UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA	:	
		INDICTMENT
-v-	:	
		07 Cr.
DAVID A. STOCKMAN,	:	
J. MICHAEL STEPP,		
DAVID R. COSGROVE, and	:	
PAUL C. BARNABA,		
Defendants.	:	

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COUNT ONE

(Conspiracy To Commit Securities Fraud, Make False Statements In Annual and Quarterly Reports, Make False Entries In Books And Records, Lie To Auditors, Commit Bank Fraud, Wire Fraud, and Obstruction of An Agency Proceeding)

The Grand Jury charges:

RELEVANT PERSONS AND ENTITIES

1. At all times relevant to this Indictment, Collins & Aikman, Inc. ("C&A") was a corporation organized under the laws of the State of Michigan with its headquarters in Troy, Michigan. At all times relevant to this Indictment, C&A's common stock was listed under the symbol "CKC" on the New York Stock Exchange.

2. DAVID A. STOCKMAN, the defendant, served on C&A's board of directors from in or about 2000 through in or about May 2005. From on or about August 1, 2002 until in or about May 2005, STOCKMAN served as Chairman of the Board of Directors of C&A, and from in or about August 2003 until in or about May 2005, STOCKMAN served as Chief Executive Officer of C&A. At all times

relevant to this Indictment, STOCKMAN was a partner in a private equity firm (the "Private Equity Firm"), which was the largest single shareholder in C&A.

3. At all times relevant to this Indictment, J. MICHAEL STEPP, the defendant, was a partner in the Private Equity Firm. From in or about 2000 until in or about April 2006, STEPP served as Vice Chairman of the C&A Board of Directors. In or about 2001, STEPP was an advisor to C&A and from in or about January 2002 until in or about October 2004, STEPP served as the Chief Financial Officer of C&A.

4. At all times relevant to this Indictment, DAVID R. COSGROVE, the defendant, was employed by C&A or an entity later purchased by C&A. At various times relevant to this Indictment, COSGROVE served as Group Controller for the Plastics Group, Vice President of Finance for the North American Plastics Group (from in or about February 2002 to in or about August 2002), Vice President of the Financial Planning and Analysis Group (from in or about August 2002 to in or about October 2004), and Senior Vice President, Financial Planning and Controller (from in or about October 2004 to at least May 2005).

5. At various times relevant to this Indictment, PAUL BARNABA, the defendant, was employed by C&A in the Purchasing Department. From Spring 2002 to December 2004, BARNABA was the Director of Financial Analysis for the Purchasing Department.

From December 2004 until in or about April 2005, BARNABA held the position of Vice President and Director of Purchasing for the Plastics Division.

BACKGROUND

C&A's Business

6. At all times relevant to this Indictment, C&A provided to businesses around the world a broad range of automotive supply parts, including, among other things, instrument panels and almost all other parts of an automobile interior, carpets, acoustics, fabrics, and convertible tops. C&A owned and operated factories in North America, South America, and Europe, and supplied parts to both domestic and foreign auto manufacturers, such as Ford Motor Company, General Motors, DaimlerChrysler, and others. The automobile manufacturers are commonly referred to within the industry as original equipment manufacturers or "OEMs." C&A operated primarily as a Tier I supplier in the automotive industry, meaning that C&A supplied its products directly to the OEMs. C&A also operated as a Tier II supplier, in that it supplied certain products to other automotive parts suppliers, who in turn supplied the OEMs. By 2005, C&A had grown to be one of the largest automotive parts suppliers in the world.

7. At all times relevant to this Indictment, in order to produce automobile interiors and parts for the OEMs, C&A had

to purchase either raw materials or certain component parts from vendors. The costs of these raw materials and component parts were among C&A's largest expenses.

The Private Equity Firm's Investment in C&A

8. In 1999, DAVID A. STOCKMAN and others formed the Private Equity Firm with the stated goal of acquiring and expanding industrial companies. As part of his initial investment strategy on behalf of the Private Equity Firm, STOCKMAN targeted C&A as a company which he planned to control and expand through acquisitions. In or about February 2001, the Private Equity Firm acquired a controlling share of C&A's equity; thereafter, STOCKMAN and other representatives of the Private Equity Firm became members of the C&A Board of Directors. C&A entered into a services agreement with the Private Equity Firm under which the Private Equity Firm provided advisory and consulting services, in return for a $4.0 million annual advisory fee and additional fees of 1% of the total enterprise value of certain acquisitions.

9. During 2001, as directed by STOCKMAN and in accordance with the Private Equity Firm's planned strategy, C&A purchased three other auto parts businesses and in the process doubled its size. First, in or about July, 2001, C&A acquired Becker Group L.L.C., a company that manufactured plastic parts for automobiles. In or about September 2001, C&A acquired Joan

Automotive Fabrics, which was part of Joan Fabrics, a privately held fabrics manufacturing company. These two acquisitions were part of STOCKMAN and the Private Equity Firm's specific plan to form C&A into a "Mega Tier II" supplier of fabrics and plastic parts to other automotive parts suppliers. Finally, in December 2001, C&A made its largest acquisition, purchasing the trim division of Textron Automotive Company, known as "TAC-Trim." This acquisition was intended to further STOCKMAN's strategy of garnering a larger share of the Tier I market, towards C&A's goal of producing almost any part of an automobile interior to OEMs worldwide.

C&A's Capital Structure

10. At all times relevant to this Indictment, in addition to capital raised in the equity markets, C&A availed itself of a variety of sources of debt financing. At various times relevant to this Indictment, C&A's capital structure included (1) between approximately $400 million and $900 million in notes; (2) revolving credit facilities and term loans from banks between approximately $575 million and $675 million; and (3) an accounts receivable securitization facility of between approximately $170 million and $250 million.

11. Once STOCKMAN and the Private Equity Fund were in control of C&A in 2001, they caused C&A to finance its purchase of Tac-TRIM in December 2001 in part through issuing an

additional $500 million in 10-year notes. Between that note issuance and other increases in its debts, under STOCKMAN's control, C&A's net debt increased from approximately $884 million as of December 30, 2000 to approximately $1.6 billion as of December 31, 2004.

12. At all times relevant to this Indictment, C&A's credit facilities were governed by certain financial covenants. Failure to comply with these covenants would, under terms of the credit facilities, constitute a default by C&A and warrant a demand for immediate payment of the full amount of the credit facilities. For example, C&A had to maintain a certain ratio of performance, measured by dividing C&A's net debt by a specific formula for "Earnings Before Interest, Taxes, Depreciation, and Amortization" ("EBITDA"), referred to as a leverage covenant. If the ratio of C&A's net debt to its EBITDA fell below the covenant requirements, C&A would be in default of its leverage covenant. The credit facility agreements provided that, over time, the leverage covenant would become more stringent, meaning that C&A was expected to continue to meet increasing performance targets and/or reduce its overall indebtedness to maintain compliance with its covenants. If C&A could not comply with its covenants, C&A could attempt to negotiate a less stringent financial test with its lenders, but such waivers of covenants were not guaranteed and were costly to C&A.

13. In the event that C&A were to default on its credit facilities, cross-default provisions in its indentures would trigger a default event on C&A's notes as well.

C&A's Financial Reporting Process

14. At all times relevant to this Indictment, C&A employed independent auditors who performed year-end audits of C&A's financial statements. In addition, auditors completed quarterly reviews of selected C&A financial information.

15. At all times relevant to this Indictment, at the close of each month and each quarter of C&A's fiscal year, employees in C&A's finance and accounting departments collected and summarized information reflecting C&A's operating performance and financial results for the particular period in question. This information was reflected in various financial statements and reports.

16. At all times relevant to this Indictment, C&A tracked its sales, EBITDA, operating income, capital expenditures and other financial metrics on a monthly basis through the use of internal reports. Each C&A plant was required to update an internal computer system with its monthly or quarterly forecasts and actual results. The results from the plants then rolled up to corresponding divisions. Each division then reviewed the plants' reports and consolidated them into divisional reports, which were sent to the Financial Planning and Analysis group,

which, from at least 2003 until 2005, was headed by DAVID R. COSGROVE. At the corporate level, the results from each division were aggregated and combined with the home office results, which typically consisted of corporate overhead and any "top side" adjustments. The consolidated reports tracked actual results and compared them to forecasted results. As months went by, forecasted results were updated with the latest information, including the latest estimates of future sales to the OEMs. STOCKMAN and STEPP reviewed the internal forecasts and STOCKMAN often made changes to the internal forecasts or suggested ways to improve C&A's results.

17. At all times relevant to this Indictment, STOCKMAN led periodic meetings to discuss C&A's operating results for the upcoming months, with a focus on the current quarter. In connection with these meetings, STOCKMAN, STEPP, COSGROVE, and others reviewed documents that summarized information, including sales, expenses, and other anticipated accounting entries that would affect C&A's revenues in the current quarter and in following months. STOCKMAN regularly met with C&A employees to discuss the financial results and projections reflected in the various documents presented during these meetings.

THE SCHEME TO DEFRAUD

Introduction And Overview

18. Beginning in or about 2001, after the Private Equity Firm and STOCKMAN took operating control of C&A and undertook their plan of expansion, C&A faced increasing pressures in its business operations. Over time, C&A was squeezed between cost-reduction mandates from the OEMs and raw material price increases from its vendors. In addition, C&A's operating results were further depressed by the high costs of integrating the businesses it had acquired during 2001 into the existing C&A operations. From as early as in or about December 2001, these operational pressures, among other issues, threatened to cause C&A's financial performance to fall to levels that might trigger default on the financial covenants governing the credit facilities and the cross-default provisions in C&A's notes. Thus, STOCKMAN, STEPP, COSGROVE, and the Private Equity Firm continually faced pressure to keep C&A's financial performance at a level that would (a) enable C&A to comply with the covenants in its credit facilities; and (b) satisfy investors that STOCKMAN's and the Private Equity Firm's financial plan was successful.

19. In response to these operational pressures, STOCKMAN orchestrated a scheme, joined in by COSGROVE, STEPP, BARNABA, and others, to defraud C&A's investors, banks, and creditors by manipulating C&A's reported revenues and earnings in

an effort to, among other things, (1) enable C&A to avoid violating covenants in its credit facilities agreements and thus C&A's financial ruin; and (2) raise additional capital in the debt markets to assist C&A in solving its business problems.

20. In furtherance of that scheme, from at least as early as in or about December 2001, STOCKMAN, STEPP, COSGROVE, and BARNABA caused C&A's reported figures for EBITDA, operating income, and other financial metrics to be falsely and fraudulently inflated by systematically and improperly recognizing cost reductions based on supplier rebates, as detailed in paragraphs 26 to 48, below.

21. In furtherance of the scheme, STOCKMAN and his co-conspirators made repeated public statements in which they (a) falsely described C&A's operating performance and financial results, and (b) omitted material facts necessary to make the statements that they made about C&A's operating performance and financial results complete, accurate, and not misleading. In addition, STOCKMAN and his co-conspirators caused C&A to file financial statements with the SEC that presented a materially false and misleading description of C&A's operating performance and financial results. STOCKMAN and others made similarly false and misleading statements to C&A's creditors and lenders, which falsely described C&A's operating performance and financial results, and omitted material facts necessary to make the

statements that they made about C&A's operating performance and financial results complete, accurate, and not misleading, as detailed in paragraphs 26 to 48, below.

22. As C&A's true operating results substantially deteriorated at the end of 2004 and the beginning of 2005, causing an unprecedented liquidity crisis, STOCKMAN directed a scheme to further defraud C&A's creditors by, among other things, misrepresenting to a lender the nature of C&A's portfolio of accounts receivable, against which C&A was borrowing over a hundred million dollars on a daily basis, as detailed in paragraphs 49 to 61, below.

23. As C&A's true operating results continued to deteriorate in the first quarter of 2005 and as its improper rebate accounting practices came under scrutiny from its auditors, STOCKMAN directed a scheme to further defraud C&A's investors and creditors by making numerous false statements to the public and to C&A's creditors concerning (a) C&A's current liquidity situation, (b) C&A's forecasted EBITDA for the first quarter of 2005, and (c) the scope of the improper rebate recognition practices that C&A's outside auditors and Audit Committee were beginning to examine, as detailed in paragraphs 62 to 90, below.

24. On or about March 17, 2005, as part of its regularly scheduled public earnings call, C&A announced that it

would have to delay the filing of its 2004 Annual Report on SEC Form 10-K because C&A had been improperly recognizing cost reductions attributed to supplier rebates. STOCKMAN falsely sought to reassure C&A's investors, creditors, outside auditors, and the Board of Directors that the rebate issue was small in scale and did not reflect fundamental operating problems at C&A. In early April 2005, STOCKMAN repeated many of these assurances to Credit Suisse First Boston ("Credit Suisse"), in order to secure $75 million in additional financing. These additional funds, however, were not sufficient to meet C&A's needs and were depleted by late April 2005. Ultimately, in or about May 2005, the Board of Directors discovered that C&A had run out of cash and had, at STOCKMAN's direction, misled C&A's investors about C&A's true operating performance. The Board of Directors also discovered that STOCKMAN had understated to the Board and C&A's investors the scope of the rebate accounting issue. On or about May 12, 2005, the Board of Directors requested STOCKMAN's resignation.

25. On or about May 17, 2005, C&A filed for bankruptcy. As a result, C&A's common stock became nearly worthless, and the price of C&A's bonds (Senior Subordinated Notes, due 2012 and Senior Subordinated Notes, due 2011) also plummeted. The fraud carried out by STOCKMAN, STEPP, COSGROVE,

BARNABA, and others caused hundreds of millions of dollars in investor and creditor losses.

THE JOAN FABRIC REBATE FRAUD SCHEME

26. Starting in or about late 2001, STOCKMAN and STEPP, along with others, arranged for round trip transactions between C&A and Joan Fabrics in order to improperly manipulate C&A's EBITDA, as detailed below.

27. On or about September 21, 2001, at STOCKMAN's direction, C&A acquired Joan Automotive Fabrics, a supplier of automotive fabric, from Joan Fabrics.

28. In the fourth quarter of 2001, STOCKMAN, STEPP, and others realized that C&A's fourth quarter results were going to fall short of expectations. Therefore, STEPP, with STOCKMAN's knowledge and approval, asked the Chief Executive Officer of Joan Fabrics ("the Joan CEO") for a $3 million payment from Joan Fabrics to C&A that would be used to boost C&A's EBITDA for the fourth quarter of 2001. In return, STOCKMAN, STEPP, and others promised to repay Joan Fabrics in the future. As STOCKMAN and STEPP intended, this $3 million payment was characterized as a supplier rebate to allow C&A to account for it as a reduction in cost for the fourth quarter of 2001, and therefore increase C&A's EBITDA for that period. This characterization was false, as STOCKMAN and STEPP had agreed that C&A would make Joan Fabrics "whole" for the payment at some point in the future. Therefore,

the transaction was a round trip of cash, not a supplier rebate, and should not have factored into C&A's EBITDA.

29. After this first "rebate," STOCKMAN negotiated additional payments from Joan Fabrics in order to boost C&A's EBITDA. STOCKMAN negotiated these payments personally with the Joan CEO, which totaled nearly $15 million in "rebates" between the fourth quarter of 2001 and the first quarter of 2003. As with the first "rebate," C&A booked each payment as a reduction in cost, and increased its EBITDA. Neither Joan Fabrics nor entities controlled by the Joan CEO had a contractual obligation to make these payments, and they in fact only agreed to do so with the understanding that Joan Fabrics would be repaid.

30. At STOCKMAN and STEPP's direction, C&A repaid these "rebates" to Joan Fabrics through a series of subsequent transactions. For example, on or about April 19, 2002, C&A gave back to Joan Fabrics certain looms that C&A had obtained as part of the original purchase of Joan Automotive, worth approximately $3.1 million, for no consideration and without approval by the C&A Board of Directors. At STOCKMAN's direction, C&A repaid Joan Fabrics by systematically overpaying Joan Fabrics or entities controlled by the Joan CEO for additional purchases, including:

a. C&A's purchase of Southwest Laminates, Inc., from the Joan CEO;

b. C&A's purchase of air jet texturing machines from a subsidiary of Joan Fabrics; and

c. the purported purchase of looms from Joan Fabrics for the purpose of running a furniture fabrics business at C&A.

31. Thus, C&A improperly recognized approximately $14.9 million in "rebates" from Joan entities between 2001 and 2003.

32. In August 2003, the Audit Committee of C&A's Board of Directors began an investigation of certain related party transactions, including the "rebates" paid by Joan Fabrics to C&A. In or about August 2003, the Securities and Exchange Commission ("SEC") opened an investigation into the matter. Knowing that the Audit Committee would keep the SEC apprised of its findings, STOCKMAN and STEPP sought to mislead the Audit Committee, and directed others to do so, including by concealing the true nature of the "rebate" transactions with Joan Fabrics and by creating false and fraudulent justifications for the "rebates."

33. STOCKMAN, STEPP, and their co-conspirators, through their misrepresentations, convinced the Audit Committee that the "rebates" paid by Joan Fabrics had a legitimate business purpose, were not loans to C&A, and were not repaid through other transactions between C&A and Joan Fabrics. Thus, based on

misleading and incomplete information, the Audit Committee authorized a report concluding that the "rebate" transactions were legitimate, and communicated that report to the SEC in or about March 2004 in connection with the SEC's investigation.

THE SUPPLIER REBATE FRAUD SCHEME

34. Beginning in or about 2002, in order to respond to the financial pressures on C&A outlined above, STOCKMAN, STEPP, COSGROVE, and BARNABA schemed to inflate C&A's income by systematically recognizing "rebates" from C&A's suppliers before those cost reductions had in fact been earned by C&A, as detailed below.

35. During the time period relevant to this Indictment, OEMs typically sought to secure long-term supply contracts for each part of each automobile they made for the life of the "program." If awarded business from an OEM, C&A would typically sign a long-term – or "life of the program" – contract to produce specified parts of a vehicle for the OEM. These contracts, which often lasted for several years, helped the OEM ensure it had a steady stream of parts which met the OEM's quality and engineering standards. Once C&A had been awarded such business, C&A frequently sought to secure long-term supply agreements with its suppliers who would provide raw materials or component parts for the awarded program.

36. In negotiating long-term supply agreements with

its suppliers, C&A would often demand price reductions. C&A demanded such price reductions, in part, due to increasing cost pressure on C&A from the OEMs. Price reductions could take different forms: (i) a per piece price reduction or volume discount, i.e., a reduction in the cost of each component part or each pound of raw material supplied to C&A; or (ii) an upfront lump sum payment, referred to by STOCKMAN and others as a "rebate," "pay to play," or "slotting fee." Where the contract between C&A and a raw material supplier called for a volume discount per pound of material supplied, any such discount would normally be calculated at the end of a quarter or year, based upon the actual amount of raw materials supplied to C&A in that period. To the extent that C&A negotiated a one-time "rebate" or "slotting fee," it would take the form of an upfront, lump sum payment that the supplier would agree to pay to C&A in exchange for future business. In these instances, at STOCKMAN's direction or with his knowledge and approval, C&A either agreed to source new business to that supplier, or maintained existing business with a supplier, instead of resourcing the business to a cheaper source of supply. In either event, C&A negotiated "rebates" that were contingent on C&A making future purchases from the supplier granting the rebate. Thus, C&A's right to retain the total amount of a "rebate" was typically conditioned on C&A meeting its

contractual obligations, including sourcing particular business to the supplier.

37. At all times relevant to this Indictment, according to relevant accounting principles, and as STOCKMAN, STEPP, COSGROVE, and BARNABA knew, C&A could properly recognize and record rebates as a reduction in cost of sales only after C&A earned the rebate from the vendors, i.e., when C&A satisfied all the contractual terms that would entitle it to receive payment or keep any up-front lump sum payments.

38. Beginning in or about 2002, STOCKMAN, STEPP, COSGROVE, and BARNABA participated in a scheme to recognize the cost reductions from their "rebate" transactions before the rebates had been earned by C&A, in order to lower C&A's costs in the present quarter and thereby inflate its EBITDA for that period. C&A continuously faced pressure to improve performance, in order to meet external expectations and to comply with the covenants in its credit facilities agreements.

39. STOCKMAN, STEPP, and COSGROVE routinely attended meetings with members of the C&A Purchasing Department, including BARNABA, and knew that BARNABA and other employees from the C&A Purchasing Department were promising future business to suppliers in order to obtain up-front "rebates." In many cases, STOCKMAN directed C&A employees to get rebates from specific suppliers; STOCKMAN would specify the amount of the rebate to be requested

and the specific future business to be promised to the supplier. Once STOCKMAN identified a rebate, it became part of the C&A Purchasing Department's target goal for the quarter. At times relevant to this Indictment, STOCKMAN, STEPP, and COSGROVE received weekly written reports from the C&A Purchasing Department which included updated information concerning rebate transactions. These weekly updates often referred to the fact that future business was being promised to suppliers in exchange for rebates being booked immediately.

40. Beginning at least as early as in or about March 2002, STOCKMAN and COSGROVE directed employees in C&A's Purchasing Department to pull income forward into the current reporting period and thereby falsely pad C&A's reported income. STOCKMAN and COSGROVE understood that C&A's employees were therefore soliciting false documentation from suppliers to allow C&A to account for rebates improperly, using a template letter approved by COSGROVE. In particular, STOCKMAN and COSGROVE directed C&A's employees, when documenting supplier rebates that were contingent on future business, to obtain side letters or separate documents that falsely attributed the supplier rebate to past purchases. Purchasing employees, acting at BARNABA's direction, then solicited false documentation from suppliers knowing that such false documents would be used for immediate and improper recognition of cost reductions. STOCKMAN, STEPP,

COSGROVE, and BARNABA used the false documents to justify immediate recognition of the supplier rebates in C&A's books and records and in its financial reports filed with the SEC.

41. STOCKMAN specifically approved various contingent supplier rebates that were improperly booked in the current quarter. For example, STOCKMAN approved the following rebates, with the knowledge and approval of STEPP and COSGROVE, each of which, as they each well knew, was contingent on future business, each of which was falsely documented to hide the contingency, and each of which was recognized in whole or in part in the current quarter:

a. Third quarter 2003: $1 million rebate from a plastic parts supplier;

b. Fourth quarter 2003: $250,000 rebate from a tooling supplier.

42. STOCKMAN directed employees, such as BARNABA, to seek COSGROVE's guidance in "booking" the "rebates" in the current quarter, despite knowing that it would be improper to book the "rebates" in the current quarter because they were contingent on future events. COSGROVE reviewed false side letters obtained or prepared by BARNABA and C&A's Purchasing Department, with knowledge that they did not accurately reflect the true nature of the "rebates," and edited false side letters for the purpose of removing references to future business. The

false side letters were typically then provided to C&A's outside auditors as "proof" that the rebates were properly booked in the current reporting period.

Expansion Of The Rebate Scheme To Capital Equipment

43. By 2004, C&A had obtained or tried to obtain rebates from nearly all of its raw material suppliers and C&A had already leveraged nearly all of its new business opportunities for up-front lump sum rebates. Moreover, with rising costs of raw materials, it was becoming more difficult to obtain commitments to make lump sum payments from any suppliers, particularly resin and steel producers. As a result, STOCKMAN, STEPP, COSGROVE, and BARNABA and their co-conspirators expanded the rebate scheme to capital equipment being purchased by C&A. STOCKMAN, STEPP, COSGROVE, and BARNABA each knew that, under generally accepted accounting principles, any discounts on the purchase of capital would result in a reduction of the cost basis of that asset, and would have no impact whatsoever on EBITDA. As the defendants knew, historically, C&A had accounted for any discounts on capital equipment in this manner. For the sole purpose of inflating C&A's reported EBITDA and operating income, STOCKMAN and COSGROVE, with STEPP's knowledge and approval, directed C&A employees, including BARNABA, to negotiate discounts on purchases of capital equipment and falsely document those discounts as "rebates" for past purchases of non-capital items.

In order to convince the equipment suppliers to agree to the "rebate," C&A generally agreed to pay a higher price for the equipment than originally requested by the equipment supplier, in return for a "rebate" for the difference, coupled with documentation that falsely attributed the rebate to items, such as the purchase of spare parts, which appeared to justify a decrease in expenses, rather than a discount on the cost of capital.

44. For example, as STOCKMAN and his co-conspirators knew, C&A obtained the following capital cost reductions in 2004, among others:

a. In or about February 2004, C&A negotiated a $1 million reduction in the cost of a large number of new machines for the Hermosillo plant with an equipment supplier.

b. In or about 2004, C&A obtained two separate $500,000 rebates from an equipment supplier.

c. In or about July 2004, C&A negotiated a $1 million rebate from a press manufacturer.

All of these rebates were in reality discounts in the purchase price of equipment, but at STOCKMAN's and COSGROVE's direction, C&A obtained documentation from the equipment suppliers falsely representing that the rebates were given for purchases of non-capital items or services, which was used to justify an increase

to EBITDA. These "rebates" were reviewed with STOCKMAN, STEPP, and COSGROVE, and each were aware that the discounts were being falsely justified as rebates on non-capital expenses.

45. In 2004, C&A improperly recognized approximately $7.2 million in pre-tax operating income based on capital expenditure "rebates."

Booking The "Rebates"

46. In furtherance of this scheme, from in or about 2002 through in or about 2005, rather than disclosing C&A's true financial condition and operating performance, STOCKMAN, STEPP, COSGROVE, and BARNABA directed C&A employees to falsely and fraudulently book the above-described rebates as cost reductions in the then-current quarter, in order to decrease artificially C&A's reported expenses, resulting in, among other things, artificially-inflated figures for C&A's EBITDA and operating income, among other financial metrics. In light of their aggregate amount and timing, these entries made C&A's reported revenue and EBITDA materially misleading in reporting periods between the first quarter of 2002 and the first quarter of 2005.

47. As a result of the above-described "rebate" schemes, between 2001 and 2004, C&A improperly inflated pre-tax operating income (or lowered pre-tax operating loss) by at least approximately $43.6 million.

C&A's 2004 Debt Offering

48. In or about August 2004, C&A offered, and the public purchased, approximately $415 million in 12.875% Senior Subordinated Notes due 2012 based, in part, on offering materials that were false and fraudulent in that they included results of operations that had been falsely and materially inflated by the rebate schemes described above.

C&A's LIQUIDITY CRISIS IN THE FIRST QUARTER OF 2005

49. In January 2005, as industry pressures on C&A increased, C&A faced an unprecedented liquidity crisis. Throughout much of the first quarter of 2005, C&A was fully drawn on its revolving credit facilities, and C&A did not have sufficient liquidity to pay its bills. In order to avoid filing for bankruptcy, which would have acknowledged the failure of STOCKMAN's leadership and have resulted in the loss of STOCKMAN's and the Private Equity Firm's investment in C&A, STOCKMAN assumed personal responsibility for management of C&A's liquidity position on a daily basis. STOCKMAN directed subordinates from various departments to commence a fraudulent invoicing scheme in order to increase the available liquidity under C&A's accounts receivable securitization facility. As part of his effort to conceal the dire liquidity situation, STOCKMAN made various false statements about the problem, both to the public and to C&A's creditors.

C&A's Credit Arrangements As Of January 2005

50. As of January 2005, C&A had credit facilities totaling approximately $675 million. C&A had obtained these credit facilities from J.P. Morgan Chase ("JPMC") and they consisted primarily of a $400 million term loan and two revolving credit facilities. The revolving credit facilities could be drawn upon as needed.

51. In or about December 2004, C&A entered into an agreement with General Electric Capital Corporation ("GECC") to become C&A's lender under its existing accounts receivable securitization facility. At any given time, C&A had billed or invoiced the OEMs for millions of dollars worth of goods already sold. Once an OEM received an invoice, that OEM then had a certain amount of time to pay for the parts made by C&A. The amounts owed for these goods which had been sold but not yet paid for were listed as a receivable in C&A's books and records. In order to increase its liquidity and speed up receipt of cash, the agreement with GECC allowed C&A to borrow against the outstanding balance in C&A's accounts receivable. The maximum amount that C&A could borrow under the agreement with GECC was $250 million. The amount that could be borrowed from GECC at any given time depended on the amount of outstanding unpaid receivables, referred to as the borrowing base.

52. Under C&A's agreement with GECC, only certain receivables could be included in the calculation of the pool of eligible receivables, or borrowing base. The size of the borrowing base changed on a daily basis to reflect the addition of new receivables, the payment of outstanding receivables, and the ineligibility of old receivables. Among other requirements, in order to constitute an "eligible receivable," C&A had to be entitled to payment from the OEM once C&A generated an invoice and sent it to the OEM. This requirement is common to these types of facilities, as GECC agreed to lend C&A money on the understanding that GECC could collect from the OEMs were C&A to default on its payment to GECC. Under the relevant agreement between an OEM and C&A, OEMs were obligated to pay on the terms that had been otherwise agreed upon with C&A, but the maximum allowable term of payment under the agreement between C&A and GECC was 60 days. Once an invoice was 60 days "past due," it was automatically excluded from the borrowing base. Thus, theoretically, the maximum amount of time an unpaid receivable could remain in the borrowing base was 120 days – 60 days to take into account the time within which the OEM was supposed to pay C&A and 60 days in "past due" status.

53. Each day, under its agreement with GECC, C&A was required to send a report to GECC which updated GECC on the status of the borrowing base. Among other information, this

daily report included a calculation of the level of eligible receivables. The daily report also stated whether C&A could borrow more money from GECC – where the size of the borrowing base had increased – or whether C&A had to make a payment to GECC – because the level of the borrowing base had decreased. These reports were signed by employees from the Treasury Department, who certified to the accuracy of each day's report. C&A was allowed a grace period of two days to report the borrowing base calculation to GECC, and it typically took C&A the full two days to prepare the report, given the amount of information that needed to be gathered and the calculations that needed to be done. Thus, the report prepared each day, although it reflected the "events" of two business days earlier, either required an immediate payment to GECC or allowed an immediate increase in the amount of money that C&A could borrow from GECC. Typically, at STOCKMAN's direction, C&A's Treasury Department sought to borrow the maximum amount supported by the pool of eligible receivables each day because of the low cost of financing under the GECC agreement.

54. From at least in or about early January 2005, STOCKMAN and other employees knew that C&A faced a severe liquidity crisis. At STOCKMAN's direction, C&A delayed paying its bills as long as possible, and many of C&A's suppliers were being paid only when they threatened to stop supplying C&A with

goods. Although the amount borrowed from JPMC on the revolving credit facilities fluctuated, starting in January 2005, C&A was beginning to fully draw on its revolving credit facilities, which essentially meant that C&A had run out of credit.

The Scheme To Defraud GECC

55. Starting in or about January 2005, STOCKMAN and his co-conspirators engaged in a scheme to defraud GECC. On or about January 6, 2005, C&A's Treasury Department prepared a daily report for GECC which revealed that C&A had to make an immediate payment to GECC of approximately $21.8 million. Employees in C&A's Treasury Department realized that C&A did not have sufficient liquidity to make the payment to GECC. Thus, C&A was in default of its obligations under the GECC facility if it did not make the payment. STOCKMAN was immediately informed of both the need for an immediate payment to GECC and the fact that C&A could not make the payment. With STOCKMAN's knowledge and approval, employees from the Treasury Department intentionally misled GECC about the status of the daily report and the approximate $21.8 million payment. First, with STOCKMAN's knowledge and approval, C&A employees failed to disclose to GECC that C&A owed GECC approximately $21.8 million and that C&A could not afford to make that payment. Second, using a computer systems error that prevented C&A from generating a complete borrowing base report as an excuse, C&A employees delayed

providing daily reports due to GECC on January 6 and January 7, 2005.

