IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	
v.	**:**	**CRIMINAL NO. 03-496**
PATRICK BUTTERY	**:**	

GOVERNMENT'S GUILTY PLEA MEMORANDUM

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On August 6, 2003, an indictment was returned against defendant Patrick Buttery, charging Buttery and co-defendant George Capell with multiple counts of wire fraud, mail fraud, and money laundering. Buttery is scheduled for a guilty plea hearing before the Court on Monday, January 30, 2006, at 3:30 p.m. The guilty plea agreement is included with this memorandum as Attachment A. The executed original plea agreement will be filed with the Court at the hearing. Trial in this matter, which is complex, is scheduled for March 6, 2006.

II. SUMMARY OF THE PLEA AGREEMENT

The parties have entered into a written guilty plea agreement in which the defendant has agreed to plead guilty to 33 counts of the indictment. Specifically, the defendant has agreed to plead guilty to (i) 21 counts of wire fraud, in violation of Title 18, United States Code, Section 1343, as charged in Counts 5 to 19, 21 to 25, and 27; (ii) one count of wire fraud against a financial institution, in violation of Title 18, United States Code, Section 1343, as charged in Count 20; (iii) eight counts of mail fraud, in violation of Title 18, United States Code, Section 1341, as charged in Counts 28 to 35; and (iv) three counts of money laundering, in violation of Title 18, United States Code, Section 1957, as charged in Counts 40 to 42.

The guilty pleas involving wire and mail fraud arise from the defendant's participation from at least February 23, 2000 through at least March 21, 2001, as the Chief Financial Officer for the company Computer Personalities Systems, Inc. ("CPSI"), and in concert with co-defendant George Capell, in schemes designed to defraud (i) individual consumers from across the country, (ii) financial companies, and (iii) suppliers of products and services. The guilty pleas involving the money laundering offenses are based upon the defendant obtaining three checks in the amounts of $60,000, $40,000 and $35,000, respectively, signed by George Capell and drawn on a bank account of CPSI, knowing that these checks were derived from a specified unlawful activity, that is, the underlying wire fraud and mail fraud schemes at issue.

Guideline Stipulations

The parties agree to the following stipulations under the November 1, 2000 Guidelines:

a. The parties agree and stipulate that the fraud loss caused by the defendant in furtherance of the criminal activity jointly undertaken by the defendant and his co-schemer was more than $20,000,000 but less than $40,000,000; this amount was within the scope of the defendant's agreement; this amount was reasonably foreseeable to the defendant in connection with the scheme; and the defendant's Guideline range should be calculated based on this amount pursuant to Guideline Section 1B1.3, which would result in a 16-level increase in the base offense level pursuant to Guideline Section 2F1.1(b)(1)(Q).

b. The parties agree and stipulate that the offenses involved more than minimal planning, requiring a 2-level upward adjustment under Guideline Section 2F1.1(b)(2)(A).

c. The parties agree and stipulate that the offenses involved mass marketing, requiring a 2-level upward adjustment under Guideline Section 2F1.1(b)(3).

d. The parties agree and stipulate that the defendant had an aggravating role in the offense, requiring a 2-level upward adjustment under Guideline Section 3B1.1(c).

e. The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under Guideline Section 3E1.1(a).

f. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, making the defendant eligible for an additional 1-level downward adjustment under Guideline Section 3E1.1(b).

The parties agree and understand that: (1) the parties are free to argue the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) the above stipulations are not binding upon either the Probation Department or the Court; and (3) the Court may make factual and legal determinations that differ from the stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed.

The defendant may not withdraw his plea because the Court declines to follow any recommendation, motion or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

Cooperation Language

The plea agreement is a "cooperation" plea agreement. Accordingly, the defendant has agreed to cooperate fully and truthfully with the government, as detailed more fully in the agreement. In return, the government has agreed to move to allow the Court to depart from the Sentencing Guidelines pursuant to Sentencing Guidelines §5K1.1, if the government, in its sole discretion, determines that the defendant has provided complete and substantial assistance in the investigation or prosecution of another person who has committed an offense.

Dismissal of Five Wire Fraud Counts

If the government in its sole discretion determines that the defendant has fulfilled all of his cooperation obligations, at the time of sentencing, the government will move to dismiss Counts 1 to 4 and 26 of the indictment, all of which charge wire fraud, in violation of Title 18, United States Code, Section 1343, and the notice of forfeiture in the indictment based on Counts 20 to 22, as to this defendant. The defendant waives the statute of limitations as to all counts to be dismissed under this agreement, and agrees that if the defendant withdraws from, or successfully challenges, the guilty plea entered under this agreement, or if these counts are otherwise reinstated under the terms of this agreement, neither the statute of limitations nor the Double Jeopardy Clause will bar prosecution on any of these dismissed counts.

Appellate Waiver

In exchange for the undertakings made by the government in entering the plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally

attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law.

a. Notwithstanding the waiver provision above, if the government appeals the sentence, then the defendant may file a direct appeal of his sentence.

b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:

(1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth in the agreement;

(2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines; and/or

(3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 125 S. Ct. 738 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

Miscellaneous

The defendant agrees to forfeiture as provided in Attachment A to the plea agreement; the forfeiture agreement involves the sum of $135,000, which is the total of the three checks at issue in the three money laundering offenses to which he is pleading guilty. The defendant also understands that restitution will be ordered, on a schedule to be set by the Court.

III. ELEMENTS OF THE OFFENSES

A. Wire Fraud

The defendant has agreed to plead guilty to 21 counts of wire fraud, in violation of Title 18, United States Code, Section 1343, as charged in Counts 5 to 19, 21 to 25, and 27. In order to prove the crime of wire fraud, the government must demonstrate the following:

1. The defendant knowingly devised or participated in a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises;

2. The defendant acted with the specific intent to defraud; and

3. In advancing, furthering, or carrying out the scheme, the defendant used the interstate wires, or caused the interstate wires, to be used.

See 1A O'Malley, Grenig & Lee Devitt and Blackmar, Federal Jury Practice and Instructions, § 47.07 (5th ed.)

The defendant also has agreed to plead guilty to one count of wire fraud against a financial institution, in violation of Title 18, United States Code, Section 1343, as charged in Count 20. This offense carries a maximum statutory penalty of 30 years, rather than the usual five years for a wire fraud offense, based on the involvement of a financial institution. Accordingly, under Apprendi and its progeny, the enhanced statutory maximum sentence applies only if the fact of the financial institution is admitted by the defendant, or proven beyond a reasonable doubt. Here, Count 20 involves a fraud against Fleet Bank, which is a " financial institution" under Section 1343 because it was insured by the Federal Deposit Insurance Corporation at the time of the scheme. See 18 U.S.C. § 20 (defining "financial institution").

B. Mail Fraud

The defendant has agreed to plead guilty to eight counts of mail fraud, in violation of Title 18, United States Code, Section 1341, as charged in Counts 28 to 35. In order to prove the crime of mail fraud, the government must demonstrate the following:

1. The defendant knowingly devised or participated in a scheme to defraud or to obtain money or property by materially false or fraudulent pretenses, representations or promises;

2. The defendant acted with the specific intent to defraud; and

3. In advancing, furthering, or carrying out the scheme, the defendant used the mails, or caused the mails, to be used.

See 2 Devitt and Blackmar, Federal Jury Practice and Instructions, § 40.03 (4th ed. 1990). See also United States v. Pharis, 298 F.3d 228, 234 (3d Cir. 2002); United States v. Frey, 42 F.3d 795, 797 (3d Cir. 1994); United States v. Hannigan, 27 F.3d 890, 892 (3d Cir. 1994); United States v. Copple, 24 F.2d 535, 544 (3d Cir. 1994); United States v. Burks, 867 F.2d 795 (3d Cir. 1989); accord Pereira v. United States, 347 U.S. 1, 8-9 (1954).

