

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

No.

v.

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM

Violations: Title 18, United States Code, Sections 1343, 1348(1), and 1350(c)(1); Title 15, United States Code, Sections 78m and 78ff(a); and Title 17, Code of Federal Regulations, Section 240.13b2-2(a)

COUNT ONE
(Securities Fraud)

The SPECIAL JULY 2018 GRAND JURY charges:

1. At times material to this Indictment:

Company A and Relevant Individuals and Entities

a. Company A was an Illinois-based company with headquarters in Wood Dale, Illinois. Company A manufactured and distributed engines and power systems for industrial, transportation, and agricultural applications. From on or about May 14, 2013, through on or about April 18, 2017, Company A's common stock was listed on the Nasdaq Stock Market, which is a national securities exchange.

b. Defendant GARY S. WINEMASTER was Company A's Chief Executive Officer and Chairman of the Board of Directors. WINEMASTER owned more than 35% of Company A's stock and was the company's largest shareholder.

c. Defendant CRAIG M. DAVIS was Company A's Vice President of Sales. Among other responsibilities, DAVIS supervised many of Company A's sales representatives and sales contractors, including defendant JAMES F. NEEDHAM,

Individual A, Individual B, Individual C, and Individual D. DAVIS reported to WINEMASTER.

d. Defendant JAMES F. NEEDHAM was employed by Company A as a General Manager and was responsible for sales of heavy-duty power systems for industrial applications. NEEDHAM reported to DAVIS and WINEMASTER.

e. Between in or around October 2015 and in or around February 2017, Individual E was Company A's Chief Financial Officer.

f. Individual F was Company A's Controller.

g. Company B was a Wyoming-based company that built generators, among other products. Company C was a Wyoming-based company that distributed and serviced generators. Between in or around January 2013 and in or around March 2016, Individual G was employed as the Chief Operations Officer of Company B. Between in or around May 2014 and in or around March 2016, while employed with Company B, Individual G also worked for Company C. Between in or around March 2016 and in or around March 2017, Individual G was Company C's Chief Operations Officer.

Revenue Recognition at Company A

h. When ordering products from Company A, a customer typically submitted a purchase order specifying the type and quantity of products being ordered, the requested delivery date, and the purchase price. The standard terms governing a purchase order were the terms listed in Company A's distribution agreement with the customer. When Company A and the customer had not agreed to terms through a distribution agreement, the standard terms governing a purchase

order were those listed on Company A's website. For a particular transaction, a customer and Company A could agree to special terms that were different from the standard terms.

i. If Company A's accounting personnel were not aware of special terms for a particular transaction, they would treat the transaction as governed by the standard terms for the customer. Based on those standard terms, once the product was shipped, a sale was posted to the company's general ledger, and Company A recognized the revenue from the sale as of that date.

j. The existence of certain special terms for a particular transaction, including rights to return products, rights to exchange products, discounts, and extended and indefinite payment terms, was material to Company A's Accounting Department's assessment of whether, and when, revenue could be recognized for the transaction.

Reporting Revenue to the Public

k. Company A's fiscal years were January 1 through December 31 of each year. For each fiscal year, the first quarter ended on March 31, the second quarter ended on June 30, the third quarter ended on September 30, and the fourth quarter ended on December 31.

l. Following the completion of each fiscal year, Company A prepared consolidated financial statements and submitted those statements to its outside auditor, referred to here as "Auditor A." Following the completion of each fiscal quarter, Company A provided interim financial information to Auditor A. In management representation letters submitted quarterly to Auditor A, Company A's

management, including WINEMASTER, confirmed that, among other things, (i) there were no side agreements or other arrangements that had not been disclosed to Auditor A; (ii) Company A's financial statements and financial information were presented in accordance with accounting principles generally accepted in the United States ("GAAP"); and (iii) to the best of their knowledge and belief, no events or transactions had occurred that would require recognition or disclosure in the prior year's financial statements.

m. Following a review by Auditor A, Company A reported its financial information to the investing public in periodic reports filed with the U.S. Securities & Exchange Commission. Among other metrics, Company A reported to the public the revenues the company earned during the reporting period. In making such reports, the company represented that its financial statements were prepared in accordance with GAAP.

