

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SCIENTON TECHNOLOGIES, INC.,)	
NI GROUP, INC. and SECURE-IT, INC.)	No. CV 04 2652 (DRH) (WDW)
)	
Plaintiffs,)	AMENDED COMPLAINT
)	
-against-)	
)	<u>Jury Trial Demanded</u>
COMPUTER ASSOCIATES)	
INTERNATIONAL, INC,)	
)	
Defendant.)	

Plaintiffs SCIENTON TECHNOLOGIES, INC., NI GROUP, INC. and SECURE-IT, INC., by their attorneys Goodkind Labaton Rudoff & Sucharow LLP, for their amended complaint against Defendant COMPUTER ASSOCIATES INTERNATIONAL, INC., allege as follows:

Nature of the Action

1. This action charges Computer Associates International, Inc., one of the world’s largest software companies, with agreeing to work with NI Group, Inc. to design a software solution for Canadian Imperial Bank of Commerce (“CIBC”) and thus participating with NI Group in a joint endeavor to obtain a contract for Computer Associates that Computer Associates had been unable to obtain on its own, and then failing to pay NI Group the agreed-upon amount of 10% of the \$68 million CIBC contract (or \$6.8 Million). Computer Associates also failed to pay NI Group \$250,000 for its participation in a joint endeavor to obtain a contract for Computer Associates with BCE Emergis. Then, in both instances, Computer Associates failed to honor its agreement to employ NI Group (or its successor-in-interest, Scienton Technologies, Inc.) to lead

the implementation of the software services required by the contracts, with anticipated profits to NI Group and its successor, Scienton Technologies, of approximately \$37 million. During this same period, Computer Associates asked NI Group to develop systems and software to implement two new and innovative concepts in computer and enterprise security that NI Group had proposed to Computer Associates under an explicit promise of confidentiality and non-use. When work on one of those was virtually completed, however, Computer Associates suddenly broke its promises and terminated its involvement with NI Group, demanding that NI Group return to Computer Associates all of Computer Associates' software to it. To comply fully with the request, NI Group was required to destroy all its work on this project. Several years later, Scienton Technologies learned that Computer Associates had misappropriated NI Group's valuable trade secrets to create new products, eTrust 20/20 and Command Center, which Computer Associates has been actively and successfully marketing to many entities, including the American Government's Department of Homeland Security. At this time, the value of the stolen trade secrets is believed to exceed \$800 million. Furthermore, the software which Computer Associates caused NI Group to destroy had intrinsic value, and the combination of that loss with Scienton's lost business opportunities as a result of CA's bad-faith termination of its commitments resulted in extensive damages to Scienton. Finally, CA interfered with NI Group's valuable commercial relationship with Quiet Touch, which resulted in the loss of revenue and profits to NI Group. Accordingly, this action seeks an award of substantial compensatory and punitive damages against Computer Associates and also the imposition of a royalty on CA's past and future sales or licenses of all software employing Plaintiffs' trade secrets.

The Parties

2. Scienton Technologies Inc. ("Scienton") is a corporation organized under the laws of Ontario, Canada, with its principal place of business at 111 Peter Street, Suite 407, Toronto,

Ontario M2V 2H1, Canada. As of November 29, 2000 Scienton is the successor-in-interest to Plaintiff NI Group, Inc.

3. NI Group Inc. (“NI Group”) is a corporation organized under the laws of Ontario, Canada, with its principal place of business at 81 South Kingsway, Toronto, Ontario M6S 2T4, Canada. NI Group was organized and is owned by Jovan Miladinovic, who is also a founder and shareholder of Scienton. As of June 5, 2000 NI Group is the successor-in-interest to Plaintiff Secure-IT Inc.

4. Secure-IT Inc. (“Secure-IT”) is a corporation organized under the laws of Ontario, Canada, with its principal place of business at 296 Lee Avenue, Toronto WE 2P5, Canada. Secure-IT was organized and is owned by Predrag Zivic, who was also a founder and is a shareholder of Scienton.

5. Defendant Computer Associates International, Inc. (“CA”) is a corporation organized under the laws of Delaware with its principal place of business at One Computer Associates Plaza, Islandia, New York 11788-7000. CA is one of the largest software companies in the world, with annual revenues in excess of \$3 billion.

Jurisdiction and Venue

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(1) in that it is between a citizen of a state and citizens of a foreign state and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

7. The Court has personal jurisdiction over CA because CA’s headquarters are in this District and CA does business in this District.

8. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (a) because Defendant CA resides in this District and because a substantial part of the events giving rise to the claim occurred in this District.

Facts Common to All Claims

9. The formal relationship between CA and the Plaintiffs began in 1999, when CA entered into a Vendor Services Agreement, dated as of October 18, 1999, with Secure-IT (the “VSA”). Under the VSA, Secure-IT, a consulting company focusing on security in the information technology (“IT”) field, began to assist CA with its customers in the United States in implementing tools in a variety of IT areas, including security.

10. The VSA was signed by Predrag Zivic for Secure-IT on September 26, 1999 and then by Michael J. Espina, Vice President of CA, in Islandia, New York, on October 18, 1999. Among other things, the VSA provided that it would be “governed and construed in accordance with the laws of New York “ and that the most appropriate forum for adjudicating disputes between CA and Secure-IT is in “the federal and state courts of New York.”

11. Pursuant to the VSA, Secure-IT worked with a number of CA clients in the United States, including KPMG and companies in New Jersey and Chicago. For its efforts, Secure-IT submitted invoices to CA in Islandia, New York.

12. On and after June 5, 2000, Secure-IT merged its operation into NI Group, with CA’s full understanding and approval. Indeed, CA not only told NI Group that NI Group was officially substituted in the place of Secure-IT on the existing VSA, but CA also prepared and sent to NI Group a new VSA specifying NI Group as the vendor. This new VSA was signed by Zoran Markovic, Vice President of NI Group, on June 30, 2000, and returned to CA. However, CA never returned a counter-signed copy to NI Group, a frequent occurrence in the relationship of the parties.

13. Both parties understood that a formal agreement between CA and NI Group had been concluded. In fact, Robert Dinkel, Senior Vice President of CA, later signed an “Addendum to Vendor Services Agreement (‘VSA’) Between Computer Associates

International, Inc. ('CA') and *NI Group Inc.* ('Vendor')" (emphasis added) dated effective February 14, 2001, which stated that it was amending the earlier VSA dated October 18, 1999. Then, when CA ultimately purported to terminate its relationship with NI Group, its notice of termination, dated June 25, 2001, specifically stated that CA was terminating the VSA "entered into on October 18, 1999 ('the Agreement') by *NI Group, Inc.* ('NI Group') and Computer Associates International, Inc." (emphasis added). Thus, both parties acknowledged the substitution of NI Group in the relationship, even though the new VSA was never formally signed by CA.

14. The new VSA, like the previous VSA, specifically provided that it would be "governed and construed in accordance with the laws of the State of New York" and that the most appropriate venue for legal proceedings between CA and NI Group was in the federal and state courts of New York.

The TD Bank Proposal

15. In mid-2000, CA and NI Group began to explore ways in which their relationship could be expanded into new and innovative areas. As NI Group's computer engineers had expertise with many of CA's software products, they began to see how NI Group's trade secrets in the area of computer and enterprise security could be used to integrate different CA products and third-party products and provide powerful functionality that had never been thought of or implemented by CA's engineers and technicians.

16. Independent of its relationship with CA, NI Group was in the process of responding to a request for proposals from TD Bank, one of the four largest banks in Canada, for a system to allow users to sign on to its computer system and be authenticated without typing any input and in addition the management of the overall system. NI Group saw the TD Bank proposal as an opportunity to develop new and valuable technology by combining its own

proprietary technology with certain CA software products as well as third-party products.

Therefore, because this alliance between NI Group and CA would require NI Group to share its highly secret and valuable trade secrets with CA, the parties entered into a Mutual Nondisclosure Agreement (“MNDA”) dated as of September 20, 2000. The MNDA was signed by Predrag Zivic of NI Group and by Tommy Bennett, Senior Vice President of CA, in Islandia, New York.

17. The MNDA stated that highly confidential, trade-secret information was going to be shared between the parties and that each party agreed not to disclose or to use the other party’s information except for the specific purpose of the MNDA. The MNDA further provided that “[e]ach disclosing party shall at all times retain sole and exclusive title to, ownership of, all rights in and control over the use of its Information.”

18. During this same time period, CA entered into two Consultant Relations Program License Agreements with Secure-IT and NI Group, respectively, which permitted Secure-IT and NI Group to use CA products in cooperative development efforts. The first such agreement was between CA and Secure-IT and was signed by Zoran Markovic for Secure-IT on June 16, 2000, and by Robert Dinkel, CA Vice President in Islandia, New York, on June 29, 2000. The second agreement was between CA and NI Group and was signed by Zoran Markovic for NI Group on September 28, 2000. Even though the latter agreement was signed by NI Group and returned to CA in Islandia, New York, as frequently occurred, it was never formally countersigned by CA and returned to NI Group. Nevertheless, both parties understood the agreement to have been consummated, and they proceeded to perform under the agreement.

19. NI Group developed a solution for TD Bank, employing both NI Group’s proprietary technology and CA software, including products called eTrust Single Sign-On, eTrust Access Control and eTrust Directory, as well as third party software packages Netegrity,

Entrust PKI and Core Change Portal. NI Group revealed its concepts for combining its technology and CA's software to CA engineers, who were amazed, telling NI Group that they had never thought of such combinations and would have believed them impossible.

20. NI Group successfully delivered a pilot solution to TD Bank for the agreed upon fee.

The CIBC and BCE Emergis Contracts

21. By the fall of 2000, in part because of the TD Bank project, CA told NI Group that CA had been deeply impressed with NI Group's abilities and the extent to which NI Group and its engineers were respected by the Canadian business community. CA officials said that CA wanted to expand the relationship between the companies. One consequence of that expanded relationship was CA's interest in a major initiative by NI Group to develop NI Group's Information Security Model™ in innovative and novel combinations with certain CA products, including Neugents and Jasmine (problem and risk prediction and detection software and technology), to develop powerful new security software that would be extremely useful and valuable to a wide variety of enterprises. This initiative is discussed below (paragraphs 51-65).

22. Another consequence of CA's growing awareness of NI Group's competence and reputation came on November 29, 2000, when CA's National Area Manager for Canada, Joanne Moretti, told NI Group's principals, Jovan Miladinovic and Predrag Zivic, that CA had been trying without success to obtain what would be CA's largest Canadian transaction of all time, a worldwide software license agreement and provision of accompanying implementation services for CIBC.

23. Ms. Moretti explained that CA had not been able to convince CIBC that CA's products could be successfully employed in a security solution for CIBC and that CA desperately needed (a) the strategic partnership of NI Group in designing an integrated solution for CIBC

and (b) NI Group's assistance with CA's sales group to persuade CIBC to purchase that solution and the world wide software license agreement. Ms. Moretti told NI Group that if NI Group would accept this assignment and participate with CA in this joint endeavor, CA would pay NI Group 10% of the value of the resulting contract between CA and CIBC and would award to NI Group sub-contracts to implement and support the CA product at CIBC, contracts that obviously would be extremely valuable to NI Group. Ms. Moretti told NI Group that it was imperative that this effort begin immediately, since CA was afraid that CIBC might close a deal with another vendor before CA even had a chance to introduce NI Group to CIBC.

24. NI Group accepted this offer from CA, and, in reliance on CA's promises and the agreement that it had made with CA, NI Group confirmed that it would begin the CIBC proposal process immediately. CA stated that the agreement for its joint endeavor with NI Group would later be reduced to a written "Teaming Agreement" that could take two to three months to prepare but assured NI Group that the agreement with CA was already complete and that the written agreement, that was simply a formality, would reflect the date of the actual agreement, November 29, 2000. In reliance on CA's representation that the agreement regarding its joint endeavor with NI Group was in effect and had been consummated, NI Group began immediately to work on the CIBC project. From that point forward, NI Group was CA's strategic partner in this and other endeavors, in a confidential and fiduciary relationship.

25. Within days, CA's sales team - Irene Nathan and Richard Pitcher - had been introduced to NI Group, and they explained how CA had encountered nothing but closed doors at CIBC. In particular, CA had a very bad image at CIBC, rooted in years of harsh mainframe licensing practices by CA. NI Group agreed to try and turn around CIBC's perception of CA through a joint proposal made by CA and NI Group.

26. NI Group believed it could succeed on the CIBC project and that such a success with CA on the CIBC project would strengthen the CA/NI Group relationship and would facilitate and fund the even more significant development project that NI Group was simultaneously working on with CA (paragraphs 51-65 below). It communicated these beliefs to CA, which understood and confirmed them and urged NI Group to devote every possible effort to making this new business relationship successful.

27. NI Group designed a totally new and innovative solution for CIBC, integrating CA products with exciting new NI Group and third-party technology. By December 8, 2000, slightly more than a week after making its agreement with CA regarding CIBC, NI Group was able to demonstrate an integrated solution for CIBC's enterprise security needs to the CA engineers, who confirmed that NI Group had done the "impossible."

28. In meetings and electronic conferences with CA staff in Islandia and Toronto, NI Group structured a sales presentation to CIBC designed to rehabilitate CA's reputation and demonstrate a robust and unique solution to CIBC's enterprise security needs that would convince CIBC to license CA's software at the world-wide enterprise level. The first joint presentation was made to CIBC on December 15, 2000. The CIBC technical staff was stunned by NI Group's presentation. As a result of the CA and NI Group joint proposal to CIBC, NI Group and CA were asked to make a follow-up presentation as one of a short list of vendors several days later, on December 19, 2000.

29. The December 19th presentation also went very well, and CIBC told NI Group that it would be contacting CA and NI Group for additional integration and operational information. From that moment forward, NI Group was fully responsible for the proposal process at CIBC and performed a leading role in that endeavor. Yet, NI Group received no

compensation for any of its activities with respect to the CIBC project and understood that it would be compensated pursuant to the terms of the November 29, 2000 agreement which was to be confirmed in the Teaming Agreement later if CIBC entered into an agreement with CA to purchase or license its software.

30. Over the next several months, NI Group actively participated in negotiations with CIBC staff, answered questions and further promoted the CA contract with CIBC.

31. Meanwhile, on January 16, 2001, NI Group received an e-mail from Richard Pitcher which had been sent to him from CA's headquarters in Islandia, containing the "Teaming Agreement," which was the written embodiment of the agreement that had been made in November pursuant to which NI Group was participating with CA in their joint endeavor to make the sale to CIBC. Mr. Pitcher asked NI Group to fill in a few terms that had been verbally agreed to, sign the Teaming Agreement and return it to CA.

32. NI Group understood the written Teaming Agreement to set forth in writing the terms of the agreement that had already been made. In particular, the Teaming Agreement called for NI Group to receive "10% of the value of CA software product sale at CIBC" as well as "the Contract for services to implement the CA product at CIBC." The Teaming Agreement provided further that it would "be governed by, and construed in accordance with, the law of the State of New York."

33. Since these terms were consistent with NI Group's understanding of its oral agreement with CA – an agreement which it had already been performing for approximately six weeks – Predrag Zivic signed the agreement on behalf of NI Group and returned it to CA.

34. The CIBC project continued to go forward. In fact, because the joint endeavor with respect to CIBC had been so successful, CA also asked NI Group to assist in making a

presentation to BCE Emergis, the largest outsourcing company in Canada and part of the Bell group of companies, on the same terms as the CIBC venture: 10% of the contract value and a contract for services to implement the CA product at BCE Emergis if CA won the contract. NI Group accepted CA's offer and then participated in a presentation to BCE Emergis, which went extremely well.

35. CA was very pleased with NI Group's efforts and told NI Group that it wanted the Teaming Agreement expanded to cover all previous and future joint efforts between CA and NI Group; since CA was expecting a number of new business opportunities for the two companies working together.

36. Upon information and belief, CA entered into a \$2.5 Million contract to provide its software to BCE Emergis. As a result, NI Group was entitled to receive \$250,000 and the sub-contract to implement and support the CA products at BCE Emergis and consequent profits from such sub-contract for NI Group in an amount to be determined at trial, which, upon information and belief, exceed \$1.25 Million.

37. NI Group met with Anthony Wright and Irene Nathan of CA on January 29, 2001. The principals of NI Group expected that they would receive the final signed Teaming Agreement from CA. Instead, NI Group was told that CA fully affirmed the earlier agreement, wanted to expand the NI Group relationship even further and wanted to enter into a new and broader agreement with NI Group. The meeting concluded with Mr. Wright stating that "This is a very important day for both CA and NI Group."

38. On February 13, 2001, NI Group received a call from Nigel Collins and Eric Maurice of CA's Islandia, New York office, to discuss the new expanded relationship. The CA officials told NI Group that while the existing agreement was "OK," the new agreement would

address all possible engagements and conditions involving NI Group's innovative developments integrating NI Group technology with CA's products and that this new agreement, like the last one, would be retroactive to the beginning of the CIBC joint endeavor between the two companies.

39. In the meantime, the CIBC project moved to successful closure. The proposal to CIBC – which was presented by NI Group and which explicitly stated that CA “will be using both CA resources and sub-contracting NI Group, a security-consulting firm” – was ultimately accepted by CIBC. On April 3, 2001, Piers McMahon of CA's Islandia headquarters sent Predrag Zivic an e-mail giving him the good news on the CIBC sale: “I heard we won this. Congratulations for your work here, and I hope all is well, and that this leads to good business for you (and CA).”

40. NI Group heard that the CIBC contract with CA was valued at \$68 million, and looked forward to being paid the 10% of that value – \$6.8 million – that it had now earned for its efforts in securing the contract. NI Group also anticipated that it would receive the sub-contract to implement and support the CA products at CIBC. But no payment and no sub-contract was forthcoming and CA failed even to provide NI Group with a copy of its agreement with CIBC.

41. NI Group then had a series of frustrating communications with an ever-escalating series of managers at CA concerning payment for the CIBC contract and the obligation to provide sub-contracts to NI Group for implementation of CA software at CIBC. NI Group believed that it was experiencing the understandable consequences of dealing with a very large corporate bureaucracy. It later realized that it was actually experiencing a clever and callous effort to keep NI Group hard at work on its significant development efforts which CA was

encouraging at the same time that CA was fending off any attempt to comply with CA's agreement to compensate NI Group for the CIBC sale.

42. This campaign reached a peak at the end of May 2001. NI Group, feeling increasingly uncomfortable with CA's constant obfuscation and failure to make good on its commitments, decided that it needed to bring the matter to a head and thus sent an invoice to CA for the NI Group's 10% share of the value of the CIBC sale. Because NI Group had been told that the sale was valued at \$55 million (a statement now believed to have been intentionally misleading), the invoice was for \$5,500,000. Upon information and belief, the actual amount of the invoice should have been \$6,800,000.

43. Based upon NI Group's understanding of what CIBC's needs would be to implement and support CA's product at CIBC, NI Group also sent a request for a purchase order for NI Group's services in connection with the implementation of the CIBC contract. The purchase order called for a five-year effort by NI Group at a price of \$70,017,920 that would have resulted in profits for NI Group of approximately \$35 Million..

44. CA's response was to terminate the relationship with NI Group. Having obtained the CIBC contract, and having acquired access to and knowledge of NI Group's trade secrets in the parallel development process discussed below (paragraphs 51-65), CA sent NI Group a letter dated June 25, 2001 (received June 28, 2001), purporting to terminate the VSA entered into on October 18, 1999 and demanding that NI Group return all CA Confidential Information. NI Group was stunned but complied with CA's demands, as is discussed more fully below.

45. As of the date of this Amended Complaint, the \$6.8 million earned by NI Group in connection with its joint endeavor with CA regarding the CIBC contract has not been paid and is due and owing, with interest.

46. Furthermore, NI Group (and its successor in interest, Scienton) never was engaged to perform the implementation work on the CIBC contract as had been agreed upon. Upon information and belief, NI Group (now Scienton) would have earned a profit on that work of at least \$35 million.

47. Finally, NI Group was never paid the agreed upon 10% of the value of CA's contract with BCE Emergis. Upon information and belief, CA's contract with BCE Emergis is for \$2.5 million entitling NI Group to \$250,000. Nor did NI Group receive the contract for services to be rendered under the CA/BCE Emergis contract, causing NI Group to lose profits, in an amount to be determined at trial, which, upon information and belief, exceed \$1.25 million.

CA Interferes with Quiet Touch Contract

48. During this same period, NI Group was also working with a company called Quiet Touch to provide computer security components for Quiet Touch projects and software.

49. Following CA's purported termination of its relationship with NI Group, CA officials demanded that Quiet Touch not do business with NI Group, on pain of not being allowed to do business with CA at CIBC. CA's actions were motivated solely by malice, for the purpose of harming NI Group.

50. As a result of CA's interference with NI Group's valuable contractual relations and prospective contractual relations, NI Group lost revenues and substantial profits in an amount to be determined at trial.

The NI Group/CA Development Initiatives

51. Beginning as early as the summer of 2000 and separate from the work NI Group and CA were jointly pursuing with respect to CIBC, NI Group saw the possibility of using its own trade-secret technology, based on its Information Security Model™, to make new use of existing technology, such as CA's Neugents, AION and eTrust line of products (CA software

products and related technology), to create new systems to manage security and risk for major financial institutions and others. The upside potential of this innovative technology was enormous and remains so today.

52. NI Group presented the parameters of this concept to CA engineers, who told NI Group that they had never thought such combination of technologies possible. CA urged NI Group to move forward on a proposal for developing this combined technology together with CA.

53. The first step was the signing of the MNDA (see ¶ 16 above). NI Group then signed the second CA Consultant Relations Program License Agreement on September 28, 2000, allowing NI Group to make use of a number of CA products in its development work. Although CA agreed to this license, consistent with its frequent custom and practice CA never executed the actual document that it had drafted. But CA's agreement is evidenced by, among other things, the fact that CA gave NI Group full access to all the products identified in Appendix A to the Consultant Relations Program License Agreement and gave training to NI Group on those products in October 2000.

54. NI Group also traveled to New York on several occasions to participate in training with respect to the CA products and to make a presentation to a CTO conference in New York City, in November 2000. During these meetings, NI Group presented ideas about how the innovative NI Group concept would work, and NI Group received praise from the highest levels of CA's technical management, including Russell Artzt. CA actively encouraged NI Group to devote substantial effort to the project, on the explicit understanding, reflected in the MNDA, that NI Group's technology and its confidential trade secrets would be kept confidential, would

not be divulged to anyone outside the CA/NI Group team working on this project, would not be used unilaterally by CA, and would at all times remain the separate property of NI Group.

55. Relying on these assurances, NI Group freely communicated its concepts and the manner of their implementation to CA, but they always were maintained in the strictest secrecy by NI Group and never revealed to anyone not in a confidential relationship with it. These concepts and the manner of their implementation had immense commercial value to CA and the competitors of both CA and NI Group.

56. NI Group also presented to CA a concept of implementing a Canadian “Identrus” initiative. Different structures like “Identrus” in the United States, or “Canadian Payment Association” in Canada that permit on-line, business-to-business services to be conducted in a secure context use different trust models, resulting in an inability to conduct this type of transaction between entities belonging to different structures. This initiative would make use of another piece of NI Group intellectual property, called Trust Model Router™ in combination with certain CA technology and enable cross certification between different trust model structures. It would also be immensely profitable. CA officials were very excited about the project and encouraged NI Group to move forward with it.

57. Throughout the winter of 2000 - 2001 and the spring of 2001, NI Group devoted much of its time developing these two initiatives, believing, for all the reasons set forth above, that these initiatives would continue to expand the business relationship with CA. For its part, CA publicly acknowledged its strategic partnership with NI Group, listing NI Group on its web site with other partners such as IBM, Microsoft Corporation, Dell Computer Corporation and Intel Corporation and stated that “[t]he partnership between NI GROUP and Computer

Associates International, Inc. (CA) provides implementations and solutions built on CA's eTrust products."

58. By June of 2001, NI Group had made great progress, particularly on the project based on NI Group's Information Security Model™, which was approximately 80% complete. Indeed, in late June, 2001, NI Group filed patent applications in both the United States and Canada for the Information Security Model™ and for the Trust Model Router™ inventions. Those patent applications are currently pending under examination.

59. In addition to the concepts identified in the patent applications (which applications remain secret unless and until the patents are granted), NI Group also revealed to CA's engineers its secrets on how to implement these structures using NI Group's proprietary technology and existing CA programs. These concepts and these implementations were totally unknown to CA and constituted valuable property of NI Group. At every available opportunity, CA's technical staff marveled at what NI Group had created and urged NI Group to move ahead with its work.

60. As alleged above (¶ 44), CA suddenly terminated its relationship with NI Group in late June 2001 and demanded that, pursuant to the VSA, NI Group return all CA software and maintain the confidentiality of CA's intellectual property. NI Group returned the CA software and requested that CA return all of NI Group's confidential information and maintain the confidentiality of the intellectual property that NI Group had supplied to CA. A similar set of reciprocal promises to return confidential information was contained in the MNDA. NI Group, consulted with its attorney and was told that in order to comply with its obligations under the MNDA it would have to destroy all of the work product created by NI Group including all code and related development material that it had created to integrate CA products with its own

proprietary information and technology. Acting in good faith and in the reasonable belief that CA would comply with its reciprocal obligations under the MNDA, NI Group was required to destroy the valuable work that it had created.

61. NI Group was unable to move ahead on projects on which it was working and lost important business opportunities. It also lost a time to market advantage of approximately two years it held over competitors. As a result, NI Group lost substantial revenues and profits and was damaged in an amount to be determined at trial, which it believes to be hundreds of millions of dollars.

62. Almost a year later, however, in April of 2002, CA announced the creation of eTrust 20/20, described as a groundbreaking visual tool for enterprise security managers to detect policy abuse, theft, espionage and the like. While Scienton (by then, the successor to NI Group) did not know what use if any CA had made of NI Group's development work and its proprietary intellectual property, the new product seemed very close in functionality to what NI Group had been working on with CA.

63. In the summer of 2003, Scienton began to learn more about the actual content of eTrust 20/20 and the corresponding Security Command Center programs, which were being released in Beta test programs. It became apparent to Scienton that CA, which had had no idea how to create the programs described as part of eTrust 20/20 and Security Command Center, had misappropriated NI Group's work and trade secrets that had been revealed to CA under the strictest promises of confidentiality and non-use.

64. These trade secrets included how to use CA products to gather security-related data, how to use those products to provide a holistic approach to security management, how to integrate the new product with the then existing eTrust line of products, how to do data

consolidation and normalization for risk, how to calculate information and statistics for risk and security measurement, how to collect and define anomalies used for improved security management and risk and how to provide for real-time report presentation and reporting. Furthermore CA's new products (eTrust 20/20 and Command Center), upon information and belief, also infringe on Scienton's claims in the pending Information Security Model™ patent. Scienton also learned that CA filed its own patent application, using concepts and implementations misappropriated from NI Group. (Since CA's application, like NI Group/Scienton's applications, remains secret, Plaintiffs do not yet know its full content.)

65. It also appears that CA has embarked on an aggressive marketing campaign for the new technology based on NI Group/Scienton's misappropriated trade secrets and proprietary technology. While the outcome of that marketing program is not now known, it is capable of generating profits in excess of \$800 Million. Among the possible customers for this powerful technology stolen from NI Group/Scienton is the United States Department of Homeland Security.

First Claim – Breach of Contract

66. Plaintiffs reallege and incorporate paragraphs 1 through 65.

67. CA breached its agreement with NI Group to pay NI Group 10% of the value of the CIBC contract and to award NI Group the sub-contract to provide implementation services to CIBC.

68. As a result, NI Group, and its successor in interest, Scienton, have suffered damages in an amount to be determined at the trial of this action, but in no event less than \$41.8 Million.

Second Claim – Breach of Contract

69. Plaintiffs reallege and incorporate paragraphs 1 through 68.

70. CA breached its agreement with NI Group to pay NI Group 10% of the value of the BCE Emergis contract and to award NI Group the sub-contract to provide implementation services to BCE Emergis.

71. As a result, NI Group, and its successor in interest, Scienton, have suffered damages in an amount to be determined at the trial of this action, but in no event less than \$1.5 Million.

Third Claim – Quasi-Contract

72. Plaintiffs reallege and incorporate paragraphs 1 through 71.

73. In the alternative to the First Claim, the conduct of the parties, the promises made by CA and NI Group's justifiable reliance on those promises create a quasi-contract obligating CA to pay NI Group 10% of the value of CA's contracts with CIBC and to pay NI Group the profit it would have earned on work done pursuant to the sub-contract to perform implementation services to CIBC.

74. CA breached its obligations to NI Group created by the quasi-contract.

75. As a result, NI Group, and its successor in interest, Scienton, have suffered damages in an amount to be determined at the trial of this action, but in no event less than \$41.8 Million.

Fourth Claim – Quasi-Contract

76. Plaintiffs reallege and incorporate paragraphs 1 through 75.

77. In the alternative to the Second Claim, the conduct of the parties, the promises made by CA and NI Group's justifiable reliance on those promises create a quasi-contract obligating CA to pay NI Group 10% of the value of CA's contracts with BCE Emergis and to pay NI Group the profit it would have earned on work done pursuant to the sub-contract to perform implementation services to BCE Emergis.

78. CA breached its obligations to NI Group created by the quasi-contract.

79. As a result, NI Group, and its successor in interest, Scienton, have suffered damages in an amount to be determined at the trial of this action, but in no event less than \$1.5 Million.

Fifth Claim – Misappropriation of Trade Secrets

80. Plaintiffs reallege and incorporate paragraphs 1 through 79.

81. CA misappropriated NI Group's trade secrets in creating a number of programs, including eTrust 20/20 and Command Center, as well as programs to be identified in discovery.

82. As a result, NI Group has suffered damages in an amount to be established at trial in excess of \$800 Million and is entitled to an award of punitive damages.

83. Furthermore, NI Group, and its successor in interest Scienton, should receive royalties on all future sales or any CA product which is based upon or incorporates in whole or in part NI Group's misappropriated trade secrets.

Sixth Claim – Breach of the MNDA

84. Plaintiffs reallege and incorporate paragraphs 1 through 83.

85. Pursuant to and in reliance upon the MNDA, between in or about September 2000 and in or about June 2001 NI Group conveyed and delivered to CA its proprietary and confidential information.

86. CA has breached the MNDA by using that proprietary and confidential information and incorporating it in products and services sold or licensed by CA to third parties, including its products eTrust 20/20 and Command Center.

87. The value of confidential and proprietary information and the damages suffered by NI Group as a result of CA's breach of the MNDA will be proven at trial but are now believed to exceed \$800 Million.

88. Furthermore, NI Group and its successor in interest Scienton should receive reasonable royalties as determined by the Court on all past and future sales of CA's products which are based upon or incorporate, in whole or in part, NI Group's confidential information utilized by CA in breach of the MNDA.

89. Furthermore, NI Group and its successor in interest Scienton should be awarded damages arising from the good faith destruction of the work product created by NI Group, in an amount to be determined at trial.

Seventh Claim – Unfair Competition

90. Plaintiffs reallege and incorporate paragraphs 1 through 89.

91. CA's misappropriation of NI Group's trade secrets and CA's use of NI Group's proprietary and confidential information constitutes unfair competition.

92. NI Group suffered damages as a result of this unfair competition in an amount that will be proven at trial in excess of \$800 Million and is entitled to an award of punitive damages.

93. Furthermore, NI Group and its successor in interest Scienton should receive reasonable royalties as determined by the Court on all past and future sales of CA's products which are based upon or incorporate, in whole or in part, NI Group's proprietary and confidential information.

Eighth Claim – Interference with Contact/Anticipated Contract

94. Plaintiffs reallege and incorporate paragraphs 1 through 93.

95. Because of CA's interference with NI Group's valuable commercial relationship with Quiet Touch, NI Group lost revenues and substantial profits in an amount to be determined at trial.

WHEREFORE, plaintiffs demand that judgment be entered against CA as follows:

1. On the First Claim, awarding NI Group and Scienton at least \$40.8 Million plus interest.
2. On the Second Claim, awarding NI Group and Scienton at least \$1.5 Million plus interest.
3. On the Third Claim, awarding NI Group and Scienton at least \$40.8 Million plus interest.
4. On the Fourth Claim, awarding NI Group and Scienton at least \$1.5 Million plus interest.
5. On the Fifth Claim, awarding NI Group and Scienton damages in such amount as to be determined at trial together with punitive damages plus interest.
6. On the Sixth Claim, awarding NI Group and Scienton damages in such amount as to be determined at trial plus interest.
7. On the Seventh Claim, awarding NI Group and Scienton damages in such amount as to be determined at trial together with punitive damages plus interest.
8. On the Eighth Claim, awarding NI Group and Scienton damages in such amount as to be determined at the trial plus interest.
9. On the Fifth, Sixth and Seventh Claims, awarding NI Group and Scienton an appropriate royalty on any past and future sales by CA of any product that is based upon or incorporates, in whole or in part, NI Group's proprietary and confidential information.

10. Awarding the costs and disbursements of this action together with reasonable attorney's fees and such other and further relief as the Court deems just and proper.

Dated: March 15, 2005

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By: _____

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