

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN

GERSH KORSINSKY, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

COLLINS & AIKMAN CORPORATION,  
JERRY L. MOSINGO, DAVID A.  
STOCKMAN, J. MICHAEL STEPP, and  
BRYCE KOTH,

Defendants.

Civil Action No.

05-60075  
JOHN CORBETT O'MEARA

CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF  
FEDERAL SECURITIES LAW

JURY TRIAL DEMANDED

**FILED**

APR - 8 2005

CLERK'S OFFICE  
U.S. DISTRICT COURT  
ANN ARBOR, MI

Plaintiff, Gersh Korsinsky ("Plaintiff"), individually and on behalf of all other persons similarly situated, by his undersigned attorneys, for his Class Action Complaint, alleges the following upon personal knowledge as to himself and his own acts and upon information and belief as to all other matters based upon the investigation made by and through his attorneys, which investigation included, among other things, a review of the public documents and news releases of Collins & Aikman Corporation, including its press releases and public filings with the Securities and Exchange Commission (the "SEC").

**NATURE OF THE ACTION**

1. Plaintiff brings this action as a class action on behalf of himself and all other persons who purchased shares of common stock of Collins & Aikman Corporation ("C&A" or "Company") during the period May 15, 2003 through and including March 17, 2005 ("Class Period"), to recover damages caused by defendants' violation of the federal securities laws.

2. C&A is a global leader in the design, engineering and manufacturing of automotive interior components, including instrument panels, fully assembled cockpit modules, floor and acoustic systems, automotive fabric, interior and exterior trim and convertible roof systems. Headquartered in Troy, Michigan, C&A has a workforce of approximately 24,000 and a network of more than 100 technical centers, sales offices and manufacturing sites in seventeen (17) countries.

3. Although C&A reported steady revenues throughout the Class Period, the Company's seemingly optimistic financial prospects were the direct result of the defendants having artificially inflated the Company's revenues by failing to properly account for supplier credits and rebates.

4. Namely, on March 17, 2005, C&A shocked the investing public by announcing that it was delaying its 2004 earnings report for a second time due to improper accounting practices related to supplier rebates, which would likely result in a restatement for Fiscal Year 2004. The Company further announced that its internal investigation was ongoing and that the accounting improprieties may result in the Company restating its financial results for Fiscal Year 2003. In particular, C&A reviewed its accounting practices dating back to 2002 and discovered that it had overstated revenues by approximately \$12 million.

5. On the heels of those revelations, C&A's common stock fell nearly 24% from a closing price of \$1.63 on March 16, 2005 to close at \$1.24 on March 17, 2005, on heavy trading volume, six times the average daily volume.

## **JURISDICTION AND VENUE**

6. The claims alleged herein arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b) and 78t, and SEC Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.

7. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. §§ 1331 and 1337.

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts alleged herein, including the dissemination to the investing public of the misleading statements and omissions at issue, occurred in substantial part in this District. Moreover, Defendants conduct substantial business in this District.

9. In connection with the acts, transactions and conduct alleged herein, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of national securities exchanges and markets.

## **PARTIES**

10. Plaintiff Gersh Korsinsky purchased shares of C&A's common stock during the Class Period as set forth on the attached certification and was damaged thereby.

11. Defendant Collins & Aikman Corporation was incorporated under the laws of the state of Delaware and maintains its principal executive offices at 250 Stephenson Highway, Troy, Michigan 48083. C&A's common stock trades on the New York Stock Exchange ("NYSE") under the ticker symbol "CKC."

12. Defendant Jerry L. Mosingo ("Mosingo") served as C&A's President and Chief Executive Officer until August 11, 2003. Defendant Mosingo approved C&A's materially false and misleading press releases and signed the Company's quarterly reports on Form 10-Q for the periods ending March 31, 2003 and June 30, 2003, respectively, which were filed with the SEC during the Class Period.

13. Defendant David A. Stockman ("Stockman") has served as C&A's Chief Executive Officer since August 11, 2003. Defendant Stockman approved C&A's materially false and misleading press releases and signed the Company's Fiscal Year 2003 fourth quarter and year-end report on Form 10-K, and the Company's quarterly reports on Form 10-Q for the periods ending September 30, 2003, March 31, 2004, June 30, 2004 and September 30, 2004, respectively, which were filed with the SEC during the Class Period.

