

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	NO.
	:	
-v-	:	
	:	(J.)
MARTIN L. GRASS,	:	
FRANKLIN C. BROWN,	:	
FRANKLYN M. BERGONZI, and	:	
ERIC S. SORKIN,	:	
Defendants	:	

INDICTMENT

The Grand Jury Charges:

INTRODUCTION

A. RITE AID CORPORATION

1. During all time periods encompassed by this Indictment, Rite Aid Corporation, hereinafter referred to as “the Company,” was a publicly held corporation duly organized and existing under the laws of the State of Delaware. Incorporated in 1968, its primary business was the operation of retail drug stores. The Company also engaged in pharmacy benefits management, the marketing of prescription plans, and managed health care services. Rite Aid’s headquarters and senior executive offices were

located at 30 Hunter Lane, Camp Hill, Pennsylvania. Most of its accounting department personnel were located at a separate facility in Valley Green, PA.

2. As a publicly owned corporation, Rite Aid's stock was traded on the New York Stock Exchange. As of May 10, 1999, the Company had more than 258 million outstanding shares of common stock.¹ The Company also sold short term notes (commercial paper) and other securities to the public.

SEC Requirements

3. In order to sell securities to the public, Rite Aid was required to comply with the federal securities laws, including the Securities Act of 1933, the Securities Exchange Act of 1934, and regulations promulgated thereunder. These laws and regulations are designed to ensure that a publicly owned company's financial information is accurately recorded and disclosed to the public. Among other requirements, Rite Aid had to file quarterly financial statements (Forms 10-Q) and an annual financial statement (Form 10-K) with the SEC. Rite Aid was also obligated to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances the Company's financial transactions were recorded in conformity with Generally Accepted Accounting Principles (GAAP).

¹All references to numbers of shares in this Indictment reflect the February 2, 1998, two for one stock split.

Rite Aid's Auditors

4. Although the quarterly financial statements did not have to be audited, the Company's annual financial statements were required to be audited by a certified public accounting firm. The accounting firm of KPMG, LLP (KPMG) audited Rite Aid's Fiscal Year (FY) 1996-1999 annual financial statements. KPMG expressed its opinion in the Company's Form 10-K Annual Reports that Rite Aid's financial statements fairly presented, in all material respects, the financial position and results of operations of the Company in conformity with GAAP.

5. The SEC also requires publicly held corporations like Rite Aid to disclose related party transactions, including loans and loan guarantees, between the corporation, its directors, and officers in excess of \$60,000 in an Annual Proxy Statement (Form DEF 14A). The Annual Proxy Statement must also disclose all forms of compensation awarded, accrued, earned, or paid to the company's chief executive officer and the four other highest paid officers. Other significant events a company deems important to its shareholders are reported to the SEC on a Current Report (Form 8-K).

The Board of Directors

6. Rite Aid was governed by a Board of Directors, which consisted of 8-9 members serving staggered, three-year terms. The Board regularly met 4 times a year and usually had 5-6 "Outside Directors," who were not corporate officers. The Board had various Committees, including an Audit Committee and a Compensation Committee, each

of which were composed of 3 Outside Directors. The Audit Committee oversaw management's financial reporting responsibilities and the Company's maintenance of appropriate internal control systems. The Compensation Committee reviewed the performance of the Company's executive personnel and made recommendations to the Board with respect to executive compensation policies.

The Top 4 Corporate Officers

7. The top 4 corporate officers at Rite Aid between March of 1995 and October of 1999 were MARTIN L. GRASS (GRASS), Timothy J. Noonan, FRANKLIN C. BROWN, and FRANKLYN M. BERGONZI. GRASS was appointed Rite Aid's Chief Executive Officer (CEO) and Chairman of its Board of Directors on March 4, 1995, the beginning of its 1996 Fiscal Year.² Prior to his appointment, GRASS had been the Company's President and Chief Operating Officer (COO) since 1989, a member of the Board of Directors since 1982, and a corporate officer since 1980. GRASS is the son of the Company's founder, Alex Grass.³ GRASS served as CEO and Chairman of the Board from March 4, 1995, until his resignation was announced on October 18, 1999.

8. At the time of GRASS' promotion to CEO on March 4, 1995, Timothy J. Noonan became Rite Aid's President and Chief Operating Officer (COO). Noonan also

²Rite Aid's fiscal year ends on the Saturday closest to Feb 28 or March 1.

³On March 4, 1995, Alex Grass retired as Chairman of the Board and Chief Executive Officer, positions he held since the founding of the Company. However, Alex Grass continued to serve as a member of the Board of Directors until 2001.

became a member of the Board of Directors at that time. Prior to that, Noonan had served as the Company's Executive Vice President and had been a corporate officer since 1973. Noonan served as Rite Aid's President, COO, and as a member of its Board of Directors from March 4, 1995 until October 18, 1999. Between October 18, 1999, and December 5, 1999, Noonan served as the Company's Interim Chief Executive Officer. Thereafter, Noonan served as President and Chief Operations Officer until his resignation on February 25, 2000.

9. On March 4, 1995, FRANKLIN C. BROWN was Executive Vice-President, Chief Legal Counsel, and had been a member of the Board of Directors since 1981. Prior to his appointment as Executive Vice President in April of 1993, BROWN served the Company for 13 years as Senior Vice President and General Counsel, and as a corporate officer since 1969. BROWN served as Executive Vice President, Chief Legal Counsel, and as a member of the Board of Directors until July 9, 1997, when he was promoted to Vice Chairman of the Board of Directors. Thereafter, BROWN resigned as an employee of Rite Aid on February 25, 2000, and as a member of the Board of Directors on May 29, 2000.

10. On March 4, 1995, FRANKLYN M. BERGONZI was promoted to Executive Vice President and Chief Financial Officer (CFO) of the Company. Prior to that BERGONZI had served as Senior Vice President of Finance and as a corporate officer since 1977. BERGONZI became a Certified Public Accountant (CPA) in

Pennsylvania in 1970, but his certification expired in 1983. BERGONZI served as Executive Vice President and CFO from March 4, 1995 until January 13, 1999, when he was promoted to Senior Executive Vice President and CFO. BERGONZI served as Senior Executive Vice President and CFO until June 14, 1999, when he resigned his position as CFO. Thereafter, BERGONZI maintained his office at corporate headquarters where he worked in an untitled capacity until his retirement on or about October 18, 1999.

11. As Rite Aid's four highest and most senior officers, GRASS, Noonan, BROWN and BERGONZI directly participated in the day-to-day management of the Company and, as such, were privy to all pertinent information regarding Rite Aid's business operations, accounting, and finances. As Rite Aid's four most senior officers, GRASS, Noonan, BROWN, and BERGONZI owed fiduciary obligations to manage the Company's affairs honestly and to provide complete and candid information to Rite Aid's directors, shareholders, and investors. GRASS, Noonan, BROWN, and BERGONZI were duty bound to provide truthful, complete and accurate information to Rite Aid's accountants, auditors, and government regulators, and had statutory duties to disseminate accurate information with respect to the Company's true financial condition and earnings.

Senior Management Compensation

12. Rite Aid supplemented the salaries paid its senior executives with an Annual Bonus Plan, a Stock Option Award Plan, and Long Term Incentive Plans (LTIP). All three programs were tied to increases in Rite Aid's earnings and/or the price of Rite Aid stock. Together, the plans afforded GRASS, Noonan, BROWN, and BERGONZI the

opportunity to earn hundreds of millions of dollars.

a) The Annual Bonus Plan

13. Under the Annual Bonus Plan,⁴ if Rite Aid’s annual earnings per share (EPS) improved by 10% from the prior year, each participating executive received a bonus equal to 50% of their “targeted amount.”⁵ The maximum bonus was 150% of the targeted amount, which was earned if EPS improved by 15% or more from the previous year. Increases in EPS between 10% and 15% resulted in incremental increases in the bonuses paid. However, If EPS did not increase by at least 10%, *no* bonuses were to be paid.

14. The following table reflects the salaries and bonuses paid GRASS, Noonan, BROWN, and BERGONZI between FY 1996 and 1999:

	FY 1996	FY 1997	FY 1998	FY 1999
	<i>salary / bonus</i>	<i>salary / bonus</i>	<i>salary / bonus</i>	<i>salary / bonus</i>
GRASS	\$1,000,000 / \$600,000	\$1,000,000 / \$900,000	\$1,000,000 / \$898,000	\$1,000,000 / -0-
NOONAN	\$500,000 / \$300,000	\$700,000 / \$630,000	\$700,000 / \$628,600	\$700,000 / -0-
BROWN	\$450,000 / \$243,000	\$500,000 / \$337,500	\$500,000 / \$336,825	\$500,000 / -0-
BERGONZI	\$345,000 / \$186,500	\$403,000 / \$266,625	\$445,000 / \$299,774	\$445,000 / -0-

b) Stock Options

15. Rite Aid’s Board of Directors periodically awarded its senior executives options to purchase Company stock. The following table summarizes the stock options

⁴As described by the Company’s 1996 Proxy Statement.

⁵The “targeted amount” was a percentage of each executive’s salary. The percentages varied according to the officer’s rank.

awarded GRASS, Noonan, BROWN and BERGONZI between January of 1993 and May of 1998:

Grant Date	Exercise Price	SHARES GRANTED			
		<i>Grass</i>	<i>Noonan</i>	<i>Brown</i>	<i>Bergonzi</i>
1/6/93	\$9.25	1,000,000	275,000	275,000	160,000
8/31/93	\$8.91	100,000	27,500	27,500	16,000
2/8/94	\$9.56	100,000	27,500	27,500	16,000
5/31/94	\$10.06	100,000	27,500	27,500	16,000
8/31/94	\$10.31	100,000	27,500	27,500	16,000
11/29/94	\$11.31	100,000	27,500	27,500	16,000
2/28/95	\$12.38	100,000	27,500	27,500	16,000
5/31/95	\$11.88	100,000	27,500	27,500	16,000
8/31/95	\$14.00	100,000	27,500	27,500	16,000
11/30/95	\$15.62	100,000	27,500	27,500	16,000
2/28/96	\$15.87	100,000	27,500	27,500	16,000
6/26/96	\$14.31	100,000	70,000	70,000	40,000
10/30/96	\$16.94	1,000,000	600,000	275,000	275,000
5/12/98	\$30.75	1,000,000	650,000	300,000	300,000

16. Generally, the right to exercise the options vested over 4 years, with 25% of each award vesting on each one year anniversary of the award. However, the October 30, 1996, and the May 12, 1998, awards vested earlier in the event the price of Rite Aid stock reached \$30 and \$60 per share, respectively.⁶

⁶ All of the October 30, 1996, options were exercisable at any time after October 30, 1997, provided the price of Rite Aid stock traded at an average of \$30 per share for 30 consecutive days. Fifty percent of the May 12, 1998, options vested on October 12, 2000, and

17. By the end of FY 1999 the options GRASS, Noonan, BROWN, and BERGONZI held were worth millions of dollars. The Company's 1999 Proxy Statement calculated their value as of February 27, 1999, when the price of Rite Aid stock closed at \$41.38 per share, as follows:

FEBRUARY 27, 1999 OPTION VALUE

	<i>Exercisable</i>	<i>Unexercisable</i>
GRASS	\$83.2 million	\$11.0 million
NOONAN	\$31.4 million	\$8.9 million
BROWN	\$23.0 million	\$4.8 million
BERGONZI	\$16.4 million	\$4.3 million

c) The Long Term Incentive Plans

18. In addition to the Annual Bonus and Stock Option Plans, during GRASS's tenure as CEO two Long Term Incentive Plans (LTIP) were put in place for officers holding the rank of Senior Vice-President and above. Known as LTIP I and LTIP II, the plans involved outright grants of stock (or their cash equivalent) based upon increases in the Company's earnings over 4year time periods..

19. LTIP I covered the 4 year period between FY 1996 and FY 1999. As described by the Company's 1996 Proxy Statement, LTIP I participants would receive a Threshold Payout (20% of their "target" shares) if the Company's average annual earnings per share (EPS) increased by 8% between FY 1996 and FY 1999. The Maximum Payout

fifty percent vested on October 12, 2002, unless the average trading price of Rite Aid stock was at least \$60 per share for one consecutive calendar month prior to October 12, 2000, in which case all of the options vested as of October 12, 2000.

(100% of target shares) was earned if average annual EPS was 12.5% or higher. Average annual EPS increases between 8% and 12.5% incrementally increased the number of shares awarded. However, *no* shares were earned if average annual EPS was *less* than 8%. Approximately 13 senior executives participated in LTIP I. The following table depicts the minimum and maximum number of shares⁷ GRASS, Noonan, BROWN, and BERGONZI could have earned under LTIP I:

LTIP I (FY 96-99)	THRESHOLD PAYOUT (8% Avg. EPS)	MAXIMUM PAYOUT (12.5% Avg. EPS)
GRASS	200,000 shares	1,000,000 shares
Noonan	120,000 shares	600,000 shares
BROWN	60,000 shares	300,000 shares
BERGONZI	60,000 shares	300,000 shares

20. LTIP II was implemented after the Company acquired Thrifty Payless, Inc. in December of 1996 and covered the 4 year period between FY 1998 and FY 2001. As described by the Company's 1998 Proxy Statement and the May 29, 1997, Compensation Committee meeting minutes, under LTIP II the number of shares each participant could earn incrementally increased as average annual earnings per share (EPS) exceeded 9%, with the maximum payout earned at 12% average annual EPS growth.

21. Unlike LTIP I, the LTIP II plan also had a Stock Price Multiplier provision. If the minimum 9% EPS requirement was met, the Stock Price Multiplier incrementally increased the number of shares awarded as the 30 day average price of Rite Aid stock

⁷As adjusted by the two-for-one, February 2, 1998, stock split.

exceeded \$30.00, up to a maximum doubling of the shares if the price reached \$49.50 or higher. The following table illustrates the Threshold and Maximum number of shares GRASS, Noonan, BROWN, and BERGONZI could have earned under LTIP II:

LTIP II (FY 98-01)	THRESHOLD PAYOUT (9% Avg. EPS & stock price \$30.00 or lower)	MAXIMUM PAYOUT (12% Avg. EPS & stock price \$49.50 or higher)
GRASS	400,000 shares	2,000,000 shares
Noonan	240,000 shares	1,200,000 shares
BROWN	120,000 shares	600,000 shares
BERGONZI	120,000 shares	600,000 shares

d) The Deferred Compensation Program

22. Rite Aid also had a retirement plan for officers holding the rank of Vice President and above, known as the Deferred Compensation Program. Under the Deferred Compensation Program, eligible participants were entitled to receive upon retirement at age 65 or death an annual benefit for the next 15 years. The annual benefit was equal to 40% - 60% (depending upon the officer's position) of the average of the participant's 3 highest salaries.

Executive Stock Ownership

23. Many senior Rite Aid executives owned Rite Aid stock. However, no executive owned more Rite Aid stock than Martin GRASS. In his FY 1999 Proxy Statement questionnaire, GRASS reported that as of April 1, 1999, he had direct beneficial ownership of 777,294 shares and the indirect beneficial ownership of another 371,918 shares.

Rite Aid Acquisitions and Expansion

24. As Martin Grass observed in the Company's FY 1999 Proxy Statement, under his direction Rite Aid embarked upon "the most aggressive real estate expansion program in the history of the drugstore industry." Among other acquisitions, on December 12, 1996, the Company acquired Thrifty Payless, Inc., which operated 1,049 stores in ten western states, for \$1.3 billion. Eight months later on August 27, 1997, Rite Aid bought the two largest privately-held drug store chains in the United States, K&B, Inc. and Harco, Inc., which together operated 332 stores in the South, for \$340 million. Thereafter, on January 22, 1999, Rite Aid acquired all of the outstanding stock of PCS Health Systems, Inc. (PCS) a pharmaceutical benefits management company, for \$1.5 billion.

25. In addition to acquisitions, during GRASS' tenure as CEO Rite Aid built 1,618 new stores and relocated or remodeled hundreds of others. In March of 1995 Rite Aid had 35,700 employees and 2,829 stores. By February 27, 1999, Rite Aid was one of the largest retail drugstore chains in the World, with approximately 89,900 employees and 3,821 drug stores in 31 states and the District of Columbia.

Rite Aid Debt

26. With the Company's rapid expansion came a concomitant increase in Rite Aid's debt. The Company's FY 1995 Annual Report reported interest expense for that year at \$42.3 million, short term debt of \$137.5 million, and long term debt of \$805.9

million. By the end of FY 1999 (February 27, 1999) the Company's annual interest expense had grown to \$194.7 million, its short term debt was \$1.55 billion, and its long term debt was \$2.58 billion. The substantial increase in short term debt was largely due to the Company's acquisition of PCS with \$1.5 billion in commercial paper.

Rite Aid's Financial Statements and Earnings Reports

27. Between March of 1995 and October 18, 1999, GRASS, Noonan, BROWN, and BERGONZI caused Rite Aid financial statements that purported to conform with GAAP and the applicable regulatory requirements to be prepared and filed in Quarterly and Annual Reports with the SEC. The Quarterly Reports (Form 10-Q) and Annual Reports (Form 10-K), which were signed by GRASS, Noonan, BROWN, and/or BERGONZI, included acknowledgments that management was responsible for the preparation, integrity and objectivity of the financial statements, along with representations that they were prepared in conformity with Generally Accepted Accounting Principles (GAAP).

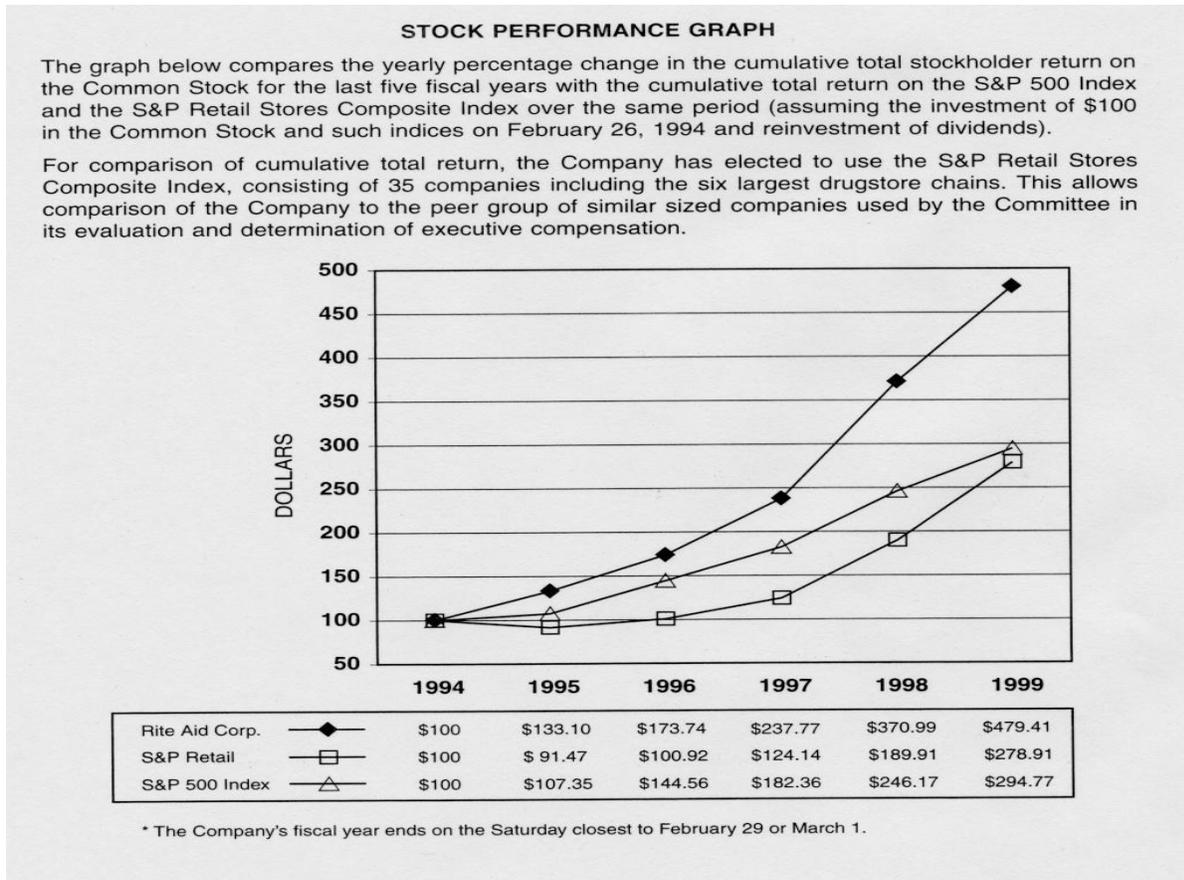
28. In these financial statements Rite Aid portrayed itself as a financially robust company with sustained economic growth between FY 1996 and FY 1999. Net income for FY 1996 and FY 1997 exceeded \$158 million and \$116 million, respectively. According to the Reports, net income more than doubled in FY 1998 to \$316 million. In the Company's FY 1998 Annual Report GRASS boasted that Rite Aid just completed "the most ... profitable year in the history of our Company."

29. In addition to the SEC filings, GRASS, Noonan, BROWN and BERGONZI regularly issued press releases with respect to the Company's earnings, which were disseminated throughout the World via the news media. GRASS, Noonan, BROWN and BERGONZI also issued projections with respect to what Rite Aid expected its future earnings to be over the course of each year. Typically, these forecasts were made on a quarterly basis via press releases and conference calls with Wall Street analysts. In most situations between FY 1996 and FY 1999 Rite Aid's reported earnings met or exceeded Wall Street's expectations.

The Price of Rite Aid Stock

30. As a consequence of the financial statements filed and earnings announcements made by GRASS, Noonan, BROWN, and BERGONZI, the price of Rite Aid stock soared. Between March of 1995 and February of 1999 the Company's stock rose by more than 306%, an increase more than twice that of Standard and Poor's 500 stock index. On March 3, 1995, the price of Rite Aid stock closed on the New York Stock Exchange at \$12.81. Two years later on March 3, 1997, the price was at \$21.75. By July of 1998 the price hit \$40 a share. That year Rite Aid was named by *Business Week* as one of its 50 top-performing companies and by *Fortune* magazine as one of "America's Most Admired Companies." On January 8, 1999, the Company's stock closed at its all time high of \$50.94 per share. To illustrate the dramatic increase in the price of Rite Aid stock between 1994 and 1999, as compared to the rest of the retail store industry, Rite Aid

included the following chart in the Company's 1999 Proxy Statement:



B. DISCOVERY OF THE SCHEME TO FALSIFY RITE AID'S FINANCIAL STATEMENTS

31. As described in further detail in this Indictment, GRASS, Noonan, BROWN and BERGONZI's portrayal of Rite Aid as a profitable company was a ruse and a mirage. The deception was accomplished through massive accounting fraud, the deliberate

falsification of its financial statements, and intentionally false SEC filings. GRASS, BROWN, and BERGONZI devised, organized and implemented the scheme, which was accomplished by deliberately understating the Company's expenses and overstating its income by hundreds of millions of dollars. BERGONZI coordinated the accounting fraud, directing subordinates in Rite Aid's Accounting Department to make arbitrary, unsupported entries that did not comport with GAAP in the Company's books and records.

SEC Scrutiny

32. On November 6, 1998, the Company filed a Registration Statement with the SEC which contained key financial information for prior years. As a consequence, the SEC sent Rite Aid numerous Comment Letters that questioned several aspects of Rite Aid's accounting practices. Over the course of the next 10 months BERGONZI caused false and misleading information to be submitted to the SEC in response to its inquiries.

The 4th Quarter FY 1999 Shortfall

33. On March 12, 1999, the Company issued a Press Release announcing a shortfall in its anticipated 4th Quarter FY 1999 earnings. The Release estimated the quarter's earnings at \$0.30 to \$0.32 a share, well below Wall Street (First Call Consensus) expectations of \$0.52 per share. As a result of the unexpected shortfall, the price of Rite Aid stock plummeted from \$37.00 to \$22.56, a one day decline of 39%. In an attempt to stop the decline, and as a public show of confidence, on March 15, 1999, Noonan bought 10,000 shares and GRASS bought 200,000 shares (approx. cost \$4.6 million) of Rite Aid

stock.⁸ However, on March 29, 1999, the Company issued another press release which downwardly revised its March 12, 1999, estimate even lower to \$0.28 per share.

The FY 1999 Audit

34. During the Spring of 1999 the Company's accounting came under scrutiny in connection with its FY 1999 audit. The KPMG audit team for that year was headed by a new Engagement Partner. The audit was protracted, consuming more than 90 days. Occasionally, relations between KPMG and Rite Aid's senior management, particularly GRASS and BERGONZI, were heated and contentious. Deliberate lies and misleading information were provided to KPMG during the course of the audit. Other material information was concealed and intentionally withheld from the auditors.

35. The audit culminated with round-the-clock work over Memorial Day weekend. Finally, on June 1, 1999, Rite Aid filed its Annual Report for FY 1999 with the SEC. The filing lowered the March 29, 1999, Press Release estimate of \$158 million net income (\$.61 per share) to \$143.6 million net income (\$.55 per share) for FY 1999.

The Cash Shortage and Loans

36. In January of 1999 the Company took out a \$1.3 billion dollar line of credit with a bank syndicate to support its commercial paper borrowings. By the early summer of 1999 Rite Aid was experiencing severe cash flow problems. Because of insufficient funds to pay its bills, BERGONZI routinely directed the Company's Treasury Office to hold checks written to the Company's vendors. In order to alleviate the cash shortage, on June

⁸The approximate cost of GRASS' purchase was \$4.6 million.

8, 1999, J.P. Morgan Bank granted Rite Aid an emergency overnight loan of \$75 million, which was converted 3 days later into a \$300 million demand note.

37. By the early Fall of 1999 Rite Aid could no longer utilize its existing \$1.3 billion line of credit to satisfy its maturing commercial paper obligations because it had violated debt to earnings ratio covenants with its banks. To alleviate the crisis, on September 24, 1999, JP Morgan and four other financial institutions provided Rite Aid an interim \$800 million line of credit. A few days later the interim \$800 million line of credit was replaced by an amended \$1.3 billion dollar line of credit. However, the banks only agreed to offer the new credit facilities to Rite Aid on the condition they were secured by the Company's PCS stock as collateral.

The Accounting Department "Revolt"

38. Despite the SEC's inquiries and the protracted nature of the FY 1999 audit, BERGONZI continued to direct his subordinates to make unsupported entries in the Company's books and records during the 1st Quarter of FY 2000. Thursday night, June 10, 1999, BERGONZI directed his employees to make unsupported entries totaling \$97 million. However, this time certain members of the Accounting Department protested. After one Accounting Department manager met privately with GRASS on Saturday, June 12, 1999, and complained about BERGONZI's unsupported entries, BERGONZI reversed roughly a third of the entries. Not to be deterred, BERGONZI replaced many of the reversals with other unsupported entries.

Bergonzi's "Resignation"

39. Dissatisfied with the lack of support for BERGONZI's entries, on Monday, June 14, 1999, several members of the Accounting Department traveled to Rite Aid's Camp Hill headquarters where they demanded a face to face meeting with BERGONZI. Upon their arrival GRASS appeased the group by announcing he had asked BERGONZI to step down as CFO, effective immediately. GRASS and Noonan also assured the accountants they would be provided support for BERGONZI's entries.

The New Acting CFO

40. Although the accountants were told BERGONZI no longer was the CFO, BERGONZI continued to work at Rite Aid headquarters on a full time basis. Eventually, on July 14, 1999, GRASS named the Company's Senior Vice President of Finance and Administration as the Acting Chief Financial Officer.

41. During the course of the Summer of 1999 the Acting Chief Financial Officer and his staff became increasingly aware of BERGONZI's unsupported accounting entries that did not comport with GAAP. At the same time, GRASS and BROWN were making a concerted effort to try and sell the Company and/or a large portion of its assets to another entity.

42. By early October the Acting Chief Financial Officer had repeatedly advised GRASS the Company needed to restate the Company's reported earnings by hundreds of millions of dollars. After the Acting Chief Financial Officer realized GRASS was not disclosing the full extent of the Company's accounting issues to the Board of Directors, Rite Aid's lenders, industry analysts, and the investing public, on October 7, 1999, the

Acting CFO secured counsel and arranged for a private meeting with the Company's Audit Committee in New York, NY. During the meeting the Acting CFO disclosed some of what he had learned about BERGONZI's bogus accounting entries. Upon the conclusion of the meeting the Board authorized the Acting CFO to hire an outside accounting firm, Ten Eyck Associates, to help him evaluate the Company's improper accounting.

43. On October 11, 1999, the Board of Directors issued a Press Release advising the Company's preliminary results for the 2nd Quarter FY 2000 indicated a \$67.9 million dollar loss. The Press Release also announced the Company intended to restate its financial statements for prior years.⁹ That day, the price of Rite Aid stock closed on the New York Stock Exchange at \$10 per share.

Grass' & Bergonzi's Departure

44. On or about October 15, 1999, the Board of Directors learned GRASS had pledged Rite Aid's PCS stock as collateral for the amended \$1.3 billion dollar line of credit without the Board's knowledge or consent. On October 18, 1999, the Company issued a Press Release announcing GRASS's resignation as Chairman of the Board and as Chief Executive Officer, and that Tim Noonan would serve as the Interim CEO. The Press Release also announced the Company expected the restatement of its FY 1997-1999 income to total, on a pre-tax basis, \$500 million. With GRASS' resignation, BERGONZI immediately ceased working at Rite Aid.

⁹The next day the Company filed the October 18, 1999, Press Release with the SEC as a Current Report (Form 8-K).

The Internal Investigation

45. At the Board's direction, in early November of 1999 KPMG's Engagement Partner interviewed nearly a dozen members of Rite Aid's accounting department regarding the Acting CFO's revelations and other accounting issues. On November 11, 1999, KPMG announced it was resigning as Rite Aid's auditor and withdrawing its opinions with respect to Rite Aid's FY 1997-1999 financial statements.

46. On December 5, 1999, Rite Aid announced a new senior executive management team, one with no previous ties to the Company, had been hired.¹⁰ That month the Board of Directors launched a massive internal investigation into the Company's accounting and financial reporting. A New York law firm (Swidler, Berlin, Shereff, & Friedman, LLP) was retained to conduct the probe. A new public accounting firm, Deloitte & Touche, LLP, was hired to replace KPMG. The forensic accounting team at Deloitte & Touche was also engaged to help review and reconstruct the Company's books and records.

The \$1.6 Billion Dollar Restatement

47. The internal investigation lasted nearly 8 months and entailed more than 80 interviews of current and former Rite Aid employees. After the results were presented to the Board, the Company filed its Annual Report for FY 2000 with the SEC on July 11, 2000. The filing included a comprehensive Restatement of Rite Aid's financial statements for FY 1998, FY 1999 and the 1st Quarter of FY 2000.

¹⁰Noonan and BROWN retired from Rite Aid employ in February of 2000.

