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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

CRIM. NO. 24-CR-131-JB

v.

USAO NO. 20R00251

AUSTAL USA, LLC

**VIOLATIONS: 15 U.S.C. §§ 78j(b) and
78ff(a)
17 C.F.R. § 240.10b-5
18 U.S.C. § 1516**

INFORMATION

The United States of America, by and through the United States Attorney for the Southern District of Alabama and the United States Department of Justice, Criminal Division, Fraud Section, charges:

**COUNT 1
Securities Fraud
(15 U.S.C. §§ 78j(b) and 78ff(a); 17 C.F.R. § 240.10b-5)**

At all times relevant to this criminal information:

The Defendant and Relevant Entities and Individuals

1. **AUSTAL USA, LLC** was a shipbuilder based in Mobile, Alabama, and a subsidiary of Austal Limited, an international shipbuilding company based in Australia. One of the ship classes that **AUSTAL USA** built was the U.S. Navy's Independence-class Littoral Combat Ship (LCS). **AUSTAL USA** built the LCS ships under contracts with the U.S. Navy.

2. Austal Limited was a publicly traded company that listed its shares on the Australian Securities Exchange (ASX). Austal Limited sponsored American Depositary Receipts (ADRs) for purchase in the over-the-counter (OTC) market in the United States. An ADR was a negotiable certificate issued by a U.S. depository bank representing a specified number of shares

of a foreign company's stock. Each ADR was equivalent to ten ordinary shares of Austal Limited traded on the ASX. Austal Limited's shares and ADRs trading on the American OTC market were securities within the meaning of Section 3(a)(10) of the Securities Exchange Act of 1934, which defined a "security" to include, among other things, "any... stock."

3. **AUSTAL USA's** revenues constituted approximately 80% of Austal Limited's total annual revenue between in or around 2013 and in or around 2016.

4. Craig D. Perciavalle was **AUSTAL USA's** President. Perciavalle had significant responsibility for **AUSTAL USA's** shipbuilding and financial operations.

5. Joseph A. Runkel was **AUSTAL USA's** Director of Financial Analysis. Runkel reported to **AUSTAL USA's** Chief Financial Officer, CC-1, who was responsible for overseeing **AUSTAL USA's** accounting records. CC-1 is now deceased.

6. From in or around 2010 until in or around July 2015, William O. Adams was **AUSTAL USA's** Program Director over the LCS program. From at least in or around 2013 until in or around 2015, Adams reported directly to Perciavalle.

7. **AUSTAL USA** relied on shipbuilding cost estimates called "estimates at completion" (EACs) to calculate the profitability of each vessel, including those in the LCS program, and to prepare **AUSTAL USA's** overall financial reporting. EACs represented the estimated total cost to complete a project (for **AUSTAL USA**, a vessel) at any given point in time. The EACs were calculated by adding the actual costs to date for a vessel to the estimated remaining cost to complete the vessel. To report accurate financial results, **AUSTAL USA** needed to provide management's best estimate of the probable outcome for its EACs on the ships.

8. **AUSTAL USA** compiled final EACs and information about the LCS program into a monthly Board Report and distributed it to **AUSTAL USA's** Board of Managers, which included

certain Austal Limited executives. Similarly, **AUSTAL USA** regularly prepared accounting records that it transmitted to Austal Limited. Austal Limited used this information from **AUSTAL USA** to report information about the performance of the LCS program and financial information to various parties, including shareholders, the investing public, and financial institutions.

9. Austal Limited published and released to its shareholders, the investing public, and financial institutions various reports and announcements concerning its business operations, including the financial performance of Austal Limited, **AUSTAL USA**, and the LCS program. This included annual reports and semi-annual reports which contained financial statements that Austal Limited represented as a “true and fair view” of its financial position. In addition to Austal Limited’s published and released announcements, Austal Limited and **AUSTAL USA** executives, including Perciavalle, presented financial and other information to shareholders, the investing public, and financial institutions through earnings calls and other presentations.

AUSTAL USA’s Independent Financial Statement Auditors

10. An independent financial-statement auditor was a certified public accountant who examined the financial statements that a company’s management had prepared. **AUSTAL USA** retained Accounting Firm 1 to perform an independent audit of **AUSTAL USA**’s financial statements for fiscal years 2014, 2015, and 2016, and to provide an opinion that **AUSTAL USA**’s financial statements were free from material misstatements, used appropriate accounting policies, included reasonable significant accounting estimates by management, and overall fairly presented, in all material respects, the financial position of **AUSTAL USA**. Austal Limited received Accounting Firm 1’s opinion regarding **AUSTAL USA** in connection with the preparation of financial statements and other information Austal Limited published, released, and presented to shareholders, the investing public, and financial institutions. Accounting Firm 1 also conducted

half-year reviews in 2014, 2015, and 2016, which were more limited in scope than the full-year audits.

The Scheme to Defraud

11. From at least 2013 through at least 2016, in the Southern District of Alabama and elsewhere, the defendant,

AUSTAL USA,

knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, in connection with the purchase and sale of securities, did use and employ, and cause others to use and employ, manipulative and deceptive devices and contrivances, and attempted to do so, by: (a) employing, and causing others to employ, devices, schemes, and artifices to defraud; (b) making, and causing others to make, untrue statements of material fact and omitting to state, and causing others to omit to state, material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging, and causing others to engage, in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons.

Purpose of the Scheme to Defraud

12. The purpose of the scheme to defraud was for **AUSTAL USA** to mislead Austal Limited's shareholders and the investing public about **AUSTAL USA**'s financial condition and the performance of the LCS program in order to (a) maintain and increase the share price of Austal Limited's stock; and (b) unjustly enrich senior executives of **AUSTAL USA** through their continued receipt of compensation, stock, and other benefits.

Manner and Means of the Scheme to Defraud

13. Beginning at least in or around 2013, Perciavalle, CC-1, Runkel, Adams, and others knew that **AUSTAL USA**'s LCS shipbuilding program was underperforming and over budget. With this knowledge, and with the intent to benefit **AUSTAL USA**, Perciavalle, CC-1, Runkel, Adams, and others intentionally provided and caused others to provide false and fraudulent financial information and other information about the LCS program to certain members of **AUSTAL USA**'s Board of Managers, Austal Limited's Board of Directors, Accounting Firm 1, and accounting employees of Austal Limited, including for dissemination to Austal Limited's shareholders and the investing public. To do so, Perciavalle, CC-1, Runkel, Adams, and others artificially reduced and suppressed EACs to levels that were unrealistic and materially different from management's best estimates and knowingly and intentionally provided materially false and misleading information about **AUSTAL USA**'s progress on its LCS vessels to conceal problems with meeting financial metrics for the performance of the program.

14. One of the means used by **AUSTAL USA**, through Perciavalle, CC-1, Runkel, Adams, and others to conceal the negative performance issues and cost growth on the LCS program was to knowingly and intentionally mislead and deceive Accounting Firm 1 during its audits and reviews of **AUSTAL USA**'s financial statements, which Perciavalle, CC-1, Runkel, Adams, and others knew were used to prepare Austal Limited's financial statements and other documents on which shareholders and the investing public relied.

15. By concealing negative information about **AUSTAL USA**'s performance and the extent of the cost growth on the LCS program from members of the **AUSTAL USA** Board and Accounting Firm 1, **AUSTAL USA**, through the actions of Perciavalle, CC-1, Runkel, Adams, and others, knowingly and intentionally caused Austal Limited to communicate false and

misleading information to Austal Limited's shareholders and to the investing public in Austal Limited's required annual and semi-annual financial reporting.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17 Code of Federal Regulations, Section 240.10b-5.

Count 2
Obstruction of a Federal Audit
(18 U.S.C. § 1516)

16. Paragraphs 1 through 10 of this Information are realleged and incorporated by reference as though fully set forth herein.

17. The Defense Contract Audit Agency (DCAA) was an agency of the United States government that employed federal auditors to perform audits for and on behalf of the U.S. Department of Defense. Among other audits, DCAA conducted financial capability audits of federal government contractors like **AUSTAL USA** in order to advise the Department of Defense and its military branches, like the U.S. Navy, on whether the audited contractor had the financial ability to perform as promised in its contracts with the government.

18. In or around December 2014, at the request of the U.S. Navy, DCAA began conducting a financial capability audit of **AUSTAL USA** to determine if the company had adequate financial resources to perform on its government contracts. In order to complete an audit that the Navy could use to make decisions impacting its contracts with **AUSTAL USA**, DCAA relied on **AUSTAL USA** to provide accurate and truthful information during the audit.

19. Between in or around 2014 and continuing through in or around 2015, in the Southern District of Alabama and elsewhere, **AUSTAL USA**, through the actions of CC-1 and others, with the intent to deceive and defraud the United States endeavored to influence, obstruct, and impede DCAA, a Federal auditor, in the performance of official duties relating to a person,

entity, and program receiving in excess of \$100,000, directly and indirectly, from the United States in any one-year period under a contract, subcontract, grant, or cooperative agreement.

In violation of Title 18, United States Code, Section 1516.

SEAN P. COSTELLO
UNITED STATES ATTORNEY

GLENN S. LEON
CHIEF, FRAUD SECTION

By:



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AUGUST 26, 2024