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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

February 2001 - Grand Jury

UNITED STATES OF AMERICA,	)	No. CR 01-730(A)-GAF
)	
	)	<u>FIRST SUPERSEDING</u>
Plaintiff,	)	<u>I N D I C T M E N T</u>
)	
v.	)	[18 U.S.C. § 371: Conspiracy;
	)	15 U.S.C. §§ 78m (b) (2) (A),
	)	78m (b) (5), 78ff, and 17
	)	C.F.R. § 240.13b2-1:
ALLAN BOREN and	)	Falsification of Books and
ERIC CANO,	)	Records; 18 U.S.C. § 1343:
	)	Wire Fraud; 18 U.S.C.
	)	§ 1505: Obstruction of
Defendants.	)	Proceedings Before Agencies;
)	18 U.S.C. § 2: Aiding and
)	Abetting, and Causing An Act
)	To Be Done]
)	

The Grand Jury charges:

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JWS:SAC

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COUNT ONE

[18 U.S.C. § 371]

I. INTRODUCTION

1. At all times relevant to this Indictment:

a. Manhattan Bagel Company, Inc. ("Manhattan Bagel" or the "Company") was a corporation engaged in the production and sale of bagels and related products through franchised, licensed, or company-owned stores. Manhattan Bagel was incorporated in New Jersey with its principal executive offices in Eatontown, New Jersey. Manhattan Bagel's common stock was registered with the Securities and Exchange Commission ("SEC") pursuant to Section 12(g) of the Securities Exchange Act of 1934 and quoted on the National Association of Securities Dealers Automated Quotations System ("NASDAQ") under the symbol BGLS.

b. I&J Bagels, Inc. ("I&J") was acquired by Manhattan Bagel on June 29, 1995, as a wholly-owned subsidiary of the Company. At the time of acquisition, I&J owned and licensed approximately 17 bagel stores in the Los Angeles area.

c. In 1992, defendant ALLAN BOREN ("BOREN") acquired control over the previously family owned I&J in exchange for a \$159,000 note that defendant BOREN later defaulted upon. Subsequent to his acquisition of control over I&J, defendant BOREN assumed the title of Chairman of the Board of I&J. Defendant BOREN maintained the title of Chairman of the Board until Manhattan Bagel discovered a pending criminal environmental dumping case against Chatsworth Plating Company, a contractor to

1 the Department of Defense, owned and operated by defendant BOREN,
2 at which time defendant BOREN resigned his position with I&J.

3 d. Defendant ERIC CANO ("CANO"), a long-time
4 associate of defendant BOREN, was given the title of President of
5 I&J by defendant BOREN prior to I&J's acquisition by Manhattan
6 Bagel. After defendant BOREN relinquished the title of Chairman
7 of the Board, defendant CANO remained as President of I&J until
8 he resigned after Manhattan Bagel discovered the financial
9 irregularities at the I&J subsidiary.

10 e. Timothy Tuttle ("Tuttle") was the owner of
11 Peerless Maintenance Company ("Peerless"), an entity used by
12 defendants BOREN and CANO to falsify bagel sales in connection
13 with I&J's acquisition by Manhattan Bagel. In approximately
14 October 1996 through August 1998, Tuttle was a victim of
15 intimidation by defendants BOREN and CANO after the SEC began
16 investigating financial irregularities reported by Manhattan
17 Bagel.

18 f. Marytza Tortola, formerly known as Marytza
19 Altamirano ("Altamirano"), performed services for I&J as a
20 contractor and was personally involved with defendant BOREN. In
21 approximately January 1997 through April 1997, Altamirano was a
22 victim of intimidation by defendant BOREN after the SEC began
23 investigating the financial irregularities reported by Manhattan
24 Bagel.

25 g. Phillip Borini ("Borini") served as the Executive
26 Director for the law firm of Veatch, Carlson, Grogan & Nelson

1 ("Veatch Carlson"). Borini was the brother of defendant BOREN
2 and the brother-in-law of Tuttle. In approximately October 1996
3 through February 1998, Borini was a victim of intimidation by
4 defendants BOREN and CANO after the SEC began investigating the
5 financial irregularities reported by Manhattan Bagel.

6 **Federal Financial Reporting Requirements**

7 2. Manhattan Bagel's common stock was registered with the
8 SEC and was publicly traded on the NASDAQ system. As a company
9 whose stock was publicly traded on NASDAQ, Manhattan Bagel was
10 required to file periodic reports with the SEC containing
11 information about the company's management, board of directors,
12 and business operations, as well as financial statements that
13 accurately presented its finances and business results according
14 to generally accepted accounting principles (also known as
15 "GAAP"). Manhattan Bagel's annual financial statements were
16 required to be audited by an independent public accountant.

17 **Federal Record Keeping Requirements**

18 3. Because Manhattan Bagel's stock was registered with the
19 SEC and publicly traded on the NASDAQ, Manhattan Bagel was
20 required to make and keep books, records and accounts which, in
21 reasonable detail, accurately and fairly reflected its
22 transactions and dispositions of its assets. Manhattan Bagel was
23 further required to create and maintain a system of internal
24 accounting controls sufficient to provide reasonable assurances
25 that transactions were recorded as necessary to permit
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1 preparation of financial statements in conformity with GAAP and
2 to maintain accountability for its assets.

3 4. Under GAAP, a company's sales revenues and income are
4 recorded and reported for specific reporting periods, such as for
5 a quarter or a year. Under GAAP, the rules and regulations of
6 the SEC, and Manhattan Bagel's own publicly stated accounting
7 policies, Manhattan Bagel could report revenues from the sale of
8 merchandise only if a valid, actual sale to a customer took
9 place, and the merchandise was shipped to the customer during the
10 period in which the revenue was reported.

11 5. Manhattan Bagel's financial statements were publicly
12 reported four times a year, that is, quarterly.

