

# 10-462-cv(L)

10-464-cv(CON)

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IN THE

## United States Court of Appeals

FOR THE SECOND CIRCUIT



SECURITIES and EXCHANGE COMMISSION,

*Plaintiff-Appellee,*

*v.*

RAJ RAJARATNAM and DANIELLE CHIESI,

*Defendants-Appellants,*

*(Additional Caption on Reverse)*

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*On Appeal from the United States District Court  
for the Southern District of New York*

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### **JOINT APPENDIX**

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MARK KURLAND, ROBERT MOFFAT, NEW CASTLE FUNDS LLC,  
ROOMY KHAN, DEEP SHAH, ALI T. FAR, CHOO-BENG LEE,  
FAR & LEE LLC, SPHERIX CAPITAL LLC, ALI HARIRI, ZVI GOFFER,  
DAVID PLATE, GAUTHAM SHANKAR,  
SCHOTTENFELD GROUP LLC, STEVEN FORTUNA,  
S2 CAPITAL MANAGEMENT, LP,

*Defendants.*

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APPEAL, ECF

**U.S. District Court**  
**United States District Court for the Southern District of New York (Foley Square)**  
**CIVIL DOCKET FOR CASE #: 1:09-cv-08811-JSR**

Securities and Exchange Commission v. Galleon  
Management, LP et al  
Assigned to: Judge Jed S. Rakoff  
Cause: 15:78m(a) Securities Exchange Act

Date Filed: 10/16/2009  
Jury Demand: Defendant  
Nature of Suit: 850  
Securities/Commodities  
Jurisdiction: U.S. Government Plaintiff

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<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
10/16/2009	<a href="#">1</a>	COMPLAINT against New Castle Funds LLC, Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat. Document filed by Securities and Exchange Commission.(mro) (mro). (Entered: 10/19/2009)
10/16/2009		SUMMONS ISSUED as to New Castle Funds LLC, Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat. (mro) (Entered: 10/19/2009)
10/16/2009		Magistrate Judge Henry B. Pitman is so designated. (mro) (Entered: 10/19/2009)
10/16/2009		Case Designated ECF. (mro) (Entered: 10/19/2009)
10/19/2009		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney David Rosenfeld for noncompliance with Section (14.3) of the S.D.N.Y. Electronic Case Filing Rules & Instructions. E-MAIL the PDF for Document <a href="#">1</a>

		Complaint to: case_openings@nysd.uscourts.gov. (mro) (Entered: 10/19/2009)
10/19/2009	<a href="#">2</a>	NOTICE OF APPEARANCE by Valerie Ann Szczepanik on behalf of Securities and Exchange Commission (Szczepanik, Valerie) (Entered: 10/19/2009)
10/20/2009	<a href="#">3</a>	NOTICE OF APPEARANCE by Israel E. Friedman on behalf of Securities and Exchange Commission (Friedman, Israel) (Entered: 10/20/2009)
10/22/2009	<a href="#">4</a>	ORDER: ( Status Conference set for 10/2/2009 at 10:00 AM in Courtroom 14B, 500 Pearl Street, New York, NY 10007 before Judge Jed S. Rakoff.) (Signed by Judge Jed S. Rakoff on 10/22/09) (js) (Entered: 10/23/2009)
10/26/2009	<a href="#">5</a>	AMENDED NOTICE OF COURT CONFERENCE: Initial Conference set for 11/4/2009 at 10:00 AM in Courtroom 14B, 500 Pearl Street, New York, NY 10007 before Judge Jed S. Rakoff. (Signed by Judge Jed S. Rakoff on 10/26/09) (tro) (Entered: 10/26/2009)
10/26/2009	<a href="#">6</a>	NOTICE OF APPEARANCE by Jason Evan Friedman on behalf of Securities and Exchange Commission (Friedman, Jason) (Entered: 10/26/2009)
10/26/2009	<a href="#">7</a>	NOTICE OF APPEARANCE by Sanjay Wadhwa on behalf of Securities and Exchange Commission (Wadhwa, Sanjay) (Entered: 10/26/2009)
10/27/2009	<a href="#">8</a>	NOTICE OF APPEARANCE by Robert Henry Hotz, Jr on behalf of Raj Rajaratnam (Hotz, Robert) (Entered: 10/27/2009)
10/27/2009	<a href="#">9</a>	NOTICE OF APPEARANCE by Samidh Jalem Guha on behalf of Raj Rajaratnam (Guha, Samidh) (Entered: 10/27/2009)
10/28/2009	<a href="#">10</a>	NOTICE OF APPEARANCE by Paul Scott Hugel on behalf of Anil Kumar (Hugel, Paul) (Entered: 10/28/2009)
10/28/2009	<a href="#">11</a>	NOTICE OF APPEARANCE by Isabelle A. Kirshner on behalf of Anil Kumar (Kirshner, Isabelle) (Entered: 10/28/2009)
10/28/2009	<a href="#">12</a>	NOTICE OF APPEARANCE by Charles E. Clayman on behalf of Anil Kumar (Clayman, Charles) (Entered: 10/28/2009)
10/28/2009	<a href="#">13</a>	MOTION for John M. Dowd to Appear Pro Hac Vice. Document filed by Raj Rajaratnam.(mro) (Entered: 10/29/2009)
10/29/2009	<a href="#">14</a>	ORDER granting <a href="#">13</a> Motion for John M. Dowd to Appear Pro Hac Vice for defendant Raj Rajaratnam. (Signed by Judge Jed S. Rakoff on 10/28/09) (cd) (Entered: 10/29/2009)
10/29/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <a href="#">14</a> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (cd) (Entered: 10/29/2009)
10/30/2009	<a href="#">15</a>	NOTICE OF APPEARANCE by Adam Selim Hakki on behalf of Galleon Management, LP (Hakki, Adam) (Entered: 10/30/2009)
10/30/2009	<a href="#">16</a>	NOTICE OF APPEARANCE by Stephen Robert Fishbein on behalf of

		Galleon Management, LP (Fishbein, Stephen) (Entered: 10/30/2009)
10/30/2009	<a href="#">17</a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Galleon Management, LP.(Fishbein, Stephen) (Entered: 10/30/2009)
11/02/2009	<a href="#">18</a>	NOTICE OF APPEARANCE by David I. Zalman on behalf of Danielle Chiesi (Zalman, David) (Entered: 11/02/2009)
11/02/2009	<a href="#">19</a>	NOTICE OF APPEARANCE by Thomas Benjamin Kinzler on behalf of Danielle Chiesi (Kinzler, Thomas) (Entered: 11/02/2009)
11/02/2009	<a href="#">20</a>	NOTICE OF APPEARANCE by Alan Robert Kaufman on behalf of Danielle Chiesi (Kaufman, Alan) (Entered: 11/02/2009)
11/03/2009	<a href="#">21</a>	CERTIFICATE OF SERVICE. Document filed by Galleon Management, LP. (Fishbein, Stephen) (Entered: 11/03/2009)
11/03/2009	<a href="#">22</a>	NOTICE OF APPEARANCE by Steven Ronald Glaser on behalf of New Castle Funds LLC (Glaser, Steven) (Entered: 11/03/2009)
11/03/2009	<a href="#">23</a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by New Castle Funds LLC.(Glaser, Steven) (Entered: 11/03/2009)
11/03/2009	<a href="#">26</a>	MOTION for William E. White to Appear Pro Hac Vice. Document filed by Raj Rajaratnam.(mro) (Entered: 11/05/2009)
11/04/2009	<a href="#">24</a>	CIVIL CASE MANAGEMENT PLAN: The case is to be tried to a jury. Amended Pleadings due by 12/15/2009. Joinder of Parties due by 12/15/2009. Motions due by 5/14/2010. Responses due by 5/28/2010 Replies due by 6/4/2010. Discovery due by 4/30/2010. Oral Argument set for 6/11/2010 at 02:00 PM before Judge Jed S. Rakoff. Final Pretrial Conference set for 6/11/2010 at 02:00 PM before Judge Jed S. Rakoff. So ordered. (Signed by Judge Jed S. Rakoff on 11/4/09) (js) (Entered: 11/04/2009)
11/04/2009	<a href="#">25</a>	ORDER ADMITTING ATTORNEY PRO HAC VICE. Attorney John M. Dowd for Raj Rajaratnam admitted Pro Hac Vice. (Signed by Judge Jed S. Rakoff on 11/2/09) (db) (Entered: 11/04/2009)
11/04/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <a href="#">25</a> Order Admitting Attorney Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (db) (Entered: 11/04/2009)
11/04/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Initial Pretrial Conference held on 11/4/2009. (tro) (Entered: 11/05/2009)
11/05/2009	<a href="#">27</a>	NOTICE OF APPEARANCE by Kenneth Ian Schacter on behalf of Robert Moffat (Schacter, Kenneth) (Entered: 11/05/2009)
11/05/2009	<a href="#">28</a>	NOTICE OF APPEARANCE by Eugenie Marie Cesar-Fabian on behalf of Robert Moffat (Cesar-Fabian, Eugenie) (Entered: 11/05/2009)
11/05/2009	<a href="#">29</a>	ORDER granting <a href="#">26</a> Motion for William E. White to Appear Pro Hac Vice for Raj Rajaratnam. (Signed by Judge Jed S. Rakoff on 11/4/09) (db) (Entered: 11/05/2009)

		11/05/2009)
11/05/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <a href="#">29</a> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (db) (Entered: 11/05/2009)
11/05/2009	<a href="#">30</a>	AMENDED COMPLAINT amending <a href="#">1</a> Complaint against Roomy Khan, Deep Shah, Ali T. Far, Choo-Beng Lee, Far & Lee LLC, Spherix Capital LLC, Ali Hariri, Zvi Goffer, David Plate, Gautham Shankar, Schottenfeld Group LLC, Steven Fortuna, S2 Capital Management, LP, New Castle Funds LLC, Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat. Document filed by Securities and Exchange Commission. Related document: <a href="#">1</a> Complaint filed by Securities and Exchange Commission.(mro) (Entered: 11/06/2009)
11/05/2009		SUMMONS ISSUED as to New Castle Funds LLC, Roomy Khan, Deep Shah, Ali T. Far, Choo-Beng Lee, Far & Lee LLC, Spherix Capital LLC, Ali Hariri, Zvi Goffer, David Plate, Gautham Shankar, Schottenfeld Group LLC, Steven Fortuna, S2 Capital Management, LP, Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat. (mro) (Entered: 11/06/2009)
11/06/2009	<a href="#">31</a>	ORDER: The Securities and Exchange Commission amended its complaint yesterday to include additional defendants. unless persuaded otherwise, the court intends to maintain the schedule set forth in the Case management Plan ordered on November 4, 2009. Therefore, if counsel for any newly-added defendant objects to that schedule, such counsel must file such objection with the court by no later than November 25, 2009. So Ordered (Signed by Judge Jed S. Rakoff on 11/6/09) (js) (Entered: 11/06/2009)
11/09/2009	<a href="#">32</a>	NOTICE OF APPEARANCE by Norman Arthur Bloch on behalf of Rajiv Goel (Attachments: # <a href="#">1</a> Certificate of Service)(Bloch, Norman) (Entered: 11/09/2009)
11/09/2009	<a href="#">33</a>	NOTICE OF APPEARANCE by Sunny Hyo Seon Kim on behalf of Rajiv Goel (Attachments: # <a href="#">1</a> Certificate of Service)(Kim, Sunny) (Entered: 11/09/2009)
11/09/2009	<a href="#">34</a>	NOTICE OF APPEARANCE by John A. Nathanson on behalf of Galleon Management, LP (Nathanson, John) (Entered: 11/09/2009)
11/10/2009	<a href="#">35</a>	NOTICE OF APPEARANCE by Hissan Ahsan Bajwa on behalf of Schottenfeld Group LLC (Bajwa, Hissan) (Entered: 11/10/2009)
11/10/2009	<a href="#">36</a>	NOTICE OF APPEARANCE by Kenneth M. Breen on behalf of Schottenfeld Group LLC (Breen, Kenneth) (Entered: 11/10/2009)
11/10/2009	38	TRANSCRIPT of proceedings held on 11/4/09 before Judge Jed S. Rakoff. (ldi) (Entered: 11/17/2009)
11/12/2009	<a href="#">37</a>	NOTICE OF APPEARANCE by Gerald J. Russello on behalf of Robert Moffat (Russello, Gerald) (Entered: 11/12/2009)
11/17/2009		CASHIERS OFFICE REMARK on <a href="#">26</a> Motion to Appear Pro Hac Vice in the

		amount of \$25.00, paid on 11/03/2009, Receipt Number 705103. (jd) (Entered: 11/17/2009)
11/17/2009	<a href="#">39</a>	NOTICE OF APPEARANCE by Harlan J. Protass on behalf of Ali Hariri (Protass, Harlan) (Entered: 11/17/2009)
11/19/2009	<a href="#">40</a>	NOTICE OF APPEARANCE by Steven Gary Kobre on behalf of Ali T. Far (Kobre, Steven) (Entered: 11/19/2009)
11/19/2009	<a href="#">41</a>	NOTICE OF APPEARANCE by Andrew C. Lourie on behalf of Ali T. Far (Lourie, Andrew) (Entered: 11/19/2009)
11/19/2009	<a href="#">42</a>	NOTICE OF APPEARANCE by Francisco J. Navarro on behalf of Ali T. Far (Navarro, Francisco) (Entered: 11/19/2009)
11/19/2009	<a href="#">56</a>	MOTION for Terence J. Lynam to Appear Pro Hac Vice. Document filed by Raj Rajaratnam.(mro) (Entered: 11/24/2009)
11/20/2009	<a href="#">43</a>	NOTICE OF APPEARANCE by Laura A Brevetti on behalf of Choo-Beng Lee (Brevetti, Laura) (Entered: 11/20/2009)
11/20/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 11/20/2009. (mro) (Entered: 11/24/2009)
11/23/2009	<a href="#">44</a>	NOTICE OF APPEARANCE by Roland Gustaf Riopelle on behalf of David Plate (Riopelle, Roland) (Entered: 11/23/2009)
11/23/2009	<a href="#">45</a>	ORDER: It is hereby ordered that Terence J. Lynam is admitted pro hac vice in this action. (Signed by Judge Jed S. Rakoff on 11/20/2009) (jpo) (Entered: 11/23/2009)
11/23/2009	<a href="#">46</a>	STIPULATION AND ORDER SUBSTITUTING COUNSEL: It is hereby stipulated and agreed that pursuant to Local Civil Rule 1.4, Robert G. Morvillo and Gregory Morvillo, of Morvillo, Abramowitz, Grand, Iasan, Anello & Bohrer, P.C., 565 Fifth Avenue, New York, NY 10017, be substituted as counsel for Anil Kumar in place of Charles E. Clayman, Paul Scott Hugel, and Isabelle A. Kirshner, of Clayman & Rosenberg, 305 Madison Avenue, Suite 1301, New York, NY 10165. (Signed by Judge Jed S. Rakoff on 11/20/2009) (jpo) (Entered: 11/23/2009)
11/23/2009	<a href="#">47</a>	MEMO ENDORSEMENT on STIPULATION AND ORDER TO EXTEND DEADLINE TO RESPOND TO COMPLAINT AND MAKE INITIAL DISCLOSURES. ENDORSEMENT: Denied. (Signed by Judge Jed S. Rakoff on 11/20/2009) (jpo) (Entered: 11/23/2009)
11/24/2009	<a href="#">48</a>	ANSWER to Amended Complaint. Document filed by Raj Rajaratnam. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission. (Attachments: # <a href="#">1</a> Certificate of Service)(Hotz, Robert) (Entered: 11/24/2009)
11/24/2009	<a href="#">49</a>	NOTICE OF APPEARANCE by Diane Ferrone on behalf of David Plate (Ferrone, Diane) (Entered: 11/24/2009)
11/24/2009	<a href="#">50</a>	NOTICE OF APPEARANCE by Robert Guy Morvillo on behalf of Anil Kumar (Attachments: # <a href="#">1</a> Certificate of Service)(Morvillo, Robert) (Entered: 11/24/2009)

		11/24/2009)
11/24/2009	<a href="#">51</a>	NOTICE OF APPEARANCE by Gregory Robert Morvillo on behalf of Anil Kumar (Attachments: # <a href="#">1</a> Certificate of Service)(Morvillo, Gregory) (Entered: 11/24/2009)
11/24/2009	<a href="#">52</a>	NOTICE OF APPEARANCE by Theodore Theodore on behalf of Mark Kurland (Theodore, Theodore) (Entered: 11/24/2009)
11/24/2009	<a href="#">53</a>	NOTICE OF APPEARANCE by Caryn Gail Schechtman on behalf of Mark Kurland (Schechtman, Caryn) (Entered: 11/24/2009)
11/24/2009	<a href="#">54</a>	NOTICE OF APPEARANCE by Jeffrey David Rotenberg on behalf of Mark Kurland (Rotenberg, Jeffrey) (Entered: 11/24/2009)
11/24/2009	<a href="#">55</a>	NOTICE OF APPEARANCE by Patrick J. Smith on behalf of Mark Kurland (Smith, Patrick) (Entered: 11/24/2009)
11/24/2009	<a href="#">57</a>	AFFIDAVIT OF SERVICE of Answer to Amended Complaint served on Richard J. Schaeffer on 11/24/09. Service was made by Mail. Document filed by Raj Rajaratnam. (Hotz, Robert) (Entered: 11/24/2009)
11/24/2009	<a href="#">58</a>	AFFIDAVIT OF SERVICE of Answer to Amended Complaint served on Theodore Altman on 11/24/09. Service was made by Mail. Document filed by Raj Rajaratnam. (Hotz, Robert) (Entered: 11/24/2009)
11/24/2009	<a href="#">59</a>	AFFIDAVIT OF SERVICE of Answer to Amended Complaint served on Harlan J. Protass on 11/24/09. Service was made by Mail. Document filed by Raj Rajaratnam. (Hotz, Robert) (Entered: 11/24/2009)
11/24/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 11/24/2009. (tro) (Entered: 12/03/2009)
11/25/2009	<a href="#">60</a>	NOTICE OF APPEARANCE by Cynthia Margaret Monaco on behalf of Zvi Goffer (Monaco, Cynthia) (Entered: 11/25/2009)
11/30/2009	<a href="#">61</a>	STIPULATION AND ORDER that the time for defendants Galleon Management, LP, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat and New Castle Funds, LLC to answer, move with respect to or otherwise respond to the amended complaint herein is extended to and including 12/9/09, provided that this extension of time shall not affect the schedule for discovery in this action. (Signed by Judge Jed S. Rakoff on 11/23/09) (dle) (Entered: 11/30/2009)
11/30/2009	<a href="#">62</a>	ORDER: It is hereby stipulated and agreed by and between the parties that the time for Defendant Ali T. Far and Choo Beng Lee to answer, move with respect to or otherwise respond to the Amended Complaint herein is extended to and including December 9, 2009, provided that this extension of time shall not affect the schedule for discovery in this action. (Signed by Judge Jed S. Rakoff on 11/27/2009) (jpo) (Entered: 11/30/2009)
11/30/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 11/30/2009. (tro) (Entered: 12/02/2009)
12/01/2009	<a href="#">63</a>	STIPULATION AND ORDER: The time for Defendant Ali T. Far and Choo-

		Beng Lee to answer, move with respect to or otherwise respond to the Amended Complaint herein is extended to and including December 9, 2009, provided that this extension of time shall not affect the schedule for discovery in this action. (Signed by Judge Jed S. Rakoff on 12/1/09) (db) (Entered: 12/01/2009)
12/01/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 12/1/2009. (tro) (Entered: 12/03/2009)
12/02/2009	<a href="#">66</a>	MOTION for Jeffrey L. Borenstein to Appear Pro Hac Vice. Document filed by Choo-Beng Lee.(mbe) (Entered: 12/03/2009)
12/03/2009	<a href="#">64</a>	NOTICE OF APPEARANCE by Michael Patrick Holland on behalf of New Castle Funds LLC (Holland, Michael) (Entered: 12/03/2009)
12/03/2009	<a href="#">65</a>	CERTIFICATE OF SERVICE of Notice of Appearance of Michael P. Holland. Document filed by New Castle Funds LLC. (Holland, Michael) (Entered: 12/03/2009)
12/04/2009		CASHIERS OFFICE REMARK on <a href="#">56</a> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 11/19/2009, Receipt Number 706523. (jd) (Entered: 12/04/2009)
12/07/2009	<a href="#">67</a>	NOTICE OF APPEARANCE by Frederick Lawrence Sosinsky on behalf of Gautham Shankar (Sosinsky, Frederick) (Entered: 12/07/2009)
12/07/2009	<a href="#">68</a>	ORDER: It is hereby Ordered that Attorney Terence J. Lynam be admitted Pro Hac Vice in this matter on behalf of Defendant Raj Rajaratnam. (Signed by Judge Jed S. Rakoff on 12/3/2009) (jfe) (Entered: 12/07/2009)
12/07/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <a href="#">68</a> Order Admitting Attorney Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (jfe) (Entered: 12/07/2009)
12/07/2009	<a href="#">69</a>	STIPULATION: It is hereby Stipulated and agreed that the time for defendant David Plate to answer, move with respect to or otherwise respond to the Amended Complaint herein is extended to and including December 16, 2009. (Signed by Judge Jed S. Rakoff on 12/3/2009) (jfe) (Entered: 12/07/2009)
12/07/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Initial Pretrial Conference held on 12/7/2009 as to defendant Steven Fortuna. (mbe) (Entered: 12/08/2009)
12/07/2009	<a href="#">80</a>	STIPULATION AND ORDER, Ali Hariri answer due 12/16/2009. (Signed by Judge Jed S. Rakoff on 12/3/09) (djc) (Entered: 12/11/2009)
12/08/2009	<a href="#">70</a>	ORDER GRANTING MOTION TO ADMIT COUNSEL PRO HAC VICE re: <a href="#">66</a> Motion for Jeffrey L. Bornstein to Appear Pro Hac Vice. Jeffrey L. Bornstein is admitted to practice pro hac vice as counsel for Defendant Choo-Beng in this action. (Signed by Judge Jed S. Rakoff on 12/7/09) (tro) (Entered: 12/08/2009)
12/08/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <a href="#">70</a> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for

		updating of Attorney Information. (tro) (Entered: 12/08/2009)
12/08/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 12/8/2009. (tro) (Entered: 12/10/2009)
12/09/2009	<a href="#">71</a>	ANSWER to Amended Complaint. Document filed by Robert Moffat. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Schacter, Kenneth) (Entered: 12/09/2009)
12/09/2009	<a href="#">72</a>	ANSWER to Amended Complaint. Document filed by New Castle Funds LLC. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Holland, Michael) (Entered: 12/09/2009)
12/09/2009	<a href="#">73</a>	ANSWER to Amended Complaint. Document filed by Anil Kumar. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission. (Attachments: # <a href="#">1</a> Affidavit Certificate of Service)(Morvillo, Robert) (Entered: 12/09/2009)
12/09/2009	<a href="#">74</a>	ANSWER to Amended Complaint. Document filed by Danielle Chiesi. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Zalman, David) (Entered: 12/09/2009)
12/09/2009	<a href="#">75</a>	ANSWER to Amended Complaint. Document filed by Rajiv Goel. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission. (Attachments: # <a href="#">1</a> Certificate of Service)(Kim, Sunny) (Entered: 12/09/2009)
12/09/2009	<a href="#">76</a>	ANSWER to Amended Complaint. Document filed by Galleon Management, LP.(Hakki, Adam) (Entered: 12/09/2009)
12/09/2009	<a href="#">77</a>	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No Corporate Parent. Document filed by Schottenfeld Group LLC.(Bajwa, Hissan) (Entered: 12/09/2009)
12/09/2009	<a href="#">78</a>	ANSWER to Amended Complaint. Document filed by Schottenfeld Group LLC. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Bajwa, Hissan) (Entered: 12/09/2009)
12/09/2009	<a href="#">79</a>	ANSWER to Amended Complaint. Document filed by Mark Kurland. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Smith, Patrick) (Entered: 12/10/2009)
12/14/2009	<a href="#">81</a>	ANSWER to Amended Complaint. Document filed by Zvi Goffer. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Monaco, Cynthia) (Entered: 12/14/2009)
12/14/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 12/14/2009. (mro) (Entered: 12/21/2009)
12/15/2009	<a href="#">82</a>	MOTION for Silvestre A. Fontes to Appear Pro Hac Vice. Document filed by Securities and Exchange Commission.(mro) (Entered: 12/15/2009)
12/16/2009	<a href="#">83</a>	STIPULATION AND ORDER AS TO DEFENDANTS FAR & LEE LLC AND SPHERIX CAPITAL LLC: It is hereby ordered that Far Lee LLC shall cease doing business, and Spherix Capital LLC shall cease doing business

		after it has completed winding down and therefore, pursuant to this Stipulation and Order, the Court hereby dismisses the Commission's claims against far & Lee LLC and Spherix Capital LLC, with prejudice. (Signed by Judge Jed S. Rakoff on 12/15/2009) (jpo) (Entered: 12/16/2009)
12/16/2009	<a href="#">84</a>	ANSWER to Amended Complaint with JURY DEMAND. Document filed by David Plate.(Ferrone, Diane) (Entered: 12/16/2009)
12/16/2009	<a href="#">85</a>	ANSWER to Amended Complaint. Document filed by Ali Hariri. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Protass, Harlan) (Entered: 12/16/2009)
12/17/2009	<a href="#">86</a>	PROTECTIVE ORDER...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Jed S. Rakoff on 12/16/09) (cd) (Entered: 12/17/2009)
12/17/2009	<a href="#">87</a>	ANSWER to Amended Complaint with JURY DEMAND. Document filed by Ali T. Far. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Kobre, Steven) (Entered: 12/17/2009)
12/18/2009	<a href="#">88</a>	ANSWER to Complaint with JURY DEMAND. Document filed by Choo-Beng Lee.(Bornstein, Jeffrey) (Entered: 12/18/2009)
12/18/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 12/18/2009. (mro) (Entered: 12/21/2009)
12/21/2009	<a href="#">89</a>	NOTICE OF APPEARANCE by Richard J. Schaeffer on behalf of Steven Fortuna (Schaeffer, Richard) (Entered: 12/21/2009)
12/21/2009	<a href="#">90</a>	NOTICE OF APPEARANCE by Adler Charles Bernard on behalf of Steven Fortuna (Bernard, Adler) (Entered: 12/21/2009)
12/21/2009	<a href="#">91</a>	ANSWER to Amended Complaint. Document filed by Steven Fortuna. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission. (Attachments: # <a href="#">1</a> Affidavit of Service)(Schaeffer, Richard) (Entered: 12/21/2009)
12/21/2009		CASHIERS OFFICE REMARK on <a href="#">66</a> Motion to Appear Pro Hac Vice in the amount of \$25.00, paid on 12/2/2009, Receipt Number 707426. (jd) (Entered: 12/21/2009)
12/22/2009	<a href="#">92</a>	ANSWER to Amended Complaint with JURY DEMAND. Document filed by Gautham Shankar. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(Sosinsky, Frederick) (Entered: 12/22/2009)
12/22/2009	<a href="#">93</a>	ORDER; that Silvestre A. Fontes to Appear Pro Hac Vice as counsel for Securities and Exchange Commission, in the above captioned case in the United States District Court for the Southern District of New York. (Signed by Judge Jed S. Rakoff on 12/21/09). (pl) (Entered: 12/22/2009)
12/22/2009		Transmission to Attorney Admissions Clerk. Transmitted re: <a href="#">93</a> Order on Motion to Appear Pro Hac Vice, to the Attorney Admissions Clerk for updating of Attorney Information. (pl) (Entered: 12/22/2009)

12/23/2009	<a href="#">94</a>	ORDER: In a conference call initiated by counsel earlier today, it became apparent that defendants will be the proponents as far as expert testimony is concerned, with the plaintiff responding thereto. Accordingly, the date for expert disclosures by the defendants is moved to February 16, 2010, and the date for expert disclosures from the plaintiff is moved to March 23, 2010. Counsel are reminded, as they were on the conference call, that all other previously scheduled dates, including the trial date of August 2, 2010, remain fixed and firm. (Signed by Judge Jed S. Rakoff on 12/23/09) (ae) (Entered: 12/23/2009)
12/23/2009		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 12/23/2009. (jw) (Entered: 01/05/2010)
01/05/2010	95	TRANSCRIPT of proceedings held on December 7, 2009 before Judge Jed S. Rakoff. (mro) (Entered: 01/05/2010)
01/08/2010	<a href="#">96</a>	NOTICE OF APPEARANCE by Michael Melburn Bruso on behalf of Schottenfeld Group LLC (Bruso, Michael) (Entered: 01/08/2010)
01/15/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 1/15/2010. (mro) (Entered: 01/25/2010)
01/19/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 1/19/2010. (mro) (Entered: 01/25/2010)
01/20/2010		Received returned mail Mail was addressed to S2 Capital Management LP of Attn: The Corporation Trust Company at 1209 Orange Street, Wilmington, DE, 19801 and was returned for the following reason(s): According the records of CT Corporation their statutory representation services were discontinued and all process sent to the last known address on their records which was returned as undeliverable. Do not have a forwarding address. *Accepted for filing by the Chambers of Judge Jed S. Rakoff on 1/14/2010. (tro) (Entered: 01/20/2010)
01/20/2010		Received returned mail Mail was addressed to S2 Capital Management LP of Attn: The Corporation Trust Company at 1209 Orange Street, Wilmington, DE, 19801 and was returned for the following reason(s): According the records of CT Corporation their statutory representation services were discontinued and all process sent to the last known address on their records which was returned as undeliverable. Do not have a forwarding address. *Accepted for filing by the Chambers of Judge Jed S. Rakoff on 1/14/2010. (tro) (Entered: 01/20/2010)
01/20/2010	<a href="#">97</a>	MOTION for Leave to File Second Amended Complaint. Document filed by Securities and Exchange Commission.(Szczeapanik, Valerie) (Entered: 01/20/2010)
01/20/2010	<a href="#">98</a>	MEMORANDUM OF LAW in Support re: <a href="#">97</a> MOTION for Leave to File Second Amended Complaint.. Document filed by Securities and Exchange Commission. (Szczeapanik, Valerie) (Entered: 01/20/2010)
01/20/2010	<a href="#">99</a>	DECLARATION of Matthew J. Watkins in Support re: <a href="#">97</a> MOTION for Leave to File Second Amended Complaint.. Document filed by Securities and

		Exchange Commission. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Szczepanik, Valerie) (Entered: 01/20/2010)
01/22/2010	<a href="#">100</a>	MEMORANDUM OF LAW in Opposition re: <a href="#">97</a> MOTION for Leave to File Second Amended Complaint.. Document filed by Raj Rajaratnam. (Attachments: # <a href="#">1</a> Certificate of Service)(Hotz, Robert) (Entered: 01/22/2010)
01/25/2010	<a href="#">101</a>	LETTER addressed to Judge Jed S. Rakoff from Jonathan R. Streeter dated 1/20/10 re: At the Court's request, the Government submits this letter to set forth its position concerning whether the defendants can provide the wiretap evidence in their possession to the SEC in discovery; Because certain defendants currently possess that evidence, it is clearly relevant to the issues in the SEC case, and the wiretap statute doe snot preclude the defendants from producing it, the Government submits that the defendants can produce that evidence in discovery in this matter. Document filed by the Securities and Exchange Commission. (mro) (Entered: 01/25/2010)
01/25/2010	<a href="#">102</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated 1/20/10 re: The Commission respectfully requests that Your Honor enter the proposed judgment with respect to defendants Lee and Far, which would resolve all issues in this action with respect to those defendants. Counsel for defendants Lee and Far have informed the undersigned that they agree with the contents of this letter and join in the Commission's request. Document filed by Securities and Exchange Commission.(mro) (Entered: 01/25/2010)
01/25/2010	<a href="#">103</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated 1/20/10 re: The Commission requests that the Court order the defendants to comply with plaintiff's discovery requests and immediately produce to the Commission all wiretap materials in their possession, custody or control. Document filed by Securities and Exchange Commission.(mro) (Entered: 01/25/2010)
01/25/2010	<a href="#">104</a>	LETTER addressed to Judge Jed S. Rakoff from Terence J. Lynam dated 1/22/10 re: Defendant Raj Rajaratnam respectfully opposes the SEC's motion to compel the production of wiretap evidence. Document filed by Raj Rajaratnam.(mro) (Entered: 01/25/2010)
01/25/2010	<a href="#">105</a>	LETTER addressed to Judge Jed S. Rakoff from Alan R. Kaufman dated 1/22/10 re: For the reasons listed herein, we request that Your Honor deny the SEC's request that Ms. Chiesi produce the Sealed Title III Intercepts and Authorizations. Document filed by Danielle Chiesi.(mro) (Entered: 01/25/2010)
01/25/2010	<a href="#">106</a>	LETTER addressed to Judge Jed S. Rakoff from Cynthia M. Monaco dated 1/22/10 re: We submit this letter response to the motion of the SEC to compel discovery of "wiretap materials;" Mr. Goffer requests that the Court deny the SEC's motion to compel. Document filed by Zvi Goffer.(mro) (Entered: 01/25/2010)
01/25/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Pretrial Conference held on 1/25/2010. (mro) (Entered: 01/26/2010)
01/27/2010	<a href="#">107</a>	ORDER...the Court hereby grants leave to plaintiff to file its proposed second

		amended complaint. Also, the date for expert disclosures by a claim proponent is moved to 3/2/10, and the date for expert disclosures from a claim opponent is moved to 3/30/10. (Signed by Judge Jed S. Rakoff on 1/26/10) (cd) (Entered: 01/27/2010)
01/29/2010	<a href="#">108</a>	ORDER...the Court hereby approves the settlement (which has been separately signed and docketed). The Court takes the liberty of suggesting that the SEC may wish to consider, as a matter of future practice, submitting explanation along with any settlements it submits to courts for approval. (Signed by Judge Jed S. Rakoff on 1/28/10) (cd) (Entered: 02/01/2010)
01/29/2010	<a href="#">120</a>	JUDGMENT #10,0194 in favor of Securities and Exchange Commission against Ali T. Far, Choo-Beng Lee in the amount of \$ 1,335,618.17. (Signed by Judge Jed S. Rakoff on 1/28/10) (jf). (Entered: 02/02/2010)
01/29/2010	<a href="#">124</a>	SECOND AMENDED COMPLAINT amending <a href="#">30</a> Amended Complaint against New Castle Funds LLC, Roomy Khan, Deep Shah, Ali Hariri, Zvi Goffer, David Plate, Gautham Shankar, Schottenfeld Group LLC, Steven Fortuna, S2 Capital Management, LP, Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat. Document filed by Securities and Exchange Commission. Related document: <a href="#">30</a> Amended Complaint,, filed by Securities and Exchange Commission.(mbe) (ama). (Entered: 02/03/2010)
02/01/2010	<a href="#">109</a>	LETTER addressed to Judge Jed S. Rakoff from Abbe R. Tiger dated 1/27/10 re: Our client, Craig C. Drimal is a defendant in 09cv9208; Defendants Goffer, Shankar, and Plate are co-defendants in that matter; We write concerning the request that is before Your Honor for an Order to allow the SEC to obtain certain wiretap material in civil discovery in the instant case; On behalf of Drimal, we join in the arguments presented on behalf of the defendants opposing the SEC's request for discovery of the wiretap materials. (mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">110</a>	LETTER addressed to Judge Jed S. Rakoff from Alan R. Kaufman dated 1/27/10 re: On behalf of Daniella Chiesi, we write to respond to arguments advanced by the SEC and the US Attorney's Office during the 1/25/10 hearing; For the reasons listed herein, we request that Your Honor deny the SEC's request that Ms. Chiesi produce the Sealed Title III Intercepts and Authorizations. Document filed by Danielle Chiesi.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">111</a>	LETTER addressed to Judge Jed S. Rakoff from Terence J. Lynam dated 1/27/10 re: Defendant Raj Rajaratnam submits this letter responding to caselaw and arguments raised during the 1/25/10 hearing on the SEC's motion to compel; Mr. Rajaratnam has a statutory right to challenge the legality of wire interceptions before they are disclosed in any proceeding. Document filed by Raj Rajaratnam.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">112</a>	LETTER addressed to Judge Jed S. Rakoff from Kenneth I. Schacter dated 1/27/10 re: We submit this letter on behalf of our client, defendant Robert Moffat; While we take no position on the motion, to the extent that the Court directs defendants Rajaratnam and Chiesi to produce wiretap materials to the

		SEC, we request that the Court direct that all other parties to the litigation be provided with copies of those materials. Document filed by Robert Moffat.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">113</a>	LETTER addressed to Judge Jed S. Rakoff from Kenneth M. Breen dated 1/27/10 re: Defendant Schottenfeld Group LLC, writes with respect to the motion to compel; Schottenfeld Group LLC takes no position on the motion brought by the SEC, but seeks to join the letter submitted by defendant Robert Moffat dated 1/27/10. Document filed by Schottenfeld Group LLC.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">114</a>	LETTER addressed to Judge Jed S. Rakoff from Jonathan R. Streeter dated 1/27/10 re: For the reasons listed herein, as well as those provided at the conference and in the Government's letter of 1/20/10, the Government submits that this Court should compel the defendants to produce the wiretap evidence in discovery, or in the alternative, should permit the Government to disclose that evidence directly to the SEC. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">115</a>	LETTER addressed to Judge Jed S. Rakoff from Alan R. Kaufman dated 1/29/10 re: Defendant Danielle Chie writes in response to the SEC's 1/27 letter; The USAO's argument that disclosure of the sealed Title III Intercepts to the SEC should be rejected, and the SEC's motion to compel should be denied. Document filed by Danielle Chiesi.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">116</a>	LETTER addressed to Judge Jed S. Rakoff from Terence J. Lynam dated 1/29/10 re: The SEC has not asked this Court to compel the production of the wiretaps from the USAO, which is not a party to this case and was only asked by the Court to participate in the recent hearing so as to share its views on the instant motion; Although the USAO suggests that it might benefit from disclosing the wiretaps to the SEC, the express purpose of the motion to compel is to assist the SEC's presentation of its civil case; If the USAO needs to help in the criminal case, it can seek authorization to disclose from Judge Holwell. Document filed by Raj Rajaratnam.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">117</a>	LETTER addressed to Judge Jed S. Rakoff from Cynthia M. Monaco dated 1/29/10 re: This letter is in response to the letter submissions of the USAO and the SEC dated 1/27; Mr. Goffer requests a hearing before this Court to explore the facts of this unauthorized disclosure and to fashion an appropriate remedy. Document filed by Zvi Goffer.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">118</a>	LETTER addressed to Judge Jed S. Rakoff from Jonathan R. Streeter dated 1/29/10 re: The Government submits this letter in response to the letters of Raj Rajaratnam and Daniella Chiesi dated 1/27; For the reasons listed herein and in the Government's prior letters and oral arguments, the Governments submits that (1) this Court can and should order the defendants to produce the wiretap evidence to the SEC in discovery in this matter, (2) the Government is permitted under 18 USC 2517 to provide that evidence directly to the SEC. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/02/2010)
02/01/2010	<a href="#">119</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated

		1/29/10 re: In summary, any privacy interests defendants would otherwise have in the Title III materials are greatly diminished in the instant case where the materials have already been disclosed in public charging documents and given widespread publication in the national news media; Furthermore, these greatly reduced privacy interest are far outweighed by the public policy reasons supporting the disclosure of these materials to the Commission to enforce important public interests. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/02/2010)
02/01/2010	121	TRANSCRIPT of proceedings held on 1/25/10 before Judge Jed S. Rakoff. (pl) (Entered: 02/02/2010)
02/01/2010	125	TRANSCRIPT of proceedings held on January 25, 2010 at 4:57 pm before Judge Jed S. Rakoff. (eef) (Entered: 02/04/2010)
02/02/2010	<a href="#">122</a>	NOTICE OF APPEARANCE by Nicole Marie Hudak on behalf of Danielle Chiesi (Hudak, Nicole) (Entered: 02/02/2010)
02/02/2010	<a href="#">123</a>	NOTICE OF APPEARANCE by David Wikstrom on behalf of Roomy Khan (Wikstrom, David) (Entered: 02/02/2010)
02/09/2010	<a href="#">126</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated 1/27/10 re: The Commission requests that the Court order the defendants to comply with the Commission's discovery requests and to immediately produce to the Commission all wiretap materials in their possession, custody or control. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/09/2010)
02/09/2010	<a href="#">127</a>	LETTER addressed to Judge Jed S. Rakoff from Alan R. Kaufman dated 1/29/10 re: We join in the request of the attorneys for defendants Zvi Goffer for a hearing concerning the unauthorized disclosure of Title VII materials to the SEC by the US Attorney's Office. Document filed by Raj Rajaratnam, Danielle Chiesi.(mro) (Entered: 02/09/2010)
02/09/2010	<a href="#">128</a>	LETTER addressed to Judge Jed S. Rakoff from Jonathan R. Streeter dated 1/29/10 re: The Government's litigation position that it is permitted to provide the wiretap materials directly to the SEC was announced in open court on January 25, 2010, before the Government even learned of the inadvertent disclosure described herein. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/09/2010)
02/09/2010	<a href="#">129</a>	MEMORANDUM ORDER: Accordingly, defendants Rajaratnam and Chiesi are hereby ordered to produce to the S.E.C. by February 15, 2010 copies of all the wiretap recordings received by those defendants from the Government, and to promptly produce the same materials to any other party to this case who so demands in writing, provided that all parties to this case who have or receive such recordings shall not provide them to any person who is not a party to this case pending further order of this Court. SO ORDERED. (Signed by Judge Jed S. Rakoff on 2/9/2010) (tve) (Entered: 02/09/2010)
02/09/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 2/9/2010. (tro) (Entered: 02/16/2010)

02/11/2010	<a href="#">130</a>	LETTER addressed to Judge Jed S. Rakoff from David Wikstrom dated 2/5/10 re: By this letter, defendant Roomy Khan moves for a protective order pursuant to Rule 26(c) barring defendant Raj Rajaratnam from seeking certain materials and documents from Ms. Kahn, from plaintiff SEC, and from third parties, as more fully set forth herein, on the ground that the material requests are neither relevant to the issues in this litigation, nor reasonably calculated to lead discovery of admissible evidence. Document filed by Roomy Khan.(mro) (Entered: 02/11/2010)
02/11/2010	<a href="#">131</a>	LETTER addressed to Judge Jed S. Rakoff from James M. Keneally dated 2/9/10 re: We write with respect to Your Honor's order, entered his afternoon, which directed Mr. Rajaratnam and Ms. Chiesi to produce the Title III wiretap recordings to the SEC; We respectfully join in the motion filed by letter this afternoon by counsel for Mr. Rajaratnam requesting a stay of the Court's Order pending appeal. (mro) (Entered: 02/11/2010)
02/11/2010	<a href="#">132</a>	LETTER addressed to Judge Jed S. Rakoff from Terence J. Lynam dated 2/9/10 re: We move for a stay of this Order pending appeal to the Second Circuit. Document filed by Raj Rajaratnam.(mro) (Entered: 02/11/2010)
02/11/2010	<a href="#">133</a>	LETTER addressed to Judge Jed S. Rakoff from William E. White dated 2/9/10 re: Raj Rajaratnam responds to defendant Rommy Khan's 2/5/10 request for a protective order; Ms. Kahn's objections to the discovery are without merit and her request for a protective order should be denied; Ms. Kahn should be directed to immediately and fully respond to Mr. Rajaratnam's document requests. Document filed by Raj Rajaratnam.(mro) (Entered: 02/11/2010)
02/11/2010	<a href="#">134</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated 2/9/10 re: The SEC submits this letter to respond to counsel for defendant Roomy Khan's dated 2/5/10; The Commission agreed to produce materials from those images that are relevant to this action; The Commission takes no position with respect to Ms. Kahn's motion for a protective order. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/11/2010)
02/11/2010	<a href="#">135</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated 2/11/10 re: The SEC submits this letter to respond to the requests of defendants Rajaratnam and Chiesi that the Court stay its order dated 2/9/10; The Commission opposes defendants' request because a stay of the order would substantially prejudice the Commission. Document filed by Securities and Exchange Commission.(mro) (Entered: 02/11/2010)
02/11/2010	<a href="#">136</a>	ORDER: Given the shortness of time, therefore, the Court will simply indicate that it finds the reasoning in the S.E.C.'s letter wholly persuasive and adopts its reasoning by reference. Accordingly, the Court denies both the motion for certification, which the Court regards as frivolous, and the motion for a stay, which the Court finds would be highly prejudicial to the S.E.C. SO ORDERED. (Signed by Judge Jed S. Rakoff on 2/11/2010) (tve) (Entered: 02/11/2010)
02/11/2010	<a href="#">137</a>	NOTICE OF APPEAL from <a href="#">129</a> Memorandum Order. Document filed by Raj Rajaratnam. Filing fee \$ 455.00, receipt number E 894114. (nd) (Entered: 02/11/2010)

		02/11/2010)
02/11/2010		Transmission of Notice of Appeal to the District Judge re: <a href="#">137</a> Notice of Appeal. (nd) (Entered: 02/11/2010)
02/11/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">137</a> Notice of Appeal. (nd) (Entered: 02/11/2010)
02/11/2010	<a href="#">138</a>	ORDER: The Court will hear oral argument on all pending discovery disputes involving this case at 2 p.m. next Friday, February 19, 2010. Any party or third party having such a dispute should appear at that time. SO ORDERED. (Signed by Judge Jed S. Rakoff on 2/11/2010) (tve) (Entered: 02/11/2010)
02/11/2010	<a href="#">142</a>	NOTICE OF APPEAL from <a href="#">129</a> Memorandum Order. Document filed by Danielle Chiesi. Filing fee \$ 455.00, receipt number E 894118. (nd) (Entered: 02/16/2010)
02/11/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 2/11/2010. (mro) (Entered: 02/16/2010)
02/12/2010	<a href="#">139</a>	NOTICE OF APPEARANCE by Andrew James Frisch on behalf of Zvi Goffer (Frisch, Andrew) (Entered: 02/12/2010)
02/12/2010	<a href="#">140</a>	ANSWER to Amended Complaint. Document filed by New Castle Funds LLC. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Holland, Michael) (Entered: 02/12/2010)
02/16/2010	<a href="#">141</a>	ORDER of USCA (Certified Copy) USCA Case Number 10-0462-(L), 10-0464(Con). IT IS HEREBY ORDERED that the motion for a stay pending appeal of the February 9, 2010 order of the Hon. Jed S. Rakoff in the District Court for the Southern District of New York in docket no. 09cv8811 will be determined by a three judges motions panel as soon as possible. The order is stayed until the motions panel makes its determination. The Security & Exchange Commission is ordered to file its opposition on or before Friday, February 19, 2010 at 5:00 PM. Catherine O'Hagan Wolfe, Clerk USCA. Certified: 2/11/2010. (nd) (Entered: 02/16/2010)
02/16/2010		Transmission of Notice of Appeal to the District Judge re: <a href="#">142</a> Notice of Appeal. (nd) (Entered: 02/16/2010)
02/16/2010		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <a href="#">142</a> Notice of Appeal. (nd) (Entered: 02/16/2010)
02/16/2010	<a href="#">143</a>	ANSWER to Amended Complaint. Document filed by Danielle Chiesi. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Zalman, David) (Entered: 02/16/2010)
02/16/2010	<a href="#">144</a>	ANSWER to Amended Complaint. Document filed by Robert Moffat. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Schacter, Kenneth) (Entered: 02/16/2010)
02/16/2010	<a href="#">145</a>	ANSWER to Amended Complaint. Document filed by Raj Rajaratnam. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Hotz, Robert) (Entered: 02/16/2010)

02/16/2010	<a href="#">146</a>	ANSWER to Amended Complaint. Document filed by Galleon Management, LP. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Hakki, Adam) (Entered: 02/16/2010)
02/17/2010	<a href="#">147</a>	ANSWER to Amended Complaint with JURY DEMAND. Document filed by David Plate. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Ferrone, Diane) (Entered: 02/17/2010)
02/17/2010	<a href="#">148</a>	FILING ERROR - WRONG PDF FILE ASSOCIATED WITH DOCKET ENTRY - ANSWER to Amended Complaint. Document filed by Zvi Goffer. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Monaco, Cynthia) Modified on 2/18/2010 (kco). (Entered: 02/17/2010)
02/18/2010	<a href="#">149</a>	ANSWER to Amended Complaint. Document filed by Zvi Goffer. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Monaco, Cynthia) (Entered: 02/18/2010)
02/18/2010	<a href="#">150</a>	ANSWER to Amended Complaint. Document filed by Schottenfeld Group LLC. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Bajwa, Hissan) (Entered: 02/18/2010)
02/18/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 2/18/2010. (mro) (Entered: 02/19/2010)
02/18/2010	151	TRANSCRIPT of proceedings held on January 25, 2010 4:57 p.m. before Judge Jed S. Rakoff. (ajc) (Entered: 02/24/2010)
02/19/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Pretrial Conference held on 2/19/2010. The Court granted the U.S. Attorney's Office motion to intervene in this case. The Court reserved decision on the application to adjourn the trial date set for August 2nd. (mro) (Entered: 02/22/2010)
02/24/2010	<a href="#">152</a>	LETTER addressed to Judge Jed S. Rakoff from Kenneth L. Schacter dated 2/22/2010 re: We represent defendant Robert Moffat in the above-referenced matter. I am writing to address a legal issue that arose during the conference on Friday, February 19, 2010, concerning the Government's motion to adjourn the trial in this matter until after the conclusion of the trial in United States v. Rajaratnam et al., No. 09 Cr. 1184 (RJH). Document filed by Robert Moffat. (rw) (Entered: 02/24/2010)
02/24/2010	<a href="#">153</a>	ANSWER to Amended Complaint. Document filed by Steven Fortuna. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission. (Attachments: # <a href="#">1</a> Affidavit of Service)(Bernard, Adler) (Entered: 02/24/2010)
02/25/2010	<a href="#">154</a>	PROTECTIVE ORDER...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Jed S. Rakoff on 2/24/2010) (jpo) (Entered: 02/25/2010)
03/10/2010	155	TRANSCRIPT of proceedings held on February 19, 2010 2:00 p.m. before Judge Jed S. Rakoff. (ajc) (Entered: 03/11/2010)

03/11/2010	156	TRANSCRIPT of proceedings held on 2/19/10 before Judge Jed S. Rakoff. (pl) (Entered: 03/11/2010)
03/11/2010	<a href="#">157</a>	ANSWER to Amended Complaint. Document filed by Mark Kurland. Related document: <a href="#">124</a> Amended Complaint, filed by Securities and Exchange Commission.(Theodore, Theodore) (Entered: 03/11/2010)
03/24/2010	<a href="#">158</a>	ORDER Now, however, a further factor has tipped the balance toward adjournment. Specifically, the Court of Appeals has today stayed the prior order of this Court directing certain defendants to turn over to the plaintiff Securities and Exchange Commission the wiretapped conversations received by these defendants in the parallel criminal matter. See S.E.C. v. Galleon Management, LP, 10-0462-cv (Lead) (2d Cir. Mar. 24, 2010) (order granting stay pending appeal). The stay order also sets forth the schedule for the briefing of the appeal from this Court's order, with the final brief to be filed on June 8, 2010 and oral argument to be heard thereafter. Moreover, comments made by the presiding judge during the oral argument before the Court of Appeals suggest that the resolution of that appeal may also be affected by the resolution of the suppression hearing on the wiretap evidence currently scheduled to commence before Judge Holwell on June 17, 2010. Since, therefore, resolution of the wiretap issue cannot realistically be expected before July 2010, an August 2 trial is no longer practical, and counsel for several of the defendants will thereafter be occupied in preparing for the criminal trial set for October 2010. Thus, with reluctance, the Court hereby adjourns the trial of this case until Monday, February 14, 2011. Counsel should consult with one another as to a proposed new case management plan in light of this change, and fax to the Court their proposed joint plan or respective differing plans by no later than March 31, 2010. SO ORDERED. (Signed by Judge Jed S. Rakoff on 3/24/2010) (jmi) (Entered: 03/25/2010)
04/05/2010	<a href="#">159</a>	CIVIL CASE MANAGEMENT PLAN: Ready for Trial by 2/14/2011. This case is to be tried to a jury. All depositions (including any expert depositions, see item 3 of this Order) must be completed by 1/7/2011. All Discovery due by 1/7/2011. Post-discovery summary judgment motions are to be served and filed by 1/14/2011. Responses are to be served and filed by 1/21/2011. Replies are to be served and filed by 1/26/2011. A final pretrial conference, as well as oral argument on any post-discovery summary judgment motions, shall be held on 2/1/2011 at 04:00 PM before Judge Jed S. Rakoff. Pretrial Order due by 2/10/2011. The Court will decide any summary judgment motion by 2/4/11. No motions in limine will be permitted. The Joint Pretrial Order will be due on 2/10/11. (Signed by Judge Jed S. Rakoff on 4/3/2010) (tro) (Entered: 04/05/2010)
04/05/2010	<a href="#">160</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik dated 3/29/10 re: The Commission requests that Your Honor enter the proposed judgment with respect to the defendant Schottenfeld Group, which would resolve all issues in this action with respect to that defendant. Document filed by Securities and Exchange Commission.(mro) Modified on 4/6/2010 (mro). (Entered: 04/05/2010)
04/05/2010	<a href="#">161</a>	ORDER: The parties, jointly or severally, are hereby ordered to file with the Court, by no later than April 12, 2010, one or more formal statements setting

		forth: (1) the details of how the disgorgement figure was calculated, including the particulars of the violations involved and how the related trading profits or losses were arrived at; (2) the specifics of the recommendations for enhanced compliance made to Schottenfeld by its outside counsel and the manner in which Schottenfeld proposes to implement those recommendations; and (3) the timing and manner of the appointment of the independent consultant, including the selection criteria. (Signed by Judge Jed S. Rakoff on 4/5/10) (db) (Entered: 04/05/2010)
04/12/2010	<a href="#">162</a>	LETTER addressed to Judge Jed S. Rakoff from Valerie A. Szczepanik and Kenneth Breen dated 4/7/10 re: The Commission and Schottenfeld Group request that Your Honor enter the proposed judgment with respect to defendant Schottenfeld Group which would resolve all issues in this action with respect to that defendant. Document filed by Schottenfeld Group LLC, Securities and Exchange Commission.(mro) (Entered: 04/12/2010)
04/19/2010		Minute Entry for proceedings held before Judge Jed S. Rakoff: Telephone Conference held on 4/19/2010. (mro) (Entered: 04/20/2010)
04/20/2010	<a href="#">163</a>	ORDER re submitted Consent and Proposed Final Judgment as to defendant Schottenfeld Group, LLC: The Court finds the disgorgement and penalty calculations to be reasonable. Although the prophylactic measures appear somewhat superficial, the Court, after giving the requisite deference to plaintiff's assessment in this regard, hereby approves the settlement, which will be signed and docketed separately. So Ordered. (Signed by Judge Jed S. Rakoff on 4/19/10) (cd) (Entered: 04/20/2010)
04/20/2010	<a href="#">164</a>	FINAL JUDGMENT #10,0621 in favor of Securities and Exchange Commission against Schottenfeld Group LLC in the amount of \$ 762,915.64. (Signed by Judge Jed S. Rakoff on 4/19/10) (Attachments: # <a href="#">1</a> notice of right to appeal)(ml) (Entered: 04/20/2010)

<b>PACER Service Center</b>			
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04/20/2010 16:06:25			
<b>PACER Login:</b>	ak0004	<b>Client Code:</b>	687830.0002
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:09-cv-08811-JSR
<b>Billable Pages:</b>	19	<b>Cost:</b>	1.52



Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, plaintiff Securities and Exchange Commission (the "Commission") requests that defendant Raj Rajaratnam produce the following documents for inspection and copying on or before December 16, 2009, at the New York offices of the Commission, 3 World Financial Center, Room 400, New York, N.Y. 10281-1022.

**A. DEFINITIONS AND INSTRUCTIONS**

1. The definitions and rules of construction set forth in Local Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York ("Local Rules") are incorporated by reference into these document requests as if fully set forth herein.

2. "This action" means SEC v. Galleon Management, LP, et al., 09 CV 8811 (JSR).

3. "You" and "your" means the person to whom these document requests are directed, including your former or present accountants, officers, agents, servants, employees, attorneys or other representatives, or any corporations, partnerships, or other entities over which you exercise or have exercised control or which have acted on your behalf.

4. "Polycom" means Polycom, Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

5. "Hilton" means Hilton Hotels Corp., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have

acted on its behalf, its predecessors, successors, assigns and affiliates.

6. “Google” means Google, Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

7. “Intel” means Intel Corp., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

8. “Clearwire” means Clearwire Corp., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

9. “AMD” means Advanced Micro Devices Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

10. “PeopleSupport” means PeopleSupport, Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

11. “Akamai” means Akamai Technologies, Inc., including its former or present

accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

12. "Sprint" means Sprint Nextel Corp., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

13. "ATIC" means Advanced Technology Investment Co., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

14. "Mubadala" means Mubadala Investment Co., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

15. "IBM" means International Business Machines Corp., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

16. Assertions of any claim of privilege or work product protection shall be governed by Local Rule 26.2.

17. If any document sought by these document requests once was, but no longer is, within your possession, custody or control, please identify each such document and its present or last known custodian, and state: (a) the reason why the document is not being produced; and (b) the date of the loss, destruction, discarding, theft or other disposal of the document.

18. Each document request requires production of each responsive document in its entirety, including all non-identical copies, drafts, and identical copies containing different handwritten notations, without abbreviation, expurgation, or redaction.

19. These document requests are continuing and, to the extent that your answers may be enlarged, diminished or otherwise modified by information acquired by you subsequent to the service of your response hereto, you are promptly to serve supplemental responses reflecting all subsequently acquired information.

20. Unless otherwise specified, the time period covered by these document requests is January 1, 2005 through the date of the trial of this action.

**B. REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

1. All documents concerning any fact alleged in the pleadings filed in this action, or any fact underlying the subject matter of this action.

2. All documents sufficient to identify any individual with knowledge or information concerning any fact alleged in the pleadings filed in this action, or any fact underlying the subject matter of this action, and all documents concerning and including any communications by or to such individual concerning any fact alleged in the pleadings filed in this action, or any fact underlying the subject matter of this action.

3. All documents concerning any defenses or denials asserted by, or to be asserted

by, you in this case.

4. All documents that you intend to, or might, rely upon for any purpose in this action.
5. All documents concerning your appointments and schedules.
6. All documents concerning contact and phone lists maintained by you or on your behalf.
7. Records of all calls, faxes, and text messages you made, sent, or received, business and personal, including, but not limited to, records of telephone lines you used that are standard, cellular, or mobile, including, but not limited to, telephone bills, call detail records, message slips, notes and memoranda.
8. All documents concerning communications concerning: (a) Polycom, (b) Hilton, (c) Google, (d) Intel, (e) Clearwire, (f) AMD, (g) PeopleSupport, (h) Akamai, (i) Roomy Khan, (j) Anil Kumar, (k) Rajiv Goel, (l) Danielle Chiesi, (m) Mark Kurland, (n) Robert Moffat, (o) Hector Ruiz, (p) Kieran Taylor, (q) Krish Panu, (r) Ian Horowitz, (s) Todd Deutsch, (t) Gary Rosenbach, (u) Ali T. Far, (v) Choo-Beng Lee, (w) Deep Shah, (x) Shammara Hussain, (y) Sunil Bhalla, or (z) Rengan Rajaratnam.
9. All documents concerning Polycom, Hilton, Google, Intel, Clearwire, AMD, PeopleSupport, or Akamai (collectively, the "Relevant Issuers"), including, but not limited to all documents concerning trades and transactions in the securities of any of the Relevant Issuers, including, but not limited to, monthly account statements of accounts over which you have had any control or beneficial interest.
10. All documents concerning Polycom's financial results or guidance.

11. All documents concerning a possible purchase of Hilton in 2007.
12. All documents concerning Google's financial results or guidance.
13. All documents concerning Intel's financial results or guidance.
14. All documents concerning the joint venture involving Clearwire, Sprint, and Intel, announced publicly on May 7, 2008, including, but not limited to: (a) any documents relating to the negotiations or discussions that led up to the announcement of the joint venture, (b) any documents concerning the possibility that Clearwire, Sprint, or Intel would enter into a joint venture, or (c) any documents concerning the possibility that Intel would invest in such a joint venture.
15. All documents concerning AMD's transactions with ATIC and Mubadala, announced publicly on October 7, 2008, including, but not limited to: (a) any documents relating to the negotiations or discussions that led up to the announcement of the transactions, including any negotiations or discussions with IBM, and (b) any documents concerning the possibility that AMD would enter into transactions with ATIC and Mubadala.
16. All documents concerning the possible acquisition of PeopleSupport in 2008.
17. All documents concerning Akamai's financial results or guidance.
18. All documents concerning securities trades and transactions in which Rajiv Goel had a beneficial interest.
19. All documents concerning your sources of information at public companies.
20. Documents sufficient to show your financial assets and liabilities.
21. All Documents concerning all brokerage or securities accounts, other than Galleon accounts, in which you have or had a beneficial or controlling interest.

22. All federal and state tax returns filed by you or on your behalf.

Dated: November 16, 2009  
New York, New York



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VALERIE A. SZCZEPANIK  
Attorney for Plaintiff  
Securities and Exchange Commission  
New York Regional Office  
3 World Financial Center  
New York, NY 10281-1022  
Ph: (212) 336-0175  
Fx: (212) 336-1317



Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, plaintiff Securities and Exchange Commission (the "Commission") requests that defendant Danielle Chiesi produce the following documents for inspection and copying on or before December 16, 2009, at the New York offices of the Commission, 3 World Financial Center, Room 400, New York, N.Y. 10281-1022.

**A. DEFINITIONS AND INSTRUCTIONS**

1. The definitions and rules of construction set forth in Local Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York ("Local Rules") are incorporated by reference into these document requests as if fully set forth herein.

2. "This action" means SEC v. Galleon Management, LP, et al., 09 CV 8811 (JSR).

3. "New Castle" means New Castle Funds LLC, including its former or present members, accountants, officers, agents, servants, employees, attorneys, members, or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

4. "S2 Capital" means S2 Capital Management, LP, including its former or present limited or general partners, accountants, officers, agents, servants, employees, attorneys, members, or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

5. “IBM” means International Business Machine Corporation, including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

6. “Sun Microsystems” means Sun Microsystems, Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

7. “AMD” means Advanced Micro Devices Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

8. “Akamai” means Akamai Technologies, Inc., including its former or present accountants, officers, agents, servants, employees, attorneys or other representatives, any corporations, partnerships, or other entities over which it exercises or has exercised control or which have acted on its behalf, its predecessors, successors, assigns and affiliates.

9. “You” and “your” means the person to whom these document requests are directed, including your former or present accountants, officers, agents, servants, employees, attorneys or other representatives, or any corporations, partnerships, or other entities over which you exercise or have exercised control or which have acted on your behalf.

10. Assertions of any claim of privilege or work product protection shall be governed by Local Rule 26.2.

11. If any document sought by these document requests once was, but no longer is, within your possession, custody or control, please identify each such document and its present or last known custodian, and state: (a) the reason why the document is not being produced, and (b) the date of the loss, destruction, discarding, theft or other disposal of the document.

12. Each document request requires production of each responsive document in its entirety, including all non-identical copies, drafts, and identical copies containing different handwritten notations, without abbreviation, expurgation, or redaction.

13. These document requests are continuing and, to the extent that your answers may be enlarged, diminished or otherwise modified by information acquired by you subsequent to the service of your response hereto, you are promptly to serve supplemental responses reflecting all subsequently acquired information.

14. Unless otherwise specified, the time period covered by these document requests is June 1, 2007 through the present.

## **II. REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

1. All documents concerning any fact alleged in the pleadings filed in this action, or any fact underlying the subject matter of this action.

2. All documents sufficient to identify any individual with knowledge or information concerning any fact alleged in the pleadings filed in this action, or any fact underlying the subject matter of this action, and all documents concerning and including any communications by or to such individual concerning any fact alleged in the pleadings filed in this action, or any fact underlying the subject matter of this action.

3. All documents concerning any defenses or denials asserted by, or to be asserted

by, you in this case.

4. All documents that you intend to, or might, rely upon for any purpose at trial or on summary judgment in this action.

5. All documents reflecting your appointments and schedules.

6. All documents concerning contact and phone lists created or maintained by or for you.

7. All documents concerning records of all calls, faxes, and text messages, whether standard, cellular, or mobile, including, but not limited to, telephone bills, call details, message slips, notes, and memoranda, from or to you.

8. All documents concerning communications concerning: (a) IBM, (b) Sun Microsystems, (c) AMD, (d) Akamai, (e) Mark Kurland, (f) Robert Moffat, (g) Hector Ruiz, (h) Keiran Taylor, (i) Steven Fortuna, (j) S2 Capital, and (k) Raj Rajartnam.

9. All documents concerning trades and transactions in the securities of: (a) IBM, (b) Sun Microsystems, (c) AMD, and (d) Akamai, including, but not limited to, monthly account statements of accounts over which you had any control or beneficial interest.

10. All documents concerning the securities of: (a) IBM, (b) Sun Microsystems, (c) AMD, and (d) Akamai.

11. All documents concerning: (a) Sun Microsystem's January 27, 2009 Q2 earnings release, (b) all other Sun Microsystem earnings releases or guidance, and (c) IBM's possible acquisition of Sun Microsystems.

12. All documents concerning AMD's 2008 recapitalization and spin-off of its semiconductor manufacturing operations, including negotiations, discussions and transactions

with Advanced Technology Investment Company, Mubadala Investment Company and IBM.

13. All documents concerning: (a) IBM's January 20, 2009, Q4 2008 earnings release, and (b) all other IBM earnings releases or guidance issuance.

14. All documents concerning: (a) Akamai's July 30, 2008 Q2 2008 earnings release, and (b) all other Akamai earnings releases or guidance issuance.

15. All documents: (a) concerning New Castle's internal policies and procedures concerning insider trading or the treatment of confidential information, and (b) concerning your compliance with same.

16. All documents concerning any allegation that you engaged in insider trading.

17. All documents concerning any payments or other remuneration to you in excess of \$5,000.

18. All documents concerning your separation, suspension, or departure from New Castle.

19. All documents concerning any internal investigation or action by New Castle concerning insider trading or misuse of confidential information.

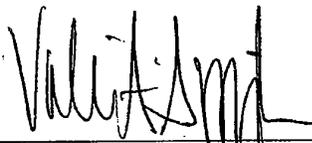
20. All documents concerning your sources of information at any publicly traded company.

21. All consulting agreements between you and New Castle.

22. Federal and State Tax Returns filed by you or on your behalf.

23. Documents sufficient to indentify your assets and liabilities.

Dated: November 16, 2009  
New York, New York



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VALERIE A. SZCZEPANIK  
Attorney for Plaintiff  
Securities and Exchange Commission  
New York Regional Office  
3 World Financial Center  
New York, NY 10281-1022  
Ph: (212) 336-0175  
Fx: (212) 336-1317



JED S. RAKOFF, U.S.D.J.

All the parties to this action having requested that the Court issue a protective order to protect the confidentiality of nonpublic and competitively-sensitive information that may need to be disclosed to adversary parties in connection with discovery in this case pursuant to Fed. R. Civ. P. 26(c), and to guard against the waiver of attorney-client privilege and work product protection pursuant to Fed. R. Evid. 502(d), the parties having agreed to the following terms, and the Court having found that good cause exists for issuance of an appropriately-tailored protective order governing the pre-trial phase of this action, it is therefore hereby

ORDERED that any person subject to this Order – including without limitation the parties to this action, their representatives, agents, experts and consultants, all third parties providing discovery in this action, and all other interested persons with actual or constructive notice of this Order -- shall adhere to the following terms, upon pain of contempt:

1. Any person subject to this Order who receives from any other person any "Discovery Material" (i.e., information of any kind provided in the course of discovery in this action) that is designated as "Confidential" pursuant to the terms of this Order shall not disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder.

2. The person producing any given Discovery Material may designate as Confidential only such portion of such material as consists of:

(a) previously nondisclosed financial information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports and sale margins);

(b) previously nondisclosed material relating to ownership or control of any non-public company;

(c) previously nondisclosed business plans, product development information, or marketing plans;

(d) any information of a personal or intimate nature regarding any individual; or

(e) any other category of information hereinafter given confidential status by the Court.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the producing person or that person's counsel may designate such portion as "Confidential" by stamping or otherwise clearly marking as "Confidential" the protected portion in a manner that will not interfere with legibility or audibility, and by also producing for future public use another copy of said Discovery Material with the confidential information redacted. With respect to deposition transcripts

and exhibits, a producing person or that person's counsel may indicate on the record that a question calls for Confidential information, in which case the transcript of the designated testimony shall be bound in a separate volume and marked "Confidential Information Governed by Protective Order" by the reporter.

4. If at any time prior to the trial of this action, a producing person realizes that some portion[s] of Discovery Material that that person previously produced without limitation should be designated as Confidential, he may so designate by so apprising all parties in writing, and such designated portion[s] of the Discovery Material will hereafter be treated as Confidential under the terms of this Order.

5. No person subject to this Order other than the producing person shall disclose any of the Discovery Material designated by the producing person as confidential to any other person whomsoever, except to:

- (a) the parties to this action;
- (b) counsel retained specifically for this action, including any paralegal, clerical and other assistant employed by such counsel and assigned to this matter;
- (c) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;
- (d) any witness who counsel for a party in good faith believes may be called to testify at trial or deposition in this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;
- (e) any person retained by a party to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such

person has first executed a Non-Disclosure Agreement in the form annexed as an Exhibit hereto;

(f) stenographers engaged to transcribe depositions conducted in this action;

(g) co-counsel, the Government, or the Court in any criminal investigation or litigation; and

(h) the Court and its support personnel.

6. Prior to any disclosure of any Confidential Discovery Material to any person referred to in subparagraphs 5(d) or 5(e) above, such person shall be provided by counsel with a copy of this Protective Order and shall sign a Non-Disclosure Agreement in the form annexed as an Exhibit hereto stating that that person has read this Order and agrees to be bound by its terms. Said counsel shall retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either prior to such person being permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

7. All Confidential Discovery Material filed with the Court, and all portions of pleadings, motions or other papers filed with the Court that disclose such Confidential Discovery Material, shall be filed under seal with the Clerk of the Court and kept under seal until further order of the Court. The parties will use their best efforts to minimize such sealing.

8. Any party or producing person who either objects to any designation of confidentiality, or who, by contrast, requests still further limits on disclosure (such as "attorneys' eyes only" in extraordinary circumstances), may at any time prior to the trial of this action serve upon counsel for the designating person or party requesting

production a written notice stating with particularity the grounds of the objection or request, or make production under a designation that limits disclosure and/or transmission of produced documents. If agreement cannot be reached promptly, counsel for all affected persons will convene a joint telephone call with the Court to obtain a ruling.

9. All persons are hereby placed on notice that the Court is unlikely to seal or otherwise afford confidential treatment to any Discovery Material introduced in evidence at trial, even if such material has previously been sealed or designated as Confidential. The Court also retains discretion whether to afford confidential treatment to any Confidential Document or information contained in any Confidential Document submitted to the Court in connection with any motion, application, or proceeding that may result in an order and/or decision by the Court.

10. Each person who has access to Discovery Material that has been designated as Confidential shall take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

11. If, in connection with this litigation, a party inadvertently discloses information subject to a claim of attorney-client privilege or attorney work product protection (“Inadvertently Disclosed Information”), such disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work product protection with respect to the Inadvertently Disclosed Information and its subject matter.

12. If a disclosing party makes a claim of inadvertent disclosure, the receiving party shall, within five business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed.

13. Within five business days of the notification that such Inadvertently Disclosed Information has been returned or destroyed, the disclosing party shall produce a privilege log with respect to the Inadvertently Disclosed Information.

14. The receiving party may move the Court for an Order compelling production of the Inadvertently Disclosed Information. The motion shall be filed under seal, and shall not assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.

15. The disclosing party retains the burden of establishing the privileged or protected nature of any Inadvertently Disclosed Information. Nothing in this Order shall limit the right of any party to request an *in camera* review of the Inadvertently Disclosed Information.

16. This Protective Order shall survive the termination of the litigation. Within 30 days of the final disposition of this action, all Discovery Material designated as "Confidential," and all copies thereof, shall be promptly returned to the producing person, or, upon permission of the producing person, destroyed.

17. This Court shall retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

18. Nothing in this Order shall interfere with the Commission's use of information for law enforcement activities and to otherwise regulate, administer and enforce the federal securities laws.

SO ORDERED.

Dated: 12-16-09  
New York, New York

  
\_\_\_\_\_  
JED S. RAKOFF, U.S.D.J.



of this litigation and that at the conclusion of the litigation I will return all discovery information to the party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: \_\_\_\_\_

**Szczepanik, Valerie**

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**From:** Szczepanik, Valerie  
**Sent:** Monday, December 28, 2009 4:19 PM  
**To:** 'White, Bill'  
**Cc:** Fontes, Silvestre A.  
**Subject:** SEC v. Galleon; 09 CV 8811

Bill,

I understand that certain wire surveillance items relating to the above-captioned case have been released to you, including audio recordings, line sheets and applications. These items are responsive to the SEC's document requests to your client, served on November 16, 2009, and we request that copies of these items be provided to us immediately or, alternatively, that they immediately be made available for our inspection and copying.

Regards,  
Valerie Szczepanik

**Szczepanik, Valerie**

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**From:** Szczepanik, Valerie  
**Sent:** Monday, December 28, 2009 4:20 PM  
**To:** 'Kaufman, Allan'  
**Subject:** SEC v. Galleon; 09 CV 8811

Alan,

I understand that certain wire surveillance items relating to the above-captioned case have been released to you, including audio recordings, line sheets and applications. These items are responsive to the SEC's document requests to your client, served on November 16, 2009, and we request that copies of these items be provided to us immediately or, alternatively, that they immediately be made available for our inspection and copying.

Regards,  
Valerie Szczepanik

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

WILLIAM E. WHITE  
202.887.4036/fax: 202.887.4288  
wwhite@akingump.com

December 30, 2009

VIA FIRST CLASS MAIL AND EMAIL

Valerie A. Szczepanik  
SEC, Northeast Regional Office  
3 World Financial Center, Suite 400  
New York, NY 10281Re: SEC v. Galleon Management, LP, et al., 09 Civ. 8811 (JSR)

Dear Ms. Szczepanik:

This letter responds to your request to Mr. Rajaratnam that he produce to the SEC the wiretap communications recorded by the United States Attorney's Office during its criminal investigation of Mr. Rajaratnam for alleged insider trading – an investigation throughout which the SEC itself worked “very closely” as a “terrific partner” with the U.S. Attorney (according to the post-complaint press conferences).

As an initial matter, we wish to be clear that, while we very recently received some of the intercepted communications and line sheets from the U.S. Attorney's Office, we still do not have the vast majority of the more than eight months of wiretaps. And what materials we do have and obtain in the future, we are unable to produce to you for three reasons.

First, and most importantly, the wiretap communications and related materials that Mr. Rajaratnam has received were properly provided to him as a defendant in a criminal case pursuant to Title III (18 U.S.C. 2510 - 2522) and Rule 16 of the Federal Rules of Criminal Procedure. Title III and the Constitution both require that the government disclose those materials to him.

However, as you know, Title III strictly regulates the disclosure of wiretap communications and criminally proscribes any distribution of the communications not authorized by the law. See 18 U.S.C. §§ 2511, 2517; see generally Bartnicki v. Vopper, 532 U.S. 514 (2001). We see nothing in Title III that authorizes Mr. Rajaratnam to disclose the communications that you have requested to a party as part of discovery in a civil proceeding – let alone to the nineteen other private parties in the SEC civil case who would be entitled to make an identical discovery request. Cf. 18 U.S.C. § 2517(3) (disclosure by individual limited to “while giving testimony”). Nor does Title III permit the broad public disclosure of the wiretap transcripts that the SEC's use of such materials in a civil trial anticipates.

Indeed, prior to producing the materials to Mr. Rajaratnam, the U.S. Attorney's Office requested that he stipulate to producing them to the SEC as well. Mr. Rajaratnam declined to do

AKIN GUMP  
STRAUSS HAUER & FELD LLP  

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Attorneys at Law

Valerie A. Szczepanik  
December 30, 2009  
Page 2

so because nothing in Title III permits either him or the U.S. Attorney to disclose the materials to the SEC. Nor does anything in Title III appear to permit the federal government to stipulate its way around Title III's strict disclosure limitations. We thus believe that the U.S. Attorney's Office shares our view about the limitations on disclosure. That, in fact, is the only plausible explanation for their exceptional request for a stipulation from a criminal defendant in the course of complying with their constitutional and statutory disclosure obligations to him.

Second, even if we were permitted to produce the materials, which we are not, and even if the SEC were entitled to receive them, which it is not, it would be inappropriate to produce them in civil discovery before the Court in this case has determined whether the wiretaps were obtained "in violation of [Title III]," 18 U.S.C. § 2511(d). We believe that the intercepted communications were obtained, in violation of both Title III and the Fourth Amendment to the Constitution. Given the constitutional and statutory privacy interests protected by Title III, it would be inappropriate for these intercepts to be distributed through the civil discovery process to the SEC, not to mention the nineteen other parties to this lawsuit. Such a wholesale release of raw, untested Title III information is not only prohibited by the statute, but in fact flies in the teeth of the very purpose for the extensive protections and constraints that Congress codified in Title III. If you believe there is contrary authority, please let us know as soon as possible.

Third, it bears noting that, while you have told us that the SEC does not have possession, custody, or control of this material, that claim is hard to reconcile with the detailed pleading of the SEC's Amended Complaint. Without access to the intercepted communications, it is difficult to see how the SEC had a basis to make such allegations. Please advise us whether the SEC has already been afforded any access in any manner to the wiretap communications that you now seek from Mr. Rajaratnam, or to summaries or derivatives of those interceptions in any form.

Relatedly, your attempted scheduling of Mr. Rajaratnam's deposition is premature. We have just received some of the intercepted communications, while more are reported to be en route. Until we review and analyze all of that material, we are not in a position to advise Mr. Rajaratnam concerning his rights with respect to the deposition. Moreover, as stated above, we intend to move to suppress the intercepted communications and anything derived from those communications. Mr. Rajaratnam's deposition should not take place until after that motion is decided. We propose selecting a control date of April 7, 2010 for Mr. Rajaratnam's deposition. Please let us know if this is agreeable to you or if we should schedule a conference with Judge Rakoff.

On another topic, please let us know if you have reconsidered your position with respect to: (1) producing, or permitting us to obtain a forensic image of Roomy Khan's computers (Request #1 of the First Request For the Production of Documents); (2) producing all documents (except for privileged documents) related to the 1998-2003 investigation or inquiry related to Roomy Khan (Request #1, 2, & 4); (3) producing all documents (except for privileged

AKIN GUMP  
STRAUSS HAUER & FELD LLP  

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Attorneys at Law

Valerie A. Szczepanik  
December 30, 2009  
Page 3

documents) from the investigation where Ms. Khan purportedly obstructed justice (Requests #1, 3, & 4). If you will not provide us with this material we will also need to schedule a conference with Judge Rakoff.

Sincerely,

A handwritten signature in black ink, appearing to read "William E. White". The signature is written in a cursive, flowing style.

William E. White



Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, plaintiff Securities and Exchange Commission (the "Commission") requests that defendants produce the following documents for inspection and copying within 30 days of service of these requests, at the New York offices of the Commission, 3 World Financial Center, Room 400, New York, N.Y. 10281-1022.

**A. DEFINITIONS AND INSTRUCTIONS**

1. The definitions and rules of construction set forth in Local Civil Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York ("Local Rules") are incorporated by reference into these document requests as if fully set forth herein.

2. "This action" shall mean SEC v. Galleon Management, LP, et al., 09 CV 8811 (JSR).

3. "Wiretap materials" includes any materials concerning visual observation or aural monitoring, electronic or otherwise, conducted by any investigative or law enforcement officer concerning the conduct alleged in the above-captioned case or any parallel criminal action, including any surveillance conducted by the United States Attorney's Office, the Federal Bureau of Investigation and any other government agency or enforcement body, and shall include any recordings of communications, affidavits and applications in support of monitoring, court orders, summaries, line sheets, and transcriptions, and any portion thereof.

4. Assertions of any claim of privilege or work product protection shall be governed by Local Rule 26.2.

5. If any document sought by these document requests once was, but no longer is, within your possession, custody or control, please identify each such document and its present or last known custodian, and state: (a) the reason why the document is not being produced; and (b) the date of the loss, destruction, discarding, theft or other disposal of the document.

6. Each document request requires production of each responsive document in its entirety, including all non-identical copies, drafts, and identical copies containing different handwritten notations, without abbreviation, expurgation, or redaction.

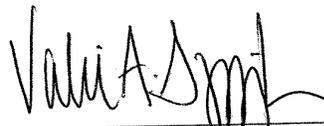
7. These document requests are continuing and, to the extent that your answers may be enlarged, diminished or otherwise modified by information acquired subsequent to the service of your response hereto, you are promptly to serve supplemental responses reflecting all subsequently acquired information.

8. Unless otherwise specified, the time period covered by these document requests is March 1, 2006 through the date of the trial of this action.

**B. REQUESTS FOR THE PRODUCTION OF DOCUMENTS**

1. All documents concerning wiretap materials.
2. All documents sufficient to identify any individual or entity with possession, custody or control of wiretap materials.
3. All documents evidencing any joint defense agreement concerning this action.
4. All documents produced in response to subpoenas and/or requests for documents or information concerning the matters referenced in the pleadings in this action.

Dated: January 13, 2010  
New York, New York



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MOTION

1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK  
2 -----x

2  
3 SECURITIES AND EXCHANGE  
3 COMMISSION,

4  
4 Plaintiff, New York, N.Y.

5 v. 09 Civ. 8811 (JSR)

6 GALLEON MANAGEMENT, LP, et  
7 al.,

8 Defendants.

9 -----x

10 January 25, 2010  
10 4:57 p.m.

11 Before:

12 HON. JED S. RAKOFF,  
13 District Judge

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MOTION  
APPEARANCES CONTINUED

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1 (Case called; all sides ready)

2 THE COURT: All right. We have two matters before the  
3 Court, one of which has been the subject of formal motion  
4 papers, the other the subject of letter briefing that, however,  
5 has been docketed and is publicly available.

6 The formal motion is the SEC's motion to file an  
7 amended complaint, and the letter briefing relates to the SEC's  
8 application to obtain, by way of discovery from the defendants,  
9 the wiretap recordings and information that they've received  
10 from the U.S. Attorney's Office, which is here as well.

11 The fact that the door to the cell block just opened  
12 should not discourage anyone from making any argument they care  
13 to make. I have a criminal matter after this matter.

14 I think we will start with the motion to amend, though  
15 the two are not totally unrelated.

16 I think it comes down to a question of whether there  
17 is any real prejudice. Unlike, for example, the case of SEC v.  
18 Bank of America, where I denied such a motion because the SEC  
19 had waited until the end of discovery to bring on such a  
20 motion, here discovery is, while underway, far from being  
21 completed; it doesn't need to be completed until April 30th.  
22 It is true that we've set a trial date and, like all my trial  
23 dates, it is fixed in stone and will not move. But that is  
24 August 2nd, which is eons from now.

25 So absent some substantial prejudice, I am inclined to  
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1 grant the motion. So I think we ought to hear first from  
2 opposing counsel.

3 MR. WHITE: Thank you, your Honor. William White for  
4 defendant Raj Rajaratnam.

5 On prejudice, your Honor, it comes down to dates that  
6 have been set. The first is the expert disclosure date, which  
7 is currently set for February 16.

8 THE COURT: Yes. We could move that, though, because  
9 their expert is not due until March 23rd, and, more  
10 importantly, all depositions don't have to be completed until  
11 April 16th. So if you need a couple of extra weeks there, we  
12 could certainly give you that.

13 MR. WHITE: Yes, your Honor. I think I can come back  
14 to that.

15 The second point is Mr. Raj Rajaratnam's deposition,  
16 which is currently being scheduled for early March, in terms of  
17 just gathering the material for these new matters -- and these  
18 new matters do substantially increase the size of the work --  
19 the disgorgement amount, the purported disgorgement amount  
20 doubles. The one case, which is the ATI case, the disgorgement  
21 figure that the SEC has included in the complaint is  
22 \$19 million, which is essentially double the amounts for all  
23 the other stocks combined.

24 There is also a five-month period of time between the  
25 first just tip, as the government would allege in the

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1 complaint, until the actual announcement --

2 THE COURT: I have no doubt that it will require some  
3 additional work. It doesn't sound to me, though, like it  
4 requires an inordinate amount of work. Your client is blessed  
5 with very skillful counsel from a very large firm. And  
6 experience suggests that you would be able to whip this into  
7 shape, so to speak, in a relatively modest amount of time.

8 I mean, I suppose we could move his deposition a week  
9 or so, as well, to give you a little bit more time, but it  
10 certainly doesn't seem to me to be the kind of prejudice that  
11 would warrant denying the motion. It just means some  
12 adjustments in the discovery schedule.

13 Is there anything else, though, you wanted to add?

14 MR. WHITE: Just this, your Honor. I think we could  
15 make some modest adjustments in both of those deadlines and  
16 that will certainly help give me some additional time. The  
17 concern that we have, though, in this case, what prompted the  
18 proposed amended complaint is some additional information from  
19 the U.S. Attorney's Office developed through a guilty plea of  
20 one of the defendants in this case. And our concern is as we  
21 keep going further down the road, if there is further  
22 information, are there going to be continued motions to amend  
23 that will cause those dates --

24 THE COURT: You should take some solace from my normal  
25 practices in that regard. I'm not going to allow any amendment

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1 that would have any likelihood of moving the trial date. And  
2 moving back from that, you know, a lot follows. And I'm sure  
3 that message has gotten through to your adversary as well.

4 So why don't we move -- let me hear if the SEC has any  
5 problem in moving the date for the defendants -- for the  
6 proponent's expert. It depends on the nature of the expert who  
7 goes first and who goes second. But, anyway, two weeks, and  
8 then the response maybe a week. So it will be -- instead of  
9 February 16th, it would be March 2nd. And instead of  
10 March 23rd, it would be March 30th.

11 Let me just pause there.

12 Any problems with that in terms of the experts?

13 MS. SZCZEPANIK: Your Honor, is that just for Mr. Raj  
14 Rajaratnam's experts or for all the defendants?

15 THE COURT: Well, I will hear the other defendants in  
16 a minute but let's take the worst case. Assuming it was  
17 everyone; so what?

18 MS. SZCZEPANIK: We don't object to a two-week  
19 extension.

20 THE COURT: Let me hear from any other defendant who  
21 wants to be heard on that issue.

22 MR. HAKKI: Your Honor, I am Adam Hakki for Galleon  
23 Management --

24 THE COURT: You would be delighted to take the extra  
25 time?

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1 MR. HAKKI: We would, your Honor.

2 MR. KAUFMAN: I echo that.

3 THE COURT: So it would be for everyone.

4 In terms of the deposition of Mr. Raj Rajaratnam, what  
5 day is that on for now?

6 MR. WHITE: We have some dates. We hadn't firmly set  
7 it. The SEC has proposed some dates in the first week of  
8 March. We would request that we do that later in March, closer  
9 to the end of March, if that's --

10 THE COURT: I don't think the end of March. I think,  
11 from what you just told me, frankly, you could probably do the  
12 earlier part of March, but I'll give you to -- it can be any  
13 date that you mutually agree to up to but no later than  
14 March 15th.

15 All right. So with those understandings, the motion  
16 to amend is granted.

17 Now let's talk about what I think is a really kind of  
18 interesting issue, not that they aren't all very interesting,  
19 of course, which is the disclosure of the wiretap information.  
20 I want to distinguish here, if I may, between the recordings  
21 themselves and the applications. Because much has been made of  
22 interpreting the Second Circuit's recent decision in the matter  
23 of the application of The New York Times to unseal wiretap and  
24 search warrant materials, 577 F.3d 401, (2d Cir. 2009), where  
25 the Court of Appeals, in its wisdom, reversed me for granting

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1 access to those materials.

2 I only mention that because I am very familiar,  
3 obviously, with that case. That had to do with wiretap  
4 applications and with the standard of who is an aggrieved  
5 person and the standard of good cause in connection with  
6 wiretap applications. I did not understand that case -- but I  
7 will be glad to hear anyone who wants to argue otherwise --  
8 that that is really addressing the issue here insofar as the  
9 recordings, as opposed to the applications. There is no issue  
10 of recordings in that case. It had all to do with wiretap  
11 applications.

12 It does not appear to me that the statute really  
13 addresses directly the issue we have here. But let me ask --  
14 and this might be addressed as much to the U.S. Attorney's  
15 Office as to the SEC -- if you had applied to Judge Holwell,  
16 which I gather you keep threatening to do, to disclose to the  
17 SEC for its use in this civil case the wiretap information,  
18 or -- this is addressed to the SEC -- the SEC, regardless if  
19 the U.S. Attorney's office had applied to Judge Holwell for  
20 release of the information, assuming, for the purpose of my  
21 hypothetical that no release had been yet made to the  
22 defendants -- that's artificial, of course, because sooner or  
23 later the criminal case, but it could have conceivably happened  
24 earlier on -- what would be the standard is my question? What  
25 standard would you have to show to Judge Holwell in a criminal

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1 case to warrant his disclosing the wiretap recordings to the  
2 SEC for use in the parallel civil case?

3 MR. STREETER: Your Honor, the government submits that  
4 it would be 2517, Section 2, which provides that the government  
5 can use wiretap evidence and disclose it to the extent such use  
6 is appropriate to the proper performance of the official duties  
7 of the person making disclosure. So we would have --

8 THE COURT: You don't think that's limited, as your  
9 adversary seems to argue, to criminal investigative and law  
10 enforcement agencies?

11 MR. STREETER: Section 1 is but Section 2 is expressly  
12 not so limited. We would not apply under Section 2 for the  
13 reasons they've identified, namely, that the Securities and  
14 Exchange Commission is not the investigative law enforcement  
15 officers that can conduct investigations for the statutes  
16 provided in Title III, but Section 2 allows us to disclose  
17 wiretap evidence so long as it is part of the proper  
18 performance of our official duties. And we think it would be,  
19 and we have been threatening to bring that to Judge Holwell.  
20 But we are waiting because we don't think it makes sense for  
21 two judges to spend their time on what you described as a  
22 difficult and interesting issue.

23 But we are prepared --

24 THE COURT: Judge Holwell undoubtedly is grateful for  
25 that.

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1 I do think -- and I'll hear anyone if they disagree  
2 with this -- I think, as the parties seem to agree on one  
3 thing, which is that essentially the same issues would be  
4 raised in either forum. So since it is before me, I might as  
5 well decide it.

6 MR. STREETER: I think, actually, your Honor, it would  
7 produce the same result but we think the analysis is totally  
8 different here than it would be before Judge Holwell. Judge  
9 Holwell would be addressing the question whether or not it is  
10 part of the proper performance of our duties to hand over this  
11 evidence to the SEC. As your Honor knows, the issue for you is  
12 whether or not there is anything in Title III that prevents the  
13 defendants from handing it over pursuant to a duly issued  
14 discovery request.

15 THE COURT: Yes. But the reason I am not quite sure  
16 that that's not the same issue is because that seems to open  
17 up, on your analysis, a situation where anytime a criminal  
18 defendant received wiretap information, anyone who wanted that  
19 information for any purpose could bring a civil suit. And if  
20 they had a basis -- you know, someone was an alleged victim,  
21 someone had some other legally cognizable basis for bringing  
22 the lawsuit -- they could get it. I'm not sure that Title III  
23 really visages that kind of disclosure.

24 MR. STREETER: Two things about that, your Honor.  
25 First of all, the fact that it has never happened before

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1 suggests that the parade of horrors that the defendants  
2 suggest is not likely to happen.

3 Number two, a motion to dismiss such a frivolous  
4 lawsuit that's merely designed to get at Title III evidence  
5 could easily be granted in order to prevent that from  
6 happening.

7 And thirdly, the Court --

8 THE COURT: Let's take a real possibility. Let's  
9 assume that the victim of a criminal case -- and most crimes  
10 have victims -- brought a civil suit seeking damages -- but it  
11 is not the SEC; we are talking now about, you know, just a  
12 private victim -- and sought from the defendants the wiretap  
13 information. So you're saying that would be fine as far as  
14 you're concerned?

15 MR. STREETER: Yes, your Honor. There are things the  
16 court could do to manage that situation. The schedule could be  
17 structured in a way that the criminal trial goes first and the  
18 evidence is either disclosed or not, and suppression is  
19 determined in the criminal trial and then you are smiling  
20 because --

21 THE COURT: Criminal trial expert, this is unheard of?  
22 What about, or you could have a protective order?

23 MR. STREETER: You absolutely could. In terms of the  
24 defendants' privacy concerns, we think that all of them can be  
25 addressed with a carefully drafted and strictly enforced

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1 protective order in this case.

2 THE COURT: All right. Let me ask the SEC: Are you  
3 of the same mind as the U.S. Attorney's Office?

4 MS. SZCZEPANIK: Yes, your Honor. And I don't think  
5 the issue before the Court is whether any private litigant can  
6 get the information. The facts here are that the information  
7 is clearly relevant. The defendants have it. It's not  
8 privileged. There is nothing constraining the defendants as  
9 far as the protective order in the criminal case. And we've  
10 sought it pursuant to a valid discovery request. And we don't  
11 see anything in Title III that prohibits the defendants turning  
12 it over to us.

13 Moreover, the current situation is creating such an  
14 informational imbalance as can hardly be countenanced under the  
15 Federal Rules. And we think that the issue is ripe for your  
16 Honor --

17 THE COURT: I think the Federal Rules countenance all  
18 sorts of things, but I understand the point you are making.

19 So let me hear from defense counsel.

20 MR. LYNAM: Thank you, your Honor. Terence Lynam for  
21 Mr. Raj Rajaratnam.

22 Your Honor raised a number of points that I would like  
23 to address. We obviously disagree with the government's  
24 position and quite strenuously. We think, first of all, a fair  
25 reading of the Second Circuit's decision in New York Times last

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1 year also provides guidance to this Court on the wiretaps  
2 themselves, not just the applications, because the Second  
3 Circuit said that Title III created a strong presumption  
4 against disclosure of the fruits of the wiretap applications.

5 They also said that Title III has a categorical  
6 presumption against disclosure of the sealed applications.

7 So they talked about both the fruits and the  
8 applications.

9 THE COURT: You would agree, would you not, that the  
10 only holding had to do with the wiretap applications, because  
11 no wiretap recordings were before them?

12 MR. LYNAM: That's right, your Honor. That's correct.  
13 But I think the Court is well aware that applications, when you  
14 have subsequent wiretaps and renewals, like we did here, the  
15 applications and the subsequent applications reveal the  
16 contents of the prior intercepts. So the applications here --

17 THE COURT: I agree. But going back to -- in other  
18 words, what the SEC is most complaining about is, they say  
19 here's a case where the wiretaps that bear directly on the  
20 case, you've got it, they don't. That has infinitely greater  
21 force, it seems to me, when we are talking about the recordings  
22 itself than about the applications.

23 MR. LYNAM: Yes. Your Honor, I would agree with you  
24 on the recordings; that is really the meat of this.

25 THE COURT: Yes.

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1 MR. LYNAM: But the applications are important because  
2 they reveal the recordings and because, as the Second Circuit  
3 pointed out, there is a specific statute that governs the  
4 applications.

5 THE COURT: Yes. But I guess -- I don't mean to  
6 interrupt, though actually I do, but the --

7 MR. LYNAM: That's all right.

8 THE COURT: Assuming for the sake of argument -- and  
9 this is not a ruling, just a hypothetical -- that I were to say  
10 they can't get the applications. Tell me why they shouldn't  
11 get the recordings?

12 MR. LYNAM: The recordings get at least as much  
13 protection as the applications. I think if your Honor applied  
14 New York --

15 THE COURT: Where do you see that in the statute?

16 MR. LYNAM: Well, your Honor, I think you have to look  
17 at what the Second Circuit was saying in The New York Times.  
18 They were saying that there was no disclosure authorized unless  
19 it is -- no disclosure may occur unless it is permitted in the  
20 statute. It's where you start the analysis from.

21 The government's analysis is that all disclosures are  
22 authorized unless prohibited in the statute. That's not what  
23 the Second Circuit said. The Second Circuit said there is a  
24 presumption against disclosure. Only can disclose both the  
25 fruits and the applications --

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1 THE COURT: Which relied heavily on the "aggrieved  
2 person" language because that traced back to the MDC decision.

3 MR. LYNAM: Correct.

4 THE COURT: And that's language that would seemingly  
5 only apply to the applications.

6 MR. LYNAM: The applications do encompass the notion  
7 of an aggrieved person because the statute and the MDC case  
8 talks about it that way. We are certainly just as much an  
9 aggrieved person with the wiretaps themselves of Mr. Raj  
10 Rajaratnam.

11 THE COURT: That's why I could well see that they  
12 might not qualify as an aggrieved person to get the wiretap  
13 applications. But what does that have to do with recordings?

14 MR. LYNAM: I agree. The recordings, I agree that  
15 they are different. But they certainly are not an aggrieved  
16 person for the recording. Their showing must be, under New  
17 York Times and under MDC and if you take into account the  
18 Second Circuit's decision in Newsday, have these wiretap  
19 recording, are they still private? Have they been disclosed in  
20 a public forum? They haven't. They are under seal before  
21 Judge Holwell. We only got them because we are a criminal  
22 defendant --

23 THE COURT: Why is your situation any different than  
24 grand jury material? If there were testimony that had been  
25 given in the grand jury and a party, any party in the world,

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1 but certainly the SEC, could move for release of that  
2 regardless of whether it had been turned over to the defendants  
3 or not. And all they would have to show, under Rule 6(e) of  
4 the Federal Rules of Criminal Procedure, was that they wanted  
5 to use it in connections with an ongoing judicial proceeding,  
6 like a lawsuit.

7 And then, if they got it, you'd be screaming they got  
8 to give it to you as well because how could you defend and have  
9 proper preparation for defending yourself in my hypothetical  
10 lawsuit where they have the grand jury material unless they  
11 turned it over to you as well. Why isn't that the kind of  
12 analysis you should use here?

13 MR. LYNAM: I think it is because, your Honor, Title  
14 III is unique in the sense that the history of why it was  
15 passed in response to the Supreme Court's decision in Katz and  
16 the interpretations of it have been in order to allow any  
17 wiretapping at all, it must be done under the strictures of the  
18 statute itself. So it is not directly analogous to a grand  
19 jury situation. You have to really look at whether the statute  
20 authorizes it. If the statute doesn't authorize the release,  
21 it's prohibited.

22 But I would like to mention one case that we cited in  
23 our letter which dealt with the grand jury situation. It is  
24 interesting. It is the Third Circuit's decision in In Re Grand  
25 Jury where there were wire intercepts by private parties,

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1 illegal -- allegedly illegal intercepts. The government sought  
2 to subpoena those intercepts and they wanted to present them to  
3 a grand jury. So we all know the rules of grand jury secrecy,  
4 and presumably they would be protected under those rules. But  
5 the Third Circuit held that disclosure to the grand jury was  
6 not permitted, analogous to the protective order that we see  
7 the government --

8 THE COURT: Because?

9 MR. LYNAM: Because Title III did not authorize it.  
10 They look at the statute. They say Title III does not  
11 authorize disclosure even to a grand jury. The brief person  
12 objected. And the court said there was no authority in the  
13 statute to disclose the contents of these intercepts to the  
14 grand jury. These were intercepts of private parties.

15 But, nevertheless, I think the point is that even the  
16 protective order that the government is seeking here doesn't  
17 solve this. These wiretaps that we are talking about have  
18 conversations of Mr. Rajaratnam his wife, with his daughter,  
19 with other family members, with his doctor. The SEC has no  
20 right to any of that information. They are strictly under seal  
21 in the criminal case. We've only been given access to them  
22 because of the criminal case.

23 And that has to be the starting point, Title III.  
24 Title III creates the presumption against disclosure. They  
25 haven't cited any case that has authorized disclosure --

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1 THE COURT: Why can't your concerns in that regard be  
2 handled through an appropriate protective order?

3 MR. LYNAM: Well, your Honor, because Title III does  
4 not allow for disclosure under a protective order. It either  
5 allows for the disclosure or not. There is no provision that  
6 allows disclosure for use in civil discovery. There simply is  
7 no provision in that.