2. Beginning no later than in or around 2014 and continuing through at least on or about December 28, 2016, at Wood Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, as well as Individual A, Individual B, Individual C, Individual D, Individual G, and others known and unknown to the Grand Jury, knowingly participated in a scheme to defraud Company A shareholders and other investors in

connection with Company A's common stock listed on the Nasdaq Stock Market, which scheme is further described below.

3. It was part of the scheme that GARY S. WINEMASTER, CRAIG M. DAVIS, JAMES F. NEEDHAM, and others fraudulently inflated by millions of dollars the revenue Company A reported to the investing public in certain periods. In doing so, WINEMASTER, DAVIS, NEEDHAM, and others deceived Company A shareholders and other investors about Company A's financial health and performance.

4. It was further part of the scheme that GARY S. WINEMASTER, CRAIG M. DAVIS, and JAMES F. NEEDHAM, as well as Individual A, Individual B, Individual C, Individual D, and others, offered, caused to be offered, and agreed to special terms for transactions, and then knowingly and intentionally withheld and concealed those special terms from Company A's Accounting Department. These terms included, but were not limited to, discounts, rights to return products, rights to exchange products, and extended and indefinite periods in which to pay for products. As a result, at the time of the transactions, Company A's Accounting Department did not learn the true terms of the transactions, causing Company A to recognize revenue for the transactions in periods for which the revenue should not have been recognized under GAAP, and to report fraudulently inflated revenues to the investing public.

5. It was further part of the scheme that GARY S. WINEMASTER, CRAIG M. DAVIS, Individual A, and others, knowing that Company A's customers had not

agreed to accept delivery of certain products at certain times, and without the customers' knowledge and consent, shipped products to customers and to warehouses so that records from the shipments fraudulently supported Company A's treatment of the transactions as sales in the periods during which they were shipped. As a result, Company A recognized revenue for the transactions in periods for which the revenue should not have been recognized under GAAP and reported fraudulently inflated revenues to the investing public.

6. It was further part of the scheme that, for the purpose of inducing Auditor A to certify and approve Company A's financial information so that Company A could report its fraudulently inflated revenues to the investing public, GARY S. WINEMASTER knowingly submitted to Auditor A management representation letters in which WINEMASTER fraudulently confirmed that, among other things, (i) there were no side agreements or other arrangements that had not been disclosed to Auditor A; (ii) Company A's financial statements and financial information were presented in accordance with GAAP; and (iii) to the best of his knowledge and belief, no events or transactions had occurred that would require recognition or disclosure in the prior year's financial statements; knowing that these representations were false.

7. It was further part of the scheme that GARY S. WINEMASTER, CRAIG M. DAVIS, JAMES F. NEEDHAM, and others misrepresented, concealed, and hid, and caused to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme and the purposes of those acts.

8. It was further part of the scheme that, for purposes of misrepresenting, concealing, and hiding acts done in furtherance of the scheme and the purposes of those acts, GARY S. WINEMASTER, CRAIG M. DAVIS, and JAMES F. NEEDHAM, as well as Individual G and others, renegotiated and modified the special terms of transactions entered in prior periods for the purpose of creating false records to fraudulently support Company A's accounting for the transactions.

9. It was further part of the scheme that, for purposes of misrepresenting, concealing, and hiding acts done in furtherance of the scheme and the purposes of those acts, GARY S. WINEMASTER, CRAIG M. DAVIS, and JAMES F. NEEDHAM, as well as Individual G and others, knowingly created and caused to be created documents that falsely described the terms of transactions to fraudulently support Company A's accounting for those transactions.

10. It was further part of the scheme that, for purposes of misrepresenting, concealing, and hiding acts done in furtherance of the scheme and the purposes of those acts, GARY S. WINEMASTER, CRAIG M. DAVIS, JAMES F. NEEDHAM, as well as Individual D and others, knowingly made and caused to be made false oral and written statements to Auditor A and knowingly and intentionally omitted from disclosure to Auditor A material truthful information regarding the terms of certain transactions, for the purpose of fraudulently convincing Auditor A that Company A properly accounted for those transactions.

11. It was further part of the scheme that, for purposes of misrepresenting, concealing, and hiding acts done in furtherance of the scheme and the purposes of

those acts, GARY S. WINEMASTER, JAMES F. NEEDHAM, and others knowingly arranged and caused to be arranged new sales transactions by Company A's customers, involving products that they knew had been delivered to the customers by Company A in earlier transactions pursuant to terms that had not been disclosed to Company A's Accounting Department at the time of the earlier transactions, to fraudulently support Company A's accounting for the earlier transactions.

12. On or about February 26, 2016, at Wood Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing and attempting to execute the above-described scheme, did knowingly submit and cause to be submitted to the U.S. Securities & Exchange Commission Company A's Annual Report for fiscal year 2015 containing Company A's consolidated financial statements and financial information on Form 10-K, which statements fraudulently reported to the investing public that Company A made substantially more revenue in 2015 than Company A actually made;

In violation of Title 18, United States Code, Section 1348(1).

COUNT TWO
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. Beginning no later than in or around 2014 and continuing through at least on or about December 28, 2016, at Wood Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, as well as Individual A, Individual B, Individual C, Individual D, Individual G, and others known and unknown to the Grand Jury, devised, intended to devise, and participated in a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

3. Paragraphs 3 through 11 of Count One are incorporated here.
4. On or about March 19, 2015, at approximately 1:58 p.m., at Wood Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER and
CRAIG M. DAVIS,

defendants herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [Individual B]@[Company A].com to [DAVIS]@[Company A].com explaining that a

Company A customer would agree to a transaction only if WINEMASTER agreed via a telephone call to certain special terms and conditions for the transaction;

In violation of Title 18, United States Code, Section 1343.

COUNT THREE
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about September 24, 2015, at approximately 1:26 p.m., at Wood

Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [Individual G]@[Company B].com to [NEEDHAM]@[Company A].com confirming that Company B would issue a purchase order to Company A for a substantially inflated amount for a September 2015 transaction;

In violation of Title 18, United States Code, Section 1343.

COUNT FOUR
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about December 29, 2015, at approximately 10:11 a.m., at Wood

Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [NEEDHAM]@[Company A].com to [DAVIS]@[Company A].com attaching Company A's agreement to accept the return of 80 engines from Company B in exchange for Company C's submission of a purchase order for 3 engines;

In violation of Title 18, United States Code, Section 1343.

COUNT FIVE
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about January 28, 2016, at approximately 11:04 a.m., at Wood

Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [DAVIS]@[Company A].com to [NEEDHAM]@[Company A].com instructing NEEDHAM to tell Company B to pay the amount that had been agreed to for a transaction rather than the inflated price listed on Company B's purchase order from in or around September 2015;

In violation of Title 18, United States Code, Section 1343.

COUNT SIX
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about March 24, 2016, at approximately 10:26 a.m., at Wood Dale,

in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [DAVIS]@[Company A].com to [NEEDHAM]@[Company A].com discouraging NEEDHAM from informing a member of Company A's Accounting Department about the true terms of the September 2015 transaction with Company B;

In violation of Title 18, United States Code, Section 1343.

COUNT SEVEN
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about April 11, 2016, at approximately 11:25 a.m., at Wood Dale,

in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [NEEDHAM]@[Company A].com to [WINEMASTER]@[Company A].com forwarding a misleading description by Individual G of the September 2015 transaction with Company B;

In violation of Title 18, United States Code, Section 1343.

COUNT EIGHT
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about April 19, 2016, at approximately 11:25 a.m., at Wood Dale,

in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [WINEMASTER]@[Company A].com to [Individual H]@[Company B].com and [Individual I]@[Company B].com confirming Company A's agreement to accept the return of 41 22L engines and 44 14L engines in exchange for 20 11L engines;

In violation of Title 18, United States Code, Section 1343.

COUNT NINE
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about May 10, 2016, at Wood Dale, in the Northern District of

Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, the electronic transfer from Company A to Auditor A of a management representation letter signed by WINEMASTER, Individual E, and Individual F, in which WINEMASTER fraudulently stated certain information for Auditor A that WINEMASTER knew was false when stated;

In violation of Title 18, United States Code, Section 1343.

COUNT TEN
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about August 3, 2016, at approximately 12:56 p.m., at Wood Dale,

in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [Individual E]@[Company A].com to [Individual J]@[Auditor A].com, [Individual K]@[Auditor A].com, and others attaching a memorandum that falsely described Company A transactions that Auditor A was reviewing;

In violation of Title 18, United States Code, Section 1343.

COUNT ELEVEN
(Wire Fraud)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraphs 1 through 3 of Count Two are incorporated here.
2. On or about December 1, 2016, at approximately 10:03 a.m., at Wood

Dale, in the Northern District of Illinois, Eastern Division, and elsewhere,

GARY S. WINEMASTER,
CRAIG M. DAVIS, and
JAMES F. NEEDHAM,

defendants herein, for the purpose of executing the above-described scheme, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, and signals, namely, an e-mail from [NEEDHAM]@[Company A].com to [Individual I]@[Company B].com attaching a purchase order from Company A to Company B for Company A to purchase approximately \$9.6 million of products from Company B;

In violation of Title 18, United States Code, Section 1343.

COUNT TWELVE

(False Statement to Auditor in connection with Representation Letter)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about February 26, 2016, at Wood Dale, in the Northern District of Illinois, Eastern Division,

GARY S. WINEMASTER,

defendant herein, did willfully make and cause to be made a materially false and misleading statement, and omit to state a material fact necessary in order to make a statement made, in light of the circumstances under which such statement was made, not misleading, namely, a representation in Company A's management representation letter to Auditor A that, as of on or about February 26, 2016:

- (i) WINEMASTER had no knowledge of fraud or suspected fraud affecting Company A involving management or others where the fraud could have a material effect on Company A's financial statements; and
- (ii) There were no side agreements or other arrangements, either written or oral, that were not disclosed to Auditor A;

which statement was made to Auditor A in connection with a review and examination of the financial statements of Company A required to be made and the preparation and filing of a document and report required to be filed with the U.S. Securities & Exchange Commission, namely, the periodic report containing the financial statements filed on Form 10-K by Company A for 2015;

In violation of Title 15, United States Code, Sections 78m and 78ff(a); and Title 17, Code of Federal Regulations, Section 240.13b2-2(a).

COUNT THIRTEEN

(False Statement to Auditor in connection with Representation Letter)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about May 10, 2016, at Wood Dale, in the Northern District of

Illinois, Eastern Division,

GARY S. WINEMASTER,

defendant herein, did willfully make and cause to be made a materially false and misleading statement, and omit to state a material fact necessary in order to make a statement made, in light of the circumstances under which such statement was made, not misleading, namely, a representation in Company A's management representation letter to Auditor A that, as of on or about May 10, 2016:

- (i) WINEMASTER had no knowledge of any fraud or suspected fraud affecting Company A involving management or others where fraud could have a material effect on Company A's interim financial information;
- (ii) There were no side agreements or other arrangements, either written or oral, that had not been disclosed to Auditor A;
- (iii) WINEMASTER reaffirmed the representations made to Auditor A in Company A's letter dated February 26, 2016, related to the financial statements as of and for the period ended December 31, 2015; and
- (iv) To the best of WINEMASTER's knowledge and belief, no events or transactions had occurred subsequent to February 26, 2016, that would have required recognition or disclosure in the aforementioned financial statements;

which statement was made to Company A's auditors in connection with a review and examination of the financial statements of Company A required to be made and the preparation and filing of a document and report required to be filed with the U.S.

Securities & Exchange Commission, namely, the periodic report containing the financial statements filed on Form 10-Q by Company A for the first quarter of 2016;

In violation of Title 15, United States Code, Sections 78m and 78ff(a); and Title 17, Code of Federal Regulations, Section 240.13b2-2(a).

COUNT FOURTEEN
(Failure of Corporate Officer to Certify Financial Reports)

The SPECIAL JULY 2018 GRAND JURY further charges:

1. Paragraph 1 of Count One is incorporated here.
2. On or about February 26, 2016, at Wood Dale, in the Northern District of Illinois, Eastern Division,

GARY S. WINEMASTER,

defendant herein, did certify a statement accompanying the financial statements filed by Company A, an issuer with the U.S. Securities Exchange Commission pursuant to Sections 13(a) and 15(d) of the Securities Exchange Act of 1934, asserting that the information contained in the periodic report fairly presents, in all material respects, the financial condition and results of operations of Company A, knowing in fact that the information contained in the report did not fairly present, in all material respects, the financial condition and results of operations of Company A;

In violation of Title 18, United States Code, Section 1350(c)(1).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY