UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DEBORAH A. RISBERG, derivatively on behalf of ASPEN TECHNOLOGY, INC., Plaintiff(s),	
vs.	**C.A. NO:**
JOAN C. MCARDLE, DOUGLAS A. KINGSLEY, DONALD P. CASEY, MARK E. FUSCO, GARY E. HAROIAN, STEPHEN M. JENNINGS, MICHAEL PEHL, STEVEN L. BROWN, GRESHAM T. BREBACH, JR., DOUGLAS R. BROWN, CHARLES F. KANE, MANOLIS E. KOTZABASKIS, C. STEVEN PRINGLE, DAVID MCQUILLIN, LAWRENCE B. EVANS, STEPHEN J. DOYLE, LISA W. ZAPPALA, and MAY A. PALERMO,	**VERIFIED SHAREHOLDER DERIVATIVE COMPLAINT**
- and -	
ASPEN TECHNOLOGY, INC., a Delaware Corporation, Nominal Defendant, Defendant(s).	

Deborah A. Risberg ("Plaintiff") is a shareholder of Aspen Technology Inc. ("Aspen" or the "Company"), and files this Verified Shareholder Derivative Complaint (the "Complaint") pursuant to Federal Rule of Civil Procedure 23.1 on behalf of the Company against certain of its officers and directors seeking to remedy Defendants' violations of the law, including breaches of fiduciary duties relating to events that began as early as September 1997 and continued until the present day (the "Relevant Period") and that have caused substantial financial losses to Aspen and other damages, including, but not limited to, its reputation and goodwill. Plaintiff hereby alleges upon personal knowledge as to her own acts and upon information and belief as to all other matters, based upon, *inter alia*, an investigation conducted by her counsel, which included, among other things, the review of publicly available documents filed with the United States Securities and Exchange Commission ("SEC"), press releases and other media reports.

INTRODUCTION

1. In recent months, over 100 companies have come under scrutiny for their stock option granting practices. On March 18, 2006, an article appeared in the *Wall Street Journal* (the "*Journal*") entitled, "The Perfect Payday – Some CEOs reap millions by landing stock options when they are most valuable; Luck – or something else?" The *Journal's* analysis focused on financial filings from several high-tech companies and was an extension of recent academic articles which suggested that "backdating [stock options] was widespread, particularly from the start of the tech-stock boom in the 1990s though the Sarbanes-Oxley corporate reform act of 2002."

2. Backdating at Aspen has unjustly enriched the Company's top executives and directors to the detriment of Aspen and its shareholders. A key purpose of stock options is to give recipients an incentive to improve their employer's performance, including its stock price. Backdating options such that they carry a lower price runs counter to this goal, giving the recipient a "paper profit" right from the start. For example, if a company grants options on May 22, when its stock price is $20, but records the date of issue as April 22, when the stock price was only $15, it would be giving those who were granted options a riskless profit. Thus, manipulating options such that they carried a strike price lower than the trading price of the stock on the date of grant, Aspen insiders profited immediately upon the award of the options without doing anything to improve the Company's business or financial condition – a situation which

President George W. Bush recently declared "bad for America": "[O]vercompensating or trying to ***backdate things is . . . bad for America***.[1] And there ought to be consequences when people don't tell the truth and are not transparent."

3. Lynn Turner, the SEC's former Chief Accountant, described undisclosed backdating as follows: "It's like allowing people to place bets on a horse race after the horses have crossed the finish line." Arthur Levitt, former Chairman of the SEC, described backdating as stealing: "It is ripping off shareholders in an unconscionable way" and "represents the ultimate in greed."

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

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

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[1] All emphasis is added throughout, unless otherwise noted.

> expenses, as well as the various periods to which they may have been allocated, may also be incorrect. . . .
>
> More to the point, what does this kind of conduct say about those who do it and those who allow it to occur (either wittingly or unwittingly)?
>
> Those who backdate options grants violate federal and state law. And those on whose watch this conduct occurs are also potentially liable: If they knew about the backdating, they're participants in fraudulent and unlawful conduct. If they didn't know about the backdating, the question will be: Should they have done more to discover it?

Harvey Pitt, *The Next Big Scandal*, Forbes.com, May 26, 2006. Chairman Pitt also opined that:

> Options backdating calls a company's internal controls into question. Many discussions of backdating start with the observation that backdating is not, per se, illegal. That is wrong. Options backdating frequently involves falsification of records used to gain access to corporate assets. . . . If corporate directors were complicit in these efforts, state law fiduciary obligations are violated. Backdating is not only illegal and unethical, it points to a lack of integrity in a company's internal controls.

Harvey Pitt, *Lessons of the stock option scandal*, Fin. Times, June 2, 2006.

5. United States Senator Charles Grassley agrees. On September 6, 2006, the United States Senate Committee on Finance held a hearing, "Executive Compensation: Backdating to the Future/Oversight of current issues regarding executive compensation including backdating of stock options; and tax treatment of executive compensation, retirement and benefits." Chairman Grassley, in his opening statement, stated: "***[Options backdating] is behavior that, to put it bluntly, is disgusting and repulsive. It is behavior that ignores the concept of an 'honest day's work for an honest day's pay' and replaces it with a phrase that we hear all too often today, 'I'm going to get mine.***' . . . [S]hareholders and rank-and-file employees were ripped off by senior executives who rigged stock option programs – through a process called 'back-dating' – to further enrich themselves. And as we have found far too often in corporation scandals of recent

years, boards of directors were either asleep at the switch, or in some cases, willing accomplices themselves. . . ."

6. Moreover, as the *Journal* recently explained on December 12, 2006, in an article entitled "How Backdating Helped Executives Cut Their Taxes," many corporate insiders have manipulated stock option grant dates ***for the additional purpose of cheating on their income taxes***. Far more often than not, grant recipients immediately sell the shares they buy when they exercise options, and are required to pay ordinary income tax, as well as payroll taxes, on the difference between the stock's value on the date the option was exercised and the options' strike price. The highest federal marginal income tax rate is 35%. However, those insiders who hold shares for at least a year will pay a much lower capital gains tax – currently 15% – on any profit between the time they exercise and when they eventually dispose of the shares. This substantially lower tax rate provides an obvious incentive to exercise options at a relative low point in the stock price. As the *Journal* explained:

> Consider an executive who holds options on 100,000 shares with a strike price of $10. If he exercises and sells when the price is $20, he realizes $1 million in income and must pay $350,000 in income taxes.
>
> If he instead can claim an exercise price of $16, he lowers his income tax to $210,000. If he then sells a year later and the stock is at the same price of $20, he pays $60,000 in capital-gains levies, for a total tax bite of $270,000. ***In other words, he has the same $1 million gain but saves $80,000 in taxes***.

7. Defendants' conduct complained of herein is just the type of illegal backdating described above, which federal prosecutors and the SEC has been investigating intensely over the past year. Throughout the Relevant Period, as recently admitted by the Company, Defendants were granted hundreds of thousands of backdated or otherwise manipulated options to purchase Aspen stock, in direct violation of the terms of Aspen's shareholder-approved stock option plans.

Defendants' manipulation of options also constitutes breaches of their fiduciary duties of care, loyalty, and good faith to Aspen.

8. As a result of Defendants' unlawful stock option backdating scheme, the Company has been forced to announce a planned restatement of its historical financial results and has been exposed to a costly internal investigation.

JURISDICTION AND VENUE

9. This Court has jurisdiction over all claims asserted herein pursuant to 28 U.S.C. §1331 in that plaintiff's claims arise in part under the Constitution and laws of the United States, including SOX. This Court has supplemental jurisdiction pursuant to 28 U.S.C. §1367(a). This action is not a collusive action designed to confer jurisdiction on a court of the United States that it would not otherwise have.

10. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391(b) insofar as a substantial part of the events or omissions giving rise to the claim occurred within this judicial district.

THE PARTIES

11. Plaintiff Deborah A. Risberg ("Plaintiff") acquired 300 shares of Aspen common stock on October 5, 1998. Plaintiff sold 50 of those shares on August 30, 2000 and she never purchased any additional Aspen shares. Thus, Plaintiff currently owns 250 shares of Aspen common stock. Plaintiff is a citizen of Georgia.

12. Nominal Defendant Aspen is a corporation organized and existing under the laws of Delaware, with its headquarters located in this District at Ten Canal Park, Cambridge, Massachusetts 02141-2201.

13. Defendant Joan C. McArdle ("McArdle") has served on Aspen's board of directors (the "Board") since 1994. Defendant McArdle also serves on the Board's Audit Committee (the "Audit Committee") as well as the Nominating and Corporate Governance Committee. McArdle has also served two terms of duty as a member of the Compensation Committee (the "Compensation Committee"); first from 1996-1999, and then again in 2002. According to the Company's public filings, McArdle authorized the backdated and/or otherwise manipulated option grants challenged herein. McArdle also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-K. Defendant McArdle knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to her in connection therewith. As of October 1, 2005, McArdle held 134,298 options to purchase Aspen stock.

14. Defendant Stephen M. Jennings ("Jennings") has served on the Board since July 2000, and has served as Chairman of the Board since January 2005. In addition, Defendant Jennings is the Chairman of the Compensation Committee and has served on the Compensation Committee since 2000. He is also a member of the Nominating and Corporate Governance Committees. According to the Company's public filings, Jennings authorized the backdated and/or otherwise manipulated option grants challenged herein. Jennings also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-

K. Defendant Jennings knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Jennings held 102,523 options to purchase Aspen stock.

15. Defendant Donald P. Casey ("Casey") has served on the Board since April 2004. Defendant Casey has also served on the Audit Committee, the Compensation Committee, and the Nominating and Corporate Governance Committee since April 2004. According to the Company's public filings, Casey authorized the backdated and/or otherwise manipulated option grants challenged herein. Casey also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-K. Defendant Casey knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Casey held 19,000 options to purchase Aspen stock.

16. Defendant Mark E. Fusco ("Fusco") has served on the Board since December 2003, and has served as the Company's President and Chief Executive Officer ("CEO") since January 2005. Defendant Fusco was a member of the Compensation and Nominating and Corporate Governance Committees in 2004, and has served on the Compensation Committee

since April 2004. According to the Company's public filings, Fusco authorized the backdated and/or otherwise manipulated option grants challenged herein. Fusco also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-K. Defendant Fusco knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Fusco held 589,000 options to purchase Aspen stock.

17. Defendant Gary E. Haroian ("Haroian") has served on the Board since December 2003. He also has served on the Audit and Nominating and Corporate Governance Committees since that time. Defendant Haroian has been determined to be an "audit committee financial expert," as defined in Item 401(h) of Regulation S-K. Defendant Haroian knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Haroian held 23,000 options to purchase Aspen stock.

18. Defendant Michael Pehl ("Pehl") has served on the Board since August 2003. Defendant Pehl knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via

access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Pehl held 1,527,003 options to purchase Aspen stock.

19. Defendant Douglas A. Kingsley ("Kingsley") served on the Board from August 2003 through January 2006. Defendant Kingsley knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Kingsley held 4,432,790 options to purchase Aspen stock.

20. Defendant Stephen L. Brown ("S. Brown") served on the Board from July 2000 until 2003. During that time, he served on the Audit, Compensation, and Nominating and Corporate Governance Committees. According to the Company's public filings, S. Brown authorized the backdated and/or otherwise manipulated option grants challenged herein. S. Brown also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-K. Defendant S. Brown knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to

him in connection therewith. As of October 1, 2005, S. Brown held 53,523 options to purchase Aspen stock.

21. Defendant Gresham T. Brebach, Jr. (Brebach") served on the Board from 1995 until 2003. During that time, he served on the board's Audit and Compensation Committees. According to the Company's public filings, Brebach authorized the backdated and/or otherwise manipulated option grants challenged herein. Brebach also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-K. Defendant Brebach knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, Brebach held 102,523 options to purchase Aspen stock.

22. Defendant Douglas R. Brown ("D. Brown") served on the Board from 1986 until 2002. During that time, he served on the Audit, Compensation, and Nominating and Corporate Governance Committees. According to the Company's public filings, D. Brown authorized the backdated and/or otherwise manipulated option grants challenged herein. D. Brown also falsely stated that options were priced at fair market value on the date of the grant in numerous Aspen financial filings, including the Company's Annual Proxy Statements and its Annual Reports on Form 10-K. Defendant D. Brown knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with

other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. As of October 1, 2005, D. Brown held 102,523 options to purchase Aspen stock.