13 **II. THE OBJECTS OF THE CONSPIRACY**

14 6. Beginning on a date unknown to the Grand Jury and
15 continuing until in or about August 1998, in the Central District
16 of California and elsewhere, defendants BOREN and CANO, together
17 with others known and unknown to the Grand Jury, knowingly and
18 unlawfully combined, conspired, and agreed to commit the
19 following offenses against the United States:

20 a. To commit securities fraud by inflating I&J's
21 revenues by creating fake bagel sales to two purported wholesale
22 customers by knowingly and willfully and with the intent to
23 defraud, directly or indirectly, in connection with the purchase
24 and sale of securities, (a) employing a scheme to defraud, (b)
25 making untrue statements of a material fact and omitting to state
26 material facts necessary in order to make the statements made, in

1 light of the circumstances under which they were made, not
2 misleading, and (c) engaging in acts, practices and courses of
3 business that operated as a fraud and deceit, through the use of
4 the means and instrumentalities of interstate commerce, the
5 mails, and the facilities of a national securities exchange, all
6 in violation of Title 15, United States Code, Sections 78j(b) and
7 78ff, and Rule 10b-5 of the rules and regulations of the
8 Securities and Exchange Commission promulgated thereunder and
9 codified at Title 17, Code of Federal Regulations, Section
10 240.10b-5;

11 b. To commit accounting fraud by knowingly and
12 willfully circumventing a system of internal accounting controls
13 which were sufficient to provide reasonable assurances that I&J,
14 and thereby Manhattan Bagel, had properly maintained
15 accountability for its assets, and to knowingly and willfully
16 falsify records, books and accounts kept by I&J, necessary to
17 accurately and fairly reflect the transactions and dispositions
18 of the assets of I&J, in violation of Title 15, United States
19 Code, Section 78m(b) (2), 78m(b) (5), and 78ff, and Rule 13b2-1 of
20 the rules and regulations of the Securities and Exchange
21 Commission promulgated thereunder and codified at Title 17, Code
22 of Federal Regulations, Section 240.13b2-1.

1 **III. THE MANNER AND MEANS OF THE CONSPIRACY**

2 7. The objects of the conspiracy were carried out, in
3 part, as follows:

4 **Overview**

5 a. Beginning in the second quarter of 1995, just
6 before the acquisition of I&J by Manhattan Bagel, defendants
7 BOREN and CANO implemented a scheme to inflate I&J's revenues by
8 creating fake bagel sales to two purported wholesale customers:
9 Veatch Carlson, a law firm, and Peerless Maintenance Company
10 ("Peerless"), a small private firm that provides office cleaning
11 services. In the last three quarters of 1995, I&J booked
12 \$206,000 in bagel product sales to the two purported customers,
13 which amounted to tens of thousands of bagels and related
14 products in a nine-month period.

15 b. On or about June 20, 1996, Manhattan Bagel
16 announced that Manhattan Bagel had "uncovered certain improper
17 bookkeeping entries and accounting practices" at its I&J
18 subsidiary concerning "franchise fees, payments made for
19 purported public relations work, real estate finders fees, bonus
20 and vacation pay, and inflated receivables and inventory." The
21 June 20, 1996, announcement further stated that Manhattan Bagel
22 would be required to restate its first quarter 1996 financial
23 results, reducing revenues for the quarter by approximately
24 \$90,000 and increasing expenses by about \$260,000 as a result of
25 the improper accounting practices at I&J. According to the

1 announcement, the first quarter net income per share was expected
2 to decrease from \$.12 to \$.09.

3 c. On June 21, 1996, the price of Manhattan Bagel
4 common stock tumbled from \$21.25 to \$13.75, a drop of
5 approximately 35%, on record volume.

6 d. At the time of Manhattan Bagel's June 20, 1996,
7 announcement, Manhattan Bagel had not uncovered the fake sales to
8 Veatch Carlson and Peerless because defendants BOREN and CANO
9 were then actively engaged in efforts to conceal the true facts
10 from Manhattan Bagel's auditor Ernst & Young - an effort that
11 continued at least through August 1998.

12 **False Sales**

13 e. Beginning in or about the spring of 1995,
14 defendants BOREN and CANO created and participated in a scheme to
15 record fake bagel sales to two phantom accounts: Veatch Carlson,
16 whose executive director was defendant BOREN's brother, Borini,
17 and Peerless, whose owner was Borini's brother-in-law.
18 Defendants BOREN and CANO carried out the plan by directing I&J's
19 accounting personnel to record fake sales to Veatch Carlson and
20 Peerless on a weekly basis, which I&J did every week through
21 December 1995. Each week, I&J fraudulently recorded: \$2,935 from
22 the sale of 300 dozen bagels and related products to Veatch
23 Carlson; and \$2,436 from the sale of 200-225 dozen bagels and
24 related products to Peerless. Defendant BOREN intended, among
25 other things, to inflate I&J's revenues in order to ensure that
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1 he received the maximum number of shares in the newly merged
2 company.

3 f. To implement the scheme, defendant CANO told I&J's
4 Chief Financial Officer ("CFO") that Veatch Carlson and Peerless
5 each had a standing order for delivery of a set amount of product
6 each and every day. Defendant CANO instructed the CFO to prepare
7 the same invoice every week, without first obtaining the usual
8 documentation showing delivery of product to the customer.

9 Defendant CANO also told the CFO not to mail the invoices to
10 Veatch Carlson or Peerless. Defendant CANO told the CFO to give
11 the invoices to him because Veatch Carlson and Peerless were
12 important accounts requiring special treatment and he personally
13 would hand-deliver all invoices as a courtesy. The CFO complied
14 with defendant CANO's instructions.

15 g. For the year ending December 31, 1995, I&J's books
16 showed sales to Veatch Carlson totaling \$120,335, all in the last
17 three quarters of the year. During that period, three payments
18 totaling \$58,700 were recorded on the account. These three
19 payments were made by Veatch Carlson checks dated April 30, 1995,
20 May 31, 1995 and December 28, 1995. Defendant Boren's brother,
21 Borini, signed all three checks in his capacity as the executive
22 director of Veatch Carlson.

23 h. During the last three quarters of 1995, I&J's
24 books show total sales to Peerless of \$85,356.50 and a single
25 payment of \$14,619.00 made by bank check dated November 14, 1995.
26 In 1996, Peerless purportedly made two additional payments, the
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1 first by bank check dated January 29, 1996, in the amount of
2 \$9,746.00, and the second by a Peerless check of \$50,000.00,
3 dated August 12, 1996, signed by Tuttle.

4 i. The Veatch Carlson and Peerless sales were fake.
5 The payments recorded on the two accounts were designed to make
6 the Veatch Carlson and Peerless sales appear real. By September,
7 1995, however, the independent public auditor for Manhattan
8 Bagel, Ernst & Young (the "auditor"), started to look into the
9 claimed sales to Veatch Carlson and Peerless.

10 j. To convince Manhattan Bagel's auditor that these
11 fake sales were real, defendant BOREN directed his brother,
12 Borini, to make payments to I&J against the Veatch Carlson and
13 Peerless accounts using money that Borini owed to defendant
14 BOREN. Borini owed defendant BOREN approximately \$1.3 million,
15 against which he made regular monthly payments. The three
16 payments Veatch Carlson purportedly made to I&J for bagel sales
17 were, in reality, loan payments which defendant BOREN directed
18 Borini to make payable to I&J, as if they were payments against
19 the fake bagel sales invoices. At defendant BOREN's direction,
20 Borini included I&J invoice numbers on two checks to give the
21 false appearance of genuine payments against the fake Veatch
22 Carlson bagel account.

23 k. Defendant BOREN also instructed Borini to arrange
24 the false bagel payments made by Peerless in November 1995 and
25 January 1996. Borini withdrew money from his personal bank
26 account in November and January in the amounts of the Peerless
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1 payments in those two months. He then purchased two bank checks,
2 payable to "I & Joy Manhattan Bagels." On each check, Borini
3 included a set of invoice numbers furnished by defendant CANO,
4 and, in the January check, he also added the word "Peerless" in
5 the memo section to make it appear that the check came from
6 Peerless. Additionally, defendant CANO orchestrated a \$50,000
7 payment made by Peerless in August 1996.

8 Concealment of the False Sales

9 l. To further hide the fake sales from Manhattan
10 Bagel's auditor, defendants BOREN and CANO instructed Tuttle,
11 Borini and others to sign or forge signatures on audit
12 confirmations of the fake Veatch Carlson and Peerless account
13 balances.

14 m. In connection with the 1995 year-end audit of
15 Manhattan Bagel's financial statements, the Company's auditor,
16 Ernst & Young, prepared written requests to Veatch Carlson and
17 Peerless, in October 1995, and again in February 1996, asking
18 representatives of the two entities to confirm the respective
19 amounts owed to I&J as of September 30, 1995, for the October
20 requests, and as of December 31, 1995, for the February requests.

21 n. In mid-October 1995, defendant BOREN learned of
22 Ernst & Young's confirmation request to Veatch Carlson and
23 instructed defendant CANO to get the confirmation signed.
24 Defendant CANO did so even though he knew that the Veatch Carlson
25 account was fake and that the firm owed no money to I&J for bagel
26 sales. Defendant CANO faxed the Veatch Carlson confirmation
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1 request to Borini's personal assistant at Veatch Carlson and told
2 him to sign it. Borini's assistant signed the confirmation on
3 October 11, 1995, falsely confirming to the auditor that Veatch
4 Carlson owed I&J \$58,700 as of September 30, 1995.

5 o. Also in mid-October 1995, the auditor, Ernst &
6 Young, faxed a confirmation request to Tuttle, the owner of
7 Peerless. The request sought confirmation that Peerless owed I&J
8 \$53,597 as of September 30, 1995. Tuttle called Borini to learn
9 what the confirmation was about. Borini said he would take care
10 of it. Borini then called his brother, defendant BOREN, who
11 openly acknowledged to Borini that he had created fake accounts
12 on I&J's books for Veatch Carlson and Peerless. Defendant BOREN
13 told Borini to obtain a signature on the Peerless confirmation,
14 knowing the confirmation would be false. Borini complied and
15 arranged to have Tuttle's signature forged on the Peerless
16 confirmation. Defendant CANO then delivered the forged
17 confirmation to the auditor, knowing that the confirmation was
18 false.

19 p. On or about February 9, 1996, Veatch Carlson
20 received a request from the auditor that it confirm a balance of
21 \$61,635 as of December 31, 1995 on the law firm's account. In
22 order to deceive the auditor, and keep the fraudulent scheme
23 going, defendant BOREN personally called the office manager at
24 Veatch Carlson and told her to have the confirmation signed,
25 which she did.

1 q. Also on or about February 12, 1996, the auditor
2 requested that Peerless confirm a balance due I&J of \$70,737 as
3 of December 31, 1995. Tuttle again called Borini, who again told
4 him that he would take care of the confirmation. Borini then
5 spoke with his brother, defendant BOREN, who told Borini to get
6 the confirmation signed. Both defendant BOREN and Borini knew
7 that Peerless had not purchased the claimed bagels from I&J.

8 r. On or about February 12, 1996, following defendant
9 BOREN'S instructions, defendant CANO, Borini, and Borini's
10 assistant met at Borini's home where they forged the signature of
11 a purported Peerless representative upon the confirmation.
12 Borini's assistant then helped defendant CANO and Borini prepare
13 a fax cover sheet with Peerless' logo and faxed the phony
14 confirmation from Borini's home to Ernst & Young as if it had
15 come from Peerless. At Borini's direction, his assistant also
16 reprogrammed the fax machine so that the recipient would not be
17 able to determine from the fax header that the document had, in
18 fact, come from Borini's home.

19 s. On July 23, 1996, an Ernst & Young partner
20 contacted the Veatch Carlson office manager by telephone and
21 asked the office manager to confirm that the balance was owed for
22 goods and services that Veatch Carlson received from I&J. The
23 office manager agreed to sign an account receivable confirmation
24 to that effect. The Ernst & Young partner sent her a
25 confirmation request that same day, which she signed at an August
26 8, 1996 meeting.

1 t. On August 8, 1996, an Ernst & Young attorney
2 visited Borini and the office manager at the offices of Veatch
3 Carlson to ask about the sales to Veatch Carlson during 1995.
4 The Ernst & Young engagement partner attended by conference call.
5 During the meeting, Borini falsely stated that Veatch Carlson had
6 purchased the claimed bagels and related bagel products from I&J
7 during 1995 and had owed the amounts previously confirmed. Then,
8 in the presence of the Ernst & Young attorney, the office manager
9 signed the account receivable confirmation that the engagement
10 partner had sent her in July. The confirmation falsely confirmed
11 the balance that purportedly remained outstanding as of June 30,
12 1996.

13 u. Defendant CANO arranged a session that occurred on
14 August 12, 1996, between Tuttle and another Ernst & Young
15 partner. Tuttle was told to go to the Century City offices of
16 defendant CANO's attorney where he would meet with an Ernst &
17 Young auditor to discuss the claimed bagel purchases. The Ernst
18 & Young engagement partner again attended by conference call.
19 Unbeknownst to the auditor and to Tuttle, defendants BOREN and
20 CANO were in a nearby room waiting to meet with Tuttle.
21 Defendants BOREN and CANO wanted to meet with Tuttle alone in
22 advance of his session with the auditor to ensure that Tuttle
23 would falsely tell the auditor that Peerless had purchased the
24 claimed bagels.

25 v. After arriving at the Century City offices of
26 defendant Cano's attorney for the session with the auditor,
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1 Tuttle was escorted by defendant CANO's attorney to the room in
2 which defendants BOREN and CANO were waiting. In the meeting
3 with defendants BOREN and CANO, defendant BOREN asked Tuttle how
4 his mother, father and family "were doing." This was a common
5 device used by defendant BOREN, in part, to demonstrate that he,
6 defendant BOREN, possessed knowledge about the personal life of
7 those individuals with whom he had a dispute and with those
8 individuals whose conduct he wished to direct. Tuttle asked
9 defendant BOREN what he was supposed to do in the meeting with
10 the auditor. In response, defendant BOREN told Tuttle to falsely
11 tell the auditor that Peerless owed I&J money for the claimed
12 bagel purchases. Defendant BOREN and Tuttle both knew that
13 Peerless had not purchased the claimed bagels from I&J. As
14 Tuttle left the meeting with defendants BOREN and CANO to meet
15 with the Ernst & Young auditors in a nearby conference room,
16 defendant BOREN said to Tuttle words to the effect of, "By the
17 way, I'm not here. You don't see me."

18 w. After the August 12, 1996 meeting with defendants
19 BOREN and CANO, Tuttle was escorted by defendant CANO and CANO's
20 attorney to the nearby conference room for the session with the
21 Ernst & Young auditors. Tuttle then carried out defendant
22 BOREN's instructions and falsely told the auditor that Peerless
23 had purchased the claimed bagels and related bagel products from
24 I&J during 1995 and owed the amounts previously confirmed. When
25 the auditor asked what Peerless did with all of the bagels,
26 Tuttle, caught off guard, falsely replied that Peerless gave

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1 bagels to customers. The auditor then asked Tuttle to sign a
2 confirmation. Tuttle excused himself from the session and
3 returned to the room where defendants BOREN and CANO were still
4 waiting. Tuttle told defendants BOREN and CANO that he did not
5 want to sign the false confirmation. Defendant BOREN told him to
6 sign it, knowing the confirmation would be false. Tuttle then
7 telephoned Borini, who likewise told him to sign the false
8 confirmation. Tuttle returned to the session with the Ernst &
9 Young auditors and, in the auditor's presence, signed the false
10 account receivable confirmation for the balance that purportedly
11 remained outstanding as of June 30, 1996.

12 x. During the same session, Tuttle handed the auditor
13 a check for \$50,000, which represented most of the balance for
14 the claimed bagel purchases. Tuttle fraudulently told the
15 auditor that the funds came from Peerless, while hiding from the
16 auditor the true structure of the transaction. Before the
17 meeting, Borini had told Tuttle to write a check to Manhattan
18 Bagel for \$50,000 and assured him that \$50,000 would be deposited
19 in Peerless' bank account the next day.

20 y. The next day, on or about August 13, 1996,
21 defendant CANO delivered a paper bag to Borini's home containing
22 \$50,000 in cash. Defendant CANO and Borini's assistant counted
23 the cash in Borini's dining room. Borini's assistant then
24 delivered the cash to Borini's attorney, who drew a \$50,000 check
25 against his attorney trust account, payable to Peerless. The
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1 attorney gave the check to Borini's assistant. The check was
2 then deposited to Peerless' account.

3 z. On or about a week after Tuttle's August 12, 1996
4 meeting with defendants BOREN and CANO and the session with the
5 Ernst & Young auditors, defendant CANO visited Tuttle at Peerless
6 and handed Tuttle an envelope containing a \$200 gift certificate
7 for an expensive restaurant in Santa Monica, Chinois on Main. At
8 the time defendant CANO handed Tuttle the envelope, defendant
9 CANO said words to the effect of "Thanks for helping us out last
10 week. I bet you're glad it's over."

11 **IV. OVERT ACTS**

12 8. To effect the objects of the conspiracy, the following
13 overt acts, among others, were committed in the Central District
14 of California and elsewhere:

15 Overt Act No. 1: On or about May 29, 1995, employees
16 at I&J prepared a false order form showing an order for 45 dozen
17 bagels and related bagel products from Peerless. The false order
18 form included false signatures for the purported delivery and
19 receipt of the bagels and bagel related products.

20 Overt Act No. 2: On or about May 30, 1995, employees
21 at I&J prepared a false order form showing an order for 45 dozen
22 bagels and bagel related products from Peerless. The false order
23 form included false signatures for the purported delivery and
24 receipt of the bagels and bagel related products.

25 Overt Act No. 3: On or about May 30, 1995, employees
26 at I&J prepared a false order form showing an order for 60 dozen
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1 bagels and bagel related products from the Veatch Carlson law
2 firm. The false order form included false signatures for the
3 purported delivery and receipt of the bagels and bagel related
4 products.

5 Overt Act No. 4: On or about May 31, 1995, employees
6 at I&J prepared a false order form showing an order for 45 dozen
7 bagels and bagel related products from Peerless. The false order
8 form included false signatures for the purported delivery and
9 receipt of the bagels and bagel related products.

10 Overt Act No. 5: On or about May 31, 1995, employees
11 at I&J prepared a false order form showing an order for 60 dozen
12 bagels and bagel related products from the Veatch Carlson law
13 firm. The false order form included false signatures for the
14 purported delivery and receipt of the bagels and bagel related
15 products.

16 Overt Act No. 6: On or about June 1, 1995, employees
17 at I&J prepared a false order form showing an order for 60 dozen
18 bagels and bagel related products from Peerless. The false order
19 form included false signatures for the purported delivery and
20 receipt of the bagels and bagel related products.

21 Overt Act No. 7: On or about June 1, 1995, employees
22 at I&J prepared a false order form showing an order for 60 dozen
23 bagels and bagel related products from the Veatch Carlson law
24 firm. The false order form included false signatures for the
25 purported delivery and receipt of the bagels and bagel related
26 products.

1 Overt Act No. 8: On or about June 2, 1995, employees
2 at I&J prepared a false order form showing an order for 50 dozen
3 bagels and bagel related products from Peerless. The false order
4 form included false signatures for the purported delivery and
5 receipt of the bagels and bagel related products.

6 Overt Act No. 9: On or about June 2, 1995, employees
7 at I&J prepared a false order form showing an order for 60 dozen
8 bagels and bagel related products from the Veatch Carlson law
9 firm. The false order form included false signatures for the
10 purported delivery and receipt of the bagels and bagel related
11 products.

12 Overt Act No. 10: On or about June 5, 1995, employees
13 at I&J prepared a false order form showing an order for 45 dozen
14 bagels and bagel related products from Peerless. The false order
15 form included false signatures for the purported delivery and
16 receipt of the bagels and bagel related products.

17 Overt Act No. 11: On or about June 5, 1995, employees
18 at I&J prepared a false order form showing an order for 60 dozen
19 bagels and bagel related products from the Veatch Carlson law
20 firm. The false order form included false signatures for the
21 purported delivery and receipt of the bagels and bagel related
22 products.

23 Overt Act No. 12: On or about June 6, 1995, employees
24 at I&J prepared a false order form showing an order for 45 dozen
25 bagels and bagel related products from Peerless. The false order
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1 form included false signatures for the purported delivery and
2 receipt of the bagels and bagel related products.

3 Overt Act No. 13: On or about June 6, 1995, employees
4 at I&J prepared a false order form showing an order for 60 dozen
5 bagels and bagel related products from the Veatch Carlson law
6 firm. The false order form included false signatures for the
7 purported delivery and receipt of the bagel related products.

8 Overt Act No. 14: On or about June 7, 1995, employees
9 at I&J prepared a false order form showing an order for 45 dozen
10 bagels and bagel related products from Peerless. The false order
11 form included false signatures for the purported delivery and
12 receipt of the bagels and bagel related products.

13 Overt Act No. 15: On or about June 7, 1995, employees
14 at I&J prepared a false order form showing an order for 60 dozen
15 bagels and bagel related products from the Veatch Carlson law
16 firm. The false order form included false signatures for the
17 purported delivery and receipt of the bagels and bagel related
18 products.

19 Overt Act No. 16: On or about June 8, 1995, employees
20 at I&J prepared a false order form showing an order for 45 dozen
21 bagels and bagel related products from Peerless. The false order
22 form included false signatures for the purported delivery and
23 receipt of the bagels and bagel related products.

24 Overt Act No. 17: On or about June 8, 1995, employees
25 at I&J prepared a false order form showing an order for 60 dozen
26 bagels and bagel related products from the Veatch Carlson law
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1 firm. The false order form included false signatures for the
2 purported delivery and receipt of the bagels and bagel related
3 products.

4 Overt Act No. 18: On or about June 9, 1995, employees
5 at I&J prepared a false order form showing an order for 50 dozen
6 bagels and bagel related products from Peerless. The false order
7 form included false signatures for the purported delivery and
8 receipt of the bagels and bagel related products.

9 Overt Act No. 19: On or about June 9, 1995, employees
10 at I&J prepared a false order form showing an order for 60 dozen
11 bagels and bagel related products from the Veatch Carlson law
12 firm. The false order form included false signatures for the
13 purported delivery and receipt of the bagels and bagel related
14 products.

15 Overt Act No. 20: On or about June 12, 1995, employees
16 at I&J prepared a false order form showing an order for 45 dozen
17 bagels and bagel related products from Peerless. The false order
18 form included false signatures for the purported delivery and
19 receipt of the bagels and bagel related products.

20 Overt Act No. 21: On or about June 12, 1995, employees
21 at I&J prepared a false order form showing an order for 60 dozen
22 bagels and bagel related products from the Veatch Carlson law
23 firm. The false order form included false signatures for the
24 purported delivery and receipt of the bagels and bagel related
25 products.

1 Overt Act No. 22: On or about June 13, 1995, employees
2 at I&J prepared a false order form showing an order for 45 dozen
3 bagels and bagel related products from Peerless. The false order
4 form included false signatures for the purported delivery and
5 receipt of the bagels and bagel related products.

6 Overt Act No. 23: On or about June 13, 1995, employees
7 at I&J prepared a false order form showing an order for 60 dozen
8 bagels and bagel related products from the Veatch Carlson law
9 firm. The false order form included false signatures for the
10 purported delivery and receipt of the bagels and bagel related
11 products.

12 Overt Act No. 24: On or about June 14, 1995, employees
13 at I&J prepared a false order form showing an order for 45 dozen
14 bagels and bagel related products from Peerless. The false order
15 form included false signatures for the purported delivery and
16 receipt of the bagels and bagel related products.

17 Overt Act No. 25: On or about June 14, 1995, employees
18 at I&J prepared a false order form showing an order for 60 dozen
19 bagels and bagel related products from the Veatch Carlson law
20 firm. The false order form included false signatures for the
21 purported delivery and receipt of the bagels and bagel related
22 products.

23 Overt Act No. 26: On or about June 15, 1995, employees
24 at I&J prepared a false order form showing an order for 45 dozen
25 bagels and bagel related products from Peerless. The false order
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1 form included false signatures for the purported delivery and
2 receipt of the bagels and bagel related products.

3 Overt Act No. 27: On or about June 15, 1995, employees
4 at I&J prepared a false order form showing an order for 60 dozen
5 bagels and bagel related products from the Veatch Carlson law
6 firm. The false order form included false signatures for the
7 purported delivery and receipt of the bagels and bagel related
8 products.

9 Overt Act No. 28: On or about June 16, 1995, employees
10 at I&J prepared a false order form showing an order for 50 dozen
11 bagels and bagel related products from Peerless. The false order
12 form included false signatures for the purported delivery and
13 receipt of the bagels and bagel related products.

14 Overt Act No. 29: On or about June 16, 1995, employees
15 at I&J prepared a false order form showing an order for 60 dozen
16 bagels and bagel related products from the Veatch Carlson law
17 firm. The false order form included false signatures for the
18 purported delivery and receipt of the bagel related products.

19 Overt Act No. 30: On or about October 11, 1995,
20 defendant CANO assisted defendant BOREN in obtaining a false
21 confirmation of the amount of money purportedly owed to I&J by
22 Veatch Carlson for the fake sales of bagels.

23 Overt Act No. 31: On or about February 12, 1996,
24 defendant CANO went to Borini's home to ensure that a false
25 confirmation was signed and faxed to the auditor, Ernst & Young.

1 Overt Act No. 32: On or about August 12, 1996,
2 defendant CANO arranged a session between Tuttle and Manhattan
3 Bagel's auditors, Ernst & Young, for the purpose of providing
4 another false confirmation of the fake Peerless debt to I&J.

5 Overt Act No. 33: On or about August 12, 1996, both
6 defendants BOREN and CANO, who were present in a nearby room, met
7 with Tuttle prior to Tuttle's session with the auditors to ensure
8 that Tuttle falsely told the auditors that Peerless had purchased
9 the claimed bagels.

10 Overt Act No. 34: On or about August 13, 1996,
11 defendant CANO delivered a paper bag containing \$50,000 in cash
12 to Borini's home.

13 Overt Act No. 35: On or about August 13, 1996,
14 defendant CANO and Borini's assistant counted \$50,000 in cash.

15 Overt Act No. 36: On or about August 13, 1996,
16 Borini's assistant then took the \$50,000 in cash to Borini's
17 attorney, who drew a \$50,000 check against his attorney's trust
18 account, payable to Peerless. The \$50,000 check was to reimburse
19 Peerless for the false payment made to I&J to make it appear that
20 the claimed bagel sales had occurred.