48. The Restatement was the largest restatement of corporate income in the history of the United States. The filing fixed FY 2000 as a *\$1.133 billion loss*, FY 1999 as a *\$461.5 million loss*, and FY 1998 as a *\$165.2 million loss*. Although the Restatement did not specifically address net income for FY 1996 or FY 1997, it reduced retained earnings for all years prior to FY 1998 by an additional \$547.1 million. As such, the Restatement effectively eliminated all profits originally reported by Rite Aid between FY 1996 and the 1st Quarter of FY 2000. The following table compares the Company's originally reported net income to the July 11, 2000 Restatement:

	<i>Net Income As Originally Reported</i>	<i>Net Income (Loss) Per July 11, 2000 Restatement</i>
FY 1998	\$316.4 million	(\$165.2 million)
FY 1999	\$143.6 million	(\$461.5 million)
1 st Q FY 2000	\$81 million	(\$43.7 million)
Total	\$541 million	(\$670.5 million)

Other Crimes

49. Beyond massive accounting fraud, Rite Aid's internal investigation uncovered substantial evidence GRASS, BROWN and BERGONZI had perpetrated other offenses in the course of their scheme to manipulate the Company's earnings. Among other crimes, the investigation revealed schemes to defraud Rite Aid's vendors out of millions of dollars, schemes to defraud financial institutions, and other schemes designed to personally enrich GRASS, BROWN, and BERGONZI.

COUNT ONE

(Conspiracy, 18 U.S.C. § 371)

A. THE CONSPIRACY

1. The Introduction to this Indictment is specifically incorporated herein.

2. Beginning in March of 1995, the exact date being unknown to the grand jury, and continuing thereafter through June of 2000, within the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN L. GRASS,
FRANKLIN C. BROWN, and
FRANK M. BERGONZI,**

did knowingly and willfully combine, conspire, confederate, and agree with each other and with others, known and unknown to the grand jury, to defraud the United States and to commit offenses certain against the United States, to wit:

a) to defraud the United States by impeding, impairing, obstructing and defeating the lawful government functions of the United States Securities and Exchange Commission (SEC), an agency of the United States, in its enforcement of the federal securities laws, in violation of 18 U.S.C. § 371;

b) to make and cause to be made false, fictitious and fraudulent material statements and representations, and to falsify, conceal, and cover up material facts by trick, scheme or device in matters within the jurisdiction of the SEC, in violation of False Statements, 18 U.S.C. § 1001;

c) by the use of means and instrumentalities of interstate commerce and of the mails, to employ a device, scheme and artifice to defraud; to make untrue statements of material facts, to omit to state material facts; and to engage in acts, practices and courses of business that would operate as a fraud and deceit in connection with the purchase and sale of Rite Aid securities, in violation of Securities Fraud, 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. §240.10b-5;

d) to knowingly execute, and attempt to execute, a scheme and artifice to defraud

Rite Aid, its shareholders, and its vendors, and to obtain moneys, funds, credits, assets, and property owned by or under the control of Rite Aid's vendors, by means of false and fraudulent pretenses, representations and promises, in violation of Mail Fraud, 18 U.S.C. § 1341;

e) to knowingly transmit, and cause to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, signals and sounds, for the purpose of executing a scheme and artifice to defraud Rite Aid, its directors, its investors, and its shareholders, and for obtaining money, funds and property owned by or under the control of Rite Aid by false and fraudulent pretenses, representations and promises, in violation of Wire Fraud, 18 U.S.C. § 1343;

f) to deprive Rite Aid, its directors, its shareholders and the investing public of the intangible right to the honest services of the Chairman of the Board of Directors and the Chief Executive Officer, the President and Chief Operations Officer, the Vice-Chairman of the Board of Directors, and the Chief Financial Officer, in violation of 18 U.S.C. § §1341, 1343, and 1346;

g) to knowingly execute, and attempt to execute, a scheme and artifice to defraud federally insured financial institutions which were lending monies to Rite Aid, to obtain monies, assets, credit and securities under the custody and control of those federally insured financial institutions by means of false and fraudulent pretenses, representations and promises, in violation of Bank Fraud, 18 U.S.C. § 1344;

h) to knowingly make false statements and reports for the purpose of influencing, in any way, the action of federally insured financial institutions in loans and loan extensions, in violation of 18 U.S.C. § 1014;

i) to knowingly and willfully circumvent the system of internal financial and accounting controls of Rite Aid, in violation of 15 U.S.C. § 78m(b)(2)(B)(i)(ii), and §78m(b)(5).

j) to knowingly and willfully make materially false statements to accountants and auditors of Rite Aid, and to conceal material facts from accountants and auditors of Rite Aid in violation of 15 U.S.C. § 78ff; and 17 C.F.R. §240.13b2-2; and

k) to knowingly and willfully maintain false books and records of Rite Aid, in violation of 15 U.S.C. § §78m(b)(2)(A), 78m(b)(5), and 78ff; and 17 C.F.R. §240.13b2-1.

B. THE MANNER AND MEANS OF THE CONSPIRACY

3. The conspirators' intent and purpose was to defraud Rite Aid, its Board of Directors, its shareholders, its investors, its vendors, and its lenders. The conspirators implemented a variety of means and schemes to effectuate their illegal purpose.

The Scheme to Inflate Rite Aid's Financial Statements

4. As previously mentioned, GRASS, BROWN, and BERGONZI's portrayal of Rite Aid as a profitable company was a ruse and a mirage. The deception was accomplished through massive accounting fraud, the deliberate falsification of its financial statements, and false SEC submissions. GRASS, BROWN and BERGONZI devised, organized, and implemented the scheme, which was accomplished by understating the Company's expenses and overstating its income by hundreds of millions of dollars. BERGONZI coordinated the accounting fraud, directing and instructing less senior employees in the Rite Aid Accounting Department to make arbitrary and unsupported entries that did not comport with GAAP in the Company's books and records.

5. The conspirators employed the following techniques, among others, to falsify and inflate Rite Aid's quarterly and annual financial statements during FY 1996, FY 1997, FY 1998, FY 1999, and the 1st Quarter of FY 2000:

(a) by applying approximately \$17.5 million in fictional credits to corporate expense accounts,

(b) by applying approximately \$27.9 million in fictional credits to retail expense accounts,

(c) by making arbitrary, unsupported quarterly gross profit adjustments totaling approximately \$268.3 million,

(d) by fraudulently claiming and deducting approximately \$35.4 million in arbitrarily inflated, damaged and outdated merchandise credits against Rite Aid's vendors,

(e) by fraudulently claiming and deducting approximately \$29.7 million in additional bogus merchandise credits against Rite Aid's vendors by invoices dated February 23, 1999,

(f) by the premature recording of approximately \$75.6 million in unearned pharmaceutical rebate income,

(g) by the premature recording of approximately \$17 million income from the settlement of a lawsuit against a pharmaceutical manufacturer,

(h) by failing to record approximately \$10.6 million in Dead Deal expense,

(i) by failing to accrue approximately \$55.3 million in employee Stock Appreciation Right (SAR) expense,

(j) by improperly reversing approximately \$6.6 million in pharmaceutical Will-Call Payable expense into income,

(k) by making approximately \$13.8 million in arbitrary, unsupported reductions to Inventory Shrink expense,

(l) by making arbitrary, unsupported, retroactive extensions to the depreciable lives of fixed assets, thereby lowering depreciation expense by approximately \$14.6 million,

(m) by knowingly filing false financial statements with the SEC that materially misstated Rite Aid's true financial condition and operational results,

(n) by knowingly disseminating false earnings information via the news media that materially misstated Rite Aid's true financial condition,

(o) by knowingly providing false information and documents to Rite Aid's auditors, and

(p) by failing to disclose and by concealing other material financial information from Rite Aid's auditors.

The Upcharge

6. In order to inflate the Company's reported earnings, the conspirators devised schemes that defrauded Rite Aid's vendors. As a major retailer, Rite Aid did business with thousands of vendors and suppliers, spending billions each year on pharmaceutical and consumer goods. Rite Aid had different agreements with its vendors regarding damaged and outdated (D & O) merchandise. Most allowed Rite Aid to take a D & O deduction against future payments without returning the goods to them or a third party. These vendors relied upon Rite Aid providing a monthly statement that accurately reported the quantities of D & O product removed from Rite Aid's stores.

7. With GRASS, BROWN, and BERGONZI's knowledge, approval and direction, Rite Aid arbitrarily inflated the quantities of damaged and outdated goods it reported to its vendors. Known as the "Upcharge," the percentage of inflation was approximately 35% between FY 1995 and FY 1998. At the beginning of FY 1999 the Upcharge was increased to 50%.

8. The Upcharge was never disclosed to the vendors, who were unaware Rite Aid was systematically defrauding them. The Upcharge had a significant impact upon the Company's financial statements, allowing Rite Aid to claim and deduct approximately \$53.1 million in additional, bogus D & O credits between FY 1995 and FY 1999. More than half of that amount, \$27.8 million, was recorded on the Company's books and records during FY 1999.

The Fired Senior Vice President Settlement

9. In order to conceal the Company's vendor fraud, GRASS, BROWN and their

co-conspirators devised and implemented another scheme that defrauded Rite Aid's directors, shareholders and investors. In June of 1998 GRASS summarily fired the Senior Vice President in charge of Category Management and hired a private investigative firm to investigate his dealings with the Company's vendors. In November of 1998 the fired Senior Vice President (hereinafter referred to as the fired SVP) filed a lawsuit against Rite Aid and GRASS for damages. Initially, GRASS vigorously defended the lawsuit and refused to conduct any serious settlement negotiations.

10. However, in late January of 1999 articles appeared in the Wall Street Journal regarding allegations the fired SVP had advanced in his lawsuit about undisclosed GRASS family interests in companies that did business with Rite Aid. Then, in late February of 1999, GRASS and BROWN learned the fired SVP was threatening to tell the media about Rite Aid's damaged and outdated good Upcharge.

11. In order to silence the fired SVP, GRASS and BROWN quickly settled the lawsuit. Although GRASS submitted the proposed settlement to the Board of Directors for approval, GRASS misrepresented the results of the Company's investigation of the fired SVP to the Board. The settlement agreement paid the fired SVP \$3 million on March 1, 1999, another \$3 million on March 1, 2000, followed by \$335,000 for the next 15 years, making the total value of the agreement worth more than \$11 million.¹¹

12. In exchange, the fired SVP pledged "not to communicate to anyone in any form, written, oral or otherwise, any information concerning the business, practices,

¹¹ GRASS contributed no funds towards the settlement.

policies, actions or conduct of Rite Aid.” The terms specified that if the fired SVP ever breached his promise, Rite Aid would be relieved of making any further payments. The agreement also required the fired SVP to sign a letter declaring he did not know of “any business policy or practice of Rite Aid’s which violated ... any law,” which GRASS and BROWN disseminated to the news media.

The February 23, 1999, Chargebacks

13. In late February of 1999, just before the close of FY 1999, GRASS, BROWN, BERGONZI and their co-conspirators devised yet another scheme by which to inflate Rite Aid’s earnings by defrauding its vendors. During the summer of 1998 the Company decided to discontinue carrying a large quantity of goods, much of which were acquired in the Thrifty Payless acquisition. Known as non-go-forward product, the goods were sold at substantial markdowns in clearance-type sales.

14. Despite the fact there were no prior vendor agreements in place for sharing the markdown costs, GRASS, BROWN, BERGONZI and their co-conspirators caused Rite Aid’s Category Management and Accounts Payable departments to invoice the vendors for the Company’s lost income. However, the invoices, all of which were dated February 23, 1999, falsely described the Chargebacks as deductions for damaged and outdated goods and reset merchandise. Moreover, the amount charged each vendor was merely estimated as a percentage of that vendor’s annual sales. As a result, \$29.7 million in additional bogus vendor credits were booked as income for FY 1999.

The Loan Guarantees

15. GRASS and BROWN also defrauded the Company by perpetrating a scheme that required Rite Aid to pay-off two loans totaling \$7.5 million. The short-term loans were made by Nations Bank to Rite Aid's Senior Executive Vice President in charge of Marketing and her husband in July of 1998 and May of 1999. Nations Bank only agreed to make the loans on the condition Rite Aid guaranteed payment. Knowing the Board of Directors would not approve the guarantees, BROWN executed the loan guarantees at GRASS' direction without the Board's knowledge or consent. BROWN caused bogus Certificates of Excerpts from Minutes to be prepared that falsely represented that BROWN had authorization from the Board of Directors to execute the guarantees. As a result, Rite Aid was compelled to pay-off both loans when they came due in April and June of 2000. At that time, neither GRASS, BROWN, nor the Senior Executive Vice President for Marketing were employed by the Company. GRASS and BROWN also failed to disclose the loan guarantees in Rite Aid's 1999 Proxy Statement, as required by the SEC.

The False Finance Committee Minutes

16. GRASS and his co-conspirators also defrauded Rite Aid, its directors, its stockholders, the investing public, and various financial institutions via other fraudulent conduct. In late September of 1999 Rite Aid needed \$800 million in interim financing because the Company had breached debt to earnings ratio covenants in its existing \$1.3 billion line of credit. The financial institutions with whom GRASS was negotiating agreed to lend Rite Aid the \$800 million and to waive the covenant violations, but only if Rite Aid pledged its PCS stock as collateral for the new financing. Not wanting to disclose the full

extent of Rite Aid's severe financial difficulties to the Board of Directors or the investing public, on September 24, 1999, GRASS caused bogus Minutes to be prepared by another corporate officer that falsely represented that the Board's Finance Committee had authorized GRASS to pledge the PCS stock. After GRASS executed the bogus Minutes he submitted them to the banks. Thereafter, GRASS failed to disclose the PCS pledge in subsequent meetings with the Board of Directors and Wall Street analysts.

The Annual Bonuses

17. The conspiracy to falsify Rite Aid's financial statements and defraud the Company's investors personally enriched the defendants. As a result of the false earnings reported by the defendants, GRASS, BROWN and BERGONZI were awarded annual bonuses by the Compensation Committee for FY 1996, FY 1997, and FY 1998 totaling more than \$4 million. Had the Company's true earnings been revealed, no bonuses would have been paid under Rite Aid's Annual Bonus Plan.

The 83 Acre, \$2.6 Million, CCA Associates Scheme

18. GRASS, BROWN, and BERGONZI further defrauded Rite Aid, its stockholders, and the investing public by participating in multi-million dollar, undisclosed related party transactions. While GRASS served as Chief Executive Officer of Rite Aid, GRASS and GRASS' brother-in-law, Tim Harrison, owned and operated a commercial real estate business known as Harrison & Grass in Lemoyne, PA. The business consisted of several different entities, one of which was CCA Associates, Inc (CCA). Martin GRASS and Tim Harrison were CCA's sole shareholders, each owning 50% (10 shares) of

the company. In 1997 CCA entered into a contract to purchase 83 acres of real estate in Fairview Township, York County, PA. The amended contract specified that if CCA did not purchase the property for \$1.8 million by January 31, 1998, CCA would forfeit its \$245,000 deposit.

19. On January 29, 1998, GRASS, BROWN and BERGONZI caused \$2.6 million to be wired from a Rite Aid account in New York to a CCA account in Harrisburg. \$1.8 million of the \$2.6 million was used to complete the real estate purchase and deed the 83 acres in CCA's name. A closing document falsely identified Harrison as the *sole* shareholder of CCA.

20. The remainder of the funds, approximately \$813,000, was used to pay-off Harrison & Grass debts and business expenses. No contracts, loan agreements, or other documents were executed by Tim Harrison regarding the \$2.6 million. To the Company's present knowledge, no contracts, loan agreements, or other documents were executed by Rite Aid regarding the \$2.6 million. Moreover, the transaction was concealed and not publicly disclosed by GRASS as a related party transaction, as required by the SEC.

