

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  
COMMISSION,

Case No.

14

Plaintiff,

**COMPLAINT FOR VIOLATIONS OF  
SECTION 304 OF THE SARBANES-  
OXLEY ACT OF 2002**

15

vs.

16

MAYNARD L. JENKINS,

17

Defendant.

18

19

20

21

22

23

24

25

26

27

28

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

3 **SUMMARY**

4 1. By this action, the Commission seeks an order from this Court,  
5 pursuant to Section 304 of the Sarbanes-Oxley Act, requiring Maynard L. Jenkins,  
6 former chairman and chief executive officer of CSK Auto Corporation (“CSK”),  
7 to reimburse CSK for all of his bonuses and other incentive-based and equity-  
8 based compensation, and all of his profits realized from his sale of CSK stock,  
9 during the 12-month period following the issuance of CSK’s financial statements  
10 contained in its annual reports for fiscal years 2002, 2003 and 2004, all of which  
11 were required to be restated, not once, but twice, as a result of CSK’s fraudulent  
12 conduct.

13 2. During a substantial portion of Jenkins’ decade-long tenure as  
14 chairman and chief executive officer of CSK, CSK was engaged in a pervasive  
15 accounting fraud, which involved many of its most senior officers, that resulted in  
16 CSK filing fraudulent financial statements in its annual reports for fiscal years  
17 2002, 2003 and 2004, all of which Jenkins signed.

18 3. During the period at issue, CSK was one of the largest specialty  
19 retailers of automotive parts and accessories in the United States. As a retailer of  
20 automotive products, CSK purchased products from vendors that manufacture  
21 automotive parts and accessories. From at least fiscal years 2002 through 2004, a  
22 significant portion of CSK’s income was derived from allowances it received from  
23 its vendors. Vendor allowances are used to provide retailers, such as CSK, with  
24 financial support to market the vendor’s products. In general, CSK accounted for  
25 vendor allowances by reducing its costs of goods sold. Thus, the more vendor  
26 allowances CSK earned, the lower its costs of goods sold, resulting in greater  
27 reported pre-tax income. During the fiscal years at issue, CSK’s accounting of its  
28 ///

1 vendor allowances were vital to CSK's financial results, and served to increase its  
2 reported pre-tax income by tens of millions of dollars each fiscal year.

3       4. During fiscal years 2002, 2003, and 2004, CSK knew that there were  
4 millions of dollars of uncollectible vendor allowance receivables recognized in its  
5 financial statements. Rather than write off the uncollectible receivables, as  
6 required by Generally Accepted Accounting Principles ("GAAP"), CSK engaged  
7 in a scheme to hide the uncollectible receivables through various accounting  
8 tricks. In addition, during fiscal year 2003, CSK over-recognized millions of  
9 dollars of vendor allowances.

10      5. If CSK had written off the uncollectible vendor allowances, it would  
11 have increased the company's expenses and decreased its income. Because CSK  
12 concealed its uncollectible vendor allowances, CSK's required periodic reports  
13 filed with the Commission failed to comply with financial reporting requirements  
14 under the securities laws, misled the public about the company's financial  
15 performance, and materially overstated its pre-tax income as follows: (a) by at  
16 least 47%, or \$11 million, for fiscal year 2002; (b) by at least \$34 million, thereby  
17 falsely reporting pre-tax income instead of an actual loss, for fiscal year 2003; and  
18 (c) by at least 65%, or \$21 million, for fiscal year 2004.

19      6. As a result of CSK's fraudulent conduct and material non-  
20 compliance with its financial reporting requirements under the securities laws it  
21 was required to prepare not one, but two accounting restatements. CSK filed its  
22 first restatement as part of its Form 10-K annual report for fiscal year 2004 (the  
23 "First Restatement"), which Jenkins signed. As part of the First Restatement,  
24 CSK reduced its previously recognized vendor allowances for fiscal years 2002,  
25 2003, and the first three quarters of fiscal year 2004, but failed to properly account  
26 for, and write-off all known, uncollectible vendor allowance receivables. The  
27 First Restatement also falsely attributed the vendor allowance adjustments to mere  
28            ///

1 errors in estimates and bookkeeping mistakes rather than to CSK's fraudulent  
2 conduct.

3        7. After additional accounting irregularities came to light, CSK  
4 announced on March 27, 2006, that it was conducting a special investigation  
5 relating to, among other things, vendor allowance accounting irregularities. On  
6 May 1, 2007, CSK filed its Form 10-K for fiscal year 2005 restating, for the  
7 second time, its financial statements for 2002, 2003, and 2004 due, in part, to the  
8 fraudulent scheme relating to CSK's failure to write off uncollectible vendor  
9 allowances (the "Second Restatement"). Jenkins signed the Form 10-K for fiscal  
10 year 2005.

11        8. During the 12-month periods following the issuance of CSK's 2002,  
12 2003, and 2004 Forms 10-K (*i.e.*, from May 5, 2003 to May 2, 2005) Jenkins  
13 received over \$2 million in compensation from CSK in the form of bonuses and  
14 other incentive-based and equity-based compensation. During that same period,  
15 Jenkins also realized over \$2 million in profits from the sale of CSK securities.

16        9. Jenkins is required by Section 304 of the Sarbanes-Oxley Act of  
17 2002, 15 U.S.C. § 7243 (the “Act”), to reimburse CSK his bonuses and other  
18 incentive-based and equity-based compensation as well as the profits he realized  
19 from his sale of CSK securities during the relevant period. To date, Jenkins has  
20 not complied, and has refused to comply, with the reimbursement requirements of  
21 Section 304.

## **JURISDICTION AND VENUE**

23       10. This Court has jurisdiction over this action pursuant to Section 3(b)  
24 of the Act, 15 U.S.C. § 7202(b), and Sections 21(d), 21(e), and 27 of the Securities  
25 Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. §§ 78u(d), 78u(e) & 78aa.

26        11.     Venue is proper in this district pursuant to Section 27 of the  
27 Exchange Act, 15 U.S.C. § 78aa, because Jenkins resides within this district and  
28 certain of the transactions, acts, practices and courses of conduct constituting

1 violations of the federal securities laws alleged in this Complaint occurred within  
2 this district.

## THE DEFENDANT

4           12.     **Maynard L. Jenkins**, age 66, is a resident of Scottsdale, Arizona  
5 and served as CSK's chief executive officer and chairman of the board from  
6 January 1997 until his retirement in August 2007.

## **RELATED PARTIES**

8        13. CSK was a Delaware corporation with its principal executive offices  
9 in Phoenix, Arizona. CSK became a publicly traded company in March 1999, and  
10 its common stock was registered with the Commission pursuant to Section 12(b)  
11 of the Exchange Act and listed on the New York Stock Exchange. As of January  
12 30, 2005, it operated 1,134 stores in nineteen states under three brand names:  
13 Checker Auto Parts, Schucks Auto Supply, and Kragen Auto Parts. In 2008, after  
14 the conduct at issue, CSK became a wholly-owned subsidiary of O'Reilly  
15 Automotive, Inc.

16        14. Based on the underlying fraudulent conduct summarized herein, on  
17 May 26, 2009, the Commission instituted settled cease-and-desist proceedings  
18 against CSK that found that CSK, which neither admitted nor denied the  
19 Commission's findings, had violated Section 17(a) of the Securities Act of 1933,  
20 15 U.S.C. § 77q(a), and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the  
21 Exchange Act, 15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(2)(A) & 78m(b)(2)(B), and  
22 Rules 10b-5, 12b-20, and 13a-1 thereunder, 17 C.F.R. §§ 240.10b-5, 240.12b-20  
23 & 240.13a-1. Among other things, the Commission ordered CSK to cease and  
24 desist from committing or causing any violations and any future violations of  
25 those provisions.

26        15.    **Martin G. Fraser** was CSK's chief operating officer and president  
27 from 2000 until September 2006, when he resigned at CSK's request. On March  
28 12, 2009, the Commission filed its first amended complaint in the District of

1 Arizona against Fraser, alleging, among other things, that by participating in the  
2 underlying fraudulent conduct summarized herein, Fraser had violated Section  
3 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), and Sections 10(b), 13(a),  
4 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, 15 U.S.C. §§ 78j(b), 78m(a),  
5 78m(b)(2)(A) & 78m(b)(2)(B), and Rules 10b-5, 12b-20, and 13a-1 thereunder, 17  
6 C.F.R. §§ 240.10b-5, 240.12b-20 & 240.13a-1. *SEC v Fraser, et al.*, CV 090443-  
7 PHX-GMS. In addition, based on the underlying fraudulent conduct, the U.S.  
8 Department of Justice named Fraser as a defendant in a 31-count indictment, filed  
9 on April 7, 2009, in the District of Arizona. *United States v. Fraser, et al.*, CR 09-  
10 372 PHX SRB LOA.

