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F.#2004R00737

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

I N F O R M A T I O N

- against -

Cr. No. 04-330(ILG)
(T. 18, U.S.C., §§ 371
and 3551 et seq.)

DAVID KAPLAN,

Defendant.

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THE UNITED STATES ATTORNEY CHARGES:

INTRODUCTION

At all times relevant to this Information, unless otherwise indicated:

I. Background

A. Computer Associates

1. Computer Associates International, Inc. ("CA"), was a Delaware corporation with its headquarters and principal place of business located in Islandia, New York. CA was one of the world's leading manufacturers and distributors of computer software for use by businesses. CA's reported revenues for the fiscal year ending March 31, 1999 were \$5.253 billion. CA's reported revenues for the fiscal year ending March 31, 2000 were \$6.776 billion.

2. CA was a publicly traded corporation, the common stock of which traded on the New York Stock Exchange. CA's

shareholders were located throughout the United States, including in the Eastern District of New York.

3. CA did not sell or transfer title to its products to its customers. Instead, CA licensed its products pursuant to license agreements under which CA's customers agreed to pay a one-time license fee and an annual usage and maintenance fee.

B. Certain Relevant Accounting Principles

4. As a public company, CA was required to comply with the rules and regulations of the United States Securities and Exchange Commission (the "SEC"). The SEC's rules and regulations were designed to protect members of the investing public by, among other things, ensuring that a company's financial information was accurately recorded and disclosed to the investing public.

5. Under the SEC's rules and regulations, CA and its officers were required to (a) make and keep books, records and accounts which, in reasonable detail, fairly and accurately reflected the company's business transactions, including its revenues and expenses; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurance that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"); and (c) file with the SEC quarterly reports (on Form

10-Q) and annual reports (on Form 10-K) which included financial statements that accurately presented CA's financial condition and the results of its business operations in accordance with GAAP.

6. Under GAAP, four conditions were required to be met in order for revenue associated with a license agreement to be recognized: (a) persuasive evidence of an arrangement was required to have existed; (b) delivery of the licensed products was required to have occurred; (c) the license fee was required to have been fixed or determinable; and (d) the collectibility of the license fee was required to have been probable. When written contracts were used to memorialize a license agreement, the GAAP "persuasive evidence" criterion required the contracts to have been signed by both vendor and customer. Accordingly, under GAAP, in order for CA properly to have recognized revenue from a license agreement in a particular fiscal quarter, the license agreement was required to have been signed by both CA and its customer within that quarter.

C. The Defendant

7. The defendant DAVID KAPLAN, a certified public accountant, was employed by CA from 1990 to 2003. KAPLAN held a variety of positions in CA's sales accounting, general accounting and financial reporting departments. From 1997 to 2001, KAPLAN served as CA's Vice President of Financial Reporting. From 2001 through 2003, KAPLAN served as CA's Senior Vice President of

Finance and Administration. As head of CA's Financial Reporting department, KAPLAN and those he supervised worked with CA's sales, sales accounting and legal departments, as well as a department called the Global Sales Organization, to ensure that the company properly reported its financial position and revenues as required by GAAP and SEC regulations. Among other responsibilities, KAPLAN participated in the tabulation of CA's quarterly revenues on a contract-by-contract basis.

D. Consensus Estimates

8. CA regularly issued public predictions at the outset of each fiscal quarter of the revenues it expected to earn during that quarter. Based in part on these predictions, professional stock analysts estimated what they believed would be CA's total revenue during the period and predicted the earnings per share of CA stock. The average of the estimates of the professional analysts was commonly referred to as the "consensus estimate."

9. CA's officers, executives and directors, including the defendant DAVID KAPLAN, understood that CA's failure to meet or exceed the consensus estimate for a quarter would likely result in a substantial decrease in the company's stock price. For example, on July 3, 2000, CA issued a press release which reported that the company expected "financial results for the first quarter ending June 30, 2000 to be less than current Wall

Street estimates." In the press release, CA cited as one of the factors contributing to its failure to meet the consensus estimate "the fact that several large contracts that were expected to close in the final days of the quarter have been delayed" On the date of the press release, which was issued after the market closed, CA's stock price closed at \$51.12 per share. On the next trading day, July 5, 2000, CA's stock price opened at \$29.00 per share, representing a percentage drop of slightly more than 43 percent.

E. The Scheme to Defraud: the "35-Day Month"

10. Prior to and during CA's fiscal year 2000, which ended March 31, 2000, numerous CA officers and executives, including the defendant DAVID KAPLAN, engaged in a systemic, company-wide practice of falsely and fraudulently recording and reporting within a fiscal quarter revenues associated with certain license agreements even though those license agreements had not in fact been finalized and signed during that quarter. This practice, which was sometimes referred to within CA as the "35-day month" or the "three-day window," violated GAAP.

11. The practice was referred to as the "35-day month" because it involved artificially extending months, primarily the last month of a fiscal quarter, for accounting purposes beyond the true end of the month. The practice did not, however, only result in months that had, for accounting purposes,

35 days. Instead, months were often extended even longer. Nonetheless, for the sake of simplicity, the practice is referred to hereinafter as the "35-day month practice."

12. The central goal of the 35-day month practice was to permit CA to report that it had met or exceeded its projected quarterly revenues and earnings when, in truth, CA had not met its projected quarterly revenues and earnings. As a result of the practice, CA reported falsely to investors and regulators during multiple fiscal quarters, including each of the four quarters of CA's fiscal year 2000, that it had met or exceeded its consensus estimates. Indeed, in the last three quarters of fiscal year 2000 alone, CA improperly recognized and falsely reported hundreds of millions of dollars of revenue associated with numerous license agreements that had been finalized after the quarter close. In so doing, CA made misrepresentations and omissions of material fact which were relied upon by members of the investing public.

13. As part of the 35-day month practice, CA sales managers and salespeople were instructed and pressured by high-level CA executives to, among other things, back-date license agreements finalized in the days immediately following the end of a fiscal quarter to make it appear as though the agreements had been finalized before the end of that fiscal quarter.

14. As a further part of the 35-day month practice,

the defendant DAVID KAPLAN and other high- and mid-level executives at CA routinely extended CA's fiscal quarters, normally for three business days. This practice, which was often referred to as "keeping the books open," was designed and executed so that CA could falsely record and report revenues associated with back-dated license agreements finalized after the end of fiscal quarters. The period between the true end of CA's fiscal quarter and the date on which CA's books were actually closed was referred to within CA as the "flash period."

15. As a further part of the 35-day month practice, the defendant DAVID KAPLAN consulted with high-level executives at CA during flash periods in fiscal year 2000 concerning whether the company had generated sufficient license agreement revenue to meet the consensus estimates for the recently ended quarters. When informed that the company had not yet generated sufficient revenue to meet the consensus estimate, these high-level executives directed KAPLAN and others to keep the books open until additional back-dated contracts had been finalized and signed. As a result of CA's having kept the books open in this manner, CA was able to report that it had met the consensus estimate when in fact it had not done so.

16. Numerous CA officers and executives, including the defendant DAVID KAPLAN, concealed the existence of the 35-day month practice from CA's outside auditors. Among other things,

CA executives engaged in a practice of "cleaning up" copies of back-dated license agreements before providing copies of the agreements to CA's auditors. This practice included, but was not limited to, removing from license agreements facsimile stamps and other notations which showed the true date on which the agreements were finalized. KAPLAN knew that the purpose of this practice was to prevent CA's auditors, and by extension the investing public, from learning of CA's failure to meet or exceed the consensus estimate for the given quarter.

F. The Investigations

17. In or about the beginning of 2002, the United States Attorney's Office for the Eastern District of New York (the "United States Attorney's Office"), the Federal Bureau of Investigation (the "FBI") and the Northeast Regional Office of the SEC began investigations into CA's accounting practices, including whether, during the late-1990s and thereafter, CA engaged in improper accounting practices with the intent to overstate its fiscal quarterly revenues to make it appear as though the company had met consensus estimates. Since June 2002, a grand jury sitting in the Eastern District of New York has been considering evidence about CA's accounting practices (these investigations are referred to collectively as the "Government Investigations").

18. In or about February 2002, CA retained a law firm

(the "Company's Law Firm") to represent it in connection with the Government Investigations. Through the Company's Law Firm, CA represented to the United States Attorney's Office and the SEC that it was committed to cooperating fully with the Government Investigations. This representation was also made publicly by CA in press releases, SEC filings and other public statements. Additionally, in a press release issued on February 20, 2002, CA denied that it had engaged in any improper accounting practices, declaring: "The reporting of our financial results has always been in accordance with applicable accounting principles."

19. After being retained in February 2002, the Company's Law Firm met with the defendant DAVID KAPLAN and other CA executives in order to inquire into their knowledge of the practices that were the subject of the Government Investigations. KAPLAN and others agreed in advance of these meetings that they would not disclose, falsely deny and otherwise conceal the existence of the 35-day month practice. Moreover, KAPLAN and others presented to the Company's Law Firm an assortment of false and misleading justifications the purpose of which was to counter or explain away evidence of the 35-day month practice. KAPLAN and others knew, and in fact intended, that the Company's Law Firm would present these false and misleading justifications to the United States Attorney's Office, the SEC and the FBI.

20. For example, during a meeting with attorneys from the Company's Law Firm on or about May 3, 2002, the defendant DAVID KAPLAN falsely denied that the 35-day month practice had existed. KAPLAN further stated that license agreement revenues were generally booked in the quarter in which such agreements were signed and that if errors occurred in that practice, such errors would have been caught and reversed through the application of financial controls in place at CA. At the time that he made such statements, KAPLAN knew them to be false and misleading and knew and intended that they would be transmitted to the United States Attorney's Office, the SEC and the FBI.

21. Subsequent to the defendant DAVID KAPLAN's interview by the Company's Law Firm, in or about July 2003, the Audit Committee of CA's Board of Directors retained a second law firm (the "Audit Committee's Law Firm") to conduct a separate internal investigation into CA's accounting practices, focusing on the 35-day month practice. As part of its internal investigation, the Audit Committee's Law Firm interviewed KAPLAN on or about October 2, 2003, at which time he falsely denied the existence of the 35-day month practice and stated that he was unaware that CA recognized revenue from back-dated contracts in quarters prior to their actual execution. KAPLAN further falsely stated that the post-quarter-end contract activity at CA related only to the processing of contracts signed prior to quarter's

end. KAPLAN knew and intended that these false statements would also be transmitted to the United States Attorney's Office, the SEC and the FBI.

COUNT ONE
(Securities Fraud Conspiracy)

22. The allegations contained in paragraphs 1 through 21 are realleged and incorporated as if fully set forth in this paragraph.

23. In or about and between 1997 and 2000, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant DAVID KAPLAN, together with others, did knowingly and willfully, directly and indirectly, conspire:

(a) to commit fraud in connection with the purchase and sale of common stock issued by CA, in violation of Title 15, United States Code, Sections 78(j) and 78(ff), and Title 17, Code of Federal Regulations, Section 240.10b-5;

(b) to make and cause to be made false and misleading statements of material fact in applications, reports and documents required to be filed under the Securities and Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Section 78ff;

(c) to falsify CA's books, records and accounts, the making and keeping of which was required by Title 15, United States Code, Section 78(b)(2)(A) and Title 17, Code of Federal

Regulations, Section 240.13b2-1, in violation of Title 15, United States Code, Sections 78m (b)(5) and 78ff; and

(d) to circumvent CA's internal accounting controls as required by Title 15, United States Code, Section 78m(b)(2)(B), in violation of Title 15, United States Code, Sections 78m (b) (5) and 78ff.

OVERT ACT

24. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, on or about January 4, 2000, the defendant DAVID KAPLAN met with a high-level CA executive in Islandia, New York.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO

(Conspiracy to Obstruct Justice)

25. The allegations contained in paragraphs 1 through 21 are realleged and incorporated as if fully set forth in this paragraph.

26. In or about and between February 2002 and February 2004, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant DAVID KAPLAN, together with others, did knowingly, intentionally and corruptly conspire to obstruct, influence and impede official proceedings, to wit: the Government Investigations, in violation of Title 18, United States Code, Section 1512(c)(2).

27. It was a part of the conspiracy that beginning in or about February 2002, the defendant DAVID KAPLAN and another high-level CA executive agreed falsely to deny and otherwise conceal the existence of the 35-day month practice, and to devise false and misleading justifications whose purpose was to counter or explain away evidence of the 35-day month practice. The conspirators communicated these false and misleading justifications to the Company's Law Firm and the Audit Committee's Law Firm and others knowing and with the intent that they would, in turn, be presented to the United States Attorney's Office, the SEC and the FBI. KAPLAN and others well knew and believed that these false statements, together with their concealment of material information, would have the effect of obstructing and impeding the Government Investigations.

28. It was further part of the conspiracy that, after February 2002, the defendant DAVID KAPLAN met with another CA executive and agreed with that individual to deny the existence of the 35-day month practice and to conceal its existence by presenting various false and misleading justifications for conduct that was improper. KAPLAN and others well knew and believed that such false statements and concealment of material information would have the effect of obstructing and impeding the Government Investigations.

29. It was a further part of the conspiracy that, on or about May 23, 2002, the defendant DAVID KAPLAN, while being interviewed by members of the Company's Law Firm, did not disclose but instead concealed the existence of the 35-day month practice.

30. It was a further part of the conspiracy that, on or about October 2, 2003, the defendant DAVID KAPLAN met with the Audit Committee's Law Firm and falsely denied the existence of the 35-day month practice. At the time he met with the Company's Law Firm and the Audit Committee's Law Firm, KAPLAN well knew and believed that his false statements and concealment of material information would have the effect of obstructing and impeding the Government Investigations.

OVERT ACT

31. In furtherance of the conspiracy and to effect its objects, within the Eastern District of New York and elsewhere, on or about October 2, 2003, the defendant DAVID KAPLAN met with members of the Audit Committee's Law Firm in Islandia, New York.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

ROSLYNN R. MAUSKOPF
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK