UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA : Crim. No. 01-

v. : Hon.

WALTER A. FORBES, and

E. KIRK SHELTON : Title 18, United States Code, Sections 371, 1343, and 2

INDICTMENT

The grand jury for and in the District of New Jersey, sitting at Newark, charges:

COUNT 1

(Conspiracy to Commit Mail Fraud and

Wire Fraud and to Make False Statements in

Reports Required to Be Filed with the SEC)

CUC

1. At all relevant times prior to December 17, 1997:

a. CUC International, Inc. ("CUC") was a publicly held company with its corporate headquarters in Stamford, Connecticut.

b. CUC's principal business was selling memberships in its proprietary buying clubs, which included programs for home shoppers, travelers, restaurantgoers, and automobile purchasers, among others. The company marketed these membership programs primarily through its Comp-U-Card Division ("Comp-U-Card"), its largest business unit, which maintained separate offices in Trumbull, Connecticut.

c. CUC was also engaged in a variety of other businesses, including the marketing of discount coupons, supplementary insurance policies, and other financial products and services, through wholly-owned subsidiaries. Those subsidiaries were located around the United States and, after in or about 1995, in Europe.

2. CUC (then known as Comp-U-Card International, Inc.) conducted an initial public offering of its stock in or about 1983. Its stock was subsequently traded on the over-the-counter market. On or about August 23, 1989, CUC stock was listed for trading on the New York Stock Exchange.

3. From at least as early as the mid-1980's, CUC pursued a strategy of fueling its growth with frequent acquisitions. From in or about the mid-1980's to in or about 1997, CUC purchased more than 25 other companies, which it then either operated as subsidiaries or consolidated with its existing businesses. In most of these cases, CUC paid at least a substantial part of the purchase price with CUC stock.

4. In 1996, CUC made the three largest acquisitions in its history, as follows. In July 1996, it acquired two software publishers, Davidson & Associates, Inc. ("Davidson") and Sierra On-Line, Inc. ("Sierra"), for a total of approximately $1.858 billion. Then, in August 1996, it acquired Ideon Group, Inc. ("Ideon"), a provider of credit card enhancement packages, for approximately $393 million. CUC paid for all three purchases exclusively by issuing stock.

The Formation of Cendant

5. Prior to December 17, 1997, HFS, Inc. ("HFS") was a publicly-held company with its corporate headquarters in Parsippany, New Jersey whose principal business was the franchising of brand-name hotels, rental car agencies, and real estate brokerage offices.

6. In or about May 1997, CUC and HFS agreed to merge into a single company. The merger became effective on December 17, 1997, at which time the merged company adopted the name Cendant Corporation ("Cendant"). Cendant established its corporate headquarters in Parsippany, New Jersey.

7. After the Cendant merger, the former CUC businesses continued to be grouped together for management purposes and formed a separate entity within Cendant known as Cendant Membership Services, Inc. ("CMS"). CMS maintained its own corporate headquarters, including its own separate accounting unit, in the former CUC offices in Stamford, Connecticut.

8. Prior to the Cendant merger, CUC's fiscal year ended on January 31. After the merger, CMS adopted the December 31 fiscal year-end

9. From at least as early as in or about 1980 to in or about December 1997, the defendant WALTER A. FORBES was employed as the Chief Executive Officer of CUC. From in or about 1983 to in or about December 1997, the defendant WALTER A. FORBES also served as the Chairman of the Board of CUC. From on or about December 17, 1997 to in or about July 1998 he held the title of Chairman of the Board of Cendant.

10. From in or about 1981 to in or about 1991, the defendant E. KIRK SHELTON was employed in various senior executive positions at CUC. From in or about 1991 to in or about December 1997, the defendant E. KIRK SHELTON was employed as the President and Chief Operating Officer of CUC. From on or about December 17, 1997 to in or about April 1998, he held the title of Executive Vice President and Vice Chairman of Cendant.

