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KENNETH S. GARDNER, CLERK
UNITED STATES BANKRUPTCY COURT
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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In Re:	Chapter 7
marchFIRST, INC., et al.,	Case No. 01-24742
Debtors.	Jointly Administered
	Honorable John D. Schwartz
ANDREW J. MAXWELL, Chapter 7 Trustee for the bankruptcy estate of Debtors, Plaintiff,	
v.	Adversary No. 02A00194
ROBERT F. BERNARD, ROBERT CLARKSON, DAVID SHELOW, EDWARD F. SZOFER, BERT B. YOUNG, PAUL D. CARBERY, MARK KVAMME, JOSEPH MARENGI, W. BARRY MOORE, DAVID STORCH and JOHN R. TORELL, III, Defendants.	

FILED
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
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COMPLAINT

Andrew J. Maxwell, not individually but in his capacity as the Chapter 7 trustee for the bankruptcy estate of the Debtors, files this Complaint against Robert F. Bernard, Robert Clarkson, David Shelow, Edward F. Szofer, Bert B. Young, Paul D. Carbery, Mark Kvamme, Joseph Marengi, W. Barry Moore, David Storch and John R. Torell, III.

INTRODUCTION

From its inception, marchFIRST suffered from a profound and fundamental lack of basic corporate management. Management embarked on costly, ill-considered ventures without ever seeking, much less obtaining, Board approval. When the Board learned of those unauthorized

ventures, it ignored both the occurrence and the ramifications of those unauthorized actions. Nor did the Board chastise management for the unauthorized and inappropriate actions, choosing instead either to ratify such actions without comment or to simply ignore them. Management also engaged in a variety of conduct designed to create the impression that marchFIRST was enjoying success in the marketplace when it was really in deep financial trouble. The misimpressions were fostered by inappropriate venture investments, improper income recognition (abuses of "roundtripping"), over hiring, excessive real estate spending and a variety of other corporate waste. The marchFIRST Board of Directors either was indifferent to management's rampant waste or affirmatively joined in the effort to create an unfounded illusion of success. This facade of success came at the cost of wasting untold millions of dollars by building an infrastructure for growth that did not exist at marchFIRST. Those abuses continued and accelerated while marchFIRST was in the vicinity of insolvency. Management and the Board of Directors of marchFIRST recklessly, intentionally and knowingly breached their duties to the company and its creditors.

PARTIES

1. Andrew J. Maxwell is a citizen of the State of Illinois. On July 16, 2001, the United States Trustee appointed Mr. Maxwell as the Chapter 7 trustee ("Trustee") for the bankruptcy estates of marchFIRST, Inc. ("marchFIRST") and its subsidiaries. Mr. Maxwell brings this Complaint solely in his capacity as the Trustee and not individually.

2. Robert F. Bernard ("Bernard") is a resident of the State of Illinois. Bernard resides at 1955 North Burling, Chicago, Illinois 60614. During the relevant time period, Bernard held various positions with marchFIRST and its predecessor, Whittman-Hart, Inc. ("Whittman-Hart"), including the following:

A. Bernard was Chief Executive Officer of marchFIRST from at least March 1, 2000, until he resigned from that position on or about March 12, 2001;

B. Bernard was President of marchFIRST from at least March 1, 2000, until he resigned from that position on or about March 12, 2001;

C. Bernard was a member of the Board of Directors of marchFIRST from at least March 1, 2000 until he resigned from the Board of Directors on or about March 12, 2001; and

D. Prior to the merger of Whittman-Hart and USWeb Corporation ("USWeb"), Bernard was Chief Executive Officer and a member of the Board of Directors of Whittman-Hart.

3. Robert Clarkson ("Clarkson") is a resident of the State of California. Clarkson resides at 2744 Doverton Square, Mountain View, California 94040. During the relevant time period, Clarkson was Chief Operating Officer of marchFIRST from March 1, 2000, until he resigned from that position on October 14, 2000.

4. David Shelow ("Shelow") is a resident of the State of Illinois. Shelow resides at 2650 N. Lakeview, # 1609, Chicago, Illinois 60614. During the relevant time period, Shelow held various positions with marchFIRST and Whittman-Hart, including the following:

A. Shelow was Vice President, Assistant Secretary and General Counsel of marchFIRST from at least March 1, 2000, through at least July 2001; and

B. Shelow was Vice President, Assistant Secretary and General Counsel of Whittman-Hart in 1999 and from January 1, 2000, to March 2000.

5. Edward F. Szofer ("Szofer") is a resident of the State of Illinois. Szofer resides at 10605 Wildflower, Orland Park, Illinois 60462. During the relevant time period, Szofer held various positions with marchFIRST and Whittman-Hart, including the following:

A. Szofer was a member of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about May 14, 2001;

B. Szofer was Chief Development Officer of marchFIRST from at least March 1, 2000, until he resigned from that position on or about April 2, 2001; and

C. Prior to the merger of Whittman-Hart and USWeb, Szofer was a member of the Board of Directors of Whittman-Hart, President of Whittman-Hart, and Secretary of Whittman-Hart.

6. Bert B. Young ("Young") is a resident of the State of Utah. Young resides at 1714 Ridge Point Drive, Bountiful, Utah 84010. During the relevant time period, Young held various positions with marchFIRST and Whittman-Hart, including the following:

A. Young was Chief Financial Officer and Treasurer of marchFIRST from at least March 1, 2000, until he resigned from that position on or about September 18, 2000; and

B. Prior to the merger of Whittman-Hart and USWeb, Young was Chief Financial Officer of Whittman-Hart.

7. Paul D. Carbery ("Carbery") is a resident of the State of Illinois. Carbery resides at 400 North Kenilworth Avenue, Oak Park, Illinois 60302. During the relevant time period, Carbery held various positions with marchFIRST and Whittman-Hart, including the following:

A. Carbery was a member of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about March 12, 2001;

B. Carbery was a member of the audit committee of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about March 12, 2001; and

C. Prior to the merger of Whittman-Hart and USWeb, Carbery was a member of the Board of Directors of Whittman-Hart.

8. Mark Kvamme ("Kvamme") is a resident of Minnesota. Kvamme resides at 506 6th Street NW, New Richland, Minnesota 56072. During the relevant time period, Kvamme was a member of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about October 18, 2000.

9. Joseph Marengi ("Marengi") is a resident of the State of Texas. Marengi resides at 8211 Navidad Drive, Austin, Texas 78735. During the relevant time period, Marengi held various positions with marchFIRST, including the following:

A. Marengi was a member of the Board of Directors from at least March 1, 2000, until he resigned from the Board of Directors on or about April 9, 2001; and

B. Marengi was a member of the audit committee of the Board of Directors from at least March 1, 2000, until he resigned from the Board of Directors on or about April 9, 2001.

10. W. Barry Moore ("Moore") is a resident of the State of North Carolina. Moore resides at 315 Angle Ridge Road, # 2121, Sapphire, North Carolina 28774. During the relevant time period, Moore held various positions with marchFIRST and Whittman-Hart, including the following:

A. Moore was a member of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about May 14, 2001;

B. Moore was a member of the audit committee of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about May 14, 2001; and

C. Prior to the merger of Whittman-Hart and USWeb, Moore was a member of the Board of Directors of Whittman-Hart.

11. David P. Storch ("Storch") is a resident of the State of Illinois. Storch resides at 908 Elm Place, Glencoe, Illinois 60022. During the relevant time period, Storch held various positions with marchFIRST and Whittman-Hart, including the following:

A. Storch was a member of the Board of Directors of marchFIRST from at least March 1, 2000, until he resigned from the Board of Directors on or about April 21, 2001; and

B. Prior to the merger of Whittman-Hart and USWeb, Storch was a member of the Board of Directors of Whittman-Hart.

12. John R. Torell, III ("Torell") is a resident of the State of New York. Torell resides at 33 Northway, Bronxville, New York 10708. During the relevant time period, Torell was a member of the Board of Directors from at least March 1, 2000, until he resigned from the Board of Directors on or about February 28, 2001.

JURISDICTION AND VENUE

13. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334, and Internal Operating Procedure 15(a) of the Federal District Court for the Northern District of Illinois because this action is related to the underlying bankruptcy case of marchFIRST and its affiliated debtors pending before this Court.

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND FACTS

A. Creation Of marchFIRST.

15. marchFIRST was formed in March 2000 as a result of a merger between Whittman-Hart and USWeb. The merger agreement provided that Whittman-Hart would be the surviving company after the merger, and the companies anticipated that they would then change the name of Whittman-Hart. marchFIRST was ultimately the name chosen.

16. Whittman-Hart was formed in 1984. It was a Delaware corporation headquartered in Chicago, Illinois. Over the years, Whittman-Hart became a leading provider of strategic information technology primarily aimed at back-office operations.

17. Through the 1990's, Whittman-Hart acquired numerous companies and experienced growth in the number of its employees, revenue and market capitalization. For fiscal year 1999, just prior to the merger with USWeb, Whittman-Hart's annual revenue was approximately $480 million, with a net profit of approximately $30.3 million.

18. Defendant Bernard was the Chairman of the Board and Chief Executive Officer of Whittman-Hart. At the time of the merger, Bernard owned a beneficial interest in 21% of the outstanding stock in Whittman-Hart.

19. USWeb was formed in 1995. It was a Delaware corporation headquartered in San Francisco, California. USWeb provided Internet consulting services to companies, including designing companies' Internet web pages and advanced marketing communications programs.

20. USWeb acquired over 40 companies from 1995 through 1999. For fiscal year 1999, just prior to the merger with Whittman-Hart, USWeb's annual revenue was approximately $510 million, with a net loss of $175.1 million.

21. Whittman-Hart and USWeb entered into an Agreement and Plan of Merger dated as of December 12, 1999, for a stock merger of the two companies whereby Whittman-Hart would be the surviving entity (the "Merger").

22. Under the terms of the Merger, Whittman-Hart tendered approximately 82 million shares of Whittman-Hart common stock to the USWeb shareholders in exchange for all the outstanding shares of USWeb. Based on the market price of Whittman-Hart's stock at the time of the Merger, Whittman-Hart paid approximately $7.1 billion for the acquisition of USWeb.

23. Whittman-Hart retained the investment banking firm of Credit Suisse First Boston Corporation ("CSFB") in mid-November 1999 to, among other things, render a fairness opinion with respect to the exchange ratio provided for in the merger agreement. Joseph Josephson, a managing director of CSFB, and Michael Tunstall, a representative of CSFB, delivered to Whittman-Hart's Board of Directors an opinion dated December 12, 1999, that the exchange ratio of the stock was fair to Whittman-Hart.

24. The Merger between Whittman-Hart and USWeb was effective March 1, 2000. On March 23, 2000, Whittman-Hart changed its name to marchFIRST and began trading its stock on the NASDAQ national exchange under the symbol "MRCH." marchFIRST is the successor-in-interest to Whittman-Hart.

B. Daily Operation Of marchFIRST.

25. Immediately after the effective date of the Merger, the directors of marchFIRST were Bernard, Szofer, Carbery, Kvamme, Marengi, Moore, Storch and Torell.

26. Upon the effective date of the Merger, defendant Bernard became the Chairman of the Board, President and Chief Executive Officer of marchFIRST. Bernard was described as a "hands-on" manager of marchFIRST, and was integrally involved in the decision-making regarding all aspects of its operations.

27. Upon the effective date of the Merger, defendant Clarkson was the Chief Operating Officer of marchFIRST and remained in that position until his resignation in October 2000.

28. Upon the effective date of the Merger, defendant Shelow was Vice President, Assistant Secretary and General Counsel of marchFIRST.

29. Upon the effective date of the Merger, defendant Szofer was the Chief Development Officer and a director of marchFIRST.

30. Upon the effective date of the Merger, defendant Young was the Chief Financial Officer of marchFIRST. Young continued in his position until September 18, 2000, when he resigned from his position.

31. Defendants Bernard, Clarkson, Shelow, Szofer and Young were all senior officers of marchFIRST after the Merger who participated in the day-to-day operations of marchFIRST and were privy to information regarding marchFIRST's growth, revenue, receivables,

profitability and overall financial condition. They monitored marchFIRST's business by frequently reviewing reports generated by marchFIRST's Finance Department on a daily, weekly and monthly basis. They also had access to internal information concerning the problems that arose regarding efforts to integrate the operations of USWeb and Whittman-Hart after the Merger.

32. Defendants Bernard, Clarkson, Shelow, Szofer and Young were also the individuals who had primary responsibility for marchFIRST's publicly-filed financial reports and press releases.

33. As the surviving entity in the Merger, marchFIRST succeeded to the Whittman-Hart certificate of incorporation, which contains a provision adopted pursuant to § 102(b)(7) of the Delaware General Corporation Law that modifies the standard of care members of the Board of Directors owed the company and its shareholders (sometimes call "raincoat provisions"). This amendment to the certificate of incorporation did not affect the duties owed by officers to the company and its shareholders; and did not affect the duties and responsibilities that both officers and directors owe to creditors of the company. As will be described in this Complaint, certain members of the marchFIRST Board of Directors and certain officers failed to meet the obligations they owed to marchFIRST and its creditors.

C. marchFIRST's Investment In Bluevector, LLC.

1. Whittman-Hart authorized outside investments aggregating $25 million.

34. Even before the Merger, Whittman-Hart contemplated the establishment of an investment fund so Whittman-Hart could invest in many of the internet and "dot com" companies that were its customers. At the Whittman-Hart Board of Directors' meeting on September 23, 1999, the Board authorized Whittman-Hart's management to make investments in

an aggregate amount up to $20 million without prior review by the Board. At that September 23, 1999 meeting, the Board also determined that Whittman-Hart should generally make such investments in clients that contract with Whittman-Hart to provide services.

35. At its meeting on November 18, 1999, the Whittman-Hart Board increased the authority of Whittman-Hart's management to make outside investments without prior review by the Board from an aggregate amount of $20 million to $25 million.

2. Bernard, Shelow and Young authorize marchFIRST's disastrous investment in Bluevector, LLC.

36. At the January 26, 2000, Whittman-Hart Board meeting, defendants Bernard, Young and Shelow made a presentation to the Board regarding Whittman-Hart's outside investments. They also proposed that, after the Whittman-Hart merger with USWeb, the merged company establish a new entity, tentatively called "SVIC," that, among other things, would act as an investment vehicle. While the directors discussed the proposal to set up "SVIC," the Board did not increase its previous $25 million cap for investment spending.

37. Almost immediately after the Merger became effective, defendants Bernard and Shelow, acting in their capacity as officers, directed the creation of Bluevector, LLC ("Bluevector") and marchFIRST's investment in Bluevector. Bluevector was a Delaware limited liability company that was formed on March 14, 2000, just thirteen days after the effective date of the Merger. The investment vehicle portion of the SVIC concept was implemented through Bluevector.

38. Bluevector was designed to be a joint undertaking between marchFIRST and the former employees of CSFB who had advised Whittman-Hart on the Merger. marchFIRST was to provide the money and potential investments. The former CSFB employees were to provide the investment expertise. It was an unbelievably bad deal for marchFIRST from the inception.

39. Initially, the only member of Bluevector was Bluevector Management, LLC. The members of Bluevector Management, LLC were Joseph Josephson, Anthony Trousset, Michael Tunstall and Wayne Segal, all of whom were the former employees of CSFB who had advised Whittman-Hart on the Merger.

40. marchFIRST explained the Bluevector venture by stating that marchFIRST was frequently approached with investment opportunities by its customers and business partners and that marchFIRST determined that it needed an outside, professionally-managed entity to maximize these investment opportunities. marchFIRST also said that Bluevector was set up to provide distance for marchFIRST so that if a customer's investment opportunity was presented and rejected, marchFIRST could preserve its business relationship with that customer. marchFIRST contemplated that all marchFIRST investments would be made through Bluevector.

41. On March 16, 2000, at the direction of Bernard, Shelow and Young, acting in their capacity as officers, Whittman-Hart (which was in the process of changing its name to marchFIRST) entered into a strategic alliance with Bluevector Management, LLC pursuant to which marchFIRST purchased a 50% interest in Bluevector. Pursuant to the terms of a contribution agreement, marchFIRST agreed to contribute $50 million in cash and approximately $37 million in assets to Bluevector.

42. Bernard, Young and Shelow, acting in their capacity as officers, directed this investment on economic terms that were so unfavorable to marchFIRST as to constitute a breach of their fiduciary duty of care to marchFIRST:

A. marchFIRST invested $45 million in cash (and had an obligation to fund an additional $5 million in cash) and approximately $37 million in assets in Bluevector for an initial 50% interest in Bluevector;

B. Bluevector Management, LLC invested $1,000 in cash and $499,000 in promissory notes in Bluevector for an equal 50% interest in Bluevector;

C. Bluevector was managed by a six-member Board of Directors, comprised of defendants Bernard and Young and the four former CSFB managers who were now members of Bluevector Management, LLC. Because no investment or distribution could occur without approval of a majority of the Bluevector Board, marchFIRST gave up voting and operational control over Bluevector;

D. The four (4) former CSFB employees earned annual salaries from Bluevector totaling at least $1.6 million;

E. marchFIRST contributed virtually all of the cash and assets to Bluevector, yet marchFIRST was not entitled to a priority return of its capital contribution prior to distributions being made to marchFIRST and Bluevector Management, LLC in accordance with their respective membership interests;

F. Shortly after the investment in Bluevector, marchFIRST's ownership interest in Bluevector was diluted from 50% to 47% because 3% of Bluevector was distributed to certain Bluevector employees; and

G. Because marchFIRST contributed virtually all of the cash and assets into Bluevector but received only an initial 50% interest in Bluevector, marchFIRST's investment had to be amortized as goodwill over time and marchFIRST's $87 million contribution to Bluevector was immediately worth only one-half that amount.

43. Although defendants Bernard, Young and Shelow, acting in their capacity as officers, made the decision to invest over $87 million of Whittman-Hart/marchFIRST cash and assets into Bluevector in March, 2000, the Whittman-Hart Board minutes do not reflect that these defendants sought or obtained prior Board approval for such investment. As officers, Bernard, Young and Shelow were aware that such advance Board approval was required. As General Counsel for marchFIRST, Shelow knew that board approval was necessary for such an investment and he intentionally or carelessly failed to obtain such board approval. Shelow therefore breached his duties to the company in his roles as both an officer and a lawyer for marchFIRST.

44. Defendants Bernard, Young and Shelow, acting in their capacity as officers, caused marchFIRST not to disclose to shareholders of the company in the company's Form 10-Q

filed for the first quarter of 2000, the existence of Bluevector or marchFIRST's obligation to contribute approximately $87 million to Bluevector.

45. The first Board discussion of the terms of marchFIRST's over $80 million investment in Bluevector occurred at the May 24, 2000 Board meeting, over two months after marchFIRST's investment in Bluevector.

46. At the May 24, 2000, Board meeting, defendants Bernard, Young and Shelow, acting in their capacity as officers, told the Board of the creation of Bluevector, that Bluevector was a venture capital company and that marchFIRST's 50% ownership interest in Bluevector was purchased for a commitment by marchFIRST to contribute approximately $50 million cash (approximately $45 million of which ultimately was contributed) plus approximately $37 million of portfolio assets of marchFIRST. Defendants Bernard, Young and Shelow also told the Board that marchFIRST would be the exclusive service provider to Bluevector and would refer investment opportunities to Bluevector. In fact, pursuant to the terms of a Strategic Alliance Agreement executed in connection with marchFIRST's investment in Bluevector, marchFIRST had an obligation for a period of five (5) years, to refer to Bluevector all investment opportunities presented to or developed by marchFIRST (other than certain investments involving less than $2,500,000 that required commitments on a timetable that would not permit proper review by Bluevector).

47. The materials distributed to the marchFIRST directors at the May 24, 2000 Board meeting revealed that the four former CSFB employees (through Blue Vector Management, LLC) contributed only $1,000 in cash and $499,000 in notes for their aggregate 50% interest in Bluevector.

48. The May 24, 2000, Board minutes reflect no discussion that the outside directors of the company (then Carbery, Kvamme, Marengi, Moore, Storch and Torell) questioned defendants Bernard, Young, Szofer or Shelow, all of whom were officers of marchFIRST, as to why they had violated the Board policy on investment limits when these officers caused marchFIRST to invest over $80 million of company cash and assets in Bluevector without first obtaining the required Board approval.

49. The Board minutes also reflect no discussion in which defendants Carbery, Kvamme, Marengi, Moore, Storch and Torell, as directors, questioned Bernard, Young, Szofer or Shelow, in their capacity as officers, about the fundamental economics of the Bluevector investment, including (1) whether these officers had sought or received advice regarding the fairness or structure of the transaction, or (2) why they agreed to contribute over $80 million of marchFIRST cash and assets to this entity, despite the glaring economic disadvantages described in paragraph 42.

50. With no criticism of the unauthorized transaction reflected in the minutes, the outside directors adopted a resolution on May 24, 2000, "authorizing, ratifying and approving" the marchFIRST investment in Bluevector, and authorizing Bernard and Young to serve on the Board of Directors of Bluevector.

51. The officers involved in the formation of Bluevector breached their duty of care and the directors consciously and recklessly disregarded their duties to marchFIRST. The directors' abandonment of their obligations was reckless, knowing and intentional misconduct.

D. marchFIRST's Investment In Bluevector Strategic Partners LLC.

52. The factual backdrop for marchFIRST's investment in Bluevector Strategic Partners LLC ("BVSP") focuses on the concept of revenue recognition referred to as "roundtripping".

53. In October and November 2000, a number of class action suits were filed by shareholders of marchFIRST against marchFIRST and a few key officers of marchFIRST. The class actions were ultimately consolidated in an action entitled *Sutton, et al. v. Bernard, et al.*, No. 00 C 6676, pending in the United States District Court for the Northern District of Illinois. In *Sutton*, the plaintiff shareholders assert several claims including securities law fraud relating to the marchFIRST stock. One of the principal allegations in the shareholder litigation is that officers of marchFIRST used improper income recognition practices, sometimes referenced as roundtripping or an exchange of equity for services, to falsely inflate marchFIRST's revenue.

54. At the time that Bluevector was created, marchFIRST specifically addressed the issue of whether marchFIRST would make its own equity investments outside of Bluevector and decided that marchFIRST would not use its own capital, independent of Bluevector, for such investments. This decision was explained by marchFIRST's management to its various offices in a question and answer disclosure that provided in pertinent part:

> "Q: If Bluevector does not invest in the opportunity, will marchFIRST still have the opportunity to invest?
>
> A: No. Bluevector has 10 days to decide if they want to make the investment. If they choose to proceed, they have estimated 45 days to close on the investment. If Bluevector does not make an investment, then marchFIRST will not make a separate investment using corporate capital. Instead, if the local office would like to assist the company, they could provide introduction to other venture capital firms that may be interested in the opportunity."

55. When Bluevector was created, marchFIRST also decided not to make investments outside of Bluevector even when the money would be roundtripped back to marchFIRST to pay for services. In that same question and answer format, management told its various offices there would be no equity for services transactions apart from the Bluevector venture.

> "Q: Can we make investments if the money is given back in exchange for services?
>
> A: No. We want to ensure that the investments are managed in a central location. In addition, the stockholders and market analysts do not like to see an exchange of equity for services."

56. Despite these initial decisions, by August of 2000, marchFIRST was putting pressure on Bluevector to do deals where the company receiving the investment from Bluevector immediately repaid the investment back to marchFIRST for services. Bluevector mildly resisted doing such roundtripping investments that would be dictated by marchFIRST, noting that if Bluevector were used for such investments, the money invested would have to be money from marchFIRST in addition to the $50 million marchFIRST already committed to Bluevector. marchFIRST ultimately decided to do these roundtripping investments through a new investment entity, BVSP.

57. In August or September 2000, defendants Bernard, Szofer and Shelow authorized the creation of BVSP, a Delaware limited liability company. BVSP was created on September 8, 2000, with marchFIRST owning an 80% interest in BVSP and Bluevector owning the remaining 20% interest in BVSP. (However, since marchFIRST owned 47% of Bluevector, marchFIRST's interest in BVSP was actually 89%). Bluevector received its interest, at least in part, because of marchFIRST's obligation to present investment opportunities to Bluevector.

58. Defendants Bernard, Szofer and Shelow, acting in their capacity as officers, created BVSP ostensibly as an investment vehicle for marchFIRST, and caused marchFIRST to contribute in excess of $19.8 million to BVSP.

59. The minutes of the Board of Directors of marchFIRST do not reflect the authorization of the funding of the investment of $19.8 million into BVSP.

60. marchFIRST's investment in BVSP demonstrates a total lack of corporate governance because defendants Bernard, Szofer and Shelow authorized the investment in BVSP without any prior Board approval. Importantly, there was no legitimate reason that Bernard, Szofer and Shelow created BVSP. Rather, Bernard, Szofer and Shelow created BVSP only to set up a conduit whereby marchFIRST could use its own funds to improperly book revenue. More importantly, the creation of, and investments in, BVSP for the purpose of making outside investments makes no business sense because marchFIRST had publicly and internally acknowledged when investing in Bluevector that marchFIRST did not have the expertise to make such outside investments.

61. In addition, the creation of BVSP was contrary to the fact that marchFIRST set up Bluevector, at least in part, so that marchFIRST never had to directly reject a customer's request for an investment.

62. During the last week of September 2000, defendants Bernard, Szofer and Shelow, acting as officers of marchFIRST, authorized BVSP to invest approximately $19.8 million of marchFIRST's funds into fourteen customers of marchFIRST. In each and every instance, BVSP invested funds in customers of marchFIRST that simultaneously repaid the money back to marchFIRST for work marchFIRST was to perform for the customer in the future. marchFIRST would then immediately book the receipt of the customers' funds (which funds the customer had

just received from marchFIRST) as revenue. The return of marchFIRST's investment funds was booked as prepaid revenue for services to be performed, although in many cases such services had previously been performed and billed or would never be performed. Those investments of $19.8 million were in the following companies:

- Cor Solutions
- Easyfurnish.com
- EBusiness Labs
- National Child Support
- Internet Sourcing, Inc.
- LucidHR, Inc.
- Peak Care
- Planning Places
- Provalant
- BSurplus
- TruePricing, Inc.
- Technology Communications Network, Inc.
- Visual Net LLC
- Healthx.com

63. Bernard, Szofer and Shelow, in their capacity as officers, directed the BVSP investments in order to help foster the appearance to the public, analysts, shareholders and creditors that marchFIRST was a thriving company and to help conceal from the public, analysts, shareholders and creditors marchFIRST's true deteriorating financial condition.

64. At the time they created BVSP, Bernard, Szofer and Shelow knew that marchFIRST's third quarter revenue results would fall far short of projections.

65. The Board minutes reflect that the directors' first action on marchFIRST's investment in BVSP occurred at the October 25, 2000 Board meeting. At that time, the Board of

Directors (consisting of Bernard, Szofer, Carbery, Barbara Jacks, Marengi, Moore, Storch and Torell) reviewed a summary of a "near-final draft" of an operating agreement for BVSP and discussed the ratification of the creation of, and investment in, BVSP. The Board minutes do not reflect that any of the outstanding directors questioned Bernard, Szofer or Shelow, in their capacity as officers, about the reasons they invested $19.8 million of marchFIRST funds into BVSP. The minutes do not reflect any discussion about the income recognition motivation for the creation of BVSP nor the reasoning for making investments that were previously rejected by Bluevector.

66. By a "Unanimous Written Consent of the Board of Directors," the Board approved the execution of the operating agreement for BVSP and requested that defendants Bernard, Szofer and Shelow serve as officers and agents of BVSP.

67. The BVSP transactions were not the only times these officers engaged in improper income recognition practices. The officers responsible for the creation of BVSP and its use for improper income recognition breached their duty of care to marchFIRST.

E. The Defendants Wasted Corporate Assets.

68. The creation of BVSP to facilitate roundtripping was not an isolated example of how marchFIRST officers breached their duty of care by their reckless management of the Company's assets. Defendants Bernard, Szofer, Shelow, Clarkson and Young, acting in their capacity as officers, also breached their duty of care by wasting tens of millions of dollars of company assets to create a facade that marchFIRST was a growing and successful company, rather than properly using and preserving company funds.

69. The Defendant officers misused marchFIRST's assets to create and perpetrate this façade of success in a number of different ways, including but not limited to the following:

A. Embarking on a massive program of overhiring consultants to create an appearance of demand for marchFIRST services when in fact there was no work for such consultants and employees, so that employees and consultants were put "on the bench," *i.e.* instructed not to come to work (or to come to the office but remain idle) while remaining on the marchFIRST payroll;

B. Spending tens of millions of dollars for the development of grandiose corporate headquarters in downtown Chicago;

C. Entering into unnecessary lease commitments that had to do with projecting an image of growth rather than company need, even after marchFIRST was confronting a severe liquidity crisis; and

D. Leasing and operating a corporate jet.

70. Defendants' waste of corporate assets was so egregious and irrational that the decisions could not have been – and in fact were not – based on any defensible assessment of what was in the best interest of marchFIRST.

1. Excessive and unnecessary compensation.

71. marchFIRST earned its revenues from the professional fees generated by its consultants and employees. marchFIRST's biggest expense was the compensation paid to such consultants and employees. Thus, marchFIRST's financial performance was primarily based upon billing margin, *i.e.,* the differential between the hourly billing rate of the consultants and employees, and personnel utilization rates, *i.e.,* billable hours divided by paid hours.

72. As part of their plan to create the illusion of growth and prosperity at marchFIRST, management needed to present a picture that marchFIRST had significant on-going projects from its clients, as well as an increasing number of projects in the pipeline. Thus, one measure of marchFIRST's growth and prosperity was the size of the marchFIRST work force. marchFIRST touted the size of its operation to its customers and analysts in an effort to create the impression of a dominant market position.

73. However, while a sufficient workforce was necessary to generate revenue, marchFIRST's management was charged with a fiduciary duty of care to ensure that there was not such excess capacity in the workforce so that the cost of sustaining the workforce was sharply out of balance with the work marchFIRST was hired to perform. Such a concern was particularly appropriate since marchFIRST's most significant costs were salary and benefits that marchFIRST paid to its consultants and employees. Those costs comprised approximately 70% of all costs within marchFIRST.

74. To create this façade of growth and prosperity, defendants Bernard, Szofer, Clarkson, and Young undertook a campaign to hire more and more consultants. Thus, from January through October 2000, those Defendants caused marchFIRST to increase its workforce by almost ten percent. Those officers touted their hiring of consultants and increased workforce to the public and marchFIRST's customers as a sign of the company's rapid post-merger growth and profitability.

75. Those Defendants engaged in such hiring even though marchFIRST had insufficient work for its increasing workforce to perform. marchFIRST used the phrase "pipeline revenue" to refer to its potential revenue-generating projects. marchFIRST's records disclose a precipitous and steady decline in pipeline revenue during the second and fourth quarters from approximately $120 million as of June 27, 2000 down to approximately $8 million as of December 22, 2000. In each month during the second and fourth quarters of 2000, marchFIRST's utilization rates also declined, from the June 27th "high" of 68% to the December 22nd "low" of 59.13%.

76. Without the necessary work to keep them busy, employees and consultants were thus put "on the bench." From time to time, the "on the bench" consultants were summoned to

show up at work and look productive in order to create an image of a bustling business for prospective clients and others and to conceal from the public and analysts the fact that consultants were hired to create the appearance of business rather than to meet legitimate business needs.

77. In light of the facts that marchFIRST's true profitability was dependent on employee utilization rates and that employee compensation was by far the company's largest expense, management's aggressive hiring campaign served no legitimate corporate purpose and was an egregious squandering of corporate assets.

78. Not only did management engage in a massive hiring campaign to create the illusion of corporate growth, Bernard, Szofer, Clarkson and Young failed to take action in a timely fashion to reduce its idle workforce, even though marchFIRST was operating at a negative cash flow. For example, for the nine months ending September 30, 2000, net cash provided by and used in operating activities was negative $79.8 million.

79. Not until November 13, 2000, almost three weeks after marchFIRST announced that it had fallen far short of the third quarter projections, did management finally begin to lay-off employees. At that time, Bernard announced 1,000 layoffs, which constituted slightly less than 10% of the marchFIRST workforce.

80. Defendants Bernard and Szofer, acting in their capacity as officers, further breached their duty of care and wasted corporate assets by authorizing raises and retention bonuses to management employees and to themselves on the eve of the filing of the marchFIRST bankruptcy. In March 2001, Bernard and Szofer recognized that marchFIRST was facing an extreme liquidity crisis and that it might be forced into an involuntary bankruptcy. Nevertheless:

A. On or about March 12, 2001, when marchFIRST was insolvent, or at least in the vicinity of insolvency, Bernard, acting in his capacity as an officer

on behalf of marchFIRST, entered into an amended and restated employment agreement with Shelow, pursuant to which Shelow's annual salary was increased $100,000, constituting a thirty-three percent raise in his annual base salary. Under the amended employment agreement, Shelow's raise in salary reverted back to February 1, 2001. The remaining provisions of the agreement, however, were effective as of November 1, 2000, including an increase in Shelow's annual bonus for the year 2000 to forty percent of his base salary. The agreement also provided that Shelow would receive a lump sum severance payment of three years of his base salary (i.e., $1.2 million), for which Shelow has submitted a claim in the marchFIRST bankruptcy.

B. Defendants Bernard and Szofer, acting in their capacity as officers, authorized retention pay-outs to certain employees in the end of the third quarter and/or beginning the fourth quarter of 2000, when marchFIRST was insolvent, or at least in the vicinity of insolvency.

C. On March 22, 2001, when marchFIRST was either insolvent or in the vicinity of insolvency, Szofer, acting in his capacity as an officer, authorized an immediate salary increase for Michael Salvati from $350,000 to $500,000 per year, as well as a $500,000 retention bonus payable on December 31, 2001, unless Mr. Salvati's employment is terminated with cause. Salvati received payment of approximately $376,000 in three installments during the week preceding marchFIRST's bankruptcy filing.

D. Also on March 22, 2001, when marchFIRST was insolvent, or at least in the vicinity of insolvency, Szofer, acting in his capacity as an officer, authorized a retention bonus paid to Steve Pollema of approximately $600,000 and an immediate salary increase to Steve Pollema of $500,000 per year. Pollema received payment of approximately $500,000 of this bonus in two installments, the first on March 22, 2001 and the second on April 11, 2001, the day before marchFIRST filed for bankruptcy.

2. Excessive expenditures for real estate.

81. Management also wasted marchFIRST assets by engaging in excessive expenditures for real estate. Such real estate expenditures took two forms – the excessive amount spent on marchFIRST's new corporate offices (the "West Loop Campus") and the commitment of marchFIRST to leases for office space when marchFIRST did not need and could not afford such space. In both cases, management made such expenditures as part of their strategy to create the illusion of corporate growth and prosperity. Such decisions were so

contrary to the best interests of marchFIRST that they demonstrate that the officers not only breached their fiduciary duties of care, but failed to act in good faith.

82. marchFIRST's predecessor, Whittman-Hart, originally acquired one square block in an area west of the Chicago "Loop" area, bounded by Fulton Street on the south, Elizabeth on the east, Carroll on the north and Ada on the West, which the Company referred to as its "West Loop Campus." Present on the site were two completed loft office buildings containing a total of approximately 172,000 square feet.

83. After the Merger, Bernard, Szofer, Clarkson and Young, acting in their capacity as officers, implemented a campaign to invest massive amounts of marchFIRST money to develop the West Look Campus into a "state of the art" office headquarters. These Defendants decided that marchFIRST would further renovate the existing loft buildings and add a new seven-story office building of approximately 208,000 square feet, to be connected to a nine-story covered parking garage with over 650 parking spaces. At the time that marchFIRST filed for bankruptcy, marchFIRST had borrowed and spent tens of millions of dollars toward developing the West Loop Campus, although construction was far from complete.

84. From the outset, the decision by Bernard, Szofer, Clarkson and Young, acting in their capacity as officers, committed company assets to develop corporate headquarters of this magnitude in an effort to create and maintain the illusion of marchFIRST's growth and success. With respect to the West Loop Campus, these Defendants breached their duty of care to manage the assets of marchFIRST in the best interests of the company in numerous ways, including but not limited to the following:

A. marchFIRST was comprised primarily of technical consultants who were not at the corporate offices with any regularity. Thus, there was no need for a downtown Chicago corporate "campus" of almost 380,000 square feet of office space and over 650 covered parking spaces.

B. Defendants Bernard, Szofer, Clarkson and Young selected a "deluxe" design for the building and offices, unnecessarily increasing the cost of construction and renovation.

C. The cash drain that resulted from these Defendants' mismanagement of corporate assets to develop the West Loop campus continued even when marchFIRST could not afford the massive capital expenditures this project occasioned, contributing to the company's liquidity crisis and ultimate insolvency.

85. Construction halted in December 2000, and the buildings began to deteriorate. marchFIRST ultimately had to pay millions of dollars to shut down the project.

86. Defendants Bernard and Szofer also breached their fiduciary duty of care to manage marchFIRST's assets in the best interests of the company and by failing to require a moratorium on new lease commitments in the third and fourth quarters of 2000.

87. Again, to portray marchFIRST as a rapidly growing and successful entity that could and would meet management's aggressive financial projections, marchFIRST's management engaged in a campaign of a significant proliferation of marchFIRST offices across the country. The commitment to leases for such office space was inconsistent with marchFIRST's real needs and was instead a product of the illusion management sought to perpetuate.

88. Therefore, such overly aggressive commitment to leaseholds served no valid business purpose. However, Bernard and Szofer, in their capacities as officers, failed to stop such leasing activities even in the third and fourth quarters of 2000, when they knew that much of their workforce was idle or under utilized, that the company had been and was continuing to operate at a negative cash flow and that expenses continued to climb. Instead, marchFIRST's senior management continued to enter into new unnecessary leases.

89. For example, on October 23, 2000, Bernard and Szofer, in their capacity as officers, permitted marchFIRST to enter into a 12-year lease commitment to rent 268,233 square

feet at Block 26A in the Mission Bay Project in San Francisco, California (the "Mission Bay Lease"), even though marchFIRST had previously entered into a lease for 172,629 square feet of space in San Francisco at 875 Howard Street and even though marchFIRST was generating significant negative cash flow. marchFIRST's total lease obligation for the Mission Bay Lease was in excess of $200 million.

90. The next day, October 24th, marchFIRST announced its third quarter results, which reported third quarter earnings of $.01 per share, falling far below analysts' expectations of earnings of $.20 per share. Despite reporting minimal earnings for the quarter, marchFIRST was suffering from negative cash flow because of its aggressive and, at times, improper income recognition practices.

91. Moreover, Bernard and Szofer permitted marchFIRST to enter into the Mission Bay Lease even though marchFIRST was encountering significant difficulty in meeting its financial obligations under the Howard Street Lease. These difficulties were exacerbated by the commitment to Mission Bay. By November 28, 2001, marchFIRST had instructed the landlord for the Howard Street property not to proceed with the build-out of tenant improvements. Also by November 28, 2001, the Howard Street landlord notified marchFIRST that marchFIRST was in default under the lease because it had failed to pay a $100,000 management fee to the landlord.

92. Because there was no valid business purpose for marchFIRST to enter into the Mission Bay Lease, on January 16, 2001, it ultimately had to buy its way out of the unnecessary lease commitment. Less than three months after marchFIRST signed the Mission Bay Lease, marchFIRST paid the landlord a $4.5 million termination fee. Also on January 16, 2001, as a result of Bernard and Szofer's mismanagement, marchFIRST had to pay a $7.1 million

termination fee for the Howard Street property. These termination fees resulted from the breach of the duty of care Bernard and Szofer owed marchFIRST as officers of the company.

3. Needless expenditures for a corporate jet.

93. To foster marchFIRST's image as a successful company, Bernard, as an officer of marchFIRST, authorized the company to lease a corporate jet.

94. marchFIRST undertook an analysis comparing the annual costs of leasing a corporate jet to the annual costs of commercial flights. The analysis disclosed that the annual costs of leasing a corporate jet were $3,292,956 compared to the annual costs of commercial flights of $1,800,000, a difference of $1,492,956.

95. Despite the significantly increased costs of leasing a corporate jet, defendant Bernard authorized marchFIRST to create a separate entity known as Challenger 31 LLC to lease a corporate jet for marchFIRST. On or about May 23, 2000, Challenger 31 LLC entered into a lease with Fleet National Bank ("Fleet") whereby Fleet leased a corporate jet to Challenger 31 LLC, which obligated Challenger 31 to pay $14.6 million over the ten-year lease term. In addition, marchFIRST entered into a management agreement with T-Bird Aviation, Inc. ("T-Bird"), whereby T-Bird managed the maintenance and travel requirements for the jet at an annual cost of approximately $780,000, plus an hourly cost for flight time. On that same date, marchFIRST signed a guarantee whereby marchFIRST guaranteed Challenger 31 LLC's lease obligations to Fleet for the corporate jet.

96. On or about February 8, 2001, marchFIRST entered into an amendment agreement with Challenger 31 LLC and Fleet whereby Fleet agreed to terminate the lease agreement in return for the payment of a security deposit of $1.3 million. Despite the payment of the security deposit, Fleet has asserted a claim in excess of $13.6 million against marchFIRST in the bankruptcy.

97. The expenditures for the corporate jet were extravagant and wasteful of the Company's assets, and served no valid business purpose. Bernard, as an officer of marchFIRST, breached his fiduciary of care not to waste marchFIRST assets.

4. Defendants Entered Into Transactions For Which marchFIRST Received No Consideration.

98. Management's waste of corporate assets did not begin only after the Merger. In fact, even prior to the Merger, Bernard mismanaged the assets of Whittman-Hart in breach of his fiduciary duties of care and not to waste corporate assets. Certain transactions occurred that had either no consideration or such inadequate consideration as to constitute a complete failure of consideration. One such transaction is that between Whittman-Hart and Fourth Floor Consulting, Inc. ("Fourth Floor'").

99. On or about September 22, 1999, Bernard, in his capacity as an officer, caused Whittman-Hart to enter into a Consulting Services Agreement with Fourth Floor, pursuant to which Whittman-Hart was to develop business model software for Fourth Floor. Also on September 22, 1999, Bernard personally acquired a 25% interest in Fourth Floor for approximately $300,000 and the obligation to lease space to Fourth Floor at no cost for two years. He also personally loaned Fourth Floor approximately $1.32 million so Fourth Floor would have the funds necessary to pay Whittman-Hart for these services.

100. Between August 31, 1999 and February 8, 2000, Fourth Floor paid Whittman-Hart $3.55 million for consulting services provided in connection with the creation of this business model. On February 8, 2000, Bernard, in his capacity as an officer, caused Whittman-Hart to pay $4.155 million to Fourth Floor for a non-exclusive license of this business model – the very business model that Fourth Floor had just purchased from Whittman-Hart for $3.55 million.

101. This transaction was a waste of Whittman-Hart's assets and was devoid of any valid business purpose. Bernard, in his capacity as an officer, structured this transaction such that Whittman-Hart paid $4.155 million to obtain a non-exclusive license for the product it developed and sold to Fourth Floor for $3.55 million. The Fourth Floor Consulting transaction presents a classic case of corporate waste.

F. Defendants Fail To Implement Internal Controls.

102. marchFIRST's management had an obligation to put into place adequate internal controls to enable the marchFIRST officers and directors to have accurate information regarding the financial condition of marchFIRST, including the ability to track the completion of projects, generate accurate billing information, accurately monitor accounts receivables, track utilization ratios and track collections. Defendants Bernard, Szofer, Clarkson, Young and Shelow, in their capacities as officers, in breach of their duty of care, recklessly failed to institute reasonable internal controls, even though they were well aware of the need for such controls.

103. At the time of the Merger, these Defendants knew that, to operate successfully, marchFIRST had to integrate the back-office systems of the combined companies. The back-office systems were supposed to integrate and track, on a weekly basis, data from each of marchFIRST's branch offices concerning all aspects of marchFIRST's business, including but not limited to project status, cash flow, revenue pipeline, billable and non-billable hours, and utilization rates for consultants and employees. The system was also supposed to generate client invoices and keep track of accounts receivable.

104. Bernard, Szofer, Clarkson, Young and Shelow knew that integration was an essential task. In the Form 10-K filed for the 1999 fiscal year, Whittman-Hart disclosed that one of the risks related to the merger would be the failure to successfully integrate the operations of Whittman-Hart and USWeb. By the time of the Merger, USWeb had not completed its own

integration of the approximately 45 acquisitions it had made during the previous four years. Nor were the Whittman-Hart operations completely integrated. Further complicating the situation, USWeb and Whittman-Hart used different back-office systems, with Whittman-Hart having selected for the project accounting function software known as ServiceSphere, which was a new custom product developed by Evolve Software, Inc. ("Evolve"). marchFIRST owned warrants to purchase stock in Evolve. The ServiceSphere system was incompatible with the back-office software implemented at USWeb.

105. Shortly after the Merger, Bernard, Szofer, Clarkson, Young and Shelow were apprised of the necessity to implement back-office software that could be integrated as quickly as possible and an accounting system that would be "scalable", *i.e.*, one that had the capacity to expand to a company the size of marchFIRST, with between 7,000 and 8,300 employees. These officers were advised that ServiceSphere was not scalable but that the USWeb back-office software was scalable.

106. Nevertheless, Bernard, Szofer, Clarkson, Young and Shelow, acting as officers of the company, ignored such advice and instead selected the ServiceSphere software from Evolve. Not only did the ServiceSphere software lack the crucial scalability feature, these Defendants knew from Whittman-Hart's prior experience that flaws resulted in the back-office information being incorrect. Because of the inaccuracy of the systems data, marchFIRST employees were required to manually audit and adjust the data and then enter the data into Excel spreadsheets. This process was time consuming and prone to error.

107. As Bernard, Szofer, Clarkson, Young and Shelow had been warned, the ServiceSphere system not only provided inaccurate information, the system was incapable of accomplishing the crucial integration of the back-office operations of the merged company.

108. Therefore, Bernard, Szofer, Clarkson, Young and Shelow knew that marchFIRST was never able to integrate its billing, accounting, personnel infrastructure and computer systems. They also knew that the USWeb personnel continued to generate financial reports on a monthly basis, using their pre-existing systems, while the former Whittman-Hart personnel attempted to use the ServiceSphere system. Each branch office was required to attempt to manually adjust and reconcile the two statements each week to produce weekly information to management. marchFIRST was forced to run two unintegrated systems side by side and attempt to periodically merge the information manually. This situation continued throughout the entire corporate life of marchFIRST.

109. As a result, marchFIRST's back-office information was inaccurate and unreliable. For instance, the internal systems at marchFIRST did not permit the integration of budget submissions and target numbers, which could result in an overstatement of global revenue. The systems resulted in conflicting and inaccurate information about employee headcount and utilization rates.

110. These glaring weaknesses in marchFIRST's internal controls facilitated the abuses in income recognition that have previously been explained. Hours and accounts receivable could be manipulated because traditional safeguards were not in place.

111. The failure of Bernard, Szofer, Clarkson, Young and Shelow to fulfill their duties as officers and implement adequate internal controls had a disastrous effect on marchFIRST's collections. Collections were not under control because:

A. marchFIRST's integration problems made it impossible for the company to accurately track, assess and act upon collection issues;

B. Bernard, Szofer, Clarkson, Young and Shelow failed to put into place any controls to confirm that marchFIRST employees were actually performing the work for which they were hired and providing custom, rather than "off the rack", programs; and

C. a substantial number of marchFIRST's customers were companies that had no source of revenue other than marchFIRST's investment in them.

112. As a result, during the second and third quarters of 2000, marchFIRST's accounts receivable balance was growing at an unacceptable and alarming rate, but marchFIRST could not collect on those receivables, resulting in a depletion of marchFIRST's cash and cash equivalents. For example:

A. marchFIRST's second quarter Form 10-Q/A, filed August 21, 2000, disclosed that accounts receivable between March 31 and June 20, 2000 had increased by $42 million, but that cash and cash equivalents had decreased over $150 million over the same three months.

B. marchFIRST's third quarter Form 10-Q, filed on November 20, 2000, disclosed that accounts receivable between June 30 and September 30, 2000 had increased by $38 million and that cash and cash equivalents over the same three months had decreased by $20 million.

113. Defendants Bernard, Szofer, Clarkson, Young and Shelow, in their capacities as officers of marchFIRST, breached their fiduciary duty of due care by failing to put into place adequate internal controls. The lack of even the most rudimentary internal controls exacerbated the waste of corporate assets and severely limited marchFIRST's ability to collect for those projects its workforce did perform.

114. Moreover, Bernard and Young disclosed to the public inaccurate information about the status of integration. For example, in the second quarter of 2000, Bernard and Young disclosed that marchFIRST had made "great strides" in completing the Whittman-Hart/USWeb integration, and that such integration would be virtually complete by the end of the third quarter of 2000. At the October 24, 2000, analyst conference call, Bernard represented that marchFIRST completed its integration.

G. **Disclosure obligations and the stock repurchase program.**

115. marchFIRST management had a general duty of loyalty and good faith to disclose accurate information to the public (including shareholders, analysts and creditors) concerning the operations and financial condition of marchFIRST. Defendants Bernard and Young breached these duties by disclosing inaccurate information concerning a number of material facts. This general duty of disclosure is heightened when the company engages in a stock repurchase program.

116. In April and early May 2000, Bernard, Young and Shelow, in their capacities as officers, decided that marchFIRST should implement a stock repurchase program in order to maintain and increase the stock price of the company. The Board of Directors authorized the company to purchase up to 7.5 million shares of the company to be purchased periodically in the open market, in block purchases or in privately negotiated transactions.

117. marchFIRST paid $65 million for the purchase of approximately 3 million shares of its stock pursuant to that program.

118. While the stock repurchase program was in effect, the company, through its management, had a heightened obligation to make disclosures to the public of material events. The Board and the company's management failed to make the accurate periodic disclosures required by applicable regulation. Moreover, management failed to make the appropriate disclosures to the public required by the undertaking and implementation of the company's stock repurchase program. Management's abuse of the roundtripping income recognition procedures ensured that instead the financial information that was disclosed to the general public was inaccurate.

H. Sale of assets to divine Inc.

119. By late November of 2000, marchFIRST management knew that it needed a massive cash infusion to keep the company afloat. While it was successful in obtaining a $150 million cash infusion in December 2000 from Francisco Partners, marchFIRST needed a much larger infusion to stay afloat. At least by late February 2001, and possibly much earlier than that, management was aware that marchFIRST was insolvent, or at least in the vicinity of insolvency, and that the survival of the company depended on massive cutting of costs, and another enormous cash infusion through additional debt or equity. Management acknowledged that efforts to save the company needed to concentrate on marchFIRST's more profitable business operations.

120. Instead of taking action to save the company or to marshal all assets for the benefit of the company and its creditors, Bernard and Szofer, acting as officers of the company, structured a sale of marchFIRST's significant and potentially most profitable assets to a company known as divine, Inc. ("divine"), a company in which marchFIRST had an interest. marchFIRST and divine (acting through a newly created subsidiary) signed purchase agreements for a two-phase transaction just ten days before marchFIRST filed its Chapter 11 Petition. The second phase of the transaction closed only hours before marchFIRST filed its Chapter 11 petition (which was converted to a Chapter 7 liquidation a few weeks later). The economic terms of the transaction are so unfavorable to marchFIRST as to constitute a breach of Szofer and Bernard's duty as officers to marchFIRST and its creditors.

121. Prior to the Merger, during the fourth quarter of 1999 and the second quarter of 2000, Whittman-Hart invested approximately $17 million in divine interVentures, Inc., the predecessor to divine, a publicly-traded company that was, at that time, a business incubator providing capital and services from partner companies. As a result, marchFIRST owned 1.66

million shares of common stock and 2 million shares of preferred stock of divine. Bernard served on both the marchFIRST and divine Boards.

122. On March 15, 2001, management, including Szofer, reported to the marchFIRST Board that divine was considering an offer to purchase marchFIRST, either in whole or in part. Although Bernard was technically no longer on either the marchFIRST or divine Board, having resigned three days before, Bernard played a behind-the-scenes role and Szofer played an active role on behalf of marchFIRST to consummate this transaction. Both hoped to have an affiliation with divine after the transaction was completed.

123. Shortly thereafter, on March 20, 2001, divine provided marchFIRST with a term sheet offering to purchase certain assets of marchFIRST for approximately $70 million, consisting of $10 million in cash and the remainder over a 5-year Note. The assets to be sold to divine consisted of the core Whittman-Hart business (primarily the offices, current accounts receivable, customer lists and employee rosters for the Central region), a few foreign offices and Bluevector (with the exception of the Top Tier investment.) This term sheet was presented to the marchFIRST Board.

124. On March 28, 2001, the Board, including Szofer, passed a resolution approving the transaction with divine. marchFIRST, marchFIRST Consulting, Inc. and WH Acquisition Corp. (the entity divine was created for this transaction) signed the asset purchase agreement on April 2, 2001. The transaction closed in two phases. The first transaction, in which the bulk of the old Whittman-Hart business was sold, closed on April 2, 2001. However, the second transaction, which included the sale of the remaining Whittman-Hart business, approximately four other offices (including two foreign offices) and Bluevector, did not close until the morning

of April 12, 2001, just hours before marchFIRST filed for reorganization under Chapter 11 of Title 11 of the U.S. Code (the "Bankruptcy Code").

125. The purchase price that divine paid to marchFIRST for these assets was only $12.5 million in cash and a five-year promissory note for the principal amount of $57.5 million, plus accrued annual interest of $59,387.59, with interest at prime. divine was not obligated to make payments under the Note if it had insufficient cash flow; instead interest would continue to accrue. divine also had the right to make its final balloon payment in stock instead of cash, as long as its stock was publicly-traded. In the event that divine were to default under the Note, divine had a right of first refusal with respect to the sale of the Note.

126. The business sold to divine was to be known as Divine/Whittman-Hart. This choice of name was not coincidental. According to Bernard and Szofer, the assets that marchFIRST sold to divine were the then-currently profitable units of the marchFIRST business. Bernard and Szofer believed that, from day one, Divine/Whittman-Hart would be a positive cash flow operation. Szofer and Bernard further emphasized that, after the sale, there would be no immediate change in the client services marchFIRST had previously offered – only that Divine/Whittman-Hart would now be providing those services.

127. In addition to playing an instrumental role in putting together this transaction giving divine the profitable portion of marchFIRST's business, Szofer moved his employment from marchFIRST to Divine/Whittman-Hart. Bernard was not allowed to join Szofer at Divine/Whittman-Hart as its management believed that the bad publicity surrounding Bernard and marchFIRST made the association impossible. Bernard was not told that he would not be able to move to Divine/Whittman-Hart until the deal between divine and marchFIRST was struck.

128. Szofer and Bernard structured and advocated the sale of what they admitted to be the positive cash flow portion of the marchFIRST business on the verge of marchFIRST's filing a petition to reorganize under the Bankruptcy Code. Most telling, this transaction could not reasonably address marchFIRST's liquidity crisis. marchFIRST received only $12.5 million in cash for what it contends are its most valuable assets in a non-arms-length transaction. Although there was also a $57 million component in the form of a five-year note for $57 million, this note was neither secured nor supported by any type of guaranty. The cash infusion from this transaction was almost meaningless given marchFIRST's financial condition at the time. Not surprisingly, a few weeks after it filed to reorganize under Chapter 11 of the Bankruptcy Code, marchFIRST converted its filing to a Chapter 7 liquidation.

129. marchFIRST's Bluevector investment of over $80 million was, for purposes of this sale, valued at only $11 million.

130. By advocating the sale of marchFIRST's assets to divine on the cusp of marchFIRST's bankruptcy, Szofer and Bernard, acting as officers, breached their duty of care and duty of loyalty to the corporation. Because marchFIRST was insolvent, or at least in the vicinity of insolvency, when the Board of marchFIRST approved this transaction, the Board members that approved the transaction, specifically including Moore and Szofer, breached their fiduciary duties to marchFIRST's creditors.

COUNT I

(Breach Of Fiduciary Duty By Officers Bernard, Young and Shelow)

131. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 131 of this Complaint.

132. As officers of marchFIRST, Bernard, Young and Shelow owed marchFIRST fiduciary duties of due care and good faith. Shelow also owed marchFIRST a duty of due care as a lawyer for marchFIRST.

133. Bernard, Young and Shelow breached the fiduciary duties they owed to marchFIRST in their capacity as officers by carelessly, imprudently and recklessly failing to exercise good faith, due care, skill and diligence in connection with the creation and funding of Bluevector:

A. It was imprudent and reckless for these defendants to implement the creation and funding of Bluevector without prior board approval;

B. It was imprudent and reckless for the defendants to invest $87 million in cash and assets of marchFIRST in Bluevector when Bluevector Management LLC received an equal interest in Bluevector and only contributed $1,000 cash and $499,000.00 in promissory notes;

C. It was imprudent, reckless and in breach of the duty of care and loyalty to marchFIRST in allowing marchFIRST to invest $87 million of cash and assets in Bluevector and give away a controlling voting and operating interest to Bluevector Management LLC;

D. It was imprudent, reckless and a breach of duty of due care for the defendants to invest in Bluevector when marchFIRST received no priority over Bluevector Management, LLC for distributions from Bluevector even though marchFIRST put up virtually all the cash and assets for Bluevector; and

E. It was imprudent, reckless and a breach of the duty of care for these defendants not to disclose the Bluevector transaction as required by applicable regulation in the company's proper quarterly filing.

134. Shelow also breached his duties of due care as a lawyer for marchFIRST by knowingly and/or recklessly failing to obtain prior board approval for the Bluevector investment.

135. When marchFIRST sold certain of its assets, including Bluevector, to divine in 2001, marchFIRST valued Bluevector as being worth $11 million. marchFIRST's investment in

Bluevector therefore declined in value from $87 million in cash and assets to $11 million in less than one year.

136. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages in connection with its investment in Bluevector.

137. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard, Young and Shelow as former officers of marchFIRST, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT II

(Breach Of Fiduciary Duty By Directors Bernard, Szofer, Carbery, Kvamme, Marengi, Moore, Storch and Torell For The Bluevector Investment)

138. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 138 of this Complaint.

139. Defendants Bernard, Szofer, Carbery, Kvamme, Marengi, Moore, Storch and Torell were directors of marchFIRST at the time that marchFIRST made its investment in Bluevector and at the time the Board of Directors ratified the transaction. Those defendants owed marchFIRST fiduciary duties of loyalty and good faith.

140. The foregoing defendants breached the fiduciary duties they owed to marchFIRST by consciously and recklessly ratifying the Bluevector transaction and allowing management to operate marchFIRST without proper board oversight. The directors' abandonment of their obligations was intentional misconduct.

141. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages in connection with the investment in Bluevector.

142. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard, Szofer, Carbery, Kvamme, Marengi, Moore, Storch and Torell, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT III

(Breach Of Fiduciary Duty By Officers Bernard, Szofer and Shelow for the BVSP Investment)

143. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 143 of this Complaint.

144. As officers of marchFIRST, Bernard, Szofer and Shelow each owed marchFIRST a fiduciary duty, including the duties of due care and good faith.

145. Defendants Bernard, Szofer and Shelow breached the fiduciary duties they owed to marchFIRST in their capacity as officers by carelessly, imprudently and recklessly failing to exercise good faith, due care, skill and diligence in connection with marchFIRST's investment in and operation of BVSP for the reasons stated above, specifically including:

A. marchFIRST had previously acknowledged that it did not have the expertise to make independent evaluations for outside investments and that is why it set up its investment in Bluevector;

B. Having already acknowledged that it lack necessary expertise to invest in outside ventures, the defendants invested approximately $20 million of marchFIRST's funds in BVSP solely to generate revenue through "roundtripping" and not for any legitimate investment purposes; and

C. Defendants authorized the investment in BVSP without necessary Board approval.

146. As a direct and proximate result of the foregoing breach of fiduciary duty, marchFIRST suffered substantial damages.

147. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard, Szofer and Shelow, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT IV

(Breach Of Fiduciary Duty By Bernard, Clarkson, Young, Szofer And Shelow For Waste Of Corporate Assets)

148. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 148 of this Complaint.

149. As officers of marchFIRST, Bernard, Clarkson, Young, Szofer and Shelow each owed marchFIRST a fiduciary duty not to waste corporate assets.

150. The foregoing defendants breached their fiduciary duty not to waste corporate assets by entering into transactions that served no reasonable corporate purpose and where the consideration received by marchFIRST was so inadequate that no reasonable person would have entered into such transactions. These transactions are more fully described above and specifically included the following:

A. Embarking on a massive program of overhiring consultants and employees to create an appearance of demand for marchFIRST services when in fact there was little or no work for such consultants and employees;

B. Excessive spending for the development of corporate headquarters in downtown Chicago;

C. Entering into unnecessary lease commitments; and

D. Leasing and operating a corporate jet.

151. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages and impairment of its assets.

152. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard, Clarkson, Young, Szofer and Shelow as former officers of marchFIRST, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT V

(Breach Of Fiduciary Duty Of Due Care By Bernard, Clarkson, Young, Szofer And Shelow For Waste Of Corporate Assets)

153. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 153 of this Complaint.

154. As officers of marchFIRST, Bernard, Clarkson, Young, Szofer and Shelow each owed marchFIRST a fiduciary duty of due care.

155. The foregoing defendants breached their fiduciary duty of due care by acting in a grossly negligent manner by entering into transactions that no ordinarily careful and prudent person would enter into in similar circumstances. These transactions included the following:

A. Embarking on a massive program of overhiring consultants and employees

to create an appearance of demand for marchFIRST services when in fact there was little or no work for such consultants and employees;

B. Excessive spending for the development of corporate headquarters in downtown Chicago;

C. Entering into unnecessary lease commitments; and

D. Leasing and operating a corporate jet.

156. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages and impairment of its assets.

157. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard, Clarkson, Young, Szofer and Shelow, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT VI

(Breach Of Fiduciary Duty By Bernard For Waste Of Corporate Assets)

158. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 158 of this Complaint.

159. As an officer of marchFIRST and its predecessor, Whittman-Hart, Bernard owed marchFIRST and Whittman-Hart a fiduciary duty not to waste corporate assets.

160. Bernard breached his fiduciary duty not to waste corporate assets by causing Whittman-Hart to enter into the transaction with Fourth Floor described above. The consideration received by marchFIRST in those transactions was so inadequate that no reasonable person would have entered into such a transaction.

161. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages and impairment of assets.

162. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard as follows:

A. Actual and consequential damages against Bernard in an amount to be determined.

B. Punitive damages against Bernard in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT VII

(Breach Of Fiduciary Duty Of Due Care By Bernard For Waste Of Corporate Assets)

163. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 163 of this Complaint.

164. As an officer of marchFIRST and its predecessor, Whittman-Hart, Bernard owed marchFIRST a fiduciary duty of due care.

165. Bernard breached his fiduciary duty of care by acting in a grossly negligent manner by causing Whittman-Hart to enter into the transaction with Fourth Floor to purchase business model software that Whittman-Hart had developed for Fourth Floor, a transaction that no ordinarily careful and prudent person would enter into in similar circumstances.

166. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages and impairment of assets.

167. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard as follows:

A. Actual and consequential damages against Bernard in an amount to be determined.

B. Punitive damages against Bernard in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper

COUNT VIII

(Breach Of Fiduciary Duty By Officers Bernard, Clarkson, Young, Szofer And Shelow Relating To Lack Of Internal Controls)

168. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 168 of this Complaint.

169. As officers of marchFIRST, defendants Bernard, Clarkson, Young, Szofer and Shelow each owed marchFIRST fiduciary duties including the duties of loyalty, due care and good faith in the management, supervision and direction of marchFIRST.

170. The foregoing defendants breached their fiduciary duties to marchFIRST by carelessly, recklessly, imprudently or otherwise failing to exercise good faith, due care, skill and diligence in failing to implement the appropriate and necessary internal controls for the daily operations of marchFIRST. In particular, the foregoing defendants failed to select a software program that could integrate and track, on a weekly basis, data from each of the marchFIRST branch offices concerning all aspects of marchFIRST's business. In addition, the foregoing defendants intentionally selected a back-office software that they knew did not have a "scalable" accounting system. Due to these failures, marchFIRST could not integrate its operations and it was virtually impossible to determine the financial data of the company.

171. As a direct and proximate result of the foregoing, marchFIRST suffered substantial damages and impairment of its assets.

172. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard, Clarkson, Young, Szofer and Shelow, as former officers of marchFIRST, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT IX

(Breach Of Fiduciary Duty By Officers Bernard And Szofer Regarding The Sale Of Certain Assets To divine)

173. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 173 of this Complaint.

174. As officers of marchFIRST, defendants Bernard and Szofer each owed marchFIRST fiduciary duties including the duties of due care and good faith and, because marchFIRST was either insolvent or in the vicinity of insolvency at the time of the divine transaction, they owed a duty to the creditors of marchFIRST to preserve its assets.

175. Bernard and Szofer breached these duties by carelessly, recklessly and imprudently failing to exercise good faith, due care, skill and diligence with respect to the sale of certain assets of marchFIRST to divine.

176. Moreover, both Bernard and Szofer breached their duty of loyalty by negotiating the transaction while attempting to secure an affiliation with divine.

177. As a direct and proximate result of the foregoing, marchFIRST and its creditors suffered substantial damages and marchFIRST's assets were impaired.

178. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard and Szofer, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT X

(Breach Of Fiduciary Duty By Directors Moore And Szofer For The Sale Of Certain Assets To divine)

179. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 179 of this Complaint.

180. Defendants Moore and Szofer were directors of marchFIRST at various times when marchFIRST was negotiating and consummating the sale of certain of its assets to divine. As directors of marchFIRST, Moore and Szofer each owed marchFIRST a fiduciary duty of loyalty and good faith.

181. The foregoing defendants breached their fiduciary duties owed to marchFIRST by failing to exercise good faith in approving the sale of certain assets to divine.

182. At the time that Szofer and Moore breached their duties, marchFIRST was either insolvent or in the vicinity of insolvency. Accordingly, Szofer and Moore owed a fiduciary duty to the creditors of marchFIRST to reasonably protect marchFIRST's assets. Szofer and Moore breached the fiduciary duties they owed to the creditors of marchFIRST by approving the sale of assets to divine knowing that marchFIRST was selling its profitable assets to divine when marchFIRST was on the verge of filing bankruptcy.

183. As a direct and proximate result of the foregoing, marchFIRST and its creditors suffered substantial damages and marchFIRST's assets were impaired.

184. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Szofer and Moore, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

B. Punitive damages against each of the defendants, individually, in an amount to be determined.

C. For such other relief as this Court may deem necessary and proper.

COUNT XI

(Breach Of Fiduciary Duties Of Loyalty And Good Faith By Officers Bernard And Young For Dissemination Of False And Inaccurate Information)

185. Plaintiff realleges and incorporates by reference paragraphs 1 through 130 above as paragraph 185 of this Complaint.

186. As officers of marchFIRST, Bernard and Young owed marchFIRST a fiduciary duty, including the duties of care, loyalty and good faith.

187. Defendants Bernard and Young breached their fiduciary duties of loyalty and good faith they owed to marchFIRST in their capacity as officers by recklessly, willfully, knowingly and intentionally disseminating false and inaccurate information about the condition of the company. Bernard and Young had a heightened obligation to make accurate disclosures because of the company's stock repurchase program. Examples of Bernard and Young disseminating false and inaccurate information include the following:

A. Failure to timely disclose marchFIRST's investment in Bluevector and, when it made public disclosures, they were incomplete and therefore inaccurate;

B. Failure to accurately disclose financial information because of abuse of income recognition; and

C. Bernard and Young disclosed to the public in the second quarter of 2000 that they had made "great strides" in completing the Whittman-Hart/USWeb integration, and that such integration would be virtually complete by the end of the third quarter of 2000. At the October 24, 2000 analyst conference call, Bernard represented that marchFIRST had completed its integration.

188. As a direct and proximate result of the foregoing breaches of fiduciary duty, marchFIRST suffered substantial damages.

189. The foregoing damages are in an amount not yet fully ascertained.

WHEREFORE, the Trustee prays for entry of judgment in his favor and against Bernard and Young, jointly and severally, as follows:

A. Actual and consequential damages against each of the defendants, jointly and severally, in an amount to be determined.

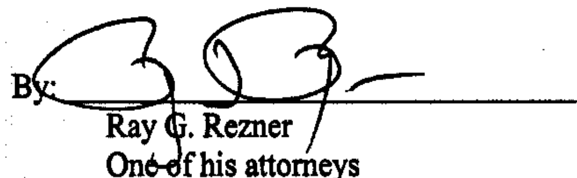
B. Punitive damages against Bernard and Young, individually, in an amount to be determined.

C. For such other and further relief as this Court may deem necessary and proper.

Dated: February 26, 2002

Respectfully submitted,

ANDREW J. MAXWELL, Chapter 7
Trustee for the Bankruptcy Estate of
marchFIRST, Inc. and its Subsidiaries



By: ______________________
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One of his attorneys

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