21. Over the course of the next year GRASS spent another \$1.4 million in Company money developing the site as a new corporate headquarters for Rite Aid. In late January of 1999, after GRASS was questioned about the 83 acres by a reporter from the Wall Street Journal and an article appeared in that newspaper regarding undisclosed GRASS family interests in companies that did business with Rite Aid, the Board of Directors initiated an internal investigation into the allegations. In order to conceal Rite

Aid's transfer of the \$2.6 million to CCA, on February 3, 1999, GRASS secretly reimbursed the Company by wiring \$2.9 million of his personal funds to Rite Aid's New York account. GRASS also submitted an affidavit to the Board of Directors in which he falsely claimed he did not have any business dealings with Rite Aid.¹²

22. On February 19, 1999, when a second Wall Street Journal article speculated whether Rite Aid intended to build a new corporate headquarters on land owned by GRASS and his brother-in-law, the Board of Directors summoned GRASS to New York to respond to the article. During the meeting GRASS concealed the fact he had used \$2.6 million of Rite Aid's money to acquire the 83 acres in CCA's name, that he had only recently refunded the Company with \$2.9 million of his own money, and gave the Board a false report indicating the Company had only spent \$184,799 on due diligence for the site.

The LTIP I Payments

23. In July of 1999 GRASS and BROWN instructed the Acting CFO to pay four Rite Aid officers LTIP I awards totaling \$5,118,176. The letters notifying the recipients of their awards indicated the Company's earnings between FY 1996 and FY 1999 entitled LTIP I participants to 73 % of the maximum number of shares. At \$25.04 per share (the average closing price for the 30 day period following the Company's March 29, 1999, earnings announcement), the payments to the four officers totaled \$5.1 million.

24. The awards were based upon the fraudulently inflated earnings figures

¹²Other than that set forth in a Current Report (Form 8-K) filed by the Company with the SEC on February 9, 1999, which did not contain any disclosure about CCA Associates, the \$2.9 million, or the 83 acres.

reported for FY 1996- FY 1999, which GRASS, BROWN and BERGONZI knowingly misstated to Rite Aid's Board, its shareholders, and the investing public. If the Company had reported its true earnings for that period, no awards would have been earned under the LTIP I plan by any participant and the \$5.1 million would not have been paid.

The Enhanced LTIP I Payout Scheme

25. BROWN and GRASS also attempted to defraud Rite Aid and its shareholders by devising a scheme that would have doubled the number of shares awarded them under the Company's LTIP I plan. In the Spring of 1998 BROWN directed an employee to prepare what purported to be a Summary of a March 5, 1995, Compensation Committee meeting and back-dated April 6, 1995, LTIP I award letters to GRASS, Noonan, and BROWN. GRASS and BROWN then caused the signature of a member of the Compensation Committee to be placed on the Meeting Summary and the award letter addressed to GRASS. GRASS signed Noonan's back-dated April 6, 1995, award letter. Copies of the back-dated Committee Meeting Summary were then delivered to Noonan and an Executive Vice President by BROWN. BROWN also delivered Noonan's, back-dated April 6, 1995, award letter to Noonan.

26. The documents significantly altered the terms of the LTIP I plan as it was originally described by Rite Aid's 1996 Proxy Statement. The back-dated modifications lowered the maximum EPS payout requirement for GRASS, BROWN, Noonan, and BERGONZI from 12.5% to 12% and inserted a previously non-existent, stock price multiplier provision. The multiplier provision incrementally increased the number of

shares that could be earned by GRASS, Noonan, BROWN and BERGONZI as the 30 day average price of Rite Aid stock exceeded \$27.50, and doubled the shares if the 30 day average price reached \$37.50. The back-dated LTIP I modifications were not approved by the Company's Board of Directors and were not disclosed in any Proxy Statement, as required by the SEC.

27. At the time the back-dated LTIP I documents were created by BROWN the 30 day average price of Rite Aid stock was already more than \$33 a share and reached \$37.50 three months later on July 15, 1998. If the same pay-out criteria were applied to GRASS, BROWN and BERGONZI as the four other LTIP I recipients (73% of maximum shares @ \$25.04/share), the bogus multiplier provision would have meant LTIP I pay-outs of \$10.9 million for both BROWN and BERGONZI (438,000 shares instead of 219,000 shares), and \$36.5 million for GRASS (1,460,000 shares instead of 730,000 shares).

28. Although no LTIP I payments were made to GRASS, BROWN, or BERGONZI during the Summer of 1999, in early 1999 GRASS and BROWN directed a Philadelphia, PA law firm to devise a stock award deferral plan and deferral election forms. The documents afforded GRASS, BROWN, and BERGONZI the option to defer receipt of their 1999 LTIP I awards to subsequent years.

Bergonzi's Employment Agreement

29. Another scheme designed by GRASS and BROWN to conceal the accounting fraud also had the intended effect of fraudulently enriching their co-conspirator, FRANK BERGONZI. After GRASS resigned on October 18, 1999, BROWN reported that he had

discovered a letter at Rite Aid headquarters from GRASS to BERGONZI dated June 14, 1999. The one page letter granted BERGONZI continued Rite Aid employment as a consultant through June 30, 2002 at \$525,000 per year with bonuses totaling \$375,000.

30. Later, in March of 2000 the Company received a copy of an Employment Agreement dated June 15, 1999, from BERGONZI's lawyer. The Agreement, which had been executed by GRASS, continued BERGONZI's employment at Rite Aid as a "senior level consultant" at \$525,000/year from June of 1999 until his retirement on December 31, 2002. As such, the Agreement afforded BERGONZI a \$80,000 increase to his \$445,000/year salary. The Agreement also paid BERGONZI \$375,000 in "non-contingent bonuses" through December 31, 2002, and upon retirement deferred compensation benefits of \$495,000 a year *for life*, with a guaranteed minimum 20 years' payment.¹³ The Agreement also gave BERGONZI and his wife lifetime medical benefits, 6 years paid life insurance, and the right to participate in future LTIP payments. More importantly, the Agreement gave BERGONZI an unqualified release from liability for any and all claims stemming from his employment. The release was significant because in March of 1999 Rite Aid had been sued by its shareholders for accounting fraud and the Company had a claim against BERGONZI for breach of his fiduciary duties.

31. In exchange, BERGONZI agreed not to disclose any "confidential information" to third parties and to be "available on reasonable notice at any time to render consultation at the request of Rite Aid's Chief Executive Officer at Camp Hill, Pa." until

¹³ The agreement provided for inflation adjusted payments every 4 years.

his retirement. GRASS did not seek nor obtain Board of Director approval for BERGONZI's Employment Agreement and gave BERGONZI the release from liability over the objections of corporate counsel.

Brown's Severance Letter & Deferred Compensation Agreement

32. It was further a part of the conspiracy and the scheme and artifice to defraud that GRASS would enrich his co-conspirator, FRANKLIN C. BROWN. After GRASS' resignation the Company learned in January of 2000 that GRASS had given BROWN an "Amended and Restated Deferred Compensation Agreement" dated October 23, 1996, which paid BROWN's wife or her designated beneficiary an annual benefit equal to 60% of BROWN's highest annual salary and bonus (\$502,500) for the rest of *her* life, or 20 years, whichever was longer. The agreement contained a "gross up" feature that had the potential to double BROWN's deferred compensation benefits in the event there was a change in control of Rite Aid.

33. The Company also learned in January of 2000 that GRASS had given BROWN a one page letter dated May 6, 1998, that, in addition to his enhanced deferred compensation benefits, granted BROWN a lump sum severance payment equal to 3 times his highest annual salary and bonus (\$2,512,500). The letter specified the severance payment also was subject to "gross up" as outlined in BROWN's Deferred Compensation Agreement.¹⁴ Among other benefits, the letter vested all stock options held by BROWN at

¹⁴ The "gross-up" feature obligated Rite Aid to pay an additional amount equal to BROWN's taxes on the \$2.5 million so BROWN's net receipt *after* taxes would be \$2.5 million.

the time of his separation and afforded Brown or his estate the right to exercise the options for 3 years after his retirement. Both the May 6, 1998, letter and the October 23, 1996 Amended and Restated Deferred Compensation Agreement obligated Rite Aid to maintain a \$1.5 million life insurance policy on BROWN's life.¹⁵ Contrary to SEC requirements, none of the benefits provided BROWN by these documents were disclosed in Rite Aid's 1997-1999 Proxy Statements.

The Back-dated Severance Letters

34. During the Summer of 1999, as Rite Aid's finances began to fail and GRASS endeavored to sell the Company, GRASS gave highly lucrative, back-dated severance and enhanced deferred compensation benefit letters to several officers. This aspect of the fraud against the Company did not end with GRASS' resignation. Sometime *after* October 18, 1999, GRASS and BROWN prepared at least 3 letters bearing GRASS's signature on Rite Aid letterhead and caused them to be delivered to Tim Noonan, Eric Sorkin, and another Rite Aid employee. These letters, which were back-dated to dates when GRASS was the Company's CEO, granted the recipients millions in enhanced severance and deferred compensation benefits.

C. OVERT ACTS IN FURTHERANCE OF THE CONSPIRACY

35. In furtherance of the Conspiracy and to effect its unlawful objects, the following overt acts, among others, were committed by the defendants and their coconspirators in the Middle District of Pennsylvania and elsewhere:

¹⁵ The approximate annual cost to Rite Aid was \$18,282.

36. In May of 1996 BERGONZI directed a subordinate in Rite Aid's Accounting Department to make approximately \$4.9 million in unsupported credit entries to 11 corporate expense accounts.

37. In August of 1996 BERGONZI directed a subordinate to make approximately \$21 million dollars in unsupported credit entries to 17 retail expense and cost of goods sold accounts.

38. In May and June of 1997 BERGONZI caused subordinates to inflate the Company's gross profit by improperly reducing accounts payable and cost of goods sold accounts by approximately \$25.3 million. BERGONZI also recorded bogus vendor Upcharge credits and failed to record Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions inflated the Company's reported pretax income for the 1st Quarter of FY 1998 by approximately \$31.3 million.

39. On or about June 2, 1997, GRASS and BROWN caused the Company to file its 1997 Proxy Statement with the SEC, which said Report failed to disclose BROWN's Amended & Restated Deferred Compensation Agreement dated October 26, 1996.

40. In August and September of 1997 BERGONZI caused subordinates to inflate the Company's gross profit by improperly reducing accounts payable and cost of goods sold accounts by approximately \$26.2 million. BERGONZI also recorded bogus vendor Upcharge credits, eliminated previously recorded retail expenses, and failed to record Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions inflated the Company's reported pretax income for the 2d Quarter of FY 1998 by approximately \$40.5

million.

41. In November and December of 1997 BERGONZI caused subordinates to inflate the Company's gross profit by improperly reducing accounts payable and cost of goods sold accounts by approximately \$5.9 million. BERGONZI also recorded bogus vendor Upcharge credits, eliminated previously recorded retail expenses, and failed to record Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions inflated the Company's reported pretax income for the 3rd Quarter of FY 1998 by approximately \$16.0 million.

42. On January 28, 1998, GRASS, BROWN and BERGONZI caused \$2.6 million in Rite Aid funds to be wired from a Rite Aid account in New York, NY to a CCA Associates, Inc. account at the Dauphin Deposit Bank in Harrisburg, PA.

43. With GRASS' and BERGONZI's knowledge and authorization, in March of 1998 the Upcharge inflation percentage on damaged and outdated good returns was increased from 35% to 50%.

44. On or about March 24, 1998, BROWN instructed a Rite Aid employee to prepare what purported to be a letter from a member of the Compensation Committee to GRASS. The letter, which was back-dated to April 6, 1995, doubled GRASS' maximum LTIP I award from 1 million to 2 million shares if the 30 day average price of Rite Aid stock reached \$37.50. At the time the back-dated letter was generated, the 30 day average exceeded \$33. GRASS and BROWN then caused the Compensation Committee member's signature to be placed on the letter.

45. On or about March 24, 1998, and April 6, 1998, BROWN instructed the same employee to prepare what purported to be a Summary of a March 5, 1995, Compensation Committee meeting and LTIP I award letters from GRASS to Noonan, BROWN and BERGONZI dated April 6, 1995. The back-dated documents raised the minimum LTIP I payout from 20% to 40% of the targeted shares and lowered the maximum payout requirement from 12.5% to 12% average annual EPS growth. The documents also contained a previously non-existent stock price multiplier that incrementally increased the number of shares awarded as the 30 day average of Rite Aid stock exceeded \$27.50, with a maximum 200% payout at \$37.50. At the time the back-dated documents were generated, the 30 day average of Rite Aid stock exceeded \$33. BROWN then delivered some of the back-dated documents to Noonan and an Executive Vice President. Approximately one week later, on or about April 15, 1998, BROWN gave the employee who generated the back-dated LTIP documents \$25,000 to purchase an automobile.

46. On or about April 14, 1998, GRASS and BERGONZI executed a six page letter in which they made a series of false representations to KPMG, including that they had made all of the Company's financial records available to KPMG, that there were no undisclosed related party transactions, and that there were no instances of fraud that could have a material effect on the Company's financial statements.

47. On or about May 8, 1998, during a meeting of Rite Aid's Compensation Committee, BERGONZI certified the Company's false and inflated earnings that were publicly reported for FY 1998. As a result, the Committee approved the payment of FY

1998 bonuses totaling \$1.5 million to GRASS, BROWN, and BERGONZI.

48. On or about May 11, 1998, GRASS executed a FY 1998 Proxy Statement Questionnaire in which he falsely denied he had any interest in any business transaction with Rite Aid and failed to disclose Rite Aid's January 28, 1998, transfer of \$2.6 million to CCA Associates.

49. On or about May 15, 1998, GRASS and BROWN caused the Company to file Rite Aid's 1998 Proxy Statement with the SEC, which said Report failed to disclose 1) BROWN's Amended & Restated Deferred Compensation Agreement dated October 26, 1996, 2) Rite Aid's January 29, 1998, \$2.6 million payment to CCA Associates, Inc., and 3) GRASS' letter dated May 6, 1998, granting BROWN enhanced severance and retirement benefits.

50. Sometime prior to May 19, 1998, BERGONZI caused subordinates to arbitrarily and retroactively lengthen the depreciable lives of fixed assets, which had the effect of lowering the Company's FY 1998 depreciation expense by approximately \$14.6 million. BERGONZI also caused subordinates to record approximately \$7.6 million in bogus vendor Upcharge credits and failed to record approximately \$22.1 million in Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions inflated the Company's reported pre-tax income for FY 1998 by approximately \$44.3 million.

51. On or about May 19, 1998, GRASS, BROWN, and BERGONZI signed Rite Aid's Annual Report for FY 1998 and caused it to be filed with the SEC, which said Report falsely inflated the Company's reported pretax income for that year by approximately \$44.3

million.

52. In May and June of 1998 BERGONZI caused Rite Aid employees to inflate the Company's gross profit by improperly reducing accounts payable and cost of goods sold accounts by approximately \$47.1 million. BERGONZI also recorded bogus vendor Upcharge credits, eliminated previously recorded retail expenses, and failed to record Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions inflated the Company's reported pretax income for the 1st Quarter of FY 1999 by approximately \$63.0 million.

53. Without authorization from the Board of Directors, on or about July 2, 1998, BROWN executed documents guaranteeing Rite Aid's payment of a \$2.5 million loan made by Nations Bank to a Rite Aid Executive Vice President and her husband.

54. On or about July 20, 1998, BROWN caused a Rite Aid officer to execute a false Certification that BROWN was authorized by the Board of Directors during an October 8, 1997, Board meeting to execute the \$2.5 million Rite Aid loan guarantee.

55. On or about July 21, 1998, GRASS and BROWN caused subordinates to issue a \$75,750 Rite Aid check, the proceeds of which were used to remove utility easements on CCA Associates' 83 acres of real estate in Fairview Township, York County, Pennsylvania.

