



**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 10-Q**

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**QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**For the quarterly period ended June 30, 2002**

**OR**

**TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES  
EXCHANGE ACT OF 1934**

**Commission file number: 1-4219**

**ZAPATA CORPORATION**

(Exact name of Registrant as specified in its charter)

**State of Nevada**  
(State or other jurisdiction of  
incorporation or organization)

**C-74-1339132**  
(I.R.S. Employer  
Identification No.)

**100 Meridian Centre, Suite 350**  
**Rochester, NY**  
(Address of principal  
executive offices)

**14618**  
(Zip Code)

**(585) 242-2000**  
(Registrant's telephone number, including area code)

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Number of shares outstanding (less treasury shares) of the Registrant's Common Stock, par value \$0.01 per share, on August 1, 2002: 2,390,849

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## **TABLE OF CONTENTS**

### **PART I — FINANCIAL INFORMATION**

#### **Item 1. Financial Statements and Notes**

**CONDENSED CONSOLIDATED BALANCE SHEETS**

**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

**NOTES TO UNAUDITED CONDENSED**

**Note 1. Summary of Operations and Basis of Presentation**

**Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations**

**Item 3. Quantitative and Qualitative Disclosures about Market Risk**

### **PART II. OTHER INFORMATION**

**Item 1. Legal Proceedings**

**Item 2. Changes in Securities**

**Item 3. Defaults upon Senior Securities**

**Item 4. Submission of Matters to a Vote of Security Holders**

**Item 5. Other Information**

**Item 6. Exhibits and Reports on Form 8-K**

**SIGNATURES**

**AMENDED BY-LAWS**

**CONSULTING AGREEMENT**

**STATEMENT REGARDING COMPUTATION**

**CERTIFICATION**

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**ZAPATA CORPORATION****TABLE OF CONTENTS**

	<b>Page</b>
<b>PART I. FINANCIAL INFORMATION</b>	
Item 1. Financial Statements	
Condensed Consolidated Balance Sheets as of June 30, 2002 (unaudited) and December 31, 2001	3
Unaudited Condensed Consolidated Statements of Operations for the Three Months and Six Months Ended June 30, 2002 and 2001	4
Unaudited Condensed Consolidated Statements of Cash Flows for the Six Months Ended June 30, 2002 and 2001	5
Notes to Unaudited Condensed Consolidated Financial Statements	6
Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations	12
Item 3. Quantitative and Qualitative Disclosures about Market Risk	18
<b>PART II. OTHER INFORMATION</b>	
Item 1. Legal Proceedings	19
Item 2. Changes in Securities and Use of Proceeds	19
Item 3. Defaults upon Senior Securities	19
Item 4. Submission of Matters to a Vote of Security Holders	19
Item 5. Other Information	20
Item 6. Exhibits and Reports on Form 8-K	20
<b>SIGNATURES</b>	<b>21</b>
<b>EXHIBITS</b>	<b>22</b>

## PART I — FINANCIAL INFORMATION

## Item 1. Financial Statements and Notes

ZAPATA CORPORATION  
CONDENSED CONSOLIDATED BALANCE SHEETS  
(In Thousands, Except Per Share Amounts)

	June 30, 2002 (Unaudited)	December 31, 2001
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 40,573	\$ 62,477
Short-term investments	67,029	33,948
Accounts receivable, net	13,772	22,427
Inventories, net	39,560	37,670
Prepaid expenses and other current assets	2,120	1,979
Total current assets	163,054	158,501
Investments and other assets:		
Long-term investments, available for sale	9,120	—
Other assets	28,069	30,937
Total investments and other assets	37,189	30,937
Property and equipment, net	82,464	82,239
Total assets	\$282,707	\$271,677
<b>LIABILITIES AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Current maturities of long-term debt	\$ 1,231	\$ 1,296
Accounts payable	3,444	1,605
Accrued liabilities	27,035	21,864
Total current liabilities	31,710	24,765
Long-term debt	14,884	15,510
Other liabilities and deferred taxes	7,536	7,952
Minority interest	55,827	53,599
Total liabilities	109,957	101,826
Commitments and contingencies		
Stockholders' equity:		
Preferred stock, (\$.01 par), 200,000 shares authorized, 0 shares issued and outstanding as of June 30, 2002 and December 31, 2001	—	—
Preference stock, (\$.01 par), 1,800,000 shares authorized, 0 shares issued and outstanding as of June 30, 2002 and December 31, 2001	—	—
Common stock, (\$.01 par), 16,500,000 shares authorized, 3,069,859 shares issued, and 2,390,849 shares outstanding on June 30, 2002 and December 31, 2001	31	31
Capital in excess of par value	162,030	161,869
Retained earnings	46,185	43,743
Treasury stock, at cost, 679,010 shares at June 30, 2002 and December 31, 2001	(31,668)	(31,668)
Accumulated other comprehensive loss	(3,828)	(4,124)
Total stockholders' equity	172,750	169,851
Total liabilities and stockholders' equity	\$282,707	\$271,677

The accompanying notes are an integral part of the condensed consolidated financial statements.

**ZAPATA CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**  
**(In Thousands, Except Per Share Amounts)**

	Three months ended June 30,		Six Months Ended June 30,	
	2002	2001	2002	2001
Revenues	\$27,237	\$ 19,053	\$50,716	\$ 38,099
Cost of revenues	20,331	17,011	37,255	35,024
Gross profit	6,906	2,042	13,461	3,075
Operating expense (income):				
Selling, general and administrative	3,436	3,824	6,564	6,804
Contract termination settlement	—	—	—	(403)
Total operating expenses	3,436	3,824	6,564	6,401
Operating income (loss)	3,470	(1,782)	6,897	(3,326)
Other income (expense):				
Interest income, net	167	700	364	1,670
Realized loss on non-investment grade securities	—	(10,006)	—	(10,923)
Impairment of long-lived assets	—	(232)	—	(232)
Other, net	(44)	(12)	(96)	9
	123	(9,550)	268	(9,476)
Income (loss) before income taxes and minority interest	3,593	(11,332)	7,165	(12,802)
(Provision) benefit for income taxes	(1,225)	1,213	(2,495)	1,362
Minority interest in net (income) loss of consolidated subsidiary	(1,150)	173	(2,228)	336
Net income (loss) to common stockholders	\$ 1,218	\$ (9,946)	\$ 2,442	\$(11,104)
Income (loss) per share (basic and diluted)	\$ 0.51	\$ (4.16)	\$ 1.02	\$ (4.65)
Weighted average common shares outstanding:				
Basic	2,391	2,391	2,391	2,390
Diluted	2,396	2,391	2,395	2,390

The accompanying notes are an integral part of the condensed consolidated financial statements.

**ZAPATA CORPORATION**  
**UNAUDITED CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**  
**(In thousands)**

	Six months ended June 30,	
	2002	2001
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ 2,442	\$(11,104)
<b>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</b>		
Depreciation and amortization	5,057	4,997
Gain (loss) on disposal of assets	33	(132)
Provisions for losses on receivables	383	870
Impairment of long-lived assets	—	232
Realized loss on non-investment grade securities	—	10,923
Stock option modification expense	127	—
Minority interest in net income (loss) of consolidated subsidiary	2,228	(336)
Deferred income taxes	3,062	(1,662)
<b>Changes in assets and liabilities:</b>		
Accounts receivable	8,638	2,322
Inventories	(1,890)	1,341
Prepaid expenses and other current assets	566	304
Accounts payable	1,840	(669)
Accrued liabilities	5,170	1,742
Other assets and liabilities	(2,544)	(870)
Total adjustments		19,062
Net cash provided by operating activities	25,112	7,958
<b>Cash flows from investing activities:</b>		
Proceeds from disposition of assets, net	23	290
Proceeds from sale of long-term investments	—	2,172
Purchase of short-term investments	(67,029)	(20,077)
Purchase of long-term investments	(8,998)	—
Proceeds of maturities of short-term investments	33,948	55,384
Capital expenditures	(4,269)	(502)
Net cash (used in) provided by investing activities	(46,325)	37,267
<b>Cash flows from financing activities:</b>		
Principal payments of short- and long-term obligations	(691)	(533)
Net cash used in financing activities	(691)	(533)
Net (decrease) increase in cash and cash equivalents	(21,904)	44,692
Cash and cash equivalents at beginning of period	62,477	19,237
Cash and cash equivalents at end of period	\$ 40,573	\$ 63,929

The accompanying notes are an integral part of the condensed consolidated financial statements.

**ZAPATA CORPORATION**  
**NOTES TO UNAUDITED CONDENSED**  
**CONSOLIDATED FINANCIAL STATEMENTS**

**Note 1. Summary of Operations and Basis of Presentation**

The unaudited condensed consolidated financial statements included herein have been prepared by Zapata Corporation (“Zapata” or the “Company”), without audit, pursuant to the rules and regulations of the Securities and Exchange Commission. The financial statements reflect all adjustments that are, in the opinion of management, necessary to fairly present such information. All such adjustments are of a normal recurring nature. Although Zapata believes that the disclosures are adequate to make the information presented not misleading, certain information and footnote disclosures, including a description of significant accounting policies normally included in financial statements prepared in accordance with accounting principles generally accepted in the United States of America, have been condensed or omitted pursuant to such rules and regulations. These financial statements should be read in conjunction with the financial statements and the notes thereto included in Zapata’s 2001 Annual Report on Form 10-K filed with the Securities and Exchange Commission and with the information presented by Omega Protein Corporation on their 2001 Annual Report on Form 10-K. The results of operations for the periods from January 1, 2002 to June 30, 2002 are not necessarily indicative of the results for any subsequent quarter or the entire fiscal year ending December 31, 2002.

**Business Description**

Zapata Corporation is a holding company which currently operates in the food segment through its 61% owned subsidiary, Omega Protein Corporation (“Omega Protein” or “Omega”), which is the nation’s largest marine protein company. In addition, Zapata holds approximately 98% of the outstanding stock of Zap.Com Corporation (“Zap.Com”), which is currently a public shell corporation.

Omega Protein produces and markets a variety of products produced from menhaden (herring-like fish found in commercial quantities in the U.S. coastal waters of the Atlantic Ocean and Gulf of Mexico) including regular grade and value added specialty fish meals, crude and refined fish oils and fish solubles. Omega’s fish meal products are used as nutritional feed additives by animal feed manufacturers and by commercial livestock producers. Omega operates its own fleet of fishing vessels as well as four processing plants. Omega’s crude fish oil is sold primarily to food producers in Europe, and its refined fish oil products, which are high in nutritionally desirable Omega-3 fatty acids, are used in a variety of foods for human consumption, as well as in aquaculture feeds and certain industrial applications. Fish solubles are sold as protein additives for animal feed and as organic fertilizers. Omega Protein is engaged in the marine protein business and its stock is traded on the New York Stock Exchange (“NYSE”) under the symbol “OME.”

Zap.Com was in the Internet industry and its stock is traded on the over-the-counter market on the NASD’s OTC Electronic Bulletin Board under the symbol “ZPCM.” In December 2000, the Zap.Com Board of Directors concluded that Zap.Com’s operations were not likely to become profitable in the foreseeable future and, therefore, it was in the best interest of Zap.Com and its stockholders to cease all Internet operations. Since that date, Zap.Com has terminated all salaried employees, all signed agreements with web site owners who joined the ZapNetwork, and all third party contractual relationships entered into in connection with its Internet business.

**Note 2. Short-Term Investments**

Short-term investments as of June 30, 2002 and December 31, 2001 are summarized as follows:

	June 30, 2002	December 31, 2001
	(in thousands)	
Federal National Mortgage Association Discount Note	\$35,955	\$10,886
Federal Home Loan Mortgage Corporation Discount Note	20,235	20,857
Federal Home Loan Bank Discount Note	9,344	1,712
Commercial Paper	1,495	493
	\$67,029	\$33,948

Interest rates on these investments ranged from 1.54%—2.80% and 1.83%—2.37% at June 30, 2002 and December 31, 2001, respectively.



[Table of Contents](#)**Note 3. Accounts Receivable**

Accounts receivable as of June 30, 2002 and December 31, 2001 are summarized as follows:

	June 30, 2002	December 31, 2001
	(in thousands)	
Trade	\$11,723	\$ 6,265
Insurance	327	290
Employee	112	37
Income tax	1,309	15,595
Other	576	500
	14,047	22,687
Less: Allowance for doubtful accounts	(275)	(260)
	\$13,772	\$22,427

**Note 4. Inventories**

Inventories as of June 30, 2002 and December 31, 2001 are summarized as follows:

	June 30, 2002	December 31, 2001
	(in thousands)	
Fish meal	\$11,021	\$19,221
Fish oil	4,961	9,128
Fish solubles	276	789
Deferred inventory cost	19,338	4,127
Other materials and supplies	3,964	4,405
	\$39,560	\$37,670

At June 30, 2002 and December 31, 2001, consolidated inventory consists exclusively of the inventory of Omega Protein. Inventory is stated at the lower of cost or market. Omega's fishing season runs from mid-April to the first of November in the Gulf of Mexico and from the beginning of May into December in the Atlantic. Government regulations preclude Omega from fishing during the off-seasons.

Omega Protein's inventory cost system considers all costs associated with an annual fish catch and its processing, both variable and fixed, and including both costs incurred during the off-season and during the fishing season. Omega's costing system allocates cost to inventory quantities on a per unit basis as calculated by a formula that considers total estimated inventoriable costs for a fishing season (including off-season costs) to total estimated fish catch and the relative fair market value of the individual products produced. Omega Protein adjusts the cost of sales, deferred costs (the majority of which are off-season costs) and inventory balances at the end of each quarter based on revised estimates of total inventoriable costs and fish catch. Omega's lower-of-cost or market-value analyses at year-end and at interim periods compares the total estimated per unit production cost of Omega's expected production to the projected per unit market prices of the products. The impairment analyses involve estimates of, among other things, future fish catches and related costs, and expected commodity prices for the fish products. These estimates, which management believes are reasonable and supportable, involve estimates of future activities and events which are inherently imprecise and for which actual results may differ.

During the off-seasons, in connection with the upcoming fishing seasons, Omega incurs costs (i.e., plant and vessel related labor, utilities, rent, repairs and depreciation) that are directly related to Omega's infrastructure. These costs accumulate in inventory and are applied as elements of the cost of production of Omega's products throughout the fishing season ratably based on Omega's monthly fish catch and the expected total fish catch for the season.

**Note 5. Other Assets**

Other assets as of June 30, 2002 and December 31, 2001 are summarized as follows:

	June 30, 2002	December 31, 2001
	(in thousands)	
Fishing nets	\$ 1,591	\$ 835
Prepaid pension cost	18,903	19,249
Deferred tax asset	5,006	8,161
Insurance receivable, net of allowance for doubtful accounts	1,707	1,590
Title XI loan origination fee	318	357
Note receivable	413	471
Deposits	131	731
Other	—	3

Valuation allowance for treasury shares purchased by subsidiary at below book value	—	(460)
	<u>\$28,069</u>	<u>\$30,937</u>

Omega Protein's amortization expense for fishing nets amounted to \$257,000 and \$475,000 for the quarters ended June 30, 2002 and 2001, respectively.

Omega carries insurance for certain losses relating to its vessels and Jones Act liability for employees aboard its vessels (collectively, "Vessel Claims Insurance"). The typical Vessel Claims Insurance policy contains an annual aggregate deductible ("AAD") for which Omega remains responsible, while the insurance carrier is responsible for all applicable amounts which exceed the AAD. It is Omega's policy to accrue current amounts due and record amounts paid out on each claim. Once payments exceed the AAD, Omega records an insurance receivable for a given policy year.

## [Table of Contents](#)

For the period from October 1, 1998 to March 31, 2000, Omega placed its Vessel Claims Insurance coverage with HIH Casualty and General Insurance, Ltd., an insurance company that is part of HIH Insurance Limited, the second largest insurance company in Australia (“HIH”). In April 2001, HIH petitioned a court in Australia to place it in provisional liquidation. Omega estimates, based on previous payments made by Omega and its existing reserves for open claims for the period covered by HIH, that HIH owes approximately \$2.0 million either to Omega or on its behalf. This amount could be adjusted upward or downward as additional claims and their corresponding reserves become finalized.

Omega has put the trustees in the Australian liquidation proceedings on notice of its claims under their insurance policy. However, based on the early nature of the proceedings, Omega believes that the ultimate outcome of the recovery against HIH cannot be assured at this time and that it is probable that a portion of these receivables will not be collectible. Accordingly, at June 30, 2002, the allowance for doubtful accounts applicable to the HIH receivable was \$1.7 million.

On December 27, 2001, Omega entered into a purchase agreement to purchase a 60,000 square foot material storage facility in St. Louis, Missouri, which it had previously leased. As part of the agreement, Omega placed \$600,000 as deposit pending the executed Deed of Trust. The Deed of Trust was executed and delivered and Omega took title to the property in February 2002.

### **Note 6. Long-Term Investments, Available for Sale**

As of June 30, 2002, the Company held available for sale securities with a total cost of approximately \$9.0 million, market value of approximately \$9.1 million and an unrealized gain of \$122,000, which is reflected as a component of other comprehensive income, net of tax. These investment grade securities are obligations of the Federal Home Loan Bank, an agency of the U.S. Government. The Company held no long-term investments as of December 31, 2001.

### **Note 7. Commitments and Contingencies**

#### ***Litigation***

A non-operating wholly-owned subsidiary of Zapata, Energy Industries, Inc., was named as a defendant in three cases commenced in 1996 and 1997 pending in the 83rd Judicial District Court of Upton County, Texas involving the death of one individual and personal injuries to two others. The cases resulted from an explosion and fire at a gas processing plant in Upton County caused by the failure of a valve cover. Zapata was named as a defendant in one of the cases. The owners of the plant have also filed a cross-claim against Energy Industries for property damage and lost profits resulting from the explosion and fire. Plaintiffs and the cross-plaintiff owners base their claim on a theory of manufacturing or design defect of the valve cover. Plaintiffs seek compensatory damages. Zapata and Energy Industries deny liability in each of the lawsuits, and have vigorously contested these matters and intend to vigorously defend against these actions. In January 2002, Zapata’s primary insurance carrier for these lawsuits notified it that it did not believe that Zapata and Energy Industries had primary insurance coverage for the losses arising out of these incidents. The insurance carrier had been providing for the defense of these actions and had not reserved its rights with respect to that defense. Although the insurance carrier has disclaimed any obligation to indemnify Zapata or Energy Industries, it has agreed to continue providing a defense. Zapata has disputed the assertion that there is no primary insurance coverage. A loss of primary insurance coverage could jeopardize excess coverage that Zapata or Energy Industries has for these claims. These cases involve plaintiffs with very serious injuries, including death. While the results of any ultimate resolution of these lawsuits cannot be predicted, in the opinion of the Company’s management, based upon discussions with defense counsel, any losses resulting from these matters will not have a material adverse effect on Zapata’s results of operations, cash flow or financial position.

Zapata is involved in litigation relating to claims arising out of its past and current operations in the normal course of business. Zapata maintains insurance coverage against such potential ordinary course claims in an amount in which it believes to be adequate. While the results of any ultimate resolution cannot be predicted, in the opinion of Zapata’s management, based upon discussions with counsel, any losses resulting from these matters will not have a material adverse effect on Zapata’s results of operations, cash flow or financial position.

#### ***Environmental Matters***

The Company is subject to various possible claims and lawsuits regarding environmental matters. Management believes that costs, if any, related to these matters will not have a material adverse effect on the results of operations, cash flows or financial position of the Company.

**Note 8. Contract Termination Settlement**

Based on the Board resolution to terminate Internet operations, certain contracts entered into by Zap.Com during its development stage were deemed to have no future value to Zap.Com. Accordingly, they recognized the expenses and associated accrued liabilities in the fourth quarter of 2000. In March of 2001, Zap.Com favorably settled its disputes over two of its contracts. Zap.Com reversed previous accruals of \$403,000 as income resulting from the settlement amounts being less than the associated accrued liabilities.

**Note 9. Earnings Per Share Information**

Basic EPS was computed by dividing reported earnings (loss) available to common stockholders by the weighted average number of common shares outstanding during the period. Options to purchase 119,000 common shares at a weighted average price of \$46.84 per share were outstanding for the three months and six months ended June 30, 2002 and were excluded from the computation of diluted EPS since the exercise price of the options was greater than the average market price of the common shares for the period. Options to purchase 122,000 common shares at a weighted average price of \$47.96 were outstanding for the three months and six months ended June 30, 2001, but were not included in the computation of diluted EPS as the effect would be antidilutive due to the net loss.

**Note 10. Comprehensive Income (Loss)**

The components of other comprehensive income (loss) as of June 30, 2002 and 2001 are as follows:

	Three Months Ended June 30, 2002	Three Months Ended June 30, 2001
	(in thousands)	
Net income (loss)	\$1,218	\$(9,946)
Unrealized gain on securities, net of tax effects	106	—
Minimum pension liability adjustment, net of tax effects	(11)	—
	—————	—————
Total comprehensive income (loss)	\$1,313	\$(9,946)
	—————	—————
	Six Months Ended June 30, 2002	Six Months Ended June 30, 2001
	(in thousands)	
Net income (loss)	\$2,442	\$(11,104)
Unrealized gain on securities, net of tax effects	76	—
Minimum pension liability adjustment, net of tax effects	220	5
	—————	—————
Total comprehensive income (loss)	\$2,738	\$(11,109)
	—————	—————

**Note 11. Related Party Transactions**

During June of 2002, the Company finalized the terms of a consulting agreement with its former Chairman of the Board of Directors, Malcolm Glazer. Subject to the terms of the agreement, as listed in Exhibit 10(m), Malcolm Glazer shall be paid \$122,500 per month effective March 1, 2002 and payable until April 30, 2006. As of June 30, 2002, the Company has accrued \$490,000 in accordance with the terms of this agreement.

During the second quarter of 2002, the Company modified the terms of certain outstanding stock options held by Malcolm Glazer and Darcie Glazer. These modifications extended the life of the option subsequent to these former employees termination of employment with the Company. Consistent with FASB Interpretation No. 44, "Accounting for Certain Transactions Involving Stock Compensation (an interpretation of APB Opinion No. 25)" the Company recorded a compensation charge of approximately \$127,000 during the quarter ended June 30, 2002 to properly reflect the impact of these modifications.

**Note 12. Recently Issued Accounting Pronouncements**

In June 2002, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 146, "Accounting for Exit or Disposal Activities." SFAS No. 146 addresses significant issues regarding the recognition, measurement, and reporting of costs that are associated with exit and disposal activities, including restructuring activities that are currently accounted for pursuant to the guidance that the Emerging Issues

## [Table of Contents](#)

Task Force (“EITF”) has set forth in EITF Issue No. 94-3, “Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring).” The scope of SFAS No. 146 also includes (1) costs related to terminating a contract that is not a capital lease and (2) termination benefits that employees who are involuntarily terminated receive under the terms of a one-time benefit arrangement that is not an ongoing benefit arrangement or an individual deferred-compensation contract. SFAS No. 146 will be effective for exit or disposal activities that are initiated after December 31, 2002.

In April 2002, the FASB issued SFAS No. 145, which rescinds SFAS No. 4, “Reporting Gains and Losses from Extinguishment of Debt,” SFAS No. 44, “Accounting for Intangible Assets of Motor Carriers” and SFAS No. 64, “Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements and amends SFAS No. 13, “Accounting for Leases.” This statement updates, clarifies and simplifies existing accounting pronouncements. As a result of rescinding SFAS No. 4 and SFAS No. 64, the criteria in Accounting Principles Bulletin No. 30 will be used to classify gains and losses from extinguishment of debt. This statement is effective for financial statements issued for fiscal years beginning after May 15, 2002. The Company does not expect the adoption of SFAS No. 145 to have a material impact on the Company’s financial position or its results of operations.

In October 2001, the FASB issued SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets.” SFAS No. 144 addresses the accounting model for long-lived assets to be disposed of by sale and resulting implementation issues. This statement requires that those long-lived assets be measured at the lower of carrying amount or fair value less cost to sell, whether reported in continuing operations or in discontinued operations. This statement is effective for financial statements issued for fiscal years beginning after December 15, 2001. The Company’s adoption of the provisions of SFAS No. 144 on January 1, 2002 did not have a material impact on the Company’s financial position or its results of operations.

### **Note 13. Industry Segment and Geographic Information**

Prior to the sale of the Company’s investment in the common stock of Viskase Corporation (“Viskase”), the sale of Charged Productions, Inc. (“Charged”) and Zap.Com’s discontinuance of its Internet operations, Zapata primarily operated in two industry segments: the Food segment, consisting of Omega Protein and Viskase and the Internet segment, consisting of Charged and Zap.Com.

Since the sale of Viskase, the food segment information has consisted exclusively of Omega Protein. Costs incurred during 2001 related to Zap.Com and Charged were primarily associated with wind-down and reporting activities. Accordingly, these costs were included within the Company’s Internet segment for 2001. As of January 1, 2002, all activity related to Zap.Com is reported as a separate segment.

The following summarizes certain financial information of each segment for the three months and six months ended June 30, 2002 and 2001:

	Revenues	Operating Income / (Loss)	Total Assets
<b>Three Months Ended June 30, 2002</b>			
Food	\$27,237	\$ 4,745	\$175,104
Zap.Com	—	(59)	2,124
Corporate	—	(1,216)	105,479
	<u>\$27,237</u>	<u>\$ 3,470</u>	<u>\$282,707</u>
<b>Three Months Ended June 30, 2001</b>			
Food	\$18,993	\$ (652)	\$161,966
Internet	60	146	2,422
Corporate	—	(1,276)	90,872
	<u>\$19,053</u>	<u>\$(1,782)</u>	<u>\$255,260</u>

[Table of Contents](#)

	Revenues	Operating Income / (Loss)	Total Assets
<b>Six Months Ended June 30, 2002</b>			
Food	\$50,716	\$ 9,232	\$175,104
Zap.Com	—	(108)	2,124
Corporate	—	(2,227)	105,479
	\$50,716	\$ 6,897	\$282,707
	—	—	—
<b>Six Months Ended June 30, 2001</b>			
Food	\$38,015	\$(1,150)	\$161,966
Internet	84	(450)	2,422
Corporate	—	(1,726)	90,872
	\$38,099	\$(3,326)	\$255,260
	—	—	—

## Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

Forward-looking statements in this Form 10-Q, future filings by the Company with the Securities and Exchange Commission ("Commission"), the Company's press releases and oral statements by authorized officers of the Company are intended to be subject to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. Investors are cautioned that all forward-looking statements involve risks and uncertainty, including without limitation those identified from time to time in press releases and other communications with stockholders by the Company and the filings made with the Commission by the Company, Omega Protein Corporation ("Omega Protein" or "Omega") and Zap.Com Corporation ("Zap.Com"), such as those disclosed under the caption "Significant Factors That Could Affect Future Performance and Forward-Looking Statements" appearing in Item 2 "Management's Discussion and Analysis of Financial Condition and Results of Operation" of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001 filed with the Commission or elsewhere in this report. The Company believes that forward-looking statements made by it are based on reasonable expectations. However, no assurances can be given that actual results will not differ materially from those contained in such forward-looking statements.

### General

Zapata Corporation is a holding company which currently operates in the food segment through its 61% owned subsidiary, Omega Protein Corporation ("Omega Protein" or "Omega"), which is the nation's largest marine protein company. In addition, Zapata holds approximately 98% of the outstanding stock of Zap.Com Corporation ("Zap.Com"), which is currently a public shell corporation.

Omega Protein produces and markets a variety of products produced from menhaden (herring-like fish found in commercial quantities in the U.S. coastal waters of the Atlantic Ocean and Gulf of Mexico) including regular grade and value added specialty fish meals, crude and refined fish oils and fish solubles. Omega's fish meal products are used as nutritional feed additives by animal feed manufacturers and by commercial livestock producers. Omega operates its own fleet of fishing vessels as well as four processing plants. Omega's crude fish oil is sold primarily to food producers in Europe, and its refined fish oil products, which are high in nutritionally desirable Omega-3 fatty acids, are used in a variety of foods for human consumption, as well as in aquaculture feeds and certain industrial applications. Fish solubles are sold as protein additives for animal feed and as organic fertilizers. Omega Protein is engaged in the marine protein business and its stock is traded on the New York Stock Exchange ("NYSE") under the symbol "OME." On June 17, 2002, Zapata announced that the board of directors authorized management to explore ways to enhance Zapata stockholder value through its holdings in Omega Protein. As of that time, Zapata's board believed that Omega Protein was undervalued and that Zapata stockholder value may be increased through an appropriate transaction or strategy. The board asked Zapata management to consider increasing Zapata's ownership position in Omega Protein or in the alternative pursuing a possible sale or another significant strategic transaction involving that interest. Zapata's cash resources will be decreased to the extent of any purchases and increased to the extent of any sale or similar transaction. There can be no assurance, however, that Zapata will be successful in completing any possible strategic alternatives currently being explored or that the alternative will enhance stockholder value.

Zap.Com was in the Internet industry and its stock is traded on the over-the-counter market on the NASD's OTC Electronic Bulletin Board under the symbol "ZPCM." In December 2000, the Zap.Com Board of Directors concluded that Zap.Com's operations were not likely to become profitable in the foreseeable future and, therefore, it was in the best interest of Zap.Com and its stockholders to cease all Internet operations. Since that date, Zap.Com has terminated all salaried employees, all signed agreements with web site owners who joined the ZapNetwork, and all third party contractual relationships entered into in connection with its Internet business.

### Results of Operations

#### *Three Months Ended June 30, 2002 and 2001*

Zapata had consolidated net income of approximately \$1.2 million or \$0.51 per share for the quarter ended June 30, 2002 compared to net loss of approximately \$9.9 million or \$4.16 per share for the quarter ended June 30, 2001. The net income for the second quarter was primarily due to a profitable quarter reported by Omega Protein. Omega reported net income of \$2.9 million for the three months ended June 30, 2002 as compared to a net loss of \$527,000 for the quarter ended June 30, 2001.

*Revenues.* For the three months ended June 30, 2002, Zapata's consolidated revenues increased approximately 43% from the quarter ended June 30, 2001. The revenue increase was primarily due to higher sales prices of 36% and 57% for Omega Protein Corporation's fish meal and fish oil, respectively, along with a 29% increase in fish oil

## Table of Contents

volume sold. Omega attributes the higher fish meal prices, fish oil prices and fish oil volumes to strong worldwide demand for fish meal and competing oil markets rebounding from historic low levels.

*Cost of Revenues.* Zapata's consolidated cost of revenues for the quarter ended June 30, 2002 was \$20.3 million, a \$3.3 million increase from \$17.0 million for the quarter ended June 30, 2001. Cost of sales primarily includes Omega Protein's direct fishing and processing costs. As a percent of revenues, cost of sales was 75% for the quarter ended June 30, 2002 as compared to 89% for the quarter ended June 30, 2001. The decrease in cost of sales as a percentage of revenues was primarily due to higher sales prices of 36% and 57% for Omega's fish meal and fish oil, respectively.

*Selling, General, and Administrative Expenses.* Zapata's consolidated selling, general and administrative expenses decreased \$388,000 or 10% compared to the quarter ended June 30, 2001. This decrease was primarily due to Omega Protein's \$634,000 decrease in the provision for uncollectible insurance accounts receivable, partially offset by Omega's higher advertising and employee related costs in the current quarter ended June 20, 2002 as compared to the previous quarter ended June 30, 2001.

*Interest Income, Net.* Interest income decreased by \$533,000 for the quarter ended June 30, 2002 as compared to the quarter ended June 30, 2001. The decrease was primarily due to lower interest rates on cash and cash equivalents and short-term investments as compared to the previous quarter.

*Realized loss on non-investment grade securities.* The Company did not incur any realized losses on non-investment grade securities for the quarter ended June 30, 2002. For the quarter ended June 30, 2001, realized loss on non-investment grade securities was approximately \$10.0 million and consisted mainly of the write-down to market value of the non-investment grade debt held in the Company's available for sale portfolio.

*(Provision) benefit for Income Taxes.* The Company's consolidated provision for income taxes was \$1.2 million for the quarter ended June 30, 2002 as compared to a benefit of approximately \$1.2 million for the quarter ended June 30, 2001. The \$2.4 million swing from a provision to a benefit is primarily due to Omega Protein's generation of income during the current quarter as compared to a loss in the same quarter of the previous period.

### *Six Months Ended June 30, 2002 and 2001*

Zapata had consolidated net income of approximately \$2.4 million or \$1.02 per share for the six months ended June 30, 2002 compared to net loss of approximately \$11.1 million or \$4.65 per share for the six months ended June 30, 2001. The net income for this period was primarily due to net income at Omega Protein. Omega reported net income of \$5.7 million or \$0.23 per share as compared to a net loss of \$904,000 or \$0.04 per share for the same period of the previous year.

*Revenues.* For the six months ended June 30, 2002, Zapata's consolidated revenues increased approximately 33% from the six months ended June 30, 2001. The revenue increase was primarily due to higher sales prices of 18% and 68% for Omega Protein's fish meal and fish oil, respectively, along with a 16% increase in fish oil volume sold. Omega attributes the higher fish meal prices, fish oil prices and fish oil volumes to strong worldwide demand for fish meal and competing oil markets rebounding from historic low levels.

*Cost of Revenues.* Zapata's consolidated cost of revenues for the six months ended June 30, 2002 was \$37.3 million, a \$2.2 million increase from \$35.0 million for the six months ended June 30, 2001. Cost of sales primarily includes Omega Protein's direct fishing and processing costs. As a percent of revenues, cost of sales was 73% for the six months ended June 30, 2002 as compared to 92% for the six months ended June 30, 2001. The decrease in cost of sales as a percentage of revenues was primarily due to higher sales prices of 18% and 68% for Omega's fish meal and fish oil, respectively.

*Selling, General, and Administrative Expenses.* Zapata's consolidated selling, general and administrative expenses decreased \$240,000 or 4% compared to the six months ended June 30, 2001. This decrease resulted from eliminating expenses from Charged Productions, Inc. after the sale of that company in April of 2001, partially offset by Omega's higher advertising and employee related costs in the current six months ended June 20, 2002 as compared to the previous six months ended June 30, 2001.

*Contract Termination Settlement.* There were no contract termination settlements in the six months ended June 30, 2002. For the six months ended June 30, 2001, Zap.Com favorably settled disputes over two of its contracts which had been reserved for in the fourth quarter of 2000 in connection with the termination of Internet operations. Accordingly, Zap.Com reversed previous accruals of \$403,000 as income resulting from the settlement amounts being less than the associated accrued liabilities.



## Table of Contents

*Interest Income, Net.* Interest income decreased by \$1.3 million for the six months ended June 30, 2002 as compared to the six months ended June 30, 2001. The decrease was primarily due to lower interest rates on cash and cash equivalents and short-term investments as compared to the previous six months.

*Realized loss on non-investment grade securities.* The Company did not incur any realized losses on non-investment grade securities for the six months ended June 30, 2002. For the six months ended June 30, 2001, realized loss on non-investment grade securities was approximately \$10.9 million and consisted mainly of the write-down to market value of the non-investment grade debt held in the Company's available for sale portfolio.

*(Provision) benefit for Income Taxes.* The Company's consolidated provision for income taxes was \$2.5 million for the six months ended June 30, 2002 as compared to a benefit of approximately \$1.4 million for the six months ended June 30, 2001. The \$3.9 million swing from a provision to a benefit is primarily due to Omega Protein's generation of income during the current six month period as compared to a loss in the same six month period of the previous year.

### **Liquidity and Capital Resources**

Prior to Omega Protein's 1998 initial public offering, Zapata, as the sole stockholder of Omega Protein, moved cash between it and Omega Protein as each company had cash needs. As a result of the offering, Zapata and Omega Protein are now separate public companies. Similarly, since Zapata's distribution of Zap.Com shares to Zapata stockholders in November 1999, Zapata and Zap.Com are separate public companies. Accordingly, the capital resources and liquidity of Omega Protein and Zap.Com are legally independent of Zapata. The working capital and other assets of Omega Protein and Zap.Com are dedicated to their respective operations and are not expected to be readily available for the general corporate purposes of Zapata, except for any dividends that may be declared and paid to their respective stockholders. For the foreseeable future, Zapata does not expect to receive cash dividends on its Omega Protein or Zap.Com shares.

Zapata's current source of liquidity is its cash, cash equivalents and investments and the interest income it earns on its investments. Zapata expects these assets to continue to be a source of liquidity until it effects an acquisition. Zapata's investments consist of U.S. Government agency securities and cash equivalents. At June 30, 2002, the Company's consolidated cash, cash equivalents and U.S. Government agency securities were \$116.7 million (including \$27.1 million attributable to Omega Protein) as compared to \$96.4 million (including \$21.8 million attributable to Omega Protein) as of December 31, 2001. The increase in Zapata Corporation's cash, cash equivalents and U.S. Government agency securities was mainly attributable to Zapata's receipt of a federal income tax refund resulting from losses on the sales of the Company's non-investment grade securities and its investment in Viskase, combined with increased cash balances at Omega Protein, partially offset by cash paid for Zapata's corporate operating expenses.

In addition to its cash, cash equivalents, investments and interest income, Zapata has a potential secondary source of liquidity in its publicly traded securities of Omega Protein and Zap.Com. Zapata's holdings of Omega Protein and Zap.Com stock constitute "restricted stock" under SEC Rule 144 and may only be sold in the public market pursuant to an effective registration statement under the Securities Act of 1933 and under any required state securities laws or pursuant to an available exemption. These and other securities law restrictions could prevent or delay any sale by Zapata of these securities or reduce the amount of proceeds that might otherwise be realized therefrom.

Currently, all of Zapata's equity securities holdings are eligible for sale under Rule 144. Zapata also has demand and piggyback registration rights for its Omega Protein and Zap.Com shares and Zapata has registered with the SEC for resale 1,000,000 shares of Zap.Com common stock. As of the date of this report, it has not sold any of its Zap.Com shares and there is no assurance that it will or can sell these shares. Although Zap.Com is publicly traded, the market for its shares has to date been thin.

At June 30, 2002, Zapata had \$16.1 million in consolidated indebtedness, all of which was Omega Protein's indebtedness. Zapata has not guaranteed nor otherwise agreed to be liable for the repayment of this debt.

Zapata's liquidity needs are primarily for operating expenses, litigation and insurance reserves, possible stock repurchases and acquisitions. Zapata also intends to invest a significant portion of its cash assets in operating businesses as soon as practicable. To pay for or fund these acquisitions, Zapata may need to raise additional capital through the issuance of equity or debt. There is no assurance, however, that such capital will be available at the time, in the amounts necessary or with terms satisfactory to Zapata.

The following tables summarizes information about Zapata's consolidated contractual cash obligations and other commercial commitments (in thousands) as of June 30, 2002 and the effect such obligations are expected to have on its consolidated liquidity and cash flow in future periods:

[Table of Contents](#)

Zapata Consolidated Contractual Cash Obligations	Payments Due by Period				
	Total	Less than 1 year	1 to 3 years	4 to 5 years	After 5 Years
Long Term Debt	\$16,115	\$1,231	\$2,710	\$3,054	\$ 9,120
Operating Leases	2,364	668	1,115	230	351
Consulting Agreement	5,428	1,480	3,948	—	—
Minimum Pension Liability	5,918	—	—	—	5,918
<b>Total Contractual Cash Obligations</b>	<b>\$29,825</b>	<b>\$3,379</b>	<b>\$7,773</b>	<b>\$3,284</b>	<b>\$15,389</b>

Zapata Consolidated Other Commercial Commitments	Amount of Commitment Expiration Per Period				
	Total	Less than 1 year	1 to 3 years	4 to 5 years	After 5 Years
Credit Facility (1)	\$13,749	\$ —	\$—	\$—	\$—
Standby Letters of Credit	2,560	2,560	—	—	—
<b>Total Commercial Commitments</b>	<b>\$16,309</b>	<b>\$2,560</b>	<b>\$—</b>	<b>\$—</b>	<b>\$—</b>

(1) As of June 30, 2002, Omega had no outstanding borrowings outstanding under the \$20.0 million Credit Facility.

Because Zapata does not guarantee or otherwise assume any liability for Omega Protein or Zap.Com or have any investment commitments to either Omega Protein or Zap.Com, it is useful to separately review the cash obligations of Zapata exclusive of Omega and Zap.Com (“Zapata Corporate”). The following table summarizes information about Zapata Corporate’s contractual cash obligations (in thousands) as of June 30, 2002, and the effects such obligations are expected to have on Zapata Corporate’s liquidity and cash flow in future periods:

Zapata Corporate Contractual Cash Obligations	Payments Due by Period				
	Total	Less than 1 year	1 to 3 years	4 to 5 years	After 5 Years
Operating Leases	\$ 553	\$ 195	\$ 358	\$—	\$ —
Consulting Agreement	5,428	1,480	3,948	—	—
Minimum Pension Liability	201	—	—	—	201
<b>Total Contractual Cash Obligations</b>	<b>\$6,182</b>	<b>\$1,675</b>	<b>\$4,306</b>	<b>\$—</b>	<b>\$201</b>

Zapata’s management believes that these liabilities have no material impact on Zapata Corporate’s liquidity and capital resources. As of the date of this report, Zapata Corporate had no other commercial commitments which may impact its capital resources and liquidity.

In the absence of unforeseen developments, Zapata believes that it has sufficient liquidity to fund its operating expenses and other operational requirements at least for the 12 months following the date of this report.

**Summary of Cash Flows**

The following table summarizes Zapata’s consolidated cash flow information (in thousands):

Zapata Consolidated	Six Months Ended June 30, 2002	Six Months Ended June 30, 2001
<b>Cash provided by (used in)</b>		
Operating activities	\$ 25,112	\$ 7,958
Investing activities	(46,325)	37,267
Financing activities	(691)	(533)
<b>Net (decrease) increase in cash and cash equivalents</b>	<b>\$(21,904)</b>	<b>\$44,692</b>

## [Table of Contents](#)

### *Net cash provided by operating activities*

Consolidated cash provided by operating activities increased during the six months ended June 30, 2002 as compared to the same period in the prior year. The increase was primarily due to Zapata's receipt of a large income tax refund and Omega Protein's generation of net income during the current period.

### *Net cash (used in) provided by investing activities*

On a consolidated basis, the Company had net cash used in investing activities during the six months ended June 30, 2002 as compared to net cash provided by investing activities during the same period in the prior year. Variations in the Company's consolidated net cash (used in) provided by investing activities are typically the result of the change in the mix of cash and cash equivalents and short and long-term investments during the period. All highly liquid investments with original maturities of three months or less are considered to be cash equivalents and all investments with original maturities of greater than three months are classified as either short or long-term investments. Accordingly, the net cash usage was primarily due to the increase in purchases of short-term investments during the period as compared to the same period in the prior year, and the purchase of long-term investments during the current period.

### *Net cash used in financing activities*

Consolidated cash used in financing activities increased slightly during the six months ended June 30, 2002 as compared to the same period in the prior year. The modest increase was primarily due to an increase in Omega Protein's repayments of long-term obligations during the period as compared to the same period in the prior year.

Because Zapata's cash management activities are separate and distinct from those of Omega Protein and Zap.Com, it is useful to separately review Zapata Corporate's cash flows separately. The following table summarizes this cash flow information (in thousands):

<b>Zapata Corporate</b>	<b>Three Months Ended June 30, 2002</b>	<b>Three Months Ended June 30, 2001</b>
<b>Cash provided by (used in)</b>		
Operating activities	\$ 14,973	\$ (772)
Investing activities	(42,100)	37,437
Financing activities	—	—
Net (decrease) increase in cash and cash equivalents	<u>\$(27,127)</u>	<u>\$36,665</u>

### *Net cash used in (provided by) operating activities*

Zapata Corporate had net cash provided by operating activities during the six months ended June 30, 2002 as compared to net cash used in operating activities during the same period in the prior year. The change from net cash used in operating activities to net cash provided by operating activities was primarily due to the receipt of a large income tax refund during the current period.

### *Net cash (used in) provided by investing activities*

Zapata Corporate had net cash used in investing activities during the six months ended June 30, 2002 as compared to net cash provided by investing activities during the same period in the prior year. The change from net cash provided by investing activities to net cash used in investing activities was primarily due to an increase in purchases in short-term investments and a decrease in proceeds from maturities of short-term investments during the quarter as compared to the same period in the prior year, and the purchase of long-term investments during the current period.

### *Net used in financing activities*

Zapata Corporate had no cash provided by (used in) financing activities during the six months ended June 30, 2002 or June 30, 2001.

## Recent Accounting Pronouncements

In June 2002, the Financial Accounting Standards Board (“FASB”) issued SFAS No. 146, “Accounting for Exit or Disposal Activities.” SFAS No. 146 addresses significant issues regarding the recognition, measurement, and reporting of costs that are associated with exit and disposal activities, including restructuring activities that are currently accounted for pursuant to the guidance that the Emerging Issues Task Force (“EITF”) has set forth in EITF Issue No. 94-3, “Liability Recognition for Certain Employee Termination Benefits and Other Costs to Exit an Activity (including Certain Costs Incurred in a Restructuring).” The scope of SFAS No. 146 also includes (1) costs related to terminating a contract that is not a capital lease and (2) termination benefits that employees who are involuntarily terminated receive under the terms of a one-time benefit arrangement that is not an ongoing benefit arrangement or an individual deferred-compensation contract. SFAS No. 146 will be effective for exit or disposal activities that are initiated after December 31, 2002.

In April 2002, the FASB issued SFAS No. 145, which rescinds SFAS No. 4, “Reporting Gains and Losses from Extinguishment of Debt,” SFAS No. 44, “Accounting for Intangible Assets of Motor Carriers” and SFAS No. 64, “Extinguishments of Debt Made to Satisfy Sinking-Fund Requirements and amends SFAS No. 13, “Accounting for Leases.” This statement updates, clarifies and simplifies existing accounting pronouncements. As a result of rescinding SFAS No. 4 and SFAS No. 64, the criteria in Accounting Principles Bulletin No. 30 will be used to classify gains and losses from extinguishment of debt. This statement is effective for financial statements issued for fiscal years beginning after May 15, 2002. The Company does not expect the adoption of SFAS No. 145 to have a material impact on the Company’s financial position or its results of operations.

In October 2001, the FASB issued SFAS No. 144, “Accounting for the Impairment or Disposal of Long-Lived Assets.” SFAS No. 144 addresses the accounting model for long-lived assets to be disposed of by sale and resulting implementation issues. This statement requires that those long-lived assets be measured at the lower of carrying amount or fair value less cost to sell, whether reported in continuing operations or in discontinued operations. This statement is effective for financial statements issued for fiscal years beginning after December 15, 2001. The Company’s adoption of the provisions of SFAS No. 144 on January 1, 2002 did not have a material impact on the Company’s financial position or its results of operations.

## Critical Accounting Policies and Estimates

The discussion and analysis of Zapata’s financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with generally accepted accounting principles in the United States of America. The preparation of these financial statements requires management to make estimates and assumptions that affect amounts reported therein. The estimates that require management’s most difficult, subjective or complex judgments are described below. We believe that the critical judgments impacting the financial statements include:

- Litigation reserves,
- Valuation allowances for deferred income taxes,
- Benefit plan components,
- Omega’s deferral of off-season costs,
- Omega’s lower-of-cost-or-market inventory analysis, and
- Omega’s accounting for self-insurance retentions.

The establishment of litigation reserves requires judgments concerning the ultimate outcome of pending litigation against the Company and its subsidiaries. In applying judgment, management utilizes opinions and estimates obtained from outside legal counsel.

The Company reduces its deferred tax assets to an amount that it believes is more likely than not to be realized. In so doing, the Company estimates future taxable income in determining if any valuation allowance is necessary.

On a consolidated basis, the Company has three defined benefit plans, under which participants earn a retirement benefit based upon a formula set forth in each plan. The Company records income or expense related to these plans using actuarially determined amounts that are calculated under the provisions of SFAS No. 87, “Employers’ Accounting for Pensions.” Key assumptions used in the actuarial valuations include the discount rate and the anticipated rate of return on plan assets. These rates are based on market interest rates, and therefore fluctuations in market interest rates could impact the amount of pension income or expense recorded for these plans.

## Table of Contents

Inventory is stated at the lower of cost or market. Omega Protein's fishing season runs from mid-April to the first of November in the Gulf of Mexico and from the beginning of May into December in the Atlantic. Government regulations preclude Omega Protein from fishing during the off-seasons.

Omega Protein's inventory cost system considers all costs associated with an annual fish catch and its processing, both variable and fixed and including both costs incurred during the off-season and during the fishing season. Omega Protein's costing system allocates cost to inventory quantities on a per unit basis as calculated by a formula that considers total estimated inventoriable costs for a fishing season (including off-season costs) to total estimated fish catch and the relative fair market value of the individual products produced. Omega Protein adjusts the cost of sales, off-season costs and inventory balances at the end of each quarter based on revised estimates of total inventoriable costs and fish catch. Omega Protein's lower-of-cost-or-market-value analyses at year-end and at interim periods compare the total estimated per unit production cost of Omega's expected production to the projected per unit market prices of the products. The impairment analyses involve estimates of, among other things, future fish catches and related costs, and expected commodity prices for the fish products. These estimates, which management believes are reasonable and supportable, involve estimates of future activities and events which are inherently imprecise and for which actual results may differ.

During the off-seasons, in connection with the upcoming fishing seasons, Omega Protein incurs costs (i.e., plant and vessel related labor, utilities, rent and depreciation) that are directly related to Omega's infrastructure. These costs accumulate in inventory and are applied as elements of the cost of production of Omega Protein's products throughout the fishing season ratably based on Omega's monthly fish catch and the expected total fish catch for the season.

As mentioned previously, Omega Protein carries insurance for certain losses relating to its vessels and Jones Act liabilities for employees aboard its vessels (collectively, "Vessel Claims Insurance"). The typical Vessel Claims Insurance policy contains an annual aggregate deductible ("AAD") for which Omega remains responsible, while the insurance carrier is responsible for all applicable amounts which exceed the AAD. Omega Protein provides reserves for those portions of the AAD for which Omega remains responsible by using an estimation process that considers Omega Protein, Inc. specific and industry data as well as Omega Protein management's experience assumptions and consultation with outside counsel. Omega Protein management's current estimated range of liabilities related to such cases is based on claims for which Omega's management can estimate the amount and range of loss. Omega Protein has recorded the minimum estimated liability related to those claims, where there is a range of loss. As additional information becomes available, Omega will assess the potential liability related to its pending litigation and revise its estimates. Such revisions in estimates of the potential liability could materially impact Omega Protein's results of operation and financial position.

### **Item 3. Quantitative and Qualitative Disclosures about Market Risk**

The Company's investment policy is designed to continue to meet Zapata's liquidity needs by purchasing investment grade securities.

Zapata's investment grade securities include obligations of the U.S. Government or agencies thereof guaranteed by the U.S. Government, certificates of deposit and money market deposits. In addition, Omega Protein holds commercial paper with a rating of A-2 or P-2.

As of June 30, 2002, Zapata held \$87.5 million in investment grade securities. Changes in interest rates affect the investment income the Company earns on its investment grade securities and, therefore, impacts its cash flows and results of operations. Due to the short duration and conservative nature of these instruments, the Company does not believe that the value of these instruments have a material exposure to interest rate risk.

In the normal course of business, the financial condition of the Company is exposed to minimal market risk associated with interest rate movements on Omega Protein's borrowings. A one percent increase or decrease in the levels of interest rates on variable rate debt would not result in a material change to the Company's results of operations.

## **PART II. OTHER INFORMATION**

### **Item 1. Legal Proceedings**

A non-operating wholly-owned subsidiary of Zapata, Energy Industries, Inc., was named as a defendant in three cases commenced in 1996 and 1997 pending in the 83rd Judicial District Court of Upton County, Texas involving the death of one individual and personal injuries to two others. The cases resulted from an explosion and fire at a gas processing plant in Upton County caused by the failure of a valve cover. Zapata was named as a defendant in one of the cases. The owners of the plant have also filed a cross-claim against Energy Industries for property damage and lost profits resulting from the explosion and fire. Plaintiffs and the cross-plaintiff owners base their claim on a theory of manufacturing or design defect of the valve cover. Plaintiffs seek compensatory damages. Zapata and Energy Industries deny liability in each of the lawsuits, and have vigorously contested these matters and intend to vigorously defend against these actions. In January 2002, Zapata's primary insurance carrier for these lawsuits notified it that it did not believe that Zapata and Energy Industries had primary insurance coverage for the losses arising out of these incidents. The insurance carrier had been providing for the defense of these actions and had not reserved its rights with respect to that defense. Although the insurance carrier has disclaimed any obligation to indemnify Zapata or Energy Industries, it has agreed to continue providing a defense. Zapata has disputed the assertion that there is no primary insurance coverage. A loss of primary insurance coverage could jeopardize excess coverage that Zapata or Energy Industries has for these claims. These cases involve plaintiffs with very serious injuries, including death. While the results of any ultimate resolution of these lawsuits cannot be predicted, in the opinion of the Company's management, based upon discussions with defense counsel, any losses resulting from these matters will not have a material adverse effect on Zapata's results of operations, cash flow or financial position.

Zapata is involved in litigation relating to claims arising out of its past and current operations in the normal course of business. Zapata maintains insurance coverage against such potential ordinary course claims in an amount in which it believes to be adequate. While the results of any ultimate resolution cannot be predicted, in the opinion of Zapata's management, based upon discussions with counsel, any losses resulting from these matters will not have a material adverse effect on Zapata's results of operations, cash flow or financial position.

### **Environmental Matters**

The Company is subject to various possible claims and lawsuits regarding environmental matters. Management believes that costs, if any, related to these matters will not have a material adverse effect on the results of operations, cash flows or financial position of the Company.

### **Item 2. Changes in Securities**

None.

### **Item 3. Defaults upon Senior Securities**

None.

### **Item 4. Submission of Matters to a Vote of Security Holders**

The Company's Annual Meeting of Stockholders' was held on May 21, 2002. In connection with the Annual Meeting of Stockholders, the following are the results of the vote taken on the various matters presented to the Company's stockholders.

## Table of Contents

(1) All of the Board's nominees for directors were elected as follows:

	For	Withhold	No Vote
Class I Directors: Term ending 2005			
Darcie S. Glazer	2,108,887	233,449	48,513
Robert V. Leffler, Jr.	2,179,208	163,128	48,513

(2) The proposal to grant stock options to non-employee directors was passed with the following vote:

For	Against	Abstain	No Vote
2,070,372	265,374	6,589	48,514

(3) The proposal to ratify the appointment of PricewaterhouseCoopers LLP as independent auditors was passed with the following vote:

For	Against	Abstain	No Vote
2,313,211	25,611	3,515	48,514

(4) The shareholder proposal to recommend to the Board of Directors that the Company liquidate was rejected with the following vote:

For	Against	Abstain	No Vote
245,420	1,528,980	6,602	609,847

### **Item 5. Other Information**

None.

### **Item 6. Exhibits and Reports on Form 8-K**

(a) Exhibits:

- 3(e) Amended By-Laws of Zapata Corporation as amended March 1, 2002.
- 10(m) Consulting Agreement dated March 1, 2002 between Zapata and Malcolm I. Glazer.
- 11 Statement Regarding Computation of Per Share Earnings.
- 99.1 Certification of CEO and CFO Pursuant to 18 U.S.C Section 1350, as adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

(b) Reports on Form 8-K:

None.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

**ZAPATA CORPORATION**  
**(Registrant)**

Dated: August 14, 2002

By: /s/ Leonard DiSalvo

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(Vice President—Finance and Chief  
Financial Officer)



**AMENDED BY-LAWS  
OF  
ZAPATA CORPORATION  
(A Nevada Corporation)  
as amended March 1, 2002**

**ARTICLE I  
MEETINGS OF STOCKHOLDERS**

**Section 1. *Place of Meeting.*** All meetings of the stockholders of the Corporation shall be held at the principal office of the corporation or at any other place or places, within or without the State of Nevada, as may from time to time be fixed by the Board of Directors, or as shall be specified or fixed in the respective notices or waivers of notice thereof.

**Section 2. *Annual Meeting.*** The annual meeting of the stockholders of the Corporation for the election of directors and for the transaction of such other business as may come before the meeting shall be held on such date in each year and at such time as shall be designated by the Board of Directors and stated in the notice of the meeting.

**Section 3. *Special Meetings.*** A special meeting of the stockholders, or of any class thereof entitled to vote, for any purpose or purposes, unless otherwise prescribed by statute or by the Articles of Incorporation, may be called at any time by the Chairman of the Board of Directors or by order of the Board of Directors and shall be called by the Chairman of the Board of Directors or the Board of Directors upon the written request of stockholders holding of record at least 80% of the outstanding shares of stock of the Corporation entitled to vote at such meeting as of the date of such request. Such written request shall state the purpose or purposes for which such meeting is to be called. Business transacted at any such special meeting shall be limited to the purposes stated in the notice.

**Section 4. *Notice of Meetings.*** Except as otherwise expressly required by law, notice of each meeting of stockholders, whether annual or special, shall be given at least ten (10) days before the date on which the meeting is to be held, to each stockholder of record entitled to vote thereat by delivering a typewritten or printed notice thereof to each stockholder personally, or by mailing such notice in a postage prepaid envelope directed to each stockholder at such stockholder's address as it appears on the stock book of the Corporation. Every notice of a special meeting of the stockholders, besides stating the time and place of the meeting, shall state briefly the objects or purposes thereof. Notice of any adjourned meeting of the stockholders shall not be required to be given, except where expressly required by law.

**Section 5. *Record Date.*** The Board of Directors may fix, in advance, a date as the record date for the purpose of determining stockholders entitled to notice of, or to vote at, any meeting of stockholders, or stockholders entitled to receive payment of any dividend or the allotment of any rights, or in order to make a determination of stockholders for any other proper purpose. Such date, in any case, shall be not more than sixty (60) days, and in case of a meeting of stockholders not less than ten (10) days, prior to the date on which the particular action requiring such determination of stockholders is to be taken. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

**Section 6. *List of Stockholders.*** It shall be the duty of the Secretary or other officer of the Corporation who shall have charge of the stock ledger, either directly or through a transfer agent appointed by the Board, to prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at such meeting, arranged in alphabetical order. Such list shall be open to the examination of any stockholder at the place where said meeting is to be held for said ten (10) days, and shall be produced and kept at the time and place of the meeting during the whole time thereof, and subject to the inspection of any stockholder who may be present. The original or a duplicate stock ledger shall be the only evidence as to who are the stockholders entitled to examine such list or the books of the Corporation or to vote in person or by proxy at such meeting.

**Section 7. *Quorum.*** At each meeting of the stockholders, the holders of record of a majority of the issued and outstanding stock of the Corporation entitled to vote at such meeting, present in person or by proxy, shall constitute a quorum for the transaction of business, except where otherwise provided by the Corporation's Articles of Incorporation, By-Laws or by law. In the absence of a quorum, any officer entitled to preside at, or act as Secretary of such meeting, shall have the power to adjourn the meeting from time to time until a quorum shall be

constituted. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally called.

**Section 8. Voting at Meetings.** Any holder of shares of capital stock of the Corporation entitled to vote shall be entitled to vote each such share as provided in the Corporation's Articles of Incorporation or, in the case of Preferred Stock or Preference Stock, in the resolution of the Board of Directors authorizing the issuance thereof, either in person or by proxy executed in writing by him or by his duly authorized attorney in fact. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy. Each proxy shall be revocable unless expressly provided therein to be irrevocable and unless it is coupled with an interest sufficient in law to support an irrevocable power. Stockholders of the Corporation shall not have cumulative voting rights in the election of directors.

**Section 9. Manner of Conducting Meetings.** To the extent not in conflict with the provisions of law relating thereto or these By-Laws, all stockholder meetings must be conducted pursuant to such rules as may be adopted by the Chairman presiding at the meeting.

## ARTICLE II BOARD OF DIRECTORS

**Section 1. General Powers.** The property, business and affairs of the Corporation shall be managed by the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Articles of Incorporation or by these By-Laws directed or required to be exercised or done by the stockholders.

**Section 2. Number and Term of Office.** The number of directors that shall constitute the whole Board of Directors shall be fixed by, and may be increased or decreased from time to time by, the affirmative vote of a majority of the numbers at any time constituting the Board of Directors of the Corporation; provided that at no time shall the number of directors constituting the whole Board be less than three (3) directors. Each director shall hold office for the full term of office to which he shall have been elected and until his successor shall have been duly elected and shall qualify, or until his earlier death, resignation, retirement, disqualification or removal.

**Section 3. Place of Meetings.** The Board of Directors may hold its meetings, have one or more offices, and keep the books and records of the Corporation, at such place or places within or without the State of Nevada, as the Board may from time to time determine.

**Section 4. First Meeting.** After each annual election of directors and on the same day or as soon thereafter as convenient, the Board of Directors shall meet for the purpose of organization, the election of officers and the transaction of other business as may be appropriate. Notice of such meeting need not be given. Such meeting may be held at any other time or place as shall be specified in a notice given as hereinafter provided for special meetings of the Board of Directors or in a consent and waiver of notice thereof signed by all the directors.

**Section 5. Regular Meetings.** Regular meetings of the Board of Directors may be held without notice at such time and place as shall from time to time be determined by the Board.

**Section 6. Special Meetings.** Special meetings of the Board of Directors may be held at any time upon the call of the Chairman of the Board and Chief Executive Officer, the Secretary or any two directors of the Corporation. Notice shall be given, either personally or by mail or telegram at least twenty-four (24) hours before the meeting. Notice of the time, place and purpose of such meeting may be waived in writing before or after such meeting, and shall be equivalent to the giving of notice. Attendance of a director at such meeting shall also constitute a waiver of notice thereof, except where he attends and submits a writing to the Secretary stating that the purpose of his attendance is to object to the transaction of any business on the ground that the meeting is not lawfully called or convened.

**Section 7. Quorum.** A majority of the directors at the time in office present at any regular or special meeting of the Board of Directors shall constitute a quorum for the transaction of business; except that in no case shall a quorum be less than one-third of the total number of directors which constitute the authorized whole Board of Directors; and, except as otherwise required by statute, by the Articles of Incorporation or by these By-Laws, the act of a majority of the directors present at any such meeting at which a quorum is present shall be the act of the Board. In the absence of a quorum, a majority of the directors present may adjourn the meeting from time to time until a quorum shall be present. Notice of any adjourned meeting need not be given.

**Section 8. *Vacancies and Newly Created Directorships.*** Any vacancy that shall occur in the Board of Directors by reason of death, resignation, retirement, disqualification or removal or any other cause whatever, and newly created directorships resulting from any increase in the authorized number of directors, may be filled by a majority of the remaining directors (though less than a quorum), including the sole remaining director, and, except as otherwise provided by the Articles of Incorporation with respect to newly created directorships filled by the Board of Directors, each director so chosen shall hold office until the annual meeting at which the term of the class to which he shall have been elected expires and until his successor shall be duly elected and shall qualify, or until his earlier death, resignation, retirement, disqualification or removal.

**Section 9. *Committees.*** The Board of Directors may, by resolution passed by a majority of the directors in office, designate one or more committees, each committee to consist of two or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided by the Board, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; provided, however, that in the absence or disqualification of any member of such committee or committees, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Such committee or committee shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

**Section 10. *Action Without a Meeting.*** Unless otherwise restricted by the Articles of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if prior to such action a written consent thereto is signed by all members of the Board or of such committee as the case may be, and such written consent is filed with the minutes of proceedings of the Board or of such committee.

**Section 11. *Compensation of Directors.*** Directors, as such, shall not receive any stated salary for their services, but may be paid for their services such amounts as may be fixed from time to time by resolution of the Board. Expenses of attendance, if any, may be paid for attendance at each regular or special meeting of the Board. No such payments shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

**Section 12. *Required Vote of Directors For Certain Actions.*** Notwithstanding anything to the contrary in these By-Laws, the following actions shall require the vote of five (5) Directors: (a) any alteration, amendment or repeal of these By-Laws; (b) the issuance of, or the adoption of any agreement or plan for the issuance of, any stock, rights, or other securities (including, without limitation, securities convertible into or exchangeable or exercisable for stock of the Corporation) to the stockholders or any class thereof generally, any term of which is contingent upon or effective upon the acquisition by any person of any of or all of the Corporation's stock or upon any other action by any person with respect to such stock; (c) the creation of any committee of the Board of Directors; (d) the filling of vacancies on the Board of Directors or any committee thereof created by the death, resignation or removal of Avram A. Glazer or Bryan G. Glazer; or (e) any action to remove Avram A. Glazer or Bryan G. Glazer from any committee of the Board of Directors.

**Section 13. *Transactions Involving Interest of Directors.*** In the absence of fraud, no contract or other transaction of the corporation is affected or invalidated by the fact that any of the directors of the corporation are in any way interested in, or connected with, any other party to, such contract or transaction, provided that such transaction satisfies the applicable provisions of Chapter 78 of the Nevada Revised Statutes. Each and every person who becomes a director of the Corporation is hereby relieved, to the extent permitted by law, from any liability that might otherwise exist from contracting in good faith with the Corporation for the benefit of himself or herself or any person in which he or she may be in any way interested or with which he or she may be in any way connected. Any director of the Corporation may vote and act upon any matter, contract or transaction between the Corporation and any other person without regard to the fact that he or she is also a stockholder, director or officer of, or has any interest in, such other person.

### ARTICLE III OFFICERS

**Section 1. *Title, Number and Salaries.*** The officers of the Corporation shall be elected by the Board of Directors, and shall consist of a Chairman of the Board, Chief Executive Officer, President, Vice Presidents, a Secretary, a Treasurer and such Assistant Secretaries and Assistant Treasurers as the Board of Directors may from time to time designate, all of whom shall hold office until their successors are elected and qualified. Two or more offices, may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity. The salaries of the officers shall be determined by the Board of Directors or committee duly designated thereby, and may be altered from time to time except as otherwise provided by contract. All officers shall be entitled to be paid or reimbursed for all cost and expenditures incurred in the Corporation's business.

**Section 2. *Vacancies.*** Whenever any vacancies shall occur in any office by death, resignation, retirement, increase in the number of officers of the Corporation, or otherwise, the same shall be filled by the Board of Directors, and the officer so elected shall hold office until his successor is chosen and qualified.

**Section 3. *Removal.*** Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interests of the Corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

**Section 4. *Chairman of the Board.*** The Chairman of the Board shall preside at all meeting of the stockholders and directors, shall be ex officio a member of all standing committees to which he is not otherwise appointed, shall see that all orders and resolutions of the Board are carried into effect, and, subject to the directions of the Board, shall have general and active management of the business of the Corporation and shall perform such other duties as may from time to time be assigned to him by the Board.

**Section 5. *Chief Executive Officer and President.*** The Chief Executive Officer and President shall be the chief administrative officer of the Corporation, and subject to the provisions of SECTION 4 of this ARTICLE III, shall perform all the duties incident to the office of Chief Executive Officer and President of a corporation and, subject to the direction of the Board, shall have general and active management of the business of the Corporation and shall perform all duties incident to the office of Chief Executive Officer and President of a corporation and such other duties as may from time to time be assigned to him by the Board. At the request of the Chairman of the Board or of the Board, or in the absence or disability of the Chairman of the Board, the Chief Executive Officer and President shall have all the powers and perform all the duties of the Chairman of the Board.

**Section 6. *Vice Presidents.*** In the absence or disability of the Chairman of the Board, the Chief Executive Officer, the President, the Vice Presidents, in the order of their seniority, shall perform the duties and exercise the powers of the Chairman of the Board and Chief Executive Officer, other than as otherwise provided in the first sentence of SECTION 4 of this ARTICLE III.

**Section 7. *Secretary.*** It shall be the duty of the Secretary to attend all meetings of the stockholders and Board of Directors, to record correctly the proceedings had at such meetings in a book suitable for that purpose and to perform like duties for standing committees when required. It shall also be the duty of the Secretary to attest with his signature and the seal of the Corporation all stock certificates issued by the Corporation and to keep a stock ledger in which shall be correctly recorded all transactions pertaining to the capital stock of the Corporation. He shall also attest with his signature and the seal of the Corporation all deeds, conveyances or other instruments requiring the seal of the Corporation. The person holding the office of Secretary shall also perform, under the direction and subject to the control of the Board of Directors, such other duties as may be assigned to him. The duties of the Secretary may also be performed by any Assistant Secretary.

**Section 8. *Treasurer.*** The Treasurer shall keep such funds of the Corporation as may be entrusted to his keeping and account for the same. He shall be prepared at all times to give information as to the condition of the Corporation and shall make a detailed annual report of the entire business and financial condition of the Corporation. The person holding the office of Treasurer shall also perform, under the direction and subject to the control of the Board of Directors, such other duties as may be assigned to him. The duties of the Treasurer may also be performed by any Assistant Treasurer.