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COUNT TWO

[15 U.S.C. §§ 78m(b) (2) (A) , 78m(b) (5) , and 78ff;

17 C.F.R. § 240.13b2-1; and 18 U.S.C. § 2]

[Falsification of Accounting Books and Records]

9. The Grand Jury repeats and realleges paragraphs 1 through 5 and 7 of this First Superseding Indictment.

10. At various times from a date unknown until at least August 1998, in Los Angeles County, within the Central District of California, and elsewhere, defendants BOREN and CANO, aided and abetted by others known and unknown, knowingly falsified and willfully caused to be falsified, both directly and indirectly, the books, records, and accounts which I&J and Manhattan Bagel were required to make and keep, and which were required, in reasonable detail, to accurately and fairly to reflect the transactions and dispositions of the assets of I&J and Manhattan Bagel, an issuer with a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934. Specifically, defendants BOREN and CANO aided and abetted the creation of false financial documents to make it appear that fake bagel sales had actually occurred and willfully caused to be created said false and fraudulent documents, including invoices, purchase orders, accounts receivable schedules, and written confirmations pertaining to the claimed fake bagel sales to Veatch Carlson and Peerless. In particular, on or about August 12, 1996, defendants BOREN and CANO, at a Century City office building, aided and abetted the falsification of written

1 | confirmations on August 12 and August 13, 1996 by Tuttle of an
2 | account balance for Peerless concerning the fake purchases of
3 | bagels by Peerless from I&J.

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1 **COUNTS THREE AND FOUR**

2 **[18 U.S.C. §§ 1343, 2]**

3 11. The Grand Jury repeats and realleges and incorporates
4 all of the allegations of paragraphs 1 through 5 and 7 of this
5 First Superseding Indictment.

6 12. Beginning on a date unknown to the Grand Jury and
7 continuing until on or about August 1998, in the Central District
8 of California, and elsewhere, defendants BOREN and CANO, together
9 with others known and unknown to the Grand Jury, knowingly and
10 with intent to defraud, devised, participated in, and executed a
11 scheme to defraud, and to obtain money and property by means of
12 materially false and fraudulent pretenses, representations, and
13 promises, and the concealment of material facts, as described in
14 paragraphs 1 through 5 and 7 of this First Superseding
15 Indictment.

16 13. On or about the dates alleged below, within the Central
17 District of California, defendants BOREN and CANO, for the
18 purpose of executing the aforesaid scheme to defraud and
19 attempting to do so, transmitted, aided and abetted, and caused
20 the transmission, by means of wire communications in interstate
21 commerce, of the following telephone calls involving
22 representatives from Manhattan Bagel's auditor, Ernst & Young, in
23 both Los Angeles and Princeton, New Jersey by telephone, and
24 representatives of each of the two false bagel accounts, Veatch
25 Carlson and Peerless as listed below:
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1	<u>Count</u>	<u>Date (On or about)</u>	<u>Interstate Nature of Telephone Call</u>
2	THREE	August 8, 1996	Call Between Representatives of Veatch Carlson in Los Angeles, California and Ernst & Young Auditors in Princeton, New Jersey
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5	FOUR	August 12, 1996	Call Between Representative of Peerless in Los Angeles, California and Ernst & Young Auditors in Princeton, New Jersey
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1 **COUNT FIVE**

2 **[18 U.S.C. § 371]**

3 **I. BACKGROUND**

4 14. In or about August 1996, the SEC initiated an
5 investigation of defendants BOREN, CANO, and others for the
6 purpose of determining if the individuals had violated federal
7 securities laws in connection with the merger of I&J with
8 Manhattan Bagel. One of the areas of SEC scrutiny involved the
9 false invoices and fake bagel sales to Veatch Carlson and
10 Peerless.

11 15. By in or about October 1996, the SEC began issuing
12 subpoenas to individuals for the purpose of obtaining their
13 testimony through depositions. Defendants BOREN and CANO learned
14 of the SEC's proceedings and embarked upon a series of actions
15 designed to intimidate and influence potential witnesses in the
16 SEC investigation, including other knowing participants in the
17 false bagel sales.

18 16. The SEC investigation continued until in or about May
19 4, 2001, at which time the SEC filed a civil action against
20 defendants BOREN, CANO and others.

21 **II. THE OBJECT OF THE CONSPIRACY**

22 17. Beginning in or before June 1996, and continuing until
23 on or about August 1998, in the Central District of California,
24 and elsewhere, defendants BOREN and CANO, together with others
25 known and unknown to the Grand Jury, knowingly and unlawfully
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1 combined, conspired, and agreed to commit the following offense
2 against the United States:

3 To corruptly influence, obstruct, and impede, and endeavor
4 to influence, obstruct, and impede the due administration of
5 justice in an ongoing SEC proceeding by threatening, intimidating
6 and pressuring witnesses who were subpoenaed to testify before
7 the SEC, in violation of Title 18, United States Code, Section
8 1505.

9 **III. THE MANNER AND MEANS OF THE CONSPIRACY**

10 18. The object of the conspiracy was carried out, in part,
11 as follows:

12 a. Defendants BOREN and CANO have been friends since
13 high school, and during the period set forth in this conspiracy,
14 they utilized telephones, speaker-phones, and cell phones in
15 their dealings with each other and with others.

16 b. For much of his adult life, defendant CANO served
17 as an assistant and "enforcer" for defendant BOREN. Defendant
18 BOREN enlisted and employed defendant CANO, among other things,
19 to intimidate and influence people with whom defendant BOREN had
20 a dispute and those individuals whose conduct defendant BOREN
21 wished to direct.

22 c. Defendant BOREN used defendant CANO to threaten,
23 intimidate and pressure individuals who had been subpoenaed to
24 testify before the SEC in connection with its investigation of
25 activities at I&J Bagel and Manhattan Bagel.

1 d. Defendant BOREN also threatened, intimidated and
2 pressured individuals who had been subpoenaed to testify before
3 the SEC in connection with its investigation of activities at I&J
4 Bagel and Manhattan Bagel.

5 Intimidation of Tuttle

6 e. Defendant CANO arranged a session that occurred on
7 August 12, 1996, between Tuttle and the Ernst & Young auditors
8 for Manhattan Bagel. The session was held at the Century City
9 offices of defendant CANO's attorney. Unbeknownst to both the
10 auditors and to Tuttle, defendants BOREN and CANO arranged to
11 meet with Tuttle in advance of Tuttle's session with the Ernst &
12 Young auditors to ensure that Tuttle would falsely tell the
13 auditors that Peerless had purchased the claimed bagels.

14 f. In advance of the August 12, 1996 session with the
15 auditors, Tuttle was escorted by defendant CANO's attorney to a
16 room in which defendants BOREN and CANO were waiting. In the
17 meeting with defendants BOREN and CANO, defendant BOREN asked
18 Tuttle how his mother, father and family "were doing." This was
19 a common device used, in part, by defendant BOREN to demonstrate
20 that he, defendant BOREN, possessed knowledge about the personal
21 life of those individuals with whom he had a dispute and with
22 those individuals whose conduct he wished to direct. Tuttle
23 asked defendant BOREN what he was supposed to do in the meeting
24 with the auditor. In response, defendant BOREN told Tuttle to
25 falsely tell the auditor that Peerless owed I&J money for the
26 claimed bagel purchases. Defendant BOREN and Tuttle both knew

1 that Peerless had not purchased the claimed bagels from I&J. As
2 Tuttle left the meeting with defendants BOREN and CANO to meet
3 with the auditors in a nearby conference room, defendant BOREN
4 said to Tuttle, "By the way, I'm not here. You don't see me."

5 g. On or about the evening of August 23, 1998,
6 defendants BOREN and CANO drove to the home of Tuttle and parked
7 their car in front of the driveway. Defendants BOREN and CANO
8 remained in the car, with the engine running and the car lights
9 on. Tuttle, who was already in the front of the home with his
10 two young daughters who were riding their bicycles, immediately,
11 instructed his daughters to go inside the house. Defendant BOREN
12 then asked several questions of Tuttle about his family and
13 personal life. Defendant BOREN asked Tuttle if he was living at
14 that residence, if Tuttle's wife was still living in Simi Valley,
15 and how Tuttle's daughters "were doing," among other things.
16 While defendant BOREN peppered Tuttle with questions about his
17 personal life, defendant CANO remained silent in his seat,
18 staring down Tuttle in a serious "tough guy" scowl. Within
19 minutes after the two drove off, Tuttle received several
20 telephone calls where the callers, who did not identify
21 themselves, laughed, mumbled and then said, "Bang!" Tuttle
22 recognized the voice of one of the callers as that of defendant
23 CANO.

24 h. As a result of defendants BOREN's and CANO's
25 actions, Tuttle removed himself and his daughters from the home
26 and slept elsewhere.

Intimidation of Borini

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2 i. In or about late October or early November 1996,
3 defendant BOREN met with his brother, Borini, who was the
4 executive director for Veatch Carlson, and asked Borini to tell
5 the SEC that the fake bagel sales were real. Defendant BOREN
6 threatened Borini and told him, in essence, that if it required
7 "taking out" Borini, then that was what he would do. Defendant
8 BOREN told Borini that Borini did not want to be "on the other
9 side of the table" from defendant BOREN.

10 j. During November 1996, after Borini refused to hire
11 an attorney chosen by defendant BOREN, defendant BOREN started
12 harassing Borini over the telephone. Defendant BOREN's numerous
13 threats included telling Borini, in essence:

- 14 (i) You are signing your own death warrant;
15 (ii) You are not going to see the light of day;
16 and
17 (iii) Eric CANO is out of control. I'm not going
18 to be able to control him on this. If he
19 thinks you're going south on us, I don't
20 know what he'll do. The only chance of
21 keeping him in line is you playing ball.

22 k. During November 1996, defendant CANO also
23 telephoned Borini and threatened him with harm if Borini did not
24 cooperate with defendant BOREN and lie to the SEC.

25 l. Between November 1996 and January 10, 1997, the day
26 Borini testified before the SEC, defendants BOREN and CANO went
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1 to Borini's residence on numerous occasions and continued the
2 threats. On one occasion, defendants BOREN and CANO appeared
3 together in the lobby of Borini's Wilshire Boulevard residence
4 and demanded that Borini make a commitment to lie to the SEC
5 about the fake bagel sales. Borini refused and defendant CANO
6 told Borini that they were "going to f- him up." Defendant CANO
7 would not allow Borini to leave the lobby and defendant BOREN
8 then told Borini that both Borini and Tuttle would end up buried
9 in the Las Vegas desert if they did not cooperate. Defendant
10 BOREN also asked Borini whether Borini wanted defendants BOREN
11 and CANO to "show up" at Tuttle's home some night or whether
12 Borini would just telephone Tuttle and tell him to cooperate
13 about the fake bagel purchases. Defendant BOREN continued his
14 threat against Borini's brother-in-law, Tuttle, by saying that he
15 and defendant CANO knew where Tuttle lived; they knew Tuttle had
16 two daughters and a "pretty young wife"; and that the "kids" and
17 wife needed their father around.

18 m. Borini appeared for the SEC deposition in New York
19 City on January 10, 1997. After Borini returned to California,
20 defendants BOREN and CANO telephoned Borini and pressured him to
21 disclose what questions were asked by the SEC. Borini explained
22 that he invoked the Fifth Amendment and could not remember the
23 questions. Defendants BOREN and CANO said they were "on their
24 way" to Borini's residence in order to help him remember the
25 questions. Shortly thereafter, defendants BOREN and CANO
26 appeared in Borini's lobby. Defendant BOREN told Borini that

1 even though Borini had invoked the Fifth Amendment, the SEC could
2 still require him to further testify against defendant BOREN by
3 offering Borini immunity. In response to defendant BOREN's
4 statement, defendant CANO told Borini that he, defendant CANO,
5 would never let Borini testify against defendant BOREN.

6 n. In or about January or February 1997, defendants
7 BOREN and CANO met with Borini at a Marie Callender's restaurant.
8 They told Borini that if he didn't get his thinking straight, he
9 could end up with a flat tire in the parking lot and no one would
10 ever see him again. Defendant BOREN then spoke to Borini alone
11 and told him that if he would go to jail for defendant BOREN,
12 defendant BOREN would take care of Borini's wife and "do
13 business" with Borini when Borini was released.

14 o. On or about February 5, 1998, defendants BOREN and
15 CANO went to Borini's Wilshire Boulevard residence and pressured
16 Borini on a number of issues, including the ongoing SEC
17 investigation. In the lobby of Borini's residence, defendant
18 CANO pushed Borini, knocking him down. After Borini got up,
19 defendants BOREN and CANO pushed and struck Borini several times,
20 knocking him back and forth. While defendants BOREN and CANO
21 were pushing and striking Borini, defendant CANO shaped his hand
22 like a gun, put the imaginary pistol to Borini's head, and
23 repeatedly pulled the imaginary trigger while saying to Borini
24 that "it" could happen "this quick," each time defendant CANO
25 pulled the imaginary trigger.

1 p. On or about February 5, 1998, immediately after the
2 physical assault on Borini in the lobby, defendant BOREN told
3 Borini that if he did not cooperate with him (defendant BOREN),
4 that defendant BOREN would falsely tell the authorities that
5 Borini was to blame for matters under investigation by the SEC.

6 q. As a result of the physical attack, Borini had to
7 change his residence and telephone number.

8 r. On or about February 27, 1998, defendants BOREN and
9 CANO followed Borini as he drove down Wilshire Boulevard. When
10 they pulled up beside Borini, defendant CANO shaped his hand like
11 a pistol, put the imaginary pistol to his head, and pulled the
12 imaginary trigger. As a result of the intimidating hand gesture,
13 Borini reported the incident to the police.

14 Intimidation of Altamirano

15 s. The SEC deposed Marytza Altamirano on or about
16 April 25, 1997. Ms. Altamirano had worked for I&J, was
17 personally involved with defendant BOREN, and they at one time
18 shared a criminal attorney paid by defendant BOREN. Before her
19 SEC deposition, defendant BOREN pressured Ms. Altamirano to
20 assert her Fifth Amendment right and told her that if she did not
21 refuse to testify, he would:

- 22 (i) Have their criminal attorney [who defendant
23 BOREN claimed had a relationship with the
24 federal judge in the case for which they had
25 sought criminal legal representation] to
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1 intercede with the federal judge so she would
2 be put in jail;

3 (ii) Make sure she would lose custody of her son;

4 (iii) Make sure she would go bankrupt; and

5 (iv) Turn her into a "bag lady."

6 Intimidation of Kappico

7 t. In or about 1996 through June 1997, defendants
8 BOREN and CANO telephoned Mark Kappico, an accountant for I&J, at
9 Kappico's Warner Center office in the San Fernando Valley.

10 During this call, defendants BOREN and CANO conveyed an interest
11 to meet with Kappico that day. Kappico initially declined, but
12 was not surprised when shortly thereafter, defendants BOREN and
13 CANO appeared at his Warner Center office. Defendants BOREN and
14 CANO renewed their lunch invitation and Kappico consented.

15 u. At lunch, defendants BOREN and CANO attempted to
16 engage Kappico in a discussion about Kappico's upcoming
17 deposition with the SEC. Kappico repeatedly told defendants
18 BOREN and CANO that he did not want to discuss his testimony with
19 them. Despite this, defendants BOREN and CANO insisted that they
20 did nothing wrong. Defendants BOREN and CANO persisted and asked
21 Kappico to provide them an opportunity to review financial
22 records to which they were not entitled. Kappico explained that
23 because defendants BOREN and CANO were no longer affiliated with
24 I&J, it would not be appropriate to provide them with access to
25 the records that were the subject of the SEC investigation.

26 v. In order to intimidate Kappico to do as they
27 requested, defendants BOREN and CANO reminded Kappico that he had

1 a nice practice, home and family to think about, and that he
2 (Kappico) would not want to cause trouble for himself by saying
3 the wrong thing to the SEC.

4 **IV. OVERT ACTS**

5 19. To effect the object of the conspiracy, the following
6 overt acts, among others, were committed in the Central District
7 of California and elsewhere:

8 Overt Act No. 1: On or about August 12, 1996, defendant
9 CANO arranged a session between Tuttle and the Ernst & Young
10 auditors for Manhattan Bagel. Unbeknownst to both the auditors
11 and Tuttle, defendants BOREN and CANO arranged to meet with
12 Tuttle in advance of the session with the auditors to ensure that
13 Tuttle would falsely tell the auditors that Peerless had
14 purchased the claimed bagels.

15 Overt Act No. 2: In or about January 1997 through
16 April 1997, defendant BOREN pressured Altamirano to assert her
17 Fifth Amendment right or else he would cause her to go to jail,
18 lose custody of her son, make her go bankrupt, and turn her into
19 a bag lady.

20 Overt Act No. 3: On or about February 5, 1998,
21 defendants BOREN and CANO went to Borini's home, pressured him
22 regarding a number of issues, including the SEC proceedings, and
23 physically assaulted Borini.

24 Overt Act No. 4: On or about August 23, 1998,
25 defendants BOREN and CANO drove to the home of Tuttle, and
26 defendant BOREN spoke to Tuttle in a manner that Tuttle perceived
27 as threatening, while defendant CANO silently scowled at Tuttle.

COUNT SIX

[18 U.S.C. §§ 1505, 2]

20. The Grand Jury repeats and realleges paragraphs 14 through 16 and 18 of this First Superseding Indictment.

21. Beginning in or about October 1996, and continuing until in or about February 1998, in the Central District of California, and elsewhere, defendants BOREN and CANO corruptly, and by threats and force, influenced, obstructed, and impeded, and endeavored to corruptly, and by threats and force, influence, obstruct, and impede the due administration of justice in ongoing Securities and Exchange Commission (SEC) proceedings by threatening, intimidating and pressuring Phillip Borini in an attempt to get him to give false testimony before the SEC.

COUNT SEVEN

[18 U.S.C. §§ 1505, 2]

22. The Grand Jury repeats and realleges paragraphs 14 through 16 and 18 of this First Superseding Indictment.

23. Beginning in or about October 1996, and continuing until in or about August 1998, in the Central District of California and elsewhere, defendants BOREN and CANO corruptly influenced, obstructed, and impeded, and endeavored to corruptly influence, obstruct, and impede the due administration of justice in ongoing Securities and Exchange Commission (SEC) proceedings by threatening, intimidating and pressuring Timothy Tuttle in an attempt to get him to give false testimony before the SEC.

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COUNT EIGHT

[18 U.S.C. §§ 1505, 2]

24. The Grand Jury repeats and realleges paragraphs 14 through 16 and 18 of this First Superseding Indictment.

25. During the period from 1996 through in or about June 1997, in the Central District of California and elsewhere, defendants BOREN and CANO corruptly, and by threats and force, influenced, obstructed, and impeded, and endeavored to corruptly, and by threats and force, influence, obstruct, and impede the due administration of justice in ongoing Securities and Exchange Commission (SEC) proceedings by threatening, intimidating and pressuring Mark Kappico, an accountant for I&J, in an attempt to get him to give false or misleading testimony before the SEC or withhold testimony from the SEC.

1 **COUNT NINE**

2 **[18 U.S.C. § 1505]**

3 26. The Grand Jury repeats and realleges paragraphs 14
4 through 16 and 18 of this First Superseding Indictment.

5 27. Beginning in or about January 1997, and continuing
6 until in or about April 1997, in the Central District of
7 California and elsewhere, defendant BOREN corruptly influenced,
8 obstructed, and impeded, and endeavored to corruptly influence,
9 obstruct, and impede the due administration of justice in ongoing
10 Securities and Exchange Commission (SEC) proceedings by
11 threatening, intimidating and pressuring Marytza Altamirano in an
12 attempt to get her to give false or misleading testimony before
13 the SEC or withhold testimony from the SEC.

14
15 A TRUE BILL

16
17 _____
18 Foreperson

19
20 JOHN S. GORDON
United States Attorney

21
22 MONICA BACHNER
Assistant United States Attorney
23 Acting Chief, Criminal Division

24
25 GREGORY WEINGART
Assistant United States Attorney
26 Chief, Major Frauds Section