11       16.     **Don W. Watson** was CSK's chief financial officer, senior vice  
12 president, and treasurer from January 1998 to September 2005. Watson served as  
13 CSK's chief administrative officer and senior vice president from September 2005  
14 to his termination in October 2006. Watson is also named as a defendant in the  
15 Commission's March 12 action and in the Department of Justice's indictment.

16       17.     **Edward W. O'Brien** was CSK's controller and vice president from  
17 March 2003 until his termination in September 2006. O'Brien is also named as a  
18 defendant in the Commission's March 12 action. On April 7, 2009, O'Brien pled  
19 guilty to obstruction of justice, in connection with the investigation conducted by  
20 the U.S. Department of Justice of the underlying fraudulent conduct.

21       18.     **Gary M. Opper** was CSK's director of credit and receivables,  
22 reporting to O'Brien, from March 17, 2003 until he was terminated in September  
23 2006. Opper is also named as a defendant in the Commission's March 12 action.  
24 On April 15, 2009, Opper pled guilty to obstruction of justice, in connection with  
25 the investigation conducted by the U.S. Department of Justice.

26       ///

27       ///

28       ///

1                   **BACKGROUND: CSK'S "LET'S WORK TOGETHER" PROGRAM**

2                 19. Although CSK had various vendor allowance programs, its largest  
 3 was its "Let's Work Together" program ("LWT"). Typically, LWT agreements  
 4 covered a one-year period, which CSK referred to as the "program year."  
 5 Although the LWT agreements varied, CSK generally earned LWT allowances at  
 6 a set dollar amount, as a percentage of the amount CSK spent to purchase the  
 7 vendor's product, or as a certain number of cents per item CSK purchased from  
 8 the vendor.

9                 20. CSK recognized LWT allowances ratably, on a monthly basis, based  
 10 on its estimate of the total allowances it expected to earn for the entire program  
 11 year. In theory, CSK's estimate was based on the LWT agreements and CSK's  
 12 expected purchases from its vendors. As CSK recognized LWT allowances for a  
 13 given program year, it increased the LWT account receivable for that program  
 14 year. Each LWT program year had its own account receivable. As CSK collected  
 15 LWT allowances for a particular program year, GAAP required that CSK reduce  
 16 the outstanding receivable for that same LWT program year.

17                   **SUMMARY OF CSK'S FRAUDULENT SCHEME**

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

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

22                 22. GAAP required that CSK write off the uncollectible LWT accounts  
 23 receivable. Specifically, under Statement of Financial Accounting Standards No.  
 24 5 ("SFAS No. 5"), Accounting for Contingencies, Paragraph 8, an estimated loss  
 25 from a loss contingency shall be accrued by a charge to income if: (a) information  
 26 available prior to issuance of the financial statements indicates that it is probable  
 27 that an asset had been impaired at the date of the financial statements; and (b) the  
 28 amount of the loss can be reasonably estimated. SFAS No. 5, Paragraph 3 defines

1 “probable” to mean that the future event or events are likely to occur. SFAS No.  
2 5, Paragraph 4 states that examples of loss contingencies include collectibility of  
3 receivables. A write-off of the uncollectible LWT allowance receivables would  
4 have increased CSK’s expenses during the fiscal year the write off was made,  
5 resulting in a decrease in pre-tax income.

6       23. Instead of writing off CSK’s uncollectible LWT accounts receivable  
7 and taking the requisite reduction to pre-tax income, CSK concealed its  
8 uncollectible LWT accounts receivable by: (a) applying millions of dollars of  
9 LWT allowances earned and collected for later LWT program years to prior LWT  
10 program year accounts receivable (referred to within CSK as “filling the bucket”);  
11 and (b) incorrectly accounting for millions of dollars of LWT allowances it paid  
12 back to vendors. Through this scheme, CSK avoided writing off tens of millions  
13 of dollars in uncollectible LWT receivables, which it had previously recognized.

