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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY _____	DEPUTY

1 DENNIS K. BURKE
 2 United States Attorney
 3 District of Arizona

3 DENIS J. McINERNEY
 4 United States Department of Justice
 5 Chief
 6 Criminal Division, Fraud Section

6 Patrick F. Stokes (Maryland State Bar Member)
 7 Jennifer R. Taylor (DC Bar #497349)
 8 United States Department of Justice
 9 Criminal Division, Fraud Section
 10 1400 New York Avenue, 4th Floor
 11 Washington, DC 20005
 12 Patrick.Stokes2@usdoj.gov
 13 Jennifer.Taylor3@usdoj.gov
 14 Telephone (202) 305-4232/4002/3611

11 UNITED STATES DISTRICT COURT
 12 DISTRICT OF ARIZONA

13 United States of America,
 14
 15 Plaintiff,
 16
 17 v.
 18 Don Walter Watson,
 19
 20 Defendant.

CR-09-372-2 PHX-SRB
PLEA AGREEMENT

19 The United States of America and the defendant, Don Walter Watson, hereby agree to
 20 dispose of this matter on the following terms and conditions:

21 **I. PLEA**

22 The defendant will plead guilty to Count 1 of the Indictment charging him with a
 23 violation of 18 United States Code ("U.S.C.") § 371, Conspiracy to Commit an Offense
 24 against the United States (a Class D felony offense), namely, Securities Fraud in violation
 25 U.S.C. §§ 78(j)(b) and 78(ff)(a) and 17 C.F.R. § 240.10b-5, and Mail Fraud, in violation of
 26 18 U.S.C. § 1341.

27 **II. MAXIMUM PENALTIES**

28 1. A violation of 18 U.S.C. § 371 is punishable by a maximum fine of \$250,000,
 or, alternatively, a fine of not more than the greater of twice the gross gain or twice the gross

1 loss, a maximum term of imprisonment of 5 years, or both, and a term of supervised release
2 of up to 3 years. If probation is imposed, a maximum term of probation is 5 years.

3 2. According to the Sentencing Guidelines issued pursuant to the Sentencing
4 Reform Act of 1984, the Court shall order the defendant to:

5 (a) make restitution to any victim of the offense pursuant to 18 U.S.C.
6 § 3663 and/or 3663A, unless the Court determines that restitution would not be appropriate;

7 (b) pay a fine pursuant to 18 U.S.C. § 3572, unless the Court finds that a
8 fine is not appropriate;

9 (c) serve a term of supervised release when required by statute or when a
10 sentence of imprisonment of more than one year is imposed (with the understanding that the
11 Court may impose a term of supervised release in all other cases); and

12 (d) pay upon conviction a \$100 special assessment for each count to which
13 the defendant pleads guilty pursuant to 18 U.S.C. § 3013(a)(2)(A).

14 3. The Court is required to consider the Sentencing Guidelines in determining the
15 defendant's sentence. However, the Sentencing Guidelines are advisory, and the Court is
16 free to exercise its discretion to impose any reasonable sentence up to the maximum set by
17 statute for the crime(s) of conviction, unless there are stipulations to the contrary that the
18 Court accepts.

19 **III. AGREEMENTS REGARDING SENTENCING**

20 1. Non-Binding Estimate of Applicable Sentencing Guidelines. The parties agree
21 that the following Sentencing Guidelines are applicable in this case:

- 22 a. U.S.S.G. § 2B1.1(a)(1) - Base Offense Level 6
23 b. U.S.S.G. § 2B1.1(b)(9)(c) - Sophisticated Means +2
24 c. Criminal History Category I.
25

26 2. The United States and the defendant agree that the parties are free to argue for
27 the application of additional adjustments and enhancements, or object to the guidelines
28 calculation of the U.S. Probation Office as appropriate, under the Sentencing Guidelines.

1 3. Non-Binding Nature of Recommendations. Defendant understands that the
2 recommendations in paragraph 1 above are not binding on the Court.

3 4. Restitution. Pursuant to 18 U.S.C. § 3663 and/or 3663A, the defendant
4 specifically agrees to make restitution in an amount to be determined by the Court at the time
5 of sentencing. This restitution order shall include restitution, if ordered, for dismissed counts
6 and uncharged conduct.