8 As I said, there would be a privacy violation even by  
9 disclosing this information to the SEC under a protective  
10 order. They have no right to listen to these intercepts of  
11 Mr. Rajaratnam talking to his wife or his other family members.  
12 They have no -- the privacy interests of the person who is  
13 intercepted are paramount here. We have them for a very  
14 limited purpose, disclosure in the criminal case because, we  
15 are entitled to it under --

16 THE COURT: Haven't you shared that with other defense  
17 counsel?

18 MR. LYNAM: Your Honor, I know that the government is  
19 very interested in that. The government, the U.S. Attorney's  
20 Office recognizes that as a criminal defendant we are entitled  
21 to prepare for trial, in a criminal trial, to use those  
22 materials. We had done some preparation like that. We have  
23 not disclosed any of the recordings to any other defendant.

24 THE COURT: Well, do you plan to?

25 MR. LYNAM: No, your Honor. Now that this case is  
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1 indicted as just Ms. Chiesi and Mr. Rajaratnam, Ms. Chiesi's  
2 counsel has the intercepts so we don't need to disclose them to  
3 our codefendant in the case. So, no, we have not disclosed the  
4 recordings.

5 THE COURT: She has yours as well as -- in other  
6 words, these conversations between your client and his wife,  
7 which you say, you know, are highly private, although  
8 experience suggests that those conversations between husbands  
9 and wives are incredibly boring, but have they been disclosed  
10 to anyone else?

11 MR. LYNAM: Your Honor, I'll just tell you what we  
12 got. We got the intercepts from Mr. Rajaratnam's cell phone,  
13 which is about 2400 recordings, which we are still going  
14 through. We got another group of over I think 3 or 4,000  
15 intercepts from Ms. Chiesi's phone, a separate recording. We  
16 got other intercepts over Mr. Farr's phone and we got other  
17 intercepts over the Drinel/Goffer intercepted phone, which is  
18 another person or defendant. Total intercepts we have are  
19 about 14,000. I assume that Ms. Chiesi's attorney got the same  
20 thing.

21 MR. KAUFMAN: That is correct, your Honor. We have  
22 the same intercepts from --

23 THE COURT: So now you know what Mr. Rajaratnam said  
24 to his wife. Do we need to exclude you from this case.

25 MR. KAUFMAN: Hardly, your Honor. But, your Honor, we  
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1 received that from the U.S. Attorney's Office, not from  
2 Mr. Rajaratnam's counsel. Again, we received those intercepts  
3 pursuant to Rule 16. And --

4 THE COURT: Rule 16. Oh, I thought I just heard from  
5 counsel that it had to only be pursuant to Title --

6 MR. KAUFMAN: It was Rule 16 discovery. They are  
7 obligated to turn over this material.

8 THE COURT: I think actually it probably is pursuant  
9 to Section 2517, as well.

10 MR. LYNAM: Right.

11 THE COURT: There is someone standing behind you who  
12 wants to be heard. Let me hear from her.

13 MS. MONACO: Very briefly, your Honor. Cynthia  
14 Monaco, on behalf of Zvi Goffer.

15 I think counsel just --

16 THE COURT: Mispronounced by your learned colleague.  
17 Yes.

18 MS. MONACO: I think as was just mentioned, some of  
19 the voluminous wiretaps that were presented to Ms. Chiesi and  
20 Mr. Rajaratnam under Rule 16 included intercepts of my client  
21 and another criminal defendant in the separate criminal case,  
22 and we had not had access to those. They have not been  
23 produced to Mr. Goffer or, to my knowledge, to Mr. Drinel under  
24 Rule 16. Our case was just indicted, or the indictment was  
25 just unsealed on Thursday. We haven't been presented for

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1 arraignment yet before Judge Sullivan. So we have no knowledge  
2 of what it is that my client's wiretaps communicate and nor has  
3 Mr. Rajaratnam's counsel shared those with us, your Honor.

4 THE COURT: Let me ask the SEC and the U.S. Attorney's  
5 Office: Are you in agreement that if I were to grant this  
6 application, that everything that that covers, that is  
7 disclosed to the SEC, ought to also be disclosed to all  
8 defendants, including those who don't yet have such  
9 information?

10 MR. STREETER: Yes. Subject it a protective order,  
11 your Honor.

12 THE COURT: Yes, of course, yes.

13 MS. SZCZEPANIK: Agreed, your Honor.

14 THE COURT: So I think that issue, you know, is  
15 subordinate to the main issue.

16 All right. Let me hear first anything further that  
17 defense counsel have to say.

18 MR. LYNAM: Your Honor, I would like to just respond  
19 to the U.S. Attorney's position that disclosure would be  
20 authorized under 2517, Sub 2, which is investigative or law  
21 enforcement officer. That's defined in the statute.

22 The SEC is not an investigative or law enforcement  
23 officer because they are not authorized to make arrests or  
24 prosecute offenses for which the wiretaps could have been  
25 authorized. And that is because Title III specifies the

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1 offenses for which you can get a wiretap, and insider trading  
2 is not one of the specified enumerated offenses. So the SEC  
3 has no right to get the wiretaps pursuant to this investigative  
4 or law enforcement function because you can't wiretap for  
5 insider trading, and that's the only charge they bring in this  
6 civil case. That is the only charge they can bring.

7 So they are trying to end run -- the SEC is trying to  
8 end run their own restriction under this statute to get wiretap  
9 materials for an insider trading case where the statute doesn't  
10 permit such intercepts.

11 THE COURT: You mentioned this in your letter and I  
12 had meant to look at it but I didn't have a chance. Where do  
13 you find the definition that you are now relying on of an  
14 investigative or law enforcement officer?

15 MR. LYNAM: Give me one moment, your Honor.

16 MR. KAUFMAN: Sub 7, 2515.

17 MR. LYNAM: 2510, Sub 7, I am told by my co-counsel.

18 THE COURT: 2510, Sub 7. Hold on.

19 (Pause)

20 So "Investigative or law enforcement officer means any  
21 officer of the United States, or of a state or political  
22 subdivision thereof, who is empowered by law to conduct  
23 investigations."

24 Let me stop there. So far that would include the SEC,  
25 yes, up to that point?

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1 MR. LYNAM: Up to that point, but if you read --

2 THE COURT: Yes, I know.

3 MR. LYNAM: All right, up to that point.

4 THE COURT: "Investigations, however, to make arrests  
5 for offenses enumerated in this chapter and any attorney  
6 authorized by law to prosecute or participate in the  
7 prosecution of such offenses."

8 Now, the offenses enumerated in the chapter would  
9 include mail and wire fraud, yes?

10 MR. LYNAM: Yes, but not insider trading.

11 THE COURT: Well, insider trading is proceeded against  
12 in the SEC's case pursuant to Section 10b-5, which is identical  
13 to the mail and wire fraud statute except it includes an  
14 additional element, namely, in connection with the purchase and  
15 sale of securities.

16 Do you think Congress really was making that fine  
17 tuned a distinction?

18 MR. LYNAM: Yes, your Honor. Congress also did not  
19 put in securities fraud as an enumerated offense, which is a  
20 Title 18 offense. So they left out securities fraud under  
21 Title 18, and they left out all the Title 15 offenses that the  
22 SEC can bring. So neither of those are covered.

23 The U.S. Attorneys --

24 THE COURT: No. Wait. I thought the point you were  
25 making is that securities fraud is not in Title 18.

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1 MR. LYNAM: No. There is a new securities fraud  
2 statute, I think it is 1346, that was added about 10/15 years  
3 ago in Title 18.

4 THE COURT: 1346, which is before the Supreme Court  
5 right now, is the beyond the service --

6 MR. LYNAM: I'm sorry. 1345.

7 THE COURT: There is, of course, RICO, which at one  
8 point, at the time of the enactment of the statute, included  
9 security fraud as a predicate.

10 MR. LYNAM: My point is that neither the securities  
11 fraud in Title 18 -- and we will get the cite in a second -- or  
12 the Title 15 securities fraud, which is the insider trading one  
13 that we have in this civil case, neither of them are enumerated  
14 in Title III's list of offenses for which you can wiretap.  
15 Therefore, the SEC doesn't satisfy the definition of an  
16 attorney entitled by law to prosecute the offenses. They are  
17 not prosecuting wire fraud and they are not prosecuting mail  
18 fraud. They are prosecuting a Title 15 offense.

19 1348 and Title 18 is the securities fraud statute.

20 THE COURT: Supposing -- all right. I'm sorry. What  
21 is the --

22 MR. LYNAM: The securities fraud statute and Title 18  
23 is 1348. That is also not listed as an enumerated offense.

24 So insider trading under Title 15 nor this 1348  
25 violation is not something that Congress has authorized

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1 wiretaps for. The SEC has tried to end-run that by getting  
2 them from us.

3 Your Honor, it is kind of strange what's going on  
4 here, because the SEC could have gone to the U.S. Attorney's  
5 Office and just asked the U.S. Attorney's office to disclose  
6 them to it. But they hadn't done that. They seem reluctant --  
7 the U.S. Attorney's Office seems reluctant to disclose these  
8 wiretaps directly to the SEC, and I think that's because they  
9 recognize there is no provision in Title III that authorizes  
10 them to disclose them to the SEC.

11 THE COURT: OK. So I understand that argument now.  
12 Let me go back to either the SEC or the U.S. Attorney,  
13 whichever wants to be heard on that.

14 The argument, as I now more fully understand it, is  
15 that Subsection 2 of Section 2517 is limited to you guys, not  
16 to the SEC, in terms of who is an investigative or law  
17 enforcement officer, and that the proper performance of what in  
18 this clearly sexist statute is listed as his official duties,  
19 means the kind of official duties referenced in Subsection 7 of  
20 Section 2510, which means prosecuting crimes.

21 What about that?

22 MR. STREETER: Your Honor, we are contending that we  
23 are the law enforcement agency --

24 THE COURT: Right.

25 MR. STREETER: -- that in the proper performance of  
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1 its duties --

2 THE COURT: What is it that leads you to believe that  
3 your disclosure to the SEC is, quote, appropriate to the proper  
4 performance of your official duties?

5 MR. STREETER: A couple of things, your Honor.

6 First of all, the Sixth and Ninth Circuits have  
7 decided, in cases involving IRS civil authorities, which is  
8 not, again, among the investigative law enforcement officers,  
9 that such disclosures can be made, and that the IRS civil  
10 authorities are the analogue of the SEC in this case.

11 But furthermore, your Honor, we work with the SEC.  
12 They are the experts in this field. We seek their expertise.  
13 We often partner with them. And we think it's part of the  
14 proper performance of our duties --

15 THE COURT: Did you disclose the wiretaps to them or  
16 not?

17 MR. STREETER: No, we didn't.

18 THE COURT: Under your theory, you could have.

19 MR. STREETER: We could have. You are right, your  
20 Honor. We could have. And we think we could have done it even  
21 without getting Court approval. But we didn't because we have  
22 defendants here who, candidly and not surprisingly, are going  
23 to attack everything that we do. And so we're being very  
24 careful, and that's why we are where we are today.

25 We could have said it's part of the proper performance  
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1 of our duties to hand this material over to the SEC, but we  
2 didn't want to get into a whole litigation with them about  
3 that.

4 THE COURT: In the cases, which I haven't read, but I  
5 will, now that you bring them to my attention, in the Sixth and  
6 Ninth Circuit, was the IRS then able to use those wiretaps in a  
7 civil proceeding?

8 MR. STREETER: They were and they did, and they were  
9 not suppressed, and the court allowed that in both instances --  
10 in, actually, three different instances, two instances in the  
11 Sixth Circuit and one instance in the Ninth Circuit. So those  
12 are some of cases we intended to bring to Judge Holwell's  
13 attention in connection with Subsection 2, which is why I said  
14 to you at the beginning that the analysis --

15 THE COURT: Are they in your letter because I must  
16 have missed that?

17 MR. STREETER: They are not.

18 THE COURT: Ah, no wonder I missed it.

19 MR. STREETER: I can tell you them now.

20 It was our view that the question of whether or not  
21 we, in the proper performance of our law enforcement duties  
22 could directly hand them over to the SEC was a question that we  
23 had planned to bring to Judge Holwell. We are happy to tell  
24 you about our arguments in the cases --

25 THE COURT: One of the things that I thought made this  
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1 otherwise difficult issue simpler was that your adversary said,  
2 quite forthrightly, in their letter -- and I'm talking about  
3 Akin Gump -- that if this had been litigated before Judge  
4 Holwell, they would have made the same arguments they make  
5 here.

6 So I understand your argument that you say I don't  
7 even have to reach that, but assuming I don't agree with you on  
8 that and I do have to reach it, I might as well hear any  
9 authority you would have brought to Judge Holwell's attention  
10 because I'm going to have to, if I go that route, have to  
11 address the same issues.

12 MR. STREETER: Absolutely, your Honor.

13 Let me give you the cites so you have them and then  
14 I'll talk to you --

15 THE COURT: And I'll give your adversary an  
16 opportunity to put in brief letter responses, since they are  
17 hearing this for the first time.

18 MR. STREETER: The first case is United States v.  
19 Fleming -- I'm sorry. United States v. Griffin. Fleming is a  
20 Fifth Circuit case, which is 547 F.2d --

21 THE COURT: I'm sorry 540 F.2d.

22 MR. STREETER: 547.

23 THE COURT: Oh, 547. Sorry.

24 MR. STREETER: F.2d 872.

25 United States v. Griffin is another Fifth Circuit  
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1 case, 588 F.2d 521; united States v. Resha, 767 F.2d 285,  
2 another Sixth Circuit case; and United States v. Spatafore, 752  
3 F.2d 415 are the cases --

4 THE COURT: I'm sorry. What circuit?

5 MR. STREETER: Ninth circuit, your Honor. But we  
6 don't just rely on those. There are Second Circuit opinions  
7 that say we can show this material to witnesses. We can use it  
8 to refresh recollection. We can use it to develop -- we can  
9 use it in many other ways that --

10 THE COURT: I think that's different because that's  
11 all in connection with your criminal prosecution. The issue  
12 here is disclosing it to the -- you know, for better or worse,  
13 the SEC hasn't received this. They want it now not to assist  
14 you in your criminal prosecution but so that they will be on a  
15 level playing field with the defendants in the civil case that  
16 they have brought.

17 MR. STREETER: It is really two things, your Honor.  
18 It both of those things. It's, number one, we want to give it  
19 to them so that they can help us, and that's what we were going  
20 to present to Judge Holwell, that question. And we want to  
21 give it to them because they are our partner in enforcing the  
22 securities laws, and we want them to be able to do that  
23 effectively. We also think that the imbalance of information  
24 in their case could actually negatively affect our criminal  
25 prosecution.

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1 For instance, if one of our cooperators in the  
2 criminal prosecution has his or her deposition taken and the  
3 defendants have all the wiretap evidence but the SEC, in  
4 preparing that witness for a deposition and in attending and  
5 defending that deposition, doesn't have access to that  
6 information, we think that will distort the truth-seeking  
7 process. A transcript will come out of that that will  
8 ultimately be used against our cooperator in a criminal case.

9 So we want the SEC, for our own purposes, to have  
10 equal information with the defendants, in addition to the fact  
11 that we want their expertise and assistance and the fact that  
12 they are a partner in enforcing securities laws and we want  
13 them to be able to do that effectively because we think that's  
14 what Congress envisioned. So it is all of those things.

15 THE COURT: Hard for me to see from that, on those  
16 theories, why, if they were working closely with you in the  
17 investigation of this case, why, if I am to credit what you  
18 were just saying, you didn't disclose it to them there.

19 MR. STREETER: Your Honor, candidly, this is an issue  
20 that we have been thinking about for a long time, trying to  
21 figure out what the safest course was, knowing that we were  
22 going to be -- that everything we did was going to be  
23 questioned. And we tried to proceed in the most careful way  
24 possible, meaning doing it after our investigation was public,  
25 after the defendants had the material, after they would have an

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1 opportunity to --

2 THE COURT: But, I mean, conversely, I mean now  
3 somehow, without the help of the SEC, you managed to muddle  
4 through to an indictment, and you are prepared to go to trial  
5 and prove guilt beyond a reasonable doubt, if you can,  
6 independent of their help. So why on those reasons is it  
7 material at this point?

8 MR. STREETER: Well, A couple of things first of all,  
9 your Honor. We are certainly prepared with respect to the two  
10 people that we have indicted. But as you've heard here, there  
11 are other wiretaps that have been turned over to the  
12 defendants, and there are materials on the wiretaps of the  
13 defendants that we think, you know, there are issues on there  
14 about other people to prosecute, and we would like their  
15 assistance in evaluating that. We think that their role in  
16 prosecuting civil securities fraud matters will be enhanced by  
17 having access to that information. So it is not just about  
18 helping us in our criminal prosecution of Mr. Rajaratnam and  
19 Ms. Chiesi, which is why this is a broader issue that I had  
20 said we thought was distinct from the issue before your Honor,  
21 but we are happy to tell you about it. We want their  
22 assistance with evaluating other potential people that we would  
23 prosecute, them prosecuting other people, other types of  
24 violations that are contained in the wiretaps that they have  
25 expertise in that we do not.

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1           You are right, we have successfully indicted two  
2 people, and we are prepared to go to trial and prove their  
3 guilt beyond a reasonable doubt. But we also want them to  
4 effectively do their job, and we want them to be able to use  
5 them as a partner with having the same evidence that we have  
6 access to, which is why we want to ask for that permission,  
7 your Honor.

8           THE COURT: All right. Let me hear if defense counsel  
9 wants to say anything in response. I understand that these are  
10 new cases so I will give you the opportunity to put in  
11 something in writing on that. But do you have anything more to  
12 say now?

13          MR. LYNAM: Thank you, your Honor, because I think it  
14 is going to be important to see whether the criminal case was  
15 over before the civil case allowed some disclosure, because  
16 that is an important factor. In your decision in New York  
17 Times, you noted that the criminal case was over and,  
18 therefore --

19          THE COURT: This was a totally different situation.  
20 There it was the press at The New York Times and others that  
21 was seeking disclosure. Here it's the -- first of all, it is a  
22 government instrumentality; it is not just any private party.

23          Secondly, it is the party that has a firm, fixed trial  
24 date of August 2nd, whereas Judge Holwell hasn't had the  
25 opportunity yet to even set his trial. And also his trial only

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1 relates to some of the defendant here, as just was noted. So I  
2 think the analogy is not really that applicable.

3 MR. LYNAM: I was only pointing that sometimes you  
4 have a situation where the criminal case is over, which is why  
5 the *Newsday* case was decided the way it was, too.

6 But with regard to the issue of this disclosure to the  
7 SEC that the prosecutor just talked about, I would note, your  
8 Honor, that somehow the SEC has been able to bring a complaint,  
9 an amended complaint, and now a second amended complaint  
10 without the benefit of these wiretaps. Presumably, they've got  
11 enough to go on --

12 THE COURT: I don't hear them saying that they are  
13 seeking this primarily -- though they are not excluding the  
14 possibility that they would use this information in their case.  
15 They are seeking it primarily so that they are in the same  
16 position as you are, which is as SEC counsel points out, the  
17 norm of a civil case, that both sides are in the same position  
18 in terms of information.

19 MR. LYNAM: And in response to that, your Honor, I  
20 would say we don't have any advantage over the SEC because we  
21 got the wiretap material because of our clients' status in the  
22 criminal case. We are not intending to use the wiretap  
23 material in the civil case. Obviously, if we did that we would  
24 be opening up the door against the very argument that we're  
25 making. If we were to try to use it in the civil case, I would

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1 agree, the SEC would be entitled to a level playing field. We  
2 couldn't just use it in the civil case as a sword and they  
3 don't get to use it.

4 But we're not intending to use it in the civil case.  
5 Our goal is to move to suppress it in the criminal case, which  
6 is where it remains under seal before Judge Holwell. But we  
7 have no advantage. We are not going to be disclosing it in the  
8 civil case. It wouldn't help us. It wouldn't help our point.  
9 That it should be suppressed.

10 THE COURT: All right. Let me just make sure -- I  
11 think it is implicit in everything I have received, but let me  
12 make sure that each and every defendant here who either already  
13 has or who might conceivably receive, depending on how I  
14 resolve this motion, wiretap information is saying that they  
15 will not offer it on their case. I'm not sure everyone is  
16 saying that but I want to be sure.

17 MR. KAUFMAN: Your Honor, on behalf of defendant  
18 Chiesi, at this point, given the amount of time we have had to  
19 review the wiretap information, we have no expectation and no  
20 intention of using it.

21 THE COURT: Supposing there is information -- let's  
22 just take a hypothetical. Supposing this might apply, for  
23 example, to defendant Goffer. Supposing there is information  
24 in which one of the wiretap persons says to the other wiretap  
25 person, thank God Mr. Goffer doesn't know what we're up to,

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1 and, therefore, counsel for Mr. Goffer then wants to put that  
2 into evidence. I just heard an argument of how that would make  
3 it totally unfair for the SEC not to have the information at  
4 that point. What about that?

5 MR. KAUFMAN: Is that addressed to me or to  
6 Mr. Goffer's counsel? I will take it.

7 THE COURT: Your colleague stood up behind you once  
8 again but not carrying a knife. So go ahead.

9 MR. KAUFMAN: Your Honor, I think the simplest answer  
10 to that is at the most, it gives the SEC an argument for  
11 disclosure of that particular conversation. Not for the 14,000  
12 hours of conversations that have been recorded --

13 THE COURT: Then they might say, gee, we want to see  
14 if in a conversation a month later someone said, you know, I  
15 was wrong, Goffer knew everything. And we can't figure that  
16 out until we've looked at all the conversations.

17 MR. KAUFMAN: But the cases have been very clear in  
18 saying that disclosure of Title III information is not meant as  
19 a civil discovery device. And this is not something that we,  
20 the defendants, have created. We --

21 THE COURT: I come back to the question, then: You  
22 may tell me you are not prepared to say anything at this point  
23 and I'll understand, but I just want to know. Counsel for  
24 Mr. Rajaratnam has said that he will not use this information,  
25 period. Correct?

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1 MR. LYNAM: In the civil case, that's right.

2 THE COURT: In the civil case?

3 MR. LYNAM: Right.

4 THE COURT: Is there any other defendant who is  
5 prepared to make that representation?

6 (Pause)

7 MR. KAUFMAN: I am making that representation as of  
8 this current time.

9 THE COURT: You are saying you want to keep open the  
10 possibility that you will find something good for your client  
11 and you might want to use it.

12 MR. KAUFMAN: I'm saying I'm not clairvoyant and I  
13 can't know what's in the hundreds of hours that I haven't  
14 listened to yet.

15 THE COURT: The point is it casts some doubt I think a  
16 little bit on the argument that the statute only allows  
17 disclosure under very specified, narrowly construed bases and  
18 everything else is automatically prohibited, which is  
19 essentially how defense counsel reads the Second Circuit  
20 decision as I'm hearing it.

21 But now I'm hearing perhaps a suggestion: Well,  
22 although we only got it in the criminal case pursuant to a very  
23 specific disclosure in the criminal case, if we find something  
24 good, we'll feel free to use it in the civil case. That seems  
25 perhaps inconsistent with the argument I just heard.

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1           MR. KAUFMAN: No, your Honor, because the statute  
2 allows a person receiving Title III information in 2517(3) to  
3 use it only in one circumstance, and that is while testifying  
4 under oath. The only way we are allowed to use this under  
5 Title III, in addition to preparing for our defense in the  
6 criminal case, is pursuant to 2517(3).

7           The statute doesn't allow us any other disclosure. We  
8 believe that if we disclose it to the SEC we are violating the  
9 law.

10           THE COURT: I saw that in your letter. Let me make  
11 sure I understand what you are saying and let's see if this is  
12 the government's view, as well.

13           You are saying that if there was something in a  
14 recording that you received that was exculpatory to your client  
15 and someone else was on the stand -- not your client -- who  
16 could identify it, or there was just a stipulation as to its  
17 authenticity, that you could not play the portion that was  
18 exculpatory to you except if and when your client testified?  
19 Is that how you are reading the statute?

20           MR. KAUFMAN: The statute says that any person who has  
21 received the wire communication -- that's us -- may disclose  
22 the contents of that communication while giving testimony under  
23 oath or affirmation in any proceeding --

24           THE COURT: I see that. That is, for the record,  
25 2517(3). And your reading of that is consistent with the very

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1 narrow interpretation that your colleague is giving this  
2 statute.

3 My question is: Is that really what your position is?

4 MR. KAUFMAN: Yes, your Honor.

5 THE COURT: So in the criminal case you are not going  
6 to be able to put in anything that might be exculpatory in  
7 these tapes except for the testimony of your client?

8 MR. KAUFMAN: No, because in the criminal case -- we  
9 are allowed to use the tapes to defend ourselves in the  
10 criminal case.

11 THE COURT: Where are you finding that?

12 MR. KAUFMAN: The whole purpose of --

13 THE COURT: Of course, the whole purpose. That's --

14 MR. KAUFMAN: In the criminal case.

15 THE COURT: No.

16 MR. KAUFMAN: Your Honor, the whole premise of Title  
17 III is with respect to criminal law enforcement. The U.S.  
18 Attorney's Office is trying to graft onto Title III this  
19 partnership notion that they're entitled to share this Title  
20 III information with agencies that only have civil  
21 jurisdiction. That doesn't exist in Title III.

22 Title III is designed for one purpose and one purpose  
23 only -- to provide maximum protection to the privacy of the  
24 individuals whose privacy has been violated and to allow that  
25 evidence to be used in criminal prosecutions.

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1 THE COURT: All right. Let me interrupt you. I hear  
2 you, but let me find out what the U.S. Attorney's position is  
3 on this issue we were just discussing.

4 MR. STREETER: Your Honor, the U.S. Attorney's  
5 Office's position is that 2517(1), (2) and (3) are directed to  
6 what the government can do. And it can't be the case that the  
7 only thing that a defendant can do is contained in 2517(3). It  
8 would be unconstitutional, your Honor, so it can't be.

9 Congress drafted this statute directed to what the  
10 government could and couldn't do. This statute doesn't address  
11 what a defendant can do. And we all agree, a defendant has to  
12 be able to show these materials and play them for witnesses;  
13 that's not contained in Section 3. They have to be able to  
14 show them to expert witnesses; that's not contained in Section  
15 3. They have to be able to share it with their codefendants,  
16 which they've acknowledged they have done; that's not contained  
17 in Section 3. And so it has to be that Section 3 is not the  
18 complete description of what they can do with it, and that  
19 means that they can do all these things with it --

20 THE COURT: So I am tentatively of that view. But now  
21 let's go back to what you can do with it.

22 The cases, which I haven't read, that you just brought  
23 to my attention regarding the IRS, the IRS, of course, has  
24 joint criminal and civil enforcement duties. So one could see  
25 that one might say, oh, of course, if the wiretap was disclosed

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1 to an IRS agent in connection with a criminal investigation and  
2 it turned out all he could do with it is use it civilly --  
3 there wasn't enough evidence to go forward on criminal but  
4 there was civil -- we're not going to say that somehow he was  
5 tainted or had to blind himself to that use. But the SEC,  
6 though it may be your partner, does not have criminal  
7 jurisdiction.

8 MR. STREETER: Well, your Honor, on that question, I  
9 mean, I'm not a tax lawyer and so you'll excuse me. But I  
10 understand that there is a bright line that Congress has  
11 established between the civil and criminal authorities, in  
12 part, to avoid abuse by one of the information contained in the  
13 other. And so --

14 THE COURT: That may be true.

15 MR. STREETER: That bright line --

16 THE COURT: You mean, in the IRS?

17 MR. STREETER: Exactly, in the IRS. It protects  
18 against them.

19 But, your Honor, it is important to understand that  
20 there are two potential ways that the SEC can get this  
21 information. Either from the defendants, as part of discovery  
22 in this case, in order to level the playing field, that's  
23 number one, and that's what we addressed our letter to.

24 Number two is a totally separate way, which is us  
25 giving it directly to the SEC because we think it is the proper

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1 performance of our law enforcement duties. And Mr. Kaufman is  
2 conflating the two. I understand your Honor wants to consider  
3 both, but it's important to know that those are two totally  
4 different ways in which the SEC can get the information.

5 THE COURT: All right. Let me ask one other question  
6 of the SEC, and I think we are going to regretfully schedule  
7 some short additional briefing in light of what has come up  
8 here today.

9 I take it that the SEC is not making any argument, and  
10 will not make any argument, that if I do disclose this  
11 information, that because it will take you some time to get  
12 through it, that you will on that basis be seeking any  
13 adjournment of the trial of this case?

14 MS. SZCZEPANIK: Yes, your Honor, we are not seeking  
15 an adjournment.

16 THE COURT: Yes.

17 MS. SZCZEPANIK: And just along those lines, I think  
18 the fact that there are a lot of materials underscores the  
19 point that we should be getting them sooner rather than later.

20 THE COURT: That's why I want to resolve this one way  
21 or the other soon.

22 So I'm going to give anyone who wants the opportunity  
23 to put in additional letter briefs not exceeding five pages,  
24 single-spaced, by let me ask, how about close of business  
25 Wednesday? Is that doable?

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1           And then anyone who wants to respond to those  
2 submissions can put in letter briefs, not to exceed five  
3 single-spaced pages by Friday, close of business. And I will  
4 then have enough to make the decision the following week.

5           So anyone have any problem with that schedule?

6           MR. LYNAM: No, your Honor. Just for clarification,  
7 since you left with "anyone who wants to," can I assume the  
8 government will be filing Wednesday and we will file Friday?

9           THE COURT: No. I'm purposely --

10          MR. LYNAM: Can we file both days?

11          THE COURT: I mean, actually, the more I think about  
12 it, maybe what makes sense is to have both sides file on both  
13 days, because there are issues -- I am not going to limit it to  
14 these new cases. There are issues that came up today that  
15 people may have further thoughts on. So I think no one's going  
16 to be -- anyone who files on Friday alone is limited, strictly  
17 limited, to stuff that was in the letters on Wednesday. But if  
18 you have something affirmative you want to say that relates to  
19 anything that came up today, then you need to put that in on  
20 Wednesday. And then Friday is just response to other people's  
21 letters. OK? That goes for everyone, including the U.S.  
22 Attorney's Office, the SEC as well.

23          OK. Anything else we need to take up today?

24          MS. SZCZEPANIK: Your Honor, one housekeeping matter.  
25 The SEC is about to schedule a number of depositions.

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1 We think we are going to be exceeding the ten deposition limit,  
2 and we would seek leave to do that.

3 THE COURT: How many do you want?

4 MS. SZCZEPANIK: I mean, we could conceivably do 30 to  
5 40, and I'm not trying to be, you know --

6 THE COURT: Anything is conceivable. How long are  
7 these depositions?

8 MS. SZCZEPANIK: We will obviously try to accommodate  
9 everyone, all the defendants' schedules, but we would like to  
10 keep them one day per person.

11 THE COURT: No. I was thinking of something much more  
12 efficient, which was, for example, if you had 20 depositions  
13 limited to three-and-a-half hours apiece, that seems to me not  
14 inconsistent with the underlying purposes of the ten,  
15 seven-hour deposition limits. It is not quite the same but it  
16 is still a little bit more onerous.

17 But so how about that? 20 three-and-a-half hour  
18 depositions. You could mix and match. You could take a couple  
19 for seven hours and a couple for two hours, but a total of 70  
20 hours of depositions.

21 MS. SZCZEPANIK: We will take that, your Honor, and if  
22 it looks like we can't make it within that limit, which we will  
23 try our best to do, I will come back to you.

24 THE COURT: OK. Anyone else want to be heard on that?  
25 OK. Very good. Thanks very much.

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1 MS. SZCZEPANIK: Thank you, your Honor.  
2 THE CLERK: All rise.

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALLEON MANAGEMENT, LP,  
RAJ RAJARATNAM,  
RAJIV GOEL,  
ANIL KUMAR,  
DANIELLE CHIESI,  
MARK KURLAND,  
ROBERT MOFFAT,  
NEW CASTLE FUNDS LLC,  
ROOMY KHAN,  
DEEP SHAH,  
ALI HARIRI,  
ZVI GOFFER,  
DAVID PLATE,  
GAUTHAM SHANKAR,  
SCHOTTENFELD GROUP LLC,  
STEVEN FORTUNA,  
and  
S2 CAPITAL MANAGEMENT, LP,

Defendants.

09 Civ. 8811  
(JSR)

ECF CASE

SECOND  
AMENDED  
COMPLAINT

JURY TRIAL  
DEMANDED

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint  
against defendants Galleon Management, LP ("Galleon"), Raj Rajaratnam ("Rajaratnam"),

Rajiv Goel (“Goel”), Anil Kumar (“Kumar”), Danielle Chiesi (“Chiesi”), Mark Kurland (“Kurland”), Robert Moffat (“Moffat”), New Castle Funds LLC (“New Castle”), Roomy Khan (“Khan”), Deep Shah (“Shah”), Ali Hariri (“Hariri”), Zvi Goffer (“Goffer”), David Plate (“Plate”), Gautham Shankar (“Shankar”), Schottenfeld Group LLC (“Schottenfeld”), Steven Fortuna (“Fortuna”), and S2 Capital Management, LP (“S2 Capital”), alleges as follows:

**SUMMARY**

1. This case involves widespread and repeated insider trading at several hedge funds, including Galleon – a multi-billion dollar New York hedge fund complex founded and controlled by Rajaratnam – New Castle, Spherix Capital LLC (“Spherix Capital”), and S2 Capital. The sources of the inside information include Goel, a managing director at Intel Corporation (“Intel”), Kumar, a director at McKinsey & Co. (“McKinsey”), Moffat, a senior executive at IBM, as well as executives and consultants at other well known companies. The inside information concerned market moving events such as quarterly earnings announcements, takeovers, and material contracts. The scheme generated over \$52 million in illicit profits or losses avoided.