14       24. CSK “filled the bucket” by taking LWT allowances collected for  
15 later program years and applying them to reduce an earlier LWT program year’s  
16 account receivable. Specifically, CSK: (a) made baseless journal entries reducing  
17 the account receivable for a prior LWT program year with an offsetting increase to  
18 the account receivable for a later LWT program year; and (b) applied LWT  
19 allowance collections for a later LWT program year to an earlier program year’s  
20 LWT account receivable.

21       25. CSK also failed to write off LWT allowances it had over-collected  
22 for prior LWT program years and ultimately paid back to its vendors. Instead of  
23 writing off amounts CSK paid back, which would have reduced its pre-tax income,  
24 CSK increased a later LWT program year’s account receivable, making it appear  
25 that it had collected an older account receivable when all CSK had done was move  
26 the outstanding receivable balance to a more recent year. This accounting  
27 treatment was contrary to GAAP because, by paying an amount back to a vendor  
28           ///

1 for a prior LWT program year, CSK acknowledged its uncollectibility and should  
2 have written off the amount.

3       **A. Fiscal Year 2002**

4       26. During its 2002 fiscal year, CSK failed to write off approximately \$11  
5 million of uncollectible vendor allowances it had recognized in previous years, most  
6 significantly as part of the 2001 LWT program year. Instead of writing off the  
7 uncollectible vendor allowances, CSK: (a) made improper journal entries moving  
8 approximately \$6 million of collections for the 2002 LWT program to the 2001 LWT  
9 account receivable; (b) misapplied paybacks of approximately \$3 million to the 2002  
10 LWT receivable; and (c) reached an agreement whereby a vendor agreed to accept an  
11 invalid \$2 million debit memo for the 2001 LWT program year in exchange for CSK  
12 not collecting \$2 million in allowances earned as part of the 2002 and 2003 LWT  
13 program years. As a result, in its Form 10-K filed on May 5, 2003, CSK materially  
14 overstated its pre-tax income by approximately \$11 million, or 47%. At the time of  
15 that filing, CSK knew, or was reckless in not knowing, that it had failed to write off  
16 uncollectible vendor allowances and over recognized allowances, and that, as a result,  
17 CSK's financial statements were materially misstated.

18       **B. Fiscal Year 2003**

19       27. During its 2003 fiscal year, CSK failed to write off approximately \$24  
20 million in uncollectible vendor allowances recognized during previous LWT  
21 program years, primarily as part of the 2002 LWT program year. Moreover, CSK  
22 improperly and prematurely recognized \$6 million in vendor allowances and  
23 improperly recognized an additional \$4 million of LWT allowances. As a result, in  
24 its Form 10-K filed on April 15, 2004, CSK overstated its 2003 pre-tax income by  
25 approximately \$34 million, turning its actual pre-tax loss of approximately \$18  
26 million into purported pre-tax income of \$16 million. At the time of that filing,  
27 CSK knew, or was reckless in not knowing, that it had failed to write off

28       ///

1 uncollectible vendor allowances and over recognized allowances, and that, as a  
2 result, CSK's financial statements were materially misstated.

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

11       29. During the fourth quarter of 2003, CSK prematurely recognized  
12 approximately \$6 million in additional vendor allowances. CSK did this by  
13 having vendors sign agreements making it appear that CSK had earned additional  
14 LWT allowances during 2003, when, in fact, those allowances would be earned, if  
15 at all, based on purchases made during 2004.

16       30. At the end of fiscal 2003, CSK obtained approximately \$4 million of  
17 additional warranty allowances from two vendors. At that same time, CSK had a  
18 warranty deficit of approximately \$13 million, which represented returns from  
19 customers covered by warranties in excess of the warranty accrual recorded by  
20 CSK. Under GAAP, a warranty deficit should be written off unless additional  
21 warranty allowances are obtained to cover the deficit. However, instead of  
22 applying the \$4 million of additional warranty allowances to offset a portion of its  
23 warranty deficit balance, CSK improperly recognized those warranty allowances  
24 as additional LWT allowances.