Named Co-conspirators

11. Cosmo Corigliano, who is named as a co-conspirator but not as a defendant herein, was licensed as a Certified Public Accountant in or about 1983. From in or about 1983 to in or about December 1994, Corigliano was employed as the Controller of CUC. From in or about December 1994 to the Cendant merger on December 17, 1997, he served as CUC's Chief Financial Officer and a Senior Vice-President of the company. From on or about December 17, 1997 to in or about April 1998, he held the title of Executive Vice-President of Cendant, but remained responsible for the reporting of financial results for the year ending December 31, 1997 by the accounting unit at CMS.

12. Anne Pember, who is named as a co-conspirator but not as a defendant herein, was licensed as a Certified Public Accountant in or about 1983. Pember was employed as Director of Accounting at Comp-U-Card from in or about 1989 to in or about June 1997 and as the Controller of CUC from in or about June 1997 to the Cendant merger on December 17, 1997. From in or about 1996, she also held the title of Senior Vice-President of CUC. From December 17, 1997 to in or about March 1998, Pember remained employed in the accounting unit at CMS.

13. At all relevant times prior to the Cendant merger on December 17, 1997, Casper Sabatino, who is named as a co-conspirator but not as a defendant herein, was employed as an accountant in CUC's corporate accounting department. From in or about December 1994 to in or about late 1997, Sabatino was the member of the department in charge of CUC's external reporting, including its quarterly and annual reports to the SEC. At all relevant times after December 17, 1997, he remained employed in the accounting unit at CMS and shared line responsibility with Anne Pember for reporting CMS's results for the year ending December 31, 1997.

The SEC

14. At all relevant times:

a. The Securities and Exchange Commission (the "SEC") was an independent agency of the United States government which was charged by law with preserving honest and efficient markets in securities.

b. SEC regulations required publicly-held companies to submit various reports to the SEC, including quarterly reports on Form 10-Q and annual reports on Form 10-K, which set forth detailed financial data. The SEC required this data to be presented in accordance with generally accepted accounting principles ("GAAP").

The Conspiracy

15. From at least as early as the late 1980's to in or about April 1998, in the District of New Jersey and elsewhere, the defendants

WALTER A. FORBES and E. KIRK SHELTON

did knowingly and willfully combine, conspire, confederate, and agree with Cosmo Corigliano, Anne Pember, Casper Sabatino, and others to commit offenses against the United States, that is:

(a) to devise a scheme and artifice to defraud holders of CUC and Cendant securities and members of the investing public and to obtain money from those securities holders and members of the investing public by means of false pretenses, representations, and promises, and to utilize the United States mails and interstate wire communications for the purpose of executing that scheme and artifice, in violation of Title 18, United States Code, Sections 1341 and 1343; and

(b) willfully and knowingly to make, and cause to be made, in quarterly reports on Form 10-Q, annual reports on Form 10-K, and other reports and documents filed with the SEC by CUC and Cendant pursuant to the Securities Exchange Act of 1934, Title 15, United States Code, Sections 78a et seq., statements which were false and misleading with respect to material facts, in violation of Title 15, United States Code, Section 78ff(a).

The Principal Objects of the Conspiracy

and the Role of the Defendants

16. From at least as early as the late 1980's to in or about 1997, it was a principal object of the conspiracy to fraudulently inflate the earnings CUC reported to the SEC and the investing public in order to artificially increase the price of CUC stock.

18. In or about 1997, it was a further principal object of the conspiracy to use the artificially increased price of CUC stock, CUC's fraudulently inflated earnings reports, and fraudulently inflated projections of CUC's future earnings to induce HFS to merge with CUC.

19. From in or about 1997, it was the principal object of the conspiracy to fraudulently inflate the earnings of CMS that Cendant reported to the SEC and the investing public and thereby artificially increase the price of Cendant stock.

20. The defendants WALTER A. FORBES and E. KIRK SHELTON participated in the conspiracy as employees of CUC and Cendant with the assistance of their co-conspirators who were their corporate subordinates.

The Improper Accounting Methods Employed

by the Conspirators to Fraudulently Inflate

<u>the Reported Earnings of CUC and Cendant</u>

21. From at least as early as the late 1980's, the defendants WALTER A. FORBES, E. KIRK SHELTON and other members of the conspiracy knowingly employed improper accounting methods to fraudulently inflate the reported earnings of CUC and Cendant. Among other things, as set forth in Paragraphs 22 through 40 below, the conspirators knowingly: (a) failed to maintain an adequate membership cancellation reserve at Comp-U-Card; (b) misallocated revenues and expenses among Comp-U-Card programs so as to qualify them for more favorable accounting treatment; (c) used merger reserves to inflate operating income; and (d) made various other improper accounting entries.

The Deliberate Failure to Set Aside

Sufficient Funds for Comp-U-Card's

<u>Membership Cancellation Reserve</u>

22. From at least as early as the late 1980's to in or about 1998, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators routinely inflated CUC's and Cendant's reported earnings by deliberately underfunding the membership cancellation reserve that was required to be maintained on the books of Comp-U-Card.

23. At all times during the above period, it was Comp-U-Card's practice to record revenue each time a customer enrolled in one of the company's membership programs. Under GAAP, Comp-U-Card was required to place a portion of all such revenue in a reserve to allow for the fact that some customers could be expected to cancel their enrollments and obtain refunds or to fail to pay for their enrollments for other reasons. The amounts set aside in this membership cancellation reserve were required to be directly deducted from Comp-U-Card's reported revenues, and ultimately from its reported earnings.

24. By knowingly violating GAAP by failing to set aside sufficient revenues for Comp-U-Card's membership cancellation reserve, the defendants and their co-conspirators fraudulently caused the earnings CUC reported for each of its fiscal years from in or about the late 1980's through January 31, 1995 to be overstated by millions of dollars; caused the earnings CUC reported for its fiscal years ending January 31, 1996 and January 31, 1997 to be overstated by approximately $48 million and $19 million, respectively; and caused the earnings Cendant reported for its fiscal year ending December 31, 1997 to be overstated by approximately $12 million.

The Deliberate Misallocation

of Revenues and Expenses

<u>Among Comp-U-Card Programs</u>

25. Further, from at least as early as the late 1980's to in or about 1998, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators routinely inflated CUC's and Cendant's reported earnings by falsely attributing revenues and expenses that had arisen from certain Comp-U-Card membership programs to other Comp-U-Card membership programs that qualified for more favorable accounting treatment.

26. During the above period, the memberships sold in different Comp-U-Card membership programs varied in length from one year to three years or longer. The programs, however, could be divided into two categories -- those in which members normally generated expenditures by Comp-U-Card only at the very beginning of their memberships (the "immediate recognition programs"), and those in which members often generated such expenditures later in their membership terms (the "deferred recognition programs").

27. Under GAAP, Comp-U-Card was required to recognize revenues from its membership programs for accounting purposes as they were earned, and to recognize the expenses incurred by those programs over approximately the same period as the revenues to which they were related. The defendants and their co-conspirators purported to comply with these requirements by causing Comp-U-Card to maintain the following accounting policies: (a) revenue produced by an immediate recognition program was to be recognized immediately upon being booked; (b) revenue produced by a deferred recognition program was to be recognized in equal monthly amounts over the life of the membership that generated the revenue; and (c) most expenses for both immediate and deferred programs were to be recognized in equal monthly amounts over a period of one year from the time they were incurred. The conspirators purported to have designed these policies

28. However, on a regular basis from at least as early as the late 1980's, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators knowingly violated GAAP and Comp-U-Card's own policies by deliberately misallocating revenue produced by deferred recognition programs to immediate recognition programs, thus improperly accelerating Comp-U-Card's recognition of that revenue. In addition, on at least one occasion during this period, the conspirators similarly violated GAAP and Comp-U-Card's policies by deliberately misallocating expenses from a program in which they would have been recognized immediately to another program in which they were to be recognized over a one-year period.

29. By so misallocating Comp-U-Card revenues and expenses, the defendants and their co-conspirators fraudulently caused the earnings CUC reported for each of its fiscal years from in or about the late 1980's through January 31, 1996 to be overstated by millions of dollars; caused the earnings CUC reported for its fiscal year ending January 31, 1997 to be overstated by approximately $10 million; and caused the earnings Cendant reported for its fiscal year ending December 31, 1997 to be overstated by approximately $17 million.

The Use of Merger Reserves

<u>to Inflate Operating Income</u>

30. Additionally, from at least as early as the late 1980's to in or about 1998, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators routinely drew upon merger reserves to fraudulently inflate the reported operating income of CUC and Cendant.

31. When CUC acquired another company during the above period, the conspirators usually caused CUC to establish an acquisition reserve on its books or the books of the acquired company. Similarly, the conspirators caused CMS to establish a merger reserve on its books when CUC merged with HFS. Such acquisition and merger reserves (herein sometimes collectively referred to as "merger reserves") were permitted by GAAP as a means of accounting for one-time expenses arising from an acquisition or a merger such as professional fees, employee severance or relocation costs, and the costs of consolidating operations. Under GAAP, a company engaged in an acquisition or merger could set aside such a reserve in the year the acquisition or merger took place, and subsequently draw on the reserve to pay all its acquisition- or merger-related expenses. The company might be required, depending on the accounting method it used, to reduce its net earnings for the year of the acquisition or merger by the amount of the reserve, but the reserve would not directly reduce the company's earnings before one-time expenses, <u>i.e.</u>, its operating income, either for that year or for future years. However, GAAP did not permit companies to establish or draw upon merger reserves for any purpose other than to pay one-time acquisition- or merger-related expenses.

32. On most occasions when the conspirators caused CUC or CMS to establish a merger reserve, they knowingly violated GAAP by placing substantially more funds in the reserve than were needed to pay foreseeable acquisition- or merger-related expenses. Then, in violation of GAAP, the conspirators made use of those excess reserve funds to fraudulently inflate the reported operating income of CUC or CMS, either by using the excess funds to reduce operating expenses; by using them to absorb the write-off of assets which would otherwise have required amortization or depreciation charges to operating income; or by crediting them directly to revenue.

33. By the above means, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators fraudulently caused the operating income CUC reported for many of its fiscal years from in or about the late 1980's through January 31, 1995 to be overstated by millions of dollars, and caused the operating income CUC reported for its fiscal year ending January 31, 1996 to be overstated by approximately $10 million.

34. During CUC's fiscal year ending January 31, 1997, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused CUC to establish a merger reserve of approximately $127 million to pay expenses arising from CUC's acquisition of Ideon, and additional merger reserves totaling approximately $53 million to pay expenses arising from CUC's acquisition of Davidson, Sierra, and one or more smaller companies. (All these reserves together, totaling approximately $180 million, were collectively known at CUC and are hereinafter collectively referred to as the "Ideon reserve.") The conspirators falsely represented, and caused CUC to falsely represent, to the SEC and the investing public that the size of the Ideon reserve was based on CUC's good-faith estimate of the probable amount of such acquisition-related expenses, when in fact the conspirators well knew that they had intentionally included tens of millions of dollars in the reserve in excess of that amount. Subsequently, by drawing on the excess funds in the Ideon reserve and a smaller merger reserve in the manner set forth above, the conspirators fraudulently caused the operating income CUC reported for its fiscal year ending January 31, 1997 to be overstated by at least $23 million.

35. On or about December 17, 1997, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused CMS to establish a merger reserve of approximately $556 million to pay expenses arising from CUC's merger with HFS and its acquisition of another company. (This reserve is hereinafter referred to as the "Cendant reserve.") The conspirators falsely represented, and caused Cendant to falsely represent, to the SEC and the investing public that the size of the Cendant reserve was based on CMS's good-faith estimate of the probable amount of such acquisition- and merger-related expenses, when in fact the conspirators well knew that they had intentionally included over $200 million in the reserve in excess of that amount. Subsequently, by drawing on the excess funds in the Cendant reserve, the Ideon reserve, and certain smaller merger reserves in the manner set forth above, the conspirators fraudulently caused the CMS operating income that Cendant reported for its fiscal year ending December 31, 1997 to be overstated by at least $110 million.