56. In August and September of 1998 BERGONZI caused subordinates to inflate the Company's gross profit by improperly reducing accounts payable and cost of goods sold accounts by approximately \$100.4 million. BERGONZI also recorded bogus vendor

Upcharge credits, eliminated previously recorded retail expenses, and failed to record Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions inflated the Company's reported pretax income for the 2nd Quarter of FY 1999 by approximately \$132.8 million.

57. In November and December of 1998 BERGONZI caused subordinates to inflate the Company's gross profit by improperly reducing accounts payable and cost of goods sold accounts by approximately \$39.6 million. BERGONZI also recorded bogus vendor Upcharge credits, eliminated previously recorded retail expenses, and failed to record Stock Appreciation Right (SAR) expense. All together, BERGONZI's actions improperly inflated the Company's reported pretax income for the 3rd Quarter of FY 1999 by approximately \$70.2 million.

58. In December of 1998 BERGONZI refused the repeated requests of a Rite Aid subordinate to increase an arbitrary \$250,000 per month cap on "Dead Deal" expense. At the time, BERGONZI was aware there was an approximate \$9 million back-log in "Dead Deal" expense that had not been written-off on the Company's books and records.

59. On January 13, 1999, GRASS promoted BERGONZI from Executive Vice President and Chief Financial Officer to Senior Executive Vice President and Chief Financial Officer.

60. In January and February of 1999 BERGONZI caused the Company's Corporate Comptroller and other accounting subordinates to improperly defer approximately \$13.8 million in FY 1999 inventory shrink expense to FY 2000.

61. In late January of 1999 BERGONZI told GRASS, Noonan, and BROWN the Company was approximately \$100 million short of expected 4th Quarter FY 1999 earnings. GRASS declined Noonan's suggestion to make up the deficit by reducing expenses, opting instead to try and make up the shortfall by negotiating litigation settlement and rebate agreements with pharmaceutical manufacturers.

62. On or about January 22, 1999, during an interview with the Wall Street Journal, GRASS told the reporter that the fired SVP's allegations of undisclosed Grass family interests in companies that did business with Rite Aid were "slanderous" and "full of crap," and that the fired SVP was merely trying to pressure the Company for money after having been terminated for poor performance. When asked whether Rite Aid intended to build a new corporate headquarters on the 83 acres owned by GRASS and his brother-in-law (CCA Associates, Inc.), GRASS claimed the site "has nothing to do with Rite Aid" and "I don't do business with Rite Aid."

63. On February 3, 1999, with BERGONZI's knowledge and participation, GRASS caused \$2.9 million in personal funds to be wired to a Rite Aid Account in New York, NY.

64. On February 9, 1999, BERGONZI and GRASS sequentially met with the Company's Corporate Comptroller and solicited his assistance in manipulating the Company's financial and accounting records. During the meetings BERGONZI told the Comptroller they were "going to have to get dirty." Although BERGONZI offered the Comptroller a \$20,000 raise, the next day he told BERGONZI he could not do what

BERGONZI asked and he was taking a stress-related medical leave.

65. On February 9, 1999, GRASS caused Rite Aid to file a Current Report (Form 8-K) with the SEC, which reported that the Company's internal review concluded Martin GRASS had no previously undisclosed business relationships with the Company. The filing concealed and did not disclose Rite Aid's January 29, 1998, \$2.6 million transfer to CCA Associates, Inc. or GRASS' February 3, 1999, \$2.9 million refund.

66. On February 10, 1999, GRASS submitted a sworn Certification to Rite Aid's Board of Directors which falsely represented that, other than that described by the February 9, 1999, Current Report (Form 8-K), GRASS did not have any business dealings with Rite Aid.

67. By invoices dated February 23, 1999, GRASS, Noonan, BROWN and BERGONZI caused approximately \$29.7 million in bogus Chargebacks to be invoiced against Rite Aid's vendors and recorded as income on the Company's books and records. Ostensibly taken for revenues lost in clearance-type markdown sales, the invoices falsely described the deductions as credits for damaged/outdated goods and reset merchandise.

68. By memorandum dated February 25, 1999, to the Board of Directors, GRASS misrepresented the results of the Company's investigation of the fired SVP and recommended the lawsuit be settled for \$11 million in exchange for the fired SVP's promise not to reveal any information regarding Rite Aid's business practices.

69. On February 26, 1999, GRASS and BROWN executed the fired SVP's \$11 million litigation settlement and non-disclosure agreement.

70. On February 26, 1999, GRASS signed and initialed letters of intent from two pharmaceutical manufacturers, Bristol Meyers Squib (BMS) and Zeneca, to enter into negotiations for new pharmaceutical product purchase and rebate agreements with Rite Aid, copies of which were provided to BROWN and BERGONZI.

71. On February 27, 1999, the last day of FY 1999, BERGONZI caused subordinates to improperly record \$13 million in unearned BMS rebates and \$29.6 million in unearned Zeneca rebates as 4th Quarter FY 1999 income. The rebates were unearned because the February 26, 1999, letters of intent explicitly provided the rebates were contingent upon 1) Rite Aid negotiating new pharmaceutical purchase and rebate agreements with BMS and Zeneca, 2) Rite Aid maintaining required BMS/Zeneca product market shares in the future, and 3) with respect to the BMS rebates, execution by Rite Aid and BMS of a definitive price-fixing, litigation settlement agreement. In order to conceal the improper entries, GRASS, BROWN and BERGONZI withheld the existence of the February 26, 1999, letters of intent from KPMG.

72. In March of 1999, against the advice of Rite Aid's General Counsel, BERGONZI reversed a \$6.6 million, Will-Call Payable expense accrual for pharmaceutical products into FY 1999 income. In order to conceal the reversal from the Rite Aid employee with the responsibility for monitoring the accrual, BERGONZI created a fictitious "contra-account" in the Company's books and records.

73. Pursuant to the settlement agreement, on March 1, 1999, BROWN interrogated the fired SVP as to what he had told newspaper reporters about Rite Aid's

damaged and outdated goods Upcharge in the offices of the Harrisburg lawyer that represented Rite Aid and GRASS in the fired SVP's lawsuit. Later that same day GRASS and BROWN disseminated a Press Release containing a quote from a letter the fired SVP gave GRASS as part of the settlement agreement. The letter falsely averred the fired SVP "did not know of any business policy or practice of Rite Aid's which violated (high standards of honesty and integrity) or any law."

74. On or about March 9, 1999, when the Company's Corporate Comptroller returned to work from medical leave, BERGONZI reassigned him from the Accounting Department at Valley Green to projects that did not involve KPMG personnel or the FY 1999 audit.

75. On March 11, 1999, BERGONZI called GRASS and Noonan in Kentucky and told them the Company was still \$100 million short of projected 4th Quarter FY 1999 earnings. That same day BERGONZI directed subordinates to reopen the Company's Accounts Payable system (something that never had been done before) and record another \$33 million in unearned BMS pharmaceutical rebate credits as 4th Quarter FY 1999 income.

76. On March 12, 1999, GRASS and BERGONZI issued a Press Release in which they estimated Rite Aid's 4th Quarter FY 1999 earnings were \$.30 to \$.32 per share, which was approximately \$.20 per share lower than the Wall Street (First Call Consensus) estimate of \$.52 per share.

77. On or about March 21, 1999, BERGONZI caused \$17 million from the purported settlement of a price-fixing lawsuit against BMS to be recorded in the

Company's books and records as 4th Quarter FY 1999 income. The entry was improper because GRASS, BROWN and BERGONZI had received a February 26, 1999, letter of intent from BMS specifying the litigation settlement was contingent, among other things, upon Rite Aid negotiating a new pharmaceutical purchase and rebate agreement with BMS.

78. When KPMG requested documentary support for BERGONZI's \$17 million BMS litigation settlement entry, BROWN caused the Harrisburg lawyer (who also represented Rite Aid in the BMS lawsuit) to send BROWN a letter dated March 25, 1999. The letter represented that Rite Aid had "reached a settlement agreement with BMS on February 26, 1999." However, the letter acknowledged that only drafts of a definitive settlement agreement had been exchanged and the agreement had not yet been signed. Thus, BROWN did not provide it to KPMG as support for BERGONZI's \$17 million dollar entry.

79. On March 25, 1999, KPMG's Engagement Partner called the Harrisburg lawyer, inquiring as to the results of BROWN's March 1, 1999, "debriefing" of the fired SVP. The Harrisburg lawyer told the Engagement Partner it failed to reveal any matter "that would affect the Company beyond its original (February 9, 1999, SEC Form 8-K) disclosure."

80. During a March 26, 1999, conference call with KPMG and the Chairman of Rite Aid's Audit Committee, GRASS and BERGONZI concealed the fact that BMS' February 26, 1999, letter of intent specified the BMS litigation settlement was contingent, among other things, upon Rite Aid and BMS negotiating a new pharmaceutical purchase

and rebate agreement.

81. On March 28, 1999, BERGONZI met with KPMG's Engagement Partner and another KPMG manager. The meeting addressed, among other issues, the lack of documentary support for BERGONZI's \$17 million BMS litigation settlement entry.

82. On March 29, 1999, GRASS and BERGONZI caused the Company to issue a Press Release which falsely reported Rite Aid's 4th Quarter earnings were \$.28 per share and FY 1999 net income was \$158 million.

83. On March 31, 1999, in response to an article that appeared in the Wall Street Journal that day about the February 23, 1999, Chargebacks, GRASS and BERGONZI conducted a conference call with drug store industry analysts. During the call GRASS and BERGONZI falsely represented that Rite Aid's vendor deductions and returns were consistent with industry norms. GRASS and BERGONZI also issued a Press Release declaring, "Vendor deductions and chargebacks have only a minimal impact on our financial results in any quarter, and credits for damaged or unused goods have no impact."

84. During a April 7, 1999, Audit Committee meeting in New York, NY, BERGONZI falsely assured the Committee and KPMG there was support for his \$17 million BMS litigation settlement entry and concealed the fact he had a copy of the February 26, 1999, BMS letter of intent which specified the litigation settlement was contingent, among other things, upon Rite Aid and BMS negotiating a new pharmaceutical purchase and rebate agreement.

85. On April 16, 1999, GRASS reassigned the Company's Corporate Comptroller

to a new Internet position that had no FY 1999 audit or corporate accounting responsibilities.

86. On or about April 17, 1999, GRASS executed a FY 1999 Proxy Statement Questionnaire in which he concealed and failed to disclose his \$2.9 million transfer of personal funds to Rite Aid on February 3, 1999.

87. Without authorization from the Board of Directors, on or about May 7, 1999, BROWN executed documents guaranteeing Rite Aid's payment of a \$5 million loan made by Nations Bank to a Rite Aid Senior Executive Vice President and her husband.

88. On or about May 10, 1999, BROWN executed a FY 1999 Proxy Statement Questionnaire in which he concealed and failed to disclose the enhanced severance and retirement benefits conferred him by GRASS' letter dated May 6, 1998.

89. On or about May 18, 1999, BROWN caused a subordinate in Rite Aid's legal department to execute a Certification that falsely represented BROWN had been authorized by Rite Aid's Board of Directors to execute the \$5 million loan guarantee during an April 7, 1999, Board meeting.

90. On May 18, 1999, GRASS caused Eric Sorkin, Vice President in charge of Pharma Purchasing, to execute the BMS pharmaceutical purchase and rebate agreement.

91. On or about May 20, 1999, BROWN caused the Harrisburg lawyer to prepare a second letter regarding the BMS litigation settlement, this one stating Rite Aid entered into a "definitive, *enforceable* settlement agreement with BMS on February 26, 1999." (emphasis supplied). At BROWN's request, the Harrisburg lawyer back-dated the letter to

May 11, 1999.

92. On or about May 22, 1999, GRASS telephoned KPMG's Engagement Partner and told him "skeletons would come out of KPMG's closet" if Rite Aid suffered as a result of the FY 1999 audit.

93. On or about May 24, 1999, BROWN caused the Harrisburg lawyer to send him a third letter, this one declaring the BMS litigation settlement was "final, binding and enforceable" as of February 26, 1999, and that the proceeds of the settlement (\$16,800,100) had already been disbursed to Rite Aid. The Harrisburg lawyer's letter concealed the fact the disbursement only took place on May 20, 1999, *after* the new Rite Aid - BMS pharmaceutical purchase and rebate agreement had been executed on May 18, 1999. The letter also concealed the fact BMS did not execute the litigation settlement agreement until May 20, 1999.

94. Upon receipt of the Harrisburg lawyer's May 24, 1999, letter, BROWN and BERGONZI faxed it to KPMG. However, neither the May 20, 1999 litigation settlement nor the May 18, 1999 pharmaceutical purchase and rebate agreement were ever provided to KPMG. As a result, KPMG approved BERGONZI's recording of the \$17 million as 4th Quarter FY 1999 income.

95. On May 26, 1999, GRASS participated in a conference call with the Company's Audit Committee and KPMG regarding the lack of documentary support for BERGONZI's accounting entries.

96. On May 27, 1999, BERGONZI traveled to New York, NY and defended his

FY 1999 accounting entries during an Audit Committee meeting with KPMG.

97. During the course of KPMG's FY 1999 audit, BERGONZI repeatedly lied to KPMG's Engagement Partner about the existence of the Company's Stock Appreciation Right (SAR) plan and concealed the fact that the Company had an obligation to pay its mid-level, field managers \$33.2 million in accrued but unrecorded FY 1999 SAR expense.¹⁶ BERGONZI also lied to KPMG's Engagement Partner about the Company's obligation to pay the \$6.6 million in Will Call Payable expense and caused Noonan to falsely substantiate BERGONZI's misrepresentations.

98. On or about May 28, 1999, GRASS and BERGONZI submitted a nine page letter to KPMG in which they made a series of false representations, including that they had made all of the Company's financial records available to KPMG, that there were no undisclosed related party transactions, no undisclosed corporate loan guarantees, that the Company had not granted any stock appreciation rights, and there were no instances of fraud that could have a material effect on the Company's financial statements.

99. During May and June of 1999, due to insufficient funds in the Company's checking accounts, BERGONZI instructed Rite Aid's Treasurer to hold and not mail checks payable to the Company's vendors

100. Sometime prior to June 1, 1999, BERGONZI failed to record approximately

¹⁶On October 2, 1995, GRASS and Noonan executed letters granting Stock Appreciation Rights (SAR) to hundreds of Rite Aid field managers. The letters promised to pay the mid-level managers the difference between the price of Rite Aid stock on May 5, 1995 (\$11.88/share) and May 5, 1999. As a result, in August of 1999 the Company paid approximately \$22 million in SAR awards to the managers.

\$10.6 million in “Dead Deal” expense and \$33.2 million in Stock Appreciation Right (SAR) expense for FY 1999. BERGONZI also caused subordinates to record approximately \$27.8 million in bogus vendor Upcharge credits for FY 1999.

101. On or about June 1, 1999, GRASS, BROWN, and BERGONZI signed Rite Aid’s Annual Report for FY 1999 and filed it with the SEC, which said Report falsely inflated the Company’s reported pretax income for that year by approximately \$214.3 million.

102. On or about June 4, 1999, GRASS and BROWN caused Rite Aid to issue its FY 1999 Proxy Statement which falsely represented that GRASS “did not and does not participate in the approval of real estate proposals submitted and recommended by the Company’s real estate professionals in instances in which a related party or any person with whom he has business relationships is involved.”

103. At approximately 8:00 pm, on Thursday, June 10, 1999, BERGONZI faxed instructions to a subordinate to make unsupported entries that artificially inflated the Company’s 1st Quarter FY 2000 earnings by approximately \$97.8 million.

104. Friday morning, June 11, 1999, the Company’s Senior Vice-President of Finance and the Acting Retail Comptroller confronted BERGONZI at corporate headquarters and told him they would not allow the \$97.8 million to remain on the books unless BERGONZI provided support. BERGONZI told the duo support for more than half of the entries would be “problematic” and the Company would have to file for bankruptcy if the entries did not stand. Later that same day GRASS called Noonan, who was on

vacation in North Carolina, and told him the Acting Retail Comptroller was refusing to use BERGONZI's "plug" number.