23. Defendant Charles F. Kane ("Kane") was Aspen's Senior Vice President, Finance and Chief Financial Officer ("CFO") from July 2003 until September 2006. Kane knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, Kane has received at least 189,216 backdated or otherwise manipulated options from Aspen.[2]

24. Defendant Manolis E. Kotzabasakis ("Kotzabasakis") has been with Aspen since at least 1997 and is currently the Company's Senior Vice President, Sales and Business Development. Kotzabasakis knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection

[2] These option numbers, and others included in this complaint, are based only on Defendants' publicly reported statements regarding option grants. Plaintiff believes that discovery may reveal that Aspen has granted unreported stock options to other potential executive officer defendants, and that the options granted to the named Defendants may actually be larger than reported.

therewith. Since 1997, Kotzabasakis has received at least 37,547 backdated or otherwise manipulated options from Aspen.

25. Defendant C. Steven Pringle ("Pringle") has been with Aspen since at least July 2002 and is currently the Company's Senior Vice President, Global Services. Pringle knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, Pringle has received at least 335,727 backdated or otherwise manipulated options from Aspen.

26. Defendant David McQuillin ("McQuillin") joined Aspen in 1997 and was the Company's President and CEO from October 2002 until January 2005. He also served on the Board from October 2002 until January 2005. McQuillin knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, McQuillin has received at least 1,880,000 backdated or otherwise manipulated options from Aspen.

27. Defendant Lawrence B. Evans ("Evans") was Aspen's principal founder and served on the Board from 1981 until 2004. Evans was the Chairman of the Board from 1984 until 2004, the Company's President from 1984 through 2001, and its CEO from 1984 through 2002. Evans knew, or recklessly failed to know, the below-described adverse non-public

information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, Evans has received at least 251,652 backdated or otherwise manipulated options from Aspen.

28. Defendant Stephen J. Doyle ("Doyle") joined Aspen as early as 1996 and was the Company's General Counsel and Secretary from May 2002 until July 2005. Doyle knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, Doyle has received at least 290,835 backdated or otherwise manipulated options from Aspen.

29. Defendant Lisa W. Zappala ("Zappala") joined Aspen as early as 1995 and was the Company's Senior Vice President, Finance in 2003. She also served as the Company's Chief Financial Officer ("CFO") from September 1998 through June 2003. Zappala knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, Zappala has received at least 45,704 backdated or otherwise manipulated options from Aspen.

30. Defendant Mary A. Palermo ("Palermo") joined Aspen in 1987. Palermo served as the Company's Co-Chief Operating Officer from January 2001 until 2003. Palermo knew, or recklessly failed to know, the below-described adverse non-public information about the business and stock option backdating of Aspen, as well as its finances, via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors' meetings and committees thereof and via reports and other information provided to him in connection therewith. Since 1997, Palermo has received at least 164,726 backdated or otherwise manipulated options from Aspen.

31. McArdle, Casey, Fusco, Haroian, Jennings, Pehl, Kingsley, S. Brown, Brebach and D. Brown are sometimes referred to herein as the "Director Defendants."

32. Kane, Kotsabaskis, Pringle, McQuillin, Evans, Doyle, Zappal, and Palermo are sometimes referred to herein as the "Officer Defendants."

33. Collectively, Defendants McArdle, Kingsley, Casey, Fusco, Haroian, Jennings, Pehl, S. Brown, Brebach, D. Brown, Kane, Kotzabaskis, Pringle, McQuillin, Evans, Doyle, Zappala, and Palermo are referred to herein as "Defendants."

DEFENDANTS' DUTIES

34. By reason of their positions as directors, and with regard to some, officers, and/or fiduciaries of Aspen, Defendants owed Aspen and its shareholders fiduciary obligations of trust, loyalty, due care, good faith, and fair dealing and were and are required to use their utmost ability to control Aspen in a fair, just, honest and equitable manner.

35. Each director and officer of the Company owes to Aspen and its shareholders the fiduciary duty to exercise due care and good faith and diligence in the administration of the Company's affairs, and the highest obligations of fair dealing. In addition, as directors of a

publicly held company, the Director Defendants had a duty to insure that the Company had sufficient internal controls to ensure that it promptly disseminated accurate and truthful information with regard to the Company's financial results, and that the Company had adequate corporate checks to protect against the unlawful back-dating of options and the improper accounting for those options, as described below.

36. To discharge their duties, Defendants were required to exercise reasonable and prudent supervision over management, and the Company's policies, practices and financial controls. By virtue of such duties, Defendants were required to, among other things:

(a) Ensure that an adequate system of internal controls was in place such that Aspen complied with applicable laws and financial results were reported accurately;

(b) Ensure that the Company had adequate corporate checks in place to ensure the Company was in compliance with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the SEC and the investing public;

(c) Ensure that management was conducting the affairs of the Company in an efficient, business-like manner to make it possible to provide the highest quality performance of its business, and to maximize the value of the Company's stock; and

(d) Remain informed as to how Aspen conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, to make reasonable inquiry in connection therewith, and to take steps to correct such conditions or practices and make such disclosures as necessary to comply with federal and state securities laws.

37. Aspen's Audit Committee Charter provides that the purpose of the Audit Committee is to assist the Board in connection with its oversight of: (i) ***the integrity of the Company's financial statements***; (ii) the Company's compliance with legal and regulatory requirements; (iii) the independent auditor's qualifications and independence; and (iv) the performance of the Company's internal audit function and independent auditors. The Audit Committee Charter further provides, in relevant part:

> **Authority and Responsibilities**
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> The Audit Committee shall discharge its responsibilities, and shall assess the information provided by the Company's management and the independent auditor, in accordance with its business judgment. Management is responsible for the preparation, presentation, and integrity of the Company's financial statements and for the appropriateness of the accounting principles and reporting policies that are used by the Company. The independent auditors are responsible for auditing the Company's financial statements and for reviewing the Company's unaudited interim financial statements. The authority and responsibilities set forth in this Charter do not reflect or create any duty or obligation of the Audit Committee to plan or conduct any audit, to determine or certify that the Company's financial statements are complete, accurate, fairly presented, or in accordance with generally accepted accounting principles or applicable law, or to guarantee the independent auditor's report.
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> **Review of Audited Financial Statements**
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> Discussion of Audited Financial Statements. ***The Audit Committee shall review and discuss with the Company's management and independent auditor the Company's audited financial statements***, including the matters about which Statement on Auditing Standards No. 61 (Codification of Statements on Auditing Standards, AU §380) requires discussion.
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> Recommendation to Board Regarding Financial Statements. ***The Audit Committee shall consider whether it will recommend to the Board of Directors that the Company's audited financial statements be included in the Company's Annual Report on Form 10-K.***
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> Audit Committee Report. The Audit Committee shall prepare an annual committee report for inclusion where necessary in the proxy statement of the Company relating to its annual meeting of security holders.
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> **Controls and Procedures**

> Oversight. ***The Audit Committee shall coordinate the Board of Directors' oversight of the Company's internal accounting controls for financial reporting, the Company's disclosure controls and procedures and the Company's code of conduct. The Audit Committee shall receive and review the reports of the CEO and CFO required by Section 302 of the Sarbanes-Oxley Act of 2002*** (and the applicable rules thereunder) and Rule 13a-14 of the Exchange Act.
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> Related-Party Transactions. The Audit Committee shall review all related party transactions on an ongoing basis, and all such transactions must be approved by the Audit Committee.
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> **Procedures and Administration**
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> Reports to Board. The Audit Committee shall report regularly to the Board of Directors.
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> Investigations. ***The Audit Committee shall have the authority to conduct or authorize investigations into any matters within the scope of its responsibilities as it shall deem appropriate, including the authority to request any officer, employee or advisor of the Company to meet with the Audit Committee or any advisors engaged by the Audit Committee.***

38. According to Aspen's Compensation Committee Charter, the purpose of the Compensation Committee is to discharge the responsibilities of the Board of Directors relating to compensation of the Company's executive officers. The Compensation Committee Charter further provides, in relevant part:

> **Compensation Matters**
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> Executive Officer Compensation. The Compensation Committee shall review and approve, or recommend for approval by a majority of the independent directors of the Board of Directors, executive officer (including the Company's Chief Executive Officer (the "CEO")) compensation, including salary, bonus and incentive compensation levels; deferred compensation; executive perquisites; equity compensation (including awards to induce employment); severance arrangements; change-in-control benefits and other forms of executive officer compensation. The Compensation Committee or the independent directors of the Board of Directors, as the case may be, shall meet without the presence of executive officers when approving CEO compensation but may, in its or their discretion, invite the CEO to be present during approval of other executive officer compensation.

Plan Recommendations and Approvals. The Compensation Committee shall periodically review and make recommendations to the Board of Directors with respect to incentive-compensation plans and equity-based plans. ***In addition to any recommendation provided by the Compensation Committee to the full Board of Directors, the Compensation Committee shall approve, or recommend for approval by a majority of the independent directors of the Board of Directors, any tax-qualified, non-discriminatory employee benefit plans (and any parallel nonqualified plans) for which stockholder approval is not sought and pursuant to which options or stock may be acquired by officers, directors, employees or consultants of the Company.***

Incentive Plan Administration. ***The Compensation Committee shall exercise all rights, authority and functions of the Board of Directors under all of the Company's stock option, stock incentive, employee stock purchase and other equity-based plans, including without limitation, the authority to interpret the terms thereof, to grant options thereunder and to make stock awards thereunder***; provided, however, that, except as otherwise expressly authorized to do so by a plan or resolution of the Board of Directors, the Compensation Committee shall not be authorized to amend any such plan. To the extent permitted by applicable law and the provisions of a given equity-based plan, and consistent with the requirements of applicable law and such equity-based plan, the Compensation Committee may delegate to one or more executive officers of the Company the power to grant options or other stock awards pursuant to such equity-based plan to employees of the Company or any subsidiary of the Company who are not directors or executive officers of the Company.

Director Compensation. The Compensation Committee shall periodically review and make recommendations to the Board of Directors with respect to director compensation.

Compensation Committee Report on Executive Compensation. The Compensation Committee shall prepare for inclusion where necessary in a proxy or information statement of the Company relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting), the report described in Item 402(k) of Regulation S-K.

Compensation Committee Report on Repricing of Options/SARs. If during the last fiscal year of the Company (while the Company was a reporting company pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Exchange Act")) any adjustment or amendment was made to the exercise price of any stock option or stock appreciation right previously awarded to a "named executive officer" (as such term is defined from time to time in Item 402(a)(3) of Regulation S-

K), the Compensation Committee shall furnish the report required by Item 402(i) of Regulation S-K.

Procedures and Administration

Reports to Board. The Compensation Committee shall report regularly to the Board of Directors.

Investigations. ***The Compensation Committee shall have the authority to conduct or authorize investigations into any matters within the scope of its responsibilities as it shall deem appropriate, including the authority to request any officer, employee or advisor of the Company to meet with the Compensation Committee or any advisors engaged by the Compensation Committee.***

39. Defendants' conduct complained of herein involves a reckless and/or knowing violation of their obligations as directors and officers of Aspen, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that Defendants were aware or should have been aware posed a risk of serious injury to the Company.

40. Defendants breached their fiduciary duties by failing to implement an adequate system of internal controls, which failure caused the Company to misrepresent its financial condition and allowed the unlawful back-dating of options.

41. During all times relevant hereto, Defendants breached their fiduciary duties to Aspen's shareholders by failing to prevent financial statements from being issued that misrepresented to the investing public, including shareholders of Aspen, the Company's actual financial results.

42. Moreover, these actions have irreparably damaged Aspen's corporate image and goodwill. For at least the foreseeable future, Aspen will suffer from what is known as the "liar's discount," a term applied to the stocks of companies implicated in illegal behavior and that

misled the investing public, such that Aspen's ability to raise equity capital or debt on favorable terms in the future is now impaired.

BACKGROUND

43. Stock options give recipients the chance to purchase a corporation's common stock at a certain price, which is usually referred to as the "exercise price" or the "strike price." Generally, and for reasons largely related to applicable IRS rules (as discussed below), option exercise prices are usually set on the date of the grant and they are established based on the corporation's closing stock price on the date of the grant.

