

1 KAREN MATTESON, Cal. Bar No. 102103
2 DIANA K. TANI, Cal. Bar No. 136656
3 JANET RICH WEISSMAN, Cal. Bar No. 137023

4 Attorneys for Plaintiff
5 Securities and Exchange Commission
6 Randall R. Lee, Regional Director
7 Sandra J. Harris, Associate Regional Director
8 5670 Wilshire Boulevard, 11th Floor
9 Los Angeles, California 90036-3648
10 Telephone: (323) 965-3998
11 Facsimile: (323) 965-3908

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **SECURITIES AND EXCHANGE**
15 **COMMISSION,**

16 Plaintiff,

17 v.

18 **RICHARD MARKS,**

19 Defendant.

Case No.

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

20 Plaintiff Securities and Exchange Commission (“Commission”) alleges as
21 follows:

22 **JURISDICTION AND VENUE**

23 1. This Court has jurisdiction over this action pursuant to
24 Sections 20(b), 20(d)(1) and 22(a) of the Securities Act of 1933 (“Securities Act”),
25 15 U.S.C. §§ 77t(b), 77t(d)(1) & 77v(a), and Sections 21(d)(1), 21(d)(3)(A), 21(e)
26 and 27 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C.
27 §§ 78u(d)(1), 78u(d)(3)(A), 78u(e) & 78aa. Defendant has, directly or indirectly,
28 made use of the means or instrumentalities of interstate commerce, of the mails, or
of the facilities of a national securities exchange, in connection with the
transactions, acts, practices and courses of business alleged in this Complaint.

1 unprocessed credits. Motorcar then delayed processing customer credits until after
2 the audit. As a result, Marks concealed the true amount of the reserve from the
3 auditor.

4 6. The Commission seeks to enjoin Marks from future violations of
5 various antifraud, reporting, internal control and lying to auditor provisions of the
6 federal securities laws. In addition, the Commission seeks to bar Marks from
7 serving as an officer or director of a public company, to obtain disgorgement of all
8 ill-gotten gains Marks received from his securities violations, and to obtain a civil
9 penalty.

10 **THE DEFENDANT**

11 7. Defendant Richard Marks was Motorcar's President, Chief Operating
12 Officer, and a Director from 1987 until he resigned those offices in March 2000.
13 Marks signed Motorcar's 1997 and 1998 annual reports and its 1997 registration
14 statement filed with the Commission. Marks resides in Los Angeles, California.

15 **RELATED ENTITY**

16 8. Motorcar Parts and Accessories, Inc. is a public company based in
17 Torrance, California. Motorcar remanufactures and sells alternators and starters
18 for the automotive after-market industry. Motorcar's securities are registered with
19 the Commission pursuant to Section 12(g) of the Exchange Act and were traded
20 on Nasdaq until August 2, 1999. Motorcar's securities have been trading over-
21 the-counter since September 2, 1999, when Nasdaq delisted the stock. The
22 Commission previously filed and settled an action against Motorcar and its former
23 Chief Financial Officer relating to certain of the conduct alleged in this Complaint.
24 SEC v. Motorcar Parts and Accessories, Inc. and Peter Bromberg, Case No. SACV
25 03-0485 JVS (SHx).

26 **THE FRAUDULENT SCHEME**

27 9. Motorcar's remanufacturing process begins when Motorcar's
28 customers return used alternators and starters ("cores") to Motorcar's warehouse

1 in Torrance. Motorcar sorts the used alternators and starters, breaks them down
2 into their component parts, remanufactures them to original manufacturer
3 specifications, and then packages them for sale to its customers. Motorcar
4 receives two types of core returns from its customers: core trade-ins and product
5 returns (also called warranty or defect returns).

6 10. Motorcar gives its customers credit for the returned cores but does not
7 issue these credits until after it checks the cores into its inventory. Motorcar has
8 three stages of processing cores before it issues a credit to its customer. Initially, a
9 customer contacts Motorcar and requests to return cores. When Motorcar
10 approves the core return transaction, it issues a “return goods authorization” to the
11 customer. The next stage is when the cores have been received at Motorcar’s
12 warehouse, but have not yet been checked into inventory. They are unloaded into
13 a designated area for temporary storage before sorting. Finally, Motorcar
14 personnel check the cores into inventory. Returned cores are unboxed, scanned
15 into Motorcar’s computer system, and then placed into bins in the warehouse. At
16 this point the cores are considered “checked in” to inventory.

17 11. Because of the delay in checking the cores into inventory and
18 processing the related credits, consistent with Generally Accepted Accounting
19 Principles (“GAAP”), Motorcar’s policy was to establish reserves for credits due
20 to customers that had yet to be processed. The effect of the reserve on Motorcar’s
21 financial statements was to reduce Motorcar’s earnings.

22 **A. Marks Causes Motorcar To Understate Its Fiscal Year 1997 And 1998**
23 **Reserves, Thereby Fraudulently Inflating Motorcar’s Earnings**

24 **1. Marks Causes Motorcar To Understate Its Fiscal Year 1997 And**
25 **1998 Reserves For Customer Credits For Cores That Were**
26 **Received But Not Checked Into Inventory**

27 12. During the final months of both fiscal 1997 and 1998, Motorcar
28 received a substantial number of returns, the majority of which were product

1 returns. Motorcar did not check these returns into inventory, but instead stored
2 them offsite in trailers in order to avoid recognizing the product returns as an
3 expense in its financial statements.

4 13. Marks participated in discussions concerning the plan to store the
5 product returns offsite, and approved the offsite storage. He also supervised the
6 employees who arranged for the offsite storage. Marks then caused Motorcar not
7 to reserve for these product returns received at fiscal year-end 1997 and 1998 but
8 not checked into inventory.

9 14. By hiding the returns offsite and not reserving for them, Marks
10 caused Motorcar's reported pre-tax earnings for fiscal 1997 and 1998 to be
11 materially overstated by \$1,067,000, or 18.8%, and by \$1,176,000, or 16.3%,
12 respectively, and deceived Motorcar's auditors into believing that all inventory
13 and returns were accounted for properly.

14 **2. Marks Causes Motorcar To Understate Its Fiscal Year 1997 And**
15 **1998 Reserves For Customer Credits For Cores That Motorcar**
16 **Had Checked Into Inventory But For Which It Had Not Yet**
17 **Issued The Related Credit**

18 15. For its fiscal year ended March 31, 1997, pursuant to GAAP,
19 Motorcar should have reserved \$2,824,000 for unprocessed credits for customer
20 returns, which in turn would have reduced its pre-tax income by the same amount.
21 Marks, however, directed Motorcar's CFO to reduce the reserve for unprocessed
22 credits. The CFO then directed employees to delete customer returns from the
23 schedules, resulting in schedules falsely supporting a lower than required reserve
24 for unprocessed credits. Motorcar then provided a schedule to the auditor with
25 customer returns deleted from it which reserved only \$500,000, thereby artificially
26 and fraudulently inflating Motorcar's pre-tax income.

27 16. For its fiscal year ended March 31, 1998, pursuant to GAAP,
28 Motorcar should have reserved \$2,701,000 for unprocessed credits for customer

1 returns. As in 1997, however, Motorcar provided a schedule to the auditor with
2 customer returns deleted from it; in that schedule, Motorcar reserved only
3 \$300,000, thereby artificially and fraudulently inflating Motorcar's pre-tax
4 income.

5 17. Motorcar overstated its pre-tax earnings for its fiscal year ended
6 March 31, 1997, by \$2,324,000, or 41%, by recording reserves for unprocessed
7 customer credits of only \$500,000 when required reserves were \$2,824,000.
8 Similarly, Motorcar overstated its pre-tax earnings for its fiscal year ended March
9 31, 1998, by \$2,401,000, or 33.3%, by recording reserves for unprocessed
10 customer credits of only \$300,000 when required reserves were \$2,701,000.

11 **B. Marks Lies To Motorcar's Auditor**

12 18. In fiscal years 1997 and 1998, Marks signed management
13 representation letters to the auditor, falsely representing that: (a) "The inventory
14 quantities include all of the company's goods, including goods not on the
15 company's premises such as goods in public warehouses"; and (b) "There have
16 been no irregularities involving management or employees who have significant
17 roles in the system of internal accounting controls."

18 19. These representations were false because, in addition to Marks'
19 fraudulent acts alleged in ¶¶ 9-17, pursuant to Marks' instructions, late one
20 evening in April 1998, after the auditor completed test counts of Motorcar's
21 inventory in connection with its 1998 audit work and released the inventory in one
22 of Motorcar's buildings, Motorcar employees moved inventory from that building
23 to another building where the auditor had not yet test counted inventory. Marks
24 had instructed the Motorcar employees to do so for the purpose of including the
25 goods twice in the inventory counts.

26 **C. Marks Signs And Causes The Filing Of False Motorcar Financial**
27 **Statements For Fiscal Years 1997 And 1998**

28 20. Through the two schemes alleged above, Marks caused Motorcar to

1 overstate pre-tax earnings by \$3,391,000 (59.8%) and by \$3,576,000 (49.6%) in
2 its annual reports filed on Commission Forms 10-K for the fiscal years ended
3 March 31, 1997, and 1998, respectively.

4 21. Additionally, on October 29, 1997, Marks signed, and caused
5 Motorcar to file with the Commission, a registration statement registering the sale
6 of 1.3 million shares of Motorcar's common stock. Marks included Motorcar's
7 false 1997 financial statements in the Form S-2 registration statement. Marks
8 received \$397,500 in ill-gotten gains as a result of his sale of stock in this offering
9 in November 1997.

10 **D. Marks Improperly Obtains Compensation In 1997 And 1998 As A**
11 **Result Of His Fraudulent Conduct**

12 22. Marks was eligible to receive cash bonuses if Motorcar's earnings
13 before interest and taxes ("EBIT") exceeded EBIT of the prior fiscal year by 20%.
14 As a result of Marks' fraudulent conduct, for 1997 he received a \$150,000 bonus,
15 and for 1998 he received a \$104,000 bonus. If Marks, however, had properly
16 reported reserves for customer credits in 1997 and 1998, Motorcar's EBIT would
17 not have exceeded the EBIT for the prior year by 20%, and Marks would not have
18 received these bonuses.

19 **E. Motorcar's Auditor Discovers The Fraud**

20 23. In May 1999, during its audit of Motorcar's fiscal 1999 financial
21 statements, the auditor discovered several accounting discrepancies, including an
22 understated reserve for unprocessed customer credits and an inappropriate reversal
23 of accounts payable. Motorcar engaged the auditor to investigate those accounting
24 discrepancies.

25 24. At the end of July 1999, the auditor completed its investigation and
26 prepared an investigative report for Motorcar indicating that an illegal act had or
27 may have occurred. Further, the auditor withdrew its audit reports on Motorcar's
28 fiscal 1997 and 1998 financial statements.

1 **THIRD CLAIM FOR RELIEF**
2 **VIOLATIONS OF COMMISSION PERIODIC**
3 **REPORTING REQUIREMENTS**

4 **Aiding and Abetting Violations of Section 13(a) of the Exchange Act,**
5 **and Rules 12b-20 and 13a-1 thereunder**

6 32. The Commission realleges and incorporates by reference ¶¶ 1 through
7 25 above.

8 33. Motorcar violated Section 13(a) of the Exchange Act and Rules
9 12b-20 and 13a-1 thereunder, by filing with the Commission materially false and
10 misleading annual reports on Form 10-K for its 1997 and 1998 fiscal years.

11 34. Defendant Marks knowingly provided substantial assistance to
12 Motorcar's violation of Section 13(a) of the Exchange Act and Rules 12b-20 and
13 13a-1 thereunder.

14 35. By engaging in the conduct described above and pursuant to
15 Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendant Marks aided and
16 abetted Motorcar's violations, and unless restrained and enjoined will continue to
17 aid and abet violations, of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a),
18 and Rules 12b-20 and 13a-1 thereunder, 17 C.F.R. § 240.12b-20 & 240.13a-1.

19 **FOURTH CLAIM FOR RELIEF**
20 **RECORD-KEEPING VIOLATIONS**

21 **Aiding and Abetting Violations of**
22 **Section 13(b)(2)(A) of the Exchange Act and**
23 **Violations of Rule 13b2-1 thereunder**

24 36. The Commission realleges and incorporates by reference ¶¶ 1 through
25 25 above.

26 37. Motorcar violated Section 13(b)(2)(A) of the Exchange Act by failing
27 to make or keep books, records and accounts that in reasonable detail accurately
28 and fairly reflected its transactions and disposition of its assets.

1 38. Defendant Marks knowingly provided substantial assistance to
2 Motorcar's violation of Section 13(b)(2)(A) of the Exchange Act.

3 39. By engaging in the conduct described above and pursuant to
4 Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), defendant Marks aided and
5 abetted Motorcar's violations, and unless restrained and enjoined will continue to
6 aid and abet violations, of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §
7 78m(b)(2)(A).

8 40. By engaging in the conduct described above, defendant Marks
9 violated Exchange Act Rule 13b2-1 by, directly or indirectly, falsifying or causing
10 to be falsified Motorcar's books, records, and accounts subject to Section
11 13(b)(2)(A) of the Exchange Act. Unless restrained and enjoined, Marks will
12 continue to violate Rule 13b2-1, 17 C.F.R. § 240.13b2-1.

13 **FIFTH CLAIM FOR RELIEF**

14 **INTERNAL CONTROL VIOLATIONS**

15 **Violations of Section 13(b)(5) of the Exchange Act**

16 41. The Commission realleges and incorporates by reference ¶¶ 1 through
17 25 above.

18 42. By engaging in the conduct described above, defendant Marks
19 violated Section 13(b)(5) of the Exchange Act by circumventing or failing to
20 implement a system of internal accounting controls, or by knowingly falsifying
21 books, records or accounts described in Section 13(b)(2) of the Exchange Act.
22 Unless restrained and enjoined, defendant Marks will continue to violate
23 Section 13(b)(5) of the Exchange Act, 15 U.S.C. § 78m(b)(5).

24 **SIXTH CLAIM FOR RELIEF**

25 **LYING TO AUDITORS**

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

27 43. The Commission realleges and incorporates by reference ¶¶ 1 through
28 25 above.

1 **IV.**

2 Order defendant Marks to pay a civil penalty under Section 20(d) of the
3 Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act,
4 15 U.S.C. § 78u(d)(3).

5 **V.**

6 Enter an order, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. §
7 77t(e) and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2),
8 prohibiting defendant Marks from acting as an officer or director of any issuer that
9 has a class of securities registered pursuant to Section 12 of the Exchange Act, 15
10 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the
11 Exchange Act, 15 U.S.C. § 78o(d).

12 **VI.**

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

17 **VII.**

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

20
21 DATED: December 17, 2003

22 _____
23 Karen Matteson
24 Attorney for Plaintiff
25 Securities and Exchange Commission
26
27
28