25           **C. Fiscal Year 2004**

26       31. During fiscal year 2004, CSK failed to write off known,  
27 uncollectible vendor allowances totaling approximately \$21 million. Specifically,  
28 CSK: (a) applied approximately \$11 million in 2004 LWT program year

1 collections to the 2003 LWT account receivable; (b) increased the 2004 LWT  
2 receivable by approximately \$4 million to avoid writing off amounts CSK paid  
3 back to vendors for the 2003 and 2002 LWT program years; and (c) moved  
4 approximately \$6 million via baseless journal entries to the 2003 LWT receivable  
5 from other vendor allowance receivables in other time periods. As a result, in its  
6 Form 10-K filed on May 2, 2005, CSK overstated pre-tax income for fiscal year  
7 2004 by approximately 65%, or \$21 million. At the time of that filing, CSK knew,  
8 or was reckless in not knowing, that it had failed to write off uncollectible vendor  
9 allowances and that, as a result, the company's financial statements were  
10 materially misstated.

11 **II. As A Result Of Its Fraud, CSK's Forms 10-K For Fiscal Years 2002, 2003,**  
12 **And 2004 Were In Material Non-Compliance With Financial Reporting**  
13 **Requirements Under The Securities Laws.**

14 32. As required by Section 13(a) of the Exchange Act and Rule 13a-1  
15 thereunder, CSK filed annual reports on Forms 10-K for fiscal years 2002, 2003,  
16 and 2004. Jenkins signed each of those annual reports and their accompanying  
17 Sarbanes-Oxley certifications.

18 33. The notes to the financial statements included with CSK's Forms 10-  
19 K for fiscal years 2002, 2003, and 2004 falsely stated that "[s]pecific accounts are  
20 written off against the allowance when management determines the account is  
21 uncollectible." CSK did not write off known, uncollectible vendor allowance  
22 receivables, but rather engaged in a scheme to avoid and hide such write offs, as  
23 follows:

24     ///  
25     ///  
26     ///  
27     ///  
28     ///

1 2 3 4 5 6 7 8 9 10	In all, CSK materially understated its costs of goods sold during fiscal years 2002 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		\$6 M	--	\$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        34. CSK's Forms 10-K for fiscal years 2002, 2003 and 2004 overstated  
 12 CSK's pre-tax income by approximately \$11 million (or 47%), \$34 million  
 13 (thereby reporting pre-tax income instead of a pre-tax loss) and about \$21 million  
 14 (or 65%), respectively. When CSK filed those Forms 10-K, CSK knew, or was  
 15 reckless in not knowing, that the company's financial statements contained therein  
 16 was materially misstated.

17        35. As set forth above, the financial statements in those annual reports  
 18 failed to comply with GAAP, namely, EITF No. 02-16 and FAS No. 5.  
 19 Regulation S-X states that financial statements filed with the Commission that are  
 20 not prepared in accordance with GAAP are presumed to be inaccurate and  
 21 misleading. 17 C.F.R. §210.4-01(a)(1). By virtue of its conduct alleged above,  
 22 CSK violated the anti-fraud provisions of the securities laws, namely, Section  
 23 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5  
 24 thereunder; the reporting requirements of the securities laws, namely, Section  
 25 13(a) of the Exchange Act and Rules 12b-20 and 13a-1 thereunder; the books and  
 26 records provisions of the securities laws, namely, Section 13(b)(2)(A) of the  
 27 Exchange Act; and the internal controls provisions of the securities laws, namely,  
 28 Section 13(b)(2)(B) of the Exchange Act.

1       **III. CSK Was Required to Prepare Two Accounting Restatements.**

2           36. As set forth above, CSK, filed annual reports in its Forms 10-K for  
 3 fiscal years 2002, 2003 and 2004 that failed to comply with GAAP and the  
 4 financial reporting requirements under the securities laws.

5           37. Due to CSK's material non-compliance with financial reporting  
 6 requirements under the securities laws, which were the result of CSK's fraudulent  
 7 conduct as set forth above, CSK was required by GAAP and the federal securities  
 8 laws to prepare an accounting restatement. Specifically, an accounting  
 9 restatement was required by, among other things, (a) Paragraph 13 of Accounting  
 10 Principles Board ("APB") Opinion No. 20, Accounting Changes, which states that  
 11 "[e]rrors in financial statements result from mathematical mistakes, mistakes in  
 12 the application of accounting principles, or oversight or misuse of facts that  
 13 existed at the time the financial statements were presented;" (b) Paragraph 36 of  
 14 APB Opinion No. 20 which states that the correction of such errors "should be  
 15 reported as a prior period adjustment;" and (c) paragraph 18 of APB Opinion No.  
 16 9, Reporting the Results of Operations, which states that "when comparative  
 17 statements are presented, prior period adjustments should be made of the amounts  
 18 of net income (and the components thereof) and retained earnings balances (as  
 19 well as of other affected balances) for all of the periods reported therein, to reflect  
 20 the retroactive application of these prior period adjustments." In addition,  
 21 Paragraph 25 of Statement of Financial Accounting Standards 154, Accounting  
 22 Changes and Error Corrections, a replacement of APB Opinion 20 and FASB  
 23 Statement 3, states that "[a]ny error in the financial statements of a prior period  
 24 discovered subsequent to their issuance should be reported as a prior period  
 25 adjustment by restating the prior period financial statements."

26           38. In fact, CSK issued two restatements in connection with its vendor  
 27 allowance accounting. CSK's Form 10-K for fiscal year 2004 included CSK's  
 28 First Restatement, which partially restated CSK's vendor allowances recognized

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

8       39. CSK's First Restatement, however, failed to: (a) write off all known,  
9 uncollectible vendor allowance receivables; (b) disclose the full extent of CSK's  
10 efforts to hide the uncollectible receivables from its independent auditors; and (c)  
11 disclose CSK's over recognition of vendor allowances during fiscal 2003. It also  
12 falsely attributed the vendor allowance restatement to mere "errors in estimation in  
13 earlier periods" and "vendor allowances recorded in improper periods" due to  
14 "imprecise estimates, bookkeeping errors and recording allowances in the  
15 incorrect periods." CSK knew, or was reckless in not knowing, about the false  
16 disclosures and misstatements contained in its First Restatement.

17       40. CSK issued its First Restatement as part of its annual report for  
18 fiscal year 2004. Thereafter, CSK's internal audit department, which in the wake  
19 of the First Restatement scrutinized CSK's vendor allowances more carefully,  
20 discovered additional irregularities that led to a special investigation, which CSK  
21 publicly announced on March 27, 2006. On September 28, 2006, CSK  
22 announced, among other things, that: (a) it had substantially completed its special  
23 investigation; (b) it no longer employed Watson, its former chief financial officer,  
24 and Fraser, its former chief operating officer and president; and (c) that Jenkins  
25 would soon be retiring and would assist CSK in its search for a new CEO. As a  
26 result of its special investigation, CSK terminated the employment of O'Brien, its  
27 controller, and Opper, its director of credits and receivables.

28       ///

1       41. On May 1, 2007, CSK filed a second restatement for fiscal years  
2 2002, 2003, and 2004, as part of its Form 10-K for fiscal year 2005, which Jenkins  
3 signed (the “Second Restatement”). The Second Restatement disclosed, among  
4 other things, that: (a) CSK had identified “accounting errors and irregularities”  
5 that materially impacted vendor allowance receivables; (b) there were “numerous  
6 instances of improperly supported journal entries recorded to the general ledger  
7 accounts, override of Company policies and procedures, absence of appropriately  
8 designed policies and procedures, misapplication of GAAP and other ineffective  
9 controls”; (c) the “errors and irregularities were primarily the result of actions  
10 directed by certain personnel and an ineffective control environment”; and (d) the  
11 “recording of improper accounting entries was directed by certain personnel.”

#### **IV. Jenkins Received Bonuses And Profits From The Sale Of CSK Stock.**

13       42. During the 12-month periods following CSK's filing of its  
14 fraudulent Forms 10-K for fiscal years 2002, 2003, and 2004 (*i.e.*, from May 5,  
15 2003 to May 2, 2006) Jenkins received bonuses and other incentive-based and  
16 equity-based compensation from CSK. During the 12-month periods following  
17 CSK's filing of its fraudulent, and subsequently restated, 2002 and 2003 annual  
18 reports, Jenkins received bonuses of approximately \$825,413 and \$1,265,607,  
19 respectively, totaling approximately \$2,091,020. In addition, during the 12-month  
20 periods following CSK's filing of its annual reports for its 2002 and 2004 fiscal  
21 years, Jenkins realized profits of approximately \$2,018,893 from the sale of CSK  
22 stock. Jenkins has never reimbursed CSK for any portion of his bonuses and other  
23 incentive-based and equity-based compensation, or his stock sale profits.

## **CLAIM FOR RELIEF**

## **FAILURE TO REIMBURSE**

## **Violations of Section 304(a) of the Act**

27       43. The Commission realleges and incorporates by reference ¶¶ 1  
28 through 42 above.