<u>Other Improper Accounting Entries</u>

36. From at least as early as the late 1980's to in or about 1998, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators also fraudulently inflated the reported earnings of CUC and Cendant by knowingly causing CUC and CMS to make a

solicitation costs so as to improperly reduce the expenses recognized by CUC. By so doing, the conspirators fraudulently caused the earnings CUC reported for many of its fiscal years from in or about the late 1980's through January 31, 1997 to be overstated by millions of dollars.

38. At various times, including in or about early 1997, the conspirators caused CUC to arbitrarily reduce the liability for commission expense Comp-U-Card carried on its books and credit the difference directly to revenue or operating expense. By so doing, the conspirators fraudulently caused the earnings CUC reported for its fiscal year ending January 31, 1997 to be overstated by at least approximately $4.5 million.

39. In or about January 1998, the conspirators caused Sierra retroactively to credit approximately $2.6 million to revenue on the basis of an unsubstantiated entry in Sierra's books indicating that the company might receive an unspecified future tax benefit. By so doing, the conspirators fraudulently caused the earnings Cendant reported for its fiscal year ending December 31, 1997 to be overstated by approximately $2.6 million.

40. In or about January 1998, knowing that January 1997 was the only month of CUC's fiscal year ending January 31, 1997 which was included in Cendant's fiscal year ending December 31, 1997, the conspirators deliberately credited approximately $22 million which CUC had earned in the months prior to January 1997 to CUC's January 1997 earnings. The conspirators had already fraudulently inflated CUC's January 1997 earnings in the previous year with approximately $11 million which they had drawn from merger reserves as set forth in Paragraph 34 above. In all, therefore, by inflating CUC's earnings for January 1997, the conspirators fraudulently caused the earnings Cendant reported for its fiscal year ending December 31, 1997 to be overstated by approximately $33 million.

Other Means and Methods of the Conspiracy

The Conspirators' Earnings Targets

41. From at least as early as in or about the late 1980's to in or about 1997, members of the conspiracy sought to support and increase the price of CUC stock by causing CUC consistently to report to the SEC and the investing public that its operating income was growing by at least 25 percent a year. Generally, the steady increases in operating income that the conspirators caused CUC to report consisted partly of new income derived from acquisitions, but also included increases in the earnings the company reported from its existing operations.

42. By causing CUC to report such rapid and consistent growth in operating income, the conspirators helped cause the price of CUC stock to rise from approximately $1.56 on August 23, 1989 to approximately $32.13 on December 17, 1997. (The price on August 23, 1989, the first day CUC stock was traded on the New York Stock Exchange, has been adjusted to reflect stock splits between that date and December 17, 1997.) This increase in the stock price in turn helped the conspirators to continue increasing CUC's operating income with new acquisitions, since such acquisitions could largely be paid for with stock.

43. Also from at least as early as in or about the late 1980's, the conspirators took pains to ensure that the earnings CUC reported each quarter closely matched the earnings predicted by Wall Street stock analysts. In particular, the conspirators made certain that CUC's reported earnings never fell even slightly short of the analysts' consensus prediction, for fear that any such shortfall could trigger a substantial decline in the price of CUC stock.

44. To ensure that the earnings CUC reported would meet the expectations of the analysts, the conspirators kept members of the analyst community well informed as to the amount of growth in earnings CUC was targeting. Then, the conspirators fraudulently inflated the earnings CUC reported each quarter to whatever extent was necessary to achieve the company's previously disclosed earnings target for that quarter.

The Conspirators' Inflation

of Reported Earnings

to Meet Their Targets

45. Generally, during each of CUC's fiscal years from in or about the late 1980's, the conspirators inflated the earnings CUC reported as follows.

46. At the end of each of the first three quarters, after the earnings recorded on the books of CUC's operating units had been consolidated for reporting purposes at the company's Stamford headquarters, the defendants WALTER A. FORBES, E. KIRK SHELTON and other conspirators reviewed the consolidated earnings to determine whether they were sufficient to meet the conspirators' earnings target for the quarter. These earnings from the operating units' books had typically already been inflated by the underfunding of Comp-U-Card's membership cancellation reserve as set forth in Paragraphs 22 through 24 above, and in some cases had been further inflated by the misallocation of Comp-U-Card revenues to immediate recognition programs as set forth in Paragraphs 25 through 29 above.

47. If the consolidated earnings nonetheless failed to reach the conspirators' quarterly target, the defendants WALTER A. FORBES, E. KIRK SHELTON and other conspirators simply adjusted them upward by whatever amount was needed to do so, and caused this adjusted total to be reported to the SEC and the investing public. Because CUC was audited only at the end of each fiscal year, the conspirators typically found it unnecessary at this time to record such a fictitious increase in earnings anywhere on CUC's books, except on the quarterly earnings consolidation.

investing public. At or about the same time, however, in order to permit CUC to withstand its annual audit, the conspirators also caused fraudulent entries to be made on the books of CUC's operating units which purported to support all the earnings added to the year's total by the conspirators' upward adjustments to earnings consolidations, whether at yearend or at the ends of the previous three quarters. Those fraudulent entries included, in various years, entries misallocating Comp-U-Card revenues to immediate recognition programs, entries drawing on merger reserves to inflate operating income, and other improper accounting entries, all as set forth in Paragraphs 25 through 40 above.

49. Throughout the above process, the defendants WALTER A. FORBES, E. KIRK SHELTON and other conspirators kept track of their scheme with the help of a provisional plan for inflating earnings maintained and periodically updated by Corigliano. This document, which the conspirators closely guarded and referred to as their "cheat sheet," listed amounts the conspirators could add to CUC's reported earnings for the year by means of various fraudulent entries, including amounts they could draw for this purpose from merger reserves.

The Acquisition of Ideon, Davidson,

and Sierra and the Cendant Merger

50. In or about 1995, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators determined that, in view of the substantial amounts by which they had already fraudulently inflated CUC's reported earnings, the company would be unable to continue reporting increases in operating earnings of at least 25 percent per year unless they found a means to inflate its reported earnings on an even larger scale in the future.

51. In large part for the specific purpose of securing such a means, the conspirators caused CUC to acquire Ideon in 1996 as set forth in Paragraph 4 above. By acquiring Ideon in addition to Davidson and Sierra, the conspirators enabled themselves to create the approximately $180 million Ideon reserve and to fraudulently draw on it to meet their targets for the operating income CUC was to report for its fiscal year ending January 31, 1997 and the CMS operating income Cendant was to report for its fiscal year ending December 31, 1997, as set forth in Paragraphs 34 and 35 above.

52. In or about early 1997, finding that the software companies CUC had acquired had produced lower real earnings than they had expected, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators determined that CUC would be unable to continue reporting increases in operating earnings of at least 25 percent per year unless they could create and fraudulently draw upon even larger merger reserves. In large part for the specific purpose of securing such reserves, the conspirators then caused CUC to merge with HFS to form Cendant in 1997 as set forth in Paragraph 35 above. To induce HFS to agree to the merger, the conspirators referred HFS to CUC's fraudulently inflated earnings reports and provided it with projections of CUC's future earnings which they had fraudulently inflated beyond their actual expectations.

53. Subsequently, as set forth in Paragraph 35, the conspirators fraudulently drew upon the approximately $556 million Cendant reserve that the merger enabled them to create to meet their target for the CMS operating income Cendant was to report for its fiscal year ending December 31, 1997. Further, the conspirators took steps to similarly draw on the Cendant reserve to meet their target for the CMS operating income to be reported in the next fiscal year ending December 31, 1998.

The Impact on Earnings Reports

of CUC and Cendant and the Losses

to Holders of Cendant Securities

54. By the means set forth above, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators fraudulently caused CUC and Cendant to misreport their earnings as follows:

a. The conspirators caused CUC to report operating income for its fiscal year ending January 31, 1996 which was overstated, in all, by at least $60 million, or more than 28 percent. They thus caused CUC to report earnings per share for that year before one-time expenses of $.86, when the true figure was no more than $.67.

b. The conspirators caused CUC to report operating income for its fiscal year ending January 31, 1997 which was overstated, in all, by at least $56 million, or more than 14 percent. They thus caused CUC to report earnings per share for that year before one-time expenses of $.70, when the true figure was no more than $.61.

c. The conspirators caused Cendant to report operating income for its fiscal year ending December 31, 1997 which was overstated, in all, by at least $170 million, more than 13 percent of the total and more than 36 percent of the CMS operating income included in that total. The conspirators thus caused Cendant to report earnings per share for that year before one-time expenses of $1.00, when the true figure was no more than $.88.