C. Money Laundering

The defendant also has agreed to plead guilty to three counts of money laundering, in violation of Title 18, United States Code, Section 1957, as charged in Counts 40 to 42. In order to prove a violation of Section 1957, the government must demonstrate the following:

1. The defendant engaged, or attempted to engage, in a monetary transaction affecting interstate commerce in criminally derived property of a value greater than $10,000;

2. The property was derived from a specified unlawful activity; and

3. The defendant acted knowingly.

See 3 Sand, et al., Modern Federal Jury Instructions ¶ 50A.06 at 50A-26 (1998 ed.). See also United States v. Cefaratti, 221 F.3d 502, 508 (3d Cir. 2000); United States v. Sokolow, 91 F.3d 396, 408 (3d Cir. 1996); see also United States v. Aramony, 88 F.3d 1369, 1385 (4th Cir. 1996).

Finally, Buttery is charged under 18 U.S.C. § 2, the aiding and abetting statute, for each of the offenses described above. Section 2 of Title 18, United States Code provides:

> (a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> (b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

Before a defendant may be held responsible for aiding and abetting others in the commission of a crime, it is necessary that the government prove beyond a reasonable doubt that the defendant knowingly and deliberately associated himself in some way with the crime charged and participated in it with the intent to commit the crime. Therefore, in order to be found guilty of the wire fraud, mail fraud and money laundering crimes at issue in this defendant's guilty plea on the basis of an aiding and abetting theory, the government must prove that defendant Buttery:

1. Knew that the crime charged was to be committed or was being committed,
2. Knowingly did some act for the purpose of aiding, commanding or encouraging the commission of that crime, or willfully caused someone, including an innocent intermediary, to commit the crime at issue, and
3. Acted with the intention of causing the crime charged to be committed.

18 U.S.C. § 2; see 1A O'Malley, Grenig & Lee, Federal Jury Practice and Instructions § 18.01 (5th ed. 2000); Nye & Sissen v. United States, 336 U.S. 613, 618-20 (1949); Cheek v. United States, 498 U.S. 192, 196 (1991); United States v. Horton, 847 F.2d 313, 321-22 (6th Cir. 1988); United States v. Martin, 747 F.2d 1404, 1407 (11th Cir. 1984).

IV. MAXIMUM SENTENCES

The following maximum statutory sentences reflect the statutory sentences provided at the time of the offenses charged, which lasted up until March 2001.

The Court may impose the following statutory maximum sentence for wire fraud, as charged in Counts 5 to 19, 21 to 25, and 27: 5 years of imprisonment, a 3-year period of supervised release, a $250,000 fine, and a $100 special assessment. Further, the Court may impose the following statutory maximum sentence for wire fraud, as charged in Count 20 (involving a financial institution): 30 years of imprisonment, a 5-year period of supervised release, a $1,000,000 fine, and a $100 special assessment. The Court also may impose the following statutory maximum for mail fraud, as charged in Counts 28 to 35: 5 years of imprisonment, a 3-year period of supervised release, a $250,000 fine, and a $100 special assessment. The Court also may impose the following statutory maximum sentence for money laundering, as charged in Counts 40 to 42: 10 years of imprisonment, a 3-year period of supervised release, a $250,000 fine, and a $100 special assessment.

Total Maximum Sentence is: 205 years imprisonment, 5-year period of supervised release, a $9,000,000 fine, and a $3,300 special assessment. Full restitution shall be ordered on a schedule to be set by the Court. Forfeiture of personal property used to commit the offenses and any property constituting, or derived from, proceeds obtained directly or indirectly as the result of the violations of Title 18, United States Code, Section 1957 also may be ordered.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by 5 years in the case of Class B felonies. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

V. FACTUAL BASIS FOR THE PLEA

The facts which the government would prove at any trial include, but are not limited to, the following:

A. THE DEFENDANTS AND THE COMPANIES

Co-defendant George Capell owned and operated two corporations, described below, involved in the sale of computers and related merchandise, and the acquisition of cable television air used for their sale: Computer Personalities Systems, Incorporated (hereinafter "CPSI"), and the Direct 2 U Network, Incorporated (hereinafter "D2U").

Defendant Patrick Buttery served as the Chief Financial Officer for CPSI beginning in or about October 1999. Prior to becoming the Chief Financial Officer for CPSI, defendant Buttery acquired a masters degree in finance, and worked in the computer industry.

CPSI, which did business as Video Computer Store ("VCS"), was created on or about November 18, 1991. Co-defendant Capell was the sole shareholder and President of CPSI.

CPSI sold computers and computer-related merchandise and services to consumers across the country by advertising through infomercials broadcasted on various cable networks, the internet website of VCS, and a retail VCS building. Co-defendant George Capell

was the “star” of the cable television infomercials. Typically, CPSI solicited orders from consumers placed over the telephone to CPSI sales representatives, or through the internet. Consumers would pay CPSI for their orders through personal checks or money orders, credit cards, or financing offered through CPSI in conjunction with a financing institution. CPSI consisted of a central office, warehouse and call center located in Pipersville, as well as at various times an accounting office in Doylestown, and another call center in Warminster, Pennsylvania. All of the CPSI buildings were located in Bucks County, Pennsylvania.

Co-defendant George Capell also was the sole shareholder and President of D2U, which produced infomercials featuring co-defendant George Capell and computers and computer-related merchandise and services offered by CPSI to consumers. D2U also bought through third-parties air time on various cable networks in order to broadcast these infomercials. D2U consisted of a television studio office in Pipersville, Pennsylvania, located adjacent to the central office and warehouse of CPSI, and a media sales office in Encino, California.

Co-defendant Capell was assisted at both companies by Vice President for administration, Elizabeth Fetzer and, after October, 1999, by his Chief Financial Officer, defendant Patrick Buttery. CPSI had several hundred employees who worked at various times from 1999 through March 2001 in various capacities, including telephone sales, customer service, warehouse workers, technical support, finance, retail store clerks and shipping.

Co-defendant George Capell caused CPSI to declare Chapter 11 bankruptcy on March 23, 2001. CPSI essentially ceased to function on that date.

B. AN OVERVIEW OF THE INTER-RELATED FRAUD SCHEMES

The schemes generally worked as follows.

First, co-defendant George Capell, assisted by defendant Patrick Buttery, defrauded consumers from across the country by (1) charging the customer immediately for computer packages, but delaying by months the delivery of the computer packages; (2) delivering only parts of the computer package, but billing for the entire computer; (3) often failing to deliver any computer at all; (4) refusing to refund consumers' money as promised; and (5) failing often to send CPSI rebates to consumers, as promised on the informercials used to sell the computer packages. To date, consumers still have lost over $3 million dollars.

Second, the defendants defrauded suppliers of computers and television air time by intentionally failing to pay suppliers for many of the computers and computer products they shipped, despite the fact that the defendants already had collected the full purchase price of the computers from consumers and/or the consumers' financial institutions. Vendors collectively lost over $10 million dollars as a result of the schemes charged.

Third, to attempt to maintain the ability of CPSI to continue in business and to attempt to force other commercial entities to bear the financial burden of CPSI's cost of doing business, the defendants made and caused to be made false representations to financial companies about the nature and business practices of CPSI and D2U, and the ability of CPSI to make payments owed. Through fraud and misrepresentations to financial companies who did business with CPSI and D2U, the defendants caused at least another $20 million of losses.

Although this memorandum necessarily discusses each of the three schemes separately, the evidence regarding any one of the three individual schemes can only be properly

understood in relation to the evidence regarding all three. For example, the defendants' knowledge that many consumers would not receive what they paid for, is revealed in part by the defendants' simultaneous knowledge that CPSI was not receiving computers from its suppliers, due to the suppliers not receiving promised payments. Conversely, the defendants' knowledge that they would be unable to pay their suppliers is revealed in part by their simultaneous knowledge that numerous consumers were cancelling orders and demanding refunds, and that financial companies were withholding payments and threatening to cut CPSI off. The various and systemic problems, all relating to an increasing lack of funds and an inability to fulfill promises, exacerbated each other. Defendants Capell and Buttery knew the entire spectrum of problems, whereas an individual consumer, supplier, or financial company, induced to do business with CPSI by the defendants' misrepresentations, was ignorant of the entire picture.

