

1 DONALD W. SEARLES, California Bar No. 135705
 E-mail: searlesd@sec.gov
 2 LORRAINE B. ECHAVARRIA, California Bar No. 191860
 E-mail: echavarrial@sec.gov
 3 ROBERT H. CONRRAD, California Bar No. 199498
 E-mail: conrradr@sec.gov
 4 C. DABNEY O'RIORDAN, California Bar No. 205158
 E-mail: oriordand@sec.gov
 5

Attorneys for Plaintiff
 6 Securities and Exchange Commission
 Rosalind R. Tyson, Regional Director
 7 Michele Wein Layne, Associate Regional Director
 5670 Wilshire Boulevard, 11th Floor
 8 Los Angeles, California 90036-3648
 Telephone: (323) 965-3998
 9 Facsimile: (323) 965-3908

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 11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13 SECURITIES AND EXCHANGE
 14 COMMISSION,

15 Plaintiff,

16 vs.

17 MARTIN G. FRASER; DON W.
 18 WATSON; EDWARD W. O'BRIEN; and
 GARY M. OPPER,

19 Defendants.
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Case No.

**COMPLAINT FOR VIOLATIONS OF
 THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. CSK Auto Corporation (“CSK”) was one of the largest specialty retailers
5 of automotive parts and accessories in the United States. Headquartered in Phoenix,
6 Arizona, CSK became a publicly traded company in March 1999. As of January 30,
7 2005, CSK operated 1,134 stores in nineteen states under three brand names: Checker
8 Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after the conduct
9 alleged in this Complaint, CSK became a wholly-owned subsidiary of O’Reilly
10 Automotive, Inc.

11 2. As a retailer of automotive products, CSK purchased products from
12 vendors that manufacture automotive parts and accessories. From at least fiscal years
13 2002 through 2004, a significant portion of CSK’s income was derived from allowances
14 it received from its vendors. Vendor allowances are used to provide retailers, such as
15 CSK, with financial support to market the vendor’s products. In general, CSK
16 accounted for vendor allowances by reducing its costs of goods sold. Thus, the more
17 vendor allowances CSK earned, the lower its costs of goods sold, resulting in greater
18 reported pre-tax income. During the years at issue, vendor allowances were vital to
19 CSK’s financials, increasing its reported pre-tax income by tens of millions of dollars
20 each fiscal year.

21 3. During fiscal years 2002, 2003, and 2004, CSK knew that there were
22 millions of dollars of vendor allowances that were recognized on its books but were not
23 collectible. Rather than write off the uncollectible receivables, as required by Generally
24 Accepted Accounting Principles (“GAAP”), CSK and its senior management engaged
25 in a scheme to hide the uncollectible receivables through various accounting tricks. In
26 addition, during fiscal year 2003, CSK over recognized millions of dollars of vendor
27 allowances. To perpetuate the fraudulent scheme, CSK’s senior management lied to the
28 company’s independent auditors and audit committee.

1 4. If CSK had written off the uncollectible vendor allowances, it would have
2 increased the company's expenses and decreased its income. Because CSK concealed
3 its uncollectible vendor allowances, CSK's annual reports filed with the Commission
4 for fiscal years 2002, 2003, and 2004 materially overstated the company's financial
5 results in violation of GAAP and misled the public about the company's financial
6 performance.

7 5. During the relevant time period, defendant Martin G. Fraser ("Fraser")
8 served as CSK's chief operating officer and president, defendant Don W. Watson
9 ("Watson") served as its chief financial officer, defendant Edward W. O'Brien
10 ("O'Brien") served as a vice president and controller, and defendant Gary M. Opper
11 ("Opper") served as its director of credits and receivables (Fraser, Watson, O'Brien,
12 and Opper are collectively referred to herein as "Defendants"). Because of Fraser's and
13 Watson's conduct, CSK filed with the Commission a false annual report for fiscal year
14 2002 that fraudulently overstated its pre-tax income for that year by approximately
15 47%, or \$11 million. In addition, because of Defendants' conduct, CSK filed false
16 annual reports with the Commission that fraudulently overstated its pre-tax income for
17 fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income
18 instead of a pre-tax loss, and for fiscal year 2004 by approximately 65%, or \$21
19 million.

20 6. As a result of Defendants' fraudulent conduct, CSK restated its financial
21 statements as part of its Form 10-K for fiscal year 2004 (the "First Restatement"). As
22 part of the First Restatement, CSK reduced its previously recognized vendor allowances
23 for fiscal years 2002, 2003 and the first three quarters of fiscal year 2004. Defendants,
24 however, continued to conceal known, significant uncollectible vendor allowance
25 receivables. The First Restatement also falsely attributed the vendor allowance
26 adjustments to mere errors in estimates and bookkeeping mistakes rather than to
27 Defendants' fraudulent conduct.

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1 7. As a result of Defendants' failure to acknowledge and write off the
2 magnitude of CSK's uncollectible vendor allowance receivables in the First
3 Restatement, CSK still had approximately \$15 million in uncollectible vendor
4 allowance receivables, which, under GAAP, should have been written off. Defendants
5 made a final attempt to collect that \$15 million deficit by intentionally over billing its
6 vendors. When the vendors complained about being double billed, CSK paid back the
7 amounts it had wrongfully collected, but incorrectly accounted for some of those
8 paybacks and mischaracterized the reasons for other paybacks to avoid detection that
9 the company had over collected vendor allowances.

10 8. Each of the Defendants knew CSK was not writing off uncollectible
11 vendor allowances receivables and was over recognizing vendor allowances resulting in
12 CSK's financial statements for fiscal years 2002, 2003, and 2004 being materially
13 misstated. Defendants Fraser and Watson substantially participated in the preparation
14 of CSK's 2002, 2003, and 2004 false financial statements. Defendant O'Brien
15 substantially participated in the preparation of the 2003 and 2004 false financial
16 statements. Defendant Opper substantially participated in, or provided substantial
17 assistance to, the preparation of the false 2003 and 2004 financial statements.

18 9. Based on their conduct, Defendants, among other things, violated the
19 antifraud provisions of the federal securities laws, falsified CSK's books and records,
20 circumvented CSK's internal controls, and lied to CSK's independent auditors. The
21 Commission seeks an order enjoining Defendants from future violations of the
22 securities laws, requiring Defendants to disgorge ill-gotten gains with prejudgment
23 interest, ordering Defendants to pay civil monetary penalties, requiring Watson to
24 reimburse stock profits pursuant to Section 304 of the Sarbanes-Oxley Act, barring
25 Fraser, Watson, and O'Brien from serving as officers or directors of a public company,
26 and providing other appropriate relief.

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1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
4 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e) & 78aa. Defendants have directly or indirectly made use of the
7 means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
8 national securities exchange in connection with the transactions, acts, practices and
9 courses of business alleged in this Complaint.

10 11. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa,
12 because defendants reside and transact business within this district and certain of the
13 transactions, acts, practices and courses of conduct constituting violations of the federal
14 securities laws alleged in this Complaint occurred within this district.

15 **THE DEFENDANTS**

16 12. **Martin G. Fraser** (53) is a resident of Phoenix, Arizona, and was CSK’s
17 chief operating officer and president from 2000 until September 2006, when he
18 resigned at CSK’s request.

19 13. **Don W. Watson** (53) is a resident of Gilbert, Arizona. From January
20 1998 to September 2005, Watson was CSK’s chief financial officer, senior vice
21 president, and treasurer. Watson served as CSK’s chief administrative officer and
22 senior vice president from September 2005 to his termination in October 2006.

23 14. **Edward W. O’Brien** (46) is a resident of Cave Creek, Arizona. O’Brien
24 was CSK’s controller and vice president from March 2003 until his termination in
25 September 2006.

26 15. **Gary M. Opper** (56) is a resident of Mesa Arizona. Opper was CSK’s
27 director of credit and receivables, reporting to O’Brien, from March 17, 2003 until he
28 was terminated in September 2006.

1 **RELATED PARTY**

2 16. **CSK Auto Corporation** is a Delaware corporation with its principal
3 executive offices in Phoenix, Arizona. CSK's common stock was registered with the
4 Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York
5 Stock Exchange. On July 11, 2008, CSK became a wholly owned subsidiary of
6 O'Reilly Automotive, Inc.

7 **BACKGROUND**

8 **I. CSK's "Let's Work Together" Program**

9 17. Each year, most of CSK's vendors agreed to pay vendor allowances.
10 Although CSK had various vendor allowance programs, its largest was its "Let's Work
11 Together" program ("LWT"). Typically, LWT agreements covered a one-year period,
12 which CSK referred to as the "program year." Although the LWT agreements varied,
13 CSK generally earned LWT allowances at a set dollar amount, as a percentage of the
14 amount CSK spent to purchase the vendor's product, or as a certain number of cents per
15 item CSK purchased from the vendor.

16 18. CSK recognized LWT allowances ratably, on a monthly basis, based on
17 its estimate of the total allowances it expected to earn for the entire program year.
18 Thus, CSK did not recognize LWT allowances as they were actually earned or
19 collected. In theory, CSK's estimate was based on the LWT agreement and CSK's
20 expected purchases from its vendors. In general, CSK recognized LWT allowances as a
21 reduction to costs of sales (an expense), thereby increasing the company's pre-tax
22 income.

23 19. As CSK recognized LWT allowances for a given program year, it
24 increased the LWT account receivable for that program year. Each LWT program year
25 had its own account receivable. As CSK collected LWT allowances for a particular
26 program year, GAAP required that CSK reduce the outstanding receivable for that same
27 LWT program year.

1 20. In general, CSK collected LWT allowances by issuing a debit memo to
2 the vendor, which notified the vendor that CSK was deducting the amount of the LWT
3 allowance from the amount CSK owed the vendor. If CSK collected too much, it
4 generally paid back the vendor by issuing a credit memo, notifying the vendor that CSK
5 was adding the amount back to the overall amount it owed the vendor.

6 **Defendants' Fraudulent Scheme**

7 **I. The Fraudulent Scheme To Avoid Vendor Allowance Write Offs**

8 21. During fiscal years 2002, 2003, and 2004, CSK was unable to collect all
9 of the vendor allowances it had recognized. As a result, large accounts receivable built
10 up for each LWT program year.

11 22. GAAP required that CSK write off the uncollectible LWT accounts
12 receivable. Specifically, under Statement of Financial Accounting Standards No. 5
13 (“SFAS No. 5”), Accounting for Contingencies Paragraph 8, an estimated loss from a
14 loss contingency shall be accrued by a charge to income if: (i) information available
15 prior to issuance of the financial statements indicates that it is probable that an asset had
16 been impaired at the date of the financial statements; and (ii) the amount of the loss can
17 be reasonably estimated. SFAS No. 5, Paragraph 3 defines “probable” to mean that the
18 future event or events are likely to occur. SFAS No. 5, Paragraph 4 states that
19 examples of loss contingencies include collectibility of receivables. A write off of the
20 uncollectible LWT allowance receivables would have increased CSK’s expenses during
21 the fiscal year the write off was made, resulting in a decrease in pre-tax income.

22 23. Instead of writing off CSK’s uncollectible LWT accounts receivable and
23 taking the requisite reduction to pre-tax income, Fraser and Watson, for fiscal year
24 2002, and Defendants, for fiscal years 2003 and 2004, concealed CSK’s uncollectible
25 LWT accounts receivable by: (i) applying tens of millions of dollars of LWT
26 allowances earned and collected for later LWT program years to prior LWT program
27 year accounts receivable (referred to within CSK as “filling the bucket”); and
28 (ii) incorrectly accounting for millions of dollars of LWT allowances it paid back to

1 vendors. Through this scheme, CSK avoided writing off tens of millions of dollars in
2 uncollectible LWT receivables, which it had previously recognized.

3 24. CSK “filled the bucket” by taking LWT allowances collected for later
4 program years and applying them to reduce an earlier LWT program year’s account
5 receivable. Specifically, CSK: (i) made baseless journal entries reducing the account
6 receivable for a prior LWT program year with an offsetting increase to the account
7 receivable for a later LWT program year; and (ii) applied LWT allowance collections
8 for a later LWT program year to an earlier program year’s LWT account receivable.

9 25. CSK also failed to write off LWT allowances it had over collected for
10 prior LWT program years and ultimately paid back to its vendors. Instead of writing
11 off amounts CSK paid back, which would reduce its pre-tax income, CSK increased a
12 later LWT program year’s account receivable, making it appear that it had collected an
13 older account receivable when all CSK had done was move the outstanding receivable
14 balance to a more recent year. This accounting treatment was contrary to GAAP
15 because by paying an amount back to a vendor for a prior LWT program year, CSK
16 acknowledged its uncollectibility and should have written off the amount.

17 **A. During CSK’s 2002 Fiscal Year, The Company Concealed**
18 **Approximately \$11 Million Of Uncollectible Vendor Allowances**

19 26. During its 2002 fiscal year, CSK failed to write off approximately \$11
20 million of uncollectible vendor allowances it had recognized in previous years, most
21 significantly as part of the 2001 LWT program year. Instead of writing off the
22 uncollectible vendor allowances, CSK: (i) made improper journal entries moving
23 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT
24 account receivable; (ii) misapplied paybacks of approximately \$3 million to the 2002
25 LWT receivable; and (iii) reached an agreement whereby a vendor agreed to accept an
26 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK
27 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT
28 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK overstated its

1 pre-tax income by approximately \$11 million, or 47%.

2 27. Throughout fiscal year 2002, Fraser and Watson knew of CSK's
3 numerous efforts to hide uncollectible LWT accounts receivable and that, as a result,
4 CSK's financial statements were materially misstated.

5 28. During fiscal year 2001, the company's controller at the time informed
6 Fraser and Watson that CSK was recognizing more LWT allowances for the 2001
7 program year than it was actually earning or likely to earn during that program year.

8 29. The 2001 LWT program year ended in September 2001. CSK tried to
9 collect the outstanding 2001 LWT account receivable throughout fiscal year 2002.

10 30. During fiscal year 2002, CSK issued a \$2 million debit memo to a vendor
11 to collect LWT allowances recognized as part of the 2001 LWT program year. The
12 vendor vigorously disputed the debit memo claiming that CSK had not purchased
13 enough products from the vendor to have earned the \$2 million. Fraser negotiated the
14 dispute. By the middle of the 2002 fiscal year, CSK agreed to forego collecting \$2
15 million worth of LWT allowances it expected to earn on purchases during the 2002 and
16 2003 LWT program years in exchange for the vendor accepting the \$2 million debit
17 memo. Both Fraser and Watson knew that the vendor had agreed to accept the already-
18 issued \$2 million debit memo only in exchange for CSK's agreement not to collect \$2
19 million in LWT for the 2002 and 2003 LWT program years. Since the vendor only
20 accepted the debit memo in exchange for future benefits from CSK, *i.e.*, future
21 purchases of product from the vendor, GAAP required that CSK immediately write off
22 the \$2 million because it was not collectible as part of the 2001 LWT program year.

23 31. During fiscal year 2002, CSK had to make various paybacks to vendors
24 for vendor allowances it had recognized during prior fiscal years. Instead of correctly
25 accounting for those paybacks by writing them off and increasing CSK's expenses, the
26 company increased the 2002 LWT program year's account receivable. Watson
27 instructed CSK employees that they would have to raise additional allowances to cover
28 for those amounts paid back because CSK "could not afford a charge for any

1 paybacks.” Fraser knew of Watson’s instruction and CSK’s failure to write off vendor
2 allowances paid back to vendors.

3 32. In October 2002, Fraser, Watson, and others met to discuss the
4 collectibility of the 2001 LWT account receivable, which had been outstanding for
5 approximately one year. At that time, of the remaining outstanding balance for the
6 2001 LWT account receivable, \$3.2 million was known to be uncollectible and \$4.5
7 million was “questionable.” These amounts did not include either the \$2 million Fraser
8 and Watson already knew was uncollectible or the paybacks.

9 33. Rather than write off these uncollectible amounts, as required by GAAP,
10 in October and November 2002, CSK devised a plan to move collections for the 2002
11 LWT program year to cover the 2001 LWT account receivable. As part of that plan, in
12 or about November 2002, Watson instructed a CSK employee to identify collections for
13 the 2002 LWT program year to move to the 2001 LWT program year account
14 receivable to cover 2001 shortfalls.

15 **B. During Fiscal Year 2003, CSK Concealed Approximately \$24 Million**
16 **In Known, Uncollectible Vendor Allowances And Improperly**
17 **Recognized Approximately \$10 Million In Vendor Allowances**

18 34. During its 2003 fiscal year, CSK used various tactics to fraudulently
19 conceal, rather than properly write off, approximately \$24 million in uncollectible
20 vendor allowances recognized during previous LWT program years, primarily as part of
21 the 2002 LWT program year. Moreover, CSK improperly and prematurely recognized
22 \$6 million in vendor allowances and improperly recognized an additional \$4 million of
23 LWT allowances. As a result, in its Form 10-K filed on April 15, 2004, CSK overstated
24 its 2003 pre-tax income by approximately \$34 million, turning its actual pre-tax loss of
25 approximately \$18 million into purported pre-tax income of \$16 million. At the time of
26 that filing, Defendants knew CSK had failed to write off uncollectible vendor
27 allowances and over recognized allowances, and that, as a result, CSK’s financial
28 statements were materially misstated.

1 35. During fiscal year 2003, CSK hid approximately \$24 million in
2 uncollectible vendor allowance receivables. First, CSK applied approximately \$10
3 million in 2003 LWT program year collections to the 2002 LWT program year
4 receivable. Second, CSK failed to write off approximately \$5 million in vendor
5 allowances CSK had over collected during prior LWT program years but had to pay
6 back during fiscal year 2003. Third, CSK made a baseless journal entry decreasing the
7 2002 LWT receivable by \$9 million and increasing the 2003 LWT receivable by the
8 same amount, which reduced the 2002 LWT receivable to zero.

9 36. During fiscal year 2003, Defendants knew CSK was failing to write off
10 uncollectible LWT allowances. During fiscal year 2003, Defendants regularly received
11 information regarding CSK's efforts to hide the uncollectible LWT allowances. For
12 example, on or about September 9, 2003, Opper sent an email to Fraser, Watson,
13 O'Brien and others discussing the collection of the 2002 LWT account receivable,
14 which was then approximately one-year old. The email stated that: (i) "approximately
15 \$9.6mm in 2003 collections . . . were moved to 2002 to cover short falls from prior
16 periods;" and (ii) the outstanding 2002 LWT program year receivable balance did not
17 include \$5.4 million in 2002 paybacks. Defendant Opper referenced in the email a
18 chart he had attached that explained the "\$24.2 million in LWT exposure from 2002
19 and prior." That chart included detailed explanations regarding millions of dollars of
20 uncollectible LWT allowances for prior years, including the 2002 LWT program year.

21 37. Defendants also met to discuss the uncollectible LWT receivables during
22 fiscal year 2003. For example, Defendants attended a meeting on or about September
23 17, 2003 to discuss the "2002 Outstanding LWT status" where Opper provided copies
24 of the chart attached to his September 9, 2003 email.

25 38. During the fourth quarter of 2003, CSK prematurely recognized
26 approximately \$6 million in additional vendor allowances, which would not be earned,
27 if at all, until fiscal year 2004, in order to meet its earnings numbers. On December 23,
28 2003, Defendants and others met with CSK's independent auditor in Fraser's office to

1 discuss the requirements for the allowances to be recognized in 2003. During the
2 meeting, CSK's independent auditor explained that the agreements had to state that the
3 allowances were for 2003, that no future performance was required of CSK, and that if
4 CSK could not collect the full amount using one method of collection, then CSK could
5 change the collection method. Defendants had vendors sign agreements making it
6 appear that CSK had earned additional LWT allowances during 2003, when, in fact,
7 those allowances would be earned, if at all, based on purchases made during 2004.

8 39. At the end of fiscal 2003, CSK obtained approximately \$4 million of
9 additional warranty allowances from two vendors. At that same time, CSK had a
10 warranty deficit of approximately \$13 million, which represented returns from
11 customers covered by warranties in excess of the warranty accrual recorded by CSK.
12 Under GAAP, a warranty deficit should be written off unless additional warranty
13 allowances are obtained to cover the deficit. However, instead of applying the \$4
14 million of additional warranty allowances to offset a portion of its warranty deficit
15 balance, CSK improperly recognized those warranty allowances as additional LWT
16 allowances. Thus, the warranty deficit included in CSK's inventory balance remained
17 \$13 million, and CSK improperly inflated its pre-tax income for fiscal year 2003 by
18 approximately \$4 million.

19 **C. During Fiscal Year 2004, CSK Failed To Write Off Approximately**
20 **\$21 Million Of Known, Uncollectible Vendor Allowances**

21 40. During fiscal year 2004, CSK concealed that it could not collect vendor
22 allowances totaling approximately \$21 million. Specifically, CSK applied:
23 (i) approximately \$11 million in 2004 LWT program year collections to the 2003 LWT
24 account receivable; (ii) approximately \$4 million CSK paid back to vendors for the
25 2003 and 2002 LWT program years to the 2004 LWT receivable; and
26 (iii) approximately \$6 million via baseless journal entries to the 2003 LWT receivable
27 from other vendor allowance receivables in other time periods. As a result, in its Form
28 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year 2004 by

1 approximately 65%, or \$21 million. At the time of that filing, Defendants knew CSK
2 had failed to write off uncollectible vendor allowances and that, as a result, the
3 company's financial statements were materially misstated.

4 41. CSK's 2004 Form 10-K included CSK's First Restatement, which
5 partially restated CSK's vendor allowances recognized during prior years. Specifically,
6 CSK restated because it could not collect all of the 2003 LWT receivable. In addition,
7 CSK restated for vendor allowances paid back during fiscal year 2003 that CSK failed
8 to properly write off during the 2003 fiscal year. CSK's restatement regarding vendor
9 allowances resulted in CSK adjusting its costs of sales upward and its pre-tax income
10 downward, for the first three quarters of 2004, and the 2003, 2002, and 2001 fiscal
11 years by \$1.9 million, \$7.1 million, \$9.0 million, and \$0.5 million, respectively.

12 42. The First Restatement, however, falsely attributed the vendor allowance
13 restatement to "errors in estimation in earlier periods" and "vendor allowances recorded
14 in improper periods" due to "imprecise estimates, bookkeeping errors and recording
15 allowances in the incorrect periods." Defendants knew the reasons stated for the
16 vendor allowance restatement were false because the First Restatement resulted from
17 Defendants' fraudulent scheme.

18 43. The First Restatement also failed to: (i) write off all known, uncollectible
19 vendor allowance receivables; (ii) disclose the full extent of CSK's efforts to hide the
20 uncollectible receivables from its independent auditors; and (iii) disclose CSK's over
21 recognition of vendor allowances during fiscal 2003. Defendants knew about these
22 misstatements contained in the First Restatement.

23 44. While preparing the First Restatement, Defendants hid the full extent of
24 their fraudulent conduct from CSK's independent auditor. For example, despite the
25 independent auditor's request for a list of all paybacks CSK had made to its vendors,
26 Watson, O'Brien, and Opper knowingly provided an incomplete list. As a result, CSK
27 failed to write off \$4 million in paybacks it had made during 2004 and applied to the
28 2003 LWT receivable. Similarly, Fraser and Watson negotiated agreements with

1 vendors whereby the vendors agreed to pay additional amounts of LWT in exchange for
2 CSK's acceptance to pay more for their goods. Fraser, however, directed others to
3 falsify documents to make it appear that CSK had entered into separate, seemingly
4 unrelated agreements, containing different dates, in order to hide from CSK's
5 independent auditor that CSK's receipt of additional LWT allowances were contingent
6 upon CSK's willingness to grant price increases offsetting the LWT amounts the
7 vendors purportedly agreed to pay. Thus, Defendants knew they were hiding material
8 information from CSK's independent auditor and excluding from the restatement,
9 intentional accounting errors regarding vendor allowances.

10 **D. To Further Cover Up Its Fraud In The Wake Of The First**
11 **Restatement, CSK Debited Its Vendors For Amounts It Knew They**
12 **Did Not Owe**

13 45. After filing its First Restatement in May 2005, CSK's outstanding 2004
14 LWT account receivable still contained approximately \$15 million that was not
15 collectible. In an effort to conceal that uncollectible receivable, CSK issued debit
16 memos to the vendors for the \$15 million at the end of July 2005.

17 46. As of July 15, 2005, Watson, O'Brien, and Opper knew that \$15 million
18 of the outstanding 2004 LWT receivable was not uncollectible because it had
19 previously been collected and had been applied to prior LWT program year receivables
20 as part of CSK's fraudulent scheme.

21 47. In July 2005, CSK issued debit memos totaling approximately \$31
22 million, including the \$15 million that CSK had previously collected. Opper instructed
23 employees to prepare the debit memos to collect the entire \$31 million even though \$15
24 million of the allowances had already been collected. When the debit memos were
25 issued, Fraser met with Watson, O'Brien, Opper, and other CSK employees. Fraser
26 told the group that CSK needed to make the debit memos "stick" and that, when it had
27 sent out debit memos in the past, CSK paid back only about ten percent of the debits.

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1 48. In late July 2005 or early August 2005, Fraser was told that many of the
2 buyers saw errors in the proposed debits. Fraser responded that probably 70% of the
3 debits would “stick” and that many of the vendors would not even notice them. At least
4 as early as September 2005, Fraser knew that a substantial amount CSK had debited
5 was at risk of having to be paid back to its vendors.

6 49. After the vendors complained about the debit memos, CSK continued to
7 hide the uncollectible LWT allowances. First, CSK negotiated deals with vendors for
8 future vendor allowances that CSK offset against the already-issued 2004 LWT debit
9 memos. Second, CSK falsified its books and records to conceal that it was paying back
10 portions of the debit memos. For example, CSK issued to certain vendors credit
11 memos, which O’Brien created or caused to be created, that falsely described the
12 paybacks as being related to “costing,” “pricing increases—steel surcharge,” or
13 “warranty.” In fact, the credit memos paid back LWT amounts that CSK had
14 improperly debited.

15 **II. CSK’s Forms 10-K For Fiscal Years 2002, 2003, And 2004 Contained**
16 **Materially False Information**

17 50. CSK filed annual reports on Form 10-K for fiscal years 2002, 2003, and
18 2004.

19 51. The notes to the financial statements included with CSK’s Forms 10-K
20 for fiscal years 2002, 2003, and 2004 falsely stated that “Specific accounts are written
21 off against the allowance when management determines the account is uncollectible.”
22 In fact, CSK did not write off known, uncollectible vendor allowance receivables, but
23 rather engaged in a scheme to avoid and hide such write offs, as set forth above.

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1 52. In all, CSK understated its costs of goods sold during fiscal years 2002
2 through 2004 as follows:

FY	Concealed Receivables From Prior Years			Over Recognized Allowances / Other Uncollectible Receivables	Total
	Unsupported Journal Entries	Misapplied Debit Memos	Misapplied Paybacks		
2002	\$6M	--	\$3 M	\$2 M	\$11 M
2003	\$9 M	\$10 M	\$5 M	\$10 M	\$34 M
2004	\$6 M	\$11 M	\$4 M	--	\$21 M

11 53. CSK's Form 10-K for fiscal year 2002 falsely overstated CSK's pre-tax
12 income by approximately 47%, or \$11 million. When CSK filed its Form 10-K for
13 fiscal year 2002, Fraser and Watson knew that the company's financial statement were
14 materially misstated.

15 54. CSK's Form 10-K for fiscal year 2003 overstated CSK's pre-tax income
16 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax
17 loss. When CSK filed its Form 10-K for fiscal year 2003, Defendants knew that the
18 company's financial statements were materially misstated.

19 55. CSK's Form 10-K for fiscal year 2004, which also contained the First
20 Restatement, overstated CSK's pre-tax income by approximately 65%, or \$21 million.
21 In addition, it falsely attributed the need for the vendor allowance restatement to
22 estimation errors, imprecise estimates, and bookkeeping errors, rather than to
23 Defendants' fraudulent conduct. When CSK filed its Form 10-K for fiscal year 2004,
24 Defendants knew the company's financial statements were materially misstated and
25 mischaracterized the reasons for the vendor allowance restatement.

26 56. Watson, as CSK's CFO, signed CSK's annual reports and the
27 accompanying Sarbanes-Oxley certifications. In connection with each of the Forms 10-
28 K filed for fiscal years 2002, 2003, and 2004, Watson certified he had no knowledge of

1 any untrue statement of material fact in the report, the annual report “fairly presents in
2 all material respects the financial condition, results of operations, and cash flows . . .,”
3 and that he had disclosed to CSK’s independent auditors and audit committee “any
4 fraud, whether or not material, that involved management or any other employees who
5 have a significant role in the registrant’s internal controls.” At the time he made those
6 certifications, Watson knew that each of those statements was false.

7 57. On March 27, 2006, CSK announced that it was conducting an internal
8 investigation relating to, among other things, accounting irregularities regarding vendor
9 allowances. CSK’s stock price immediately dropped 8% and dropped a total of 13%
10 for the week.

11 58. On May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating,
12 for the second time, its financial statements for 2002, 2003, and 2004 due, in part, to the
13 fraudulent scheme relating to CSK’s failure to write off uncollectible vendor
14 allowances.

15 **III. Defendants Substantially Participated In Making CSK’s Misleading Annual**
16 **Reports**

17 59. Fraser substantially participated in, and had intricate involvement with,
18 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
19 the financial statement filed therewith, by among other things:

20 (i) being a member of and participating in CSK’s disclosure team
21 meetings to review and discuss CSK’s Forms 10-K for fiscal years 2002, 2003,
22 and 2004 before they were filed with the Commission as well to review and
23 discuss related accounting and disclosure issues, such as collectibility of LWT
24 allowances;

25 (ii) signing sub-certifications in advance of the filing of CSK’s Forms 10-
26 K for fiscal years 2002, 2003, and 2004, on which CSK’s CEO and Watson
27 relied upon to make their own representations in the Sarbanes-Oxley
28 certifications. In those sub-certifications, Fraser falsely represented that to his

1 knowledge the Forms 10-K did not “contain any material inaccuracies or
2 omissions involving or relating to the matters with respect to which I have
3 knowledge or responsibility.” At the time he made those certifications, Fraser
4 knew those representations were false;

5 (iii) signing due diligence certifications in connection with CSK’s Forms
6 10-K for fiscal years 2002, 2003, and 2004, falsely certifying that: (a) based on
7 his knowledge of the company’s operations, the Forms 10-K did not contain or
8 omit any material facts that would make the statements contained therein
9 inaccurate or misleading; (b) to the best of his knowledge “the financial
10 statements and other accompanying financial information fairly present in all
11 material respects the financial condition, results of operations and cash flows of
12 the Company for the period presented in such report;” and (c) he had “not made
13 any false statements to any senior management or the Company’s internal
14 auditors or independent outside auditors that would affect the Company’s
15 financial statements and disclosures.” At the time he made those certifications,
16 Fraser knew those statements were false; and

17 (iv) signing management representation letters to CSK’s independent
18 auditor in connection with its audit of CSK’s consolidated financial statements
19 included with CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004. In
20 those management representation letters, Fraser “confirm[ed]” that he was
21 “responsible for the fair presentation of the consolidated financial statements of
22 financial position, results of operations, and cash flows in conformity with
23 generally accepted accounting principles.”

24 60. Watson substantially participated in, and had intricate involvement with,
25 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
26 the financial statement filed therewith by among other things:

27 (i) signing the Forms 10-K for fiscal years 2002, 2003, and 2004;

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1 (ii) signing the Sarbanes-Oxley certifications filed with CSK's Forms 10-
2 K for fiscal years 2002, 2003, and 2004;

3 (iii) being a member of and participating in CSK's disclosure team
4 meetings to review and discuss CSK's Forms 10-K for fiscal years 2002, 2003, and
5 2004 before they were filed with the Commission as well as related accounting and
6 disclosure issues, such as the collectibility of LWT allowances; and

7 (iv) signing management representation letters to CSK's independent
8 auditor in connection with its audit of CSK's consolidated financial statements included
9 with CSK's Forms 10-K for fiscal years 2002, 2003, and 2004. In those management
10 representation letters, Watson "confirm[ed]" that he was "responsible for the fair
11 presentation of the consolidated financial statements of financial position, results of
12 operations, and cash flows in conformity with generally accepted accounting
13 principles."

14 61. O'Brien substantially participated, and had intricate involvement, in the
15 preparation of CSK's Forms 10-K for fiscal years 2003 and 2004, including the
16 financial statement filed therewith, by among other things:

17 (i) being CSK's controller, whose responsibilities included reviewing
18 CSK's financial statements for accuracy;

19 (ii) being a member of and participating in CSK's disclosure team
20 meetings to review and discuss CSK's Forms 10-K for fiscal years 2003 and
21 2004 before they were filed with the Commission as well as related accounting
22 and disclosure issues, such as the collectibility of LWT allowances;

23 (iii) signing sub-certifications in advance of the filing of CSK's Forms
24 10-K for fiscal years 2003 and 2004, on which CSK's CEO and Watson relied
25 upon to make their own representations in the Sarbanes-Oxley certifications. In
26 those sub-certifications, O'Brien falsely represented that to his knowledge the
27 Forms 10-K did not "contain any material inaccuracies or omissions involving or
28 relating to the matters with respect to which I have knowledge or responsibility;"

1 (iv) signing due diligence certifications in connection with CSK's Forms
2 10-K for fiscal years 2003 and 2004, certifying that (a) based on his knowledge
3 of the company's operations, the Forms 10-K did not contain or omit any
4 material facts that would make the statements contained therein inaccurate or
5 misleading, (b) to the best of his knowledge "the financial statements and other
6 accompanying financial information fairly present in all material respects the
7 financial condition, results of operations and cash flows of the Company for the
8 period presented in such report," and (c) he had "not made any false statements
9 to any senior management or the Company's internal auditors or independent
10 outside auditors that would affect the Company's financial statements and
11 disclosures." At the time he made those certifications, O'Brien knew that those
12 statements were false; and

13 (vi) signing management representation letters to CSK's independent
14 auditor in connection with its audit of CSK's consolidated financial statements
15 included with CSK's Forms 10-K for fiscal years 2003 and 2004. In those
16 management representation letters, O'Brien "confirm[ed]" that he was
17 "responsible for the fair presentation of the consolidated financial statements of
18 financial position, results of operations, and cash flows in conformity with
19 generally accepted accounting principles."

20 62. Opper substantially participated in Defendants' fraudulent scheme to
21 avoid writing off uncollectible vendor allowance amounts in CSK's annual reports, or,
22 in the alternative, provided substantial assistance to CSK in carrying out the fraudulent
23 scheme. Rather than sound the alarm on CSK's improper accounting, Opper chose to
24 become an essential participant in CSK's fraudulent scheme by among other things:

25 (i) using his position in charge of the day-to-day management of CSK's
26 vendor accounts receivable department, particularly CSK's LWT operations, to instruct
27 employees to make accounting entries to hide uncollectible vendor allowance
28 receivables. For example, on October 10, 2003, Opper instructed a CSK employee to

1 make an improper journal entry moving an outstanding 2002 LWT receivable to the
2 2003 LWT receivable.

3 (ii) approving the misapplication of paybacks to vendors and the
4 misapplication of those paybacks to later year LWT receivables;

5 (iii) tracking CSK's movement of funds to hide uncollectible vendor
6 allowance receivables and periodically providing this information to senior
7 management, including Fraser, Watson, and O'Brien; and

8 (iv) providing to CSK's independent auditor false documents and
9 explanations in order to hide that CSK could not collect a material portion of its vendor
10 allowance receivables. For example, in a November 24, 2003 memo to CSK's
11 independent auditor, Opper provided false information and documentation regarding
12 collections for the 2003 LWT program that were improperly applied to the 2002 LWT
13 program.

14 **IV. In Carrying Out And Covering Up The Fraud, Defendants**
15 **Repeatedly Lied To CSK's Independent Auditor**

16 63. Defendants Fraser, Watson, O'Brien, and CSK's independent auditor
17 regularly attended audit committee meetings and frequently and at length discussed the
18 collectibility of the outstanding LWT receivables. Defendants Fraser and Watson often
19 led the discussion regarding LWT collections, and regularly stated that the outstanding
20 LWT receivables were collectible.

21 64. To avoid detection of their fraudulent scheme, Defendants regularly lied
22 to CSK's independent auditor in connection with its reviews and audits of CSK's
23 financial statements.

24 65. In connection with the Forms 10-K CSK filed for fiscal years 2002, 2003,
25 and 2004, Fraser, Watson, and (starting in fiscal year 2003) O'Brien, signed
26 management representation letters to CSK's independent auditor. Specifically, in
27 connection with the Form 10-K for fiscal year 2002, Fraser and Watson signed a
28 management letter dated May 2, 2003; in connection with the Form 10-K for fiscal year

1 2003, Fraser, Watson, and O'Brien signed a management representation letter dated
2 April 14, 2004; and in connection with the Form 10-K for fiscal year 2004, Fraser,
3 Watson, and O'Brien signed a management representation letter dated May 2, 2005. In
4 each of those management representation letters, Fraser, Watson, and O'Brien falsely
5 representing that: (i) the receivables were collectible; (ii) the company's financial
6 statements were prepared in accordance with GAAP; and (iii) they had no knowledge of
7 any fraud involving management or employees with a significant role in internal
8 controls, or any other fraud that could have a material effect on the company's
9 consolidated financial statements. For fiscal years 2002 and 2003, Fraser, Watson, and
10 O'Brien also falsely represented that CSK had adequate internal controls. All of those
11 representations were false for the reasons set forth above. Fraser, Watson, and O'Brien
12 knew that these representations were false when they signed the letters.

13 66. Defendant Opper gave CSK's independent auditor modified schedules
14 that omitted the columns showing the uncollectible amounts and memoranda containing
15 false information.

16 **V. Defendants Circumvented CSK's Internal Controls**

17 67. During 2002, 2003, and part of 2004, Watson, O'Brien, and Opper
18 circumvented CSK's internal controls by, among other things, instructing or approving
19 the entry of false journal entries.

20 68. In 2004, CSK developed various policies regarding vendor allowances,
21 one of which disallowed side letters with terms that differed from the LWT agreements.
22 Contrary to this policy, however, Fraser directed that a vendor agreement relating to
23 LWT allowances be split into two, with one agreement backdated.

24 **VI. Offerings While The False Financial Information Was Outstanding**

25 69. While the false financial statements were outstanding, CSK engaged in
26 several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior
27 Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3
28 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4

1 5/8% senior exchangeable notes. CSK's materially false financial statements filed with
2 its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the
3 Form S-3 and Form S-4 Registration Statements filed with the Commission during
4 fiscal years 2004 and 2005.

5 70. With respect to the 2004 debt offering, on May 20, 2004 Fraser, Watson,
6 and O'Brien signed a management representation letter to CSK's independent auditor
7 confirming their prior representations contained in the April 14, 2004 management
8 representation letter provided with the fiscal year 2003 Form 10-K. The April 14
9 management representation letter stated that the 2003 LWT receivable reflected
10 amounts owed CSK for the 2003 LWT program year. Fraser, Watson, and O'Brien
11 knew this representation was false when they signed both the April 14 and May 20,
12 2004 letters.

13 71. CSK's materially false and misleading disclosures and financial
14 statements filed with its Forms 10-K for fiscal years 2002, 2003 and 2004 were
15 incorporated by reference in the various Form S-3 and Form S-4 Registration
16 Statements filed with the Commission during fiscal year 2002, 2004 and 2005.
17 Defendants knew that these registration statements were false and misleading when
18 filed because they incorporated misstatements from CSK's Forms 10-K.

19 **VII. Defendants Received Bonuses And Sold Stock During The**
20 **Fraudulent Scheme**

21 72. For the 2002 and 2003 fiscal years, Fraser and Watson each received a
22 bonus based, in part, on CSK's financial performance.

23 73. For the 2003 fiscal year, O'Brien and Opper each received a bonus based,
24 in part, on CSK's financial performance.

25 74. Fraser, Watson, and Opper sold CSK stock in 2003, 2004, and 2005,
26 during the period of the fraud. Their net profits were \$195,419, \$155,122, and
27 \$28,078.20, respectively.

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

75. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

76. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

77. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES**

**Violations and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder**

78. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

79. Defendants, and each of them, by engaging in the conduct described

1 above, directly or indirectly, in connection with the purchase or sale of a security, by
2 the use of means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices, or courses of business which operated
10 or would operate as a fraud or deceit upon other persons.

11 80. Alternatively, Opper knowingly provided substantial assistance to CSK in
12 its violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5 in connection with CSK's annual reports on Form
14 10-K for fiscal years 2003 and 2004.

15 81. By engaging in the conduct described above, Defendants violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
17 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 82. By engaging in the conduct described above and pursuant to Section 20(e)
19 of the Exchange Act, 15 U.S.C. § 78t(e), Opper aided and abetted CSK's violations,
20 and unless restrained and enjoined will continue to aid and abet violations, of Section
21 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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THIRD CLAIM FOR RELIEF
VIOLATIONS OF COMMISSION PERIODIC
REPORTING REQUIREMENTS
Aiding and Abetting Violations of

Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

83. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

84. CSK violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission annual reports on Form 10-K for fiscal years 2002, 2003, and 2004 that were materially false and failed to include material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

85. Fraser and Watson knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2002, 2003, and 2004.

86. O'Brien and Opper knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2003 and 2004.

87. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

FOURTH CLAIM FOR RELIEF

RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of

Section 13(b)(2)(A) of the Exchange Act and Violations of

Rule 13b2-1 thereunder

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6 88. The Commission realleges and incorporates by reference ¶¶ 1 through 74
7 above.

8 89. CSK violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
9 78m(b)(2)(A), by failing to make or keep books, records, and accounts, which, in
10 reasonable detail accurately and fairly reflected its transactions and disposition of its
11 assets.

12 90. Defendants knowingly provided substantial assistance to CSK's violation
13 of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

14 91. By engaging in the conduct described above and pursuant to Section 20(e)
15 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
16 Opper aided and abetted CSK's violations, and unless restrained and enjoined will
17 continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

18 92. By engaging in the conduct described above, Defendants violated
19 Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified
20 CSK's books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act.
21 Unless restrained and enjoined, Defendants will continue to violate Rule 13b2-1, 17
22 C.F.R. § 240.13b2-1.

23 **FIFTH CLAIM FOR RELIEF**

24 **INTERNAL CONTROLS VIOLATIONS**

25 **Aiding and Abetting Violations of**

26 **Section 13(b)(2)(B) of the Exchange Act**

27 93. The Commission realleges and incorporates by reference ¶¶ 1 through 74
28 above.

1 94. CSK violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
2 78m(b)(2)(B), by failing to devise and maintain a system of internal accounting controls
3 sufficient to provide reasonable assurances that transactions were recorded as necessary
4 to permit preparation of financial statement in conformity with GAAP and to maintain
5 the accountability for assets.

6 95. Fraser, Watson, O'Brien, and Oppen knowingly provided substantial
7 assistance to CSK's violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
8 78m(b)(2)(B).

9 96. By engaging in the conduct described above and pursuant to Section 20(e)
10 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
11 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
12 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act, 15
13 U.S.C. § 78m(b)(2)(B).

14 **SIXTH CLAIM FOR RELIEF**

15 **CIRCUMVENTION OF INTERNAL CONTROLS AND**

16 **FALSIFICATION OF RECORDS**

17 **Violations of Section 13(b)(5) of the Exchange**

18 97. The Commission realleges and incorporates by reference ¶¶ 1 through 74
19 above.

20 98. By engaging in the conduct described above, Defendants violated Section
21 13(b)(5) of the Exchange Act, 15 U.S.C. §78m(b)(5), by knowingly circumventing or
22 failing to implement a system of internal accounting controls, or, directly or indirectly,
23 by knowingly falsifying or causing to be falsified any CSK books, records, or accounts
24 described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined,
25 Defendants will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C.
26 §78m(b)(5).

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1 **SEVENTH CLAIM FOR RELIEF**

2 **FALSE STATEMENT TO ACCOUNTANTS**

3 **Violations of Exchange Act Rule 13b2-2**

4 **(Against Defendants Fraser, Watson, and O'Brien)**

5 99. The Commission realleges and incorporates by reference ¶¶ 1 through 74
6 above.

7 100. Defendants Fraser, Watson, and O'Brien, directly or indirectly, (i) made,
8 or caused to be made, materially false or misleading statements or (ii) omitted to state,
9 or caused others to omit to state, material facts necessary in order to make statements
10 made, in light of the circumstances under which they were made, not misleading, to an
11 accountant in connection with an audit, review or examination of financial statements
12 or the preparation or filing of a document or report required to be filed with the
13 Commission.

14 101. By engaging in the conduct alleged above, defendants Fraser, Watson,
15 and O'Brien violated, and unless restrained and enjoined will continue to violate,
16 Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

17 **EIGHTH CLAIM FOR RELIEF**

18 **CERTIFICATION VIOLATIONS**

19 **Violations of Rule 13a-14 of the Exchange Act**

20 **(Against Defendant Watson)**

21 102. The Commission realleges and incorporates by reference ¶¶ 1 through 74
22 above.

23 103. Watson violated Rule 13a-14 by signing the certifications included with
24 CSK fiscal year 2002, 2003, and 2004 Forms 10-K, certifying, among other things, that
25 the forms fully complied with the requirements of the Exchange Act and fairly
26 presented, in all material respects, the financial condition and results of operations of
27 the company, when, in fact, the reports contained untrue statements of material fact and
28 omitted material information necessary to make the reports not misleading.

1 104. By engaging in the conduct described above, defendant Watson violated
2 Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14. Unless restrained and enjoined,
3 defendant Watson will continue to violate Rule 13a-14, 17 C.F.R. § 240.13a-14.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I**

7 Issue findings of fact and conclusions of law that the defendants committed the
8 alleged violations.

9 **II**

10 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
11 enjoining Defendant Fraser and his agents, servants, employees, attorneys, and those
12 persons in active concert or participation with any of them, who receive actual notice of
13 the order by personal service or otherwise, from violating Section 17(a) of the
14 Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
15 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections
16 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1
17 thereunder.

18 **III**

19 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
20 enjoining Defendant Watson and his agents, servants, employees, attorneys, and those
21 persons in active concert or participation with any of them, who receive actual notice of
22 the order by personal service or otherwise, from violating Section 17(a) of the
23 Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
24 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of
25 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20
26 and 13a-1 thereunder.

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IV

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant O'Brien and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder.

V

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder. Or, in the alternative, issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Section 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20 and 13a-1 thereunder.

VI

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Fraser, Watson, and O'Brien from acting as officers

1 or directors of any issuer that has a class of securities registered pursuant to Section 12
2 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
3 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4 **VII**

5 Order defendants Fraser, Watson, O'Brien, and Opper to disgorge all ill-gotten
6 gains from their illegal conduct, together with prejudgment interest thereon.

7 **VIII**

8 Order defendants Fraser, Watson, O'Brien, and Opper to pay civil penalties
9 under Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

10 **IX**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **X**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 5, 2009

Respectfully submitted,

20 

21 C. DABNEY O'RIORDAN

22 Attorney for Plaintiff

23 Securities and Exchange Commission

1 DONALD W. SEARLES, California Bar No. 135705
 E-mail: searlesd@sec.gov
 2 LORRAINE B. ECHAVARRIA, California Bar No. 191860
 E-mail: echavarrial@sec.gov
 3 ROBERT H. CONRRAD, California Bar No. 199498
 E-mail: conrradr@sec.gov
 4 C. DABNEY O'RIORDAN, California Bar No. 205158
 E-mail: oriordand@sec.gov
 5

Attorneys for Plaintiff
 6 Securities and Exchange Commission
 Rosalind R. Tyson, Regional Director
 7 Michele Wein Layne, Associate Regional Director
 5670 Wilshire Boulevard, 11th Floor
 8 Los Angeles, California 90036-3648
 Telephone: (323) 965-3998
 9 Facsimile: (323) 965-3908

10
 11 **UNITED STATES DISTRICT COURT**
 12 **DISTRICT OF ARIZONA**

13 SECURITIES AND EXCHANGE
 14 COMMISSION,

15 Plaintiff,

16 vs.

17 MARTIN G. FRASER; DON W.
 18 WATSON; EDWARD W. O'BRIEN; and
 GARY M. OPPER,

19 Defendants.
 20

Case No.

**COMPLAINT FOR VIOLATIONS OF
 THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. CSK Auto Corporation (“CSK”) was one of the largest specialty retailers
5 of automotive parts and accessories in the United States. Headquartered in Phoenix,
6 Arizona, CSK became a publicly traded company in March 1999. As of January 30,
7 2005, CSK operated 1,134 stores in nineteen states under three brand names: Checker
8 Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after the conduct
9 alleged in this Complaint, CSK became a wholly-owned subsidiary of O’Reilly
10 Automotive, Inc.

11 2. As a retailer of automotive products, CSK purchased products from
12 vendors that manufacture automotive parts and accessories. From at least fiscal years
13 2002 through 2004, a significant portion of CSK’s income was derived from allowances
14 it received from its vendors. Vendor allowances are used to provide retailers, such as
15 CSK, with financial support to market the vendor’s products. In general, CSK
16 accounted for vendor allowances by reducing its costs of goods sold. Thus, the more
17 vendor allowances CSK earned, the lower its costs of goods sold, resulting in greater
18 reported pre-tax income. During the years at issue, vendor allowances were vital to
19 CSK’s financials, increasing its reported pre-tax income by tens of millions of dollars
20 each fiscal year.

21 3. During fiscal years 2002, 2003, and 2004, CSK knew that there were
22 millions of dollars of vendor allowances that were recognized on its books but were not
23 collectible. Rather than write off the uncollectible receivables, as required by Generally
24 Accepted Accounting Principles (“GAAP”), CSK and its senior management engaged
25 in a scheme to hide the uncollectible receivables through various accounting tricks. In
26 addition, during fiscal year 2003, CSK over recognized millions of dollars of vendor
27 allowances. To perpetuate the fraudulent scheme, CSK’s senior management lied to the
28 company’s independent auditors and audit committee.

1 4. If CSK had written off the uncollectible vendor allowances, it would have
2 increased the company's expenses and decreased its income. Because CSK concealed
3 its uncollectible vendor allowances, CSK's annual reports filed with the Commission
4 for fiscal years 2002, 2003, and 2004 materially overstated the company's financial
5 results in violation of GAAP and misled the public about the company's financial
6 performance.

7 5. During the relevant time period, defendant Martin G. Fraser ("Fraser")
8 served as CSK's chief operating officer and president, defendant Don W. Watson
9 ("Watson") served as its chief financial officer, defendant Edward W. O'Brien
10 ("O'Brien") served as a vice president and controller, and defendant Gary M. Opper
11 ("Opper") served as its director of credits and receivables (Fraser, Watson, O'Brien,
12 and Opper are collectively referred to herein as "Defendants"). Because of Fraser's and
13 Watson's conduct, CSK filed with the Commission a false annual report for fiscal year
14 2002 that fraudulently overstated its pre-tax income for that year by approximately
15 47%, or \$11 million. In addition, because of Defendants' conduct, CSK filed false
16 annual reports with the Commission that fraudulently overstated its pre-tax income for
17 fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income
18 instead of a pre-tax loss, and for fiscal year 2004 by approximately 65%, or \$21
19 million.

20 6. As a result of Defendants' fraudulent conduct, CSK restated its financial
21 statements as part of its Form 10-K for fiscal year 2004 (the "First Restatement"). As
22 part of the First Restatement, CSK reduced its previously recognized vendor allowances
23 for fiscal years 2002, 2003 and the first three quarters of fiscal year 2004. Defendants,
24 however, continued to conceal known, significant uncollectible vendor allowance
25 receivables. The First Restatement also falsely attributed the vendor allowance
26 adjustments to mere errors in estimates and bookkeeping mistakes rather than to
27 Defendants' fraudulent conduct.

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1 7. As a result of Defendants' failure to acknowledge and write off the
2 magnitude of CSK's uncollectible vendor allowance receivables in the First
3 Restatement, CSK still had approximately \$15 million in uncollectible vendor
4 allowance receivables, which, under GAAP, should have been written off. Defendants
5 made a final attempt to collect that \$15 million deficit by intentionally over billing its
6 vendors. When the vendors complained about being double billed, CSK paid back the
7 amounts it had wrongfully collected, but incorrectly accounted for some of those
8 paybacks and mischaracterized the reasons for other paybacks to avoid detection that
9 the company had over collected vendor allowances.

10 8. Each of the Defendants knew CSK was not writing off uncollectible
11 vendor allowances receivables and was over recognizing vendor allowances resulting in
12 CSK's financial statements for fiscal years 2002, 2003, and 2004 being materially
13 misstated. Defendants Fraser and Watson substantially participated in the preparation
14 of CSK's 2002, 2003, and 2004 false financial statements. Defendant O'Brien
15 substantially participated in the preparation of the 2003 and 2004 false financial
16 statements. Defendant Opper substantially participated in, or provided substantial
17 assistance to, the preparation of the false 2003 and 2004 financial statements.

18 9. Based on their conduct, Defendants, among other things, violated the
19 antifraud provisions of the federal securities laws, falsified CSK's books and records,
20 circumvented CSK's internal controls, and lied to CSK's independent auditors. The
21 Commission seeks an order enjoining Defendants from future violations of the
22 securities laws, requiring Defendants to disgorge ill-gotten gains with prejudgment
23 interest, ordering Defendants to pay civil monetary penalties, requiring Watson to
24 reimburse stock profits pursuant to Section 304 of the Sarbanes-Oxley Act, barring
25 Fraser, Watson, and O'Brien from serving as officers or directors of a public company,
26 and providing other appropriate relief.

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1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
4 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e) & 78aa. Defendants have directly or indirectly made use of the
7 means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
8 national securities exchange in connection with the transactions, acts, practices and
9 courses of business alleged in this Complaint.

10 11. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa,
12 because defendants reside and transact business within this district and certain of the
13 transactions, acts, practices and courses of conduct constituting violations of the federal
14 securities laws alleged in this Complaint occurred within this district.

15 **THE DEFENDANTS**

16 12. **Martin G. Fraser** (53) is a resident of Phoenix, Arizona, and was CSK’s
17 chief operating officer and president from 2000 until September 2006, when he
18 resigned at CSK’s request.

19 13. **Don W. Watson** (53) is a resident of Gilbert, Arizona. From January
20 1998 to September 2005, Watson was CSK’s chief financial officer, senior vice
21 president, and treasurer. Watson served as CSK’s chief administrative officer and
22 senior vice president from September 2005 to his termination in October 2006.

23 14. **Edward W. O’Brien** (46) is a resident of Cave Creek, Arizona. O’Brien
24 was CSK’s controller and vice president from March 2003 until his termination in
25 September 2006.

26 15. **Gary M. Opper** (56) is a resident of Mesa Arizona. Opper was CSK’s
27 director of credit and receivables, reporting to O’Brien, from March 17, 2003 until he
28 was terminated in September 2006.

1 **RELATED PARTY**

2 16. **CSK Auto Corporation** is a Delaware corporation with its principal
3 executive offices in Phoenix, Arizona. CSK's common stock was registered with the
4 Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York
5 Stock Exchange. On July 11, 2008, CSK became a wholly owned subsidiary of
6 O'Reilly Automotive, Inc.

7 **BACKGROUND**

8 **I. CSK's "Let's Work Together" Program**

9 17. Each year, most of CSK's vendors agreed to pay vendor allowances.
10 Although CSK had various vendor allowance programs, its largest was its "Let's Work
11 Together" program ("LWT"). Typically, LWT agreements covered a one-year period,
12 which CSK referred to as the "program year." Although the LWT agreements varied,
13 CSK generally earned LWT allowances at a set dollar amount, as a percentage of the
14 amount CSK spent to purchase the vendor's product, or as a certain number of cents per
15 item CSK purchased from the vendor.

16 18. CSK recognized LWT allowances ratably, on a monthly basis, based on
17 its estimate of the total allowances it expected to earn for the entire program year.
18 Thus, CSK did not recognize LWT allowances as they were actually earned or
19 collected. In theory, CSK's estimate was based on the LWT agreement and CSK's
20 expected purchases from its vendors. In general, CSK recognized LWT allowances as a
21 reduction to costs of sales (an expense), thereby increasing the company's pre-tax
22 income.

23 19. As CSK recognized LWT allowances for a given program year, it
24 increased the LWT account receivable for that program year. Each LWT program year
25 had its own account receivable. As CSK collected LWT allowances for a particular
26 program year, GAAP required that CSK reduce the outstanding receivable for that same
27 LWT program year.

1 20. In general, CSK collected LWT allowances by issuing a debit memo to
2 the vendor, which notified the vendor that CSK was deducting the amount of the LWT
3 allowance from the amount CSK owed the vendor. If CSK collected too much, it
4 generally paid back the vendor by issuing a credit memo, notifying the vendor that CSK
5 was adding the amount back to the overall amount it owed the vendor.

6 **Defendants' Fraudulent Scheme**

7 **I. The Fraudulent Scheme To Avoid Vendor Allowance Write Offs**

8 21. During fiscal years 2002, 2003, and 2004, CSK was unable to collect all
9 of the vendor allowances it had recognized. As a result, large accounts receivable built
10 up for each LWT program year.

11 22. GAAP required that CSK write off the uncollectible LWT accounts
12 receivable. Specifically, under Statement of Financial Accounting Standards No. 5
13 (“SFAS No. 5”), Accounting for Contingencies Paragraph 8, an estimated loss from a
14 loss contingency shall be accrued by a charge to income if: (i) information available
15 prior to issuance of the financial statements indicates that it is probable that an asset had
16 been impaired at the date of the financial statements; and (ii) the amount of the loss can
17 be reasonably estimated. SFAS No. 5, Paragraph 3 defines “probable” to mean that the
18 future event or events are likely to occur. SFAS No. 5, Paragraph 4 states that
19 examples of loss contingencies include collectibility of receivables. A write off of the
20 uncollectible LWT allowance receivables would have increased CSK’s expenses during
21 the fiscal year the write off was made, resulting in a decrease in pre-tax income.

22 23. Instead of writing off CSK’s uncollectible LWT accounts receivable and
23 taking the requisite reduction to pre-tax income, Fraser and Watson, for fiscal year
24 2002, and Defendants, for fiscal years 2003 and 2004, concealed CSK’s uncollectible
25 LWT accounts receivable by: (i) applying tens of millions of dollars of LWT
26 allowances earned and collected for later LWT program years to prior LWT program
27 year accounts receivable (referred to within CSK as “filling the bucket”); and
28 (ii) incorrectly accounting for millions of dollars of LWT allowances it paid back to

1 vendors. Through this scheme, CSK avoided writing off tens of millions of dollars in
2 uncollectible LWT receivables, which it had previously recognized.

3 24. CSK “filled the bucket” by taking LWT allowances collected for later
4 program years and applying them to reduce an earlier LWT program year’s account
5 receivable. Specifically, CSK: (i) made baseless journal entries reducing the account
6 receivable for a prior LWT program year with an offsetting increase to the account
7 receivable for a later LWT program year; and (ii) applied LWT allowance collections
8 for a later LWT program year to an earlier program year’s LWT account receivable.

9 25. CSK also failed to write off LWT allowances it had over collected for
10 prior LWT program years and ultimately paid back to its vendors. Instead of writing
11 off amounts CSK paid back, which would reduce its pre-tax income, CSK increased a
12 later LWT program year’s account receivable, making it appear that it had collected an
13 older account receivable when all CSK had done was move the outstanding receivable
14 balance to a more recent year. This accounting treatment was contrary to GAAP
15 because by paying an amount back to a vendor for a prior LWT program year, CSK
16 acknowledged its uncollectibility and should have written off the amount.

17 **A. During CSK’s 2002 Fiscal Year, The Company Concealed**
18 **Approximately \$11 Million Of Uncollectible Vendor Allowances**

19 26. During its 2002 fiscal year, CSK failed to write off approximately \$11
20 million of uncollectible vendor allowances it had recognized in previous years, most
21 significantly as part of the 2001 LWT program year. Instead of writing off the
22 uncollectible vendor allowances, CSK: (i) made improper journal entries moving
23 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT
24 account receivable; (ii) misapplied paybacks of approximately \$3 million to the 2002
25 LWT receivable; and (iii) reached an agreement whereby a vendor agreed to accept an
26 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK
27 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT
28 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK overstated its

1 pre-tax income by approximately \$11 million, or 47%.

2 27. Throughout fiscal year 2002, Fraser and Watson knew of CSK's
3 numerous efforts to hide uncollectible LWT accounts receivable and that, as a result,
4 CSK's financial statements were materially misstated.

5 28. During fiscal year 2001, the company's controller at the time informed
6 Fraser and Watson that CSK was recognizing more LWT allowances for the 2001
7 program year than it was actually earning or likely to earn during that program year.

8 29. The 2001 LWT program year ended in September 2001. CSK tried to
9 collect the outstanding 2001 LWT account receivable throughout fiscal year 2002.

10 30. During fiscal year 2002, CSK issued a \$2 million debit memo to a vendor
11 to collect LWT allowances recognized as part of the 2001 LWT program year. The
12 vendor vigorously disputed the debit memo claiming that CSK had not purchased
13 enough products from the vendor to have earned the \$2 million. Fraser negotiated the
14 dispute. By the middle of the 2002 fiscal year, CSK agreed to forego collecting \$2
15 million worth of LWT allowances it expected to earn on purchases during the 2002 and
16 2003 LWT program years in exchange for the vendor accepting the \$2 million debit
17 memo. Both Fraser and Watson knew that the vendor had agreed to accept the already-
18 issued \$2 million debit memo only in exchange for CSK's agreement not to collect \$2
19 million in LWT for the 2002 and 2003 LWT program years. Since the vendor only
20 accepted the debit memo in exchange for future benefits from CSK, *i.e.*, future
21 purchases of product from the vendor, GAAP required that CSK immediately write off
22 the \$2 million because it was not collectible as part of the 2001 LWT program year.

23 31. During fiscal year 2002, CSK had to make various paybacks to vendors
24 for vendor allowances it had recognized during prior fiscal years. Instead of correctly
25 accounting for those paybacks by writing them off and increasing CSK's expenses, the
26 company increased the 2002 LWT program year's account receivable. Watson
27 instructed CSK employees that they would have to raise additional allowances to cover
28 for those amounts paid back because CSK "could not afford a charge for any

1 paybacks.” Fraser knew of Watson’s instruction and CSK’s failure to write off vendor
2 allowances paid back to vendors.

3 32. In October 2002, Fraser, Watson, and others met to discuss the
4 collectibility of the 2001 LWT account receivable, which had been outstanding for
5 approximately one year. At that time, of the remaining outstanding balance for the
6 2001 LWT account receivable, \$3.2 million was known to be uncollectible and \$4.5
7 million was “questionable.” These amounts did not include either the \$2 million Fraser
8 and Watson already knew was uncollectible or the paybacks.

9 33. Rather than write off these uncollectible amounts, as required by GAAP,
10 in October and November 2002, CSK devised a plan to move collections for the 2002
11 LWT program year to cover the 2001 LWT account receivable. As part of that plan, in
12 or about November 2002, Watson instructed a CSK employee to identify collections for
13 the 2002 LWT program year to move to the 2001 LWT program year account
14 receivable to cover 2001 shortfalls.

15 **B. During Fiscal Year 2003, CSK Concealed Approximately \$24 Million**
16 **In Known, Uncollectible Vendor Allowances And Improperly**
17 **Recognized Approximately \$10 Million In Vendor Allowances**

18 34. During its 2003 fiscal year, CSK used various tactics to fraudulently
19 conceal, rather than properly write off, approximately \$24 million in uncollectible
20 vendor allowances recognized during previous LWT program years, primarily as part of
21 the 2002 LWT program year. Moreover, CSK improperly and prematurely recognized
22 \$6 million in vendor allowances and improperly recognized an additional \$4 million of
23 LWT allowances. As a result, in its Form 10-K filed on April 15, 2004, CSK overstated
24 its 2003 pre-tax income by approximately \$34 million, turning its actual pre-tax loss of
25 approximately \$18 million into purported pre-tax income of \$16 million. At the time of
26 that filing, Defendants knew CSK had failed to write off uncollectible vendor
27 allowances and over recognized allowances, and that, as a result, CSK’s financial
28 statements were materially misstated.

1 35. During fiscal year 2003, CSK hid approximately \$24 million in
2 uncollectible vendor allowance receivables. First, CSK applied approximately \$10
3 million in 2003 LWT program year collections to the 2002 LWT program year
4 receivable. Second, CSK failed to write off approximately \$5 million in vendor
5 allowances CSK had over collected during prior LWT program years but had to pay
6 back during fiscal year 2003. Third, CSK made a baseless journal entry decreasing the
7 2002 LWT receivable by \$9 million and increasing the 2003 LWT receivable by the
8 same amount, which reduced the 2002 LWT receivable to zero.

9 36. During fiscal year 2003, Defendants knew CSK was failing to write off
10 uncollectible LWT allowances. During fiscal year 2003, Defendants regularly received
11 information regarding CSK's efforts to hide the uncollectible LWT allowances. For
12 example, on or about September 9, 2003, Opper sent an email to Fraser, Watson,
13 O'Brien and others discussing the collection of the 2002 LWT account receivable,
14 which was then approximately one-year old. The email stated that: (i) "approximately
15 \$9.6mm in 2003 collections . . . were moved to 2002 to cover short falls from prior
16 periods;" and (ii) the outstanding 2002 LWT program year receivable balance did not
17 include \$5.4 million in 2002 paybacks. Defendant Opper referenced in the email a
18 chart he had attached that explained the "\$24.2 million in LWT exposure from 2002
19 and prior." That chart included detailed explanations regarding millions of dollars of
20 uncollectible LWT allowances for prior years, including the 2002 LWT program year.

21 37. Defendants also met to discuss the uncollectible LWT receivables during
22 fiscal year 2003. For example, Defendants attended a meeting on or about September
23 17, 2003 to discuss the "2002 Outstanding LWT status" where Opper provided copies
24 of the chart attached to his September 9, 2003 email.

25 38. During the fourth quarter of 2003, CSK prematurely recognized
26 approximately \$6 million in additional vendor allowances, which would not be earned,
27 if at all, until fiscal year 2004, in order to meet its earnings numbers. On December 23,
28 2003, Defendants and others met with CSK's independent auditor in Fraser's office to

1 discuss the requirements for the allowances to be recognized in 2003. During the
2 meeting, CSK's independent auditor explained that the agreements had to state that the
3 allowances were for 2003, that no future performance was required of CSK, and that if
4 CSK could not collect the full amount using one method of collection, then CSK could
5 change the collection method. Defendants had vendors sign agreements making it
6 appear that CSK had earned additional LWT allowances during 2003, when, in fact,
7 those allowances would be earned, if at all, based on purchases made during 2004.

8 39. At the end of fiscal 2003, CSK obtained approximately \$4 million of
9 additional warranty allowances from two vendors. At that same time, CSK had a
10 warranty deficit of approximately \$13 million, which represented returns from
11 customers covered by warranties in excess of the warranty accrual recorded by CSK.
12 Under GAAP, a warranty deficit should be written off unless additional warranty
13 allowances are obtained to cover the deficit. However, instead of applying the \$4
14 million of additional warranty allowances to offset a portion of its warranty deficit
15 balance, CSK improperly recognized those warranty allowances as additional LWT
16 allowances. Thus, the warranty deficit included in CSK's inventory balance remained
17 \$13 million, and CSK improperly inflated its pre-tax income for fiscal year 2003 by
18 approximately \$4 million.

19 **C. During Fiscal Year 2004, CSK Failed To Write Off Approximately**
20 **\$21 Million Of Known, Uncollectible Vendor Allowances**

21 40. During fiscal year 2004, CSK concealed that it could not collect vendor
22 allowances totaling approximately \$21 million. Specifically, CSK applied:
23 (i) approximately \$11 million in 2004 LWT program year collections to the 2003 LWT
24 account receivable; (ii) approximately \$4 million CSK paid back to vendors for the
25 2003 and 2002 LWT program years to the 2004 LWT receivable; and
26 (iii) approximately \$6 million via baseless journal entries to the 2003 LWT receivable
27 from other vendor allowance receivables in other time periods. As a result, in its Form
28 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year 2004 by

1 approximately 65%, or \$21 million. At the time of that filing, Defendants knew CSK
2 had failed to write off uncollectible vendor allowances and that, as a result, the
3 company's financial statements were materially misstated.

4 41. CSK's 2004 Form 10-K included CSK's First Restatement, which
5 partially restated CSK's vendor allowances recognized during prior years. Specifically,
6 CSK restated because it could not collect all of the 2003 LWT receivable. In addition,
7 CSK restated for vendor allowances paid back during fiscal year 2003 that CSK failed
8 to properly write off during the 2003 fiscal year. CSK's restatement regarding vendor
9 allowances resulted in CSK adjusting its costs of sales upward and its pre-tax income
10 downward, for the first three quarters of 2004, and the 2003, 2002, and 2001 fiscal
11 years by \$1.9 million, \$7.1 million, \$9.0 million, and \$0.5 million, respectively.

12 42. The First Restatement, however, falsely attributed the vendor allowance
13 restatement to "errors in estimation in earlier periods" and "vendor allowances recorded
14 in improper periods" due to "imprecise estimates, bookkeeping errors and recording
15 allowances in the incorrect periods." Defendants knew the reasons stated for the
16 vendor allowance restatement were false because the First Restatement resulted from
17 Defendants' fraudulent scheme.

18 43. The First Restatement also failed to: (i) write off all known, uncollectible
19 vendor allowance receivables; (ii) disclose the full extent of CSK's efforts to hide the
20 uncollectible receivables from its independent auditors; and (iii) disclose CSK's over
21 recognition of vendor allowances during fiscal 2003. Defendants knew about these
22 misstatements contained in the First Restatement.

23 44. While preparing the First Restatement, Defendants hid the full extent of
24 their fraudulent conduct from CSK's independent auditor. For example, despite the
25 independent auditor's request for a list of all paybacks CSK had made to its vendors,
26 Watson, O'Brien, and Opper knowingly provided an incomplete list. As a result, CSK
27 failed to write off \$4 million in paybacks it had made during 2004 and applied to the
28 2003 LWT receivable. Similarly, Fraser and Watson negotiated agreements with

1 vendors whereby the vendors agreed to pay additional amounts of LWT in exchange for
2 CSK's acceptance to pay more for their goods. Fraser, however, directed others to
3 falsify documents to make it appear that CSK had entered into separate, seemingly
4 unrelated agreements, containing different dates, in order to hide from CSK's
5 independent auditor that CSK's receipt of additional LWT allowances were contingent
6 upon CSK's willingness to grant price increases offsetting the LWT amounts the
7 vendors purportedly agreed to pay. Thus, Defendants knew they were hiding material
8 information from CSK's independent auditor and excluding from the restatement,
9 intentional accounting errors regarding vendor allowances.

10 **D. To Further Cover Up Its Fraud In The Wake Of The First**
11 **Restatement, CSK Debited Its Vendors For Amounts It Knew They**
12 **Did Not Owe**

13 45. After filing its First Restatement in May 2005, CSK's outstanding 2004
14 LWT account receivable still contained approximately \$15 million that was not
15 collectible. In an effort to conceal that uncollectible receivable, CSK issued debit
16 memos to the vendors for the \$15 million at the end of July 2005.

17 46. As of July 15, 2005, Watson, O'Brien, and Opper knew that \$15 million
18 of the outstanding 2004 LWT receivable was not uncollectible because it had
19 previously been collected and had been applied to prior LWT program year receivables
20 as part of CSK's fraudulent scheme.

21 47. In July 2005, CSK issued debit memos totaling approximately \$31
22 million, including the \$15 million that CSK had previously collected. Opper instructed
23 employees to prepare the debit memos to collect the entire \$31 million even though \$15
24 million of the allowances had already been collected. When the debit memos were
25 issued, Fraser met with Watson, O'Brien, Opper, and other CSK employees. Fraser
26 told the group that CSK needed to make the debit memos "stick" and that, when it had
27 sent out debit memos in the past, CSK paid back only about ten percent of the debits.

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1 48. In late July 2005 or early August 2005, Fraser was told that many of the
2 buyers saw errors in the proposed debits. Fraser responded that probably 70% of the
3 debits would “stick” and that many of the vendors would not even notice them. At least
4 as early as September 2005, Fraser knew that a substantial amount CSK had debited
5 was at risk of having to be paid back to its vendors.

6 49. After the vendors complained about the debit memos, CSK continued to
7 hide the uncollectible LWT allowances. First, CSK negotiated deals with vendors for
8 future vendor allowances that CSK offset against the already-issued 2004 LWT debit
9 memos. Second, CSK falsified its books and records to conceal that it was paying back
10 portions of the debit memos. For example, CSK issued to certain vendors credit
11 memos, which O’Brien created or caused to be created, that falsely described the
12 paybacks as being related to “costing,” “pricing increases—steel surcharge,” or
13 “warranty.” In fact, the credit memos paid back LWT amounts that CSK had
14 improperly debited.

15 **II. CSK’s Forms 10-K For Fiscal Years 2002, 2003, And 2004 Contained**
16 **Materially False Information**

17 50. CSK filed annual reports on Form 10-K for fiscal years 2002, 2003, and
18 2004.

19 51. The notes to the financial statements included with CSK’s Forms 10-K
20 for fiscal years 2002, 2003, and 2004 falsely stated that “Specific accounts are written
21 off against the allowance when management determines the account is uncollectible.”
22 In fact, CSK did not write off known, uncollectible vendor allowance receivables, but
23 rather engaged in a scheme to avoid and hide such write offs, as set forth above.

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1 52. In all, CSK understated its costs of goods sold during fiscal years 2002
2 through 2004 as follows:

FY	Concealed Receivables From Prior Years			Over Recognized Allowances / Other Uncollectible Receivables	Total
	Unsupported Journal Entries	Misapplied Debit Memos	Misapplied Paybacks		
2002	\$6M	--	\$3 M	\$2 M	\$11 M
2003	\$9 M	\$10 M	\$5 M	\$10 M	\$34 M
2004	\$6 M	\$11 M	\$4 M	--	\$21 M

11 53. CSK's Form 10-K for fiscal year 2002 falsely overstated CSK's pre-tax
12 income by approximately 47%, or \$11 million. When CSK filed its Form 10-K for
13 fiscal year 2002, Fraser and Watson knew that the company's financial statement were
14 materially misstated.

15 54. CSK's Form 10-K for fiscal year 2003 overstated CSK's pre-tax income
16 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax
17 loss. When CSK filed its Form 10-K for fiscal year 2003, Defendants knew that the
18 company's financial statements were materially misstated.

19 55. CSK's Form 10-K for fiscal year 2004, which also contained the First
20 Restatement, overstated CSK's pre-tax income by approximately 65%, or \$21 million.
21 In addition, it falsely attributed the need for the vendor allowance restatement to
22 estimation errors, imprecise estimates, and bookkeeping errors, rather than to
23 Defendants' fraudulent conduct. When CSK filed its Form 10-K for fiscal year 2004,
24 Defendants knew the company's financial statements were materially misstated and
25 mischaracterized the reasons for the vendor allowance restatement.

26 56. Watson, as CSK's CFO, signed CSK's annual reports and the
27 accompanying Sarbanes-Oxley certifications. In connection with each of the Forms 10-
28 K filed for fiscal years 2002, 2003, and 2004, Watson certified he had no knowledge of

1 any untrue statement of material fact in the report, the annual report “fairly presents in
2 all material respects the financial condition, results of operations, and cash flows . . .,”
3 and that he had disclosed to CSK’s independent auditors and audit committee “any
4 fraud, whether or not material, that involved management or any other employees who
5 have a significant role in the registrant’s internal controls.” At the time he made those
6 certifications, Watson knew that each of those statements was false.

7 57. On March 27, 2006, CSK announced that it was conducting an internal
8 investigation relating to, among other things, accounting irregularities regarding vendor
9 allowances. CSK’s stock price immediately dropped 8% and dropped a total of 13%
10 for the week.

11 58. On May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating,
12 for the second time, its financial statements for 2002, 2003, and 2004 due, in part, to the
13 fraudulent scheme relating to CSK’s failure to write off uncollectible vendor
14 allowances.

15 **III. Defendants Substantially Participated In Making CSK’s Misleading Annual**
16 **Reports**

17 59. Fraser substantially participated in, and had intricate involvement with,
18 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
19 the financial statement filed therewith, by among other things:

20 (i) being a member of and participating in CSK’s disclosure team
21 meetings to review and discuss CSK’s Forms 10-K for fiscal years 2002, 2003,
22 and 2004 before they were filed with the Commission as well to review and
23 discuss related accounting and disclosure issues, such as collectibility of LWT
24 allowances;

25 (ii) signing sub-certifications in advance of the filing of CSK’s Forms 10-
26 K for fiscal years 2002, 2003, and 2004, on which CSK’s CEO and Watson
27 relied upon to make their own representations in the Sarbanes-Oxley
28 certifications. In those sub-certifications, Fraser falsely represented that to his

1 knowledge the Forms 10-K did not “contain any material inaccuracies or
2 omissions involving or relating to the matters with respect to which I have
3 knowledge or responsibility.” At the time he made those certifications, Fraser
4 knew those representations were false;

5 (iii) signing due diligence certifications in connection with CSK’s Forms
6 10-K for fiscal years 2002, 2003, and 2004, falsely certifying that: (a) based on
7 his knowledge of the company’s operations, the Forms 10-K did not contain or
8 omit any material facts that would make the statements contained therein
9 inaccurate or misleading; (b) to the best of his knowledge “the financial
10 statements and other accompanying financial information fairly present in all
11 material respects the financial condition, results of operations and cash flows of
12 the Company for the period presented in such report;” and (c) he had “not made
13 any false statements to any senior management or the Company’s internal
14 auditors or independent outside auditors that would affect the Company’s
15 financial statements and disclosures.” At the time he made those certifications,
16 Fraser knew those statements were false; and

17 (iv) signing management representation letters to CSK’s independent
18 auditor in connection with its audit of CSK’s consolidated financial statements
19 included with CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004. In
20 those management representation letters, Fraser “confirm[ed]” that he was
21 “responsible for the fair presentation of the consolidated financial statements of
22 financial position, results of operations, and cash flows in conformity with
23 generally accepted accounting principles.”

24 60. Watson substantially participated in, and had intricate involvement with,
25 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
26 the financial statement filed therewith by among other things:

27 (i) signing the Forms 10-K for fiscal years 2002, 2003, and 2004;

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1 (ii) signing the Sarbanes-Oxley certifications filed with CSK's Forms 10-
2 K for fiscal years 2002, 2003, and 2004;

3 (iii) being a member of and participating in CSK's disclosure team
4 meetings to review and discuss CSK's Forms 10-K for fiscal years 2002, 2003, and
5 2004 before they were filed with the Commission as well as related accounting and
6 disclosure issues, such as the collectibility of LWT allowances; and

7 (iv) signing management representation letters to CSK's independent
8 auditor in connection with its audit of CSK's consolidated financial statements included
9 with CSK's Forms 10-K for fiscal years 2002, 2003, and 2004. In those management
10 representation letters, Watson "confirm[ed]" that he was "responsible for the fair
11 presentation of the consolidated financial statements of financial position, results of
12 operations, and cash flows in conformity with generally accepted accounting
13 principles."

14 61. O'Brien substantially participated, and had intricate involvement, in the
15 preparation of CSK's Forms 10-K for fiscal years 2003 and 2004, including the
16 financial statement filed therewith, by among other things:

17 (i) being CSK's controller, whose responsibilities included reviewing
18 CSK's financial statements for accuracy;

19 (ii) being a member of and participating in CSK's disclosure team
20 meetings to review and discuss CSK's Forms 10-K for fiscal years 2003 and
21 2004 before they were filed with the Commission as well as related accounting
22 and disclosure issues, such as the collectibility of LWT allowances;

23 (iii) signing sub-certifications in advance of the filing of CSK's Forms
24 10-K for fiscal years 2003 and 2004, on which CSK's CEO and Watson relied
25 upon to make their own representations in the Sarbanes-Oxley certifications. In
26 those sub-certifications, O'Brien falsely represented that to his knowledge the
27 Forms 10-K did not "contain any material inaccuracies or omissions involving or
28 relating to the matters with respect to which I have knowledge or responsibility;"

1 (iv) signing due diligence certifications in connection with CSK's Forms
2 10-K for fiscal years 2003 and 2004, certifying that (a) based on his knowledge
3 of the company's operations, the Forms 10-K did not contain or omit any
4 material facts that would make the statements contained therein inaccurate or
5 misleading, (b) to the best of his knowledge "the financial statements and other
6 accompanying financial information fairly present in all material respects the
7 financial condition, results of operations and cash flows of the Company for the
8 period presented in such report," and (c) he had "not made any false statements
9 to any senior management or the Company's internal auditors or independent
10 outside auditors that would affect the Company's financial statements and
11 disclosures." At the time he made those certifications, O'Brien knew that those
12 statements were false; and

13 (vi) signing management representation letters to CSK's independent
14 auditor in connection with its audit of CSK's consolidated financial statements
15 included with CSK's Forms 10-K for fiscal years 2003 and 2004. In those
16 management representation letters, O'Brien "confirm[ed]" that he was
17 "responsible for the fair presentation of the consolidated financial statements of
18 financial position, results of operations, and cash flows in conformity with
19 generally accepted accounting principles."

20 62. Opper substantially participated in Defendants' fraudulent scheme to
21 avoid writing off uncollectible vendor allowance amounts in CSK's annual reports, or,
22 in the alternative, provided substantial assistance to CSK in carrying out the fraudulent
23 scheme. Rather than sound the alarm on CSK's improper accounting, Opper chose to
24 become an essential participant in CSK's fraudulent scheme by among other things:

25 (i) using his position in charge of the day-to-day management of CSK's
26 vendor accounts receivable department, particularly CSK's LWT operations, to instruct
27 employees to make accounting entries to hide uncollectible vendor allowance
28 receivables. For example, on October 10, 2003, Opper instructed a CSK employee to

1 make an improper journal entry moving an outstanding 2002 LWT receivable to the
2 2003 LWT receivable.

3 (ii) approving the misapplication of paybacks to vendors and the
4 misapplication of those paybacks to later year LWT receivables;

5 (iii) tracking CSK's movement of funds to hide uncollectible vendor
6 allowance receivables and periodically providing this information to senior
7 management, including Fraser, Watson, and O'Brien; and

8 (iv) providing to CSK's independent auditor false documents and
9 explanations in order to hide that CSK could not collect a material portion of its vendor
10 allowance receivables. For example, in a November 24, 2003 memo to CSK's
11 independent auditor, Opper provided false information and documentation regarding
12 collections for the 2003 LWT program that were improperly applied to the 2002 LWT
13 program.

14 **IV. In Carrying Out And Covering Up The Fraud, Defendants**
15 **Repeatedly Lied To CSK's Independent Auditor**

16 63. Defendants Fraser, Watson, O'Brien, and CSK's independent auditor
17 regularly attended audit committee meetings and frequently and at length discussed the
18 collectibility of the outstanding LWT receivables. Defendants Fraser and Watson often
19 led the discussion regarding LWT collections, and regularly stated that the outstanding
20 LWT receivables were collectible.

21 64. To avoid detection of their fraudulent scheme, Defendants regularly lied
22 to CSK's independent auditor in connection with its reviews and audits of CSK's
23 financial statements.

24 65. In connection with the Forms 10-K CSK filed for fiscal years 2002, 2003,
25 and 2004, Fraser, Watson, and (starting in fiscal year 2003) O'Brien, signed
26 management representation letters to CSK's independent auditor. Specifically, in
27 connection with the Form 10-K for fiscal year 2002, Fraser and Watson signed a
28 management letter dated May 2, 2003; in connection with the Form 10-K for fiscal year

1 2003, Fraser, Watson, and O'Brien signed a management representation letter dated
2 April 14, 2004; and in connection with the Form 10-K for fiscal year 2004, Fraser,
3 Watson, and O'Brien signed a management representation letter dated May 2, 2005. In
4 each of those management representation letters, Fraser, Watson, and O'Brien falsely
5 representing that: (i) the receivables were collectible; (ii) the company's financial
6 statements were prepared in accordance with GAAP; and (iii) they had no knowledge of
7 any fraud involving management or employees with a significant role in internal
8 controls, or any other fraud that could have a material effect on the company's
9 consolidated financial statements. For fiscal years 2002 and 2003, Fraser, Watson, and
10 O'Brien also falsely represented that CSK had adequate internal controls. All of those
11 representations were false for the reasons set forth above. Fraser, Watson, and O'Brien
12 knew that these representations were false when they signed the letters.

13 66. Defendant Opper gave CSK's independent auditor modified schedules
14 that omitted the columns showing the uncollectible amounts and memoranda containing
15 false information.

16 **V. Defendants Circumvented CSK's Internal Controls**

17 67. During 2002, 2003, and part of 2004, Watson, O'Brien, and Opper
18 circumvented CSK's internal controls by, among other things, instructing or approving
19 the entry of false journal entries.

20 68. In 2004, CSK developed various policies regarding vendor allowances,
21 one of which disallowed side letters with terms that differed from the LWT agreements.
22 Contrary to this policy, however, Fraser directed that a vendor agreement relating to
23 LWT allowances be split into two, with one agreement backdated.

24 **VI. Offerings While The False Financial Information Was Outstanding**

25 69. While the false financial statements were outstanding, CSK engaged in
26 several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior
27 Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3
28 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4

1 5/8% senior exchangeable notes. CSK's materially false financial statements filed with
2 its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the
3 Form S-3 and Form S-4 Registration Statements filed with the Commission during
4 fiscal years 2004 and 2005.

5 70. With respect to the 2004 debt offering, on May 20, 2004 Fraser, Watson,
6 and O'Brien signed a management representation letter to CSK's independent auditor
7 confirming their prior representations contained in the April 14, 2004 management
8 representation letter provided with the fiscal year 2003 Form 10-K. The April 14
9 management representation letter stated that the 2003 LWT receivable reflected
10 amounts owed CSK for the 2003 LWT program year. Fraser, Watson, and O'Brien
11 knew this representation was false when they signed both the April 14 and May 20,
12 2004 letters.

13 71. CSK's materially false and misleading disclosures and financial
14 statements filed with its Forms 10-K for fiscal years 2002, 2003 and 2004 were
15 incorporated by reference in the various Form S-3 and Form S-4 Registration
16 Statements filed with the Commission during fiscal year 2002, 2004 and 2005.
17 Defendants knew that these registration statements were false and misleading when
18 filed because they incorporated misstatements from CSK's Forms 10-K.

19 **VII. Defendants Received Bonuses And Sold Stock During The**
20 **Fraudulent Scheme**

21 72. For the 2002 and 2003 fiscal years, Fraser and Watson each received a
22 bonus based, in part, on CSK's financial performance.

23 73. For the 2003 fiscal year, O'Brien and Oppen each received a bonus based,
24 in part, on CSK's financial performance.

25 74. Fraser, Watson, and Oppen sold CSK stock in 2003, 2004, and 2005,
26 during the period of the fraud. Their net profits were \$195,419, \$155,122, and
27 \$28,078.20, respectively.

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

75. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

76. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

77. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES**

**Violations and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder**

78. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

79. Defendants, and each of them, by engaging in the conduct described

1 above, directly or indirectly, in connection with the purchase or sale of a security, by
2 the use of means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices, or courses of business which operated
10 or would operate as a fraud or deceit upon other persons.

11 80. Alternatively, Opper knowingly provided substantial assistance to CSK in
12 its violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5 in connection with CSK's annual reports on Form
14 10-K for fiscal years 2003 and 2004.

15 81. By engaging in the conduct described above, Defendants violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
17 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 82. By engaging in the conduct described above and pursuant to Section 20(e)
19 of the Exchange Act, 15 U.S.C. § 78t(e), Opper aided and abetted CSK's violations,
20 and unless restrained and enjoined will continue to aid and abet violations, of Section
21 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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THIRD CLAIM FOR RELIEF
VIOLATIONS OF COMMISSION PERIODIC
REPORTING REQUIREMENTS
Aiding and Abetting Violations of

Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

83. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

84. CSK violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission annual reports on Form 10-K for fiscal years 2002, 2003, and 2004 that were materially false and failed to include material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

85. Fraser and Watson knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2002, 2003, and 2004.

86. O'Brien and Opper knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2003 and 2004.

87. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

1 **FOURTH CLAIM FOR RELIEF**

2 **RECORD-KEEPING VIOLATIONS**

3 **Aiding and Abetting Violations of**

4 **Section 13(b)(2)(A) of the Exchange Act and Violations of**

5 **Rule 13b2-1 thereunder**

6 88. The Commission realleges and incorporates by reference ¶¶ 1 through 74
7 above.

8 89. CSK violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
9 78m(b)(2)(A), by failing to make or keep books, records, and accounts, which, in
10 reasonable detail accurately and fairly reflected its transactions and disposition of its
11 assets.

12 90. Defendants knowingly provided substantial assistance to CSK's violation
13 of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

14 91. By engaging in the conduct described above and pursuant to Section 20(e)
15 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
16 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
17 continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

18 92. By engaging in the conduct described above, Defendants violated
19 Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified
20 CSK's books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act.
21 Unless restrained and enjoined, Defendants will continue to violate Rule 13b2-1, 17
22 C.F.R. § 240.13b2-1.

23 **FIFTH CLAIM FOR RELIEF**

24 **INTERNAL CONTROLS VIOLATIONS**

25 **Aiding and Abetting Violations of**

26 **Section 13(b)(2)(B) of the Exchange Act**

27 93. The Commission realleges and incorporates by reference ¶¶ 1 through 74
28 above.

1 94. CSK violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
2 78m(b)(2)(B), by failing to devise and maintain a system of internal accounting controls
3 sufficient to provide reasonable assurances that transactions were recorded as necessary
4 to permit preparation of financial statement in conformity with GAAP and to maintain
5 the accountability for assets.

6 95. Fraser, Watson, O'Brien, and Oppen knowingly provided substantial
7 assistance to CSK's violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
8 78m(b)(2)(B).

9 96. By engaging in the conduct described above and pursuant to Section 20(e)
10 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
11 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
12 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act, 15
13 U.S.C. § 78m(b)(2)(B).

14 **SIXTH CLAIM FOR RELIEF**

15 **CIRCUMVENTION OF INTERNAL CONTROLS AND**

16 **FALSIFICATION OF RECORDS**

17 **Violations of Section 13(b)(5) of the Exchange**

18 97. The Commission realleges and incorporates by reference ¶¶ 1 through 74
19 above.

20 98. By engaging in the conduct described above, Defendants violated Section
21 13(b)(5) of the Exchange Act, 15 U.S.C. §78m(b)(5), by knowingly circumventing or
22 failing to implement a system of internal accounting controls, or, directly or indirectly,
23 by knowingly falsifying or causing to be falsified any CSK books, records, or accounts
24 described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined,
25 Defendants will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C.
26 §78m(b)(5).

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SEVENTH CLAIM FOR RELIEF

FALSE STATEMENT TO ACCOUNTANTS

Violations of Exchange Act Rule 13b2-2

(Against Defendants Fraser, Watson, and O'Brien)

99. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

100. Defendants Fraser, Watson, and O'Brien, directly or indirectly, (i) made, or caused to be made, materially false or misleading statements or (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

101. By engaging in the conduct alleged above, defendants Fraser, Watson, and O'Brien violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

EIGHTH CLAIM FOR RELIEF

CERTIFICATION VIOLATIONS

Violations of Rule 13a-14 of the Exchange Act

(Against Defendant Watson)

102. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

103. Watson violated Rule 13a-14 by signing the certifications included with CSK fiscal year 2002, 2003, and 2004 Forms 10-K, certifying, among other things, that the forms fully complied with the requirements of the Exchange Act and fairly presented, in all material respects, the financial condition and results of operations of the company, when, in fact, the reports contained untrue statements of material fact and omitted material information necessary to make the reports not misleading.

1 104. By engaging in the conduct described above, defendant Watson violated
2 Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14. Unless restrained and enjoined,
3 defendant Watson will continue to violate Rule 13a-14, 17 C.F.R. § 240.13a-14.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I**

7 Issue findings of fact and conclusions of law that the defendants committed the
8 alleged violations.

9 **II**

10 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
11 enjoining Defendant Fraser and his agents, servants, employees, attorneys, and those
12 persons in active concert or participation with any of them, who receive actual notice of
13 the order by personal service or otherwise, from violating Section 17(a) of the
14 Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
15 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections
16 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1
17 thereunder.

18 **III**

19 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
20 enjoining Defendant Watson and his agents, servants, employees, attorneys, and those
21 persons in active concert or participation with any of them, who receive actual notice of
22 the order by personal service or otherwise, from violating Section 17(a) of the
23 Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
24 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of
25 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20
26 and 13a-1 thereunder.

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28**IV**

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant O'Brien and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder.

V

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder. Or, in the alternative, issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Section 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20 and 13a-1 thereunder.

VI

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Fraser, Watson, and O'Brien from acting as officers

1 or directors of any issuer that has a class of securities registered pursuant to Section 12
2 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
3 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4 **VII**

5 Order defendants Fraser, Watson, O'Brien, and Opper to disgorge all ill-gotten
6 gains from their illegal conduct, together with prejudgment interest thereon.

7 **VIII**

8 Order defendants Fraser, Watson, O'Brien, and Opper to pay civil penalties
9 under Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

10 **IX**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **X**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 5, 2009

Respectfully submitted,

20 

21 C. DABNEY O'RIORDAN

22 Attorney for Plaintiff

23 Securities and Exchange Commission

1 DONALD W. SEARLES, California Bar No. 135705
E-mail: searlesd@sec.gov
2 LORRAINE B. ECHAVARRIA, California Bar No. 191860
E-mail: echavarrial@sec.gov
3 ROBERT H. CONRRAD, California Bar No. 199498
E-mail: conrradr@sec.gov
4 C. DABNEY O'RIORDAN, California Bar No. 205158
E-mail: oriordand@sec.gov
5

Attorneys for Plaintiff
6 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
7 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
8 Los Angeles, California 90036-3648
Telephone: (323) 965-3998
9 Facsimile: (323) 965-3908
10

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 MARTIN G. FRASER; DON W.
18 WATSON; EDWARD W. O'BRIEN; and
GARY M. OPPER,

19 Defendants.
20

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. CSK Auto Corporation (“CSK”) was one of the largest specialty retailers
5 of automotive parts and accessories in the United States. Headquartered in Phoenix,
6 Arizona, CSK became a publicly traded company in March 1999. As of January 30,
7 2005, CSK operated 1,134 stores in nineteen states under three brand names: Checker
8 Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after the conduct
9 alleged in this Complaint, CSK became a wholly-owned subsidiary of O’Reilly
10 Automotive, Inc.

11 2. As a retailer of automotive products, CSK purchased products from
12 vendors that manufacture automotive parts and accessories. From at least fiscal years
13 2002 through 2004, a significant portion of CSK’s income was derived from allowances
14 it received from its vendors. Vendor allowances are used to provide retailers, such as
15 CSK, with financial support to market the vendor’s products. In general, CSK
16 accounted for vendor allowances by reducing its costs of goods sold. Thus, the more
17 vendor allowances CSK earned, the lower its costs of goods sold, resulting in greater
18 reported pre-tax income. During the years at issue, vendor allowances were vital to
19 CSK’s financials, increasing its reported pre-tax income by tens of millions of dollars
20 each fiscal year.

21 3. During fiscal years 2002, 2003, and 2004, CSK knew that there were
22 millions of dollars of vendor allowances that were recognized on its books but were not
23 collectible. Rather than write off the uncollectible receivables, as required by Generally
24 Accepted Accounting Principles (“GAAP”), CSK and its senior management engaged
25 in a scheme to hide the uncollectible receivables through various accounting tricks. In
26 addition, during fiscal year 2003, CSK over recognized millions of dollars of vendor
27 allowances. To perpetuate the fraudulent scheme, CSK’s senior management lied to the
28 company’s independent auditors and audit committee.

1 4. If CSK had written off the uncollectible vendor allowances, it would have
2 increased the company's expenses and decreased its income. Because CSK concealed
3 its uncollectible vendor allowances, CSK's annual reports filed with the Commission
4 for fiscal years 2002, 2003, and 2004 materially overstated the company's financial
5 results in violation of GAAP and misled the public about the company's financial
6 performance.

7 5. During the relevant time period, defendant Martin G. Fraser ("Fraser")
8 served as CSK's chief operating officer and president, defendant Don W. Watson
9 ("Watson") served as its chief financial officer, defendant Edward W. O'Brien
10 ("O'Brien") served as a vice president and controller, and defendant Gary M. Opper
11 ("Opper") served as its director of credits and receivables (Fraser, Watson, O'Brien,
12 and Opper are collectively referred to herein as "Defendants"). Because of Fraser's and
13 Watson's conduct, CSK filed with the Commission a false annual report for fiscal year
14 2002 that fraudulently overstated its pre-tax income for that year by approximately
15 47%, or \$11 million. In addition, because of Defendants' conduct, CSK filed false
16 annual reports with the Commission that fraudulently overstated its pre-tax income for
17 fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income
18 instead of a pre-tax loss, and for fiscal year 2004 by approximately 65%, or \$21
19 million.

20 6. As a result of Defendants' fraudulent conduct, CSK restated its financial
21 statements as part of its Form 10-K for fiscal year 2004 (the "First Restatement"). As
22 part of the First Restatement, CSK reduced its previously recognized vendor allowances
23 for fiscal years 2002, 2003 and the first three quarters of fiscal year 2004. Defendants,
24 however, continued to conceal known, significant uncollectible vendor allowance
25 receivables. The First Restatement also falsely attributed the vendor allowance
26 adjustments to mere errors in estimates and bookkeeping mistakes rather than to
27 Defendants' fraudulent conduct.

28

1 7. As a result of Defendants' failure to acknowledge and write off the
2 magnitude of CSK's uncollectible vendor allowance receivables in the First
3 Restatement, CSK still had approximately \$15 million in uncollectible vendor
4 allowance receivables, which, under GAAP, should have been written off. Defendants
5 made a final attempt to collect that \$15 million deficit by intentionally over billing its
6 vendors. When the vendors complained about being double billed, CSK paid back the
7 amounts it had wrongfully collected, but incorrectly accounted for some of those
8 paybacks and mischaracterized the reasons for other paybacks to avoid detection that
9 the company had over collected vendor allowances.

10 8. Each of the Defendants knew CSK was not writing off uncollectible
11 vendor allowances receivables and was over recognizing vendor allowances resulting in
12 CSK's financial statements for fiscal years 2002, 2003, and 2004 being materially
13 misstated. Defendants Fraser and Watson substantially participated in the preparation
14 of CSK's 2002, 2003, and 2004 false financial statements. Defendant O'Brien
15 substantially participated in the preparation of the 2003 and 2004 false financial
16 statements. Defendant Opper substantially participated in, or provided substantial
17 assistance to, the preparation of the false 2003 and 2004 financial statements.

18 9. Based on their conduct, Defendants, among other things, violated the
19 antifraud provisions of the federal securities laws, falsified CSK's books and records,
20 circumvented CSK's internal controls, and lied to CSK's independent auditors. The
21 Commission seeks an order enjoining Defendants from future violations of the
22 securities laws, requiring Defendants to disgorge ill-gotten gains with prejudgment
23 interest, ordering Defendants to pay civil monetary penalties, requiring Watson to
24 reimburse stock profits pursuant to Section 304 of the Sarbanes-Oxley Act, barring
25 Fraser, Watson, and O'Brien from serving as officers or directors of a public company,
26 and providing other appropriate relief.

27
28

1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
4 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e) & 78aa. Defendants have directly or indirectly made use of the
7 means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
8 national securities exchange in connection with the transactions, acts, practices and
9 courses of business alleged in this Complaint.

10 11. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa,
12 because defendants reside and transact business within this district and certain of the
13 transactions, acts, practices and courses of conduct constituting violations of the federal
14 securities laws alleged in this Complaint occurred within this district.

15 **THE DEFENDANTS**

16 12. **Martin G. Fraser** (53) is a resident of Phoenix, Arizona, and was CSK’s
17 chief operating officer and president from 2000 until September 2006, when he
18 resigned at CSK’s request.

19 13. **Don W. Watson** (53) is a resident of Gilbert, Arizona. From January
20 1998 to September 2005, Watson was CSK’s chief financial officer, senior vice
21 president, and treasurer. Watson served as CSK’s chief administrative officer and
22 senior vice president from September 2005 to his termination in October 2006.

23 14. **Edward W. O’Brien** (46) is a resident of Cave Creek, Arizona. O’Brien
24 was CSK’s controller and vice president from March 2003 until his termination in
25 September 2006.

26 15. **Gary M. Opper** (56) is a resident of Mesa Arizona. Opper was CSK’s
27 director of credit and receivables, reporting to O’Brien, from March 17, 2003 until he
28 was terminated in September 2006.

1 **RELATED PARTY**

2 16. **CSK Auto Corporation** is a Delaware corporation with its principal
3 executive offices in Phoenix, Arizona. CSK's common stock was registered with the
4 Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York
5 Stock Exchange. On July 11, 2008, CSK became a wholly owned subsidiary of
6 O'Reilly Automotive, Inc.

7 **BACKGROUND**

8 **I. CSK's "Let's Work Together" Program**

9 17. Each year, most of CSK's vendors agreed to pay vendor allowances.
10 Although CSK had various vendor allowance programs, its largest was its "Let's Work
11 Together" program ("LWT"). Typically, LWT agreements covered a one-year period,
12 which CSK referred to as the "program year." Although the LWT agreements varied,
13 CSK generally earned LWT allowances at a set dollar amount, as a percentage of the
14 amount CSK spent to purchase the vendor's product, or as a certain number of cents per
15 item CSK purchased from the vendor.

16 18. CSK recognized LWT allowances ratably, on a monthly basis, based on
17 its estimate of the total allowances it expected to earn for the entire program year.
18 Thus, CSK did not recognize LWT allowances as they were actually earned or
19 collected. In theory, CSK's estimate was based on the LWT agreement and CSK's
20 expected purchases from its vendors. In general, CSK recognized LWT allowances as a
21 reduction to costs of sales (an expense), thereby increasing the company's pre-tax
22 income.

23 19. As CSK recognized LWT allowances for a given program year, it
24 increased the LWT account receivable for that program year. Each LWT program year
25 had its own account receivable. As CSK collected LWT allowances for a particular
26 program year, GAAP required that CSK reduce the outstanding receivable for that same
27 LWT program year.

1 20. In general, CSK collected LWT allowances by issuing a debit memo to
2 the vendor, which notified the vendor that CSK was deducting the amount of the LWT
3 allowance from the amount CSK owed the vendor. If CSK collected too much, it
4 generally paid back the vendor by issuing a credit memo, notifying the vendor that CSK
5 was adding the amount back to the overall amount it owed the vendor.

6 **Defendants' Fraudulent Scheme**

7 **I. The Fraudulent Scheme To Avoid Vendor Allowance Write Offs**

8 21. During fiscal years 2002, 2003, and 2004, CSK was unable to collect all
9 of the vendor allowances it had recognized. As a result, large accounts receivable built
10 up for each LWT program year.

11 22. GAAP required that CSK write off the uncollectible LWT accounts
12 receivable. Specifically, under Statement of Financial Accounting Standards No. 5
13 (“SFAS No. 5”), Accounting for Contingencies Paragraph 8, an estimated loss from a
14 loss contingency shall be accrued by a charge to income if: (i) information available
15 prior to issuance of the financial statements indicates that it is probable that an asset had
16 been impaired at the date of the financial statements; and (ii) the amount of the loss can
17 be reasonably estimated. SFAS No. 5, Paragraph 3 defines “probable” to mean that the
18 future event or events are likely to occur. SFAS No. 5, Paragraph 4 states that
19 examples of loss contingencies include collectibility of receivables. A write off of the
20 uncollectible LWT allowance receivables would have increased CSK’s expenses during
21 the fiscal year the write off was made, resulting in a decrease in pre-tax income.

22 23. Instead of writing off CSK’s uncollectible LWT accounts receivable and
23 taking the requisite reduction to pre-tax income, Fraser and Watson, for fiscal year
24 2002, and Defendants, for fiscal years 2003 and 2004, concealed CSK’s uncollectible
25 LWT accounts receivable by: (i) applying tens of millions of dollars of LWT
26 allowances earned and collected for later LWT program years to prior LWT program
27 year accounts receivable (referred to within CSK as “filling the bucket”); and
28 (ii) incorrectly accounting for millions of dollars of LWT allowances it paid back to

1 vendors. Through this scheme, CSK avoided writing off tens of millions of dollars in
2 uncollectible LWT receivables, which it had previously recognized.

3 24. CSK “filled the bucket” by taking LWT allowances collected for later
4 program years and applying them to reduce an earlier LWT program year’s account
5 receivable. Specifically, CSK: (i) made baseless journal entries reducing the account
6 receivable for a prior LWT program year with an offsetting increase to the account
7 receivable for a later LWT program year; and (ii) applied LWT allowance collections
8 for a later LWT program year to an earlier program year’s LWT account receivable.

9 25. CSK also failed to write off LWT allowances it had over collected for
10 prior LWT program years and ultimately paid back to its vendors. Instead of writing
11 off amounts CSK paid back, which would reduce its pre-tax income, CSK increased a
12 later LWT program year’s account receivable, making it appear that it had collected an
13 older account receivable when all CSK had done was move the outstanding receivable
14 balance to a more recent year. This accounting treatment was contrary to GAAP
15 because by paying an amount back to a vendor for a prior LWT program year, CSK
16 acknowledged its uncollectibility and should have written off the amount.

17 **A. During CSK’s 2002 Fiscal Year, The Company Concealed**
18 **Approximately \$11 Million Of Uncollectible Vendor Allowances**

19 26. During its 2002 fiscal year, CSK failed to write off approximately \$11
20 million of uncollectible vendor allowances it had recognized in previous years, most
21 significantly as part of the 2001 LWT program year. Instead of writing off the
22 uncollectible vendor allowances, CSK: (i) made improper journal entries moving
23 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT
24 account receivable; (ii) misapplied paybacks of approximately \$3 million to the 2002
25 LWT receivable; and (iii) reached an agreement whereby a vendor agreed to accept an
26 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK
27 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT
28 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK overstated its

1 pre-tax income by approximately \$11 million, or 47%.

2 27. Throughout fiscal year 2002, Fraser and Watson knew of CSK's
3 numerous efforts to hide uncollectible LWT accounts receivable and that, as a result,
4 CSK's financial statements were materially misstated.

5 28. During fiscal year 2001, the company's controller at the time informed
6 Fraser and Watson that CSK was recognizing more LWT allowances for the 2001
7 program year than it was actually earning or likely to earn during that program year.

8 29. The 2001 LWT program year ended in September 2001. CSK tried to
9 collect the outstanding 2001 LWT account receivable throughout fiscal year 2002.

10 30. During fiscal year 2002, CSK issued a \$2 million debit memo to a vendor
11 to collect LWT allowances recognized as part of the 2001 LWT program year. The
12 vendor vigorously disputed the debit memo claiming that CSK had not purchased
13 enough products from the vendor to have earned the \$2 million. Fraser negotiated the
14 dispute. By the middle of the 2002 fiscal year, CSK agreed to forego collecting \$2
15 million worth of LWT allowances it expected to earn on purchases during the 2002 and
16 2003 LWT program years in exchange for the vendor accepting the \$2 million debit
17 memo. Both Fraser and Watson knew that the vendor had agreed to accept the already-
18 issued \$2 million debit memo only in exchange for CSK's agreement not to collect \$2
19 million in LWT for the 2002 and 2003 LWT program years. Since the vendor only
20 accepted the debit memo in exchange for future benefits from CSK, *i.e.*, future
21 purchases of product from the vendor, GAAP required that CSK immediately write off
22 the \$2 million because it was not collectible as part of the 2001 LWT program year.

23 31. During fiscal year 2002, CSK had to make various paybacks to vendors
24 for vendor allowances it had recognized during prior fiscal years. Instead of correctly
25 accounting for those paybacks by writing them off and increasing CSK's expenses, the
26 company increased the 2002 LWT program year's account receivable. Watson
27 instructed CSK employees that they would have to raise additional allowances to cover
28 for those amounts paid back because CSK "could not afford a charge for any

1 paybacks.” Fraser knew of Watson’s instruction and CSK’s failure to write off vendor
2 allowances paid back to vendors.

3 32. In October 2002, Fraser, Watson, and others met to discuss the
4 collectibility of the 2001 LWT account receivable, which had been outstanding for
5 approximately one year. At that time, of the remaining outstanding balance for the
6 2001 LWT account receivable, \$3.2 million was known to be uncollectible and \$4.5
7 million was “questionable.” These amounts did not include either the \$2 million Fraser
8 and Watson already knew was uncollectible or the paybacks.

9 33. Rather than write off these uncollectible amounts, as required by GAAP,
10 in October and November 2002, CSK devised a plan to move collections for the 2002
11 LWT program year to cover the 2001 LWT account receivable. As part of that plan, in
12 or about November 2002, Watson instructed a CSK employee to identify collections for
13 the 2002 LWT program year to move to the 2001 LWT program year account
14 receivable to cover 2001 shortfalls.

15 **B. During Fiscal Year 2003, CSK Concealed Approximately \$24 Million**
16 **In Known, Uncollectible Vendor Allowances And Improperly**
17 **Recognized Approximately \$10 Million In Vendor Allowances**

18 34. During its 2003 fiscal year, CSK used various tactics to fraudulently
19 conceal, rather than properly write off, approximately \$24 million in uncollectible
20 vendor allowances recognized during previous LWT program years, primarily as part of
21 the 2002 LWT program year. Moreover, CSK improperly and prematurely recognized
22 \$6 million in vendor allowances and improperly recognized an additional \$4 million of
23 LWT allowances. As a result, in its Form 10-K filed on April 15, 2004, CSK overstated
24 its 2003 pre-tax income by approximately \$34 million, turning its actual pre-tax loss of
25 approximately \$18 million into purported pre-tax income of \$16 million. At the time of
26 that filing, Defendants knew CSK had failed to write off uncollectible vendor
27 allowances and over recognized allowances, and that, as a result, CSK’s financial
28 statements were materially misstated.

1 35. During fiscal year 2003, CSK hid approximately \$24 million in
2 uncollectible vendor allowance receivables. First, CSK applied approximately \$10
3 million in 2003 LWT program year collections to the 2002 LWT program year
4 receivable. Second, CSK failed to write off approximately \$5 million in vendor
5 allowances CSK had over collected during prior LWT program years but had to pay
6 back during fiscal year 2003. Third, CSK made a baseless journal entry decreasing the
7 2002 LWT receivable by \$9 million and increasing the 2003 LWT receivable by the
8 same amount, which reduced the 2002 LWT receivable to zero.

9 36. During fiscal year 2003, Defendants knew CSK was failing to write off
10 uncollectible LWT allowances. During fiscal year 2003, Defendants regularly received
11 information regarding CSK's efforts to hide the uncollectible LWT allowances. For
12 example, on or about September 9, 2003, Opper sent an email to Fraser, Watson,
13 O'Brien and others discussing the collection of the 2002 LWT account receivable,
14 which was then approximately one-year old. The email stated that: (i) "approximately
15 \$9.6mm in 2003 collections . . . were moved to 2002 to cover short falls from prior
16 periods;" and (ii) the outstanding 2002 LWT program year receivable balance did not
17 include \$5.4 million in 2002 paybacks. Defendant Opper referenced in the email a
18 chart he had attached that explained the "\$24.2 million in LWT exposure from 2002
19 and prior." That chart included detailed explanations regarding millions of dollars of
20 uncollectible LWT allowances for prior years, including the 2002 LWT program year.

21 37. Defendants also met to discuss the uncollectible LWT receivables during
22 fiscal year 2003. For example, Defendants attended a meeting on or about September
23 17, 2003 to discuss the "2002 Outstanding LWT status" where Opper provided copies
24 of the chart attached to his September 9, 2003 email.

25 38. During the fourth quarter of 2003, CSK prematurely recognized
26 approximately \$6 million in additional vendor allowances, which would not be earned,
27 if at all, until fiscal year 2004, in order to meet its earnings numbers. On December 23,
28 2003, Defendants and others met with CSK's independent auditor in Fraser's office to

1 discuss the requirements for the allowances to be recognized in 2003. During the
2 meeting, CSK's independent auditor explained that the agreements had to state that the
3 allowances were for 2003, that no future performance was required of CSK, and that if
4 CSK could not collect the full amount using one method of collection, then CSK could
5 change the collection method. Defendants had vendors sign agreements making it
6 appear that CSK had earned additional LWT allowances during 2003, when, in fact,
7 those allowances would be earned, if at all, based on purchases made during 2004.

8 39. At the end of fiscal 2003, CSK obtained approximately \$4 million of
9 additional warranty allowances from two vendors. At that same time, CSK had a
10 warranty deficit of approximately \$13 million, which represented returns from
11 customers covered by warranties in excess of the warranty accrual recorded by CSK.
12 Under GAAP, a warranty deficit should be written off unless additional warranty
13 allowances are obtained to cover the deficit. However, instead of applying the \$4
14 million of additional warranty allowances to offset a portion of its warranty deficit
15 balance, CSK improperly recognized those warranty allowances as additional LWT
16 allowances. Thus, the warranty deficit included in CSK's inventory balance remained
17 \$13 million, and CSK improperly inflated its pre-tax income for fiscal year 2003 by
18 approximately \$4 million.

19 **C. During Fiscal Year 2004, CSK Failed To Write Off Approximately**
20 **\$21 Million Of Known, Uncollectible Vendor Allowances**

21 40. During fiscal year 2004, CSK concealed that it could not collect vendor
22 allowances totaling approximately \$21 million. Specifically, CSK applied:
23 (i) approximately \$11 million in 2004 LWT program year collections to the 2003 LWT
24 account receivable; (ii) approximately \$4 million CSK paid back to vendors for the
25 2003 and 2002 LWT program years to the 2004 LWT receivable; and
26 (iii) approximately \$6 million via baseless journal entries to the 2003 LWT receivable
27 from other vendor allowance receivables in other time periods. As a result, in its Form
28 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year 2004 by

1 approximately 65%, or \$21 million. At the time of that filing, Defendants knew CSK
2 had failed to write off uncollectible vendor allowances and that, as a result, the
3 company's financial statements were materially misstated.

4 41. CSK's 2004 Form 10-K included CSK's First Restatement, which
5 partially restated CSK's vendor allowances recognized during prior years. Specifically,
6 CSK restated because it could not collect all of the 2003 LWT receivable. In addition,
7 CSK restated for vendor allowances paid back during fiscal year 2003 that CSK failed
8 to properly write off during the 2003 fiscal year. CSK's restatement regarding vendor
9 allowances resulted in CSK adjusting its costs of sales upward and its pre-tax income
10 downward, for the first three quarters of 2004, and the 2003, 2002, and 2001 fiscal
11 years by \$1.9 million, \$7.1 million, \$9.0 million, and \$0.5 million, respectively.

12 42. The First Restatement, however, falsely attributed the vendor allowance
13 restatement to "errors in estimation in earlier periods" and "vendor allowances recorded
14 in improper periods" due to "imprecise estimates, bookkeeping errors and recording
15 allowances in the incorrect periods." Defendants knew the reasons stated for the
16 vendor allowance restatement were false because the First Restatement resulted from
17 Defendants' fraudulent scheme.

18 43. The First Restatement also failed to: (i) write off all known, uncollectible
19 vendor allowance receivables; (ii) disclose the full extent of CSK's efforts to hide the
20 uncollectible receivables from its independent auditors; and (iii) disclose CSK's over
21 recognition of vendor allowances during fiscal 2003. Defendants knew about these
22 misstatements contained in the First Restatement.

23 44. While preparing the First Restatement, Defendants hid the full extent of
24 their fraudulent conduct from CSK's independent auditor. For example, despite the
25 independent auditor's request for a list of all paybacks CSK had made to its vendors,
26 Watson, O'Brien, and Opper knowingly provided an incomplete list. As a result, CSK
27 failed to write off \$4 million in paybacks it had made during 2004 and applied to the
28 2003 LWT receivable. Similarly, Fraser and Watson negotiated agreements with

1 vendors whereby the vendors agreed to pay additional amounts of LWT in exchange for
2 CSK's acceptance to pay more for their goods. Fraser, however, directed others to
3 falsify documents to make it appear that CSK had entered into separate, seemingly
4 unrelated agreements, containing different dates, in order to hide from CSK's
5 independent auditor that CSK's receipt of additional LWT allowances were contingent
6 upon CSK's willingness to grant price increases offsetting the LWT amounts the
7 vendors purportedly agreed to pay. Thus, Defendants knew they were hiding material
8 information from CSK's independent auditor and excluding from the restatement,
9 intentional accounting errors regarding vendor allowances.

10 **D. To Further Cover Up Its Fraud In The Wake Of The First**
11 **Restatement, CSK Debited Its Vendors For Amounts It Knew They**
12 **Did Not Owe**

13 45. After filing its First Restatement in May 2005, CSK's outstanding 2004
14 LWT account receivable still contained approximately \$15 million that was not
15 collectible. In an effort to conceal that uncollectible receivable, CSK issued debit
16 memos to the vendors for the \$15 million at the end of July 2005.

17 46. As of July 15, 2005, Watson, O'Brien, and Opper knew that \$15 million
18 of the outstanding 2004 LWT receivable was not uncollectible because it had
19 previously been collected and had been applied to prior LWT program year receivables
20 as part of CSK's fraudulent scheme.

21 47. In July 2005, CSK issued debit memos totaling approximately \$31
22 million, including the \$15 million that CSK had previously collected. Opper instructed
23 employees to prepare the debit memos to collect the entire \$31 million even though \$15
24 million of the allowances had already been collected. When the debit memos were
25 issued, Fraser met with Watson, O'Brien, Opper, and other CSK employees. Fraser
26 told the group that CSK needed to make the debit memos "stick" and that, when it had
27 sent out debit memos in the past, CSK paid back only about ten percent of the debits.

28

1 48. In late July 2005 or early August 2005, Fraser was told that many of the
2 buyers saw errors in the proposed debits. Fraser responded that probably 70% of the
3 debits would “stick” and that many of the vendors would not even notice them. At least
4 as early as September 2005, Fraser knew that a substantial amount CSK had debited
5 was at risk of having to be paid back to its vendors.

6 49. After the vendors complained about the debit memos, CSK continued to
7 hide the uncollectible LWT allowances. First, CSK negotiated deals with vendors for
8 future vendor allowances that CSK offset against the already-issued 2004 LWT debit
9 memos. Second, CSK falsified its books and records to conceal that it was paying back
10 portions of the debit memos. For example, CSK issued to certain vendors credit
11 memos, which O’Brien created or caused to be created, that falsely described the
12 paybacks as being related to “costing,” “pricing increases—steel surcharge,” or
13 “warranty.” In fact, the credit memos paid back LWT amounts that CSK had
14 improperly debited.

15 **II. CSK’s Forms 10-K For Fiscal Years 2002, 2003, And 2004 Contained**
16 **Materially False Information**

17 50. CSK filed annual reports on Form 10-K for fiscal years 2002, 2003, and
18 2004.

19 51. The notes to the financial statements included with CSK’s Forms 10-K
20 for fiscal years 2002, 2003, and 2004 falsely stated that “Specific accounts are written
21 off against the allowance when management determines the account is uncollectible.”
22 In fact, CSK did not write off known, uncollectible vendor allowance receivables, but
23 rather engaged in a scheme to avoid and hide such write offs, as set forth above.

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1 52. In all, CSK understated its costs of goods sold during fiscal years 2002
2 through 2004 as follows:

FY	Concealed Receivables From Prior Years			Over Recognized Allowances / Other Uncollectible Receivables	Total
	Unsupported Journal Entries	Misapplied Debit Memos	Misapplied Paybacks		
2002	\$6M	--	\$3 M	\$2 M	\$11 M
2003	\$9 M	\$10 M	\$5 M	\$10 M	\$34 M
2004	\$6 M	\$11 M	\$4 M	--	\$21 M

11 53. CSK's Form 10-K for fiscal year 2002 falsely overstated CSK's pre-tax
12 income by approximately 47%, or \$11 million. When CSK filed its Form 10-K for
13 fiscal year 2002, Fraser and Watson knew that the company's financial statement were
14 materially misstated.

15 54. CSK's Form 10-K for fiscal year 2003 overstated CSK's pre-tax income
16 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax
17 loss. When CSK filed its Form 10-K for fiscal year 2003, Defendants knew that the
18 company's financial statements were materially misstated.

19 55. CSK's Form 10-K for fiscal year 2004, which also contained the First
20 Restatement, overstated CSK's pre-tax income by approximately 65%, or \$21 million.
21 In addition, it falsely attributed the need for the vendor allowance restatement to
22 estimation errors, imprecise estimates, and bookkeeping errors, rather than to
23 Defendants' fraudulent conduct. When CSK filed its Form 10-K for fiscal year 2004,
24 Defendants knew the company's financial statements were materially misstated and
25 mischaracterized the reasons for the vendor allowance restatement.

26 56. Watson, as CSK's CFO, signed CSK's annual reports and the
27 accompanying Sarbanes-Oxley certifications. In connection with each of the Forms 10-
28 K filed for fiscal years 2002, 2003, and 2004, Watson certified he had no knowledge of

1 any untrue statement of material fact in the report, the annual report “fairly presents in
2 all material respects the financial condition, results of operations, and cash flows . . .,”
3 and that he had disclosed to CSK’s independent auditors and audit committee “any
4 fraud, whether or not material, that involved management or any other employees who
5 have a significant role in the registrant’s internal controls.” At the time he made those
6 certifications, Watson knew that each of those statements was false.

7 57. On March 27, 2006, CSK announced that it was conducting an internal
8 investigation relating to, among other things, accounting irregularities regarding vendor
9 allowances. CSK’s stock price immediately dropped 8% and dropped a total of 13%
10 for the week.

11 58. On May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating,
12 for the second time, its financial statements for 2002, 2003, and 2004 due, in part, to the
13 fraudulent scheme relating to CSK’s failure to write off uncollectible vendor
14 allowances.

15 **III. Defendants Substantially Participated In Making CSK’s Misleading Annual**
16 **Reports**

17 59. Fraser substantially participated in, and had intricate involvement with,
18 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
19 the financial statement filed therewith, by among other things:

20 (i) being a member of and participating in CSK’s disclosure team
21 meetings to review and discuss CSK’s Forms 10-K for fiscal years 2002, 2003,
22 and 2004 before they were filed with the Commission as well to review and
23 discuss related accounting and disclosure issues, such as collectibility of LWT
24 allowances;

25 (ii) signing sub-certifications in advance of the filing of CSK’s Forms 10-
26 K for fiscal years 2002, 2003, and 2004, on which CSK’s CEO and Watson
27 relied upon to make their own representations in the Sarbanes-Oxley
28 certifications. In those sub-certifications, Fraser falsely represented that to his

1 knowledge the Forms 10-K did not “contain any material inaccuracies or
2 omissions involving or relating to the matters with respect to which I have
3 knowledge or responsibility.” At the time he made those certifications, Fraser
4 knew those representations were false;

5 (iii) signing due diligence certifications in connection with CSK’s Forms
6 10-K for fiscal years 2002, 2003, and 2004, falsely certifying that: (a) based on
7 his knowledge of the company’s operations, the Forms 10-K did not contain or
8 omit any material facts that would make the statements contained therein
9 inaccurate or misleading; (b) to the best of his knowledge “the financial
10 statements and other accompanying financial information fairly present in all
11 material respects the financial condition, results of operations and cash flows of
12 the Company for the period presented in such report;” and (c) he had “not made
13 any false statements to any senior management or the Company’s internal
14 auditors or independent outside auditors that would affect the Company’s
15 financial statements and disclosures.” At the time he made those certifications,
16 Fraser knew those statements were false; and

17 (iv) signing management representation letters to CSK’s independent
18 auditor in connection with its audit of CSK’s consolidated financial statements
19 included with CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004. In
20 those management representation letters, Fraser “confirm[ed]” that he was
21 “responsible for the fair presentation of the consolidated financial statements of
22 financial position, results of operations, and cash flows in conformity with
23 generally accepted accounting principles.”

24 60. Watson substantially participated in, and had intricate involvement with,
25 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
26 the financial statement filed therewith by among other things:

27 (i) signing the Forms 10-K for fiscal years 2002, 2003, and 2004;

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1 (ii) signing the Sarbanes-Oxley certifications filed with CSK's Forms 10-
2 K for fiscal years 2002, 2003, and 2004;

3 (iii) being a member of and participating in CSK's disclosure team
4 meetings to review and discuss CSK's Forms 10-K for fiscal years 2002, 2003, and
5 2004 before they were filed with the Commission as well as related accounting and
6 disclosure issues, such as the collectibility of LWT allowances; and

7 (iv) signing management representation letters to CSK's independent
8 auditor in connection with its audit of CSK's consolidated financial statements included
9 with CSK's Forms 10-K for fiscal years 2002, 2003, and 2004. In those management
10 representation letters, Watson "confirm[ed]" that he was "responsible for the fair
11 presentation of the consolidated financial statements of financial position, results of
12 operations, and cash flows in conformity with generally accepted accounting
13 principles."

14 61. O'Brien substantially participated, and had intricate involvement, in the
15 preparation of CSK's Forms 10-K for fiscal years 2003 and 2004, including the
16 financial statement filed therewith, by among other things:

17 (i) being CSK's controller, whose responsibilities included reviewing
18 CSK's financial statements for accuracy;

19 (ii) being a member of and participating in CSK's disclosure team
20 meetings to review and discuss CSK's Forms 10-K for fiscal years 2003 and
21 2004 before they were filed with the Commission as well as related accounting
22 and disclosure issues, such as the collectibility of LWT allowances;

23 (iii) signing sub-certifications in advance of the filing of CSK's Forms
24 10-K for fiscal years 2003 and 2004, on which CSK's CEO and Watson relied
25 upon to make their own representations in the Sarbanes-Oxley certifications. In
26 those sub-certifications, O'Brien falsely represented that to his knowledge the
27 Forms 10-K did not "contain any material inaccuracies or omissions involving or
28 relating to the matters with respect to which I have knowledge or responsibility;"

1 (iv) signing due diligence certifications in connection with CSK's Forms
2 10-K for fiscal years 2003 and 2004, certifying that (a) based on his knowledge
3 of the company's operations, the Forms 10-K did not contain or omit any
4 material facts that would make the statements contained therein inaccurate or
5 misleading, (b) to the best of his knowledge "the financial statements and other
6 accompanying financial information fairly present in all material respects the
7 financial condition, results of operations and cash flows of the Company for the
8 period presented in such report," and (c) he had "not made any false statements
9 to any senior management or the Company's internal auditors or independent
10 outside auditors that would affect the Company's financial statements and
11 disclosures." At the time he made those certifications, O'Brien knew that those
12 statements were false; and

13 (vi) signing management representation letters to CSK's independent
14 auditor in connection with its audit of CSK's consolidated financial statements
15 included with CSK's Forms 10-K for fiscal years 2003 and 2004. In those
16 management representation letters, O'Brien "confirm[ed]" that he was
17 "responsible for the fair presentation of the consolidated financial statements of
18 financial position, results of operations, and cash flows in conformity with
19 generally accepted accounting principles."

20 62. Opper substantially participated in Defendants' fraudulent scheme to
21 avoid writing off uncollectible vendor allowance amounts in CSK's annual reports, or,
22 in the alternative, provided substantial assistance to CSK in carrying out the fraudulent
23 scheme. Rather than sound the alarm on CSK's improper accounting, Opper chose to
24 become an essential participant in CSK's fraudulent scheme by among other things:

25 (i) using his position in charge of the day-to-day management of CSK's
26 vendor accounts receivable department, particularly CSK's LWT operations, to instruct
27 employees to make accounting entries to hide uncollectible vendor allowance
28 receivables. For example, on October 10, 2003, Opper instructed a CSK employee to

1 make an improper journal entry moving an outstanding 2002 LWT receivable to the
2 2003 LWT receivable.

3 (ii) approving the misapplication of paybacks to vendors and the
4 misapplication of those paybacks to later year LWT receivables;

5 (iii) tracking CSK's movement of funds to hide uncollectible vendor
6 allowance receivables and periodically providing this information to senior
7 management, including Fraser, Watson, and O'Brien; and

8 (iv) providing to CSK's independent auditor false documents and
9 explanations in order to hide that CSK could not collect a material portion of its vendor
10 allowance receivables. For example, in a November 24, 2003 memo to CSK's
11 independent auditor, Opper provided false information and documentation regarding
12 collections for the 2003 LWT program that were improperly applied to the 2002 LWT
13 program.

14 **IV. In Carrying Out And Covering Up The Fraud, Defendants**
15 **Repeatedly Lied To CSK's Independent Auditor**

16 63. Defendants Fraser, Watson, O'Brien, and CSK's independent auditor
17 regularly attended audit committee meetings and frequently and at length discussed the
18 collectibility of the outstanding LWT receivables. Defendants Fraser and Watson often
19 led the discussion regarding LWT collections, and regularly stated that the outstanding
20 LWT receivables were collectible.

21 64. To avoid detection of their fraudulent scheme, Defendants regularly lied
22 to CSK's independent auditor in connection with its reviews and audits of CSK's
23 financial statements.

24 65. In connection with the Forms 10-K CSK filed for fiscal years 2002, 2003,
25 and 2004, Fraser, Watson, and (starting in fiscal year 2003) O'Brien, signed
26 management representation letters to CSK's independent auditor. Specifically, in
27 connection with the Form 10-K for fiscal year 2002, Fraser and Watson signed a
28 management letter dated May 2, 2003; in connection with the Form 10-K for fiscal year

1 2003, Fraser, Watson, and O'Brien signed a management representation letter dated
2 April 14, 2004; and in connection with the Form 10-K for fiscal year 2004, Fraser,
3 Watson, and O'Brien signed a management representation letter dated May 2, 2005. In
4 each of those management representation letters, Fraser, Watson, and O'Brien falsely
5 representing that: (i) the receivables were collectible; (ii) the company's financial
6 statements were prepared in accordance with GAAP; and (iii) they had no knowledge of
7 any fraud involving management or employees with a significant role in internal
8 controls, or any other fraud that could have a material effect on the company's
9 consolidated financial statements. For fiscal years 2002 and 2003, Fraser, Watson, and
10 O'Brien also falsely represented that CSK had adequate internal controls. All of those
11 representations were false for the reasons set forth above. Fraser, Watson, and O'Brien
12 knew that these representations were false when they signed the letters.

13 66. Defendant Opper gave CSK's independent auditor modified schedules
14 that omitted the columns showing the uncollectible amounts and memoranda containing
15 false information.

16 **V. Defendants Circumvented CSK's Internal Controls**

17 67. During 2002, 2003, and part of 2004, Watson, O'Brien, and Opper
18 circumvented CSK's internal controls by, among other things, instructing or approving
19 the entry of false journal entries.

20 68. In 2004, CSK developed various policies regarding vendor allowances,
21 one of which disallowed side letters with terms that differed from the LWT agreements.
22 Contrary to this policy, however, Fraser directed that a vendor agreement relating to
23 LWT allowances be split into two, with one agreement backdated.

24 **VI. Offerings While The False Financial Information Was Outstanding**

25 69. While the false financial statements were outstanding, CSK engaged in
26 several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior
27 Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3
28 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4

1 5/8% senior exchangeable notes. CSK's materially false financial statements filed with
2 its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the
3 Form S-3 and Form S-4 Registration Statements filed with the Commission during
4 fiscal years 2004 and 2005.

5 70. With respect to the 2004 debt offering, on May 20, 2004 Fraser, Watson,
6 and O'Brien signed a management representation letter to CSK's independent auditor
7 confirming their prior representations contained in the April 14, 2004 management
8 representation letter provided with the fiscal year 2003 Form 10-K. The April 14
9 management representation letter stated that the 2003 LWT receivable reflected
10 amounts owed CSK for the 2003 LWT program year. Fraser, Watson, and O'Brien
11 knew this representation was false when they signed both the April 14 and May 20,
12 2004 letters.

13 71. CSK's materially false and misleading disclosures and financial
14 statements filed with its Forms 10-K for fiscal years 2002, 2003 and 2004 were
15 incorporated by reference in the various Form S-3 and Form S-4 Registration
16 Statements filed with the Commission during fiscal year 2002, 2004 and 2005.
17 Defendants knew that these registration statements were false and misleading when
18 filed because they incorporated misstatements from CSK's Forms 10-K.

19 **VII. Defendants Received Bonuses And Sold Stock During The**
20 **Fraudulent Scheme**

21 72. For the 2002 and 2003 fiscal years, Fraser and Watson each received a
22 bonus based, in part, on CSK's financial performance.

23 73. For the 2003 fiscal year, O'Brien and Oppen each received a bonus based,
24 in part, on CSK's financial performance.

25 74. Fraser, Watson, and Oppen sold CSK stock in 2003, 2004, and 2005,
26 during the period of the fraud. Their net profits were \$195,419, \$155,122, and
27 \$28,078.20, respectively.

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

75. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

76. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

77. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES**

**Violations and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder**

78. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

79. Defendants, and each of them, by engaging in the conduct described

1 above, directly or indirectly, in connection with the purchase or sale of a security, by
2 the use of means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices, or courses of business which operated
10 or would operate as a fraud or deceit upon other persons.

11 80. Alternatively, Opper knowingly provided substantial assistance to CSK in
12 its violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5 in connection with CSK's annual reports on Form
14 10-K for fiscal years 2003 and 2004.

15 81. By engaging in the conduct described above, Defendants violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
17 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 82. By engaging in the conduct described above and pursuant to Section 20(e)
19 of the Exchange Act, 15 U.S.C. § 78t(e), Opper aided and abetted CSK's violations,
20 and unless restrained and enjoined will continue to aid and abet violations, of Section
21 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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THIRD CLAIM FOR RELIEF
VIOLATIONS OF COMMISSION PERIODIC
REPORTING REQUIREMENTS
Aiding and Abetting Violations of

Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

83. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

84. CSK violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission annual reports on Form 10-K for fiscal years 2002, 2003, and 2004 that were materially false and failed to include material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

85. Fraser and Watson knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2002, 2003, and 2004.

86. O'Brien and Opper knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2003 and 2004.

87. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

1 **FOURTH CLAIM FOR RELIEF**

2 **RECORD-KEEPING VIOLATIONS**

3 **Aiding and Abetting Violations of**

4 **Section 13(b)(2)(A) of the Exchange Act and Violations of**

5 **Rule 13b2-1 thereunder**

6 88. The Commission realleges and incorporates by reference ¶¶ 1 through 74
7 above.

8 89. CSK violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
9 78m(b)(2)(A), by failing to make or keep books, records, and accounts, which, in
10 reasonable detail accurately and fairly reflected its transactions and disposition of its
11 assets.

12 90. Defendants knowingly provided substantial assistance to CSK's violation
13 of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

14 91. By engaging in the conduct described above and pursuant to Section 20(e)
15 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
16 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
17 continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

18 92. By engaging in the conduct described above, Defendants violated
19 Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified
20 CSK's books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act.
21 Unless restrained and enjoined, Defendants will continue to violate Rule 13b2-1, 17
22 C.F.R. § 240.13b2-1.

23 **FIFTH CLAIM FOR RELIEF**

24 **INTERNAL CONTROLS VIOLATIONS**

25 **Aiding and Abetting Violations of**

26 **Section 13(b)(2)(B) of the Exchange Act**

27 93. The Commission realleges and incorporates by reference ¶¶ 1 through 74
28 above.

1 94. CSK violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
2 78m(b)(2)(B), by failing to devise and maintain a system of internal accounting controls
3 sufficient to provide reasonable assurances that transactions were recorded as necessary
4 to permit preparation of financial statement in conformity with GAAP and to maintain
5 the accountability for assets.

6 95. Fraser, Watson, O'Brien, and Oppen knowingly provided substantial
7 assistance to CSK's violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
8 78m(b)(2)(B).

9 96. By engaging in the conduct described above and pursuant to Section 20(e)
10 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
11 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
12 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act, 15
13 U.S.C. § 78m(b)(2)(B).

14 **SIXTH CLAIM FOR RELIEF**

15 **CIRCUMVENTION OF INTERNAL CONTROLS AND**

16 **FALSIFICATION OF RECORDS**

17 **Violations of Section 13(b)(5) of the Exchange**

18 97. The Commission realleges and incorporates by reference ¶¶ 1 through 74
19 above.

20 98. By engaging in the conduct described above, Defendants violated Section
21 13(b)(5) of the Exchange Act, 15 U.S.C. §78m(b)(5), by knowingly circumventing or
22 failing to implement a system of internal accounting controls, or, directly or indirectly,
23 by knowingly falsifying or causing to be falsified any CSK books, records, or accounts
24 described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined,
25 Defendants will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C.
26 §78m(b)(5).

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1 **SEVENTH CLAIM FOR RELIEF**

2 **FALSE STATEMENT TO ACCOUNTANTS**

3 **Violations of Exchange Act Rule 13b2-2**

4 **(Against Defendants Fraser, Watson, and O'Brien)**

5 99. The Commission realleges and incorporates by reference ¶¶ 1 through 74
6 above.

7 100. Defendants Fraser, Watson, and O'Brien, directly or indirectly, (i) made,
8 or caused to be made, materially false or misleading statements or (ii) omitted to state,
9 or caused others to omit to state, material facts necessary in order to make statements
10 made, in light of the circumstances under which they were made, not misleading, to an
11 accountant in connection with an audit, review or examination of financial statements
12 or the preparation or filing of a document or report required to be filed with the
13 Commission.

14 101. By engaging in the conduct alleged above, defendants Fraser, Watson,
15 and O'Brien violated, and unless restrained and enjoined will continue to violate,
16 Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

17 **EIGHTH CLAIM FOR RELIEF**

18 **CERTIFICATION VIOLATIONS**

19 **Violations of Rule 13a-14 of the Exchange Act**

20 **(Against Defendant Watson)**

21 102. The Commission realleges and incorporates by reference ¶¶ 1 through 74
22 above.

23 103. Watson violated Rule 13a-14 by signing the certifications included with
24 CSK fiscal year 2002, 2003, and 2004 Forms 10-K, certifying, among other things, that
25 the forms fully complied with the requirements of the Exchange Act and fairly
26 presented, in all material respects, the financial condition and results of operations of
27 the company, when, in fact, the reports contained untrue statements of material fact and
28 omitted material information necessary to make the reports not misleading.

1 104. By engaging in the conduct described above, defendant Watson violated
2 Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14. Unless restrained and enjoined,
3 defendant Watson will continue to violate Rule 13a-14, 17 C.F.R. § 240.13a-14.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I**

7 Issue findings of fact and conclusions of law that the defendants committed the
8 alleged violations.

9 **II**

10 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
11 enjoining Defendant Fraser and his agents, servants, employees, attorneys, and those
12 persons in active concert or participation with any of them, who receive actual notice of
13 the order by personal service or otherwise, from violating Section 17(a) of the
14 Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
15 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections
16 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1
17 thereunder.

18 **III**

19 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
20 enjoining Defendant Watson and his agents, servants, employees, attorneys, and those
21 persons in active concert or participation with any of them, who receive actual notice of
22 the order by personal service or otherwise, from violating Section 17(a) of the
23 Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
24 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of
25 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20
26 and 13a-1 thereunder.

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28**IV**

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant O'Brien and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder.

V

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder. Or, in the alternative, issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Section 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20 and 13a-1 thereunder.

VI

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Fraser, Watson, and O'Brien from acting as officers

1 or directors of any issuer that has a class of securities registered pursuant to Section 12
2 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
3 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4 **VII**

5 Order defendants Fraser, Watson, O'Brien, and Opper to disgorge all ill-gotten
6 gains from their illegal conduct, together with prejudgment interest thereon.

7 **VIII**

8 Order defendants Fraser, Watson, O'Brien, and Opper to pay civil penalties
9 under Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

10 **IX**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **X**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 5, 2009

Respectfully submitted,

20 

21 C. DABNEY O'RIORDAN

22 Attorney for Plaintiff

23 Securities and Exchange Commission

1 DONALD W. SEARLES, California Bar No. 135705
E-mail: searlesd@sec.gov
2 LORRAINE B. ECHAVARRIA, California Bar No. 191860
E-mail: echavarrial@sec.gov
3 ROBERT H. CONRRAD, California Bar No. 199498
E-mail: conrradr@sec.gov
4 C. DABNEY O'RIORDAN, California Bar No. 205158
E-mail: oriordand@sec.gov
5

Attorneys for Plaintiff
6 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
7 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
8 Los Angeles, California 90036-3648
Telephone: (323) 965-3998
9 Facsimile: (323) 965-3908
10

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 MARTIN G. FRASER; DON W.
18 WATSON; EDWARD W. O'BRIEN; and
GARY M. OPPER,

19 Defendants.
20

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. CSK Auto Corporation (“CSK”) was one of the largest specialty retailers
5 of automotive parts and accessories in the United States. Headquartered in Phoenix,
6 Arizona, CSK became a publicly traded company in March 1999. As of January 30,
7 2005, CSK operated 1,134 stores in nineteen states under three brand names: Checker
8 Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after the conduct
9 alleged in this Complaint, CSK became a wholly-owned subsidiary of O’Reilly
10 Automotive, Inc.

11 2. As a retailer of automotive products, CSK purchased products from
12 vendors that manufacture automotive parts and accessories. From at least fiscal years
13 2002 through 2004, a significant portion of CSK’s income was derived from allowances
14 it received from its vendors. Vendor allowances are used to provide retailers, such as
15 CSK, with financial support to market the vendor’s products. In general, CSK
16 accounted for vendor allowances by reducing its costs of goods sold. Thus, the more
17 vendor allowances CSK earned, the lower its costs of goods sold, resulting in greater
18 reported pre-tax income. During the years at issue, vendor allowances were vital to
19 CSK’s financials, increasing its reported pre-tax income by tens of millions of dollars
20 each fiscal year.

21 3. During fiscal years 2002, 2003, and 2004, CSK knew that there were
22 millions of dollars of vendor allowances that were recognized on its books but were not
23 collectible. Rather than write off the uncollectible receivables, as required by Generally
24 Accepted Accounting Principles (“GAAP”), CSK and its senior management engaged
25 in a scheme to hide the uncollectible receivables through various accounting tricks. In
26 addition, during fiscal year 2003, CSK over recognized millions of dollars of vendor
27 allowances. To perpetuate the fraudulent scheme, CSK’s senior management lied to the
28 company’s independent auditors and audit committee.

1 4. If CSK had written off the uncollectible vendor allowances, it would have
2 increased the company's expenses and decreased its income. Because CSK concealed
3 its uncollectible vendor allowances, CSK's annual reports filed with the Commission
4 for fiscal years 2002, 2003, and 2004 materially overstated the company's financial
5 results in violation of GAAP and misled the public about the company's financial
6 performance.

7 5. During the relevant time period, defendant Martin G. Fraser ("Fraser")
8 served as CSK's chief operating officer and president, defendant Don W. Watson
9 ("Watson") served as its chief financial officer, defendant Edward W. O'Brien
10 ("O'Brien") served as a vice president and controller, and defendant Gary M. Opper
11 ("Opper") served as its director of credits and receivables (Fraser, Watson, O'Brien,
12 and Opper are collectively referred to herein as "Defendants"). Because of Fraser's and
13 Watson's conduct, CSK filed with the Commission a false annual report for fiscal year
14 2002 that fraudulently overstated its pre-tax income for that year by approximately
15 47%, or \$11 million. In addition, because of Defendants' conduct, CSK filed false
16 annual reports with the Commission that fraudulently overstated its pre-tax income for
17 fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income
18 instead of a pre-tax loss, and for fiscal year 2004 by approximately 65%, or \$21
19 million.

20 6. As a result of Defendants' fraudulent conduct, CSK restated its financial
21 statements as part of its Form 10-K for fiscal year 2004 (the "First Restatement"). As
22 part of the First Restatement, CSK reduced its previously recognized vendor allowances
23 for fiscal years 2002, 2003 and the first three quarters of fiscal year 2004. Defendants,
24 however, continued to conceal known, significant uncollectible vendor allowance
25 receivables. The First Restatement also falsely attributed the vendor allowance
26 adjustments to mere errors in estimates and bookkeeping mistakes rather than to
27 Defendants' fraudulent conduct.

28

1 7. As a result of Defendants' failure to acknowledge and write off the
2 magnitude of CSK's uncollectible vendor allowance receivables in the First
3 Restatement, CSK still had approximately \$15 million in uncollectible vendor
4 allowance receivables, which, under GAAP, should have been written off. Defendants
5 made a final attempt to collect that \$15 million deficit by intentionally over billing its
6 vendors. When the vendors complained about being double billed, CSK paid back the
7 amounts it had wrongfully collected, but incorrectly accounted for some of those
8 paybacks and mischaracterized the reasons for other paybacks to avoid detection that
9 the company had over collected vendor allowances.

10 8. Each of the Defendants knew CSK was not writing off uncollectible
11 vendor allowances receivables and was over recognizing vendor allowances resulting in
12 CSK's financial statements for fiscal years 2002, 2003, and 2004 being materially
13 misstated. Defendants Fraser and Watson substantially participated in the preparation
14 of CSK's 2002, 2003, and 2004 false financial statements. Defendant O'Brien
15 substantially participated in the preparation of the 2003 and 2004 false financial
16 statements. Defendant Opper substantially participated in, or provided substantial
17 assistance to, the preparation of the false 2003 and 2004 financial statements.

18 9. Based on their conduct, Defendants, among other things, violated the
19 antifraud provisions of the federal securities laws, falsified CSK's books and records,
20 circumvented CSK's internal controls, and lied to CSK's independent auditors. The
21 Commission seeks an order enjoining Defendants from future violations of the
22 securities laws, requiring Defendants to disgorge ill-gotten gains with prejudgment
23 interest, ordering Defendants to pay civil monetary penalties, requiring Watson to
24 reimburse stock profits pursuant to Section 304 of the Sarbanes-Oxley Act, barring
25 Fraser, Watson, and O'Brien from serving as officers or directors of a public company,
26 and providing other appropriate relief.

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28

1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
4 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e) & 78aa. Defendants have directly or indirectly made use of the
7 means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
8 national securities exchange in connection with the transactions, acts, practices and
9 courses of business alleged in this Complaint.

10 11. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa,
12 because defendants reside and transact business within this district and certain of the
13 transactions, acts, practices and courses of conduct constituting violations of the federal
14 securities laws alleged in this Complaint occurred within this district.

15 **THE DEFENDANTS**

16 12. **Martin G. Fraser** (53) is a resident of Phoenix, Arizona, and was CSK’s
17 chief operating officer and president from 2000 until September 2006, when he
18 resigned at CSK’s request.

19 13. **Don W. Watson** (53) is a resident of Gilbert, Arizona. From January
20 1998 to September 2005, Watson was CSK’s chief financial officer, senior vice
21 president, and treasurer. Watson served as CSK’s chief administrative officer and
22 senior vice president from September 2005 to his termination in October 2006.

23 14. **Edward W. O’Brien** (46) is a resident of Cave Creek, Arizona. O’Brien
24 was CSK’s controller and vice president from March 2003 until his termination in
25 September 2006.

26 15. **Gary M. Opper** (56) is a resident of Mesa Arizona. Opper was CSK’s
27 director of credit and receivables, reporting to O’Brien, from March 17, 2003 until he
28 was terminated in September 2006.

1 **RELATED PARTY**

2 16. **CSK Auto Corporation** is a Delaware corporation with its principal
3 executive offices in Phoenix, Arizona. CSK's common stock was registered with the
4 Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York
5 Stock Exchange. On July 11, 2008, CSK became a wholly owned subsidiary of
6 O'Reilly Automotive, Inc.

7 **BACKGROUND**

8 **I. CSK's "Let's Work Together" Program**

9 17. Each year, most of CSK's vendors agreed to pay vendor allowances.
10 Although CSK had various vendor allowance programs, its largest was its "Let's Work
11 Together" program ("LWT"). Typically, LWT agreements covered a one-year period,
12 which CSK referred to as the "program year." Although the LWT agreements varied,
13 CSK generally earned LWT allowances at a set dollar amount, as a percentage of the
14 amount CSK spent to purchase the vendor's product, or as a certain number of cents per
15 item CSK purchased from the vendor.

16 18. CSK recognized LWT allowances ratably, on a monthly basis, based on
17 its estimate of the total allowances it expected to earn for the entire program year.
18 Thus, CSK did not recognize LWT allowances as they were actually earned or
19 collected. In theory, CSK's estimate was based on the LWT agreement and CSK's
20 expected purchases from its vendors. In general, CSK recognized LWT allowances as a
21 reduction to costs of sales (an expense), thereby increasing the company's pre-tax
22 income.

23 19. As CSK recognized LWT allowances for a given program year, it
24 increased the LWT account receivable for that program year. Each LWT program year
25 had its own account receivable. As CSK collected LWT allowances for a particular
26 program year, GAAP required that CSK reduce the outstanding receivable for that same
27 LWT program year.

1 vendors. Through this scheme, CSK avoided writing off tens of millions of dollars in
2 uncollectible LWT receivables, which it had previously recognized.

3 24. CSK “filled the bucket” by taking LWT allowances collected for later
4 program years and applying them to reduce an earlier LWT program year’s account
5 receivable. Specifically, CSK: (i) made baseless journal entries reducing the account
6 receivable for a prior LWT program year with an offsetting increase to the account
7 receivable for a later LWT program year; and (ii) applied LWT allowance collections
8 for a later LWT program year to an earlier program year’s LWT account receivable.

9 25. CSK also failed to write off LWT allowances it had over collected for
10 prior LWT program years and ultimately paid back to its vendors. Instead of writing
11 off amounts CSK paid back, which would reduce its pre-tax income, CSK increased a
12 later LWT program year’s account receivable, making it appear that it had collected an
13 older account receivable when all CSK had done was move the outstanding receivable
14 balance to a more recent year. This accounting treatment was contrary to GAAP
15 because by paying an amount back to a vendor for a prior LWT program year, CSK
16 acknowledged its uncollectibility and should have written off the amount.

17 **A. During CSK’s 2002 Fiscal Year, The Company Concealed**
18 **Approximately \$11 Million Of Uncollectible Vendor Allowances**

19 26. During its 2002 fiscal year, CSK failed to write off approximately \$11
20 million of uncollectible vendor allowances it had recognized in previous years, most
21 significantly as part of the 2001 LWT program year. Instead of writing off the
22 uncollectible vendor allowances, CSK: (i) made improper journal entries moving
23 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT
24 account receivable; (ii) misapplied paybacks of approximately \$3 million to the 2002
25 LWT receivable; and (iii) reached an agreement whereby a vendor agreed to accept an
26 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK
27 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT
28 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK overstated its

1 pre-tax income by approximately \$11 million, or 47%.

2 27. Throughout fiscal year 2002, Fraser and Watson knew of CSK's
3 numerous efforts to hide uncollectible LWT accounts receivable and that, as a result,
4 CSK's financial statements were materially misstated.

5 28. During fiscal year 2001, the company's controller at the time informed
6 Fraser and Watson that CSK was recognizing more LWT allowances for the 2001
7 program year than it was actually earning or likely to earn during that program year.

8 29. The 2001 LWT program year ended in September 2001. CSK tried to
9 collect the outstanding 2001 LWT account receivable throughout fiscal year 2002.

10 30. During fiscal year 2002, CSK issued a \$2 million debit memo to a vendor
11 to collect LWT allowances recognized as part of the 2001 LWT program year. The
12 vendor vigorously disputed the debit memo claiming that CSK had not purchased
13 enough products from the vendor to have earned the \$2 million. Fraser negotiated the
14 dispute. By the middle of the 2002 fiscal year, CSK agreed to forego collecting \$2
15 million worth of LWT allowances it expected to earn on purchases during the 2002 and
16 2003 LWT program years in exchange for the vendor accepting the \$2 million debit
17 memo. Both Fraser and Watson knew that the vendor had agreed to accept the already-
18 issued \$2 million debit memo only in exchange for CSK's agreement not to collect \$2
19 million in LWT for the 2002 and 2003 LWT program years. Since the vendor only
20 accepted the debit memo in exchange for future benefits from CSK, *i.e.*, future
21 purchases of product from the vendor, GAAP required that CSK immediately write off
22 the \$2 million because it was not collectible as part of the 2001 LWT program year.

23 31. During fiscal year 2002, CSK had to make various paybacks to vendors
24 for vendor allowances it had recognized during prior fiscal years. Instead of correctly
25 accounting for those paybacks by writing them off and increasing CSK's expenses, the
26 company increased the 2002 LWT program year's account receivable. Watson
27 instructed CSK employees that they would have to raise additional allowances to cover
28 for those amounts paid back because CSK "could not afford a charge for any

1 paybacks.” Fraser knew of Watson’s instruction and CSK’s failure to write off vendor
2 allowances paid back to vendors.

3 32. In October 2002, Fraser, Watson, and others met to discuss the
4 collectibility of the 2001 LWT account receivable, which had been outstanding for
5 approximately one year. At that time, of the remaining outstanding balance for the
6 2001 LWT account receivable, \$3.2 million was known to be uncollectible and \$4.5
7 million was “questionable.” These amounts did not include either the \$2 million Fraser
8 and Watson already knew was uncollectible or the paybacks.

9 33. Rather than write off these uncollectible amounts, as required by GAAP,
10 in October and November 2002, CSK devised a plan to move collections for the 2002
11 LWT program year to cover the 2001 LWT account receivable. As part of that plan, in
12 or about November 2002, Watson instructed a CSK employee to identify collections for
13 the 2002 LWT program year to move to the 2001 LWT program year account
14 receivable to cover 2001 shortfalls.

15 **B. During Fiscal Year 2003, CSK Concealed Approximately \$24 Million**
16 **In Known, Uncollectible Vendor Allowances And Improperly**
17 **Recognized Approximately \$10 Million In Vendor Allowances**

18 34. During its 2003 fiscal year, CSK used various tactics to fraudulently
19 conceal, rather than properly write off, approximately \$24 million in uncollectible
20 vendor allowances recognized during previous LWT program years, primarily as part of
21 the 2002 LWT program year. Moreover, CSK improperly and prematurely recognized
22 \$6 million in vendor allowances and improperly recognized an additional \$4 million of
23 LWT allowances. As a result, in its Form 10-K filed on April 15, 2004, CSK overstated
24 its 2003 pre-tax income by approximately \$34 million, turning its actual pre-tax loss of
25 approximately \$18 million into purported pre-tax income of \$16 million. At the time of
26 that filing, Defendants knew CSK had failed to write off uncollectible vendor
27 allowances and over recognized allowances, and that, as a result, CSK’s financial
28 statements were materially misstated.

1 35. During fiscal year 2003, CSK hid approximately \$24 million in
2 uncollectible vendor allowance receivables. First, CSK applied approximately \$10
3 million in 2003 LWT program year collections to the 2002 LWT program year
4 receivable. Second, CSK failed to write off approximately \$5 million in vendor
5 allowances CSK had over collected during prior LWT program years but had to pay
6 back during fiscal year 2003. Third, CSK made a baseless journal entry decreasing the
7 2002 LWT receivable by \$9 million and increasing the 2003 LWT receivable by the
8 same amount, which reduced the 2002 LWT receivable to zero.

9 36. During fiscal year 2003, Defendants knew CSK was failing to write off
10 uncollectible LWT allowances. During fiscal year 2003, Defendants regularly received
11 information regarding CSK's efforts to hide the uncollectible LWT allowances. For
12 example, on or about September 9, 2003, Opper sent an email to Fraser, Watson,
13 O'Brien and others discussing the collection of the 2002 LWT account receivable,
14 which was then approximately one-year old. The email stated that: (i) "approximately
15 \$9.6mm in 2003 collections . . . were moved to 2002 to cover short falls from prior
16 periods;" and (ii) the outstanding 2002 LWT program year receivable balance did not
17 include \$5.4 million in 2002 paybacks. Defendant Opper referenced in the email a
18 chart he had attached that explained the "\$24.2 million in LWT exposure from 2002
19 and prior." That chart included detailed explanations regarding millions of dollars of
20 uncollectible LWT allowances for prior years, including the 2002 LWT program year.

21 37. Defendants also met to discuss the uncollectible LWT receivables during
22 fiscal year 2003. For example, Defendants attended a meeting on or about September
23 17, 2003 to discuss the "2002 Outstanding LWT status" where Opper provided copies
24 of the chart attached to his September 9, 2003 email.

25 38. During the fourth quarter of 2003, CSK prematurely recognized
26 approximately \$6 million in additional vendor allowances, which would not be earned,
27 if at all, until fiscal year 2004, in order to meet its earnings numbers. On December 23,
28 2003, Defendants and others met with CSK's independent auditor in Fraser's office to

1 discuss the requirements for the allowances to be recognized in 2003. During the
2 meeting, CSK's independent auditor explained that the agreements had to state that the
3 allowances were for 2003, that no future performance was required of CSK, and that if
4 CSK could not collect the full amount using one method of collection, then CSK could
5 change the collection method. Defendants had vendors sign agreements making it
6 appear that CSK had earned additional LWT allowances during 2003, when, in fact,
7 those allowances would be earned, if at all, based on purchases made during 2004.

8 39. At the end of fiscal 2003, CSK obtained approximately \$4 million of
9 additional warranty allowances from two vendors. At that same time, CSK had a
10 warranty deficit of approximately \$13 million, which represented returns from
11 customers covered by warranties in excess of the warranty accrual recorded by CSK.
12 Under GAAP, a warranty deficit should be written off unless additional warranty
13 allowances are obtained to cover the deficit. However, instead of applying the \$4
14 million of additional warranty allowances to offset a portion of its warranty deficit
15 balance, CSK improperly recognized those warranty allowances as additional LWT
16 allowances. Thus, the warranty deficit included in CSK's inventory balance remained
17 \$13 million, and CSK improperly inflated its pre-tax income for fiscal year 2003 by
18 approximately \$4 million.

19 **C. During Fiscal Year 2004, CSK Failed To Write Off Approximately**
20 **\$21 Million Of Known, Uncollectible Vendor Allowances**

21 40. During fiscal year 2004, CSK concealed that it could not collect vendor
22 allowances totaling approximately \$21 million. Specifically, CSK applied:
23 (i) approximately \$11 million in 2004 LWT program year collections to the 2003 LWT
24 account receivable; (ii) approximately \$4 million CSK paid back to vendors for the
25 2003 and 2002 LWT program years to the 2004 LWT receivable; and
26 (iii) approximately \$6 million via baseless journal entries to the 2003 LWT receivable
27 from other vendor allowance receivables in other time periods. As a result, in its Form
28 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year 2004 by

1 approximately 65%, or \$21 million. At the time of that filing, Defendants knew CSK
2 had failed to write off uncollectible vendor allowances and that, as a result, the
3 company's financial statements were materially misstated.

4 41. CSK's 2004 Form 10-K included CSK's First Restatement, which
5 partially restated CSK's vendor allowances recognized during prior years. Specifically,
6 CSK restated because it could not collect all of the 2003 LWT receivable. In addition,
7 CSK restated for vendor allowances paid back during fiscal year 2003 that CSK failed
8 to properly write off during the 2003 fiscal year. CSK's restatement regarding vendor
9 allowances resulted in CSK adjusting its costs of sales upward and its pre-tax income
10 downward, for the first three quarters of 2004, and the 2003, 2002, and 2001 fiscal
11 years by \$1.9 million, \$7.1 million, \$9.0 million, and \$0.5 million, respectively.

12 42. The First Restatement, however, falsely attributed the vendor allowance
13 restatement to "errors in estimation in earlier periods" and "vendor allowances recorded
14 in improper periods" due to "imprecise estimates, bookkeeping errors and recording
15 allowances in the incorrect periods." Defendants knew the reasons stated for the
16 vendor allowance restatement were false because the First Restatement resulted from
17 Defendants' fraudulent scheme.

18 43. The First Restatement also failed to: (i) write off all known, uncollectible
19 vendor allowance receivables; (ii) disclose the full extent of CSK's efforts to hide the
20 uncollectible receivables from its independent auditors; and (iii) disclose CSK's over
21 recognition of vendor allowances during fiscal 2003. Defendants knew about these
22 misstatements contained in the First Restatement.

23 44. While preparing the First Restatement, Defendants hid the full extent of
24 their fraudulent conduct from CSK's independent auditor. For example, despite the
25 independent auditor's request for a list of all paybacks CSK had made to its vendors,
26 Watson, O'Brien, and Opper knowingly provided an incomplete list. As a result, CSK
27 failed to write off \$4 million in paybacks it had made during 2004 and applied to the
28 2003 LWT receivable. Similarly, Fraser and Watson negotiated agreements with

1 vendors whereby the vendors agreed to pay additional amounts of LWT in exchange for
2 CSK's acceptance to pay more for their goods. Fraser, however, directed others to
3 falsify documents to make it appear that CSK had entered into separate, seemingly
4 unrelated agreements, containing different dates, in order to hide from CSK's
5 independent auditor that CSK's receipt of additional LWT allowances were contingent
6 upon CSK's willingness to grant price increases offsetting the LWT amounts the
7 vendors purportedly agreed to pay. Thus, Defendants knew they were hiding material
8 information from CSK's independent auditor and excluding from the restatement,
9 intentional accounting errors regarding vendor allowances.

10 **D. To Further Cover Up Its Fraud In The Wake Of The First**
11 **Restatement, CSK Debited Its Vendors For Amounts It Knew They**
12 **Did Not Owe**

13 45. After filing its First Restatement in May 2005, CSK's outstanding 2004
14 LWT account receivable still contained approximately \$15 million that was not
15 collectible. In an effort to conceal that uncollectible receivable, CSK issued debit
16 memos to the vendors for the \$15 million at the end of July 2005.

17 46. As of July 15, 2005, Watson, O'Brien, and Opper knew that \$15 million
18 of the outstanding 2004 LWT receivable was not uncollectible because it had
19 previously been collected and had been applied to prior LWT program year receivables
20 as part of CSK's fraudulent scheme.

21 47. In July 2005, CSK issued debit memos totaling approximately \$31
22 million, including the \$15 million that CSK had previously collected. Opper instructed
23 employees to prepare the debit memos to collect the entire \$31 million even though \$15
24 million of the allowances had already been collected. When the debit memos were
25 issued, Fraser met with Watson, O'Brien, Opper, and other CSK employees. Fraser
26 told the group that CSK needed to make the debit memos "stick" and that, when it had
27 sent out debit memos in the past, CSK paid back only about ten percent of the debits.

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1 48. In late July 2005 or early August 2005, Fraser was told that many of the
2 buyers saw errors in the proposed debits. Fraser responded that probably 70% of the
3 debits would “stick” and that many of the vendors would not even notice them. At least
4 as early as September 2005, Fraser knew that a substantial amount CSK had debited
5 was at risk of having to be paid back to its vendors.

6 49. After the vendors complained about the debit memos, CSK continued to
7 hide the uncollectible LWT allowances. First, CSK negotiated deals with vendors for
8 future vendor allowances that CSK offset against the already-issued 2004 LWT debit
9 memos. Second, CSK falsified its books and records to conceal that it was paying back
10 portions of the debit memos. For example, CSK issued to certain vendors credit
11 memos, which O’Brien created or caused to be created, that falsely described the
12 paybacks as being related to “costing,” “pricing increases—steel surcharge,” or
13 “warranty.” In fact, the credit memos paid back LWT amounts that CSK had
14 improperly debited.

15 **II. CSK’s Forms 10-K For Fiscal Years 2002, 2003, And 2004 Contained**
16 **Materially False Information**

17 50. CSK filed annual reports on Form 10-K for fiscal years 2002, 2003, and
18 2004.

19 51. The notes to the financial statements included with CSK’s Forms 10-K
20 for fiscal years 2002, 2003, and 2004 falsely stated that “Specific accounts are written
21 off against the allowance when management determines the account is uncollectible.”
22 In fact, CSK did not write off known, uncollectible vendor allowance receivables, but
23 rather engaged in a scheme to avoid and hide such write offs, as set forth above.

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1 52. In all, CSK understated its costs of goods sold during fiscal years 2002
2 through 2004 as follows:

FY	Concealed Receivables From Prior Years			Over Recognized Allowances / Other Uncollectible Receivables	Total
	Unsupported Journal Entries	Misapplied Debit Memos	Misapplied Paybacks		
2002	\$6M	--	\$3 M	\$2 M	\$11 M
2003	\$9 M	\$10 M	\$5 M	\$10 M	\$34 M
2004	\$6 M	\$11 M	\$4 M	--	\$21 M

11 53. CSK's Form 10-K for fiscal year 2002 falsely overstated CSK's pre-tax
12 income by approximately 47%, or \$11 million. When CSK filed its Form 10-K for
13 fiscal year 2002, Fraser and Watson knew that the company's financial statement were
14 materially misstated.

15 54. CSK's Form 10-K for fiscal year 2003 overstated CSK's pre-tax income
16 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax
17 loss. When CSK filed its Form 10-K for fiscal year 2003, Defendants knew that the
18 company's financial statements were materially misstated.

19 55. CSK's Form 10-K for fiscal year 2004, which also contained the First
20 Restatement, overstated CSK's pre-tax income by approximately 65%, or \$21 million.
21 In addition, it falsely attributed the need for the vendor allowance restatement to
22 estimation errors, imprecise estimates, and bookkeeping errors, rather than to
23 Defendants' fraudulent conduct. When CSK filed its Form 10-K for fiscal year 2004,
24 Defendants knew the company's financial statements were materially misstated and
25 mischaracterized the reasons for the vendor allowance restatement.

26 56. Watson, as CSK's CFO, signed CSK's annual reports and the
27 accompanying Sarbanes-Oxley certifications. In connection with each of the Forms 10-
28 K filed for fiscal years 2002, 2003, and 2004, Watson certified he had no knowledge of

1 any untrue statement of material fact in the report, the annual report “fairly presents in
2 all material respects the financial condition, results of operations, and cash flows . . .,”
3 and that he had disclosed to CSK’s independent auditors and audit committee “any
4 fraud, whether or not material, that involved management or any other employees who
5 have a significant role in the registrant’s internal controls.” At the time he made those
6 certifications, Watson knew that each of those statements was false.

7 57. On March 27, 2006, CSK announced that it was conducting an internal
8 investigation relating to, among other things, accounting irregularities regarding vendor
9 allowances. CSK’s stock price immediately dropped 8% and dropped a total of 13%
10 for the week.

11 58. On May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating,
12 for the second time, its financial statements for 2002, 2003, and 2004 due, in part, to the
13 fraudulent scheme relating to CSK’s failure to write off uncollectible vendor
14 allowances.

15 **III. Defendants Substantially Participated In Making CSK’s Misleading Annual**
16 **Reports**

17 59. Fraser substantially participated in, and had intricate involvement with,
18 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
19 the financial statement filed therewith, by among other things:

20 (i) being a member of and participating in CSK’s disclosure team
21 meetings to review and discuss CSK’s Forms 10-K for fiscal years 2002, 2003,
22 and 2004 before they were filed with the Commission as well to review and
23 discuss related accounting and disclosure issues, such as collectibility of LWT
24 allowances;

25 (ii) signing sub-certifications in advance of the filing of CSK’s Forms 10-
26 K for fiscal years 2002, 2003, and 2004, on which CSK’s CEO and Watson
27 relied upon to make their own representations in the Sarbanes-Oxley
28 certifications. In those sub-certifications, Fraser falsely represented that to his

1 knowledge the Forms 10-K did not “contain any material inaccuracies or
2 omissions involving or relating to the matters with respect to which I have
3 knowledge or responsibility.” At the time he made those certifications, Fraser
4 knew those representations were false;

5 (iii) signing due diligence certifications in connection with CSK’s Forms
6 10-K for fiscal years 2002, 2003, and 2004, falsely certifying that: (a) based on
7 his knowledge of the company’s operations, the Forms 10-K did not contain or
8 omit any material facts that would make the statements contained therein
9 inaccurate or misleading; (b) to the best of his knowledge “the financial
10 statements and other accompanying financial information fairly present in all
11 material respects the financial condition, results of operations and cash flows of
12 the Company for the period presented in such report;” and (c) he had “not made
13 any false statements to any senior management or the Company’s internal
14 auditors or independent outside auditors that would affect the Company’s
15 financial statements and disclosures.” At the time he made those certifications,
16 Fraser knew those statements were false; and

17 (iv) signing management representation letters to CSK’s independent
18 auditor in connection with its audit of CSK’s consolidated financial statements
19 included with CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004. In
20 those management representation letters, Fraser “confirm[ed]” that he was
21 “responsible for the fair presentation of the consolidated financial statements of
22 financial position, results of operations, and cash flows in conformity with
23 generally accepted accounting principles.”

24 60. Watson substantially participated in, and had intricate involvement with,
25 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
26 the financial statement filed therewith by among other things:

27 (i) signing the Forms 10-K for fiscal years 2002, 2003, and 2004;

28

1 (ii) signing the Sarbanes-Oxley certifications filed with CSK's Forms 10-
2 K for fiscal years 2002, 2003, and 2004;

3 (iii) being a member of and participating in CSK's disclosure team
4 meetings to review and discuss CSK's Forms 10-K for fiscal years 2002, 2003, and
5 2004 before they were filed with the Commission as well as related accounting and
6 disclosure issues, such as the collectibility of LWT allowances; and

7 (iv) signing management representation letters to CSK's independent
8 auditor in connection with its audit of CSK's consolidated financial statements included
9 with CSK's Forms 10-K for fiscal years 2002, 2003, and 2004. In those management
10 representation letters, Watson "confirm[ed]" that he was "responsible for the fair
11 presentation of the consolidated financial statements of financial position, results of
12 operations, and cash flows in conformity with generally accepted accounting
13 principles."

14 61. O'Brien substantially participated, and had intricate involvement, in the
15 preparation of CSK's Forms 10-K for fiscal years 2003 and 2004, including the
16 financial statement filed therewith, by among other things:

17 (i) being CSK's controller, whose responsibilities included reviewing
18 CSK's financial statements for accuracy;

19 (ii) being a member of and participating in CSK's disclosure team
20 meetings to review and discuss CSK's Forms 10-K for fiscal years 2003 and
21 2004 before they were filed with the Commission as well as related accounting
22 and disclosure issues, such as the collectibility of LWT allowances;

23 (iii) signing sub-certifications in advance of the filing of CSK's Forms
24 10-K for fiscal years 2003 and 2004, on which CSK's CEO and Watson relied
25 upon to make their own representations in the Sarbanes-Oxley certifications. In
26 those sub-certifications, O'Brien falsely represented that to his knowledge the
27 Forms 10-K did not "contain any material inaccuracies or omissions involving or
28 relating to the matters with respect to which I have knowledge or responsibility;"

1 (iv) signing due diligence certifications in connection with CSK's Forms
2 10-K for fiscal years 2003 and 2004, certifying that (a) based on his knowledge
3 of the company's operations, the Forms 10-K did not contain or omit any
4 material facts that would make the statements contained therein inaccurate or
5 misleading, (b) to the best of his knowledge "the financial statements and other
6 accompanying financial information fairly present in all material respects the
7 financial condition, results of operations and cash flows of the Company for the
8 period presented in such report," and (c) he had "not made any false statements
9 to any senior management or the Company's internal auditors or independent
10 outside auditors that would affect the Company's financial statements and
11 disclosures." At the time he made those certifications, O'Brien knew that those
12 statements were false; and

13 (vi) signing management representation letters to CSK's independent
14 auditor in connection with its audit of CSK's consolidated financial statements
15 included with CSK's Forms 10-K for fiscal years 2003 and 2004. In those
16 management representation letters, O'Brien "confirm[ed]" that he was
17 "responsible for the fair presentation of the consolidated financial statements of
18 financial position, results of operations, and cash flows in conformity with
19 generally accepted accounting principles."

20 62. Opper substantially participated in Defendants' fraudulent scheme to
21 avoid writing off uncollectible vendor allowance amounts in CSK's annual reports, or,
22 in the alternative, provided substantial assistance to CSK in carrying out the fraudulent
23 scheme. Rather than sound the alarm on CSK's improper accounting, Opper chose to
24 become an essential participant in CSK's fraudulent scheme by among other things:

25 (i) using his position in charge of the day-to-day management of CSK's
26 vendor accounts receivable department, particularly CSK's LWT operations, to instruct
27 employees to make accounting entries to hide uncollectible vendor allowance
28 receivables. For example, on October 10, 2003, Opper instructed a CSK employee to

1 make an improper journal entry moving an outstanding 2002 LWT receivable to the
2 2003 LWT receivable.

3 (ii) approving the misapplication of paybacks to vendors and the
4 misapplication of those paybacks to later year LWT receivables;

5 (iii) tracking CSK's movement of funds to hide uncollectible vendor
6 allowance receivables and periodically providing this information to senior
7 management, including Fraser, Watson, and O'Brien; and

8 (iv) providing to CSK's independent auditor false documents and
9 explanations in order to hide that CSK could not collect a material portion of its vendor
10 allowance receivables. For example, in a November 24, 2003 memo to CSK's
11 independent auditor, Opper provided false information and documentation regarding
12 collections for the 2003 LWT program that were improperly applied to the 2002 LWT
13 program.

14 **IV. In Carrying Out And Covering Up The Fraud, Defendants**
15 **Repeatedly Lied To CSK's Independent Auditor**

16 63. Defendants Fraser, Watson, O'Brien, and CSK's independent auditor
17 regularly attended audit committee meetings and frequently and at length discussed the
18 collectibility of the outstanding LWT receivables. Defendants Fraser and Watson often
19 led the discussion regarding LWT collections, and regularly stated that the outstanding
20 LWT receivables were collectible.

21 64. To avoid detection of their fraudulent scheme, Defendants regularly lied
22 to CSK's independent auditor in connection with its reviews and audits of CSK's
23 financial statements.

24 65. In connection with the Forms 10-K CSK filed for fiscal years 2002, 2003,
25 and 2004, Fraser, Watson, and (starting in fiscal year 2003) O'Brien, signed
26 management representation letters to CSK's independent auditor. Specifically, in
27 connection with the Form 10-K for fiscal year 2002, Fraser and Watson signed a
28 management letter dated May 2, 2003; in connection with the Form 10-K for fiscal year

1 2003, Fraser, Watson, and O'Brien signed a management representation letter dated
2 April 14, 2004; and in connection with the Form 10-K for fiscal year 2004, Fraser,
3 Watson, and O'Brien signed a management representation letter dated May 2, 2005. In
4 each of those management representation letters, Fraser, Watson, and O'Brien falsely
5 representing that: (i) the receivables were collectible; (ii) the company's financial
6 statements were prepared in accordance with GAAP; and (iii) they had no knowledge of
7 any fraud involving management or employees with a significant role in internal
8 controls, or any other fraud that could have a material effect on the company's
9 consolidated financial statements. For fiscal years 2002 and 2003, Fraser, Watson, and
10 O'Brien also falsely represented that CSK had adequate internal controls. All of those
11 representations were false for the reasons set forth above. Fraser, Watson, and O'Brien
12 knew that these representations were false when they signed the letters.

13 66. Defendant Opper gave CSK's independent auditor modified schedules
14 that omitted the columns showing the uncollectible amounts and memoranda containing
15 false information.

16 **V. Defendants Circumvented CSK's Internal Controls**

17 67. During 2002, 2003, and part of 2004, Watson, O'Brien, and Opper
18 circumvented CSK's internal controls by, among other things, instructing or approving
19 the entry of false journal entries.

20 68. In 2004, CSK developed various policies regarding vendor allowances,
21 one of which disallowed side letters with terms that differed from the LWT agreements.
22 Contrary to this policy, however, Fraser directed that a vendor agreement relating to
23 LWT allowances be split into two, with one agreement backdated.

24 **VI. Offerings While The False Financial Information Was Outstanding**

25 69. While the false financial statements were outstanding, CSK engaged in
26 several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior
27 Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3
28 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4

1 5/8% senior exchangeable notes. CSK's materially false financial statements filed with
2 its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the
3 Form S-3 and Form S-4 Registration Statements filed with the Commission during
4 fiscal years 2004 and 2005.

5 70. With respect to the 2004 debt offering, on May 20, 2004 Fraser, Watson,
6 and O'Brien signed a management representation letter to CSK's independent auditor
7 confirming their prior representations contained in the April 14, 2004 management
8 representation letter provided with the fiscal year 2003 Form 10-K. The April 14
9 management representation letter stated that the 2003 LWT receivable reflected
10 amounts owed CSK for the 2003 LWT program year. Fraser, Watson, and O'Brien
11 knew this representation was false when they signed both the April 14 and May 20,
12 2004 letters.

13 71. CSK's materially false and misleading disclosures and financial
14 statements filed with its Forms 10-K for fiscal years 2002, 2003 and 2004 were
15 incorporated by reference in the various Form S-3 and Form S-4 Registration
16 Statements filed with the Commission during fiscal year 2002, 2004 and 2005.
17 Defendants knew that these registration statements were false and misleading when
18 filed because they incorporated misstatements from CSK's Forms 10-K.

19 **VII. Defendants Received Bonuses And Sold Stock During The**
20 **Fraudulent Scheme**

21 72. For the 2002 and 2003 fiscal years, Fraser and Watson each received a
22 bonus based, in part, on CSK's financial performance.

23 73. For the 2003 fiscal year, O'Brien and Oppen each received a bonus based,
24 in part, on CSK's financial performance.

25 74. Fraser, Watson, and Oppen sold CSK stock in 2003, 2004, and 2005,
26 during the period of the fraud. Their net profits were \$195,419, \$155,122, and
27 \$28,078.20, respectively.

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

75. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

76. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

77. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES**

**Violations and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder**

78. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

79. Defendants, and each of them, by engaging in the conduct described

1 above, directly or indirectly, in connection with the purchase or sale of a security, by
2 the use of means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices, or courses of business which operated
10 or would operate as a fraud or deceit upon other persons.

11 80. Alternatively, Opper knowingly provided substantial assistance to CSK in
12 its violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5 in connection with CSK's annual reports on Form
14 10-K for fiscal years 2003 and 2004.

15 81. By engaging in the conduct described above, Defendants violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
17 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 82. By engaging in the conduct described above and pursuant to Section 20(e)
19 of the Exchange Act, 15 U.S.C. § 78t(e), Opper aided and abetted CSK's violations,
20 and unless restrained and enjoined will continue to aid and abet violations, of Section
21 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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THIRD CLAIM FOR RELIEF
VIOLATIONS OF COMMISSION PERIODIC
REPORTING REQUIREMENTS
Aiding and Abetting Violations of

Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

83. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

84. CSK violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission annual reports on Form 10-K for fiscal years 2002, 2003, and 2004 that were materially false and failed to include material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

85. Fraser and Watson knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2002, 2003, and 2004.

86. O'Brien and Opper knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2003 and 2004.

87. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

FOURTH CLAIM FOR RELIEF

RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of

Section 13(b)(2)(A) of the Exchange Act and Violations of

Rule 13b2-1 thereunder

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6 88. The Commission realleges and incorporates by reference ¶¶ 1 through 74
7 above.

8 89. CSK violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
9 78m(b)(2)(A), by failing to make or keep books, records, and accounts, which, in
10 reasonable detail accurately and fairly reflected its transactions and disposition of its
11 assets.

12 90. Defendants knowingly provided substantial assistance to CSK's violation
13 of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

14 91. By engaging in the conduct described above and pursuant to Section 20(e)
15 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
16 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
17 continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

18 92. By engaging in the conduct described above, Defendants violated
19 Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified
20 CSK's books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act.
21 Unless restrained and enjoined, Defendants will continue to violate Rule 13b2-1, 17
22 C.F.R. § 240.13b2-1.

23 **FIFTH CLAIM FOR RELIEF**

24 **INTERNAL CONTROLS VIOLATIONS**

25 **Aiding and Abetting Violations of**

26 **Section 13(b)(2)(B) of the Exchange Act**

27 93. The Commission realleges and incorporates by reference ¶¶ 1 through 74
28 above.

1 **SEVENTH CLAIM FOR RELIEF**

2 **FALSE STATEMENT TO ACCOUNTANTS**

3 **Violations of Exchange Act Rule 13b2-2**

4 **(Against Defendants Fraser, Watson, and O'Brien)**

5 99. The Commission realleges and incorporates by reference ¶¶ 1 through 74
6 above.

7 100. Defendants Fraser, Watson, and O'Brien, directly or indirectly, (i) made,
8 or caused to be made, materially false or misleading statements or (ii) omitted to state,
9 or caused others to omit to state, material facts necessary in order to make statements
10 made, in light of the circumstances under which they were made, not misleading, to an
11 accountant in connection with an audit, review or examination of financial statements
12 or the preparation or filing of a document or report required to be filed with the
13 Commission.

14 101. By engaging in the conduct alleged above, defendants Fraser, Watson,
15 and O'Brien violated, and unless restrained and enjoined will continue to violate,
16 Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

17 **EIGHTH CLAIM FOR RELIEF**

18 **CERTIFICATION VIOLATIONS**

19 **Violations of Rule 13a-14 of the Exchange Act**

20 **(Against Defendant Watson)**

21 102. The Commission realleges and incorporates by reference ¶¶ 1 through 74
22 above.

23 103. Watson violated Rule 13a-14 by signing the certifications included with
24 CSK fiscal year 2002, 2003, and 2004 Forms 10-K, certifying, among other things, that
25 the forms fully complied with the requirements of the Exchange Act and fairly
26 presented, in all material respects, the financial condition and results of operations of
27 the company, when, in fact, the reports contained untrue statements of material fact and
28 omitted material information necessary to make the reports not misleading.

1 104. By engaging in the conduct described above, defendant Watson violated
2 Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14. Unless restrained and enjoined,
3 defendant Watson will continue to violate Rule 13a-14, 17 C.F.R. § 240.13a-14.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I**

7 Issue findings of fact and conclusions of law that the defendants committed the
8 alleged violations.

9 **II**

10 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
11 enjoining Defendant Fraser and his agents, servants, employees, attorneys, and those
12 persons in active concert or participation with any of them, who receive actual notice of
13 the order by personal service or otherwise, from violating Section 17(a) of the
14 Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
15 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections
16 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1
17 thereunder.

18 **III**

19 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
20 enjoining Defendant Watson and his agents, servants, employees, attorneys, and those
21 persons in active concert or participation with any of them, who receive actual notice of
22 the order by personal service or otherwise, from violating Section 17(a) of the
23 Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
24 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of
25 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20
26 and 13a-1 thereunder.

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IV

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant O'Brien and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder.

V

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder. Or, in the alternative, issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Section 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20 and 13a-1 thereunder.

VI

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Fraser, Watson, and O'Brien from acting as officers

1 or directors of any issuer that has a class of securities registered pursuant to Section 12
2 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
3 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4 **VII**

5 Order defendants Fraser, Watson, O'Brien, and Opper to disgorge all ill-gotten
6 gains from their illegal conduct, together with prejudgment interest thereon.

7 **VIII**

8 Order defendants Fraser, Watson, O'Brien, and Opper to pay civil penalties
9 under Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

10 **IX**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **X**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 5, 2009

Respectfully submitted,

20 

21 C. DABNEY O'RIORDAN

22 Attorney for Plaintiff

23 Securities and Exchange Commission

1 DONALD W. SEARLES, California Bar No. 135705
E-mail: searlesd@sec.gov
2 LORRAINE B. ECHAVARRIA, California Bar No. 191860
E-mail: echavarrial@sec.gov
3 ROBERT H. CONRRAD, California Bar No. 199498
E-mail: conrradr@sec.gov
4 C. DABNEY O'RIORDAN, California Bar No. 205158
E-mail: oriordand@sec.gov
5

Attorneys for Plaintiff
6 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
7 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
8 Los Angeles, California 90036-3648
Telephone: (323) 965-3998
9 Facsimile: (323) 965-3908
10

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 MARTIN G. FRASER; DON W.
18 WATSON; EDWARD W. O'BRIEN; and
GARY M. OPPER,

19 Defendants.
20

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. CSK Auto Corporation (“CSK”) was one of the largest specialty retailers
5 of automotive parts and accessories in the United States. Headquartered in Phoenix,
6 Arizona, CSK became a publicly traded company in March 1999. As of January 30,
7 2005, CSK operated 1,134 stores in nineteen states under three brand names: Checker
8 Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after the conduct
9 alleged in this Complaint, CSK became a wholly-owned subsidiary of O’Reilly
10 Automotive, Inc.

11 2. As a retailer of automotive products, CSK purchased products from
12 vendors that manufacture automotive parts and accessories. From at least fiscal years
13 2002 through 2004, a significant portion of CSK’s income was derived from allowances
14 it received from its vendors. Vendor allowances are used to provide retailers, such as
15 CSK, with financial support to market the vendor’s products. In general, CSK
16 accounted for vendor allowances by reducing its costs of goods sold. Thus, the more
17 vendor allowances CSK earned, the lower its costs of goods sold, resulting in greater
18 reported pre-tax income. During the years at issue, vendor allowances were vital to
19 CSK’s financials, increasing its reported pre-tax income by tens of millions of dollars
20 each fiscal year.

21 3. During fiscal years 2002, 2003, and 2004, CSK knew that there were
22 millions of dollars of vendor allowances that were recognized on its books but were not
23 collectible. Rather than write off the uncollectible receivables, as required by Generally
24 Accepted Accounting Principles (“GAAP”), CSK and its senior management engaged
25 in a scheme to hide the uncollectible receivables through various accounting tricks. In
26 addition, during fiscal year 2003, CSK over recognized millions of dollars of vendor
27 allowances. To perpetuate the fraudulent scheme, CSK’s senior management lied to the
28 company’s independent auditors and audit committee.

1 4. If CSK had written off the uncollectible vendor allowances, it would have
2 increased the company's expenses and decreased its income. Because CSK concealed
3 its uncollectible vendor allowances, CSK's annual reports filed with the Commission
4 for fiscal years 2002, 2003, and 2004 materially overstated the company's financial
5 results in violation of GAAP and misled the public about the company's financial
6 performance.

7 5. During the relevant time period, defendant Martin G. Fraser ("Fraser")
8 served as CSK's chief operating officer and president, defendant Don W. Watson
9 ("Watson") served as its chief financial officer, defendant Edward W. O'Brien
10 ("O'Brien") served as a vice president and controller, and defendant Gary M. Opper
11 ("Opper") served as its director of credits and receivables (Fraser, Watson, O'Brien,
12 and Opper are collectively referred to herein as "Defendants"). Because of Fraser's and
13 Watson's conduct, CSK filed with the Commission a false annual report for fiscal year
14 2002 that fraudulently overstated its pre-tax income for that year by approximately
15 47%, or \$11 million. In addition, because of Defendants' conduct, CSK filed false
16 annual reports with the Commission that fraudulently overstated its pre-tax income for
17 fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income
18 instead of a pre-tax loss, and for fiscal year 2004 by approximately 65%, or \$21
19 million.

20 6. As a result of Defendants' fraudulent conduct, CSK restated its financial
21 statements as part of its Form 10-K for fiscal year 2004 (the "First Restatement"). As
22 part of the First Restatement, CSK reduced its previously recognized vendor allowances
23 for fiscal years 2002, 2003 and the first three quarters of fiscal year 2004. Defendants,
24 however, continued to conceal known, significant uncollectible vendor allowance
25 receivables. The First Restatement also falsely attributed the vendor allowance
26 adjustments to mere errors in estimates and bookkeeping mistakes rather than to
27 Defendants' fraudulent conduct.

28

1 7. As a result of Defendants' failure to acknowledge and write off the
2 magnitude of CSK's uncollectible vendor allowance receivables in the First
3 Restatement, CSK still had approximately \$15 million in uncollectible vendor
4 allowance receivables, which, under GAAP, should have been written off. Defendants
5 made a final attempt to collect that \$15 million deficit by intentionally over billing its
6 vendors. When the vendors complained about being double billed, CSK paid back the
7 amounts it had wrongfully collected, but incorrectly accounted for some of those
8 paybacks and mischaracterized the reasons for other paybacks to avoid detection that
9 the company had over collected vendor allowances.

10 8. Each of the Defendants knew CSK was not writing off uncollectible
11 vendor allowances receivables and was over recognizing vendor allowances resulting in
12 CSK's financial statements for fiscal years 2002, 2003, and 2004 being materially
13 misstated. Defendants Fraser and Watson substantially participated in the preparation
14 of CSK's 2002, 2003, and 2004 false financial statements. Defendant O'Brien
15 substantially participated in the preparation of the 2003 and 2004 false financial
16 statements. Defendant Opper substantially participated in, or provided substantial
17 assistance to, the preparation of the false 2003 and 2004 financial statements.

18 9. Based on their conduct, Defendants, among other things, violated the
19 antifraud provisions of the federal securities laws, falsified CSK's books and records,
20 circumvented CSK's internal controls, and lied to CSK's independent auditors. The
21 Commission seeks an order enjoining Defendants from future violations of the
22 securities laws, requiring Defendants to disgorge ill-gotten gains with prejudgment
23 interest, ordering Defendants to pay civil monetary penalties, requiring Watson to
24 reimburse stock profits pursuant to Section 304 of the Sarbanes-Oxley Act, barring
25 Fraser, Watson, and O'Brien from serving as officers or directors of a public company,
26 and providing other appropriate relief.

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1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
4 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e) & 78aa. Defendants have directly or indirectly made use of the
7 means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
8 national securities exchange in connection with the transactions, acts, practices and
9 courses of business alleged in this Complaint.

10 11. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa,
12 because defendants reside and transact business within this district and certain of the
13 transactions, acts, practices and courses of conduct constituting violations of the federal
14 securities laws alleged in this Complaint occurred within this district.

15 **THE DEFENDANTS**

16 12. **Martin G. Fraser** (53) is a resident of Phoenix, Arizona, and was CSK’s
17 chief operating officer and president from 2000 until September 2006, when he
18 resigned at CSK’s request.

19 13. **Don W. Watson** (53) is a resident of Gilbert, Arizona. From January
20 1998 to September 2005, Watson was CSK’s chief financial officer, senior vice
21 president, and treasurer. Watson served as CSK’s chief administrative officer and
22 senior vice president from September 2005 to his termination in October 2006.

23 14. **Edward W. O’Brien** (46) is a resident of Cave Creek, Arizona. O’Brien
24 was CSK’s controller and vice president from March 2003 until his termination in
25 September 2006.

26 15. **Gary M. Opper** (56) is a resident of Mesa Arizona. Opper was CSK’s
27 director of credit and receivables, reporting to O’Brien, from March 17, 2003 until he
28 was terminated in September 2006.

1 **RELATED PARTY**

2 16. **CSK Auto Corporation** is a Delaware corporation with its principal
3 executive offices in Phoenix, Arizona. CSK's common stock was registered with the
4 Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York
5 Stock Exchange. On July 11, 2008, CSK became a wholly owned subsidiary of
6 O'Reilly Automotive, Inc.

7 **BACKGROUND**

8 **I. CSK's "Let's Work Together" Program**

9 17. Each year, most of CSK's vendors agreed to pay vendor allowances.
10 Although CSK had various vendor allowance programs, its largest was its "Let's Work
11 Together" program ("LWT"). Typically, LWT agreements covered a one-year period,
12 which CSK referred to as the "program year." Although the LWT agreements varied,
13 CSK generally earned LWT allowances at a set dollar amount, as a percentage of the
14 amount CSK spent to purchase the vendor's product, or as a certain number of cents per
15 item CSK purchased from the vendor.

16 18. CSK recognized LWT allowances ratably, on a monthly basis, based on
17 its estimate of the total allowances it expected to earn for the entire program year.
18 Thus, CSK did not recognize LWT allowances as they were actually earned or
19 collected. In theory, CSK's estimate was based on the LWT agreement and CSK's
20 expected purchases from its vendors. In general, CSK recognized LWT allowances as a
21 reduction to costs of sales (an expense), thereby increasing the company's pre-tax
22 income.

23 19. As CSK recognized LWT allowances for a given program year, it
24 increased the LWT account receivable for that program year. Each LWT program year
25 had its own account receivable. As CSK collected LWT allowances for a particular
26 program year, GAAP required that CSK reduce the outstanding receivable for that same
27 LWT program year.

1 20. In general, CSK collected LWT allowances by issuing a debit memo to
2 the vendor, which notified the vendor that CSK was deducting the amount of the LWT
3 allowance from the amount CSK owed the vendor. If CSK collected too much, it
4 generally paid back the vendor by issuing a credit memo, notifying the vendor that CSK
5 was adding the amount back to the overall amount it owed the vendor.

Defendants' Fraudulent Scheme

I. The Fraudulent Scheme To Avoid Vendor Allowance Write Offs

8 21. During fiscal years 2002, 2003, and 2004, CSK was unable to collect all
9 of the vendor allowances it had recognized. As a result, large accounts receivable built
10 up for each LWT program year.

11 22. GAAP required that CSK write off the uncollectible LWT accounts
12 receivable. Specifically, under Statement of Financial Accounting Standards No. 5
13 (“SFAS No. 5”), Accounting for Contingencies Paragraph 8, an estimated loss from a
14 loss contingency shall be accrued by a charge to income if: (i) information available
15 prior to issuance of the financial statements indicates that it is probable that an asset had
16 been impaired at the date of the financial statements; and (ii) the amount of the loss can
17 be reasonably estimated. SFAS No. 5, Paragraph 3 defines “probable” to mean that the
18 future event or events are likely to occur. SFAS No. 5, Paragraph 4 states that
19 examples of loss contingencies include collectibility of receivables. A write off of the
20 uncollectible LWT allowance receivables would have increased CSK’s expenses during
21 the fiscal year the write off was made, resulting in a decrease in pre-tax income.

22 23. Instead of writing off CSK’s uncollectible LWT accounts receivable and
23 taking the requisite reduction to pre-tax income, Fraser and Watson, for fiscal year
24 2002, and Defendants, for fiscal years 2003 and 2004, concealed CSK’s uncollectible
25 LWT accounts receivable by: (i) applying tens of millions of dollars of LWT
26 allowances earned and collected for later LWT program years to prior LWT program
27 year accounts receivable (referred to within CSK as “filling the bucket”); and
28 (ii) incorrectly accounting for millions of dollars of LWT allowances it paid back to

1 vendors. Through this scheme, CSK avoided writing off tens of millions of dollars in
2 uncollectible LWT receivables, which it had previously recognized.

3 24. CSK “filled the bucket” by taking LWT allowances collected for later
4 program years and applying them to reduce an earlier LWT program year’s account
5 receivable. Specifically, CSK: (i) made baseless journal entries reducing the account
6 receivable for a prior LWT program year with an offsetting increase to the account
7 receivable for a later LWT program year; and (ii) applied LWT allowance collections
8 for a later LWT program year to an earlier program year’s LWT account receivable.

9 25. CSK also failed to write off LWT allowances it had over collected for
10 prior LWT program years and ultimately paid back to its vendors. Instead of writing
11 off amounts CSK paid back, which would reduce its pre-tax income, CSK increased a
12 later LWT program year’s account receivable, making it appear that it had collected an
13 older account receivable when all CSK had done was move the outstanding receivable
14 balance to a more recent year. This accounting treatment was contrary to GAAP
15 because by paying an amount back to a vendor for a prior LWT program year, CSK
16 acknowledged its uncollectibility and should have written off the amount.

17 **A. During CSK’s 2002 Fiscal Year, The Company Concealed**
18 **Approximately \$11 Million Of Uncollectible Vendor Allowances**

19 26. During its 2002 fiscal year, CSK failed to write off approximately \$11
20 million of uncollectible vendor allowances it had recognized in previous years, most
21 significantly as part of the 2001 LWT program year. Instead of writing off the
22 uncollectible vendor allowances, CSK: (i) made improper journal entries moving
23 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT
24 account receivable; (ii) misapplied paybacks of approximately \$3 million to the 2002
25 LWT receivable; and (iii) reached an agreement whereby a vendor agreed to accept an
26 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK
27 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT
28 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK overstated its

1 pre-tax income by approximately \$11 million, or 47%.

2 27. Throughout fiscal year 2002, Fraser and Watson knew of CSK's
3 numerous efforts to hide uncollectible LWT accounts receivable and that, as a result,
4 CSK's financial statements were materially misstated.

5 28. During fiscal year 2001, the company's controller at the time informed
6 Fraser and Watson that CSK was recognizing more LWT allowances for the 2001
7 program year than it was actually earning or likely to earn during that program year.

8 29. The 2001 LWT program year ended in September 2001. CSK tried to
9 collect the outstanding 2001 LWT account receivable throughout fiscal year 2002.

10 30. During fiscal year 2002, CSK issued a \$2 million debit memo to a vendor
11 to collect LWT allowances recognized as part of the 2001 LWT program year. The
12 vendor vigorously disputed the debit memo claiming that CSK had not purchased
13 enough products from the vendor to have earned the \$2 million. Fraser negotiated the
14 dispute. By the middle of the 2002 fiscal year, CSK agreed to forego collecting \$2
15 million worth of LWT allowances it expected to earn on purchases during the 2002 and
16 2003 LWT program years in exchange for the vendor accepting the \$2 million debit
17 memo. Both Fraser and Watson knew that the vendor had agreed to accept the already-
18 issued \$2 million debit memo only in exchange for CSK's agreement not to collect \$2
19 million in LWT for the 2002 and 2003 LWT program years. Since the vendor only
20 accepted the debit memo in exchange for future benefits from CSK, *i.e.*, future
21 purchases of product from the vendor, GAAP required that CSK immediately write off
22 the \$2 million because it was not collectible as part of the 2001 LWT program year.

23 31. During fiscal year 2002, CSK had to make various paybacks to vendors
24 for vendor allowances it had recognized during prior fiscal years. Instead of correctly
25 accounting for those paybacks by writing them off and increasing CSK's expenses, the
26 company increased the 2002 LWT program year's account receivable. Watson
27 instructed CSK employees that they would have to raise additional allowances to cover
28 for those amounts paid back because CSK "could not afford a charge for any

1 paybacks.” Fraser knew of Watson’s instruction and CSK’s failure to write off vendor
2 allowances paid back to vendors.

3 32. In October 2002, Fraser, Watson, and others met to discuss the
4 collectibility of the 2001 LWT account receivable, which had been outstanding for
5 approximately one year. At that time, of the remaining outstanding balance for the
6 2001 LWT account receivable, \$3.2 million was known to be uncollectible and \$4.5
7 million was “questionable.” These amounts did not include either the \$2 million Fraser
8 and Watson already knew was uncollectible or the paybacks.

9 33. Rather than write off these uncollectible amounts, as required by GAAP,
10 in October and November 2002, CSK devised a plan to move collections for the 2002
11 LWT program year to cover the 2001 LWT account receivable. As part of that plan, in
12 or about November 2002, Watson instructed a CSK employee to identify collections for
13 the 2002 LWT program year to move to the 2001 LWT program year account
14 receivable to cover 2001 shortfalls.

15 **B. During Fiscal Year 2003, CSK Concealed Approximately \$24 Million**
16 **In Known, Uncollectible Vendor Allowances And Improperly**
17 **Recognized Approximately \$10 Million In Vendor Allowances**

18 34. During its 2003 fiscal year, CSK used various tactics to fraudulently
19 conceal, rather than properly write off, approximately \$24 million in uncollectible
20 vendor allowances recognized during previous LWT program years, primarily as part of
21 the 2002 LWT program year. Moreover, CSK improperly and prematurely recognized
22 \$6 million in vendor allowances and improperly recognized an additional \$4 million of
23 LWT allowances. As a result, in its Form 10-K filed on April 15, 2004, CSK overstated
24 its 2003 pre-tax income by approximately \$34 million, turning its actual pre-tax loss of
25 approximately \$18 million into purported pre-tax income of \$16 million. At the time of
26 that filing, Defendants knew CSK had failed to write off uncollectible vendor
27 allowances and over recognized allowances, and that, as a result, CSK’s financial
28 statements were materially misstated.

1 35. During fiscal year 2003, CSK hid approximately \$24 million in
2 uncollectible vendor allowance receivables. First, CSK applied approximately \$10
3 million in 2003 LWT program year collections to the 2002 LWT program year
4 receivable. Second, CSK failed to write off approximately \$5 million in vendor
5 allowances CSK had over collected during prior LWT program years but had to pay
6 back during fiscal year 2003. Third, CSK made a baseless journal entry decreasing the
7 2002 LWT receivable by \$9 million and increasing the 2003 LWT receivable by the
8 same amount, which reduced the 2002 LWT receivable to zero.

9 36. During fiscal year 2003, Defendants knew CSK was failing to write off
10 uncollectible LWT allowances. During fiscal year 2003, Defendants regularly received
11 information regarding CSK's efforts to hide the uncollectible LWT allowances. For
12 example, on or about September 9, 2003, Opper sent an email to Fraser, Watson,
13 O'Brien and others discussing the collection of the 2002 LWT account receivable,
14 which was then approximately one-year old. The email stated that: (i) "approximately
15 \$9.6mm in 2003 collections . . . were moved to 2002 to cover short falls from prior
16 periods;" and (ii) the outstanding 2002 LWT program year receivable balance did not
17 include \$5.4 million in 2002 paybacks. Defendant Opper referenced in the email a
18 chart he had attached that explained the "\$24.2 million in LWT exposure from 2002
19 and prior." That chart included detailed explanations regarding millions of dollars of
20 uncollectible LWT allowances for prior years, including the 2002 LWT program year.

21 37. Defendants also met to discuss the uncollectible LWT receivables during
22 fiscal year 2003. For example, Defendants attended a meeting on or about September
23 17, 2003 to discuss the "2002 Outstanding LWT status" where Opper provided copies
24 of the chart attached to his September 9, 2003 email.

25 38. During the fourth quarter of 2003, CSK prematurely recognized
26 approximately \$6 million in additional vendor allowances, which would not be earned,
27 if at all, until fiscal year 2004, in order to meet its earnings numbers. On December 23,
28 2003, Defendants and others met with CSK's independent auditor in Fraser's office to

1 discuss the requirements for the allowances to be recognized in 2003. During the
2 meeting, CSK's independent auditor explained that the agreements had to state that the
3 allowances were for 2003, that no future performance was required of CSK, and that if
4 CSK could not collect the full amount using one method of collection, then CSK could
5 change the collection method. Defendants had vendors sign agreements making it
6 appear that CSK had earned additional LWT allowances during 2003, when, in fact,
7 those allowances would be earned, if at all, based on purchases made during 2004.

8 39. At the end of fiscal 2003, CSK obtained approximately \$4 million of
9 additional warranty allowances from two vendors. At that same time, CSK had a
10 warranty deficit of approximately \$13 million, which represented returns from
11 customers covered by warranties in excess of the warranty accrual recorded by CSK.
12 Under GAAP, a warranty deficit should be written off unless additional warranty
13 allowances are obtained to cover the deficit. However, instead of applying the \$4
14 million of additional warranty allowances to offset a portion of its warranty deficit
15 balance, CSK improperly recognized those warranty allowances as additional LWT
16 allowances. Thus, the warranty deficit included in CSK's inventory balance remained
17 \$13 million, and CSK improperly inflated its pre-tax income for fiscal year 2003 by
18 approximately \$4 million.

19 **C. During Fiscal Year 2004, CSK Failed To Write Off Approximately**
20 **\$21 Million Of Known, Uncollectible Vendor Allowances**

21 40. During fiscal year 2004, CSK concealed that it could not collect vendor
22 allowances totaling approximately \$21 million. Specifically, CSK applied:
23 (i) approximately \$11 million in 2004 LWT program year collections to the 2003 LWT
24 account receivable; (ii) approximately \$4 million CSK paid back to vendors for the
25 2003 and 2002 LWT program years to the 2004 LWT receivable; and
26 (iii) approximately \$6 million via baseless journal entries to the 2003 LWT receivable
27 from other vendor allowance receivables in other time periods. As a result, in its Form
28 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year 2004 by

1 approximately 65%, or \$21 million. At the time of that filing, Defendants knew CSK
2 had failed to write off uncollectible vendor allowances and that, as a result, the
3 company's financial statements were materially misstated.

4 41. CSK's 2004 Form 10-K included CSK's First Restatement, which
5 partially restated CSK's vendor allowances recognized during prior years. Specifically,
6 CSK restated because it could not collect all of the 2003 LWT receivable. In addition,
7 CSK restated for vendor allowances paid back during fiscal year 2003 that CSK failed
8 to properly write off during the 2003 fiscal year. CSK's restatement regarding vendor
9 allowances resulted in CSK adjusting its costs of sales upward and its pre-tax income
10 downward, for the first three quarters of 2004, and the 2003, 2002, and 2001 fiscal
11 years by \$1.9 million, \$7.1 million, \$9.0 million, and \$0.5 million, respectively.

12 42. The First Restatement, however, falsely attributed the vendor allowance
13 restatement to "errors in estimation in earlier periods" and "vendor allowances recorded
14 in improper periods" due to "imprecise estimates, bookkeeping errors and recording
15 allowances in the incorrect periods." Defendants knew the reasons stated for the
16 vendor allowance restatement were false because the First Restatement resulted from
17 Defendants' fraudulent scheme.

18 43. The First Restatement also failed to: (i) write off all known, uncollectible
19 vendor allowance receivables; (ii) disclose the full extent of CSK's efforts to hide the
20 uncollectible receivables from its independent auditors; and (iii) disclose CSK's over
21 recognition of vendor allowances during fiscal 2003. Defendants knew about these
22 misstatements contained in the First Restatement.

23 44. While preparing the First Restatement, Defendants hid the full extent of
24 their fraudulent conduct from CSK's independent auditor. For example, despite the
25 independent auditor's request for a list of all paybacks CSK had made to its vendors,
26 Watson, O'Brien, and Opper knowingly provided an incomplete list. As a result, CSK
27 failed to write off \$4 million in paybacks it had made during 2004 and applied to the
28 2003 LWT receivable. Similarly, Fraser and Watson negotiated agreements with

1 vendors whereby the vendors agreed to pay additional amounts of LWT in exchange for
2 CSK's acceptance to pay more for their goods. Fraser, however, directed others to
3 falsify documents to make it appear that CSK had entered into separate, seemingly
4 unrelated agreements, containing different dates, in order to hide from CSK's
5 independent auditor that CSK's receipt of additional LWT allowances were contingent
6 upon CSK's willingness to grant price increases offsetting the LWT amounts the
7 vendors purportedly agreed to pay. Thus, Defendants knew they were hiding material
8 information from CSK's independent auditor and excluding from the restatement,
9 intentional accounting errors regarding vendor allowances.

10 **D. To Further Cover Up Its Fraud In The Wake Of The First**
11 **Restatement, CSK Debited Its Vendors For Amounts It Knew They**
12 **Did Not Owe**

13 45. After filing its First Restatement in May 2005, CSK's outstanding 2004
14 LWT account receivable still contained approximately \$15 million that was not
15 collectible. In an effort to conceal that uncollectible receivable, CSK issued debit
16 memos to the vendors for the \$15 million at the end of July 2005.

17 46. As of July 15, 2005, Watson, O'Brien, and Opper knew that \$15 million
18 of the outstanding 2004 LWT receivable was not uncollectible because it had
19 previously been collected and had been applied to prior LWT program year receivables
20 as part of CSK's fraudulent scheme.

21 47. In July 2005, CSK issued debit memos totaling approximately \$31
22 million, including the \$15 million that CSK had previously collected. Opper instructed
23 employees to prepare the debit memos to collect the entire \$31 million even though \$15
24 million of the allowances had already been collected. When the debit memos were
25 issued, Fraser met with Watson, O'Brien, Opper, and other CSK employees. Fraser
26 told the group that CSK needed to make the debit memos "stick" and that, when it had
27 sent out debit memos in the past, CSK paid back only about ten percent of the debits.

28

1 48. In late July 2005 or early August 2005, Fraser was told that many of the
2 buyers saw errors in the proposed debits. Fraser responded that probably 70% of the
3 debits would “stick” and that many of the vendors would not even notice them. At least
4 as early as September 2005, Fraser knew that a substantial amount CSK had debited
5 was at risk of having to be paid back to its vendors.

6 49. After the vendors complained about the debit memos, CSK continued to
7 hide the uncollectible LWT allowances. First, CSK negotiated deals with vendors for
8 future vendor allowances that CSK offset against the already-issued 2004 LWT debit
9 memos. Second, CSK falsified its books and records to conceal that it was paying back
10 portions of the debit memos. For example, CSK issued to certain vendors credit
11 memos, which O’Brien created or caused to be created, that falsely described the
12 paybacks as being related to “costing,” “pricing increases—steel surcharge,” or
13 “warranty.” In fact, the credit memos paid back LWT amounts that CSK had
14 improperly debited.

15 **II. CSK’s Forms 10-K For Fiscal Years 2002, 2003, And 2004 Contained**
16 **Materially False Information**

17 50. CSK filed annual reports on Form 10-K for fiscal years 2002, 2003, and
18 2004.

19 51. The notes to the financial statements included with CSK’s Forms 10-K
20 for fiscal years 2002, 2003, and 2004 falsely stated that “Specific accounts are written
21 off against the allowance when management determines the account is uncollectible.”
22 In fact, CSK did not write off known, uncollectible vendor allowance receivables, but
23 rather engaged in a scheme to avoid and hide such write offs, as set forth above.

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1 52. In all, CSK understated its costs of goods sold during fiscal years 2002
2 through 2004 as follows:

FY	Concealed Receivables From Prior Years			Over Recognized Allowances / Other Uncollectible Receivables	Total
	Unsupported Journal Entries	Misapplied Debit Memos	Misapplied Paybacks		
2002	\$6M	--	\$3 M	\$2 M	\$11 M
2003	\$9 M	\$10 M	\$5 M	\$10 M	\$34 M
2004	\$6 M	\$11 M	\$4 M	--	\$21 M

11 53. CSK's Form 10-K for fiscal year 2002 falsely overstated CSK's pre-tax
12 income by approximately 47%, or \$11 million. When CSK filed its Form 10-K for
13 fiscal year 2002, Fraser and Watson knew that the company's financial statement were
14 materially misstated.

15 54. CSK's Form 10-K for fiscal year 2003 overstated CSK's pre-tax income
16 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax
17 loss. When CSK filed its Form 10-K for fiscal year 2003, Defendants knew that the
18 company's financial statements were materially misstated.

19 55. CSK's Form 10-K for fiscal year 2004, which also contained the First
20 Restatement, overstated CSK's pre-tax income by approximately 65%, or \$21 million.
21 In addition, it falsely attributed the need for the vendor allowance restatement to
22 estimation errors, imprecise estimates, and bookkeeping errors, rather than to
23 Defendants' fraudulent conduct. When CSK filed its Form 10-K for fiscal year 2004,
24 Defendants knew the company's financial statements were materially misstated and
25 mischaracterized the reasons for the vendor allowance restatement.

26 56. Watson, as CSK's CFO, signed CSK's annual reports and the
27 accompanying Sarbanes-Oxley certifications. In connection with each of the Forms 10-
28 K filed for fiscal years 2002, 2003, and 2004, Watson certified he had no knowledge of

1 any untrue statement of material fact in the report, the annual report “fairly presents in
2 all material respects the financial condition, results of operations, and cash flows . . .,”
3 and that he had disclosed to CSK’s independent auditors and audit committee “any
4 fraud, whether or not material, that involved management or any other employees who
5 have a significant role in the registrant’s internal controls.” At the time he made those
6 certifications, Watson knew that each of those statements was false.

7 57. On March 27, 2006, CSK announced that it was conducting an internal
8 investigation relating to, among other things, accounting irregularities regarding vendor
9 allowances. CSK’s stock price immediately dropped 8% and dropped a total of 13%
10 for the week.

11 58. On May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating,
12 for the second time, its financial statements for 2002, 2003, and 2004 due, in part, to the
13 fraudulent scheme relating to CSK’s failure to write off uncollectible vendor
14 allowances.

15 **III. Defendants Substantially Participated In Making CSK’s Misleading Annual**
16 **Reports**

17 59. Fraser substantially participated in, and had intricate involvement with,
18 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
19 the financial statement filed therewith, by among other things:

20 (i) being a member of and participating in CSK’s disclosure team
21 meetings to review and discuss CSK’s Forms 10-K for fiscal years 2002, 2003,
22 and 2004 before they were filed with the Commission as well to review and
23 discuss related accounting and disclosure issues, such as collectibility of LWT
24 allowances;

25 (ii) signing sub-certifications in advance of the filing of CSK’s Forms 10-
26 K for fiscal years 2002, 2003, and 2004, on which CSK’s CEO and Watson
27 relied upon to make their own representations in the Sarbanes-Oxley
28 certifications. In those sub-certifications, Fraser falsely represented that to his

1 knowledge the Forms 10-K did not “contain any material inaccuracies or
2 omissions involving or relating to the matters with respect to which I have
3 knowledge or responsibility.” At the time he made those certifications, Fraser
4 knew those representations were false;

5 (iii) signing due diligence certifications in connection with CSK’s Forms
6 10-K for fiscal years 2002, 2003, and 2004, falsely certifying that: (a) based on
7 his knowledge of the company’s operations, the Forms 10-K did not contain or
8 omit any material facts that would make the statements contained therein
9 inaccurate or misleading; (b) to the best of his knowledge “the financial
10 statements and other accompanying financial information fairly present in all
11 material respects the financial condition, results of operations and cash flows of
12 the Company for the period presented in such report;” and (c) he had “not made
13 any false statements to any senior management or the Company’s internal
14 auditors or independent outside auditors that would affect the Company’s
15 financial statements and disclosures.” At the time he made those certifications,
16 Fraser knew those statements were false; and

17 (iv) signing management representation letters to CSK’s independent
18 auditor in connection with its audit of CSK’s consolidated financial statements
19 included with CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004. In
20 those management representation letters, Fraser “confirm[ed]” that he was
21 “responsible for the fair presentation of the consolidated financial statements of
22 financial position, results of operations, and cash flows in conformity with
23 generally accepted accounting principles.”

24 60. Watson substantially participated in, and had intricate involvement with,
25 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
26 the financial statement filed therewith by among other things:

27 (i) signing the Forms 10-K for fiscal years 2002, 2003, and 2004;

28

1 (ii) signing the Sarbanes-Oxley certifications filed with CSK's Forms 10-
2 K for fiscal years 2002, 2003, and 2004;

3 (iii) being a member of and participating in CSK's disclosure team
4 meetings to review and discuss CSK's Forms 10-K for fiscal years 2002, 2003, and
5 2004 before they were filed with the Commission as well as related accounting and
6 disclosure issues, such as the collectibility of LWT allowances; and

7 (iv) signing management representation letters to CSK's independent
8 auditor in connection with its audit of CSK's consolidated financial statements included
9 with CSK's Forms 10-K for fiscal years 2002, 2003, and 2004. In those management
10 representation letters, Watson "confirm[ed]" that he was "responsible for the fair
11 presentation of the consolidated financial statements of financial position, results of
12 operations, and cash flows in conformity with generally accepted accounting
13 principles."

14 61. O'Brien substantially participated, and had intricate involvement, in the
15 preparation of CSK's Forms 10-K for fiscal years 2003 and 2004, including the
16 financial statement filed therewith, by among other things:

17 (i) being CSK's controller, whose responsibilities included reviewing
18 CSK's financial statements for accuracy;

19 (ii) being a member of and participating in CSK's disclosure team
20 meetings to review and discuss CSK's Forms 10-K for fiscal years 2003 and
21 2004 before they were filed with the Commission as well as related accounting
22 and disclosure issues, such as the collectibility of LWT allowances;

23 (iii) signing sub-certifications in advance of the filing of CSK's Forms
24 10-K for fiscal years 2003 and 2004, on which CSK's CEO and Watson relied
25 upon to make their own representations in the Sarbanes-Oxley certifications. In
26 those sub-certifications, O'Brien falsely represented that to his knowledge the
27 Forms 10-K did not "contain any material inaccuracies or omissions involving or
28 relating to the matters with respect to which I have knowledge or responsibility;"

1 (iv) signing due diligence certifications in connection with CSK's Forms
2 10-K for fiscal years 2003 and 2004, certifying that (a) based on his knowledge
3 of the company's operations, the Forms 10-K did not contain or omit any
4 material facts that would make the statements contained therein inaccurate or
5 misleading, (b) to the best of his knowledge "the financial statements and other
6 accompanying financial information fairly present in all material respects the
7 financial condition, results of operations and cash flows of the Company for the
8 period presented in such report," and (c) he had "not made any false statements
9 to any senior management or the Company's internal auditors or independent
10 outside auditors that would affect the Company's financial statements and
11 disclosures." At the time he made those certifications, O'Brien knew that those
12 statements were false; and

13 (vi) signing management representation letters to CSK's independent
14 auditor in connection with its audit of CSK's consolidated financial statements
15 included with CSK's Forms 10-K for fiscal years 2003 and 2004. In those
16 management representation letters, O'Brien "confirm[ed]" that he was
17 "responsible for the fair presentation of the consolidated financial statements of
18 financial position, results of operations, and cash flows in conformity with
19 generally accepted accounting principles."

20 62. Opper substantially participated in Defendants' fraudulent scheme to
21 avoid writing off uncollectible vendor allowance amounts in CSK's annual reports, or,
22 in the alternative, provided substantial assistance to CSK in carrying out the fraudulent
23 scheme. Rather than sound the alarm on CSK's improper accounting, Opper chose to
24 become an essential participant in CSK's fraudulent scheme by among other things:

25 (i) using his position in charge of the day-to-day management of CSK's
26 vendor accounts receivable department, particularly CSK's LWT operations, to instruct
27 employees to make accounting entries to hide uncollectible vendor allowance
28 receivables. For example, on October 10, 2003, Opper instructed a CSK employee to

1 make an improper journal entry moving an outstanding 2002 LWT receivable to the
2 2003 LWT receivable.

3 (ii) approving the misapplication of paybacks to vendors and the
4 misapplication of those paybacks to later year LWT receivables;

5 (iii) tracking CSK's movement of funds to hide uncollectible vendor
6 allowance receivables and periodically providing this information to senior
7 management, including Fraser, Watson, and O'Brien; and

8 (iv) providing to CSK's independent auditor false documents and
9 explanations in order to hide that CSK could not collect a material portion of its vendor
10 allowance receivables. For example, in a November 24, 2003 memo to CSK's
11 independent auditor, Opper provided false information and documentation regarding
12 collections for the 2003 LWT program that were improperly applied to the 2002 LWT
13 program.

14 **IV. In Carrying Out And Covering Up The Fraud, Defendants**
15 **Repeatedly Lied To CSK's Independent Auditor**

16 63. Defendants Fraser, Watson, O'Brien, and CSK's independent auditor
17 regularly attended audit committee meetings and frequently and at length discussed the
18 collectibility of the outstanding LWT receivables. Defendants Fraser and Watson often
19 led the discussion regarding LWT collections, and regularly stated that the outstanding
20 LWT receivables were collectible.

21 64. To avoid detection of their fraudulent scheme, Defendants regularly lied
22 to CSK's independent auditor in connection with its reviews and audits of CSK's
23 financial statements.

24 65. In connection with the Forms 10-K CSK filed for fiscal years 2002, 2003,
25 and 2004, Fraser, Watson, and (starting in fiscal year 2003) O'Brien, signed
26 management representation letters to CSK's independent auditor. Specifically, in
27 connection with the Form 10-K for fiscal year 2002, Fraser and Watson signed a
28 management letter dated May 2, 2003; in connection with the Form 10-K for fiscal year

1 2003, Fraser, Watson, and O'Brien signed a management representation letter dated
2 April 14, 2004; and in connection with the Form 10-K for fiscal year 2004, Fraser,
3 Watson, and O'Brien signed a management representation letter dated May 2, 2005. In
4 each of those management representation letters, Fraser, Watson, and O'Brien falsely
5 representing that: (i) the receivables were collectible; (ii) the company's financial
6 statements were prepared in accordance with GAAP; and (iii) they had no knowledge of
7 any fraud involving management or employees with a significant role in internal
8 controls, or any other fraud that could have a material effect on the company's
9 consolidated financial statements. For fiscal years 2002 and 2003, Fraser, Watson, and
10 O'Brien also falsely represented that CSK had adequate internal controls. All of those
11 representations were false for the reasons set forth above. Fraser, Watson, and O'Brien
12 knew that these representations were false when they signed the letters.

13 66. Defendant Opper gave CSK's independent auditor modified schedules
14 that omitted the columns showing the uncollectible amounts and memoranda containing
15 false information.

16 **V. Defendants Circumvented CSK's Internal Controls**

17 67. During 2002, 2003, and part of 2004, Watson, O'Brien, and Opper
18 circumvented CSK's internal controls by, among other things, instructing or approving
19 the entry of false journal entries.

20 68. In 2004, CSK developed various policies regarding vendor allowances,
21 one of which disallowed side letters with terms that differed from the LWT agreements.
22 Contrary to this policy, however, Fraser directed that a vendor agreement relating to
23 LWT allowances be split into two, with one agreement backdated.

24 **VI. Offerings While The False Financial Information Was Outstanding**

25 69. While the false financial statements were outstanding, CSK engaged in
26 several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior
27 Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3
28 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4

1 5/8% senior exchangeable notes. CSK's materially false financial statements filed with
2 its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the
3 Form S-3 and Form S-4 Registration Statements filed with the Commission during
4 fiscal years 2004 and 2005.

5 70. With respect to the 2004 debt offering, on May 20, 2004 Fraser, Watson,
6 and O'Brien signed a management representation letter to CSK's independent auditor
7 confirming their prior representations contained in the April 14, 2004 management
8 representation letter provided with the fiscal year 2003 Form 10-K. The April 14
9 management representation letter stated that the 2003 LWT receivable reflected
10 amounts owed CSK for the 2003 LWT program year. Fraser, Watson, and O'Brien
11 knew this representation was false when they signed both the April 14 and May 20,
12 2004 letters.

13 71. CSK's materially false and misleading disclosures and financial
14 statements filed with its Forms 10-K for fiscal years 2002, 2003 and 2004 were
15 incorporated by reference in the various Form S-3 and Form S-4 Registration
16 Statements filed with the Commission during fiscal year 2002, 2004 and 2005.
17 Defendants knew that these registration statements were false and misleading when
18 filed because they incorporated misstatements from CSK's Forms 10-K.

19 **VII. Defendants Received Bonuses And Sold Stock During The**
20 **Fraudulent Scheme**

21 72. For the 2002 and 2003 fiscal years, Fraser and Watson each received a
22 bonus based, in part, on CSK's financial performance.

23 73. For the 2003 fiscal year, O'Brien and Oppen each received a bonus based,
24 in part, on CSK's financial performance.

25 74. Fraser, Watson, and Oppen sold CSK stock in 2003, 2004, and 2005,
26 during the period of the fraud. Their net profits were \$195,419, \$155,122, and
27 \$28,078.20, respectively.

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

75. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

76. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

77. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES**

**Violations and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder**

78. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

79. Defendants, and each of them, by engaging in the conduct described

1 above, directly or indirectly, in connection with the purchase or sale of a security, by
2 the use of means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices, or courses of business which operated
10 or would operate as a fraud or deceit upon other persons.

11 80. Alternatively, Opper knowingly provided substantial assistance to CSK in
12 its violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5 in connection with CSK's annual reports on Form
14 10-K for fiscal years 2003 and 2004.

15 81. By engaging in the conduct described above, Defendants violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
17 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 82. By engaging in the conduct described above and pursuant to Section 20(e)
19 of the Exchange Act, 15 U.S.C. § 78t(e), Opper aided and abetted CSK's violations,
20 and unless restrained and enjoined will continue to aid and abet violations, of Section
21 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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THIRD CLAIM FOR RELIEF
VIOLATIONS OF COMMISSION PERIODIC
REPORTING REQUIREMENTS
Aiding and Abetting Violations of

Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

83. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

84. CSK violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission annual reports on Form 10-K for fiscal years 2002, 2003, and 2004 that were materially false and failed to include material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

85. Fraser and Watson knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2002, 2003, and 2004.

86. O'Brien and Opper knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2003 and 2004.

87. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

FOURTH CLAIM FOR RELIEF

RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of

Section 13(b)(2)(A) of the Exchange Act and Violations of

Rule 13b2-1 thereunder

88. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

89. CSK violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), by failing to make or keep books, records, and accounts, which, in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

90. Defendants knowingly provided substantial assistance to CSK's violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

91. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and Opper aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

92. By engaging in the conduct described above, Defendants violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified CSK's books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, Defendants will continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

FIFTH CLAIM FOR RELIEF

INTERNAL CONTROLS VIOLATIONS

Aiding and Abetting Violations of

Section 13(b)(2)(B) of the Exchange Act

93. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

1 94. CSK violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
2 78m(b)(2)(B), by failing to devise and maintain a system of internal accounting controls
3 sufficient to provide reasonable assurances that transactions were recorded as necessary
4 to permit preparation of financial statement in conformity with GAAP and to maintain
5 the accountability for assets.

6 95. Fraser, Watson, O'Brien, and Oppen knowingly provided substantial
7 assistance to CSK's violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
8 78m(b)(2)(B).

9 96. By engaging in the conduct described above and pursuant to Section 20(e)
10 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
11 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
12 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act, 15
13 U.S.C. § 78m(b)(2)(B).

14 **SIXTH CLAIM FOR RELIEF**

15 **CIRCUMVENTION OF INTERNAL CONTROLS AND**

16 **FALSIFICATION OF RECORDS**

17 **Violations of Section 13(b)(5) of the Exchange**

18 97. The Commission realleges and incorporates by reference ¶¶ 1 through 74
19 above.

20 98. By engaging in the conduct described above, Defendants violated Section
21 13(b)(5) of the Exchange Act, 15 U.S.C. §78m(b)(5), by knowingly circumventing or
22 failing to implement a system of internal accounting controls, or, directly or indirectly,
23 by knowingly falsifying or causing to be falsified any CSK books, records, or accounts
24 described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined,
25 Defendants will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C.
26 §78m(b)(5).

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1 **SEVENTH CLAIM FOR RELIEF**

2 **FALSE STATEMENT TO ACCOUNTANTS**

3 **Violations of Exchange Act Rule 13b2-2**

4 **(Against Defendants Fraser, Watson, and O'Brien)**

5 99. The Commission realleges and incorporates by reference ¶¶ 1 through 74
6 above.

7 100. Defendants Fraser, Watson, and O'Brien, directly or indirectly, (i) made,
8 or caused to be made, materially false or misleading statements or (ii) omitted to state,
9 or caused others to omit to state, material facts necessary in order to make statements
10 made, in light of the circumstances under which they were made, not misleading, to an
11 accountant in connection with an audit, review or examination of financial statements
12 or the preparation or filing of a document or report required to be filed with the
13 Commission.

14 101. By engaging in the conduct alleged above, defendants Fraser, Watson,
15 and O'Brien violated, and unless restrained and enjoined will continue to violate,
16 Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

17 **EIGHTH CLAIM FOR RELIEF**

18 **CERTIFICATION VIOLATIONS**

19 **Violations of Rule 13a-14 of the Exchange Act**

20 **(Against Defendant Watson)**

21 102. The Commission realleges and incorporates by reference ¶¶ 1 through 74
22 above.

23 103. Watson violated Rule 13a-14 by signing the certifications included with
24 CSK fiscal year 2002, 2003, and 2004 Forms 10-K, certifying, among other things, that
25 the forms fully complied with the requirements of the Exchange Act and fairly
26 presented, in all material respects, the financial condition and results of operations of
27 the company, when, in fact, the reports contained untrue statements of material fact and
28 omitted material information necessary to make the reports not misleading.

1 104. By engaging in the conduct described above, defendant Watson violated
2 Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14. Unless restrained and enjoined,
3 defendant Watson will continue to violate Rule 13a-14, 17 C.F.R. § 240.13a-14.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that the Court:

6 **I**

7 Issue findings of fact and conclusions of law that the defendants committed the
8 alleged violations.

9 **II**

10 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
11 enjoining Defendant Fraser and his agents, servants, employees, attorneys, and those
12 persons in active concert or participation with any of them, who receive actual notice of
13 the order by personal service or otherwise, from violating Section 17(a) of the
14 Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
15 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections
16 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1
17 thereunder.

18 **III**

19 Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently
20 enjoining Defendant Watson and his agents, servants, employees, attorneys, and those
21 persons in active concert or participation with any of them, who receive actual notice of
22 the order by personal service or otherwise, from violating Section 17(a) of the
23 Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5,
24 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of
25 Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20
26 and 13a-1 thereunder.

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28**IV**

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant O'Brien and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder.

V

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder. Or, in the alternative, issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Section 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20 and 13a-1 thereunder.

VI

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Fraser, Watson, and O'Brien from acting as officers

1 or directors of any issuer that has a class of securities registered pursuant to Section 12
2 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
3 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4 **VII**

5 Order defendants Fraser, Watson, O'Brien, and Opper to disgorge all ill-gotten
6 gains from their illegal conduct, together with prejudgment interest thereon.

7 **VIII**

8 Order defendants Fraser, Watson, O'Brien, and Opper to pay civil penalties
9 under Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

10 **IX**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **X**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 5, 2009

Respectfully submitted,

20 

21 C. DABNEY O'RIORDAN

22 Attorney for Plaintiff

23 Securities and Exchange Commission
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1 DONALD W. SEARLES, California Bar No. 135705
E-mail: searlesd@sec.gov
2 LORRAINE B. ECHAVARRIA, California Bar No. 191860
E-mail: echavarrial@sec.gov
3 ROBERT H. CONRRAD, California Bar No. 199498
E-mail: conrradr@sec.gov
4 C. DABNEY O'RIORDAN, California Bar No. 205158
E-mail: oriordand@sec.gov
5

Attorneys for Plaintiff
6 Securities and Exchange Commission
Rosalind R. Tyson, Regional Director
7 Michele Wein Layne, Associate Regional Director
5670 Wilshire Boulevard, 11th Floor
8 Los Angeles, California 90036-3648
Telephone: (323) 965-3998
9 Facsimile: (323) 965-3908
10

11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF ARIZONA**

13 SECURITIES AND EXCHANGE
14 COMMISSION,

15 Plaintiff,

16 vs.

17 MARTIN G. FRASER; DON W.
18 WATSON; EDWARD W. O'BRIEN; and
GARY M. OPPER,

19 Defendants.
20

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE FEDERAL SECURITIES LAWS**

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1 Plaintiff Securities and Exchange Commission (the “Commission”) alleges as
2 follows:

3 **SUMMARY**

4 1. CSK Auto Corporation (“CSK”) was one of the largest specialty retailers
5 of automotive parts and accessories in the United States. Headquartered in Phoenix,
6 Arizona, CSK became a publicly traded company in March 1999. As of January 30,
7 2005, CSK operated 1,134 stores in nineteen states under three brand names: Checker
8 Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after the conduct
9 alleged in this Complaint, CSK became a wholly-owned subsidiary of O’Reilly
10 Automotive, Inc.

11 2. As a retailer of automotive products, CSK purchased products from
12 vendors that manufacture automotive parts and accessories. From at least fiscal years
13 2002 through 2004, a significant portion of CSK’s income was derived from allowances
14 it received from its vendors. Vendor allowances are used to provide retailers, such as
15 CSK, with financial support to market the vendor’s products. In general, CSK
16 accounted for vendor allowances by reducing its costs of goods sold. Thus, the more
17 vendor allowances CSK earned, the lower its costs of goods sold, resulting in greater
18 reported pre-tax income. During the years at issue, vendor allowances were vital to
19 CSK’s financials, increasing its reported pre-tax income by tens of millions of dollars
20 each fiscal year.

21 3. During fiscal years 2002, 2003, and 2004, CSK knew that there were
22 millions of dollars of vendor allowances that were recognized on its books but were not
23 collectible. Rather than write off the uncollectible receivables, as required by Generally
24 Accepted Accounting Principles (“GAAP”), CSK and its senior management engaged
25 in a scheme to hide the uncollectible receivables through various accounting tricks. In
26 addition, during fiscal year 2003, CSK over recognized millions of dollars of vendor
27 allowances. To perpetuate the fraudulent scheme, CSK’s senior management lied to the
28 company’s independent auditors and audit committee.

1 4. If CSK had written off the uncollectible vendor allowances, it would have
2 increased the company's expenses and decreased its income. Because CSK concealed
3 its uncollectible vendor allowances, CSK's annual reports filed with the Commission
4 for fiscal years 2002, 2003, and 2004 materially overstated the company's financial
5 results in violation of GAAP and misled the public about the company's financial
6 performance.

7 5. During the relevant time period, defendant Martin G. Fraser ("Fraser")
8 served as CSK's chief operating officer and president, defendant Don W. Watson
9 ("Watson") served as its chief financial officer, defendant Edward W. O'Brien
10 ("O'Brien") served as a vice president and controller, and defendant Gary M. Opper
11 ("Opper") served as its director of credits and receivables (Fraser, Watson, O'Brien,
12 and Opper are collectively referred to herein as "Defendants"). Because of Fraser's and
13 Watson's conduct, CSK filed with the Commission a false annual report for fiscal year
14 2002 that fraudulently overstated its pre-tax income for that year by approximately
15 47%, or \$11 million. In addition, because of Defendants' conduct, CSK filed false
16 annual reports with the Commission that fraudulently overstated its pre-tax income for
17 fiscal year 2003 by approximately \$34 million, thereby reporting pre-tax income
18 instead of a pre-tax loss, and for fiscal year 2004 by approximately 65%, or \$21
19 million.

20 6. As a result of Defendants' fraudulent conduct, CSK restated its financial
21 statements as part of its Form 10-K for fiscal year 2004 (the "First Restatement"). As
22 part of the First Restatement, CSK reduced its previously recognized vendor allowances
23 for fiscal years 2002, 2003 and the first three quarters of fiscal year 2004. Defendants,
24 however, continued to conceal known, significant uncollectible vendor allowance
25 receivables. The First Restatement also falsely attributed the vendor allowance
26 adjustments to mere errors in estimates and bookkeeping mistakes rather than to
27 Defendants' fraudulent conduct.

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1 7. As a result of Defendants' failure to acknowledge and write off the
2 magnitude of CSK's uncollectible vendor allowance receivables in the First
3 Restatement, CSK still had approximately \$15 million in uncollectible vendor
4 allowance receivables, which, under GAAP, should have been written off. Defendants
5 made a final attempt to collect that \$15 million deficit by intentionally over billing its
6 vendors. When the vendors complained about being double billed, CSK paid back the
7 amounts it had wrongfully collected, but incorrectly accounted for some of those
8 paybacks and mischaracterized the reasons for other paybacks to avoid detection that
9 the company had over collected vendor allowances.

10 8. Each of the Defendants knew CSK was not writing off uncollectible
11 vendor allowances receivables and was over recognizing vendor allowances resulting in
12 CSK's financial statements for fiscal years 2002, 2003, and 2004 being materially
13 misstated. Defendants Fraser and Watson substantially participated in the preparation
14 of CSK's 2002, 2003, and 2004 false financial statements. Defendant O'Brien
15 substantially participated in the preparation of the 2003 and 2004 false financial
16 statements. Defendant Opper substantially participated in, or provided substantial
17 assistance to, the preparation of the false 2003 and 2004 financial statements.

18 9. Based on their conduct, Defendants, among other things, violated the
19 antifraud provisions of the federal securities laws, falsified CSK's books and records,
20 circumvented CSK's internal controls, and lied to CSK's independent auditors. The
21 Commission seeks an order enjoining Defendants from future violations of the
22 securities laws, requiring Defendants to disgorge ill-gotten gains with prejudgment
23 interest, ordering Defendants to pay civil monetary penalties, requiring Watson to
24 reimburse stock profits pursuant to Section 304 of the Sarbanes-Oxley Act, barring
25 Fraser, Watson, and O'Brien from serving as officers or directors of a public company,
26 and providing other appropriate relief.

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1 **JURISDICTION AND VENUE**

2 10. This Court has jurisdiction over this action pursuant to Sections 20(b),
3 20(d)(1), and 22(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. §§
4 77t(b), 77t(d)(1), and 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e), and 27 of the
5 Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d)(1),
6 78u(d)(3)(A), 78u(e) & 78aa. Defendants have directly or indirectly made use of the
7 means or instrumentalities of interstate commerce, of the mails, or of the facilities of a
8 national securities exchange in connection with the transactions, acts, practices and
9 courses of business alleged in this Complaint.

10 11. Venue is proper in this district pursuant to Section 22(a) of the Securities
11 Act, 15 U.S.C. § 77v(a), and Section 27 of the Exchange Act, 15 U.S.C. § 78aa,
12 because defendants reside and transact business within this district and certain of the
13 transactions, acts, practices and courses of conduct constituting violations of the federal
14 securities laws alleged in this Complaint occurred within this district.

15 **THE DEFENDANTS**

16 12. **Martin G. Fraser** (53) is a resident of Phoenix, Arizona, and was CSK’s
17 chief operating officer and president from 2000 until September 2006, when he
18 resigned at CSK’s request.

19 13. **Don W. Watson** (53) is a resident of Gilbert, Arizona. From January
20 1998 to September 2005, Watson was CSK’s chief financial officer, senior vice
21 president, and treasurer. Watson served as CSK’s chief administrative officer and
22 senior vice president from September 2005 to his termination in October 2006.

23 14. **Edward W. O’Brien** (46) is a resident of Cave Creek, Arizona. O’Brien
24 was CSK’s controller and vice president from March 2003 until his termination in
25 September 2006.

26 15. **Gary M. Opper** (56) is a resident of Mesa Arizona. Opper was CSK’s
27 director of credit and receivables, reporting to O’Brien, from March 17, 2003 until he
28 was terminated in September 2006.

1 **RELATED PARTY**

2 16. **CSK Auto Corporation** is a Delaware corporation with its principal
3 executive offices in Phoenix, Arizona. CSK's common stock was registered with the
4 Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York
5 Stock Exchange. On July 11, 2008, CSK became a wholly owned subsidiary of
6 O'Reilly Automotive, Inc.

7 **BACKGROUND**

8 **I. CSK's "Let's Work Together" Program**

9 17. Each year, most of CSK's vendors agreed to pay vendor allowances.
10 Although CSK had various vendor allowance programs, its largest was its "Let's Work
11 Together" program ("LWT"). Typically, LWT agreements covered a one-year period,
12 which CSK referred to as the "program year." Although the LWT agreements varied,
13 CSK generally earned LWT allowances at a set dollar amount, as a percentage of the
14 amount CSK spent to purchase the vendor's product, or as a certain number of cents per
15 item CSK purchased from the vendor.

16 18. CSK recognized LWT allowances ratably, on a monthly basis, based on
17 its estimate of the total allowances it expected to earn for the entire program year.
18 Thus, CSK did not recognize LWT allowances as they were actually earned or
19 collected. In theory, CSK's estimate was based on the LWT agreement and CSK's
20 expected purchases from its vendors. In general, CSK recognized LWT allowances as a
21 reduction to costs of sales (an expense), thereby increasing the company's pre-tax
22 income.

23 19. As CSK recognized LWT allowances for a given program year, it
24 increased the LWT account receivable for that program year. Each LWT program year
25 had its own account receivable. As CSK collected LWT allowances for a particular
26 program year, GAAP required that CSK reduce the outstanding receivable for that same
27 LWT program year.

1 vendors. Through this scheme, CSK avoided writing off tens of millions of dollars in
2 uncollectible LWT receivables, which it had previously recognized.

3 24. CSK “filled the bucket” by taking LWT allowances collected for later
4 program years and applying them to reduce an earlier LWT program year’s account
5 receivable. Specifically, CSK: (i) made baseless journal entries reducing the account
6 receivable for a prior LWT program year with an offsetting increase to the account
7 receivable for a later LWT program year; and (ii) applied LWT allowance collections
8 for a later LWT program year to an earlier program year’s LWT account receivable.

9 25. CSK also failed to write off LWT allowances it had over collected for
10 prior LWT program years and ultimately paid back to its vendors. Instead of writing
11 off amounts CSK paid back, which would reduce its pre-tax income, CSK increased a
12 later LWT program year’s account receivable, making it appear that it had collected an
13 older account receivable when all CSK had done was move the outstanding receivable
14 balance to a more recent year. This accounting treatment was contrary to GAAP
15 because by paying an amount back to a vendor for a prior LWT program year, CSK
16 acknowledged its uncollectibility and should have written off the amount.

17 **A. During CSK’s 2002 Fiscal Year, The Company Concealed**
18 **Approximately \$11 Million Of Uncollectible Vendor Allowances**

19 26. During its 2002 fiscal year, CSK failed to write off approximately \$11
20 million of uncollectible vendor allowances it had recognized in previous years, most
21 significantly as part of the 2001 LWT program year. Instead of writing off the
22 uncollectible vendor allowances, CSK: (i) made improper journal entries moving
23 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT
24 account receivable; (ii) misapplied paybacks of approximately \$3 million to the 2002
25 LWT receivable; and (iii) reached an agreement whereby a vendor agreed to accept an
26 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK
27 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT
28 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK overstated its

1 pre-tax income by approximately \$11 million, or 47%.

2 27. Throughout fiscal year 2002, Fraser and Watson knew of CSK's
3 numerous efforts to hide uncollectible LWT accounts receivable and that, as a result,
4 CSK's financial statements were materially misstated.

5 28. During fiscal year 2001, the company's controller at the time informed
6 Fraser and Watson that CSK was recognizing more LWT allowances for the 2001
7 program year than it was actually earning or likely to earn during that program year.

8 29. The 2001 LWT program year ended in September 2001. CSK tried to
9 collect the outstanding 2001 LWT account receivable throughout fiscal year 2002.

10 30. During fiscal year 2002, CSK issued a \$2 million debit memo to a vendor
11 to collect LWT allowances recognized as part of the 2001 LWT program year. The
12 vendor vigorously disputed the debit memo claiming that CSK had not purchased
13 enough products from the vendor to have earned the \$2 million. Fraser negotiated the
14 dispute. By the middle of the 2002 fiscal year, CSK agreed to forego collecting \$2
15 million worth of LWT allowances it expected to earn on purchases during the 2002 and
16 2003 LWT program years in exchange for the vendor accepting the \$2 million debit
17 memo. Both Fraser and Watson knew that the vendor had agreed to accept the already-
18 issued \$2 million debit memo only in exchange for CSK's agreement not to collect \$2
19 million in LWT for the 2002 and 2003 LWT program years. Since the vendor only
20 accepted the debit memo in exchange for future benefits from CSK, *i.e.*, future
21 purchases of product from the vendor, GAAP required that CSK immediately write off
22 the \$2 million because it was not collectible as part of the 2001 LWT program year.

23 31. During fiscal year 2002, CSK had to make various paybacks to vendors
24 for vendor allowances it had recognized during prior fiscal years. Instead of correctly
25 accounting for those paybacks by writing them off and increasing CSK's expenses, the
26 company increased the 2002 LWT program year's account receivable. Watson
27 instructed CSK employees that they would have to raise additional allowances to cover
28 for those amounts paid back because CSK "could not afford a charge for any

1 paybacks.” Fraser knew of Watson’s instruction and CSK’s failure to write off vendor
2 allowances paid back to vendors.

3 32. In October 2002, Fraser, Watson, and others met to discuss the
4 collectibility of the 2001 LWT account receivable, which had been outstanding for
5 approximately one year. At that time, of the remaining outstanding balance for the
6 2001 LWT account receivable, \$3.2 million was known to be uncollectible and \$4.5
7 million was “questionable.” These amounts did not include either the \$2 million Fraser
8 and Watson already knew was uncollectible or the paybacks.

9 33. Rather than write off these uncollectible amounts, as required by GAAP,
10 in October and November 2002, CSK devised a plan to move collections for the 2002
11 LWT program year to cover the 2001 LWT account receivable. As part of that plan, in
12 or about November 2002, Watson instructed a CSK employee to identify collections for
13 the 2002 LWT program year to move to the 2001 LWT program year account
14 receivable to cover 2001 shortfalls.

15 **B. During Fiscal Year 2003, CSK Concealed Approximately \$24 Million**
16 **In Known, Uncollectible Vendor Allowances And Improperly**
17 **Recognized Approximately \$10 Million In Vendor Allowances**

18 34. During its 2003 fiscal year, CSK used various tactics to fraudulently
19 conceal, rather than properly write off, approximately \$24 million in uncollectible
20 vendor allowances recognized during previous LWT program years, primarily as part of
21 the 2002 LWT program year. Moreover, CSK improperly and prematurely recognized
22 \$6 million in vendor allowances and improperly recognized an additional \$4 million of
23 LWT allowances. As a result, in its Form 10-K filed on April 15, 2004, CSK overstated
24 its 2003 pre-tax income by approximately \$34 million, turning its actual pre-tax loss of
25 approximately \$18 million into purported pre-tax income of \$16 million. At the time of
26 that filing, Defendants knew CSK had failed to write off uncollectible vendor
27 allowances and over recognized allowances, and that, as a result, CSK’s financial
28 statements were materially misstated.

1 35. During fiscal year 2003, CSK hid approximately \$24 million in
2 uncollectible vendor allowance receivables. First, CSK applied approximately \$10
3 million in 2003 LWT program year collections to the 2002 LWT program year
4 receivable. Second, CSK failed to write off approximately \$5 million in vendor
5 allowances CSK had over collected during prior LWT program years but had to pay
6 back during fiscal year 2003. Third, CSK made a baseless journal entry decreasing the
7 2002 LWT receivable by \$9 million and increasing the 2003 LWT receivable by the
8 same amount, which reduced the 2002 LWT receivable to zero.

9 36. During fiscal year 2003, Defendants knew CSK was failing to write off
10 uncollectible LWT allowances. During fiscal year 2003, Defendants regularly received
11 information regarding CSK's efforts to hide the uncollectible LWT allowances. For
12 example, on or about September 9, 2003, Opper sent an email to Fraser, Watson,
13 O'Brien and others discussing the collection of the 2002 LWT account receivable,
14 which was then approximately one-year old. The email stated that: (i) "approximately
15 \$9.6mm in 2003 collections . . . were moved to 2002 to cover short falls from prior
16 periods;" and (ii) the outstanding 2002 LWT program year receivable balance did not
17 include \$5.4 million in 2002 paybacks. Defendant Opper referenced in the email a
18 chart he had attached that explained the "\$24.2 million in LWT exposure from 2002
19 and prior." That chart included detailed explanations regarding millions of dollars of
20 uncollectible LWT allowances for prior years, including the 2002 LWT program year.

21 37. Defendants also met to discuss the uncollectible LWT receivables during
22 fiscal year 2003. For example, Defendants attended a meeting on or about September
23 17, 2003 to discuss the "2002 Outstanding LWT status" where Opper provided copies
24 of the chart attached to his September 9, 2003 email.

25 38. During the fourth quarter of 2003, CSK prematurely recognized
26 approximately \$6 million in additional vendor allowances, which would not be earned,
27 if at all, until fiscal year 2004, in order to meet its earnings numbers. On December 23,
28 2003, Defendants and others met with CSK's independent auditor in Fraser's office to

1 discuss the requirements for the allowances to be recognized in 2003. During the
2 meeting, CSK's independent auditor explained that the agreements had to state that the
3 allowances were for 2003, that no future performance was required of CSK, and that if
4 CSK could not collect the full amount using one method of collection, then CSK could
5 change the collection method. Defendants had vendors sign agreements making it
6 appear that CSK had earned additional LWT allowances during 2003, when, in fact,
7 those allowances would be earned, if at all, based on purchases made during 2004.

8 39. At the end of fiscal 2003, CSK obtained approximately \$4 million of
9 additional warranty allowances from two vendors. At that same time, CSK had a
10 warranty deficit of approximately \$13 million, which represented returns from
11 customers covered by warranties in excess of the warranty accrual recorded by CSK.
12 Under GAAP, a warranty deficit should be written off unless additional warranty
13 allowances are obtained to cover the deficit. However, instead of applying the \$4
14 million of additional warranty allowances to offset a portion of its warranty deficit
15 balance, CSK improperly recognized those warranty allowances as additional LWT
16 allowances. Thus, the warranty deficit included in CSK's inventory balance remained
17 \$13 million, and CSK improperly inflated its pre-tax income for fiscal year 2003 by
18 approximately \$4 million.

19 **C. During Fiscal Year 2004, CSK Failed To Write Off Approximately**
20 **\$21 Million Of Known, Uncollectible Vendor Allowances**

21 40. During fiscal year 2004, CSK concealed that it could not collect vendor
22 allowances totaling approximately \$21 million. Specifically, CSK applied:
23 (i) approximately \$11 million in 2004 LWT program year collections to the 2003 LWT
24 account receivable; (ii) approximately \$4 million CSK paid back to vendors for the
25 2003 and 2002 LWT program years to the 2004 LWT receivable; and
26 (iii) approximately \$6 million via baseless journal entries to the 2003 LWT receivable
27 from other vendor allowance receivables in other time periods. As a result, in its Form
28 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year 2004 by

1 approximately 65%, or \$21 million. At the time of that filing, Defendants knew CSK
2 had failed to write off uncollectible vendor allowances and that, as a result, the
3 company's financial statements were materially misstated.

4 41. CSK's 2004 Form 10-K included CSK's First Restatement, which
5 partially restated CSK's vendor allowances recognized during prior years. Specifically,
6 CSK restated because it could not collect all of the 2003 LWT receivable. In addition,
7 CSK restated for vendor allowances paid back during fiscal year 2003 that CSK failed
8 to properly write off during the 2003 fiscal year. CSK's restatement regarding vendor
9 allowances resulted in CSK adjusting its costs of sales upward and its pre-tax income
10 downward, for the first three quarters of 2004, and the 2003, 2002, and 2001 fiscal
11 years by \$1.9 million, \$7.1 million, \$9.0 million, and \$0.5 million, respectively.

12 42. The First Restatement, however, falsely attributed the vendor allowance
13 restatement to "errors in estimation in earlier periods" and "vendor allowances recorded
14 in improper periods" due to "imprecise estimates, bookkeeping errors and recording
15 allowances in the incorrect periods." Defendants knew the reasons stated for the
16 vendor allowance restatement were false because the First Restatement resulted from
17 Defendants' fraudulent scheme.

18 43. The First Restatement also failed to: (i) write off all known, uncollectible
19 vendor allowance receivables; (ii) disclose the full extent of CSK's efforts to hide the
20 uncollectible receivables from its independent auditors; and (iii) disclose CSK's over
21 recognition of vendor allowances during fiscal 2003. Defendants knew about these
22 misstatements contained in the First Restatement.

23 44. While preparing the First Restatement, Defendants hid the full extent of
24 their fraudulent conduct from CSK's independent auditor. For example, despite the
25 independent auditor's request for a list of all paybacks CSK had made to its vendors,
26 Watson, O'Brien, and Opper knowingly provided an incomplete list. As a result, CSK
27 failed to write off \$4 million in paybacks it had made during 2004 and applied to the
28 2003 LWT receivable. Similarly, Fraser and Watson negotiated agreements with

1 vendors whereby the vendors agreed to pay additional amounts of LWT in exchange for
2 CSK's acceptance to pay more for their goods. Fraser, however, directed others to
3 falsify documents to make it appear that CSK had entered into separate, seemingly
4 unrelated agreements, containing different dates, in order to hide from CSK's
5 independent auditor that CSK's receipt of additional LWT allowances were contingent
6 upon CSK's willingness to grant price increases offsetting the LWT amounts the
7 vendors purportedly agreed to pay. Thus, Defendants knew they were hiding material
8 information from CSK's independent auditor and excluding from the restatement,
9 intentional accounting errors regarding vendor allowances.

10 **D. To Further Cover Up Its Fraud In The Wake Of The First**
11 **Restatement, CSK Debited Its Vendors For Amounts It Knew They**
12 **Did Not Owe**

13 45. After filing its First Restatement in May 2005, CSK's outstanding 2004
14 LWT account receivable still contained approximately \$15 million that was not
15 collectible. In an effort to conceal that uncollectible receivable, CSK issued debit
16 memos to the vendors for the \$15 million at the end of July 2005.

17 46. As of July 15, 2005, Watson, O'Brien, and Opper knew that \$15 million
18 of the outstanding 2004 LWT receivable was not uncollectible because it had
19 previously been collected and had been applied to prior LWT program year receivables
20 as part of CSK's fraudulent scheme.

21 47. In July 2005, CSK issued debit memos totaling approximately \$31
22 million, including the \$15 million that CSK had previously collected. Opper instructed
23 employees to prepare the debit memos to collect the entire \$31 million even though \$15
24 million of the allowances had already been collected. When the debit memos were
25 issued, Fraser met with Watson, O'Brien, Opper, and other CSK employees. Fraser
26 told the group that CSK needed to make the debit memos "stick" and that, when it had
27 sent out debit memos in the past, CSK paid back only about ten percent of the debits.

28

1 48. In late July 2005 or early August 2005, Fraser was told that many of the
2 buyers saw errors in the proposed debits. Fraser responded that probably 70% of the
3 debits would “stick” and that many of the vendors would not even notice them. At least
4 as early as September 2005, Fraser knew that a substantial amount CSK had debited
5 was at risk of having to be paid back to its vendors.

6 49. After the vendors complained about the debit memos, CSK continued to
7 hide the uncollectible LWT allowances. First, CSK negotiated deals with vendors for
8 future vendor allowances that CSK offset against the already-issued 2004 LWT debit
9 memos. Second, CSK falsified its books and records to conceal that it was paying back
10 portions of the debit memos. For example, CSK issued to certain vendors credit
11 memos, which O’Brien created or caused to be created, that falsely described the
12 paybacks as being related to “costing,” “pricing increases—steel surcharge,” or
13 “warranty.” In fact, the credit memos paid back LWT amounts that CSK had
14 improperly debited.

15 **II. CSK’s Forms 10-K For Fiscal Years 2002, 2003, And 2004 Contained**
16 **Materially False Information**

17 50. CSK filed annual reports on Form 10-K for fiscal years 2002, 2003, and
18 2004.

19 51. The notes to the financial statements included with CSK’s Forms 10-K
20 for fiscal years 2002, 2003, and 2004 falsely stated that “Specific accounts are written
21 off against the allowance when management determines the account is uncollectible.”
22 In fact, CSK did not write off known, uncollectible vendor allowance receivables, but
23 rather engaged in a scheme to avoid and hide such write offs, as set forth above.

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1 52. In all, CSK understated its costs of goods sold during fiscal years 2002
2 through 2004 as follows:

FY	Concealed Receivables From Prior Years			Over Recognized Allowances / Other Uncollectible Receivables	Total
	Unsupported Journal Entries	Misapplied Debit Memos	Misapplied Paybacks		
2002	\$6M	--	\$3 M	\$2 M	\$11 M
2003	\$9 M	\$10 M	\$5 M	\$10 M	\$34 M
2004	\$6 M	\$11 M	\$4 M	--	\$21 M

11 53. CSK's Form 10-K for fiscal year 2002 falsely overstated CSK's pre-tax
12 income by approximately 47%, or \$11 million. When CSK filed its Form 10-K for
13 fiscal year 2002, Fraser and Watson knew that the company's financial statement were
14 materially misstated.

15 54. CSK's Form 10-K for fiscal year 2003 overstated CSK's pre-tax income
16 by approximately \$34 million, thereby reporting pre-tax income instead of a pre-tax
17 loss. When CSK filed its Form 10-K for fiscal year 2003, Defendants knew that the
18 company's financial statements were materially misstated.

19 55. CSK's Form 10-K for fiscal year 2004, which also contained the First
20 Restatement, overstated CSK's pre-tax income by approximately 65%, or \$21 million.
21 In addition, it falsely attributed the need for the vendor allowance restatement to
22 estimation errors, imprecise estimates, and bookkeeping errors, rather than to
23 Defendants' fraudulent conduct. When CSK filed its Form 10-K for fiscal year 2004,
24 Defendants knew the company's financial statements were materially misstated and
25 mischaracterized the reasons for the vendor allowance restatement.

26 56. Watson, as CSK's CFO, signed CSK's annual reports and the
27 accompanying Sarbanes-Oxley certifications. In connection with each of the Forms 10-
28 K filed for fiscal years 2002, 2003, and 2004, Watson certified he had no knowledge of

1 any untrue statement of material fact in the report, the annual report “fairly presents in
2 all material respects the financial condition, results of operations, and cash flows . . .,”
3 and that he had disclosed to CSK’s independent auditors and audit committee “any
4 fraud, whether or not material, that involved management or any other employees who
5 have a significant role in the registrant’s internal controls.” At the time he made those
6 certifications, Watson knew that each of those statements was false.

7 57. On March 27, 2006, CSK announced that it was conducting an internal
8 investigation relating to, among other things, accounting irregularities regarding vendor
9 allowances. CSK’s stock price immediately dropped 8% and dropped a total of 13%
10 for the week.

11 58. On May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating,
12 for the second time, its financial statements for 2002, 2003, and 2004 due, in part, to the
13 fraudulent scheme relating to CSK’s failure to write off uncollectible vendor
14 allowances.

15 **III. Defendants Substantially Participated In Making CSK’s Misleading Annual**
16 **Reports**

17 59. Fraser substantially participated in, and had intricate involvement with,
18 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
19 the financial statement filed therewith, by among other things:

20 (i) being a member of and participating in CSK’s disclosure team
21 meetings to review and discuss CSK’s Forms 10-K for fiscal years 2002, 2003,
22 and 2004 before they were filed with the Commission as well to review and
23 discuss related accounting and disclosure issues, such as collectibility of LWT
24 allowances;

25 (ii) signing sub-certifications in advance of the filing of CSK’s Forms 10-
26 K for fiscal years 2002, 2003, and 2004, on which CSK’s CEO and Watson
27 relied upon to make their own representations in the Sarbanes-Oxley
28 certifications. In those sub-certifications, Fraser falsely represented that to his

1 knowledge the Forms 10-K did not “contain any material inaccuracies or
2 omissions involving or relating to the matters with respect to which I have
3 knowledge or responsibility.” At the time he made those certifications, Fraser
4 knew those representations were false;

5 (iii) signing due diligence certifications in connection with CSK’s Forms
6 10-K for fiscal years 2002, 2003, and 2004, falsely certifying that: (a) based on
7 his knowledge of the company’s operations, the Forms 10-K did not contain or
8 omit any material facts that would make the statements contained therein
9 inaccurate or misleading; (b) to the best of his knowledge “the financial
10 statements and other accompanying financial information fairly present in all
11 material respects the financial condition, results of operations and cash flows of
12 the Company for the period presented in such report;” and (c) he had “not made
13 any false statements to any senior management or the Company’s internal
14 auditors or independent outside auditors that would affect the Company’s
15 financial statements and disclosures.” At the time he made those certifications,
16 Fraser knew those statements were false; and

17 (iv) signing management representation letters to CSK’s independent
18 auditor in connection with its audit of CSK’s consolidated financial statements
19 included with CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004. In
20 those management representation letters, Fraser “confirm[ed]” that he was
21 “responsible for the fair presentation of the consolidated financial statements of
22 financial position, results of operations, and cash flows in conformity with
23 generally accepted accounting principles.”

24 60. Watson substantially participated in, and had intricate involvement with,
25 the preparation of CSK’s Forms 10-K for fiscal years 2002, 2003, and 2004, including
26 the financial statement filed therewith by among other things:

27 (i) signing the Forms 10-K for fiscal years 2002, 2003, and 2004;

1 (ii) signing the Sarbanes-Oxley certifications filed with CSK's Forms 10-
2 K for fiscal years 2002, 2003, and 2004;

3 (iii) being a member of and participating in CSK's disclosure team
4 meetings to review and discuss CSK's Forms 10-K for fiscal years 2002, 2003, and
5 2004 before they were filed with the Commission as well as related accounting and
6 disclosure issues, such as the collectibility of LWT allowances; and

7 (iv) signing management representation letters to CSK's independent
8 auditor in connection with its audit of CSK's consolidated financial statements included
9 with CSK's Forms 10-K for fiscal years 2002, 2003, and 2004. In those management
10 representation letters, Watson "confirm[ed]" that he was "responsible for the fair
11 presentation of the consolidated financial statements of financial position, results of
12 operations, and cash flows in conformity with generally accepted accounting
13 principles."

14 61. O'Brien substantially participated, and had intricate involvement, in the
15 preparation of CSK's Forms 10-K for fiscal years 2003 and 2004, including the
16 financial statement filed therewith, by among other things:

17 (i) being CSK's controller, whose responsibilities included reviewing
18 CSK's financial statements for accuracy;

19 (ii) being a member of and participating in CSK's disclosure team
20 meetings to review and discuss CSK's Forms 10-K for fiscal years 2003 and
21 2004 before they were filed with the Commission as well as related accounting
22 and disclosure issues, such as the collectibility of LWT allowances;

23 (iii) signing sub-certifications in advance of the filing of CSK's Forms
24 10-K for fiscal years 2003 and 2004, on which CSK's CEO and Watson relied
25 upon to make their own representations in the Sarbanes-Oxley certifications. In
26 those sub-certifications, O'Brien falsely represented that to his knowledge the
27 Forms 10-K did not "contain any material inaccuracies or omissions involving or
28 relating to the matters with respect to which I have knowledge or responsibility;"

1 (iv) signing due diligence certifications in connection with CSK's Forms
2 10-K for fiscal years 2003 and 2004, certifying that (a) based on his knowledge
3 of the company's operations, the Forms 10-K did not contain or omit any
4 material facts that would make the statements contained therein inaccurate or
5 misleading, (b) to the best of his knowledge "the financial statements and other
6 accompanying financial information fairly present in all material respects the
7 financial condition, results of operations and cash flows of the Company for the
8 period presented in such report," and (c) he had "not made any false statements
9 to any senior management or the Company's internal auditors or independent
10 outside auditors that would affect the Company's financial statements and
11 disclosures." At the time he made those certifications, O'Brien knew that those
12 statements were false; and

13 (vi) signing management representation letters to CSK's independent
14 auditor in connection with its audit of CSK's consolidated financial statements
15 included with CSK's Forms 10-K for fiscal years 2003 and 2004. In those
16 management representation letters, O'Brien "confirm[ed]" that he was
17 "responsible for the fair presentation of the consolidated financial statements of
18 financial position, results of operations, and cash flows in conformity with
19 generally accepted accounting principles."

20 62. Opper substantially participated in Defendants' fraudulent scheme to
21 avoid writing off uncollectible vendor allowance amounts in CSK's annual reports, or,
22 in the alternative, provided substantial assistance to CSK in carrying out the fraudulent
23 scheme. Rather than sound the alarm on CSK's improper accounting, Opper chose to
24 become an essential participant in CSK's fraudulent scheme by among other things:

25 (i) using his position in charge of the day-to-day management of CSK's
26 vendor accounts receivable department, particularly CSK's LWT operations, to instruct
27 employees to make accounting entries to hide uncollectible vendor allowance
28 receivables. For example, on October 10, 2003, Opper instructed a CSK employee to

1 make an improper journal entry moving an outstanding 2002 LWT receivable to the
2 2003 LWT receivable.

3 (ii) approving the misapplication of paybacks to vendors and the
4 misapplication of those paybacks to later year LWT receivables;

5 (iii) tracking CSK's movement of funds to hide uncollectible vendor
6 allowance receivables and periodically providing this information to senior
7 management, including Fraser, Watson, and O'Brien; and

8 (iv) providing to CSK's independent auditor false documents and
9 explanations in order to hide that CSK could not collect a material portion of its vendor
10 allowance receivables. For example, in a November 24, 2003 memo to CSK's
11 independent auditor, Opper provided false information and documentation regarding
12 collections for the 2003 LWT program that were improperly applied to the 2002 LWT
13 program.

14 **IV. In Carrying Out And Covering Up The Fraud, Defendants**
15 **Repeatedly Lied To CSK's Independent Auditor**

16 63. Defendants Fraser, Watson, O'Brien, and CSK's independent auditor
17 regularly attended audit committee meetings and frequently and at length discussed the
18 collectibility of the outstanding LWT receivables. Defendants Fraser and Watson often
19 led the discussion regarding LWT collections, and regularly stated that the outstanding
20 LWT receivables were collectible.

21 64. To avoid detection of their fraudulent scheme, Defendants regularly lied
22 to CSK's independent auditor in connection with its reviews and audits of CSK's
23 financial statements.

24 65. In connection with the Forms 10-K CSK filed for fiscal years 2002, 2003,
25 and 2004, Fraser, Watson, and (starting in fiscal year 2003) O'Brien, signed
26 management representation letters to CSK's independent auditor. Specifically, in
27 connection with the Form 10-K for fiscal year 2002, Fraser and Watson signed a
28 management letter dated May 2, 2003; in connection with the Form 10-K for fiscal year

1 2003, Fraser, Watson, and O'Brien signed a management representation letter dated
2 April 14, 2004; and in connection with the Form 10-K for fiscal year 2004, Fraser,
3 Watson, and O'Brien signed a management representation letter dated May 2, 2005. In
4 each of those management representation letters, Fraser, Watson, and O'Brien falsely
5 representing that: (i) the receivables were collectible; (ii) the company's financial
6 statements were prepared in accordance with GAAP; and (iii) they had no knowledge of
7 any fraud involving management or employees with a significant role in internal
8 controls, or any other fraud that could have a material effect on the company's
9 consolidated financial statements. For fiscal years 2002 and 2003, Fraser, Watson, and
10 O'Brien also falsely represented that CSK had adequate internal controls. All of those
11 representations were false for the reasons set forth above. Fraser, Watson, and O'Brien
12 knew that these representations were false when they signed the letters.

13 66. Defendant Opper gave CSK's independent auditor modified schedules
14 that omitted the columns showing the uncollectible amounts and memoranda containing
15 false information.

16 **V. Defendants Circumvented CSK's Internal Controls**

17 67. During 2002, 2003, and part of 2004, Watson, O'Brien, and Opper
18 circumvented CSK's internal controls by, among other things, instructing or approving
19 the entry of false journal entries.

20 68. In 2004, CSK developed various policies regarding vendor allowances,
21 one of which disallowed side letters with terms that differed from the LWT agreements.
22 Contrary to this policy, however, Fraser directed that a vendor agreement relating to
23 LWT allowances be split into two, with one agreement backdated.

24 **VI. Offerings While The False Financial Information Was Outstanding**

25 69. While the false financial statements were outstanding, CSK engaged in
26 several private debt offerings. In January 2004, CSK issued \$225 million of 7% Senior
27 Subordinated Notes. In August 2005, CSK completed a \$125 million issuance of 3
28 3/8% senior exchangeable notes. In December 2005, CSK issued \$100 million of 4

1 5/8% senior exchangeable notes. CSK's materially false financial statements filed with
2 its Forms 10-K for fiscal years 2003 and 2004 were incorporated by reference in the
3 Form S-3 and Form S-4 Registration Statements filed with the Commission during
4 fiscal years 2004 and 2005.

5 70. With respect to the 2004 debt offering, on May 20, 2004 Fraser, Watson,
6 and O'Brien signed a management representation letter to CSK's independent auditor
7 confirming their prior representations contained in the April 14, 2004 management
8 representation letter provided with the fiscal year 2003 Form 10-K. The April 14
9 management representation letter stated that the 2003 LWT receivable reflected
10 amounts owed CSK for the 2003 LWT program year. Fraser, Watson, and O'Brien
11 knew this representation was false when they signed both the April 14 and May 20,
12 2004 letters.

13 71. CSK's materially false and misleading disclosures and financial
14 statements filed with its Forms 10-K for fiscal years 2002, 2003 and 2004 were
15 incorporated by reference in the various Form S-3 and Form S-4 Registration
16 Statements filed with the Commission during fiscal year 2002, 2004 and 2005.
17 Defendants knew that these registration statements were false and misleading when
18 filed because they incorporated misstatements from CSK's Forms 10-K.

19 **VII. Defendants Received Bonuses And Sold Stock During The**
20 **Fraudulent Scheme**

21 72. For the 2002 and 2003 fiscal years, Fraser and Watson each received a
22 bonus based, in part, on CSK's financial performance.

23 73. For the 2003 fiscal year, O'Brien and Oppen each received a bonus based,
24 in part, on CSK's financial performance.

25 74. Fraser, Watson, and Oppen sold CSK stock in 2003, 2004, and 2005,
26 during the period of the fraud. Their net profits were \$195,419, \$155,122, and
27 \$28,078.20, respectively.

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FIRST CLAIM FOR RELIEF

FRAUD IN THE OFFER OR SALE OF SECURITIES

Violations of Section 17(a) of the Securities Act

75. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

76. Defendants, and each of them, by engaging in the conduct described above, directly or indirectly, in the offer or sale of securities by the use of means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- a. with scienter, employed devices, schemes, or artifices to defraud;
- b. obtained money or property by means of untrue statements of a material fact or by omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- c. engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

77. By engaging in the conduct described above, Defendants violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

SECOND CLAIM FOR RELIEF

**FRAUD IN CONNECTION WITH THE
PURCHASE OR SALE OF SECURITIES**

**Violations and Aiding and Abetting Violations of
Section 10(b) of the Exchange Act
and Rule 10b-5 thereunder**

78. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

79. Defendants, and each of them, by engaging in the conduct described

1 above, directly or indirectly, in connection with the purchase or sale of a security, by
2 the use of means or instrumentalities of interstate commerce, of the mails, or of the
3 facilities of a national securities exchange, with scienter:

- 4 a. employed devices, schemes, or artifices to defraud;
- 5 b. made untrue statements of a material fact or omitted to state a
6 material fact necessary in order to make the statements made, in
7 the light of the circumstances under which they were made, not
8 misleading; or
- 9 c. engaged in acts, practices, or courses of business which operated
10 or would operate as a fraud or deceit upon other persons.

11 80. Alternatively, Opper knowingly provided substantial assistance to CSK in
12 its violation of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5
13 thereunder, 17 C.F.R. § 240.10b-5 in connection with CSK's annual reports on Form
14 10-K for fiscal years 2003 and 2004.

15 81. By engaging in the conduct described above, Defendants violated, and
16 unless restrained and enjoined will continue to violate, Section 10(b) of the Exchange
17 Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

18 82. By engaging in the conduct described above and pursuant to Section 20(e)
19 of the Exchange Act, 15 U.S.C. § 78t(e), Opper aided and abetted CSK's violations,
20 and unless restrained and enjoined will continue to aid and abet violations, of Section
21 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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THIRD CLAIM FOR RELIEF
VIOLATIONS OF COMMISSION PERIODIC
REPORTING REQUIREMENTS
Aiding and Abetting Violations of

Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder

83. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

84. CSK violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, by filing with the Commission annual reports on Form 10-K for fiscal years 2002, 2003, and 2004 that were materially false and failed to include material information necessary to make the required statements, in light of the circumstances under which they were made, not misleading.

85. Fraser and Watson knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2002, 2003, and 2004.

86. O'Brien and Opper knowingly provided substantial assistance to CSK in its violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder in connection with CSK's annual reports for fiscal years 2003 and 2004.

87. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), Defendants aided and abetted CSK's violations, and unless restrained and enjoined will continue to aid and abet violations, of Section 13(a) of the Exchange Act, and Rules 12b-20 and 13a-13 thereunder.

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FOURTH CLAIM FOR RELIEF
RECORD-KEEPING VIOLATIONS

Aiding and Abetting Violations of
Section 13(b)(2)(A) of the Exchange Act and Violations of
Rule 13b2-1 thereunder

88. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

89. CSK violated Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A), by failing to make or keep books, records, and accounts, which, in reasonable detail accurately and fairly reflected its transactions and disposition of its assets.

90. Defendants knowingly provided substantial assistance to CSK’s violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. § 78m(b)(2)(A).

91. By engaging in the conduct described above and pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O’Brien, and Oppen aided and abetted CSK’s violations, and unless restrained and enjoined will continue to aid and abet violations of Section 13(b)(2)(A) of the Exchange Act.

92. By engaging in the conduct described above, Defendants violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing to be falsified CSK’s books, records, or accounts subject to Section 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, Defendants will continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

FIFTH CLAIM FOR RELIEF
INTERNAL CONTROLS VIOLATIONS

Aiding and Abetting Violations of
Section 13(b)(2)(B) of the Exchange Act

93. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

1 94. CSK violated Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
2 78m(b)(2)(B), by failing to devise and maintain a system of internal accounting controls
3 sufficient to provide reasonable assurances that transactions were recorded as necessary
4 to permit preparation of financial statement in conformity with GAAP and to maintain
5 the accountability for assets.

6 95. Fraser, Watson, O'Brien, and Oppen knowingly provided substantial
7 assistance to CSK's violation of Section 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §
8 78m(b)(2)(B).

9 96. By engaging in the conduct described above and pursuant to Section 20(e)
10 of the Exchange Act, 15 U.S.C. § 78t(e), defendants Fraser, Watson, O'Brien, and
11 Oppen aided and abetted CSK's violations, and unless restrained and enjoined will
12 continue to aid and abet violations of Section 13(b)(2)(B) of the Exchange Act, 15
13 U.S.C. § 78m(b)(2)(B).

14 **SIXTH CLAIM FOR RELIEF**

15 **CIRCUMVENTION OF INTERNAL CONTROLS AND**

16 **FALSIFICATION OF RECORDS**

17 **Violations of Section 13(b)(5) of the Exchange**

18 97. The Commission realleges and incorporates by reference ¶¶ 1 through 74
19 above.

20 98. By engaging in the conduct described above, Defendants violated Section
21 13(b)(5) of the Exchange Act, 15 U.S.C. §78m(b)(5), by knowingly circumventing or
22 failing to implement a system of internal accounting controls, or, directly or indirectly,
23 by knowingly falsifying or causing to be falsified any CSK books, records, or accounts
24 described in Section 13(b)(2) of the Exchange Act. Unless restrained and enjoined,
25 Defendants will continue to violate Section 13(b)(5) of the Exchange Act, 15 U.S.C.
26 §78m(b)(5).

SEVENTH CLAIM FOR RELIEF

FALSE STATEMENT TO ACCOUNTANTS

Violations of Exchange Act Rule 13b2-2

(Against Defendants Fraser, Watson, and O'Brien)

99. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

100. Defendants Fraser, Watson, and O'Brien, directly or indirectly, (i) made, or caused to be made, materially false or misleading statements or (ii) omitted to state, or caused others to omit to state, material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, to an accountant in connection with an audit, review or examination of financial statements or the preparation or filing of a document or report required to be filed with the Commission.

101. By engaging in the conduct alleged above, defendants Fraser, Watson, and O'Brien violated, and unless restrained and enjoined will continue to violate, Exchange Act Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

EIGHTH CLAIM FOR RELIEF

CERTIFICATION VIOLATIONS

Violations of Rule 13a-14 of the Exchange Act

(Against Defendant Watson)

102. The Commission realleges and incorporates by reference ¶¶ 1 through 74 above.

103. Watson violated Rule 13a-14 by signing the certifications included with CSK fiscal year 2002, 2003, and 2004 Forms 10-K, certifying, among other things, that the forms fully complied with the requirements of the Exchange Act and fairly presented, in all material respects, the financial condition and results of operations of the company, when, in fact, the reports contained untrue statements of material fact and omitted material information necessary to make the reports not misleading.

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28**IV**

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant O'Brien and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder.

V

Issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20 and 13a-1 thereunder. Or, in the alternative, issue judgments, in a form consistent with Fed. R. Civ. P. 65(d), permanently enjoining Defendant Opper and his agents, servants, employees, attorneys, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, from violating Section 17(a) of the Securities Act, and Section 13(b)(5) of the Exchange Act, and Rule 13b2-1 thereunder, and from aiding and abetting violations of Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 10b-5, 12b-20 and 13a-1 thereunder.

VI

Enter an order, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), prohibiting defendants Fraser, Watson, and O'Brien from acting as officers

1 or directors of any issuer that has a class of securities registered pursuant to Section 12
2 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to
3 Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4 **VII**

5 Order defendants Fraser, Watson, O'Brien, and Opper to disgorge all ill-gotten
6 gains from their illegal conduct, together with prejudgment interest thereon.

7 **VIII**

8 Order defendants Fraser, Watson, O'Brien, and Opper to pay civil penalties
9 under Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

10 **IX**

11 Retain jurisdiction of this action in accordance with the principles of equity and
12 the Federal Rules of Civil Procedure in order to implement and carry out the terms of
13 all orders and decrees that may be entered, or to entertain any suitable application or
14 motion for additional relief within the jurisdiction of this Court.

15 **X**

16 Grant such other and further relief as this Court may determine to be just and
17 necessary.

18
19 DATED: March 5, 2009

Respectfully submitted,

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21 C. DABNEY O'RIORDAN

22 Attorney for Plaintiff

23 Securities and Exchange Commission
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