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October 28, 2009

By ECF

The Honorable Thomas C. Platt,
United States District Judge,
United States District Court
Eastern District of New York,
Alfonse M. D'Amato United States Courthouse,
100 Federal Plaza,
Central Islip, New York 11722.

Re: *Computer Associates International, Inc., Derivative Litigation,*
04 Civ. 2697 (TCP) (ETB)

Dear Judge Platt:

We are counsel for CA, Inc. ("CA") and the Special Litigation Committee (the "SLC") of CA's Board of Directors, and we write to renew the April 13, 2007 motion, made by CA through its SLC, to dismiss certain claims and to re-align CA as plaintiff with respect to certain other claims in this action. The motion was denied by the Court on October 29, 2007 "without prejudice to renew following an expected decision by the Court of Appeals for the Second Circuit" on "the Wyly and Ranger Governance appeals of this Court's denial of their 60(b) motions" in *Federman v. Artzt et al.*, 03 Civ. 4199 (TCP) (ETB). (Docket No. 202.) That decision, annexed hereto as Exhibit A, has now been rendered by the United States Court of Appeals for the Second Circuit (the "Second Circuit"), and that Court's Mandate issued on October 26, 2009.

On July 23, 2009, the Second Circuit issued a Summary Order affirming this Court's August 2, 2007 decision in *Federman* and holding that Ranger Governance, Ltd. ("Ranger") lacked standing to bring a motion under Rule 60(b), Fed. R. Civ. P. (Exhibit A at 5-6.) The Second Circuit also ruled that CA's efforts to pursue claims in the instant action would not be adversely affected by this Court's denial of Ranger's Rule 60(b) motion in *Federman*:

The Honorable Thomas C. Platt

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[N]o action taken by the district court or by us, so far as we are aware, prevents Computer Associates from renewing its motion to realign or seeking to pursue a claim in [the instant action]. If Computer Associates renews its motion to realign, the court should then consider the merits of permitting realignment and permitting the corporation to pursue or dismiss various claims, consistent with the best interests of the shareholders.

(*Id.* at 7.)

Consistent with the Second Circuit's decision, CA and its SLC hereby renew the fully briefed motion to dismiss and re-align.¹ Accordingly, the company and its SLC respectfully request that the Court enter an Order (a proposed version of which is annexed hereto as Exhibit B):

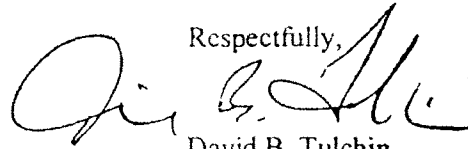
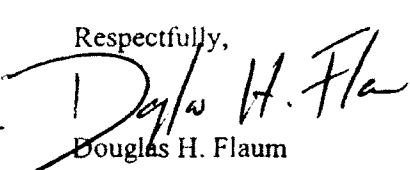
- (1) dismissing with prejudice CA's claims against Senator Alfonse D'Amato, Kenneth Cron, Gary Fernandes, Richard Grasso, Robert La Blanc, Jay Lorsch, Michael McElroy, Roel Pieper, Lewis Ranieri, Walter Schuetze, Willem de Vogel, KPMG LLP and Ernst & Young LLP;
- (2) re-aligning CA as plaintiff so that the company can settle its claims against Russell Artzt, David Kaplan, Sanjay Kumar, Charles McWade, Stephen Richards, David Rivard, Lloyd Silverstein, Steven Woghin and Ira Zar; and
- (3) re-aligning CA as plaintiff so that the company can prosecute its claims against Charles Wang and Peter Schwartz.

¹ For the Court's convenience, the docket numbers for all of the briefing on the motion are as follows: (1) motion papers (Docket Nos. 181-84, 196-97); (2) opposition papers (Docket Nos. 185-86, 188-95); and (3) reply papers (Docket No. 187).

The Honorable Thomas C. Platt

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Should the Court wish to discuss the renewed motion or any other matter, we would be pleased to answer any questions.

Respectfully,	Respectfully,
	
David B. Tulchin	Douglas H. Flaum
<i>Counsel for CA</i>	<i>Counsel for the SLC</i>

(Attachments)

cc: Counsel on the attached service list (by ECF and e-mail)

SERVICE LIST

<p>Luke McGrath Bickel & Brewer 767 Fifth Avenue, 50th Floor New York, New York 10153 lzm@bickelbrewer.com <i>Attorneys for Ranger Governance, Ltd.</i></p>	<p>Vincent A. Sama Winston & Strawn LLP 200 Park Avenue New York, New York 10016 vsama@winston.com <i>Attorneys for Charles Wang</i></p>
<p>Henry Putzel III Law Offices of Henry Putzel 565 Fifth Avenue New York, New York 10017 hputzel@earthlink.net <i>Attorneys for Peter Schwartz</i></p>	<p>Andrew M. Lawler Andrew M. Lawler, P.C. 641 Lexington Avenue, 27th Floor New York, New York 10022 alawler@amlpc.com <i>Attorneys for Ira Zar</i></p>
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<p>Lee Squitieri Squitieri & Fearon, LLP 32 East 57th Street, 12th Floor New York, New York 10022 lee@sfcslaw.com <i>Attorneys for Bert Vladimir</i></p>	<p>Joseph N. Campolo The Campolo Law Firm, P.C. 64 Smithtown Boulevard Smithtown, New York 11787 joe@campololawfirm.com <i>Attorneys for Lloyd Silverstein</i></p>
<p>Philip C. Patterson DeFeis O'Connell & Rose, P.C. 500 Fifth Avenue, 26th Floor New York, New York 10110 pcp@dorlaw.com <i>Attorneys for Michael A. McElroy</i></p>	<p>Fred P. Hafetz Hafetz & Necheles 500 Fifth Avenue, 29th Floor New York, New York 10110 fph@hafetzlaw.com <i>Attorneys for Charles P. McWade</i></p>
<p>Lewis J. Liman Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, New York 10006 lliman@cgsh.com <i>Attorneys for Kenneth D. Cron, The Honorable Alfonse M. D'Amato, Gary Fernandes, Robert E. La Blanc, Jay W. Lorsch, Lewis S. Ranieri and Walter P. Schuetze</i></p>	<p>David Meister Clifford Chance US LLP 31 West 52nd Street New York, New York 10019 david.meister@cliffordchance.com <i>Attorneys for David Rivard</i></p>
<p>Joseph Patrice Lankler, Siffert & Wohl LLP 500 Fifth Avenue, 33rd Floor New York, New York 10110 jpatrice@lswlaw.com <i>Attorneys for David Kaplan</i></p>	<p>Mitchell Karlan Gibson, Dunn & Crutcher LLP 200 Park Avenue, 47th Floor New York, New York 10166 mkarlan@gibsondunn.com <i>Attorneys for KPMG LLP</i></p>

MANDATE

EDNY/CINY
03-CV-4199
BOYLE
PLATT

07-3673-cv (L); 07-3675-cv (L); 07-3674-cv (L)
Federman v. Artzt; Barroway v. Computer Assocs.; In re Computer Assoc. 2002

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 **SUMMARY ORDER**

4 RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED
5 AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND
6 FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT
7 CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION
8 MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)."
9 UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE
10 WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE
11 PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER
12 WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE
13 AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT
14 DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

15 At a stated term of the United States Court of Appeals for the
16 Second Circuit, held at the Daniel Patrick Moynihan United States
17 Courthouse, 500 Pearl Street, in the City of New York, on the
18 23rd day of July, two thousand nine.

19 PRESENT:

20 JOHN M. WALKER, JR.,
21 ROBERT D. SACK,
22 Circuit Judges,
23 JOHN G. KOELTL,*
24 District Judge.



25 -----
26 CHARLES FEDERMAN, Derivatively on
27 Behalf of Nominal Defendant,
28 Plaintiff,

29 BERT VLADIMIR and IRVING ROSENZWEIG,
30 Movants,

31 RANGER GOVERNANCE, LTD.,
32 derivatively on behalf of Computer
33 Associates International, Inc.,
34 Movant-Appellant-Cross-Appellee

No. 07-3673-cv (L),
07-4022-cv (CON),
07-4904-cv (XAP);
07-3675-cv (L),
07-4020-cv (CON);
07-3674-cv (L),
07-4024-cv (CON)

* The Honorable John G. Koeltl, District Judge of the
United States District Court for the Southern District of New
York, sitting by designation.