C. THE FINANCIAL AND ORGANIZATIONAL PROBLEMS OF THE COMPANIES

1. EVIDENCE FROM THE EMPLOYEES

At any trial, the government would call as witnesses the following former employees of CPSI, among others: Elizabeth Fetzer, the Vice-President of CPSI; Maryellen Heffner, a supervisor in customer service; Margaret Simons, a manager in the accounting department; Kathleen Cusick, who took over as manager of accounting when Simmons left CPSI in November 2000 due to ethical qualms; and Christine Painter, who also worked in accounting. Collectively, the testimony of these employees would show no less than the following, all of which was known to defendant Buttery, either generally or specifically, in part because these employees would tell both Buttery and co-defendant Capell about the conditions at CPSI:

CPSI was a nightmare for its consumer customers, and was chaotic and stressful for its employees. This is because CPSI did not have the necessary funds to buy enough computers, for which consumers already had paid, or pay for rebates and refunds promised to consumers. As a result, customers were on hold for hours. The filing system was set up to be as inefficient as possible, so that account retrieval took far longer than it should have, and computers were slow to arrive, or did not arrive at all, due to suppliers not getting paid.

Despite the fact that CPSI sold computers, most of the "record keeping" was done on paper, and was not automated. Co-defendant Capell took personal possession of the invoices sent by the major vendors, signed all of the major checks, and had access to CPSI's sales records. Co-defendant Capell would inquire almost daily to determine the balances in the corporate bank accounts, which became increasingly low. Occasionally, defendant Buttery also would inquire.

Employees in customer service were on the telephone non-stop, either taking new orders or, as time went on, taking more and more complaints, until the complaints overwhelmed the employees. By the end of 2000, at least 40 per cent of the calls were complaints or "status calls," that is, calls from individuals who had paid for computers which had not arrived within the advertised time. Consumers constantly would complain that they had received only part of their system – for example, the printer – but would not receive the central processing unit. People also complained that they did not receive rebates as promised, and that technical support was poor or non-existent. Co-defendant Capell would tell defendant Buttery that providing consumers with partial product was a method to blunt the consumers' ability to seek recourse.

In late 1999, Heffner took over as head of consumer affairs for CPSI, and was responsible for responding to the consumer complaints, and the complaints involving the

Attorney Generals offices', consumer protection agencies, and civil litigation. She was directed to see that this type of complaint received a higher level of response – consumers who formally complained would get a credit or refund before individuals who had been waiting longer for their computer or refund. After Heffner took over customer service, she would still handle the phones occasionally, and there would still be numerous complaints. She and other senior staffers would at times ignore orders from defendants Capell and Buttery to answer the phones for new orders, because they knew that the people who already had ordered and paid had not received their computers yet, and they did not want to lead on new customers. Other employees continued to take new orders, however, even when it was clear that people were not getting their computers.

When Heffner tried to talk to defendant Buttery in early 2000 about the number of orders that had been unfulfilled for several months, he would deny that there were such orders. At this time, however, defendant Buttery had been present at CPSI long enough to realize that there was a substantial amount of unfulfilled customer orders, as well as consumer complaints. Moreover, Heffner showed Buttery the boxes brimming with growing consumer complaints. Defendant Buttery also was aware by this time that CPSI would not pay its computer suppliers.

Margaret Simons worked in the accounting department of CPSI from January 1999 until she left the company in November 2000 due to her ethical discomfort. Customers were charged before their computers were shipped, if ever, during the entire time she worked at CPSI, and this practice continued even after the defendants promised MBNA and Fleet Bank that CPSI would stop this practice. No later than the summer of 2000, conditions at CPSI had deteriorated badly, and many customers were calling trying to find out what happened to the

computer they had ordered, or when they would receive the credit they had requested upon the cancellation of their order. When Simons left, the vast majority of customers were dissatisfied.

Christine Painter began working in the accounting department in 1999. After Christmas 1999, customer relations deteriorated, and the company routinely began getting hundreds of complaint letters. Both defendants Capell and Buttery were aware of the substantial consumer problems through complaint letters, and from notification from CPSI employees.

A summary exhibit regarding the corporate bank accounts would reveal at trial ever dwindling cash availability, and that cash assets were significantly eclipsed, by many millions of dollars at all times throughout the scheme, by outstanding and long-term debts.

2. EVIDENCE FROM FINANCIAL PROFESSIONALS

Steve Kobasa wa a CPA who worked as a partner for the accounting firm Stockton Bates. Kobasa and others did work for defendant Capell and CPSI, such as performing compilations for September and December, 1998 and March and June, 1999. Kobasa also prepared financial statements for CPSI for June and December, 1999.

Co-defendant Capell and his wife wrote the major checks for the companies, and had control over the One Write "accounting system," which was simply carbonized copies of checks written. Accounts receivable consisted of paper records of orders placed by customers, and then entered into a computer program created by Capell. Kobasa requested and received from Capell monthly sales reports. Capell also personally paid the majority of the significant invoices (i.e., bills from suppliers). Pursuant to this practice, Capell would call the bank to see how much money was available from credit card deposits in order to pay outstanding invoices.

By August, 1999, Kobasa had created a financial statement for CPSI for the period ending June 30, 1999. This financial statement, which was not audited, stated that CPSI had about $79 million in gross sales for the period, and about $2 million in retained earnings. However, the statement also explains that"[t]here are also sales order of $8,562,000 that have been received from approved customers that have not been invoiced because the product has not been received or shipped." At the time, the $8.562 million number was growing. Kobasa provided the financials to the defendants, and told them that they should ship product and reduce the amount of unfulfilled sales involving unshipped orders.

Kobasa did not finish the December 31, 1999 financial statements until early October 2000 due to problems involving obtaining adequate information from CPSI. Unlike the prior financial statement, this one was based on an audited balance sheet. CPSI had about $131 million in gross sales. As opposed to $2 million in retained earnings, however, as reflected by the prior financial statement, the December 31, 1999 financial statement now reflected an approximate deficit of $15 million. As both defendants knew, and as the defendants personally discussed, the dramatic $17 million swing from black to red ink resulted because the audit had confirmed payables, receivables and customer deposits, and thereby confirmed that about $13 million in customer deposits had been collected and possessed by CPSI at the time, but product had not been shipped yet to complete the sale, revealing a looming liability owed by CPSI to its customers. Kobasa provided copies of these financials to the defendants. Further, Kobasa discussed the large deficit throughout the ongoing audit – from February 2000 through October 2000 – with defendant Buttery, who in turn discussed it with defendant Capell. The ongoing reaction of co-defendant Capell was that his key goal remained his raw volume of gross sales.

Kobasa also told the defendants in late 1999 that if CPSI was collecting money from customers, then CPSI had to ship quickly or they would run into problems.

Kobasa performed sometime in 1999 a break-even analysis and concluded that CPSI was not making enough money to cover its overhead. Kobasa shared his results with defendant Capell and Vice-President Fetzer. In early 2000, both Kobasa and defendant Buttery did their own gross profit percentage analysis. Both arrived at findings similar to that of the break-even analysis. Kobasa also told defendant Buttery several times during mid-2000 that the failure to honor all customer refunds, and the amount of consumer complaints, was a problem.

Joseph Carrozza began to work as a financial consultant for CPSI in or around August, 1999. As with Kobasa, Carrozza performed a gross profit analysis in the Fall of 1999 with defendant Buttery, and determined that CPSI was not generating sufficient profits. Carrozza explained his findings in the Fall of 1999 to defendant Capell, and defendant Buttery also discussed the low margin of profit with co-defendant Capell. Carrozza further confirms that shipping was a problem; although the custom in the industry is to ship within one week, CPSI's failure to ship for up to three months was extremely unusual. The shipping problems were due to a combination of lack of controls, lack of cash flow, and cancellations by disgruntled customers. Defendant Capell also routinely exhausted and switched computer vendors. Carozza discussed with the defendants the fact that at least $13 million was owed to consumers by late 1999.

Finally, the defendants hired Steven Fierce as a financial consultant for CPSI and D2U for January through March, 2001. Fierce was hired to raise between $15 and $20 million in outside investment. Of this, $10 to $12 million supposedly was to be used to pay vendors owed money, particularly Everex. Another $3 to $4 million was to be used to pay back consumers.

