

**COPY**

FILED  
CLERK'S OFFICE  
UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

2007 JUL 25 P 3: 32

SECURITIES AND EXCHANGE COMMISSION

U.S. DISTRICT COURT  
DISTRICT OF MASS.  
**JURY TRIAL DEMANDED**

Plaintiff,

v.

ROBERT J. THERRIEN,

Defendant.

Case No.

**07 CA 11364 RCL**

**COMPLAINT**

1. Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendant Robert J. Therrien ("Therrien"), alleges the following:

**SUMMARY**

2. This Commission enforcement action concerns a fraudulent stock options backdating scheme perpetrated from at least 1999 through 2005 by Therrien, the former Chairman of the Board and Chief Executive Officer of Brooks Automation, Inc. ("Brooks" or the "Company"), a Chelmsford, Massachusetts-based supplier of software and related services to manufacturers of computer chips.

3. Under well-settled accounting principles in effect throughout the relevant period, Brooks was required to record an expense in its financial statements for any stock options granted below the current market price ("in-the-money"), while the Company did not need to record an expense for options granted to employees at the current market price ("at-the-money"). In order to provide Brooks' employees and executives, including himself, with lucrative in-the-money options (which result in an immediate financial benefit to recipients), while avoiding having to inform shareholders of the millions of

dollars in compensation expenses thereby incurred and the resulting impact on the Company's financial statements, Therrien engaged in a scheme to falsify company records to create the false appearance that the options granted in-the-money actually had been granted at-the-money on an earlier date. Therrien's scheme involved choosing purported grant dates with the benefit of hindsight in order to grant options at a lower price than the current market price at the time of the actual grant determination. Therrien personally benefited by more than \$10 million from his fraudulent conduct.

4. As part of the scheme, Therrien, in or about November 1999, created and signed false documents resulting in the issuance of in-the-money options to himself, which he immediately exercised, to purchase 225,000 shares of Brooks' common stock. Therrien signed these false documents after learning that his options to purchase the shares had expired unexercised a few months earlier in or about August 1999. The documents Therrien signed falsely indicated that he had actually exercised his options before they expired. As a result, Therrien received approximately \$5.8 million in undisclosed compensation from Brooks. Brooks failed to report this compensation in its Commission filings.

5. As a result of this and other transactions, Therrien and Brooks concealed millions of dollars in expense from investors, materially understating Brooks' expenses and overstating the Company's income, by falsifying records and failing to maintain records relating to stock option grants and exercises. During the period from May 1999 to September 2005, Therrien signed numerous public filings by Brooks that he knew or was reckless in not knowing materially misrepresented its financial results.

6. On or about May 11, 2006, Brooks announced that it intended to restate its financial statements contained in filings with the Commission for some or all of the periods between 1999 and 2005, and that those financial statements should not be relied upon. The announcement stated that “[t]he Company believes that it accounted for certain matters concerning stock options incorrectly, and as a result recognized less compensation expense than it should have in periods prior to fiscal 2006.”

7. On or about July 31, 2006, Brooks announced that “[d]riven by matters related to past stock option grants, the Company has revised its financial statements for the fiscal years 1996 through 2005 to record cumulative additional non-cash, pre-tax stock-based compensation expense of \$64.5 million.” In effect, Brooks restated its results and wrote off more than \$64 million that had been reported as profit during that period. At least \$54 million of Brooks’ restatement is attributable to Therrien’s fraudulent conduct.

8. By engaging in the acts alleged in this Complaint, Therrien violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b), 78m(b)(5), 78n(a) and 78p(a)] and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9 and 16a-3 [17 C.F.R. §§ 240.10b-5, 240.13a-14, 240.13b2-1, 240.13b2-2, 240.14a-9 and 240.16a-3] thereunder. Through his conduct, Therrien aided and abetted Brooks’ uncharged violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Exchange Act Rules 12b-20, 13a-1 and 13a-13 [17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13] thereunder.

9. For the reasons discussed herein, the Commission seeks all of the relief sought herein.

### **JURISDICTION AND VENUE**

10. The Commission is an agency of the United States of America established by Section 4(a) of the Exchange Act [15 U.S.C. §78d(a)].