44. Generally, the theory is that the recipient of any option grant is assuming the risk in receiving the grant; that is, if the corporation's stock price declines after the date of the grant, those options (at least in the short term) do not have any true economic value because the recipient of the grant can purchase the corporation's common stock in the open market at a price that is lower than the strike price on the option. Sometimes, these options are (colloquially) said to be "underwater" because they are not "in-the-money" and thus, there is no rationale economic reason to exercise the option if the corporation's stock price declines after the date of the grant.

45. Conversely, if a corporation's stock price increases after the date of a grant, the recipient of the grant has received a valuable economic benefit - the recipient can then exercise the option, which allows him/her to purchase stock below market price which he/she can then sell into the market for a profit.

46. In 2005, the SEC began investigating the stock option granting practices of numerous companies. As reported by the *Journal* on March 18, 2006, the SEC's "look at

options timing was largely prompted by academic research that examined thousands of companies and found odd patterns of stock movement around the dates of the grants."

47. The premise of the academic research was that mere chance could not have accounted for many of the fortuitous reported grant dates and a pattern emerged - at certain companies, executives, consistently, over a multi-year period, received options that were purportedly dated at or near historical low trading prices of their companies' stock, but just prior to material increases in the stock price. The academics' conclusion, which was based on a sophisticated statistical analysis, was that option grant dates were manipulated (i.e., backdated) at many companies they examined.

48. Generally, the theory is that these improper backdating practices allowed corporate insiders to reap unlawful windfall profits when the options were exercised. It stands to reason that if an executive was allowed to pick a grant date (instead of sticking with whatever date the options were actually granted), he/she could pick a date when the corporation's stock price was low, thereby earning "extra," but illicit profits.

DEFENDANTS' UNLAWFUL BACKDATING SCHEME

49. Between at least 1997 and 2006, Aspen, through the actions of the Board and the Compensation Committee, granted backdated stock options for the purchase of millions of shares of the Company's common stock to Defendants, who were highly placed executives with the Company.

50. In its public filings with the SEC, including in the Company's Annual Proxy Statements seeking shareholder approval for the stock options plans, Defendants contracted and represented that the exercise price of all of the stock options granted would be fixed based on the fair market value of the Company's common stock on the date of the grant.

Contracts and Disclosures Regarding the Stock Option Plans

51. In 1995, Aspen created a series of shareholder-approved stock option plans. The first, known as The Aspen Technology, Inc. 1995 Employee Stock Purchase Plan (the "1995 Plan") was created to "encourage ownership of Stock by employees of the Company and to provide additional incentive for the employees to promote the success of the business of the Company."

52. Amended in 2003, the 1995 Plan provides in relevant part:

> The Plan shall be administered by the Committee, which shall determine from time to time whether to grant Options under the Plan, shall specify which dates shall be Grant Dates and Exercise Dates, shall determine the fair market value of the Stock, and shall fix the maximum percentage of each Optionee's Compensation which may be withheld for the purpose of purchasing shares of Stock; PROVIDED, that, the maximum percentage shall not exceed five percent. The Committee shall have authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to the Plan, to determine the terms of Options granted under the Plan, and to make all other determinations necessary or advisable for the administration of the Plan.

53. "Committee" is defined in the Plan as "a committee of the board of directors of the Company composed exclusively of disinterested directors."

54. The 1995 Plan also provides that "[t]he purchase price of shares of Stock shall be 85% of the lesser of (a) the Market Value of the shares as of the Grant Date, or (b) the Market Value of the shares as of the Exercise Date, or such greater percentage as may be set by the Committee from time to time."

55. During the Relevant Period, Aspen also had a shareholder-approved stock option plan for Directors, known as the 1995 Directors Stock Option Plan (the "1995 Directors Plan"). The 1995 Directors Plan was created to "encourage ownership of the Stock by non-employee

directors of the Company and to provide additional incentive for them to promote the success of the Company's business."

56. The 1995 Director's Plan provided for option grants to non-employee directors as follows:

> FIRST GRANTS TO CERTAIN DIRECTORS. Each individual who was not, within the 12 months preceding his or her first election to the Board of Directors, either an officer or employee of the Company or any subsidiary of the Company and who is serving as a director immediately after the 1995 Annual Meeting of Stockholders or who is first elected to the Board of Directors during the term of the Plan (whether elected at an annual or special stockholders' meeting or by action of the Board of Directors) shall be granted, on the date of the 1995 Annual Meeting or such later election an Option to purchase 12,000 shares of Stock. Each Option shall (i) have an exercise price equal to 100% of the Fair Market Value of the Stock on the Grant Date, and (ii) become exercisable in 12 quarterly installments, beginning with the last day of the calendar quarter following the Grant Date, but only if the Optionee remains a director of the Company on the respective dates. The Option Period shall be ten years from the Grant Date.
>
> SUBSEQUENT GRANTS TO CERTAIN DIRECTORS. Each individual who continues as a non-employee director following any Annual Meeting of Stockholders of the Company shall be granted, on the date of that Annual Meeting of Stockholders, an Option to purchase 4,000 shares of Stock. Each Option shall (i) have an Exercise Price equal to 100% of the Fair Market Value of the Stock on the Grant Date and(ii) become exercisable in four quarterly installments, beginning with the third anniversary of the Grant Date, but only if the Optionee remains a director of the Company on the respective dates. The Option Period shall be ten years from the Grant Date.

57. At some point after the adoption of the 1995 Directors Plan, it was amended to increase the amount of the initial grants to directors from 12,000 to 24,000 options, and to increase subsequent annual grants from 4,000 to 8,000 options.

58. In 1995, Aspen also created a stock option incentive plan known simply as the 1995 Stock Option Plan ("1995 Incentive Plan"). With the stated purpose of "encourage[ing] ownership of the Stock by key employees and key advisors of the Company and its Related

Corporations and to provide additional incentive for them to promote the success of the Company's business," this Plan was to be administered according to the following guidelines:

> The Plan shall be administered by the Committee. Subject to the provisions of the Plan, the Committee shall have complete authority, in its discretion, to make the following determinations with respect to each Option to be granted by the Company: (a) the key employee or key advisor to receive the Option; (b) the time of granting the Option; (c) the number of shares subject thereto; (d) the Option Price; (e) the Option period; and (f) if the Optionee is an employee, whether the Option is an Incentive Option. In making such determinations, the Committee may take into account the nature of the services rendered by the key employees and key advisors, their present and potential contributions to the success of the Company and its Related Corporations, and such other factors as the Committee in its discretion shall deem relevant. Subject to the provisions of the Plan, the Committee shall also have complete authority to interpret the Plan, to prescribe, amend and rescind rules and regulations relating to it, to determine the terms and provisions of the respective Option Agreements (which need not be identical), and to make all other determinations necessary or advisable for the administration of the Plan. The Committee's determinations on the matters referred to in this Section 5 shall be conclusive.

59. The 1995 Incentive Plan defined "Committee" as "[t]he Compensation Committee of the Company's Board of Directors."

60. ***Regarding option pricing, the Plan provided, "[t]he Option Price under each Incentive Option shall be not less than 100% of the Fair Market Value of the Stock on the Grant Date except that the Option Price under an Incentive Option granted to a Major Shareholder must be not less than 110% of the Fair Market Value."***

61. The Company also has three additional stock option plans to benefit the Company's employees: the 1996 Special Stock Option Plan; the 1998 Employee Stock Purchase Plan, and the 2001 Stock Option Plan. Each of these plans were also administered by the Compensation Committee and the strike price there under was purportedly set at the fair market value of Aspen stock on the date of the grant.

Executive Officers' Receipt of Backdated Stock Options

62. Employing a widely accepted analytical model for detecting backdated options – the price action of an issuer's common stock 20 days before and 20 days after the date of grant – a review of the stock option grants at Aspen during the relevant period shows that the stock option grants were dated near or on the very day that Aspen stock hit its low price for the month, or in advance of sharp stock price increases.

63. This astonishing multi-year pattern of stock option grants on dates with highly favorable exercise prices – at or near a periodic law, or preceding a sharp increase in the share price – indicates that the purported grant dates of stock options were not the actual dates on which the option grants were made. Rather, the pattern indicates that the grants were repeatedly backdated to dates with exceedingly low stock prices. Indeed, the exercise price of almost every grant to defendants in the relevant period was below the weighted average price of the stock in the corresponding fiscal year. As discussed herein, Defendants have already tacitly admitted the truth of these allegations.

64. As demonstrated below, year after year, Aspen stock options were granted at different times of the year with the only consistency being that the grants were at or near a periodic low or preceded a run-up in the share price.

65. On September 11, 1997, the Compensation Committee purportedly awarded Defendants Evans, Palermo, and three other executives nearly 25,000 Aspen stock options. On September 11, 1997, Aspen stock closed at $31.12, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $35.12, or nearly 13%, within 20 days of this purported grant:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On September 11, 1997	Aspen Stock Price 20 Days After Option Grant

$36.13	$31.12	$35.12

The exercise price for this grant was the lowest closing price of Aspen common stock for the month of September 1997.

66. On December 19, 1997, the Compensation Committee purportedly awarded Defendants Evans, McQuillin, and two other executives 138,000 Aspen stock options. On December 19, 1997, Aspen stock closed at $29.25, near the bottom of a sharp drop in the price of Aspen common stock. Aspen's stock price rose to $31.50, or nearly 8%, within 20 days of this purported grant:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: December 19, 1997	Aspen Stock Price 20 Days After Option Grant
$38.12	$29.25	$31.50

The exercise price for this grant was the lowest closing price of Aspen common stock for the month of December 1997.

67. On August 4, 1998, the Compensation Committee purportedly awarded Defendants Evans, Palermo, and one other executive 52,000 stock options. On August 4, 1998, Aspen stock closed at $23.94, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $29.00, or more than 21%, within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: August 4, 1998	Aspen Stock Price 20 Days After Option Grant
$52.75	$23.94	$29.00

68. On October 8, 1998, the Compensation Committee purportedly awarded Defendants Evans, Palermo and two other executives 23,250 options. On October 8, 1998, Aspen stock closed at $7.00, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $13.81, or 97.3%, within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: October 8, 1998	Aspen Stock Price 20 Days After Option Grant
$25.19	$7.00	$13.81

69. On January 15, 1999, the Compensation Committee purportedly awarded Defendants Evans, McQuillin, Palermo, and two other executives 280,000 stock options. On

January 15, 1999, Aspen stock closed at $13.75, preceding a sharp increase. Aspen's stock price rose to $15.19, or 10.5%, within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: January 15, 1999	Aspen Stock Price 20 Days After Option Grant
$14.12	$13.75	$15.19

70. On September 1, 1999, the Compensation Committee purportedly awarded Defendants Evans, McQuillin, Palermo, and two other executives 187,500 options. On September 1, 1999, Aspen stock closed at $8.50, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $10.37, or 22%, within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: September 1, 1999	Aspen Stock Price 20 Days After Option Grant
$10.37	$8.50	$10.37

71. On April 10, 2001, the Compensation Committee purportedly awarded Defendants Evans, McQuillin, Palermo, Doyle and Zappala 97,500 options. On April 10, 2001, Aspen stock closed at $14.05, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $21.06, or 50%, within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: April 10, 2001	Aspen Stock Price 20 Days After Option Grant
$19.31	$14.05	21.06

72. On August 16, 2002, the Compensation Committee purportedly awarded Defendants McQullin, Doyle, Evans, Pringle, Zappala and Kotzabaskis 216,659 options. On

August 16, 2002, Aspen stock closed at $2.98, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $4.04, or 36%, within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: August 16, 2002	Aspen Stock Price 20 Days After Option Grant
$3.75	$2.98	$4.04

73. On August 15, 2003, the Compensation Committee awarded Defendants McQullin, Pringle, Kane, and Doyle 2,205,886 options. On August 15, 2003, Aspen stock closed at $2.75, near the bottom of a sharp drop in the price of Aspen common stock, and preceding a sharp price increase. Aspen's stock price rose to $3.81, or 38.5%, in the value of Aspen stock within 20 days of the grant date:

Aspen Stock Price 20 Days Prior to Option Grant	Aspen Stock Price On Grant Date: August 15, 2003	Aspen Stock Price 20 Days After Option Grant
$4.11	$2.75	$3.81

74. Pricing options at or near the bottom of a stock price valley was apparently a standard practice for Defendants, and is indicative of option backdating. By allowing the Company's stock price to develop over a period of time, and then returning to that period to select the date with the lowest stock price as the option grant date, Defendants ensured themselves healthy gains built-in to the already generous option grants. Of course, this practice also defeated the purported rationale for awarding stock based compensation to officers and directors as incentives, because backdating options already ensures those options will be in-the-money, thus alleviating the incentive to maximize the Company's performance.

