These financial statements failed to properly record material compensation expenses, materially overstated net income and earnings per share, and understated net losses and losses per share. For example, the 2005 10-K disclosed that Openwave had stock-based compensation expense of \$5.2 million, \$3.2 million, and \$3.7 million, and net loss of \$62.1 million, \$29.9 million, and \$217.0 million for the fiscal years ended June 30, 2005 and 2004, respectively. The 2005 10-K also disclosed that Openwave had accumulated deficit of \$2.63 billion and \$2.57 billion on June 30, 2005 and 2004, respectively. However, Openwave's 2006 10-K discloses that, had

Openwave's options been properly accounted for, the Company would have recognized additional expenses of $0.6 million, $0.6 million, and $10.3 million in fiscal 2005, 2004, and 2003, respectively. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses in each period (*i.e.* $3.1 million, $138.7 million, $170.1 million, $180.5 million, $181.1 million, and $181.7 million in fiscal 2000 through 2005, respectively).

76. The Offering Documents offered an option to purchase 15,600,000 primary shares of common stock, plus an option to purchase an additional 2,340,000 shares to cover over-allotments, if any. The Company estimated net proceeds from the Offering, without exercise of the overallotment, to be $241.5 million. If the overallotment option were exercised, the proceeds were estimated to rise to $277.9 million.

77. The Underwriter Defendants collectively received more than $12,753,000 in underwriting fees and commissions for the Offering. The Offering Documents disclosed that each Underwriter Defendant was serving as an underwriter for the Offering. As part of their duties as underwriters, the Underwriter Defendants, collectively and individually, were required to conduct, prior to the Offering, a reasonable investigation of the Company to ensure that the statements contained in the Offering Documents contained no material misstatements or omissions of material fact. The Underwriter Defendants failed to fulfill their duty to the investing public in this regard.

78. Defendants Peterschmidt, Covert, Denman, Hedfors, Held, Jabbar and Puckett signed the Registration Statement.

79. The sole book-running manager of the Offering was Merrill Lynch & Co., the co-lead manager was Lehman Brothers and the co-managers of the Offering were JP Morgan and Thomas Weisel Partners LLC.

VII. MISTATEMENTS CONCERNING COMPLIANCE WITH GAAP

80. Throughout the Class Period, Openwave represented that its financial statements were in conformance with GAAP. As the Company has now admitted, these representations were false. As set forth herein (*see* ¶¶171 to 281), the financial statements issued by the Company for fiscal years 2000 through 2005, and the financial statements for the fiscal quarters therein, did not fairly and accurately represent the Company's financial position and the results of its operations because they violated key provisions of GAAP. These financial statements were false due to Defendants' improper accounting practices, including improperly accounting for stock options which artificially inflated the Company's income, earnings per share and operating margins. The financial statements were also false because they understated the Company's compensation costs and tax liabilities.

81. GAAP principles are the official standards accepted by the SEC and promulgated in part by the American Institute of Certified Public Accountants ("AIC"). GAAP consists of a collection of authoritative literature, including the Financial Accounting Standards Board ("FASB") Statements of Financial Accounting Statements ("SFAS"), FASB Interpretations ("FIN"), Accounting Principles Board Opinions ("APB Opinion"), AICPA Accounting Research Bulletins ("ARB"), and Emerging Task Force ("ETIF") guidance. SEC Regulation S-X (17 C.F.R. § 210.4 01(a)(1)), provides that financial statements filed with the SEC that are not prepared in compliance with GAAP are presumed to be false and misleading. Regulation S-X also requires that interim financial statements must comply with GAAP, with the exception that

interim financial statements need not include disclosures which would be duplicative of disclosures accompanying annual financial statements. 17 C.F.R. § 210.10-01(a).

82. The fact that Openwave restated its financial statements, and disclosed that its previously-filed financial statements should no longer be relied upon, is an admission that they were false and misleading when originally issued (APB No.20, ¶¶7-13; SFAS No. 154, ¶25).

83. GAAP, as set forth in Accounting Principles Board Opinion ("APB") No. 25, *Accounting for Stock Issued to Employees* – the standard for accounting for employee stock opinions in effect until 1995 – required that any different between the market price on the measurement date and the exercise price be accorded as compensation expense. APB No. 25, ¶10 stated in part:

> Compensation for services that a corporation receives as consideration for stock issued through employee stock option, purchase, and award plans should be measured by the quoted market price of the stock at the measurement date less the amount, if any, that the employee is required to pay.
>
> * * *
>
> Thus a corporation recognizes compensation cost for stock issued through compensatory plans unless the employee pays an amount that is at least equal to the quoted market price of the stock at the measurement date.

84. In 1995, SFAS No. 123, Accounting for Stock-Based Compensation, became effective. The new standard set forth "fair value" as the method for accounting for stock based compensation plans. This method was deemed preferable to APB No. 25. However, companies were permitted to continue to use APB No. 25, but with added disclosure requirements. SFAS No. 123, ¶11 stated in part:

> This Statement provides a choice of accounting methods for transactions with employees that are within the scope of Opinion 25. Paragraphs 16-44 of this Statement describe a method of accounting based on the fair value, rather than the intrinsic value,

> of an employee stock option or a similar equity instrument. The Board encourages entities to adopt the fair value based method of accounting, which is preferable to the Opinion 25 method for purposes of justifying a change in accounting principles under APB Opinion No. 2529, Accounting Changes. However, an entity may continue to apply Opinion 25 in accounting for its stock-based employee compensation arrangements. An entity that does so shall disclose pro forma net income and, if presented, earnings per share, determined as if the fair value based method had been applied in measuring compensation cost (paragraph 45).

85. In December 2004, SFAS 123 was revised. The new standard, SFAS No. 123R, required recognition of the cost of options (as per the fair value method) in the financial statements.

> An entity shall account for the compensation cost from share-based payment transactions with employees in accordance with the fair-value-based method set forth in paragraphs 11-63 of this Statement.

86. Each of these standards required a company include in its calculation the fair market value of the stock on the measurement or grant date. For a publicly traded company like Openwave, the fair market value of the stock was the trading price of the stock on the grant date. So long as the exercise price of the stock was the same as the quoted market price, there was no compensation cost recorded on the grant date under APB No. 25 (the standard which companies were permitted to continue to follow under SFAS No. 123), as long as they included disclosures about the pro forma impact of using the fair value method of measurement under SFAS No. 123. However, granting options with exercise prices equal to market price on the date of grants was critical to the accounting under any of the standards.

87. Indeed, this is what Openwave represented it did. For example, the 2002 Proxy Statement states that "[u]nder the 1995 and 1996 Stock Plans, the exercise price for incentive stock options is at least 100% of the fair market value of the Company's stock on the date of grant for employees owning less than 10% of the voting power of all classes of stock, and at least

110% of the fair market value on the date of grant for employees owning more than 10% of the voting power of all classes of stock."

88. A virtually identical disclosure was included in the Company's 2003, 2004 and 2005 proxies.

89. Openwave represented the following about its compliance with stock option accounting rules in its 2002 Form 10-K:

> As permitted under SFAS No. 123, *Accounting for Stock-Based Compensation,* the Company has elected to follow Accounting Principles Board Opinion No.25 (APB No 25), *Accounting for Stock Issued to Employees,* and related interpretations in accounting for stock-based awards to employees. Accordingly, compensation cost for stock options is measured as the excess, if any, of the market price of the Company's common stock at the date of grant over the stock option exercise price.

90. A virtually identical disclosure was included in the Company's 2003, 2004 and, 2005 Forms 10-K.

91. In reality, Openwave's financial statements and related disclosures were materially false and misleading because Openwave was violating a fundamental principle for the manner in which it accounted for stock options under all the various stock option accounting standards: it was granting options with exercise prices at less than market value. In fact, it was backdating options to dates when the price was lower than the market price on the date the options were actually granted. By dating the options at times when the price was lower than the market price on the actual grant date, the Company should have recorded compensation expenses, but did not.

92. The Company also failed to record associated tax liabilities with the backdated options. Options-related costs previously deductible under Internal Revenue Code § 162m would no longer be deductible.

93. Due to these accounting improprieties, the Company presented its financial results and statements in a manner that violated GAAP, including the following fundamental principles:

(a) The principle that "interim financial reporting should be based upon the same accounting principles and practices used to prepare annual financial statements" (APB No. 28, ¶10);

(b) The principle that "financial reporting should provide information that is useful to present to potential investors and creditors and other users in making rational investment, credit, and similar decisions" (FASB Statement of Concepts No. 1, ¶34);

(c) The principle that "financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and effects of transactions, events, and circumstances that change resources and claims to those resources" (FASB Statement of Concepts No. 1, ¶40);

(d) The principle that "financial reporting should provide information about an enterprise's financial performance during a period" (FASB Statement of Concepts No. 1, ¶42);

(e) The principle that "financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it " (FASB Statement of Concepts No. 1, ¶50);

(f) The principle that "financial reporting should be reliable in that it represents what it purports to represent" (FASB Statement of Concepts No. 2, ¶¶ 5 8 -5 9);

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

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

94. The adverse information concealed by Defendants during the Class Period and detailed above was in violation of Item 303 of Regulation S-K under the federal securities law (17 C.F.R. §229.303).

95. Further, the undisclosed adverse information concealed by Defendants during the Class Period is the type of information which, because of SEC regulations, regulations of the national stock exchanges and customary business practice, is expected by investors and securities analysts to be disclosed and is known by corporate officials and their legal and financial advisors to be the type of information which is expected to be and must be disclosed. Because of their positions with the Company, and their access to material non-public information available to them but not to the public, Defendants each knew that the adverse facts specified herein had not been disclosed to and were being concealed from the public and that the positive representations being made were then materially false and misleading.

VIII. THE SECURITIES ACT DEFENDANTS' NEGLIGENCE

96. The Underwriter Defendants did not conduct a reasonable investigation of the statements contained in the Offering Documents, and did not possess reasonable grounds for believing that the statements in those documents were true and not misleading. In particular, the Underwriter Defendants did not conduct a reasonable investigation into the accuracy of the financial information included in the Offering Documents relating to, among other things, the

Company's compensation expenses, net income, net losses, and earnings per share, including the financial information contained in the textual portions of the those documents, as well as that contained in the attached audited and unaudited financial statements.

97. The Underwriter Defendants' failure to conduct a reasonable investigation into the unaudited financial statements in the Offering Documents (including, but not limited to, the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005), was particularly negligent given this Court's seminal opinion, *In re Worldcom, Inc. Sec. Litig.*, 346 F.Supp. 2d 628 (S.D.N.Y. 2004), which reiterated and confirmed that underwriters cannot simply rely on an auditors' work when investigating the accuracy of unaudited financial statements. Rather, because "the public relied on the underwriter to obtain and verify relevant information and then make sure that essential facts are disclosed" (*id.* at 685), underwriters must conduct their own, independent (and reasonable) investigation into the accuracy of unaudited financial statements.

98. In addition, the Underwriter Defendants had an obligation to review the minutes of Openwave's Board of Directors and committee meetings, including, but not limited to, the minutes of Openwave's Compensation Committee meetings. Upon information and belief, had the Underwriter Defendants fulfilled their obligation to conduct this reasonable investigation, they would have discovered that Openwave was consistently backdating option grants or they would have been triggered to review further Openwave's stock option grant practices.

99. Defendants Openwave, Peterschmidt, Covert, Denman, Hedfors, Held, Jabbar and Puckett, each of whom prepared, approved, and/or signed the Offering Documents, did not conduct a reasonable investigation of the statements contained in the Offering Documents, and

did not possess reasonable grounds for believing that the statements in those documents were true and not misleading.

100. KMPG, which consented to the inclusion in the Offering Documents of its audit opinions on the Company's financial statements for fiscal years 2003 through 2005, performed its audits of the Company's financial statements in a negligent manner, which did not comply with generally accepted accounting standards ("GAAS"), and did not properly investigate whether the Company's financial statements were accurate. KPMG's 2003 through 2005 audit opinions also falsely stated that Openwave's financials were in conformance with GAAP.

IX. CLAIMS FOR RELIEF UNDER THE SECURITIES ACT

101. Lead Plaintiff repeats and realleges each and every allegation above relating to the Securities Act claims as if fully set forth herein, except for any allegations that Defendants made the untrue statements of material fact and omissions intentionally or recklessly. For the purposes of Securities Act Counts One, Two and Three, Lead Plaintiff asserts only strict liability and negligence claims, and expressly disclaims any claim of fraud or intentional misconduct.

COUNT ONE

For Violations of §11 of the Securities Act Against Defendants Openwave, Peterschmidt, Covert, Puckett, Denman, Hedfors, Held, Jabbar, Merrill, Lynch, Pierce, Fenner & Smith Inc., Lehman Brothers Inc., J.P. Morgan Securities Inc., Thomas Weisel Partners LLC and KPMG

102. Lead Plaintiff repeats and realleges each and every allegation above relating to the Securities Act claims as if fully set forth herein, except for any allegations that charge any Defendant with acting with scienter.

103. This claim is brought pursuant to Section 11 of the Securities Act against Defendants Openwave, Peterschmidt, Covert, Puckett, Denman, Hedfors, Held, Jabbar, Merrill, Lynch, Pierce, Fenner & Smith Inc., Lehman Brothers Inc., J.P. Morgan Securities Inc., Thomas

Weisel Partners LLC and KPMG (collectively, the "Section 11 Defendants"), on behalf of members of the Class who, during the Class Period, purchased or otherwise acquired the registered stock issued pursuant and/or traceable to the Offering and were damaged by the acts alleged herein. This claim is based solely in strict liability and negligence—it does not sound in fraud. Lead Plaintiff expressly disclaims any allegations of fraud or intentional misconduct in connection with this claim.

104. As discussed above in ¶¶74-79, in December 2005, Openwave issued and sold to investors 15,600,000 shares of common stock.

105. Openwave was the issuer of the registered stock pursuant to the Offering Documents within the meaning of Section 11 of the Securities Act.

106. Defendants Peterschmidt, Covert, Puckett, Denman, Hedfors, Held and Jabbar each signed the Offering Documents as a senior officer and/or director of Openwave within the meaning of Section 11 of the Securities Act.

107. The Underwriter Defendants were statutory underwriters for the registered stock, as admitted in the Offering Documents.

108. KPMG was Openwave's auditor, and consented to being named in the Offering Documents as a party who certified the audited financial statements contained therein. KPMG's audit reports, which were contained in the Offering Documents with KPMG's written consent, incorrectly stated that the Company's financial statements for fiscal years 2003 through 2005 were fairly presented in accordance with GAAP.

109. The registered stock was issued and sold pursuant to the Offering Documents. All purchases of the registered stock after the issuance of the Offering Documents through the end of the Class Period are traceable to the Offering Documents.

110. The Offering Documents contained untrue statements of material fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading. Those statements included the following:

(a) Net Revenue for the fiscal years ended 2003, 2004 and 2005 was $190,178; $209,725 and $263,638 respectively;

(b) Total Operating Expenses for fiscal years ended 2003, 2004 and 2005 were $383,217; $230,225 and $317,541 respectively;

(c) Net Income for the fiscal years ended 2003, 2004 and 2005 was ($216,958); ($29,851) and ($62,129) respectively; and

(d) Stockholders' Equity for the fiscal years ended 2003, 2004 and 2005 was $182,278; $173,032 and $156,404 respectively.

111. As admitted in the Restatement, these statements regarding the Company's financial performance and compliance with GAAP were materially untrue and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading.

112. As the issuer of the registered stock, Openwave is strictly liable for the untrue statements of material fact and material omissions described herein.

113. None of the Section 11 Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Offering Documents were accurate and complete in all material respects. Had they exercised reasonable case, they would have known of the material misstatements and omissions alleged herein.

114. In connection with offering the registered stock to the public and the sale of Openwave securities, the Section 11 Defendants, directly or indirectly, used the means and

instrumentalities of interstate commerce, the United States mails and a national securities exchange.

115. Class members did not know, nor in the exercise of reasonable diligence could they have know, that the Offering Documents contained untrue statements of material fact and omitted to state material facts required to be stated or necessary to make the statements particularized above not misleading when they purchased or acquired the registered stock.

116. This claim is brought within one year after the discovery of the untrue statements and omissions, and within three years after the issuance of the Offering Documents.

117. By reason of the foregoing, the Section 11 Defendants are liable to the members of the Class who acquired the registered stock pursuant to or traceable to the Offering Documents.

COUNT TWO

For Violations of §15 of the Securities Act Against Defendants Peterschmidt and Covert

118. Lead Plaintiff repeats and realleges each and every allegation above relating to the Securities Act claims as if fully set forth herein, except those allegations that charge any Defendants with acting with scienter. This claim is brought pursuant to Section 15 of the Securities Act against Defendants Peterschmidt and Covert (collectively, the "Section 15 Defendants"), on behalf of members of the Class who, during the Class Period, purchased or otherwise acquired the registered stock and were damaged by acts alleged herein. This claim is specifically brought in strict liability and negligence – it does not sound in fraud. Lead Plaintiff expressly disclaims any allegations of fraud or intentional misconduct in connection with this claim.

119. As alleged herein, Openwave violated Section 11 of the Securities Act by issuing the Offering Documents, which included materially untrue statements of fact and omitted to state material facts required to be stated therein or necessary to make the statements therein not misleading. The Section 15 Defendants were controlling persons of Openwave when the Offering Documents were filed and became effective. Defendants Peterschmidt was a controlling person of Openwave during the Class Period as demonstrated by the facts alleged herein, including:

(a) Defendant Peterschmidt served as Openwave's Chief Executive Officer and Chairman of the Board from November 2004 to March 2007.

(b) Defendant Peterschmidt was ultimately responsible for ensuring that the internal disclosure and accounting procedures were effective and required no changes. Consistent with that responsibility, he signed each of Openwave's Forms 10-K and 10-Q between November 2004 and the March 2007, and signed the Offering Documents. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Peterschmidt certified the accuracy of Openwave's Forms 10-K and 10-Q and the effectiveness of Openwave's disclosure and internal control procedures.

(c) From November 2004 to January 2007, Defendant Peterschmidt led each of Openwave's conference calls with analysts and investors, where he responded to questions relating to all aspects of Openwave's business, strategic direction and financial performance.

120. Defendant Covert was a controlling person of Openwave from April 2003 through the present, as demonstrated by the facts alleged herein, including:

(a) Defendant Covert served as Director, Chairman of the Audit Committee and later as Chief Financial Officer from April 2003 to the present.

(b) As Chief Financial Officer, Defendant Covert was ultimately responsible for ensuring that the internal disclosure and accounting procedures were effective and required no changes. Consistent with that responsibility, he signed each of Openwave's Forms 10-K for the fiscal years ended June 30, 2003 and 2004. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Peterschmidt certified the accuracy of Openwave's Forms 10-K and 10-Q and the effectiveness of Openwave's disclosure and internal control procedures from October 2005 through the present.

(c) From October 2005 to the present, Defendant Covert participated in each of Openwave's conference calls with analysts and investors, where he responded to questions relating to all aspects of Openwave's business, strategic direction and financial performance.

121. By virtue of their exercise of control over the Company, the Section 15 Defendants each had the power to influence and control, and did influence and control, directly or indirectly, the decision-making of Openwave, including the content of its public statements and of the Offering Documents. These Section 15 Defendants did not make a reasonable investigation or possess reasonable grounds for the belief that the statements contained in the Offering Documents were accurate and complete in all material respects. Had they exercised reasonable care, they would have known of the material misstatements and omissions alleged herein.

122. This claim is brought within one year after the discovery of the materially untrue statements and omissions in the Offering Documents and within three years after the registered stock was offered to the public.

123. By reason of the misconduct alleged herein, for which Openwave is primarily liable as set forth herein, the Section 15 Defendants are jointly and severally liable with and to the same extent as Openwave, pursuant to Section 15 of the Securities Act.

COUNT THREE

For Violations of Section 12(a)(2) of the Securities Act Against Defendants Openwave, Merrill Lynch, Pierce, Fenner & Smith Inc., Lehman Brothers Inc., J.P. Morgan Securities Inc. and Thomas Weisel Partners LLC

124. Lead Plaintiff repeats and realleges each and every allegation above relating to the Securities Act claims as if fully set forth herein, except those allegations that charge any Defendants with acting with scienter. This claim is brought pursuant to Section 12(a)(2) of the Securities Act, 15 U.S.C. §77k against Defendants Openwave, Merrill Lynch, Pierce, Fenner & Smith Inc., Lehman Brothers Inc., J.P. Morgan Securities Inc. and Thomas Weisel Partners LLC (collectively, the "Section 12(a)(2) Defendants"), on behalf of members of the Class who, during the Class Period, purchased or otherwise acquired Openwave common stock pursuant and/or traceable to the Prospectus and were damaged by acts alleged herein. For the purposes of this Count, Lead Plaintiff asserts only strict liability and negligence claims and expressly disclaims any allegation of fraud or intentional misconduct.

125. By means of the Offering Documents, and by using the means and instruments of transportation and communication in interstate commerce and of the mails, Defendant Openwave and the Underwriter Defendants, through public offerings, offered and sold Openwave common stock to members of the Class.

126. The Offering Documents were materially false and misleading, omitted to state facts necessary to make the statements made not misleading and concealed or failed to adequately disclose material facts as alleged herein. Openwave has admitted that all of its financial statements filed with the SEC or disseminated to the investing public during the Class Period were materially false and misleading. This admission by itself proves Openwave's violation of Section 12(a)(2) of the Securities Act.

127. Neither Openwave nor any of the Underwriter Defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Prospectus, as set out above, were accurate and complete in all material respects. Had they exercised reasonable care, these Defendants would have known of the material misstatements and omissions alleged herein.

128. Lead Plaintiff and other members of the Class purchased Openwave common stock by means of the materially false and misleading Prospectus. At the time they purchased shares in the Secondary Offering, neither Lead Plaintiff nor any member of the class knew, or by the reasonable exercise of care could have known, of the material misstatements in and omissions from the Secondary Prospectus.

129. By virtue of the conduct alleged herein, Openwave and the Underwriter Defendants violated, and/or controlled a person who violated, Section 12(a)(2) of the Securities Act. Accordingly, members of the Class who purchased or otherwise acquired Openwave common stock have a right to rescind and recover the consideration paid for their common stock and hereby elect to rescind and tender their common stock to Openwave and the Underwriter Defendants.

130. Members of the class who have sold their Openwave common stock issued in or traceable to the Secondary Offering are entitled to recissory damages.

131. This action is commenced within one year after the discovery of the misstatements and omissions contained in the Prospectus and within three years after the Secondary Offering.

X. THE FRAUDULENT SCHEME

132. Openwave develops and sells open standards software products and services to mobile and wireless operators and broadband providers. Between 1999 and 2006, the Company enjoyed steady growth in both sales and the size of its operations. To recruit and retain key executives and employees, Openwave, at the direction of its Board of Directors, made liberal use of stock options as a form of compensation.

133. Each option gave the recipient the right to buy one share of Openwave 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 "in-the-money" whenever the trading price of Openwave common stock exceeded the option's exercise price. The option was "at-the-money" whenever the trading price of Openwave common stock and the exercise price were the same. The option was "out-of-the-money" or "underwater" whenever the trading price of Openwave common stock was less than the exercise price. At all relevant times, Defendants represented that Openwave's incentive stock option grants were made at fair market value, *i.e.*, the closing price of Openwave common stock on the date of grant ("at-the-money" and certainly not "in-the money").

A. THE OPENWAVE STOCK OPTION PLANS

134. Between 2000 through 2006, Openwave granted stock options to its officers, directors and employees pursuant to at least three different stock option plans: the 1995 Stock Option Plan ("1995 Plan"), the 1996 Stock Option Plan ("1996 Plan"), and the 1999 Directors'

Stock Option Plan ("1999 Plan"). Each plan was prepared by Openwave's management, adopted by the Board of Directors and voted upon and approved by Openwave shareholders.

135. The stated purpose of each plan was to "attract and retain the best available personnel for positions of substantial responsibility, to provide additional incentive to Employees and Consultants of the Company and its Subsidiaries and to promote the success of the Company's business." *See* 1995 Plan, ¶1; 1996 Plan, ¶1; 1999 Plan, ¶1. Each plan gave Openwave's Board of Directors or Compensation Committee full power to interpret and administer the plans, to select the specific employees to whom awards would be granted under the plans, the type and amount of the award to be granted to such employees, and the terms of the option agreements to be entered into with such employees. *See* 1995 Plan, ¶¶4-5; 1996 Plan, ¶¶4-5; 1999 Plan, ¶¶4-5.

136. Under the 1995 Plan and the 1996 Plan, the Board of Directors, or a designated Committee, was responsible for determining the exercise price of each option grant, within certain limitations. *See* 1995 Plan, ¶8(a); 1996 Plan, ¶9(a). Under the 1999 Plan, the Board alone was responsible for determining the exercise price of each option grant, within certain limitations. *See* 1999 Plan, ¶4(a).

137. Stock options could not have an exercise price less than the fair market value of a share of Openwave common stock on the date of grant. *See* 1995 Plan, ¶8(a)(1)(b); 1996 Plan, ¶9(a)(1)(b); 1999 Plan, ¶¶4(a)(2), 8(a). The plans defined fair market value to be the closing sales price of a share of Openwave common stock as published by the principal national exchange on which Openwave's common stock was listed. *See* 1995 Plan, ¶2(k)(i); 1996 Plan, ¶2(m); 1999 Plan, ¶8(b).

138. During the Class Period, Director Defendants Puckett, Denman, Hedfors and Verhalen served on the Company's Compensation Committee, and Director Defendants Puckett, Denman, Jabbar and Evans served on the Company's Audit Committee.

B. OPENWAVE'S BY-LAWS

139. At all relevant times, Openwave's By-Laws authorized the Board of Directors or Compensation Committee to act formally on option grant proposals in one of two ways: The Board of Directors or Compensation Committee could act without a formal meeting if all members of the Board or Committee consented in writing to the adoption of a resolution authorizing the action. This is called "unanimous written consent." Alternatively, the Board of Directors or Compensation Committee could act by holding a meeting at which a quorum of the Board or Committee members is present, if a majority of those present at the meeting approve the action.

140. For some of the Openwave option grants made during the relevant period, the Board of Directors and/or Compensation Committee acted through unanimous written consents, and not through a formal meeting of the Board of Directors or Compensation Committee members.

141. The 1999 Openwave Proxy (filed under the name of its predecessor corporation, Phone.com) explained the Company's stock option plans as follows:

> [The Company] has utilized its stock option plans to provide executives and other key employees with incentives to maximize long-term stockholder value. Awards under this plan by the Board take the form of stock options designed to give the recipient a significant equity stake in [the Company] and thereby closely align his or her interests with those of [the Company's stockholders.... ***Each option grant allows the executive officer to acquire shares of Common Stock at a fixed price per share (the fair market value on the date of grant)*** over a specified period of time (up to 10 years). Options granted to the executive officers prior to calendar 1999, typically vested in periodic installments over a

> four-year period. The options granted to the executive officers in June 1999 vest over a seven year period and the Company expects that future options granted to executive officers will also vest over a seven year period. ***Accordingly, the option will provide a return to the executive officer*** only if he or she remains in Phone.com's service, and then ***only if the market price of the Common Stock appreciates over the option term.***

(Emphasis added).

142. Openwave also utilized a stock option plan to attract and retain directors of the Company which similarly specified that "[t]he per Share exercise price for the Shares to be issued pursuant to exercise of an Option shall be 100% of the fair market value per Share on the date of grant of the Option." (1999 Directors' Stock Option Plan, ¶ 8(a)).

C. THE FRAUDULENT SCHEME

143. As detailed below, Defendants each knowingly or with deliberate recklessness employed devices, schemes and artifices to defraud, made untrue statements of material fact and/or omitted to state material facts necessary to make statements made not misleading, and engaged in acts, practices and a course of business which operated a fraud and deceit upon Class members including: (i) causing and/or permitting the manipulation of stock option grants by, *inter alia*, retroactively selective exercise prices for option grants in order to understate compensation expenses and personally obtain larger than reported compensation; (ii) exercising backdated options and selling the shares obtained therefrom; (iii) preparing, approving and signing SEC filings that overstated the Company's results and understated its expenses and tax liabilities in its financial results; (iv) preparing, approving and signing SEC filings that understated and misrepresented officer compensation; (v) failing to properly withhold taxes when employees exercised options; and/or (vi) taking steps to ensure that the Company lacked sound internal controls and contained deficiencies and material weaknesses.

1. Defendants' Manipulation of Option Grants

144. The Company has conceded in its Restatement that approximately 33% of the 56 million options granted between 1999 and 2005 had a grant date that preceded the appropriate measurement date. The Director Defendants and Defendants Listwin, Peterschmidt, Black, Solomon and Pace, each backdated the option grants for the principal purpose of furthering the fraudulent scheme as evidenced by the following facts.

145. First, in its 2006 Form 10-K, the Company concluded that "there were deficiencies in the process by which many options were granted through Unanimous Written Consent ("UWC") by the Compensation Committee (Defendants Puckett, Denman, Hedfors and Verhalen) of the Board of Directors. The Record Date, which was based upon the typed "effective date" of these grants was on or before the date distributed but often preceded the return of the signed consents and formal approval by Compensation Committee members. This was noted in the interviews conducted during the review, and supported by the dates noted on the telecopy header information of the returned consents."

146. According to Confidential Witness #1, a former Corporate Controller at Openwave between March 2001 and August 2003, option grants were approved by the Compensation Committee, and the grants were then communicated to Openwave's Stock Administration Group usually by Defendant Black. The Stock Administration Group then entered all approved options into a database called Equity Edge.

147. Confidential Witness #2, a former Senior Human Resources Generalist at Openwave between 1999 and 2003, explained that "special allocation" grants – those grants given to the highest-level executives at the Company – were then approved by the entire Board of Directors.

148. According to Confidential Witness #1, Defendants Black, Solomon and Peters all played a role in the Compensation Committee's process of issuing and dating options. For example, Defendant Black often attended the Compensation Committee meetings where backdated option grants were issued, and Defendants Solomon and Peters were responsible for keeping the minutes of the Compensation Committee meetings where the backdated option grants were issued.

149. Confidential Witness #3, a former Stock Administrator at Openwave between 2000 and 2005, confirmed that Defendant Solomon was "very involved" with the issuing of grant dates and effective dates, and the "Bible version" of anything having to do with either the stock option plan or the granting of options would come from him.

150. Confidential Witness #4, a former Corporate Comptroller at Openwave between 2003 and 2005, also stated that the administration of stock options at Openwave fell under the control of Defendant Solomon. He stated that Defendant Solomon kept the minutes of the Compensation Committee meetings. Moreover, Confidential Witness #4 stated that the Compensation Committee always made the awards of 100,000 or more to the Company's top executives, and that the Compensation Committee granted authority to the Company's CEO (Defendants Listwin and Peterschmidt) to independently make awards of 50,000 options or less.

151. Confidential Witness #5, the former Director of Global Compensation at Openwave between 2001 and 2003, confirmed that Defendants Solomon and Peters attended the Compensation Committee meetings, and that they were responsible for coordinating the signing and collection of the UWCs. Moreover, Defendants Solomon and Peters then forwarded the signed UWCs to the Stock Administration department for entry into Equity Edge.

152. Confidential Witness #6, a former Manager of Global Compensation at Openwave between 2000 and 2003, explained the process of stock options grants to new hires at Openwave. Confidential Witness #6 explained that the Human Resources Department would create a list of new employees and the number of options each employee would be granted, and that the list would then be forwarded to Defendant Solomon for his review. Defendant Solomon would then forward the list to Defendant Listwin for final approval.

153. The backdating at Openwave, however, was not due simply to deficiencies in process. Instead, the Director Defendants and Defendants Listwin, Peterschmidt, Black, Solomon and Pace, intentionally and knowingly granted options with strike prices well below market on the date of grant. Specifically, Confidential Witness #7, a former Vice President of Product Management and Business Development between 1999 and 2004 recalled a number of times when Openwave granted options to certain employees with strike prices far below the market price of the stock at that time. He further stated that those grants with below market strike prices generated internal controversy at Openwave.

154. Confidential Witness #1 confirmed that there were occasions that the record date of an option grant ***was deliberately set before the grant date.***

155. Moreover, Confidential Witness #4 believes that the Compensation Committee ***altered the dates that they met and made the grants. He believes that the Compensation Committee would make the stock option awards, and then chose to report the grant date as a date with a much lower stock price.***

156. Confidential Witness #3 explained that on a number of occasions, Defendant Solomon authorized him to enter option grants in Equity Edge ***prior to receiving actual signed UWCs from the members of the Compensation Committee.***

157. In its 2006 Form 10-K, the Company concluded that "there were deficiencies in the process by which certain options were granted by the Stock Option Committee ("SOC"), a one-person committee with authority delegated from the Compensation Committee, consisting of the Company's CEO. For certain grants, the SOC or an executive on his behalf, communicated to the Stock Administration group that the SOC had decided to grant stock options more than one day after the Record Date." Based on the Company's reporting of officers, it is clear that this individual was either Defendant Listwin and/or Defendant Peterschmidt.

158. According to Confidential Witness #8, a former Human Resources Manager for Openwave between 2000-2005, Defendant Listwin instilled a "cowboy mentality" at Openwave with "everyone doing their own thing, without regard for rules or procedures." In fact, Confidential Witness #4 stated that Defendant Listwin likely was the individual responsible for creating the backdating scheme.

2. Defendants' Receipt of Backdated Options

159. As detailed in ¶¶306-307, herein, during the Class Period, Defendants, Black, Peters, Listwin, Pace, Snyder and Kennedy each knowingly and/or recklessly received options that were backdated (either prior to or during the Class Period), and/or sold the resulting shares for the primary purpose of furthering the fraudulent scheme.

160. Lead Plaintiff's expert has conducted a statistical analysis of the options granted to the Officer Defendants during calendar years 2000-2002. Lead Plaintiff's expert has found sufficient evidence to conclude that Openwave typically backdated its option grants to the Officer Defendants two (2) days. The computed odds of seeing the two day increase in market price returns that the Officer Defendants' option grants received during calendar years 2000-2002 is 1 in 18,080. This corresponds to a 99.994% confidence level that Openwave backdated its option grants to the Officer Defendants. Notably, Openwave's Special Committee found that

Softwave.com, Openwave's predecessor prior to the Company's IPO in 1999, followed a procedure whereby options were granted retroactively on a weekly basis selecting the low price for the week – such a procedure completely comports with Plaintiff's expert's statistical findings.

3. Defendants' Understating of Expenses, Improper Tax Treatment of Options and Misrepresentation of the Company's Financial Results

161. As detailed above, Defendants reported inflated net income figures of Openwave by failing to properly account for stock option grants made to Openwave senior officers and employees. Specifically, Openwave's expenses were understated and income was overstated due to the Company's failure to record the compensation expense from the backdated stock options that were granted to officers and employees and its improper tax treatment of the options.

162. Each of the Defendants issued false and misleading statements for the principal purpose of furthering the backdating scheme by preparing, approving or signing the SEC filings that understated and misrepresented officer compensation.

4. Defendants' Participation in the Understating and Misrepresentation of Officer Compensation

163. Openwave's annual Proxy Statements for fiscal years 2002 through 2005, contained false statements about the compensation of Openwave's officers because they stated, among other things, that the exercise price of the stock options was equal to the price of the stock on the date of the grant. Because of these false statements, shareholders were mislead about the total compensation of Openwave's officers and about the level of oversight the Board of Directors were exercising over Openwave's officers. As such, shareholders had false information when they were asked to vote for and approve the election of directors.

5. Defendants' False and Misleading Statements Regarding the Company's Tax Withholding Obligation

164. In addition to failing to properly report its tax liabilities, the Company also violated tax laws by failing to properly withhold tax liabilities upon the exercise of options as required by IRC §422.

165. The September 6, 2006 testimony of Linda Thomsen, Director of the SEC's Division of Enforcement, before the U.S. Senate Committee on Finance, explained the withholding obligations:

> When an employee exercises a non-statutory option, the difference between the exercise price and the fair market value of the company's stock on the date of exercise is treated as ordinary compensation and the employee is generally taxed on the gain at his or her ordinary income tax rates. The company incurs employee withholding obligations on this gain, but also is entitled to an associated tax deduction on the gain. When companies backdate option grants to a lower exercise price, employees can obtain a larger taxable gain upon the exercise of an NSO and companies can obtain a correspondingly larger tax deduction and withholding obligation on that gain.
>
> Unlike the exercise of NSOs, incentive stock options, or ISOs, afford employees favorable tax treatment because any gain at exercise is not taxed as ordinary income, although the gain may be subject to alternative minimum tax. Accordingly, a company does not obtain any corresponding tax deductible (or incur withholding obligations) at the time of the exercise. In addition, if an employee holds the stock for the statutory holding period prior to sale – one year after exercise and two years after grant – then the sale is considered a "qualifying disposition" and the entire gain on sale is taxed at favorable capital gains rates. However, among the statutory requirements of ISOs is that they be granted at-the-money. An ISO that is granted in-the-money loses its favorable status and instead is treated under the tax code as a non-statutory option (NSO), including ordinary income recognition by the employee on any gain at exercise and a corresponding tax deduction by the company on that gain. Backdating allows an employee to treat what is in fact a non-qualified option as an incentive option, which can result in the employee underpaying

taxes while causing the company to lose the tax deduction to which it otherwise would have been entitled.

166. Specifically, for a stock option to qualify as an Incentive Stock Option ("ISO")(and thus receive the special tax treatment described above under IRC Section 421(a)), it must meet the requirements of IRC Section 422 when granted and at all times beginning from the grant until its exercise. Under IRC Section 422, the option price must equal or exceed the fair market value of the underlying stock at the time of the grant; *i.e.*, the option cannot be in-the-money when granted. A backdated stock option that has been granted at a discount, therefore, would violate one of the requirements that apply to ISOs and would not qualify as an ISO.

167. If the requirements for an ISO have not been followed, the option will be treated under the tax rules as a non-qualified option. ISOs are subject to taxation only upon the sale of the stock. Non-qualified options, however, are subject to income tax and Federal Insurance Contributions Act ("FICA") withholding upon exercise. The backdated stock options granted to Openwave officers and employees did not qualify as ISOs because they were granted at a discount, and, therefore, they should have been classified as non-qualified options.

168. Because the backdated stock options constituted non-qualified options, Openwave was liable for the income tax and payments under FICA that it failed to withhold upon the recipient's exercise of the discounted options. Defendants, as well as others, exercised options during the Class Period that were granted between 1999 and 2005 the period during which options were backdated. Accordingly, Openwave should have, but failed to, withhold monies when these backdated options were exercised.

169. The Company's 2006 Form 10-K strongly supports an inference that Openwave issued ISOs that were disqualified because of the backdated option prices, but failed to withhold monies:

> Prior fiscal periods have been restated to reflect (a) additional non-cash stock-based compensation expense and the associated ***payroll tax expense*** relating to employee stock and option grants prior to fiscal year 2006, (b) ***adjustments of income tax assets and liabilities***, and (c) adjustments of accumulated deficit, deferred revenue, and accrued liabilities

170. Moreover, Confidential Witness #4 explained that he recently received a notice from the Company informing him that Openwave had to take an expense charge of $13,000 for options he was granted during his tenor at the Company, and that that the Company would cover any tax implications that he was responsible for as a result of the expense charge.

6. Defendants' Failure to Establish Sound Internal Controls and Allow Deficiencies and Material Weaknesses

171. As explained in the 2006 Form 10-K, Openwave identified material weaknesses in internal control over financial reporting as of June 30, 2006 related to its accounting for income taxes. Specifically, Openwave found that the Company had insufficient internal technical expertise and ineffective policies and procedures to ensure proper accounting for income taxes, including deferred income taxes. As a result of these material weakness, certain of Openwave's income tax balances contained errors which were material, and thus, Openwave concluded that the Company did not maintain effective internal control over financial reporting.

172. Defendants were responsible for ensuring sound internal controls. By failing to establish that the Company did not have proper internal controls, and repeatedly and expressly representing that such controls were adequate, these Defendants furthered the fraudulent scheme.

XI. OPENWAVE ISSUED MATERIALLY FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD

173. During the Class Period, the Section 10(b) Defendants issued a series of false and misleading statements in violation of sections 10(b), 20(a) and 20A of the Exchange Act and Rule 10b-5. These statements fall within several categories. First, the Section 10(b) Defendants

issued false and misleading statements regarding the Company's financials. Second, the Section 10(b) Defendants issued false and misleading statements regarding the terms and value of the options granted to officers, directors and employees. Third, the Section 10(b) Defendants issued false and misleading statements regarding the Company's internal controls relating to stock option grants and related financial reporting.[/]

174. On September 30, 2002, the Company filed with the SEC its Form 10-K for the fiscal year ended June 30, 2002 (the "2002 10-K"). The 2002 10-K disclosed that Openwave had stock-based compensation expenses of $14.9 million and $10.2 million, net losses of $1.2 million and $0.7 million, for the fiscal years ended June 30, 2002 and 2001, respectively, and accumulated deficit as of June 30, 2002 of $2.32 billion. Defendants Listwin, Black, Evans, Puckett and Hedfors signed the 2002 Form 10-K. The certifications that Defendants Listwin and Black each signed pursuant to §906 of the Sarbanes-Oxley Act of 2002, which were included in the 2002 10-K, falsely stated that information contained in the 2002 10-K fairly presents in all material respects the financial condition and results of operations of Openwave.

175. Additionally, the Company, in relevant part, stated:

> All stock-based compensation is being amortized in a manner consistent with Financial Accounting Standards Board Interpretation No. 28 (FIN No. 28), *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans.* Stock-based compensation consisted of continued amortization of the deferred stock-based compensation related to acquisitions, as well as compensation expense recognized on warrants, options issued to nonemployees and restricted stock granted to executives at exercise prices below the current fair value of the Company's stock. We expect our overall stock-based compensation to moderately increase in the coming year.

* * *

Years ended June 30, 2002 and June 30, 2001 (In thousands)		
Line Item	**2002**	**2001**
Deferred stock-based compensation	$ (7,159)	$ (6,079)
Accumulated deficit	(2,319,431)	(1,058,673)
Operating expense – stock Based compensation	14,866	10,223
Operating loss	(1,248,739)	(701,766)
Net loss	(12,260,758)	(689,994)

* * *

Quarterly Results for the Year Ended June 30, 2002 (In thousands)				
Line Item	**Fourth Quarter**	**Third Quarter**	**Second Quarter**	**First Quarter**
Operating expense – stock based compensation	$2,559	$2,898	$4,423	$4,986
Operating loss	(469,361)	(113,727)	(495,707)	(168,944)
Net loss	(474,752)	(115,676)	(499,879)	(170,451)

* * *

<u>Accounting for Stock-Based Compensation</u>

As permitted under SFAS No. 123, Accounting for Stock-Based Compensation, the Company has elected to follow Accounting Principles Board Opinion No. 25 (APB No 25), Accounting for Stock Issued to Employees, and related interpretations in accounting for stock-based awards to employees. Accordingly, compensation cost for stock options is measured as the excess, if any, of the market price of the Company's common stock at the date of grant over the stock option exercise price.

* * *

<u>Stock Plans</u>

* * *

Under the 1995 and 1996 Stock Plans, the exercise price for incentive stock options is at least 100% of the fair market value of the Company's stock on the date of grant for employees owning less than 10% of the voting power of all classes of stock, and at least 110% of the fair market value on the date of grant for employees owning more than 10% of the voting power of all classes of stock. For nonstatutory options granted under the 1995 and 1996 Stock Plans, the exercise price is determined by the Board of Directors except that in the case of a nonstatutory option intended to qualify as "performance-based compensation" within the meaning of Section 162(m) of the Code, the exercise price shall be no less than 100% of the fair market value of the stock on the date of grant.

* * *

In March 1999, the Company adopted the Openwave Systems Inc. 1999 Directors' Stock Option Plan (the "Directors' Stock Plan") which provides for the grant of nonstatutory stock options to nonemployee directors ("Outside Directors"). ... The exercise price of options granted under the Directors' Stock Plan is equal to the fair market value of the Company's common stock on the date of grant. Under the Directors' Stock Plan, options have a term of ten years. As of June 30, 2002 there were 994,250 shares available for grant under the Directors' Stock Plan.

* * *

(Emphasis added).

<u>Stock-Based Compensation</u>

The Company uses the intrinsic value method in accounting for its employee stock-based compensation plans.

176. The Company's 2002 Form 10-K also contained the following Sarbanes-Oxley certification signed by Defendants Listwin and Black:

In connection with the Annual Report of Openwave Systems Inc. on Form 10-K for the fiscal year ended June 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), [Donald Listwin, as Chief Executive Officer / Alan Black, as Chief Financial Officer] of Openwave Systems Inc., certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to my knowledge that the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Report fairly presents in all material respects the financial condition and results of operations of Openwave Systems Inc.

177. The statements set forth above in ¶¶172-174 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $31.7 million, $135.7 million, and $3.1 million in fiscal 2002, 2001, and 2000, respectively. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses in each period (*i.e.*, $3.1 million, $138.5 million, and $170.1 million in fiscal 2000, 2001, and 2002, respectively). The Sarbanes-Oxley certifications signed by Listwin and Black were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit and therefore its financial statements did not fairly present its financial condition and results of operations. Further, these statements were false and misleading because they state that options were granted with an exercise price of at least 100% the fair market value of the Company's stock on the date of grant, when in fact they were backdated. The statements were additionally false and misleading because they state that the Company property accounted for stock grants pursuant to APB 25.

178. On October 22, 2002, the Company issued a press release entitled "Openwave Reports Results for First Quarter Fiscal 2003." The press release disclosed that net losses under GAAP were $138.5 million and $474.8 million for the quarters ended September 30, 2002 and June 30, 2002, respectively.

179. Therein, the Company stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading independent provider of open software products and services for

> the mobile communications industry, today announced that revenues for the first fiscal quarter ended September 30, 2002 were $71.2 million as compared to $70.1 million in the fourth fiscal quarter ended June 30, 2002.
>
> Pro forma net loss for the first fiscal quarter of 2003 was $29.9 million, or $0.17 per basic share, compared to a pro forma net loss of $33.2 million, or $0.19 per basic share, for the June 2002 quarter. Based on Generally Accepted Accounting Principles (GAAP), net loss for the first fiscal quarter was $138.5 million, or $0.79 per basic share, compared to a net loss of $474.8 million, or $2.73 per basic share, for the June 2002 quarter. The per share numbers are based on 176.2 and 174.2 million weighted-average basic and diluted shares outstanding for the September and June 2002 quarters, respectively.

(Internal footnotes omitted).

180. The same day, the Company held a conference call for the investing community and financial analysts (the "1Q 2003 Conference Call"). On this call, Black falsely stated that "[t]otal stock based compensation expense was 772 thousand dollars for the quarter. And we expect to incur 1.2 million dollars in stock based compensation charges in the December quarter."

181. On this same call, analysts were concerned that the number of option grants issued by Openwave in the last year were similar to those granted under Ken Kozlowski at Tyco. Analysts asked Company officials whether there was anything exceptional in the previous year's stock option grants. Black falsely responded that "it was pretty much, um, par for the course in terms of the, the awards that were made across the, the employee base."

182. The statements set forth above in ¶¶176-179 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million, in

fiscal 2003 and 2002, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the press release understated net losses for the quarterly periods.

183. On November 14, 2002, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended September 30, 2002 (the "1Q 2003 10-Q"). The 1Q 2003 10-Q disclosed that Openwave had stock-based compensation expense of $0.7 million and $5.0 million and net loss of $138.5 million and $170.1 million for the three months ended September 30, 2002 and 2001, respectively. The 1Q 2003 10-Q also disclosed that Openwave had an accumulated deficit of $2.46 billion $2.32 billion on September 30, 2002 and June 30, 2002, respectively. Defendant Black signed the 1Q 2003 10-Q. The certifications that Defendants Listwin and Black each signed pursuant to §906 of the Sarbanes-Act of 2002, which were included in the 1Q 2003 10-Q, falsely stated that information contained in 1Q 2003 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave.

184. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousand)		
Line Item	**September 30, 2002**	**June 30, 2002**
Deferred stock-based compensation	$ (4,187)	$ (7,159)
Accumulated deficit	(2,457,975)	(2,319,431)
	Three months ended September 30,	
Line Item	**2002**	**2001**
Operating expense – stock based Compensation	772	4,986
Operating loss	(124,037)	(169,994)
Net loss	(138,554)	(170,451)

185. The statements set forth above in ¶¶181-182 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million, in fiscal 2003 and 2002, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 1Q 2003 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, and $170.1 million in fiscal 2000, 2001, and 2002, respectively) and understated by between $170.1 million and $180.5 million at September 30, 2002. The Sarbanes-Oxley certifications signed by Listwin and Black were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit and therefore its financial statements did not fairly present its financial condition and results of operations.

186. On January 21, 2003, the Company issued a press release entitled "Openwave Reports Second Quarter Fiscal 2003 Results." The press release disclosed that net losses under GAAP were $29.5 million, $138.5 million, and $499.9 million for the quarters ended December 30, 2002, September 30, 2002 and December 30, 2001, respectively.

187. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading independent provider of open software products and services for the mobile communications industry, today announced that revenues for the second fiscal quarter ended December 31, 2002 were $66.8 million as compared to $71.2 million in the first fiscal

quarter ended September 30, 2002 and to $93.8 in the second fiscal quarter ended December 31, 2001.

> Pro forma net loss for the second fiscal quarter of 2003 was $24.7 million, or $0.14 per basic share, compared to a pro forma net loss of $29.9 million, or $0.17 per basic share, for the first fiscal quarter of 2003 and compared to a pro forma net loss of $12.9 million, or $0.07 per basic share, for the second fiscal quarter of 2002. Based on Generally Accepted Accounting Principles (GAAP), net loss for the second fiscal quarter of 2003 was $29.5 million, or $0.17 per basic share, compared to a net loss of $138.5 million, or $0.79 per basic share, for the first quarter and compared to a net loss of $499.9 million, or $2.88 per basic share, for the second quarter of the prior year. The per share numbers are based on 177.7, 176.2 and 173.5 million weighted-average basic and diluted shares outstanding for the three comparative periods, respectively, for the pro forma and GAAP-based numbers. A table reconciling the Company's results reported on a GAAP basis to its pro forma results for each of these periods is contained on page six of this press release.

188. The same day, the Company held a conference call for the investing community and financial analysts (the "2Q 2003 Conference Call"). On this call, Black falsely stated that "[t]otal stock base compensation expense was $1.3m for the quarter and we expect to incur stock base compensation charges of approximately $1.3m in the March quarter."

189. The statements set forth above in ¶¶184-186 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million, in fiscal 2003 and 2002, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

190. On February 14, 2003, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended December 30, 2002 (the "2Q 2003 10-Q"). The 2Q 2003 10-Q disclosed that Openwave had stock-based compensation expense of $1.3 million and $4.4 million, and net loss of $29.5 million and $499.9 million for the three months ended December 30, 2002 and 2001, respectively. The 2Q 2003 10-Q also disclosed that Openwave had an accumulated deficit of $2.49 billion and $2.32 billion on December 30, 2002 and June 30, 2002, respectively. Defendant Black signed the 2Q 2003 10-Q. The certifications that Defendants Listwin and Black each signed pursuant to §906 of the Sarbanes-Act of 2002, which were included in the 2Q 2003 10-Q, falsely stated that information contained in 2Q 2003 10-Q fairly presents in all material respects the financial condition and results of operations of Openwave.

191. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**December 31, 2002**	**June 30, 2002**
Deferred stock-based compensation	$ (4,218)	$ (7,159)
Accumulated deficit	(2,487,472)	(2,319,431)
	Three Months Ended December 31,	
Line Item	**2002**	**2001**
Operating expense – stock based compensation	1,322	4,423
Operating loss	(26,647)	(495,707)
Net loss	(29,497)	(499,879)

192. The statements set forth above in ¶¶188-189 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported

expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million, in fiscal 2003 and 2002, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 2Q 2003 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, and $170.1 million in fiscal 2000, 2001, and 2002, respectively) and understated by between $170.1 million and $180.5 million at December 31, 2002. The Sarbanes-Oxley certifications signed by Listwin and Black were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit and therefore its financial statements did not fairly present its financial condition and results of operations.

193. On April 24, 2003 the Company issued a press release entitled "Openwave Reports Results for Third Quarter Fiscal 2003." The press release disclosed that net losses under GAAP were $23.2 million, $29.5 million, and $115.7 million for the quarters ended March 31, 2003, December 31, 2002 and March 31, 2002, respectively.

194. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading independent provider of open software products and services for the mobile communications industry, today announced that revenues for the third fiscal quarter ended March 31, 2003 were $63.5 million as compared to $66.8 million in the second fiscal quarter ended December 31, 2002 and $83.2 million in the third fiscal quarter ended March 31, 2002.
>
> Based on Generally Accepted Accounting Principles (GAAP), net loss for the third fiscal quarter of 2003 was $23.2 million, or $0.13 per basic share, compared to a net loss of $29.5 million, or $0.17 per basic share, for the second fiscal quarter and a net loss of $115.7 million, or $0.67 per basic share, for the third fiscal quarter

> in the prior year. The Company's pro forma net loss per basic share for the third fiscal quarter of 2003 was $0.11 and falls within the range of the pro forma net loss outlook of $0.08 to $0.16 provided by the Company last quarter. The pro forma net loss per basic share excludes total charges of $3.3 million for amortization of goodwill and other intangible assets, deferred stock-based compensation and loss on investments in nonmarketable equity securities. The Company does not intend to provide these types of pro forma earnings (loss) results in the future. The per share amounts are based on 178.6, 177.7 and 173.3 million weighted-average basic and diluted shares outstanding for the three comparative periods, respectively.

195. The statements set forth above in ¶¶191-192 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million, in fiscal 2003 and 2002, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the press release understated net losses for the quarterly periods.

196. On May 14, 2003, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended March 31, 2003 (the "3Q 2003 10-Q"). The 3Q 2003 10-Q disclosed that Openwave had stock-based compensation expense of $0.7 million and $2.9 million, and net losses of $23.2 million and $115.7 million for the three months ended March 31, 2003 and 2002, respectively. The 3Q 2003 10-Q also disclosed that Openwave had an accumulated deficit of $2.51 billion and $2.32 billion on March 31, 2003 and June 30, 2002, respectively. The certification that Defendants Listwin and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 3Q 2003 10-Q, falsely stated that information contained in 3Q

2003 10-Q fairly presents in all material respects the financial condition and results of operations of Openwave.

197. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**March 31, 2003**	**June 30, 2002**
Deferred stock-based compensation	$ (2,692)	$ (7,159)
Accumulated deficit	(2,510,686)	(2,319,431)
	Three Months Ended March 31,	
Line Item	**2003**	**2002**
Operating expense – stock based compensation	686	2,898
Operating loss	(19,402)	(113,727)
Net loss	(23,214)	(115,676)

198. The statements set forth above in ¶¶194-195 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million in fiscal 2003 and 2002, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 3Q 2003 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, and $170.1 million in fiscal 2000, 2001, and 2002, respectively) and understated by between $170.1 million and $180.5 million at March 31, 2003. The Sarbanes-Oxley certification signed by Listwin and Pace was misleading because Openwave

underreported its expenses, net loss, and accumulated deficit and therefore its financial statements did not fairly present its financial condition and results of operations.

199. On July 24, 2003 the Company issued a press release entitled "Openwave Reports Fourth Quarter and Fiscal 2003 Year End Results." The press release disclosed that net losses under GAAP were $25.7 million and $23.2 million for the quarters ended June 30, 2003 and March 31, 2003, respectively.

200. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for the fourth fiscal quarter ended June 30, 2003 were $66.5 million, an increase from the third fiscal quarter revenue of $63.5 million. Revenues for the twelve months ended June 30, 2003 were $268 million.
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> * * *
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> Based on Generally Accepted Accounting Principles (GAAP), net loss for the fourth fiscal quarter of 2003 was $25.7 million, or $0.14 per basic share, compared to a net loss of $23.2 million, or $0.13 per basic share, for the third fiscal quarter. The per share amounts are based on 179.2 and 178.6 million weighted-average basic and diluted shares outstanding for the two comparative periods, respectively. EBITDA loss, which consists of earnings before interest, taxes, depreciation and amortization of assets including deferred stock-based compensation expense, was $13.4 million. EBITDA loss without restructuring-related charges was $5.5 million. The Company considers EBITDA to be an important measure of performance because it reflects the resources available to fund the Company's operations, and it is an important metric often used by investors to evaluate the performance of a business.

201. On the same day, the Company held a conference call for the investing community and financial analysts (the "4Q 2003 Conference Call"). On this call, Defendant Pace falsely stated that "[t]otal stock based compensation was $901,000 for the quarter, and we expect to incur stock based compensation charges of approximately $750,000 in the September quarter.

202. The statements set forth above in ¶¶197-199 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million and $31.7 million, in fiscal 2003 and 2002 respectively. The 2006 10-K further discloses that this amount were required to be amortized over the related service period, demonstrating that the press release understated net losses for the quarterly periods.

203. On August 28, 2003, the Company filed with the SEC its Form 10-K for the fiscal year ended June 30, 2003 (the "2003 10-K"). The 2003 10-K disclosed that Openwave had stock-based compensation expense of $3.7 million, $14.9 million and $11.0 million, and net loss of $217.0 million, $1.26 billion, and $690 million for the fiscal years ended June 30, 2003, 2002, and 2001, respectively. The 2003 10-K disclosed that Openwave had accumulated deficits of $2.54 billion and $2.32 billion on June 30, 2003 and 2002, respectively. Defendants Listwin, Pace, Kennedy, Covert, Puckett and Hedfors signed the 2003 Form 10-K. The certification that Defendant Listwin signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 2003 10-K, falsely stated that information contained in 2003 10-K fairly presents in all material respects the financial condition and results of operations of Openwave. Defendants Listwin and Pace also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 2003 10-K, which states that he had reviewed the 2003 10-K and that "[b]ased on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period

covered by this annual report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report."

204. This Annual Report also contained the same detailed language as to how the Company accounted for stock-based compensation as that set forth at ¶173, *supra*. Additionally, the Company, in relevant part, detailed:

> All stock-based compensation is being amortized in a manner consistent with Financial Accounting Standards Board Interpretation No. 28 (FIN No. 28), *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans.* Stock-based compensation consisted of continued amortization of the deferred stock-based compensation related to acquisitions, as well as compensation expense recognized on warrants, options issued to nonemployees and restricted stock granted to executives at exercise prices below the current fair value of our stock.
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> **Accounting for Stock-Based Compensation**
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> As permitted under SFAS No. 123, Accounting for Stock-Based Compensation, the Company has elected to follow Accounting Principles Board Opinion No.25 (APB No 25), *Accounting for Stock Issued to Employees,* and related interpretations in accounting for stock-based awards to employees. Accordingly, compensation cost for stock options is measured as the excess, if any, of the market price of the Company's common stock at the date of grant over the stock option exercise price. Warrants issued to nonemployees are accounted for using the fair value method of accounting as prescribed by SFAS No. 123 and Emerging Issues Task Force ("EITF") No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.* Compensation costs are amortized in a manner consistent with Financial Accounting Standards Board Interpretation No. 28 (FIN No. 28), *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans.* The Company uses the Black-Scholes option pricing model to value options and warrants granted to nonemployees.

* * *

Years ended June 30, (In thousands)		
Line Item	2003	2002
Deferred stock-based compensation	$ (2,185)	$ (7,159)
Accumulated deficit	(2,536,389)	(2,319,431)
Operating expense – stock based Compensation	3,681	14,866
Operating loss	(193,039)	(1,248,739)
Net loss attributable to common Stockholders	(216,958)	(1,260,758)

* * *

Quarterly Results Year ended June 30, 2003 (In thousands)				
Line Item	Fourth Quarter	Third Quarter	Second Quarter	First Quarter
Operating expense – stock based Compensation	$901	$686	$1,322	$772
Operating loss	(22,953)	(19,402)	(26,647)	(124,037)
Net loss	(25,703)	(26,214)	(29,497)	(138,544)

205. The statements set forth above in ¶¶201-202 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $10.3 million, $31.7 million, and $135.7 million, in fiscal 2003, 2002, and 2001, respectively. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses in each period (*i.e.* $3.1 million, $138.7 million, $170.1 million, and $180.5 million in fiscal 2000 through 2003, respectively). The Sarbanes-Oxley certifications were misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial

statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations. Further, the statements were false and misleading because they state that options were granted with an exercise price of at least 100% the fair market value of the Company's Stock on the date of grant, when in fact they were backdated. The statements were additionally false and misleading because they state that the Company property accounted for stock grants pursuant to APB 25.

206. On October 28, 2003, the Company issued a press release entitled "Openwave Reports First Quarter Fiscal 2004 Results." The press release disclosed that net loss under GAAP was $14.0 million and $25.7 million for the quarters ended September 30, 2003 and June 30, 2003, respectively.

207. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWVD), the leading provider of open software products and services for the communications industry, today announced that revenues for its first fiscal quarter ended September 30, 2003 were $68.0 million, an increase from $66.5 million for the preceding quarter ended June 30, 2003. In addition to revenue, the Company delivered results at the high end of the range for management's outlook with respect to gross margins, total ending cash and investments, earnings per share, and EBITDA.
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> * * *
>
> Openwave effected a 1 for 3 reverse stock split on October 21. Per share net loss on a pre- and post-split basis are as follows:
>
> ***Pre-Split***
>
> Based on Generally Accepted Accounting Principles (GAAP), net loss for the first quarter ended September 30, 2003 was $14.0 million or $0.08 per basic share pre-split, compared to a net loss of $25.7 million or $0.14 per basic pre-split share for the preceding quarter.

Post-Split

> Based on GAAP, net loss for the first quarter ended September 30, 2003 was $14.0 million or $0.23 per basic post-split share, compared to a net loss of $25.7 million or $0.43 per basic post-split share for the preceding quarter.

208. The same day, the Company held a conference call for the investing community and financial analysts (the "1Q 2004 Conference Call"). On this call, Defendant Pace falsely stated that "[t]otal stock-based compensation expense was $735,000 for the quarter and we expect to incur stock-based comp charges of approximately $800,000 in the December quarter."

209. The statements set forth above in ¶¶204-206 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $10.3 million in fiscal years 2004 and 2003, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

210. On November 14, 2003, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended September 30, 2003 (the "1Q 2004 10-Q"). The 1Q 2004 10-Q disclosed that Openwave had stock-based compensation expense of $0.7 million and $0.8 million and net loss of $14.0 million and $138.5 million for the three months ended September 30, 2003 and 2002, respectively. The 1Q 2004 10-Q also disclosed that Openwave had an accumulated deficit of $2.55 billion and $2.54 billion on September 30, 2003 and June 30, 2003, respectively. The certification that Defendants Listwin and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 1Q 2004 10-Q, falsely stated that information contained in 1Q

2004 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendant Listwin also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 1Q 2004 10-Q, which stated that he had reviewed the 1Q 2004 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly presents in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

211. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**September 30, 2003**	**June 30, 2003**
Deferred stock-based compensation	$ (1,554)	$ (2,185)
Accumulated deficit	(2,550,378)	(2,536,389)
	Three Months Ended September 30,	
Line Item	**2003**	**2002**
Operating expense – stock based compensation	735	772
Operating loss	(12,995)	(124,037)
Net loss	(13,989)	(138,544)

212. On January 21, 2004, Openwave issued a press release entitled "Openwave Reports Second Quarter Fiscal 2004 Results." The press release disclosed net loss was $9.4 million, $14.0 million, and $29.5 million for the quarters ended December 31, 2003, September 30, 2002 and December 31, 2002, respectively.

213. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its second fiscal quarter ended December 31, 2003 were $71.8 million, an increase of $3.8 million from $68.0 million during the preceding quarter ended September 30, 2003 and an increase of $5.0 million from $66.8 million during the December quarter in the preceding year.
>
> * * *
>
> Net loss for the second quarter ended December 31, 2003 was $9.4 million or $0.15 per basic and diluted share, compared to a net loss of $14.0 million or $0.23 per basic and diluted share for the preceding quarter and a net loss of $29.5 million or $0.50 per basic and diluted share for the December quarter in the preceding year.

214. The same day, the Company held a conference call for the investing community and financial analysts (the "2Q 2004 Conference Call"). On this call, Defendant Pace falsely stated that "[t]otal stock based compensation was $754,000 for the quarter and we expect to incur stock based compensation charges of approximately $870,000 in the March quarter."

215. The statements set forth above in ¶¶208-212 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $10.3 million, in fiscal years 2004 and 2003, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 1Q 2004 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, and $180.5 million in fiscal years

2000 through 2003, respectively) and understated by between $180.5 million and $181.0 million at September 30, 2003. The Sarbanes-Oxley certifications signed by Defendants Listwin and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

216. On February 17, 2004, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended December 31, 2003 (the "2Q 2004 10-Q"). The 2Q 2004 10-Q disclosed that Openwave had stock-based compensation expense of $0.8 million and $1.3 million and net loss of $9.4 million and $29.5 million for the three months ended December 31, 2003 and 2002, respectively. The 2Q 2004 10-Q also disclosed that Openwave had an accumulated deficit of $2.56 billion and $2.54 billion on December 31, 2003 and June 30, 2003, respectively. The certification that Defendant Listwin signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 2Q 2004 10-Q, falsely stated that information contained in 2Q 2004 10-Q fairly presents in all material respects the financial condition and results of operations of Openwave. Defendant Listwin also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 2Q 2004 10-Q, which stated that he had reviewed the 2Q 2004 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly

report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

217. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**December 31, 2003**	**June 30, 2003**
Deferred stock-based compensation	$ (2,087)	$ (2,185)
Accumulated deficit	(2,559,765)	(2,536,389)
	Three Months Ended December 31,	
Line Item	**2003**	**2002**
Operating expense – stock based compensation	754	1,332
Operating loss	(4,605)	(26,647)
Net loss	(9,387)	(29,497)

218. The statements set forth above in ¶¶214-215 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $10.3 million, in fiscal 2004 and 2003, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 2Q 2004 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, and $180.5 million in fiscal 2000 through 2003, respectively) and understated by between $180.5 million and $181.0 million at December 31,

2003. The Sarbanes-Oxley certifications signed by Defendants Listwin and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

219. On April 28, 2004, the Company issued a press release entitled "Openwave Reports Third Quarter Fiscal 2004 Results." The press release disclosed that net loss was $5.7 million, $9.4 million, and $23.2 million for the quarters ended March 31, 2004, December 31, 2003, and March 31, 2003, respectively.

220. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its third fiscal quarter ended March 31, 2004 were $74.2 million, an increase from $71.8 million during the preceding quarter ended December 31, 2003 and an increase of 16.9% from $63.5 million during the March quarter in the preceding year.
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> * * *
>
> Net loss for the third fiscal quarter ended March 31, 2004 was $5.7 million, or $0.09 per basic and diluted share, compared to a net loss of $9.4 million, or $0.15 per basic and diluted share, for the preceding quarter and a net loss of $23.2 million, or $0.39 per basic and diluted share, for the March quarter in the preceding year.

221. The same day, the Company held a conference call for the investing community and financial analysts (the "3Q 2004 Conference Call"). On this call, Defendant Pace falsely stated that "[t]he total stock based compensation expense was $938,000 for the quarter compared to $754,000 last quarter. We expect to incur stock-based compensation charges of approximately $725,000 in the June quarter."

222. The statements set forth above in ¶¶217-219 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $10.3 million, in fiscal years 2004 and 2003, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

223. On May 12, 2004, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended March 31, 2004 (the "3Q 2004 10-Q"). The 3Q 2004 10-Q disclosed that Openwave had stock-based compensation expense of $0.9 million and $.7 million and net loss of $5.7 million and $23.2 million for the three months ended March 31, 2004 and 2003, respectively. The 3Q 2004 10-Q also disclosed that Openwave had an accumulated deficit of $2.57 billion and $2.54 billion on March 31, 2004 and June 30, 2003, respectively. The certification that Defendants Listwin and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 3Q 2004 10-Q, falsely stated that information contained in 3Q 2004 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Listwin and Pace also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 3Q 2004 10-Q, which stated that he had reviewed the 3Q 2004 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on

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

224. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**March 31, 2004**	**June 30, 2003**
Deferred stock-based compensation	$ (2,716)	$ (2,185)
Accumulated deficit	(2,565,503)	(2,536,389)
	Three Months Ended March 31,	
Line Item	**2004**	**2003**
Operating expense – stock based compensation	938	686
Operating loss	(4,547)	(19,402)
Net loss	(5,738)	(23,214)

225. The statements set forth above in ¶¶221-222 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $10.3 million, in fiscal 2004 and 2003, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 3Q 2004 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, and $180.5 million in fiscal 2000 through 2003,

respectively) and understated by between $180.5 million and $181.0 million at March 31, 2004. The Sarbanes-Oxley certifications signed by Listwin and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

226. On July 28, 2004, the Company issued a press release entitled "Openwave Reports Fourth Quarter Fiscal 2004 Results." The press release disclosed that net loss was $737,000, $5.7 million, and $25.7 million for the quarters ended June 30, 2004, March 31, 2004, and June 30, 2003, respectively.

227. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its fiscal fourth quarter ended June 30, 2004 were $76.8 million, an increase of $2.6 million or 3% from $74.2 million during the preceding quarter ended March 31, 2004, and an increase of $10.3 million or 15% from $66.5 million during the June quarter in the preceding year. Revenues for the twelve months ended June 30, 2004 were $291 million.
>
> "Positive operating income was achieved for the first time," said Don Listwin, president and CEO of Openwave. "This is a major milestone for the company."
>
> Net loss for the fiscal fourth quarter ended June 30, 2004 was $737,000, or $0.01 per basic and diluted share, compared to a net loss of $5.7 million, or $0.09 per basic and diluted share, for the preceding quarter and a net loss of $25.7 million, or $0.43 per basic and diluted share, for the fiscal fourth quarter ended June 30, 2003. Net loss for the 2004 fiscal year ended June 30, 2004 was $29.9 million, an 86% improvement from the $217 million net loss reported for the previous fiscal year.

228. The same day, the Company held a conference call for the investing community and financial analysts (the "4Q 2004 Conference Call"). On this call, Defendant Pace falsely

stated that "[t]otal stock-based compensation was $700,000 for the June quarter, compared to $900,000 in the prior quarter. We expect to incur stock-based comp charges of approximately $600,000 in the September quarter."

229. The statements set forth above in ¶¶224-226 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $10.3 million, in fiscal 2004 and 2003, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

230. On September 13, 2004, the Company filed with the SEC its Form10-K for the fiscal year ended June 30, 2004 (the "2004 10-K"). The 2004 10-K disclosed that Openwave had stock-based compensation expense of $3.2 million, $3.7 million, and $14.9 million and net loss of $29.9 million, $217.0 million, and $1.26 billion for the fiscal years ended June 30, 2004, 2003, and 2002, respectively. The 2004 10-K disclosed that Openwave had accumulated deficit of $2.57 billion and $2.54 billion on June 30, 2004 and 2003, respectively. Defendants Listwin, Pace, Puckett, Kennedy, Covert, Hedfors, Jabbar and Denman signed the 2004 Form 10-K. The certification that Defendants Listwin and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 2004 10-K, falsely stated that information contained in 2004 10-K fairly presents in all material respects the financial condition and results of operations of Openwave. Defendants Listwin and Pace also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 2004 10-K, which states that he had

reviewed the 2004 10-K and that "[b]ased on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report."

231. Additionally, the Company, in relevant part, detailed:

> All stock-based compensation is being amortized in a manner consistent with Financial Accounting Standards Board Interpretation ("FIN") No. 28, *"Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans."* Stock-based compensation consists of continued amortization of the deferred stock-based compensation related to acquisitions, as well as compensation expense recognized on warrants, options issued to non-employees and restricted stock granted to executives and other employees at exercise prices below the current fair value of our stock.
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> * * *
>
> **<u>Accounting for Stock-Based Compensation</u>**
>
> As permitted under SFAS No. 123, *Accounting for Stock-Based Compensation,* the Company has elected to follow Accounting Principles Board Opinion No.25 (APB No 25), *Accounting for Stock Issued to Employees,* and related interpretations in accounting for stock-based awards to employees. Accordingly, compensation cost for stock options is measured as the excess, if any, of the market price of the Company's common stock at the date of grant over the stock option exercise price. Warrants issued to nonemployees are accounted for using the fair value method of accounting as prescribed by SFAS No. 123 and Emerging Issues Task Force ("EITF") No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services.* Compensation costs are amortized in a manner consistent with Financial Accounting Standards Board Interpretation No. 28 (FIN No. 28), Accounting for Stock Appreciation Rights and Other Variable Stock Option or

Award Plans. The Company uses the Black-Scholes option pricing model to value options and warrants granted to nonemployees.

* * *

Years ended June 30, (In thousands)		
Line Item	**2004**	**2003**
Deferred stock-based compensation	(1,191)	$ (2,185)
Accumulated deficit	(2,566,240)	(2,536,389)
Operating expense – stock based Compensation	3,150	3,681
Operating loss	(20,500)	(193,039)
Net loss	(29,851)	(216,958)

232. The Company's Form 10-K filed with the SEC on September 13, 2004 also contained the following Sarbanes Oxley required certifications, which stated:

I, [Don Listwin, President and Chief Executive Officer] [Joshua Pace, Chief Financial Officer] of Openwave Systems Inc. certify that:

1. **I have reviewed this annual report on Form 10-K of Openwave Systems Inc.;**

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

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

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

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

(b) **designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;**

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

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

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

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

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

In connection with the Annual Report on Form 10-K of Openwave Systems Inc. (the "Company") for the year ended June 30, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Don Listwin, as Chief Executive Officer of the Company, and Joshua Pace, as Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the SarbanesOxley Act of 2002, that, to the best of his knowledge:

> (1) **the Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, and**
>
> (2) **the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Openwave Systems Inc.**

(Emphasis added).

233. The statements set forth above in ¶¶228-230 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million, $10.3 million, and $31.7 million in fiscal 2004, 2003, and 2002, respectively. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses in each period (*i.e.* $3.1 million, $138.7 million, $170.1 million, $180.5 million, and $181.1 million in fiscal 2000 through 2004, respectively). The Sarbanes-Oxley certifications signed by Listwin and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

234. On October 26, 2004, the Company issued a press release entitled "Openwave Achieves Profitability: Reports First Quarter Fiscal 2005 Results." The press release disclosed

that net income (loss) on a GAAP basis was $957,000, ($737,000), and ($14.0 million) for the quarters ended September 30, 2004, June 30, 2004, and September 30, 2003, respectively.

235. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading independent provider of open software products and services for the communications industry, today announced that revenues for its first fiscal quarter ended September 30, 2004 were $83.6 million, an increase of 9% from $76.8 million during the preceding quarter ended June 30, 2004 and an increase of 23% from $68.0 million during the September quarter in the preceding year.
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> Net income on a GAAP basis for the first fiscal quarter ended September 30, 2004 was $957,000, or $0.01 per basic and diluted share, compared to a net loss of $737,000, or ($0.01) per basic and diluted share, for the preceding quarter and a net loss of $14.0 million, or ($0.23) per basic and diluted share, for the September quarter in the preceding year. Net income on a non-GAAP basis, excluding all amortization of acquisition related intangibles and restructuring costs, for the first fiscal quarter ended September 30, 2004 was $3.5 million, or $0.05 per basic and diluted share. A reconciliation between net income on a GAAP basis and a non-GAAP basis is provided below in a table immediately following the Condensed Consolidated Statements of Operations.

236. The same day, the Company held a conference call for the investing community and financial analysts (the "1Q 2005 Conference Call"). On this call, Defendant Pace falsely stated that "[o]ur total stock-based compensation expense was $594,000 for the September quarter compared to $722,000 in the prior quarter. We expect to incur stock-based compensation charges of approximately $900,000 in the December quarter."

237. The statements set forth above in ¶¶232-234 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for,

the Company would have recognized additional expenses of $0.6 million and $0.6 million, in fiscal 2005 and 2004, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

238. On November 9, 2004, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended September 30, 2004 (the "1Q 2005 10-Q"). The 1Q 2005 10-Q disclosed that Openwave had stock-based compensation expense of $0.6 million and $0.7 million and net income (loss) of $1.0 million and ($14.0 million) for the three months ended September 30, 2004 and 2003, respectively. The 1Q 2005 10-Q also disclosed that Openwave had an accumulated deficit of $2.57 billion and $2.57 billion on September 30, 2004 and June 30, 2004, respectively. The certification that Defendants Peterschmidt and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 1Q 2005 10-Q, falsely stated that information contained in 1Q 2005 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Peterschmidt and Pace also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 1Q 2005 10-Q, which stated that he had reviewed the 1Q 2005 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

239. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**September 30, 2004**	**June 30, 2004**
Deferred stock-based compensation	$ (1,762)	$ (1,991)
Accumulated deficit	(2,565,283)	(2,566,240)
	Three Months Ended September 30,	
Line Item	**2004**	**2003**
Operating expense – stock based compensation	594	735
Operating income (loss)	3,213	(12,995)
Net income	957	(13,989)

240. The statements set forth above in ¶¶236-237 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $0.6 million, in fiscal 2005 and 2004, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 1Q 2005 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, $180.6 million, and $181.0 million in fiscal 2000 through 2004, respectively) and understated by between $181.0 million and $181.7 million at September 30, 2003. The Sarbanes-Oxley certifications signed by Peterschmidt and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and

accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

241. On January 27, 2005, the Company issued a press release entitled "Openwave Achieves 30% Revenue Growth in Second Quarter." The press release disclosed that net income (loss) on a GAAP basis was $1.9 million, $957,000, and ($9.4 million) for the quarters ended December 31, 2004, September 30, 2004, and December 31, 2003, respectively.

242. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its second fiscal quarter ended December 31, 2004 were $93.5 million, an increase of $9.9 million, or 12%, from $83.6 million during the preceding quarter ended September 30, 2004 and an increase of $21.8 million, or 30%, from $71.8 million during the December quarter in the preceding year.
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> Net income on a GAAP basis for the second fiscal quarter ended December 31, 2004 was $1.9 million or $0.03 per diluted share, compared to net income of $957,000 or $0.01 per diluted share for the preceding quarter and a net loss of $9.4 million or $0.15 per diluted share for the December quarter in the preceding year. Net income on a non-GAAP basis, excluding all amortization of acquisition related intangibles and restructuring costs, for the second fiscal quarter ended December 31, 2004 was $4.6 million, or $0.07 per diluted share, compared with $3.5 million, or $0.05 per diluted share in the prior quarter. A reconciliation between net income on a GAAP basis and a non-GAAP basis is provided below in a table immediately following the Condensed Consolidated Statements of Operations.

243. The same day, the Company held a conference call for the investing community and financial analysts (the "2Q 2005 Conference Call"). On this call, Defendant Pace falsely stated that "[t]otal stock based compensation was $1.2m for the December quarter compared to

approximately $600,000 in the prior quarter. We expect to incur stock based compensation charges of approximately $1.5m in the March quarter, reflecting new executive hires and recent promotions."

244. The statements set forth above in ¶¶239-241 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $0.6 million, in fiscal 2005 and 2004, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

245. On February 9, 2005, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended December 31, 2004 (the "2Q 2005 10-Q"). The 2Q 2005 10-Q disclosed that Openwave had stock-based compensation expense of $1.2 million and $0.8 million and net income (loss) of $1.9 million and ($9.4 million) for the three months ended December 31, 2004 and 2003, respectively. The 2Q 2005 10-Q also disclosed that Openwave had an accumulated deficit of $2.56 billion and $2.57 billion on December 31, 2004 and June 30, 2004, respectively. The certification that Defendants Peterschmidt and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 2Q 2005 10-Q, falsely stated that information contained in 2Q 2005 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Peterschmidt and Pace also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 2Q 2005 10-Q, which stated that he had reviewed the 2Q 2005 10-Q and that "[b]ased on my knowledge, this

quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

246. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**December 31, 2004**	**June 30, 2004**
Deferred stock-based compensation	$ (7,236)	$ (1,991)
Accumulated deficit	(2,563,417)	(2,566,240)
	Three Months Ended December 31,	
Line Item	**2004**	**2003**
Operating expense – stock based compensation	1,232	754
Operating income (loss)	2,964	(4,605)
Net income (loss)	1,866	(9,387)

247. The statements set forth above in ¶¶243-244 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $0.6 million, in fiscal 2005 and 2004, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 2Q 2005 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for

these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* \$3.1 million, \$138.5 million, \$170.1 million, \$180.6 million, and \$181.0 million in fiscal 2000 through 2004, respectively) and understated by between \$181.0 million and \$181.7 million at December 31, 2003. The Sarbanes-Oxley certifications signed by Defendants Peterschmidt and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

248. On April 27, 2005, the Company issued a press release entitled "Openwave Grows Revenue 43% in Third Quarter" The press release disclosed that net income (loss) on a GAAP basis was (\$2.6 million), \$1.9 million, and (\$5.7 million) for the quarters ended March 31, 2005, December 31, 2004, and March 31, 2004, respectively.

249. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its third fiscal quarter ended March 31, 2005 were \$106.3 million, an increase of \$12.8 million, or 14%, from \$93.5 million during the preceding quarter ended December 31, 2004 and an increase of \$32.1 million, or 43%, from \$74.2 million during the March quarter in the preceding year.
>
> *　*　*
>
> On a GAAP basis, net loss for the third fiscal quarter ended March 31, 2005 was \$2.6 million or \$0.04 per share, compared to net income of \$1.9 million or \$0.03 per diluted share for the preceding quarter and a net loss of \$5.7 million or \$0.09 per share for the March quarter in the preceding year. Net income on a non-GAAP basis, which excludes amortization of intangibles and acquisition-related stock-based compensation, and restructuring and related costs, for the third fiscal quarter ended March 31, 2005 was \$4.7

> million, or $0.07 per diluted share, compared with $4.6 million, or $0.07 per diluted share in the prior quarter. A reconciliation between net income (loss) on a GAAP basis and a non-GAAP basis is provided below in a table immediately following the Condensed Consolidated Statements of Operations.

250. The same day, the Company held a conference call for the investing community and financial analysts (the "3Q 2005 Conference Call"). On this call, Defendant Pace stated that "[t]otal stock-based compensation expense was $1 million for the March quarter compared to 1.2 million in the prior quarter. We expect to incur stock-based compensation charges of approximately 1.8 million in the June quarter."

251. The statements set forth above in ¶¶246-248 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $0.6 million in fiscal years 2005 and 2004, respectively. The 2006 10-K further states that such amounts were required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods.

252. On May 9, 2005, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended March 31, 2005 (the "3Q 2005 10-Q"). The 3Q 2005 10-Q disclosed that Openwave had stock-based compensation expense of $1.0 million and $0.9 million and net income (loss) of $1.4 million and $1.9 million for the three months ended March 31, 2005 and 2004, respectively. The 3Q 2005 10-Q also disclosed that Openwave had an accumulated deficit of $2.57 billion and $2.57 billion on March 31, 2005 and June 30, 2004, respectively. The certification that Defendants Peterschmidt and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 2Q 2005 10-Q, falsely stated that information contained in

3Q 2005 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Peterschmidt and Pace also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 3Q 2005 10-Q, which stated that he had reviewed the 3Q 2005 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

253. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**March 31, 2005**	**June 30, 2004**
Deferred stock-based compensation	$ (7,607)	$ (1,991)
Accumulated deficit	(2,566,031)	(2,566,240)
	Three Months Ended March 31,	
Line Item	**2005**	**2004**
Operating expense – stock based compensation	1,011	938
Operating income (loss)	1,773	(4,547)
Net income (loss)	(2,614)	(5,738)

254. The statements set forth above in ¶¶250-251 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for,

the Company would have recognized additional expenses of $0.6 million and $0.6 million, in fiscal 2005 and 2004, respectively. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 3Q 2005 10-Q understated net losses for the quarterly periods. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, $180.6 million, and $181.0 million in fiscal 2000 through 2004, respectively) and understated by between $181.0 million and $181.7 million at March 31, 2005. The Sarbanes-Oxley certifications signed by Defendants Peterschmidt and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

255. On August 4, 2005, the Company issued a press release entitled "Openwave Reports Fourth Quarter Financial Results" The press release disclosed that net loss on a GAAP basis was $62.3 million and $0.7 million for the quarters ended June 30, 2005 and June 30, 2004, respectively.

256. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its fourth fiscal quarter ended June 30, 2005 were $100.3 million, an increase of $23.5 million, or 31 %, from $76.8 million during the June quarter in the preceding year. Openwave posted bookings of $130.4 million, the highest level in the company's history.

*   *   *

> Including $64.6 million in restructuring charges, net loss for the fourth fiscal quarter ended June 30, 2005 on a GAAP basis was $62.3 million, or $0.91 per share, compared to a net loss of $0.7 million, or $0.01 per share, for the June quarter in the preceding year. Net income on a non-GAAP basis, which excludes amortization of intangibles and acquisition-related stock-based compensation, and restructuring and related costs, for the fourth fiscal quarter ended June 30, 2005 was $4.8 million, or $0.07 per diluted share. A reconciliation between net income (loss) on a GAAP basis and a non-GAAP basis is provided below in a table immediately following the Condensed Consolidated Statements of Operations.

257. The same day, the Company held a conference call for the investing community and financial analysts (the "4Q 2005 Conference Call"). On this call, Defendant Pace stated that "[t]otal stock-based compensation was $2.4 million for the June quarter, compared to 1 million in the prior quarter. This increase was due to the increased use of restricted share grants."

258. In addition, on this 4Q 2005 Conference Call, Defendant Pace stated "[a]s you know, beginning July 1, 2005 Openwave will be required to show the impact of stock options on our income statement. Our expected charge in the September quarter for both restricted share and stock option grants will be between 7 and $9 million. We will update this projection on a quarterly basis, and consistent with industry practice, we will exclude all stock based compensation, including restricted stock grants from our pro forma results on a go forward basis."

259. The statements set forth above in ¶¶253-256 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million and $0.6 million, in fiscal 2005 and 2004, respectively. The 2006 10-K further states that such amounts were

required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the quarterly periods. Moreover, the statements set forth above were materially false and misleading because the Company did not in fact show the financial impact of its stock option grants on its income statements.

260. On September 12, 2005, the Company filed with the SEC its Form10-K for the fiscal year ended June 30, 2005 (the "2005 10-K"). The 2005 10-K disclosed that Openwave had stock-based compensation expense of $5.2 million, $3.2 million, and $3.7 million and net loss of $62.1 million, $29.9 million, and $217.0 for the fiscal years ended June 30, 2005 and 2004, respectively. The 2005 10-K also disclosed that Openwave had accumulated deficit of $2.63 billion and $2.57 billion on June 30, 2005 and 2004, respectively. Defendants Peterschmidt, Pace, Puckett, Hedfors, Jabbar, Denman and Held signed the 2005 Form 10-K. The certification that Defendants Peterschmidt and Pace signed pursuant to §906 of the Sarbanes-Act of 2002, which was included in the 2005 10-K, falsely stated that information contained in 2005 10-K fairly presented in all material respects the financial condition and results of operations of Openwave. Defendant Peterschmidt also signed a certification pursuant to §302 of the Sarbanes-Oxley Act of 2002, which was included in the 2005 10-K, which states that he had reviewed the 2005 10-K and that "[b]ased on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this annual report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this annual report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this annual report."

261. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

> All stock-based compensation is being amortized in a manner consistent with Financial Accounting Standards Board Interpretation No. 28 (FIN No. 28), *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans.* Stock-based compensation consisted of continued amortization of the deferred stock-based compensation related to acquisitions, as well as compensation expense recognized on warrants, options issued to nonemployees and restricted stock granted to executives at exercise prices below the current fair value of our stock.
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> * * *
>
> **Accounting for Stock-Based Compensation**
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> As permitted under SFAS No. 123, *Accounting for Stock-Based Compensation,* the Company has elected to follow Accounting Principles Board Opinion No.25 (APB No 25), *Accounting for Stock Issued to Employees,* and related interpretations in accounting for stock-based awards to employees. Accordingly, compensation cost for stock options is measured as the excess, if any, of the market price of the Company's common stock at the date of grant over the stock option exercise price. Warrants issued to nonemployees are accounted for using the fair value method of accounting as prescribed by SFAS No. 123 and Emerging Issues Task Force ("EITF") No. 96-18, *Accounting for Equity Instruments That Are Issued to Other Than Employees for Acquiring, or in Conjunction with Selling, Goods or Services*. Compensation costs are amortized in a manner consistent with Financial Accounting Standards Board Interpretation No. 28 (FIN No. 28), *Accounting for Stock Appreciation Rights and Other Variable Stock Option or Award Plans.* The Company uses the Black-Scholes option pricing model to value options and warrants granted to nonemployees.
>
> * * *

Years ended June 30, (In thousands)		
	2005	2004
Deferred stock-based compensation	(13,163)	$ (1,991)
Accumulated deficit	(2,628,369)	(2,566,240)
Operating expense – stock based compensation	5,202	3,150
Operating loss	(53,903)	(20,500)
Net loss	(62,129)	(29,851)

262. The statements set forth above in ¶¶258-259 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million, $0.6 million, and $10.3 million in fiscal 2005, 2004, and 2003, respectively. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses in each period (*i.e.* $3.1 million, $138.7 million, $170.1 million, $180.5 million, $181.1 million, and $181.7 million in fiscal 2000 through 2005, respectively). The Sarbanes-Oxley certifications signed by Defendants Peterschmidt and Pace were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

263. On October 26, 2005, the Company issued a press release entitled "Openwave reports 24% Year Over Year Quarterly Revenue Growth." The press release disclosed that net income (loss) on a GAAP basis was ($7.7 million), $1.0 million, and ($62.3 million) for the quarters ended September 30, 2005, June 30, 2005, and September 30, 2004, respectively.

264. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its first fiscal quarter ended September 30, 2005 were $103.3 million, an increase of $19.7 million, or 24%, from $83.6 million during the September quarter in the preceding year, and an increase of $3.0 million, or 3%, from $100.3 million for the prior quarter ended June 30, 2005.
>
> * * *
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> On a GAAP basis, net loss for the first fiscal quarter ended September 30, 2005 was $7.7 million, or $0.11 per share, compared to a net income of $1.0 million, or $0.01 per share, for the September quarter in the preceding year and a net loss of $62.3 million, or $0.91 per share in the prior quarter.

265. The same day, the Company held a conference call for the investing community and financial analysts (the "1Q 2006 Conference Call"). On this call, Defendant Covert stated that "stock based compensation which is not included in our pro forma net income was $10.2 million in Q3 '05, compared to $2.4 million in Q2 '05 and $0.6 million in Q3 '04. The increase is primarily due to expensing stock options in a charge related to an acquisition. This is the first quarter that Openwave started expensing stock options in accordance with new accounting rules."

266. The statements set forth above in ¶¶261-263 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million in fiscal 2005. The 2006 10-K further states that this amount was required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the fiscal 2005 quarterly period. Moreover, the statements set forth above were materially false and

misleading because the Company did not in fact correctly expense its stock option grants in accordance with APB 25 of FASB 123.

267. On November 9, 2005, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended September 30, 2005 (the "1Q 2006 10-Q"). The 1Q 2006 10-Q disclosed that Openwave had net income (loss) of $7.7 million and $1.0 million for the three months ended September 30, 2005 and 2004, respectively. The 1Q 2006 10-Q also disclosed that Openwave had an accumulated deficit of $2.64 billion and $2.63 billion on September 30, 2005 and June 30, 2005, respectively. Defendant Covert signed the 1Q 2006 10-Q. The certification that Defendants Peterschmidt and Covert signed pursuant to §906 of the Sarbanes-Act of 2002, which were included in the 1Q 2006 10-Q, falsely stated that information contained in 1Q 2006 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Peterschmidt and Covert also each signed certifications pursuant to §302 of the Sarbanes-Oxley Act of 2002, which were included in the 1Q 2006 10-Q, which stated that they had each reviewed the 1Q 2006 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

268. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**September 30, 2005**	**June 30, 2005**
Deferred stock-based compensation	$ ---	$ (13,163)
Accumulated deficit	(2,636,045)	(2,628,369)
	Three Months Ended September 30,	
Line Item	**2005**	**2004**
Operating expense – stock based compensation	[10,204]	[594]
Operating income (loss)	(5,710)	3,213
Net income (loss)	(7,676)	957

269. The statements set forth above in ¶¶265-266 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million in fiscal 2005. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 1Q 2006 10-Q understated net losses for the fiscal 2005 quarterly period. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, $180.6 million, $181.0 million, and $181.7 million in fiscal 2000 through 2005, respectively) and understated by between $181.0 million and $181.7 million at September 30, 2004. The Sarbanes-Oxley certifications signed by Peterschmidt and Covert were materially false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

270. On January 26, 2006, the Company issued a press release entitled "Openwave Reports Record Earnings." The press release disclosed that net income (loss) on a GAAP basis was \$8.4 million, \$7.7 million, and \$1.9 million for the quarters ended December 31, 2005, September 30, 2005, and December 31, 2004, respectively.

271. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its second fiscal quarter ended December 31, 2005 were \$104.5 million, an increase of \$11.0 million, or 12%, from \$93.5 million during the December quarter in the preceding year, and an increase of \$1.2 million, or 1%, from \$103.3 million for the prior quarter ended September 30, 2005.
>
> * * *
>
> Net income on a GAAP basis for the second fiscal quarter ended December 31, 2005 was \$8.4 million, or \$0.11 per share, compared to net income of \$1.9 million, or \$0.03 per share, for the December quarter in the preceding year and a net loss of \$7.7 million, or \$0.11 per share in the prior quarter.

272. The same day, the Company held a conference call for the investing community and financial analysts (the "2Q 2006 Conference Call"). On this call, Defendant Covert stated that "[s]tock-based compensation, which is not included in our pro forma net income, was 11.3 million in fiscal Q2 '06 compared to 10.2 million in fiscal Q1 '06, and 1.2 million in fiscal Q2 '05. The increase on a year-over-year basis is due to the new rules for expensing stock options than we implemented starting with fiscal Q1 '06. Pro forma fully diluted shares outstanding for fiscal Q2 '06 were 87.6 million; for fiscal Q1'06, 75 million; and fiscal Q2 '05, 70.3 million."

273. The statements set forth above in ¶¶268-270 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported

expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million in fiscal 2005. The 2006 10-K further states that this amount was required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the fiscal 2005 quarterly period.

274. On February 8, 2006, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended December 31, 2005 (the "2Q 2006 10-Q"). The 2Q 2006 10-Q disclosed that Openwave had net income of $8.4 million and $1.9 million for the three months ended December 31, 2005 and 2004, respectively. The 2Q 2006 10-Q disclosed that Openwave had an accumulated deficit of $2.63 billion and $2.63 billion on December 31, 2005 and June 30, 2005, respectively. Defendant Covert signed the 2Q 2006 10-Q. The certification that Defendants Peterschmidt and Covert signed pursuant to §906 of the Sarbanes-Act of 2002, which were included in the 2Q 2006 10-Q, falsely stated that information contained in 2Q 2006 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Peterschmidt and Covert also each signed certifications pursuant to §302 of the Sarbanes-Oxley Act of 2002, which were included in the 2Q 2006 10-Q, which stated that they had each reviewed the 2Q 2006 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of

operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

275. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**December 31, 2005**	**June 30, 2005**
Deferred stock-based compensation	$ ---	$ (13,163)
Accumulated deficit	(2,627,601)	(2,628,369)
	Three Months Ended December 31,	
Line Item	**2005**	**2004**
Operating expense – stock based compensation	(11,311)	(1,232)
Operating income	9,379	2,964
Net income	8,444	1,866

276. The statements set forth above in ¶¶272-273 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million in fiscal 2005. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 2Q 2006 10-Q understated net losses for the fiscal 2005 quarterly period. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, $180.6 million, $181.0 million, and $181.7 million in fiscal 2000 through 2005, respectively) and understated by between $181.0 million and $181.7 million at December 31, 2004. The Sarbanes-Oxley certifications signed by Peterschmidt and Covert were materially

false and misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

277. On April 27, 2006, the Company issued a press release entitled "Openwave Reports Solid Third Quarter Revenue and Earnings In Line With Projections." The press release disclosed that net income (loss) on a GAAP basis was $9.6 million, ($2.6 million), $8.4 million for the quarters ended March 31, 2006, March 31, 2005, and December 31, 2005, respectively.

278. Therein, the Company, in relevant part, stated:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that revenues for its third fiscal quarter ended March 31, 2006 were $113.0 million, an increase of $6.7 million, or 6%, from $106.3 million during the March quarter in the preceding year, and an increase of $8.5 million, or 8%, from $104.5 million for the prior quarter ended December 31, 2005.
>
> Net income on a GAAP basis for the third fiscal quarter ended March 31, 2006 was $9.6 million, or $0.10 per share, compared to a net loss of $2.6 million, or $0.04 per share, for the March quarter in the preceding year and net income of $8.4 million, or $0.11 per share in the prior quarter.

279. The same day, the Company held a conference call for the investing community and financial analysts (the "3Q 2006 Conference Call"). On this call, Defendant Covert stated that "[s]tock based compensation, which is not included in our pro forma net income, was 10.7 million in fiscal Q3 '06 compared to 11.3 million in fiscal Q2 '06 and 1 million in fiscal Q3 '05. The increase in stock based compensation on a YOY basis is due to new rules for expensing stock options that we implemented starting with Q1 fiscal '06."

280. The statements set forth above in ¶¶275-277 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported

expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million in fiscal 2005. The 2006 10-K further states that this amount was required to be amortized over the related service period, demonstrating that the press release understated Openwave's net losses for the fiscal 2005 quarterly period.

281. On May 10, 2006, the Company filed with the SEC its Form 10-Q for the fiscal quarter ended March 31, 2006 (the "3Q 2006 10-Q"). The 3Q 2006 10-Q disclosed that Openwave had net income of $9.6 million and $2.6 million for the three months ended March 31, 2006 and 2005, respectively. The 2Q 2006 10-Q also disclosed that Openwave had an accumulated deficit of $2.62 billion and $2.63 billion on March 31, 2006 and June 30, 2005, respectively. Defendant Covert signed the 3Q 2006 10-Q. The certification that Defendants Peterschmidt and Covert signed pursuant to §906 of the Sarbanes-Act of 2002, which were included in the 3Q 2006 10-Q, falsely stated that information contained in 3Q 2006 10-Q fairly presented in all material respects the financial condition and results of operations of Openwave. Defendants Peterschmidt and Covert also each signed certifications pursuant to §302 of the Sarbanes-Oxley Act of 2002, which were included in the 3Q 2006 10-Q, which stated that they had each reviewed the 3Q 2006 10-Q and that "[b]ased on my knowledge, this quarterly report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this quarterly report" and "[b]ased on my knowledge, the financial statements, and other financial information included in this quarterly report, fairly present in all material respects the financial condition, results of

operations and cash flows of the registrant as of, and for, the periods presented in this quarterly report."

282. Additionally, the Company, in relevant part, detailed the following regarding stock-based compensation:

Quarterly Results (In thousands)		
Line Item	**March 31, 2006**	**June 30, 2005**
Deferred stock-based compensation	$ ---	$ (13,163)
Accumulated deficit	(2,618,031)	(2,628,369)
	Three Months Ended March 31,	
Line Item	**2006**	**2005**
Operating expense – stock based compensation	[10,658]	[550]
Operating income	6,151	1,773
Net income (loss)	9,570	(2,614)

283. The statements set forth above in ¶¶279-280 were materially false and misleading. As was ultimately disclosed in Openwave's 2006 10-K, because Openwave had backdated options, causing them to have intrinsic value on the date of grant, the Company underreported expenses. Openwave's 2006 10-K discloses that, had these options been properly accounted for, the Company would have recognized additional expenses of $0.6 million in fiscal 2005. The 2006 10-K further discloses that such amounts were required to be amortized over the related service period, demonstrating that the 3Q 2006 10-Q understated net losses for the fiscal 2005 quarterly period. Because Openwave did not properly account for these expenses in the periods in which they should have been incurred, its accumulated deficit was understated by the cumulative amount of those expenses for each full fiscal year (*i.e.* $3.1 million, $138.5 million, $170.1 million, $180.6 million, $181.0 million, and $181.7 million in fiscal 2000 through 2005, respectively) and understated by between $181.0 million and $181.7 million at March 31, 2005. The Sarbanes-Oxley certifications signed by Peterschmidt and Covert were materially false and

misleading because Openwave underreported its expenses, net loss, and accumulated deficit, and therefore its financial statements contained untrue statements and omissions of material fact and did not fairly present its financial condition and results of operations.

XII. THE TRUTH BEGINS TO EMERGE

A. THE SEC AND U.S. ATTORNEY INVESTIGATIONS

284. On May 22, 2006, Openwave issued a press release announcing that the SEC had opened an informal inquiry into the Company's past stock option grants. In this press release, however, Openwave stressed that "the SEC letter states that the informal inquiry should not be construed as an indication by the SEC or its staff that any violation of law has occurred, or as an adverse reflection upon any person, entity, or security." News of the SEC inquiry caused the Company's stock price to drop from a closing price of $15.37 per share on Friday, May 19, 2006 to $14.68 on May 22, 2006, a decline of 4.5% per share.

285. Therein, the Company, in relevant part, revealed:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced that ***it has received a letter of informal inquiry from the Securities and Exchange Commission requesting documents related to the Company's stock option grants and stock option practices. The SEC letter states that the informal inquiry should not be construed as an indication by the SEC or its staff that any violation of law has occurred, or as an adverse reflection upon any person, entity, or security.*** The Company intends to cooperate fully with the SEC in this matter.

(Emphasis added).

286. Then, on July 5, 2006, after the close of the market, Openwave filed with the SEC a Regulation FD disclosure on Form 8-K stating that it had received subpoenas from the United States Attorneys for the Northern District of California and for the Southern District of New York requesting documents relating to the Company's historical stock option practices. On this

news, Openwave's stock price dropped, declining from a closing price of $11.47 per share on July 5, 2006, to a closing price of $7.77 per share on July 6, 2006, representing a decline of $3.70 per share, or 32%.

B. THE SPECIAL COMMITTEE INVESTIGATION

287. On October 4, 2007, Openwave issued a press release entitled "Openwave Announces Stock Option Investigation Update – Company Receives NASDAQ Notice." Therein, the Company, in relevant part, revealed:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading independent provider of software solutions for the communications and media industries, today announced an update of its stock option investigation and that the Company has received a Staff Determination from NASDAQ.
>
> The Special Committee of the Company's Board of Directors is in the process of concluding its independent investigation relating to the Company's stock option grants and practices. The Special Committee to date has not found evidence that leads it to conclude that there was fraud or manipulation in the granting of options. While the results are not yet finalized, ***the Special Committee has determined that the measurement dates for financial accounting purposes for certain stock option grants differ from recorded grant dates for certain awards and will likely cause the Company to restate its financial statements.*** The Company is also reviewing the tax implications of these adjustments, but the Company has not completed its review nor reached any preliminary conclusions regarding the tax implications.
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> * * *
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> Based on the work of the Special Committee of the Board of Directors, on October 2, 2006, the Company concluded that all ***financial statements previously issued by the Company should no longer be relied upon***. The Company's management and the Special Committee have discussed this matter with KPMG, the Company's independent registered public accounting firm.