2. The unlawful trading involved inside information concerning at least 14 different companies, including Google, Inc. (“Google”), Hilton Hotels Corporation (“Hilton”), and Intel. Specifically:

- (i) A Polycom, Inc. (“Polycom”) senior executive tipped Khan to material nonpublic information about Polycom’s Fourth Quarter (“Q4”) 2005 and Q1 2006 earnings. Khan traded based on that information and, in

turn, tipped Rajaratnam, who traded on behalf of Galleon based on that information.

- (ii) Shah, a Moody's rating agency analyst, tipped Khan to material nonpublic information about the impending takeover of Hilton by The Blackstone Group. Khan traded based on that information and also tipped Rajaratnam, who traded on behalf of Galleon based on that information. Khan also tipped another person ("Tipper X") who traded based on that information and tipped Shankar. Shankar traded based on the information and also tipped Goffer and others at Schottenfeld all of whom traded based on that information.
- (iii) An employee at Market Street Partners, an investor relations consulting firm that did work for Google, tipped Khan and Choo-Beng Lee ("Lee") to material nonpublic information about Google's Q2 2007 earnings. Khan traded based on that information and also tipped Rajaratnam, who traded based on that information on behalf of Galleon. Khan also tipped Tipper X, who also traded based on that information. Tipper X, in turn, tipped Shankar who also traded based on that information. Lee tipped Ali T. Far ("Far"), his business partner, and Lee and Far traded based on the information in an account in the name of Far & Lee LLC.
- (iv) A friend of Shah (the "Kronos Source") tipped Shah to material nonpublic information about the impending acquisition of Kronos Inc. ("Kronos"). Shah then tipped Khan who traded based on that

information and also tipped Tipper X. Tipper X traded based on the information and also tipped Shankar. Shankar traded based on the information and also tipped Goffer and Plate, both of whom also traded based on the information.

- (v) Goel tipped Rajaratnam to material nonpublic information about Intel's Q4 2006, Q1 2007 and Q3 2007 earnings, and Rajaratnam traded on behalf of Galleon based on that information.
  - (vi) Goel also tipped Rajaratnam to material nonpublic information about a pending joint venture involving Clearwire Corporation ("Clearwire") and Sprint Nextel Corporation ("Sprint"). Rajaratnam traded on behalf of Galleon based on that information.
  - (vii) As payback for Goel's Intel and Clearwire tips, Rajaratnam traded in Goel's personal account on the basis of material nonpublic information concerning PeopleSupport, Inc. ("PeopleSupport"), a company that was acquired by Aegis BPO Services Ltd. Rajaratnam also traded in Goel's personal account on the basis of material nonpublic information about the impending takeover of Hilton, as additional payback for Goel's tips.
- 
- (viii) Kumar tipped Rajaratnam to material nonpublic information about Advanced Micro Devices Inc.'s ("AMD") pending transactions with ATI Technologies Inc. ("ATI") and with two Abu Dhabi sovereign entities, and Rajaratnam traded on behalf of Galleon based on that information.

- (ix) Kumar also tipped Rajaratnam to material nonpublic information about a major work force reduction by eBay Inc. (“eBay”), and Rajaratnam traded on behalf of Galleon based on that information.
- (x) An Akamai Technologies, Inc. (“Akamai”) executive tipped Chiesi to material nonpublic information about Akamai’s Q2 2008 earnings. Chiesi tipped Kurland, and Chiesi and Kurland traded based on that information on behalf of New Castle. Chiesi also tipped Rajaratnam, who traded based on that information on behalf of Galleon, as well as Fortuna, who traded based on that information on behalf of S2 Capital.
- (xi) Moffat tipped Chiesi to material nonpublic information about Sun Microsystems, Inc.’s (“SUN”) Q2 2009 earnings. Chiesi traded on behalf of New Castle based on that information. Moffat also tipped Chiesi to material nonpublic information about IBM’s fiscal quarter ending December 2008, and Chiesi traded on behalf of New Castle based on that information. In addition, Moffat and an AMD executive (“AMD Executive”) each tipped Chiesi to material nonpublic information about AMD’s pending transactions with two Abu Dhabi sovereign entities. Chiesi tipped Kurland, and Chiesi and Kurland traded based on that information on behalf of New Castle. Chiesi also tipped Fortuna who traded based on that information on behalf of S2 Capital.
- (xii) Hariri, an Atheros Communications, Inc. (“Atheros”) executive, tipped Far to material nonpublic information about Atheros’s Q4 2008

earnings. Far tipped Lee, and Far and Lee both traded based on that information on behalf of Spherix Capital.

**NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT**

3. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77t(b)] and Section 21(d) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78u(d)]. The Commission seeks permanent injunctions against each of the defendants, enjoining them from engaging in the transactions, acts, practices, and courses of business alleged in this Complaint, disgorgement of all profits realized or losses avoided from the unlawful insider trading activity set forth herein, and civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. The Commission also brings this action pursuant to Section 21A of the Exchange Act [15 U.S.C. § 78u-1] for civil penalties against the defendants under the Insider Trading and Securities Fraud Enforcement Act of 1988. In addition, pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)] and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], the Commission seeks an order barring Goel, Moffat and Hariri from acting as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)], and for such other relief as the Court may deem appropriate pursuant to Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)].

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this action pursuant to Sections 20(b), 20(d), and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), and 77v(a)] and Sections 21(d), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), and 78aa].

5. Venue lies in this Court pursuant to Sections 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], and Sections 21(d), 21A and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u-1 and 78aa]. Certain of the acts, practices, transactions and courses of business alleged herein occurred within the Southern District of New York. For example, Defendant Rajaratnam lives in New York, New York, and works at Galleon's New York, New York headquarters. Defendants Chiesi, Kurland, Goffer, and Plate all reside within the Southern District of New York, and New Castle, Schottenfeld and S2 Capital are all based within the Southern District of New York. In addition, many of the communications in furtherance of the insider trading alleged herein were made from, to, or within the Southern District of New York.

**DEFENDANTS**

6. **Galleon**, a Delaware limited partnership, is a registered investment adviser based in New York, New York, that, as of March 2009, had over \$2.6 billion under management. Galleon was founded in 1997 and registered with the Commission in January 2006. Galleon serves as the investment adviser for several hedge funds, including, among others, the Technology Offshore Fund, Technology Partners Fund, Technology MAC Fund, and the Diversified Fund (collectively, the "Galleon Tech funds"), the Captains funds and the Communications funds.

7. **Rajaratnam**, age 52, resides in New York, New York. Rajaratnam is the founder and a Managing General Partner of Galleon, and serves as the Portfolio Manager of the Galleon Tech funds. Prior to founding Galleon, Rajaratnam worked at Needham & Co., a registered broker-dealer, for 11 years, at which time he held Series 7 and Series 24 securities licenses. Rajaratnam obtained a degree from the University of Sussex, England, in 1980, and an MBA in Finance from the Wharton School of the University of Pennsylvania in 1983.

8. **Goel**, age 51, resides in Los Altos, California. Goel is a managing director within Intel's treasury group. He is also a managing director at Intel Capital, an Intel subsidiary that makes proprietary equity investments in technology companies. Goel received an MBA in Finance from the Wharton School of the University of Pennsylvania in or around 1983, and is a friend of Rajaratnam's.

9. **Kumar**, age 51, resides in Saratoga, California. During the relevant period, Kumar was a senior partner and director of McKinsey, a global business consulting firm. Kumar is on the Executive Board of the Indian School of Business. Kumar is a friend of Rajaratnam's and attended the Wharton School of the University of Pennsylvania with Rajaratnam in the early 1980s. Kumar is an indirect investor in one or more funds managed by Galleon.

10. **Chiesi**, age 44, resides in New York, New York. During the relevant time period, Chiesi was a consultant and a portfolio manager at New Castle, a registered hedge fund investment adviser. Chiesi holds Series 7 and 63 securities licenses.

11. **Kurland**, age 61, resides in Mount Kisco, New York. Kurland is a Senior Managing Director and General Partner at New Castle.

12. **Moffat**, age 53, resides in Ridgefield, Connecticut. During the relevant time period, Moffat was Senior Vice President and Group Executive of IBM's Systems and Technology Group.

13. **New Castle**, a Delaware limited liability company, is a registered investment adviser based in White Plains, New York, that was formerly part of Bear Stearns Asset Management. New Castle serves as the investment adviser to several hedge funds and, as of April 17, 2009, had assets under management of over \$971 million.

14. **Khan**, age 51, resides in Ft. Lauderdale, Florida. Khan is an individual investor who was employed at Intel in the late 1990s and subsequently was employed at Galleon.

15. **Shah**, age 27, resided in Jersey City, New Jersey during the relevant time period and, in 2007, was employed at Moody's as a lodging industry analyst. Shah left Moody's in late 2007 or early 2008, and he is believed to currently reside in India.

16. **Hariri**, age 38, resides in San Francisco, California. Hariri has served as Vice President of Broadband Carrier Networking at Atheros since March 2008. Hariri holds a BS in Electrical and Systems Engineering and a Master's degree in Electrical Engineering from the University of Connecticut.

17. **Goffer**, age 33, resides in New York, New York. During the relevant time period, Goffer was a registered representative and proprietary trader at Schottenfeld. Currently, Goffer is employed at Echotrade LLC and is a trader at Incremental Capital, LLC. Goffer holds Series 7, 55, 63 and 65 securities licenses.

18. **Plate**, age 34, resides in New York, New York. During the relevant time period, Plate was a registered representative and proprietary trader at Schottenfeld. Currently, Plate is a registered representative at G-2 Trading, LLC. Plate holds Series 7, 55 and 63 securities licenses.

19. **Shankar**, age 35, resides in New Canaan, Connecticut. During the relevant time period, Shankar was a registered representative and a proprietary trader at Schottenfeld. Shankar is currently unemployed. Shankar holds Series 3, 7, 55 and 63 securities licenses.

20. **Schottenfeld**, a New York limited liability company, is a registered broker-dealer based in New York, New York.

21. **Fortuna**, age 47, resides in Westwood, Massachusetts. Fortuna is a co-founder and principal of S2 Capital, an unregistered hedge fund investment adviser. Fortuna received a Master's degree in Engineering from Boston University in 1989 and an MBA from Columbia Business School in 1993. Fortuna has held Series 7, 63, 86 and 87 securities licenses.

22. **S2 Capital**, a Delaware limited partnership, is an unregistered hedge fund investment adviser based in New York, New York. S2 Capital was co-founded by Fortuna. S2 Capital serves as the investment adviser to the hedge fund S2 Capital Fund, LP and is in the process of winding down its operations. During the relevant time period, S2 Capital had over \$125 million under management.

**RELEVANT INDIVIDUALS AND ENTITIES**

23. **Akamai** is a Delaware corporation headquartered in Cambridge, Massachusetts. Akamai provides services for facilitating the delivery of content and

applications over the internet. Akamai's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "AKAM."

24. **AMD** is a Delaware corporation headquartered in Sunnyvale, California. AMD is a global semiconductor company. AMD's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the New York Stock Exchange ("NYSE") under the symbol "AMD."

25. **Atheros** is a Delaware corporation headquartered in Santa Clara, California. Atheros is a developer of semiconductor systems for wireless and other network communication products. Atheros's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "ATHR."

26. **ATI** was a Canadian corporation headquartered in Markham, Ontario, Canada. On October 25, 2006, AMD completed an approximately \$5.4 billion acquisition of ATI. ATI designed and manufactured 3D graphics, PC platform technologies and digital media silicon solutions. ATI's securities were registered with the Commission pursuant to Section 12(g) of the Exchange Act, and its stock traded on the Nasdaq under the symbol "ATYT."

27. **Clearwire** is a Delaware corporation headquartered in Kirkland, Washington. Clearwire builds and operates wireless broadband networks in the United States and abroad. Clearwire's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol

“CLWR.” Intel Capital provided financing for Clearwire’s joint venture with Sprint, which was publicly announced on May 7, 2008.

28. **eBay** is a Delaware corporation headquartered in San Jose, California. eBay provides online marketplaces for the sale of goods and services as well as online payment services and online communication offerings to individuals and businesses. eBay’s securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol “EBAY.”

29. **Far**, age 48, resides in Saratoga, California. During the relevant period, Far was a Managing Member, portfolio manager, and co-founder of Spherix Capital, an unregistered hedge fund investment adviser. Far was a Managing Member of Far & Lee LLC. Far was previously a Managing Director, portfolio manager, and analyst at Galleon. Far received a BS in Electrical Engineering and Computer Science from the University of California, Berkeley, and a JD, MBA, and Master’s of Science in Electrical Engineering from Santa Clara University. Far has held Series 7 and 63 securities licenses.

30. **Far & Lee LLC**, a Delaware limited liability company, was formed in July 2007 to operate as a trading entity that was used by Lee and Far prior to their establishing hedge fund investment adviser Spherix Capital. Far & Lee LLC’s status as a Delaware limited liability company was canceled on October 21, 2008. Its registration as a California limited liability company was canceled on or around the same date.

31. **Google** is a Delaware corporation headquartered in Mountain View, California. Google hosts one of the leading internet search engines. Google’s securities

are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "GOOG."

32. **Hilton** is a Delaware corporation that is headquartered in Beverly Hills, California. Hilton is a leading international hotel chain. Hilton's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act and, prior to October 24, 2007, its stock traded on the NYSE under the symbol "HLT." On October 24, 2007, Hilton was taken private by The Blackstone Group and its stock ceased trading on the NYSE pursuant to a merger agreement that was announced after the close of the market on July 3, 2007.

33. **IBM** is a New York corporation headquartered in Armonk, New York. IBM is a computer technology and IT consulting firm. IBM's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the NYSE under the symbol "IBM."

34. **Intel** is a Delaware corporation that is headquartered in Santa Clara, California. Intel is one of the leading manufacturers of microprocessors. Intel's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and trade on the Nasdaq under the symbol "INTC." Intel, through its investment arm subsidiary, Intel Capital, invested \$1 billion in a joint venture, announced publicly on May 7, 2008, in which Clearwire and Sprint agreed to combine their wireless broadband, or WiMax, businesses.

35. **Kronos** is a Massachusetts corporation headquartered in Chelmsford, Massachusetts. Kronos makes workforce management software for businesses. Kronos's securities were registered with the Commission pursuant to Section 12(b) of the

Exchange Act and, until Kronos was acquired by private equity firm Hellman & Friedman on June 11, 2007, its stock traded on the Nasdaq under the symbol "KRON."

36. **Lee**, age 53, resides in San Jose, California. During the relevant period, Lee was the President, portfolio manager, and co-founder of Spherix Capital, an unregistered hedge fund investment adviser. Lee was also a Managing Member of Far & Lee LLC. Lee received a BS in electrical engineering from Duke University in 1978 and an MBA from the University of California, Berkeley in 1987.

37. **Market Street Partners** is an investor relations consulting firm in San Francisco, CA, which provided services to Google.

38. **McKinsey** is a global management consulting firm headquartered in New York, New York that advises businesses, governments and other institutions on issues of strategy, organization, technology and operations. McKinsey provided consulting services to AMD and to a subsidiary of eBay.

39. **Moody's** is a Delaware corporation headquartered in New York, New York. Moody's is a rating agency that performs research and analysis on borrowers' creditworthiness. Moody's is registered with the Commission as a Nationally Recognized Statistical Rating Organization. During 2007, Moody's issued ratings on Hilton's debt securities.

40. **PeopleSupport**, is a Delaware corporation headquartered in Los Angeles, California. On October 30, 2008, PeopleSupport merged with Aegis BPO Services Ltd., and became Aegis PeopleSupport. PeopleSupport was a business process outsourcing provider offering customer management, transcription, captioning and other services.

PeopleSupport's securities were registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock traded on the Nasdaq under the symbol "PSPT."

41. **Polycom** is a Delaware corporation headquartered in Pleasanton, California. Polycom produces applications for voice, video, and data networking. Polycom's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "PLCM."

42. **Spherix Capital**, a Delaware limited liability company, is an unregistered hedge fund investment adviser based in San Jose, California. Spherix Capital was co-founded in January 2008 by Lee and Far, who are both Managing Partners and portfolio managers at Spherix Capital. Spherix Capital serves as the investment adviser to the Elliptical family of hedge funds and is in the process of winding down its operations.

43. **SUN** is a Delaware corporation headquartered in Santa Clara, California. It provides network computing infrastructure. SUN's securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act, and its stock trades on the Nasdaq under the symbol "JAVA." On April 20, 2009, Oracle Corporation announced that it had entered into a definitive merger agreement pursuant to which it would acquire SUN.

FACTS**A. Insider Trading in Polycom Securities**

44. Khan first met Rajaratnam in or around 1996, when Rajaratnam worked at Needham & Co., and Khan was employed at Intel. In the late 1990s, after Rajaratnam had founded Galleon, Khan worked for a time at Galleon. In late 2005, faced with financial difficulties, Khan approached Rajaratnam to inquire about again working at Galleon. In response, Rajaratnam asked whether Khan had inside information about any public companies. Khan told Rajaratnam that she had, or could obtain, inside information regarding Polycom. Khan agreed to provide Rajaratnam inside information regarding Polycom in the hopes of securing a position with Galleon, and in anticipation of receiving future inside tips from Rajaratnam in exchange.

45. Khan's source was a Polycom executive with access to material nonpublic information regarding Polycom's earnings (the "Polycom Source"). In or around late 2005 and early-to-mid 2006, the Polycom Source, who was a friend of Khan's, provided Khan with material nonpublic information regarding Polycom, with the knowledge that Khan intended to use that information in order to profit, and with the expectation that Khan would share a portion of Khan's illicit profits with the Polycom Source.

**a. Polycom's Q4 2005 Earnings Release – January 25, 2006**

46. In late December 2005, the Polycom Source obtained material nonpublic information concerning Polycom's unit sales and revenues for Polycom's fourth quarter 2005 ("Q4 2005"). On or before January 10, 2006, the Polycom Source provided Khan with material nonpublic Q4 2005 earnings information, including that Polycom's Q4 was strong, its revenues were up and that its order backlog had increased.

47. Following the close of the markets on January 25, 2006, Polycom released its Q4 2005 earnings, which included higher-than-expected revenues. The following day, Polycom's stock opened at \$18.30 per share, up about 8% compared to the previous day's closing price of \$16.98 per share.

48. Khan traded on the basis of the information provided by the Polycom Source by purchasing Polycom securities for Khan's personal account. On January 10, 2006, Khan purchased 3,000 February \$17.50 Polycom call option contracts at \$0.67 per contract. On January 20, 2006, Khan purchased an additional 500 February \$17.50 Polycom call option contracts at \$0.65 per contract. Khan sold the Polycom call option contracts following Polycom's Q4 2005 earnings announcement, at varying prices, reaping profits of approximately \$330,000. The Polycom Source knew that Khan's trades in Polycom based on the Polycom Source's tips had been profitable, and the Polycom Source sought to be compensated for them.

49. On or about January 10, 2006, Khan told Rajaratnam that Polycom's revenues for Q4 2005 would beat street estimates. Khan made it clear to Rajaratnam that Khan's information regarding Polycom was from an insider and was reliable. After obtaining this information from Khan, Rajaratnam began purchasing Polycom securities for the accounts of certain of the Galleon Tech funds. The Polycom Source and Khan communicated again on January 11, 2006. Khan and Rajaratnam communicated again the following day, January 12, and within approximately three minutes of that January 12 communication, Rajaratnam sent a message to his trader instructing him to "buy 60 [thousand shares] PLCM" for certain Galleon Tech funds.

50. All told, from January 10 through January 25, 2006, the date of the Polycom earnings release, Rajaratnam purchased 245,000 shares of Polycom and 500 Polycom call option contracts on behalf of the Galleon Tech funds.

51. Following the earnings announcement, the Galleon Tech funds sold their Polycom holdings on different dates and at varying prices. Collectively, the Galleon Tech funds made approximately \$600,000 in connection with their Polycom trades based on Khan's tip. On January 26, the day after the earnings release, Rajaratnam thanked Khan for the Polycom information.

**II. Polycom's Q1 2006 Earnings Release – April 19, 2006**

52. On or before April 10, 2006, the Polycom Source learned, through the Polycom Source's position at Polycom, of Polycom's first quarter 2006 ("Q1 2006") financial results, including that Polycom's revenues for Q1 2006 would beat market expectations.

53. On or about April 10, 2006, the Polycom Source communicated material nonpublic information about Polycom's Q1 2006 results to Khan. On or about April 13, 2006, Khan passed this information on to Rajaratnam, making it clear that the information was from the same source who had provided the inside information on Polycom's Q4 2005 earnings in January 2006.

54. On April 17, 2006, Khan purchased 200 April \$20 Polycom call options at \$1.35 per contract on the basis of the information Khan had received from Polycom Source, and between April 13 and 18, 2006, Rajaratnam purchased 250,000 Polycom shares on behalf of the Galleon Tech funds based on the information he had received from Khan.

55. On April 19, 2006, Polycom's stock opened at \$21.85 per share and began to climb in advance of the after-hours earnings release, closing at \$22.52 per share. Following the market close on April 19, Polycom released its Q1 2006 earnings, which included higher-than-expected revenues. Later that day, Rajaratnam congratulated Khan for the Polycom tip. On April 20, 2006, Polycom opened at \$22.72 per share. The Galleon Tech funds sold some of their Polycom shares in the stock price run-up prior to the announcement on April 19 and then sold the rest following the announcement for a profit of over \$165,000. Khan sold her options on April 19 during the stock price run-up prior to the announcement, making a profit of \$22,000.

**B. Insider Trading in Hilton Securities**

56. Khan obtained material nonpublic information in advance of a July 3, 2007 takeover announcement that a private equity group would be buying Hilton for \$47.50 per share, a premium of \$11.45 per share over the stock's July 3 closing price (the "Hilton Transaction"). Khan obtained the nonpublic information from Shah, a friend and roommate of Khan's cousin. At the time, Shah was working as an analyst at Moody's, a rating agency that was evaluating Hilton's debt in connection with the Hilton Transaction. Because of his position at Moody's, Shah had access to material nonpublic information about Hilton.

57. On or about July 2, 2007, Shah provided Khan with specific information concerning the upcoming Hilton Transaction. Shah told Khan that Hilton was going to be taken private in a deal to be announced the following day, at a price around the mid-\$40s per share. Shah indicated that he had learned this information through a communication that representatives of Moody's had received from Hilton management.

Immediately after receiving this information, Khan purchased 550 August \$35 Hilton call option contracts at \$1.07 per contract. The following morning, Khan purchased 100 July \$35 Hilton call option contracts at \$0.90 per contract.

58. Also on or about July 2, 2007, Khan told Rajaratnam that Hilton was going to be taken private at a price somewhere in the mid-\$40s per share in a deal to be announced the following day. Khan described the Hilton Transaction to Rajaratnam as a sure thing, and told Rajaratnam that she had a very good source for the Hilton information.

59. After receiving the tip from Khan, on July 3, 2007, Rajaratnam and Galleon purchased 400,000 shares of Hilton for the Galleon Tech funds, whose stated purpose is to make investments in the technology sector.

60. On the evening of July 3, the Hilton Transaction was announced at an \$11.45 per share premium over that day's closing price of \$36.05. On July 5, the first trading day after the July 4th holiday, Hilton shot up to \$45.39 per share.

61. On July 5, Khan sold all of the Hilton call option contracts that Khan had purchased on July 2 and 3 for a profit of over \$630,000.

62. To compensate Shah for the Hilton tip, Khan paid Shah \$10,000 through an intermediary.

63. The Galleon Tech funds sold their Hilton shares after the July 3 announcement for a profit of over \$4 million.

64. In addition, on July 3, 2007, Rajaratnam, or someone acting on his behalf, purchased 7,500 Hilton shares on behalf of Goel, using Goel's brokerage account held at

Charles Schwab & Co., Inc. (the "Schwab Account"). The shares were sold on July 6, 2007 for a profit of over \$78,000.

65. Khan also passed the tip Khan received from Shah about the Hilton Transaction to her friend, Tipper X, telling Tipper X on July 2, 2007 that Khan had learned from a source with inside information that Hilton would be acquired the next day at a significant premium. Tipper X traded profitably based on that information and also tipped Shankar, a proprietary trader at Schottenfeld, indicating to Shankar that the information was from an inside source. Shankar traded based on the Hilton tip, buying approximately 25,000 Hilton shares spread out over multiple accounts, including a Schottenfeld account Shankar managed as well as an account registered to a third party. After the announcement of the Hilton Transaction, Shankar sold the Hilton shares he had bought in the Schottenfeld account, making a profit of over \$156,000.

66. Shankar passed the Hilton tip that he received from Tipper X to associates at Schottenfeld, including Goffer. Shankar told Goffer that Hilton was about to be taken over and indicated that the information was from an inside source who, through Tipper X, had previously provided Shankar with inside information. Shankar and Goffer referred to the source as "the goose" (as in the goose that laid the golden egg) when speaking to each other. On July 3, 2007, Goffer purchased 5,000 Hilton shares and 510 call option contracts in a Schottenfeld account that he managed. Goffer also provided Shankar with \$10,000 to pay "the goose" for the Hilton tip, although the money was ultimately used to pay for a different insider tip, which is discussed below. Goffer sold the Hilton shares he had purchased in the Schottenfeld account after the Hilton Transaction announcement, generating profits of approximately \$329,000.

67. On July 3, 2007, a total of 81,100 Hilton shares and 773 Hilton call options were purchased in various Schottenfeld accounts generating total cumulative profits from Shankar's tip of over \$1.2 million.

**C. Insider Trading in Google Securities**

68. Within a week of the Hilton tip, Khan obtained material nonpublic information from another source (the "Google Source") concerning Google's second quarter 2007 ("Q2 2007") results, which were scheduled to be announced after the close of the markets on July 19, 2007. The Google Source worked at Market Street Partners, a consulting firm that did investor relations work on behalf of various companies, including Google. As a result, the Google Source had access to material nonpublic information concerning Google's earnings announcements.

69. On or about July 10, 2007, the Google Source told Khan that Google's earnings per share ("EPS") would be down about 25 cents, which was in sharp contrast to the market's expectation that Google's EPS would be strong. After receiving the Google tip from the Google source, beginning on July 12, 2007, and up until the day of the earnings announcement, Khan purchased a total of 566 August 2007 \$530 Google put options.

70. Shortly after receiving the Google tip from the Google Source, Khan passed the Google tip to Rajaratnam, telling him to short Google because earnings would fall below the analyst expectations. Khan told Rajaratnam that Khan's source for the tip was a consultant for Google who had pre-announcement access to earnings information.

71. After receiving the tip from Khan, Rajaratnam began buying Google put options for the Galleon Tech funds and continued buying them through July 19. In

addition, Rajaratnam communicated with Khan before the markets opened on July 17, and shortly thereafter Rajaratnam communicated with the portfolio manager of the Galleon Captains funds. Beginning that same day and continuing through the day of Google's Q2 2007 earnings announcement, the Captains funds purchased Google put options, sold Google call options and sold short Google stock.

72. After the markets closed on July 19, 2007, Google announced its Q2 2007 earnings results, disclosing, among other things, that its EPS was 25 cents lower than for Q1 2007. Google's share price fell from over \$548 per share to almost \$520 per share.

73. Khan sold all of Khan's put options the day after the July 19, 2007 Google announcement for a profit of over \$500,000.

74. The Galleon Tech funds' profits from the Google tip were nearly \$8 million, and the Galleon Captains funds made over \$1.3 million. Thus, the combined profits generated by Rajaratnam and Galleon on behalf of the various Galleon funds from insider trading in Google on the basis of Khan's tip concerning Google's July 19, 2007 announcement exceed \$9 million.

75. After the Google Source provided Khan with the above information, the Google Source told Khan that unless Khan paid the Google Source a fee of \$100,000-\$200,000 per quarter the Google Source would cease providing Khan with inside information. Khan demurred and the Google Source stopped providing Khan with tips.

76. On or about July 12, 2007, Khan also passed the material nonpublic information Khan received from the Google Source about Google's Q2 2007 results to Tipper X. Khan told Tipper X that Google would miss its quarter, and that the

information came from the Google Source, who worked at Google's investor relations firm.

77. Tipper X traded profitably on the information and paid Khan \$15,000 for the Google tip (\$10,000 of which was money redirected from Goffer, who had provided it as payment for the Hilton tip, and \$5,000 of which came from Shankar, as described below). Khan had intended to give the \$15,000 from Tipper X and \$15,000 of Khan's own money to the Google Source, but the Google Source subsequently refused to take Khan's calls. As a result, Khan kept the \$15,000 provided by Tipper X.

78. On or before July 18, 2007, Tipper X also passed the material nonpublic information Tipper X received from Khan about Google's Q2 2007 results to Shankar, telling Shankar that the information came from a source at Google's investor relations firm. Based on this information, before the announcement on July 19, 2007, Shankar sold short 2,000 Google shares and purchased 5 Google put option contracts in Schottenfeld proprietary accounts managed by Shankar. These transactions yielded profits of more than \$50,000. Tipper X told Shankar that Tipper X needed to pay the source for the Google information and Shankar gave Tipper X \$5,000 for that purpose.

79. The Google Source also provided Lee with specific information about Google's Q2 2007 disappointing earnings prior to the issuance of Google's July 19, 2007 earnings release. The Google Source is a family friend of Lee's and Lee knew, at the time, that the Google Source was employed at Google's investor relations firm. Lee shared the information from the Google Source with Lee's business partner, Far, and Far and Lee traded based on the information in a joint account they held in the name of Far & Lee LLC. On the morning of July 19, 2007, before the earnings announcement, Far and

Lee caused Far & Lee LLC to purchase 200 July 2007 \$540 Google put option contracts, a position they closed out after Google's announcement for a profit of over \$390,000. In addition, Lee purchased Google put options in his personal account for a profit of over \$71,000.

**D. Insider Trading in Kronos Securities**

80. Khan also received inside information, which Khan traded on and passed on to others, concerning the acquisition of software company Kronos by private equity firm Hellman & Friedman ("Hellman") in March 2007 (the "Kronos Transaction").

81. On March 23, 2007, Kronos announced, at market open, that it would be taken private by Hellman.

82. During mid-March 2007, Shah learned from a friend (the "Kronos Source") that Kronos was on the auction block and was about to be acquired. The Kronos Source and Shah communicated several times on March 14, 2007, and the Kronos Source relayed specific information concerning a bid to acquire Kronos. Shah and Khan also communicated several times on March 14, and Shah provided Khan with material nonpublic information concerning the Kronos Transaction. Khan, in turn, tipped Tipper X to this information.

83. On March 16, 2007, Khan purchased 35 April \$40 Kronos call options at \$3.00 per contract on the basis of the inside information Khan received from Shah.

84. Following the March 23, 2007 announcement that Kronos was being acquired for \$55 per share, Kronos' stock price increased nearly 14%, from \$46.63 per share on March 22 to \$53.11 per share at the market close on March 23. After the

announcement, Khan sold all of the call options she had bought on March 16 for a profit of approximately \$37,000.

85. Shah asked Khan to pay him \$10,000 for the Kronos tip, and Khan, in turn, arranged for her tippee, Tipper X, to make the payment to Shah.

86. On or about March 15, 2007, Khan told Tipper X that Kronos would be acquired in about a week for a substantial premium, and also told Tipper X about the source of the tip, and that the source wanted to be paid \$10,000 for the tip. Tipper X traded profitably based on the information and also personally paid Shah \$10,000 in cash for the Kronos tip.

87. Tipper X passed the Kronos tip, including information about the source, to Shankar, and asked Shankar whether he could get Shankar's Schottenfeld colleague, Goffer, to provide the \$10,000 that had been requested for the tip. Shankar tipped Goffer to the Kronos Transaction and Goffer agreed to pay the \$10,000, leaving the cash in a bag in Shankar's desk drawer.

88. Shankar purchased 7,500 Kronos shares on March 19 and 20, 2007, in a Schottenfeld account that Shankar managed and then sold them after the March 23 announcement of the Kronos Transaction for a profit of over \$78,000.

89. Goffer began purchasing Kronos shares on March 19, 2007, in a Schottenfeld account that Goffer managed, and held 19,000 Kronos shares heading into the March 23 announcement of the Kronos Transaction. The shares were sold after the announcement for a profit of approximately \$200,000.

90. Shankar passed the Kronos tip to Plate, another Schottenfeld colleague, and asked Plate to provide \$5,000 that would be used to pay the source of the

information. Plate paid Shankar the \$5,000 although Shankar did not end up providing this money to the source.

91. Plate began purchasing Kronos shares on March 20, 2007, in a Schottenfeld account that Plate managed, and held 10,000 Kronos shares heading into the March 23 announcement of the Kronos Transaction. The shares were sold after announcement for a profit of approximately \$90,000.

92. Shankar, Goffer, and/or Plate passed the material nonpublic information they received about Kronos to others at Schottenfeld. All told, 14 Schottenfeld accounts purchased shares in Kronos ahead of the March 23 announcement, realizing total cumulative profits of over \$800,000.

**E. Insider Trading in Intel Securities**

93. On several occasions, Rajaratnam obtained material nonpublic information concerning Intel from defendant Goel, a managing director in Intel's treasury group and at Intel Capital. The treasury group is part of Intel's finance department and Intel Capital reports directly to Intel's President & Chief Executive Officer.

**(a) Intel's Q4 2006 Earnings Release – January 16, 2007**

94. Beginning on or about January 8, and continuing through January 16, 2007, Goel communicated to Rajaratnam material nonpublic information that Goel secured through his position at Intel about Intel's fourth quarter 2006 ("Q4 2006"), financial results and outlook.