55. Further, by the above means, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused holders of Cendant securities to sustain billions of dollars in losses after the fraudulent inflation of Cendant's reported earnings for the year ending December 31, 1997 was disclosed to the public on or about April 15, 1998.

Overt Acts

a. On or about March 19, 1996, at Stamford, Connecticut, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused CUC to issue a press release announcing its earnings for the fiscal year ending January 31, 1996 in which those earnings were overstated as set forth in Paragraph 54(a) above.

b. On or about April 25, 1996, at Stamford, Connecticut, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused CUC to file with the SEC an annual report on Form 10-K for the fiscal year ending January 31, 1996 in which CUC's earnings for that year were overstated as set forth in Paragraph 54(a) above.

c. On or about March 11, 1997, at Stamford, Connecticut, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused CUC to issue a press release announcing its earnings for the fiscal year ending January 31, 1997 in which those earnings were overstated as set forth in Paragraph 54(b) above.

d. On or about May 1, 1997, at Stamford, Connecticut, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused CUC to file with the SEC an annual report on Form 10-K for the fiscal year ending January 31, 1997 in which CUC's earnings for that year were overstated as set forth in Paragraph 54(b) above.

e. On or about February 2, 1998, at Stamford, Connecticut, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused a schedule of CUC's earnings for the fiscal year ended December 31, 1997 to be transmitted via facsimile from Stamford, Connecticut to Parsippany, New Jersey. The schedule, which was sent to allow Cendant to calculate its overall earnings, overstated the earnings of CUC by at least $170 million.

f. On or about February 4, 1998, at Parsippany, New Jersey, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused Cendant to issue a press release announcing its earnings for the fiscal year ending December 31, 1997 in which those earnings were overstated as set forth in Paragraph 54(c) above.

g. On or about March 31, 1998, at Parsippany, New Jersey, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused Cendant to file with the SEC an annual report on Form 10-K for the fiscal year ending December 31, 1997 in which Cendant's earnings for that year were overstated as set forth in Paragraph 54(c) above.

All in violation of Title 18, United States Code, Section 371.

COUNT 2

(Wire Fraud)

1. Paragraphs 1 through 14 of Count 1 of this Indictment are hereby realleged and incorporated as though set forth in full herein.

2. From at least as early as the late 1980's to in or about April 1998, in the District of New Jersey and elsewhere, the defendants

WALTER A. FORBES and E. KIRK SHELTON

and others knowingly and willfully devised and intended to devise a scheme and artifice to defraud holders of CUC and Cendant securities and members of the investing public and to obtain money from those securities holders and members of the investing public by means of false and fraudulent pretenses, representations and promises, which scheme and artifice was in substance as set forth in Paragraphs 14 through 55 of Count 1 of this Indictment.

3. On or about February 2, 1998, at Stamford, Connecticut, the defendants WALTER A. FORBES, E. KIRK SHELTON and their co-conspirators caused a schedule of CUC's earnings for the fiscal year ended December 31, 1997 to be transmitted via facsimile from Stamford, Connecticut to Parsippany, New Jersey. The schedule, which was sent to allow Cendant to calculate its overall earnings, overstated the earnings of CUC by at least $170 million.

4. On or about February 2, 1998, for the purpose of executing said scheme and artifice and attempting to do so, at Parsippany in the District of New Jersey and elsewhere, the defendants

WALTER A. FORBES and E. KIRK SHELTON

knowingly and willfully caused to be transmitted by means of wire communication in interstate commerce certain signs, signals, and sounds, in that they caused a schedule of CUC's earnings for the fiscal year ended December 31, 1997 to be transmitted via facsimile from Stamford, Connecticut to Parsippany, New Jersey. In violation of Title 18, United States Code, Sections 1343 and 2.

A TRUE BILL

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FOREPERSON

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