75. Moreover, throughout the Relevant Period, certain Defendants have exercised many of their allegedly backdated stock options, contributing to their ability to realize millions of dollars in profit on Aspen stock they obtained by cashing in under-priced stock options. Due to incomplete SEC reporting records for Defendants, however, Plaintiff has not been able to determine the precise amount of Defendants' insider sales.

76. The apparent failure of a number of the Defendants to file reports of their stock option grants, exercises, and stock sales on Forms 3, 4, and 5, as required by the SEC, may have contributed to their ability to backdate options, even after the Sarbanes-Oxley Act of 2002 was enacted.

77. As a result of the backdating of options issued to Defendants, they have been unjustly enriched in the amount of millions of dollars at the expense of the Company. The Company has received and will receive less money from Defendants when they exercise their options at prices substantially lower than they would have if the options had not been backdated.

78. The practice of backdating stock options not only lined the pockets of Defendants at the direct expense of the Company, which received less money when the options were exercised, but also resulted in the overstatement of the Company's profits at least between 1997 and 2006. This is because options priced below the stock's fair market value when they were awarded brought the recipient an instant paper gain that must be accounted for as additional compensation and treated as an expense to the Company. As a result, the Company has restated its financial statements from at least fiscal year 1997 through fiscal year 2006 to take into account the backdating of options.

Aspen's Financial Statements

79. Throughout the Relevant Period, Defendants caused Aspen to issue unqualified quarterly and yearly financial statements on SEC reports 10-Q and 10-K respectively. In each financial report issued, Defendants claimed, *inter alia,* that: (i) the Company's financial reports were prepared and presented in accord with GAAP and (ii) they had designed and implemented a series of adequate internal controls. Those reports included:

The 1997 Form 10-K

80. Aspen's financial results for the fiscal fourth quarter and year end of 1997, the period ended June 30, 1997, were reported in the Company's Annual Report on Form 10-K filed with the SEC on or about September 29, 1997. The Annual Report was signed by Defendants Evans, Palermo, Brebach, D. Brown and McArdle. The 1997 Form 10-K was simultaneously distributed to shareholders and the public. The 1997 Form 10-K included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 1998 Form 10-K

81. Aspen's financial results for the fiscal fourth quarter and year end of 1998, the period ended June 30, 1998, were reported in the Company's Annual Report on Form 10-K filed with the SEC on or about September 28, 1998. The Annual Report was signed by Defendants Evans, Zappala, D. Brown and McArdle. Although the signature block for this report also included Defendant Brebach, it does not appear that he actually signed.

The 1998 Form 10-K was simultaneously distributed to shareholders and the public. The 1998 Form 10-K included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 1999 Form 10-K405

82. Aspen's financial results for the fiscal fourth quarter and year end of 1999, the period ended June 30, 1999, were reported in the Company's Annual Report on Form 10-K405 filed with the SEC on or about September 28, 1999. The Annual Report was signed by Defendants Evans, Zappala, Brebach, D. Brown and McArdle. The 1999 Form 10-K405 was simultaneously distributed to shareholders and the public. The 1999 Form 10-K405 included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2000 Form 10-K405

83. Aspen's financial results for the fiscal fourth quarter and year end of 2000, the period ended June 30, 2000, were reported in the Company's Annual Report on Form 10-K405 filed with the SEC on or about September 28, 2000. The Annual Report was signed by Defendants Evans, Zappala, D. Brown, Jennings and McArdle. Although the signature block for this report also included Defendants Brebach and S. Brown, it does not appear that they actually signed. The 2000 Form 10-K405 was simultaneously distributed to shareholders and the public. The 2000 Form 10-K405 included Aspen's financial

statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2001 Form 10-K405

84. Aspen's financial results for the fiscal fourth quarter and year end of 2001, the period ended June 30, 2001, were reported in the Company's Annual Report on Form 10-K405 filed with the SEC on or about September 28, 2001. The Annual Report was signed by Defendants Evans, Zappala, Brebach, D. Brown, Jennings and McArdle. Although the signature block for this report also included Defendant S. Brown, it does not appear that he actually signed. The 2001 Form 10-K405 was simultaneously distributed to shareholders and the public. The 2001 Form 10-K405 included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2002 Form 10-K

85. Aspen's financial results for the fiscal fourth quarter and year end of 2002, the period ended June 30, 2002, were reported in the Company's Annual Report on Form 10-K filed with the SEC on or about September 30, 2002. The Annual Report was signed by Defendants Evans, Zappala, Brebach, D. Brown, S. Brown, Jennings and McArdle. The 2002 Form 10-K was simultaneously distributed to shareholders and the public. The 2002 Form 10-K included Aspen's financial statements which were materially false and

misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2003 Form 10-K

86. Aspen's financial results for the fiscal fourth quarter and year end of 2003, the period ended June 30, 2003, were reported in the Company's Annual Report on Form 10-K filed with the SEC on or about September 29, 2003. The Annual Report was signed by Defendants McQuillin, Kane, Evans, Brebach, D. Brown, S. Brown, Jennings, McArdle, Kingsley and Pehl. The 2003 Form 10-K was simultaneously distributed to shareholders and the public. The 2003 Form 10-K included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2004 Form 10-K

87. Aspen's financial results for the fiscal fourth quarter and year end of 2004, the period ended June 30, 2004, were reported in the Company's Annual Report on Form 10-K filed with the SEC on or about September 13, 2004. The Annual Report was signed by Defendants McQuillin, Kane, Evans, Casey, Fusco, Haroian, Jennings, McArdle, Kingsley and Pehl. The 2004 Form 10-K was simultaneously distributed to shareholders and the public. The 2004 Form 10-K included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2004 Form 10-K/A

88. Aspen's amended financial results for the fiscal fourth quarter and year end of 2004, the period ended June 30, 2004, were reported in the Company's Amended Annual Report on Form 10-K/A filed with the SEC on or about March 15, 2005. The Amended Annual Report was signed by Defendants Fusco, Kane, Jennings, Casey, Haroian, Kingsley, McArdle and Pehl. The 2004 Form 10-K/A was simultaneously distributed to shareholders and the public. The 2004 Form 10-K/A included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

The 2005 Form 10-K

89. Aspen's financial results for the fiscal fourth quarter and year end of 2005, the period ended June 30, 2005, were reported in the Company's Annual Report on Form 10-K filed with the SEC on or about September 13, 2005. The Annual Report was signed by Defendants Fusco, Kane, Jennings, Casey, Haroian, Kingsley, McArdle and Pehl. The 2005 Form 10-K was simultaneously distributed to shareholders and the public. The 2005 Form 10-K included Aspen's financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Aspen's compensation expense was materially understated and its net earnings were materially overstated.

False CEO and CFO Certifications

90. In connection with the filing of certain Annual Reports on Form 10-K during the Relevant Period, Defendants McQuillin and Kane filed false Certifications of Chief Executive

Officer and Chief Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (the "Certification").

91. In each Certification, McQuillin and Kane made certain representations with respect to the accuracy and truthfulness of the information contained therein. For example, the Company's Form 10-K for fiscal year 2003, filed with the SEC and disseminated to shareholders on September 29, 2003, contained the following Certification made by McQuillin and Kane:

I, David L. McQuillin/Charles F. Kane, certify that:

1. I have reviewed this annual report on Form 10-K of Aspen Technology, Inc.;

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

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

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-14 and 15d-14) for the registrant and we have:

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

   b) evaluated the effectiveness of the registrant's disclosure controls and procedures as of a date within 90 days prior to the filing date of this annual report (the "Evaluation Date"); and

   c) presented in this annual report our conclusions about the effectiveness of the disclosure controls and procedures based on our evaluation as of the Evaluation Date;

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation, to the registrant's auditors and the audit committee of registrant's board of directors (or person's performing the equivalent function):

a) all significant deficiencies in the design or operation of internal controls which could adversely affect the registrant's ability to record, process, summarize and report financial data and have identified for the registrant's auditors any material weaknesses in internal controls; and

b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls; and

* * * * * *

In connection with the Annual Report of Aspen Technology, Inc. (the "Company") on Form 10-K for the period ended June 30, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of the Company, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, certifies that to his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

92. Despite their many statements to the contrary, as alleged herein, Defendants did not design a system of adequate controls; nor did they ever make any true attempt to do so. Defendants' failure to establish adequate internal controls could not have been the exercise of valid business judgment, and it rendered all of their statements during the relevant period regarding their controls materially false and misleading when issued. Because Defendants made

no true effort in this regard, the Company's financial reporting was inherently unreliable throughout the relevant period.

False and Misleading Annual Proxy Statements

93. Defendants caused Aspen to send to shareholders proxy statements in connection with the Company's annual shareholder meetings during the relevant period. Defendants drafted, approved and/or signed Aspen's proxy statements during that period. Between 1997 and 2006, the Individual Defendants prepared and/or reviewed each proxy statement before the statements were filed with the SEC. Defendants knew, or were deliberately reckless in not knowing, that the proxy statements were materially false and misleading.

94. Throughout the Relevant Period, the Company, with the knowledge, approval and participation of each of the Individual Defendants, for the purpose and with the effect of concealing the improper stock option backdating, disseminated to shareholders and filed with the SEC annual proxy statements that falsely reported the dates of stock option grants and falsely stated that stock options were granted to Defendants "***with an exercise price equal to the fair market value on the date of grant***."

95. The Aspen proxy statements that were sent to shareholders by the Company and Defendants in connection with annual shareholders' meetings typically concerned the election of directors, the approval and adoption of Aspen's stock option plans, the authorization to reserve shares for future issuance under the stock option plans, and ratification of the selection of Aspen's auditor. Each proxy statement sent to shareholders during this period contained materially false and misleading disclosures or omitted information about Aspen's stock option practices, as detailed below.

Aspen's 1997 Proxy Statement

96. On or about December 1, 1997, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Brebach, D. Brown and McArdle), made the following representations regarding the role of the Compensation Committee, and the Company's stock option plans:

> Each executive officer's compensation package is comprised of three elements: base compensation, which reflects individual performance and is designed primarily to be competitive with salary levels in a comparative group; bonus compensation, payable in cash and based on achievement of financial performance goals established by the Committee; ***and stock options, designed to assure long-term alignment with the interests of stockholders***. Both the base compensation and the bonus compensation were established off of the prior year's compensation, which was established after review of a report from Towers, Perrin, Forster & Crosby, Inc. ("TPF&C"), consultants in management ompensation. TPF&C had analyzed the base compensation and bonus compensation of xecutive officers of the Company against similar amounts paid by comparable corporations. TPF&C noted in that report for fiscal 1996 that the base compensation and bonus compensation of the executive officers of the Company were generally below the averages for executives of the comparable group of corporations. In assessing the information contained in the report, the Committee considered the nature of the business, the size and the profitability of comparable companies. ***Stock options were granted in amounts deemed by the Committee to be appropriate to increase alignment with stockholder interests and to serve as a means to retain the services of the executive officers.*** The Company did not pay bonuses to its executive officers with respect to fiscal 1997 because it did not achieve the internal financial targets set by the Compensation Committee.

Aspen's 1998 Proxy Statement

97. On or about October 28, 1998, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Brebach, D. Brown and McArdle), made representations virtually identical to those made in the Company's 1997 proxy statement regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 1999 Proxy Statement

98. On or about November 9, 1999, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Brebach, D. Brown and McArdle), made representations virtually identical to those made in the Company's 1997-1998 proxy statements regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 2000 Proxy Statement

99. On or about November 13, 2000, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Brebach, D. Brown and Jennings), made representations virtually identical to those made in the Company's 1997-1999 proxy statements regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 2001 Proxy Statement

100. On or about October 30, 2001, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Brebach, D. Brown and Jennings), made representations virtually identical to those made in the Company's 1997-2000 proxy statements regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 2002 Proxy Statement

101. On or about October 28, 2002, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (S. Brown, D. Brown and Jennings), made representations virtually identical to those made in the

Company's 1997-2001 proxy statements regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 2003 Proxy Statement

102. On or about October 28, 2003, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (S. Brown, D. Brown and Jennings), made representations virtually identical to those made in the Company's 1997-2002 proxy statements regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 2004 Proxy Statement

103. On or about October 28, 2004, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Jennings, Fusco and Casey), made the following representations regarding the role of the Compensation Committee, and the Company's stock option plans:

> *Purpose of the Compensation Committee.* The compensation committee is responsible for determining compensation levels for the executive officers for each fiscal year based upon a consistent set of policies. ***Our executive compensation policies have been designed to link executive compensation to the attainment of specific goals and to be closely aligned with the interest of our stockholders.*** We designed these policies to allow us to attract and retain senior executives critical to our long-term success by providing a competitive compensation package and recognizing and rewarding individual contributions. During fiscal 2004, the compensation committee reviewed information on market practices, programs and compensation levels for companies identified as industry peers.
>
> *Elements of the Compensation Program.* Each executive officer's compensation package has three elements:
>
> - base compensation, which reflects individual performance and is designed primarily to be competitive with salary levels in a comparative group;

- bonus compensation, payable in cash and based on achievement of corporate financial performance targets and attainment of individual performance goals established by the compensation committee; and

- stock options, designed to assure long-term alignment with the interests of stockholders.

In fiscal 2004, executive base salaries were adjusted based on individual performance and market analysis, in order to ensure competitiveness. The executive bonus plan measured the executive officers on the basis of a combination of corporate operating income targets and individual performance goals to determine payments. The actual incentive award paid to each executive was determined by first multiplying the target bonus for each executive by an overall performance factor of 85%. Each executive then voluntarily reduced his award by approximately 50% in order to make the difference available for bonus awards to the general employee base.

The compensation committee grants stock options to our senior executives based on corporate and individual performance as well as competitive industry practice as indicated by market data provided for companies which the committee considers to be comparable to AspenTech. In August 2003, following the closing of our Series D convertible preferred stock financing, we granted each of our named executive officers a stock option to purchase the number of shares set forth in the Option Grants in Fiscal Year 2004 table included in this proxy statement. These grants were made as part of a new equity incentive program for executive officers and employees established in connection with the Series D convertible preferred stock financing. In October 2004, following the completion of fiscal year 2004, our executive officers each received a stock option grant to reward individual performance during that fiscal year. The compensation committee took into account the individual's level of responsibility within the company and individual performance in determining grant size. ***We grant stock options with an exercise price equal to the fair market value on the date of grant.***

Aspen's 2005 Proxy Statement

104. On or about October 28, 2005, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Jennings and Casey), made representations virtually identical to those made in the Company's

2004 proxy statement regarding the role of the Compensation Committee and the Company's stock option plans.

Aspen's 2006 Proxy Statement

105. On or about October 30, 2006, Aspen filed a Form 14A proxy statement with the SEC. In the proxy statement, the Board, through the Report of its Compensation Committee (Jennings and Casey), made representations virtually identical to those made in the Company's 2004 proxy statement regarding the role of the Compensation Committee and the Company's stock option plans.

106. All of the statements concerning the purposes of Aspen's stock option plans and the value of the stock options on the date of grant, alleged herein, were knowingly false and misleading when made. In fact, Defendants caused the Company to backdate Aspen stock option grants to themselves and certain Company insiders, which was not permitted by the Company's stock option plans. Contrary to the representations, as alleged herein, none of the manipulated stock options to Defendants and others were ever approved by the shareholders, nor were shareholders ever aware of this illicit compensation.

Aspen is Forced to Restate Its Historical Financial Results

107. On September 6, 2006, Defendants caused Aspen to issue a press release preliminarily announcing selected financial results for the fiscal quarter and fiscal year ended June 30, 2006. More importantly, Defendants, for the first time, disclosed the existence of an ongoing internal investigation being conducted by a committee of so-called "independent directors" into the timing of past stock option grants. This purportedly independent investigation had turned up accounting errors related to the Company's historical option grants that would force the Company to restate its previously issued financial statements from 2002 and thereafter.

Aspen stated it estimated that additional compensation and related payroll tax expense of approximately $12 million, $10 million, $7 million, $1 million, and $1 million will be required to be recorded in fiscal years 2002, 2003, 2004, 2005 and the first three quarters of fiscal 2006, respectively. In addition, the Company stated it estimated that beginning retained earnings as of July 1, 2001 would be adjusted by approximately $23 million, related to compensation expense from periods prior to fiscal 2002. Further the Company stated that because the subcommittee's work was ongoing, these estimates were subject to change:

> The company also announced that, in connection with the preparation of financial statements for the fiscal year-ended June 30, 2006, ***a subcommittee of independent directors was appointed to review the company's accounting treatment for stock option grants for prior years. That review is still ongoing. The subcommittee has concluded that errors were made in the accounting for certain historical stock options granted during and prior to fiscal 2004, and previously issued financial statements will require restatement as a result of these errors. Accordingly, previously issued financial statements and the related reports of our independent registered public accounting firm should not be relied upon.*** The subcommittee currently estimates that additional compensation and related payroll tax expense of approximately $12 million, $10 million, $7 million, $1 million and $1 million will be required to be recorded in fiscal years 2002, 2003, 2004, 2005 and the first three quarters of fiscal 2006, respectively. In addition, the subcommittee currently estimates that beginning retained earnings as of July 1, 2001 will be adjusted by approximately $23 million, related to compensation expense from periods prior to fiscal 2002. Because the subcommittee's work is ongoing, these estimates are subject to change. The subcommittee's review indicates that these compensation expense impacts are primarily the result of errors in the determination of the measurement date related to grants of options allocated among a pool of employees when the specific number of options to be awarded to specific employees had not been finalized.
>
> The company expects that the restated financial statements will also reflect the correction of certain previously identified errors, which were not previously recorded because the company believed they were not material, as well as certain miscellaneous errors identified during the fiscal 2006 financial closing process. Such corrections will impact both the previously issued annual periods from 2003 to 2005 and the quarterly periods for 2006. These adjustments are expected to increase net income by approximately $3 million for the first three quarters of fiscal 2006, with a corresponding decrease in net income for fiscal years 2003, 2004 and 2005 of an equal amount in the aggregate.

108. On September 28, 2006, after the close of trading, Aspen issued another press release announcing fourth quarter and year end financial results, as well as the "completion" of the Company's "independent" stock option review and resulting restatements. That same day, Aspen filed its Annual Report on Form 10-K for the fiscal year ending June 30, 2006. In that Report, Aspen stated that it had found improper accounting for stock based compensation relating to the backdating of options as far back as 1995. The Company further stated that it would have to reduce earnings and increase stock based compensation and withholding tax adjustments as a result in the following amounts:

Year	Increased Net Loss for Adjustments to Stock-Based Compensation Charges and Withholding Tax Adjustments
1997	$0.2 million
1998	$1.5 million
1999	$10.0 million
2000	$7.0 million
2001	$10.4 million
2002	$11.5 million
2003	$9.5 million
2004	$7.2 million
2005	$0.5 million
2006	$1.0 million

TOTAL	$58.8 million

109. Specifically, Defendants issued the following statement regarding the restatement of Aspen's prior financial statements to properly account for backdated stock options:

> ***In connection with the preparation of financial statements for the fiscal year ended June 30, 2006, a subcommittee of independent members of our board of directors reviewed our accounting treatment for all stock options granted since we completed our initial public offering in fiscal 1995.*** Based upon the subcommittee's review, the Audit Committee and management determined that certain option grants during fiscal years 1995 through 2004 were accounted for improperly, and concluded that stock-based compensation associated with certain grants was misstated in fiscal years 1995 through 2005, and in the nine months ended March 31, 2006...The stock-based compensation charges, including the aforementioned withholding tax adjustments, increased net loss for the fiscal years ended June 30, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, and the nine months ended March 31, 2006 by $0.2 million, $1.5 million, $10.0 million, $7.0 million, $10.4 million, $11.5 million, $9.5 million, $7.2 million, $0.5 million, and $ 1.0 million, respectively.
>
> ***In addition, as a result of the errors in determining measurement dates, certain options were determined to have been granted with an exercise price below the fair market value of our stock on the actual grant date.*** These discounted options vesting subsequent to December 2004 result in nonqualified deferred compensation for purposes of Section 409A of the Internal Revenue Code, and holders are subject to an excise tax on the value of the options in the year in which they vest. We have concluded that it is probable we will either implement a plan to assist the affected employees for the amount of this tax, or adjust the terms of the original option grant which would also have financial statement ramifications. As such, we recorded an estimated liability of approximately $1.0 million in the fourth quarter of fiscal 2006 in connection with this contingency.
>
> The restatement of prior year financial statements also includes the adjustments for other errors identified after the applicable period had been reported. Such errors were not previously recorded because we believed the amount of any such errors, both individually and in the aggregate, were not material to our consolidated financial statements. These errors related to the timing of revenue recognition, losses on sales and disposals of assets, interest income, and the calculation of foreign currency gains and losses.

> As a result of the foregoing, we have restated our financial statements as of June 30, 2005 and for the fiscal years ended June 30, 2004 and 2005 in our consolidated financial statements, beginning on page F-3. We show the effects of the restatement on our financial statements for the years ended June 1999, 2000, 2001, 2002 and 2003 in Item 6, "Selected Financial Data." We show the effects of the restatement on each of the quarters in the year ended June 30, 2005 and the first three quarters in the year ended June 30, 2006 in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations – Quarterly Data."
>
> We have not amended and we do not intend to amend any of our other previously filed annual reports on Form 10-K or quarterly reports on Form 10-Q for the periods affected by the restatement. For this reason, the consolidated financial statements and related financial information contained in such previously filed reports should not be relied upon.

110. Although the September 28, 2006 press release purportedly discloses the results of the "independent" Board subcommittee's investigation into option backdating, the release omits perhaps the most material information about the investigation- ***which employees and/or directors were found to have participated, authorized, or acquiesced in the backdating of options, and which employees or directors received those backdated options.***

111. On November 9, 2006, Defendants caused the Company to issue a press release announcing additional restatement of financial results for fiscal year 2006:

> Aspen Technology, Inc. (Nasdaq: AZPN), a leading provider of software and services to the process industries, today announced that its previously issued financial statements for the fiscal year ended June 30, 2006 will require restatement. In connection with the preparation of financial statements for the three months ended September 30, 2006, AspenTech determined that there was an error in the calculation of its stock-based compensation expense related to forfeiture rates under an accounting standard adopted at the beginning of fiscal 2006 and that revenue recognized for a service arrangement was incorrect. Accordingly, the previously issued financial statements and the related report of its independent registered public accounting firm should not be relied upon.
>
> Management has discussed these errors with the Audit Committee of the Board of Directors and with its independent registered public accounting firm. AspenTech currently estimates that additional stock-based compensation expense of approximately $1.4 million and additional service revenues of approximately $0.3 million will be required to be recorded in fiscal 2006. In addition, corresponding

> decreases in stock-based compensation and service revenues will be reflected in the results for the three months ended September 30, 2006 that were announced on Tuesday, November 7, 2006.

112. Most recently, on February 6, 2007, Defendants caused the Company to issue a press release announcing yet further restatement of historical financial results, for fiscal years 2004-2006, and the first quarter of fiscal year 2007:

> The company is also announcing that it expects to restate its previously issued financial statements for fiscal years 2004 through 2006 and the first quarter of fiscal 2007, relating primarily to non-cash adjustments in the company's previously reported non-operating income. In the fiscal years 2004, 2005, 2006 and the first quarter of fiscal 2007, non-operating income is expected to increase by approximately $4 million, decrease by approximately $3 million, decrease by approximately $5 million and increase by approximately $500,000, respectively. In addition, non-operating income in the second quarter of fiscal 2007 is expected to reflect a non-cash benefit of approximately $3 million to $4 million as a result of the accounting treatment being applied in the restated results.
>
> The company also expects that the restated financial statements will also reflect the correction of errors identified in the current period close, which is expected to reduce net income by approximately $400,000 in fiscal 2006 with a corresponding increase in net income in the first quarter of fiscal 2007. Accordingly, previously issued financial statements and the related reports of our independent registered public accounting firm should not be relied upon.

113. Defendants' breaches of their fiduciary duties in failing to ensure and implement proper and adequate internal controls at Aspen has led to the expenditure of large sums of corporate money for numerous investigations and restatements of the Company's previously issued financial statements.

Defendants' Role In Backdating

114. During the relevant time period, the Company had in place numerous shareholder-approved stock option incentive plans applicable to the Executive Defendants, including: the 1995 Plan, the 1995 Incentive Plan, the 1996 Special Stock Option Plan, the 1998

Employee Stock Option Plan, and the 2001 Stock Option Plan. The stock options of Directors were controlled by the terms of the 1995 Directors Plan (collectively, the "Plans").

115. Each of the Plans were administered by the Board, with specific oversight given to the Compensation Committee. The Compensation Committee was primarily responsible for, *inter alia*, reviewing the compensation arrangements for the Company's executive officers, including the CEO, and for administering the Company's equity compensation plans, including the Plans.

116. Of the current board members, Defendants McArdle, Casey, Fusco, and Jennings have each served on the Compensation Committee during the Relevant Period. Defendants D. Brown, S. Brown and Brebach, all former directors, have also served on the Compensation Committee during the Relevant Period. The following chart outlines the membership of Aspen's Compensation Committee during the Relevant Period.

Fiscal Year	**Compensation Committee Members**
~~1996~~	~~Brebach, D. Brown and McArdle~~
2005	Casey and Jennings
2004	Casey, Fusco and Jennings
2003	D. Brown, S. Brown and Jennings`
2002	D. Brown, S. Brown, Jennings and McArdle
2001	Brebach, D. Brown and Jennings
2000	Brebach, D. Brown and Jennings
1999	Brebach, D. Brown and McArdle
1998	Brebach, D. Brown and McArdle
1997	Brebach, D. Brown and McArdle

117. Throughout the Relevant Period, the Company, through the actions of the Board and the Compensation Committee, granted backdated stock options for the purchase of millions of shares of the Company's common stock to Defendants.

118. In its public filings with the SEC, and as set forth in the shareholder approved Plans, Defendants represented that the exercise price of all of the stock options was in fact tied to the fair market value of the Company's common stock, measured by the publicly traded closing price for the Company stock on the date of the grant. This was a binding contract that Defendants entered into with Company stockholders when they solicited their approval of the Plans.

119. Contrary to these disclosures, however, as shown by the pattern of grant dates that were highly favorable to Defendants, many stock options were not priced on the date of the grant, but were in fact backdated.

120. Defendants stood in a fiduciary relationship with the Company and its shareholders, and thereby owed them duties of due care and loyalty. These duties required the Board to act in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interest of the Company and its shareholders.

121. Defendants violated their fiduciary duties to the Company by failing to act with due care, loyalty and good faith, when they either expressly authorized the practice of back-dating options, or in conscious abrogation of their fiduciary duties, permitted it to occur.

122. Defendants misrepresented and caused the Company to misrepresent in public SEC filings that the exercise price of certain stock options were tied to the fair market value of the stock on the date of the grant, thereby affirmatively concealing the claims set forth herein.

The Plans and employment agreements, referenced above, were exhibits that were incorporated by reference each year in the Company's Annual Reports on Form 10-K. Also, the compensation of the Officer Defendants, including their stock option grants, were disclosed in the Company's Annual Proxy Statements promulgated in connection with the Company's annual meetings. Director Defendants' misrepresentations about the Company's stock option pricing practices were known to be false or were made in reckless disregard of their truth or falsity, and the concealment could not have been discovered through reasonable diligence by the typical shareholder, prior to the announcement by Defendants of the so-called "independent investigation" on September 6, 2006.

Defendants' Failure To Ensure Aspen Had Adequate Internal Controls

123. In addition to backdating options, as set forth above, Defendants breached their fiduciary duties by falling to ensure the Company had adequate internal controls.

124. On September 28, 2006, Defendants caused Aspen to file its Annual Report with the SEC on Form 10-K (the "2006 10-K"). In the 2006 10-K, management discussed the status of the Company's internal controls. Management concluded that although it had remedied three of the six deficiencies identified more than a year ago, Aspen still suffered from a lack of control in the remaining three areas: (1) inadequate financial statement preparation; (2) lack of control over accounts receivable; and (3) lack of control over accounting for taxes.

125. Specifically, Defendants stated:

> *Changes in Internal Control Over Financial Reporting.* We previously reported six material weaknesses in our internal control over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act), which were described in Item 9A and Management's Report on Internal Control Over Financial Reporting in our Annual Report on Form 10-K for the fiscal year ended June 30, 2005, which we filed on September 13, 2005. A material weakness is a significant deficiency (as defined in Public Company Accounting Oversight Board Auditing Standard

No. 2), or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected.

During the first three quarters of the year ended June 30, 2006, we reported on Form 10-Q significant changes made to our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) to address our previously reported material weaknesses. During the fourth quarter, management completed testing to assess the effectiveness of its remedial measures and based on that testing has concluded in the fourth quarter that three of the previously reported material weaknesses no longer constitute material weaknesses as of June 30, 2006. For the three remaining items which management believes still constitute material weaknesses as of June 30, 2006, we have made changes in our internal controls over financial reporting as they relate to these control areas, but there continues to be additional work required for us to conclude that these control areas are operating such that they no longer constitute material weaknesses.

A discussion of the changes reported on Form 10-Q in previous quarters and their impact on our previously reported material weaknesses is included below. The following three previously reported material weaknesses no longer constituted material weaknesses as of June 30, 2006:

1) *Inadequate staffing and ineffective training and communication within the accounting and finance organization.*

· We increased the staffing and level of expertise of our accounting and finance organization, including hiring a vice president corporate controller, a director of corporate accounting, a manager of financial reporting, a manager of revenue operations, a credit and collections manager, an accounts payable manager, a sales tax analyst, and additional general accountants in general ledger, payroll, and collections in our Cambridge, Massachusetts headquarters, as well as a manager of revenue operations for the Asia Pacific region.

· We consolidated our North American accounting operations into a single shared service center at our Cambridge, Massachusetts headquarters.

· We implemented procedures under which we hold periodic meetings of cross-functional teams to improve communication and provide additional training.

· We held several training sessions on revenue recognition and internal credit policies for regional sales personnel, sales and executive management and new finance management.

During the fourth quarter of 2006, management concluded that the remedial measures described above were sufficient such that inadequate staffing and ineffective training and communication within the accounting and finance organization no longer constituted a material weakness as of June 30, 2006.

2) *Ineffective revenue recognition controls.*

· We took steps to improve our procedures relating to approving revenue arrangements sold through foreign agents, including redefining the identification, approval, recording and monitoring processes for agents and their commissions, and increasing coordination amongst our internal functional organizations.

· We completed an inventory of software currently held by our resellers.

· We implemented a policy requiring each customer to provide written confirmation of acceptance of ongoing maintenance.

· We enhanced our documentation regarding our pricing policies relating to consulting services and software maintenance services.

During the fourth quarter of 2006, management concluded that the remedial measures described above were sufficient such that ineffective revenue recognition controls no longer constituted a material weakness as of June 30, 2006.

3) *Inadequate controls over bank accounts.*

· We enhanced our existing policies and procedures related to the maintenance of bank accounts to include a periodic evaluation of our existing accounts, and closed accounts and updated bank signatory authorizations as appropriate for our business.

· We implemented policies and procedures to ensure bank accounts are included in our general ledger chart of accounts on a timely basis.

During the fourth quarter of 2006, management concluded that the remedial measures described above were sufficient such that inadequate controls over bank accounts no longer constituted a material weakness as of June 30, 2006.

The three remaining previously reported material weaknesses which management believes require further work and still constituted material weaknesses as of June 30, 2006, as well as the related significant changes to internal controls over financial reporting, are as follows:

1) *Inadequate financial statement preparation and review procedures.*

· We significantly increased the number and expertise of experienced supervisory personnel within the accounting and finance organization.

· We implemented procedures under which we hold periodic meetings of cross-functional teams to improve communication and provide additional training.

· We enhanced our existing monthly closing meetings to include a formal planning and financial review process, and have extended attendance at those meetings to a broader group of senior financial management and staff.

· We implemented policies and procedures to identify and add accounts, including bank accounts, to our general ledger chart of accounts on a timely basis.

· We enhanced our existing policies and procedures relating to general ledger account reconciliations, including establishment of a formal escalation method to notify senior financial management of accounts that have unreconciled or unadjusted variances.

· We implemented formal policies and procedures to ensure that our accounting and analysis of intangible assets, reserves and accruals are adequately supported and documented.

· We have implemented procedures for the timely preparation of memoranda to support all non-routine transactions.

Although the remedial measures implemented above improved our financial statement preparation and review as of June 30, 2006, certain of our processes and systems require further work and are dependent upon the recruiting and training of a number of qualified staff that were hired late in the fiscal year. As a result, certain controls over our periodic financial close process were not in place for a sufficient duration or were not effective as of June 30, 2006. Specifically, we did not have effective controls and procedures as of June 30, 2006 with respect to the (a) review of manual journal entries recorded at the consolidated level; (b) timely disposition of required adjustments identified through the period-end account analysis and reconciliation process, and (c) accounting for complex non-routine transactions.

This material weakness over our period financial close process as of June 30, 2006 is discussed further in "Management's Report on Internal Control Over Financial Reporting" included below.

2) *Ineffective and inadequate controls over the accounts receivable function.*

· We enhanced our policies and procedures relating to determining the creditworthiness of new and existing customers.

· We improved our policies and procedures to ensure that accurate invoices are submitted to customers and that all invoices paid by customers are recorded accurately and timely in our records.

· We enhanced our bad debt policies to clarify when reserves and write-offs are required and have implemented procedures designed to assess the proper valuation of our accounts receivable reserves.

· We engaged external collections agencies and legal counsel to assist with the collection of certain outstanding accounts receivable.

Although the remedial measures implemented above improved the internal controls over our accounts receivable function as of June 30, 2006, our accounts receivable reconciliation and review procedures require further work. As a result, controls in the accounts receivable function over the process to record customer invoice payments timely and accurately were not effective as of June 30, 2006. Specifically, we did not have effective procedures and controls over our accounts receivable function to provide reasonable assurance that all customer invoice payments are being recorded timely and accurately, and reflected as liabilities in those cases where we collected cash from customers relating to invoices previously sold to financial institutions.

This material weakness over controls in our accounts receivable function to record customer invoice payments timely and accurately as of June 30, 2006 is discussed further in "Management's Report on Internal Control Over Financial Reporting" included below.

3) Inadequate controls over the accounting for taxes.

- We implemented policies and procedures for the determination, review and documentation of income tax and sales tax liabilities and deferred income tax assets and liabilities as well as for preparing income tax provision calculations.

- We increased the level of review of all quarterly and annual tax accounts and calculations.

Although the remedial measures implemented above improved our controls over the accounting for taxes, further work is required to develop effective controls over the accounting for our income tax provision, income tax liabilities and deferred income tax accounts and related disclosures. As a result, controls over the accounting for income taxes were not adequate to prevent or detect a material misstatement of our financial position or results of operations as of June 30, 2006. Specifically, we did not have effective design or operational controls over the accounting for income taxes to provide reasonable assurance that the relevant income tax accounts and related disclosures can be prepared in accordance with generally accepted accounting principles.

This material weakness over the accounting for income taxes as of June 30, 2006 is discussed further in Management's Report on Internal Control Over Financial Reporting included below.

In addition, during the fourth quarter, management identified one new material weakness in internal control over the accrual of goods and services received as of June 30, 2006. As a result, controls over the accrual of goods and services received were not effective as of June 30, 2006 to provide reasonable assurance that all goods and services received are being recorded timely and completely.

This material weakness over the accrual of goods and services received as of June 30, 2006 is discussed further in "Management's Report on Internal Control Over Financial Reporting" included below.

126. In short, although the Company's current Board and the current Officer Defendants had been addressing these issues for more than a year, they admitted that Aspen still could not confidently prepare its financial statements or its taxes, and could not determine whether its creditors were paying their invoices and whether those invoices and payments were being recorded properly.

127. The Company also included the Report of Deloitte and Touche ("D&T"), the Company accountants, regarding Aspen's internal controls. In that report, D&T found that the Company's internal controls suffered from material weaknesses in *four* areas. These weaknesses included the three previously identified (lack of control over periodic financial close process, inventory control and taxes) as well as the additional area of ineffective and inadequate controls over the accrual of goods and services.

128. Specifically, the D&T report stated:

> We have audited management's assessment, included in the accompanying Management's Report on Internal Control over Financial Reporting, that Aspen Technology, Inc. and subsidiaries (the "Company") did not maintain effective internal control over financial reporting as of June 30, 2006, because of the effect of the material weaknesses identified in management's assessment based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting. Our responsibility is to express an opinion on management's assessment and an opinion on the effectiveness of the Company's internal control over financial reporting based on our audit.
>
> We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, evaluating management's assessment, testing and evaluating the design and operating effectiveness of internal control, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinions.
>
> A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable

assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the annual or interim financial statements will not be prevented or detected. The following material weaknesses have been identified and included in management's assessment:

1. ***Inadequate and ineffective controls over the periodic financial close process.***

The Company did not have effective design or operational controls and procedures that provided reasonable assurance that financial statements could be prepared in accordance with generally accepted accounting principles. Specifically, the Company did not have adequate controls and procedures with respect to the (a) review of manual journal entries recorded at the consolidated level; (b) timely disposition of required adjustments identified through the period-end account analysis and reconciliation process, and (c) accounting for complex non-routine transactions. As a result of these identified weaknesses, material post closing adjustments were identified and posted to the Company's books and records and financial statements. These adjustments, which are reflected in the Company's financial statements as of and for the year ended June 30, 2006, caused changes in assets, liabilities, stockholders' equity, revenues and expenses. Such weaknesses could continue to impact the balances in all of the accounts previously mentioned.

2. ***Inadequate and ineffective controls in the accounts receivable function over the process to record customer invoice payments timely and accurately.***

The Company did not have effective design or operational controls over the accounts receivable function to provide reasonable assurance that all customer invoice payments are being recorded timely and accurately, and reflected as liabilities in those cases where the Company collected cash from customers relating to invoices previously sold to financial institutions. As a result of these identified weaknesses, material post-closing adjustments were posted to the

Company's books and records and financial statements. These adjustments, which are reflected in the Company's financial statements as of and for the year ended June 30, 2006, caused changes to accounts receivable and accrued expenses. Such weaknesses could continue to impact the balances in all of the accounts previously mentioned.

3. ***Inadequate and ineffective controls over the accounting for income taxes.***

The Company did not have adequate design or operational controls over the accounting for income taxes to provide reasonable assurance that the relevant income tax accounts and related disclosures can be prepared in accordance with generally accepted accounting principles. As a result of these identified weaknesses, post-closing adjustments have been posted to the Company's books and records and its financial statements. These adjustments, which are reflected in the accompanying financial statements for the year ended June 30, 2006, caused changes to income taxes payable, deferred income tax assets and liabilities, the income tax provision, and additional paid-in capital. Such weaknesses could continue to impact the balances in the accounts previously mentioned.

4. ***Ineffective and inadequate controls over accrual of goods and services.***

The Company did not have adequate design or operational controls in place to provide reasonable assurance that all goods and services received are being recorded timely and completely. As a result of these identified weaknesses, material post-closing adjustments were posted to the Company's books and records and financial statements. These adjustments, which are reflected in the accompanying financial statements as of and for the year ended June 30, 2006, caused changes to unbilled services, property and leasehold improvements, accounts payable, service and other revenue, cost of services, and operating expenses. Such weaknesses could continue to impact the balances in all of the accounts previously mentioned.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the consolidated financial statements as of and for the year ended June 30, 2006, of the Company and this report does not affect our report on such financial statements.

In our opinion, management's assessment that the Company did not maintain effective internal control over financial reporting as of June 30, 2006, is fairly stated, in all material respects, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Also in our opinion, because of the effect of the material weaknesses described above on the achievement of the objectives of the control criteria, the Company has not maintained effective internal control over financial reporting as of June 30, 2006, based on the criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

DEMAND FUTILITY ALLEGATIONS

129. Aspen's Board of Directors consists of defendants McArdle, Casey, Fusco, Haroian, Jennings, and Pehl, as well as David McKenna ("McKenna") (collectively, the "Demand Directors"). Based upon the facts set forth herein, applicable law and the longstanding rule that equity does not compel a useless and futile act, a pre-filing demand upon the Demand Directors to institute this action against the Demand Directors is excused as futile. A pre-filing demand would be a useless and futile act because the Demand Directors have already conceded that they do not have a majority of disinterested and/or independent members. As set forth herein, the Demand Directors have acknowledged (in Company financial filings and press releases) that they have formed a special *ad hoc* Board subcommittee to purportedly investigate the stock option scheme described herein. Clearly, and based on the facts alleged, the formation of the *ad hoc* Board subcommittee was necessitated due to the fact that a majority of the Demand Directors could not have independently and disinterestedly investigated the claims alleged herein. As such, it would be totally unreasonable to expect the Plaintiff to make a demand on these directors who have already conceded that they are not disinterested and/or independent. Accordingly, demand is excused.

130. Demand is also excused for the following reasons:

(A) The Demand Directors have already conceded that they do not have a majority of disinterested and/or independent members. As set forth herein, under the terms of the Audit Committee Charter, the Audit Committee was and is expressly authorized to conduct investigations related to, *inter alia*, the Company's financial reporting. Moreover, under the terms of the Compensation Committee Charter, the Compensation Committee was and is expressly authorized to conduct investigations related to, *inter alia*, the administration of the Company's stock option Plans. Despite these explicit grants of authority to investigate the claims alleged in these actions, the Demand Directors caused the Company to form an *ad hoc* "special committee" to investigate the claims herein. The formation of the special committee is a *de facto* admission by a majority of the Demand Directors that they face a substantial likelihood of liability as a result of their conduct on the Board. This stands to reason: if a majority of the Demand Directors could have disinterestedly and independently investigated the claims alleged herein, there would be no point in forming a special *ad hoc* committee to conduct the investigation, given the clear grants of authority to the Audit and Compensation Committees. In light of this concession, it would be totally unreasonable to expect the Plaintiff to make a demand on the Demand Directors. Thus, demand is excused.

(B) Defendants McArdle, Jennings, Casey, and Fusco (each of whom served on the Compensation Committee during the Relevant Period) are interested because they face a substantial likelihood of liability for their conduct on the Board as a result of their integral roles in the secret backdating scheme. As alleged herein, Defendants McArdle, Jennings, Casey, and Fusco each granted Aspen stock options that were backdated. Defendants McArdle, Jennings, Casey, and Fusco also concealed the existence of the backdating scheme by repeatedly issuing false statements about Aspen's stock option Plans which were designed to and did hide the scheme from Aspen shareholders. For example, in the Compensation Committee Report contained in the Company's annual proxy statement filed with the SEC and disseminated to shareholders on or about October 28, 2004, Defendants Jennings, Casey, and Fusco represented that "all options granted in fiscal year 2004 were granted ***with an exercise price equal to the fair market value on the date of the grant.***" Moreover, the Compensation Committee operates pursuant to a charter. Under the terms of that charter, the Compensation Committee is directly responsible for, *inter alia,* setting the compensation levels of Company executives and the administration of the Plans. As members of the Compensation Committee during the relevant period, Defendants McArdle, Jennings, Casey, and Fusco had the primary responsibility of administering certain of the stock option grants that are challenged in this action. Accordingly, their personal potential liability for the acts (and failures to act) alleged herein casts doubt about their ability to disinterestedly evaluate a demand. Thus, because McArdle, Jennings, Casey, and Fusco comprise a majority of the Demand Directors, demand is excused.

(C) Because the Compensation Committee members comprise a majority of the Demand Directors, the entire Board is disabled from considering a demand due to the fact that the decision to backdate option grants is not a protected business judgment. Thus, demand is excused.

(D) Defendants McArdle, Casey, Fusco, Haroian, and Jennings are interested because they face a substantial likelihood of liability for their systematic failure to properly exercise their fiduciary duties as members of Audit Committee during the relevant period. This inference is strongly supported by the Company's ex post admissions (detailed herein) that, *inter alia*: (i) options were backdated at Aspen; (ii) they caused Aspen to issue numerous materially false and misleading financial statements (including Annual Reports on Form 10-K and Annual Proxies) for nearly a decade; (iii) the Board and the Compensation Committee failed to properly implement the Plans; and (iv) the Company lacked adequate internal controls for nearly a decade. Clearly, McArdle, Casey, Fusco, Haroian, and Jennings breached their fiduciary duties to Aspen and its stockholders. Indeed, in light of these admissions, and their potential civil and criminal exposure related thereto, there can be little doubt that McArdle, Casey, Fusco, Haroian, and Jennings would be interested in any demand to remedy their conduct and that they face a substantial likelihood of being held personally liable. Thus, because McArdle, Casey, Fusco, Haroian, and Jennings comprise a majority of the Demand Directors, demand is excused.

(E) The Demand Directors have already conceded a lack of independence on the part of Fusco, Pehl, and McKenna. In the Company's most recent Annual Proxy Statement, filed with the SEC and disseminated to shareholders on October 30, 2006, the Board stated that it had determined that "Donald P. Casey, Gary E. Haroian, Stephen M. Jennings, and Joan C. McArdle do not have any relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director of Aspen…and that each of these directors therefore is an 'independent director' as defined in Rule 4200(a)(15) of the NASDAQ Marketplace Rules." The Board's exclusion of Fusco, Pehl, and McKenna from this statement can only be interpreted as its concession that they are not independent and are precluded from independently considering a demand. Thus, demand is excused as to Fusco, Pehl and McKenna;

(F) Notwithstanding the Board's express admission that Fusco lacks independence, Defendant Fusco's employment with the Company is his principal professional occupation and his primary means of earning a living. As a result of his positions with the Company, Fusco has received and expects to continue to receive material financial benefits through his long-term mutually beneficial association with the other Demand Directors. For example, during fiscal year 2005 alone, the Demand Directors caused Aspen to pay Fusco $400,000 in salary and bonuses, while granting him options to purchase 1,100,000 shares of Aspen stock. Accordingly, there is reason to doubt that Fusco would act independently of the remaining Demand Directors who are: (i) his management superiors; and/or (ii) in a position to control his valuable financial benefits; and/or (iii) directly interested in challenged financial conduct. In addition to the foregoing, there is also reason to doubt that Fusco could respond to a demand in a disinterested fashion because he faces a substantial likelihood of liability based on his conduct as a member of both the Compensation and Audit Committees. Thus, demand is excused as to Fusco;

(G) The Demand Directors have demonstrated their unwillingness and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves and/or their fellow directors and allies in the top ranks of the corporation for the violations of law complained of herein. The Demand Directors have developed professional relationships amongst each other and with the other defendants, who are their friends and with whom they have entangling financial alliances, interests and dependencies, and therefore, they are not able to and will not vigorously prosecute any such action. For example, notwithstanding the Board's express admission that Pehl, McKenna, and Fusco lack independence, they each lack independence, along with Defendant Casey, due to their associations with Advent International ("Advent"), a private equity firm that has been Aspen's majority shareholder since Advent made a $100 million equity investment in Aspen in August 2003. Upon making this equity investment, Advent was issued Series D-1 preferred Aspen stock and was entitled to elect members of the Board in proportion to its ownership interest. In fiscal year 2004, Advent nominated Defendants Casey and Fusco to serve as directors of Aspen. Meanwhile, Pehl is currently an Operating Director of Advent, while McKenna is an Advent partner, and both were also Advent appointees to the Aspen Board. Defendant D. Brown served on Aspen's Compensation Committee from 1996-2003, and was also Advent's President and CEO for nearly the same time period, from 1995-2002. Defendant D. Brown is currently a "Special Partner" of Advent. As a member of Aspen's Compensation Committee from 1996 (the time of Aspen's initial public offering) to 2002, D. Brown faces a substantial likelihood of personal liability for, *inter alia*, administering certain of the manipulated stock option grants that are the subject of this lawsuit in violation of the terms of the Company's shareholder-approved Plans, and repeatedly issuing false statements about Aspen's stock option Plans designed to hide the scheme from Aspen shareholders. As his business partners, Defendants Pehl and McKenna are hopelessly conflicted and may not independently consider a demand against D. Brown. Moreover, Defendant Kingsley, a former Aspen director also nominated to serve on the Board by Advent, is currently Advent's Managing Director. Casey, Fusco, Pehl, and McKenna, as board appointees of Advent, are hopelessly conflicted and may not independently consider a demand, in light of their employment and other entangling business relationships with Advent, and certain of the other Defendants who are principals of Advent and/or their partners of Advent. Thus, demand is excused.