11. This Court has jurisdiction over this action pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§77t(d) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§78u(d), 78u(e) and 78aa]. Venue is proper in the District of Massachusetts because Brooks is a Chelmsford, Massachusetts-based company and the defendant resides within the district and committed many of the acts and/or omissions discussed herein within the district.

12. The defendant, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, of instruments of transportation or communication in interstate commerce, of the mails, or of the facilities of a national securities exchange in connection with the acts, practices and courses of business alleged in this complaint.

### **DEFENDANT**

13. **Therrien**, of Osterville, Massachusetts, served as the President and Chief Executive Officer (“CEO”) of Brooks between at least 1989 and 2004, and as Chairman of the Board (“Chairman”) between at least 1989 and March 2006. Therrien asserted his Fifth Amendment privilege against self-incrimination during investigative testimony before the Commission staff in response to all substantive questions concerning the matters discussed in this Complaint.

## RELEVANT ENTITY

14. **Brooks** is a Delaware corporation with its principal place of business in Chelmsford, Massachusetts. Brooks is a supplier of, among other things, software and related services to manufacturers of computer chips. Since 1995, Brooks' common stock has been registered with the Commission pursuant to Sections 12(g) or 12(b) of the Exchange Act, as appropriate, and is traded on the Nasdaq National Market System. Brooks' fiscal year ends on September 30.

## FACTS

### Brooks' Procedures for Option Grants

15. At relevant times, Brooks' Board of Directors used a unanimous written consent procedure to approve option grants. Thus, Brooks' primary record of Board authorization to issue options was typically a document captioned "Written Consent in Lieu of Special Meeting of Board of Directors." Therrien routinely signed such written consents throughout the relevant period.

16. Brooks was a Delaware corporation, and Delaware law provided, at relevant times, that such consents were effective when signed. Therrien knew, or was reckless in not knowing, that Brooks routinely failed to maintain a record of when written consents were signed. Rather, Brooks' record typically was a signed copy faxed from its outside law firm, often received several weeks to months after the putative date of the option award.

### GAAP Requirements for Stock-Based Compensation Accounting

17. In its annual reports on Form 10-K filed with the Commission, Brooks falsely represented that it accounted for its stock-based compensation in accordance with

Accounting Principles Board Opinion No. 25 (“APB 25”), *Accounting for Stock Issued to Employees*, one of two alternative available methods under generally accepted accounting principles (“GAAP”) to account for stock-based compensation that were in effect throughout the time period discussed in this Complaint.

18. Under APB 25, an employer must expense the “intrinsic” value of a fixed stock option on its “measurement date.” APB 25 defines the measurement date as the first date that both the number of options an individual employee is entitled to receive and the exercise price are *known*. APB 25 ¶10 (emphasis added). A fixed stock option has intrinsic value if the exercise price of the option is less than the “quoted market price” of the underlying stock on the measurement date. If so, a corporation must record the difference between the exercise price and the quoted market price as a compensation expense over the expected life of the option, typically the option vesting period. APB 25 ¶10.

19. Brooks’ financial statements, which were included or incorporated by reference in filings with the Commission, generally represented that it accounted for its stock compensation plans in accordance with APB 25 and stated that no compensation expense on stock option grants to employees is recorded as long as the exercise price equals or exceeds the market price of the underlying stock on the date of the grant. None of Brooks’ filings throughout the period, however, reflected any compensation expense that should have been recorded as a result of the issues described in this Complaint.

20. Therrien signed annual reports filed on Form 10-K for the company’s fiscal years ended September 30, 1999 through September 30, 2005, quarterly reports filed on Form 10-Q for quarters ended March 31, 1999 through June 30, 2004 and

registration statements on dates set forth below. These filings were materially misleading because they falsely represented that compensation expense for options grants would be recorded when the exercise price of the grant was lower than the market price of Brooks' stock on the grant date. The filings contained materially misleading financial results because they failed to reflect the compensation expenses incurred in grants of in-the-money options. Therrien knew or was reckless in not knowing that these filings were materially misleading. He knew or was reckless in not knowing that compensation expenses must be recorded for grants of in-the-money options. He knew or was reckless in not knowing that Brooks had granted in-the-money options but had not recorded expenses attributable to these grants. Therrien also signed false certifications of Brooks' 2002 and 2003 Forms 10-K and Forms 10-Q for periods ended June 30, 2002 through June 30, 2004, which stated that each report "fairly presents in all material respects the financial condition and results of operations of Brooks, Inc." and did not contain any misleading statements or omissions of material fact, although he knew or was reckless in not knowing that the certifications were not true.

**Therrien Receives A New Option in November 1999 Via Backdated Documents**

21. On or about August 15, 1994, Therrien was granted an option to purchase 75,000 shares of Brooks' common stock at a price of \$7.30 per share pursuant to a Unanimous Consent in Lieu of a Special Meeting of Board of Directors. Brooks' stock thereafter underwent a stock split, as a result of which Therrien held an option to purchase 225,000 shares of Brooks' stock at a price of \$2.43 per share (or for an aggregate price of \$546,750). The option was good for a five-year period and therefore expired on or about August 15, 1999.

22. In or about early November 1999, Brooks' finance department personnel discovered, and informed Therrien, that his option to purchase the 225,000 shares of Brooks' common stock had expired unexercised on or about August 15, 1999.

23. In or about November 1999, three out of the four members of Brooks' Board (including Therrien) signed a document entitled "Directors Ratification," which was dated November 11, 1999 ("Directors Ratification"). Among other things, the Directors Ratification stated that it was intended to "ratify, approve and confirm . . . [that] in connection with telephone conversations between and among . . . Therrien [and the other two Board members] in mid-June 1999, the then board of directors authorized the Company to extend a loan in the amount of \$546,750 to . . . Therrien . . . for the purpose of paying the exercise price due from Mr. Therrien to the Company to exercise certain options held by Mr. Therrien to purchase 225,000 shares of the Company's common stock . . . ." In fact, Brooks' Board did not authorize any loan to Therrien in or about June 1999 to pay the exercise price for his option.

24. The November 11, 1999 "Directors Ratification" also attached a promissory note, dated August 13, 1999, which obliged Therrien to pay back the \$546,750 which the Board had purportedly agreed to lend him in mid-June 1999 ("Promissory Note"). The Promissory Note was signed by Therrien. In fact, Therrien did not sign the Promissory Note on August 13 or on any other date prior to the expiration of his option.

25. On or about November 18, 1999, Therrien exercised the option to purchase the 225,000 shares of Brooks' stock, conducted "as of" August 13, 1999. By exercising as of August 13, Therrien was able to purchase the shares at approximately



10% of the then current market price of approximately \$28 per share. In fact, Therrien did not exercise the option to purchase the 225,000 shares on August 13 or on any other date before the option expired.

26. On or about November 19, 1999, Therrien repaid the loan which the Board had purportedly authorized in mid-June 1999 be made to him for the purpose of exercising the option to purchase the 225,000 Brooks' common stock shares.

27. Therrien was charged \$13,211.88 in interest on the purported loan from August 13, 1999 to November 19, 1999. As a result, he was charged a total of \$559,961.88 (\$546,750 plus \$13,211.88) for the 225,000 shares of Brooks' common stock. At the time, the 225,000 shares had a market value of approximately \$6.3 million.

28. On or about November 15, 1999, Therrien filed an "Annual Statement of Changes in Beneficial Ownership" on a Form 5 with the Commission ("Form 5"). Among other things, the Form 5 falsely stated that Therrien had acquired 225,000 shares of Brooks' common stock on August 13, 1999.

29. Therrien knew, or was reckless in not knowing, when he signed the Directors Ratification, that the option to purchase the 225,000 shares of Brooks' common stock had expired in August 1999 and that he did not discuss a potential loan with anyone during the summer of 1999. Therrien also knew, or was reckless in not knowing, when he signed the Promissory Note, that Brooks did not extend a loan to him on or about August 13, 1999. Therrien signed the Promissory Note in November 1999 but it was purposefully backdated to August 13, 1999. Therrien knew, or was reckless in not knowing, that the purpose of the purported loan was to try to salvage his expired stock option. Therrien also knew, or was reckless in not knowing, at the time he signed the

Form 5, that he had not exercised his option on August 13 or on any other date before it expired.

30. Therrien received a substantial undisclosed benefit from re-issuance of the option to purchase the 225,000 shares of Brooks' common stock in or about November 1999. The option had an exercise price of \$2.43 per share, and had a cost basis of \$559,962, including interest accrued on the loan. Using Brooks' November 18, 1999 closing stock price of \$28.06, the option had a market value of \$6,313,500. The value of the shares Therrien received upon exercising the option, representing compensation to him, was \$5,753,538.

#### **Effect of the November 1999 Option Grant on Brooks' Financial Reporting**

31. In accordance with APB 25, Brooks should have recorded compensation expense of approximately \$5.8 million, representing the intrinsic value of the option that was effectively granted to Therrien on or about November 18, 1999.

32. As a result of the November 1999 option grant to Therrien, Brooks, which reported pre-tax net income of approximately \$25.2 million for the year ended September 30, 2000 in its annual report on Form 10-K filed with the Commission on or about December 22, 2000, overstated its actual pre-tax income by approximately \$5.8 million, or approximately 30%. Therrien knew or was reckless in not knowing that the company's financial results contained in the Form 10-K were materially misstated because of his options transaction. Nevertheless, he signed the Form 10-K as a director and President of the Company.

33. The compensation charge for the Therrien option exercise should have been recorded in the quarter ended December 31, 1999, Brooks' first quarter of fiscal

2000. In its Form 10-Q for the quarter ended December 31, 1999, signed by Therrien as a director and President, and filed with the Commission on or about February 14, 2000, Brooks reported pre-tax net income of approximately \$4.6 million. Had the Company recorded the correct compensation charge related to the Therrien option exercise, Brooks would have reported a pre-tax loss of approximately \$1.2 million. Therrien knew or was reckless in not knowing that the company's financial results contained in the Form 10-Q were materially misstated because of his options transaction.

34. In addition, Brooks understated its accumulated deficit by approximately \$5.8 million during subsequent reporting periods, continuing through at least September 30, 2005, due to the impact of the uncorrected entry on Brooks' quarterly and annual filings after November 1999. For the year ended September 30, 2000, Brooks reported an accumulated deficit of approximately \$16.4 million. An additional \$5.8 million charge would have increased the accumulated deficit to approximately \$22.2 million, or approximately 26%. Therrien signed annual reports on Form 10-K for the fiscal years ended September 30, 1999 through September 30, 2005 and quarterly reports on Form 10-Q for quarters ended March 31, 1999 through June 30, 2004. Therrien knew or was reckless in not knowing that each of these reports was materially misleading because it did not accurately reflect the expense that should have been recorded attributable to his November 1999 option transaction.

35. In addition to the annual and quarterly filings affected by the November 1999 option grant, Brooks also filed registration statements for the offer and sale of additional securities, including a Form S-3 filed on or about February 14, 2000 and another Form S-3 filed on or about March 7, 2001 that incorporated by reference the false

Form 10-Q for the quarter ended December 31, 1999 and the false Form 10-K for the year ended September 30, 2000, respectively. Therrien signed both of these Form S-3 filings as a director, CEO and President of Brooks. Therrien knew or was reckless in not knowing that each of these filings was materially misleading because it did not accurately reflect the expense that should have been recorded attributable to his November 1999 option transaction.

36. In proxy materials related to an upcoming annual stockholders' meeting filed with the Commission on or about January 18, 2000, Brooks falsely reported that the \$546,750 loan to Therrien had occurred on August 13, 1999. In addition, the filing failed to disclose that Therrien's option to purchase the 225,000 shares of Brooks' common stock had expired on or about August 15, 1999 and that Brooks had, in essence, granted him a new option in or about November 1999. Information concerning Therrien's executive compensation in the proxy materials was incorporated prospectively by reference in Brooks' Form 10-K for the year ended September 30, 1999 and filed with the Commission on or about December 29, 1999. Therrien signed the Form 10-K as a director and President of Brooks. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect his compensation attributable to his November 1999 option transaction.

37. In proxy materials related to an upcoming annual stockholders' meeting filed with the Commission on or about January 24, 2001, Brooks did not disclose Therrien's receipt of \$5,753,538, representing the difference between the market value of the new option he was granted in or about November 1999 and the cost to exercise the

option at that time. Information concerning Therrien's executive compensation in the proxy materials was incorporated prospectively by reference in Brooks' Form 10-K for the year ended September 30, 2000 and filed with the Commission on or about December 22, 2000. Therrien signed the Form 10-K as a director and President of Brooks. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect his compensation attributable to his November 1999 option transaction.

38. Brooks' January 24, 2001 proxy filing also stated that, "[i]n order to align the 1992 [Combination Stock Option] Plan with its current practices, in January 2000 the Board of Directors amended the 1992 Plan to eliminate the Company's ability to grant restricted stock under the 1992 Plan and to require that all options be granted with exercise prices not less than fair market value." This statement was false and misleading because, pursuant to the 1992 Plan, Brooks granted Therrien an option at a below-market exercise price in or about November 1999. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect his compensation attributable to his November 1999 option transaction.

**Therrien Approves an Option Grant Backdated to October 1, 2001**

39. On or about September 28, 2001, Therrien wrote to all Brooks employees announcing certain layoffs but noting that Brooks was going to accelerate its usual January stock option program to the "October 2001 timeframe."

40. In or about late October or early November 2001, Brooks' Board, which included Therrien as a member, approved, via a "Written Consent in Lieu of Special

Meeting of Board of Directors” dated October 1, 2001, the awarding of “an aggregate amount of [approximately 1.9 million] options to the individuals listed on the attached Schedule A . . . .”

41. A final decision concerning how many options each option recipient was to receive was not reached until on or about November 30, 2001.

42. On or about December 6, 2001, Brooks’ Director of Human Resources sent an e-mail to a number of Brooks employees, including Therrien. In the December 6, 2001 e-mail, the Director of Human Resources stated, in part: “We finalized all of the stock option grants last Friday [i.e., November 30, 2001]. . . . The effective date (October 1, 2001) and the share price (\$25.22) are included in the [attached] documentation.”

43. The \$25.22 share price on October 1, 2001 was the lowest price for Brooks’ stock during the entire calendar year 2001.

44. On or about February 5, 2002, Therrien signed a document, entitled “Certificate of the President,” which stated, in part, that “[p]ursuant to a vote of the Board of Directors . . . on October 1, 2001 . . . the Company granted nonqualified stock options . . . to certain persons . . . .” This statement was false and misleading because Brooks’ Board did not approve issuance of the approximately 1.9 million options until in or about late October or early November 2001.

45. Therrien, as Brooks’ Chairman and CEO, knew, or was reckless in not knowing, that: (a) the Board had not approved the granting of the approximately 1.9 million options on October 1, 2001; (b) a final decision concerning how many options each option recipient was to receive had not been reached until on or about November 30,

2001; and (c) it was improper for the Board and/or Brooks to treat the approximately 1.9 million options as if they had been granted on October 1, 2001.

46. The exercise price for the approximately 1.9 million shares granted as of October 1, 2001 was \$25.22 per share. The closing price on the date the options actually were granted, November 30, 2001, was \$36.75 per share. As a result, additional non-cash compensation expense reflecting the difference between the exercise price and the fair market value of the stock on the actual grant date of approximately \$22 million, less adjustments, should have been recorded and was included in Brooks' July 2006 restatement of its prior financial statements.

47. Beginning with the Company's quarterly report on Form 10-Q for the quarter ended December 31, 2001, filed with the Commission on or about February 14, 2002, Brooks' first quarter of fiscal year 2002, and then each successive filing of quarterly and annual financial statements over the vesting period of these options (variously, two or four years), additional non-cash compensation expense charges should have been recorded. Therrien signed the Form 10-Q filed on or about February 14, 2002 as an officer and director and Form 10-Q filings made from that date until the period ended June 30, 2004. Therrien also signed each Form 10-K filed for the years ended September 30, 2002 through September 30, 2005. In addition, Brooks filed a Form S-3 registration statement on or about April 29, 2002 that incorporated by reference the Form 10-Q/A for the quarter ended December 31, 2001 (filed on or about April 4, 2002). Therrien signed this Form S-3 as a director, CEO and President of Brooks. Therrien knew or was reckless in not knowing that the financial statements contained in the filings

were materially misleading because they did not reflect compensation expenses from the grant of in-the-money options.

48. In its proxy materials filed on or about January 21, 2003 relating to the election of directors, Brooks disclosed the October 2001 option grants to Therrien and other officers, as part of its required management compensation disclosure. The proxy disclosure stated that the exercise price was \$25.22 per share, but failed to disclose that the actual grant date of the options differed from the stated grant date, resulting in an intrinsic value and additional compensation to the officers of approximately \$2.7 million, less adjustments. Therrien's personal benefit, as reflected in the difference between the exercise price and the price on the date the options were actually granted, was approximately \$1 million. The January 2003 proxy materials were incorporated prospectively by reference into Brooks' Form 10-K filing for the year ended September 30, 2002, filed with the Commission on or about December 30, 2002 and signed by Therrien. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect the compensation attributable to the option grants backdated to October 1, 2001.

**Therrien Approves an Option Grant Backdated to January 4, 1999**

49. On or about November 19, 1998, Therrien attended a regular meeting of the Brooks Board of Directors. At that meeting, it was agreed, among other things, "that further consideration be given to granting additional options to senior management at some point in the next several months."



50. In or about February 1999, Brooks' Board, which included Therrien as a member, approved, via a "Written Consent in Lieu of Special Meeting of Board of Directors," the granting of options to several categories of employees, effective January 4, 1999. The stock price of \$14.62 per share on January 4, 1999 was the lowest market price for Brooks' stock during the entire calendar year 1999.

51. Pursuant to the Board's written consent, Therrien was granted an option to purchase 115,000 shares of Brooks' common stock at \$14.62 per share (or for approximately \$1.6 million).

52. Therrien approved the option grant as of January 4, 1999, knowing, or reckless in not knowing, that in fact the actual grant date was more than a month later.

53. In fact, the recipients and amounts of the option grants were not determined until weeks after the purported grant date. For example, an agenda for the January 11, 1999 Board meeting includes "Stock Options," and a document captioned "Stock Option Summary Proposals" was included in the Board package for the January 11, 1999 meeting, dated January 8. The minutes of that meeting, however, make no reference to options. A summary of Board-approved options for the grant contains the handwritten notation, "Approved, Robert J. Therrien Feb. 10, 1999." In addition, written consents from two other outside directors were not faxed from Brooks' outside law firm until on or about February 26, 1999.

54. In addition, the number of options to be granted also was not determined on the purported January 4 grant date. The Board's written consent, signed by Therrien, dated January 4, 1999, has an attached list of recipients totaling only 148,300 shares, while a 2006 Brooks printout shows that 355,566 shares were awarded on that date.

55. Therrien, as Brooks' Chairman and CEO, knew, or was reckless in not knowing, that: (a) the Board had not approved the granting of the options on January 4, 1999; (b) he himself had not approved the grant until February 10, 1999; and (c) it was improper for the Board and/or Brooks to treat the options as if they had been granted on January 4, 1999.

56. The exercise price for the options granted as of January 4, 1999 was \$14.625 per share. The options were actually granted on February 10, 1999, resulting in a revised fair market value of \$23.75 per share. As required by APB 25, additional non-cash compensation expense of approximately \$3.1 million, less adjustments, should have been recorded and was included in Brooks' July 2006 restatement of prior financial statements.

57. Brooks' Form 10-K for the fiscal year ended September 30, 1999, filed with the Commission on or about December 29, 1999, the Forms 10-Q filed on or about May 17, 1999 and on or about August 16, 1999, and each quarterly and annual filing from the second quarter of fiscal 1999 until the end of the option vesting period were misstated as a result of the missing additional non-cash compensation expense. Therrien signed the Form 10-K filed on or about December 29, 1999, and the Forms 10-Q filed on or about May 17, 1999 and August 16, 1999, as well as other filings containing the misstatement described in this paragraph. Therrien knew or was reckless in not knowing that the financial statements contained in the filings were materially misleading because they did not reflect compensation expenses from the grant of in-the-money options.