13. Defendant J. Michael Stepp ("Stepp") served as C&A's Vice President and Chief Financial Officer ("CFO") until October 13, 2004, when he stepped down as CFO. Defendant Stepp approved C&A's materially false and misleading press releases and signed the Company's Fiscal Year 2003 fourth quarter and year-end report on Form 10-K, and the Company's quarterly reports on Form 10-Q for the periods ending March 31, 2003, June 30, 2003, September 30, 2003, March 31, 2004 and June 30, 2004, respectively, which were filed with the SEC during the Class Period.

14. Defendant Bryce Koth ("Koth") has served as C&A's CFO since October 13, 2004. Defendant Koth approved C&A's materially false and misleading press releases and signed the Company's quarterly report on Form 10-Q for the period ending September 30, 2004, which was filed with the SEC during the Class Period.

15. Defendants Mosingo, Stockman, Stepp and Koth are collectively referred to herein as the Individual Defendants.

16. By reason of their positions with the Company, the Individual Defendants had access to internal documents, reports and other information, including adverse non-public information concerning the Company's business and financial condition, and attended management and/or board of director meetings. As a result of the foregoing, they were responsible for the truthfulness and accuracy of the Company's public reports and releases described herein.

17. C&A and the Individual Defendants, as officers and directors of a publicly-traded Company, had a duty to disseminate truthful and accurate information with respect to, and to correct any public statements issued by or on behalf of, the Company that had become false and misleading.

18. Each defendant knew or recklessly disregarded that the misleading statements and omissions complained of herein would adversely affect the integrity of the market for the Company's common stock and would cause the price of the Company's common stock to become artificially inflated. Each of the defendants acted knowingly or in such a reckless manner as to constitute a fraud and deceit upon plaintiff and the other members of the Class.

19. Defendants are liable, jointly and severally, as direct participants in and co-conspirators of the wrongs complained of herein.

#### **CLASS ACTION ALLEGATIONS**

20. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons who

purchased the common stock of C&A during the period May 15, 2003 through and including March 17, 2005, and who suffered damages thereby. Excluded are the defendants, members of the defendants' families, any entity in which any defendant has a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns of any of the defendants (the "Class").

21. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes there are, at a minimum, hundreds of members of the Class who traded during the Class Period. C&A had in excess of 83,630,087 shares of its stock outstanding as of February 26, 2004. Throughout the Class Period, C&A's common stock actively traded the NYSE under the ticker symbol "CKC."

22. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class.

Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether the Company issued false and misleading statements during the Class Period;
- (c) whether the Individual Defendants caused the Company to issue false and misleading statements during the Class Period;

- (d) whether defendants acted knowingly or recklessly in issuing false and misleading statements;
- (e) whether the market price of C&A securities during the Class Period was artificially inflated because of the defendants' conduct complained of herein; and
- (f) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

23. Plaintiff's claims are typical of the claims of the members of the Class as Plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

24. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class actions and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

25. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since joinder of all members of the Class is impracticable. Furthermore, because the damages suffered by the individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **SUBSTANTIVE ALLEGATIONS**

### **A. Background**

26. C&A is primarily engaged in the business of designing, manufacturing and selling automotive interior components, systems and modules. In North America, the Company manufactures components for approximately 90% of all light vehicle production platforms. The Company sells primarily to North American-based global original equipment manufacturers (“OEMs”), as well as Asian and European based global OEMs. The Company has approximately 24,000 employees and more than 100 plants and facilities worldwide. The Company conducts all of its business through its subsidiary, Collins & Aikman Products Co.

27. On March 17, 2005, C&A announced a second delay in filing its 2004 earnings report as a result of an internal investigation of its accounting practices with respect to \$12 million in supplier rebates, which the Company conceded would likely result in the Company restating its financial results for Fiscal Year 2004. C&A further announced that the Company’s audit committee had retained the law firm of Davis & Polk to assist with its ongoing investigation, which may also result in a restatement of the Company’s financial results for Fiscal Year 2003.

### **B. Materially False And Misleading Statements Disseminated During the Class Period**

28. On May 15, 2003, C&A issued a press release announcing the Company’s financial results for the reporting period ending March 31, 2003 (“May 15, 2003 Press Release”). The May 15, 2003 Press Release stated that:

The company reported first quarter 2003 operating income of \$17.4 million, a net loss from continuing operations of \$28.7 million or 34 cents per share, and EBITDA of \$50.8 million. These results compared to

operating income in the first quarter of 2002 of \$54.4 million, a net loss from continuing operations of \$6.7 million or 10 cents per share, and EBITDA of \$84.9 million. The first quarter 2003 results include \$18.1 million in charges for the impairment of long-lived assets and the first quarter 2002 results include \$9.1 million of restructuring charges.

\* \* \* \* \*

EBITDA was \$50.8 million for the first quarter of 2003. On a comparable basis, EBITDA for the first quarter of 2002 was \$84.9 million. The first quarter 2003 EBITDA calculations include \$18.1 million in charges for the impairment of long-lived assets and the first quarter 2002 EBITDA calculations included \$9.1 million of restructuring charges.

29. On May 15, 2003, C&A filed its quarterly report on Form 10-Q with the SEC announcing its financial results for the first quarter and three months ended March 31, 2003 ("First Quarter 2003 10-Q"). The First Quarter 2003 10-Q repeated the same materially false and misleading financial information that was contained in the May 15<sup>th</sup> Press Release. The First Quarter 2003 10-Q further stated that:

The condensed consolidated financial statements include the accounts of the Company and its subsidiaries. In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, including adjustments of a normal and recurring nature necessary for a fair presentation of financial position and results of operations. Certain prior year items have been reclassified to conform to the 2003 presentation.

Defendants Mosingo and Stepp signed the First Quarter 2003 10-Q.

30. On August 15, 2003, C&A issued a press release announcing the Company's financial results for the reporting period ending June 30, 2003 ("August 15, 2003 Press Release"). The August 15, 2003 Press Release stated that:

For the second quarter 2003, the company reported earnings per share of 13 cents from continuing operations versus a loss of 46 cents for the same period of 2002. The company reported second quarter 2003 sales of \$1.034 billion and operating income of \$43.5 million, which includes restructuring and asset impairment charges of \$5.7 million. On a

comparable basis for the second quarter 2002, Collins & Aikman reported sales of \$1.085 billion and operating income of \$81.5 million.

\* \* \* \* \*

EBITDA was \$77.7 million for the second quarter of 2003 as compared to \$109.7 million for the second quarter of 2002. The second quarter 2003 EBITDA includes charges of \$4.9 million for restructuring and \$.8 million for the impairment of long-lived assets; there were no comparable charges for the second quarter 2002 EBITDA.

Defendant Stockman further noted that “[d]espite difficult market conditions which caused vehicle builds to decline considerably versus last year, our employees pulled together and delivered on most facets of the operations including program launches, cost containment and performance improvement.”

31. On August 15, 2003, C&A filed its quarterly report on Form 10-Q with the SEC announcing its financial results for the second quarter and six months ended June 30, 2003 (“Second Quarter 2003 10-Q”). The Second Quarter 2003 10-Q repeated the same materially false and misleading financial information that was contained in the August 15<sup>th</sup> Press Release. The Second Quarter 2003 10-Q further stated that:

The condensed consolidated financial statements include the accounts of the Company and its subsidiaries. In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, including adjustments of a normal and recurring nature necessary for a fair presentation of financial position and results of operations. Certain prior year items have been reclassified to conform to the 2003 presentation.

Defendants Mosingo and Stepp signed the Second Quarter 2003 10-Q.

32. On November 13, 2003, C&A issued a press release announcing the Company’s financial results for the reporting period ending September 30, 2003 (“November 13, 2003 Press Release”). The November 13, 2003 Press Release stated that:

For the third quarter, which is the company's seasonally weakest quarter, the company reported net sales of \$902 million compared to \$923 million in the third quarter of 2002, a 2% decline which mainly reflected reduced North American customer build volumes. The company also reported a loss of 38 cents per share from continuing operations versus a loss of 54 cents per share in the same period in 2002. The third quarter results included after-tax charges for restructuring and long-lived asset impairments of \$16.0 million (or 19 cents per share) and \$21.4 million (or 26 cents per share) in 2003 and 2002, respectively.

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EBITDA was \$41.9 million for the third quarter of 2003 as compared to \$21.8 million for the third quarter of 2002. The third quarter 2003 EBITDA was reduced by charges of \$21.9 million for restructuring and \$2.2 million for the impairment of long-lived assets. Results for the third quarter of 2002 included pre-tax charges of \$25.1 million for restructuring and \$8.7 million for the impairment of long-lived assets.

Striking a positive note, Defendant Stockman stated that “[a]side from the restructuring charges, we had a solid third quarter, which is the first inning of C&A’s rebound in financial performance. Plant level operations in both Europe and North America were much stronger this quarter than last year’s comparable period.”

33. On November 14, 2003, C&A filed its quarterly report on Form 10-Q with the SEC announcing its financial results for the third quarter and nine months ended September 30, 2003 (“Third Quarter 2003 10-Q”). The Third Quarter 2003 10-Q repeated the same materially false and misleading financial information that was contained in the November 13<sup>th</sup> Press Release. The Third Quarter 2003 10-Q further stated that:

The condensed consolidated financial statements include the accounts of the Company and its subsidiaries. In the opinion of management, the accompanying condensed consolidated financial statements reflect all adjustments, including adjustments of a normal and recurring nature, necessary for a fair presentation of financial position and results of operations. Certain prior year items have been reclassified to conform to the 2003 presentation.

Defendants Stockman and Stepp signed the Third Quarter 2003 10-Q.

34. On March 11, 2004, C&A filed a press release announcing record financial results for the fourth quarter and year-end Fiscal Year 2003 ("March 11, 2004 Press Release"). Specifically, the Company reported net sales of \$1.013 billion in the fourth quarter of Fiscal Year 2003, as compared to \$963 million in the fourth quarter of 2002, a 5% increase. The Company further reported a loss of \$0.14/share from operations in the fourth quarter of 2003, which included after-tax charges for restructuring and long-lived asset impairments of \$16.7 million (or 20 cents per share), compared to a loss of \$0.04 cents per share in the comparable period in 2002, which included after-tax charges for restructuring and long-lived asset impairments of \$13.0 million (or 16 cents per share). The March 11<sup>th</sup> Press Release elaborated on the Company's financial results as follows:

The fourth quarter 2003 pre-tax restructuring charge of \$13.8 million included costs associated with the previously announced third quarter restructuring actions that would reduce the company's salaried workforce by almost 800 or 15%. This restructuring initiative and related actions are expected to reduce the company's fixed-cost structure by \$80 million per year.

For the full-year 2003, the company reported sales of \$3.98 billion compared to \$3.89 billion in the same period of 2002. The company also reported a net loss available to common shareholders from continuing operations of \$59.1 million or 71 cents per share, which included \$49.9 million (or 60 cents per share) of after-tax charges for restructuring and long-lived asset impairments. For the comparable 2002 period, the net loss available to common shareholders from continuing operations was \$87.6 million or \$1.15 per share, which included after tax charges for restructuring and long-lived asset impairments of \$40.9 million (or 53 cents per share).

C&A's net debt, including outstandings under an off-balance sheet accounts receivable facility, was \$1.346 billion at December 31, 2003.

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EBITDA was \$69.4 million for the fourth quarter of 2003, which was reduced by charges of \$13.8 million for restructuring and \$7.3 million for the impairment of long-lived assets. The fourth quarter 2002 EBITDA was \$68.2 million, which was reduced by charges of \$4.8 million for restructuring and \$9.3 million for the impairment of long-lived assets.

Defendant Stockman painted a rosy picture of the Company's performance, stating that he was "pleased with the solid improvement in EBITDA performance, excluding restructuring and impairment charges. For the second consecutive quarter our results were up significantly from the prior year on a comparable basis. Additionally, the restructuring program that began in the third quarter is resulting in significant fixed cost savings as indicated by our year-over-year decline in selling, general and administrative expenses."

35. On March 17, 2004, C&A filed with the SEC its Annual Report on Form 10-K for the fiscal year ended December 31, 2003 (the "2003 10-K"). The 2003 10-K repeated the same materially false and misleading financial information that was contained in the March 11th Press Release. The 2003 10-K further stated that:

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Considerable judgment is often involved in making these determinations, the use of different assumptions could result in significantly different results. Management believes its assumptions and estimates are reasonable and appropriate, however actual results could differ from those estimates. Certain of the Company's more critical accounting estimates are described below.

\* \* \* \* \*

As of the end of the period covered by this report, the Company's Chief Executive Officer and the Company's Chief Financial Officer, "the Certifying Officers," evaluated the effectiveness of the design and operation of the Company's "disclosure controls and procedures" (as defined in the Securities Exchange Act of 1934). Based on that evaluation, the Certifying Officers have concluded that the Company's disclosure controls and procedures are effective to ensure that information required to be disclosed by the Company in the reports that it files and submits under the Exchange Act is recorded, processed, summarized and reported as and when required, and are effective to ensure that such information is accumulated and communicated to the Company's management, including its Certifying Officers, as appropriate to allow timely decisions regarding required disclosure. In addition, the Certifying Officers also disclosed to the Company's auditors and the audit committee of the Board of Directors all significant deficiencies in the design or operation of internal controls that could adversely affect the Company's ability to record, process, summarize and report financial data. A summary of the key items disclosed and the changes in internal controls resulting from corrective actions are discussed below.

b. Changes in internal controls:

An evaluation of internal controls was conducted for the year ended December 31, 2003. The following paragraphs detail management's significant areas of focus to further enhance internal controls: Other than the above, there were no significant changes in the Company's internal controls or in other factors that could significantly affect internal controls. The Company also intends to refine its internal control procedures on an ongoing basis as deemed appropriate with a view towards making improvements.

- The Company has implemented certain enhancements, or is in the process of enhancing, internal controls relating to data quality and process efficiency with respect to its current consolidation system and preparation of consolidated financial statements. Recent actions relate to improving the systematic roll-up of both financial and non-financial information that is reported in the Company's financial reports filed with the Securities & Exchange Commission. These actions have primarily focused on improving: (1) the entity structure utilized by the consolidation tool, (2) the collection and compilation of financial and non-financial data and (3) the ability to identify and eliminate intercompany transactions and balances in a more efficient manner. The Company is currently making these changes to its existing consolidation system and is in the process of implementing a new consolidation system. As part of the new system implementation process, the Company is examining additional means to improve its internal controls. The Company is also enhancing its

procedures with respect to ensuring timely and adequate review of non-standard journal entries and account reconciliations and adherence to existing corporate accounting policies and accounting principles generally accepted in the United States of America.

Defendants Stockman and Stepp signed the 2003 10-K.

36. On May 6, 2004, C&A filed a press release announcing record financial results for the reporting period ended March 31, 2004 (“May 6, 2004 Press Release”).

Specifically, the Company stated that:

The company reported record first quarter net sales in 2004 of \$1.066 billion compared to \$1.035 billion in the first quarter of 2003, a 3% increase which mainly reflects improved currency impact. The company reported a loss of \$23.3 million or 28 cents per share in the first quarter of 2004, which included after-tax charges for restructuring, long-lived asset impairments and costs related to early extinguishment of debt of \$10.6 million (or 13 cents per share). In the comparable 2003 quarter, the company had a loss of \$26.2 million or 31 cents per share, which included after-tax charges for restructuring and long-lived asset impairments of \$13.2 million (or 15 cents per share).

Commenting on those results, Defendant Stockman stated that the Company was “pleased with the significant performance improvement in EBITDA before restructuring and impairment charges. For the third consecutive quarter our EBITDA results were up double digits from the prior year on a comparable basis. We are also seeing our previous problem plants turning around their financial results from the 2003 levels.”

37. On May 7, 2004, C&A filed its quarterly report on Form 10-Q with the SEC announcing its financial results for the first quarter and three months ended March 31, 2004 (“First Quarter 2004 10-Q”). The First Quarter 2004 10-Q repeated the same materially false and misleading financial information that was contained in the

May 6, 2004 Press Release. The First Quarter 2004 10-Q further stated that:

The consolidated financial statement include the accounts of the Company and its consolidated subsidiaries and in the opinion of management,

contain all adjustments, including adjustments of a normal and recurring nature necessary for a fair presentation of financial position and results of operations.