(G) All of the Demand Directors are interested because they face a substantial likelihood of liability in connection with their materially incomplete and misleading disclosures regarding the Company's recent restatement of financial results. As set forth herein, instead of finally issuing truthful disclosures regarding the stock option scheme, the Demand Directors have chosen to further cover-up the scheme. For example, despite the fact that they were recently forced to restate nine (9) years of the Company's historical financial statements, the Demand Directors have taken no action against any of the Defendants that have caused the Company to suffer damages. In fact, the Demand Directors have not even disclosed the exact option grants which were backdated, nor have they disclosed the identities of the recipients of the backdated options. The Demand Directors have clearly demonstrated their hostility to this action, and as such it would be totally unreasonable to expect them to disinterestedly and independently consider a demand. Thus, demand is excused as to all of the Demand Directors.

(H) Finally, all of the Demand Directors are interested because of their deliberate violation of the terms of the shareholder-approved Plans and their false disclosures which were intended to mislead shareholders into believing that the Demand Directors complied with the terms of those Plans. This constitutes a breach of the duty of good faith, and clearly rebuts the protections of the business judgment rule.

TOLLING OF THE STATUTE OF LIMITATIONS

131. The Counts alleged herein are timely. As an initial matter, Defendants wrongfully concealed their manipulation of the Plans, through strategic timing and fraudulent backdating, by issuing false and misleading Annual Proxy Statements, by falsely reassuring Aspen's public investors that the Company's option grants were being administered by a committee of independent directors, and by failing to disclose that backdated options were, in fact, actually issued on dates other than those disclosed, and that strategically timed option grants were issued based on the manipulation of insider information that ensured that the true fair market value of the Company's stock was, in fact, higher than the publicly traded price on the date of the option grant.

132. Aspen's public investors had no reason to know of the Defendants' breaches of their fiduciary duties until September 6, 2006, when Defendants caused the Company to announce the existence of the so-called "independent" investigation into the improper backdating of options.

133. Finally, as fiduciaries of Aspen and its public shareholders, Defendants cannot rely on any limitations defense where they withheld from Aspen's public shareholders the facts

that give rise to the claims asserted herein, *i.e.*, that the Board had abdicated its fiduciary responsibilities to oversee the Company's executive compensation practices, and that the option grant dates had been manipulated to maximize the profit for the grant recipients and, accordingly, to maximize the costs for the Company.

COUNT I

Against All Defendants for Breach of Fiduciary Duty in Connection with their Management of Aspen

134. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

135. As alleged in detail herein, each of the Defendants (and particularly, Evans, McQuillin and Fusco as the Company's CEOs, and McArdle, Casey, Jennings, D. Brown, S. Brown, Brebach and Haroian as members of the Compensation and Audit Committees) had a duty to, *inter alia*, exercise good faith to ensure that the Company was operated in a diligent, honest and prudent manner and, when placed on notice of improper or imprudent conduct by the Company and/or its employees, exercise good faith in taking action to correct the misconduct and prevent its recurrence.

136. As alleged in detail herein, Defendants knew or should have known of Defendants' stock option backdating scheme, and they failed to remedy this conduct, which has caused disastrous consequences for the Company and its stockholders. Thus, Defendants breached their fiduciary duties of loyalty and good faith.

137. All of the Defendants (and particularly Evans, McQuillin and Fusco as the Company's CEOs, and McArdle, Casey, Jennings, D. Brown, S. Brown, Brebach and Haroian as members of the Compensation and Audit Committees) willfully ignored the obvious and pervasive problems with Aspen's accounting and internal control practices and procedures and

made no true effort to correct the problems or prevent their recurrence. Thus, Defendants abdicated their fiduciary duty of good faith, which could not have been the exercise of valid business judgment.

138. As a direct and proximate result of Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

COUNT II

Against All Defendants for Breach of Fiduciary Duty for Disseminating False Information to Aspen Shareholders

139. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

140. As alleged in detail herein, each of the Defendants (and particularly Evans, McQuillin and Fusco as the Company's chief executive officers and McArdle, Casey, Jennings, D. Brown, S. Brown, Brebach and Haroian as members of the Compensation and Audit Committees) had a duty to ensure that Aspen disseminated accurate, truthful and complete information to the Market.

141. Each of the Defendants violated the fiduciary duties of care, loyalty, and good faith by causing or allowing the Company to disseminate to the market materially misleading and inaccurate information through public statements, including, but not limited to, press releases and SEC filings, as described herein.

142. Additionally, each of the Defendants failed to correct the Company's publicly reported financial results and guidance. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

As a direct and proximate result of Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

COUNT III

Against All Defendants for Breach of Fiduciary Duty for Failing to Design and Implement Adequate Internal Controls

143. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if fully set forth herein.

144. As alleged herein, each of the Defendants (and particularly Evans, McQuillin and Fusco as the Company's CEOs, and McArdle, Casey, Jennings, D. Brown, S. Brown, Brebach and Haroian as members of the Compensation and Audit Committees) had a duty to Aspen and its stockholders to design and implement adequate internal controls, including accounting controls. Further, each of the Defendants were required to ensure the Company's financial results were recorded in compliance with GAAP and SEC rules and regulations.

145. Although Defendants repeatedly told shareholders that they had complied with their fiduciary duties in this regard, those statements were untrue. The Company lacked the most basic internal controls which could have prevented the option backdating scheme (or, detected it sooner) and the resulting material negative impact on the Company's financial statements.

146. The inference that the Company lacked adequate internal controls during the Relevant Period is also supported by the Company's brief "independent" internal investigation that (eventually) uncovered the scheme. As set forth herein, when the backdating issue was finally addressed by the Board, its members were able to very quickly determine that something was amiss, and that improper backdating likely occurred.

147. Thus, notwithstanding their statements to the contrary, Defendants abdicated their responsibility to establish and maintain adequate internal controls at Aspen, having made no good faith effort to fulfill their fiduciary duties.

148. As a direct and proximate result of the Defendants' foregoing breaches of fiduciary duties, the Company has suffered significant damages, as alleged herein.

COUNT IV

Against All Defendants For Unjust Enrichment

149. Plaintiff incorporates by reference all preceding and subsequent paragraphs as if set forth fully herein.

150. Defendants were unjustly enriched by their receipt and retention of backdated stock option grants and the proceeds they received by exercising backdated stock options, as alleged herein, and it would be unconscionable to allow them to retain the benefits thereof.

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

COUNT V

Against the Officer Defendants for Breach Of Fiduciary Duty and Unjust Enrichment Related to the Salaries, Bonuses and any Other Incentive Compensation They Received During the Relevant Period

152. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

153. The Officer Defendants received stock options which are alleged to have been improperly backdated.

154. Because the Officer Defendants received backdated stock options, the Company's financial statements were materially misleading at the time they were issued. As a result, the Company's financial performance was materially overstated at all times relevant hereto, and because these defendants received financial benefits based on the Company's false financial

performance, they were unjustly enriched at the Company's expense. Thus, it would be unconscionable to allow them to retain the benefits of their improper conduct.

155. To remedy the Officer Defendants' unjust enrichment, the Court should order them to disgorge to the Company all other monetary benefits they received during the Relevant Period.

COUNT VI

Against All Defendants for Violation of §10(b) and Rule 10b-5 of the Exchange Act

156. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

157. Throughout the Relevant Period, Defendants individually and in concert, directly and indirectly, by the use and means of instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct which allowed them to receive improper option grants and make no recompense to the Company.

158. Defendants employed devices, schemes, and artifices to defraud while in possession of material, adverse non-public information and engaged in acts, practices, and a course of conduct that included the making of, or participation in the making of, untrue and/or misleading statements of material facts and/or omitting to state material facts necessary in order to make the statements made about Aspen not misleading.

159. Defendants, as top executive officers and directors of the Company, are liable as direct participants in the wrongs complained of herein. Through their positions of control and authority as officers of the Company, each of the Defendants was able to and did control the conduct complained of herein and the content of the public statements disseminated by the Company.

160. Defendants acted with scienter throughout the Relevant Period, in that they either had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose the true facts, even though such facts were available to them. Defendants were among the senior management of the Company, and were therefore directly responsible for the false and

misleading statements and/or omissions disseminated to the public through press releases, news reports, and filings with the SEC.

161. Each of the Defendants participated in a scheme to defraud with the purpose and effect of defrauding Aspen.

162. By virtue of the foregoing, Defendants have violated §10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

COUNT VII

Against All Defendants For Violation of §14 of the Exchange Act

163. Plaintiff incorporates by reference and reallege each and every allegation set forth above, as though fully set forth herein.

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

165. The Company's Annual Proxy Statements filed and disseminated throughout the Relevant Period violated §14(a) and Rule 14a-9 because they omitted material facts, including the fact that certain of the Defendants were causing Aspen to engage in an option backdating scheme, a fact which Defendants were aware of and participated in from at least 1997.

166. In the exercise of reasonable care, Defendants should have known that the Company's Annual Proxy Statements were false and misleading.

167. The misrepresentations and omissions in the Proxy Statements were material to Plaintiffs in voting on each Proxy Statement. The Proxy Statements were an essential link in the

accomplishment of the continuation of Defendants' unlawful stock option backdating scheme, as revelations of the truth would have immediately thwarted a continuation of shareholders' endorsement of the directors' positions, the executive officers' compensation, and the Company's compensation policies.

168. The Company was damaged as a result of the material misrepresentations and omissions in the Proxy Statements.

COUNT VIII

Against All Defendants For Violation of §20 of the Exchange Act

169. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

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

COUNT IX

Against All the Defendants For Corporate Waste

171. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

172. By failing to properly consider the interests of the Company and its public shareholders, by failing to conduct proper supervision, by giving away millions of dollars to Defendants via the option backdating scheme without any consideration therefor, and by failing to timely request the resignations of Defendants Evans, McQuillin and Fusco, Defendants have caused Aspen to waste valuable corporate assets.

173. As a result of Defendants' corporate waste, they are liable to the Company.

COUNT X

Against All Defendants for Breach of Contract

174. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

175. Defendants had employment agreements with the Company, and were also parties to the various stock option Plans at Aspen.

176. As a result of participating in the option backdating scheme at Aspen, Defendants have breached their employment agreements with the Company and violated the express terms of the shareholder-approved Plans, all of which provide that the exercise price of the stock options would be no less than the fair market value of the Company's common stock, or a predetermined percentage of that stock, measured by the publicly traded closing price for the Company stock, on the date of the grant.

177. The Company and its shareholders have been damaged by Defendants' breaches of contract. Plaintiff, as a shareholder and representative of the Company, seeks damages and other relief for the Company, in an amount to be proven at trial.

PLAINTIFF'S DEMAND

WHEREFORE, Plaintiff demands judgment as follows:

A. Against Defendants and in favor of the Company for an amount of damages sustained by the Company as a result of Defendants' breaches of fiduciary duties, gross mismanagement, waste of corporate assets and unjust enrichment.

B. Extraordinary equitable and/or injunctive relief as permitted by law, equity, and state statutory provisions sued hereunder, including attaching, impounding, imposing a constructive trust on or otherwise restricting the proceeds of Defendants' trading activities or their other assets so as to assure that Plaintiff on behalf of the Company has an effective remedy;

C. Awarding to the Company restitution from Defendants, and ordering disgorgement of all profits benefits and other compensation obtained by Defendants as a result of the conduct alleged herein;

D. Granting an injunction preventing future exercise of any stock option grants by any current or former Director or Officer;

E. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper, including pre and post judgment interest.

JURY DEMAND

Plaintiff demands a trial by jury.

DATED: February 23, 2007

/s/ Garrett J. Bradley

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