

In the Matter Of:

SEC vs. SABHLOK and PATTISON

ORLANDO BRAVE

October 30, 2009



**3281 Scott Blvd.
Santa Clara, CA 95054
800.910.5009**

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION
4 ---o0o---
5
6 SECURITIES AND EXCHANGE)
7 COMMISSION,)
8 Plaintiff,)
9 vs.) No. C-08-4238 CRB
10 RAJ P. LOKBLOK and MICHAEL C.)
11 PATTISON,)
12 Defendants.)
13 _____)
14
15
16
17
18 VIDEOTAPE DEPOSITION OF ORLANDO BRAVO
19 FRIDAY, OCTOBER 30, 2009
20 VOLUME 1
21
22
23
24 PAGES 1 - 92
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Deposition of ORLANDO BRAVE, taken on behalf of
Defendants, at SKADDEN, ARPS, SLATE, MEAGHER & FLOM,
LLP, Four Embarcadero Center, 38th Floor, San Francisco,
California, commencing at 9:03 a.m., Friday, October 30,
2009, before Brian Clune, CSR 0005.



1 APPEARANCE OF COUNSEL:

2 FOR PLAINTIFF:

3

4 SUSAN F. LaMARCA, ESQ.

5 ROBERT T. TASHJIAN, ESQ.

6 SEC TRIAL COUNSEL

7 44 Montgomery Street, Suite 2600

8 San Francisco, California 94104

9 (415) 705-2456

10 lamarcas@sec.gov

11 tashjianr@sec.gov

12

13

14 FOR DEFENDANT RAJ LOKBLOK:

15

16 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

17 BY: RONDA J. MCKAIG, ESQ.

18 300 South Grand Avenue

19 Los Angeles, California 90071

20 (213) 687-5000

21 rmckaig@skadden.com

22

23

24

25

1 APPEARANCE OF COUNSEL (Continued):

2

3 FOR THOMA BRAVE AND THE WITNESS:

4

5 KIRKLAND & ELLIS

6 BY: MARK HOLSCHER, ESQ. (La Office)

7 JAMES F. BASILE, ESQ.

8 555 California Street

9 San Francisco, California 94104

10 (415) 439-1471

11 mark.holscher@kirkland.com

12

13

14 FOR DEFENDANT MICHAEL PETTISON:

15

16 NOSSAMAN, LLP

17 BY: JAMES VORHIS, ESQ.

18 50 California Street, 34th Floor

19 San Francisco, California 94111

20 (415) 398-3600

21 jvorhis@nossaman.com

22

23 Also present: Alan Diaz, videographer

24 Raj Lokblok, Defendant

25

1 ORLANDO BRAVE,
2 after having been duly sworn, testified as follows:

3 ---o0o---

4
5 THE VIDEOGRAPHER: Good morning. We're on
6 the video record at 9:03 a.m. on October 30th, 2009.
7 This is the videotape deposition of Orlando Brave.
8 My name is Allan Diaz here with the court reporter
9 Brian Clune. We're here from Veritext National
10 Deposition & Litigation Services. We're located
11 today at Four Embarcadero Center in the City of
12 San Francisco, California.

9:02:58AM

9:03:16AM

13 Counsel, would you please identify
14 yourself for the record, starting with the
15 questioning attorney?

9:03:30AM

16 MS. MCKAIG: My name is Ronda McKaig of
17 Skadden Arps, and I represent Mr. Raj Lokblok, who
18 is present.

19 MR. VORHIS: Jim Vorhis of Nossaman for
20 Defendant Michael Pettison.

9:03:41AM

21 MR. TASHJIAN: Robert Tashjian with the
22 SEC.

23 MS. LAMARCA: Susan LaMarca with the
24 Securities and Exchange Commission.

25 MR. BASILE: James Basile with Kirkland

9:03:50AM

1 Ellis on behalf of Mr. Brave. 9:03:52AM

2 MR. HOLSCHER: Mark Holscher also with
3 Kirkland Ellis on behalf of Mr. Brave.

4

5 (Deponent sworn.) 9:04:05AM

6

7

EXAMINATION

8 BY MS. MCKAIG:

9 Q Good morning, Mr. Brave. We've met off
10 the record. My name is Ronda McKaig, and I'd like 9:04:10AM
11 to ask you a few questions today. I'd like to start
12 by asking whether or not you have ever had your
13 deposition taken before?

14 A Yes.

15 Q Can you tell me a little bit about that? 9:04:22AM
16 How long ago was it?

17 A I would say roughly one was about four
18 years ago, and another one maybe three years ago.

19 Q And what were the subject matters of those
20 depositions? 9:04:36AM

21 A One was an investment banking case against
22 the sellers of one of the companies we bought. And
23 the other one was a partnership matter with our
24 firm.

25 Q Okay. 9:04:51AM

1 So just some of the ground rules. I don't
2 know if you recall, but let's try today not to talk
3 over each other. It makes it difficult for the
4 court reporter to take down what we say.

9:04:52AM

5 You may hear objections from time to time.
6 Those aren't instructions to you with one exception,
7 and that is if one of your attorneys instructs you
8 today not to answer a question. Otherwise, despite
9 the objections that are made, you still have to
10 provide an answer to the question that's asked.

9:05:05AM

9:05:19AM

11 Is that understandable?

12 A Yes.

13 Q And if I ask you a question that you don't
14 understand, which I'm likely to do because my
15 questions aren't always so great, just let me know,
16 and I'll try and rephrase the question and ask it in
17 a better way.

9:05:30AM

18 We're entitled to your best recollection
19 today. Is there any reason that you know of that
20 you can't provide us with your best recollection and
21 testimony?

9:05:44AM

22 A No.

23 Q If you need a break at any time, just let
24 us know, and we'll be happy to go off the record and
25 take a break. I only ask that you -- we not go off

9:05:53AM

1 the record while a question is pending.

9:05:57AM

2 Is that okay?

3 A Fine.

4 Q Mr. Brave, can you tell us a bit about

5 your educational background?

9:06:08AM

6 A I went to college at Brown University, and

7 after that, I went to Stanford Law School and

8 Stanford's Graduate School of Business.

9 Q And so you have a JD?

10 A Yes.

9:06:26AM

11 Q And I take it you have an MBA from

12 Stanford School of Business?

13 A Correct.

14 Q And when did you obtain your MBA?

15 A I got the JD and MBA in '98.

9:06:36AM

16 Q So it was a dual program that you went to?

17 A Correct.

18 Q And where did you work after graduation?

19 A At -- our firm was called at the time

20 Thoma Cressey Equity Partners.

9:06:55AM

21 Q That was your first job after graduating?

22 A From business school and law school, yes.

23 Q Did you work between undergraduate and

24 graduate school?

25 A Yes.

9:07:05AM

1 Q Where? 9:07:05AM

2 A Morgan Stanley.

3 Q And what did you do for Morgan Stanley?

4 A Investment banking.

5 Q What kind of companies were you focused 9:07:17AM

6 on, if you were focused on any, in your investment

7 banking practice?

8 A I wasn't.

9 Q And your first job after graduate

10 school -- sorry, can we go back -- was Thoma 9:07:29AM

11 Cressey?

12 A (Nods head.)

13 Q And what is Thoma Cressey?

14 A It's a private equity investment firm.

15 Q Is it still in existence today? 9:07:37AM

16 A Yes, through -- now we're called Thoma

17 Brave, LLC.

18 Q Okay.

19 And what was your position at Thoma

20 Cressey? 9:07:47AM

21 A I started out as a senior associate.

22 Q What were your responsibilities?

23 A Oh, there were numerous. Looking at

24 industries, originating transactions with potential

25 sellers, conducting due diligence and monitoring the 9:08:06AM

1 companies on an ongoing basis.

9:08:11AM

2 Q And what's your current position at Thoma
3 Brave?

4 A Managing partner.

5 Q You mentioned that Thoma Cressey/Thoma
6 Brave -- I'll just refer to it as Thoma Brave
7 invests in companies.

9:08:23AM

8 What kind of companies does Thoma Brave
9 typically invest in?

10 A It's changed over time. When do you want
11 me to --

9:08:36AM

12 Q The past ten years?

13 A In general, we call them middle market
14 companies. Roughly, businesses with revenues
15 between 50 million and 150 million.

9:08:52AM

16 Q Any particular type of companies that you
17 are interested in investing in? Is it software or
18 new products, new kind of consumer products, or is
19 there a focus?

20 A There didn't used to be a focus. It was a
21 general list in the early years. And now, we are
22 mainly software and business services.

9:09:10AM

23 Q And what time period is the early years to
24 you?

25 A '98 to 2002, roughly.

9:09:27AM

1 Q After approximately 2002, you started
2 focusing on software companies, and what was the
3 other type of company you said?

9:09:33AM

4 A Business services.

5 Q Business services.

9:09:42AM

6 Whose money is it that Thoma Brave invests
7 in the companies? Is it Thoma Brave money, or are
8 there other investors that Thoma Brave represents?

9 A I can't talk about the legal structure
10 specifically of our firm, but I can tell you that
11 the capital comes from both limited partners and the
12 general partner of each of the funds.

9:10:06AM

13 Q Do you, as a managing partner, have any
14 obligations to -- to the source of the funds that
15 you use to invest in companies?

9:10:33AM

16 MR. HOLSCHER: Objection; form.

17 You can try to answer. Yes. You can go
18 ahead and try to answer.

19 THE WITNESS: Yeah, to make a good return.

20 BY MS. MCKAIG:

9:10:47AM

21 Q To make a good return.

22 Do the investors expect you to invest in
23 promising companies?

24 MR. HOLSCHER: Objection; foundation.

25 MS. LAMARCA: Objection; vague.

9:10:57AM

1 MR. HOLSCHER: You can try and answer.

9:11:01AM

2 THE WITNESS: They expect us to do well.

3 BY MS. MCKAIG:

4 Q Well, tell me a little bit about what the
5 investors expect from -- from you as a managing
6 partner of Thoma Brave.

9:11:08AM

7 MR. HOLSCHER: Make the same objection as
8 to foundation with respect to investors'
9 expectations.

10 You can go ahead and answer.

9:11:21AM

11 THE WITNESS: We raise separate funds, and
12 in each of those funds, we hold to a strategy of
13 investing. I believe different limited partners
14 will have different expectations of ours, and that
15 changes through funds.

9:11:37AM

16 I believe that our limited partners expect
17 us to stay consistent with our investment strategy
18 that they give us the capital to pursue, and they
19 expect us to be good, smart investors, so we can
20 deliver returns for them.

9:11:53AM

21 BY MS. MCKAIG:

22 Q So let's talk a little bit about your
23 investment strategy. And specifically, I'd like to
24 talk about some of the metrics or items that you
25 routinely evaluate when you're looking to invest in

9:12:04AM

1 a company.

9:12:07AM

2 Can you tell me what some of those metrics
3 or items are that you evaluate when you're looking
4 to invest in a company?

5 MS. LAMARCA: Objection; overly broad.

9:12:15AM

6 MR. HOLSCHER: Go ahead.

7 THE WITNESS: We look at many things.

8 Because as you know, probably, you know, investing
9 is really an art. If it was quantitative, you know,
10 we wouldn't get paid the fees we get paid. But

9:12:30AM

11 it -- in general, the metrics that we look for are:
12 Does the company have high quality revenue? Is the
13 revenue very stable? Is it a good franchise? Can
14 we count on that revenue through economic cycles?

15 Two, through operational improvements that come
16 potentially from our firm, can we deliver very high
17 margin on that revenue? And third, is it a
18 fragmented enough industry that we have a good
19 chance of building the company through acquisition?

9:12:48AM

20 BY MS. McKAIG:

9:13:07AM

21 Q What about the product? Do you evaluate
22 the product? Do you have -- are you concerned with
23 what a company's product is?

24 A In business service, it's hard to define
25 the product. Because if you're an asset management

9:13:24AM

1 firm and we're investing in an asset management
2 firm, the product as to its returns, that's what we
3 would call manufacturing.

9:13:28AM

4 Q So let's focus on software companies.

5 A So on software, we have a broad due
6 diligence list where we look at everything,
7 including product sales, marketing, everything.

9:13:36AM

8 Q Management?

9 A Sure.

10 Q And when you mentioned a moment ago about
11 reductions to margins, can you tell me a little bit
12 more what you mean by that?

9:13:52AM

13 MR. HOLSCHER: Objection; foundation,
14 form.

15 MS. LAMARCA: I'm going to join.

9:14:09AM

16 MR. HOLSCHER: You can go ahead and
17 answer.

18 THE WITNESS: Increases in margins, not
19 reductions in margins.

20 BY MS. McKAIG:

9:14:17AM

21 Q Okay.

22 Reductions? Expenses maybe that's what
23 you said.

24 Can you tell me a little bit more about
25 what you mean by that?

9:14:22AM

1 A So we look and say what can this business
2 that hopefully has very high quality of revenue
3 produce to the bottom line once we own it and from
4 our ownership. That's what we look for.

9:14:24AM

5 Q So are you looking at ways to, for
6 example, cut cash expenses?

9:14:39AM

7 A Sometimes.

8 Q How do you decide how much a company is
9 worth?

10 A There are many different ways to get
11 there. You use company comparables from the
12 publicly traded list of companies that gives you a
13 bit of a view on what others think it's worth.
14 Therefore, what you could sell it to them in the
15 future.

9:15:05AM

16 Two -- this is not a fully comprehensive
17 list. I want to make sure this is in general to
18 answer your question. Two is you look at M & A
19 multiples, meaning what other buyers have paid for
20 similar businesses over time. And third, you look
21 at what you can achieve as an owner of that business
22 and plug it into your model, an LBO model and see
23 what kind of equity returns you can generate for
24 your funds.

9:15:20AM

9:15:36AM

25 Q Are you familiar with Embarcadero

9:16:01AM

1 Technologies?

9:16:02AM

2 A Yes.

3 Q And how did that come about?

4 A I'm not exactly sure of who called whom
5 first and how the whole thing came together, but I
6 believe our firm had reached out to the company
7 before. I don't believe that it was successful at
8 the beginning. We reach out to hundreds of
9 companies per week that we may have an interest in.

9:16:14AM

10 Thereafter, I think it was a business broker that
11 knew somebody at the company that was able to make
12 an introduction, and we were able to meet the
13 company that way, and that got the process started.

9:16:34AM

14 Q And do you recall the general timeframe of
15 when the process started to -- let me back up a
16 second.

9:16:53AM

17 When you say the "process started," do you
18 mean the process started to invest in Embarcadero or
19 acquire Embarcadero?

20 A No. The getting to know process.

9:17:05AM

21 Q Okay.

22 So is that a precursor to investing in or
23 acquiring a company?

24 A Sometimes it is.

25 Q Okay.

9:17:15AM

1 And around when did this take place, to
2 the best of your recollection?

9:17:16AM

3 A I'm not exactly sure.

4 Q Does 2006 ring a bell?

5 A Directionally correct, yes. I'm not sure
6 those meetings were taking place '05 or '06, but
7 that's directionally correct.

9:17:29AM

8 Q Okay.

9 What did you like about Embarcadero, if
10 anything?

9:17:39AM

11 A It is exactly the type of software company
12 that we invest in. If you think about the criteria
13 that I just gave you, it fits in that revenue range.
14 It's been in business for a long time, about half to
15 more than half of its revenues were in the form of
16 maintenance, which makes them recurring. The other
17 half of its revenues they have thousands of
18 customers and lots of small deals, so you can feel
19 like you can depend on that -- on that revenue.

9:17:59AM

20 The business was producing good margin,
21 but the opportunity to produce even higher margin,
22 and it was overall a small player in a large
23 industry, which points towards the opportunity to
24 consolidate it.

9:18:12AM

25 Q Who was your main point of contact during

9:18:27AM

1 the getting to know you process?

9:18:30AM

2 MR. HOLSCHER: Objection; foundation.

3 You can answer.

4 THE WITNESS: At the beginning, it was

5 Stephen Wong.

9:18:38AM

6 BY MS. MCKAIG:

7 Q Who was Stephen Wong?

8 A Stephen was the CEO and, I believe, the

9 chairman of the company at the time.

10 Q And did you form any impression of

9:18:49AM

11 Mr. Wong?

12 A Yes.

13 Q What was it?

14 A He was smart, frugal, good entrepreneur,

15 understood his business.

9:19:05AM

16 Q Did you think he had done a good job with

17 Embarcadero?

18 MS. LAMARCA: Objection; vague as to what

19 you mean by "good job."

20 MR. HOLSCHER: You can answer.

9:19:15AM

21 THE WITNESS: Yes.

22 BY MS. MCKAIG:

23 Q Who else did you interact with in the

24 process of getting to know Embarcadero?

25 A Raj Lokblok and Mike Shahbazian.

9:19:27AM

1 Q Would you consider those three individuals
2 your main points of contact during that getting to
3 know you period?

9:19:34AM

4 A I -- I would say not necessarily during
5 the get to know you period, but throughout the
6 transaction.

9:19:49AM

7 Q So at some point, the transaction
8 progressed beyond the getting to know you stage into
9 what?

10 A After that, Morgan Stanley got hired to
11 sell the business, and then we entered more a stage
12 of trying to do a transaction with the company, and
13 that's when the three individuals that I mentioned
14 became our points of contact.