ISSUED AS MANDATE: OCT 26 2009

1 - v -

2 RUSSELL M. ARTZT, WILLIAM F.P. DE
3 VOGEL, RICHARD GRASSO, LEWIS S.
4 RANIERI, ALFONSE M. D'AMATO, SHIRLEY
5 STRUM KENNY, SANJAY KUMAR, ROEL
6 PIEPER, and CHARLES B. WANG,
7 Defendants-Appellees-Cross
8 Appellees,

9 COMPUTER ASSOCIATES INTERNATIONAL,
10 INC.,
11 Defendant-Appellee-Cross Appellant,

12 SPECIAL LITIGATION COMMITTEE OF THE
13 BOARD OF DIRECTORS OF COMPUTER
14 ASSOCIATES INTERNATIONAL, INC.,
15 Respondent.

16 IN TANDEM WITH

17 SAM WYLY, and OTHER WYLY MOVANTS,
18 Movants-Appellants,

19 - v -

20 COMPUTER ASSOCIATES INTERNATIONAL,
21 INC., CHARLES B. WANG, SANJAY KUMAR,
22 and RUSSELL M. ARTZT,
23 Defendants-Appellees,

24 ANDREW L. BARROWAY, on behalf of
25 himself and others similarly
26 situated, Plaintiffs' Co-Lead
27 Counsel,
28 Plaintiffs,

29 STEVEN SINSHEIMER, on behalf of
30 himself and all others similarly
31 situated, FELIX GLAUBACH, on behalf
32 of himself and all others similarly
33 situated, JERRY WEHMHOFER, on
34 behalf of himself and all others
35 similarly situated, JOHN J. GRECO,
36 on behalf of himself and all others
37 similarly situated, LILLIAN

1 HERSCHKOWITZ, and BRUCE MONTAGUE,
2 Consolidated-Plaintiffs,

3 IRA H. ZAR, ALFONSE M. D'AMATO, JAY
4 W. LORSCH, LEWIS S. RANIERI, and
5 WALTER P. SCHUETZE,
6 Defendants,

7 SEYMORE PIENKNY, SPECIAL LITIGATION
8 COMMITTEE OF THE BOARD OF DIRECTORS,
9 Respondents.

10 IN TANDEM WITH

11 WYLY MOVANTS,
12 Movants-Appellants,

13 - v -

14 CHARLES FEDERMAN, Derivatively on
15 Behalf of Nominal Defendant,
16 COMPUTER ASSOCIATES INTERNATIONAL,
17 INC.,
18 Plaintiff-Appellee,

19 SANJAY KUMAR and CHARLES B. WANG
20 Defendants-Appellees,

21 RUSSELL M. ARTZT, WILLIAM F.P. DE
22 VOGEL, RICHARD GRASSO, LEWIS S.
23 RANIERI, ALFONSE M. D'AMATO, SHIRLEY
24 STRUM KENNY, and ROEL PIEPER,
25 Defendants,

26 SPECIAL LITIGATION COMMITTEE OF THE
27 BOARD OF DIRECTORS OF COMPUTER
28 ASSOCIATES INTERNATIONAL INC.,
29 Respondent.
30 -----

31 Appearing for Appellant: James S. Renard, Bickel & Brewer
32 (William A. Brewer III, Luke A.
33 McGrath, of counsel), New York, NY.

34 Appearing for Appellee
35 Computer Associates

1 International, Inc.: David B. Tulchin, Sullivan &
2 Cromwell LLP (Tracy Richelle High,
3 William B. Monahan, of counsel),
4 New York, NY.

5 Appearing for Appellee
6 Charles B. Wang: Linda T. Coberly, Winston & Strawn
7 LLP (Vincent A. Sama, Adam J.
8 Schlatner, Kara L. Gorycki, Ari E.
9 Waldman, of counsel), Chicago IL
10 and New York, NY.

11 Appearing for Appellees
12 Willem F.P. de Vogel,
13 Shirley Strum Kenny, and
14 Roel Pieper: Lawrence O. Kamin, Willkie Farr &
15 Gallagher LLP (Deirdre N. Hykal,
16 David A. Benner, of counsel), New
17 York, NY.

18 Appearing for Appellee
19 Richard Grasso: William P. Ashworth, Williams &
20 Connolly LLP (Steven M. Farina, of
21 counsel), Washington, DC.

22 For Appellees Alfonse M.
23 D'Amato, Lewis S. Ranieri,
24 and Walter P. Schuetze: Lewis J. Liman, Cleary Gottlieb
25 Steen & Hamilton LLP, New York, NY.

26 Appeal from orders of the United States District Court for
27 the Eastern District of New York (Thomas C. Platt, Judge).

28 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED AND
29 DECREED that the judgment of the district court be, and it hereby
30 is, AFFIRMED.

31 The appellants appeal from the district court's denial of
32 their motions for relief pursuant to Federal Rule of Civil
33 Procedure 60(b). Computer Associates International, Inc.
34 ("Computer Associates") cross-appeals from the district court's
35 denial of its motion to clarify or amend its August 2, 2007
36 order. We assume the parties' familiarity with the underlying
37 facts and procedural history of the cases, and the issues on
38 appeal.

39 All three of the appeals before us involve Rule 60(b)
40 motions for relief from a 2003 global settlement of the present

1 litigation that, inter alia, barred Computer Associates and its
2 shareholders from thereafter bringing lawsuits against the
3 company and specified executives it employs or employed. This
4 global settlement also resulted in the dismissal of two sets of
5 class actions, captioned here as Barroway v. Computer Associates
6 and In re: Computer Associates 2002, and one derivative suit,
7 Federman v. Artzt. The district court correctly denied the Rule
8 60(b) motions in all of the cases.

9 The parties that moved for Rule 60(b) relief and who appeal
10 the denial of that relief are: Ranger Governance, Ltd.
11 ("Ranger"), which filed a motion for Rule 60(b) relief in
12 Federman; Sam Wyly, who filed a motion for Rule 60(b) relief in
13 Barroway; and a group of Computer Associates shareholders known
14 as the "Wyly Movants," who filed a motion for Rule 60(b) relief
15 in In re: Computer Associates. All of these movants were
16 Computer Associates shareholders at the time of the global
17 settlement, and each has brought suit to seek damages against
18 Computer Associates and several of its officers: Ranger in the
19 derivative action Ranger Governance v. Vogel, et al., Wyly in the
20 individual action Wyly v. Wang, et al., and the Wyly Movants in
21 the individual action Wyly Movants v. Wang, et al. The ability
22 of the plaintiffs to maintain these suits is arguably barred by
23 the global settlement.

24 The parties therefore moved for relief under Federal Rule of
25 Civil Procedure 60(b), which provides: "On motion and just
26 terms, the court may relieve a party or its legal representative
27 from a final judgment, order, or proceeding" for certain
28 enumerated reasons. (Emphasis added.) None of the movants was
29 a party to an underlying lawsuit in which he or it filed such a
30 motion. Although Ranger had brought its own derivative lawsuit,
31 it was not a party to the Federman suit in which it filed its
32 Rule 60(b) motion. And while Wyly and the Wyly Movants were
33 Computer Associates shareholders at the time of the global
34 settlement and were therefore absent class members in the class
35 actions in which they filed their Rule 60(b) motions, neither
36 Wyly nor the Wyly Movants was a party to those underlying class
37 actions for the purposes of Rule 60(b). See In re Four Seasons
38 Secs. Laws Litig., 525 F.2d 500, 504 (10th Cir. 1975) (concluding
39 that class member who was absent during the settlement
40 proceedings is not a "party" to "object to the nature or adequacy
41 of the settlement . . . under Rule 60(b)" (internal quotation
42 marks omitted)).

43 Although Rule 60(b) relief is "not ordinarily . . .
44 available to non-parties," we have allowed non-parties to bring
45 Rule 60(b) motions when "on the facts of th[e] case appellants

1 were sufficiently connected and identified with the . . . suit to
2 entitle them to standing to invoke [the Rule]." Dunlop v. Pan
3 Am. World Airways, Inc., 672 F.2d 1044, 1052 (2d Cir. 1982); see
4 Grace v. Bank Leumi Trust Co. of N.Y., 443 F.3d 180, 188 (2d Cir.
5 2006) ("Today, as in Dunlop, we limit our decision to the facts of
6 this case."). Both Dunlop and Grace involved extraordinary
7 circumstances in which a non-party had interests on which the
8 outcome of the proceedings had significant consequences for the
9 movants, yet those interests had not been adequately represented
10 during litigation, because of the peculiar structure of each
11 case.

12 There is nothing similarly extraordinary about the situation
13 before us. Ranger, though a shareholder, was not individually
14 involved in the Federman derivative lawsuit. Nor did its
15 interests differ from other shareholders such that they were not
16 adequately represented. Wyly and the Wyly Movants were involved
17 in the class actions only as shareholders who had not filed a
18 timely objection to the settlement of those actions -- they were
19 not lead plaintiffs in those class actions, and the lead
20 plaintiffs have declined to seek Rule 60(b) relief. "[T]he main
21 purpose of having a lead plaintiff [is] to empower one or several
22 investors with a major stake in the litigation to exercise
23 control over the litigation as a whole. The only other
24 possibility - that the court should cobble together a lead
25 plaintiff group that has standing to sue on all possible causes
26 of action - has been rejected repeatedly by courts in this
27 Circuit." Hevesi v. Citigroup Inc., 366 F.3d 70, 83 n.13 (2d
28 Cir. 2004) (citation and internal quotation marks omitted). We
29 therefore decline to expand the narrow exception to the general
30 rule that non-parties cannot bring Rule 60(b) motions to cover
31 the case before us.

32 We do not reach the grounds upon which the district court
33 dismissed the Rule 60(b) motions in these cases, because we thus
34 conclude that the moving parties lacked standing to bring those
35 motions. Cf. ACEquip Ltd. v. Am. Eng'g Corp., 315 F.3d 151, 155
36 (2d Cir. 2003) ("Our court may, of course, affirm the district
37 court's judgment on any ground appearing in the record, even if
38 the ground is different from the one relied on by the district
39 court.").

40 Ranger appears to assert that as a plaintiff in the
41 derivative suit, Ranger Governance v. Vogel, et al., it has an
42 independent source of standing in Federal Rule of Civil Procedure
43 23.1, which governs the conditions under which a "shareholder[] .
44 . . [may] bring a derivative action to enforce a right that the
45 corporation or association may properly assert but has failed to

1 enforce." But while Ranger might have had standing under Rule
2 23.1 to bring its own derivative action seeking damages against
3 Computer Associates, the question before us is whether Ranger has
4 standing to bring a Rule 60(b) motion in Federman, a suit to
5 which Ranger was not a party. For the above-stated reasons, we
6 conclude that it does not.

7 The district court denied the Special Litigation Committee's
8 ("SLC") motion under Federal Rule of Civil Procedure 59(e) asking
9 the court to make clear that its August 2 order "did not
10 adversely affect [Computer Associates's] ability to overturn the
11 release," or, "[i]n the alternative . . . to amend the Order to
12 make clear that a motion served by the company seeking to
13 overturn the release would 'relate back' to the shareholders'
14 motions to that effect." Br. of Appellee and Cross-Appellant
15 Computer Associates, Inc., No. 07-3673-cv, at 24-25. Computer
16 Associates's motion, which was made in support of the SLC's
17 motion, was also denied. "[D]istrict courts may alter or amend
18 judgment to correct a clear error of law or prevent manifest
19 injustice." Munafa v. Metro. Transp. Auth., 381 F.3d 99, 105 (2d
20 Cir. 2004) (internal quotation marks omitted). "A district
21 court's denial of a party's motion to alter or amend judgment
22 under Rule 59(e) is . . . reviewed for an abuse of discretion."
23 Id.

24 Computer Associates's theory of "relating back" is, to the
25 best our knowledge, a novel one. No clear principle of law was
26 violated by the district court's refusal to grant it, nor does it
27 result in manifest injustice. We therefore decline to overrule
28 it as an abuse of the court's discretion.

29 We note, however, that the Ranger action remains pending.
30 The district court has denied without prejudice, pending these
31 appeals, Computer Associates's motion to realign itself as the
32 plaintiff and dismiss various claims in that action. Nothing
33 occurring in the Ranger action is currently before us -- both
34 Ranger's Rule 60(b) motion and Computer Associates' Rule 59(e)
35 motion were made in the Federman action -- and no action taken by
36 the district court or by us, so far as we are aware, prevents
37 Computer Associates from renewing its motion to realign or
38 seeking to pursue a claim in that proceeding. If Computer
39 Associates renews its motion to realign, the court should then
40 consider the merits of permitting realignment and permitting the
41 corporation to pursue or dismiss various claims, consistent with
42 the best interests of the shareholders. See Bluth v. Bellow,

1 1987 WL 9369, 1987 Del. Ch. LEXIS 414 (Del. Ch. 1987); Zapata
2 Corp. v. Maldonado, 430 A.2d 779 (Del. 1981).