56. With STOCKMAN's knowledge and approval, in response to this crisis, C&A employees began trying to find receivables that could be invoiced, and thus, used to increase the level of the borrowing base by the next business day, Monday, January 10, 2005. With STOCKMAN's knowledge and approval, C&A employees manually invoiced millions of dollars worth of receivables over the weekend for the sole purpose of inflating the borrowing base and misleading GECC about the default that had already occurred. Since C&A's customers had not yet agreed to pay many of the receivables invoiced over the weekend, these receivables were not eligible to be included in the borrowing base. STOCKMAN and other C&A employees thus improperly inflated the borrowing base by invoicing ineligible receivables.

57. The following Monday, with STOCKMAN's knowledge and approval, employees of the Treasury Department prepared and submitted a daily report to GECC that failed to disclose the fact that C&A had created invoices for receivables that C&A's customers had not yet agreed to pay for the sole purpose of improperly inflating the borrowing base and avoiding the full approximately $21.8 million payment to GECC. In addition, C&A failed to disclose the fact that C&A had been in default of its agreement with GECC. Including the improperly invoiced

receivables, the amount due to GECC was brought down to approximately $11.8 million, which by then C&A could manage to pay.

58. As a result of the early January 2005 crisis, during the first and second quarters of 2005, STOCKMAN reviewed C&A's liquidity situation on a daily basis. Each day, STOCKMAN personally decided which of C&A's suppliers and creditors would get paid, and STOCKMAN personally managed all of C&A's liquidity.

59. After the early January 2005 scheme, STOCKMAN and others continued to defraud GECC by intentionally including ineligible receivables in the borrowing base of the accounts receivable securitization facility to obtain cash and increase liquidity. The majority of these ineligible receivables were invoices to OEMs for equipment, or "tooling," used to make auto parts. Under C&A's agreement with GECC, as with any other receivable, invoices for such equipment could only be included in the borrowing base if the customer had agreed to make payment. In the automotive industry, OEMs agree to make payments on tooling in two ways: they either certify that the equipment is performing to specifications, through the Production Part Approval Process, or "PPAP," or an OEM can expressly agree to be billed for tooling in advance of that approval. Although target dates for completion of PPAP are often set, typically, the OEM agrees to pay for tooling only once PPAP is completed and the OEM

has certified that C&A's production line makes parts properly. Thus, as STOCKMAN and his co-conspirators well knew, a target date for PPAP was no guarantee of OEM approval, and OEMs generally only agreed to make payment on tooling once PPAP had been completed.

60. At STOCKMAN's direction, in or about January 2005, C&A began putting such invoices for tooling in the borrowing base prior to achieving PPAP and without customer agreement based on a calculated guess as to when C&A might expect to achieve PPAP and thus be eligible to get paid by the OEMs. At STOCKMAN's initiative, invoices for tooling were created and loaded into the system that calculated the GECC borrowing base 60 days prior to the PPAP target date. At the time these tooling invoices were created, STOCKMAN and others knew that there was no customer agreement to pay the invoices, and thus they were ineligible receivables under C&A's agreement with GECC. These invoices were created and entered into the system for the sole purpose of improperly inflating the GECC borrowing base, thus generating cash and liquidity for C&A.

61. Between in or about January 2005 and in or about April 2005, C&A added a total of well over $100 million in ineligible receivables to the borrowing base. In many cases, the resulting invoice was not immediately sent to the OEM because STOCKMAN and others knew that it would not be paid. In order to

avoid bankruptcy and stay solvent, C&A borrowed from GECC against these fraudulent invoices in order to pay its bills throughout the first months of 2005.

FALSE STATEMENTS TO INVESTORS IN 2005

C&A's Rebate Fraud Comes To Light

62. Beginning in or about November 2004, C&A's outside auditors at KPMG raised questions about supplier rebates generally and about some of the specific rebates fraudulently booked early at STOCKMAN's and COSGROVE's direction. KPMG ultimately requested more documentation for supplier rebates negotiated by C&A. As a result of this request and other events, STOCKMAN knew that C&A's practice of soliciting false side letters in regard to rebate transactions would likely be disclosed to KPMG and to C&A's Board of Directors. Therefore, in March 2005, STOCKMAN reluctantly agreed to conduct an investigation of C&A's rebate accounting. STOCKMAN sought, however, to take control of the investigation in order to minimize its scope and control its conclusions. STOCKMAN also wanted to hide his own and other senior C&A management's involvement in the fraudulent scheme.

63. For example, STOCKMAN, COSGROVE, and the other members of C&A's senior management limited the number of rebates examined and refused to restate certain improperly booked rebates. STOCKMAN thereafter prepared conclusions of the

investigation's findings, which were presented to C&A's outside auditors with COSGROVE's knowledge, that minimized the financial impact of the rebate accounting errors and falsely characterized the source of the rebate accounting errors as "separation of duties," rather than the intentional fraud that it was, as evidenced by the pattern of false side letters.

64. On March 17, 2005, C&A issued a press release announcing lagging 2004 financial results and disclosing the existence of an internal investigation into improper accounting for supplier rebates. On the same date, STOCKMAN also participated in a public earnings call, for which he provided written slides to the investing public and analysts. To mitigate the negative impact of these announcements, STOCKMAN presented false and misleading information concerning the internal investigation into the supplier rebates.

65. On March 17, 2005, in the slides accompanying the public earnings call, in the press release, and on the earnings call itself, STOCKMAN sought to reassure investors and the public concerning the rebate issue. STOCKMAN disclosed that as a result of a "comprehensive internal review" of more than "350 supplier rebate entries ... for 12 quarter period (2002-2004)" led by STOCKMAN, C&A would likely have to issue restated financial statements for 2003 and the first three quarters of 2004.

66. STOCKMAN's description of the internal

investigation of the improper accounting for supplier rebates in the March 17, 2005 press release was intended to mislead investors and the public by minimizing the size of the restatement of C&A's financial statements, and exaggerating the degree to which management had explored, quantified, and rectified the rebate situation. First, the press release asserted that the internal investigation reviewed 2002 rebates, but did not indicate that any restatement was necessary. However, no meaningful review of 2002 rebates was conducted, and 2002 rebates, including those negotiated with Joan Fabrics and a $900,000 rebate from a steel supplier, were not restated even though STOCKMAN knew they were clearly accounted for improperly. Thus, the figures included in the press release regarding the proposed amount to be restated did not accurately reflect the true income earned for prior periods.

67. Second, the press release understated the degree to which previous financial statements needed to be restated based on 2003 and 2004 rebates, because the internal investigation upon which the press release was designed to justify C&A's previous accounting, rather than account for the rebates properly.

68. Finally and most importantly, the press release attributed the improper accounting to a failure of "controls" and "procedures" and to "other circumstances." This description was

intended to give the impression that the improper accounting was inadvertent and at worst the result of negligence. As described above, however, the truth was that the improper accounting was intentional and the result of a concerted scheme by STOCKMAN, STEPP, COSGROVE, BARNABA, and other C&A employees.

69. These misstatements were material in that they falsely suggested to the public, investors and C&A's outside auditors that the improper accounting for rebates was minor in scope and impact and did not involve intentional misconduct by senior management. STOCKMAN personally crafted these disclosures with the intent of misleading the public about his role and the impact of the rebate fraud.

Other Misleading Disclosures In 2005

March 17, 2005 Earnings Call

70. On March 17, 2005, the same day the press release was issued, STOCKMAN presided over an earnings call with investors and securities analysts. STOCKMAN personally drafted the slides used on that call, presented the slides, and took questions. During the call he made at least three material misstatements or omissions regarding C&A's results of operations and financial condition. Part of the information routinely provided by STOCKMAN and others to members of the investing public was so-called "guidance" concerning C&A's operational and financial results for upcoming reporting periods. The "guidance"

provided by STOCKMAN and others concerned various measures of C&A's operational and financial performance, including its EBITDA, net income, operating income, and capital expenditures. STOCKMAN knew that securities analysts, ratings agencies, and investors relied on the "guidance" provided by STOCKMAN and others and their public statements in general concerning C&A's predicted performance in the automobile parts supply industry to gauge C&A's performance, to predict C&A's expected earnings, and to disseminate estimates of C&A's expected performance to the larger investing public.

71. First, merely two weeks before the end of C&A's first quarter, STOCKMAN provided a forecast for EBITDA for the first quarter of 2005 that he knew would not be attained. He stated that EBITDA would be between $65-75 million for the first quarter of 2005, even though the most current financial information for the company, including the actual results for January and February, showed that EBITDA for the first quarter would only be roughly half that figure. Moreover, STOCKMAN represented that his projection did not assume that C&A would be able to obtain cost concessions from its customers, the OEMs, when in fact his forecast included millions of dollars of such assumed recoveries.

72. Second, during the presentation STOCKMAN highlighted a slide representing that capital expenditures in

2005 would be limited to $30 million quarterly as a sign that C&A was conserving cash. This statement was misleading because STOCKMAN knew that his projections showed that C&A would spend more than $50 million in the first quarter of 2005 and knew that C&A had actually already spent more than $30 million in capital expenditures during January and February 2005. This misrepresentation was material because, among other reasons, STOCKMAN emphasized this limitation on capital expenditures to reassure investors and the public that C&A was preserving cash and holding down its costs.

73. At the time of the March 17, 2005 press release, C&A had virtually no liquidity, with only about $4 million available to it from its revolving credit facilities and a growing payables backlog. STOCKMAN was personally managing C&A's cash on a daily basis and was well aware that C&A was unable to pay its bills on time, did not pay some bills at all, and did not have sufficient liquidity to meet the needs of a company its size. To hide this fact, and to falsely reassure the public about C&A's liquidity situation, STOCKMAN purposely omitted from the March 17, 2005 press release any liquidity figures for 2005, but instead chose to disclose C&A's liquidity as of December 31, 2004. STOCKMAN knew that C&A was suffering an unprecedented liquidity crisis, and that the failure to disclose current

liquidity information, given this crisis, made the press release materially misleading.

74. While the press release did provide a liquidity figure for December 31, 2004, this disclosure was itself materially misleading. In discussing C&A's liquidity, the press release reported that C&A had undrawn commitments of $86 million on that date, but failed to disclose that C&A was unable to actually borrow such an amount without breaching the leverage covenant in C&A's Credit Facilities agreements because it had reached its maximum permissible debt given its earnings. Instead, only about $12 million of that $86 million was actually available to C&A as of December 31, 2004. The failure to disclose what C&A could actually use of the $86 million reported liquidity was intentional. STOCKMAN understood the impact of covenants on liquidity availability and that C&A, when it made public liquidity figures, had always disclosed what was available, not just the gross liquidity figure.

75. Finally, when asked during the March 17, 2005 earnings call, "intra quarter are you tapping out your liquidity?" STOCKMAN answered "no." Given that C&A did not have enough liquidity at this time to pay its bills, this statement was a lie designed to hide the fact, well known to STOCKMAN, that C&A was suffering a major liquidity crisis.

March 23, 2005 bond presentation

76. On March 23, 2005, C&A made a presentation to MacKay Shields, holders of C&A's bonds. STOCKMAN presented the same slides he had used during the March 17, 2005 earnings call, which contained the material misrepresentations regarding EBITDA and capital expenditures described above. In addition, STOCKMAN sought to assure the MacKay Shields investors that C&A had sufficient liquidity to meet its needs, when he knew that it did not.

March 24, 2005 presentation to C&A's lenders

77. On March 24, 2005, STOCKMAN presided over a conference call with JP Morgan Chase and Credit Suisse (formerly known as Credit Suisse First Boston), among others, for the purpose of securing a waiver of compliance with C&A's financial covenants in its credit agreements. STOCKMAN personally reviewed the slides and materials used on that call, presented the slides, and took questions. During the call he made at least three material misstatements or omissions regarding C&A's results of operations and financial condition.

78. First, now merely one week before the end of C&A's first quarter, STOCKMAN provided a forecast for EBITDA for the first quarter of 2005 that he knew would not be attained. He stated that EBITDA would be $65.3 million for the first quarter of 2005, even though he knew that the most current financial

information for the company, including the actual results for January and February, showed that EBITDA for the first quarter would only be roughly half that figure. Moreover, STOCKMAN again falsely represented that his projection did not assume that C&A would be able to obtain cost concessions from the OEMs and STOCKMAN added that his projection for the first quarter of 2005 included a "contingency allowance" of $13 million, which was supposed to provide a "cushion for volume shortfalls or unplanned operating variances." In fact, STOCKMAN knew that C&A would need cost concessions from the OEMs to meet the targeted EBITDA, and that with one week left in the quarter, C&A would neither get the necessary cost concessions from the OEMs nor meet the target he had stated.

79. Second, STOCKMAN represented that capital expenditures would be $24 million for the first quarter of 2005, when he knew that C&A had already exceeded $30 million in expenditures for the quarter and was projected to spend over $50 million in the quarter. This misrepresentation was material because, among other reasons, STOCKMAN emphasized this limitation on capital expenditures to reassure C&A's creditors that C&A was preserving cash and holding down its costs.

80. To continue to hide the liquidity problems at C&A, and to falsely reassure the banks about its liquidity situation, STOCKMAN purposely omitted any liquidity figures from 2005 from

this presentation, but instead chose to disclose C&A's liquidity as of December 31, 2004. STOCKMAN knew that C&A was suffering a liquidity crisis, and that the failure to disclose current liquidity information, given this crisis, made the presentation materially misleading.

March 24, 2005 Press Release

81. On or about March 24, 2005, C&A announced that the audit committee had retained independent counsel to conduct a review of the rebate accounting related to supplier rebates. In this press release, with STOCKMAN's knowledge and approval, C&A repeated its earlier disclosures concerning the scope of the rebate accounting problem, with the intent of minimizing investors' concerns about the size of the restatement to C&A's financial statements.

April 3, 2005 Due Diligence Presentation to Credit Suisse

82. In or about early April 2005, desperate for cash, STOCKMAN and others sought additional financing from Credit Suisse. In connection with that request, STOCKMAN participated in an April 3, 2005 conference call with Credit Suisse to answer questions about C&A. During the call, STOCKMAN reiterated many of the same false statements he had made on the March 17, 2005 and March 24, 2005 calls described above.

83. First, STOCKMAN misled the lenders concerning liquidity at C&A. STOCKMAN stated in this call that he believed

that C&A currently had approximately $110 million in liquidity when STOCKMAN knew that C&A's revolving credit facilities were fully drawn prior to April 3, 2005 and C&A had no other substantial source of liquidity available at that time. STOCKMAN also told CSFB and other lenders that C&A had approximately $80-85 million in liquidity as of March 31, 2005. This statement was false because C&A did not have $80-85 million in available liquidity on March 31, 2005, as this figure did not take into account covenant restrictions. Despite having recently obtained the leeway to assume more debt and still be in compliance with the financial covenants under its Credit Facilities, C&A was again at the debt ceiling given its level of earnings, and therefore could not engage in any additional borrowing without violating the new covenant. As a result, C&A had only approximately $8.6 million of available liquidity on March 31, 2005 when covenant restrictions were taken into account.

84. Second, STOCKMAN misled the lenders concerning C&A's EBITDA and capital expenditures for the first quarter of 2005. In the April 3, 2005 call, STOCKMAN reiterated the same projections he had made in the March 17 and March 24, 2005 presentations, and stated in substance that there had been no material changes to his forecast. In fact, STOCKMAN had reviewed current EBITDA calculations at the end of March 2005, which still showed that C&A would miss the projected EBITDA target by a wide

margin and STOCKMAN knew that C&A had not yet received any of the hoped for recoveries from the OEMs, which were integral to his achieving his forecast for the first quarter.

85. After the April 3, 2005 due diligence call, CSFB agreed to lend C&A an additional $75 million in financing, which C&A received on or about April 8, 2005.

April 4, 2005 press release

86. On April 4, 2005, C&A issued a press release stating that it had a commitment from Credit Suisse to obtain $75 million in financing. That press release stated that "the Company's available liquidity (cash and unutilized commitments under revolving credit and account receivables facilities) was approximately $81 million at March 31, 2005, as compared with approximately $86 million at December 31, 2004." This disclosure was false and misleading for several reasons.

87. First, as discussed above, C&A did not have $86 million in available liquidity on December 31, 2004. Because of covenant restrictions, C&A had no more than about $12 million in available liquidity on that date. Second, as discussed above, C&A did not have $81 million in available liquidity on March 31, 2005, because this figure also did not take into account covenant restrictions. As a result, C&A had only less than $9 million of available liquidity on March 31, 2005 when covenant restrictions were taken into account. In reviewing the press release,

STOCKMAN knew the impact of covenants on liquidity availability and that C&A, when it publicly disclosed liquidity figures, had always disclosed what was available, not just the gross liquidity figure.

88. Third, the $81 million figure, even if all of it had been available, would still have been materially misleading in that the press release did not disclose that this level of liquidity had only been attained by the scheme to defraud GECC. STOCKMAN knew that the liquidity number was false and misleading because he knew it was created by fraudulently inflating the GECC borrowing base.

April 22, 2005 Presentation to GECC

89. On or about April 22, 2005, STOCKMAN and others participated in a conference call with employees of GECC. In addition to the credit that GECC provided to C&A through the accounts receivable securitization facility, GECC also provided substantial off-balance sheet financing to C&A. Thus, the primary purpose of the conference call was to discuss C&A's financial condition, as GECC was concerned about, among other things, the March 2005 disclosures regarding the investigation into accounting related to supplier rebates and about the liquidity situation at C&A. During this conference call, STOCKMAN used the same slides from his March 17, 2005 presentation, and thus repeated the same false statements

described above concerning first quarter 2005 EBITDA and capital expenditures. Although STOCKMAN indicated in substance that C&A might have some difficulty making the first quarter 2005 EBITDA, which the slides indicated would be between $65 million and $75 million, STOCKMAN sought to reassure GECC that 2005 EBITDA would be higher than 2004 levels, and was budgeted at $360 million for the year, which he indicated included a substantial cushion for unexpected events. STOCKMAN knew these statements were false because the first quarter had already ended with EBITDA at well below STOCKMAN's projections. Moreover, by April 22, 2005, STOCKMAN had not yet secured contractual commitments from the OEMs to provide C&A with the relief it needed to stay afloat.

90. At the time of the conference call, STOCKMAN told GECC in substance that C&A had improved its liquidity position from January 2005, despite knowing that C&A had already spent nearly all of the $75 million in additional financing obtained from Credit Suisse in early April. Finally, although the Audit Committee's independent investigation into the rebate accounting issue was ongoing, STOCKMAN repeated his earlier misleading statements concerning the limited scope of the rebate accounting problem, noting that 90% of the rebate transactions were properly booked.

FALSE STATEMENTS AND MISLEADING OMISSIONS IN C&A'S SEC FILINGS

91. As a result of the public listing of its securities, at all relevant times C&A was required by federal securities laws to make certain filings with the United States Securities and Exchange Commission ("SEC") and to maintain certain books and records. In particular, applicable securities statutes and regulations required C&A to, among other things, (a) file with the SEC annual financial statements audited by an independent accountant; (b) file with the SEC quarterly updates of its financial statements that disclosed its financial condition and the results of its business operations for each three-month period; (c) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles and other applicable criteria; and (d) make and keep books, records, and accounts that accurately and fairly reflected the company's business transactions.

92. The quarterly and annual reports filed by C&A for the fourth quarter of 2001 through the third quarter of 2004 included financial statements that reflected the above-described fraudulent adjustments to C&A's expenses and revenue.

93. By directing these adjustments to be made, and falsely concealing the adjustments from the C&A's auditors, STOCKMAN, STEPP, COSGROVE, BARNABA, and their co-conspirators disguised C&A's true operating performance and financial condition from the investing public. As a result, STOCKMAN, STEPP, COSGROVE, BARNABA, and their co-conspirators caused C&A to report financial results, which, as STOCKMAN, STEPP, COSGROVE, BARNABA, and their co-conspirators knew, exceeded by material amounts C&A's actual financial results in each reporting period.

THE CONSPIRACY

94. From in or about December 2001 through in or about May 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, and others known and unknown, unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, namely (a) to commit fraud in connection with the purchase and sale of securities issued by C&A, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) to make and cause to be made false and misleading statements of material fact in applications, reports, and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, in

violation of Title 15, United States Code, Sections 78m(a) and 78ff; (c) to falsify books, records, and accounts of C&A, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1; (d) to make false and materially misleading statements to C&A's auditors, in violation of Title 17, Code of Federal Regulations, Section 240.13b2-2 and Title 15, United States Code, Section 78ff; (d) to commit bank fraud, in violation of Title 18, United States Code, Section 1344; (e) to commit wire fraud, in violation of Title 18, United States Code, Section 1343; and (f) to obstruct an agency proceeding, in violation of Title 18, United States Code, Section 1505.

Objects Of The Conspiracy

Fraud In Connection With The
Purchase And Sale Of Securities

95. It was a part and an object of the conspiracy that DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, and others known and unknown, 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, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by C&A, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices,

schemes, and artifices to defraud; (b) making and causing C&A to make untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon the purchasers and sellers of C&A securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

False Statements In
Annual And Quarterly SEC Reports

96. It was further a part and an object of the conspiracy that DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, and others known and unknown, unlawfully, willfully, and knowingly, in applications, reports, and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, would and did make and cause to be made statements that were false and misleading with respect to material facts, in violation of Title 15, United States Code, Sections 78m(a) and 78ff.

False Books And Records

97. It was further a part and an object of the conspiracy that DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, and others known and unknown, unlawfully, willfully, and knowingly would and did,

directly and indirectly, falsify and cause to be falsified books, records, and accounts subject to Section 13(b)(2) of the Securities Exchange Act of 1934, namely books, records, and accounts of C&A, an issuer with a class of securities registered pursuant to the Securities Exchange Act of 1934, which C&A was required to make and keep, accurately and fairly reflecting, in reasonable detail, the transactions and dispositions of the assets of C&A, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1.

Lying To The Auditors

98. It was further a part and an object of the conspiracy that DAVID A. STOCKMAN, J. MICHAEL STEPP, and DAVID R. COSGROVE, the defendants, being directors and officers of C&A, an issuer with a class of securities registered pursuant to Section 12 of the Act, and others known and unknown, unlawfully, willfully, and knowingly, would and did, directly and indirectly (a) make and cause to be made materially false and misleading statements; and (b) omit to state, and cause other persons to omit to state, material facts necessary in order to make the statements made, in the light of the circumstances under which such statements were made, not misleading to accountants in connection with (i) audits and examinations of the Financial Statements of C&A; and (ii) the preparation and filing of

documents and reports, required to be filed with the SEC pursuant to rules and regulations enacted by the SEC, in violation of Title 17, Code of Federal Regulations, Section 240.13b2-2 and Title 15, United States Code, Section 78ff.

Bank Fraud

99. It was a part and an object of the conspiracy that DAVID A. STOCKMAN, the defendant, and others known and unknown, unlawfully, willfully, and knowingly would and did execute and attempt to execute a scheme and artifice to defraud financial institutions, the deposits of which were then insured by the Federal Deposit Insurance Corporation, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of said financial institutions, by means of false and fraudulent pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344.

Wire Fraud

100. It was a part and an object of the conspiracy that DAVID A. STOCKMAN, the defendant, and others known and unknown, unlawfully, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, would and did transmit and cause to be transmitted by means of wire communication in

interstate commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

Obstruction Of Agency Proceeding

101. It was further a part and an object of the conspiracy that DAVID A. STOCKMAN and J. MICHAEL STEPP, the defendants, unlawfully, willfully and knowingly would and did corruptly influence, obstruct, and impede and endeavor to influence, obstruct, and impede the due and proper administration of the law under which any pending proceeding was being had before a department and agency of the United States, to wit, the United States Securities and Exchange Commission, in violation of Title 18, United States Code, Section 1505.