1       44. CSK, by engaging in the conduct described above, filed Forms 10-K  
2 for fiscal years 2002, 2003, and 2004 that were in material non-compliance with  
3 financial reporting requirements under the securities laws.

4        45. CSK's material non-compliance with its financial reporting  
5 requirements under the securities laws was the result of its misconduct that was  
6 designed to inflate its income fraudulently by prematurely recognizing vendor  
7 allowances and failing to write off known, uncollectible vendor allowances in  
8 violation of GAAP.

9        46. Due to CSK's material non-compliance with its financial reporting  
10 requirements under securities laws, and as a result of its misconduct, CSK was  
11 required to prepare an accounting restatement for fiscal years 2002, 2003 and  
12 2004.

13        47. The Commission has not exempted Jenkins, pursuant to Section  
14 304(b) of the Act, 15 U.S.C. § 7243(b), from the application of Section 304(a) of  
15 the Act, 15 U.S.C. § 7243(a).

16       48. By engaging in the conduct described above, Jenkins violated, and  
17 unless ordered to comply will continue to violate, Section 304(a) of the Act, 15  
18 U.S.C. § 7243(a).

## **PRAYER FOR RELIEF**

20 WHEREFORE, the Commission respectfully requests that the Court:

I.

Issue findings of fact and conclusions of law that Jenkins committed the  
alleged violations.

II.

Issue a judgment, in a form consistent with Fed. R. Civ. P. 65(d), ordering Jenkins to reimburse CSK for his bonuses and other incentive-based and equity-based compensation, and profits from CSK stock sales, pursuant to Section 304 of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7243.

III.

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

IV.

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

9 | DATED: July 22, 2009

Respectfully submitted,

s/ Robert H. Conrad  
**ROBERT H. CONRRAD**  
Attorney for Plaintiff  
Securities and Exchange Commission

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Donald W. Searles and/or Robert H. Conrad (323) 965-3998  
SEC, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, CA 90036**DEFENDANTS**

Maynard L. Jenkins

County of Residence of First Listed Defendant Maricopa

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

John W. Spiegel (213) 683-9100  
Munger Tolles & Olson LLP  
355 S. Grand Avenue, 35th Floor, Los Angeles, CA 90071**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 1 U.S. Government Plaintiff | <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)             |
| <input type="checkbox"/> 2 U.S. Government Defendant            | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	PTF	DEF	Citizen of Another State	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 4	<input type="checkbox"/> 4	
<input type="checkbox"/> 5	<input type="checkbox"/> 5		<input type="checkbox"/> 6	<input type="checkbox"/> 6	

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 410 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	
			<b>IMMIGRATION</b>	
			<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	

**V. ORIGIN**

(Place an "X" in One Box Only)

- |   |   |  |   |  |   |  |
|---|---|--|---|--|---|--|
| <input checked="" type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|---|---|--|---|--|---|--|

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):

Section 304 of Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7243

Brief description of cause:

Action to compel reimbursement pursuant to Section 304 of Sarbanes-Oxley Act

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

Judge Susan R. Bolton

CR 09-372-PHX-SRB

JUDGE G. Murray Snow

DOCKET NUMBER CV 09-443-PHX-GMS

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/22/2009

/s/ Robert H. Conrad

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

District of Arizona

SECURITIES AND EXCHANGE COMMISSION

**SUMMONS IN A CIVIL CASE**

V.

MAYNARD L. JENKINS

CASE

TO: (Name and address of Defendant)

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Donald W. Searles and/or Robert H. Conrad  
Securities and Exchange Commission  
5670 Wilshire Boulevard, 11th Floor  
Los Angeles, California 90036

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

---

CLERK

---

DATE

**RETURN OF SERVICE**

Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE
NAME OF SERVER ( <i>PRINT</i> )	TITLE

*Check one box below to indicate appropriate method of service***G** Served personally upon the defendant. Place where served: \_\_\_\_\_**G** Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: \_\_\_\_\_

**G** Returned unexecuted: \_\_\_\_\_**G** Other (specify): \_\_\_\_\_**STATEMENT OF SERVICE FEES**

TRAVEL	SERVICES	TOTAL
--------	----------	-------

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on \_\_\_\_\_  
 Date \_\_\_\_\_ *Signature of Server*

*Address of Server*

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.