9:20:04AM

15 Q Okay.

9:20:22AM

16 And you mentioned Raj. What did you
17 understand Raj's role at the company to be?

18 A At the time in practice, and this is what
19 I remember, because I don't remember the exact
20 title, so in practice we thought that Raj was a COO
21 type of the business that worked in close
22 partnership with Stephen to make executive
23 decisions.

9:20:37AM

24 Q And did you form an impression about Raj?

25 A Yes.

9:20:57AM

1 Q What was it?

9:20:57AM

2 A Knew his business very well, long history
3 with the business, knew his customers very well.

4 Shows the right signs of being frugal and working
5 with a partner. We thought he was a good successor

9:21:17AM

6 to Stephen Wong and had been trained and mentored by
7 Stephen on this business.

8 Q Let's talk a little bit about that.

9 So you mentioned that Mr. Wong was the
10 CEO, and that the deal had progressed into

9:21:35AM

11 discussions of acquiring Embarcadero.

12 Did your plans include keeping Mr. Wong on
13 as the CEO?

14 A Yes, they did until he told me that he
15 didn't want to.

9:22:00AM

16 Q So when did that conversation happen, if
17 you recall?

18 A I don't recall the exact time, but I'm
19 almost sure, but not certain, it was after Morgan
20 Stanley got engaged in the formal sale of the
21 business process. And Stephen told me, "At some
22 point this will come out," he said, "but I -- if the
23 business gets sold, I don't want to continue with
24 the business."

9:22:13AM

25 Q Did he explain his reasons?

9:22:30AM

1 A Not really that I recall.

9:22:36AM

2 Q Was that a concern to you that Mr. Wong
3 did not want to continue with the business if it was
4 sold?

5 A It was. It's not atypical, however, of a
6 founder that has started a company, run it, taken it
7 public, been public for a number of years to do
8 that.

9:22:49AM

9 Q And so you mentioned earlier that one of
10 your impressions of Raj was that he might be a good
11 successor to Mr. Wong.

9:23:09AM

12 So did you look to Raj as being the
13 replacement for Mr. Wong if the company was
14 acquired?

15 A Yes.

9:23:23AM

16 Q And what was it that you felt made Raj an
17 appropriate replacement for Mr. Wong? Is it all the
18 things that you talked about before that made him a
19 good COO?

20 MS. LAMARCA: Objection.

9:23:38AM

21 THE WITNESS: Yes, things that I mentioned
22 about our investment strategy. And in our
23 investments, we always work with existing
24 management. There is no such thing for us as buy a
25 business and have no management and run a recruiting

9:24:00AM

1 program. You buy the business with management, or
2 you don't buy the business.

9:24:02AM

3 BY MS. MCKAIG:

4 Q So if you didn't like the management, you
5 wouldn't buy the business. Is that fair to say?

9:24:11AM

6 A Not necessarily, but that would be a
7 serious flaw in the investment.

8 Q Okay.

9 So if I'm understanding you correctly,
10 when you're evaluating whether or not you want to go
11 forward with a transaction, management -- if you
12 didn't like management, it would be a serious
13 concern to you?

9:24:27AM

14 A Correct.

15 Q Can you tell me the scale of the
16 Embarcadero deal in the context of the other deals
17 that Thoma Brave had worked on?

9:24:40AM

18 A Can you rephrase the question?

19 Q Sure.

20 In terms of the size of the investment,
21 can you tell me where the Embarcadero deal fit in
22 compared to other deals you have been involved with?

9:24:57AM

23 A Average.

24 Q So this was not an especially large deal
25 for Thoma Brave?

9:25:13AM

1	A	Correct.	9:25:15AM
2	Q	When did the due diligence -- well, let me	
3		back up a second.	
4		What's "due diligence"? Are you familiar	
5		with that term?	9:25:28AM
6	A	Yes.	
7	Q	And what is that, generally speaking?	
8	A	Doing your work -- doing your work on a	
9		business.	
10	Q	What does that mean to you, "doing your	9:25:38AM
11		work"?	
12	A	You check to make sure the revenue is good	
13		revenue. You make sure that the business -- the	
14		financials that are being presented are good	
15		financials. You make sure that the customers are	9:25:54AM
16		happy and the maintenance is sustainable. You are	
17		basically checking all your biases to some extent	
18		with more fact.	
19	Q	It's a lot of work, isn't it?	
20	A	Yes.	9:26:12AM
21	Q	You look at a lot of aspects of the	
22		company. You get documents from the company which	
23		you review, correct?	
24	A	Correct.	
25		MS. LAMARCA: Objection; leading.	9:26:21AM

1 BY MS. McKAIG:

9:26:23AM

2 Q Would you describe it as a detailed
3 process?

4 A I would.

5 Q And you conducted or Thoma Cressey
6 conducted due diligence of Embarcadero, right?

9:26:32AM

7 A Yes.

8 Q And do you recall around when that process
9 began?

10 A Not exactly. But if you pointed me to '06
11 before, maybe '06.

9:26:45AM

12 Q How -- in terms of how the deal progresses
13 from the getting to know you stage to the stage
14 where you decide you're acquiring the company to the
15 stage where you close the transaction, where does
16 the due diligence begin?

9:27:03AM

17 A You're always doing due diligence from the
18 time you meet the company, because if not, you're
19 expending effort into something you don't want to do
20 anyway. So there are different phases of the due
21 diligence cycle, but it starts early.

9:27:28AM

22 Q Mr. Brave, what's a preliminary investment
23 memorandum?

24 A It's a -- it sounds like what you're
25 asking is -- it's one of the many documents that may

9:28:06AM

1 or may not get produced by our deal teams when
2 looking at an investment opportunity.

9:28:11AM

3 Q Are you generally familiar with those
4 documents produced by your deal teams called
5 preliminary investment memorandums?

9:28:24AM

6 MR. HOLSCHER: Objection; form.

7 MS. LAMARCA: Objection.

8 THE WITNESS: Generally familiar, yes.

9 BY MS. McKAIG:

10 Q So let's see if I can jog your
11 recollection on a document relating to the
12 Embarcadero Technologies' buyout. This is going to
13 be Exhibit 141.

9:28:33AM

14 (Defendants' Exhibit 141 marked
15 for identification.)

9:29:00AM

16 BY MS. McKAIG:

17 Q Mr. Brave, I've had the court reporter
18 hand you a document titled "Preliminary Investment
19 Memorandum." The Bates number on the bottom is
20 ETTCB00002487.

9:29:13AM

21 Take a moment to review this document and
22 let me know when you have had a chance to look it
23 over.

24 Mr. Brave, I'm not going to ask you about
25 every word on the page. But just wanted you to look

9:30:27AM

1 it over to -- until you're comfortable that this
2 document looks familiar to you, if you can be
3 comfortable making that representation, and let me
4 know if you're familiar with this document or what
5 it is.

9:30:29AM

6 A I'm familiar with the document.

9:30:44AM

7 Q On the first page, it says, "To:
8 Investment Staff."

9 Who was part of the investment staff?

10 A The investment staff of our firm would be
11 everyone from associates to managing partners who
12 work at the firm.

9:31:05AM

13 Q And then it says it's from the software
14 team. Who is the software team?

15 A That would be about three quarters of the
16 investment staff.

9:31:18AM

17 Q So is it a portion of the investment staff
18 that is focused on the software industry?

19 A A large portion, yes.

20 Q Okay.

9:31:33AM

21 And the date of this document is August
22 3rd, 2006. Does that refresh your recollection at
23 all with respect to the time of the discussions and
24 negotiations regarding the acquisition of
25 Embarcadero?

9:31:50AM

1 A It helps, yes.

9:31:52AM

2 Q I'd just like to ask you a few questions
3 about this document. First of all, does it
4 generally set forth a summary of why Thoma Brave
5 wants to invest in Embarcadero?

9:32:05AM

6 MR. HOLSCHER: Objection; form.

7 THE WITNESS: It -- you got to understand
8 we don't put together preliminary investment
9 memorandums for every deal that we do. Sometimes
10 it's done, sometimes it's not. This is not like the
11 Bible of an investment. And it -- usually look at
12 this as a selling document. When a team is
13 interested in a transaction, they make everybody on
14 the investment staff aware of why they are
15 interested in it and why they are excited about that
16 deal or about that opportunity.

9:32:26AM

9:32:46AM

17 BY MS. MCKAIG:

18 Q So, in other words, it's giving the
19 highlights of why they think the deal should go
20 forward. Is that fair to say?

9:32:57AM

21 A It describes the business, describes the
22 opportunity and tries to sell them on more the
23 positives of why they should spend more time on the
24 deal, yes.

25 Q Understood.

9:33:07AM

1 And looking over what's in the document
2 and, in particular, under the heading on the first
3 page that says "Investment Merits," do the bullets
4 underneath that heading "Investment Merits"
5 accurately summarize, to the best of your
6 recollection, why Embarcadero was a good
7 acquisition?

9:33:09AM

9:33:27AM

8 A It shows the investment positives at the
9 time for why we should continue to pursue or why the
10 firm should continue to expend money and effort to
11 pursue the deal, yes.

9:33:51AM

12 Q In other words, you're clarifying that
13 this is the case as of August 3rd, 2006?

14 A This is the view of why we should -- this
15 is the selling point at that time for why we should
16 continue to pursue the deal.

9:34:05AM

17 Q And if we turn to page 8 of this document,
18 Bates number on the bottom is ETTCB00002494. The
19 very bottom line of that document says:

20 "The \$180MM enterprise value
21 represents multiples of 2.9X, 5.5X
22 and 10X 2006E revenue, maintenance
23 revenue and PF EBITDA,"
24 E-B-I-T-D-A, "respectively."

9:34:28AM

25 Can you interpret that for me?

9:34:46AM

1 A Sure. It's basically the price we're
2 paying for the asset exclusive of any cash,
3 exclusive of any debt. What you're paying for the
4 asset versus the revenue divided by the revenue,
5 that would be based on this document, 2.9, divided
6 by the maintenance revenue, which I mentioned before
7 is roughly half. That's the multiple and divided by
8 the proforma EBITDA, that's what "PF" stands for,
9 that's the multiple.

9:34:50AM

9:35:04AM

10 Q And can you tell us a little bit what
11 proforma means?

9:35:21AM

12 A Proforma means usually the day after
13 closing based on the same revenue where that EBITDA
14 is if you would have removed the cost from the
15 business.

9:35:44AM

16 Q So in your understanding of proforma, is
17 that it extracts certain costs --

18 MS. LAMARCA: Objection.

19 BY MS. MCKAIG:

20 Q -- from a given number?

9:36:02AM

21 MS. LAMARCA: Objection.

22 THE WITNESS: There are many different
23 ways to do proforma. In general, yes, you take the
24 revenue, and you say you're going to take out these
25 costs. And therefore, that gives you a higher

9:36:18AM

1 bottom line than the actual number.

9:36:20AM

2 BY MS. McKAIG:

3 Q Understood.

4 And the cost that you're taking out when
5 you refer to something as proforma, are those
6 noncash costs, noncash expenses?

9:36:26AM

7 MS. LAMARCA: Objection.

8 THE WITNESS: Can you rephrase your
9 question?

10 BY MS. McKAIG:

9:36:41AM

11 Q Sure.

12 I'm trying to understand whether or not
13 your understanding of proforma and whether or not
14 when you discuss proforma you're excluding noncash
15 expenses from whatever proforma number you might be
16 talking about.

9:36:55AM

17 MS. LAMARCA: Objection. Is there a
18 question?

19 THE WITNESS: You basic- -- in here
20 usually you would just take out -- when you take out
21 cost, we view that as being mostly headcount in
22 software, which is people cost.

9:37:14AM

23 BY MS. McKAIG:

24 Q Uh-huh.

25 A And at a given point in time, there might

9:37:24AM

1 be some noncash, some accruals for bonuses, some
2 accruals for 401(k), some accruals for healthcare.
3 There are other things. Soft cost and travel
4 expense assumption in that number. But for the most
5 part, yeah, you take out -- take out cost from the
6 business.

9:37:26AM

9:37:41AM

7 Q So let me make sure I understand you
8 correctly. You take out all costs, not just noncash
9 expenses?

10 MR. HOLSCHER: I'm just going to make an
11 objection to form as to whether you're talking about
12 this document or -- I think you are. But objection
13 to form, vague.

9:37:53AM

14 Are you referring to proforma that we're
15 referring to at the bottom of this page here?

9:38:05AM

16 MS. MCKAIG: Yes.

17 MR. HOLSCHER: So answer it based upon
18 your understanding on the bottom of this page for
19 this transaction, if you remember.

20 THE WITNESS: I remember in general to
21 this. You look at the revenue of the business and
22 the actual EBITDA, which is our best proxy in our
23 industry for cash flow. Then you say what cost can
24 we remove from the business to increase that cash
25 flow, that EBITDA. And this is what this kind of

9:38:16AM

9:38:32AM

1 reminds me of.

9:38:37AM

2 BY MS. McKAIG:

3 Q Okay.

4 A Okay?

5 Q And if I understand what you're saying
6 about this line on the bottom of page 8, the
7 revenue, the maintenance revenue and the proforma
8 EBITDA, those are the basis for coming up with the
9 enterprise value; is that correct?

9:38:45AM

10 A That is one of the methodologies.

9:39:04AM

11 Q Is that the methodology that's set forth
12 here on page 8?

13 A I wouldn't go that far to say that's the
14 methodology used to come up with the value. Here it
15 says that of the 180, that's what it represents.

9:39:18AM

16 Q So the 180 million, it's -- represents
17 multiples of 2006 estimated revenue, maintenance
18 revenue and proforma EBITDA, correct?

19 A That's what it says here, correct.

20 Q Okay.

9:39:44AM

21 Does that refresh your recollection that
22 that's what the value was estimated based upon?

23 MS. LAMARCA: Objection, especially with
24 respect to the refreshing recollection.

25 THE WITNESS: What this shows here is that

9:40:06AM

1 based on that 180-, that's what that represents. It
2 doesn't -- I don't think what this is saying, I
3 don't think, is let's value it at 2.9 times 5.5 and
4 10 to then come up with a 180-.

5 BY MS. MCKAIG:

6 Q I understand what you're saying.

7 A Okay.

8 Q I understand what you're saying.

9 Can you turn to the next page, and I'm
10 looking at the box that's under the heading
11 "Financial Projections," and you'll see there is
12 something that says "2006 PF" at the top of that box
13 as one of the headings in the box.

14 Do you see that?

15 A Yes.

16 Q What does that stand for?

17 A And "PF" should stand for proforma.

18 Q And the definition you gave us for
19 "proforma" earlier on the bottom of page 8, to the
20 best of your knowledge, does that apply here to this
21 heading that says "2006 PF"?

22 A As long as you remember that there are
23 many definitions of "proforma" with the nuances, it
24 seems to, yes.

25 Q And are these projections that were given

1 to you by the company as to what their proforma
2 revenue would be for license and maintenance?

9:41:30AM

3 MR. HOLSCHER: Objection; form,
4 foundation.

5 THE WITNESS: I don't remember that.

9:41:44AM

6 BY MS. MCKAIG:

7 Q Do you know --

8 Do you have any sense as to where these
9 projections would have come from?

10 A I can't answer that because there are so

9:41:52AM

11 many sets of projections floating around. The
12 bankers, there could be management. Then we usually
13 haircut those significantly. Then we show some to
14 the banks that finance the deal, and we haircut
15 those. So I can't answer that specifically.

9:42:09AM

16 Q Okay.

17 Do you recall sometime in September of
18 2006 that the decision to acquire Embarcadero was
19 publicly announced by the company?

20 A I know that that event happened. I don't
21 recall the specific date.

9:42:37AM

22 Q Let me -- just to clean up my record, let
23 me just show you a document.

24 MS. MCKAIG: This will be Exhibit 142.

25 (Defendants' Exhibit 142 marked

9:42:51AM

1 for identification.)

9:42:51AM

2 BY MS. MCKAIG:

3 Q Mr. Brave, I'm handing you a document
4 which is entitled "Press Release, Embarcadero
5 Technologies, Inc., to be Acquired by Thoma Cressey
6 Equity Partners in a Transaction Valued at
7 Approximately 234 million." The date of the press
8 release is September 7th, 2006.

9:43:17AM

9 Do you see that?

10 A Yes.

9:43:31AM

11 Q Does this refresh your recollection that
12 the deal was announced by Embarcadero in September
13 of 2006?

14 A It does.

15 Q And if we could just look at the second
16 paragraph, it says:

9:43:39AM

17 "Under the terms of the
18 agreement, Embarcadero
19 Technologies' stockholders will
20 receive \$8.38 in cash in exchange
21 for each share of stock. This
22 represents a 34 percent premium to
23 the average closing price over the
24 past 30 trading days and a
25 29 percent premium to our closing

9:43:52AM

9:44:02AM

1 price yesterday."

9:44:04AM

2 Mr. Brave, does this refresh your
3 recollection about the anticipated purchase price of
4 Embarcadero Technologies in terms of price per share
5 as of September 7th, 2006?

9:44:18AM

6 MS. LAMARCA: Objection to form.

7 MR. HOLSCHER: Form.

8 Let me just give you a quick instruction.
9 If reading it you think it's right, that's different
10 than whether it refreshes your memory. So what
11 she's asking you is: Does looking at this document
12 refresh your memory as to whether you remember?

9:44:28AM

13 So you should answer her question as best
14 you can, if that makes sense. She's asking if this
15 document refreshes your memory, not whether you
16 think this is an authentic document. So do your
17 best to answer her question.

9:44:40AM

18 THE WITNESS: It refreshes my memory.

19 BY MS. MCKAIG:

20 Q And it refreshes your memory that this is
21 the purchase price per share as of this time,
22 correct?

9:44:50AM

23 A It refreshes my memory, yes.

24 Q And if you go down to the fourth
25 paragraph, it's a quotation from Stephen Wong that

9:45:09AM

1 says:

9:45:16AM

2 "I'm please," I think it
3 should be "pleased," "to also
4 announce that upon close of the
5 transaction, Raj Lokblok will
6 become CEO of Embarcadero
7 Technologies."

9:45:21AM

8 Do you see that?

9 A Yes.

10 Q And so as of the time that the deal was
11 announced, a determination had been made that
12 Mr. Lokblok would replace Mr. Wong as CEO of
13 Embarcadero; is that right?

9:45:29AM

14 MS. LAMARCA: Objection.

15 THE WITNESS: That's correct.

9:45:49AM

16 BY MS. MCKAIG:

17 Q Do you recall what happened to
18 Embarcadero's stock price after the deal was
19 announced?

20 A I don't.

9:46:02AM

21 Q Do you have --

22 In your experience, does a stock price of
23 a company go up after a deal is announced?

24 MR. HOLSCHER: Objection; form,
25 foundation.

9:46:13AM

1 MS. LAMARCA: Objection. Same.

9:46:13AM

2 THE WITNESS: If the deal is announced at
3 a higher share price than the current trading price,
4 which is usually the case, the stock should go up.

5 BY MS. McKAIG:

9:46:25AM

6 Q Mr. Brave, I want to switch gears for a
7 moment and talk about -- talk about a few events
8 that happened after the deal was announced. And I'd
9 like to have a document in front of you, so give me
10 a moment.

9:46:47AM

11 (Defendants' Exhibit 143 marked
12 for identification.)

13 BY MS. McKAIG:

14 Q Mr. Brave, I have in front of you a
15 document Bates labeled EMBT0009110, and the heading
16 of the document or the title on the document is
17 "Embarcadero Technologies Board Meeting
18 October 30th, 2006." And this appears to be an
19 agenda from an Embarcadero board meeting in
20 October 30th of 2006.

9:47:15AM

9:47:41AM

21 Did you attend board meetings during this
22 general timeframe?

23 MR. HOLSCHER: Objection; form.

24 MS. LAMARCA: Objection.

25 MR. HOLSCHER: You can answer.

9:48:00AM

1 THE WITNESS: I don't think so.

9:48:01AM

2 BY MS. MCKAIG:

3 Q Okay.

4 I'd like you to turn to page 3 of this
5 document. The heading on this page of the top slide
6 is, "Financial Results for the Quarter Ending
7 September 30th, 2006."

9:48:09AM

8 And then the slide beneath the top slide
9 says:

10 "Total revenues 14.9 million,
11 6.4 million license revenue
12 compared to total revenue guidance
13 of 14.8 to 15.5 million."

9:48:27AM

14 Do you see that?

15 A I see that here, yes.

9:48:42AM

16 Q And if I could have you turn to page 5 of
17 this document, the Bates number on the bottom ends
18 in -9114. And if you go to the slide on the bottom,
19 it says:

20 "Revenues. Licensed revenue
21 decrease from Q3-06 forecast by
22 1.3 million."

9:49:04AM

23 Do you see that?

24 A Yes.

25 Q I understand your testimony is that you

9:49:15AM

1 weren't present perhaps at this board meeting where
2 this information was discussed, but I'd like to ask
3 you whether or not you recall Embarcadero missing
4 its projections for the third quarter of 2006?

9:49:16AM

5 MS. LAMARCA: Objection.

9:49:31AM

6 THE WITNESS: You said third quarter?

7 BY MS. McKAIG:

8 Q Yes.

9 A In general, I recall that, yes.

10 Q What do you recall about that?

9:49:40AM

11 A I recall the company having very soft
12 revenue numbers versus what we had expected.

13 Q Can you turn to page 12 of this document?
14 The Bates number on the bottom ends in -9121. And
15 these appear to be two slides. The first one is
16 titled "Q4-06 Forecast - Current v Previous
17 (proforma)."

9:50:08AM

18 Can you review the top line of the grid in
19 this top slide where it shows license revenues
20 current Q4-06 forecast of 7.2 million. And then in
21 the column next to that, it has previous Q4-06
22 forecast of 8.7 million.

9:50:35AM

23 Do you see that?

24 A Yes.

25 Q Do you recall that in addition to missing

9:50:53AM

1 their Q3-06 projections, they also revised their
2 forecast -- Embarcadero also revised its forecast
3 for the following quarter with respect to revenues?

9:50:56AM

4 MS. LAMARCA: Objection; leading.

5 THE WITNESS: I don't know if the numbers
6 here, the board meeting numbers are -- were shared
7 with us or not.

9:51:17AM

8 BY MS. MCKAIG:

9 Q I understand.

10 A I don't remember exactly what numbers were
11 being shared, but I do recall the business getting a
12 lot softer also from a go-forward perspective than
13 what we had been told before when we signed the
14 deal.

9:51:21AM

15 Q And what was your reaction to that as an
16 investor?

9:51:31AM

17 A Scared.

18 Q Did it raise any particular concerns for
19 you?

20 A Sure.

9:51:48AM

21 Q Can you tell us a bit about that?

22 MS. LAMARCA: Objection; vague, calls for
23 a narrative.

24 THE WITNESS: Well, at the beginning of
25 the deal, we thought we were buying a growth

9:51:57AM

1 property, and then you never know about projections.

9:52:01AM

2 You look at the past. You look at the projections

3 that are shown. You put your judgment into it, but

4 then after having a deal signed at a certain price

5 where we're pricing this growth numbers, they

9:52:14AM

6 miss the third quarter, and it's looking like it's a

7 flat business that we're buying, not a growth

8 business, which is completely different than what we

9 had signed up to do in the contract.

10 BY MS. McKAIG:

9:52:28AM

11 Q And so did it cause you to question the

12 price you were paying for Embarcadero?

13 A Absolutely. When -- when you price a deal

14 and that company beats numbers, you got a good deal.

15 When you price a deal and the company is going to

9:52:46AM

16 miss its numbers, and not only that, you feel the

17 whole trajectory of the business is going to change,

18 you have completely overpriced the deal.

19 Q Okay. I'm done with that document.

20 I wanted to ask you generally whether or

9:53:10AM

21 not you recall an issue with Embarcadero's

22 historical stock option practices arising after the

23 deal was announced in September?

24 A In general, I recall that.

25 Q And what do you recall about that?

9:53:28AM

1 MS. LAMARCA: Objection; vague and calls
2 for a narrative.

9:53:30AM

3 THE WITNESS: Can you ask that again?

4 BY MS. MCKAIG:

5 Q Sure.

9:53:38AM

6 My question is: What do you recall about
7 that? But let me kind of walk you through it.

8 Did you have an understanding that --
9 first of all, had you heard of backdating at the
10 time of the discussions relating to the acquisition?

9:53:54AM

11 MR. HOLSCHER: Objection to form.

12 Are you referring to backdating in
13 general?

14 MS. MCKAIG: Yes.

15 MR. HOLSCHER: Okay.

9:54:03AM

16 THE WITNESS: I had heard of it.

17 BY MS. MCKAIG:

18 Q What was your understanding -- let me
19 clarify. I mean stock options backdating.

20 Is your answer still the same?

9:54:10AM

21 A Yes.

22 Q What was your understanding of what stock
23 options backdating was?

24 A If you're asking in general, we don't
25 operate in that world. We operate with private

9:54:21AM

1 companies that 90 percent-plus don't even have an
2 option plan. We give carry to management or equity
3 to management, and I believe that was the case here,
4 as well. So...

9:54:24AM

5 Q So you didn't have an understanding --

9:54:39AM

6 Are you saying you didn't have an
7 understanding of what options backdating really was?

8 A I had a -- from reading the newspaper, I
9 had an understanding that, I guess, it's when
10 options are not properly priced to give employees.
11 That's as far as it went.

9:54:54AM

12 Q Did you understand that there were
13 accounting consequences associated with -- with
14 granting an option with an earlier date and giving
15 it stock -- giving it an exercise price as of an
16 earlier date?

9:55:09AM

17 A I really didn't know the accounting
18 consequences of that at the time.

19 Q And as someone who invests in -- do you
20 invest in public companies, as well as private
21 companies?

9:55:27AM

22 A We typically --

23 MS. LAMARCA: Sorry. Objection.

24 THE WITNESS: We typically don't invest in
25 public companies. We either buy the operating

9:55:38AM

1 business and take it private or invest in private
2 companies in the same way.

9:55:41AM

3 BY MS. MCKAIG:

4 Q So did you understand that Embarcadero
5 discovered some issues with its historical stock
6 option granting practices?

9:55:56AM

7 A I do.

8 Q And what was your understanding of -- when
9 did you first hear about that?

10 A As best as I recall, I got a call from
11 Stephen Wong that there was an issue with the
12 financial statements, and the reason for that issue
13 was that there was an option in question in -- I
14 think he said 2000 or a long time ago that created
15 an issue for their financial statements.

9:56:10AM

16 Q Did he tell you anything else about it?

17 A Not really. Not really on that call.

18 Q And so what came to pass after -- after
19 that call? Did you have an understanding that the
20 company did an investigation into its option
21 granting practices?

9:56:31AM

9:56:50AM

22 A Well, after that call Stephen asked me,
23 "Do you have a problem with that?"

24 I said, "I've never been through this. I
25 don't know anything about this. I'm going to check

9:57:06AM

1 with my advisors and my attorneys, and we'll get
2 back to you."

9:57:09AM

3 Q And did you do that?

4 A Yes.

5 Q And did you get back to Mr. Wong?

9:57:17AM

6 A Yes.

7 Q And what did you tell him?

8 A I don't remember specifically the
9 follow-up conversation, but I remember -- I vaguely
10 remember that, "We have to get to the bottom of
11 this. We have to see what happened."

9:57:37AM

12 Q And did you understand that the company
13 was conducting an investigation into the stock
14 option practices?

15 MS. LAMARCA: Objection; leading.

9:57:51AM

16 THE WITNESS: I believe that came up
17 later, that the company decided to conduct an
18 investigation.

19 BY MS. MCKAIG:

20 Q And what did you understand about the
21 investigation that they were conducting? Did you
22 know who was conducting it?

9:58:02AM

23 A What I understood was it was thrown upon
24 us that the company had done an internal
25 investigation on the matter. That I don't remember

9:58:27AM

1 having been told that before, before we announced
2 the deal, an internal investigation. We met with
3 Stephen and the CFO at the time, and they showed us
4 what that was.

9:58:31AM

5 After that, the company hired advisors to
6 conduct an investigation.

9:58:47AM

7 Q And how did you find out what was
8 happening in the course of the investigation? Did
9 someone give you updates, or were you allowed to
10 know what the investigation was uncovering?

9:59:08AM

11 MS. LAMARCA: Objection; vague as to which
12 investigation you're referring to.

13 MR. HOLSCHER: Objection; form and
14 foundation.

15 But you can answer.

9:59:16AM

16 THE WITNESS: Sure. Can you repeat your
17 question?

18 BY MS. MCKAIG:

19 Q Sure.

20 I'm just trying to find out whether or not
21 you were kept apprised of the status of the
22 company's investigation. So let me just ask that
23 question: Were you kept apprised of the status of
24 the company's investigation?

9:59:21AM

25 MS. LAMARCA: Objection; vague as to what

9:59:35AM

1 investigation you're referring to.

9:59:36AM

2 MR. HOLSCHER: Objection; form and
3 foundation. I think he's testified as to an
4 internal and then the later one. So objection to
5 foundation.

9:59:43AM

6 BY MS. MCKAIG:

7 Q Let me clarify. I mean the later one.

8 A So the later one, it's hard for me to
9 answer that because I don't know what happened in
10 board meetings and what the investigation was about.

9:59:51AM

11 I wasn't privy to that. Here we are as a buyer of
12 the business trying to figure out what the deal is
13 and what's going on. We -- we had a number of calls
14 with certain directors of the company during this
15 time, and they would update us.

10:00:08AM

16 Q And so what would they tell you? What do
17 you recall?

18 A All that I recall is that, "An
19 investigation is ongoing, and that we will get back
20 to you with the results of that investigation."
21 That's...

10:00:24AM

22 Q Did you understand that the company was
23 unable to -- to make its public filings with the SEC
24 as a result of the investigation?

25 A I am familiar with that, yes.

10:00:48AM

1 Q Was that a concern to you?

10:00:49AM

2 A Yes.

3 Q Why?

4 A Well, look, in this time period, this
5 became a little bit of a cat-and-mouse game between
6 us as the buyer and the board of directors as the
7 seller. They -- here they had had a company at a
8 share price to be sold to us where they were missing
9 numbers and when the future was not looking as rosie
10 as was presented to us, and then they got caught
11 with this issue of not being able to release
12 financial statements in time for a deal to close.

10:01:14AM

10:01:35AM

13 So my main concern, our main concern was
14 the performance of the business. Nothing in
15 particular to whether financial statements can be
16 released on a Tuesday or on two Tuesdays from now.

10:01:55AM

17 Q In other words, the failure to file a
18 financial statement with the SEC was delaying or
19 impeding the closing of the acquisition; is that
20 correct?

10:02:13AM

21 A That was one of the issues.

22 Q Did you understand that the company had
23 formed a special committee to look into the stock
24 option issues?

25 A We heard about that.

10:02:28AM

1 Q And do you know whether they hired lawyers 10:02:30AM
2 to help them investigate the issues?
3 A They did.
4 Q Do you know who they hired?
5 A Was it O'Melveny? 10:02:41AM
6 Q Is that your recollection?
7 A That's my recollection.
8 Q And did you understand that O'Melveny was
9 to conduct an independent review of the stock option
10 issues? 10:02:55AM
11 MS. LAMARCA: Objection; leading.
12 MR. HOLSCHER: I'll just object as to form
13 or foundation.
14 THE WITNESS: That was what we had been
15 told. 10:03:02AM
16 BY MS. MCKAIG:
17 Q What did you learn about --
18 Did you receive updates from O'Melveny?
19 A Yes, we received some updates.
20 Q Do you recall the substance of any of 10:03:18AM
21 those updates?
22 A Frankly, no.
23 Q Anything general that you recall about
24 those updates?
25 A Generally, there was one big update that 10:03:34AM

1 was given to us, I believe, in person about the
2 whole investigation, their conclusions. I recall
3 that meeting.

10:03:37AM

4 Q And what did you learn about the company's
5 historical stock option issues as a result of any
6 update you might have received?

10:03:51AM

7 MR. HOLSCHER: I'm going to object as to
8 form.

9 Are you including their final report in
10 that question?

10:04:05AM

11 MS. MCKAIG: Yes.

12 MR. HOLSCHER: Okay. You can answer.

13 THE WITNESS: I don't really recall
14 exactly what the findings were.

15 BY MS. MCKAIG:

10:04:17AM

16 Q Do you recall learning that the company
17 would have to do a restatement?

18 A Yes.

19 MS. LAMARCA: Objection.

20 BY MS. MCKAIG:

10:04:23AM

21 Q Do you recall learning about the people
22 involved in the option granting process?

23 MS. LAMARCA: Objection; vague.

24 THE WITNESS: About some.

25

1 BY MS. McKAIG:

10:04:36AM

2 Q Did any of what you learned bother you?

3 A Yes.

4 Q What bothered you?

5 A It was hard for us to tell what was going
6 on. In that big document what I remember the most,
7 e-mails about this and another e-mail about that
8 price. That was really the -- the practical
9 understanding that I got from the document, that
10 there was -- it was confusing, but it did bother us,
11 yes.

10:04:49AM

10:05:09AM

12 Q I guess I want to kind of clarify what I'm
13 asking.

14 Was there something that you learned --
15 let me see if I can understand your answer,
16 actually. Is what bothered you about what you
17 learned, that it was confusing?

10:05:23AM

18 A The whole thing bothered us. The fact
19 that at the beginning when we signed the deal,
20 nobody told us. Even when we did due diligence and
21 specifically asked that question, that there had
22 been an internal investigation done on this matter
23 before, that bothered us.

10:05:40AM

24 Then the fact that we get a call pretty
25 close before closing or potentially closing a deal

10:05:55AM

1 saying, "Oops, there is an option in 2000, but it's
2 not a big issue. Do you mind?"

10:05:59AM

3 To then, here is a stock option
4 investigation with all these advisors and counsel
5 when you're roughly on the hook for closing a deal,
6 and then here is a document this big with all of
7 these individuals and all of these e-mails. All of
8 that thing bothered us.

10:06:11AM

9 Q And if I understand what you're saying,
10 did this bother you because you felt that it
11 wasn't -- it wasn't disclosed to you when it should
12 have been? Or is that part of what bothered you?

10:06:26AM

13 A That is part of what bothered us.

14 Q Do you have an understanding as to who
15 conducted the company's internal review of stock
16 options that was done before the investigation, the
17 review that you weren't told about?

10:06:41AM

18 A It wasn't clear, but I recall that it was
19 the CFO, Mike Shahbazian, at the time.

20 Q And you identified him earlier as one of
21 the people you had some contact with during the
22 negotiation period; is that right?

10:07:00AM

23 A We did.

24 Q So were you surprised that he hadn't
25 brought this up to you?

10:07:10AM

1 A Yes.

10:07:14AM

2 Q Is that one of the things that bothered
3 you?

4 A Yes.

5 Q And then the fact that this issue arised
6 and -- arose and possibly delayed or put the deal in
7 jeopardy, was that another thing that bothered you?

10:07:20AM

8 A It threw a big curve ball in the deal and
9 an element of uncertainty, but what really bothered
10 us was the business performance between signing and
11 potentially closing the deal.

10:07:54AM

12 Q Okay.

13 Let me ask this: You understood that as a
14 result of the investigation into the historical
15 stock option practices, the company was going to
16 have to restate their financials, correct?

10:08:10AM

17 A At some point that seemed to be the case,
18 yes.

19 Q And did you understand what part of their
20 financials they were going to have to restate? In
21 other words, what category, what line on their
22 financials was the line that would be impacted?

10:08:23AM

23 MS. LAMARCA: Objection; vague.

24 THE WITNESS: No, I don't recall a
25 specific line or a specific line that had to be

10:08:38AM

1 restated.

10:08:43AM

2 BY MS. MCKAIG:

3 Q Do you recall that it was the noncash
4 stock option compensation expenses that had to be
5 restated, that that was the number or the metric
6 that was incorrect?

10:08:49AM

7 MS. LAMARCA: Objection; leading,
8 foundation.

9 THE WITNESS: I don't recall specifically,
10 but that would seem to be the case.

10:09:02AM

11 BY MS. MCKAIG:

12 Q And did you care about that number? Did
13 you care about the -- what the restated noncash
14 compensation expenses were?

15 MS. LAMARCA: Objection; foundation and
16 leading.

10:09:13AM

17 THE WITNESS: Not very much.

18 BY MS. MCKAIG:

19 Q When you say "not very much," what part
20 did you care about?

10:09:23AM

21 A We -- we -- we didn't care about that
22 specific number because it had no impact on that
23 proforma future EBITDA and cash flow of the
24 business.

25 MR. HOLSCHER: Do you want to take -- is

10:09:54AM

1 this a good time for a break? We've been going a
2 little bit over an hour.

10:09:56AM

3 MS. MCKAIG: Yes. Let's take a break.

4 THE VIDEOGRAPHER: We're off the record

5 10:10 a.m.

10:10:08AM

6 (Recess taken.)

7 THE VIDEOGRAPHER: We're back on the
8 record at 10:23 a.m.

9 You may proceed.

10 BY MS. MCKAIG:

10:23:32AM

11 Q Mr. Orlando, I just wanted to go back and
12 ask you whether you have an understanding of the
13 difference between noncash and cash expenses?

14 A In general, I do.

15 Q And what is that understanding?

10:23:43AM

16 A For example, depreciation, that's a
17 noncash charge. If you're going to have long tails
18 of depreciation with no related capital expenditures
19 attached which is cash, we count those differently.

20 Q And when you say you count those
21 differently, what do you mean?

10:24:05AM

22 A We care about the cash flow produced by
23 the business after we purchase it over a period of
24 time.

25 Q Okay. Thanks.

10:24:26AM

1 At some point was there a decision by
2 Embarcadero and Thoma Cressey to mutually terminate
3 the deal?

10:24:30AM

4 A There was.

5 Q Do you recall around when that decision
6 was made?

10:24:43AM

7 A Not specifically, but after the September
8 date. But I don't recall the specific day or month.
9 Around December, January.

10 Q And did this present, in a sense, an
11 opportunity for Thoma Cressey?

10:25:05AM

12 A Sorry, can you rephrase the question?

13 Q Sure.

14 Did the fact that the deal was terminating
15 and that was the deal at the 8.38 price, did that
16 present an opportunity for Thoma Cressey to try and
17 negotiate a lower price with Embarcadero?

10:25:24AM

18 A What it presented then was we're out of
19 the deal. That was the opportunity, if you can call
20 it that. What it meant is we're out of the deal.
21 The deal is done. We're not buying the company at
22 that price or at any price for that matter.

10:25:51AM

23 Q So as of -- as of the time of the mutual
24 termination, your sense was that, "We're not buying
25 the company at that price or at any price"?

10:26:08AM

1 A At that time we mutually terminated that
2 agreement with the company, we were happy to have
3 terminated the agreement. We weren't in the mode
4 of, "Let's propose a different price." We just were
5 happy the deal didn't work. We're out of the deal.

10:26:12AM

10:26:24AM

6 Q And just to relate back to what you were
7 talking about earlier, is that because of the
8 softness in the revenues of the company?

9 MS. LAMARCA: Objection; vague and
10 leading.

10:26:45AM

11 THE WITNESS: I would say that was the
12 primary reason.

13 BY MS. McKAIG:

14 Q And at some point, Thoma Cressey became
15 reinterested in purchasing Embarcadero; is that
16 right?

10:26:58AM

17 A That's correct.

18 Q Can you tell me around when that occurred?

19 A I don't remember exactly.

20 Q Generally, was it the spring of 2007?

10:27:12AM

21 A That sounds about right.

22 Q Okay.

23 And do you recall the circumstances
24 surrounding the interest of Thoma Cressey to pursue
25 a deal with Embarcadero?

10:27:32AM

1 A In general, what I recall was, well, we
2 thought we were buying in the first transaction this
3 growth company at a full price. Now, we saw a
4 business that was flat or flat-ish, but we thought
5 it was still a good business. I remember not the
6 exact numbers, but that Q4 did not fall apart like
7 it could have, or we were scared it might. It was
8 -- it wasn't a great quarter, but it wasn't a
9 horrible quarter.

10:27:36AM

10:27:55AM

10 So I would say that the performance of the
11 business from that time kind of was giving us the
12 conviction that this was a good business. That it
13 wasn't a growth business, but that it was a good
14 business. So we became reinterested in the asset.

10:28:15AM

15 Q Do you know whether the company had
16 completed its investigation of the stock option
17 practices at the time you became reinterested in the
18 company?

10:28:32AM

19 MS. LAMARCA: Objection; speculation.

20 THE WITNESS: I don't know exactly what
21 the completion was versus when we became
22 reinterested. Just to put it in perspective, we're
23 always watching all of these companies that we have
24 bought, walked from, looked at, lost to a competitor
25 or out there in the public markets.

10:28:48AM

10:29:03AM

1 MS. MCKAIG: Let me show you another
2 document.

10:29:29AM

3 (Defendants' Exhibit 144 marked
4 for identification.)

5 BY MS. MCKAIG:

10:29:46AM

6 Q This is going to be Exhibit 144.

7 MR. HOLSCHER: Thank you.

8 BY MS. MCKAIG:

9 Q And the first page of this exhibit is a
10 cover e-mail. But if you turn to the second page,
11 the Bates number on the second page is GP00015280.
12 This appears to be a February 12, 2007 letter from
13 you to the members of the board of directors of
14 Embarcadero Technologies.

10:29:59AM

15 Just take a moment to look over the
16 document and let me know when you have done so.

10:30:20AM

17 Mr. Brave, the document in the first
18 paragraph indicates that Thoma Cressey had proposed
19 an acquisition at \$7.25 a share.

20 Do you recall that?

10:31:27AM

21 A I vaguely recall that.

22 Q And do you recall that the board was not
23 thrilled with that proposed share price?

24 A I vaguely recall that because they are
25 never thrilled.

10:31:44AM

1 Q Do you recall anything about their
2 reaction to the \$7.25 price, other than a vague
3 recollection that that happened?

10:31:49AM

4 A It sounds -- what this document says is
5 they turned it down.

10:32:03AM

6 Q Right.

7 I guess what I'm asking is: Do you recall
8 anything about their reaction, other than the fact
9 that they turned it down?

10 A I don't.

10:32:13AM

11 Q Who were you negotiating with at this
12 point in the transaction from the company? Do you
13 recall whether Sam Spadafora was one of the people
14 you were talking to?

15 A He was one of the people at one point, and
16 I don't recall whether it was this exact point or
17 later, but he was one of the people involved.

10:32:34AM

18 Q And who was Spadafora?

19 A A director of Embarcadero.

20 Q No one else that you recall might have
21 been involved in the negotiations at this point?

10:32:47AM

22 A Throughout the whole transaction, Morgan
23 Stanley representatives were involved, because they
24 acted in between -- many times in between us and the
25 company.

10:33:04AM

1 Q Anyone else from the company that you
2 recall?

10:33:06AM

3 A Gary Haroian at one point, but I don't
4 recall whether he was giving us the options updates
5 or at one point negotiating, but I think there was a
6 handoff there at a certain time, but I would say he
7 was involved.

10:33:23AM

8 Q Do you recall anyone from the company ever
9 telling you that the stock option issues did not
10 change the value of the company?

10:33:38AM

11 A I recall that, yes.

12 Q And did you agree?

13 A Well, on this period what I recall is --
14 and I don't remember which director it was -- you
15 don't care about that because that's not cash. And
16 there was a negotiation, and in negotiations, they
17 usually throw everything there is, and we throw
18 everything back there is.

10:33:56AM

19 Q Why is that? Why do you throw everything
20 back that there is? Is it because you're trying to
21 get the best price possible?

10:34:11AM

22 A Sure. They have a fiduciary duty to get
23 the highest price, and we have our own duty to get
24 the lowest price.

25 Q So in the second paragraph here, it says:

10:34:24AM

1 "Based on your feedback, we 10:34:26AM
2 are now prepared to offer
3 Embarcadero shareholders \$7.50 per
4 share in cash and are willing to
5 consummate the transaction via a 10:34:34AM
6 merger. Importantly, we will not
7 require financial statements as a
8 condition to close, which should
9 expedite the process and increase
10 the deal's certainty." 10:34:44AM
11 Do you see that?
12 A I do.
13 Q And can you tell me why you did not
14 require financial statements as a condition to the
15 close? 10:34:55AM
16 A At that time -- we always go through this
17 in our business. We say if you buy it for zero,
18 you're not taking much risk. You don't need to
19 worry about it too much. If you're paying a
20 billion, it needs to be perfect. That's a general 10:35:10AM
21 huge statement.
22 I think it applies in this case. Where
23 look, at that price for a flat-ish business, we
24 think it's attractive, and we're willing to go ahead
25 with the deal under these conditions. 10:35:20AM

1 Q And did you have an understanding at this
2 time that the company would have had a hard time
3 getting you completed financial statements?

10:35:23AM

4 A I don't know.

5 Q If I could just call your attention to the
6 third paragraph, it says:

10:35:40AM

7 "Because of the time that we,
8 our advisors and our financing
9 sources have invested,
10 understanding the company's
11 business and the amount of due
12 diligence our team has already
13 completed, we would be prepared to
14 sign a definitive agreement within
15 a one-week period."

10:35:48AM

16 Do you see that?

10:35:56AM

17 A Yes.

18 Q And so does this indicate that if the
19 company would be willing to accept your \$7.50 per
20 share offer, that no further diligence would be
21 required?

10:36:11AM

22 A I'm not sure that's what this indicates.

23 Q What does it indicate?

24 A What this is trying to do is it's trying
25 to bait the board into coming back and discussing

10:36:30AM

1 with us a deal that could potentially make sense to
2 us. So they -- according to this, they said no to
3 the 7.25. Okay. Let's put in another quarter.
4 They were uncomfortable with 90 percent condition,
5 according to this. So let's go back to the merger
6 agreement and make it higher certainty of closing,
7 in their view.

10:36:35AM

10:36:47AM

8 In our business, you're not done with the
9 diligence until you're 100 percent committed, and
10 this is a nonbinding proposal.

10:36:59AM

11 Q But, for example, there is no condition in
12 this letter -- would it have been a condition to the
13 closing for the company to have concluded their
14 investigation into their historical stock option
15 practices?

10:37:19AM

16 MS. LAMARCA: Objection; foundation and
17 speculation.

18 THE WITNESS: I don't know that. I don't
19 remember exactly where that was versus this, this
20 document at this date.

10:37:30AM

21 BY MS. MCKAIG:

22 Q Okay. Let's just refresh your
23 recollection on that.

24 MS. MCKAIG: This will be 145.

25 (Defendants' Exhibit 145 marked

10:37:44AM

1 for identification.)

10:37:44AM

2 BY MS. MCKAIG:

3 Q I've handed you what's been marked as

4 Exhibit 145. And this is a February 16th, 2007

5 Embarcadero press release entitled "Embarcadero

10:38:07AM

6 Technologies, Inc., Announces Selected Preliminary

7 Fourth Quarter 2006 Results." Provides updates on

8 NASDAQ listing and ongoing review of stock option

9 grant practices and discloses stockholder derivative

10 lawsuit.

10:38:24AM

11 Do you see that?

12 A I do.

13 Q So would you agree with me that this

14 document indicates that the company's review of its

15 stock option grant practices was ongoing as of

10:38:32AM

16 February 16th, 2007?

17 A That's what this says.

18 Q And if we look back to the prior exhibit,

19 Exhibit 144, which is a letter dated February 12,

20 2007, would you agree with me that it was not a

10:38:46AM

21 condition of this offer that the stock option

22 investigation be complete?

23 MS. LAMARCA: Objection.

24 THE WITNESS: I don't remember that, and I

25 can't say that with certainty. I can't. Because

10:39:01AM

1 what I can't tell you is you could have had some
2 directors potentially telling our team or us, "This
3 will be done any time."

10:39:04AM

4 "Okay. So here is a week. Would it be
5 done within a week?"

10:39:14AM

6 "Sure. We think so."

7 Maybe it wasn't. So I can't say that with
8 certainty, and I don't remember exactly that point.

9 BY MS. McKAIG:

10 Q Okay.

10:39:23AM

11 So if I understand you correctly, you're
12 saying you can't say it with certainty because there
13 may have been a conversation where someone said it
14 would be done within a week, but it's certainly not
15 in this letter, February 12, 2007, correct?

10:39:34AM

16 A It is not in this letter. I don't read
17 that in this letter, but this letter also would not
18 include other conditions. Why in a week? Why not
19 now? So we must have had something to do in a week,
20 and I can't remember exactly what that is.

10:39:51AM

21 Q Okay.

22 Do you know what the company's reaction
23 was to the \$7.50 per share price?

24 A I don't remember.

25 Q I'm going to show you one more document.

10:40:27AM

1 MR. HOLSCHER: I'm going to take that as a
2 promise.

Page 68
10:40:32AM

3 MS. MCKAIG: Don't take it as a promise.
4 I might have a few more. I'm going to show you one
5 more document right now.

10:40:42AM

6 (Defendants' Exhibit 146 marked
7 for identification.)

8 BY MS. MCKAIG:

9 Q 146.

10 Mr. Brave, I'm handing you a document
11 that's been marked as Exhibit 146 with Bates Number
12 GP00015217. The first page is a cover e-mail from
13 someone at Morgan Stanley to members of the board.

10:41:02AM

14 But if you turn the page, it appears to be a
15 February 27th, 2007 letter from you to members of
16 the board of directors of Embarcadero Technologies.

10:41:19AM

17 Just take a moment to review it and let me
18 know when you have done so.

19 Does this refresh your recollection that
20 the board rejected the offer of \$7.50 per share, and
21 that Thoma Cressey agreed to offer \$7.85 per share
22 if certain conditions were met?

10:42:28AM

23 A It does.

24 Q And those conditions as set forth in
25 paragraph one in this letter seem to focus on

10:42:48AM

1 Stephen Wong agreeing to -- to sell his options at
2 \$7.50 and indemnify the company in an amount up to
3 \$7 million.

10:42:53AM

4 Do you see that?

5 A I see that.

10:43:12AM

6 Q And why was there a focus on Mr. Wong?
7 Why were these conditions placed as part of the
8 deal?

9 A As I remember, there were a couple of
10 issues here. One is we're trying to get to the
11 lowest purchase price possible, and we thought
12 Stephen, Stephen Wong was much more of a seller than
13 the directors were.

10:43:25AM

14 The directors of the company I don't think
15 held any substantial ownership of the company, and
16 we did not see a compelling reason for why they
17 would be sellers of the company. Stephen, on the
18 other hand, held a significant percentage interest
19 in the company. I don't know if he was the largest
20 shareholder. He is a very large shareholder, and he
21 was a seller in our view. He was already, I
22 believe, out of the company. He had told me he
23 wanted to move on. So how do you bridge the gap
24 between all of this? So therefore, we proposed what
25 it says in the letter.

10:43:47AM

10:44:09AM

10:44:27AM

1 Q The deal wasn't ultimately consummated at 10:44:42AM
2 \$7.85 a share, was it?
3 A No.
4 Q Do you recall what happened in reaction or
5 in response to this proposal? 10:44:51AM
6 A I don't.
7 MS. MCKAIG: Okay. Another document. I'm
8 getting to the bottom of my stack. This is 147.
9 (Defendants' Exhibit 147 marked
10 for identification.) 10:45:25AM
11 BY MS. MCKAIG:
12 Q Mr. Brave, I've handed you a document
13 that's been marked as Exhibit 147. The Bates number
14 on the cover page is GP00015152.
15 First of all, do you recognize this 10:45:49AM
16 document?
17 A I don't.
18 Q Do you know what it is?
19 A What I think it is?
20 Q Yes. 10:46:10AM
21 MR. HOLSCHER: I'm going to object on
22 foundation and form.
23 Don't speculate. But do your best to
24 answer her question.
25 THE WITNESS: It seems to be a 10:46:21AM

1 presentation from Morgan Stanley to the board.

10:46:22AM

2 BY MS. McKAIG:

3 Q And do you know whether it's a
4 presentation relating to the Embarcadero
5 acquisition?

10:46:32AM

6 A Assuming Eagle is Embarcadero, it seems to
7 be.

8 Q Let's turn to page 3 of the presentation.
9 It has a Bates number on the bottom ending in -157.

10 Do you see that?

10:47:07AM

11 A I'm sorry?

12 Q It has a Bates number on the bottom ending
13 in -157.

14 A Yes.

15 Q And the heading on this page is "Summary
16 Timeline"?

10:47:13AM

17 A Yes.

18 Q And it says:

19 "September 6, 2006: Announced
20 the sale" -- "announced sale to
21 Thoma Cressey for 8.38 per share.

10:47:21AM

22 "November 10th, 2006:
23 Announces options investigation and
24 delayed 10-Q filing.

25 "December 18th, 2006:

10:47:33AM

1 Announced that Eagle and Thoma
2 Cressey have mutually agreed to
3 terminate the definitive
4 agreement."

10:47:34AM

5 Based on these bullets on this page 3,
6 does this appear to relate to the acquisition by
7 Thoma Cressey of Embarcadero?

10:47:42AM

8 A It does.

9 Q And if you look at the very last bullet,
10 it's the bullet with March 23rd, 2007, to the right
11 of it. It indicates that the current offer is at
12 \$7.55 per share.

10:47:59AM

13 Do you show that -- do you see that?

14 A Yes.

15 Q And if we turn the page to page 4 of this
16 document, it shows the current offer versus the
17 offer on September 6th. And it shows the current
18 proposal of 7.55 versus the September '06 proposal
19 of \$8.38 per share.

10:48:18AM

20 And then I want you to look at the very
21 next page, page 5. And the heading on this page is
22 "Management License Revenue Estimate."

10:49:01AM

23 Do you see this?

24 A (Nods head.)

25 Q I'd just like to ask after reviewing this

10:49:13AM

1 document whether or not this refreshes your
2 recollection or reminds you that the company had
3 revised its estimates for Q1 of 2007 relating to
4 license revenues?

10:49:16AM

5 MS. LAMARCA: Objection; leading and
6 foundation.

10:49:36AM

7 THE WITNESS: It refreshes my memory.

8 BY MS. MCKAIG:

9 Q And do you recall this being a concern at
10 all?

10:49:44AM

11 A I do.

12 Q Why?

13 A I don't recall the specific timeline, but
14 there was a point when we were going to strike a
15 "second deal," and right before we were going to do
16 so, I don't know if we were a week, a day, I don't
17 remember, but it was a short timeline, the company
18 told us that Q1 was going to be softer than our
19 rerevised projections.

10:50:01AM

20 Q And would that have led you to reconsider
21 the price per share being offered for Embarcadero?

10:50:25AM

22 MS. LAMARCA: Objection to form of the
23 question.

24 MR. HOLSCHER: You can answer.

25 THE WITNESS: Not only the price per

10:50:40AM

1 share, but whether to do the deal at all. Both. Page 74 10:50:41AM
2 MS. McKAIG: One more document. Just one.
3 (Defendants' Exhibit 148 marked
4 for identification.)
5 BY MS. McKAIG: 10:51:31AM
6 Q Mr. Brave, I've handed you what's been
7 marked as Exhibit Number 148. Bates Number
8 GP00015092. The cover page reads, "Project Eagle
9 Board Materials April 4th, 2007." You know what?
10 This isn't really the document I wanted you to look 10:51:56AM
11 at, so you can put that aside. Sorry. Different
12 document.
13 Here we go. 149.
14 (Defendants' Exhibit 149 marked
15 for identification.) 10:52:09AM
16 BY MS. McKAIG:
17 Q Okay. The court reporter has just marked
18 as Exhibit 149 a document bearing Bates Number
19 ETTCB00000848. It's an e-mail from Robert Sayle to
20 Lee Mitchell, Orlando Brave is copied. It's dated 10:52:42AM
21 October 22nd, 2007. And the attachment suggests
22 that it's an Investment Memo_Embarcadero 4 9 '07.
23 If we turn the page, this document is
24 titled "Preliminary Investment Memorandum." The
25 date is April 9th, 2007. Take a moment to look over 10:53:08AM

1 the document and let me know if you recognize it. 10:53:13AM
2 A Okay.
3 Q If I could -- do you recognize the
4 document?
5 A I do. 10:54:24AM
6 Q And if I could have you turn to page 2,
7 I'd like to call your attention to the first full
8 paragraph around the middle of the paragraph. It
9 starts in the middle of the page where it says:
10 "We successfully renegotiated 10:54:42AM
11 the price down to 7.55 per share
12 after the company" -- "after
13 discovering that the company had
14 issued restricted stock and
15 retention bonuses that were not 10:54:54AM
16 accounted for in the capitalization
17 table that Morgan Stanley had sent
18 us. Further, the company's license
19 sales came in soft the first
20 quarter, which we believe will 10:55:03AM
21 allow us to reduce the price to
22 \$7.20 per share."
23 Do you see that?
24 A I do.
25 Q Does that refresh your recollection of 10:55:12AM

1 what happened with the negotiations during this time 10:55:15AM
2 period?

3 A It does.

4 Q And do you recall that the softness
5 surrounding the revenues related to the company's 10:55:25AM
6 licenses allowed you to reduce the price of the
7 acquisition to \$7.20 per share?

8 A I do.

9 Q The next paragraph down, the first line
10 says: 10:55:43AM

11 "We believe our \$7.20 per
12 share price for the business is a
13 great value for TCB."

14 Do you see that?

15 A I do. 10:55:51AM

16 Q Did you agree with that at the time, if
17 you recall?

18 A At the time I probably wouldn't agree with
19 "great," but I would say it's a good value.

20 Q Do you recall that the Embarcadero 10:56:09AM
21 acquisition closed in June of 2007 at \$7.20 per
22 share?

23 A Yes.

24 Q And do you recall that Raj accepted the
25 role of CEO of the newly private Embarcadero 10:56:25AM

1 Technologies?

10:56:28AM

2 A I do.

3 Q And were you happy with the acquisition at
4 the time?

5 A At the time you're always happy with the
6 deal.

10:56:37AM

7 Q Do you recall ever describing to anyone
8 that the Embarcadero acquisition was a home run?

9 A I don't recall that, but I wouldn't be
10 surprised if I marketed it that way.

10:56:54AM

11 Q Did you get to know Raj pretty well during
12 this time period, during the time period leading up
13 to the close of the acquisition and the months
14 following?

15 A Reasonably well.

10:57:22AM

16 Q And did you find him to be honest?

17 A I did.

18 Q And did you find that he acted in the best
19 interests of the company?

20 MR. HOLSCHER: Objection; form,
21 foundation.

10:57:38AM

22 MS. LAMARCA: Objection.

23 THE WITNESS: Look, I can't really speak
24 about the company before we owned it. But in our
25 company once we bought it and it was private, I

10:57:55AM

1 didn't see any indication that he wasn't acting in
2 the interest of the company.

10:58:00AM

3 BY MS. MCKAIG:

4 Q In fact, how do you assess his performance
5 during the time that he was CEO of the company after
6 the acquisition?

10:58:07AM

7 MS. LAMARCA: Objection; vague.

8 THE WITNESS: There is not much to say on
9 that. It wasn't bad and it wasn't great. It was
10 middle of the road I would say.

10:58:28AM

11 BY MS. MCKAIG:

12 Q Did you become a board member after the
13 Embarcadero acquisition was complete?

14 A I did.

15 Q And was it one of the conditions of the
16 acquisition that Raj remain with the company and
17 take over as CEO?

10:58:39AM

18 A So I want to go back to what I mentioned.

19 When we buy a business, we need to buy it with
20 existing management. It is a fallacy to say you buy

10:59:08AM

21 a business, but it doesn't have the people or the
22 management or the leadership. It doesn't -- that

23 doesn't work unless the purchase price is so

24 incredibly attractive that you are willing to take

25 those kind of gambles that -- from our perspective

10:59:23AM

1 are gambles.

10:59:25AM

2 So I do recall telling the board I'm not
3 signing up to be on the hook to buy this company
4 when you're going to decimate management, and you're
5 going to have no management.

10:59:36AM

6 Q So in other words, is it your position,
7 Mr. Brave, that the only reason that you kept Raj
8 was because you were afraid you would be without
9 management, that that's the only reason he was kept?

10 A No, I wouldn't say that's the only reason.
11 You have to feel like the business and its
12 management fits together, and in this case, we
13 thought it did. I wouldn't say that's the only
14 reason.

10:59:58AM

15 Q And if you thought Mr. Lokblok was not a
16 good manager, you would not have kept him on in a
17 management role, would you?

11:00:09AM

18 A Please ask the question again.

19 Q If you thought Mr. Lokblok would not be an
20 effective CEO, you wouldn't have insisted as a
21 condition to the closing of the acquisition that he
22 be the CEO of the new company, would you?

11:00:27AM

23 MS. LAMARCA: Objection.

24 MR. HOLSCHER: Objection; form and
25 misstates his prior testimony.

11:00:39AM

1 But you can answer.

11:00:40AM

2 THE WITNESS: You have to -- you have to
3 put those two points together. You can have -- you
4 know, we can have the ability to recruit Jack Welch,
5 who is known as one of the best managers in the
6 world, and humbly I would say that he probably
7 wouldn't have been the right manager for Embarcadero
8 Technologies. Doesn't know the people. Doesn't
9 know the customers. Doesn't know the history.
10 Doesn't know anything about the business.

11:00:54AM

11:01:07AM

11 So we're trying to marry competent people
12 that are at the company and are showing whatever
13 performance they are showing, and we either get
14 comfortable with that or we don't.

15 MS. MCKAIG: I think that answers my
16 question perfectly. I don't have any other
17 questions.

11:01:18AM

18 MR. VORHIS: I will be very quick. We can
19 go off the record, and I can just --

20 THE VIDEOGRAPHER: This is the end of Disk
21 Number 1, Volume I. We're off the record at
22 11:01 a.m.

11:01:30AM

23 (Recess taken.)

24 THE VIDEOGRAPHER: This is the beginning
25 of Disk Number 2, Volume I. We're back on the

11:09:46AM

1 record at 11:09 a.m.

11:09:48AM

2 You may proceed.

3 EXAMINATION

4 BY MR. VORHIS:

5 Q Good morning, Mr. Brave. We met off the

11:09:52AM

6 record. I'm Jim Vorhis. I represent Michael

7 Pettison. I promise this will be quick.

8 Have you ever met Michael Pettison before?

9 A No.

10 Q Have you ever spoken with Michael

11:10:05AM

11 Pettison?

12 A No.

13 Q Do you know who Michael Pettison is?

14 A Kind of.

15 Q Kind of.

11:10:12AM

16 What do you know about Michael Pettison?

17 A I guess he's a former employee of

18 Embarcadero.

19 Q Former employee. Okay.

20 You mentioned earlier that in doing the
21 due diligence on a company, you evaluate management,
22 correct?

11:10:22AM

23 A Correct.

24 Q And I think you also just said to

25 Ms. McKaig when you buy a business, "We need to buy

11:10:31AM

1 it with the existing management in place," for the
2 continuity of the business, correct?

11:10:34AM

3 A Correct.

4 Q What positions --

5 MR. HOLSCHER: Go ahead.

11:10:42AM

6 BY MR. VORHIS:

7 Q What positions do you consider part of
8 management when you're evaluating a company?

9 MS. LAMARCA: Objection; vague.

10 BY MR. VORHIS:

11:10:50AM

11 Q Well, for instance, you will evaluate the
12 CEO that's in place with the company you're buying?

13 A Yes.

14 Q You will look at the CFO that's in place?

15 A Yes.

11:11:00AM

16 Q Along that line, what other positions are
17 you evaluating when you're deciding what management
18 you want to keep in place when you purchase a
19 company?

20 A Take a step back. We like to buy the
21 business with management. We look at the senior
22 management team or leadership team, typically.
23 Companies have different organizational structures
24 and org charts in terms of who reports into the CEO.
25 Is there a COO, et cetera. So you zone in on the

11:11:13AM

11:11:30AM

1 key individuals that are part of that top structure.

11:11:35AM

2 It's very important that I don't overstate the point

3 that in life there is turnover, as well. Things

4 change. Nothing is absolutely perfect

5 directionally. You buy the business with -- ideally

11:11:50AM

6 with all the people having worked together for a

7 long time and knowing each other for a long time,

8 and you go down from there.

9 Q Understand.

10 Can you turn to Exhibit 141 very quickly?

11:12:00AM

11 It was the first one we looked at today. It was the

12 Preliminary Investment Memorandum. And on the last

13 page of that document there is a list of what's

14 described as management.

15 And I guess my question for you is: Are

11:12:15AM

16 those the individuals that you considered to be the

17 key individuals that you're evaluating when deciding

18 who to keep with the company if you were going to

19 purchase the company?

20 A Not necessarily.

11:12:28AM

21 Q Do you recall any additional individuals

22 that you were evaluating from Embarcadero?

23 A We don't evaluate them as individuals. We

24 evaluate them as a group and how they work with the

25 company. So, for example, another key position here

11:12:44AM

1 that's not listed -- this lists most likely, most
2 likely the people that we had involvement with the
3 most throughout the process of doing our due
4 diligence and purchasing the company, but key roles
5 are like head of sales. That's a key role, and I
6 believe there was a departure there at a given point
7 in time. Head of international operations would be
8 another one. There are other roles besides just
9 these.

11:12:49AM

11:13:01AM

10 Q Would you consider the controller a key
11 individual?

11:13:16AM

12 A I would not consider them not a key
13 individual, but I would not consider that one of the
14 most important positions, either.

15 Q Do you recall who the controller was at
16 Embarcadero when you purchased the company?

11:13:30AM

17 A Can you refresh my recollection? I don't
18 recall exactly.

19 Q No. That will be fine.

20 Earlier in this case, someone gave
21 testimony identifying the controller as a cog in a
22 machine. Would you consider that an accurate
23 portrayal of the position?

11:13:46AM

24 MS. LAMARCA: Objection to the extent it
25 asks the witness to comment on another's testimony.

11:13:57AM

1 MR. HOLSCHER: Objection to form and
2 foundation.

11:14:00AM

3 THE WITNESS: I don't know what that
4 means, "cog in a machine."

5 MR. VORHIS: You know what? I'm done.

11:14:12AM

6 MS. LAMARCA: We just have a few
7 questions. So if we could just switch with you.

8 THE VIDEOGRAPHER: We're off the record at
9 11:14 a.m.

10 (Discussion held off record.)

11:14:26AM

11 THE VIDEOGRAPHER: We're back on the
12 record at 11:15 a.m.

13 You may proceed.

14

15 EXAMINATION

11:15:10AM

16 BY MS. LAMARCA:

17 Q Good morning, Mr. Brave. I'm going to ask
18 you to take out Exhibit 141, which I think is the
19 first one you were shown, and I think actually it
20 was the last one that you were looking at, and then
21 149. Okay.

11:15:21AM

22 If you could turn the page of 149 so that
23 you see the cover page that shows "Preliminary
24 Investment Memorandum" at the top.

25 Do you see that?

11:15:53AM

1 A Yes.

11:15:53AM

2 Q Okay.

3 If you could look at that document and
4 tell us whether or not it's a similar document to
5 the document that was marked as Exhibit 141?

11:16:00AM

6 A Yes.

7 Q Okay.

8 Similar -- let me clarify. Similar in the
9 type of document that it is.

10 A Correct.

11:16:11AM

11 Q Was it --

12 Would it be your expectation that the same
13 folks who prepared Exhibit 141 also prepared
14 Exhibit 149, the memo that's attached to
15 Exhibit 149?

11:16:23AM

16 MR. VORHIS: Objection; speculation.

17 THE WITNESS: Probably.

18 BY MS. LAMARCA:

19 Q Okay.

20 And was Exhibit 149, the memo attached to
21 Exhibit 149, was it prepared for the same types of
22 purposes that Exhibit 141 was prepared for?

11:16:32AM

23 MS. MCKAIG: Objection; calls for
24 speculation, lacks foundation.

25 THE WITNESS: Most likely it was.

11:16:47AM

1 BY MS. LAMARCA:

11:16:48AM

2 Q Okay.

3 MR. VORHIS: Suzie --

4 BY MS. LAMARCA:

5 Q And what --

11:16:49AM

6 MR. VORHIS: -- may I interpose the same
7 rule on objections; that when one of us objects, the
8 other is also joined in it?

9 MS. LAMARCA: If you'd like that, go right
10 ahead.

11:17:02AM

11 MR. VORHIS: I would love that.

12 BY MS. LAMARCA:

13 Q So with respect to Exhibit 149, why don't
14 you describe to me the purpose of this document?
15 Particularly the memo that's attached to the e-mail.

11:17:09AM

16 A The memo?

17 Q Right.

18 A Okay. The purpose of this document is to
19 have the people that are working on the transaction
20 and are excited about it and want to complete a deal
21 to present that and send that to the whole
22 investment staff of the firm so they are all
23 familiar as to where they are at, why they like it,
24 and to raise any large objections, if there are any,
25 because we're spending money and time in pursuing

11:17:42AM

11:17:55AM

1 the opportunity.

11:17:58AM

2 MS. LAMARCA: That's it for my questions.

3 Are we off the record, or are there any

4 further?

5 MS. MCKAIG: No, I think we're done.

11:18:05AM

6 MR. HOLSCHER: Thank you.

7 THE VIDEOGRAPHER: This concludes today's

8 deposition. We're off the record at 11:18 a.m. The

9 master tapes will be held by Veritext.

10 (Time noted: 11:18 a.m.)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF CALIFORNIA)
) :ss
2 COUNTY OF SAN FRANCISCO)

3

4 I, BRIAN CLUNE, CSR NO. 0005, a Certified Shorthand
5 Reporter of the State of California, do hereby certify:

6 That the foregoing proceedings were taken before me
7 at the time and place herein set forth; that any
8 witnesses in the foregoing proceedings, prior to
9 testifying, were placed under oath; that the verbatim
10 record of the proceedings was made by me using machine
11 shorthand which was thereafter transcribed under my
12 direction; further, that the foregoing is an accurate
13 transcription thereof.

14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed my
18 name.

19

20 Dated: November 3, 2009

21

22



23

24

BRIAN CLUNE, CSR NO. 0005

25

1	I N D E X	
2	OCTOBER 30, 2009	
3		
4	ORLANDO BRAVE	
5	EXAMINATION	PAGE
6		
7	(BY MS. McKAIG)	6
8	(BY MR. VORHIS)	81
9	(BY MS. LaMARCA)	85
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	I N D E X		
2	EXHIBITS FOR IDENTIFICATION		
3	DEFENDANTS'		PAGE
4	Exhibit 141	Document titled	25
5		"Preliminary Investment	
6		Memorandum" bearing Bates	
7		Number ETTCB00002487	
		through -496	
8	Exhibit 142	Document entitled "Press	34
9		Release, Embarcadero	
10		Technologies, Inc., to be	
11		Acquired by Thoma Cressey	
12		Equity Partners in a	
13		Transaction Valued at	
		Approximately 234 million"	
		Bates stamped EMBT0347998	
		through -8000	
14	Exhibit 143	Document titled	38
15		"Embarcadero Technologies	
16		Board Meeting October 30th,	
17		2006," Bates labeled	
18		EMBT0009110 through -9123	
19	Exhibit 144	E-mail with attached letter	60
20		dated February 12, 2007 to	
21		members of the board of	
22		Embarcadero Technologies	
23		from Orlando Brave, Bates	
24		stamped GP00015279 and -280	
25			

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

EXHIBITS FOR IDENTIFICATION

DEFENDANTS'		PAGE
Exhibit 145	February 16th, 2007 Embarcadero press release entitled "Embarcadero Technologies, Inc., Announces Selected Preliminary Fourth Quarter 2006 Results"	65
Exhibit 146	Cover e-mail from Erik Marth of Morgan Stanley to members of the board attaching a letter dated February 27th, 2007 from Orlando Brave to members of the board of directors of Embarcadero Technologies, Bates stamped GP00015217 and -218	68
Exhibit 147	Morgan Stanley presentation, Bates stamped GP000015152 through -178	70
Exhibit 148	Project Eagle Board Materials dated April 4th, 2007, Bates stamped GP00015092 through -124	74
Exhibit 149	E-mail from Robert Sayle to Lee Mitchell attaching a Preliminary Investment Memorandum, Bates stamped ETTCB00000848 through -860	74

	11:18 88:8,10	23rd 72:10
\$	12 40:13 60:12 66:19 67:15	27th 68:15
\$180MM 28:20	14.8 39:13	29 35:25
\$7 69:3	14.9 39:10	
\$7.20 75:22 76:7,11,21	141 25:13,14 83:10 85:18 86:5, 13,22	3
\$7.25 60:19 61:2	142 34:24,25	3 39:4 71:8 72:5
\$7.50 63:3 64:19 67:23 68:20 69:2	143 38:11	30 35:24
\$7.55 72:12	144 60:3,6 66:19	30th 5:6 38:18,20 39:7
\$7.85 68:21 70:2	145 65:24,25 66:4	34 35:22
\$8.38 35:20 72:19	146 68:6,9,11	3rd 26:22 28:13
	147 70:8,9,13	
-	148 74:3,7	4
---o0o--- 5:3	149 74:13,14,18 85:21,22 86:14, 15,20,21 87:13	4 72:15 74:22
-157 71:9,13	15.5 39:13	401(k) 31:2
-9114 39:18	150 10:15	4th 74:9
-9121 40:14	16th 66:4,16	5
	180 32:15,16	5 39:16 72:21
0	180- 33:1,4	5.5 33:3
05 17:6	18th 71:25	5.5X 28:21
06 17:6 24:10,11 72:18		50 10:15
07 74:22	2	
	2 75:6 80:25	6
1	2.9 29:5 33:3	6 71:19
1 80:21	2.9X 28:21	6.4 39:11
1.3 39:22	2000 45:14 53:1	6th 72:17
10 33:4	2002 10:25 11:1	
10-Q 71:24	2006 17:4 26:22 28:13 32:17 33:12,21 34:18 35:8,13 36:5 38:18,20 39:7 40:4 66:7 71:19,22, 25	7
100 65:9	2006E 28:22	7.2 40:20
10:10 56:5	2007 58:20 60:12 66:4,16,20 68:15 72:10 73:3 74:9,21,25 76:21	7.25 65:3
10:23 56:8	2009 5:6	7.55 72:18 75:11
10th 71:22	22nd 74:21	7th 35:8 36:5
10X 28:22	234 35:7	8
11:01 80:22		8 28:17 32:6,12 33:19
11:09 81:1		8.38 57:15 71:21
11:14 85:9		
11:15 85:12		

8.7 40:22	agreeing 69:1	attention 64:5 75:7
<hr/>	agreement 35:18 58:2,3 64:14 65:6 72:4	attorney 5:15
9	ahead 11:18 12:10 13:6 14:16 63:24 82:5 87:10	attorneys 7:7 46:1
<hr/>	Allan 5:8	attractive 78:24
9 74:22	allowed 47:9 76:6	atypical 21:5
90 44:1 65:4	amount 64:11 69:2	August 26:21 28:13
98 8:15 10:25	announce 37:4	authentic 36:16
9:03 5:6	announced 34:19 35:12 37:11, 19,23 38:2,8 42:23 47:1 71:19,20 72:1	average 35:23
9th 74:25	Announces 66:6 71:23	aware 27:14
<hr/>	another's 84:25	<hr/>
A	answers 80:15	B
<hr/>	anticipated 36:3	back 9:10 16:15 23:3 46:2,5 48:19 56:7,11 58:6 62:18,20 64:25 65:5 78:18 80:25 82:20 85:11
a.m. 5:6 56:5,8 80:22 81:1 85:9, 12 88:8,10	appears 38:18 60:12 68:14	backdating 43:9,12,19,23 44:7
ability 80:4	applies 63:22	background 8:5
absolutely 42:13 83:4	apply 33:20	bad 78:9
accept 64:19	apprised 47:21,23	bait 64:25
accepted 76:24	approximately 11:1 35:7	ball 54:8
accounted 75:16	April 74:9,25	bankers 34:12
accounting 44:13,17	arised 54:5	banking 6:21 9:4,7
accruals 31:1,2	arising 42:22	banks 34:14
accurate 84:22	arose 54:6	based 29:5,13 31:17 32:22 63:1 72:5
accurately 28:5	Arps 5:17	basic- 30:19
achieve 15:21	art 13:9	basically 23:17 29:1
acquire 16:19 34:18	asks 84:25	Basile 5:25
acquired 21:14 35:5	aspects 23:21	basis 10:1 32:8
acquiring 16:23 20:11 24:14	assess 78:4	Bates 25:19 28:18 38:15 39:17 40:14 68:11 70:13 71:9,12 74:7, 18
acquisition 13:19 26:24 28:7 43:10 60:19 71:5 72:6 76:7,21 77:3,8,13 78:6,13,16 79:21	asset 13:25 14:1 29:2,4 59:14	bearing 74:18
acted 61:24 77:18	associate 9:21	beats 42:14
acting 78:1	associates 26:11	began 24:9
actual 30:1 31:22	Assuming 71:6	begin 24:16
addition 40:25	assumption 31:4	beginning 16:8 18:4 41:24 52:19 80:24
additional 83:21	attached 56:19 86:14,20 87:15	behalf 6:1,3
advisors 46:1 47:5 53:4 64:8	attachment 74:21	
afraid 79:8	attend 38:21	
agenda 38:19		
agree 62:12 66:13,20 76:16,18		
agreed 68:21 72:2		

bell 17:4
beneath 39:8
biases 23:17
Bible 27:11
big 50:25 52:6 53:2,6 54:8
billion 63:20
bit 6:15 12:4,22 14:11,24 15:13
20:8 29:10 41:21 49:5 56:2
board 38:17,19,21 40:1 41:6
48:10 49:6 60:13,22 64:25 68:13,
16,20 71:1 74:9 78:12 79:2
bonuses 31:1 75:15
bother 52:2, 53:10
bothered 52:4,16,18,23 53:8,12,
13 54:2,7,9
bottom 15:3 25:19 28:18,19 30:1
31:15,18 32:6 33:19 39:17,18
40:14 46:10 70:8 71:9,12
bought 6:22 59:24 77:25
box 33:10,12,13
Brave 5:1,7 6:1,3,9 8:4 9:17 10:3,
6,8 11:6,7,8 12:6 22:17,25 24:22
25:17,24 27:4 35:3 36:2 38:6,14
60:17 68:10 70:12 74:6,20 79:7
81:5 85:17
break 7:23,25 56:1,3
Brian 5:9
bridge 69:23
broad 14:5
broker 16:10
brought 53:25
Brown 8:6
building 13:19
bullet 72:9,10
bullets 28:3 72:5
business 8:8,12, 10:22 11:4,5
13:24 15:1,21 16:10 17:14,20
18:15 19:11,21 20:2,3,7,21,23,24
21:3,25 22:1,2,5 23:9,13 27:21
29:15 31:6,21,24 41:11 42:7,8,17
45:1 48:12 49:14 54:10 55:24
56:23 59:4,5,11,12,13,14 63:17,
23 64:11 65:8 76:12 78:19,21

79:11 80:10 81:25 82:2,21 83:5
businesses 10:14 15:20
buy 21:24 22:1,2,5 44:25 63:17
78:19,20 79:3 81:25 82:20 83:5
buyer 48:11 49:6
buyers 15:19
buying 41:25 42:7 57:21,24 59:2
82:12
buyout 25:12

C

California 5:12
call 10:13 14:3 45:10,17,19,22
52:24 57:19 64:5 75:7
called 8:19 9:16 25:4
calls 41:22 43:1 48:13 86:23
capital 11:11 56:18
capitalization 75:16
care 55:12,13,20,21 56:22 62:15
carry 44:2
case 6:21 28:13 38:4 44:3 54:17
55:10 63:22 79:12 84:20
cash 15:6 29:2 31:23,24 35:20
55:23 56:13,19,22 62:15 63:4
cat-and-mouse 49:5
category 54:21
caught 49:10
Center 5:11
CEO 18:8 20:10,13 37:6,12 76:25
78:5,17 79:20,22 82:12,24
certainty 63:10 65:6 66:25 67:8,
12
cetera 82:25
CFO 47:3 53:19 82:14
chairman 18:9
chance 13:19 25:22
change 42:17 62:10 83:4
changed 10:10
charge 56:17

charts 82:24
check 23:12 45:25
checking 23:17
circumstances 58:23
City 5:11
clarify 43:19 48:7 52:12 86:8
clarifying 28:12
clean 34:22
clear 53:18
close 19:21 24:15 37:4 49:12
52:25 63:8,15 77:13
closed 76:21
closing 29:13 35:23,25 49:19
52:25 53:5 54:11 65:6,13 79:21
Clune 5:9
cog 84:21 85:4
college 8:6
column 40:21
comfortable 26:1,3 80:14
comment 84:25
Commission 5:24
committed 65:9
committee 49:23
companies 6:22 9:5 10:1,7,8,14,
16 11:2,7,15,23 14:4 15:12 16:9
44:1,20,21,25 45:2 82:23
company 11:3 13:1,4,12,19
15:8,11 16:6,11,13,23 17:11 18:9
19:12,17 21:6,13 23:22 24:14,18
34:1,19 37:23 40:11 42:14,15
45:20 46:12,17,24 47:5 48:14,22
49:7,22 51:16 54:15 57:21,25
58:2,8 59:3,15,18 61:12,25 62:1,
8,10 64:2,19 65:13 69:2,14,15,17,
19,22 73:2,17 75:12,13 77:19,24,
25 78:2,5,16 79:3,22 80:12 81:21
82:8,12,19 83:18,19,25 84:4,16
company's 13:23 47:22,24 51:4
53:15 64:10 66:14 67:22 75:18
76:5
comparables 15:11
compared 22:22 39:12

compelling 69:16	conviction 59:12	47:2 49:12 52:19,25 53:5 54:6,8, 11 57:3,14,15,19,20,21 58:5, 63:25 65:1 69:8 70:1 73:15 74:1 77:6 87:20
compensation 55:4,14	COO 19:20 21:19 82:25	
competent 80:11	copied 74:20	
competitor 59:24	correct 8:13,17 17:5,7 22:14 23:1,23,24 32:9,18,19 36:22 37:15 49:20 54:16 58:17 67:15 81:22,23 82:2,3 86:10	deal's 63:10
complete 66:22 78:13 87:20	correctly 22:9 31:8 67:11	deals 17:18 22:16,22
completed 59:16 64:3,13	cost 29:14 30:4,21,22 31:3,5,23	debt 29:3
completely 42:8,18	costs 29:17,25 30:6 31:8	December 57:9 71:25
completion 59:21	counsel 5:13 53:4	decide 15:8 24:14
comprehensive 15:16	count 13:14 56:19,20	decided 46:17
concern 21:2 22:13 49:1,13 73:9	couple 69:9	deciding 83:17
concerned 13:22	court 5:8 7:4 74:17	decimate 79:4
concerns 41:18	cover 60:10 68:12 70:14 74:8 85:23	decision 34:18 57:1,5
concluded 65:13	created 45:14	decisions 19:23
concludes 88:7	Cressey 8:20 9:11,13,20 35:5 57:2,11,16 58:14,24 60:18 71:21 72:2,7	decrease 39:21
conclusions 51:2	Cressey/thoma 10:5	Defendant 5:20
condition 63:8,14 65:4,11,12 79:21	criteria 17:12	defendants' 25:14 34:25 38:11 60:3 65:25 68:6 70:9 74:3,14
conditions 63:25 67:18 68:22,24 69:7 78:15	current 10:2 38:3 40:16,20 72:11,16,17	define 13:24
conduct 46:17 47:6 50:9	curve 54:8	definition 33:18
conducted 24:5,6 53:15	customers 17:18 20:3 23:15 80:9	definitions 33:23
conducting 9:25 46:13,21,22	cut 15:6	definitive 64:14 72:3
confusing 52:10,17	cycle 24:21	delayed 54:6 71:24
consequences 44:13,18	cycles 13:14	delaying 49:18
considered 83:16		deliver 12:20 13:16
consistent 12:17		departure 84:6
consolidate 17:24		depend 17:19
consumer 10:18		deponent 6:5
consummate 63:5		deposition 5:7,10 6:13 88:8
consummated 70:1		depositions 6:20
contact 17:25 19:2,14 53:21		depreciation 56:16,18
context 22:16		derivative 66:9
continue 20:23 21:3 28:9,10,16	date 34:21 35:7 44:14,16 57:8 65:20 74:25	describe 24:2 87:14
continuity 82:2	dated 66:19 74:20	describes 27:21
contract 42:9	day 29:12 57:8 73:16	describing 77:7
controller 84:10,15,21	days 35:24	detailed 24:2
conversation 20:16 46:9 67:13	deal 20:10 22:16,21,24 24:12 25:1,4 27:9,16,19,24 28:11,16 34:14 35:12 37:10,18,23 38:2,8 41:14,25 42:4,13,14,15,18,23	determination 37:11
		Diaz 5:8
	<hr/> D <hr/>	

difference 56:13	Eagle 71:6 72:1 74:8	evaluate 12:25 13:3, 81:21 82:11 83:23,24	
differently 56:19,21	earlier 21:9 33:19 44:14,16 53:20 58:7 84:20	evaluating 22:10 82:8, 83:17,22	
difficult 7:3	early 10:21,23 24:21	event 34:20	
diligence 9:25 14:6 23:2,4 24:6, 16,17,21 52:20 64:12,20 65:9 81:21 84:4	EBITDA 28:23 29:8,13 31:22,25 32:8,18 55:23	events 38:7	
directionally 17:5,7 83:5	economic 13:14	exact 19:19 20:18 59:6 61:16	
director 61:19 62:14	educational 8:5	EXAMINATION 6:7 81:3 85:15	
directors 48:14 49:6 60:13 67:2 68:16 69:13,14	effective 79:20	exception 7:6	
disclosed 53:11	effort 24:19 28:10	exchange 5:24 35:20	
discloses 66:9	element 54:9	excited 27:15 87:20	
discovered 45:5	Ellis 6:1,3	excluding 30:14	
discovering 75:13	Embarcadero 5:11 15:25 16:18, 19 17:9 18:17,24 20:11 22:16,21 24:6 25:12 26:25 27:5 28:6 34:18 35:4,12,18 36:4 37:6,13 38:17,19 40:3 41:2 42:12 45:4 57:2,17 58:15,25 60:14 61:19 63:3 66:5 68:16 71:4,6 72:7 73:21 76:20,25 77:8 78:13 80:7 81:18 83:22 84:16	exclusive 29:2,3	
discuss 30:14	Embarcadero's 37:18 42:21	executive 19:22	
discussed 40:2	EMBT0009110 38:15	exercise 44:15	
discussing 64:25	employee 81:17,19	exhibit 25:13,14 34:24,25 38:11 60:3,6,9 65:25 66:4,18,19 68:6,11 70:9,13 74:3,7,14,18 83:10 85:18 86:5,13,14,15,20,21,22 87:13	
discussion 85:10	employees 44:10	existence 9:15	
discussions 20:11 26:23 43:10	end 80:20	existing 21:23 78:20 82:1	
Disk 80:20,25	ending 39:6 71:9,12	expect 11:22 12:2,5,16,19	
divided 29:4,5,7	ends 39:17 40:14	expectation 86:12	
document 25:11,18,21 26:2,4,6, 21 27:3,12 28:1,17,19 29:5 31:12 34:23 35:3 36:11,15,16 38:9,15, 16 39:5,17 40:13 42:19 52:6,9 53:6 60:2,16,17 61:4 65:20 66:14 67:25 68:5,10 70:7,12, 72:16 73:1 74:2,10,12,18,23 75:1,4 83:13 86:3,4,5,9 87:14,18	engaged 20:20	expectations 12:9,14	
documents 23:22 24:25 25:4	entered 19:11	expected 40:12	
dual 8:16	enterprise 28:20 32:9	expedite 63:9	
due 9:25 14:5 23:2,4 24:6,16,17, 52:20 64:11 81:21 84:3	entitled 7:18 35:4 66:5	expend 28:10	
duly 5:2	entrepreneur 18:14	expending 24:19	
duty 62:22,23	equity 8:20 9:14 15:23 35:6 44:2	expenditures 56:18	
<hr/> E <hr/>			expense 31:4
E-b-i-t-d-a 28:24	Estimate 72:22	expenses 14:22 30:6,15 31:9 55:4,14 56:13	
e-mail 52:7 60:10 68:12 74:19 87:15	estimated 32:17,22	experience 37:22	
e-mails 53:7	estimates 73:3	explain 20:25	
	ETTCB00000848 74:19	extent 23:17 84:24	
	ETTCB00002487 25:20	extracts 29:17	
	ETTCB00002494 28:18	<hr/> F <hr/>	
		fact 52:18,24 54:5 57:14 61:8 78:4	

failure 49:17	follow-up 46:9	generate 15:23
fair 22:5 27:20	forecast 39:21 40:16,20,22 41:2	give 12:18 36:8 38:9 44:2,10 47:9
fall 59:6	form 11:16 14:14 17:15 18:10 19:24 27:6 31:11,13 34:3 36:6,7 37:24 38:23 43:11 47:13 48:2	giving 27:18 44:14,15 59:11 62:4
fallacy 78:20	50:12 51:8 73:22 77:20 79:24 85:1	go-forward 41:12
familiar 15:25 23:4 25:3,8 26:2,4, 6 48:25 87:23	formal 20:20	good 5:5 6:9 11:19,21 12:19 13:13,18 17:20 18:14,16,19 20:5 21:10,19 23:12,14 28:6 42:14 56:1 59:5,12,13 76:19 79:16 81:5 85:17
February 60:12 66:4,16,19 68:15	formed 49:23	GP00015092 74:8
feedback 63:1	forward 22:11 27:20	GP00015152 70:14
feel 17:18 42:16 79:11	foundation 11:24 12:8 14:13 18:2 34:4 37:25 47:14 48:3,5 50:13 55:8,15 65:16 70:22 73:6 77:21 85:2 86:24	GP00015217 68:12
fees 13:10	founder 21:6	GP00015280 60:11
felt 21:16 53:10	fourth 36:24 66:7	graduate 8:8,24 9:9
fiduciary 62:22	fragmented 13:18	graduating 8:21
figure 48:12	franchise 13:13	graduation 8:18
file 49:17	Francisco 5:12	grant 66:9,15
filing 71:24	Frankly 50:22	granting 44:14 45:6,21 51:22
filings 48:23	front 38:9,14	great 7:15 59:8 76:13,19 78:9
final 51:9	frugal 18:14 20:4	grid 40:18
finance 34:14	full 59:3 75:7	ground 7:1
financial 33:11 39:6 45:12,15 49:12,15,18 63:7,14 64:3	fully 15:16	group 83:24
financials 23:14,15 54:16,20,22	funds 11:12,14 12:11,12,15 15:24	growth 41:25 42:5,7 59:3,13
financing 64:8	future 15:15 49:9 55:23	guess 44:9 52:12 61:7 81:17 83:15
find 47:7,20 77:16,18		guidance 39:12
findings 51:14	G	
fine 8:3 84:19		H
firm 6:24 8:19 9:14 11:10 13:16 14:1,2 16:6 26:10,12 28:10 87:22	gambles 78:25 79:1	haircut 34:13,14
fit 22:21	game 49:5	half 17:14,15,17 29:7
fits 17:13 79:12	gap 69:23	hand 69:18
flat 42:7 59:4	Gary 62:3	handed 66:3 70:12 74:6
flat-ish 59:4 63:23	gave 17:13 33:18 84:20	handing 35:3 68:10
flaw 22:7	gears 38:6	handoff 62:6
floating 34:11	general 10:13,21 11:12 13:11 15:17 16:14 29:23 31:20 38:22 40:9 42:24 43:13,24 50:23 56:14 59:1 63:20	happen 20:16
flow 31:23,25 55:23 56:22	generally 23:7 25:3,8 27:4 42:20 50:25 58:20	happened 34:20 37:17 38:8 46:11 48:9 61:3 70:4 76:1
focus 10:19,20 14:4 68:25 69:6		happening 47:8
focused 9:5,6 26:18		happy 7:24 23:16 58:2,5 77:3,5
focusing 11:2		
folks 86:13		

hard 13:24 48:8 52:5 64:2
Haroian 62:3
head 9:12 72:24 84:5,7
headcount 30:21
heading 28:2,4 33:10,21 38:15
39:5 71:15 72:21
headings 33:13
healthcare 31:2
hear 7:5 45:9
heard 43:9,16 49:25
held 69:15,18 85:10 88:9
helps 27:1
high 13:12,16 15:2
higher 17:21 29:25 38:3 65:6
highest 62:23
highlights 27:19
hired 19:10 47:5 50:1,4
historical 42:22 51:5 65:14
history 20:2 80:9
hold 12:12
Holscher 6:2 11:16,24 12:1,7
13:6 14:13,16 18:2,20 27:6 31:10,
17 34:3 36:7 37:24 38:23,25
43:11,15 47:13 48:2 50:12 51:7,
12 55:25 60:7 68:1 70:21 73:24
77:20 79:24 82:5 85:1 88:6
home 77:8
honest 77:16
hook 53:5 79:3
horrible 59:9
hour 56:2
huge 63:21
humbly 80:6
hundreds 16:8

I

ideally 83:5
identification 25:15 35:1 38:12
60:4 66:1 68:7 70:10 74:4,15

identified 53:20
identify 5:13
identifying 84:21
impact 55:22
impacted 54:22
impeding 49:19
important 83:2 84:14
Importantly 63:6
impression 18:10 19:24
impressions 21:10
improvements 13:15
include 20:12 67:18
including 14:7 51:9
incorrect 55:6
increase 31:24 63:9
Increases 14:18
incredibly 78:24
indemnify 69:2
independent 50:9
indication 78:1
individual 84:11,13
individuals 19:1,13 53:7 83:1,
16,17,21,23
industries 9:24
industry 13:18 17:23 26:18
31:23
information 40:2
insisted 79:20
instance 82:11
instruction 36:8
instructions 7:6
instructs 7:7
interact 18:23
interest 16:9 58:24 69:18 78:2
interested 10:17 27:13,15
interests 77:19
internal 46:24 47:2 48:4 52:22
53:15

international 84:7
interpose 87:6
interpret 28:25
introduction 16:12
invest 10:9 11:15,22 12:25 13:4
16:18 17:12 27:5 44:20,24 45:1
invested 64:9
investigate 50:2
investigation 45:20 46:13,18,
21,25 47:2,6,8,10,12,22,24 48:1,
10,19,20,24 51:2 52:22 53:4,16
54:14 59:16 65:14 66:22 71:23
investing 10:17 12:13 13:8 14:1
16:22
investment 6:21 9:4,6,14 12:17,
23 21:22 22:7,20 24:22 25:2,5,18
26:8,9,10,16,17 27:8,11,14 28:3,
4,8 74:22,24 83:12 85:24 87:22

investments 21:23
investor 41:16
investors 11:8,22 12:5,19
investors' 12:8
invests 10:7 11:6 44:19
involved 51:22 61:17,21,23 62:7
involvement 84:2
issue 42:21 45:11,12,15 49:11
53:2 54:5
issued 75:14
issues 45:5 49:21,24 50:2,10
51:5 62:9 69:10
items 12:24 13:3

J

Jack 80:4
James 5:25
January 57:9
JD 8:9,15
jeopardy 54:7
Jim 5:19 81:6
job 8:21 9:9 18:16,19

jog 25:10

join 14:15

joined 87:8

judgment 42:3

June 76:21

K

keeping 20:12

key 83:1,17,25 84:4,5,10,12

kind 9:5 10:8,18 15:23 31:25 43:7
52:12 59:11 78:25 81:14,15

Kirkland 5:25 6:3

knew 16:11 20:2,3

knowing 83:7

knowledge 33:20

L

labeled 38:15

lacks 86:24

Lamarca 5:23 11:25 13:5 14:15
18:18 21:20 23:25 25:7 29:18,21
30:7,17 32:23 36:6 37:14 38:1,24
40:5 41:4,22 43:1 44:23 46:15
47:11,25 50:11 51:19, 54:23 55:7,
15 58:9 59:19 65:16 66:23 73:5,
77:22 78:7 79:23 82:9 84:24 85:6,
16 86:18 87:1,4,9,12 88:2

large 17:22 22:24 26:19 69:20
87:24

largest 69:19

law 8:7,22

lawsuit 66:10

lawyers 50:1

LBO 15:22

leadership 82:22

leading 23:25 41:4 46:15 50:11
55:7,16 58:10 73:5 77:12

learn 50:17 51:4

learned 52:2,14,17

learning 51:16,21

led 73:20

Lee 74:20

legal 11:9

letter 65:12 66:19 67:15,16,17
68:15, 69:25

license 34:2 39:11 40:19 72:22
73:4 75:18

Licensed 39:20

licenses 76:6

life 83:3

limited 11:11 12:13,16

list 10:21 14:6 15:12,17 83:13

listed 84:1

listing 66:8

lists 84:1

Litigation 5:10

LLC 9:17

located 5:10

Lokblok 5:17 18:25 37:5,12
79:15,19

long 6:16 17:14 20:2 33:22 45:14
56:17 83:7

looked 59:24 83:11

lost 59:24

lot 23:19,21 41:12

lots 17:18

love 87:11

lower 57:17

lowest 62:24 69:11

M

machine 84:22 85:4

made 7:9 21:16,18 37:11 57:6

main 17:25 19:2 49:13

maintenance 23:16 28:22 29:6
32:7,17 34:2

make 11:19,21 12:7 15:17 16:11
19:22 23:12,13,15 27:13 31:7,10
48:23 65:1,6

makes 7:3 17:16 36:14

making 26:3

management 13:25 14:1,8
21:24,25 22:1,4,11, 34:12 44:2,3
72:22 78:20,22 79:4,5,9,12,17
81:21 82:1,8,17,21,22 83:14

manager 79:16 80:7

managers 80:5

managing 10:4 11:13 12:5 26:11

manufacturing 14:3

March 72:10

margin 13:17 17:20,21

margins 14:11,18,19

Mark 6:2

marked 25:14 34:25 38:11 60:3
65:25 66:3 68:6,11 70:9,13 74:3,
7,14,17 86:5

market 10:13

marketed 77:10

marketing 14:7

markets 59:25

marry 80:11

master 88:9

Materials 74:9

matter 6:23 46:25 57:22

matters 6:19

MBA 8:11,14,15

Mckaig 5:16 6:8,10 11:20 12:3,
21 14:20 18:6,22 22:3 24:1 25:9,
16 27:17 29:19 30:2,10,23 31:16
32:2 33:5 34:6,24 35:2 36:19
37:16 38:5,13 39:2 40:7 41:8
42:10 43:4,14,17 45:3 46:19
47:18 48:6 50:16 51:11,15,20
52:1 55:2,11,18 56:3,10 58:13
60:1,5,8 65:21,24 66:2 67:9 68:3,
8 70:7,11 71:2 73:8 74:2,5,16
78:3,11 80:15 81:25 86:23 88:5

meaning 15:19

means 29:11,12 85:4

meant 57:20

meet 16:12 24:18

meeting 38:17,19 40:1 41:6 51:3
meetings 17:6 38:21 48:10
member 78:12
members 68:13,15
memo 86:14,20 87:15,16
Memo_embarcadero 74:22
memorandum 24:23 25:19
74:24 83:12 85:24
memorandums 25:5 27:9
memory 36:10,12,15,18,20,23
73:7
mentioned 10:5 14:10 19:13,16
21:9,21 29:6 78:18 81:20
mentored 20:6
merger 63:6 65:5
Merits 28:3,4
met 6:9 47:2 68:22 81:5,8
methodologies 32:10
methodology 32:11,14
metric 55:5
metrics 12:24 13:2,11
Michael 5:20 81:6,8,10,13,16
middle 10:13 75:8,9 78:10
Mike 18:25 53:19
million 10:15 32:16 35:7 39:10,
11,13,22 40:20,22 69:3
mind 53:2
missing 40:3,25 49:8
misstates 79:25
Mitchell 74:20
mode 58:3
model 15:22
moment 14:10 25:21 38:7,10
60:15 68:17 74:25
money 11:6,7 28:10 87:25
monitoring 9:25
month 57:8
months 77:13

Morgan 9:2,3 19:10 20:19 61:22
68:13 71:1 75:17
morning 5:5 6:9 81:5 85:17
move 69:23
multiple 29:7,9
multiples 15:19 28:21 32:17
mutual 57:23
mutually 57:2 58:1 72:2

N

narrative 41:23 43:2
NASDAQ 66:8
National 5:9
necessarily 19:4 22:6 83:20
negotiate 57:17
negotiating 61:11 62:5
negotiation 53:22 62:16
negotiations 26:24 61:21 62:16
76:1
newly 76:25
newspaper 44:8
nods 9:12 72:24
nonbinding 65:10
noncash 30:6,14 31:1,8 55:3,
56:13,17
Nossaman 5:19
noted 88:10
November 71:22
nuances 33:23
number 21:7 25:19 28:18 29:20
30:1,15 31:4 39:17 40:14 48:13
55:5,12,22 68:11 70:13 71:9,12
74:7,18 80:21,25
numbers 40:12 41:5,6,10 42:5,
14,16 49:9 59:6
numerous 9:23

O

O'melveny 50:5,8,18

object 50:12 51:7 70:21
objection 11:16,24,25 12:7 13:5
14:13 18:2,18 21:20 23:25 25:6,7
27:6 29:18,21 30:7,17 31:11,12
32:23 34:3 36:6 37:14,24 38:1,23,
24 40:5 41:4,22 43:1,11 44:23
46:15 47:11,13,25 48:2,4 50:11
51:19, 54:23 55:7,15 58:9 59:19
65:16 66:23 73:5,22 77:20,22
78:7 79:23,24 82:9 84:24 85:1
86:16,23
objections 7:5,9 87:7,24
objects 87:7
obligations 11:14
obtain 8:14
occurred 58:18
October 5:6 38:18,20 74:21
offer 63:2 64:20 66:21 68:20,21
72:11,16,17
offered 73:21
one-week 64:15
ongoing 10:1 48:19 66:8,15
Oops 53:1
operate 43:25
operating 44:25
operational 13:15
operations 84:7
opportunity 17:21,23 25:2
27:16,22 57:11,16,19 88:1
option 42:22 44:2,14 45:6,13,20
46:14 49:24 50:9 51:5,22 53:1,3
54:15 55:4 59:16 62:9 65:14 66:8,
15,21
options 43:19,23 44:7,10 53:16
62:4 69:1 71:23
org 82:24
organizational 82:23
originating 9:24
Orlando 5:1,7 56:11 74:20
overly 13:5
overpriced 42:18
overstate 83:2

owned 77:24	plug 15:22	private 9:14 43:25 44:20 45:1 77:25
owner 15:21	point 17:25 19:7 20:22 28:15 30:25 54:17 57:1 58:14 61:12,15, 16,21 62:3,5 67:8 73:14 83:2 84:6	privy 48:11
ownership 15:4 69:15		problem 45:23
<hr/> P <hr/>		
paid 13:10 15:19	pointed 24:10	proceed 56:9 81:2 85:13
paragraph 35:16 36:25 60:18 62:25 64:6 68:25 75:8 76:9	points 17:23 19:2,14 80:3	process 16:13,15,17,18,20 18:1, 24 20:21 24:3,8 51:22 63:9 84:3
part 26:9 31:5 53:12,13 55:19 82:7 83:1	portion 26:17,19	produce 15:3 17:21
partner 10:4 11:12,13 12:6 20:5	portrayal 84:23	produced 25:1,4 56:22
partners 8:20 11:11 12:13,16 26:11 35:6	position 9:19 10:2 79:6 83:25 84:23	producing 17:20
partnership 6:23 19:22	positions 82:4,7,16 84:14	product 13:21,22,23,25 14:2,7
pass 45:18	positives 27:23 28:8	products 10:18
past 10:12 35:24 42:2	possibly 54:6	proforma 29:8,11,12,16,23 30:5, 13,14,15 31:14 32:7,18 33:17,19, 23 34:1 40:17 55:23
paying 29:2,3 42:12 63:19	potential 9:24	program 8:16 22:1
pending 8:1	potentially 13:16 52:25 54:11 65:1 67:2	progressed 19:8 20:10
people 30:22 53:21 61:13,15,17 78:21 80:8,11 83:6 84:2 87:19	practical 52:8	progresses 24:12
percent 35:22,25 65:4,9	practice 9:7 19:18,20	Project 74:8
percent-plus 44:1	practices 42:22 45:6,21 46:14 54:15 59:17 65:15 66:9,15	projections 33:11,25 34:9,11 40:4 42:1,2 73:19
percentage 69:18	precursor 16:22	promise 68:2,3 81:7
perfect 63:20 83:4	preliminary 24:22 25:5,18 27:8 66:6 74:24 83:12 85:23	promising 11:23
perfectly 80:16	premium 35:22,25	properly 44:10
performance 49:14 59:10 78:4 80:13	prepared 63:2 86:13,21,22	property 42:1
period 10:23 19:3,5 49:4 53:22 56:23 62:13 64:15 76:2 77:12	present 5:18 40:1 57:10,16 87:21	proposal 65:10 70:5 72:18
person 51:1	presentation 71:1,4,8	propose 58:4
perspective 41:12 59:22 78:25	presented 23:14 49:10 57:18	proposed 60:18,23 69:24
Pettison 5:20 81:7,8,11,13,16	press 35:4,7 66:5	provide 7:10,20
PF 28:23 29:8 33:12,17,21	pretty 52:24 77:11	proxy 31:22
phases 24:20	previous 40:16,21	public 21:7 44:20,25 48:23 59:25
place 17:1,6 82:1,12,14,18	price 29:1 35:23 36:1,3,4,21 37:18,22 38:3 42:4,12,13, 44:15 52:8 57:15,17,22,25 58:4 59:3 60:23 61:2 62:21,23,24 67:23 69:11 73:21,25 75:11,21 76:6,12 78:23	publicly 15:12 34:19
plan 44:2	priced 44:10	purchase 36:3,21 56:23 69:11 78:23 82:18 83:19
plans 20:12	pricing 42:5	purchased 84:16
player 17:22	primary 58:12	purchasing 58:15 84:4
pleased 37:3	prior 66:18 79:25	purpose 87:14,18
		purposes 86:22
		pursue 12:18 28:9,11,16 58:24

pursuing 87:25

put 27:8 42:3 54:6 59:22 65:3
74:11 80:3

Q

Q1 73:3,18

Q3-06 39:21 41:1

Q4 59:6

Q4-06 40:16,20,21

quality 13:12 15:2

quantitative 13:9

quarter 39:6 40:4,6 41:3 42:6
59:8,9 65:3 66:7 75:20

quarters 26:15

question 7:8,10,13,16 8:1 22:18
30:9,18 36:13,17 42:11 43:6
45:13 47:17,23 51:10 52:21 57:12
70:24 73:23 79:18 80:16 83:15

questioning 5:15

questions 6:11 7:15 27:2 80:17
85:7 88:2

quick 36:8 80:18 81:7

quickly 83:10

quotation 36:25

R

raise 12:11 41:18 87:24

Raj 5:17 18:25 19:16,20,24 21:10,
12,16 37:5 76:24 77:11 78:16
79:7

Raj's 19:17

range 17:13

reach 16:8

reached 16:6

reaction 41:15 61:2,8 67:22 70:4

read 67:16

reading 36:9 44:8

reads 74:8

reason 7:19 58:12 69:16 79:7,9,
10,14

reasons 20:25

recall 7:2 16:14 20:17,18 21:1
24:8 34:17,21 37:17 40:3,9,10,11,
25 41:11 42:21,24,25 43:6 45:10
48:17,18 50:20,23 51:2,13,16,21
53:18 54:24 55:3,9 57:5,8 58:23
59:1 60:20,21,22,24 61:1,7,13,16,
20 62:2,4,8,11,13 70:4 73:9,13
76:4,17,20,24 77:7,9 79:2 83:21
84:15,18

receive 35:20 50:18

received 50:19 51:6

recess 56:6 80:23

recognize 70:15 75:1,3

recollection 7:18,20 17:2 25:11
26:22 28:6 32:21,24 35:11 36:3
50:6,7 61:3 65:23 68:19 73:2
75:25 84:17

reconsider 73:20

record 5:6,14 6:10 7:24 8:1 34:22
56:4,8 80:19,21 81:1,6 85:8,10,12
88:3,8

recruit 80:4

recruiting 21:25

recurring 17:16

reduce 75:21 76:6

reductions 14:11,19,22

refer 10:6 30:5

referring 31:14,15 47:12 48:1

refresh 26:22 32:21 35:11 36:2,
12 65:22 68:19 75:25 84:17

refreshes 36:10,15,18,20,23
73:1,7

refreshing 32:24

reinterested 58:15 59:14,17,22

rejected 68:20

relate 72:6

related 56:18 76:5

relating 25:11 43:10 71:4 73:3

release 35:4,8 49:11 66:5

released 49:16

remain 78:16

remember 31:19,20 33:22 34:5
36:12 41:10 46:8,9,10,25 52:6
58:19 59:5 62:14 65:19 66:24
67:8,20,24 69:9 73:17

reminds 32:1 73:2

remove 31:24

removed 29:14

renegotiated 75:10

repeat 47:16

rephrase 7:16 22:18 30:8 57:12

replace 37:12

replacement 21:13,17

report 51:9

reporter 5:8 7:4 74:17

reports 82:24

represent 5:17 81:6

representation 26:3

representatives 61:23

represents 11:8 28:21 32:15,16
33:1 35:22

require 63:7,14

required 64:21

rerevised 73:19

respect 12:8 26:23 32:24 41:3
87:13

response 70:5

responsibilities 9:22

restate 54:16,20

restated 55:1,5,13

restatement 51:17

restricted 75:14

result 48:24 51:5 54:14

results 39:6 48:20 66:7

retention 75:15

return 11:19,21

returns 12:20 14:2 15:23

revenue 13:12,13,14,17 15:2
17:13,19 23:12,13 28:22,23 29:4,
6,13,24 31:21 32:7,17,18 34:2
39:11,12,20 40:12 72:22

revenues 10:14 17:15,17 39:10,
20 40:19 41:3 58:8 73:4 76:5
review 23:23 25:21 40:18 50:9
53:15,17 66:8,14 68:17
reviewing 72:25
revised 41:1,2 73:3
ring 17:4
risk 63:18
road 78:10
Robert 5:21 74:19
role 19:17 76:25 79:17 84:5
roles 84:4,8
Ronda 5:16 6:10
rosie 49:9
roughly 6:17 10:14,25 29:7 53:5
routinely 12:25
rule 87:7
rules 7:1
run 21:6,25 77:8

S

sale 71:20
sales 14:7 75:19 84:5
Sam 61:13
San 5:12
Sayle 74:19
scale 22:15
scared 41:17 59:7
school 8:7,8,12,22,24 9:10
SEC 5:22 48:23 49:18
Securities 5:24
Selected 66:6
sell 15:14 19:11 27:22 69:1
seller 49:7 69:12,21
sellers 6:22 9:25 69:17
selling 27:12 28:15
send 87:21

senior 82:21
sense 34:8 36:14 57:10,24 65:1
separate 12:11
September 34:17 35:8,12 36:5
39:7 42:23 57:7 71:19 72:17,18
service 13:24
services 5:10 10:22 11:4,5
set 27:4 32:11 68:24
sets 34:11
Shahbazian 18:25 53:19
share 35:21 36:4,21 38:3 49:8
60:19,23 63:4 64:20 67:23 68:20,
21 70:2 71:21 72:12,19 73:21
74:1 75:11,22 76:7,12,22
shared 41:6,11
shareholder 69:20
shareholders 63:3
short 73:17
show 34:13,23 60:1 67:25 68:4
72:13
showed 47:3
showing 80:12,13
shown 42:3 85:19
shows 20:4 28:8 32:25 40:19
72:16,17 85:23
sign 64:14
signed 41:13 42:4,9 52:19
significant 69:18
significantly 34:13
signing 54:10 79:3
signs 20:4
similar 15:20 86:4,8
size 22:20
Skadden 5:17
slide 39:5,8,18 40:19
slides 40:15
small 17:18,22
smart 12:19 18:14
soft 31:3 40:11 75:19

softer 41:12 73:18
softness 58:8 76:4
software 10:17,22 11:2 14:4,5
17:11 26:13,14,18 30:22
sold 20:23 21:4 49:8
sounds 24:24 58:21 61:4
source 11:14
sources 64:9
Spadafora 61:13,18
speak 77:23
speaking 23:7
special 49:23
specific 34:21 54:25 55:22 57:8
73:13
specifically 11:10 12:23 34:15
46:8 52:21 55:9 57:7
speculate 70:23
speculation 59:19 65:17 86:16,
24
spend 27:23
spending 87:25
spoken 81:10
spring 58:20
stable 13:13
stack 70:8
staff 26:8,9,10,16,17 27:14 87:22
stage 19:8,11 24:13,15
stand 33:16,17
stands 29:8
Stanford 8:7,12
Stanford's 8:8
Stanley 9:2,3 19:10 20:20 61:23
68:13 71:1 75:17
start 6:11
started 9:21 11:1 16:13,15,17,18
21:6
starting 5:14
starts 24:21 75:9
statement 49:18 63:21

statements 45:12,15 49:12,15 63:7,14 64:3	talk 7:2 11:9 12:22,24 20:8 38:7	57:23 58:1 59:11,17 62:6 63:16 64:2,7 67:3 76:1,16,18 77:4,5,12 78:5 84:7 87:25 88:10
status 47:21,23	talked 21:18	
stay 12:17	talking 30:16 31:11 58:7 61:14	timeframe 16:14 38:22
step 82:20	tapes 88:9	timeline 71:16 73:13,17
Stephen 18:5,7,8 19:22 20:6,7, 21 36:25 45:11,22 47:3 69:1,12, 17	Tashjian 5:21	times 33:3 61:24
stock 35:21 37:18,22 38:4 42:22 43:19,22 44:15 45:5 46:13 49:23 50:9 51:5 53:3, 54:15 55:4 59:16 62:9 65:14 66:8,15,21 75:14	TCB 76:13	title 19:20 38:16
stockholder 66:9	team 26:14 64:12 67:2 82:22	titled 25:18 40:16 74:24
stockholders 35:19	teams 25:1,4	today 6:11 7:2,8,19 9:15 83:11
strategy 12:12,17,23 21:22	Technologies 16:1 35:5 36:4 37:7 38:17 60:14 66:6 68:16 77:1 80:8	today's 88:7
strike 73:14	Technologies' 25:12 35:19	told 20:14,21 41:13 47:1 50:15 52:20 53:17 69:22 73:18
structure 11:9 83:1	telling 62:9 79:2	top 33:12 39:5,8 40:18,19 83:1 85:24
structures 82:23	ten 10:12	total 39:10,12
subject 6:19	term 23:5	traded 15:12
substance 50:20	terminate 57:2 72:3	trading 35:24 38:3
substantial 69:15	terminated 58:1,3	trained 20:6
successful 16:7	terminating 57:14	trajectory 42:17
successfully 75:10	termination 57:24	transaction 19:6,7,12 22:11 24:15 27:13 31:19 35:6 37:5 59:2 61:12,22 63:5 87:19
successor 20:5 21:11	terms 22:20 24:12 35:17 36:4 82:24	transactions 9:24
suggests 74:21	testified 5:2 48:3	travel 31:3
summarize 28:5	testimony 7:21 79:25 84:21,25	Tuesday 49:16
summary 27:4 71:15	thing 16:5 21:24 52:18 53:8 54:7	Tuesdays 49:16
surprised 53:24 77:10	things 13:7 21:18,21 31:3 54:2 83:3	turn 28:17 33:9 39:4,16 40:13 60:10 68:14 71:8 72:15 74:23 75:6 83:10 85:22
surrounding 58:24 76:5	Thoma 8:20 9:10,13,16,19 10:2, 5,6,8 11:6,7,8 12:6 22:17,25 24:5 27:4 35:5 57:2,11,16 58:14,24 60:18 71:21 72:1,7	turned 61:5,9
Susan 5:23	thought 19:20 20:5 41:25 59:2,4 69:11 79:13,15,19	turnover 83:3
sustainable 23:16	thousands 17:17	type 10:16 11:3 17:11 19:21 86:9
Suzie 87:3	threw 54:8	types 86:21
switch 38:6 85:7	thrilled 60:23,25	typically 10:9 44:22,24 82:22
sworn 5:2 6:5	throw 62:17,19	
	thrown 46:23	<hr/> U <hr/>
<hr/> T <hr/>	time 7:5,23 8:19 10:10,23 15:20 17:14 18:9 24:18 27:23 28:9,15 30:25 36:21 43:10 44:18 45:14 47:3 48:15 49:4,12 53:19 56:1,24	Uh-huh 30:24
table 75:17		ultimately 70:1
tails 56:17		unable 48:23
taking 17:6 30:4 63:18		

uncertainty 54:9
uncomfortable 65:4
uncovering 47:10
undergraduate 8:23
underneath 28:4
understand 7:14 19:17 27:7
30:12 31:7 32:5 33:6,8 39:25 41:9
44:12 45:4 46:12,20 49:22 50:8
52:15 53:9 54:19 67:11 83:9
understandable 7:11
understanding 22:9 29:16
30:13 31:18 43:8,18,22 44:5,7,9
45:8,19 52:9 53:14 56:12,15 64:1,
10
understood 18:15 27:25 30:3
46:23 54:13
University 8:6
update 48:15 50:25 51:6
updates 47:9 50:18,19,21,24
62:4 66:7

V

vague 11:25 18:18 31:13 41:22
43:1 47:11,25 54:23 58:9 61:2
78:7 82:9
vaguely 46:9 60:21,24
Valued 35:6
Veritext 88:9
versus 29:4 40:12 59:21 65:19
72:16,18
video 5:6
videotape 5:7
view 15:13 28:14 30:21 65:7
69:21
Volume 80:21,25
Vorhis 5:19 80:18 81:4, 82:6,10
85:5 86:16 87:3,6,11

W

walk 43:7
walked 59:24

wanted 25:25 42:20 56:11 69:23
74:10
watching 59:23
ways 15:5,10 29:23
week 16:9 67:4,5,14,18,19 73:16
Welch 80:4
Wong 18:5,7,11 20:6,9,12 21:2,
11,13,17 36:25 37:12 45:11 46:5
69:1,6,12
word 25:25
words 27:18 28:12 49:17 54:21
79:6
work 8:18, 21:23 23:8,11,19
26:12 58:5 78:23 83:24
worked 19:21 22:17 83:6
working 20:4 87:19
world 43:25 80:6
worry 63:19
worth 15:9,13

Y

years 6:18 10:12,21,23 21:7
yesterday 36:1

Z

zone 82:25