**Section 9. *Delegation of Authority.*** In the case of any absence of any officer of the Corporation or for any other reason that the Board may deem sufficient, the Board of Directors may delegate some or all of the powers or

duties of such officer to any other officer or to any director, employee, stockholder or agent for whatever period of time seems desirable, providing that a majority of the whole Board concurs therein.

**Section 10. *Transaction Involving Interest of Officer.*** In the absence of fraud, no contract or other transaction of the Corporation shall be affected or invalidated by the fact that any of the officers of the Corporation are in any way interested in, or connected with, any other party to such contract or transaction, or are themselves parties to such contract or transaction, provided that the transaction complies with the applicable provisions of Chapter 78 of the Nevada Revised Statutes. Each and every person who is or may become an officer of the Corporation is hereby relieved, to the extent permitted by law, when acting in good faith, from any liability that might otherwise exist from contracting with the Corporation for the benefit of such officer or any person in which he or she may be in any way interested or with which he or she may be in any way connected.

#### **ARTICLE IV INDEMNIFICATION AND INSURANCE**

**Section 1. *General Indemnification.*** Subject to the provisions of Section 3 of this Article IV, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the laws of the State of Nevada, as the same exist or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, against all costs, charges, expenses, liabilities and losses (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred or suffered by said person in connection with such action, suit or proceeding if he or she met standards of conduct which makes it possible under the applicable provisions of Chapter 78 of the Nevada Revised Statutes for the Corporation to indemnify said person, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful.

**Section 2. *Indemnification in Actions by or in the Right of the Corporation.*** Subject to the provisions of Section 3 of this Article IV, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the laws of the State of Nevada, as the same exist or may hereafter be amended, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees and amounts paid in settlement) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have failed to meet a standard of conduct which makes it permissible under the applicable provisions of Chapter 78 of the Nevada Revised Statutes for the Corporation to indemnify such person for the amount claimed.

**Section 3. *Determination of Standard of Conduct.*** Any indemnification under Sections 1 and 2 of this Article IV (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the director or officer is proper in the circumstances because he had met the applicable standard of conduct set forth in said Sections 1 and 2 and under Nevada law. Such determination shall be made (1) by the Board of Directors, by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such quorum is not obtainable or, even if obtainable and a quorum of disinterested directors so directs, by independent legal counsel (who may be counsel to the Corporation) in a written opinion, or (3) by the stockholders. Neither the failure of the Corporation (including the Board of Directors, independent legal counsel or its stockholders) to have made a determination before the commencement of such action that indemnification of the claimant is permissible under the circumstances because he or she has met such standards of conduct, nor an actual determination by the Corporation (including the Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such standards of conduct, shall be a defense to the action or create a presumption that the claimant has failed to meet such standards of conduct. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person failed to meet the standard of care under the applicable provisions of Chapter 78 of the Nevada Revised States.

**Section 4. *Successful Defense.*** If a director or officer of the Corporation has been successful on the merits or otherwise as a party to any action, suit or proceeding referred to in Sections 1 and 2 of this Article IV, or

with respect to any claim, issue or matter therein (to the extent that a portion of his expenses can be reasonably allocated thereto), he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

**Section 5. Expenses During Proceeding.** Expenses incurred in defending a civil, criminal, administrative or investigative action, suit or proceeding or threat thereof, may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director or officer to whom or on whose behalf any such amount is paid to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Corporation as authorized in this Article IV.

**Section 6. Exclusivity.** The indemnification provided by this Article IV shall not be deemed exclusive of any other rights to which any person indemnified may be entitled under any other By-Law, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office and shall continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 7. Insurance.** The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability under the provisions of this Article V or under Nevada Law.

**Section 8. Indemnification Agreement.** The Corporation may enter into agreements with any director, officer, employee, fiduciary or agent of the Corporation providing for indemnification to the full extent permitted by Nevada law.

**Section 9. Definitions.** For the purposes of this Article IV, references to "the Corporation" include all constituent corporations absorbed in a consolidation or merger as well as the resulting or surviving corporation so that any person who is or was a director or officer of such a constituent corporation or is or was serving at the request of such constituent corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise shall stand in the same position under the provisions of this Article IV with respect to the resulting or surviving corporation as he would if he had served the resulting or surviving corporation in the same capacity. For purposes of this Article IV, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the corporation" shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who met a standard of conduct under Nevada law and acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the corporation" as referred to in this Article IV.

## **ARTICLE V SHARES OF CAPITAL STOCK AND THEIR TRANSFER**

**Section 1. Certificates for Stock.** Every owner of stock of the Corporation shall be entitled to a certificate or certificates, to be in such form as the Board shall prescribe, certifying the number and class of shares of the capital stock of the Corporation owned by him. The certificates for the respective classes of such stock shall be numbered in the order in which they shall be issued and shall be signed in the name of the Corporation by the Chairman of the Board, or the Chief Executive Officer and President, or any Vice President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of the Corporation, and the seal of the Corporation shall be affixed thereto; provided, however, that, where such certificate is signed by a transfer agent or an assistant transfer agent or by a transfer clerk acting on behalf of the Corporation and a registrar, if the Board shall by Resolution so authorize, the signature of such Chairman of the Board, Chief Executive Officer and President, Vice President, Treasurer, Secretary, Assistant Treasurer or Assistant Secretary and the seal of the Corporation may be facsimile. In case any officer or officers of the Corporation who shall have signed, or whose facsimile signature or signatures shall have been used on, any such certificate or certificates shall cease to be such officer or officers, whether by reason of death, resignation, retirement or otherwise, before such certificate or certificates shall have been delivered by the Corporation, such certificate or certificates may nevertheless be adopted by the Corporation and be issue and delivered as though the person or persons who signed such certificate or certificates, or whose

facsimile signature or signatures shall have been affixed thereto, had not ceased to be such officer or officers. A record shall be kept by the Secretary, transfer agent or by any other officer, employee or agent designated by the Board of the name of the person, firm or corporation owning the stock represented by such certificates, the number and class of shares represented by such certificates, respectively, and the respective dates thereof, and in case of cancellation, the respective dates of cancellation. Every certificate surrendered to the Corporation for exchange or transfer shall be cancelled, and no new certificate or certificates shall be issued in exchange for any existing certificate until such existing certificate shall have been so cancelled, except in cases provided for in Section 5 of this Article V.

**Section 2. *Classes and Series of Classes of Stock.*** If the Corporation shall be authorized to issue more than one class of stock or more than one series of any class, the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate which the Corporation shall issue to represent such class or series of stock; provided that, in lieu of the foregoing requirements, there may be set forth on the face or back of the Certificate which the Corporation shall issue to represent such class or series of stock, a statement that the Corporation will furnish without charge to each stockholder who so requests the designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**Section 3. *Transfer of Stock.*** Transfers of shares of the capital stock of the Corporation shall be made only on the books of the Corporation by the registered holder thereof, or by his attorney thereunto authorized by power of attorney duly executed and filed with the Secretary of the Corporation, or with a transfer agent appointed as in Section 4 of this Article V provided, and on surrender of the certificate or certificates for such shares properly endorsed and the payment of all taxes thereon. The person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation; provided, however, that whenever any transfer of shares shall be made for collateral security, and not absolutely, such fact, if known to the Secretary of the Corporation, shall be so expressed in the entry of transfer.

**Section 4. *Regulations.*** The Board may make such rules and regulations as it may deem expedient, not inconsistent with the Articles of Incorporation or these By-laws, concerning the issue, transfer and registration of certificates for shares of the stock of the Corporation. It may appoint, or authorize any principal officer or officers to appoint, one or more Transfer Agents and one or more Registrars, and may require all certificates of stock to bear the signature or signatures of any of them.

**Section 5. *Lost, Destroyed or Mutilated Certificates.*** In case of loss, destruction or mutilation of any certificates of stock, another certificate or certificates may be issued in place thereof upon proof of such loss, destruction, or mutilation and upon the giving of a bond of indemnity to the Corporation in such form and in such sum as the Board may direct; provided, however, that a new certificate may be issued without requiring any bond when, in the judgment of the Board, it is proper so to do.

**Section 6. *Dividends.*** Dividends upon the capital stock of the Corporation, subject to the provisions of the Articles of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Articles of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE VI MISCELLANEOUS PROVISIONS

**Section 1. *Corporate Seal.*** The seal of the Corporation shall be circular in form with the words "Corporate SEAL Nevada" in the center and the name of the Corporation around the margin thereof.

**Section 2. *Fiscal Year.*** The fiscal year of the Corporation shall end at the close of business on the 31st day of December in each year.

**Section 3. Annual Reports.** The Board of Directors shall present at each annual meeting of the stockholders a full report of the business and condition of the Corporation.

**Section 4. Execution of Contracts.** The Board may authorize any officer or officers, agent or agents, or attorney or attorneys, to enter into any contract or execute and deliver any instrument in the name and on behalf of the Corporation, and such authority may be general or confined to specific instances; and, unless so authorized by the Board or expressly authorized by these By-Laws, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or other engagement or to pledge its credit or to render it liable pecuniarily for any purpose or in any amount.

**Section 5. Loans.** No loan shall be contracted on behalf of the Corporation, and no negotiable paper shall be issued in its name, unless authorized by the Board or by a committee of the Board to whom the Board has delegated such power.

**Section 6. Checks, Drafts, Etc.** All checks, drafts, bills, notes and other negotiable instruments and orders for the payment of money issued in the name of the Corporation, shall be signed by such officer or officers, employee or employees, agent or agents, of the Corporation and in such manner as shall from time to time be determined by resolution of the Board.

**Section 7. Deposits.** All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks, trust companies or other depositories as the Board may designate, or as may be designated by any officer or officers, agent or agents, or attorney or attorneys, of the Corporation to whom power in that respect shall have been delegated by the Board. For the purpose of deposit and for the purpose of collection for the account of the Corporation, the Chairman of the Board and Chief Executive Officer and President, or any Vice President, or the Treasurer (or any other officer or agent or employee or attorney of the Corporation to whom such power shall be delegated by the Board) may endorse, assign and deliver checks, drafts and other orders for the payment of money which are payable to the order of the Corporation.

**Section 8. General and Special Bank Accounts.** The Board may from time to time authorize the opening and keeping of general and special bank accounts with such banks, trust companies or other depositories as it may designate or as may be designated by any officer or officers, agent or agents, or attorney or attorneys, of the Corporation to whom power in that respect shall have been delegated by the Board. The Board may make such special rules and regulations with respect to such bank accounts, not inconsistent with the provisions of these By-laws, as it may deem expedient.

**Section 9. Offices.** The Corporation may have an office or offices at such other place or places, either within or without the State of Nevada, as the Board of Directors may from time to time determine or as shall be necessary for the conduct of business of the Corporation.

## **ARTICLE VII AMENDMENTS**

All By-Laws of the Corporation shall be subject to alteration or repeal, and new By-Laws shall be adopted, either by the affirmative votes of the holders of record of 80% or more of the issued and outstanding stock of the Corporation entitled to vote in respect thereof, given at any annual or special meeting, or by the vote provided for in Section 12 of Article II hereof given at any regular or special meeting of the Board of Directors, provided that notice of the proposal so to alter or repeal or to make such By-Laws be included in the notice of such meeting of the stockholders or the Board, as the case may be. By-Laws, whether made or altered by the stockholders or by the Board of Directors, shall be subject to alteration or repeal by the stockholders by the vote herein above specified.



**ARTICLE VIII  
INTERPRETATION**

Reference in these By-Laws to any provision of Chapter 78 of the Nevada Revised Statutes shall be deemed to include all amendments thereto and the effect of the construction and determination of validity thereof of the Nevada Supreme Court.

I HEREBY CERTIFY that the foregoing is a full, true and correct copy of the Amended Bylaws of Zapata Corporation, a Nevada corporation, as in effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name as of March 1, 2002.

/s/ Gordon E. Forth

\_\_\_\_\_  
Gordon E. Forth, Secretary

## CONSULTING AGREEMENT

This **CONSULTING AGREEMENT** (“**Agreement**”), made and entered into as of the 1st day of March, 2002 (the “**Effective Date**”) and between Zapata Corporation (“Zapata”), a Nevada corporation with an address of 100 Meridian Centre, Rochester, New York 14618, and Malcolm I. Glazer (“Glazer”), who has an address of 1482 South Ocean Boulevard, Palm Beach, Florida 33480.

WITNESSETH:

**WHEREAS**, Glazer served as Chairman of the Board of Zapata from July, 1994 to the Effective Date, when he retired from such position;

**WHEREAS**, Glazer possesses executive skills and leadership experience which Zapata is desirous of calling upon from time to time during the forty-eight months following such retirement; and

**WHEREAS**, Glazer is willing to provide his skills and the benefit of his experience, from time to time, to Zapata as a consultant over such forty-eight-month period;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, Zapata and Glazer covenant and agree as follows:

1. **Engagement as Consultant.** Zapata hereby engages Glazer as a consultant effective as of the Effective Date, and Glazer hereby accepts such engagement in accordance with the terms and conditions hereinafter set forth.

2. **Consulting Duties.** The Chief Executive and/or the Chairman of the Board of Directors may from time to time request Glazer to furnish services as a consultant and advisor. Such services shall include consultation with Zapata’s Chairman of the Board and Chief Executive Office, upon request, concerning the management and overall policy and strategic direction of Zapata and the financial consequences thereof and consultation and advice with respect to special projects designated from time to time by the Chairman of the Board and Chief Executive Officer of Zapata, including but not limited to, possible acquisitions, mergers, divestitures and capital raising and financing transactions. Glazer shall not be required to hold himself available for consulting services at any fixed time, but shall be available on a reasonable basis. Glazer’s presence shall not be required at any particular office or place in order to render his consulting services unless such services could not reasonably be performed in another location or by telephone or letter.

3. **Term of Consulting Engagement.** Subject to Section 9 below, the term of Glazer’s consulting engagement shall be from the Effective Date until April 30, 2006 (the “**Consulting Period**”).

4. **Compensation.** Subject to the terms of this Agreement, in consideration for Glazer’s agreements contained herein, during the Consulting Period Zapata shall pay Glazer compensation of One Hundred Twenty Two Thousand Five Hundred Dollars (\$122,500) per month without deduction for federal, state and local taxes. Zapata shall pay Glazer in such intervals as it pays its executive officers. In addition, during the Consulting Period, Glazer shall also be entitled to such perquisites (including expense reimbursement and transportation) as are made available to executive officers of Zapata in accordance with Zapata’s policies and practices.

5. **Stock Options.** Zapata acknowledges that Glazer is the holder of options to purchase up to 2,000 shares of Zapata common stock at an exercise price of \$59.375 per share under its 1987 Special Incentive Plan (the “**1987 Plan Options**”), and options to purchase up to 32,500 shares of Zapata common stock (the “**1996 Plan Options**”) at an exercise price of \$46.250 per share under its Amended and Restated 1996 Long-Term Incentive Plan. In consideration of Glazer’s willingness to enter into this Agreement and to perform his obligations and provide the services referred to in this Agreement, the Compensation Committee of Zapata’s Board of Directors has authorized by all appropriate corporate action the continuance of the 1996 Plan Options held by Glazer for the remaining term of such options. Glazer acknowledges that the 1987 Plan Options must be exercised by May 30, 2002, otherwise they will terminate and be of no further force or effect after such date.

6. **Health Benefits.** During the Consulting Period, Zapata shall continue to provide Glazer and his spouse with the same medical and other health benefits as it provides to Glazer and his spouse as of the Effective Date, provided that, Zapata may change the benefits offered to Glazer and his spouse in Zapata's discretion if such change (a) is effected for executive officers of Zapata, or (b) is reasonably required by Zapata and does not materially change the benefits offered to Glazer and his spouse.

7. **Confidential Information.** During the Consulting Period and thereafter, Glazer will not directly or indirectly (without Zapata's prior written consent) use for himself or use for, or disclose to, any party other than Zapata or its subsidiaries any secret or confidential or proprietary information or data relating to the business of Zapata or its subsidiaries or any such information or data with respect to businesses being investigated by Zapata for acquisition.

8. **Indemnification, etc.**

(a) Zapata agrees that Glazer's existing rights, in his capacity as an officer, director or employee of the Company, to indemnification and advancement of expenses, as such rights currently exist under Zapata's Articles of Incorporation, by-laws, resolutions, and any other agreement or document binding on Zapata, shall not be diminished or reduced in any respect following the date of this Agreement.

(b) Zapata will continue to maintain, for a period of at least six (6) years following the date of this Agreement, Zapata's directors and officers liability insurance covering Glazer in his capacity as a former director, officer and employee of Zapata, at the highest coverage level then currently maintained for any of its then current officers or directors.

(c) Zapata agrees to indemnify, protect, defend and hold Glazer and his estate, heirs, and personal representatives, harmless from and against any actual or threatened action, suit or proceeding, whether civil, criminal, administrative or investigative (hereinafter a "**proceeding**"), and all losses, liabilities, damages and expenses, including reasonable attorney's fees incurred by counsel reasonably designated or approved by him, in connection with this Agreement or his services hereunder, provided that any consulting services giving rise to such indemnification shall have been performed by Glazer in good faith and, to the best of his knowledge, in a lawful manner. Zapata shall pay or reimburse Glazer for all costs and expenses, including, without limitation, court costs and attorneys' fees, incurred by Glazer as a result of any claim, action or proceeding (including, without limitation, a claim, action or proceeding by Glazer against Zapata arising out of, or challenging the validity or enforceability of, this Agreement or any provision hereof) and shall advance such expenses if Glazer undertakes to repay such amounts if it is ultimately determined that Glazer is not entitled to be indemnified under Nevada law.

(d) The provisions of this Section 8 are independent covenants of Zapata and are in consideration of Glazer's separation from Zapata as well as his willingness to enter into this Agreement and to perform the obligations and provide the services referred to herein, and Zapata's obligations under this Section 8 shall survive and be applicable notwithstanding any other event or circumstance affecting any of Zapata's obligations under this Agreement.

9. **Termination.**

(a) If Glazer should die or become permanently disabled before the expiration of the Consulting Period, then the Consulting Period shall end on the date of his death or permanent disability, and Zapata shall pay to Glazer's estate or to Glazer or his legal guardian, as applicable, any accrued but unpaid amounts due hereunder.

(b) Zapata may terminate the Consulting Period at any time for Cause, in which event no further payments shall be made hereunder and Glazer shall not be entitled to any further benefits hereunder. For purposes of this Agreement, "Cause" shall mean Glazer's dishonesty, commission of a felony or willful unauthorized disclosure of confidential information of Zapata.

10. **Relationship Between the Parties.**

(a) The relationship of Glazer to Zapata during the term of this Agreement shall be solely that of independent contractor. Consequently, Glazer shall have no authority and shall not assume to act for or on behalf of Zapata without its express written approval.

(b) Glazer is solely responsible for the payment of all taxes and the filing of all tax returns and reports with respect to the amounts paid to Glazer under Section 4 hereof, and Glazer agrees to indemnify Zapata, its

officers and directors for any liability imposed on them or each of them arising out of any failure by him to pay such taxes or to file any such returns at any time.

11. **Successors.**

(a) This Agreement is personal to Glazer and without the prior written consent of Zapata shall not be assignable by Glazer otherwise than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by Glazer's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon Zapata and its respective successors and assigns.

(c) Zapata shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of its respective businesses and/or assets to assume expressly and agree to perform this Agreement in the same manner and to the same extent that Zapata would be required to perform it if no such succession had taken place. As used in this Agreement, the "Zapata" shall mean Zapata, as hereinbefore defined and any successor to its respective businesses and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law, or otherwise.

12. **Nonwaiver of Rights.** The failure to enforce at any time any of the provisions of this Agreement or to require at any time performance by the other party of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or to affect either the validity of this Agreement, or any part hereof, or the right of either party thereafter to enforce each and every provision in accordance with the terms of this Agreement.

13. **Invalidity of Provisions.** In the event that any provision of this Agreement is adjudicated to be invalid or unenforceable under applicable law, the validity and enforceability of the remaining provisions shall be unaffected. To the extent that any provision of this Agreement is adjudicated to be invalid or unenforceable because it is overbroad, that provision shall not be void but rather shall be limited only to the extent required by applicable law and enforced to the maximum extent allowed under such law.

14. **Governing Law and Choice of Forum.** This Agreement shall be interpreted in accordance with and governed by the laws of the State of New York. Any actions or proceedings arising out of or relating, directly or indirectly, to this Agreement shall be filed and litigated exclusively in any state or federal court located in the County of Monroe County, New York.

15. **Amendments.** No modification, amendment or waiver of any of the provisions of this Agreement shall be effective unless agreed to in writing by the parties hereto.

16. **Notices.** Any notice to be given by either party hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed, certified or registered mail, postage prepaid at the addresses first set forth in the beginning of this Agreement or to such other address as may have been furnished to the other party by written notice.

17. **Counterparts.** This Agreement may be executed in one or more counterparts all of which together shall be treated as a single agreement.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed and unconditionally delivered as of the first date set forth above.

ZAPATA CORPORATION

By: /s/ Leonard DiSalvo

Name: Leonard DiSalvo  
Title: Vice President-Finance and Chief Financial Officer

/s/ Malcolm I Glazer

Malcolm I. Glazer

## STATEMENT REGARDING COMPUTATION OF PER SHARE EARNINGS

## ZAPATA CORPORATION

## Statement Regarding Computation of Per Share Earnings

	Three Months Ended June 30, 2002	Three Months Ended June 30, 2001
Net income (loss) (in thousands)	\$1,218	\$ (9,946)
Actual outstanding common shares at beginning of period	2,391	23,889
Effect of ten-for-one reverse stock split	—	(21,500)
Other adjustments	—	2
Weighted average common shares outstanding – basic	2,391	2,391
Net income (loss) per share — basic	\$ 0.51	\$ (4.16)
Dilutive effect of outstanding options	5	—
Weighted average common shares outstanding – diluted	2,396	2,391
Net income (loss) per share — diluted	\$ 0.51	\$ (4.16)
	Six Months Ended June 30, 2002	Six Months Ended June 30, 2001
Net income (loss) (in thousands)	\$2,442	\$ (11,104)
Actual outstanding common shares at beginning of period	2,391	23,889
Effect of ten-for-one reverse stock split	—	(21,500)
Other adjustments	—	1
Weighted average common shares outstanding – basic	2,391	2,390
Net income (loss) per share — basic	\$ 1.02	\$ (4.65)
Dilutive effect of outstanding options	4	—
Weighted average common shares outstanding – diluted	2,395	2,390
Net income (loss) per share — diluted	\$ 1.02	\$ (4.65)

**CERTIFICATION OF CEO AND CFO PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED  
PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Zapata Corporation (the "Company") on Form 10-Q for the period ending June 30, 2002 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), Avram A. Glazer, as Chief Executive Officer of the Company, and Leonard DiSalvo, as the Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 to the best of his knowledge, that:

- (1) The Report fully complies with the requirements of Section 13(a) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Avram A. Glazer

Avram A. Glazer

Chairman of the Board, President and Chief Executive Officer

August 14, 2002

/s/ Leonard DiSalvo

Leonard DiSalvo

Vice President – Finance and Chief Financial Officer

August 14, 2002

This Certification accompanies this Report pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 and shall not be deemed filed by the Company for purposes of Section 18 of the Securities Exchange Act of 1934, as amended.