3. OUTSIDE AGENCIES

Throughout the period of the schemes, CPSI experienced mounting difficulties with inquiries and investigations involving the Federal Trade Commission, the Attorney General's Office of Pennsylvania, and the Better Business Bureau. Although defendant George Capell had the vast majority of the contact with these entities, defendant Patrick Buttery was generally aware of these problems. Defendant Buttery knew that representatives of the Attorney General periodically met with defendant Capell and Vice-President Fetzer regarding the large volume of consumer complaints. Defendant Buttery knew that defendant Capell and Fetzer were providing information and documents in response to repeated requests from the Federal Trade Commission, due to issues regarding the large volume of consumer complaints. Finally, defendant Buttery was aware that in about December 1999 the Better Business Bureau suspended CPSI, and that in March 2000, it terminated the membership of CPSI. Defendant Capell explained his problems with the Better Business Bureau by declaring that CPSI was too large and sophisticated a company to bother being involved anymore with the Better Business Bureau.

C. THE WIRE AND MAIL FRAUDS AGAINST CONSUMERS (COUNTS 5 THROUGH 19, AND COUNTS 28 THROUGH 35)

To attempt to obtain for CPSI more money, gross sales, and market share, co-defendant George Capell made and caused to be made false representations to consumers regarding CPSI's merchandise, services and financial incentives from at least September 1999 through March 21, 2001. Specifically, during various infomercials broadcasted on cable networks across the country, on the VCS internet website, and through the CPSI customer service

department, co-defendant George Capell represented, and caused to be represented, the following, all of which was known to defendant Patrick Buttery:

Consumers were told that computers and related merchandise which they ordered would be received within a particular period of time following their order, usually ranging from two to six weeks, when as defendants Capell and Buttery well knew, because of the widespread problems at CPSI, many consumers would not receive their orders until much later than promised, and many other customers would not receive their computers at all. Consumers also were told that they would receive the computers and related merchandise for which they had paid, when as the defendants well knew, many consumers would not receive all or even any of the merchandise for which they had paid, or would receive merchandise different than what actually had been ordered, without their permission. Further, consumers were told that the purchase price for computers and computer-related merchandise included readily available technical support, when, as the defendants well knew, most consumers, including those who received faulty merchandise, would not receive any technical support whatsoever. Moreover, consumers were told that computers and computer-related merchandise which did not function properly could be returned for repair or replacement, when as the defendants well knew, many consumers who received faulty merchandise would not receive repaired or replaced merchandise.

Consumers were told that they could return their merchandise and receive refunds, when as the defendants well knew, both defendants Capella and Buttery would prevent employees of CPSI from paying refunds to most of the consumers who had requested refunds. Consumers also were told that they could take advantage of a 30-day money-back guarantee, when as the defendants well knew, they would not honor the 30-day money-back guarantee for

many consumers. Moreover, consumers were told that if they ordered computers and computer-related merchandise from CPSI., they would receive a CPSI rebate, usually $100 in addition to manufacturers' rebates, when as the defendants well knew, many consumers would not receive these rebates, and many also would be unlikely to receive promised rebates from the manufacturers, because CPSI was not paying those manufacturers for delivered goods.

Starting no later than in or about January 2001, when the financial status of CPSI was particularly bad, consumers ordering computers and computer related merchandise were told they could receive a special $100 discount if they paid for their order through a money order or check, when, as the defendants well knew, many consumers who paid through money order or check in fact never would receive their goods. Co-defendant Capell instituted this tactic of inducing consumers to pay cash in order to obtain more cash flow, to prevent frustrated consumers from being able to seek recourse through charge backs from a credit card or financing company, and to avoid the need to pay credit card companies the reserves they were demanding. Both defendants discussed this tactic with each other. Many consumers took advantage of this offer, and had no recourse other than bankruptcy claims when CPSI did not deliver their goods.

If the customer used a credit card, CPSI would charge the customer as soon as the customer placed the order, and usually prior to the time that the computer was even ordered from the supplier. At the time these infomercials were being broadcast, however, defendants Capell and Buttery knew that they were already months behind on delivering existing orders. Despite the fact that CPSI was selling thousands of computers a month, and was collecting the money from consumers before orders were placed for the computer, CPSI did not pay its suppliers. As a result, one after another, suppliers refused to ship computers to CPSI, causing huge delays of

computer deliveries, or in many instances, no delivery at all. Co-defendant Capell would also direct his employees, with the assistance of defendant Buttery, to ship out some components of the computer, like the monitor, just before a consumer's time limit to file a dispute with the credit card company had run. Consumers would then believe that the rest of the computer would arrive shortly. Frequently, they were disappointed. Some consumers actually would get a computer, only to find that it was not what they ordered, or that it did not function properly.

Despite the widespread problems in delivering product to consumers, co-defendant Capell instructed Vice-President Fetzer to instruct the customer service representatives answering phones to tell consumers that they would receive missing product within a few weeks.

The primary role of defendant Buttery in the scheme to defraud consumers, aside from helping to pursue the supporting schemes to defraud vendors and financial companies, see infra, was to assist co-defendant Capell in preventing employees of CPSI from: (1) paying refunds to many consumers; (2) honoring the 30-day money-back guarantee to many consumers; and (3) paying rebates promised by co-defendant Capell and CPSI to consumers.

Margaret Simons would request money for consumer refunds from defendant Buttery. Simons would frequently tell defendant Buttery, for example, that $1 million was due in refunds. Defendant Buttery, however, would tell Simons that she was authorized to return only a much smaller amount – sometimes under $100,000. On one occasion Simons gave $150,000 in refunds when defendant Buttery only authorized to give $100,000 in credits, and she was berated by both defendants Capell and Buttery, who knew, and had discussed together, the fact that CPSI could not afford to pay the refunds which defendant Capell was promising on television. Due to

CPSI's inability to fulfill the promises of Capell, defendant Buttery issued his repeated instructions to other employees to not pay the majority of outstanding refund requests.

After Margaret Simons left, Kathleen Cusick also brought the problem of customer refunds to defendant Buttery's attention, and he told her that they would take care of the problem. The problem was never resolved for most customers, however. As with Simons, defendant Buttery would allow Cusick to send refunds to only a small fraction of the customers who were requesting them.

Some customers were given their refunds. These consumers were referred to as "hot tamales," or "screamers." "Hot tamales" included consumers who had hired attorneys or complained to regulatory agencies. These individuals, at the direction of co-defendant Capell, would be given their refunds ahead of other customers who might have been waiting months for their refund. Kathleen Cusick calculated refunds due to customers on her home computer, and found that credits were due to customers of more than $3 million for November and December of 2000, and the first half of January 2001. Cusick shared her results with both defendants.

CPSI, through co-defendant Capell, always offered a rebate in the infomercials, usually for $100, in order to induce consumers to buy. As both defendants knew, the rebate process was designed to be as complicated and as lengthy as possible, to limit the number of customers who bothered to seek them. Co-defendant George Capell was responsible for designing the intentionally elaborate rebate process. Despite the effort involved – at least two mailings were required by the consumer before a rebate application was even processed – many consumers persisted. Unfortunately, many never received their rebates. Again this is because, as

the defendants knew, CPSI could not afford to pay the promised rebates. Co-defendant Capell directed defendant Buttery and Vice-President Fetzer to withhold rebate payments.

In 1999, CPSI hired Continental Promotions ("Continental"), a Phoenix, Arizona firm, to process the rebates promised to consumers, but co-defendant Capell refused to send Continental sufficient funds to pay consumers. As problems with Continental deepened in early 2000, a representative of Continental told defendant Buttery that Continental would not pay any additional rebates until CPSI paid its invoices. In July 2000, Continental ended the rebate program in frustration, and sent CPSI a disk containing the names and addresses of consumers who still were owed approximately $848,000 in promised by unfunded rebates. Continental also shut off CPSI's 800 number at Continental, which caused CPSI's customer service to be overwhelmed with calls from unhappy consumers, as defendant Buttery knew. Nonetheless, Capell thereafter continued to advertise rebates as a selling points during infomercials for CPSI.

Defendant Buttery and Vice-President Fetzer discussed with co-defendant Capell the fact that CPSI was incapable of paying its promised rebates to consumers. The reaction of co-defendant Capell was that CPSI would not stop offering the rebates, because the promised rebates were a key selling point, and were necessary to make the price of the merchandise appear acceptably low to consumers. Moreover, many consumers gave up seeking them at all.

The following chart summarizes the specific wire fraud counts involving consumers to which defendant Patrick Buttery is pleading guilty. These counts represent the counts charged which involve consumer orders which occurred after February 2000. These consumers represent the experiences of thousands of consumers from across the country.

COUNT	DATE	VICTIM	SUMMARY
5	3/17/00	S.L.	On March 17, 2000, S.L. ordered about $1,991 in computer and computer-related merchandise, from in or about East Debuke, IL. She eventually received some merchandise, but still never received the promised $150 rebate. Further, her computer stopped operating in December, 2000. She was advised by customer support to return her computer, which she did. The computer was returned to her in January, 2001. It stopped operating the next day. She returned her computer again. She contacted CPSI in February, 2001, asking about her computer. She later received a computer – but it was a different computer, it was used, and it contained the files of another person.
6	4/22/00	B.C.	On April 22, 2000, B.C. ordered approximately $2,190 in computer and computer-related merchandise, from in or about New Iberia, LA. She eventually received her merchandise, but still never received $150 in promised rebates. Her system, promised to be delivered in 2 to 4 weeks, took about 2 months to arrive. It malfunctioned in July, 2000. Despite having paid $99 for an on-site extended warranty, she received nothing but the run-around from "technical support" at CPSI. Although she sent a series of letters and faxes, the computer was never repaired.

7	5/28/00	R.D.	On May 28, 2000, R.D. ordered approximately $2,395 for computer and computer-related merchandise from in or about Chillicothe, Ohio over the telephone. He is a disabled person. He took out a loan from his credit union to pay for this computer. He never received approximately $225 in promised rebates from CPSI. He began to complain in July, 2000 (he expected delivery in 2 to 4 weeks), and was told that he could not receive what he had ordered, but could get something else for an additional $47, which he sent in. He was told different things at different times about why the shipments were taking so long. He finally received everything in November, 2000, but it was different than what he ordered. In February, 2001, after R.D. started using it in January, 2001, the computer stopped working. R.D. was informed that his warranty had begun on May 28, 2000, when he placed the order, even though he received his purchase on November 13, 2000. Technical support was useless.
8	8/00	C.B.	In or about August, 2000, C.B. ordered over the telephone approximately $2,450 for computer and computer-related merchandise from San Juan Capistrano, CA. She ordered an Everex system and obtained financing through MBNA. The internet posting from CPSI stated that she would be billed "just prior" to shipping. She was told that shipping would occur in 5 to 8 weeks. She became upset when MBNA began billing her in December, 2000, she still had not received her computer, and defendant Capell was stating during a December, 2000 infomercial that computers being sold then would be shipped before Christmas. She finally received a monitor (only) in December, 2000. C.B. gave up calling the customer service line and called instead the sales line, which quickly took calls. She was told to ship her monitor back and she could receive her refund. She did return her monitor, but she never received a refund. She also never received the promised $300 in rebates.

9	9/12/00	C.C.	On or about September 12, 2000, C.C. ordered over the telephone approximately $2,270 for computer and computer-related merchandise from Vestale, NY. He used his credit card to purchase Everex equipment and expected delivery in 3 to 6 weeks. Despite cancelling his order in December, 2000, he received at the end of December or the beginning of January, 2001 a monitor. He returned the monitor as instructed but never received a refund. He never received $375 in rebates.
10	9/13/00	L.B.	On September 13, 2000, L.B. ordered approximately $2,744 for computer and computer-related merchandise, from Hales-Corners, WI. He expected delivery in three to five weeks. After three weeks, he began checking on his order and also upgraded; he was told that the upgrade would result in another three to five weeks. After waiting another five weeks, and began a series of calls, and was told twice that the computer he had ordered was no longer available and would have to accept a different computer (twice). Vice-President Fetzer promised Belter at some point that he would receive a $450 check for his troubles. Ultimately, he received only a monitor and no check. He later learned that CPSI had filed for bankruptcy.
11	9/22/00	D.C.	On September 22, 2000, D.C. ordered approximately $3,344 in computer and computer-related merchandise from Lena, IL. He was induced to buy by the software bundle and rebates of $375. Delivery was promised in 4-6 weeks. D.C. began receiving dunning postcards in about November, 2000. He then was offered a $100 discount on an alternate system which he initially declined but later accepted in January, 2001. Despite this, he received only a monitor. He received no refund and no rebates.
12	9/28/00	L.W.	On September 28, 2000, L.W. ordered about $1,972 in computer and computer-related merchandise from Burtonville, MD. He was told 4 to 8 weeks delivery time. He also was told $400 in rebates. He eventually cancelled his order and was promised a credit on his credit card. Instead, he later received a monitor only in November, 2000. He shipped this back as instructed. Nonetheless, he received no refund and no rebates.

13	10/1/00	M.W.	On October 1, 2000, M.W. ordered about $2,270 in computer and computer-related merchandise from Virginia Beach, VA. She was promised a 3-6 week delivery. She received the monitor shortly after but nothing else. In December 2000, CPSI advised that she could not have the system she ordered, but that another was available. She agreed to accept that. She still received nothing until February, 2001 when CPSI advised her that the new system was not available but she would be upgraded to a Micron PC-M826 at no cost in 3 weeks. However, this system never came. Other than the monitor, she received nothing.
14	10/15/00	K.F.	On October 15, 2000, K.F. ordered about $1,972 in computer and computer-related merchandise from Tualatin, OR. She was promised an entire system by six weeks, as she wanted it for Christmas. The promise of $375 in rebates and bundled software convinced her to buy. She received the monitor on November 21, 2000 and some other components in January 2001. However, she never received a printer, scanner or rebates.
15	10/17/00	S.M.	On October 17, 2000, S.M. ordered approximately $2,127 in computer and computer-related merchandise from Attica, New York through e-mail. On or about November 6, 2000, she received only a monitor, but no other components and no rebates. By December 16, 2000, she cancelled the order because nothing else arrived as promised. In January 2001, she returned the monitor via FedEx, but never got the promised refund. She made numerous calls, all to no avail.
16	10/24/00	T.C.	On October 24, 2000, T.C. ordered approximately $2,247 in computer and computer-related merchandise from Fayetteville, GA. He ordered a system online with a credit card after seeing the infomercials. After many contacts with CPSI, he finally received a system without the printer and scanner right before Christmas. He submitted the rebate applications but never received printer, scanner or any rebates.

17	11/7/00	J.C.	On November 7, 2000, J.C. ordered approximately $2,072 in computer and computer-related merchandise from Shreveport, LA. J.C. used the proceeds of a home equity loan to buy the computer. She was told to expect the system within 30-60 days. She received the monitor in December 2000 but never received any other components. She cancelled the order in February or March 2001 and was sent a label for the return of the monitor, after which she would receive refund. She returned the monitor but received no refund.
18	1/9/2001	R.S.	On January 9, 2001, R.S. ordered approximately $1,796 in computer and computer-related merchandise from Jackson, MI. He is blind and wanted to buy a computer in order to secure employment. He was promised 4-6 week delivery. In March 2001, he also ordered a scanner and digital camera, paying an additional $100. He never received anything.
19	2/13/2001	M.T.	On February 13, 2001, M.T. ordered approximately $2,095 in computer and computer-related merchandise from Church Road, VA. She noted that the order was posted to her MasterCard two days later, a "red flag" in her opinion. She was promised 3 to 6 weeks delivery. At the end of March 2001, she and her husband tried to contact VCS but no one answered the toll free number. She never received anything, and never got a refund.