(Emphasis added).

288. Then, on October 26, 2006, in a press release reporting financial results for its fiscal 2007 first quarter ended September 30, 2006, Openwave admitted that "the measurement dates for financial accounting purposes for certain stock option grants differ from recorded grant dates for certain awards." On this news, Openwave's stock price declined from a closing price of $9.56 per share on October 26, 2006 to $8.51 per share on October 27, 2006, a decline of 11.0%.

289. Therein, the Company, in relevant part, revealed:

> Openwave Systems Inc. (Nasdaq: OPWV), the leading provider of open software products and services for the communications industry, today announced preliminary financial results for its fiscal 2007 first quarter ended September 30, 2006. All financial figures presented are estimates which may be subject to adjustment as a result of the likely restatement of historical results discussed below.
>
> * * *
>
> **<u>Results Subject to Adjustment</u>**
>
> As previously announced on October 4, 2006, a Special Committee investigating Openwave's stock option practices is in the process of concluding its independent investigation relating to the Company's stock option grants and practices. The Special Committee to date has not found evidence that leads it to conclude that there was fraud or manipulation in the granting of options. While the results are not yet finalized, the Special Committee has determined that ***the measurement dates for financial accounting purposes for certain stock option grants differ from recorded grant dates for certain awards and will likely cause the Company to restate its financial statements.*** The Company is also reviewing the tax implications of these adjustments, but the Company has not completed its review nor reached any final conclusions regarding the tax implications.

(Emphasis added).

290. The Company subsequently provided additional details on the exact value of the restatement that would be required to correctly report its options grants. On December 1, 2006,

in both a press release and in the Company's 2006 10-K, Openwave explained that a Special Committee of its Board of Directors that had been established to investigate the circumstances concerning the Company's options backdating had "identified certain circumstances in which the grant date used by the Company as the 'measurement date' for accounting purposes preceded the appropriate measurement date." The Company admitted that, because of this backdating, the financial statements that the Company filed with the SEC between fiscal 1999 and fiscal 2005 could not be relied upon. Finally, the press release and Form 10-K explained that ***the Company would be required to take additional charges of $182 million*** to restate its earnings and accumulated deficit for fiscal years 2000 through 2005. The Company thus confirmed financial statements it had issued during the Class Period had cumulatively overstated net income.

291. Therein, the Company, in relevant part, revealed:

> The Special Committee reviewed all grants of stock options from June 1999 to September 2006 and undertook an extensive examination of the Company's accounting policies, accounting records, supporting documentation, e-mail communications and interviews with current and former employees and Board members.
>
> * * *
>
> ***The Special Committee identified certain circumstances in which the grant date used by the Company as the "measurement date" for accounting purposes preceded the appropriate measurement date.***
>
> ***In light of these findings by the Special Committee, Openwave re-measured certain stock option grants which resulted in additional non-cash charges for stock-based compensation and associated payroll tax expense for fiscal years 2000 through 2005, totaling approximately $182 million.*** The Company noted that $167 million, or 92%, of the total $182 million charge was related to fiscal 2001 ($135 million) and fiscal 2002 ($32 million).
>
> Openwave has not amended, and does not intend to amend, its previously filed annual reports on form 10-K or quarterly reports on form 10-Q for the periods affected by the restatements. The

> financial information that has been previously filed or otherwise reported for the periods from fiscal 1999 through fiscal 2005 is superseded by the information in the form 10-K for fiscal 2006. As a result, the financial statements and related financial information contained in such previously filed reports should no longer be relied upon. Additional details, including related disclosures, are available in the Company's form 10-K, filed today.

(Emphasis added).

C. THE RESTATEMENT

292. On December 1, 2006, Openwave filed its 2006 10-K. The Company's 2006 10-K was signed by Defendants Peterschmidt and Covert. The Company, in relevant part, detailed:

> In this Form 10-K, we are restating the consolidated balance sheet as of June 30, 2005 and the related consolidated statements of operations, stockholders' equity and comprehensive loss, and cash flows for each of the years in the two-year period ended June 30, 2005, and each of the quarters in the fiscal year 2005. Our decision to restate was based on the results of an independent review into our stock option accounting that was conducted under the direction of a special committee of the board of directors (the "Special Committee").
>
> As part of the restatement, we have also made changes to the balance sheet as of June 30, 2005 to adjust certain income tax assets and liabilities to correct errors identified in the fourth quarter of fiscal 2006, as well as certain deferred revenues and accrued liabilities to correct errors identified in fiscal year 2005 which were not material to the statement of operations for any prior fiscal year. These changes are described in more detail below. We are also restating the pro forma disclosures for stock-based compensation expense required under Statement of Financial Accounting Standards No. 123, *Accounting for Stock-Based Compensation,* (FAS 123) included in Note 2 to the consolidated financial statements.
>
> This Form 10-K also reflects the restatement of (i) "Selected Consolidated Financial Data" for the fiscal years ended June 30, 2005, 2004, 2003, and 2002 in Item 6 and (ii) "Management's Discussion and Analysis of Financial Condition and Results of Operations in Item 7 for the years ended June 30, 2005 and 2004.

Previously filed annual reports on Form 10-K and quarterly reports on Form 10-Q affected by the restatements have not been amended and, as such, should not be relied upon.

293. With regard to the Special Committees' findings following the internal investigation of the Company's stock option practices, the Company, in relevant part, revealed:

> The Special Committee reviewed all grants of options or restricted stock made by the Company from our predecessor company Phone.com's IPO in June 1999 to September 2006 . . . Over 56 million shares granted were reviewed, ***of which approximately 33% were remeasured based upon the review.*** The review included an extensive examination of our accounting policies, accounting records, supporting documentation, and e-mail communications, as well as interviews with numerous current and former employees and current and former members of our board of directors.
>
> * * *
>
> [T]he Special Committee's review identified circumstances where the grant date used by us as the "measurement date" for accounting purposes (the "Record Date") preceded the appropriate measurement date, as defined in the accounting literature.
>
> - ***The Special Committee found evidence to conclude that there were deficiencies in the process by which many options were granted*** through Unanimous Written Consent ("UWC") by the Compensation Committee of the Board of Directors. The Record Date, which was based upon the typed "effective date", of these grants was on or before the date distributed but often preceded the return of the signed consents and formal approval by Compensation Committee members. ... ***Accordingly, the Special Committee found that the appropriate measurement date likely differed from the Record Date of grants authorized through UWC of the Compensation Committee*** unless conclusive evidence was available to establish that the Record Date was appropriate.
>
> - ***The Special Committee found evidence to conclude that there were deficiencies in the process by which certain options were granted by the Stock Option Committee ("SOC"), a one-person committee with authority delegated from the Compensation Committee, consisting of the Company's CEO.*** For certain grants, the SOC or an executive on his behalf, communicated to the Stock Administration group that the SOC

> had decided to grant stock options more than one day after the Record Date... ***[T]he Special Committee concluded that the appropriate measurement date likely differed from the Record Date for SOC option grants during this timeframe unless conclusive evidence was available to establish that the Record Date was appropriate.***

(Emphasis added).

D. THE RESTATEMENT'S IMPACT ON FINANCIAL RESTATEMENTS

294. The Restatement had a significant and material effect on Openwave's financials. With regard to the impact that such discoveries by the Special Committee would have on the Company's financial condition, the Company stated:

> As a result of the findings of the Special Committee, we remeasured certain stock option grants which resulted in additional stock-based compensation and associated payroll tax expense for fiscal years 2000 through 2005. This expense is the result of options granted with an intrinsic value totaling $197.4 million. Intrinsic value is the quoted market price of the stock at the measurement date less the strike price the recipient would need to pay to exercise the option. The impact of amortizing the intrinsic value over the related service periods, after accounting for forfeitures, and the associated payroll tax expense is as follows:

Fiscal Year	Additional Expense ($000's)
2000	3,069
2001	135,414
2002	31,652
2003	10,318
2004	603
2005	645
Total for all fiscal years	**181,701**

> The impact to fiscal year 2001 reflects the large number of options remeasured with a substantial positive intrinsic value due to the increase in the stock price during that timeframe. Additionally, many options granted in fiscal year 2001 were cancelled during the same fiscal year with an agreement to reissue options six to seven months later with an exercise price equal to the stock price on the replacement grant date. The cancellation resulted in previously

> deferred compensation being recognized in an accelerated manner in fiscal 2001 as the cancellation was not as a result of failure of the employee to meet the service obligation.
>
> The impact of the remeasured grants to previously disclosed Pro forma expense under FAS 123 is as follows:

Fiscal Year	(Reduction) Addition to Pro-Forma Expanse ($000's)
2000	(5,057)
2001	40,317
2002	36,954
2003	115,631
2004	5,814
2005	(304)
Total for all fiscal years	**93,355**

* * *

> - **Grants remeasured using the date such grants were entered into the options database accounted for approximately 16% of the $181.7 million incremental expense.**

(Emphasis added).

295. With regard to the Restatement of its prior financial results, and the impact that this would have on the Company, the Company stated:

> Because the prices at the originally stated grant dates were lower than the prices on the actual measurement dates, we recognized material amounts of stock-based compensation expense which were not accounted for in our previously issued financial statements. Accordingly, management concluded that our previously issued financial statements should no longer be relied upon.
>
> As a result of the Special Committee's review, as well as management's review of our historical financial statements, we have restated our financial results for fiscal years ended June 30, 1999 through 2005, including each of the quarters in fiscal year 2005.
>
> As a result of the events described above, we have become subject to the following significant risks, each of which could have a

> material adverse effect on our business, financial condition and results of operations.
>
> We face risks related to the SEC and US Attorney inquiries regarding our historic and current stock option grants and practices, which have required significant management time and attention, caused us to incur significant accounting and legal expense and could require us to pay fines or other penalties.
>
> * * *
>
> We have also incurred expenses relating to legal, accounting, tax and other professional services in connection with these matters and expect to continue to incur significant expenses in the future, which may adversely affect our results of operations and cash flows.

296. To further illustrate the financial impact that the Special Committees' findings would have on the Company's restated financial results, the Company provided the following chart illustrating the true financial effect:

Fiscal Year ended June 30,						
	2005 Restated	**2004 Restated**	**2003 Restated**	**2002 Restated**	**2001 Restated**	**2000 Restated**
Net loss	$(62,774)	$(30,454)	$(227,276)	$(1,292,410)	$(825,408)	$(291,326)
Add: Stock-based Compensation included in net loss, zero tax effect	5,780	3,706	13,999	46,518	146,385	13,253
Deduct:Stock-based compensation expense determined under the fair value method for all awards, zero tax effect	(26,936)	(54,047)	(132,737)	(271,580)	(503,420)	$(114,602)
Pro-forma net Loss	$(83,930)	$(80,795)	$(346,014)	$(1,517,472)	$(1,182,443)	$(392,675)
Basic and diluted net loss per share attributable to common stockholders						
As reported	$(0.94)	$(0.49)	$(3.83)	$(22.39)	$(14.97)	$(6.25)
Pro forma	$(1.26)	$(1.30)	$(5.83)	$(26.29)	$(21.44)	$(8.42)

(Internal footnotes omitted).

XIII. ADDITIONAL FALSE AND MISLEADING STATEMENTS AND OMISSIONS

A. DEFENDANTS CERTIFIED FALSE AND MISLEADING FINANCIAL RESULTS

297. Defendants Black, Covert, Listwin, Pace and Peterschmidt knowingly certified false and misleading financial statements. Defendants Black, Covert, Listwin, Pace and Peterschmidt certified the following financial statements during the Class Period:

Type of Filing	Filing Period	Filing Date	Signed/Certified by CEO	Signed/ Certified by CFO/CAO[2]
10-Q	Quarterly period ended 12/31/2001	2/12/2002	-	Alan Black
10-Q	Quarterly period ended 3/31/2002	5/15/2002	-	Alan Black
10-K	Fiscal year ended 6/30/2002	9/30/2002	Donald Listwin	Alan Black
10-Q	Quarterly period ended 9/30/2002	11/14/2002	Donald Listwin	Alan Black
10-Q	Quarterly period ended 12/31/2002	2/14/2003	Donald Listwin	Alan Black
10-Q/A	Quarterly period ended 12/31/2002	2/14/2003	Donald Listwin	Alan Black
10-Q	Quarterly period ended 3/31/2003	5/14/2003	Donald Listwin	Joshua Pace (CAO)
10-K	Fiscal year ended 6/30/2003	8/28/2003	Donald Listwin	Joshua Pace (CAO)
10-Q	Quarterly period ended 9/30/2003	11/14/2003	Donald Listwin	Joshua Pace (CAO)
10-Q	Quarterly period ended 12/31/2002	2/17/2004	Donald Listwin	Joshua Pace (CAO)
10-Q	Quarterly period ended 3/31/2004	5/12/2004	Donald Listwin	Joshua Pace (CAO)
10-K	Fiscal year ended 6/30/2004	9/13/2004	Donald Listwin	Joshua Pace
10-Q	Quarterly period ended 9/30/2004	11/09/2004	David C. Peterschmidt	Joshua Pace

[2] In the years where Joshua Pace signed and certified Openwave's financial statements as the Company's CAO, the Company did not have an individual filling the position of CFO.

10-Q	Quarterly period ended 12/31/2004	2/09/2005	David C. Peterschmidt	Joshua Pace
10-Q	Quarterly period ended 3/31/2005	5/09/2005	David C. Peterschmidt	Joshua Pace
10-K	Fiscal year ended 6/30/2005	9/12/2005	David C. Peterschmidt	Joshua Pace
10-K/A	Fiscal year ended 6/30/2005	9/13/2005	David C. Peterschmidt	Joshua Pace
10-Q	Quarterly period ended 9/30/2005	11/09/2005	David C. Peterschmidt	Harold L. Covert
10-Q	Quarterly period ended 12/31/2005	2/08/2006	David C. Peterschmidt	Harold L. Covert
10-Q	Quarterly period ended 3/31/2006	5/10/2006	David C. Peterschmidt	Harold L. Covert

298. These financial statements were not in accordance with GAAP and SEC rules. Section 302 of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") and SEC Rules 13a-14(a) and 15d-14(a) of the Exchange Act required Defendants Listwin and Peterschmidt as the CEO, and Defendants Black, Covert, Listwin, Pace and Peterschmidt as the CFO, to certify to the SEC and investors both the fairness of the financial information in each quarterly and annual report. In their certifications, Defendants Black, Covert, Listwin, Pace and Peterschmidt stated that the Company's financial reports did not contain any untrue statement of material fact or omit to state a material fact. In addition, Defendants Black, Covert, Listwin, Pace and Peterschmidt stated that Openwave had established and maintained disclosure controls and procedures sufficient to ensure that the financial and non-financial information required to be disclosed in SEC reports was recorded, processed, summarized and reported within the specified time periods.

299. Defendants Black, Covert, Listwin, Pace and Peterschmidt knowingly certified misleading and inaccurate financial statements that were not in accordance with GAAP and SEC rules. In accordance with §906 of Sarbanes-Oxley and 18 U.S.C. §1350, Defendants Black, Covert, Listwin, Pace and Peterschmidt were required to certify each periodic report that included financial statements. Their signed certifications falsely stated that: (i) the report fully complied with the requirements of §13(a) or §15(d) of the Exchange Act; and (ii) the information contained in the report fairly presented, in all material respects, the financial condition and results of operations of Openwave.

300. On the dates noted in the Schedule of Certified Financial Statements at ¶295 above, Defendants Black, Covert, Listwin, Pace and Peterschmidt signed and filed with the SEC certifications under SEC Rules 13a-14(a)/15d-14(a) of the Exchange Act and §906 of Sarbanes-Oxley attesting to the accuracy and truthfulness of the corresponding Forms 10-K and 10-Q for Openwave. At the time, Defendants Black, Covert, Listwin, Pace and Peterschmidt signed these certifications, they knew or recklessly disregarded that they were false for the reasons alleged herein.

XIV. ADDITIONAL ALLEGATIONS OF SCIENTER

301. As alleged herein, the 10(b) Defendants, acted with *scienter* in that they (a) had access to all internal data concerning the Company's stock option plans; (b) directed and/or participated in establishing the terms of the option grants, including the choice of grant dates and exercise price; (c) knew or with deliberate recklessness disregarded that the public documents and statements issued or disseminated in the name of the Company were materially false, incomplete or misleading; (d) knew or with deliberate recklessness disregarded that such statements or documents would be issued or disseminated to the investing public; and (e) knowingly or with deliberate recklessness participated or

acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws.

302. Additional facts provide actual and strong circumstantial evidence of the Section 10(b) Defendants' *scienter* including: (a) the Company's concessions and admissions; (b) the Section 10(b) Defendants' roles and responsibilities for granting and administering option grants, including their specific attendance at meetings where options were backdated; (c) the Section 10(b) Defendants' desire to personally obtain greater compensation without public scrutiny; and (d) the pervasiveness and nature of the fraud.

A. THE COMPANY'S ADMISSIONS AND RECENT ACTIONS ESTABLISH DEFENDANTS' SCIENTER

303. Most notably, the Company has made admissions and taken actions that establish, without resort to circumstantial evidence, the scienter of the Section 10(b) Defendants:

(a) In the spring of 2006 and in its 2006 Form 10-K, the Company admitted that options were backdated. Indeed, in its 2006 Form 10-K, the Company explained that the Special Committee's review identified numerous circumstances where the grant date used by the Company as the measurement date used for accounting purposes preceded the appropriate measurement date.

(b) The Company's restated financials make clear that some backdating occurred after fiscal year 2002. In fact, the Company noted that $15 million of the restatement charge related to fiscal years 2003 through 2005. This is a tacit admission that some backdating occurred after 2002, which is after SOX changed the requirements for reporting option grants. After August 29, 2002, option grants had to be reported to the SEC within two days of the grant. The fact that the options misconduct occurred both before and after this SOX provision was enacted suggests a knowing violation of securities laws or at least severe recklessness.

(c) During the pendency of Special Committee's investigation, the Company announced the termination of Defendant Peters. Defendant Peters served as Openwave's General Counsel when the vast majority of the backdated options were granted, and was intimately involved with the approval of option grants during that time.

(d) During the pendency of the Special Committee's investigation, the Company demoted its COO, Defendant Snyder. Defendant Snyder served as the Company's COO when many of the backdated options were granted. In addition, Defendant Snyder received certain of the backdated options at issue here.

(e) Just three months after the completion of the Special Committee's investigation and the issuance of the Company's Restatement, Defendant Peterschmidt resigned as the President and CEO of the Company. Defendant Peterschmidt signed numerous of the Company's false and misleading Forms 10-K and certified the accuracy of the Company's financial statements issued during the Class Period.

B. DEFENDANTS' SPECIFIC PARTICIPATION IN THE BACKDATING ESTABLISHES THEIR SCIENTER

304. The Company also concluded that "there were deficiencies in the process by which many options were granted through Unanimous Written Consent ("UWC") by the Compensation Committee of the Board of Directors" and "there were deficiencies in the process by which certain options were granted by the Stock Option Committee…consisting of the Company's CEO." As described above, Defendants Listwin and Peterschmidt were the sole members of the Stock Option Committee during their respective tenures as CEO of Openwave.

Defendants Puckett, Denman, Hedfors and Verhalen were responsible for approving the grant dates and exercise prices of the vast majority of option grants during the Class Period.

305. In addition, as explained more fully below in Section X.C.1, Defendants Black, Solomon and Peters were intimately involved in the backdating of options.

306. As alleged above, the members of the Stock Option Committee and the Compensation Committee (Defendants Listwin, Peterschmidt, Puckett, Denman, Hedfors and Verhalen) and Defendants Black, Solomon and Peters each participated in the actual selection of backdated grant dates for the principal purpose of furthering the fraud.

C. DEFENDANTS' PERSONAL ENRICHMENT THROUGH LUCRATIVE STOCK OPTION GRANTS AND INSIDER TRADING SUPPORTS A FINDING OF SCIENTER

307. The Officer Defendants were motivated to commit the fraudulent scheme in order to reap significant personal profits. The Officer Defendants provided themselves with a direct form of compensation, which amounted to undisclosed and unaccounted for compensation in a number of ways.

308. First, the Officer Defendants each personally obtained backdated options. The following charts set forth the options granted to the Officer Defendants in calendar years 2000 through 2002 as reported in the Company's Proxy Statements and Forms 4 filed with the SEC. As Openwave's press release issued on December 1, 2002 makes clear, 92% of the total $182 million charge taken by Openwave related to fiscal years 2001 and 2002:

NAME	GRANT DATE	NUMBER OF OPTIONS GRANTED	EXERCISE PRICE	2-DAY RETURN
Mulica, Michael	1/3/2000	200,000	$120.50	12%
Mulica, Michael	5/3/2000	336,667	$75.31	4%
Mulica, Michael	7/19/2000	20,000	$1.00	19%
Black, Alan	7/13/2000	75,000	$84.94	4%
Peters, Stevens	7/13/2000	20,000	$84.94	4%

Yu, Francis	7/13/2000	9,000	$84.94	4%
Black, Alan	9/7/2000	100,000	$97.13	-5%
Listwin, Don	9/18/2000	6,000,000	$86.06	18%
Mulica, Michael	1/2/2001	100,000	$34.75	2%
Snyder, Allen	1/8/2001	300,000	$27.56	27%
Mulica, Michael	1/10/2001	300,000	$35.00	20%
Black, Alan	1/10/2001	75,000	$35.00	20%
Peters, Steven	1/10/2001	75,000	$35.00	20%
Yu, Francis	1/10/2001	12,000	$35.00	20%
Pace, Joshua A.	7/11/2001	75,000	$20.24	8%
Snyder, Allen	7/20/2001	50,000	$17.97	29%
Peters, Stevens	7/20/2001	50,000	$17.97	29%
Kennedy, Kevin	8/23/2001	2,000,000	$13.69	19%
Black, Alan	9/21/2001	425,000	$12.51	13%
Listwin, Don	10/30/2001	5,300,000	$7.81	3%
Kennedy, Kevin	10/30/2001	1,000,000	$7.81	3%
Snyder, Allen	10/30/2001	75,000	$7.81	3%
Peters, Steve	10/30/2001	150,000	$7.81	3%
Shantz, Jon	12/3/2001	380,000	$9.99	16%
Pace, Joshua A.	4/9/2002	40,000	$5.39	1%
Mulica, Michael	4/9/2002	927,497	$5.39	1%
Yu, Francis	4/9/2002	43,750	$5.39	1%
Snyder, Allen	4/9/2002	300,000	$5.39	1%
Black, Alan	7/15/2002	825,000	$1.61	1%
Kennedy, Kevin	7/15/2002	3,500,000	$1.61	1%
Peters, Steve	7/15/2002	250,000	$1.61	1%
Snyder, Allen	7/15/2002	295,000	$1.61	1%
Shantz, Jon	7/15/2002	530,000	$1.61	1%
Hose, David A.	8/12/2002	300,000	$1.04	-4%
Pace, Joshua A.	9/11/2002	45,750	$.91	-14%
Snyder, Allen	10/1/2002	700,000	$.62	-2%
Hose, David A.	10/1/2002	400,000	$.62	-2%
Mulica, Michael	10/10/2002	100,000	$.46	46%
Shantz, Jon.	10/22/2002	100,000	$.85	29%

309. While Openwave has not identified precisely which options were backdated, it has confirmed that options granted during this period had been retroactively priced for all employees who received such grants. Based on these admissions, there is a strong inference that all of the options granted to the Officer Defendants during the Class Period were backdated options.

310. Second, the Officer Defendants actually exercised backdated options, thereby cashing in on their fraudulent scheme.

311. Third, certain Defendants also sold 3,676,429 shares of stock during the Class Period for proceeds of $54.9 million:

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
Kennedy, Kevin	11/4/2003	25,000.00	$13.50	1,800.00	93.28%	$337,500.00
	11/5/2003	150,000.00	$13.59	1,800.00	98.81%	$2,038,245.00
	11/5/2003	25,000.00	$13.59	1,800.00	93.28%	$339,707.50
	1/6/2004	70,000.00	$12.00	1,800.00	97.49%	$840,000.00
	1/8/2004	60,000.00	$12.71	1,800.00	97.09%	$762,660.00
	2/3/2004	100,000.00	$14.40	1,800.00	98.23%	$1,439,800.00
	3/3/2004	100,001.00	$15.22	1,800.00	98.23%	$1,522,415.22
	4/5/2004	98,146.00	$13.42	1,800.00	98.20%	$1,316,952.47
	6/29/2004	97,222.00	$12.00	1,800.00	98.18%	$1,166,664.00
Total		**725,369.00**				**$9,763,944.19**
Listwin, Donald	12/1/2004	1,500,000.00	$13.16	807,009.00	65.02%	$19,740,000.00
	5/4/2005	55,000.00	$13.43	707,009.00	7.22%	$738,650.00
	5/4/2005	15,000.00	$13.36	707,009.00	2.08%	$200,400.00
	5/4/2005	15,000.00	$13.39	707,009.00	2.08%	$200,850.00
Total		**1,600,000.00**				**$21,080,900.00**
Pace, Joshua	11/6/2003	5,000.00	$13.81	29,166.00	14.63%	$69,050.00
	1/26/2004	1,778.00	$16.24	33,332.00	5.06%	$28,879.17
	8/2/2004	11,600.00	$11.30	53,332.00	17.86%	$131,080.00
	8/2/2004	3,400.00	$11.31	53,332.00	5.99%	$38,454.00
	11/24/2004	4,000.00	$13.70	45,332.00	8.11%	$54,800.00
	11/24/2004	4,000.00	$13.66	45,332.00	8.11%	$54,640.00
	2/15/2005	6,000.00	$13.45	37,332.00	13.85%	$80,700.00
	2/15/2005	2,000.00	$13.45	37,332.00	5.08%	$26,890.00
	5/16/2005	3,399.00	$14.02	125,933.00	2.63%	$47,653.98
	5/16/2005	2,000.00	$14.01	129,332.00	1.52%	$28,027.00
	5/16/2005	2,000.00	$14.02	129,332.00	1.52%	$28,036.00
	5/16/2005	2,000.00	$14.05	129,332.00	1.52%	$28,102.00
	5/16/2005	2,000.00	$14.07	129,332.00	1.52%	$28,133.00
	6/8/2005	2,000.00	$16.87	113,433.00	1.73%	$33,732.00
	6/8/2005	2,000.00	$16.88	113,433.00	1.73%	$33,760.00
	6/8/2005	2,000.00	$16.89	113,433.00	1.73%	$33,780.00
	6/8/2005	2,000.00	$16.90	113,433.00	1.73%	$33,790.00
	6/8/2005	2,000.00	$16.91	113,433.00	1.73%	$33,829.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	6/8/2005	2,000.00	$16.92	113,433.00	1.73%	$33,849.00
	6/8/2005	500	$16.85	113,433.00	0.44%	$8,425.00
	8/11/2005	3,800.00	$16.90	108,455.00	3.39%	$64,220.00
	8/11/2005	1,178.00	$16.91	108,455.00	1.07%	$19,919.98
	9/8/2005	2,900.00	$17.32	95,723.00	2.94%	$50,228.00
	9/8/2005	2,300.00	$17.35	95,723.00	2.35%	$39,905.00
	9/8/2005	2,200.00	$17.40	95,723.00	2.25%	$38,280.00
	9/8/2005	1,900.00	$17.41	95,723.00	1.95%	$33,079.00
	9/8/2005	1,800.00	$17.33	95,723.00	1.85%	$31,194.00
	9/8/2005	1,600.00	$17.45	95,723.00	1.64%	$27,920.00
	9/8/2005	1,500.00	$17.34	95,723.00	1.54%	$26,010.00
	9/8/2005	700	$17.31	95,723.00	0.73%	$12,117.00
	9/8/2005	600	$17.36	95,723.00	0.62%	$10,416.00
	9/8/2005	584	$17.46	95,723.00	0.61%	$10,196.64
	9/8/2005	400	$17.30	95,723.00	0.42%	$6,920.00
	9/8/2005	200	$17.39	95,723.00	0.21%	$3,478.00
	9/8/2005	100	$17.42	95,723.00	0.10%	$1,742.00
Total		**83,439.00**				**$1,231,235.77**
Peters, Steven	1/26/2004	8,333.00	$16.24	88,880.00	8.57%	$135,327.92
	1/27/2004	8,516.00	$16.66	88,880.00	8.74%	$141,901.26
	8/2/2004	33,333.00	$11.32	55,547.00	37.50%	$377,196.23
	5/6/2005	4,000.00	$14.12	182,213.00	2.15%	$56,480.00
	5/6/2005	3,600.00	$13.99	182,213.00	1.94%	$50,364.00
	5/6/2005	3,200.00	$14.03	182,213.00	1.73%	$44,896.00
	5/6/2005	3,200.00	$14.02	182,213.00	1.73%	$44,864.00
	5/6/2005	2,500.00	$13.98	182,213.00	1.35%	$34,950.00
	5/6/2005	2,400.00	$14.11	182,213.00	1.30%	$33,864.00
	5/6/2005	1,900.00	$14.14	182,213.00	1.03%	$26,866.00
	5/6/2005	1,500.00	$14.15	182,213.00	0.82%	$21,225.00
	5/6/2005	1,490.00	$14.17	182,213.00	0.81%	$21,113.30
	5/6/2005	1,300.00	$14.06	182,213.00	0.71%	$18,278.00
	5/6/2005	1,300.00	$14.04	182,213.00	0.71%	$18,252.00
	5/6/2005	1,300.00	$14.00	182,213.00	0.71%	$18,200.00
	5/6/2005	1,100.00	$14.01	182,213.00	0.60%	$15,411.00
	5/6/2005	1,100.00	$13.97	182,213.00	0.60%	$15,367.00
	5/6/2005	700	$14.09	182,213.00	0.38%	$9,863.00
	5/6/2005	600	$14.13	182,213.00	0.33%	$8,478.00
	5/6/2005	600	$14.07	182,213.00	0.33%	$8,442.00
	5/6/2005	400	$14.18	182,213.00	0.22%	$5,672.00
	5/6/2005	310	$14.19	182,213.00	0.17%	$4,398.90
	5/6/2005	300	$14.10	182,213.00	0.16%	$4,230.00
	5/6/2005	200	$14.05	182,213.00	0.11%	$2,810.00
	5/6/2005	200	$14.16	182,213.00	0.11%	$2,832.00
	5/6/2005	134	$13.96	182,213.00	0.07%	$1,870.64

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	8/10/2005	24,975.00	$17.00	182,213.00	12.05%	$424,575.00
	8/10/2005	13,020.00	$17.01	182,213.00	6.67%	$221,470.20
	8/10/2005	7,755.00	$17.02	182,213.00	4.08%	$131,990.10
	8/10/2005	3,753.00	$17.05	182,213.00	2.02%	$63,988.65
	8/10/2005	350	$17.03	182,213.00	0.19%	$5,960.50
	8/10/2005	147	$17.04	182,213.00	0.08%	$2,504.88
	8/31/2005	40,000.00	$17.53	142,213.00	21.95%	$701,120.00
	3/8/2006	6,800.00	$18.24	125,325.00	5.15%	$124,032.00
	3/8/2006	6,800.00	$18.24	125,325.00	5.15%	$124,032.00
	3/8/2006	5,400.00	$18.23	125,325.00	4.13%	$98,442.00
	3/8/2006	5,400.00	$18.23	125,325.00	4.13%	$98,442.00
	3/8/2006	2,600.00	$18.25	125,325.00	2.03%	$47,450.00
	3/8/2006	2,600.00	$18.25	125,325.00	2.03%	$47,450.00
	3/8/2006	900	$18.21	125,325.00	0.71%	$16,389.00
	3/8/2006	900	$18.21	125,325.00	0.71%	$16,389.00
	3/8/2006	800	$18.26	125,325.00	0.63%	$14,608.00
	3/8/2006	800	$18.26	125,325.00	0.63%	$14,608.00
	3/8/2006	200	$18.22	125,325.00	0.16%	$3,644.00
	3/8/2006	200	$18.22	125,325.00	0.16%	$3,644.00
	3/8/2006	188	$18.28	125,325.00	0.15%	$3,436.64
	3/8/2006	188	$18.28	125,325.00	0.15%	$3,436.64
	3/13/2006	24,400.00	$20.11	125,325.00	16.30%	$490,684.00
	3/13/2006	12,000.00	$20.17	125,325.00	8.74%	$242,040.00
	3/13/2006	11,600.00	$20.10	125,325.00	8.47%	$233,160.00
	3/13/2006	6,900.00	$20.16	125,325.00	5.22%	$139,104.00
	3/13/2006	5,873.00	$20.13	125,325.00	4.48%	$118,223.49
	3/13/2006	4,900.00	$20.08	125,325.00	3.76%	$98,392.00
	3/13/2006	2,243.00	$20.09	125,325.00	1.76%	$45,061.87
	3/13/2006	2,227.00	$20.13	125,325.00	1.75%	$44,829.51
	3/13/2006	1,870.00	$20.12	125,325.00	1.47%	$37,624.40
	3/13/2006	986	$20.05	125,325.00	0.78%	$19,769.30
	3/13/2006	400	$20.14	125,325.00	0.32%	$8,056.00
	3/13/2006	106	$20.06	125,325.00	0.08%	$2,126.36
	3/13/2006	1	$20.05	125,325.00	0.00%	$20.05
	8/31/2006	4,600.00	$8.20	105,325.00	4.18%	$37,720.00
	8/31/2006	2,800.00	$8.23	105,325.00	2.59%	$23,044.00
	8/31/2006	1,900.00	$8.14	105,325.00	1.77%	$15,466.00
	8/31/2006	1,900.00	$8.22	105,325.00	1.77%	$15,618.00
	8/31/2006	1,600.00	$8.27	105,325.00	1.50%	$13,232.00
	8/31/2006	1,200.00	$8.12	105,325.00	1.13%	$9,744.00
	8/31/2006	1,100.00	$8.10	105,325.00	1.03%	$8,910.00
	8/31/2006	1,100.00	$8.17	105,325.00	1.03%	$8,987.00
	8/31/2006	1,000.00	$8.26	105,325.00	0.94%	$8,260.00
	8/31/2006	900	$8.16	105,325.00	0.85%	$7,344.00
	8/31/2006	700	$8.18	105,325.00	0.66%	$5,726.00
	8/31/2006	500	$8.25	105,325.00	0.47%	$4,125.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	8/31/2006	400	$8.21	105,325.00	0.38%	$3,284.00
	8/31/2006	300	$8.24	105,325.00	0.28%	$2,472.00
Total		**300,798.00**				**$4,933,787.84**
Peterschmidt, David	11/3/2005	7,000.00	$17.45	318,750.00	2.15%	$122,150.00
	11/3/2005	4,000.00	$17.43	318,750.00	1.24%	$69,720.00
	11/3/2005	3,821.00	$17.62	318,750.00	1.18%	$67,326.02
	11/3/2005	3,000.00	$17.85	318,750.00	0.93%	$53,550.00
	11/3/2005	3,000.00	$17.58	318,750.00	0.93%	$52,740.00
	11/3/2005	2,250.00	$17.40	318,750.00	0.70%	$39,150.00
	11/3/2005	2,000.00	$17.55	318,750.00	0.62%	$35,100.00
	11/3/2005	1,857.00	$17.50	318,750.00	0.58%	$32,497.50
	11/3/2005	1,570.00	$17.75	318,750.00	0.49%	$27,867.50
	11/3/2005	1,239.00	$17.47	318,750.00	0.39%	$21,645.33
	11/3/2005	1,000.00	$17.65	318,750.00	0.31%	$17,650.00
	11/3/2005	191	$17.48	318,750.00	0.06%	$3,338.68
	11/3/2005	179	$17.63	318,750.00	0.06%	$3,155.77
	11/3/2005	143	$17.51	318,750.00	0.04%	$2,503.93
	11/21/2005	7,200.00	$17.60	313,750.00	2.24%	$126,720.00
	11/21/2005	3,400.00	$17.56	313,750.00	1.07%	$59,704.00
	11/21/2005	2,400.00	$17.50	313,750.00	0.76%	$42,000.00
	11/21/2005	2,400.00	$17.65	313,750.00	0.76%	$42,360.00
	11/21/2005	1,800.00	$17.70	313,750.00	0.57%	$31,860.00
	11/21/2005	1,400.00	$17.56	313,750.00	0.44%	$24,584.00
	11/21/2005	1,200.00	$17.54	313,750.00	0.38%	$21,048.00
	11/21/2005	1,200.00	$17.58	313,750.00	0.38%	$21,096.00
	11/21/2005	1,200.00	$17.63	313,750.00	0.38%	$21,156.00
	11/21/2005	1,200.00	$17.66	313,750.00	0.38%	$21,192.00
	11/21/2005	1,200.00	$17.80	313,750.00	0.38%	$21,360.00
	11/21/2005	400	$17.72	313,750.00	0.13%	$7,088.00
	5/22/2006	40,000.00	$15.00	303,750.00	11.64%	$600,000.00
	5/22/2006	10,000.00	$15.00	303,750.00	3.19%	$150,000.00
Total		**106,250.00**				**$1,738,562.73**
Puckett, M.	11/15/2004	11,666.00	$14.47	8,052.00	59.16%	$168,807.02
	11/15/2004	5,000.00	$14.47	8,052.00	38.31%	$72,350.00
	11/15/2004	500	$14.48	8,052.00	5.85%	$7,240.00
Total		**17,166.00**				**$248,397.02**
Snyder, Allen	11/28/2003	642	$12.04	117,661.00	0.54%	$7,729.68
	12/29/2003	300	$11.27	117,198.00	0.26%	$3,381.30
	12/29/2003	163	$11.27	117,198.00	0.14%	$1,837.01

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	1/27/2004	463	$16.61	133,401.00	0.35%	$7,690.43
	3/1/2004	925	$15.32	132,476.00	0.69%	$14,171.00
	3/29/2004	926	$13.68	131,550.00	0.70%	$12,667.68
	4/27/2004	926	$10.92	130,624.00	0.70%	$10,111.92
	5/28/2004	426	$10.90	129,697.00	0.33%	$4,643.40
	5/28/2004	301	$10.91	129,697.00	0.23%	$3,283.91
	5/28/2004	200	$10.94	129,697.00	0.15%	$2,188.00
	6/28/2004	927	$11.43	128,770.00	0.71%	$10,595.61
	7/28/2004	726	$10.16	127,844.00	0.56%	$7,376.16
	7/28/2004	200	$10.18	127,844.00	0.16%	$2,036.00
	8/30/2004	800	$9.33	126,919.00	0.63%	$7,464.00
	8/30/2004	100	$9.32	126,919.00	0.08%	$932.00
	8/30/2004	25	$9.31	126,919.00	0.02%	$232.75
	9/28/2004	926	$8.19	125,993.00	0.73%	$7,583.94
	10/28/2004	926	$10.87	285,067.00	0.32%	$10,065.62
	11/30/2004	925	$13.08	284,142.00	0.32%	$12,099.00
	12/28/2004	600	$15.55	283,216.00	0.21%	$9,330.00
	12/28/2004	300	$15.54	283,216.00	0.11%	$4,662.00
	12/28/2004	26	$15.52	283,216.00	0.01%	$403.52
	1/28/2005	926	$13.91	282,290.00	0.33%	$12,880.66
	2/16/2005	10,000.00	$13.69	282,290.00	3.42%	$136,900.00
	3/1/2005	926	$13.05	281,364.00	0.33%	$12,084.30
	3/16/2005	10,000.00	$11.95	291,364.00	3.32%	$119,500.00
	3/28/2005	926	$11.55	290,438.00	0.32%	$10,695.30
	4/20/2005	10,000.00	$11.98	290,438.00	3.33%	$119,800.00
	4/28/2005	926	$13.13	289,512.00	0.32%	$12,158.38
	5/18/2005	10,000.00	$14.03	289,512.00	3.34%	$140,300.00
	5/31/2005	925	$15.44	288,587.00	0.32%	$14,282.00
	6/15/2005	4,000.00	$15.65	288,587.00	1.37%	$62,600.00
	6/15/2005	4,000.00	$15.66	288,587.00	1.37%	$62,648.00
	6/15/2005	4,000.00	$15.70	288,587.00	1.37%	$62,800.00
	6/15/2005	2,000.00	$15.68	288,587.00	0.69%	$31,363.00
	6/15/2005	2,000.00	$15.69	288,587.00	0.69%	$31,376.00
	6/15/2005	2,000.00	$15.71	288,587.00	0.69%	$31,420.00
	6/15/2005	2,000.00	$15.72	288,587.00	0.69%	$31,441.00
	6/28/2005	927	$16.45	287,660.00	0.32%	$15,249.15
	7/20/2005	2,000.00	$18.52	287,660.00	0.69%	$37,044.00
	7/20/2005	2,000.00	$18.53	287,660.00	0.69%	$37,054.00
	7/20/2005	2,000.00	$18.53	287,660.00	0.69%	$37,060.00
	7/20/2005	2,000.00	$18.54	287,660.00	0.69%	$37,071.00
	7/20/2005	2,000.00	$18.54	287,660.00	0.69%	$37,076.00
	7/20/2005	2,000.00	$18.54	287,660.00	0.69%	$37,082.00
	7/20/2005	2,000.00	$18.58	287,660.00	0.69%	$37,159.20
	7/20/2005	2,000.00	$18.63	287,660.00	0.69%	$37,268.00
	7/20/2005	2,000.00	$18.66	287,660.00	0.69%	$37,316.00
	7/20/2005	1,000.00	$18.52	287,660.00	0.35%	$18,520.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	7/20/2005	1,000.00	$18.55	287,660.00	0.35%	$18,550.00
	7/28/2005	926	$18.30	286,734.00	0.32%	$16,945.80
	8/17/2005	2,000.00	$17.30	286,734.00	0.69%	$34,598.00
	8/17/2005	2,000.00	$17.30	286,734.00	0.69%	$34,605.00
	8/17/2005	2,000.00	$17.34	286,734.00	0.69%	$34,688.00
	8/17/2005	2,000.00	$17.35	286,734.00	0.69%	$34,690.00
	8/17/2005	2,000.00	$17.35	286,734.00	0.69%	$34,704.00
	8/17/2005	2,000.00	$17.40	286,734.00	0.69%	$34,809.60
	8/17/2005	2,000.00	$17.30	286,734.00	0.69%	$34,593.00
	8/17/2005	2,000.00	$17.38	286,734.00	0.69%	$34,763.00
	8/17/2005	1,900.00	$17.36	286,734.00	0.66%	$32,985.14
	8/17/2005	1,500.00	$17.45	286,734.00	0.52%	$26,174.10
	8/17/2005	600	$17.40	286,734.00	0.21%	$10,440.00
	8/29/2005	925	$17.54	285,809.00	0.32%	$16,224.50
	8/31/2005	20,000.00	$17.44	265,809.00	7.00%	$348,700.00
	9/21/2005	1,200.00	$18.50	274,709.00	0.43%	$22,200.00
	9/21/2005	1,200.00	$19.35	265,808.00	0.45%	$23,220.00
	9/21/2005	800	$18.61	274,709.00	0.29%	$14,888.00
	9/21/2005	700	$18.51	274,709.00	0.25%	$12,957.00
	9/21/2005	700	$18.81	274,709.00	0.25%	$13,167.00
	9/21/2005	700	$19.37	265,808.00	0.26%	$13,559.00
	9/21/2005	600	$18.49	274,709.00	0.22%	$11,094.00
	9/21/2005	600	$18.67	274,709.00	0.22%	$11,202.00
	9/21/2005	600	$18.68	274,709.00	0.22%	$11,208.00
	9/21/2005	600	$19.21	265,808.00	0.23%	$11,526.00
	9/21/2005	600	$19.24	265,808.00	0.23%	$11,544.00
	9/21/2005	600	$19.26	265,808.00	0.23%	$11,556.00
	9/21/2005	500	$18.62	274,709.00	0.18%	$9,310.00
	9/21/2005	500	$18.63	274,709.00	0.18%	$9,315.00
	9/21/2005	500	$18.64	274,709.00	0.18%	$9,320.00
	9/21/2005	500	$19.29	265,808.00	0.19%	$9,645.00
	9/21/2005	500	$19.30	265,808.00	0.19%	$9,650.00
	9/21/2005	400	$18.52	274,709.00	0.15%	$7,408.00
	9/21/2005	400	$18.60	274,709.00	0.15%	$7,440.00
	9/21/2005	400	$18.65	274,709.00	0.15%	$7,460.00
	9/21/2005	400	$18.85	274,709.00	0.15%	$7,540.00
	9/21/2005	400	$18.86	274,709.00	0.15%	$7,544.00
	9/21/2005	400	$19.17	265,808.00	0.15%	$7,668.00
	9/21/2005	400	$19.34	265,808.00	0.15%	$7,736.00
	9/21/2005	400	$19.36	265,808.00	0.15%	$7,744.00
	9/21/2005	400	$19.43	265,808.00	0.15%	$7,772.00
	9/21/2005	324	$19.32	265,808.00	0.12%	$6,259.68
	9/21/2005	300	$18.69	274,709.00	0.11%	$5,607.00
	9/21/2005	300	$19.00	265,808.00	0.11%	$5,700.00
	9/21/2005	300	$19.20	265,808.00	0.11%	$5,760.00
	9/21/2005	246	$19.33	265,808.00	0.09%	$4,755.18

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	9/21/2005	200	$18.47	274,709.00	0.07%	$3,694.00
	9/21/2005	200	$18.56	274,709.00	0.07%	$3,712.00
	9/21/2005	200	$18.73	274,709.00	0.07%	$3,746.00
	9/21/2005	200	$18.74	274,709.00	0.07%	$3,748.00
	9/21/2005	200	$18.84	274,709.00	0.07%	$3,768.00
	9/21/2005	200	$18.93	274,709.00	0.07%	$3,786.00
	9/21/2005	200	$18.83	274,709.00	0.07%	$3,766.00
	9/21/2005	200	$18.77	274,709.00	0.07%	$3,754.00
	9/21/2005	200	$19.08	265,808.00	0.08%	$3,816.00
	9/21/2005	200	$19.16	265,808.00	0.08%	$3,832.00
	9/21/2005	200	$19.41	265,808.00	0.08%	$3,882.00
	9/21/2005	176	$19.31	265,808.00	0.07%	$3,398.56
	9/21/2005	160	$19.27	265,808.00	0.06%	$3,083.20
	9/21/2005	155	$19.28	265,808.00	0.06%	$2,988.40
	9/21/2005	140	$19.30	265,808.00	0.05%	$2,702.50
	9/21/2005	100	$18.48	274,709.00	0.04%	$1,848.00
	9/21/2005	100	$18.57	274,709.00	0.04%	$1,857.00
	9/21/2005	100	$18.58	274,709.00	0.04%	$1,858.00
	9/21/2005	100	$18.72	274,709.00	0.04%	$1,872.00
	9/21/2005	100	$18.99	274,709.00	0.04%	$1,899.00
	9/21/2005	100	$19.33	265,808.00	0.04%	$1,932.98
	9/21/2005	100	$19.34	265,808.00	0.04%	$1,933.86
	9/28/2005	926	$18.85	264,882.00	0.35%	$17,455.10
	10/19/2005	1,200.00	$15.20	274,582.00	0.44%	$18,240.00
	10/19/2005	1,000.00	$15.27	274,582.00	0.36%	$15,270.00
	10/19/2005	1,000.00	$15.49	265,382.00	0.38%	$15,490.00
	10/19/2005	900	$15.17	274,582.00	0.33%	$13,653.00
	10/19/2005	700	$15.75	265,382.00	0.26%	$11,025.00
	10/19/2005	600	$15.10	274,582.00	0.22%	$9,060.00
	10/19/2005	600	$15.31	274,582.00	0.22%	$9,186.00
	10/19/2005	600	$15.46	265,382.00	0.23%	$9,276.00
	10/19/2005	600	$15.47	265,382.00	0.23%	$9,282.00
	10/19/2005	526	$15.45	265,382.00	0.20%	$8,126.70
	10/19/2005	500	$15.29	274,582.00	0.18%	$7,645.00
	10/19/2005	500	$15.34	274,582.00	0.18%	$7,670.00
	10/19/2005	500	$15.77	265,382.00	0.19%	$7,885.00
	10/19/2005	474	$15.44	265,382.00	0.18%	$7,318.56
	10/19/2005	400	$15.08	274,582.00	0.15%	$6,032.00
	10/19/2005	400	$15.09	274,582.00	0.15%	$6,036.00
	10/19/2005	400	$15.14	274,582.00	0.15%	$6,054.36
	10/19/2005	400	$15.19	274,582.00	0.15%	$6,076.00
	10/19/2005	400	$15.28	274,582.00	0.15%	$6,112.00
	10/19/2005	400	$15.15	274,582.00	0.15%	$6,060.00
	10/19/2005	400	$15.57	265,382.00	0.15%	$6,228.00
	10/19/2005	400	$15.74	265,382.00	0.15%	$6,296.00
	10/19/2005	300	$15.13	274,582.00	0.11%	$4,539.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	10/19/2005	300	$15.60	265,382.00	0.11%	$4,680.00
	10/19/2005	300	$15.73	265,382.00	0.11%	$4,719.00
	10/19/2005	300	$15.78	265,382.00	0.11%	$4,734.00
	10/19/2005	300	$16.00	265,382.00	0.11%	$4,800.00
	10/19/2005	300	$16.03	264,882.00	0.11%	$4,809.00
	10/19/2005	200	$15.07	274,582.00	0.07%	$3,014.00
	10/19/2005	200	$15.12	274,582.00	0.07%	$3,024.00
	10/19/2005	200	$15.14	274,582.00	0.07%	$3,028.00
	10/19/2005	200	$15.18	274,582.00	0.07%	$3,036.00
	10/19/2005	200	$15.25	274,582.00	0.07%	$3,050.00
	10/19/2005	200	$15.30	274,582.00	0.07%	$3,060.00
	10/19/2005	200	$15.16	274,582.00	0.07%	$3,032.00
	10/19/2005	200	$15.39	265,382.00	0.08%	$3,078.00
	10/19/2005	200	$15.40	265,382.00	0.08%	$3,080.00
	10/19/2005	200	$15.48	265,382.00	0.08%	$3,096.00
	10/19/2005	200	$15.58	265,382.00	0.08%	$3,116.00
	10/19/2005	200	$15.64	265,382.00	0.08%	$3,128.00
	10/19/2005	200	$15.72	265,382.00	0.08%	$3,144.00
	10/19/2005	200	$15.76	265,382.00	0.08%	$3,152.00
	10/19/2005	200	$15.80	265,382.00	0.08%	$3,160.00
	10/19/2005	200	$15.93	265,382.00	0.08%	$3,186.00
	10/19/2005	200	$15.94	265,382.00	0.08%	$3,188.00
	10/19/2005	200	$15.99	265,382.00	0.08%	$3,198.00
	10/19/2005	174	$15.24	274,582.00	0.06%	$2,651.76
	10/19/2005	126	$15.11	274,582.00	0.05%	$1,903.86
	10/19/2005	100	$15.21	274,582.00	0.04%	$1,521.00
	10/19/2005	100	$15.22	274,582.00	0.04%	$1,522.00
	10/19/2005	100	$15.26	274,582.00	0.04%	$1,526.00
	10/19/2005	100	$15.32	274,582.00	0.04%	$1,532.00
	10/19/2005	100	$15.36	274,582.00	0.04%	$1,536.00
	10/19/2005	100	$15.37	274,582.00	0.04%	$1,537.00
	10/19/2005	100	$15.41	265,382.00	0.04%	$1,541.00
	10/19/2005	100	$15.42	265,382.00	0.04%	$1,542.00
	10/19/2005	100	$15.66	265,382.00	0.04%	$1,566.00
	10/19/2005	100	$15.81	265,382.00	0.04%	$1,581.00
	10/19/2005	100	$15.89	265,382.00	0.04%	$1,589.00
	10/19/2005	100	$15.98	265,382.00	0.04%	$1,598.00
	10/19/2005	100	$16.02	264,882.00	0.04%	$1,602.00
	10/19/2005	100	$16.06	264,882.00	0.04%	$1,606.00
	10/28/2005	926	$17.67	263,956.00	0.35%	$16,362.42
	11/16/2005	2,400.00	$17.06	263,956.00	0.90%	$40,944.00
	11/16/2005	2,200.00	$17.09	263,956.00	0.83%	$37,598.00
	11/16/2005	1,900.00	$17.04	263,956.00	0.71%	$32,376.00
	11/16/2005	1,500.00	$17.10	263,956.00	0.57%	$25,650.00
	11/16/2005	1,297.00	$17.12	263,956.00	0.49%	$22,204.64
	11/16/2005	1,200.00	$17.08	263,956.00	0.45%	$20,496.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	11/16/2005	1,200.00	$17.11	263,956.00	0.45%	$20,532.00
	11/16/2005	1,100.00	$17.01	263,956.00	0.42%	$18,711.00
	11/16/2005	1,000.00	$16.97	263,956.00	0.38%	$16,970.00
	11/16/2005	900	$17.03	263,956.00	0.34%	$15,327.00
	11/16/2005	703	$17.13	263,956.00	0.27%	$12,042.39
	11/16/2005	600	$16.96	263,956.00	0.23%	$10,176.00
	11/16/2005	600	$17.07	263,956.00	0.23%	$10,242.00
	11/16/2005	600	$17.16	263,956.00	0.23%	$10,296.00
	11/16/2005	500	$17.00	263,956.00	0.19%	$8,500.00
	11/16/2005	500	$17.05	263,956.00	0.19%	$8,525.00
	11/16/2005	400	$16.98	263,956.00	0.15%	$6,792.00
	11/16/2005	300	$16.95	263,956.00	0.11%	$5,085.00
	11/16/2005	300	$16.99	263,956.00	0.11%	$5,097.00
	11/16/2005	300	$17.14	263,956.00	0.11%	$5,142.00
	11/16/2005	200	$16.94	263,956.00	0.08%	$3,388.00
	11/16/2005	200	$17.02	263,956.00	0.08%	$3,404.00
	11/16/2005	100	$17.15	263,956.00	0.04%	$1,715.00
	11/28/2005	926	$17.30	263,030.00	0.35%	$16,019.80
	2/1/2006	83,642.00	$21.15	263,030.00	24.13%	$1,769,028.30
	2/1/2006	23,450.00	$21.40	263,030.00	8.19%	$501,830.00
	2/1/2006	15,050.00	$21.15	263,030.00	5.41%	$318,307.50
	2/1/2006	13,200.00	$21.18	263,030.00	4.78%	$279,576.00
	2/1/2006	10,200.00	$21.20	263,030.00	3.73%	$216,240.00
	2/1/2006	9,500.00	$21.45	263,030.00	3.49%	$203,775.00
	2/1/2006	9,099.00	$21.25	263,030.00	3.34%	$193,353.75
	2/1/2006	8,375.00	$21.35	263,030.00	3.09%	$178,806.25
	2/1/2006	6,505.00	$21.39	263,030.00	2.41%	$139,141.95
	2/1/2006	5,770.00	$21.17	263,030.00	2.15%	$122,150.90
	2/1/2006	5,676.00	$21.41	263,030.00	2.11%	$121,523.16
	2/1/2006	5,667.00	$21.24	263,030.00	2.11%	$120,367.08
	2/1/2006	5,600.00	$21.38	263,030.00	2.08%	$119,728.00
	2/1/2006	3,812.00	$21.16	263,030.00	1.43%	$80,661.92
	2/1/2006	3,800.00	$21.19	263,030.00	1.42%	$80,522.00
	2/1/2006	3,692.00	$21.26	263,030.00	1.38%	$78,491.92
	2/1/2006	3,200.00	$21.30	263,030.00	1.20%	$68,160.00
	2/1/2006	3,100.00	$21.36	263,030.00	1.16%	$66,216.00
	2/1/2006	3,000.00	$21.47	263,030.00	1.13%	$64,410.00
	2/1/2006	2,954.00	$21.34	263,030.00	1.11%	$63,038.36
	2/1/2006	2,942.00	$21.27	263,030.00	1.11%	$62,576.34
	2/1/2006	2,700.00	$21.37	263,030.00	1.02%	$57,699.00
	2/1/2006	2,680.00	$21.42	263,030.00	1.01%	$57,405.60
	2/1/2006	2,542.00	$21.28	263,030.00	0.96%	$54,093.76
	2/1/2006	1,843.00	$21.23	263,030.00	0.70%	$39,126.89
	2/1/2006	900	$21.22	263,030.00	0.34%	$19,098.00
	2/1/2006	608	$21.26	263,030.00	0.23%	$12,926.08
	2/1/2006	500	$21.43	263,030.00	0.19%	$10,715.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	2/1/2006	300	$21.21	263,030.00	0.11%	$6,363.00
	2/2/2006	20,216.00	$21.15	205,778.00	8.95%	$427,568.40
	2/2/2006	19,900.00	$21.24	263,030.00	7.03%	$422,676.00
	2/2/2006	11,178.00	$21.00	205,778.00	5.15%	$234,738.00
	2/2/2006	9,513.00	$20.83	205,778.00	4.42%	$198,155.79
	2/2/2006	8,800.00	$20.85	205,778.00	4.10%	$183,480.00
	2/2/2006	8,147.00	$20.86	205,778.00	3.81%	$169,946.42
	2/2/2006	7,321.00	$20.80	205,778.00	3.44%	$152,276.80
	2/2/2006	7,000.00	$21.20	263,030.00	2.59%	$148,400.00
	2/2/2006	6,471.00	$21.55	263,030.00	2.40%	$139,450.05
	2/2/2006	5,752.00	$20.85	205,778.00	2.72%	$119,929.20
	2/2/2006	5,266.00	$20.84	205,778.00	2.50%	$109,743.44
	2/2/2006	5,050.00	$20.86	205,778.00	2.40%	$105,343.00
	2/2/2006	4,900.00	$20.87	205,778.00	2.33%	$102,263.00
	2/2/2006	4,641.00	$21.15	205,778.00	2.21%	$98,157.15
	2/2/2006	4,072.00	$21.54	263,030.00	1.52%	$87,710.88
	2/2/2006	3,900.00	$20.86	205,778.00	1.86%	$81,354.00
	2/2/2006	2,499.00	$21.15	263,030.00	0.94%	$52,853.85
	2/2/2006	2,400.00	$20.90	205,778.00	1.15%	$50,160.00
	2/2/2006	2,200.00	$21.40	263,030.00	0.83%	$47,080.00
	2/2/2006	2,200.00	$21.21	263,030.00	0.83%	$46,662.00
	2/2/2006	2,117.00	$21.56	263,030.00	0.80%	$45,642.52
	2/2/2006	2,100.00	$20.90	205,778.00	1.01%	$43,890.00
	2/2/2006	2,078.00	$21.15	263,030.00	0.78%	$43,949.70
	2/2/2006	1,676.00	$20.87	205,778.00	0.81%	$34,978.12
	2/2/2006	1,667.00	$21.50	263,030.00	0.63%	$35,840.50
	2/2/2006	1,500.00	$21.47	263,030.00	0.57%	$32,205.00
	2/2/2006	1,481.00	$21.15	205,778.00	0.71%	$31,323.15
	2/2/2006	1,200.00	$21.18	263,030.00	0.45%	$25,416.00
	2/2/2006	1,000.00	$21.45	263,030.00	0.38%	$21,450.00
	2/2/2006	1,000.00	$21.26	263,030.00	0.38%	$21,260.00
	2/2/2006	928	$21.54	263,030.00	0.35%	$19,989.12
	2/2/2006	814	$20.81	205,778.00	0.39%	$16,939.34
	2/2/2006	773	$21.15	263,030.00	0.29%	$16,348.95
	2/2/2006	700	$21.25	263,030.00	0.27%	$14,875.00
	2/2/2006	600	$21.22	263,030.00	0.23%	$12,732.00
	2/2/2006	600	$20.88	205,778.00	0.29%	$12,528.00
	2/2/2006	524	$20.91	205,778.00	0.25%	$10,956.84
	2/2/2006	400	$21.16	263,030.00	0.15%	$8,464.00
	2/2/2006	300	$21.46	263,030.00	0.11%	$6,438.00
	2/2/2006	300	$20.92	205,778.00	0.15%	$6,276.00
	2/2/2006	200	$21.60	263,030.00	0.08%	$4,320.00
	2/2/2006	200	$21.19	263,030.00	0.08%	$4,238.00
	2/2/2006	200	$20.84	205,778.00	0.10%	$4,167.00
	2/2/2006	185	$21.15	205,778.00	0.09%	$3,912.75
	2/2/2006	183	$21.56	263,030.00	0.07%	$3,945.48

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	2/2/2006	100	$21.57	263,030.00	0.04%	$2,157.00
	2/2/2006	84	$21.48	263,030.00	0.03%	$1,804.32
	2/3/2006	22,469.00	$20.80	141,178.00	13.73%	$467,355.20
	2/3/2006	13,993.00	$20.81	141,178.00	9.02%	$291,194.33
	2/3/2006	12,000.00	$21.03	205,778.00	5.51%	$252,360.00
	2/3/2006	6,638.00	$20.82	141,178.00	4.49%	$138,203.16
	2/3/2006	3,700.00	$20.74	141,178.00	2.55%	$76,738.00
	2/3/2006	2,638.00	$21.01	205,778.00	1.27%	$55,424.38
	2/3/2006	2,200.00	$21.02	205,778.00	1.06%	$46,244.00
	2/3/2006	2,100.00	$20.84	141,178.00	1.47%	$43,764.00
	2/3/2006	2,100.00	$20.70	141,178.00	1.47%	$43,470.00
	2/3/2006	1,800.00	$20.89	141,178.00	1.26%	$37,602.00
	2/3/2006	1,700.00	$20.88	141,178.00	1.19%	$35,496.00
	2/3/2006	1,200.00	$20.87	141,178.00	0.84%	$25,044.00
	2/3/2006	1,200.00	$20.75	141,178.00	0.84%	$24,900.00
	2/3/2006	1,000.00	$20.93	141,178.00	0.70%	$20,930.00
	2/3/2006	1,000.00	$20.83	141,178.00	0.70%	$20,830.00
	2/3/2006	900	$20.78	141,178.00	0.63%	$18,702.00
	2/3/2006	900	$20.71	141,178.00	0.63%	$18,639.00
	2/3/2006	900	$20.69	141,178.00	0.63%	$18,621.00
	2/3/2006	600	$20.68	141,178.00	0.42%	$12,408.00
	2/3/2006	400	$20.77	141,178.00	0.28%	$8,308.00
	2/3/2006	400	$20.73	141,178.00	0.28%	$8,292.00
	2/3/2006	300	$20.95	141,178.00	0.21%	$6,285.00
	2/3/2006	300	$20.85	141,178.00	0.21%	$6,255.00
	2/3/2006	300	$20.81	141,178.00	0.21%	$6,241.50
	2/3/2006	200	$20.99	141,178.00	0.14%	$4,198.00
	2/3/2006	200	$20.96	141,178.00	0.14%	$4,192.00
	2/3/2006	200	$20.94	141,178.00	0.14%	$4,188.00
	2/3/2006	100	$20.90	141,178.00	0.07%	$2,090.00
	3/9/2006	776	$18.98	477,500.00	0.16%	$14,728.48
	3/9/2006	750	$19.00	477,500.00	0.16%	$14,250.00
	3/9/2006	600	$19.01	477,500.00	0.13%	$11,406.00
	3/9/2006	595	$18.97	477,500.00	0.12%	$11,287.15
	3/9/2006	585	$18.95	477,500.00	0.12%	$11,085.75
	3/9/2006	100	$18.96	477,500.00	0.02%	$1,896.00
	3/9/2006	20	$18.99	477,500.00	0.00%	$379.80
	3/28/2006	500	$19.80	476,574.00	0.10%	$9,900.00
	3/28/2006	200	$19.79	476,574.00	0.04%	$3,958.00
	3/28/2006	100	$19.77	476,574.00	0.02%	$1,977.00
	3/28/2006	100	$19.81	476,574.00	0.02%	$1,981.00
	3/28/2006	26	$19.76	476,574.00	0.01%	$513.76
	4/28/2006	500	$18.42	475,646.00	0.11%	$9,210.00
	4/28/2006	428	$18.35	475,646.00	0.09%	$7,853.80
	5/30/2006	400	$15.08	474,720.00	0.08%	$6,032.00
	5/30/2006	200	$14.99	474,720.00	0.04%	$2,998.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	5/30/2006	200	$15.10	474,720.00	0.04%	$3,020.00
	5/30/2006	126	$15.05	474,720.00	0.03%	$1,896.30
	6/28/2006	629	$11.00	473,794.00	0.13%	$6,919.00
	6/28/2006	126	$10.94	473,794.00	0.03%	$1,378.44
	6/29/2006	171	$10.99	473,794.00	0.04%	$1,879.29
	7/28/2006	400	$6.38	472,868.00	0.08%	$2,552.00
	7/28/2006	240	$6.50	472,868.00	0.05%	$1,560.00
	7/28/2006	100	$6.45	472,868.00	0.02%	$645.00
	7/28/2006	100	$6.39	472,868.00	0.02%	$639.00
	7/28/2006	49	$6.44	472,868.00	0.01%	$315.56
	7/28/2006	37	$6.47	472,868.00	0.01%	$239.39
	8/28/2006	900	$7.76	471,942.00	0.19%	$6,984.00
	8/28/2006	26	$7.73	471,942.00	0.01%	$200.98
	8/31/2006	3,800.00	$8.43	453,942.00	0.83%	$32,034.00
	8/31/2006	3,700.00	$8.32	453,942.00	0.81%	$30,784.00
	8/31/2006	1,700.00	$8.38	453,942.00	0.37%	$14,246.00
	8/31/2006	1,700.00	$8.39	453,942.00	0.37%	$14,263.00
	8/31/2006	1,650.00	$8.40	453,942.00	0.36%	$13,860.00
	8/31/2006	1,500.00	$8.41	453,942.00	0.33%	$12,615.00
	8/31/2006	1,300.00	$8.36	453,942.00	0.29%	$10,868.00
	8/31/2006	1,200.00	$8.34	453,942.00	0.26%	$10,008.00
	8/31/2006	800	$8.33	453,942.00	0.18%	$6,664.00
	8/31/2006	450	$8.35	453,942.00	0.10%	$3,757.50
	8/31/2006	200	$8.28	453,942.00	0.04%	$1,656.00
Total		**715,004.00**				**$13,781,955.31**
Wilkenson, Simon	5/6/2005	3,230.00	$14.00	256,770.00	1.24%	$45,220.00
	5/6/2005	3,000.00	$13.97	256,770.00	1.15%	$41,910.00
	5/6/2005	3,000.00	$13.98	256,770.00	1.15%	$41,940.00
	5/6/2005	2,000.00	$13.96	256,770.00	0.77%	$27,920.00
	5/6/2005	2,000.00	$13.99	256,770.00	0.77%	$27,980.00
	5/6/2005	1,900.00	$14.09	256,770.00	0.73%	$26,771.00
	5/6/2005	1,900.00	$14.10	256,770.00	0.73%	$26,790.00
	5/6/2005	1,000.00	$14.11	256,770.00	0.39%	$14,110.00
	5/6/2005	1,000.00	$14.15	256,770.00	0.39%	$14,150.00
	5/6/2005	1,000.00	$14.18	256,770.00	0.39%	$14,180.00
	5/6/2005	100	$14.02	256,770.00	0.04%	$1,402.00
	5/6/2005	100	$14.12	256,770.00	0.04%	$1,412.00
	8/9/2005	16,548.00	$16.93	175,847.00	8.60%	$280,157.64
	8/9/2005	11,000.00	$16.91	175,847.00	5.89%	$186,010.00
	8/9/2005	8,000.00	$16.90	175,847.00	4.35%	$135,200.00
	8/9/2005	6,173.00	$17.15	175,847.00	3.39%	$105,866.95
	8/9/2005	5,000.00	$17.13	175,847.00	2.76%	$85,650.00
	8/9/2005	4,665.00	$16.95	175,847.00	2.58%	$79,071.75

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	REMAINING SHARES	PERCENT SOLD	TOTAL SALES
	8/9/2005	4,000.00	$16.85	175,847.00	2.22%	$67,400.00
	8/9/2005	4,000.00	$16.92	175,847.00	2.22%	$67,696.00
	8/9/2005	4,000.00	$17.00	175,847.00	2.22%	$68,000.00
	8/9/2005	4,000.00	$17.20	175,847.00	2.22%	$68,800.00
	8/9/2005	3,200.00	$16.96	175,847.00	1.79%	$54,272.00
	8/9/2005	3,000.00	$16.85	175,847.00	1.68%	$50,559.90
	8/9/2005	3,000.00	$16.89	175,847.00	1.68%	$50,670.00
	8/9/2005	3,000.00	$16.91	175,847.00	1.68%	$50,715.90
	8/9/2005	3,000.00	$16.92	175,847.00	1.68%	$50,757.60
	8/9/2005	3,000.00	$16.96	175,847.00	1.68%	$50,871.00
	8/9/2005	3,000.00	$16.96	175,847.00	1.68%	$50,874.00
	8/9/2005	3,000.00	$17.02	175,847.00	1.68%	$51,060.00
	8/9/2005	3,000.00	$17.10	175,847.00	1.68%	$51,300.00
	8/9/2005	2,900.00	$17.08	175,847.00	1.62%	$49,532.00
	8/9/2005	2,000.00	$17.03	175,847.00	1.12%	$34,057.00
	8/9/2005	2,000.00	$17.05	175,847.00	1.12%	$34,100.00
	8/9/2005	2,000.00	$17.09	175,847.00	1.12%	$34,180.00
	8/9/2005	1,500.00	$16.89	175,847.00	0.85%	$25,327.50
	8/9/2005	1,500.00	$16.89	175,847.00	0.85%	$25,327.50
	8/9/2005	1,000.00	$16.99	175,847.00	0.57%	$16,990.00
	8/9/2005	587	$16.93	175,847.00	0.33%	$9,935.56
	8/9/2005	100	$17.03	175,847.00	0.06%	$1,703.00
Total		**128,403.00**				**$2,119,870.30**
Grand Total		**3,676,429**				**$54,898,653.16**

312. Prior to the Class Period, but during the time period when Openware was backdating options, Defendants Black, Rossmann, Verhalen and Snyder sold an additional 135,173 shares of stock for additional proceeds of approximately $8.85 million:

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	RESULTING SHARES	PERCENT SOLD	TOTAL SALES
Black, Alan	5/25/2000	14,898.00	$67.13	303,900.00	4.67%	$1,000,028.25
	2/1/2001	75,000.00	$69.71	224,801.00	25.02%	$5,228,160.00
Total		89,898.00				$6,228,188.25
Rossmann, Alain	2/2/2001	10,000.00	$66.00	6,048,118.00	0.17%	$660,000.00
	2/5/2001	20,000.00	$67.50	6,048,118.00	0.33%	$1,350,000.00
	2/6/2001	5,000.00	$69.00	6,048,118.00	0.08%	$345,000.00

NAME	TRANSACTION DATE	SHARES SOLD	PRICE PER SHARE	RESULTING SHARES	PERCENT SOLD	TOTAL SALES
	4/24/2001	10,000.00	$35.01	6,038,118.00	0.17%	$350,125.00
Total		45,000.00				$2,705,125.00
Snyder, Allen	7/17/2001	94	$21.28	1,006.00	8.55%	$2,032.00
Total		94				$2,032.00
Verhalen, Andrew	1/19/2001	181	$51.44	1,995.00	8.32%	$9,310.28
Total		181				$9,310.28
Grand Total		**135,173**				**$8,944,655.53**

313. Since this fraudulent scheme had commenced by at least 1999, no meaningful comparison of prior trading patterns can be performed. However, the Class Period trades were highly suspicious. In particular, several of the Officer Defendants sold shares in May 2006, after some preliminary reports that companies were backdating options and right after the first news that Openwave was possibly among the list of companies engaging in such conduct. Furthermore, Defendant Snyder sold 55% of his total shares (options and stock) in the first three days of February 2006, just one month prior to the first news regarding options backdating. In fact, the value of insider trading sales in February 2006 was more than twice as high as in any other month in at least the two years prior.

314. Fourth, the Officer Defendants were motivated to perpetrate the backdating fraud due to the fact that the vast majority of their overall compensation was through stock option grants. As the following compensation chart demonstrates, close to 75% of the Officer Defendants' total compensation came through stock option grants:

	Annual Compensation				Long-Term Compensation		
Name and Principal Position	**Fiscal Year**	**Salary ($)**	**Bonus($)**	**Other Annual Compensation**	**Restricted Stock Awards ($)**	**Securities Underlying Options (#)**	**All Other Compensation ($)**
Listwin, Don	2002	$250,000	n/a		n/a	5,300,000	$360
	2003	$329,615	$750,000	n/a	$879,996	$1,766,666	$540

	Annual Compensation				Long-Term Compensation		
Name and Principal Position	**Fiscal Year**	**Salary ($)**	**Bonus($)**	**Other Annual Compensation**	**Restricted Stock Awards ($)**	**Securities Underlying Options (#)**	**All Other Compensation ($)**
President and CEO	2004	$233,334	$700,000 $750,000	n/a	$609,573 $879,996	$133,333 $1,766,666	$337 $540
	2005	$110,044	n/a	n/a	n/a	n/a	n/a
	2006						
Black, Alan	2002	$270,834	n/a		$539,100	425,000	$360
CFO and Sr. VP of Corporate Affairs	2003	$276,750	$641,765	n/a	n/a	274,999	$540
	2004	$275,000	$745,388 $641,765	$322,298	n/a	$80,830	$540
	2005						
	2006						
Mulica, Michael	2002	$295,833	$397,501		$539,100	927,497[3]	$324
Sr. VP, Office of Customer Operations, Sales	2003	$300,000	$295,431	$76,649	n/a	33,333	$513
	2004						
	2005						
	2006						
Kennedy, Kevin J.	2002	$328,125	$1,210,909	$123,504	$2,053,500	3,000,000[4]	$495
Chief Operating Office	2003	$375,000	$657,291[5]	$342,947	n/a	1,166,666	$810
	2004	$102,750	$903,000 $657,291	$224,237	n/a	n/a	$202
	2005						
	2006						
Snyder, Allen	2002	$270,834	$203,125			425,000	$540
Sr. VP, Office of Customer Operations, Customer Advocacy	2003	$301,250	$534,501[6]	n/a	$186,000	316,665	$810
	2004	$310,000	$553,732 $534,501	n/a	$472,648 $186,000	164,164 316,665	$1,026
	2005	$340,000	$494,825	n/a	$1,629,600	200,000	$1,242
	2006	$350,000	$297,284	n/a	$1,687,920	100,000	$29,286
Peters, Steve	2002	$263,500	n/a	n/a	n/a	$66,665	$360
Sr. VP and Chief Administrative and Legal Officer	2003	$265,549	$286,000	n/a	$331,997	$98,333	$540
	2004						
	2005						
	2006						
Hose, David A.	2002	n/a	n/a	n/a	n/a	n/a	n/a

[3] Openwave's 2002 Proxy lists Mulica's securities underlying options as 927,497; Openwave's 2003 Proxy lists his 2002 securities underlying options as 309,164.

[4] Openwave's 2002 Proxy lists Kennedy's securities underlying options as 3,000,000; Openwave's 2003 Proxy lists his 2002 securities underlying options as 1,000,000.

[5] Openwave's 2003 Proxy lists Kennedy's bonus as $657,291;Openwave's 2004 Proxy lists his 2003 bonus as $1,087,405.

[6] Openwave's 2003 Proxy lists Snyder's bonus as $534,501; Openwave's 2004 Proxy lists his 2003 bonus as $203,125.

Name and Principal Position	Annual Compensation				Long-Term Compensation		
	Fiscal Year	Salary ($)	Bonus($)	Other Annual Compensation	Restricted Stock Awards ($)	Securities Underlying Options (#)	All Other Compensation ($)
Sr. VP, Client Business	2003	$265,833	n/a	n/a	n/a	n/a	n/a
	2004	$300,000	$379,500 $213,500	n/a	$472,647 $123,999	100,000 266,664	$487
	2005						
	2006						
Pace, Joshua Sr. VP and CFO	2002	$190,914	n/a	n/a	n/a	n/a	n/a
	2003	$207,128	$8,197	n/a	n/a	38,331	$261
	2004	$240,000	$200,000 $111,867	n/a	$118,148 $124,500	57,331 15,250	$464 $392
	2005	$294,378	$107,088	n/a	$1,620,700	200,000 57,331	$484 $464
	2006						
Shantz, Jon Formerly Sr. VP, Market Development	2002	$151,247					
	2003	$275,000	$24,134	n/a	n/a	126,666	$285
	2004	$271,676	$137,500 $200,000	n/a	$236,324	87,666 209,999	$810 $675
	2005						
	2006						
Peterschmidt, David C. President and CEO	2002						
	2003						
	2004						
	2005	$331,730	$291,750	n/a	$2,997,500	500,000	$180
	2006	$500,000	$496,208	n/a	$1,594,900	750,000	$26,679
Peters, Steve Ex. VP, Chief Administrative Officer	2002						
	2003						
	2004	$272,250	n/a $286,000	n/a	$236,323 $331,997	98,333	$540
	2005	$293,750	$151,530		$1,504,000	200,000 84,830	$810
	2006	$300,000	$148,635	n/a	n/a	60,000	$23,886
Wilkinson, Simon Sr. VP, Global Sales organization	2002						
	2003						
	2004						
	2005	$244,496	$315,504	n/a	$963,000	175,000	n/a
	2006	$294,140	$192,016	n/a	n/a	n/a	n/a
Covert, Harold L. Ex. VP and CFO	2002						
	2003						
	2004						
	2005						
	2006	$282,468	$360,236	n/a	$2,290,880	300,000	$9,016
Whalen, David	2002						

Name and Principal Position	Annual Compensation				Long-Term Compensation		
	Fiscal Year	Salary ($)	Bonus($)	Other Annual Compensation	Restricted Stock Awards ($)	Securities Underlying Options (#)	All Other Compensation ($)
Re. VP, Worldwide Sales	2003						
	2004	$165,989	$252,409	n/a	n/a	66,666	$350
	2005	$207,502	$672,134	n/a	$147,000	20,000	$552
	2006	$278,751	$258,075	$51,125	$1,247,925	150,000	22,022

315. The Section 10(b) Defendants clearly had the motive and opportunity to perpetrate the fraudulent scheme described herein by virtue of their positions at the Company and roles in the backdating scheme as alleged herein in addition to the fact that they personally profited from the scheme.

D. THE PERVASIVENESS OF THE FRAUDULENT CONDUCT AND THE NATURE OF THE ACCOUNTING RULES AT ISSUE FURTHER SUPPORTS A STRONG INFERENCE OF SCIENTER

316. The duration, magnitude and pervasiveness of the scheme support a strong inference of fraudulent conduct on the part of the Section 10(b)Defendants. Openwave admits that the backdating occurred from 1999 forward, and that the retroactive pricing of stock options affected many employees who received options. Further, as a result of the Section 10(b) Defendants' improper reporting of backdated options, ***the financial results for fiscal years 2000 through 2005 have been restated,*** and the Company recorded additional pretax, non-cash, stock-based compensation expense of $186 million.

317. A strong inference of *scienter* is further supported by the nature of the accounting rules at issue. The primary accounting rules at issue – APB No. 25 and SFAS 123(R) – are simple and straightforward in application.

E. THE FACT THAT PURPORTED COMPLIANCE WAS ESSENTIAL TO MAINTAINING OPENWAVE'S PROFITABLE PERFORMANCE SUPPORTS A STRONG INFERENCE OF SCIENTER

318. Given the enormous amount of stock options issued as compensation to Openwave's workforce, the Section 10(b)Defendants were keenly aware of the potentially devastating impact on Openwave's financial condition that would result if the Company failed to comply with APB 25 and was required to record compensation expenses for gains incurred in connection with its option grants. For example, had Openwave properly recorded its net loss for the fiscal years ended June 30, 2003 and 2002, it would have reported a net loss of approximately $203 million and approximately $1.28 billion respectively. This would have increased Openwave's net loss for fiscal year ended June 30, 2003 by $10.3 million and net loss for fiscal year ended June 30, 2002 by $31.7 million.

319. Accordingly, it was of enormous significance to Openwave's earnings and business model that the Company qualify for favorable tax treatment under APB 25. By disguising backdated options by manipulating their grant dates, the Section 10(b)Defendants were able to receive additional immediate value for their options while Openwave continued to claim (albeit improperly) favorable accounting treatment, thereby inflating earnings.

F. THE "STREAMLING" OF THE COMPANY'S EXECUTIVES SUPPORTS A STRONG INFERENCE OF SCIENTER

320. Openwave's knowledge and intent with respect to backdating and improper accounting for stock options is further supported by the fact that Defendant Peters was fired and Defendant Snyder was demoted, as part of a purported "streamling effort," during the Special Committee's investigation regarding options backdating, and that Defendant Peterschmidt "resigned" just three months after the completion of the Special Committee's investigation and

the issuance of the Company's Restatement. As discussed more fully above in Section X.C.1, Defendant Peters and Snyder were involved in the granting of options during the relevant period, and Defendant Peterschmidt signed numerous of the Company's false and misleading Forms 10-K and certified the accuracy of the Company's financial statements issued during the Class Period.

G. THE SPECIAL COMMITTEE'S INSTRUCTION TO DESTROY EVIDENCE SUPPORTS A FINDING OF SCIENTER

321. Confidential Witness #5 was interviewed by the Company's Special Committee during its investigation into the backdating of options. During this interview, the Special Committee asked him to look at certain copies of Openwave e-mails and interpret them for the Committee. When the Special Committee completed its questioning of Confidential Witness #5, he was instructed to "destroy everything they sent" to him.

XV. LOSS CAUSATION

322. During the Class Period, as detailed herein, Defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Openwave's securities prices and operated as a fraud or deceit on Class Period purchasers of Openwave securities by misrepresenting the Company's business condition. Defendants achieved this façade of success, growth and strong future business prospects by misrepresenting the Company's financial results and compensation practices. Later, however, when Defendants' prior misrepresentations and fraudulent conduct began to be disclosed and became apparent to the market, Openwave stock fell precipitously as the prior artificial inflation was removed from Openwave's securities prices. As a result of their purchases of Openwave securities during the Class Period, Lead Plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

323. During the Class Period, the Defendants presented a misleading picture of Openwave's business and prospects. Instead of truthfully disclosing that Openwave's business was not as healthy as represented, Defendants caused Openwave to misrepresent the Company's earnings and compensation and tax expenses, among other important metrics. During the Class Period, Defendants also repeatedly, but falsely, emphasized that Openwave's compensation practices aligned the interests of management with shareholders, and that Openwave's compensation and accounting practices were overseen by independent, competent directors.

324. These false and misleading representations concerning Openwave's financial results and management compensation – plus Defendants' non-disclosure of material facts concerning the Company's compensation practices, which facts demonstrate that Defendants were not acting in the best interests of shareholders, but, rather, were acting dishonestly and in violation of Company, NASDAQ and SEC policies and regulations – caused and maintained the artificial inflation in Openwave's securities prices throughout the Class Period and until the truth was ultimately revealed to the market.

325. Defendants' false and misleading statements had the intended effect and caused Openwave's common stock to trade at artificially inflated levels throughout the Class Period, reaching a high of $23.19 per share on February 9, 2007.

326. Starting on May 16, 2006 through the end of the Class period on October 26, 2006, investors began to learn the truth through a number of disclosures, including Defendants' own admissions, revealing, among other things: (1) Defendants had caused Openwave to engage in substantial backdating and spring loading of stock option grants issued to, among others, senior management; (2) Openwave's published financial statements issued during and prior to the Class period were materially misleading for failure to account for these stock option grants;

and (3) certain of the Defendants sold shares of Openwave based on material, non-public information. These revelations did not happen all at once, but rather were the result of investigations by investors, journalists and academics and pronouncements from the Company. As investors and the market became aware of the true facts, which had been obfuscated for over seven years by Defendants, the prior artificial inflation came out of Openwave's securities prices, damaging investors.

327. As a direct result of these disclosures and the public revelations regarding Openwave's issuance of stock options, and the falsity about Openwave's previous Class Period representations and its actual business prospects going forward, Openwave's stock price dropped from its trading range in the $20s in February, March and April 2006 to as low as $6.09 on July 20, 2006. This drop removed the artificial inflation from Openwave's stock price, causing real economic loss to investors who had purchased the securities during the Class Period. In sum, as the truth about Defendants' fraud and Openwave's business performance was revealed, the Company's stock price plummeted, the artificial inflation came out of the stock, and plaintiffs and other members of the Class were damaged.

328. The declines in Openwave's stock price beginning on May 16, 2006 through the end of the Class Period, and the resulting damages suffered by Lead Plaintiff and the other members of the Class are directly attributable to the market's reaction to the disclosure of information that had previously been misrepresented or concealed by defendants, and to the market's adjustment of the Company's securities prices to reflect the newly emerging truth about the Company's condition. The timing and magnitude of Openwave's stock price decline negate any inference that the loss suffered by plaintiffs and other Class members was caused by changed market conditions, macroeconomic, industry factors or Company specific facts

unrelated to the defendants' fraudulent conduct. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by Defendants named herein, or been aware of the truth behind these defendants' material misstatements, they would not have purchased Openwave securities at artificially inflated prices.

XVI. INAPPLICABILITY OF STATUTORY SAFE HARBOR

329. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false or misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false or misleading may be characterized as forward-looking, they were not adequately identified as forward-looking when made, and there were no meaningful cautionary statements identifying facts that could cause actual results to differ materially from those in the purportedly forward-looking statements. To the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, Defendants had actual knowledge that the particular forward-looking statement was materially false or misleading. In addition, to the extent any of the statements set forth above were accurate when made, they became inaccurate or misleading because of subsequent events, and Defendants failed to update those statements which later became inaccurate.

XVII. PRESUMPTION OF RELIANCE

330. At all relevant times, the market for Openwave's common stock was an efficient market that promptly digested current information with respect to the Company from all publicly-available sources and reflected such information in the prices of the Company's securities. Through the Class Period:

(a) Openwave's stock met the requirements for listing, and was listed and actively traded on the NASDAQ, a highly efficient and automated market;

(b) As a regulated issuer, Openwave filed periodic public reports with the SEC and NASDAQ;

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

(d) Securities analysts and the business press followed and published research reports regarding Openwave that were publicly available to investors;

(e) The market price of Openwave securities reacted promptly to the dissemination of public information regarding the Company;

(f) The average weekly trading volume for Openwave stock during the Class Period was approximately $8.21 million; and

(g) The Company's market capitalization was approximately $397,773,373.50 on September 15, 2002 (date the 2002 10-K was filed), $2,206,346,870.25 on August 15, 2003 (date the 2003 10-K was filed), $67,010,715 (date the 2004 10-K was filed) and $72,040,716 August 31, 2005 (date the 2005 10-K was filed).

331. As a result of the misconduct alleged herein (including Defendants' misstatements and omissions), the market for Openwave securities was artificially inflated. Under such circumstances, the presumption of reliance available under the "fraud-on-the-market" theory applies.

332. Lead Plaintiff and the other Class members relied on the integrity of the market price for the Company's securities and were substantially damaged as a direct and proximate result of their purchases of Openwave securities at artificially inflated prices and the subsequent decline in the price of those securities when the truth was disclosed.

333. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by the defendants, or been aware of the truth behind the Defendants' material misstatements, they would not have purchased Openwave securities at inflated prices.

334. Plaintiffs are also entitled to the *Affiliate Ute* presumption of reliance because Defendants' fraudulent scheme primarily involved a failure to disclose and/or concealment of the material facts concerning Defendants' backdating and spring loading of options grants, which information plaintiffs would have wanted to have known and which would have caused investors to not have purchased shares of Openwave at the prices they traded at during the Class Period.

XVIII. CLAIMS FOR RELIEF UNDER THE EXCHANGE ACT

COUNT ONE

For Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against Defendants Openwave, Peterschmidt, Covert, Listwin, Black, Pace, Rossmann, Kennedy, Puckett, Denman, Hedfors, Held, Jabbar, Evans and Verhalen

335. Lead Plaintiff repeats and realleges each and every allegation set forth above as if fully set forth herein. This Claim is brought pursuant to Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder, on behalf of Lead Plaintiff and all other members of the Class, against Defendants Openwave, Peterschmidt, Covert, Listwin, Black, Pace, Rossmann, Kennedy, Puckett, Denman, Hedfors, Held, Jabbar, Evans and Verhalen (the "Section 10(b) Defendants").

336. Throughout the Class Period, the 10(b) Defendants individually, and in concert, directly and indirectly, by the use and means of instrumentalities of interstate commerce, the mails and the facilities of a national securities exchange, employed devices, schemes and artifices to defraud, made untrue statements of material fact and/or omitted to state material facts necessary to make statements made not misleading, and engaged in acts, practices and a course of business which operated a fraud and deceit upon Class members, in violation of Section 10(b) of the Exchange Act and Rule 10b-5(b) promulgated thereunder. The Section 10(b) Defendants false and misleading statements and omissions were made with scienter and were intended to and did, as alleged herein, (i) deceive the investing public, including Lead Plaintiff and the other members of the Class; (ii) artificially create, inflate and maintain the market for and market price of the Company's securities; and (iii) cause Lead Plaintiff and the other members of the Class to purchase the Company's securities at inflated prices.

337. Specifically, Defendants initiated or pursued a scheme and course of conduct which: (i) concealed the fact that the Company had allowed insiders to manipulate its Stock Option Plan and was misrepresenting its financial results and (ii) deceived the investing public, including purchasers of Openwave common stock, regarding these accounting practices and Openwave's true financial performance in an effort to maintain an artificially high price for Openwave common stock in violation of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder. Openwave and the Section 10(b) Defendants are sued as primary participants in the wrongful and illegal course of conduct charged herein.

338. By misrepresenting the Company's financial statements, failing to inform the market of the improper and manipulative options backdating scheme and resulting impact it was having on the Company's financial results and profits, and making other false statements, these

defendants presented a misleading picture of Openwave's business, compensation practices, financial results and prospects. This caused and maintained artificial inflation in the trading prices of Openwave's publicly traded securities throughout the Class Period and until the truth came out.

339. The Section 10(b) Defendants were individually and collectively responsible for making the statements and omissions alleged herein, by virtue of having prepared, approved, signed and/or disseminated documents which contained untrue statements of material fact and/or omitted facts necessary to make the statements therein not misleading and/or making direct statements to the investing public on the conference calls detailed herein.

340. During the Class Period, the Section 10(b) Defendants occupied an executive-level position at Openwave and were privy to non-public information concerning the Company. Each of them knew or recklessly disregarded the adverse facts specified herein and omitted to disclose those facts. Notwithstanding their duty to refrain from selling Openwave stock while in possession of material, adverse, non-public information concerning the Company, the Insider Selling Defendants sold millions of shares of Openwave stock at grossly inflated prices, improperly personally profiting and benefiting from their wrongful course of conduct and false and misleading statements. Moreover, the 10(b) Defendants improperly obtained option grants at artificially low prices or just prior to new positive corporate news which would boost the stock price.

341. As described herein, the Section 10(b) Defendants made the false statements and omissions knowingly and intentionally, or in such an extremely reckless manner as to constitute willful deceit and fraud upon Lead Plaintiff and other members of the Class who purchased Openwave securities during the Class Period. Throughout the Class Period, the Section 10(b)

Defendants had a duty to disclose new information that came to their attention, which rendered their prior statements to the market materially false and misleading.

342. The Section 10(b) Defendants' false statements and omissions were made in connection with the purchase or sale of the Company's securities.

343. In ignorance of the false and misleading nature of the Section 10(b) Defendants' statements and/or upon the integrity of the market price for Openwave securities, Lead Plaintiff and the other members of the Class purchased Openwave securities at artificially inflated prices during the Class Period. But for the fraud, they would not have purchased the securities at artificially inflated prices.

344. The market price for Openwave securities declined materially upon the public disclosure of the facts that had previously been misrepresented or omitted by the Section 10(b) Defendants, as described above.

345. Lead Plaintiff and the other members of the Class were substantially damaged as a direct and proximate result of their purchases of Openwave securities at artificially inflated prices and the subsequent decline in the price of those securities when the truth was disclosed.

346. The Defendants named in this Count acted with scienter throughout the Class Period, in that they either had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose the true facts, even though such facts were available to them. The Individual Defendants constituted the senior management of the Company, and were therefore directly responsible for the false and misleading statements and/or omissions disseminated to the public through press releases, news reports, and filings with the SEC.

347. In committing the wrongful acts alleged herein, the 10(b) Defendants have pursued or joined in the pursuit of a common course of conduct and acted in concert with one another in furtherance of their common plan. This course of conduct or scheme was designed to and did: (i) conceal the fact that the Company was allowing insiders to manipulate its stock option plan and was misrepresenting its financial results; (ii) maintain the Section 10(b) Defendants' executive and directorial positions at Openwave and the profits, power and prestige that the Section 10(b) Defendants enjoyed as a result of those positions; and (iii) deceive the investing public, including the shareholders of Openwave, regarding the Section 10(b) Defendants' compensation practices and Openwave's financial performance.

348. The Section 10(b) Defendants accomplished their common enterprise and/or common course of conduct by causing the Company to purposefully and/or recklessly engage in the option backdating scheme alleged herein and misrepresent Openwave's financial results. Each of the Section 10(b) Defendants was a direct, necessary and substantial participant in the common enterprise and/or common course of conduct complaint of herein. In taking such actions to substantially assist the commission of the wrongdoing complained of herein, each Section 10(b) Defendant acted with knowledge of the primary wrongdoing, and was aware of his or her overall contribution to and furtherance of the wrongdoing.

349. This claim was brought within two years after discovery of this fraud and within five years of the making of the statements alleged herein to be materially false and misleading.

350. By virtue of the foregoing, the Section 10(b) Defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, and are liable to Lead Plaintiff and the members of the Class, each of whom has been damaged as a result of such violation.

COUNT TWO

For Violations of Section 20(a) of the Exchange Act Against Defendants Peterschmidt, Covert, Listwin, Black and Pace

351. Lead Plaintiff repeats and realleges each and every allegation above as if set forth fully herein. This Claim is brought pursuant to Section 20(a) of the Exchange Act against Defendants Peterschmidt, Covert, Listwin and Black (collectively the "Section 20(a) Defendants"), on behalf of Lead Plaintiff and all members of the Class who purchased Openwave securities during the Class Period.

352. As alleged herein, Openwave is liable to Lead Plaintiff and the members of the Class who purchased Openwave securities based on the materially false and misleading statements and omissions set forth above, pursuant to Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

353. Throughout the Class Period, the Section 20(a) Defendants were controlling persons of Openwave within the meaning of Section 20(a) of the Exchange Act, and culpable participants in the Openwave fraud, as detailed herein.

354. Each of the Section 20(a) Defendants exercised control over Openwave during the Class Period by virtue of, among other things, their executive positions with the Company, the key roles they played in the Company's management, and their direct involvement in its day to day operations, including its financial reporting and accounting functions.

355. In addition to the allegations set forth above, the following allegations demonstrate the Section 20(a) Defendants' control over Openwave during the Class Period. Defendants Peterschmidt was a controlling person of Openwave during the Class Period as demonstrated by the facts alleged herein, including:

(h) Defendant Peterschmidt served as Openwave's Chief Executive Officer and Chairman of the Board from November 2004 to March 2007.

(i) Defendant Peterschmidt was ultimately responsible for ensuring that the internal disclosure and accounting procedures were effective and required no changes. Consistent with that responsibility, he signed each of Openwave's Forms 10-K and 10-Q between November 2004 and the March 2007, and signed the Offering Documents. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Peterschmidt certified the accuracy of Openwave's Forms 10-K and 10-Q and the effectiveness of Openwave's disclosure and internal control procedures.

(j) From November 2004 to January 2007, Defendant Peterschmidt led each of Openwave's conference calls with analysts and investors, where he responded to questions relating to all aspects of Openwave's business, strategic direction and financial performance.

356. Defendant Listwin was a controlling person of Openwave from November 2000 through April 24, 2003 as demonstrated by the facts alleged herein, including:

(a) Defendant Listwin served as Openwave's Chief Executive Officer and President from September 2000 through April 2003.

(b) Defendant Listwin was ultimately responsible for ensuring that the internal disclosure and accounting procedures were effective and required no changes. Consistent with that responsibility, he signed each of Openwave's Forms 10-K and 10-Q between September 2000 to November 2004. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Listwin certified the accuracy of Openwave's Forms 10-K and 10-Q and the effectiveness of Openwave's disclosure and internal control procedures from September 2002 through November 2004.

(c) From September 2000 through November 2004, Defendant Listwin led each of Openwave's conference calls with analysts and investors, where he responded to questions relating to all aspects of Openwave's business, strategic direction and financial performance.

357. Defendant Black was a controlling person of Openwave from November 2000 through April 24, 2003 as demonstrated by the facts alleged herein, including:

(a) Defendant Black served as Senior Vice President, Corporate Affairs and Chief Financial Officer of Openwave from November 2000 through April 24, 2003.

(b) Defendant Black was ultimately responsible for ensuring that the internal disclosure and accounting procedures were effective and required no changes. Consistent with that responsibility, he signed each of Openwave's Forms 10-K and 10-Q between November 2000 through April 24, 2003. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Black certified the accuracy of Openwave's Forms 10-K and 10-Q and the effectiveness of Openwave's disclosure and internal control procedures from September 2002 through April 24, 2003.

(c) From November 2000 through April 24, 2003, Defendant Black participated in each of Openwave's conference calls with analysts and investors, where he responded to questions relating to all aspects of Openwave's business, strategic direction and financial performance.

358. Defendant Covert was a controlling person of Openwave from April 2003 through the present, as demonstrated by the facts alleged herein, including:

(d) Defendant Covert served as Director, Chairman of the Audit Committee and later as Chief Financial Officer from April 2003 to the present.

(e) As Chief Financial Officer, Defendant Covert was ultimately responsible for ensuring that the internal disclosure and accounting procedures were effective and required no changes. Consistent with that responsibility, he signed each of Openwave's Forms 10-K for the fiscal years ended June 30, 2003 and 2004. Pursuant to Sections 302 and 906 of Sarbanes-Oxley, Peterschmidt certified the accuracy of Openwave's Forms 10-K and 10-Q and the effectiveness of Openwave's disclosure and internal control procedures from October 2005 through the present.

(f) From October 2005 to the present, Defendant Covert participated in each of Openwave's conference calls with analysts and investors, where he responded to questions relating to all aspects of Openwave's business, strategic direction and financial performance.

359. Given their individual and collective responsibilities for managing Openwave throughout the Class Period, the Section 20(a) Defendants were regularly presented to the market as the individuals who were responsible for Openwave's day-to-day business and operations, as well as the Company's strategic direction. These Section 20(a) Defendants accepted responsibility for presenting quarterly and annual results, setting guidance for future periods and assuring the market about the state of, and prospects for, product development. No one else at Openwave exercised that degree of responsibility for, or control over, the Company's activities and public statements.

360. As a result of the false and misleading statements and omissions alleged herein, the market price of Openwave securities was artificially inflated during the Class Period. Under

such circumstances, the presumption of reliance available under the "fraud on the market" theory applies, as more particularly set forth above. Lead Plaintiff and the members of the Class relied upon either the integrity of the market or upon the statements and reports of the Section 20(a) Defendants in purchasing Openwave securities at artificially inflated prices.

361. As a direct and proximate result of their wrongful conduct, Lead Plaintiff and the other members of the Class suffered damages in connection with their purchases of Openwave shares during the Class Period. Had Lead Plaintiff and the other members of the Class known of the material adverse information not disclosed by defendants, or been aware of the truth behind their material misstatements, they would not have purchased the securities at artificially inflated prices.

362. This claim was brought within two years after the discovery of this fraud and within five years of the making of the statements alleged herein to be materially false and misleading.

363. By virtue of the forgoing, each of the Section 20(a) Defendants are liable to Lead Plaintiff and the Class, each of whom has been damaged as a result of Openwave's underlying violations.

COUNT THREE

For Violations of Section 20A of The Exchange Act Against Defendants Peterschmidt, Listwin, Pace, Snyder, Peters, Rossmann, Wilkinson, Kennedy and Puckett

364. Lead Plaintiff repeats and realleges each of the allegation set forth above as if fully set forth herein.

365. This claim is brought pursuant to Section 20A of the Exchange Act against Defendants Peterschmidt, Listwin, Pace, Snyder, Peters, Rossmann, Wilkinson, Kennedy and

Puckett (collectively, the "Section 20A Defendants") on behalf of all members of the Class damaged by the Section 20A Defendants' insider trading during the Class Period.

366. The Section 20A Defendants were in possession of material non-public information about Openwave. As alleged above, the Section 20A Defendants took advantage of the material non-public information regarding Openwave's backdating of stock option grants, to make millions of dollars in insider trading profits during the Class Period. These transactions were made while the Section 20A Defendants had knowing possession of material non-public information. The Section 20A Defendants' transactions in Openwave securities were made contemporaneously with Lead Plaintiff's and the Class members' purchases of Openwave securities during the Class Period.

367. All members of the Class who purchased shares of Openwave securities contemporaneously with sales by the Section 20A Defendants: (i) have suffered damages because, in reliance on the integrity of the market, they paid artificially inflated prices as a result of the violations of Section 10(b) and 20(a) of the Exchange Act as alleged herein; and (ii) would not have purchased the securities at the prices they paid, or at all, if they had been aware that the market prices had been artificially inflated by the Section 20A Defendants' false and misleading statements and concealment. At the time of the Class members' purchases of the securities, the fair and true market value of the securities was substantially less than the price paid by these Class members.

XIX. PRAYER FOR RELIEF

WHEREFORE, Lead Plaintiff prays for relief and judgment, as follows:

A. Declaring this action to be a proper class action pursuant to Rule 23(a) and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

B. Awarding Lead Plaintiff and the members of the Class compensatory damages and/or rescission;

C. Directing all Defendants to account for all damages caused by them and all profits, special benefits and unjust enrichment they have obtained as a result of their unlawful conduct, including all salaries, bonuses, fees, stock awards, options and common stock sale proceeds, and imposing a constructive trust thereon;

D. Awarding Lead Plaintiff and the Class pre-judgment and post-judgment interest, as well as reasonable attorneys' fees, expert witness fees and other costs;

E. Awarding Lead Plaintiff and the Class the fees and expenses incurred in this action, including expert witness fees and attorneys fees; and

F. Awarding such other relief as this Court may deem just and proper.

XX. JURY TRIAL DEMAND

Lead Plaintiff hereby demands a trial by jury in this action for all issues so triable.

Dated: New York, New York
June 29, 2007

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