58. In its proxy materials relating to the election of directors filed on or about January 18, 2000, Brooks disclosed the issuance of an option to purchase 115,000 shares

granted to Therrien as well as 54,000 options granted to other executives on January 4, 1999. The proxy disclosure stated that the exercise price was \$14.63 per share and that this represented the fair market value of the Company's stock price on the grant date, but failed to disclose that the actual grant date of the options differed from the stated grant date. Information concerning Therrien's executive compensation in the proxy materials was incorporated prospectively by reference in Brooks' Form 10-K for the year ended September 30, 1999, filed with the Commission on or about December 29, 1999. Therrien signed the Form 10-K as a director and President of Brooks. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect the compensation attributable to the option grants backdated to January 4, 1999.

59. The difference between the price on the actual grant date and the price on the stated grant date results in an intrinsic value for the officer option grants of approximately \$1.5 million that was not disclosed in the January 18, 2000 proxy.

Therrien's personal benefit was approximately \$1 million.

**Other Option Grants Included in the July 2006 Restatement of Prior Financials**

60. Other option grants further demonstrate the widespread nature of Brooks' options backdating, Therrien's involvement in the option-granting process for which Brooks improperly accounted and the extensive benefits Therrien received as a result.

**A. Option Grant Backdated to May 31, 2000**

61. A grant of options to purchase 458,256 shares was made to Brooks' employees as of May 31, 2000. As part of this grant, Therrien received an option to purchase 233,000 shares. The option grant included at least one employee who did not

start work at Brooks until weeks after May 31, 2000. Therrien knew that the employee did not commence his employment at Brooks on May 31, 2000, and knew, in late June, that the employee still had not started working at Brooks. Despite this knowledge, which shows that the actual grant date could not have occurred before late June, Therrien signed a Written Consent in Lieu of Special Meeting of Board of Directors authorizing the issuance of an option to purchase 40,000 shares of Brooks to this employee that was backdated to May 31, 2000.

62. Therrien, as Brooks' Chairman and CEO, knew, or was reckless in not knowing, that: (a) the Board had not approved the granting of the options on May 31, 2000; (b) the purported grantees included at least one who was not even employed by Brooks as of that date; and (c) it was improper for the Board and/or Brooks to treat the options as if they had been granted on May 31, 2000.

63. The exercise price for the 458,256 options granted as of May 31, 2000 was \$39.75 per share. The actual grant date was August 17, 2000, reflecting an outside director's approval of the employee's grant, resulting in a revised fair market stock value of \$45.94 per share. As required by APB 25, additional non-cash compensation expense of approximately \$2.8 million, less adjustments, should have been recorded and was included in Brooks' July 2006 restatement.

64. Beginning with the Company's annual report on Form 10-K filed with the Commission on or about December 22, 2000, and then each successive filing of quarterly and annual financial statements over the vesting period of these options, additional non-cash compensation expense charges should have been recorded. In addition, Brooks filed S-3 registration and proxy statements that incorporated by reference the Company's Form

10-K filed on or about December 22, 2000. Therrien signed this Form 10-K as a director and President of the Company and signed Forms 10-Q during the relevant period.

Therrien knew or was reckless in not knowing that the financial statements contained in the filings were materially misleading because they did not reflect compensation expenses from the grant of in-the-money options.

65. Brooks also filed a proxy statement for the election of directors on or about January 24, 2001 that disclosed the May 31, 2000 option grants to Therrien and other officers and directors. The proxy disclosure stated that the exercise price was equal to the fair market value of the stock on the grant date but failed to disclose that the actual grant date of the options differed from the stated grant date, resulting in an intrinsic value and additional compensation to the officers and directors of approximately \$2.3 million, less adjustments. Therrien's personal benefit was \$1.4 million. Information concerning Therrien's executive compensation in the proxy materials was incorporated prospectively by reference in Brooks' Form 10-K for the year ended September 30, 2000 and filed with the Commission on or about December 22, 2000. Therrien signed the Form 10-K as a director and President of Brooks. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect the compensation attributable to the option grants backdated to May 31, 2000.

**B. Option Grant Backdated to January 5, 2000**

66. Another backdated option grant occurred as of January 5, 2000. The faxed written consents authorizing this grant all bear a notation that they were sent to directors (including Therrien) for signature from Brooks on or about February 4, 2000. One

director's consent shows a fax date for his signature of on or about February 7, 2000.