3 For the foregoing reasons, the judgment of the district
4 court is hereby AFFIRMED.

5 FOR THE COURT:
6 Catherine O'Hagan Wolfe, Clerk of the Court

7 By: *Francis [Signature]*
8

A TRUE COPY
Catherine O'Hagan Wolfe, Clerk
by *Margaret [Signature]*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
:

COMPUTER ASSOCIATES INTERNATIONAL, INC., : 04 Civ. 2697 (TCP) (ETB)
DERIVATIVE LITIGATION :
:

-----X
:

THIS DOCUMENT RELATES TO: ALL ACTIONS :
:

-----X

[PROPOSED] ORDER

WHEREAS, the Court has reviewed and considered (a) the April 13, 2007 motion made by CA, Inc. (“CA”), through the Special Litigation Committee of CA’s Board of Directors, to dismiss and re-align, and (b) all papers filed in connection therewith, including the October 28, 2009 request to renew that motion; and

WHEREAS, the Court has concluded that the motion should be granted.

NOW, THEREFORE, IT IS HEREBY ORDERED that the following claims asserted in the Consolidated Stockholders Derivative Complaint, filed on January 7, 2005 (the “Complaint”), are dismissed with prejudice pursuant to Rule 23.1, Fed. R. Civ. P.:

- Count One for disgorgement under Section 304 of the Sarbanes-Oxley Act of 2002 against all defendants;
- Count Two for contribution under the Private Securities Litigation Reform Act of 1995 against all defendants;
- Count Three for breach of fiduciary duty against Russell Artzt, Kenneth Cron, Alfonse D’Amato, Gary Fernandes, Richard Grasso, Robert La Blanc, Jay Lorsch, Michael McElroy, Roel Pieper, Lewis Ranieri, Walter Schuetze and Willem de Vogel;
- Count Four for restitution and unjust enrichment against McElroy;
- Count Five for waste against all defendants except Charles Wang;

- Count Six for fraud against Artzt, Cron, D’Amato, Fernandes, Grasso, La Blanc, Lorsch, McElroy, Pieper, Ranieri, Schuetze and Vogel;
- Count Seven for filing false proxy statements in violation of Section 14(a) of the Securities Exchange Act of 1934 (the “Exchange Act”) against Artzt, Cron, D’Amato, Fernandes, La Blanc, Lorsch, McElroy, Pieper, Ranieri, Schuetze and Vogel;
- Count Eight for negligence and professional malpractice against KPMG LLP (“KPMG”) and Ernst & Young LLP (“E&Y”);
- the portion of Count Nine for common law contribution against all defendants;
- the portion of Count Nine for indemnification against Artzt, Cron, D’Amato, Fernandes, Grasso, La Blanc, Lorsch, McElroy, Pieper, Ranieri, Schuetze, Vogel, KPMG and E&Y;
- Count Ten for breach of contract against KPMG and E&Y; and
- Count Eleven for aiding and abetting breach of fiduciary duty against KPMG and E&Y.

IT IS FURTHER HEREBY ORDERED that CA is re-aligned as plaintiff so that it can enter into settlements of the following claims asserted in the Complaint:

- Count Three for breach of fiduciary duty against David Kaplan, Sanjay Kumar, Charles McWade, Stephen Richards, David Rivard, Lloyd Silverstein, Steven Woghin and Ira Zar;
- Count Four for restitution and unjust enrichment against Russell Artzt, Kaplan, Kumar, McWade, Richards, Rivard, Silverstein, Woghin and Zar;
- Count Six for fraud against Kaplan, Kumar, McWade, Richards, Rivard, Silverstein, Woghin and Zar;
- Count Seven for filing false proxy statements in violation of Section 14(a) of the Exchange Act against Kaplan, Kumar, McWade, Richards, Rivard, Silverstein, Woghin and Zar; and
- the portion of Count Nine for indemnification against Kaplan, Kumar, McWade, Richards, Rivard, Silverstein, Woghin and Zar.

IT IS FURTHER HEREBY ORDERED that CA is re-aligned as plaintiff so that it can prosecute the remaining claims asserted in the Complaint:

- Count Three for breach of fiduciary duty against Peter Schwartz and Charles Wang;
- Count Four for restitution and unjust enrichment against Schwartz and Wang;
- Count Five for waste against Wang;
- Count Six for fraud against Schwartz and Wang;
- Count Seven for filing false proxy statements in violation of Section 14(a) of the Exchange Act against Schwartz and Wang; and
- the portion of Count Nine for indemnification against Schwartz and Wang.

Dated: _____, 20__

SO ORDERED:

THE HONORABLE THOMAS C. PLATT
United States District Judge