Means And Methods Of The Conspiracy

102. Among the means and methods by which DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, and others would and did carry out the conspiracy were the following:

a. STOCKMAN and STEPP negotiated "rebates" with Joan Fabrics that were in fact loans, and used the "rebates" to improperly recognize cost reductions, thereby causing, among other things, figures for C&A's publicly reported EPS, EBITDA and net income to be false and materially misleading.

b. With STEPP's knowledge and approval, STOCKMAN, COSGROVE, and BARNABA directed members of C&A's Purchasing Department to solicit false side letters in connection with certain supplier "rebate" transactions, in order to improperly recognize, or accelerate the recognition, of cost reductions, thereby causing, among other things, figures for C&A's publicly reported EPS, EBITDA, revenue growth rate, and net income to be false and materially misleading.

c. STOCKMAN, STEPP, COSGROVE, BARNABA and their co-conspirators caused C&A to file publicly with the SEC quarterly and annual reports that materially misstated, among other things, figures for C&A's EPS and net income.

d. STOCKMAN and STEPP provided and directed others to provide false and misleading financial information to the investing public and analysts.

e. STOCKMAN provided and directed others to provide false and misleading financial information to financial institutions and investment banks.

Overt Acts

103. In furtherance of the conspiracy and to effect its illegal objects, DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, PAUL C. BARNABA, and others committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. In or about 2002, STEPP solicited a rebate payment from the Joan CEO.

b. In or about 2002, STOCKMAN promised to repay a rebate received from the Joan CEO.

c. In or about May 2003, STOCKMAN, with STEPP's knowledge and approval, directed employees of the Purchasing Department to negotiate "rebates" with C&A's suppliers, in return for promises of future business.

d. In or about Summer 2003, STOCKMAN and STEPP approved an improper "pull ahead" rebate transaction.

e. In or about 2003, COSGROVE edited false documents in connection with rebate transactions.

f. In or about 2003, BARNABA obtained approval from COSGROVE to create false documents in connection with rebate transactions.

g. In or about 2004, BARNABA advised another employee to solicit false documents in connection with capital rebate transactions.

h. In or about 2004, COSGROVE drafted false contract language for BARNABA and others to use in connection with capital rebate transactions.

i. On or about March 16, 2004, STOCKMAN and STEPP signed C&A's Annual Report on Form 10-K for the Year Ending December 31, 2003.

j. In or about August 2004, STOCKMAN and STEPP gave false and misleading information to bond investors.

k. In or about January 2005, STOCKMAN directed that C&A mislead GECC concerning the accounts receivable securitization facility.

l. On or about March 17, 2005, STOCKMAN provided false and misleading financial information to securities analysts and the investing public.

m. On or about March 24, 2005, STOCKMAN provided false and misleading financial information to its lenders.

n. On or about April 22, 2005, STOCKMAN provided false and misleading financial information to GECC.

(Title 18, United States Code, Section 371.)

COUNT TWO

(Securities Fraud)

The Grand Jury further charges:

104. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

105. From in or about December 2001 up to and including in or about May 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of the common stock of C&A, used and employed manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of the common stock of C&A.

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

COUNT THREE

(Securities Fraud)

The Grand Jury further charges:

106. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

107. From in or about December 2001 up to and including in or about May 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of the 10.75% Senior Subordinated Notes, due 2011, of C&A, used and employed manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of

business which operated and would operate as a fraud and deceit upon purchasers and sellers of the 10.75% Senior Subordinated Notes, due 2011, of C&A.

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

COUNT FOUR

(Securities Fraud)

The Grand Jury further charges:

108. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

109. From in or about December 2001 up to and including in or about May 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, J. MICHAEL STEPP, DAVID R. COSGROVE, and PAUL C. BARNABA, the defendants, unlawfully, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of facilities of national securities exchanges, in connection with the purchase and sale of 12.875% Senior Subordinated Notes, due 2012, of C&A, used and employed manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state

material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon purchasers and sellers of 12.875% Senior Subordinated Notes, due 2012, of C&A.

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

COUNT FIVE

(Bank Fraud)

The Grand Jury further charges:

110. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

111. From in or about January 2005 through in or about May 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, the defendant, unlawfully, willfully, and knowingly did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Company, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of said financial institution, by means of false and fraudulent

pretenses, representations, and promises, to wit, a scheme to defraud General Electric Capital Corporation.

(Title 18, United States Code, Sections 1344 and 2.)

COUNT SIX

(Bank Fraud)

The Grand Jury further charges:

112. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

113. From in or about February 2005 through in or about May 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, the defendant, unlawfully, willfully, and knowingly did execute and attempt to execute a scheme and artifice to defraud a financial institution, the deposits of which were then insured by the Federal Deposit Insurance Company, and to obtain moneys, funds, credits, assets, securities, and other property owned by, and under the custody and control of said financial institution, by means of false and fraudulent pretenses, representations, and promises, to wit, a scheme to defraud JP Morgan Chase.

(Title 18, United States Code, Sections 1344 and 2.)

COUNT SEVEN

(Wire Fraud)

The Grand Jury further charges:

114. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

115. From in or about March 2005 up to and including in or about April 2005, in the Southern District of New York and elsewhere, DAVID A. STOCKMAN, the defendant, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, to wit, a scheme to defraud Credit Suisse First Boston of $75 million, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, a writing, sign, signal, picture and sound for the purpose of executing such scheme and artifice, to wit, STOCKMAN made misleading and false statements during a due diligence conference telephone call on or about April 3, 2005 between participants in New York, New York and participants outside New York.

(Title 18, United States Code, Sections 1343 and 2.)

COUNT EIGHT

(Obstruction of Agency Proceeding)

The Grand Jury further charges:

116. The allegations contained in paragraphs 1 through 93 and paragraphs 102 and 103 of this Indictment are repeated and realleged as if fully set forth herein.

117. From at least in or about August 2003 up to and including at least in or about March 2004, in the Southern District of New York, DAVID A. STOCKMAN and J. MICHAEL STEPP, the defendants, unlawfully, willfully and knowingly, did corruptly influence, obstruct, and impede and endeavor to influence, obstruct, and impede the proper administration of the law under which a pending proceeding was being had before a department and agency of the United States, to wit, the SEC, by causing to be provided false and misleading information to the SEC relating to the Joan Fabrics Scheme.

(Title 18, United States Code, Sections 1505 and 2.)

FORFEITURE ALLEGATION

118. As a result of committing one or more of the foregoing securities fraud offenses, in violation of Title 15, United States Code, Sections 77x, 78j(b), 78o(d), and 78ff; and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.15d-2, as alleged in Counts One, Two, Three, and Four; wire fraud offenses, in violation of Title 18, United States Code,

Section 1343, as alleged in Counts One and Sixteen of this Indictment, DAVID A. STOCKMAN, the defendant, J. MICHAEL STEPP, the defendant (as to the acts alleged in Counts One, Two, Three and Four), DAVID COSGROVE, the defendant (as to acts alleged in Counts One, Two, Three, and Four), and PAUL BARNABA, the defendant, (as to acts alleged in Counts One, Two, Three, and Four), shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the securities and wire fraud offenses.

119. As a result of committing one or more of the foregoing bank fraud offenses, in violation of Title 18 United States Code, Section 1344, as alleged in Counts Fourteen and Fifteen of this Indictment, DAVID A. STOCKMAN, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 982, any property constituting or derived from the proceeds obtained directly or indirectly as a result of the bank fraud offenses and all property traceable to the commission of the bank fraud offenses.

120. The property subject to forfeiture includes, but is not limited to the following:

a. At least $775 million in United States currency, representing the amount of proceeds obtained as a result of the charged bank fraud offenses.

b. At least $575 million in United States currency, representing the amount of proceeds obtained as a result of the charged securities and wire fraud offenses, for which the defendants are jointly and severally liable.

SUBSTITUTE ASSETS PROVISION

121. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(i) cannot be located upon the exercise of due diligence;

(ii) has been transferred or sold to, or deposited with, a third party;

(iii) has been placed beyond the jurisdiction of the court;

(iv) has been substantially diminished in value; or

(v) has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 18, United States Code, Section 982 and Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendants up to the value of the forfeitable property described above.

(Title 18, United States Code, Sections 371, 981, 982, 1343, 1344; Title 15, United States Code, Sections 77x, 78j(b), 78o(d), 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5, 240.15d-2; Title 21, United States, Section 853(p); and Title 28, United States Code, Section 2461.)

_____ FOREPERSON

_____ MICHAEL J. GARCIA
United States Attorney