The actual grant date was therefore February 7 as opposed to January 5.

67. Therrien, as Brooks' Chairman and CEO, knew, or was reckless in not knowing, that: (a) the Board had not approved the granting of the options on January 5, 2000; and (b) it was improper for the Board and/or Brooks to treat the options as if they had been granted on January 5, 2000.

68. The exercise price for the 655,700 shares was \$30.13 per share on the stated grant date of January 5, 2000. That market price represented the lowest price for a ten-month period during calendar year 2000. The actual grant date was February 7, 2000, resulting in a revised fair market stock value of \$62.25 per share. As required by APB 25, additional non-cash compensation expense of approximately \$20.6 million, with adjustments, should have been recorded and was included in Brooks' July 2006 restatement.

69. Beginning with Brooks' Form 10-Q for its second quarter of fiscal 2000, filed with the Commission on or about May 15, 2000, and then each quarterly and annual filing over the four-year vesting period, additional non-cash compensation charges should have been recorded. Therrien signed Forms 10-K and Forms 10-Q filed during the relevant period. Therrien knew or was reckless in not knowing that the financial statements contained in the filings were materially misleading because they did not reflect compensation expenses from the grant of in-the-money options.

70. In addition, Brooks filed a Form S-3 registration statement on or about February 12, 2002 that incorporated by reference the Company's annual report on Form 10-K for the year ended September 30, 2001, which in turn misstated financial statements

for both 2000 and 2001 resulting from the improper accounting of this grant. Therrien signed this Form S-3 as a director, CEO and President of Brooks. Therrien knew or was reckless in not knowing that this filing was materially misleading because it did not accurately reflect compensation expenses from the grant of in-the-money options.

71. Brooks also filed a proxy statement on or about January 24, 2001 that excluded disclosures related to the January 5, 2000 option grant. The 2001 proxy materials disclosed that the options were granted at \$30.13 per share (except approximately 12,000 stock options granted to Therrien at \$33.14 per share). The proxy, however, failed to disclose that the actual date of the option grants was February 7, 2000 and that the officers received approximately \$4.7 million of additional compensation representing the intrinsic value of their options. Therrien's personal benefit was approximately \$1.2 million. Therrien signed Brooks' Form 10-K, filed on or about December 22, 2000, which incorporated prospectively by reference the compensation information contained in the proxy. Therrien knew or was reckless in not knowing that the proxy materials and the Form 10-K incorporating them by reference were materially misleading because they did not accurately reflect the compensation attributable to the option grants backdated to January 5, 2000.

#### **Therrien's False Certification of Financials**

72. Therrien signed false certifications of Brooks' 2002 and 2003 annual reports filed on Form 10-K and of the quarterly reports filed on Forms 10-Q for the quarters ended June 30, 2002 through June 30, 2004, which stated that the report "fairly presents in all material respects the financial condition and results of operations of Brooks Automation Inc." and did not contain any misleading statements or omissions of

material fact, although he knew or was reckless in not knowing that the certifications were not true.

### **Therrien's False Statements to Accountants**

73. In connection with the preparation of Brooks' filings with the Commission between at least 1999 and 2004, Therrien made false statements to accountants and omitted to state material information necessary to make the statements made not misleading. For example, on November 15, 2000, December 13, 2001, and December 24, 2002, in connection with the audit of Brooks' financial statements for the fiscal years ended September 30, 2000, September 30, 2001 and September 30, 2002, respectively, Therrien signed representation letters to Brooks' outside auditors, PricewaterhouseCoopers, stating that Brooks' financials were fairly presented in conformity with generally accepted accounting principles and that there were no material agreements or accounts that had not been properly recorded in the records underlying the consolidated financial statements.

74. The representation letters also stated that all options granted during the relevant reporting periods were issued at exercise prices equal to or exceeding the fair market value of Brooks' stock on the grant date.

75. These representations were false, because, among other things, the financial statements did not reflect the issuance to Therrien of an in-the-money option to purchase 225,000 shares of Brooks during November 1999, and the resulting compensation to Therrien. The financial statements also did not accurately reflect Brooks' compensation expense as a result of the company-wide in-the-money option grants described in this Complaint. Therrien made similar statements and omissions to