The following chart summarizes the specific mail fraud counts involving consumers:

COUNT	DATE	VICTIM	SUMMARY
28	11/30/00	T.K.	On November 30, 2000, T.K. mailed a check for about $1,972 for computer and computer-related merchandise from Essexville, MI. In December 2000, she called CPSI about switching her order to a Micron because it seemed to be better. She had a series of calls with the "switching department" but never was able to confirm the switch. In February 2001, she was advised that her original order was not in stock and she agreed to switch to a PC M826. She later learned that CPSI was out of business. She never received any components and never got a refund. She had paid for an internet college course in January 2001, but had to drop out because she never received the computer system.
29	1/3/01	A.L.	On January 3, 2001, A.L. mailed a check for approximately $2,071 for computer and computer-related merchandise from Seattle, WA. She was promised a 3-6 week delivery. She began to make numerous calls to CPSI, but always received excuses. She finally received 4 items: monitor, printer, scanner and speakers. She never received other components, including a CPU. She suffered financial detriment because she refinanced her home to buy the system.
30	1/8/01	R.P.	On January 8, 2001, R.P. mailed a check for about $1,995 for computer and computer-related merchandise from Cape Coral, FL. As with many 2001 consumers, he sent a personal check after being promised a $100 discount for payment by check on the infomercial. Subsequently, he made repeated calls to CPSI inquiring about the status of his order. The answers provided were always evasive, and he never got the same excuse twice. R.P. never received anything. He described his experience with CPSI as "a nightmare."

31	1/4/01	C.W.	On January 4, 2001, C.W. mailed a check for about $2,201.26 for computer and computer-related merchandise from Philadelphia, PA. She expected delivery in 3-6 weeks and a $100 discount because she was paying with a check. She also recalls the 30-day money back guarantee. She undertook a campaign of phone calls, to no avail. She received nothing.
32	1/14/01	G.D.	On January 14, 2001, G.D. mailed a check for approximately $2,170 for computer and computer-related merchandise from Antoich, IL. She had been promised delivery by February 16, 2001. She made numerous calls and e-mails to CPSI but never received any merchandise. She asked for a refund and was told that the best course was to wait until the system arrived and then return it. Nothing ever came.
33	1/16/01	B.S.	On January 16, 2001, B.S. mailed a check for approximately $2,150 for computer and computer-related merchandise from Tully, NY. He had viewed the infomercial and understood that he would get a $100 rebate for sending a check. His check was deposited on January 18th, two days later. He waited but nothing came. He sent e-mails and a certified letter to CPSI, but later learned form their website that it had filed for bankruptcy. He never received anything and never received a refund or any rebates.
34	2/15/01	T.S.	On February 15, 2001, T.S. mailed a check for about $2,170 for computer and computer-related merchandise from Phillips, WI. T.S. had watched the infomercials repeatedly and took a $2,000 loan from a credit union to obtain the necessary funds. He was promised a 6-8 week delivery, but never received anything.
35	3/15/01	W.K.	On March 15, 2001, W.K. mailed a check for approximately $2,170 for computer and computer-related merchandise from Brandon, FL. Again, W.K. was promised a $100 discount and 3 to 6 weeks delivery for sending a cashier's check instead of any other form of payment. He also expected to receive $250 in rebates but never got them. He never received any merchandise, refunds or rebates.

In the wake of the bankruptcy filing by CPSI in March 2001, and in the wake of the consumer protection lawsuit brought against co-defendant Capell, CPSI and D2U by the Attorney General of Pennsylvania, many thousands of consumers from across the country filed complaints and claims of losses. These losses ranged from lost rebates to lost orders. After attempting to prevent any double counting, such consumer claims and losses totaled well over $4 million dollars. Co-defendant Capell settled the case brought against him by the Attorney General of Pennsylvania, in part by paying through an insurance policy. Approximately $1.095 million dollars of this insurance policy were paid towards consumers who had filed acceptable claims. Under this arrangement, consumers received approximately $.25 for every dollar of their loss. Accordingly, over $3 million in outstanding consumer claims of losses remain to date.

D. THE WIRE FRAUD SCHEMES AGAINST FINANCIAL COMPANIES (COUNTS 20 THROUGH 22)

In order to attempt to maintain the ability of CPSI to continue in business, and to attempt to force other commercial entities to bear the financial burden of CPSI's cost of doing business, defendants Buttery and Capell made, and caused to be made, false representations to financial companies – MBNA, Fleet Bank, and NOVA Information Systems – about the nature and business practices of CPSI and D2U, and the ability of CPSI to make payments owed. The defendants, through fraud and misrepresentations to financial companies who did business with CPSI and D2U, caused at least $20 million in losses.

1. MBNA

In July 1999, MBNA entered into an agreement with co-defendant Capell and CPSI to provide financing to customers ordering computers. MBNA continued its relationship

with CPSI, amid escalating problems and misgivings, until March 7, 2001, shortly before CPSI entered into bankruptcy. Ultimately, MBNA lost over $10 million as a result of customers refusing to repay to MBNA the financing received in regards to goods which they had ordered from CPSI but not received (under the agreement, MBNA first paid CPSI for the orders placed by customers using MBNA). Typically, consumers would cancel their financing with MBNA, which then would attempt, usually without success, to recoup from CPSI the funds which it had provided. Co-defendant George Capell explained to defendant Buttery that MBNA had little recourse under its contract with CPSI, and that CPSI could take advantage of that, so that MBNA would be forced to absorb the losses flowing from CPSI's problems with consumers.

As soon as late 1999, CPSI fell behind in supplying computers, supposedly due to an earthquake in Taiwan.1/ In the late spring and the summer of 2000, MBNA began sending to CPSI copies of customer complaints that CPSI was billing customers before product was shipped. During a telephone conference call in June 2000 between MBNA and the defendants, defendant Capell was extremely aggressive, blamed vendors for failing to supply product already to consumers, and threatened to sue MBNA if it stopped accepting financing applications. The threat of a lawsuit became a constant refrain from Capell when the defendants dealt with MBNA.

On July 27, 2000, MBNA representatives met the defendants at the CPSI offices. On August 8, 2000, MBNA sent a letter to co-defendant Capell, which was forwarded to defendant Buttery memorializing concerns discussed during the meeting; this letter states that the

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1/ Co-defendant Capell blamed the earthquake in Taiwan for his shipping problems when talking with defendant Buttery and others. After defendant Buttery had begun his job at CPSI in October 1999, he realized within a few months that the shipping problems in fact stemmed from poor relations with vendors, related to non-payment, and that, consistent with the overall pattern of blaming outsiders or outside forces, the earthquake represented simply another ready excuse.

level of MBNA customer disputes involving CPSI had reached an “alarming” level, and that this problem was due primarily to CPSI’s objectionable policy of billing customers before orders were shipped. The letter notes that the FTC is “scrutinizing the advertising practices of the computer industry and we need to be extremely cautious.”

Following this letter, Vice-President Fetzer sent an e-mail to both defendants on August 13, 2000 reminding them of MBNA’s concerns regarding the practice of billing before shipping, and the threat by MBNA to stop doing business with CPSI unless the practice stopped. The e-mail includes several quotes from MBNA representatives, including “it terrifies us that you are using our money and our settlement account to finance your business. It is clear to us that you are using today’s settlements to finance computers that you sold 2 to 3 months ago. . . . We deal with a lot of computer companies, and frankly none are experiencing delays at this time.”

At this time, CPSI was billing its customers prior to shipping because the defendants knew that CPSI would collapse without such a practice because CPSI needed cash flow. The primary goal of the defendants was to obtain funds from consumers. If CPSI waited to bill customers until product actually was shipped, CPSI would be unable to function. The defendants well knew that this practice of billing before shipping resulted in many consumers being deprived of product for which they had paid, or promised rebates or refunds. The defendants discussed this practice, and co-defendant Capell made it clear to defendant Buttery that ceasing the practice of billing before shipping was not an option. Defendant Buttery in turn discussed with Vice-President Fetzer the fact that CPSI would not stop billing before shipping.

Nonetheless, August 15, 2000, Vice-President Fetzer, at the direction of co-defendant Capell and with the knowledge of defendant Buttery, faxed interstate a letter to

MBNA, charged in **Count 21**, in which she stated that, "[t]o minimize our mutual exposure for future disputes, we agree that we will not bill a customer's account until the CPU and monitor have been shipped." MBNA continued to do business with CPSI.

CPSI did stop billing before shipping for about one or two weeks. Thereafter, CPSI resumed its practice of billing customers entirely and immediately, because the defendants knew that CPSI would collapse if the practice did not continue.

During the Fall of 2000, MBNA sent notices to CPSI about new customer complaints. Defendant Buttery responded by stalling, or causing MBNA not to be paid for chargebacks involving customers cancelling their MBNA financing. Eventually, by late 2000, six out of every ten MBNA customers had problems with their CPSI orders.

MBNA finally terminated its contract with CPSI on about March 7, 2001, a few weeks prior to the bankruptcy filing of CPSI. MBNA, however, lost over $10 million to issue credits to customers who had rescinded their financing from between January 23 and August, 2001. This figure represented about a quarter of the approximate total of $50 million in financing extended by MBNA to CPSI customers over the entire length of the relationship.

2. FLEET BANK

Fleet Bank, the deposits of were insured by the Federal Deposit Insurance Corporation at the time the scheme, processed CPSI's merchant accounts for credit cards involved in customer orders from CPSI. Like MBNA, Fleet Bank expressed deep concern as to the excessive charge backs, and the practice of billing before shipping. Throughout 2000, correspondence involving Fleet Bank, both defendants, and Vice-President Fetzer, spells out that CPSI was placed in the Visa Monitoring Program in June 1999 due to excessive charge backs. In

letters to Fleet Bank, however, defendant Buttery, consistent with the approach laid out by co-defendant Capell, blames software provided by Fleet Bank, and delays in supplies due to the financial condition of one of their suppliers, and bad weather in Taiwan for the company's delays in shipping to consumers. On April 12, 2000, and as charged in **Count 20**, defendant Buttery sent via interstate fax a letter to Fleet Bank, in which he seeks to assure Fleet Bank that CPSI was doing everything possible to reduce its charge back rate. At the time this letter was written, and as the defendants well knew, CPSI was not going to change its policy of billing long before shipping, promising rebates it could not deliver, or processing credits for cancelled orders.

Likewise, and as the defendants knew, and as directed by co-defendant Capell, Vice-President Fetzer specifically assured Fleet Bank that after October 1, 2000, customers would not be billed before computers were shipped. Based on this assurance, and after warning CPSI to promptly process credits, Fleet Bank agreed to intercede with Visa on their behalf to get CPSI extended by Visa for another few months. Fleet Bank took this step because it believed that CPSI management was doing their best to address the problems with charge backs. As with MBNA, the assurance that CPSI would stop its practice of billing before shipping was not accurate, because co-defendant Capell would not allow the practice to cease. Defendant Buttery would repeat to Fetzer the fact that CPSI would attempt to survive by billing before shipping.

Finally, in a letter to defendant Capell dated January 12, 2001, Fleet notified him that Fleet was cutting off the CPSI merchant account. Due to consumer chargebacks flowing from undelivered product, Fleet Bank lost millions, but no more than approximately $5.9 million.

3. NOVA INFORMATION SYSTEMS

____________NOVA Information Systems, Inc. ("NOVA") initially had no idea that it was dealing with a problem company. In August 2000, co-defendant Capell and defendant Buttery knew that it was likely that both MBNA and Fleet would soon be ending their relationships with CPSI, leaving CPSI without a source for consumer financing and with no ability to process credit cards. The defendants then set up a merchant account with NOVA under D2U's name. Co-defendant Capell obtained a merchant account number from NOVA for D2U, by falsely claiming that D2U sold computers, and by significantly understating the volume of expected business, knowing that he could not obtain a new merchants number for credit card processing for CPSI. Unlike CPSI, D2U had no problems with financial institutions which appeared during NOVA's due diligence checks. D2U, however, in fact was a television studio, not a computer distributor.

____________In an August 28, 2000 application sent to NOVA on behalf of D2U, co-defendant Capell falsely stated that D2U sold computers to consumers. Capell completed and signed this application. Based on this statement, and Capell's under-representation of the sales volume that would be processed through the account, NOVA agreed to set up a merchant account for D2U. At the time it agreed to open this account, NOVA could find no negative information about D2U in the indices relied on by financial companies. This was because D2U did not have any known consumer problems at that time, because it did not deal with consumers.

Defendant Buttery knew about this misrepresentation to NOVA by co-defendant Capell. Moreover, Capell informed Buttery that he successfully had switched company names on a financial company in New Jersey in the mid-90s, and had left the prior company with his losses. Capell explained to Buttery that he (Capell) was going to do it again by enlisting NOVA.

In January or February 2001, defendant Buttery attempted to speak with a NOVA representative on the telephone concerning opening a different location for D2U. NOVA refused to discuss this with defendant Buttery unless updated financials were supplied. Buttery did not provide updated financials because the defendants knew that outsiders should not see the December 31, 1999 financial statement, which revealed the deep problems at CPSI.

In a letter dated March 14, 2001 and faxed interstate, Daniel Kelly, then the controller of CPSI, and at the direction of defendant Buttery, discussed business which could be expected on a new merchant account with NOVA. At the time that this letter was sent, the defendants both knew that CPSI was facing imminent collapse.

By the time NOVA discovered that it was in fact dealing with CPSI, a company riddled with problems, it had lost approximately $6 million in monies paid to D2U/CPSI.

E. THE WIRE FRAUDS AGAINST THE VENDORS

____________At the heart of many of CPSI's problems with consumers was the fact that the defendants did not have the computers to send to them. The reason that they did not have the computers was that they did not pay the suppliers, even though in most instances they had already collected the money from customers before they even placed an order with a supplier.

The defendants falsely promised to pay computer vendors within a reasonable time after computers were shipped by the vendors, knowing that CPSI in fact would not pay vendors, or would only pay them a fraction of vendor invoices. Despite having received full payment from a substantial portion of consumers ordering merchandise, they would cause CPSI to delay payments to vendors for months, refuse to pay vendors at all, and pay vendors with checks which were written on insufficient funds. The defendants also would falsely blame the

failure of CPSI to deliver computers and computer-related equipment on various vendors, knowing that those vendors in fact had not been paid because CPSI had withheld payment from them. This conduct was an attempt to maintain the ability of CPSI to continue in business, and to attempt to force other companies to bear the financial burden of CPSI's cost of doing business.

Defendant Buttery and Capell followed a pattern when dealing with their vendors. The defendants, particularly Capell, would hype the high sales of CPSI, and negotiate payment terms. Sometimes they would pay in a timely fashion on the first shipments, inducing suppliers to advance more computers. Then they would stop paying invoices. Suppliers sometimes would continue to ship for a time after payments became delinquent, because the defendants either lulled them with promises of future payment, or co-defendant George Capell threatened them with lawsuits. Most of these companies were out so much money as a result of supplying computers for which they had not been paid, that they initially continued to ship in the hope of maintaining a relationship with CPSI long enough to get paid. When vendors began to complain, the defendants would go on the offense and make up a specious claims concerning the supposed lack of performance by the vendors. The real reason for delayed or lack of payment by the defendants was that the funds did not exist. The vendors collectively lost over $10 million.

____________As previously described, the defendants knew by no later than June 2000, among other information, that CPSI was running at a loss, that its profit margins were too low to sustain itself, and that the December 31, 1999 financial statements, when completed, would reflect that CPSI had an enormous debt and little cash flow or liquid assets. When the December 31, 1999 financial statements were formally finalized in October 2000, Buttery and Capell intentionally never sent copies to vendors who would request them, because the defendants realized that the

financial statements would demonstrate the deteriorated status of the company and would deter outside companies from doing business with CPSI, or from shipping product before payment.

______1. EVEREX SYSTEMS

Everex Systems, Inc. ("Everex"), which went out of business as a result of this fraud, was the biggest supplier of computers for CPSI in 2000. In a February 23, 2000 facsimile from Pennsylvania to Everex in California, charged in **Count 23**, defendant Patrick Buttery agreed to terms for a first order of computers, with terms of half to be pre-paid, and the remainder to be paid in 30 days. At the time defendant Patrick Buttery signed this agreement, he was aware that CPSI was not paying its vendors in a timely fashion.

CPSI stopped paying Everex, and Capell and Buttery sent Everex a total of four very large checks in late 2000, all of which turned out to be worthless, in order to lull Everex into continuing to send product. By late 2000, Everex was desperate to get paid, because it was in danger of going out of business due to its inability to pay its own vendors. Capell and Buttery then promised Everex that if it would continue to ship, it would permit Everex to put all of the CPSI credit card orders through Everex's merchant number. Just when Everex thought that it might get paid, the defendants caused CPSI employee Margaret Simmons to send an interstate email to Everex on November 15, 2000, charged in **Count 24**, delaying this process for another two weeks. Everex finally stopped shipping, and Capell returned 500 computers, falsely and aggressively claiming to Everex that the computers were defective. This activity caused further delays in shipments to consumers. Everex ultimately lost approximately $7 million.

2. INGRAM MICRO

Ingram Micro ("Ingram") was another computer supplier to CPSI. It lost approximately $700,000 as a result of being defrauded by the defendants. Ingram began to do business with CPSI in about January 2000. Ingram received from CPSI in January 2000 part of the June 30, 1999 financials, which reflected a $2 million in retained earnings. CPSI became slow in paying, so Ingram dropped their credit line and required further financial information in or about June 2000. Accordingly, Ingram received on June 3, 2000 a CPSI profit and loss statement for the first quarter of 2000, which reflected a small profit, and a year 2000 business plan, full of glowing testimonials about the growth of CPSI and its solid relationships with its consumers. Ingram requested but never received the December 31, 1999 financials.

In November, 2000, Ingram credit manager supervisor Chris Sweeney discussed with defendant Buttery CPSI's ongoing failure to pay on time. Buttery responded by faxing from Pennsylvania to New York a letter to Ingram, charged in **Count 25**, stating that "it is CPSI's intention to make payment 35 to 40 days from invoice date." At this time, as Buttery and Capell well knew, CPSI had no such monies actually available.

In December 2000, defendant Buttery discussed with Sweeney the value of CPSI as part of a successful attempt to raise temporarily its credit line to $600,000 for the holiday selling season. Based on what Capell had instructed Buttery to say, Buttery told Sweeney that the actual value of CPSI was about $60 million because of the value of the household cable subscribers and customer good will. By the time of this conversation, both defendants knew that CPSI was having massive problems with consumers. Further, both defendants, but not Ingram, already had seen the now-completed December 31, 1999 financials, which showed a net worth of

about negative $15 million, quite different than the $2 million in positive retained earnings reflected on the June 30, 1999 financials which Ingram previously had received.

Ingram stopped shipping to CPSI on or about March 8, 2001 because its repeated requests for payment of outstanding invoices went unheeded.

3. MICRON

Micron is another computer supplier to CPSI. It began doing business with CPSI in or about September 2000. Micron lost over $3 million by being defrauded by the defendants.

On September 21, 2000, Micron had an initial meeting with Capell at CPSI. Defendant Capell told Micron that his previous suppliers could not keep up with the voluminous demand of his customers. Co-defendant Capell also stated that the number one problem of CPSI was delivery, and that he had been burdened with a 17,000 unit backlog in December, 1999.

After problems quickly arose, Micron representatives traveled to Pennsylvania to meet with the defendants in December 2000. During this meeting, co-defendant Capell described lofty growth aspirations, and defendant Buttery informed Micron that CPSI paid its bills.

Co-defendant Capell sent numerous e-mails to representatives of Micron in December 2000 and January 2001, in which Capell attempted to justify slow or undelivered payment from CPSI by heatedly blaming Micron for not delivering good product.2/

2/ Aspect Computers ("Aspect") was another primary supplier of computers to CPSI in late 2000. The count pertaining to Aspect, charged in **Count 26**, will be the subject of a government motion to dismiss during the defendant's sentencing, as stated in the parties' plea agreement, due to witness problems involving Aspect which have led the government to conclude that the offense is no longer readily provable. However, the fact remains that the defendants treated Aspect the same way that they treated their other vendors, by extracting as much product as possible while refusing to pay as promised, and that the defendants knew that consumer orders could not be fulfilled reliably through computers from Aspect. As with Everex, the defendants provided Aspect with large checks which turned out to be worthless, because, as the defendants

4. OCEAN COMMUNICATIONS

Ocean Communications ("Ocean") is a provider of cable television time which is based in West Palm Beach, Florida, and which began to do business with D2U in about late 1998 or early 1999. Ocean lost just under approximately $2.1 million to D2U and the defendants.

In about mid-2000, D2U started to fall behind in payments. Ocean's contact for payment was defendant Buttery, but eventually Ocean began to deal more and more with co-defendant Capell. Ocean would send monthly schedules of amounts due and owing to CPSI. The debts increased, but Ocean was reluctant to terminate the relationship because it had invested a lot of money to set up the cable systems for the D2U infomercials. In mid-2000, Capell blamed some of his computer suppliers as to why he would not pay Ocean, but mainly Capell blamed Ocean for supposedly failing to provide the services and systems contracted for. Ocean employed people to act as spotters in the areas in which the infomercials played, and documented that Capell's accusations were baseless. Defendant Buttery was aware of Capell's statements to Ocean, and knew that they represented Capell's usual stall tactics of blaming his supplier.

Defendant Buttery assisted Capell in constantly putting off payment. An officer of Ocean took a trip in about January, 2001 to meet him, but Buttery did not show. Buttery sent several letters and e-mails to Ocean in which he promised to send a check, which he did not.

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knew, there were insufficient funds to cover the checks. Alternatively, the defendants provided Aspect with post-dated checks and then issued "stop payment" requests on the checks once the computers were delivered, but before the checks were cashed. A representative of Aspect would drive to CPSI in late 2000 to try to meet with and obtain payments from the defendants, both of whom would be "too busy" to see him. As usual, co-defendant Capell frequently tried to turn the tables by accusing Aspect, both in e-mails and over the telephone, of not fulfilling its promises.

One January 17, 2001, Capell sent an interstate e-mail to an officer of Ocean, charged in **Count 27**, in which Capell falsely stated that he was not paying the outstanding monies due to Ocean because Ocean was not providing good product. In fact, defendant Capell was not going to pay Ocean, which still was continuing to buy cable time across the country for D2U, because D2U had no money to spare, as the defendants well knew.

F. MONEY LAUNDERING (COUNTS 40 TO 42)

Defendant Patrick Buttery took $135,000 in bonuses from CPSI during 2000 in the form of three corporate checks written in the name of his wife, Susan Buttery, each in amounts over $10,000. This bonus money was in addition to defendant Patrick Buttery's other $138,272 in wages from CPSI, and Susan Buttery's approximate $1,404 in wages from CPSI (she did minimal design work at CPSI). In contrast to prior tax years, Patrick and Susan Buttery filed separate joint tax returns for 2000, and Susan Buttery declared the $135,000 as her income. At this time, defendant Patrick Buttery was involved in legal proceedings with his former wife, regarding alimony and child support payments. Co-defendant George Capell wrote each of the three checks. Further, when the checks were written, CPSI was able to continue to function on the basis of the combined wire and mail fraud schemes described above. Accordingly, the monies spent by CPSI to pay defendant Patrick Buttery's bonuses, as opposed to outstanding debts owed to the victims of the schemes, represented the proceeds of fraudulent activity, and constituted proceeds of specified unlawful activity under the money laundering statutes.

The first check from CPSI payable to Susan Buttery was check number 1445, dated May 4, 2000, in the amount of $60,000 (**Count 40**). The second check from CPSI payable to Susan Buttery was check number 1547, dated August 18, 2000, in the amount of $35,000

(**Count 41**). The check was deposited into Patrick and Susan Buttery's PNC Bank account on August 21, 2000. The third check from CPSI payable to Susan Buttery was check number 1013, dated December 8, 2000, in the amount of $40,000 (**Count 42**). The check was deposited into Patrick and Susan Buttery's PNC Bank account on December 11, 2000. These three checks also form the basis for the parties' agreement regarding a forfeiture award of $135,000.

Respectfully submitted,

PATRICK L. MEEHAN
United States Attorney

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PETER D. HARDY
Assistant United States Attorney

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JUDY GOLDSTEIN SMITH
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Guilty Plea Memorandum was served upon defense counsel by electronic filing and facsimile machine:

Benjamin Cooper, Esq.
Cathy Henry, Esq.
Defender Association of Philadelphia
The Curtis Center Building, Suite 540 West
Independence Square West
Philadelphia, PA 19103

____
PETER D. HARDY
Assistant United States Attorney

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