95. On January 8, 2007, approximately one week before Intel's scheduled Q4 2006 earnings announcement, Rajaratnam contacted Goel. The next day, on January 9, 2007, Rajaratnam purchased 1 million shares of Intel at \$21.08 per share, and on January

11, 2007, Rajaratnam purchased an additional 500,000 shares at \$21.65 per share on behalf of various Galleon Tech funds.

96. Goel and Rajaratnam communicated again multiple times over the Martin Luther King Day weekend that followed. On Tuesday, January 16, 2007, the day the markets reopened after the long weekend, Rajaratnam and Galleon abruptly shifted course with respect to Intel, selling the Galleon Tech funds' entire 1,500,000-share long position in Intel at \$22.03 per share, and making a profit of a little over \$1 million. Goel again contacted Rajaratnam that afternoon.

97. Later that day, after the markets closed, Intel released its Q4 2006 earnings. Although the company's earnings were slightly higher than analysts' projections, its guidance for future performance was below expectations.

98. As a result, Intel's stock price, which had closed at \$22.30 per share, opened at \$21.25 on January 17, 2007, down \$1.05 per share, or nearly 5%. Goel contacted Rajaratnam three times that day. The Galleon Tech funds' combined loss avoidance as a result of the January 16 sell-off was approximately \$1.4 million.

**(b). Intel's Q1 2007 Earnings Release – April 17, 2007**

99. The following quarter, Goel again provided Rajaratnam material nonpublic information concerning Intel's earnings and financial guidance. On or before April 9, 2007, approximately one week before Intel's scheduled Q1 2007 earnings announcement, Rajaratnam and Galleon began selling short Intel's stock. The funds sold short 1 million shares at \$20.14 per share. Goel and Rajaratnam spoke with each other multiple times in the days leading up to the trades, including on April 9, 2007. Later that day, after Rajaratnam's communication with Goel, Khan communicated with Rajaratnam.

That night, Khan emailed the principal of another hedge fund: “Also spoke to Raj[aratnam] . . . This is what I got . . . [Intel] dn 10% . . . ”

100. The next day, April 10, 2007, Rajaratnam and Galleon sold short a combined 150,000 Intel shares at \$20.68 per share. On that day, Goel communicated with a member of Intel’s IR department, who, at the time of the calls, was aware of Intel’s quarterly earnings numbers. Goel and Rajaratnam communicated again on April 11 and 13, 2007. After the April 13 contact, Rajaratnam and Galleon reversed course and began covering the Galleon Tech funds’ short positions in Intel, and purchased 500,000 Intel shares at \$20.45 per share. Goel and Rajaratnam communicated again later that afternoon.

101. On Saturday, April 14, 2007, Goel reached out again to his contact in Intel’s IR department and then communicated with Rajaratnam. Then, on Monday, April 16, 2007, Goel repeatedly tried to contact Rajaratnam who was traveling in the Caribbean at the time. Shortly after Rajaratnam and Goel spoke, Rajaratnam contacted another portfolio manager for certain of Galleon hedge funds, including the Captain’s Fund. Beginning immediately after that communication, the Galleon Tech funds purchased 500,000 Intel shares at \$20.63 per share and covered their existing short position – 650,000 shares – at \$20.61 per share. Also immediately after the communication, other Galleon funds, including the Galleon Captains Fund and Galleon Communications Fund, started covering their existing short positions in Intel, purchasing Intel shares, and selling Intel put options.

102. On April 17, 2007, Rajaratnam and Galleon purchased 1,479,044 shares of Intel at prices ranging from \$20.81 to \$21.42 per share. Later that day, after the markets

closed, Intel released its Q1 2007 earnings, raising its profitability target for the rest of the year. Intel's share price, which had been \$20.77 at the close, rose following the announcement, primarily due to Intel's improved outlook on profitability, which was based mainly on cost reductions rather than any increases in revenues or sales. In fact, Intel's revenues were down 9% compared with Q4 2006, which ties closely with what Rajaratnam had told Khan, as reflected in Khan's April 9, 2007 communication.

103. In sum, Rajaratnam and Galleon established a sizable short position in Intel after Rajaratnam learned of Intel's lower revenue numbers from Goel on or around April 9, but then changed course and took a long position after Goel told Rajaratnam, on or around April 13, that Intel would be raising its profitability target for the rest of the year. The Galleon funds profited on the above trades by approximately \$1.3 million, and avoided losses of approximately \$917,000.

**(c). Intel's Q3 2007 Earnings Release – October 16, 2007**

104. In connection with Intel's third quarter release, Goel once again gave Rajaratnam material nonpublic information concerning Intel's earnings and financial guidance and Rajaratnam and Galleon traded based on the information. On October 8, 2007, a week or so before Intel's scheduled Q3 2007 earnings announcement, Goel contacted Rajaratnam. Two days later, on October 10, 2007, Rajaratnam and Galleon purchased 500,000 Intel shares at an average price of \$25.82 per share.

105. On October 15, 2007, the day before Intel's earnings announcement, Goel and Rajaratnam communicated again. The following day, Rajaratnam and Galleon purchased an additional 450,000 Intel shares at \$25.74 per share. After the markets closed that day, Intel released its Q3 2007 earnings, raising guidance and reporting

revenues and earnings that beat expectations. Following the announcement, Intel's share price, which had closed at \$25.48 on October 16, opened on October 17 at \$26.79 per share, up more than 5%. On October 17, Goel communicated with Rajaratnam, and Rajaratnam and Galleon sold the 950,000 Intel shares that they had acquired, at a price of approximately \$26.73 per share, realizing a profit of over \$690,000.

**F. Insider Trading in Clearwire Securities**

106. Goel, who is a managing director at Intel Capital, an Intel subsidiary that invests in technology companies, also tipped Rajaratnam about a joint venture between Clearwire and Sprint through which the two companies combined their wireless broadband, or WiMAX, businesses to form a new wireless communications company (the "Clearwire Transaction").

107. The Clearwire Transaction was publicly announced on May 7, 2008. Intel Capital, which was Clearwire's largest shareholder, owning about a 20% stake and having representation on Clearwire's Board at the time of the deal, invested \$1 billion in the Clearwire-Sprint joint venture. According to press reports, the investment was Intel Capital's largest ever.

108. Between early February 2008 and May 2008, Rajaratnam caused the Galleon Tech funds to engage in three rounds of Clearwire trading, all in close proximity to communications between Goel and Rajaratnam. In all three rounds, the Galleon Tech funds traded in advance of news reports relating to the deal between Clearwire and Sprint based on material nonpublic information about the Clearwire Transaction that Goel obtained through his employment at Intel and provided to Rajaratnam.

109. First, the Galleon Tech funds began building a long position in Clearwire on February 8, 2008 (continuing through February 14) of 375,350 shares following several timely contacts between Goel and Rajaratnam, including on the morning of February 8. On February 15, after multiple media outlets reported rumors that Clearwire and Sprint might revive a previously announced but abandoned plan to combine their wireless broadband businesses and announce a deal in the next few days (sending Clearwire's stock price up over 5%), the Galleon Tech funds began to liquidate their position.

110. Then, on March 19 and 20, 2008, Goel and Rajaratnam communicated repeatedly. In the course of these communications, Goel provided Rajaratnam with material nonpublic information about the Clearwire Transaction which Goel obtained through his employment at Intel. On the next trading day after the calls, Monday, March 24, the Galleon Tech funds again began to build a long position in Clearwire, purchasing 125,800 shares. Goel and Rajaratnam communicated again on March 24 and Goel provided Rajaratnam with additional material nonpublic information concerning the Clearwire Transaction. On March 25, Rajaratnam caused the Galleon Tech funds to buy another 136,000 Clearwire shares. After the close of the markets that day, the media reported that Clearwire had created a severance plan for its employees in the event of a takeover, again fueling speculation that Clearwire was close to striking a deal with Sprint. On March 26, Clearwire's share price opened at \$15.85 per share, up about 18% from the previous day's closing price.

111. On March 26, multiple media outlets reported that Clearwire and Sprint might get funding for the rumored joint venture from two major cable companies,

sending Clearwire's share price up almost 6% by the end of the trading day. That same day, Rajaratnam caused the Galleon Tech funds to begin to sell the Clearwire shares they had accumulated, selling 68,000 Clearwire shares. Rajaratnam and Goel communicated again on April 1 and April 2, 2008. On April 2, Rajaratnam caused the Galleon Tech funds to sell 44,200 Clearwire shares. On April 15, 2008, Goel communicated to Rajaratnam that things were not happening as planned with respect to the Clearwire Transaction. On April 18, Rajaratnam liquidated the Galleon Tech funds' Clearwire position, selling the remaining 149,600 shares.

112. Rajaratnam again established a long position in Clearwire on behalf of the Galleon tech funds on May 6, 2008, the day before the Clearwire Transaction was announced, purchasing 290,750 shares. The trades were once again preceded by contact between Goel and Rajaratnam (on April 20, 23, and 30). Clearwire's stock price jumped almost 9% on May 7 in the wake of the announcement, before declining over the course of the day to close down 1.46%. The Galleon Tech funds sold roughly half their Clearwire holdings for a sizeable profit on May 7, liquidating their remaining holdings by May 27.

113. Overall, the Galleon Tech funds realized illicit gains of over \$780,000 on their Clearwire trading between February and May 2008.

**G. Insider Trading in PeopleSupport Securities**

114. Rajaratnam traded on the basis of material nonpublic information concerning PeopleSupport on behalf of Goel.

115. During 2008, Galleon had regular access to inside information about PeopleSupport, a back office outsourcing company, because Galleon was a 25% owner of

the company, and because a managing director at Galleon (the “Galleon Designee”) served on PeopleSupport’s Board of Directors.

116. The Galleon Designee communicated material nonpublic information about PeopleSupport that the Galleon Designee learned through the Galleon Designee’s service on PeopleSupport’s Board of Directors to Rajaratnam, including information concerning the acquisition of PeopleSupport by Aegis BPO Services Ltd. (“Aegis”).

117. On two separate occasions during 2008, Rajaratnam purchased securities of PeopleSupport through Goel’s personal Schwab Account based on material nonpublic information. First, Rajaratnam purchased 30,000 shares in advance of PeopleSupport’s August 4, 2008 announcement that PeopleSupport would be acquired by Aegis. These shares were sold for a profit of about \$102,000 after PeopleSupport’s share price spiked 25% in response to the merger announcement.

118. Second, on the afternoon of October 7, 2008, in advance of PeopleSupport’s October 8, 2008 announcement that the merger with Aegis was confirmed (PeopleSupport had announced the prior morning that it had received a request to delay the merger, which sent prices down amidst investor concerns that the deal might be in jeopardy), Rajaratnam purchased 30,000 PeopleSupport shares for Goel’s Schwab Account. Rajaratnam communicated with Goel on October 7, indicating to Goel that Rajaratnam knew by virtue of the Galleon Designee’s position on PeopleSupport’s Board that the deal was going to close later in October and that he had purchased the shares for Goel in the Schwab Account. The shares were sold after the October 8 announcement for a profit of about \$48,000.

**H. Insider Trading in Akamai Securities**

119. An executive at the internet services company Akamai and a family friend of Chiesi's (the "Akamai Source"), provided material nonpublic information about Akamai's disappointing Q2 2008 earnings results and guidance concerning future performance to Chiesi in advance of Akamai's July 30, 2008 earnings release and earnings conference call (the "Q2 2008 Earnings Announcement"). Specifically, the Akamai Source told Chiesi that Akamai would guide down and that the consensus among Akamai's management was that Akamai's stock price would decline in the wake of the Q2 2008 Earnings Announcement.

120. In its Q2 2008 Earnings Announcement on July 30, 2008, Akamai announced results that missed both the consensus sales estimate and the consensus revenues forecast. Akamai also announced earnings and revenues forecasts that were below consensus estimates. Following the announcement, Akamai's stock declined nearly 20%, from \$31.25 per share on July 30 to \$25.06 per share on the day after the announcement.

121. Chiesi communicated with the Akamai Source numerous times, and also traded profitably in Akamai on behalf of the New Castle funds, prior to the Q2 2008 Earnings Announcement. Specifically, Chiesi and the Akamai Source spoke multiple times between July 2 and July 24, 2008, and had two lengthy discussions on July 24, 2008. Immediately following the second of these discussions, Chiesi communicated the material nonpublic information she had learned from the Akamai Source to Kurland. On the following day, July 25, the New Castle funds sold short shares of Akamai, adding to its short positions through July 30, 2008. In the day or so before Akamai's Q2 2008

Earnings Announcement, Chiesi had two additional calls with the Akamai Source. On July 30, New Castle purchased 1,466 Aug 2008 \$30 Akamai put options. Following the Q2 2008 Earnings Announcement, the New Castle funds covered their combined Akamai short position, which had grown to almost 290,000 shares, and sold their Akamai puts, generating profits of approximately \$2.4 million.

122. In addition to trading Akamai shares for the New Castle funds based on the tip from the Akamai Source, Chiesi also passed the Akamai Source's tip to Rajaratnam and Galleon, and also to Fortuna and S2 Capital.

123. Chiesi and Rajaratnam communicated numerous times on July 23 and 24, 2008, including immediately before and after Chiesi spoke with the Akamai Source. Just after speaking to the Akamai Source on July 24, Chiesi told Rajaratnam that she learned from the Akamai Source that Akamai was going to guide down and that people at Akamai were saying that Akamai's stock price was going to decline to \$25.00 per share based on the Q2 2008 Earnings Announcement. Chiesi made clear to Rajaratnam that her source was an insider at Akamai. On the day following this spate of communications, July 25, 2008, Rajaratnam dramatically increased the Galleon Tech funds' existing short position in Akamai, selling short 138,550 Akamai shares. On July 29, Rajaratnam sold short another 173,300 Akamai shares on behalf of the Galleon Tech funds. Then, on the morning of July 30, 2008, the day of the Q2 2008 Earnings Announcement, Rajaratnam contacted Chiesi. Shortly thereafter, Chiesi communicated with the Akamai Source and then communicated with Rajaratnam again. On July 30, Rajaratnam increased the Galleon Tech funds' short positions yet again, selling short another 211,650 Akamai shares. Following the announcement, Rajaratnam closed out the Galleon Tech funds'

half-million-share short position and put options for a combined profit of over \$3.2 million.

124. On the morning of Friday, July 25, after Chiesi had communicated with the Akamai Source the night before, Chiesi passed the Akamai tip to Fortuna, telling Fortuna that Akamai would guide lower and that the consensus among Akamai's management was that the Q2 2008 Earnings Announcement would drive Akamai's stock price down. Chiesi made clear to Fortuna that the information was nonpublic and that the source of the inside information was someone at Akamai. Based on Chiesi's tip, Fortuna began shorting Akamai stock and purchasing puts on that same day for S2 Capital's "Tech" account, increasing the short and put positions through the July 30, 2008 Q2 2008 Earnings Announcement. After the announcement, Fortuna covered S2 Capital's entire Akamai short position of 375,000 shares and sold the remaining Akamai put option contracts for a profit of approximately \$2.4 million.

**I. Insider Trading in SUN Securities**

125. Moffat, IBM's Senior Vice President and Group Executive, Systems and Technology Group, conveyed to Chiesi material nonpublic information about SUN's Q2 2009 results in advance of SUN's January 27, 2009 earnings release.

126. In January 2009, IBM was conducting due diligence on SUN in contemplation of a possible acquisition of SUN by IBM. Pursuant to a confidentiality agreement between IBM and SUN entered into as part of the acquisition process, SUN provided IBM with its Q2 2009 earnings results in advance of the January 27, 2009 earnings announcement. Because of his role in IBM's due diligence of SUN, Moffat had access to SUN's earnings results.

127. Chiesi and Moffat, who are friends, contacted each other numerous times during January 2009, with the frequency of contact between the two increasing significantly just prior to the SUN earnings release.

128. Moffat was one of a group of IBM executives on the preliminary due diligence team arriving at a designated location to conduct due diligence on SUN on January 19, 2009. Moffat contacted Chiesi at home that evening, and had several conversations with her over the next several days. In the course of one or more of these conversations, Moffat provided Chiesi with material nonpublic information concerning SUN's Q2 2009 earnings. In addition, on January 22, 2009, a draft of SUN's earnings results was conveyed to the IBM due diligence team.

129. On Monday, January 26, 2009, Chiesi told a third party that her IBM source had indicated to her that SUN would announce the next day that its "top," or quarterly revenue, and "bottom," or earnings per share, would exceed analysts' consensus expectations, and that the revenue number would be "3.2 [billion]," and that her source knew this because IBM was doing due diligence on SUN.

130. On January 26, 2009, Chiesi began acquiring a substantial long position in SUN on behalf of New Castle. On January 27, 2009, after the market closed, SUN reported its Q2 2009 earnings information. SUN's performance substantially exceeded consensus estimates, including higher revenue (\$3.22 billion) and margins, posting a \$0.02 per share profit whereas consensus estimates called for a loss of \$0.09/0.10 per share. SUN's share price rallied on the news, rising 21%, from a January 27 closing price of \$3.99 per share to a January 28 closing price of \$4.86 per share, generating profits of nearly \$1 million for New Castle.

131. On January 28, 2009, Moffat transmitted to SUN, on behalf of IBM, a preliminary proposal to acquire SUN.

**J. Insider Trading in ATI Securities**

132. Starting in or around 2003, Rajaratnam agreed to pay Kumar, a friend of Rajaratnam's and a senior partner and director of McKinsey, \$500,000 per year in return for material nonpublic information that Kumar obtained from clients of McKinsey. In an effort to hide the proposed arrangement, Rajaratnam paid Kumar for the information through a third party located overseas. Kumar reinvested the money paid to him by Rajaratnam in Galleon funds for Kumar's benefit, although in the name of a third party who was not a United States citizen. Kumar made arrangements to have an overseas entity receive payments from Rajaratnam via an account in Switzerland. Kumar also arranged to have such payments invested in one or more Galleon funds in the name of a domestic worker employed by Kumar, and informed Rajaratnam of such arrangement.

133. Pursuant to these arrangements, beginning in or around 2003, Kumar provided Rajaratnam material nonpublic information obtained from various McKinsey clients in exchange for the payments described in paragraph 132. For example, in or around 2004, Kumar provided Rajaratnam with material nonpublic information concerning AMD. Kumar reinvested the payments he received from Rajaratnam in exchange for the inside information in one or more Galleon funds for Kumar's benefit but in the name of Kumar's domestic worker.

134. In or around late 2005, Kumar, as a director of McKinsey, began advising AMD about the possibility of acquiring a graphics company. By in or around March 2006, AMD had settled on ATI as its acquisition target and had begun confidential

negotiations with ATI concerning a potential acquisition. Kumar tipped Rajaratnam to this information and, based on the information, Rajaratnam, in or around March 2006, caused the Galleon Tech funds to begin acquiring ATI stock. Negotiations between AMD and ATI continued over the next several months, and, during that span, Kumar updated Rajaratnam periodically on the progress of those negotiations. Based on the inside information Kumar provided, Rajaratnam caused the Galleon Tech funds to accumulate additional ATI shares.

135. On July 24, 2006, AMD publicly announced that it had entered into a \$5.4 billion transaction to acquire ATI (the "ATI Transaction"). ATI's stock price increased significantly based on the news and, that same day, Rajaratnam caused the Galleon Tech funds to liquidate their position in ATI, generating illicit profits of over \$19 million.

136. In or around late 2006, Rajaratnam told Kumar that he would pay him a \$1 million "bonus" to reward Kumar for the information Kumar provided Rajaratnam concerning the ATI Transaction. Rajaratnam subsequently caused Galleon to wire \$1 million into an overseas account held by Kumar.

137. In total, from in or around 2003 through in or about October 2009, Rajaratnam paid Kumar approximately \$1.75 million to \$2 million as compensation for Kumar's provision of inside information to Rajaratnam. Because Kumar reinvested a portion of that compensation in a nominee account at Galleon, Kumar received a total of approximately \$2.6 million through his participation in the illicit scheme with Rajaratnam.

138. In or around 2007, Rajaratnam told Kumar that because Galleon was under increased scrutiny, Kumar should no longer keep Kumar's investment in Galleon

in the name of Kumar's domestic worker. Kumar later changed the name of the investment holder of his Galleon investment from the name of his domestic worker to the name of an overseas entity.

**K. Insider Trading in AMD Securities**

139. On October 7, 2008, AMD announced a spin off of its semiconductor manufacturing operations into a joint venture with Advanced Technology Investment Company, an investment company formed by the government of Abu Dhabi. AMD also announced that an Abu Dhabi sovereign wealth fund, Mubadala Investment Co., would be investing \$314 million in AMD. Both deals were publicly announced prior to the market open on October 7, 2008 (collectively, the "AMD Transactions").

140. Kumar provided material nonpublic information to Rajaratnam about the AMD Transactions prior to the October 7, 2008 public announcement concerning those transactions.

141. Moffat and an AMD executive ("AMD Executive") also provided material nonpublic information to Chiesi about the AMD Transactions prior to the October 7, 2008 public announcement concerning the AMD Transactions. Chiesi shared material nonpublic information about the AMD Transactions with Kurland and Fortuna.

142. Prior to the October 7, 2008 announcement of the AMD Transactions, Rajaratnam and Chiesi exchanged material nonpublic information they received from their respective sources about the transactions. Chiesi tipped Kurland to material nonpublic information about the AMD Transactions that she received from Rajaratnam.

143. During in or about 2007 and in or about 2008, Kumar, as a director of McKinsey, advised AMD concerning its strategy to spin off its manufacturing business

while retaining its design business. Kumar tipped Rajaratnam to AMD's strategy, saying that it would probably prevent AMD from going out of business because it would cut costs and raise capital. Pursuant to this strategy, AMD negotiated with various entities during 2008 in an effort to sell its manufacturing business and raise capital. Kumar regularly provided Rajaratnam with material nonpublic information about the progress of these negotiations.

144. In or about June 2008, AMD entered into exclusive negotiations with the Abu Dhabi-based investors concerning the AMD Transactions. Beginning on June 1, 2008, McKinsey began advising AMD in connection with AMD's negotiations with the two Abu Dhabi sovereign entities. Kumar was one of the individuals at McKinsey knowledgeable about the negotiations, having first been contacted about the matter on or around June 1, 2008.

145. IBM was involved in the AMD Transactions because the new, separate manufacturing entity that was being created sought to license certain technology from IBM. Moffat was one of the employees at IBM participating in discussions and meetings relating to the AMD Transactions.

146. Kumar and Rajaratnam communicated numerous times concerning the AMD Transactions. On August 14, Kumar learned that the parties to the AMD Transactions had decided to proceed with the deal, and on August 15 Kumar conveyed this material nonpublic information to Rajaratnam. That day, Rajaratnam and Galleon dramatically increased their long position in AMD by purchasing over 2.5 million AMD shares as well as call options on behalf of various Galleon funds, and continued to build their long position up until just days before the announcement of the AMD Transactions.

On September 11, 2008, Kumar communicated to Rajaratnam that the deals were on track and that the announcement of the AMD Transactions would be the first week of October. Various Galleon funds continued to trade AMD based on the inside information Rajaratnam had received from Kumar, including a purchase of approximately 4 million AMD shares on September 25 and 26. On the evening of September 29, Kumar left a voice message for Rajaratnam indicating that he had the information that Rajaratnam wanted. The next day, Rajaratnam communicated with Chiesi and indicated that the date for the announcement of the AMD Transaction was October 7, 2008. That same day, Rajaratnam and Galleon purchased several hundred thousand more AMD shares in various Galleon funds, and then purchased over 1.5 million more AMD shares on October 3, 2008.

147. Meanwhile, on August 12 and 13, 2008, Chiesi communicated multiple times with the AMD Executive. On August 15, Rajaratnam communicated with Chiesi. Chiesi told Rajaratnam that she was hearing from her IBM source that the AMD Transactions would occur September 9 but the AMD Executive told her they would occur around mid-September. Chiesi's source at IBM for this information was Moffat. Rajaratnam informed Chiesi that the parties shook hands on the deals the day before. Shortly after Chiesi's communication with Rajaratnam, Chiesi communicated with Kurland, passing along material nonpublic information about AMD that she received from Moffat and the AMD Executive. Kurland cautioned Chiesi to be careful and to avoid putting anything in an email. Kurland also told Chiesi to purchase AMD shares on behalf of New Castle. Later that day, Chiesi communicated with Moffat and Moffat provided Chiesi with numerous details about the AMD Transactions. On or about August

15, Chiesi and Kurland bought approximately 200,000 AMD shares on behalf of New Castle.

148. From approximately August 22 to approximately September 22, 2008, Chiesi learned from Moffat additional material nonpublic information about the AMD Transactions. During this time period and throughout, Kurland received regular updates on the transactions, either indirectly from Chiesi, or directly by listening in on some of her communications with Moffat.

149. From approximately August 19 to approximately September 16, 2008, Chiesi had numerous communications with the AMD Executive during which the AMD Executive tipped Chiesi to additional nonpublic information about the AMD Transactions. Chiesi passed material inside information she received from the AMD Executive about the AMD Transactions to Kurland.

150. Between August 19 and September 30, 2008, Chiesi and Rajaratnam had numerous communications during which they exchanged material nonpublic information about the AMD Transactions that they received from their respective sources. Chiesi passed at least some of the inside information she received from Rajaratnam about the AMD Transactions to Kurland. For example, shortly after Rajaratnam told Chiesi on September 30 that the transaction would be announced on October 7, Chiesi passed this information to Kurland.

151. Chiesi and Kurland built a sizeable long position in AMD on behalf of New Castle between August 15 and September 30, 2008, including a purchase of approximately 127,600 AMD shares on September 30.

152. On or before August 15, 2008, Chiesi tipped Fortuna to the material nonpublic information she received from her various sources about the AMD Transactions. Fortuna communicated multiple times with Chiesi between August 12 and 15. Fortuna purchased 40,000 AMD shares on behalf of S2 Capital on August 15, and then continued to build a large long position in AMD right up until the October 7 announcement.

153. AMD's stock price increased by about 24.6% in the aftermath of the announcement of the AMD Transactions, opening at \$5.27 per share on October 7 after closing the day before at \$4.23 per share. However, because the worldwide economic crisis sent stock prices, including AMD's, tumbling in September and October 2008, AMD's share price was lower following the October 7 announcement than it was when the various Galleon, New Castle and S2 Capital funds had begun accumulating much of their respective AMD positions in August. Nevertheless, the funds' investments increased significantly on the news of the AMD Transactions – for instance, the aggregate value of Galleon's position in AMD increased by approximately \$9.5 million from October 6 to October 7, 2008.

**L. Insider Trading in eBay Securities**

154. On or about Thursday, October 2, 2008, Kumar learned through another McKinsey client, an eBay subsidiary, that eBay was planning to announce a major work force reduction on the following Monday, October 6, 2008, and that such information was confidential. On or around October 3, 2008, Kumar tipped Rajaratnam to this material nonpublic information. After receiving the tip, on October 3 Rajaratnam caused the Galleon Tech funds to sell short eBay shares. On October 6, 2008, eBay publicly

announced its plans to implement a significant reduction of its global workforce. After the announcement, Rajaratnam caused the Galleon Tech funds to cover their collective short position in eBay, generating illicit profits of more than \$500,000.

**M. Insider Trading in IBM Securities**

155. Moffat provided Chiesi with material nonpublic information concerning IBM's quarterly financial results, including IBM's Q4 2008 earnings release, and Chiesi traded on behalf of New Castle based on that information.

156. Prior to January 8, 2009, New Castle had accumulated a 177,000 share short position in IBM stock. On January 8, 2009, Moffat and Chiesi communicated twice. The following day, January 9, 2009, Chiesi began to cover New Castle's short position. All told, between January 9 and January 15, 2009, Chiesi covered New Castle's entire 177,000 share short position and then built a long position in the same amount, 177,000 shares.

157. Chiesi and Moffat communicated again on January 19, 2009. On January 20, 2009, Chiesi added to New Castle's long position, purchasing approximately 45,200 shares of IBM stock, at a price of approximately \$82.72 per share. That day, Chiesi indicated to an employee of another hedge fund that her IBM contact told her that IBM could add 30 cents to its bottom line guidance for its 2009 fiscal year. She also indicated that IBM could beat analyst estimates for the quarter.

158. On or about January 20, 2009, following the close of the market, IBM announced its earnings for the quarter ending in December 2008. Earnings per share were \$3.28, which beat analysts' consensus expectations of \$3.03. Moreover, IBM announced that it expected earnings per share in 2009 of at least \$9.20, which was 27

cents more than IBM's earnings per share in 2008 (\$8.93), and higher than analysts' expectations of \$8.75.

159. On January 21, 2009, IBM stock opened at \$86.29 per share, up \$4.31 (approximately 5%) over the previous day's closing price of \$81.98 per share. Between January 21, 2009 and January 30, 2009, New Castle sold approximately 109,000 shares of IBM stock, at prices ranging from \$88.83 to \$93.24 per share, for a profit of approximately \$715,000. Additionally, New Castle avoided losses of approximately \$1.02 million from its short covers based on the January 8 communication Chiesi had with Moffat.

**N. Insider Trading in Atheros Securities**

160. Hariri, a Vice-President at the semiconductor company Atheros, tipped Far, a principal at Spherix Capital, in advance of Atheros's December 17, 2008 earnings pre-announcement and February 2, 2009 Q4 2008 earnings announcement. Far knew Hariri through Far's mother-in-law, and Far and Hariri regularly exchanged inside information. Hariri regularly gave Far information related to Atheros's revenues, gross margins and guidance. In exchange, Far provided Hariri with inside information on other companies, which information Hariri then used to trade for his personal gain.

161. After the market close on December 17, 2008, Atheros announced that it was cutting its Q4 2008 earnings guidance in half, to between \$0.14 and \$0.19 per share, on anticipated revenue of \$95 million to \$100 million. Hariri told Far about the negative announcement on the morning of December 17, 2008, hours before the announcement was disclosed to the public. Within minutes of being told about the announcement, Far sold short 331,017 Atheros shares on behalf of Spherix Capital's Elliptical Master Fund

Ltd. (the "Elliptical Master Fund"). The negative news was announced after the market closed that day, and the following day Atheros's stock opened and traded lower, eventually closing at a price down 17.56%. Far covered the Elliptical Master Fund's short sales after the announcement, making a profit of approximately \$480,000.

162. Far shared the tip he received from Hariri about Atheros's December 17, 2008 pre-announcement with Lee, his partner and a co-principal at Spherix Capital. Lee knew that Far was receiving material nonpublic information from an inside source at Atheros and was trading based on the information on behalf of Spherix Capital.

163. On February 2, 2009, after the market close, Atheros issued its Q4 2008 earnings release, reporting sales and profits that were better than analysts' expectations. Hariri began providing Far with material nonpublic information concerning Atheros's Q4 2008 financial results on or about January 5, 2009. On January 5, Far increased the Elliptical Master Fund's position in Atheros and purchased an additional 70,000 Atheros shares. Far and Hariri communicated multiple additional times between January 5 and the February 2 announcement, and Far continued to build the fund's long position in Atheros leading up to the announcement, accumulating an approximately 900,000 share position heading into the announcement. After the announcement, Atheros's stock rose 6.7% from its February 2 closing price of \$12.09 per share to close at \$12.90 per share on February 3. Far sold off much of the fund's long position in Atheros in the days after the announcement, generating a profit of over \$390,000 on the fund's post-January 4, 2009 Atheros stock purchases based on material nonpublic information provided by Hariri.

**CLAIMS FOR RELIEF**

**CLAIM I**

**Violations of Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder  
(Against all Defendants)**

164. The Commission realleges and incorporates by reference paragraphs 1 through 162, as though fully set forth herein.

165. The information concerning (i) the Polycom January 25 and April 19, 2006 earnings announcements, (ii) the Hilton Transaction, (iii) the Google July 19, 2007 earnings announcement, (iv) the Kronos Transaction, (v) the Intel January 16, April 17 and October 16, 2007 earnings announcements, (vi) the Clearwire Transaction, (vii) the PeopleSupport Merger Announcements, (viii) the ATI Transaction, (ix) the AMD Transactions, (x) the eBay October 6, 2008 work force reduction announcement, (xi) the Akamai July 30, 2008 earnings announcement, (xii) the SUN January 27, 2009 earnings announcement, (xiii) the IBM January 20, 2009 earnings announcement, and (xiv) the Atheros December 17, 2008 earnings pre-announcement and February 2, 2009 earnings announcement, respectively, was, in each case, material and nonpublic. In addition, the information was in each case considered confidential by the companies that were the ultimate source of the information, and each of these companies had policies protecting confidential information.

166. Each of the Polycom Source, Shah, the Google Source, the Kronos Source, Goel, Kumar, the Akamai Source, Moffat, the AMD Executive and Hariri learned the material nonpublic information each conveyed during the course of their employment, and each knew, recklessly disregarded, or should have known, that each,

directly, indirectly or derivatively, owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to keep the information confidential.

167. Each of the Polycom Source, Shah, the Google Source, the Kronos Source, Goel, Kumar, the Akamai Source, Moffat, the AMD Executive and Hariri tipped material, nonpublic information to their respective tippee(s) with the expectation of receiving a benefit.

168. In connection with the purchase or sale of securities, each of Khan, Rajaratnam, Tipper X, Shankar, Goffer, Plate, Chiesi, Kurland and Fortuna knew, recklessly disregarded, or should have known, that the material non-public information each received from their respective tippers was disclosed or misappropriated in breach of a fiduciary duty, or similar relationship of trust and confidence.

169. Each of Shah, Khan, Chiesi, Tipper X and Shankar tipped their respective tippees material non-public information, with the expectation of a benefit therefrom, and each knew, recklessly disregarded, or should have known, that the information was conveyed in breach of a fiduciary duty, or obligation arising from a similar relationship of trust and confidence.

