

1 2. From its initial public offering (hereinafter "IPO") in April 1997 through August 30,
2 2002, Peregrine was a publicly held corporation whose shares were traded under the symbol "PRGN"
3 on the National Association of Securities Dealers Automated Quotation system national market
4 (hereinafter "NASDAQ"). Peregrine's shares were registered securities under the federal securities
5 laws and were bought, held, and sold by individuals and entities throughout the United States and the
6 world -- including financial institutions -- using the means and instrumentalities of interstate
7 commerce and the mails.

8 3. Peregrine's reported annual revenues increased from approximately \$35 million in
9 fiscal year 1997 to approximately \$564 million in fiscal year 2001. From April 1997 through the
10 quarter ended June 2001, Peregrine reported 17 consecutive quarters of growth that met or exceeded
11 Peregrine's own predictions and professional securities analysts' expectations. Peregrine stock price
12 rose from its April 1997 IPO price of approximately \$2.25 per share (split-adjusted) to a high of
13 \$79.50 per share on March 27, 2000. As of June 30, 2001, Peregrine had issued over 162.76 million
14 shares, which were trading at roughly \$29 per share, yielding a market capitalization of roughly \$4.72
15 billion.

16 4. On May 6, 2002, Peregrine announced that it was conducting an internal investigation
17 into potential misstatements in its prior financial reports. Peregrine also announced the resignations
18 of its Chief Executive Officer, defendant STEPHEN PARKER GARDNER, and its Chief Financial
19 Officer, Matthew C. Gless (charged elsewhere). Peregrine's stock price dropped to \$0.89 per share.
20 On August 30, 2002, Peregrine's stock was delisted from NASDAQ. On September 22, 2002,
21 Peregrine filed for federal bankruptcy protection. In bankruptcy, Peregrine canceled its previously
22 issued common stock and issued holders of its old stock one share of new stock for every 48.7548
23 shares of old stock held. As a result of these events, Peregrine shareholders lost approximately \$4
24 billion in equity.

25 5. In February 2003, Peregrine restated its financial results for fiscal years 2000 and 2001
26 and for the first three quarters of fiscal 2002. For the restatement period, between April 1, 1999, and
27 December 31, 2001, Peregrine lowered previously reported revenues of \$1.34 billion by \$507.3
28 million.

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The Defendants

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6. Defendant STEPHEN PARKER GARDNER, (hereinafter “defendant GARDNER”) was hired by Peregrine in 1997 as Vice President of Strategic Acquisitions. In April 1998, defendant GARDNER was promoted to President and Chief Executive Officer (hereinafter “CEO”), and in July 2000, defendant GARDNER was named Chairman of the Board of Directors. As CEO and Chairman, defendant GARDNER was responsible for the overall financial performance of Peregrine, and was obligated to ensure that Peregrine's financial records, reports, and public statements were fair and accurate. By the time he left Peregrine in May 2002, defendant GARDNER had been paid approximately \$4 million in salary and bonuses, and had been granted and exercised stock options worth approximately \$13 million. Much of defendant GARDNER’s compensation was tied directly to Peregrine’s purported financial success.

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7. Defendant DOUGLAS STEPHEN POWANDA, (hereinafter “defendant POWANDA”) was hired by Peregrine in February 1992 as a Senior Account Executive. Defendant POWANDA became a Vice President of Sales on or about July 1994, and was named Peregrine’s Vice President of Worldwide Sales on or about January 1998. On or about July 2001, defendant POWANDA began serving in the Office of the Chairman of the Board, reporting directly to defendant GARDNER. By the time he left the employ of Peregrine on or about May 2002, defendant POWANDA had been paid approximately \$2 million in salary, bonuses and commissions, and had exercised stock options worth approximately \$30 million. Defendant POWANDA’s compensation was tied directly to Peregrine’s purported financial success.

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8. Defendant ANDREW VINCENT CAHILL, JR.(hereinafter “defendant CAHILL”) began working for Peregrine on or about May 2000 in the position of Vice President for World Wide Sales. Defendant CAHILL was named Executive Vice President for World Wide Sales on or about October 2001. Between 2000 and May 2002, defendant CAHILL was paid approximately \$1 million

1 in salary, bonuses and commissions, and received stock options, based in part on Peregrine's purported
2 financial success.

3 9. Defendant JEREMY REEVE CROOK (hereinafter "defendant CROOK") was hired
4 by Peregrine on or about 1998 as Vice President of Europe and Emerging Markets, based in
5 Peregrine's European Headquarters outside London, England. Defendant CROOK held this position
6 until his resignation from Peregrine in October 2001. While employed at Peregrine, defendant
7 CROOK received approximately £895,400 (worth approximately \$1,600,000 today) in salary, bonuses
8 and commissions, and received stock options, based in part on Peregrine's purported financial success.

9 10. Defendant GARY LEE LENZ (hereinafter "defendant LENZ") was hired by Peregrine
10 in May 2000 as its Executive Vice President of Business Development and later became Peregrine's
11 President and Chief Operating Officer. Through his employment at Peregrine, defendant LENZ was
12 paid approximately \$879,000 in salary, bonuses and commissions, and received stock options, based
13 in part on Peregrine's purported financial success.

14 11. Defendant BERDJ JOSEPH RASSAM (hereinafter "defendant RASSAM") was hired
15 by Peregrine in November 2000 as Controller. In September 2001 he was promoted to Vice President
16 of Finance and Chief Accounting Officer. While at Peregrine, defendant RASSAM was responsible
17 for the revenue department and worldwide consolidation of the company's financial reports.
18 Defendant RASSAM was also the primary liaison between Peregrine and its auditors, Arthur Andersen
19 LLP. During the period of his employment, defendant RASSAM received approximately \$424,450
20 in salary and bonuses, and received stock options, based in part on Peregrine's purported financial
21 success and defendant RASSAM's ability to obtain an unqualified audit opinion of Peregrine's
22 financial statements from Arthur Andersen.

23 12. Defendant JOSEPH GERARD REICHNER (hereinafter "defendant REICHNER") was
24 hired by Peregrine in September 2000 as Senior Vice President of Alliances and Business
25 Development, a position he held until March 2002. Through his employment at Peregrine defendant
26 REICHNER was paid approximately \$588,500 in salary, bonuses and commissions, and received
27 stock options, based in part on Peregrine's purported financial success.

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1 13. Defendant PATRICK JUDE TOWLE (hereinafter “defendant TOWLE”) was
2 Peregrine’s Revenue Accounting Manager from November 1999 through November 2002. Among
3 his other duties, defendant TOWLE was responsible for determining whether license revenue from
4 domestic contracts could be booked, and for consolidating revenue figures from United States and
5 foreign operations. During his employment, Peregrine paid defendant TOWLE approximately
6 \$231,800 in salary and bonuses, and granted him stock options, based in part on Peregrine’s purported
7 financial success.

8 14. As officers, directors, and employees of Peregrine, defendants GARDNER,
9 POWANDA, CAHILL, CROOK, LENZ, RASSAM, REICHNER, and TOWLE held positions of trust
10 and confidence, and owed a duty of honest services to their employer, Peregrine, and its shareholders.
11 This duty of honest services included an obligation to conduct their duties in an honest, faithful and
12 disinterested manner, free from self-dealing.

13 15. Defendant LARRY ALAN RODDA (hereinafter “defendant RODDA”) was a partner
14 and later a managing director of KPMG LLP’s consulting division, later known as KPMG Consulting
15 LLC and BearingPoint, Inc. (hereinafter “KPMG”), in the Sacramento, California office. Defendant
16 RODDA managed a team of KPMG personnel who provided consulting services to other businesses.
17 From March 1999 through October 2000, RODDA signed Peregrine software license agreements with
18 a face value of over \$27 million.

19 16. Defendant DANIEL FRANCIS STULAC (hereinafter “defendant STULAC”) was the
20 senior accountant and then the engagement partner for the audits of Peregrine’s financial statements
21 by Arthur Andersen LLP during Peregrine’s fiscal years 1999, 2000 and 2001.

22 17. Defendant MICHAEL DANNY WHITT (hereinafter “defendant WHITT”) was an
23 owner of Barnhill Associates, Inc., which later did business as Barnhill Management Group, Inc.
24 (hereinafter “Barnhill”). From March 1999 through March 2000, defendant WHITT signed Peregrine
25 software license agreements with a face value of over \$13 million, of which defendant WHITT and
26 Barnhill paid Peregrine only a small fraction. In March 2000, Peregrine acquired Barnhill for
27 approximately \$32.2 million, issuing defendant WHITT stock and stock options valued at
28 approximately \$10 million.

Federal Securities Laws and Regulations

18. Federal securities laws required Peregrine and its directors, officers, and employees to comply with the regulations of the United States Securities and Exchange Commission (hereinafter “SEC”). Federal securities laws and SEC regulations protect members of the investing public by, among other things, requiring that public companies’ financial information be fairly and accurately recorded and disclosed to the public in accordance with generally accepted accounting principles (hereinafter “GAAP”).

19. As required by federal laws and SEC regulations, Peregrine filed quarterly and annual reports with the SEC on Forms 10-Q and 10-K, and ensured that its annual financial reports in its Forms 10-K were audited and certified by independent accountants. Arthur Andersen LLP served as the independent auditors of Peregrine’s financial reports from its IPO in 1997 through the beginning of April 2002.

Generally Accepted Accounting Principles

20. Generally accepted accounting principles ensure a uniform system of reporting to allow the investing public to understand and rely upon various companies’ financial reports. Since 1973, the SEC has designated the pronouncements of the Financial Accounting Standards Board (hereinafter “FASB”) as authoritative GAAP in the absence of any contrary determination by the SEC. GAAP may also be derived from pronouncements by the American Institute of Certified Public Accountants (hereinafter “AICPA”), to the extent they do not conflict with pronouncements by FASB or the SEC.

21. The essence of GAAP applicable to corporate financial reporting is that financial reports should provide present and potential investors and creditors complete and reliable financial information for a designated period of time, applying conservatism to uncertainties. See FASB Statement of Financial Accounting Concepts No. 1 (Objectives of Financial Reporting by Business Enterprises; Issued Nov. 1978) and No. 2 (Qualitative Aspects of Accounting Information; Issued May 1980).

22. GAAP for reporting on software license fees -- which made up the bulk of Peregrine’s revenues -- also includes the AICPA’s Statement of Position (hereinafter “SOP”) 97-2 (Software Revenue Recognition; Issued October 1997). In many respects, SOP 97-2 merely applies general

1 principles of fair dealing and existing GAAP to specific technical issues that arise in software licensing
2 transactions. Under SOP 97-2, revenue may not be recognized -- i.e., publicly reported -- on a software
3 license transaction within a particular period unless the transaction satisfies four criteria: (a) persuasive
4 evidence of an agreement exists, (b) delivery had occurred, (c) the vendor's fee is fixed or
5 determinable, and (d) collectibility is probable. Each of these four conditions must be satisfied within
6 the reporting period in order for the revenue from the transaction to be included in that period. Among
7 other things, this means that revenue cannot be publicly reported in period 1 if the contracts were
8 signed during period 2, or to the extent a sale was subject to a right of return or other unsatisfied
9 contingency or promise, or if a customer was known to be unable or unlikely to pay.

10 23. Peregrine adopted SOP 97-2 as of its fiscal year 1999 (April 1998 through March
11 1999), stating that the adoption of SOP 97-2 did not require restatement of prior revenues and did not
12 have a material impact on revenues or income. In its Form 10-K for fiscal year 1999, Peregrine
13 claimed to be adhering to the following revenue recognition policy:

14 "Revenues from software license agreements are recognized currently, provided that
15 all of the following conditions have been met: a noncancellable license agreement has
16 been signed, the product has been delivered, there are no material uncertainties
17 regarding customer acceptance, collection of the resulting receivable is deemed
probable and the risk of concession is deemed remote, and no other significant vendor
obligations exist." (Peregrine 1999 10-K, at F-8.)

18 Similarly, Peregrine's Form 10-K for fiscal year 2001 stated:

19 "Revenues from direct and indirect license agreements are recognized, provided that
20 all of the following conditions are met: a noncancellable license agreement has been
21 signed; the product has been delivered; there are no material uncertainties regarding
22 customer acceptance; collection of the resulting receivable is deemed probable; risk of
23 concession is deemed remote; and no other significant vendor obligations exist. We
24 may grant extended payment terms of more than one year. Typically this is only done
25 in limited circumstances where the contract is with customers having a proven credit
26 history; when appropriate we discount the related receivable at the applicable market
27 interest rate as a reduction of revenue." (Peregrine 2001 10-K, at F-7.)

24 **The Marketplace for Peregrine's Stock**

25 24. Peregrine's stock price was influenced by factors such as Peregrine's reported revenue
26 earnings, cash flow, and other metrics used by investors and professional securities analysts to judge
27 Peregrine's financial health. Peregrine's stock price was also influenced by its revenue growth rate
28 and whether it consistently met revenue and earnings targets and forecasts. Peregrine and its

1 management provided information to the public about these and other matters in a variety of ways
2 In addition to the regular reports filed with the SEC, Peregrine and its management regularly provided
3 information through press releases, conference calls with securities analysts, and other means. The
4 information provided often included not only reports on past performance, but also guidance regarding
5 anticipated revenue, earnings, and other financial metrics for upcoming reporting periods.

6 25. Peregrine and its management also provided “pro forma” financials to the public that
7 separately treated any acquisition-related expenses incurred by the company. Users of Peregrine’s
8 financial statements viewed the company’s acquisition-related expenses as exceptional, nonrecurring
9 events, and would discount or ignore such expenses in evaluating Peregrine’s financial performance
10 and condition.

11 26. Relying in part on the company’s information, including its guidance, securities analysts
12 disseminated to the public their own estimates of Peregrine’s expected performance. Analysts’
13 expectations were closely followed by investors and Peregrine’s management. Typically, if a publicly
14 traded company announced numbers that failed to meet or exceed analysts’ expectations, this
15 information would negatively impact the price of the company’s stock. For example, between
16 January 2nd and January 3rd 2002, after Peregrine announced that its quarterly earnings numbers
17 would fall below analysts’ expectations, the closing price of Peregrine’s stock declined from \$14.51
18 per share to \$9.26 per share.

19 27. Securities analysts and investors monitored whether Peregrine was collecting money
20 from customers on deals that had been booked as revenue in prior fiscal quarters. One indicator of
21 whether monies owed by customers -- also known as Peregrine’s “accounts receivable” -- were being
22 collected was a metric known as Days Sales Outstanding (or “DSO”). DSO was a calculation that, in
23 essence, revealed how many days it takes a company to collect its accounts receivable. The larger a
24 company’s DSO figure, the more likely analysts will call into question the collectibility of the
25 company’s accounts receivable, its revenue, and ultimately, the value of its stock.

26 28. To manage its DSO, Peregrine entered into contractual arrangements with financial
27 institutions to sell certain of Peregrine’s accounts receivable in exchange for a discounted cash
28 payment. Use of these financing arrangements allowed Peregrine to reduce its DSO figure by

1 removing these accounts receivable from its balance sheet. GAAP allowed a publicly traded company
2 such as Peregrine to remove accounts receivable from its balance sheet so long as the risk of loss from
3 an uncollectible account receivable was transferred fully to a third party. Peregrine sold accounts
4 receivable to Wells Fargo HBC Trade Bank, N.A., Fleet Business Credit Corporation (a wholly owned
5 subsidiary of Fleet Bank, N.A.), and Silicon Valley Bank (“the Banks”), all of which were “financial
6 institutions” as that term is defined in Title 18, United States Code, Section 20.

7 **Count 1 – 18 U.S.C. § 371**

8 (Conspiracy to Commit Securities Fraud, Wire Fraud,
9 Falsification of Books and Records, and Bank Fraud)

10 29. The allegations contained in Paragraphs 1 through 28 of this Indictment are relegated
11 and incorporated as if fully set forth here.

12 30. Beginning on a date unknown to the Grand Jury, but no later than on or about March
13 1999, and continuing through on or about May 2002, within the Southern District of California and
14 elsewhere, defendants GARDNER, POWANDA, CAHILL, CROOK, LENZ, RASSAM, REICHNER,
15 TOWLE, RODDA, STULAC and WHITT did knowingly and intentionally conspire and agree with
16 each other and others known and unknown to the Grand Jury to commit offenses against the United
17 States, to wit:

18 a. to knowingly and willfully, directly and indirectly, by the use of the means and
19 instrumentalities of interstate commerce and of the mails, use and employ manipulative and deceptive
20 devices and contrivances in connection with the purchase and sale of securities issued by Peregrine
21 Systems, Inc., in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (i)
22 employing devices, schemes and artifices to defraud, (ii) making and causing to be made untrue
23 statements of material fact, and omitting to state facts necessary in order to make the statements made,
24 in light of the circumstances under which they were made, not misleading, and (iii) engaging in acts,
25 practices, and courses of business which operated and would operate as a fraud and deceit upon any
26 person, including members of the investing public and holders and purchasers of Peregrine securities,
27 all in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal
28 Regulations, Section 240.10b-5;

1 33. It was further part of the conspiracy that the defendants would inflate Peregrine's
2 reported software license revenues and omit to state material information about said revenues by,
3 among other things:

4 a. improperly keeping Peregrine's books "open" past the end of the fiscal quarter
5 in order to fraudulently include sales that had actually been completed in a later fiscal quarter;

6 b. improperly recording revenue on contracts that were subject to oral and written
7 side agreements containing material contingencies and promises, and concealing these contingencies
8 and promises from the investing public;

9 c. recording revenue on "sales" that were actually barter or swaps dependent on
10 Peregrine providing the purported purchaser with cash, equity, or orders for products or services, and
11 concealing and omitting to state these reciprocal commitments from the investing public.

12 34. It was further part of the conspiracy that the defendants and others would backdate
13 "white-out," and remove fax headers from sales documentation in order to fraudulently conceal the
14 fact that these deals had actually closed after the end of the fiscal quarter.

15 35. It was further part of the conspiracy that the defendants would create and cause to be
16 created false books, records and accounts (including false contracts, invoices, and audit confirmations
17 of transactions) in order to execute, continue, maintain, and conceal the deceitful scheme.

18 36. It was further part of the conspiracy that the defendants would offer deal partners
19 financial inducements -- such as kick-backs concealed as "marketing funds" or "finders fees" -- to get
20 the deal partners to sign what appeared to be binding software license agreements with Peregrine.

21 37. It was further part of the conspiracy that the defendants and others would frequently
22 encourage each other and joke about the fraudulent practices at Peregrine by discussing such topics
23 as:

24 a. the presence at Peregrine of a "magic drawer" from which contracts could be
25 extracted whenever they needed to fraudulently book revenue;

26 b. the use at Peregrine of a fax machine that magically time-stamped any contract
27 as having arrived before the end of the fiscal quarter;

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1 c. the practice of booking contracts that were signed on the “37th” day of the
2 month; and;

3 d. getting “paper” from customers instead of real contracts, so that Peregrine could
4 pretend to close the gap between its revenue targets and reality.

5 38. It was further part of the conspiracy that the conspirators would abuse their positions
6 of trust and seniority to encourage and reward those who engaged in fraudulent revenue recognition
7 practices by showering them with huge commissions, increased stock options, promotions, financial
8 incentives, and verbal expressions of gratitude.

9 39. It was further part of the conspiracy that, by creating and causing Peregrine to
10 fraudulently report revenue from these transactions, the defendants made and caused to be made false
11 and misleading statements and representations to, and concealed material information from, the
12 investing public, Peregrine’s auditors, financial institutions, the SEC, and the shareholders of
13 Peregrine.

14 *Fraudulent Sale of Accounts Receivable*

15 40. It was further part of the conspiracy that, in order to reduce Peregrine’s true DSO and
16 conceal Peregrine’s failure to collect on millions of dollars of accounts receivable from invalid,
17 impaired, and sham deals, the conspirators caused Peregrine to fraudulently sell accounts receivable
18 from these bad deals to financial institutions in exchange for discounted cash payments. By selling
19 these purported assets, the conspirators caused these falsified, invalid and uncollectible accounts
20 receivable to be improperly removed from Peregrine’s balance sheet, thereby fraudulently reducing
21 Peregrine’s DSO.

22 41. It was further part of the conspiracy that the conspirators would create and cause to be
23 created false and misleading documentation, including backdated contracts and “off-line” invoices,
24 in order to mislead banks into believing that pending deals had actually closed.

25 42. It was further part of the conspiracy that when a sold account receivable came due and
26 funds were owed to a financial institution, the conspirators would cause Peregrine to fraudulently make
27 repayment on behalf of the customer in order to prevent detection of the scheme.

28 *Disseminating False Information About Peregrine*

1 *Burn Cleaning*

2 49. It was further part of the conspiracy that the defendants and others would conceal and
3 covertly remove uncollectible accounts receivable from Peregrine's balance sheet through "burn
4 cleaning" -- that is, rather than expensing, writing off, reversing, or restating revenue associated with
5 invalid, impaired, or sham deals recorded in prior fiscal quarters, they would cause unrelated deals in
6 current fiscal periods to be applied or credited towards the customers' outstanding obligations, thereby
7 preventing detection of the fact that Peregrine should never have booked the revenue in the first place

8 *Fraudulently Acquiring Other Companies*

9 50. It was further part of the conspiracy that the defendants and others would cause
10 Peregrine to use the accounting associated with the purchase of other companies to deceptively remove
11 uncollectible accounts receivable from Peregrine's balance sheet.

12 **Overt Acts**

13 51. In furtherance of the conspiracy and in order to carry out the objectives thereof, on or
14 about the dates set forth below, within the Southern District of California and elsewhere, defendants
15 GARDNER, POWANDA, CAHILL, CROOK, LENZ, RASSAM, REICHNER, TOWLE, RODDA,
16 STULAC, and WHITT, and other conspirators, committed and caused to be committed the following
17 overt acts, among others:

- 18 a. On or about April 7, 1999, defendant POWANDA caused to be faxed to
19 defendant WHITT contracts backdated to March 1999, purporting to bind
20 Barnhill to purchase over \$700,000 worth of software licenses from Peregrine.
- 21 b. On or about April 7, 1999, defendant WHITT signed and caused to be faxed
22 back to defendant POWANDA contracts backdated to March 1999.
- 23 c. On or about April 21, 1999, defendant WHITT caused Peregrine to issue a
24 check to Barnhill for \$39,858, or five percent (5%) of the total value of certain
25 backdated contracts signed by defendant WHITT two weeks earlier.
- 26 d. On or about June 30, 1999, defendant WHITT signed a contract purporting to
27 obligate Barnhill to purchase approximately \$3.5 million worth of Peregrine
28 software.

- 1 e. On or about June 30, 1999, defendant POWANDA caused Peregrine to
2 improperly record revenue from a \$3.5 million contract signed by defendant
3 WHITT.
- 4 f. On or about September 30, 1999, an employee in Peregrine's finance
5 department sold to Fleet Business Credit Corp. a \$3.5 million account
6 receivable from a deal with Barnhill.
- 7 g. On or about October 8, 1999, defendant WHITT signed several contracts
8 between Barnhill and Peregrine, backdated to September 1999, and caused
9 these documents to be faxed to defendant POWANDA in San Diego
10 California, so they could be included in Peregrine's revenue figures for the
11 quarter ending September 30, 1999.
- 12 h. On or about October 15, 1999, defendant GARDNER expressed concerns
13 about Peregrine's channel sales activities in a presentation to Peregrine's Board
14 of Directors, which concerns he omitted from his contemporaneous public
15 statements about Peregrine's performance.
- 16 i. On or about December 30, 1999, defendants GARDNER and POWANDA
17 authorized a Peregrine executive to offer defendant RODDA an "out-clause"
18 on a proposed transaction with KPMG valued at approximately \$4 million.
- 19 j. On or about January 17, 2000, defendant GARDNER notified Peregrine's
20 Board of Directors that Peregrine intended to acquire Barnhill.
- 21 k. On or about February 2000, defendant RODDA sent a letter to Peregrine's
22 independent auditors in which he falsely confirmed that KPMG would pay
23 Peregrine according to the written terms of a December 31, 1999 contract, and
24 fraudulently concealed from Peregrine's auditors the fact that KPMG had been
25 granted an oral side-agreement that negated its obligation to pay Peregrine.
- 26 l. On or about March 2000, defendant GARDNER and others caused Peregrine
27 to acquire Barnhill for over \$32 million, an amount grossly in excess of the fair
28 market value of the company, and caused Peregrine to issue to defendant

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WHITT shares of Peregrine stock having a fair market value in excess of \$10 million.

- m. On or about June 28, 2000, defendants GARDNER, POWANDA, CAHILL, and CROOK discussed how to get a small, start-up company in the United Kingdom with only \$1.2 million in annual revenues to sign a sham contract to pay Peregrine approximately \$3 million to \$4 million for software.
- n. On or about June 30, 2000, defendant RODDA caused a contract to be delivered to Peregrine that purported to obligate KPMG to pay within 60 days approximately \$7.1 million (plus applicable taxes) for software licenses.
- o. On or about June 30, 2000, defendants GARDNER, POWANDA, CAHILL and others congratulated and thanked a Peregrine employee for getting defendant RODDA to sign a contingent contract for over \$7 million that was booked in the quarter.
- p. On or about July 5, 2000, defendant CROOK executed two side letters in connection with a \$5,000,000 deal with a French company that Peregrine fraudulently booked as revenue in the fiscal quarter ending June 30, 2000.
- q. On or about July 5, 2000, defendant CROOK notified defendants GARDNER, POWANDA, and CAHILL that the \$5,000,000 transaction with a French company should close on that day, and payment would be contingent on the French company actually selling the licenses to end users.
- r. On or about July 5, 2000, defendants GARDNER and POWANDA sent emails to CROOK and others in Europe, thanking them for finally closing the \$5,000,000 deal with a French company.
- s. On or about July 6, 2000, defendant CAHILL directed a Peregrine employee to contact defendant RODDA and get him to sign another deal on behalf of KPMG for the June 2000 quarter.
- t. On or about July 7, 2000, defendant RODDA caused to be delivered to Peregrine a backdated contract that purported to obligate KPMG to pay

1 approximately \$2.3 million, plus applicable taxes, within 30 days for the
2 purchase of even more Peregrine software.

3 u. On or about July 10, 2000, defendant TOWLE faxed to Peregrine's auditors a
4 detail of the revenue to be publicly reported for the June 2000 quarter,
5 including in that revenue approximately \$4.299 million for the French deal and
6 \$2 million for a KPMG deal.

7 v. On or about the September 2000 quarter, defendants GARDNER and
8 POWANDA arranged for Peregrine to purchase software licenses from a small
9 start-up company in the United Kingdom for the purpose of erasing an account
10 receivable owed by that company to Peregrine.

11 w. On or about September 25, 2000, defendant POWANDA told a deal partner not
12 to worry about signing a contingent deal that would be used by Peregrine to
13 fraudulently book revenue, joking that the practice was so common that
14 POWANDA intended to someday start a company called "End-of-
15 Quarter.com" which would specialize in signing sham deals for public
16 companies in exchange for money.

17 x. On or about September 27, 2000, defendant POWANDA sent by facsimile
18 transmission a proposed contract to a deal partner in Virginia.

19 y. On or about September 29, 2000, defendant GARDNER arranged with an
20 executive of another software company to "swap" approximately \$3 million in
21 software licenses, and to conceal from investors the reciprocal nature of these
22 transactions, so that each company could fraudulently book revenue from these
23 transactions.

24 z. On or about September 29, 2000, defendant GARDNER told a Peregrine sales
25 employee to offer a money back guarantee to a potential deal partner, and to tell
26 the deal partner that the contract could be cancelled, in order to convince the
27 deal partner to sign a contract that Peregrine intended to book that quarter.
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- 1 aa. On or about September 29, 2000, a Peregrine employee emailed defendants
2 POWANDA and LENZ, notifying them that a deal partner had signed a sham
3 contract which allowed Peregrine to declare “License revenue \$467k, main
4 [maintenance] revenue \$95k.”
- 5 bb. On or about October 2, 2000, defendant POWANDA sent an email to a deal
6 partner attaching a proposed contract, backdated to September 29, 2000, to
7 purchase \$3.6 million of Peregrine software licenses and maintenance.
- 8 cc. On or about October 3, 2000, intending that Peregrine would book the revenue
9 in the prior fiscal quarter, defendants POWANDA, CAHILL and LENZ
10 induced a deal partner to sign a backdated contract for \$3.6 million by
11 promising that Peregrine would purchase “services” from the deal partner in the
12 same amount, and that Peregrine would assist the deal partner in actually
13 selling the purchased software.
- 14 dd. On or about October 3, 2000, defendant POWANDA directed a Peregrine
15 employee to request that defendant RODDA sign on behalf of KPMG for
16 another sham transaction worth approximately \$11.5 million.
- 17 ee. On or about October 3, 2000, in order to effectuate a “round trip” of funds to
18 pay for agreements signed in June 2000, defendants POWANDA and RODDA
19 agreed to have Peregrine wire to KPMG approximately \$7.526 million to clear
20 the bogus contracts from KPMG’s books, and then to have KPMG return the
21 funds.
- 22 ff. On or about October 3, 2000, defendant POWANDA faxed to defendant
23 RODDA the \$11.5 million contract between KPMG and Peregrine, with a fax
24 cover page dated September 29, 2000, that stated, “I will follow up and have
25 the wire confirmed with you today.”
- 26 gg. On or about October 3, 2000, defendant POWANDA caused Peregrine to wire
27 approximately \$6.1 million to KPMG.
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of certain proposed contracts that obligated KPMG to pay Peregrine within 90 days, KPMG would not be held responsible for payment if the anticipated end-users did not purchase the software.

qq. On or about December 20 and 27, 2000, a Peregrine employee sent emails to defendant REICHNER and a managing director at KPMG, attaching proposed contracts between KPMG and Peregrine for the sale of over \$4 million worth of software licenses.

rr. On or about December 28, 2000, defendant REICHNER signed a letter awarding the KPMG managing director \$250,000 in marketing funds.

ss. On or about December 28, 2000, defendant CROOK spoke with defendants GARDNER and CAHILL and others by telephone about the fact that a £10 million deal with a large company in the United Kingdom would not be closed before the end of the year, and agreeing that Peregrine should offer a thirty-day money back guarantee in order to get the deal to close.

tt. On or about December 29, 2000, a KPMG managing director caused to be delivered to Peregrine's offices several signed contracts between Peregrine and KPMG which did not include the side-agreements between the parties.

uu. On or about January 2, 2001, defendant GARDNER caused an email to be sent to defendant LENZ specifying LENZ's revenue goal for the next fiscal quarter.

vv. On or about January 5, 2001, defendant CROOK backdated and signed contract documents related to the £10 million deal with a large company in the United Kingdom, knowing that the revenue would be booked by Peregrine in the prior quarter.

ww. On or about January 5, 2001, a Peregrine employee sent an email to defendants GARDNER, POWANDA, CROOK and CAHILL, notifying them that the proposed £10 million deal with a large United Kingdom company -- which Peregrine would improperly book in quarter ending December 31, 2000 -- had closed that day.

- 1 xx. On or about January 5, 2001, a Peregrine sales employee emailed GARDNER,
2 POWANDA, CROOK, LENZ, and others, expressing thanks to those who
3 helped close a deal “At the last second of the last hour of the 37th of
4 December...”
- 5 yy. On or about January 24, 2001, during a conference call with professional
6 securities analysts, defendant GARDNER fraudulently claimed (1) that part of
7 the revenue for the quarter ending December 31, 2000, came from the £10
8 million transaction with a United Kingdom company – when in fact he knew
9 that the transaction had not closed until on or about January 5, 2001 – and (2)
10 that Peregrine had been reserving adequately for uncollectible bad debts and
11 was “very comfortable about the collectibility.”
- 12 zz. On or about March 29, 2001, a Peregrine executive emailed defendant LENZ:
13 “If we miss friday [March 30, 2001] we miss the quarter according to true
14 accounting rules. If the anser [sic] is because you say so fine but we increase
15 our risk BIG GUY.”
- 16 aaa. On or about March 30, 2001, defendant GARDNER authorized selling to a
17 financial institution a portion of an account receivable related to a transaction
18 with a company in the United Kingdom, knowing that the contract underlying
19 the account receivable had already been cancelled.
- 20 bbb. On or about March 31, 2001, defendant LENZ directed a Peregrine executive
21 to get a deal partner to sign a software resale contract for over \$1 million,
22 knowing that the partner would be promised that it did not need to pay until it
23 finally resold the software.
- 24 ccc. On or about April 1, 2001, defendants LENZ and REICHNER asked a deal
25 partner to backdate his signature on contract documents to March 30, 2001.
- 26 ddd. On or about April 3, 2001, defendant POWANDA sent an email to a Peregrine
27 sales executive directing him to park a \$3.5 million transaction with a United
28 Kingdom company, and to backdate the contracts to March 30, 2001.

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- eee. On or about April 3, 2001, knowing that the revenue from the deal would be booked in the prior fiscal quarter, defendant LENZ and another Peregrine employee extended a side-agreement to a small company in California to induce that company to sign a backdated contract to purchase approximately \$2.5 million worth of Peregrine software.
- fff. On or about April 2001, defendant REICHNER sent a memo to defendants GARDNER and LENZ noting that in the December 2000 transactions KPMG only “took paper.”
- ggg. On or about April 2001, CAHILL sent a memo to GARDNER commenting on REICHNER’s performance and separating out the KPMG sham transactions and another sham transaction as only “paper.”
- hhh. On or about April 12, 2001, defendant RASSAM caused Peregrine to send a letter to the SEC containing false and misleading statements about Peregrine’s accounting, including the following statements:
 - i. “Extended payment terms are offered for no longer than a period of 3 years in limited circumstances where the contract is with customers having a proven credit history”;
 - ii. “Peregrine has a policy of performing thorough background and credit checks on all of its indirect partners as well as its direct sale customers”;
 - iii. “The Company has demonstrated over the course of its existence that it has an excellent history of collections on similar type contracts without concession”;
 - iv. “The Company has a business practice since 1994 of granting such terms and has demonstrated successful collection in all cases without granting concessions.”

- 1 iii. On or about April 17, 2001, defendant RASSAM emailed a Peregrine finance
2 employee requesting information about bad accounts receivable which had not
3 yet been written off but which were “at risk.”
- 4 jjj. On or about April 2001, defendant RASSAM stated that a Peregrine finance
5 employee should identify “garbage” receivables, and that he intended to “bury”
6 such receivables in acquisition accounting.
- 7 kkk. On or about April 23, 2001, defendant TOWLE e-mailed Peregrine finance
8 employees asking for information about certain reseller transactions by April
9 24, 2001, in order for the auditors “to sign-off on the audit.”
- 10 lll. On or about April 2001, defendant RASSAM and others caused Peregrine to
11 write off approximately \$30 million in uncollectible accounts receivable by
12 falsely characterizing them as nonrecurring, acquisition related charges.
- 13 mmm. On or about April 26, 2001, defendants GARDNER and LENZ signed a letter
14 to Arthur Andersen LLP falsely stating:
- 15 i. “There are no material transactions that have not been properly
16 recorded in the accounting records underlying the financial statements”;
- 17 ii. “The Company has complied with all aspects of contractual agreements
18 that would have a material effect on the financial statements in the
19 event of noncompliance”;
- 20 iii. “The accounting records underlying the financial statements accurately
21 and fairly reflect, in reasonable detail, the transactions of the Company
22 (and its subsidiaries)”;
- 23 iv. “There have been no concessions granted during fiscal 2000 on any
24 license arrangements entered into or currently outstanding nor does the
25 Company anticipate granting any in the future.”
- 26 nnn On or about September 28, 2001, defendant GARDNER sent an email to a
27 representative of a counter party asking the representative to sign a letter
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needed by Peregrine to sell an account receivable to a federally insured financial institution.

ooo. On or about October 2001, defendant RASSAM and others caused Peregrine to write off approximately \$43 million in bad accounts receivable by falsely characterizing them as nonrecurring, acquisition related charges.

ppp. On or about October 6, 2001, defendant STULAC emailed an Arthur Andersen employee in an attempt to coordinate their stories about the inappropriate accounting done at Peregrine.

qqq. On or about December 27, 2001, defendant RASSAM participated in a conference call wherein he and others improperly directed Peregrine finance employees to covertly write off certain bad debts by debiting revenue, among other means, and falsely claimed that said means had been cleared by Peregrine's U.S. auditors.

rrr. On or about February 19, 2002, defendant GARDNER gave a false and misleading presentation regarding Peregrine's financial performance and condition to the management of a Texas-based company, in order to entice that company to purchase or merge with Peregrine.

sss. On or about April 23, 2002, defendants STULAC and RASSAM provided false and misleading information, and omitted to provide information necessary to make the information provided not misleading, to representatives of a Texas-based company during a telephone call about Peregrine's financial performance and condition.

All in violation of Title 18, United States Code, Sections 371 and 3551 et seq.

Count 2 – 15 U.S.C. §§ 78j(b) and 78ff; 17 C.F.R. § 240.10b-5

(Securities Fraud)

52. The allegations contained in Paragraphs 1 through 28 are realleged and incorporated as if fully set forth here.

1 to obtain money and property by means of materially false and fraudulent pretenses, representations
 2 and promises and to deprive Peregrine and its shareholders of their intangible right of and to
 3 defendants' honest services -- that is, to defraud the investing public, Peregrine and its shareholders.
 4 financial institutions, the SEC, and others, by disseminating false and fraudulent information about
 5 Peregrine's financial condition.

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8 57. The allegations contained in Paragraphs 32 through 51 of Count 1 are realleged and
 9 incorporated as if fully set forth here as more fully describing the scheme and artifice to defraud and
 10 to obtain money and property by means of materially false and fraudulent pretenses, representations
 11 and promises.

12 58. The aforementioned scheme and artifice to defraud affected "financial institutions," as
 13 that term is defined in Title 18, United States Code, Section 20.

14 59. On or about the dates set forth below, in the Southern District of California, for the
 15 purpose of executing said scheme and artifice, defendants GARDNER, POWANDA, CAHILL,
 16 CROOK, LENZ, RASSAM, REICHNER, TOWLE, RODDA, STULAC and WHITT did transmit and
 17 cause to be transmitted by means of wire communications in interstate and international commerce
 18 the following writings, signs, pictures and sounds:

19 Transaction-Related Transmissions

Count	Date	Defendants	Wire Transmission	Description
3	10/08/99	GARDNER (1), POWANDA (2), CROOK (4), and WHITT (11)	Facsimile transmission from Englewood, CO to San Diego, CA.	Fax of backdated contracts between Peregrine and Barnhill.
4	09/27/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Facsimile transmission from San Diego, CA, to Fredericksburg, VA.	Fax of proposed contract with Peregrine.

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<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
5	12/29/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Facsimile transmission from San Diego, CA to Chicago, IL.	Fax transmission of letter offering \$250,000 in "marketing funds" to KPMG.

Conference Calls

<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
6	10/24/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.
7	12/11/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.
8	01/24/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.
9	04/26/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.

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<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
10	05/24/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.
11	08/28/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.
12	01/03/02	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.
13	01/24/02	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Telephone call from San Diego, CA, to New York, NY.	Conference call with investors and securities analysts.

Press Releases

<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
14	10/20/99	GARDNER (1), POWANDA (2), CROOK (4), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Second Quarter, Fiscal Year 2000.
15	01/20/00	GARDNER (1), POWANDA (2), CROOK (4), RODDA (9), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Third Quarter, Fiscal Year 2000.
16	04/26/00	GARDNER (1), POWANDA (2), CROOK (4), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Fourth Quarter and entire Fiscal Year 2000.
17	07/19/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the First Quarter, Fiscal Year 2001.
18	10/24/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Second Quarter, Fiscal Year 2001.
19	01/24/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Third Quarter, Fiscal Year 2001.

<u>Court</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
20	04/04/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing preliminary results for the Fourth Quarter, Fiscal Year 2001.
21	04/26/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Fourth Quarter and full Fiscal Year 2001.
22	07/24/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the First Quarter, Fiscal Year 2002.
23	10/24/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Second Quarter, Fiscal Year 2002.

<u>Court</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
24	01/02/02	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing preliminary results for the Third Quarter, Fiscal Year 2002.
25	01/24/02	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Wire transmission from San Diego, CA to New York, NY.	Transmission of Peregrine press release announcing results for the Third Quarter, Fiscal Year 2002.

SEC Filings

<u>Court</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
26	11/15/99	GARDNER (1), POWANDA (2), CROOK (4), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the Second Quarter, Fiscal Year 2000.
27	02/11/00	GARDNER (1), POWANDA (2), CROOK (4), RODDA (9), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the Third Quarter, Fiscal Year 2000.
28	05/10/00	GARDNER (1), POWANDA (2), CROOK (4), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-K for the Fiscal Year 2000.

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<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
29	08/14/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the First Quarter, Fiscal Year 2001.
30	11/14/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the Second Quarter, Fiscal Year 2001.
31	02/14/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the Third Quarter, Fiscal Year 2001.
32	06/29/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-K for Fiscal Year 2001.

<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Wire Transmission</u>	<u>Description</u>
33	07/03/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of a Peregrine Form S-4 relating to an acquisition.
34	08/13/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the First Quarter, Fiscal Year 2002.
35	11/13/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the Second Quarter, Fiscal Year 2002.
36	02/14/02	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Electronic transmission from Merrill Corp., San Diego, CA, to Arlington, VA.	Filing with SEC of Peregrine's Form 10-Q for the Third Quarter, Fiscal Year 2002.

All in violation of Title 18, United States Code, Sections 1343, 1346, 2 and 3551 et seq.

Count 37

15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5) and 78ff; 17 C.F.R. § 240.13b2-1

(Falsifying Books, Records, and Accounts)

60. The allegations contained in Paragraphs 1 through 28 are relegate and incorporated as if fully set forth here.

61. Beginning on a date unknown to the grand jury but no later than March 1999 and continuing through on or about May 2002, within the Southern District of California and elsewhere defendants GARDNER, POWANDA, CAHILL, CROOK, LENZ, RASSAM, REICHNER, TOWLE, RODDA, STULAC, and WHITT did knowingly and willfully, directly and indirectly, falsify and cause to be falsified books, records and accounts of Peregrine.

62. The allegations contained in paragraphs 32 through 51 of Count 1 of the Indictment and paragraph 59 of Counts 3 through 36 of the Indictment, are relegate and incorporated as if fully set forth here as alleging the books, records and accounts of Peregrine that the defendants directly and indirectly falsified.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1, and Title 18, United States Code, Sections 2 and 3551 et seq.

Counts 38 through 45 – 18 U.S.C. § 1344

(Bank Fraud)

63. The allegations contained in Paragraphs 1 through 28 are realleged and incorporated as if fully set forth here.

64. Beginning on a date unknown to the grand jury and continuing until on or about May 2002, within the Southern District of California and elsewhere, defendants GARDNER, POWANDA, CAHILL, CROOK, LENZ, RASSAM, REICHNER, TOWLE, RODDA, STULAC, and WHITT and others known and unknown to the grand jury, knowingly devised and intended to devise a scheme and artifice (a) to defraud the Banks and (b) to obtain money, funds and credits owned by and under the custody and control of the Banks, by means of materially false and fraudulent pretenses, representations and promises.

65. The allegations contained in paragraphs 32 through 51 of Count 1 of the Indictment are realleged and incorporated as if fully set forth here are more fully describing the scheme and artifice

1 to (a) to defraud the Banks and (b) to obtain money, funds and credits owned by and under the custody
 2 and control of the Banks, by means of materially false and fraudulent pretenses, representations and
 3 promises.

4 66. On or about the dates set forth below, within the Southern District of California and
 5 elsewhere, defendants GARDNER, POWANDA, CAHILL, CROOK, LENZ, RASSAM, REICHNER,
 6 TOWLE, RODDA, STULAC, and WHITT executed and attempted to execute the aforesaid scheme
 7 and artifice through the following acts:

Count	Date	Defendants	Act in Execution	Bank
38	06/30/99	GARDNER (1), POWANDA (2), CROOK (4), and WHITT (11).	Sale of accounts receivable for several contracts worth approximately \$4 million that had not closed.	Wells Fargo HBC Trade Bank, N.A.
39	09/30/99	GARDNER (1), POWANDA (2), CROOK (4), and WHITT (11).	Sale of account receivable for \$3.5 million contract with Barnhill & Associates.	Fleet Business Credit Corp., a wholly subsidiary of Fleet National Bank
40	12/31/99	GARDNER (1), POWANDA (2), CROOK (4), RODDA (9), and WHITT (11).	Sale of account receivable for contract with KPMG.	Wells Fargo HBC Trade Bank, N.A.
41	09/29/00	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Sale of account receivable for contract with Fujitsu Ltd. that had not closed.	Wells Fargo HBC Trade Bank, N.A.
42	03/30/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Sale of portion of account receivable for contract with British Telecom that had not closed.	Wells Fargo HBC Trade Bank, N.A.

<u>Count</u>	<u>Date</u>	<u>Defendants</u>	<u>Act in Execution</u>	<u>Bank</u>
43	06/26/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Sale of portion of account receivable for contract with British Telecom that had not closed.	Wells Fargo HBC Trade Bank, N.A.
44	09/28/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Sale of portion of account receivable for contract with Systematics AG.	Fleet Business Credit Corp., a subsidiary of Fleet Bank, N.A.
45	10/29/01	GARDNER (1), POWANDA (2), CAHILL (3), CROOK (4), LENZ (5), RASSAM (6), REICHNER (7), TOWLE (8), RODDA (9), STULAC (10), and WHITT (11).	Execution of Revolving Credit Agreement with Peregrine.	Fleet National Bank, N.A.

All in violation of Title 18, United States Code, Sections 1344, 2 and 3551 et seq..

FORFEITURE ALLEGATIONS

67. Upon conviction of one or more of the offenses of Conspiracy, as charged in Count 1 or Wire Fraud affecting a financial institution, as charged in Counts 3 through 36, defendants STEPHEN PARKER GARDNER, DOUGLAS STEPHEN POWANDA, ANDREW VINCENT CAHILL, JR., JEREMY REEVE CROOK, GARY LEE LENZ, JOSEPH GERARD REICHNER, BERDJ JOSEPH RASSAM , PATRICK JUDE TOWLE, LARRY ALAN RODDA, DANIEL FRANCIS STULAC, and MICHAEL DANNY WHITT shall forfeit to the United States pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

1 and Title 18, United States Code, Section 982(a)(2)(A), any property constituting or derived from
2 proceeds traceable to, and obtained directly or indirectly, as a result of the said violations, including
3 but not limited to the following:

4 A sum of money equal to \$50,000,000 in United States currency, representing the amount of
5 proceeds obtained as a result of the offenses of (1) Conspiracy to Commit Securities Fraud and Wire
6 Fraud (18 U.S.C. § 371), and (2) Wire Fraud affecting a Financial Institution (18 U.S.C. § 1343), for
7 which the defendants are jointly and severally liable.

8 68. If any of the above-described forfeitable property, as a result of any act or omission of
9 the defendants

- 10 a. cannot be located upon the exercise of due diligence;
- 11 b. has been transferred or sold to, or deposited with, a third party;
- 12 c. has been placed beyond the jurisdiction of the court;
- 13 d. has been substantially diminished in value; or
- 14 e. has been commingled with other property which cannot be divided without
15 difficulty;

16 it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as
17 incorporated by Title 18, United States Code, Section 982(b), to seek forfeiture of any other property
18 of said defendants up to the value of the forfeitable property described above, including but not limited
19 to the following:

20 **SPECIAL ALLEGATIONS**

21 69. The allegations contained in Paragraphs 1 through 66 are realleged and incorporated
22 as if fully set forth here.

23 70. With respect to each Count of the Indictment, except Counts 38 to 45:

- 24 a. The actual loss caused was greater than \$400,000,000;
 - 25 b. The offense involved a scheme to defraud 250 or more victims;
 - 26 c. The offense involved sophisticated means;
- 27
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- 1 d. The offense substantially endangered the solvency of an organization,
2 Peregrine, that at all relevant times was a publicly traded company and had
3 1,000 or more employees;
- 4 e. The offense was a violation of securities law and, at the time of the offense
5 defendants GARDNER, POWANDA, CAHILL, CROOK, LENZ, REICHNER
6 and RASSAM were officers and directors of Peregrine, a publicly traded
7 company;
- 8 f. The offense involved more than minimal planning;
- 9 g. The offense was committed through mass marketing;
- 10 h. The offense affected a financial institution and GARDNER and POWANDA
11 each derived more than \$1 million in gross receipts from the offense;
- 12 i. Defendants GARDNER, POWANDA, and CAHILL were organizers and
13 leaders of a criminal activity that involved five or more participants and was
14 otherwise extensive;
- 15 j. Defendants CROOK, LENZ, REICHNER, and RASSAM were managers and
16 supervisors of criminal activity that involved five or more participants and was
17 otherwise extensive;
- 18 k. Defendant STULAC was a manager and supervisor of criminal activity;
- 19 l. Defendants GARDNER, POWANDA, CAHILL, LENZ, RASSAM, TOWLE,
20 and STULAC, abused a position of public and private trust and defendants
21 RASSAM, TOWLE, and STULAC used a special skill in a manner that
22 significantly facilitated the commission and concealment of the offense;
- 23 m. Defendants GARDNER, POWANDA, LENZ, RODDA, and WHITT willfully
24 obstructed and impeded, and attempted to obstruct and impede, the
25 administration of justice during the course of the investigation and prosecution
26 of the offense and related conduct thereto.

27 DATED: October 5, 2004.

28 A TRUE BILL:

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Foreperson

CAROL C. LAM
United States Attorney

By: _____
ERIC J. BESTE
Assistant U.S. Attorney