105. On June 11, 1999, GRASS executed the Rite Aid - Zeneca pharmaceutical purchase and rebate agreement at Zeneca's headquarters in Wilmington, Delaware. The agreement was never provided to KPMG.

106. Saturday morning, June 12, 1999, GRASS summoned the Acting Retail Comptroller to Rite Aid headquarters for a private meeting in GRASS' office. During the meeting GRASS unsuccessfully attempted to persuade the Acting Retail Comptroller BERGONZI's unsupported accounting entries were appropriate.

107. Saturday afternoon, June 12, 1999, BERGONZI called the Acting Retail Comptroller at Valley Green and instructed him to reverse \$33 million of the \$97.8 million. However, BERGONZI replaced the entries, in part, with \$13 million in unsupported vendor income. BERGONZI also faxed the Acting Retail Comptroller instructions to record \$2.9 million in Zeneca rebates that BERGONZI had already booked as 4th Quarter FY 1999 income.

108. After BERGONZI failed to provide support as he had promised, on Monday, June 14, 1999, the Acting Retail Comptroller and several other Accounting Department managers drove from Valley Green to corporate headquarters where they demanded a meeting with BERGONZI. In order to appease the group, GRASS told the accountants he had asked for BERGONZI's resignation. GRASS repeatedly assured the accountants they would be provided support for BERGONZI's entries.

109. During the afternoon of June 14, 1999, GRASS and BERGONZI conducted a conference call with industry analysts and issued a Press Release in which they falsely claimed Rite Aid's net income for the 1st Quarter of FY 2000 was \$81 million. Although GRASS told the accountants he had asked for BERGONZI's immediate resignation as CFO, the Press Release stated that BERGONZI had decided to retire in the Fall of 1999.

110. On or about June 14, 1999, BROWN met the fired SVP at a Harrisburg, PA area hotel and paid him \$5,000 cash for signing an affidavit needed as support for one of BERGONZI's accounting entries.

111. On June 14, 1999, GRASS, BROWN, and BERGONZI caused Rite Aid to file its FY 1999 Proxy Statement with the SEC, with said Report failed to disclose 1) BROWN's Amended & Restated Deferred Compensation Agreement dated 10/26/96, 2) Rite Aid's \$2.6 million payment to CCA Associates, Inc., 3) GRASS' \$2.9 million refund, 4) Rite Aid's \$2.5 million bank loan guarantee, 5) Rite Aid's \$5 million bank loan guarantee, and 6) GRASS' May 6, 1998, letter re BROWN's severance and retirement benefits.

112. On or about June 23, 1999, GRASS traveled to KPMG's offices in New York, NY and asked KPMG to replace Rite Aid's Audit Engagement Partner. During the same meeting GRASS told KPMG he was willing to sign an inventory consulting contract with KPMG.

113. On June 30, 1999, GRASS and BERGONZI traveled to Perryman, MD where they attended the annual Rite Aid shareholders meeting and a Board of Directors meeting.

During the Board meeting BERGONZI provided the Directors a report regarding the false financial results for the 1st Quarter of FY 2000.

114. On or about July 2, 1999, GRASS executed and caused letters to be delivered to four Rite Aid officers advising the Company's earnings between FY 1996 and FY 1999 entitled them to 73% of the maximum number of LTIP I shares. At \$25.04 per share (the average closing price during the 30 day period following the Company's March 29, 1999, earnings announcement), the officers were told they would receive LTIP I payments in the amounts of \$913,960, \$913,960, \$1,462,336, and \$1,827,920.

115. On or about July 13, 1999, GRASS caused the Acting CFO to sign the Company's Form 10-Q Report for the 1st Quarter of FY 2000, which said Report falsely inflated the Company's reported pretax income for that period by at least \$49.3 million.

116. On July 15, 1999, GRASS executed the Rite Aid inventory consulting contract with KPMG.

117. On or about July 16, 1999, GRASS executed an Employment Agreement that continued BERGONZI's employment with Rite Aid as a consultant until his retirement on December 31, 2002, at a salary of \$525,000 per year and bonuses totaling \$375,000. The Employment Agreement, which was back-dated to June 15, 1999, enhanced BERGONZI's deferred compensation benefits by paying, upon his retirement, \$495,000 a year *for life* with a guaranteed minimum 20 years' payment.¹⁷ The Agreement also granted

¹⁷The Agreement also provided for inflation adjusted, deferred compensation payments every 4 years.

BERGONZI an unqualified release from liability for any and all claims stemming from his employment. In exchange, BERGONZI agreed not to disclose any “confidential” Rite Aid information. By separate letter dated July 15, 1999, BROWN clarified BERGONZI was also eligible to receive long term incentive plan (LTIP) and stock option awards if such were paid to other Rite Aid officers.

118. On or about July 30, 1999, GRASS and BROWN instructed the Acting CFO to process the LTIP I payments to the four previously mentioned Rite Aid officers. The four payments, which were paid by the Company on August 2, 1999, and August 16, 1999, totaled \$5,118,176.

119. In August of 1999 GRASS gave the Acting CFO a letter granting him 100,000 shares of Rite Aid stock in the event certain earnings goals were reached between FY 2000 and FY 2003. The letter, which was back-dated to June 2, 1999, provided the award was subject to the rules regarding a “Change in Control” of the Company. At the time, the Acting CFO was providing confidential Rite Aid financial information to Safeway, a company GRASS had solicited to buy Rite Aid. When GRASS handed the letter to the Acting CFO, GRASS reminded him the letter was worth millions if the sale went through.

120. No earlier than August of 1999, GRASS delivered a letter dated June 12, 1998, to a Senior Vice President at Rite Aid. The back-dated letter granted the Senior Vice President early and enhanced deferred compensation benefits worth millions of dollars. On another unknown occasion GRASS provided a nearly identical version of the same letter to

another Rite Aid Senior Vice-President.

121. On August 25, 1999, GRASS postponed the Rite Aid Corporation Analyst / Investor Meeting from September 2, 1999, to September 22, 1999.

122. During the second week of September of 1999 the Acting CFO sent GRASS a report indicating the 2nd Quarter FY 2000 results would be a \$70 million dollar *loss*. GRASS told the Acting CFO that if the Company had to report those numbers, he would have to resign.

123. On September 21, 1999, GRASS executed an amended, \$1.1 million dollar inventory consulting contract with KPMG.

124. On or about September 21, 1999, GRASS postponed the Rite Aid Corporation Analyst/Investor Meeting a second time from September 22, 1999, to October 11, 1999.

125. On September 24, 1999, GRASS, the Acting CFO and other Company executives traveled to New York, NY for the purpose of obtaining bank waivers of debt to earnings covenant violations and \$800 million in interim financing to pay-off maturing commercial paper obligations. During the meetings GRASS withheld material information from the banks regarding the Company's true financial condition and the need to restate prior years' earnings. In order to obtain the new, interim financing, GRASS pledged Rite Aid's PCS stock as collateral and falsely represented to the banks that the Board of Directors' Finance Committee had authorized the pledge.

126. On September 29, 1999, GRASS conducted a conference call with industry

analysts and falsely denied Rite Aid had used a new, interim credit facility to meet the Company's maturing commercial paper obligations. GRASS also concealed the fact Rite Aid pledged its PCS stock as collateral for the loan.

127. On September 30, 1999, GRASS attended a Board of Directors' meeting in New York, NY and concealed the fact he had pledged Rite Aid's PCS stock as collateral for the interim \$800 million line of credit.

128. On October 1, 1999, GRASS traveled to New York, NY, met with two ratings agencies (Moody's Investors Service and Standard & Poors), and concealed the fact he had pledged the Company's PCS stock as collateral for the amended \$1.3 billion line of credit.

129. During the afternoon of October 1, 1999, the Acting CFO told GRASS the Company needed to restate another \$70 million in income. GRASS told the Acting CFO not to worry, he would meet with KPMG next week and "cut a deal."

130. On Sunday, October 3, 1999, the Acting CFO sent GRASS an e-mail advising he would not travel to New York with GRASS the next day because their meetings with the banks would require him "to reveal the GAAP irregularities" and he did not believe GRASS wanted his participation. The next day GRASS told the banks the Acting CFO could not attend because he was ill.

131. In approximately November of 1999 BROWN instructed his secretary to speak to GRASS' former secretary in order to learn how to alter the internal clock on her Rite Aid computer so the file generation date would match the date on a back-dated letter.

132. Sometime after GRASS' resignation on October 18, 1999, GRASS signed and BROWN delivered a letter on CEO letterhead dated April 2, 1999, to Eric Sorkin, the Rite Aid officer who had the lead role in negotiating the BMS and Zeneca rebate agreements. In addition to stock option exercise rights, the back-dated letter granted Sorkin 3 years continued salary and bonus upon the termination of his employment, followed by early deferred compensation benefits. At the time Sorkin's annual salary was \$250,000 and his most recent bonus had been \$114,188.

133. On or about Thanksgiving Day, November 25, 1999, GRASS signed and BROWN delivered a letter on CEO letterhead dated September 29, 1999, to the residence of another Rite Aid employee. Although the employee was not an officer of the Company, the back-dated letter granted the employee deferred compensation benefits totaling \$525,000 and the right to accelerate the payment of the benefits in the event he was terminated prior to his 65th birthday.

134. In December of 1999 GRASS signed and BROWN delivered a letter on CEO letterhead dated January 8, 1999, to Timothy Noonan. In addition to stock option exercise rights, the back-dated letter granted Noonan continued salary and his highest annual bonus for 3 years following his termination or removal from the Presidency of Rite Aid, followed by deferred compensation benefits for 20 years beyond his 65th birthday. At the time Noonan was 58 years of age, his annual salary was \$700,000, and his highest bonus had been \$628,600.

135. On or about January 7, 2000, BROWN submitted his May 6, 1998, severance

letter to Rite Aid's Board of Directors, requesting it be honored.

136. On or about January 10, 2000, Eric SORKIN submitted his back-dated April 2, 1999, severance and enhanced deferred compensation letter to the Company's new management team, intending it be honored.

137. On or about March 6, 2000, BERGONZI, through counsel, sent Rite Aid a letter threatening to sue Rite Aid if it did not honor the terms of BERGONZI's June 15, 1999, Employment Agreement.

138. By their earlier actions, on or about April 7, 2000, GRASS and BROWN caused Rite Aid to wire \$5,045,034 to Nations Bank to pay-off the \$5 million loan guarantee.

139. By their earlier actions, on or about June 30, 2000, GRASS and BROWN caused Rite Aid to wire \$2,538,499 to Nations Bank to pay-off the \$2.5 million loan guarantee.

All in violation of Title 18, United States Code, Section 371.

COUNT 2
(Fraud In Connection With
The Purchase And Sale of Securities)

The Grand Jury Further Charges:

1. The information and allegations set forth in the Introduction and prior Counts of this Indictment are specifically incorporated herein.

2. Between March of 1995 and June of 2000, in the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN GRASS,
FRANKLIN BROWN, and
FRANK BERGONZI,**

along with others, known and unknown, did unlawfully, willfully, and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of a security, in contravention of Rule 10b-5 (17 C. F. R. § 240.10b-5) of the rules and regulations promulgated by the SEC; to wit, in that the defendants:

- (a) employed devices, schemes, and artifices to defraud;
- (b) made and caused to be made untrue statements of material facts,
- (c) omitted to state material facts necessary in order to make statements not misleading in light of the circumstances under which they were made, and
- (d) engaged in acts, practices, and courses of business which operated as a fraud and deceit upon investors who purchased and sold shares of Rite Aid stock and other Rite Aid investments.

3. As more fully set forth in Count 1 of this Indictment, which is specifically incorporated herein, and for the purpose of executing the aforesaid manipulative and deceptive device and contrivance, the defendants fraudulently misrepresented the financial condition of Rite Aid to the investing public by various means, including but not limited to the filing of false Forms 10-Q and 10-K with the SEC, by the issuance of false financial reports and press releases, and by conducting telephone conference calls and meetings, all of which disseminated false financial information into the marketplace via the media and other instrumentalities of interstate commerce that concealed, among other things, the fact that Rite Aid had manipulated its books and records and had fraudulently inflated Rite Aid's true income by hundreds of millions of dollars.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS 3 - 11

(False Statements With The SEC)

The Grand Jury Further Charges:

1. The information and allegations contained within the Introduction and prior Counts of this Indictment are specifically incorporated herein.

2. On or about the dates set forth below, in the Middle District of Pennsylvania and elsewhere, in a matter within the jurisdiction of the United States Securities and Exchange Commission (SEC), an agency within the executive branch of the Government of the United States, the defendants,

**MARTIN GRASS,
FRANKLIN BROWN, and
FRANK BERGONZI,**

knowingly and willfully made and used, and caused to be made and used, a false writing and document knowing same to contain materially false, fictitious, and fraudulent statements and entries, in that the defendants, who were then and there directors and senior corporate officers of Rite Aid Corporation, caused Quarterly Reports (Forms 10-Q) and Annual Reports (Form 10-K) to be filed with the SEC on behalf of the Rite Aid Corporation, which said Reports contained false financial statements that materially and substantially inflated Rite Aid's reported pre-tax income for those time periods, when the defendants well knew and believed the Company's actual pre-tax income was substantially less than that reported on said Forms, as set forth below:

COUNT	SEC FILED	FORM	PERIOD	REPORTED PRE-TAX INCOME (in millions)	APPROXIMATE INFLATED AMOUNT (in millions)
3	7/14/97	10-Q	1 ST Q, FY 98	\$114.3	\$31.3
4	10/14/97	10-Q	2 ND Q, FY 98	\$101.5	\$40.5
5	1/12/98	10-Q	3 RD Q, FY 98	\$113.7	\$16.0
6	5/19/98	10-K	FY 1998	\$530.0	\$44.3
7	7/2/98	10-Q	1st Q, FY 99	\$151.3	\$63.0
8	10/13/98	10-Q	2 ND Q, FY 99	\$135.2 ¹⁸	\$132.8
9	1/12/99	10-Q	3 RD Q, FY 99	\$144.7	\$70.2
10	6/1/99	10-K	FY 1999	\$199.6	\$214.3
11	7/13/99	10-Q	1st Q, FY 00	\$141.1	\$49.3

All in violation of Title 18, United States Code, Sections 1001(a)(3) and 2.

¹⁸Excluding a \$289.7 million charge for store closings.

COUNTS 12 - 15
(False Statements With The SEC)

The Grand Jury Further Charges:

1. The information and allegations contained within the Introduction and prior Counts of this Indictment are specifically incorporated herein.

2. On or about the dates set forth below, in the Middle District of Pennsylvania elsewhere, in a matter within the jurisdiction of the United States Securities and Exchange Commission (SEC), an agency within the executive branch of the Government of the United States, the defendants,

**MARTIN GRASS and
FRANKLIN BROWN**

knowingly and willfully falsified, concealed, and covered up by trick, scheme and device material facts, in that the defendants, who were then directors and senior corporate officers of Rite Aid Corporation, caused Annual Proxy Statements (Form DEF 14A) and a Current Report (Form 8-K) to be filed with the SEC on behalf of the Rite Aid Corporation, which said Reports concealed and failed to disclose, as required by SEC rule and regulation, certain related party transactions, executive loan guarantees, and executive compensation agreements, as set forth below:

COUNT	SEC FILED	FORM	MATERIAL FACTS CONCEALED
12	6/2/97	1997 Proxy Statement (Form DEF 14A)	1) Franklin Brown Amended & Restated Deferred Compensation Agreement dated 10/26/96
13	5/15/98	1998 Proxy Statement (Form DEF 14A)	1) Franklin Brown Amended & Restated Deferred Compensation Agreement dated 10/26/96; 2) Rite Aid Corporation \$2.6 million payment on or about 1/29/98 to CCA Associates, Inc., and 3) Martin Grass letter to Franklin BROWN dated May 6, 1998, re Brown's severance and retirement benefits.
14	2/9/99	Current Report (Form 8-K)	1) Rite Aid Corporation \$2.6 million payment on or about 1/29/98 to CCA Associates, Inc., and 2) Martin Grass payment of \$2.9 million to Rite Aid Corporation on or about 2/3/99;
15	6/14/99	1999 Proxy Statement (Form DEF 14A)	1) Franklin Brown Amended & Restated Deferred Compensation Agreement dated 10/26/96; 2) Rite Aid Corporation \$2.6 million payment to CCA Associates, Inc., on or about 1/29/98; 3) Martin Grass \$2.9 million payment to Rite Aid Corporation on or about 2/3/99; 4) Rite Aid's \$2.5 million bank loan guarantee for a Senior Exec. VP Rite Aid, on or about 7/2/98; 5) Rite Aid's \$5 million bank loan guarantee for a Senior Exec. VP of Rite Aid, on or about 5/7/99; and 6) Martin Grass letter to Franklin BROWN dated May 6, 1998, re Brown's severance and retirement benefits.

All in violation of Title 18, United States Code, Sections 1001(a)(1) and 2.

COUNTS 16 - 25

(Mail Fraud)

1. The information and allegations contained within the Introduction and prior Counts of this Indictment are specifically incorporated herein.

2. On or about the dates set forth below, in the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN GRASS,
FRANKLIN BROWN, and
FRANK BERGONZI,**

did knowingly devise, execute, and attempt to execute a scheme and artifice to defraud Rite Aid, its shareholders, and its vendors, and to obtain moneys, funds, credits, assets, and property of another by means of false and fraudulent pretenses, representations and promises, and for the purpose of executing said scheme and artifice, did knowingly cause any matter or thing to be placed in an authorized depository for mail matter and to be delivered according to the direction thereon, as set forth below:

COUNT	DATE	MATTER MAILED	RITE AID VENDOR
16	12/10/98	Rite Aid check for \$3,104,228 with remittance advice deduction for \$198,789 in inflated D&O credits for month ending 9/28/98	COTY P.O. Box 7191M Main Post Office St. Louis, MO 63195
17	10/26/98	Rite Aid check for \$66,885 with remittance advice deduction for \$272,725 in inflated D&O credits for month ending 9/28/98	JOHNSON & JOHNSON P.O. Box 751170 Charlotte, NC 28275-1170

18	10/22/98	Rite Aid check for \$15,453 with remittance advice deduction for \$311,998 in inflated D&O credits for month ending 9/28/98	MAYBELLINE P.O. Box 751355 Charlotte, NC 28275-1355
19	10/29/98	Rite Aid check for \$114,247 with remittance advice deduction for \$369,698 in inflated D&O credits for month ending 9/28/98	LOREAL COSMETIC Cusmair, Inc. P.O. Box 751025 Charlotte NC 28275
20	10/26/98	Rite Aid check for \$201,217 with remittance advice deduction for \$499,503 in inflated D&O credits for month ending 9/28/98	REVLON BEAUTY CARE P.O. Box 640314 Pittsburgh, PA 15264-0314
21	2/26/99	Rite Aid check for \$295,738 with remittance advice deductions for Invoices dated 2/23/99 in amounts of \$346,574 and \$331,085	QUALITY KING P.O. Box 7777-W5505 Philadelphia, PA 19175
22	3/26/99	Rite Aid check for \$577, 619 with remittance advice deduction for Invoice dated 2/23/99 in amount of \$654,357	REVLON BEAUTY CARE P.O. Box 640314 Pittsburgh, PA 15264-0314
23	3/01/99	Rite Aid check for \$74,617 with remittance advice deduction for Invoice dated 2/23/99 in amount of \$538,712	WARNER LAMBERT CONS HEALTH P.O. Box 640899 Pittsburgh, PA 15264-0899
24	3/04/99	Rite Aid check for \$17,508 with remittance advice deduction for Invoice dated 2/23/99 in amount of \$507,915	LEINER HEALTH PRODUCTS 135 S. Lasalle Street Dept. 1465 Chicago, IL 60674-1465

25	2/23/99	Invoice dated 2/23/99 in amount of \$504,534	KENDAL CONFAB Attn: Credit Department 601 Allendale Road King of Prussia, PA 19406
-----------	---------	--	---

All in violation of Title 18, United States Code, § 1341, and §2.

COUNTS 26 - 31
(Wire Fraud)

The Grand Jury Further Charges:

1. The information and allegations contained within the Introduction and prior Counts of this Indictment are hereby specifically incorporated herein.

2. On or about the dates set forth below, in the Middle District of Pennsylvania, and elsewhere, the defendants,

**MARTIN GRASS,
FRANKLIN BROWN, and
FRANK BERGONZI**

did knowingly transmit, and cause to be transmitted, by means of wire communication in interstate commerce, certain writings, signs, signals and sounds, for the purpose of executing a scheme and artifice to defraud Rite Aid and its shareholders, and for obtaining money, funds and property owned by or under the control of Rite Aid by false and fraudulent pretenses, representations and promises, and for the purpose of executing and attempting to execute the scheme and artifice to defraud, the defendants did cause to be transmitted by means of wire communication in interstate commerce the following writings, signs, signals, and sounds, as set forth below:

COUNT	DATE	ORIGIN	DESTINATION	COMMUNICATION
26	1/29/98	Chase Manhattan Bank New York, NY	Dauphin Deposit Bank Harrisburg, PA	Transfer of \$2,613,212 from Rite Aid Corp. account at Chase Manhattan Bank to CCA Associates, Inc. account at Dauphin Deposit
27	4/4/98	Rite Aid Headquarters 30 Hunter Lane Camp Hill, PA	Automatic Data Processing, Inc. Atlanta, GA	Instructions to issue Martin GRASS a FY 1998 bonus check (\$898,000 gross)
28	4/4/98	Rite Aid Headquarters 30 Hunter Lane Camp Hill, PA	Automatic Data Processing, Inc. Atlanta, GA	Instructions to issue Franklin BROWN a FY 1998 bonus check (\$336,825 gross)
29	4/4/98	Rite Aid Headquarters 30 Hunter Lane Camp Hill, PA	Automatic Data Processing, Inc Atlanta, GA	Instructions to issue Frank BERGONZI a FY 98 bonus check (\$299,774 gross)
30	4/7/00	Rite Aid Headquarters 30 Hunter Lane Camp Hill, PA	Chase Manhattan Bank New York, NY	Instructions to wire \$5,045,034 to Nations Bank for loan guarantee pay-off
31	6/30/00	Rite Aid Headquarters 30 Hunter Lane Camp Hill, PA	Chase Manhattan Bank New York, NY	Instructions to wire \$2,538,499 to Nations Bank for loan guarantee pay-off

All in violation of Title 18, United States Code, Section 1343, and Section 2.

COUNT 32
(Criminal Forfeiture)

The Grand Jury Further Charges:

1. The information and allegations contained in the Introduction and the prior Counts of this Indictment are specifically incorporated herein.

2. As a result of the foregoing offenses, specifically, the violations of Wire Fraud, 18 U.S.C. § 1343, set forth in Counts 26-29 of this Indictment, which violations affected financial institutions, the defendants,

**MARTIN GRASS,
FRANKLIN BROWN, and
FRANK BERGONZI**

shall forfeit to the United States any and all property, real or personal, tangible or intangible, constituting or derived from proceeds each defendant obtained, directly or indirectly, as the result of the foregoing violations, including but not limited to:

- A) The FY 1998 bonuses paid to each defendant by Rite Aid, as set forth below:

	FY 1998 BONUS
GRASS	\$898,000
BROWN	\$336,825
BERGONZI	\$299,774

- B) Approximately **83 acres of real estate** located in Fairview Township, York County, PA, titled in the name of CCA Associates, Inc., by deed dated January 28, 1998, indexed to Book 1313, Page 8991 in the Office of the Recorder of Deeds of York County, PA; and

C) Substitute assets.

In the event that any of the real or personal property constituting proceeds of the offenses alleged above in Counts 26 through 29 of this Indictment or traceable to such property, or any property constituting or derived from proceeds of such offenses, as a result of any act or omission of the defendant,

- (a) cannot be located upon exercise of due diligence,
- (b) has been transferred, sold to, or deposited with a third party,
- (c) has been placed beyond the jurisdiction of the Court,
- (d) has been substantially diminished in value, or
- (e) has been commingled with other property which cannot be divided without difficulty,

the United States demands the forfeiture of other property of the defendant up to the value of the real and personal property described above, pursuant to Title 18, United States Code, Section 982 and Title 21, United States Code, Section 853(p).

All in violation of Title 18, United States Code, Section 982(a)(2)(A).

COUNT 33
(Conspiracy to Obstruct Justice)

The Grand Jury Further Charges:

1. The information and allegations contained within the Introduction and the prior Counts of this Indictment are specifically incorporated herein.

A. BACKGROUND

2. During 1999 ERIC SORKIN served as Rite Aid's Vice President in Charge of Pharma Purchasing, reporting directly to Tim Noonan, the Company's President. In February of 1999 SORKIN had the lead role in negotiating the pharmaceutical purchase and rebate agreements with Bristol Meyers Squib (BMS) and Zeneca. As such, SORKIN was intimately familiar with the terms of the BMS/Zeneca February 26, 1999, letters of intent and the terms of the contracts that were subsequently negotiated with those entities regarding the earning of pharmaceutical rebates.

3. In December of 1999 the SEC initiated a civil investigation into Rite Aid's activities. That same month the Federal Bureau of Investigation (FBI), the U.S. Attorney for the Middle District of Pennsylvania, and a Middle District of Pennsylvania grand jury initiated criminal investigations. From the outset, Rite Aid's Board of Directors and new management team cooperated with the federal civil and criminal investigators by sharing the results of the Company's internal investigation, by making Rite Aid employees available for interview, and by voluntarily responding to voluminous document and information requests.

4. On or about December 23, 1999, the SEC issued an administrative subpoena upon MARTIN GRASS. The subpoena commanded his production of, among other things, all “hard disks, diskettes... and storage devices (including) the computer of any personal assistant, secretary or other employee or person performing services for Martin L. Grass.”

5. On September 24, 2001, a grand jury subpoena duces tecum was served upon the Custodian of Records for Harrison & Grass for all records pertaining to the purchase, contract, finance and sale of the 83 acres in York County, PA. Another grand jury subpoena duces tecum seeking similar information regarding the 83 acres was served upon the Custodian of Records for CCA Associates, Inc. on October 5, 2001.

B. THE CONSPIRACY

6. Between October 18, 1999, and the date of this Indictment, in the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN GRASS,
FRANKLIN BROWN, and
ERIC SORKIN**

did, along with others, known and unknown to this grand jury, knowingly and willfully combine, conspire, confederate, and agree with each other and with others, known and unknown to this grand jury, to commit certain offenses against the United States, to wit:

- a) to corruptly influence, obstruct and impede, and endeavor to influence, obstruct and impede the due and proper administration of the law under which a pending proceeding was being had before the U.S. Securities and Exchange Commission (SEC), an agency of the United States, in violation of **Obstruction of Proceedings Before Government Agencies**, 18 U.S.C. Section 1505;
- b) to corruptly influence, obstruct and impede, and endeavor to influence, obstruct

and impede a grand jury investigation and the due and proper administration of the law, in violation of **Obstruction of Grand Jury Proceedings**, 18 U.S.C. Section 1503;

c) to knowingly use intimidation and corruptly persuade another, or attempt to do so, and engage in misleading conduct towards that person, with intent to influence the testimony of that person in an official proceeding, in violation of **Tampering with a Witness**, 18 U.S.C. §1512(b); and

d) to knowingly make false material declarations while under oath before a grand jury of the United States, in violation of **False Declarations Before A Grand Jury**, 18 U.S.C. Section 1623.

C. MANNER AND MEANS OF THE CONSPIRACY

7. GRASS, BROWN, and SORKIN endeavored to obstruct and impede the SEC, the FBI, and the grand jury investigations by:

- a) providing false and misleading information to Rite Aid's internal investigators, the SEC, and the FBI,
- b) withholding and concealing material information from Rite Aid's internal investigators, the SEC, and the FBI,
- c) destroying and concealing physical evidence subject to SEC subpoena and grand jury subpoena,
- d) intimidating, threatening, misleading, and corruptly persuading others to provide false information to Rite Aid's internal investigators, the SEC, the FBI, and the grand jury,
- e) creating, generating, and producing bogus, back-dated documents,
- f) deliberately and intentionally providing false testimony, under oath, before a federal grand jury.

D. OVERT ACTS

The following overt acts, among others, were committed by the defendants and their

coconspirators in furtherance of the conspiracy:

8. As part of the Company's internal investigation, on November 15, 1999, SORKIN traveled to New York, NY where he was interviewed by Rite Aid counsel regarding the BMS and Zeneca pharmaceutical purchase and rebate agreements. Prior to the interview BROWN coached SORKIN as to what to tell the attorneys, communicating with SORKIN via public pay phones and telephone calling cards.

9. During the month of December 1999 BROWN instructed a Rite Aid employee to delete the back-dated LTIP award letter and back-dated Compensation Committee Minute files on the computer that generated them.

10. On or about March 9, 2000, BROWN met with Rite Aid's internal investigators in New Jersey and provided false and misleading information regarding the matters under investigation.

11. On or about May 10, 2000, BROWN made an unannounced visit to the residence of the Rite Aid employee who generated the back-dated LTIP files and solicited information from him/her regarding the internal investigation. At the time the employee worked in Rite Aid's legal office. BROWN told the employee that if things went well BROWN might be able to buy him/her another new car.

12. On or about May 19, 2000, GRASS submitted a 16 page letter containing false and misleading information regarding the matters under investigation to the Company's internal investigators.

13. On several occasions between March and July of 2000, GRASS and BROWN

met with Timothy Noonan in Pennsylvania and Maryland and encouraged Noonan to withhold information from Rite Aid's internal investigators. As a result, Noonan withheld material information regarding Rite Aid's accounting fraud, vendor fraud, and the back-dated severance letters when he was interviewed by the investigators on March 16, 2000, March 30, 2000, and July 27, 2000.

14. On or about June 27, 2000, GRASS and BROWN met with GRASS' brother-in-law, Tim Harrison, in Lemoyne, PA and showed him what purported to be a contract for Rite Aid's purchase of CCA Associates, including the 83 acres in Fairview Township, York County, PA. The contract, which had been back-dated to October of 1997 by BROWN, included a false representation that Harrison was the sole shareholder of CCA Associates. Although GRASS and BROWN angrily demanded Harrison sign the bogus document, Harrison refused. However, Harrison did agree to send GRASS an e-mail that mirrored the back-dated contract's terms, including a false representation that Harrison was CCA's sole shareholder when it acquired the 83 acres.

15. Three days later, on or about June 29, 2000, GRASS lured Harrison from his Staten Island, NY residence to a private terminal at the Morrison, NJ airport. Alone with Harrison in a conference room, GRASS produced the bogus, back-dated, Rite Aid - CCA Associates contract from a briefcase, handed Harrison a pen, and told Harrison he was not leaving until Harrison signed it. Fearful as to what might happen if he did not comply with GRASS' demand, Harrison executed the bogus, back-dated contract.

16. The next day, on or about July 1, 2000, Harrison and his attorney met with

BROWN at Harrison & Grass' offices in Lemoyne, PA and demanded the bogus, back-dated, Rite Aid - CCA Associates contract be returned or destroyed. A few days later, after Harrison's attorney contacted GRASS' attorney about the matter, GRASS reluctantly shredded the contract in Harrison's presence. Shortly thereafter, GRASS stripped Harrison of all managerial responsibilities at Harrison & Grass.

17. On or about March 1, 2001, BROWN made another unannounced visit to the residence of the Rite Aid employee who generated the back-dated LTIP documents and renewed his solicitation for information regarding the internal investigation. Specifically, BROWN asked the employee if he/she knew anything that would "hit him over the head."

18. On March 13, 2001, BROWN met with Tim Noonan in Mechanicsburg, PA to discuss what they should and should not tell the FBI in the event they were interviewed. During the recorded conversation BROWN asked Noonan whether there was anything BROWN should "volunteer or weave-in" during his interview. BROWN confided to Noonan that before SORKIN was interviewed by the Company's attorneys in New York, BROWN spoke to SORKIN for hours and hours using pay phones and telephone calling cards. BROWN admitted he back-dated documents at Rite Aid and that "we" gave SORKIN an "emergency letter" to use in case SORKIN was fired. With respect to GRASS, BROWN, and BERGONZI's LTIP I payments, BROWN told Noonan "we agreed that we would just roll it over to the next year." Shortly after the meeting BROWN placed two calls from his cell phone to GRASS' cell phone.

19. On March 27 and 28, 2001, BROWN placed two telephone calls from his cell

phone to the BERGONZI residence in Hummelstown, PA.

20. On March 30, 2001, BROWN again met with Noonan in Mechanicsburg, PA to discuss what Noonan should tell the federal investigators. During this recorded conversation BROWN and Noonan discussed, among other topics, Eric SORKIN, the fired SVP litigation settlement, and the Upcharge.

21. On March 31, 2001, BROWN placed a call from his cell phone and another call from his residence to the BERGONZI residence.

22. On April 1, 2001, BROWN again met with Noonan in Mechanicsburg, PA to discuss Noonan's upcoming interview with the FBI at the U.S. Attorney's Office. At the outset of the recorded conversation BROWN told Noonan he pledged "his life, his trust, and his sacred honor" to Noonan, and that he had put himself "totally on the line for you guys." Brown assured Noonan he had personally reviewed every document on GRASS' secretary's computer and the federal investigators would not find Noonan's back-dated severance letter on it. BROWN and Noonan also discussed the fired SVP settlement, the BMS litigation settlement, and other Rite Aid employees who received back-dated severance letters. BROWN warned Noonan the federal investigators were likely to ask him about BERGONZI and told Noonan "remember, we fired Frank."

23. Between April 2 and April 24, 2001, BROWN placed 2 calls from his residence and 2 calls from his cell phone to the BERGONZI residence.

24. On April 27, 2001, BROWN again met with Noonan in Mechanicsburg, PA to discuss Noonan's upcoming interview with the FBI and the U.S. Attorney. BROWN

reassured Noonan during the recorded conversation that the federal agents would not find Noonan's back-dated severance letter because it had been typed on another computer, not the computer used by GRASS's secretary at Rite Aid, and that the computer that had been used was now "a dream."

25. On May 2, 2001, Noonan met with GRASS and BROWN in Lemoyne, PA, to ostensibly share with them what happened during Noonan's May 1, 2001, interview with the FBI and the U.S. Attorney. During the recorded conversation GRASS assured Noonan the federal investigators "do not have and never will have" the computer that generated the back-dated severance letters "unless they use a Trident submarine." GRASS also told Noonan his defense to the Upcharge was that he "probably told (the fired SVP) to take care of it, clean it up." After the meeting BROWN drove GRASS to the Capitol City Airport and called the BERGONZI residence from his cell phone.

26. On May 3, 2001, BROWN drove to Hummelstown, Pa where his automobile was observed in the driveway of BERGONZI's residence.

27. On May 10, 2001, BROWN placed a telephone call from his residence to the SORKIN residence in Mechanicsburg, PA.

28. On May 14, 2001, BROWN placed a telephone call from his cell phone to the SORKIN residence.

29. On May 16, 2001, after SORKIN spoke with Noonan, SORKIN placed a call from his residence to the BROWN residence.

30. On May 21, 2001, GRASS placed a call from his cell phone to BROWN's cell

phone. Later that afternoon, BROWN met Noonan in Mechanicsburg, PA and inquired as to whether Noonan had a second interview with the FBI and the U.S. Attorney. During this recorded conversation BROWN reassured Noonan by telling him he (BROWN) was not worried about SORKIN, that SORKIN had not been called before the grand jury, and that the computer that generated Noonan's and SORKIN's back-dated severance letters would not be found by the federal investigators. However, BROWN lied to Noonan, telling him "it's been a year" since BROWN talked to SORKIN.

31. Between May 25, 2001, and July 4, 2001, BROWN placed 10 telephone calls from his residence to the BERGONZI residence.

32. On July 4, 2001, BROWN placed a telephone call from his residence to the SORKIN residence.

33. On July 6, 2001, BROWN placed one call from his residence to the BERGONZI residence and received one call from the BERGONZI residence.

34. On July 8, 2001, BROWN placed a telephone call from his residence to the SORKIN residence.

35. On July 9 and July 10, 2001, BROWN placed two calls from his cell phone to the BERGONZI residence.

36. On July 17, 2001, SORKIN was interviewed by FBI agents in Harrisburg regarding the BMS / Zeneca pharmaceutical purchase and rebate agreements. Initially, SORKIN falsely claimed that \$29.6 million of the Zeneca rebates was "guaranteed" and was not contingent upon Rite Aid maintaining product market share.

37. On July 18, 2001, SORKIN appeared before the grand jury and, while under oath, SORKIN deliberately and intentionally lied, testifying he received one and only one severance letter from GRASS dated April 2, 1999, that he received the letter in April of 1999, and that he did not receive it *after* October 18, 1999, when GRASS no longer was the CEO of Rite Aid.

38. On August 6, 2001, BROWN placed one call from his residence to the BERGONZI residence and received one call on his cell phone from the BERGONZI residence..

39. On September 24, 2001, a grand jury subpoena was served upon the Custodian of Records for Harrison & Grass in Lemoyne, PA for all records pertaining to the purchase, contract, finance and sale of the 83 acres in York County, PA. The next day GRASS placed calls from his cell phone to Harrison's cell phone and Harrison's Staten Island, NY office.

40. On October 5, 2001, a grand jury subpoena seeking all documents pertaining to any and all business or financial transactions involving the 83 acres was served upon the Custodian of Records for CCA Associates, Inc in Lemoyne, PA. That same day GRASS called Harrison and told him he was submitting 3 boxes of documents to the U.S. Attorney's Office, including a November 1998 letter from BROWN to Harrison that related to terms of the bogus, backdated CCA - Rite Aid contract. Although Harrison told GRASS he had been contacted by the U.S. Attorney's Office (a grand jury subpoena had been issued for Harrison on October 4, 2001) and they should not be talking to one another, GRASS told Harrison the

federal authorities were interviewing his Rite Aid secretary the following week and he needed a half-hour with Harrison to “pin down some stuff so you don't make a mistake.” Despite the fact GRASS became angry when Harrison refused his request, Harrison did not meet with GRASS.

41. On or about October 8, 2001, GRASS called Harrison at his residence and assured him nobody was recording their conversation as GRASS was calling from a pay phone. During the call GRASS angrily complained how Harrison’s attorney had warned GRASS’s attorney that GRASS was planning on submitting bogus documents to the federal authorities, and that now GRASS would have to tell his attorney what he had done. GRASS told Harrison not to worry, that the bogus, back-dated, Rite Aid - CCA Associates contract had been destroyed. GRASS urged Harrison not to say anything about their telephone conversation and not to “complicate your life and make my life miserable.” GRASS cautioned Harrison that “things only go smoothly if you control the people who work for you.”

42. On or about October 19, 2001, after Harrison was served with a grand jury subpoena, GRASS left a voice-mail message for Harrison on his cell phone. In the message GRASS assured Harrison that while GRASS was a “target,” the federal authorities had no interest in Harrison. GRASS then solicited Harrison “to remember” certain fictional events consistent with the terms of the bogus, backdated CCA - Rite Aid contract. GRASS instructed Harrison to delete the message after he listened to it.

43. On or about October 31, 2001, the Custodian of Records for CCA Associates,

Inc. produced 3 boxes of records in response to the federal grand jury subpoena. The production included a document that indicated 20 shares of CCA Associates stock had been issued to Rite Aid on January 26, 1998.

44. On November 13, 2001, as Harrison was driving to Harrisburg for an interview with the FBI, GRASS called Harrison's cell phone and inquired as to whether Harrison was going to cooperate with the federal investigators.

45. On or about March 28, 2002, the Custodian of Records from CCA Associates submitted a supplemental production in response to the CCA Associates grand jury subpoena which consisted of a letter dated November 5, 1998, from BROWN to Harrison that related to the terms of the bogus, backdated CCA - Rite Aid contract.

All in violation of Title 18, United States Code, Section 371.

COUNT 34

(Obstruction of Grand Jury Proceedings)

The Grand Jury Further Charges:

1. The information and allegations within the Introduction and the prior Counts of this Indictment are specifically incorporated herein.

2. Between December of 1999 and the date of this Indictment, in the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN GRASS and
FRANKLIN BROWN,**

did corruptly influence, obstruct and impede, and did endeavor to corruptly influence, obstruct and impede the due administration of justice in connection with a Middle District of Pennsylvania grand jury investigation of Rite Aid Corporation, its officers, and various criminal offenses, including but not limited to conspiracy, mail fraud, and wire fraud.

All in violation of Title 18, United States Code, Section 1503.

COUNT 35

(Obstruction of Government Agency Proceedings)

The Grand Jury Further Charges:

1. The information and allegations within the Introduction and the prior Counts of this Indictment are specifically incorporated herein.

2. Between December of 1999 and the date of this Indictment, in the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN GRASS and
FRANKLIN BROWN,**

did corruptly influence, obstruct and impede, and did endeavor to corruptly influence, obstruct and impede, the due and proper administration of the law in connection with a pending proceeding before the United States Securities and Exchange Commission (SEC) with respect to the Rite Aid Corporation, its officers, and federal security law violations.

All in violation of Title 18, United States Code, Section 1505.

COUNT 36
(Tampering with a Witness)

The Grand Jury Further Charges:

1. The information and allegations within the Introduction and the prior Counts of this Indictment are specifically incorporated herein.

2. Between May of 2000 and the date of this Indictment, in the Middle District of Pennsylvania and elsewhere, the defendants,

**MARTIN GRASS and
FRANKLIN BROWN,**

did knowingly use intimidation, threaten, and corruptly persuade another person, and attempt to do so, and did knowingly engage in misleading conduct towards another person, with intent to:

- a) influence, delay and prevent the testimony of that person in an official proceeding, and
- b) cause or induce that person to withhold testimony from an official proceeding,

to wit; in that GRASS and BROWN intimidated, threatened, engaged in misleading conduct, and corruptly persuaded one Timothy Harrison to withhold material information from, and provide false information to the FBI, the U.S. Attorney's Office for the Middle District of Pennsylvania, and a Middle District of Pennsylvania grand jury regarding CCA Associates, Inc.'s receipt of \$2.6 million dollars from Rite Aid Corporation in January of 1998, CCA Associates acquisition of 83 acres of real estate in Fairview Township, York

County, Pennsylvania, GRASS' \$2.9 million transfer to Rite Aid on or about February 3, 1999, and the legitimacy of a bogus, back-dated Rite Aid - CCA Associates contract..

All in violation of Title 18, United States Code, Section 1512(b)(1)(2).

COUNT 37

(False Declarations Before The Grand Jury)

The Grand Jury Further Charges:

1. The information and allegations set forth within the Introduction and the prior Counts of this Indictment are specifically incorporated herein.

2. On July 18, 2001, in the Middle District of Pennsylvania, the defendant,

ERIC SORKIN,

while under oath in a proceeding before a grand jury of the United States, did knowingly make a false material declaration; to wit,

3. At the time and place aforesaid the grand jury was conducting an investigation to determine whether violations of conspiracy, 18 U.S.C. § 371, mail fraud, 18 U.S.C. § 1341, wire fraud, 18 U.S.C. §1343, and other penal provisions had been committed. It was material to said investigation that the grand jury determine whether SORKIN, an officer of Rite Aid Corporation, had received one or more severance letters dated April 2, 1999, from Martin GRASS while GRASS was, in fact, the Chairman of the Board and Chief Executive Officer of Rite Aid in April of 1999, or whether SORKIN received any severance letter subsequent to GRASS's resignation on or about October 18, 1999.

4. At the time and place alleged, ERIC SORKIN appeared as a witness under oath at a proceeding before the grand jury and knowingly made the following declarations in response to questions with respect to the material matters alleged in paragraph 3, as follows:

(GJ Transcript, p. 60)

Q: Sir, I want to ask you a question. This letter is dated April 2nd, 1999.

When did you get this letter?

A: On or about that time.

Q: Who gave it to you?

A: I don't recall.

Q: You don't recall?

A: I think it was Martin.

Q: You're certain it was on or about April 2nd, 1999?

A: Yes, sir.

Q: Do you recall where he gave it to you or where you received it, when you received it?

A: I believe I was in Harrisburg when I received it

Q: Was it physically handed to you, or did it come to you in the mail?

A: I believe it was physically handed to me, but I don't remember. I think it was physically handed to me. I didn't get it in the mail.

Q: Do you recall getting this letter?

A: Yes, I do

Q: Do you have a specific recollection of receiving this letter?

A: Yes, I do.

Q: Where is the original?

A: The original is in my vault.

Q: In your home?

A: In the safe deposit box in the bank.

.....

(GJ Transcript, p. 62)

Q: Are you absolutely certain, sir, that you did not get this letter after October 18th, 1999?

A: Yes.

Q: And you are certain that you received it from someone on or about April 2nd, 1999?

A: Yes

Q: But you don't recall who that person was?

A: No, I don't.

Q: Could it have been someone besides Mr. Grass?

A: I don't think so.

Q: Franklin Brown, you know who he is?

A: Yes.

Q: He was at one time counsel for the company and then he became Vice Chairman of the Board, I think that was his title, in '99.

A: Yes.

Q: He had an office at headquarters, at Rite Aid headquarters. Did he give you this letter, sir?

A: He may have.

Q: He may have. But if he did, it would have been on or about April 2nd, 1999?

A: I believe so.

Q: Are you absolutely certain about that, sir?

A: I'm not absolutely certain. It was sometime in that time frame, though.

Q: Would you say within a week or so?

A: It would have been sometime in April.

Q: Sometime in April. You're absolutely certain about that?

A: Yes.

Q: This letter or at least a copy of this letter, a version of this letter?

A: Yes, a version of it.

Q: A version of it?

A: I mean you're discussing this term. I have to compare this with what I have.

Q: Let's stick with this letter. That's when you received this letter?

A: Yes, sir.

Q: April of '99?

A: Yes.

.....

(GJ Transcript, p. 76)

Q: Is this the only letter you received from Mr. Grass or Mr. Brown or anyone else at Rite Aid regarding these types of benefits, these changes to your deferred compensation and the three-year severance agreement?

A: Yes.

Q: This is the only one, that you received one letter and one letter only?

A: One letter.

Q: The original is in the vault today, correct?

A: Yes.

5. The aforesaid testimony of ERIC SORKIN was intentionally and deliberately false, as SORKIN then and there well knew, in that the single letter SORKIN claimed to have received was not delivered to him, nor received by him, until sometime subsequent to October 18, 1999, when Martin GRASS no longer was the Chairman of the Board and Chief Executive Officer of Rite Aid.

All in violation of 18 U.S.C. § 1623(a).

GRAND JURY FOREPERSON

DATE

THOMAS A. MARINO
United States Attorney
Middle District of Pennsylvania