7 5. Assets. The defendant shall make a full accounting of all assets in which the
8 defendant has any legal or equitable interest. The defendant shall not (and shall not aid or
9 abet any other party to) sell, hide, waste, spend, or transfer any such assets or property before
10 sentencing, without the prior approval of the United States (provided, however, that no prior
11 approval will be required for routine, day-to-day expenditures).

12 6. Acceptance of Responsibility. If the defendant demonstrates an acceptance of
13 responsibility for this offense up to and including the time of the sentencing, consistent with
14 U.S.S.G. § 3E1.1, the United States will recommend a two-level reduction in the applicable
15 Sentencing Guidelines offense level pursuant to U.S.S.G. § 3E1.1(a). If the defendant has an
16 offense level of 16 or more, the United States will recommend an additional one-level
17 reduction in the applicable Sentencing Guidelines offense level pursuant to U.S.S.G. §
18 3E1.1(b).

19 **IV. AGREEMENT TO DISMISS OR NOT TO PROSECUTE**

20 1. Pursuant to Fed. R. Crim. P. 11(c)(1)(A), at the time of the defendant's
21 sentencing, the United States shall dismiss Counts 2 through 28 and Counts 30 and 31 of the
22 Indictment in CR-09-372-2-PHX-SRB against the defendant.

23 2. The United States Department of Justice, Criminal Division, Fraud Section and
24 the United States Attorney's Office for the District of Arizona will not prosecute the
25 defendant for any offenses committed by the defendant, and known by the United States, in
26 connection with the conduct underlying and related to the defendant's guilty plea.

27 3. This agreement does not, in any manner, restrict the actions of the United
28

1 States by another office of the United States Department of Justice, other district, or bind any
2 other United States Attorney's Office (other than the United States Attorney's Office for the
3 District of Arizona).

4 4. If the Court rejects the plea agreement, this case will be scheduled for trial for
5 the Indictment.

6 **V. COURT APPROVAL REQUIRED; REINSTITUTION OF PROSECUTION**

7 If the Court, after reviewing this plea agreement, concludes that any provision
8 contained herein is inappropriate, it may reject the plea agreement and give the defendant the
9 opportunity to withdraw the guilty plea in accordance with Fed. R. Crim. P. 11(c)(5).

10 If the defendant's guilty plea or plea agreement is rejected, withdrawn, vacated, or
11 reversed at any time, this agreement shall be null and void, the United States shall be free to
12 prosecute the defendant for all crimes of which it then has knowledge and any charges that
13 have been dismissed because of this plea agreement shall automatically be reinstated. In
14 such event, the defendant waives any and all objections, motions, and defenses based upon
15 the Statute of Limitations, the Speedy Trial Act, or constitutional restrictions in bringing later
16 charges or proceedings. The defendant understands that any statements made at the time of
17 the defendant's change of plea or sentencing may be used against the defendant in any
18 subsequent hearing, trial, or proceeding subject to the limitations of Fed. R. Evid. 410.

19 **IV. WAIVER OF DEFENSES AND APPEAL RIGHTS**

20 Providing the defendant's sentence is consistent with this agreement, the defendant
21 waives (1) any and all motions, defenses, probable cause determinations, and objections that
22 the defendant could assert to the indictment or information; and (2) any right to file an
23 appeal, any collateral attack, and any other writ or motion that challenges the conviction, an
24 order of restitution or forfeiture, the entry of judgment against the defendant, or any aspect of
25 the defendant's sentence, including the manner in which the sentence is determined,
26 including but not limited to any appeals under 18 U.S.C. § 3742 and motions under 28 U.S.C.
27 §§ 2241 and 2255. The defendant acknowledges that if the Court has sentenced the
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1 defendant according to the terms of this agreement, this waiver shall result in the dismissal of
2 any appeal, collateral attack, or other motion the defendant might file challenging the
3 conviction, order of restitution or forfeiture, or sentence in this case.

4 **VII. DISCLOSURE OF INFORMATION**

5 1. The United States retains the unrestricted right to provide information and
6 make any and all statements it deems appropriate to the U.S. Probation Office and to the
7 Court in connection with the case.

8 2. Any information, statements, documents, and evidence that the defendant
9 provides to the United States pursuant to this agreement may be used against the defendant at
10 any time.

11 3. The defendant shall provide complete and truthful responses to questions posed
12 by the U.S. Probation Office including, but not limited to, questions relating to:

- 13 (a) criminal convictions, history of drug abuse, and mental illness; and
14 (b) financial information, including present financial assets or liabilities that
15 relate to the ability of the defendant to pay a fine or restitution.

16 **VIII. FORFEITURE, CIVIL, AND ADMINISTRATIVE PROCEEDINGS**

17 Nothing in this agreement shall be construed to protect the defendant from
18 administrative or civil forfeiture proceedings or prohibit the United States from proceeding
19 with and/or initiating an action for civil forfeiture. Pursuant to 18 U.S.C. § 3613, all
20 monetary penalties, including restitution imposed by the Court, shall be due immediately
21 upon judgment and subject to immediate enforcement by the United States. If the Court
22 imposes a schedule of payments, the schedule of payments shall be merely a schedule of
23 minimum payments and shall not be a limitation on the methods available to the United
24 States to enforce the judgment.
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1 **IX. ELEMENTS**

2 **Conspiracy (18 U.S.C. § 371)**

3 *First*, beginning in or about January 2001, until in or about September 2006, in the
4 District of Arizona and elsewhere, the defendant and others did willfully agree and conspire
5 with each other to commit offenses against the United States, namely, securities fraud and
6 mail fraud.

7 *Second*, the defendant became a member of the conspiracy knowing of at least one of
8 its objects and intending to help accomplish it; and

9 *Third*, one of the members of the conspiracy performed at least one overt act in the
10 District of Arizona for the purpose of carrying out the conspiracy.

11 **Elements of Securities Fraud (15 U.S.C. §§ 78j(b) and 78ff)**

12 *First*, from in or about January 2001 to in or about September 2006, within the
13 District of Arizona, the defendant, directly or indirectly, willfully used a device or scheme to
14 defraud, made an untrue statement of a material fact, or engaged in an act, practice, or course
15 of business which operated or would operate as a fraud or deceit on any person;

16 *Second*, the defendant's acts were in connection with the purchase or sale of CSK
17 Auto Corp. ("CSK") securities; and

18 *Third*, the defendant used the mail, an instrumentality of interstate commerce, or any
19 facility of a national security exchange in connection with these acts.
20

21 **Elements of Mail Fraud (18 U.S.C. § 1341)**

22 *First*, from in or about January 2001 to in or about September 2006, within the District
23 of Arizona, the defendant devised and intended to devise a scheme or artifice to defraud or for
24 obtaining money or property by means of false or fraudulent pretenses, representations, or
25 promises;

26 *Second*, the defendant knew that the promises or statements were false;

27 *Third*, the promises or statements were material, that is they would reasonably influence
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1 a person to part with money or property;

2 *Fourth*, the defendant acted with the intent to defraud; and

3 *Fifth*, the defendant used, or caused to be used, the mails to carry out or attempt to carry
4 out an essential part of the scheme.
5

6 **X. FACTUAL BASIS**

7 The defendant admits that if this matter were to proceed to trial the United States could
8 prove the following facts beyond a reasonable doubt:

9
10 1. At all times relevant to the Indictment, the defendant was a resident in the District
11 of Arizona and an employee of CSK, a large specialty retailer of automobile parts. The
12 defendant was a senior vice president and chief financial officer (“CFO”) until in or about
13 October 2005, at which time he was replaced as CFO and became the chief administrative
14 officer. He was employed at CSK until in or about September 2006.

15 2. As part of its business, CSK purchased hundreds of millions of dollars worth of
16 parts and accessories every year from vendors. CSK entered into agreements with many vendors
17 to receive discounts, or allowances, for products it purchased in exchange for CSK using the
18 allowances, generally, for marketing of the vendors’ products for sale in its stores. CSK’s
19 largest vendor allowance program was called “Let’s Work Together” (“LWT”).

20 3. The defendant and his co-conspirators conspired to artificially inflate CSK’s
21 earnings from in or about January 2001 through in or about September 2006. The methods
22 willfully used by the defendant and his co-conspirators primarily included the following: hiding
23 that CSK could not collect a material amount of LWT allowances that CSK had recognized and
24 that CSK had not written off as uncollectible, and recognizing vendor allowances and other
25 income that CSK had not earned.

26
27 4. During the course of the conspiracy, the defendant and his co-conspirators
28 willfully caused CSK to hide that it had earned millions of dollars less in pre-tax income than

1 represented in its publicly filed financial statements. To do so, the defendant and his co-
2 conspirators willfully engaged in at least two methods to artificially inflate CSK's pre-tax
3 income and earnings from the LWT program: (I) intentionally misapplying collections for later
4 LWT program years to prior year LWT accounts receivable through improper debit memos,
5 which were generally sent to vendors through the U.S. mail and (ii) accounting for amounts paid
6 back through credit memos to vendors for prior LWT program years as increases to current or
7 subsequent year LWT accounts receivable instead of writing off the amounts, all done to give
8 the false appearance that the prior year LWT receivables had been properly collected.

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10 5. As a result of these actions, the defendant and his co-conspirators willfully caused
11 CSK to conceal uncollectible LWT receivables that should have been written off, including
12 approximately \$10 million for fiscal year 2002, approximately \$23 million for fiscal year 2003,
13 and approximately \$19 million for fiscal year 2004. By failing to write off these amounts, the
14 defendant and his co-conspirators willfully caused CSK to falsely report materially higher pre-
15 tax income and LWT receivable balances in its financial statements for the years 2001 through
16 2004, including in annual reports (Forms 10-K) and quarterly reports (Forms 10-Q) filed with
17 the United States Securities and Exchange Commission.

18 6. The defendant, as CFO, signed Forms 10-K and certified, as required by the
19 securities laws, that they did not contain any material untrue statements, fairly presented the
20 financial condition of CSK, and did not contain "[a]ny fraud, whether or not material." As CFO,
21 the defendant signed Forms 10-Q and certified that the information in the reports fairly presented
22 the financial condition and result of operations of CSK. Despite signing these certifications, the
23 defendant did not disclose his participation in or knowledge of the fraudulent scheme described
24 above.

25 7. In or about June 2005, the defendant knew that CSK continued to have a
26 substantial uncollectible balance in its 2004 LWT account receivable. As represented to the
27 defendant by his co-conspirators, this uncollectible balance was approximately \$15 million. This
28 balance consisted of amounts that CSK had already collected and moved to prior years. It also

1 contained amounts that CSK had paid back to vendors from prior years and should have been
2 written off. The defendant directed his co-conspirators to continue to attempt to collect this
3 balance rather than write it off, as should have been done. In or about July 2005, the defendant's
4 co-conspirators caused CSK to send debit memos to vendors attempting to collect the
5 outstanding balance of approximately \$30 million in the 2004 LWT account receivable. This
6 balance included the approximately \$15 million in uncollectible LWT amounts, as described
7 above. Although the defendant was not directly involved in the creation and delivery of these
8 debit memos, by no later than August 2005 he understood that his co-conspirators sent debit
9 memos to vendors seeking to collect these LWT amounts that the vendors did not actually owe
10 CSK. The defendant and his co-conspirators continued to try to collect the balances even as
11 vendors disputed the collections. For example, on or about August 1, 2005, the defendant and
12 his co-conspirators intentionally caused CSK to seek to collect from Honeywell/Allied
13 Aftermarket more than \$1 million through debit memo D2426385LWS when in fact the
14 defendant and his co-conspirators knew that this amount was not owed to CSK. As a result of
15 the scheme, the defendant and his co-conspirators caused this debit memo to be mailed from the
16 District of Arizona by United States Postal Service to Honeywell/Allied Aftermarket in Danbury,
17 Connecticut, on our about August 1, 2005.

18
19 The defendant shall swear under oath to the accuracy of this statement and, if the
20 defendant should be called upon to testify about this matter in the future, any intentional material
21 inconsistencies in the defendant's testimony may subject the defendant to additional penalties
22 for perjury or false swearing, which may be enforced by the United States under this agreement.

23 **APPROVAL AND ACCEPTANCE OF THE DEFENDANT**

24 I have read the entire plea agreement with the assistance of my attorney. I understand each
25 of its provisions and I voluntarily agree to it.

26 I have discussed the case and my constitutional and other rights with my attorney. I
27 understand that by entering my plea of guilty I shall waive my rights to plead not guilty, to trial
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1 by jury, to confront, cross-examine, and compel the attendance of witnesses, to present evidence
2 in my defense, to remain silent and refuse to be a witness against myself by asserting my
3 privilege against self-incrimination, all with the assistance of counsel, and to be presumed
4 innocent until proven guilty beyond a reasonable doubt.

5 I agree to enter my guilty plea as indicated above on the terms and conditions set forth
6 in this agreement.

7 I have been advised by my attorney of the nature of the charges to which I am entering
8 my guilty plea. I have further been advised by my attorney of the nature and range of the
9 possible sentence and that my ultimate sentence shall be determined by the Court after
10 consideration of the advisory Sentencing Guidelines.

11 My guilty plea is not the result of force, threats, assurances, or promises, other than the
12 promises contained in this agreement. I voluntarily agree to the provisions of this agreement and
13 I agree to be bound according to its provisions.

14 I understand that if I am granted probation or placed on supervised release by the Court,
15 the terms and conditions of such probation/supervised release are subject to modification at any
16 time. I further understand that if I violate any of the conditions of my probation/supervised
17 release, my probation/supervised release may be revoked and upon such revocation,
18 notwithstanding any other provision of this agreement, I may be required to serve a term of
19 imprisonment or my sentence otherwise may be altered.

20 This written plea agreement, and any written addenda filed as attachments to this plea
21 agreement, contain all the terms and conditions of the plea. Any additional agreements, if any
22 such agreements exist, shall be recorded in a separate document and may be filed with the Court
23 under seal; accordingly, additional agreements, if any, may not be in the public record.

24 I further agree that promises, including any predictions as to the Sentencing Guideline
25 range or to any Sentencing Guideline factors that will apply, made by anyone (including my
26 attorney) that are not contained within this written plea agreement, are null and void and have
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1 no force and effect.

2 I am satisfied that my defense attorney has represented me in a competent manner.

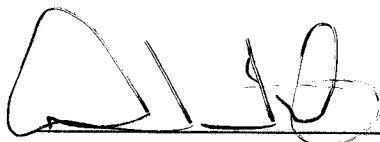
3 I fully understand the terms and conditions of this plea agreement. I am not now using
4 or under the influence of any drug, medication, liquor, or other intoxicant or depressant that
5 would impair my ability to fully understand the terms and conditions of this plea agreement.
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5/13/2011



10 Date

DON WALTER WATSON

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Defendant

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APPROVAL OF DEFENSE COUNSEL

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2 I have discussed this case and the plea agreement with my client in detail and have
3 advised the defendant of all matters within the scope of Fed. R. Crim. P. 11, the constitutional
4 and other rights of an accused, the factual basis for and the nature of the offense to which the
5 guilty plea will be entered, possible defenses, and the consequences of the guilty plea including
6 the maximum statutory sentence possible. I have further discussed the concept of the advisory
7 Sentencing Guidelines with the defendant. No assurances, promises, or representations have
8 been given to me or to the defendant by the United States or any of its representatives that are
9 not contained in this written agreement. I concur in the entry of the plea as indicated above and
10 that the terms and conditions set forth in this agreement are in the best interests of my client. I
11 agree to make a bona fide effort to ensure that the guilty plea is entered in accordance with all
12 the requirements of Fed. R. Crim. P. 11.
13

14 5/13/11
15 _____

16 Date



17 _____
18 EDWARD F. NOVAK
19 ZACHARY D. CAIN
20 MELISSA S. HO
21 Attorneys for Defendant
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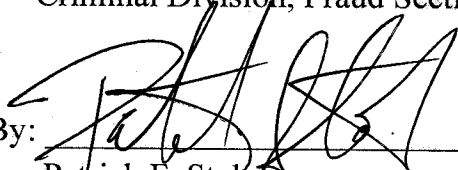
APPROVAL OF THE UNITED STATES

I have reviewed this matter and the plea agreement. I agree on behalf of the United States that the terms and conditions set forth herein are appropriate and are in the best interests of justice.

DENNIS K. BURKE
United States Attorney
District of Arizona

DENIS J. McINERNEY
United States Department of Justice
Chief
Criminal Division, Fraud Section

5/13/11
Date

By: 
Patrick F. Stokes
Deputy Chief, Fraud Section
Jennifer R. Taylor
Trial Attorney, Fraud Section

ACCEPTANCE BY THE COURT

Date

HON. SUSAN R. BOLTON
United States District Judge