170. Rajaratnam learned of the information concerning the merger of PeopleSupport through Galleon's representation on PeopleSupport's Board of Directors. Rajaratnam knew, recklessly disregarded, or should have known, that he, directly, indirectly or derivatively, owed a fiduciary duty, or obligation arising from a similar relationship of trust and confidence, to PeopleSupport to maintain such information in confidence and to not trade on it.

171. Rajaratnam, Galleon, Chiesi, Kurland, New Castle, Fortuna and S2 Capital, are liable for the trading occurring in the funds advised – directly or indirectly – by each, respectively, because each effectuated the trades on behalf of the funds, controlled the funds and/or unlawfully tipped the inside information to the funds.

172. The unlawful trading done by Rajaratnam, Shankar, Plate, Goffer, Chiesi, Kurland and Fortuna, respectively, is imputed or attributable to Galleon, Schottenfeld, New Castle, and S2 Capital, respectively.

173. By virtue of the foregoing, each of the Defendants, in connection with the purchase or sale of securities, by the use of the means or instrumentalities of interstate commerce, or of the mails, or a facility of a national securities exchange, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would have operated as a fraud or deceit upon persons.

174. By virtue of the foregoing, each of the Defendants directly or indirectly, violated, and unless enjoined, will again violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**CLAIM II**

**Violations of Section 17(a) of the Securities Act  
(Against Galleon, Rajaratnam, Goel, Kumar, Chiesi, Kurland, New Castle, Khan,  
Hariri, Shankar, Schottenfeld, Fortuna and S2 Capital)**

175. The Commission realleges and incorporates by reference paragraphs 1 through 173, as though fully set forth herein.

176. By virtue of the foregoing, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly, each of Galleon, Rajaratnam, Goel, Kumar, Chiesi, Kurland, New Castle, Khan, Hariri, Shankar, Schottenfeld, Fortuna and S2 Capital: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operate or would operate as a fraud or deceit upon a purchaser.

177. By reason of the conduct described above, Galleon, Rajaratnam, Goel, Kumar, Chiesi, Kurland, New Castle, Khan, Hariri, Shankar, Schottenfeld, Fortuna and S2 Capital, directly or indirectly, violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

**RELIEF SOUGHT**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

**I.**

Permanently restraining and enjoining each of the Defendants, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];

**II.**

Permanently restraining and enjoining Galleon, Rajaratnam, Goel, Kumar, Chiesi, Kurland, New Castle, Khan, Hariri, Schottenfeld, Shankar, S2 Capital, Fortuna, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating Section 17(a) of the Securities Act [15 U.S.C. §§ 77q(a)];

**III.**

Ordering each of the Defendants to disgorge, with prejudgment interest, all illicit trading profits, other ill-gotten gains received, and/or losses avoided as a result of the conduct alleged in this Complaint, including, as to each of the Defendants, their own illicit trading profits, other ill-gotten gains, and/or losses avoided, and the illicit trading profits, other ill-gotten gains, and/or losses avoided of their direct and downstream tippees.

**IV.**

Ordering each of the Defendants to pay civil monetary penalties pursuant to Section 21(d)(3) and/or Section 21A of the Exchange Act [15 U.S.C. §§ 78u(d)(3), 78u-1], and Section 20(d) of the Securities Act [5 U.S.C. § 77t(d)];

**V.**

Barring defendants Goel, Moffat and Hariri pursuant to Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], and Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], from acting as officers or directors of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

VI.

Granting such other and further relief as this Court may deem just and proper.

Dated: New York, New York  
January 29, 2010



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**CERTIFICATE OF SERVICE**

I hereby certify that, on January 29, 2010, the foregoing Second Amended Complaint was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants.

**SERVICE LIST**

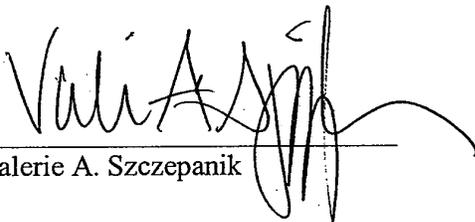
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Dated: January 29, 2010  
New York, New York

  
\_\_\_\_\_  
Valerie A. Szczepanik

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

WILLIAM E. WHITE  
202.887.4000/fax: 202.887.4288  
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February 9, 2010

The Honorable Jed S. Rakoff  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, New York 10007

Re: *Securities and Exchange Commission v. Galleon Management, LP, et al.*, No. 09-CV-8811 (JSR) (S.D.N.Y.)

Dear Judge Rakoff:

Defendant Raj Rajaratnam responds to Defendant Roomy Khan's February 5, 2010 request for a protective order relating to three specific discovery requests: (1) Mr. Rajaratnam's request to Plaintiff Securities and Exchange Commission for copies of six forensic images of her computers; (2) financial statements of Ms. Khan that Mr. Rajaratnam has subpoenaed from a bank; and (3) Requests 20-25 of Mr. Rajaratnam's First Document Request to Ms. Khan (the "February 5 Letter"). Ms. Khan is one of the key witnesses in the SEC's case against Mr. Rajaratnam. Specifically, Ms. Khan is the SEC's sole witness in support of its insider trading allegations for three stocks alleged in the Complaint: Polycom, Hilton, and Google. Sec. Am. Compl. at ¶¶ 2(i)-(iii), 44-79 (Jan. 29, 2010). Her credibility is a critical issue. While discovery will undoubtedly yield further examples of her lack of truthfulness, at present counsel is aware of the following:

- Ms. Khan was fired from employment at Galleon in or about 2000 for violating company policy by engaging in significant stock trading in accounts that were located outside of Galleon. After concealing this activity for some time, Ms. Khan told Galleon management that this trading netted her millions of dollars. On information and belief, Ms. Khan failed to pay income taxes on those gains.
- During the period from in or about 2000 to 2002, Ms. Khan fabricated allegations of insider trading against Mr. Rajaratnam which were uncorroborated by the FBI and the SEC after an extensive investigation.
- Ms. Khan pleaded guilty to wire fraud in the Northern District of California on April 2, 2001 pursuant to a cooperation agreement and was sentenced on July 1, 2002 to six months' home confinement and three years probation.

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The Honorable Jed S. Rakoff  
February 9, 2010  
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- In an action brought by a domestic employee of Ms. Khan's in federal court in the Northern District of California, Ms. Khan fabricated evidence in 2009. By order dated August 28, 2009, the federal judge in that action issued a ruling in which he proposed to give a "strongly worded instruction about the inference of culpability that must be drawn from fabrication of evidence" by Ms. Khan.
- In the same federal court action, Ms. Khan made several declarations about which of her personal computers were in her possession in 2008 and 2009. The computers listed in her declaration do not appear to match the description of the computers that were forensically imaged and that the SEC now has.
- Ms. Khan has recently pled guilty to a count of obstruction of justice in connection with her destruction of an incriminating email that she received from a co-conspirator in early 2008 and her instructions to others (not Mr. Rajaratnam) to do the same. She engaged in this conduct while acting as a government cooperating witness.

Ms. Khan's central objection is that information that goes to her credibility as a witness is irrelevant and not discoverable. That conclusion is incorrect. Relevance, for the purpose of discovery in a civil case, is "an extremely broad concept." *Condit v. Dunne*, 225 F.R.D. 100, 105 (S.D.N.Y. 2004). Additionally, as a case Ms. Khan cites points out, "information showing that a person having knowledge of discoverable facts may not be worthy of belief is **always relevant** to the subject matter of the action." *Davidson Pipe Co. v. Laventhol and Horwath*, 120 F.R.D. 455, 461 (S.D.N.Y. 1988) (emphasis added). The court in that case went on to say that information about prior acts "may serve as the foundation for cross-examination of a witness...and [is] therefore discoverable on that basis." *Id.* at 461-62. Given Ms. Kahn's position as a key witness in the SEC case, this discovery is not only relevant but vital to Mr. Rajaratnam's defense. As we demonstrate below, and in light of the facts discussed above, each of Mr. Rajaratnam's discovery requests is proper.

#### Forensic Computer Images

Ms. Khan first objects to Mr. Rajaratnam's request to the SEC for the forensic images of five computers that Ms. Khan owned. Ms. Khan has voluntarily provided these images to the SEC. Nonetheless, Ms. Khan now claims that her privacy interests would be invaded if the images were provided to counsel for Mr. Rajaratnam. Ms. Khan also suggests the key word searches that the SEC performed should provide adequate information to Mr. Rajaratnam and that anything more was merely a fishing expedition. For the reasons set forth below, her claims are without merit.

AKIN GUMP  
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Attorneys at Law

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February 9, 2010  
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First, the notion that forensic images of computers cannot be obtained through discovery is simply incorrect.<sup>1</sup> Courts have discretion to order the production of forensic images where issues have been fairly raised about the integrity of documents or of the document productions. *Gutman v. Klein*, No. 03 CV 1571, 2008 WL 4682208, at \*1 (E.D.N.Y. Oct. 15, 2008) (ordering forensic imaging of hard drives when there was evidence of file tampering). Here, there are such issues, as noted above.

Second, Ms. Khan already provided these images voluntarily to the SEC. Whatever privacy interests Ms. Khan had in those images is surely diminished by that voluntary production. Ms. Khan knew or clearly should have known that by providing these images to the government they would be at significant risk of disclosure either in this litigation, related criminal litigation, or through a Freedom of Information Act request.

Third, the search terms utilized by the SEC are not a sufficient substitute for our review of the forensic images. Ms. Khan's own cited authority makes this point. In *Gross Construction Associates v. American Manufacturers Mutual Insurance*, Magistrate Judge Peck noted that "[k]ey word searches do not reflect context," and that lawyers should not "design key word searches in the dark." 256 F.R.D. 134, 135-36 (S.D.N.Y. 2009). Search terms are simply insufficient to identify other incidents in Ms. Khan's pattern of deceptive behavior.

Fourth, despite claims to the contrary, Mr. Rajaratnam has offered reasonable limitations and protections for this material, all of which were rejected by Ms. Khan's counsel, including an offer to stipulate that the images could be produced as confidential material pursuant to the Court's existing protective order and to refrain from reviewing medical records, photographs, and passwords without Ms. Khan's express permission or the Court's approval.

Finally, these forensic images are also responsive to the document request that was served directly on Ms. Khan. Ms. Khan has failed to timely provide objections to that discovery request

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<sup>1</sup> See, e.g., *Caylon v. Mizuho Securities USA, Inc.*, No. 07 CIV 02241, 2007 WL 1468889, at \*3-4 (S.D.N.Y. May 18, 2007) (citing *Ameriwood Indus. Inc. v. Liberman*, No. 4:06 CV 524, 2006 WL 3825291 (E.D.Mo. Dec. 27, 2006) (noting that some electronically stored information might not be obtained during a typical search, and that problems with a party's discovery responses may justify a request for hard drive images); *Gutman v. Klein*, No. 03 CV 1571, 2008 WL 4682208, at \*1 (E.D.N.Y. Oct. 15, 2008) (noting that Magistrate Judge Levy ordered the defendant to provide plaintiff's counsel with access to computers so that they could copy the computer's hard drives); *Fox Indus., Inc. v. Gurovich*, No. CV 03-5166, 2004 WL 1896913, at \*8 (E.D.N.Y. July 15, 2004) (permitting forensic imaging of a defendant's computers to allow the discovery of emails "that may not be as inconsequential" as the plaintiff claimed).

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The Honorable Jed S. Rakoff

February 9, 2010

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and she is currently twenty-one days late in responding. As a result, and as we discuss below, she has waived any objections that she may have had to the document request. If Mr. Rajaratnam can obtain those images directly from Ms. Khan, she should not be able to object to their production by a third-party.

Third Party Subpoena to First Republic Bank.

Ms. Khan next objects to Mr. Rajaratnam's subpoena to First Republic Bank requesting records concerning Ms. Khan's various mortgages, loans, and statements of net worth. That subpoena is proper and should be allowed. The records sought pertain not only to an initial mortgage application made in 2000, but also to various related documents, including financial disclosures, dated as recently as 2005. Based on what Mr. Rajaratnam knows of Ms. Khan's financial condition, including significant tax liabilities, he has reason to believe that statements Ms. Khan made on her mortgage documents were false.<sup>2</sup> Knowingly making a false statement on financial disclosures of this kind is a federal crime. If Ms. Khan made such a false statement, it would clearly be relevant to her credibility. Because Ms. Khan's credibility is relevant, and because her propensity to make false statements cannot be elicited by search terms, Mr. Rajaratnam is entitled to the documents he has sought from First Republic Bank.

Ms. Khan also objects to this subpoena because it seeks information that goes back twelve years. The fact that some of Mr. Rajaratnam's requests seek information going back to 1998 is not a bar to its discovery. Ms. Khan made false allegations of insider trading against Mr. Rajaratnam in 2000. Moreover, Mr. Rajaratnam is confident that the SEC intends to open the door to this earlier time period by bringing in evidence of Ms. Khan and Mr. Rajaratnam's relationship in the late 1990s and the claim by Ms. Khan that she provided material non-public information to Mr. Rajaratnam at that time. As a result, Mr. Rajaratnam is entitled to seek discovery from this time period.

Requests 20-25 of Mr. Rajaratnam's Document Request to Ms. Khan

Finally, Ms. Khan objects to Requests 20-25 of Mr. Rajaratnam's First Request for the Production of Documents from Ms. Khan.<sup>3</sup> As an initial matter, Ms. Khan has failed to timely

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<sup>2</sup> The SEC has put Ms. Khan's financial status at issue, noting that she was experiencing financial difficulties in at least late 2005. Sec. Am. Compl. at ¶ 44.

<sup>3</sup> Those requests seek documents concerning legal matters involving Ms. Khan, her appointments and schedules, her federal and state tax returns, her financial assets and liabilities, her employment history, and any tax liability for which she was delinquent in payment.

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The Honorable Jed S. Rakoff

February 9, 2010

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respond to Mr. Rajaratnam's discovery requests, and as a result, she has waived her right to object to them.<sup>4</sup> Ms. Khan was served with the complaint and summons in this matter by the SEC in October 2009. Yet Ms. Khan has not responded to the complaint in any way and until last week no one had entered an appearance for her. Ms. Khan did not appear at the Rule 16 conference, did not make required initial disclosures, and has not responded to the SEC's discovery requests. Interestingly, notwithstanding the above, the SEC has not yet moved for the entry of default.

Despite Ms. Khan's failure to participate in this litigation, Mr. Rajaratnam personally served her with a document request on December 19, 2009. Rule 34 required a response to be served by Ms. Khan on January 19, 2010. To this date, no response has been made and is now twenty-one days late. Ms. Khan has given no explanation whatsoever for her failure to serve her responses and objections in the time required by the Federal Rules. In certain situations, courts have allowed parties to make late objections if they can meet a showing of good cause. *Eldaghar v. City of New York*, No. 02 Civ 9151, 2003 WL 22455224, \*1 (S.D.N.Y. Oct. 28, 2003) (noting that absence of a valid explanation for a failure to timely serve objections and responses to discovery requests warranted a finding of waiver). But in her February 5 Letter, Ms. Khan has not even attempted to provide a basis for finding good cause. This may not be surprising given the steps that Mr. Rajaratnam went through to obtain a response from Ms. Khan. In addition to personally serving Ms. Khan with the request, the undersigned counsel sent a letter to Ms. Khan's criminal defense attorney on January 6, 2010 advising him of the upcoming deadline. Similarly, on January 29, 2010, having had no contact with Ms. Khan, the undersigned sent Ms. Khan a letter advising her that she had missed the response deadline and that sanctions could attach. Yet as of this date she has still not filed her responses or produced any documents.

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<sup>4</sup> See, e.g., *Rahman v. Smith & Wollensky*, No. 06 Civ. 6198, 2007 WL 1521117, at \*3 (S.D.N.Y. May 24, 2007) ("Any other result would ignore the time limits set forth in the Federal Rules of Civil Procedure, contribute further to the delay in resolving cases, and effectively turn Article V of the Federal Rules of Civil Procedure from a structure of well-defined rights and obligations to a system of suggested, but non-binding guidelines."); *Eldaghar v. City of New York*, No. 02 Civ 9151, 2003 WL 22455224, \*1 (S.D.N.Y. Oct. 28, 2003) ("The law is well settled that a failure to assert objections to a discovery request in a timely manner operates as a waiver."); *Gorman v. County of Suffolk*, No. CV 08-533, 2010 WL 55935, \*1 (E.D.N.Y. Jan. 6, 2010) ("Failure to respond or object to a discovery request in a timely manner waives any objection which may have been available."); *Labarbera v. Absolute Trucking, Inc.*, No. CV 08-4581, 2009 WL 2496463, \*1 (E.D.N.Y. Aug. 12, 2009) ("It is well established that by failing to respond or object to a discovery request in a timely manner, a party waives any objection which may have been available.")

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Attorneys at Law

The Honorable Jed S. Rakoff  
February 9, 2010  
Page 6

Conclusion

Ms. Khan's objections to the discovery are without merit and her request for a protective order should be denied. Moreover, Ms. Khan should be directed to immediately and fully respond to Mr. Rajaratnam's document requests.

Respectfully submitted,



William E. White

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	09 Civ. 8811 (JSR)
	:	
-v-	:	<u>MEMORANDUM ORDER</u>
	:	
GALLEON MANAGEMENT, LP, et al.,	:	
	:	
Defendants.	:	
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JED S. RAKOFF, U.S.D.J.

Several months after the filing of this lawsuit, criminal indictments predicated on essentially the same allegations of "insider trading" as here alleged were returned against a number of the same defendants as here named. See United States v. Rajaratnam, 09 Cr. 1184, filed on December 15, 2009 and assigned to Judge Holwell; and United States v. Goffex, 10 Cr. 056, filed on January 21, 2010 and assigned to Judge Sullivan. As the pleadings and other filings in those cases make clear, the prosecutors in those cases had previously obtained wiretap recordings of the defendants and others that they intend to use in the criminal cases and have already partially disclosed publicly. But, although the Department of Justice (the "Government") and the Securities and Exchange Commission (the "S.E.C.") were, in the Government's word, "partner[s]" in the investigation of the underlying allegations, see transcript of hearing, 1/25/10, at 30, 31, 33, the Government did not share the wiretap recordings with the S.E.C. at any time during the

investigation and, with one exception mentioned below, has not shared them since. However, subsequent to the filing of the indictment in United States v. Rajaratnam, the Government provided the wiretap recordings to the defendants in that case, Raj Rajaratnam and Danielle Chiesi, and presumably will do the same in the criminal case before Judge Sullivan. It also appears that the defendants in the case before Judge Holwell may share the recordings with counsel for some other defendants pursuant to a "joint defense" agreement. See Letter from Valerie A. Szczepanik, Esq., at 4 n.3 (Jan. 20, 2010).

Since, as a result, certain of the defendants have had access to these recordings, while the S.E.C. has not, the S.E.C. timely propounded discovery demands, pursuant to Federal Rules of Civil Procedure 26 and 34, for production of the recordings from these defendants. The defendants opposed, and the Court then received extensive written and oral submissions from the relevant parties, as well as from interested third parties such as the Government. Although, in the process, adroit counsel raised numerous interesting and even esoteric arguments, in the end the Court finds the issue to be a relatively simple one.

The parties agree that the recordings are highly relevant to this case and that they would ordinarily be discoverable. See Fed. R. Civ. P. 26(b)(1). For example, if it were the defendants who had themselves made the recordings, they would not have any basis to

refuse production of the recordings to their adversary, even if they did not themselves intend to use the recordings at trial. The parties also agree that the Government, in providing these recordings to the defendants as part of discovery in the criminal case, did not seek any protective order barring the defendants from using these recordings in any way in this parallel case or, for that matter, in any other respect.

The defendants in possession of the recordings nonetheless argue that they are precluded by law from disclosing the tapes to the S.E.C. or, indeed, to anyone not involved in the joint defense of the criminal cases. But they have proved unable to cite any statutory authority for this restriction. Instead, they argue that, because of privacy and other concerns that animated Congress in passing the applicable statute, 18 U.S.C. §§ 2510-2522 (more commonly called "Title III," because these sections were collectively Title III of the Omnibus Crime Control and Safe Streets Act of 1968), the statute should be read as implicitly prohibiting any disclosure of the recordings not expressly authorized by the statute. See also In re New York Times Co., 577 F.3d 401, 407 (2d Cir. 2009) ("[T]urning Title III into a general civil discovery mechanism would simply ignore the privacy rights of those whose conversations are overheard." (quoting In re NBC, 735 F.2d 51, 54 (2d Cir. 1984)) (internal quotation mark omitted)).

It is true that the statute, in § 2517, specifies the conditions under which the Government is authorized to disclose the contents of wiretap recordings; but as the Second Circuit long ago concluded, "it is a non-sequitur to conclude the obverse: that Congress intended in § 2517 . . . to forbid . . . access by any other means on any other occasion." In re Newsday, Inc., 895 F.2d 74, 77 (2d Cir. 1990). Moreover, while most of § 2517 is directed at specifying the scope and conditions for disclosure of wiretap materials by "any investigative or law enforcement person," the section was amended in 1970 to provide that "[a]ny person" who has lawfully received wiretap recordings may disclose their contents while giving testimony "in any proceeding held under the authority of the United States or of any State or political subdivision thereof." § 2517(3). As two sister circuits have noted, since this means, at a minimum, that in a civil enforcement action a government agency could call to the stand a criminal enforcement agent who had lawful access to the wiretaps to testify to their contents, it would be absurd for the civil attorneys preparing the witness not to have access to the wiretap recordings beforehand. See In re High Fructose Corn Syrup Antitrust Litig., 216 F.3d 621, 624 (7th Cir. 2000); Fleming v. United States, 547 F.2d 872, 875 (5th Cir. 1977). More broadly, the notion that only one party to a litigation should have access to some of the most important non-privileged evidence bearing directly on the case runs counter to basic principles of civil discovery in an adversary

system and therefore should not readily be inferred, at least not when the party otherwise left in ignorance is a government agency charged with civilly enforcing the very same provisions that are the subject of the parallel criminal cases arising from the same transactions.<sup>1</sup>

It follows that the S.E.C.'s demand for production of wiretap recordings presently in the possession of certain of the defendants here should be granted and the recordings produced to the S.E.C. by no later than February 15, 2010, and production of the recordings should also be promptly made to any other party to this case that makes a similar demand on the applicable defendants.

This is not to say, however, that Congress' concern with privacy, which underlay much of the debate over Title III, should be ignored, particularly in light of the defendants' indication that they intend to move, in this or some other court, for suppression of the wiretap recordings on the ground that they were allegedly obtained in violation of law. But the simple way to satisfy this concern at this juncture is to cover the wiretap recordings with a protective order prohibiting their disclosure to any non-party until, at a minimum, a court of competent jurisdiction rules on any suppression motion that is timely filed (keeping in mind that the trial of this action is firmly set for August 2, 2010).

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<sup>1</sup>By contrast, one could readily imagine cases where a court might find that the presumption in favor of protecting privacy might easily outweigh a similar discovery request by a purely private plaintiff, let alone a third party. See In re New York Times Co., 577 F.3d at 406-07.

Accordingly, defendants Rajaratnam and Chiesi are hereby ordered to produce to the S.E.C. by February 15, 2010 copies of all the wiretap recordings received by those defendants from the Government, and to promptly produce the same materials to any other party to this case who so demands in writing, provided that all parties to this case who have or receive such recordings shall not provide them to any person who is not a party to this case pending further order of this Court.<sup>2</sup>

SO ORDERED.

  
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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
February 9, 2010

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<sup>2</sup> The above ruling obviates the need for the Court to consider the defendants' request that the Court hold a hearing on a small group of wiretap recordings that were inadvertently provided by the Government to the S.E.C. and then retracted. Similarly, the Court has no occasion to rule on the Government's contention that, under its reading of § 2517, it is free at any time to provide the entire set of recordings to the S.E.C., since, in fact, it has not done so.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :
                                     :
           Plaintiff,                 :      09 Civ. 8811 (JSR)
                                     :
           -v-                         :      ORDER
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GALLEON MANAGEMENT, LP, et al.,    :
                                     :
           Defendants.                :
----- X

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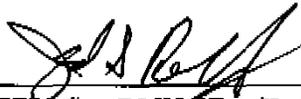
JED S. RAKOFF, U.S.D.J.

On February 9, 2010, the Court issued a memorandum order in this case ordering defendants Rajaratnam and Chiesi to produce certain Title III wiretap materials to the S.E.C. by February 15, 2010. By letters dated February 9, 2010, defendant Rajaratnam moved for a stay pending appeal and certification of the ruling for immediate appeal pursuant to 28 U.S.C. § 1292(b), or in the alternative an administrative stay, in which request defendant Chiesi joined. Per arrangements made during the snow-closing yesterday, the Court received the S.E.C.'s letter in opposition at noon today, in order that the Court could rule immediately thereafter, so that, if the Court's ruling were adverse, the defendants could immediately apply this afternoon to the Court of Appeals, as they indicated they were prepared to do.

Given the shortness of time, therefore, the Court will simply indicate that it finds the reasoning in the S.E.C.'s letter wholly persuasive and adopts its reasoning by reference. Accordingly, the

Court denies both the motion for certification, which the Court regards as frivolous, and the motion for a stay, which the Court finds would be highly prejudicial to the S.E.C.

SO ORDERED.

  
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JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
February 11, 2010

09-cv-8811  
SDNY/MYNY  
RAKoff

UNITED STATES COURT OF APPEALS  
FOR THE  
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 11<sup>th</sup> day of February, two thousand and ten.

PRESENT: Gerard E. Lynch,  
*Circuit Judge.*

Securities and Exchange Commission,

*Plaintiff-Appellee,*

v.

Raj Rajaratnam, Danielle Chiesi,

*Defendants-Appellants,*

Galleon Management, LP, Rajiv Goel, Anil Kumar, Mark Kurland, Robert Moffat, New Castle Funds LLC, Roomy Khan, Deep Shah, Ali T. Far, Choo-Beng Lee, Far & Lee LLC, Spherix Capital LLC, Ali Hariri, Zvi offer, David Plate, Gautham Shankar, Schottenfeld Group LLC, Steven Fortuna, S2 Capital Management, LP,

*Defendants.*

**ORDER**

Docket Number: 10-462 (L)  
10-464 (CON)

IT IS HEREBY ORDERED that the motion for a stay pending appeal of the February 9, 2010 order of the Hon. Jed. Rakoff in the District Court for the Southern District of New York in docket no. 09-cv-9911 will be determined by a three judge motions panel as soon as possible. The order is stayed until the motions panel makes its determination. The Security & Exchange Commission is ordered to file its opposition on or before Friday February 19, 2010 at 5:00 p.m.

A TRUE COPY  
Catherine O'Hagan Wolfe, Clerk

by   
DEPUTY CLERK

FOR THE COURT,  
Catherine O'Hagan Wolfe,  
Clerk


CERTIFIED: 2/11/10 AD

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02HFRAJC  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
-----x

UNITED STATES OF AMERICA,

v.

09 CR 1184 (RJH)

RAJ RAJARATNAM and DANIELLE  
CHIESI,

Defendant.

-----x

New York, N.Y.  
February 17, 2010  
4:00 p.m.

Before:

HON. RICHARD J. HOLWELL,

District Judge

APPEARANCES

PREET BHARARA  
United States Attorney for the  
Southern District of New York  
REED BRODSKY  
JONATHAN STREETER  
Assistant United States Attorney  
AKIN GUMP STRAUSS HAUER & FELD  
Attorneys for Defendant Rajaratnam  
JOHN M. DOWD  
ROBERT H. HOLTZ  
SAMIDH GUHA  
KELLEY DRYE & WARREN  
Attorneys for Defendant Chiesi  
ALAN ROBERT KAUFMAN  
JAMES MICHAEL KENEALLY

02HFRAJC

1 produced to the defendants the Roomy Khan materials that they  
2 asked for, so they now have those materials. We have been  
3 preparing those and we now produced them to them. But in terms  
4 of the defendant's preparation of the case, I want to say  
5 something first of all about minimization. Because while  
6 Mr. Dowd said there are 18,000 intercepts and they need to  
7 review those, as we put in our letter, only about a little less  
8 than 6,000 of those are actually the defendants being  
9 intercepted, roughly in that neighborhood. And the  
10 defendants --

11 THE COURT: Yes, but of course, counsel on either side  
12 are going to want to listen to all of them.

13 MR. STREETER: Let me put it this way. Someone needs  
14 to listen to them. I don't know that partners at the table  
15 need to listen to them. This is like anything else. There are  
16 tons and tons of calls that at the end of the day when  
17 everybody has reviewed everything, every one of those calls  
18 isn't going to be played at this trial. The FBI agents  
19 properly minimized and they did that, but that doesn't mean  
20 that there aren't a lot of calls that are relevant to some  
21 other case, but aren't relevant to this case.

22 In terms of minimization, the defendants only have  
23 standing to minimize and to ask that calls be minimized that  
24 they themselves are on. In fact, there's some law in the  
25 Second Circuit that they may not even have the right to ask for

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

1 U.S. COURT OF APPEALS  
2 FOR THE SECOND CIRCUIT  
3 S.E.C., \*

4 Appellee \*

5 v. \* Case No.: 10-462

6 GALLEON MANAGEMENT, et al., \*

7 Appellants \*

8 \* \* \* \* \*

9 OFFICE TRANSCRIPT OF PROCEEDINGS  
10 ORAL ARGUMENT

11  
12 NEW YORK, NEW YORK

13  
14 BEFORE: The Honorable Reena Raggi  
15 The Honorable Peter W. Hall  
16 The Honorable Gregory Carman

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20 Transcribed by:  
21 Robin C. Comotto, Notary Public

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A P P E A R A N C E S

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1                                   P R O C E E D I N G S

2                                   (On the record.)

3                                   JUDGE RAGGI:  S.E.C.?  If we can hear  
4 from the parties in that?

5                                   (Brief pause.)

6                                   JUDGE RAGGI:  Counsel?

7                                   MS. MILLETT:  May it please the Court,  
8 I'm Patricia Millett, on behalf of the  
9 Defendant/Appellant/Petitioners, in this case.

10                                   The District Court's Order should be  
11 stayed or enjoined through Writ of Mandamus.  It  
12 has presented this Court with a very, very, stark  
13 choice.  It has ordered the release of more than  
14 eighteen thousand raw, untested, sealed wiretapped  
15 conversations of --

16                                   JUDGE RAGGI:  What's the schedule for  
17 the challenge to the legality of the wiretap in the  
18 criminal case?

19                                   MS. MILLETT:  The suppression motion is  
20 scheduled to be argued before the District Court,  
21 on June 9th.  We anticipate --

1                   JUDGE HALL:  Has it been briefed, at  
2 this point?

3                   MS. MILLETT:  It is not briefed, at this  
4 point.  That is happening over the next couple  
5 months.  We expect to be requesting and we expect  
6 that we will obtain a Franks hearing.  And so,  
7 how --

8                   JUDGE RAGGI:  So you're expecting to  
9 receive --

10                  MS. MILLETT:  To request and to  
11 obtain -- we are going to request and hope to  
12 obtain a Franks hearing, as part of that -- Franks  
13 v. Delaware hearing, as part of that motion.

14                  JUDGE RAGGI:  Have you filed your  
15 motions to suppress, yet?

16                  MS. MILLETT:  We have not.  That due  
17 date was April 15th, although there is now a short  
18 extension motion to the need of the parties to  
19 listen to every one of these eighteen thousand  
20 wiretaps so that we can argue --

21                  JUDGE RAGGI:  So let me ask you whether

1 you really have any argument other than the  
2 legality of of the taps, with respect -- I mean, if  
3 the taping is approved, I would think your argument  
4 for non-disclosure is weakened considerably, so, I  
5 would think it's reasonable, if you're challenging  
6 the legality of these tapes, this taping, to move a  
7 little more expeditiously than you have.

8 MS. MILLETT: First of all, the judge,  
9 Judge Holwell, who's presiding over the criminal  
10 trial, has very much understood the need for  
11 substantial amount of time to do this. We did not  
12 receive all of these --

13 JUDGE RAGGI: But nothing precludes you  
14 from filing a motion to suppress, tomorrow, if you  
15 want to.

16 MS. MILLETT: No --

17 JUDGE RAGGI: Are you telling me you're  
18 not going to do it now for almost another month.

19 MS. MILLETT: With respect, to file a  
20 motion to suppress requires -- we get one bite at  
21 the apple and that means we not only have to lay

1 out substantial legal arguments, but we have to  
2 listen to every one of these eighteen thousand  
3 tapes. For minimization purposes, you raise all of  
4 the issues in one motion to suppress. And that's  
5 why --

6 JUDGE RAGGI: But minimization, at least  
7 with respect to the motion before us, would really  
8 be an admissibility question, which is not at issue  
9 in Judge Rakoff's Order, at all.

10 Whether or not interception, itself, was  
11 permissible, is another question. Do you have a  
12 bona fide basis for challenging the affidavit and  
13 the authorization? Minimization, we'll put aside,  
14 for a moment.

15 MS. MILLETT: Absolutely, we do. And we  
16 have --

17 JUDGE RAGGI: And what's the basis for  
18 challenging that?

19 MS. MILLETT: And the arguments will be  
20 that there were false, misleading omissions and  
21 misrepresentations in the documents that were

1 provided for authorization of the wiretap. The  
2 Title 18 requires -- Title III, excuse me, requires  
3 a full and complete disclosure to the District  
4 Court judge who is being asked to authorize these  
5 wiretaps, about necessity and probable cause. And  
6 neither of those was satisfied, in this case.

7           But I also want to get to your question,  
8 your point about whether this all changes after the  
9 motion to suppress, and it most definitely does  
10 not. Seven months ago, in the New York Times case,  
11 this Court held that wire -- there's a strong  
12 presumption against disclosure, and that was in a  
13 case post motion to suppress, post criminal trial.

14           JUDGE HALL: I was on the New York Times  
15 case and that was not -- that was the Times looking  
16 for wiretaps that had -- may or may not have been  
17 shared with the party --

18           MS. MILLETT: But that is --

19           JUDGE HALL: -- (inaudible) just looking  
20 for the disclosure via the Court.

21           MS. MILLETT: Precisely the point. And

1 that is, when you have a motion to suppress, none  
2 of these -- that doesn't mean everything, eighteen  
3 thousand is coming into the public record and the  
4 criminal trial. In fact, as the U.S. Attorney's  
5 Office told Judge Holwell, tons and tons of these  
6 tapes have no relevance and won't be used in the  
7 criminal action. Minimization is more than just  
8 the, making sure privacy things are covered. It  
9 goes directly to relevance. There's been no  
10 determination that eighteen thousand tapes are  
11 relevant to this civil case.

12 JUDGE RAGGI: That goes to the  
13 admissibility, and that's not where we are, now.  
14 We're at (inaudible) --

15 MS. MILLETT: It goes to  
16 discoverability.

17 JUDGE RAGGI: -- about disclosure of  
18 these tapes, now. I mean, we're dealing with this  
19 in the practical world, where your client, the  
20 interceptee, has been given the tapes. This is a  
21 civil action. He can be deposed and asked about

1 each and every one of the conversations that's on  
2 the tape, and he can be asked, as he testifies from  
3 his memory, whether he reviewed anything.

4           So, but for the possible illegality of  
5 the tapes, and the taping, I'm not sure that  
6 inevitably we're not going to be at disclosure,  
7 here, and that's why I'm interested in how quickly  
8 that can be resolved.

9           But let me make sure I understand your  
10 argument about how, even if it's, even if they're  
11 found to have been lawfully taped, you take the  
12 position that they cannot be disclosed, in this  
13 case, to the S.E.C., even though your client, and  
14 possibly co-defendants in the civil action, have  
15 been given the tapes?

16           MS. MILLETT: Precisely for this reason,  
17 and that is because you still have to have  
18 disclosures authorized by Title III. And, at a  
19 minimum, these are not going to all come out in a  
20 deposition. The reason the S.E.C. wants these is  
21 this is pre-criminal trial. The Fifth Amendment's

1 going to be evoked in those depositions. We're not  
2 going to get all these things. And I strongly ask  
3 this Court to read the Supreme Court's decision, in  
4 Gelbard --

5 JUDGE RAGGI: But it's not so clear to  
6 me that your argument is correct because the  
7 concern about Title III is that the government not  
8 be intercepting, except according to certain laws  
9 and procedures. And that disclosure, by third  
10 parties and government law enforcement people only  
11 be according to the law. Nothing in Title III  
12 addresses what a court can do.

13 And, indeed, a court orders disclosure  
14 to lawyers, all the time, in order to decide the  
15 legality of the tapes. So I'm not sure anything in  
16 Title III deals with what a court can do in a court  
17 proceeding.

18 MS. MILLETT: It does that, first of  
19 all, in the criminal case. In Gelbard v. United  
20 States, the Supreme Court held that courts cannot  
21 order individuals to testify before a grand jury

1 about wiretap conversations that have not, prior to  
2 a motion to suppress, but also have not been  
3 disclosed --

4 JUDGE RAGGI: Because the concern was  
5 the legality had not yet been decided.

6 MS. MILLETT: But, beyond that -- again,  
7 keep in mind, if Title III -- if that were all it  
8 was about, then Title III would not go to all the  
9 pains that it does, Congress wouldn't have spent  
10 its time telling the U. S. Attorney's Office, in  
11 25.17.1. and 25.17.2., you can't turn these over to  
12 the S.E.C. If all that means -- it would turn  
13 Title III on its head to say that its purpose was  
14 to make the S.E.C. go, in the Supreme Court's  
15 words, in Gelbard, to the individual whose privacy  
16 has been invaded, and get it from them instead of  
17 getting it from the U.S. Attorney's Office.

18 If that's the way Congress wanted it  
19 there's a lot more direct route. But 25.17.3. is a  
20 very narrow and precise rule for these documents  
21 and these types of intercepts, in civil litigation.

1 And it is someone who already knows the  
2 information, already has the information, can use  
3 it, testimonially, in a civil case. To turn that  
4 into an authorization for discovery is to erase  
5 everything in 25.17.3., and to rewrite it, and to  
6 overturn this Court's decision in NBC, which said  
7 Title III is not --

8 JUDGE RAGGI: (Inaudible) go past your  
9 time. I want you to just give me a sentence or two  
10 on how we have jurisdiction to hear this, at all.

11 MS. MILLETT: You have jurisdiction  
12 under this Court's decision in United States v.  
13 Gerena, which was --

14 JUDGE RAGGI: Gerena is -- has been --  
15 there have been many cases since Gerena that have  
16 made plain that privileges, whether common law or  
17 the effect of statutes, do not create this  
18 interlocutory appeal -- that we wait until after  
19 any proceeding in which that evidence is used or  
20 disclosed becomes final.

21 So, I mean, how do we distinguish these

1 from the Supreme Court's recent case, telling us  
2 that we don't hear challenges to the disclosure of  
3 privileged information?

4 MS. MILLETT: Because the Supreme Court  
5 was quite careful in Mohawk to say you go through  
6 this category by category. And it was dealing with  
7 a common law evidentiary privilege. Here, as the  
8 United States argued to the Supreme Court, in the  
9 Mohawk case, you're dealing with a statutory  
10 decision by Congress, driven by constitutional  
11 concerns that wiretapping will be used, very  
12 narrowly, for very narrow, prescribed purposes.  
13 And that --

14 JUDGE RAGGI: But, you know, I'm not  
15 sure that I understand the logic of that because  
16 the concept of the common law privileges is not to  
17 chill the conversation. And if any disclosure has  
18 that effect, the Supreme Court indicated that it  
19 was prepared to tolerate some chilling, or the  
20 minimal chilling that would come from the  
21 disclosure that was challenged there.

1                   But, here, the participants in  
2 conversations that are tapped, have no expectation  
3 that the other person in the conversation won't  
4 disclose it. It's not a privileged conversation.  
5 It's just that now it's recorded. The purpose of  
6 Title III is to keep the government out of peoples'  
7 business. But once it's lawful, I'm not sure what  
8 reason there would be for us to step in, before a  
9 final decision, to look into whether the disclosure  
10 of the lawful wiretap was somehow improper. That's  
11 assuming this wiretap survives a legality  
12 challenge.

13                   MS. MILLETT: Well, first of all, Title  
14 III is about anybody tapping. It criminally  
15 proscribes private people from tapping,  
16 intercepting.

17                   JUDGE RAGGI: Yes, I understand that.

18                   MS. MILLETT: So, it is not just about  
19 the government --

20                   JUDGE HALL: That's there no assertion  
21 here that it is private persons who are tapping?

1                   MS. MILLETT: Absolutely, not. It is --  
2 but, just to be clear, it is a judgment about a  
3 profound balance in this country --

4                   JUDGE RAGGI: Right. And when we have  
5 that case, we'll talk about the balance that that  
6 establishes.

7                   MS. MILLETT: I understand. But to  
8 respond to your comment that it's just about the  
9 government, it's not just about the government.  
10 But it is very much and primarily about the  
11 government's uninvited ear coming into  
12 conversations. And if there were no difference  
13 between people talking about phone calls and the  
14 government attaching itself to an individual for  
15 ten months, in their bedroom, in their office, in  
16 their car, in the restaurant, as intercepts do, and  
17 hearing everything, everything, then Congress would  
18 have --

19                   JUDGE RAGGI: Of course, we're talking  
20 about one part of the government which has heard  
21 it, turning it over to another part of the

1 government. I mean, there's been concern about --  
2 and this is Gerena, about disclosure in public  
3 documents. Judge Rakoff has made plain that that's  
4 not going to happen, here.

5           And so where he's taken that step, so  
6 that it will stay within the government, it's just  
7 a matter of which office is going to know it, I'm  
8 not sure we have that same concern here that was  
9 present in Gerena.

10           MS. MILLETT: You have Congress telling  
11 you that the S.E.C. --

12           JUDGE RAGGI: I'm now talking about the  
13 jurisdictional question. You would still be able  
14 to be heard, down the road, when there's a final  
15 judgment, but you're saying we have to step in now.  
16 There's no risk of public disclosure, as yet.

17           MS. MILLETT: No, this is much like the  
18 other cases because understand we have parallel  
19 civil and criminal proceedings going on here, and  
20 while maybe we can reveal this later, review this  
21 issue later in an appeal of the S.E.C. case, the

1 ability of the District Court to enforce a  
2 suppression order, the ability of the District  
3 Court to disentangle things that have come to  
4 influence witnesses, things that he ordered  
5 suppressed, or minimized, or excluded, or never  
6 come in as relevant, the influence of those on  
7 witnesses in the criminal case, we will not be able  
8 to protect our rights.

9           And the District Court will not be able  
10 to enforce his jurisdiction over the suppression  
11 motion, in that criminal case, and it can't be  
12 reviewed there. So, in this context, when you've  
13 got two parallel proceedings, and every other time  
14 in history what Congress would have expected was  
15 the civil case to go after the criminal case,  
16 then --

17           JUDGE RAGGI: Thank you, Counsel.

18           MS. MILLETT: Thank you.

19           JUDGE HALL: So if the Defendants in  
20 this proceeding notice up depositions of every  
21 person on the government's side who has knowledge

1 of this case, the government's not going to move to  
2 stay the civil proceeding?

3 MR. KARR: Excuse me, Your Honor?

4 JUDGE HALL: You're in a civil  
5 proceeding --

6 MR. KARR: Yes, sir.

7 JUDGE HALL: You're using civil  
8 discovery --

9 MR. KARR: Mm-hmm.

10 JUDGE HALL: You're getting stuff from  
11 defendants in a criminal case. If they notice up  
12 depositions of every person in the government who  
13 has knowledge of this case, you're not going to  
14 move to stay the civil proceedings?

15 MR. KARR: Your Honor, if the Court  
16 orders us to proceed with discovery, we will.  
17 Right now, there is a stay on --

18 JUDGE HALL: You are proceeding in  
19 discovery, are you not?

20 MR. KARR: Right now, there is a stay on  
21 testimonial discovery, in the case currently before

1 Judge Rakoff.

2 JUDGE HALL: How did you do that that  
3 when it seems to me you could notice up the  
4 deposition of these people and ask them to bring  
5 the documents with them?

6 MR. KARR: Because we are attempting to  
7 resolve this matter, and also hopefully get  
8 resolved the suppression matter before Judge  
9 Holwell, before we proceed with that, to minimize  
10 such need.

11 JUDGE HALL: Well, why don't you resolve  
12 the suppression matter before Judge Holwell before  
13 you get the documents in the civil proceeding?

14 MR. KARR: Well, Your Honor, under the  
15 terms of the order entered by Judge Rakoff --

16 JUDGE HALL: I understand that, by why,  
17 tactically, are you putting this at risk?

18 MR. KARR: It's not a matter of tactics,  
19 it's a matter of necessity, Your Honor. With  
20 the --

21 JUDGE HALL: Why don't you talk to the

1 government about getting the tapes?

2 MR. KARR: Your Honor, --

3 JUDGE HALL: The government meaning the  
4 entity --

5 MR. KARR: Meaning the --

6 JUDGE HALL: Well, I'm assuming, it's  
7 the F.B.I. that's (inaudible).

8 MR. KARR: Meaning the United States,  
9 Yes, Your Honor.

10 Your Honor, the did come in and raise  
11 separate grounds before Judge Rakoff. Judge Rakoff  
12 ruled on the issue that is currently before the  
13 Court, now, so we did not reach that issue. There  
14 has been a briefing before -- there has been some  
15 briefing before Judge Holwell, on the 25.17.2.  
16 issue, but that basically has not been completed  
17 and the parties are, I believe, awaiting the  
18 decision here out of this Court.

19 JUDGE HALL: So isn't the toothpaste  
20 really out of the tube if all of the sudden you've  
21 got this stuff and Judge Holwell says the way those

1 wires were obtained is not authorized and  
2 everything's suppressible?

3 MR. KARR: No, Your Honor, I don't  
4 believe that's true. Under Judge Rakoff's Order,  
5 as least pending a motion to suppress, there can be  
6 no disclosure outside of parties. The S.E.C.,  
7 pending that suppression, is just going to be --

8 JUDGE HALL: The S.E.C. wants to know  
9 each and every conversation and surely they're not  
10 going to put that out of their minds. Are you  
11 keeping a clean team, essentially divorced from all  
12 of this, so that they can step in if all of the  
13 sudden you've gotten access to information you're  
14 not supposed to have?

15 MR. KARR: We haven't done that, yet.  
16 That is a possibility, but, Your Honor, it's very  
17 common. In any case involving suppression, any  
18 motion in limine, any Rule 502 callback proceeding,  
19 where if there's been material which attorneys have  
20 seen which is no longer going to be useable at  
21 trial, that they can't make use of that.

1                   JUDGE HALL: (Inaudible) wasn't useable  
2 at trial I think the way Congress has set up Title  
3 III. This is an absolute prohibition, including  
4 the right of the parties to obtain an injunction  
5 against any use of it.

6                   MR. KARR: Well, Your Honor, here, there  
7 is nothing in Title III that bars the disclosure  
8 under these circumstances. The only statute that  
9 applies to a private party --

10                  JUDGE RAGGI: I'm not sure I understand  
11 that. The government, the prosecutorial arm of the  
12 government, at least in my past experience, has  
13 always taken a very hard line on what defense  
14 attorneys who are given Title III information can  
15 do with it.

16                  And so, and their view has been that  
17 disclosures permitted under the terms of Title III,  
18 or not at all -- so what is the legal foundation  
19 for you to suggest that information that it's  
20 criminal to procure, except according to the terms  
21 of Title III, can be disclosed under terms and

1 conditions not specified in Title III?

2 MR. KARR: Well, first, Your Honor,  
3 there's no -- when the materials were disclosed in  
4 the criminal case, there was no protective order  
5 limiting their use for the defendants in that case,  
6 who are the defendants, here. Beyond that, --

7 JUDGE RAGGI: Title III limits what they  
8 can do with it. Title III limits what someone who  
9 gets information pursuant -- that's been procured  
10 under Title III -- can do, in terms of disclosing  
11 it.

12 MR. KARR: The only statute in Title III  
13 that applies to a private party who has received  
14 intercepted communications is 25.11.1.e., and that  
15 only bars them from using them in a manner to --  
16 with intent to obstruct a criminal investigation or  
17 proceeding. 25.17. only applies to government  
18 disclosures. And this Court --

19 JUDGE HALL: That's 25.17.3.

20 MR. KARR: 25.17.3., to the extent  
21 25.17.3. applies here, Your Honor, it says that

1 materials can be used if a witness, you know, if a  
2 government agent or some witness is going to  
3 testify to them at trial.

4 JUDGE HALL: It's any person.

5 MR. KARR: Any person. Yeah.

6 JUDGE HALL: Seems to be different from  
7 any investigative or law enforcement officer, which  
8 is the lead-in for 1 and 2.

9 MR. KARR: Mm-hmm. And this Court, in  
10 Newsday, said that if 25.17.3. doesn't expressly  
11 apply to something, that you can then look to other  
12 areas of law. And there was a common law --

13 JUDGE RAGGI: What is the authority for  
14 giving you this information before its legality has  
15 been tested? I mean, all the cases I've seen  
16 involving disclosures of wiretaps have presumed  
17 their legality or their legality has been resolved.  
18 I'm having a problem understanding why we should  
19 allow this disclosure before legality has been  
20 litigated.

21 MR. KARR: Well, I think there's -- I'm

1 not aware of anything in 25.17.3. that says

2 (inaudible) --

3 JUDGE RAGGI: Do you think you can use  
4 it if it's found illegal.

5 MR. KARR: Your Honor, if there was a --  
6 if it is suppressed that, obviously, is a different  
7 situation --

8 JUDGE RAGGI: Right. So --

9 MR. KARR: I'm going to address that.

10 But --

11 JUDGE RAGGI: -- a different a situation  
12 in which you could not use it, right?

13 MR. KARR: I believe 25.15. does bar use  
14 of --

15 JUDGE RAGGI: So why shouldn't that be  
16 resolved, first? As I said, it seems to me the  
17 balance might be differently calibrated, all  
18 around, once we know whether this was a legal  
19 wiretap or an illegal wiretap.

20 MR. KARR: Because, Your Honor, with an  
21 August 2nd trial date, right now, and as Appellants

1 have noted the great difficulty in, or the amount  
2 of time that is necessary to digest this  
3 information, if the S.E.C. must await that ruling,  
4 and the hearing is on June 9 or maybe after that,  
5 it will be effectively impossible for us to have  
6 that information when we get to testimonial  
7 discovery.

8           JUDGE RAGGI: But you're going to have  
9 to create a Chinese wall, as Judge Hall indicated,  
10 because if that ruling is adverse and the wire tap  
11 is found illegal, you're going to have tainted  
12 prosecutors. So the amount of time, here -- I  
13 would think everybody's energies should be devoted  
14 to getting a quick resolution on the legality of  
15 the wiretap.

16           Has anybody explained to Judge Holwell  
17 that it could hold up the disclosure in the civil  
18 case? I mean, that might not be too impressive to  
19 a judge who's wrestling with a criminal trial but,  
20 nevertheless, has anybody made that point to him?

21           MR. KARR: I don't know how clear, I

1 don't know how clear that point's been made. I  
2 think --

3 JUDGE RAGGI: You're suggesting we don't  
4 have jurisdiction, here.

5 MR. KARR: Yes.

6 JUDGE RAGGI: And you've heard your  
7 adversary on why she thinks we do. Do you want to  
8 respond to that?

9 MR. KARR: Yeah, I do not think there's  
10 jurisdiction under the Collateral Order Doctrine.  
11 I think --

12 JUDGE RAGGI: This is a statutory  
13 provision. This is not just a common law right.  
14 And it's a statute that makes improper disclosure  
15 criminal. So why aren't, why doesn't this have a  
16 different balance than -- the common law privileges  
17 are, after all, evidentiary rules. So if it never  
18 comes into evidence, however much one may feel that  
19 there would be chilling effect, the courts have  
20 decided they're not going to get involved in it  
21 until that's a concern and there's a final

1 judgment. But Title III is different. It's a  
2 criminal statute, at the start.

3 MR. KARR: Well, Your Honor, with all  
4 due respect, I think that the characterization of  
5 common law versus statutory versus constitutional,  
6 basically, I don't know that that's the right  
7 benchmark.

8 JUDGE RAGGI: Well, you better convince  
9 me of that, of why.

10 JUDGE HALL: (Inaudible).

11 MR. KARR: Because in Mohawk, there they  
12 were dealing with the most, you know, venerated of  
13 privileges, you know, attorney/client privilege,  
14 which is highly confidential information. And  
15 there they said there's a category -- they think  
16 the problem can be corrected by having a post-  
17 disclosure, post-trial judgment and go back and  
18 reverse it, and then any information that's  
19 improperly admitted the first time, that that can  
20 be excluded.

21 JUDGE RAGGI: Well, let me suggest in

1 this case that the information is disclosed and in  
2 the course of negotiations the parties settle the  
3 case, for whatever reason, and there is no  
4 challenge to the disclosure of this wiretap. Isn't  
5 this -- we have possible violation of a statute  
6 that would go un-reviewed.

7 MR. KARR: Well, Your Honor, I don't  
8 believe a violation of the statute under my 25.11.  
9 analysis. But even beyond that, Judge Rakoff is  
10 putting --

11 JUDGE RAGGI: I'm sorry. I didn't hear  
12 you.

13 You think that disclosure --

14 MR. KARR: Beyond the issue of the  
15 legality -- because I think this is permitted under  
16 Title III. Title III doesn't expressly prohibit  
17 it. This Court, in Newsday, said that if it  
18 doesn't expressly prohibit --

19 JUDGE RAGGI: But that's the whole thing  
20 that the parties want reviewed, whether Title III  
21 has the flexibility to allow disclosure that's not

1 expressly provided. And if this case settles,  
2 there will be no opportunity to question whether or  
3 not that's so. And we're dealing with a statute,  
4 that as your adversary argues, has some  
5 constitutional grounding.

6 MR. KARR: But, Your Honor, that  
7 situation, if it settles, the materials will have  
8 been --

9 JUDGE RAGGI: Disclosed.

10 MR. KARR: But pursuant to a privacy  
11 order, it's only going to have been seen by the  
12 parties, at least prior to the suppression hearing,  
13 at the earliest.

14 JUDGE RAGGI: I'm not sure that helps  
15 you much. In any event, I don't understand -- the  
16 government isn't seeking them just to read, at its  
17 leisure. I mean, the whole purpose of seeking them  
18 is to secure evidence, right?

19 MR. KARR: Ultimately to secure  
20 evidence, yes.

21 JUDGE RAGGI: So, at one point does -- I

1 mean, the day you try to offer it in a proceeding  
2 can we intervene at that point and stop it?

3 MR. KARR: Well, Your Honor, if we seek  
4 to enter it in a proceeding pursuant, for instance,  
5 25.17.3., that's expressly permitted, so it makes  
6 the limited --

7 JUDGE RAGGI: Only if you got it  
8 lawfully.

9 JUDGE HALL: (Inaudible) permitted if  
10 they are authorized.

11 MR. KARR: Mm-hmm.

12 JUDGE HALL: It's expressly permitted if  
13 they are authorized.

14 MR. KARR: Well, I thought I had  
15 mentioned, I thought I had said, earlier, that if  
16 they were --

17 JUDGE HALL: We don't know if they're  
18 authorized while they're still under challenge.

19 MR. KARR: But as long as they're under  
20 challenge they're not going to be disclosed in  
21 trial or anywhere outside the parties. That was

1 Judge Rakoff's Order.

2 JUDGE RAGGI: But also to the -- how  
3 many parties are there?

4 MR. KARR: Um, I'm not going to get this  
5 exactly right but somewhere in the teens. Fifteen.  
6 Seventeen.

7 JUDGE RAGGI: Right. And how many of  
8 them have already received the information as part  
9 of the criminal trial, because you represented, I  
10 think, in your papers, that many of them would get  
11 them as part of the criminal discovery?

12 MR. KARR: Well, basically, all of the  
13 individual defendants in our matter are also  
14 criminally charged. So, eventually, I believe it  
15 would be all of them. There are two entity  
16 defendants in our case --

17 JUDGE RAGGI: Have you confirmed that  
18 with the United State's Attorneys --

19 MR. KARR: I've confirmed --

20 JUDGE RAGGI: -- prosecuting the case?  
21 I mean why don't they have it already? The

1 Defendant has it. If they're getting it --

2 MR. KARR: I'm not --

3 JUDGE RAGGI: -- I would -- usually  
4 disclosure is made to all the defendants, at once.

5 MR. KARR: I'm not sure of the status of  
6 that, Your Honor. I do know that everyone who is a  
7 defendant in our case is criminal charged. An  
8 individual defendant.

9 JUDGE RAGGI: Well, my concern is that  
10 however much the government may only have it  
11 pursuant to this, you're now talking about a whole  
12 handful of other persons. And you think that  
13 there's no legal issue about the disclosure to  
14 them?

15 MR. KARR: Um, --

16 JUDGE RAGGI: By the way, what about  
17 notice to the intercepted persons that you're  
18 getting disclosure of this? Has any thought been  
19 given to that? I understand there are thousands of  
20 non-parties who have been intercepted on this tap,  
21 and might have some issues about its legality,

1 right? Once we're talking about disclosure to a  
2 third -- to someone other than the prosecutor?

3 MR. KARR: Yes, it's my understanding.  
4 I don't know the specifics. That the prosecutors  
5 are complying with the notice requirements of Title  
6 III. The exact parameters I'm not sure that I  
7 have.

8 JUDGE RAGGI: All right, thank you.  
9 Thank you, very much. We'll give you a decision as  
10 quickly as we can.

11 (Off the record, proceedings concluded.)

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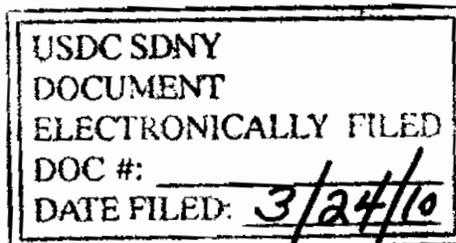
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## KELLEY DRYE &amp; WARREN LLP

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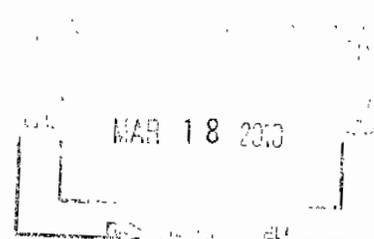
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(BY FAX (212) 805-7948)

March 18, 2010

Honorable Richard J. Holwell  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl Street  
New York, NY 10007Re: United States v. Raj Rajaratnam and Danielle Chiesi,  
S1 09 Cr. 1184 (RJH)

Dear Judge Holwell:

I write on behalf of both defendants to request a three-week adjustment of the motion schedule as it relates to the due dates for the motions to suppress the Title-III wiretaps in this case. This is occasioned by the massive logistical effort required to review all of the intercepted conversations, and then to put the conversations relevant to the motions in a presentable form for the Court. Defense counsel have conferred with the government about this request, and the government is in agreement with the following proposal: The defendants' motions to suppress the Title-III intercepts be adjourned from April 16 to May 7, the government's reply adjourned from May 7 to May 28, and the defendants' reply adjourned from May 17 to June 7. The hearing date of June 9 can remain, unless the Court deems it preferable to re-schedule it. There have been no previous requests for extensions with respect to this motion schedule.

All other motions will still be due on April 16.

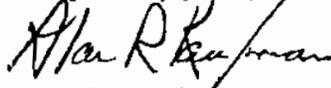
Counsel has represented that this adjustment of the motion schedule will not be a basis for a request that the trial date be adjourned.

## KELLEY DRYE &amp; WARREN LLP

Honorable Richard J. Holwell  
March 18, 2010  
Page Two

We ask the Court to approve of this adjustment to the motion schedule.

Respectfully yours,



Alan R. Kaufman

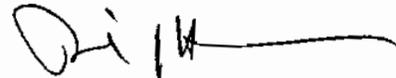
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cc: AUSA Jonathan Streeter (by e-mail)  
AUSA Reed Brodsky (by e-mail)  
SAUSA Andrew Michaelson (by e-mail)  
John M. Dowd, Esq. (by e-mail)

*Application Granted.*

*Hearing adjourned from June 9, 2010  
to June 17, 2010, at 10:30 a.m.*

SO ORDERED



USDT

3/24/10

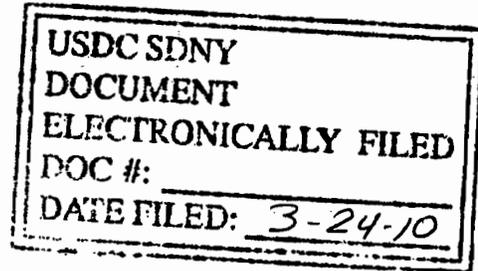
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- X  
SECURITIES AND EXCHANGE COMMISSION, :  
 :  
Plaintiff, :  
 :  
-v- :  
 :  
GALLEON MANAGEMENT, LP, et al., :  
 :  
Defendants. :  
----- X

09 Civ. 8811 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.



The Court previously scheduled the trial of this case for August 2, 2010. However, after Judge Holwell set for October 25, 2010 the trial of one of the parallel criminal cases, the United States Attorney's Office intervened in this case and moved to adjourn the trial of this case until after the completion of that criminal trial. See Tr. 2/19/10 at 3-4. Despite the fact that no party opposed the adjournment, see id. at 22, the Court reserved judgment because of the strong public interest in having cases of this kind move forward promptly. Cf. Bloate v. United States, 2010 WL 757660, at \*9 (Mar. 8, 2010) (noting, in the context of the Speedy Trial Act, the need "to vindicate the public interest in the swift administration of justice").

Now, however, a further factor has tipped the balance toward adjournment. Specifically, the Court of Appeals has today stayed the prior order of this Court directing certain defendants to turn over to the plaintiff Securities and Exchange Commission the wiretapped

conversations received by these defendants in the parallel criminal matter. See S.E.C. v. Galleon Management, LP, 10-0462-cv(Lead) (2d Cir. Mar. 24, 2010) (order granting stay pending appeal). The stay order also sets forth the schedule for the briefing of the appeal from this Court's order, with the final brief to be filed on June 8, 2010 and oral argument to be heard thereafter. Moreover, comments made by the presiding judge during the oral argument before the Court of Appeals suggest that the resolution of that appeal may also be affected by the resolution of the suppression hearing on the wiretap evidence currently scheduled to commence before Judge Holwell on June 17, 2010.

Since, therefore, resolution of the wiretap issue cannot realistically be expected before July 2010, an August 2 trial is no longer practical, and counsel for several of the defendants will thereafter be occupied in preparing for the criminal trial set for October 2010. Thus, with reluctance, the Court hereby adjourns the trial of this case until Monday, February 14, 2011. Counsel should consult with one another as to a proposed new case management plan in light of this change, and fax to the Court their proposed joint plan or respective differing plans by no later than March 31, 2010.

SO ORDERED.



\_\_\_\_\_  
JED S. RAKOFF, U.S.D.J.

Dated: New York, New York  
March 24, 2010

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

GALLEON MANAGEMENT, LP, et al.

Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 4-5-10

: CIVIL CASE  
: MANAGEMENT PLAN  
:  
: 09 CV 8811 (JSR)  
: ECF CASE

This Court requires that this case shall <sup>start trial</sup> ~~be ready for trial~~ on  
February 14, 2011

After consultation with counsel for the parties, the following Case Management Plan is adopted. This plan is also a scheduling order pursuant to Rules 16 and 26(f) of the Federal Rules of Civil Procedure.

- A. This case is to be tried to a jury.
- B. Joinder of additional parties must be accomplished by December 15, 2009.
- C. Amended pleadings may be filed without leave of Court until December 15, 2009.
- D. Discovery (in addition to the disclosures required by Fed. R. Civ. P. 26(a)):
  - 1. Documents. First request for production of documents, if any, must be served by November 16, 2009. Further document requests may be served as required, but no document request may be served later than 30 days prior to the date of the close of discovery as set forth in item 6 below.
  - 2. Interrogatories. Interrogatories pursuant to Rule 33.3(a) of the Local Civil Rules of the Southern District of New York must be served by November 24, 2009. No other interrogatories are permitted except upon prior express permission of Judge Rakoff. No Rule 33.3(a) interrogatories need be served with respect to disclosures automatically required by Fed. R. Civ. P. 26(a).

3. Experts. Every party-proponent of a claim (including any counterclaim, cross-claim, or third-party claim) that intends to offer expert testimony in respect of such claim must make the disclosures required by Fed. R. Civ. P. 26(a)(2) by December 1, 2010. Every party-opponent of such claim that intends to offer expert testimony in opposition to such claim must make the disclosure required Fed. R. Civ. P. 26(a)(2) by December 15, 2010. No expert testimony (whether designated as "rebuttal" or otherwise) will be permitted by other experts or beyond the scope of the opinions covered by the aforesaid disclosures except upon prior express permission of the Court, application for which must be made no later than 10 days after the date specified in the immediately preceding sentence. All experts may be deposed, but such depositions must occur within the time limit for all depositions set forth below.
  4. Depositions. All depositions (including any expert depositions, see item 3 above) must be completed by January 7, 2011. Unless counsel agree otherwise or the Court so orders, depositions shall not commence until November 15, 2010. Depositions shall proceed concurrently, with no party having priority, and no deposition shall extend beyond one business day without prior leave of the Court.
  5. Requests to Admit. Requests to Admit, if any, must be served by December 1, 2010.
  6. All discovery is to be completed by January 7, 2011. Interim deadlines for items 1-5 above may be extended by the parties on consent without application to the Court, provided the parties are certain they can still meet the discovery completion date set forth in this paragraph, which shall not be adjourned except upon a showing to the Court of extraordinary circumstances.
- E. Post-discovery summary judgment motions in the form prescribed by the Court's Individual Rules of Practice may be brought on without further consultation with the Court provided that a Notice of any such motion, in the form specified in the Court's Individual Rules of Practice, is filed no later than one week following the close-of-discovery date (item D-6 above) and provided that the moving papers are served by January 14, 2011, answering papers by January 21, 2011, and reply papers by January 26, 2011. Each party must file its respective papers with the Clerk of the Court on the same date that such papers are served. Additionally, on the same date that reply papers are served and filed, counsel for the parties must arrange to deliver a courtesy non-electronic hard copy of the complete set of papers to the Courthouse for delivery to Chambers.
- F. A final pre-trial conference, as well as oral argument on any post-discovery summary judgment motions, shall be held on February 1, 2011, ~~at which time~~

at 4 pm.

The Court will decide any summary judgment motion by 2/4/11. No motions in limine will be the Court shall set a firm trial date. The timing and other requirements for the Joint Pretrial Order and/or other pre-trial submissions shall be governed by the Court's Individual Rules of Practice permitted. The Joint Pretrial Order will be due on 2/10/11.

- G. All motions and applications shall be governed by Judge Rakoff's Individual Rules of Practice. Counsel shall promptly familiarize themselves with all the Court's Individual Rules, as well as with the Local Rules for the United States District Court for the Southern District of New York.

SO ORDERED.

  
JED S. RAKOFF  
U.S.D.J.

DATED: New York, New York

4/3/10