Defendants Stockman and Stepp signed the First Quarter 2004 10-Q.

38. On August 2, 2004, C&A announced the Company's financial results for the reporting period ended June 30, 2004 ("August 2, 2004 Press Release"). Specifically, the Company announced record second quarter 2004 net sales of \$1.036 billion, resulting in a loss of 35 cents per share in the second quarter of 2004, which included after-tax charges for restructuring and long-lived asset impairments of \$26.0 million (or 31 cents per share). The Company further announced that:

For the six months ended June 30, 2004, the company reported sales of \$2.103 billion compared to \$2.069 billion for the comparable period of 2003. The company also reported a net loss of \$53.0 million or 63 cents per share, which included \$35.6 million (or 43 cents per share) of after-tax charges for restructuring and long-lived asset impairments. For the comparable 2003 period, the net loss was \$15.5 million or 19 cents per share, which included after-tax charges for restructuring and long-lived asset impairments of \$17.2 million (or 21 cents per share).

\* \* \* \* \*

C&A's net debt, including outstandings under an off-balance sheet accounts receivable facility, was \$1.439 billion at June 30, 2004.

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EBITDA was \$62.6 million for the second quarter of 2004, which was reduced by charges of \$10.4 million for restructuring and \$27.4 million for the impairment of long-lived assets. The second quarter 2003 EBITDA was \$78.3 million, which was reduced by charges of \$4.9 million for restructuring and \$0.8 million for the impairment of long-lived assets. EBITDA was \$129.5 million for the six months ended June 30, 2004, which was reduced by charges of \$19.9 million for restructuring and \$30.4 million for impairment of long-lived assets. EBITDA for the six months ended June 30, 2003 was \$130.9 million, which was reduced by charges of \$4.9 million for restructuring and \$18.9 million for the impairment of long-lived assets.

Defendant Stockman again lauded those results, stating that “[f]or the fourth consecutive quarter our EBITDA performance, excluding restructuring and impairment charges was up significantly from the prior year on a comparable basis. The savings from the restructuring program that began in the third quarter of 2003 is resulting in significant fixed cost savings as indicated by our year-over-year decline in selling, general and administrative expenses.”

39. On August 3, 2004, C&A filed its quarterly report on Form 10-Q with the SEC announcing its financial results for the second quarter and six months ended June 30, 2004 (“Second Quarter 2004 10-Q”). The Second Quarter 2004 10-Q repeated the same materially false and misleading financial information that was contained in the August 2, 2004 Press Release. The Second Quarter 2004 10-Q further stated that:

The consolidated financial statement include the accounts of the Company and its consolidated subsidiaries and in the opinion of management, contain all adjustments, including adjustments of a normal and recurring nature necessary for a fair presentation of financial position and results of operations.

Defendants Stockman and Stepp signed the Second Quarter 2004 10-Q.

40. On November 9, 2004, C&A announced the Company’s financial results for the reporting period ended June 30, 2004 (“November 9, 2004 Press Release”). Specifically, the Company reported third quarter 2004 net sales of \$864.8 million, resulting in a loss of 67 cents per share in the third quarter of 2004, which included after-tax charges for restructuring and long-lived asset impairments and loss on early extinguishment of debt of \$25.1 million (or 30 cents per share). The Company further stated that:

The third quarter 2004 pre-tax restructuring charge of \$9.0 million included costs associated with additional actions to right-size the company's overhead structure, further reduce salaried headcount and streamline the senior management team on a worldwide basis. This restructuring initiative is expected to further reduce the company's cost structure by approximately \$20 million when fully implemented. During the third quarter of 2004, the company also recognized \$10.3 million of impairments of long-lived assets primarily related to plant closings.

For the nine months ended September 30, 2004, the company reported sales of \$2,968 million compared to \$2,971 million for the comparable period of 2003. The company also reported a net loss of \$108.6 million or \$1.30 per share, which included \$61.7 million (or 74 cents per share) of after-tax charges for restructuring and long-lived asset impairments and loss on early extinguishment of debt. For the comparable 2003 period, the net loss was \$47.6 million or 57 cents per share, which included after-tax charges for restructuring and long-lived asset impairments of \$33.1 million (or 40 cents per share).

Collins & Aikman's net debt, including outstandings under an off-balance sheet accounts receivable facility, was \$1,552 million at September 30, 2004. During the third quarter of 2004, the company completed the refinancing of its senior subordinated debt and senior credit facilities.

EBITDA was \$48.7 million for the third quarter of 2004, which was reduced by charges of \$9.0 million for restructuring and \$10.3 million for the impairment of long-lived assets. The third quarter 2003 EBITDA was \$41.9 million, which was reduced by charges of \$21.9 million for restructuring and \$2.2 million for the impairment of long-lived assets. EBITDA was \$178.2 million for the nine months ended September 30, 2004, which was reduced by charges of \$28.9 million for restructuring and \$40.7 million for impairment of long-lived assets. EBITDA for the nine months ended September 30, 2003 was \$172.8 million, which was reduced by charges of \$26.8 million for restructuring and \$21.1 million for the impairment of long-lived assets.

Defendant Stockman touted the foregoing resulting, stating that, "For the fifth consecutive quarter our EBITDA performance, excluding restructuring and impairment charges, was up from the prior year on a comparable basis. This was achieved despite the headwinds from increased commodity costs and OEM production cuts. The savings from

the restructuring program that began in the third quarter of 2003 has generated significant fixed cost reductions.”

41. On November 9, 2004, C&A filed its quarterly report on Form 10-Q with the SEC announcing its financial results for the third quarter and nine months ended September 30, 2004 (“Third Quarter 2004 10-Q”). The Third Quarter 2004 10-Q repeated the same materially false and misleading financial information that was contained in the November 9, 2004 Press Release. The Third Quarter 2004 10-Q further stated that:

The consolidated financial statement include the accounts of the Company and its consolidated subsidiaries and in the opinion of management, contain all adjustments, including adjustments of a normal and recurring nature necessary for a fair presentation of financial position and results of operations.

Defendants Stockman and Koth signed the Third Quarter 2004 10-Q.

42. During the Class Period, defendants misled the investing public and artificially inflated the price of C&A common stock by publicly issuing materially false and misleading statements and omitting to disclose material facts necessary to make defendants’ statements, as set forth herein, not false and misleading. The statements identified in ¶¶ 28 through 41 above were each materially false and misleading when made because:

- (a) Defendants knowingly or recklessly overstated C&A’s revenues for Fiscal Year 2003 by approximately \$2-4 million;
- (b) Defendants knowingly or recklessly overstated C&A’s revenues for Fiscal Year 2004 by approximately \$8 million -10 million;

- (c) Defendants knowingly or recklessly failed to account for \$10 million - 12 million in certain supplier rebates during Fiscal Years 2003 and 2004;
- (d) Defendants knowingly or recklessly violated the Company's internal accounting policies and SEC rules by failing to prepare the Company's financial statements in accordance with generally accepted accounting principles ("GAAP"); and
- (e) Defendants knowingly or recklessly failed to institute adequate controls that would have allowed the Company's audit committee, senior officers and/or directors to ascertain the true financial condition of the Company.

**C. The Truth Emerges**

43. On March 17, 2005, C&A issued a press release admitting that, for the second time, the Company would be delaying its financial results for Fiscal Year 2004. The press release, entitled "*Collins & Aikman Audit Committee Retains Independent Counsel for Investigation of Previously-Reported Accounting Matters,*" stated that:

The Company did not file its Annual Report on Form 10-K containing fiscal 2004 audited financial statements by its due date yesterday since it requires additional time to complete the review of the accounting issues referred to below, the financial reporting process, and the Company's assessment of controls over financial reporting. As permitted by Rule 12b-25 under the Securities Exchange Act of 1934, the Company today filed a notification providing that, among other things, its Form 10-K filing will nonetheless be timely filed if it is filed no later than 15 calendar days after its original due date. The audit, and other necessary work required for the Form 10-K to be filed, may not be completed within that extended time frame.

During the course of finalizing its financial statements for its fiscal year ended December 31, 2004, the Company identified certain accounting for supplier rebates that led to premature or inappropriate revenue recognition or that was inconsistent with relevant accounting standards and the Company's policies and practices. The Company immediately initiated an internal review of these matters and expects to restate its results for the

nine months ended September 30, 2004 to reflect the correct accounting for these rebates. The Company is continuing to evaluate whether a restatement of its 2003 results will be necessary. The Company presently expects to reduce its previously reported operating income by \$10 - \$12 million for the nine months ended September 30, 2004. The Company's outside auditors have not reviewed these conclusions, and additional adjustments may be required.

36. Following that announcement, C&A's stock price fell 23.9% to close at \$1.24 per share on trading volume of six times the average daily volume.

#### **ADDITIONAL SCIENTER ALLEGATIONS**

44. Defendants acted with scienter in that they knew that the statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated in or acquiesced to the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding C&A, their control over and/or their associations with the Company which made them privy to confidential proprietary information concerning C&A, participated in the fraudulent scheme alleged herein.

45. Defendants were motivated to artificially inflate the value of the Company's common stock in order to raise working capital. On August 26, 2004, C&A announced that the Company had completed an offering of \$415 million in aggregate principal amount of its senior subordinated notes due 2012. C&A further announced that the offering netted C&A approximately \$400 million in gross proceeds, which were used to redeem all \$400 million in principal amount owed on the Company's senior subordinated notes due 2006.

### **FRAUD-ON-THE-MARKET PRESUMPTION**

46. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine, in that:

- a) Defendants made public misrepresentations or failed to disclose material facts regarding C&A's business and financial condition during the Class Period;
- b) The omissions and misrepresentations were material;
- c) The Company's common stock is traded on the NYSE, an efficient and open market;
- d) The misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company' common stock;
- e) Plaintiff and the members of the Class purchased their common stock between the time defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the misrepresented facts; and
- f) C&A is followed by various analysts and news media. At all relevant times, the price of C&A's common stock reflected the effect of news disseminated in the market.

46. Based on the foregoing, Plaintiff and the members of the Class are entitled to the presumption of reliance upon the integrity of the market.

### **THE SAFE HARBOR PROVISION IS INAPPLICABLE**

47. The statutory safe harbor under the Private Securities Litigation Reform Act of 1995, which applies to forward-looking statements under certain circumstances, does not apply to any of the allegedly false statements pleaded in this Complaint. The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward-looking, they were not adequately identified as “forward-looking statements” when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because, at the time each of those forward-looking statements was made, the particular speaker had actual knowledge that the particular forward-looking statement was materially false or misleading, and/or the forward-looking statement was authorized and/or approved by an executive officer of C&A who knew that those statements were false when they were made.

### **COUNT I**

#### **VIOLATIONS OF SECTION 10(b) OF THE EXCHANGE ACT AND SEC RULE 10B-5**

48. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

49. This Count is asserted against all defendants and is based upon Section 10(b) of the 1934 Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5 promulgated thereunder.

50. During the Class Period, defendants, singly and in concert, directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class, and failed to disclose material information in order to make the statements made, in light of the circumstances under which they were made, not misleading to Plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce Plaintiff and the other members of the Class to purchase C&A's common stock during the Class Period at artificially inflated prices.

51. Throughout the Class Period, C&A acted through the Individual Defendants, whom it portrayed and represented to the financial press and public as its valid representatives. The willfulness, motive, knowledge, and recklessness of the Individual Defendants is therefore imputed to C&A, which is primarily liable for the securities law violations of the Individual Defendants.

52. As a result of the failure to disclose material facts, the information the defendants disseminated to the investing public was materially false and misleading as set forth above, and the market price of C&A's common stock was artificially inflated during the Class Period. In ignorance of the duty to disclose the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by said defendants, Plaintiff and the other members of the Class relied, to their detriment, on the integrity of the market price of the Company's common stock in purchasing shares of C&A. Had Plaintiff and the other members of the Class

known the truth, they would not have purchased said shares or would not have purchased them at the inflated prices that were paid.

53. Plaintiff and the other members of the Class have suffered substantial damages as a result of the wrongs herein alleged in an amount to be proved at trial.

54. By reason of the foregoing, defendants directly violated Section 10(b) of the Exchange Act and SEC Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes, and artifices to defraud; (b) failed disclose material information; or (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon Plaintiff and the other members of the Class in connection with their purchases of C&A's common stock during the Class Period.

## **COUNT II**

### **VIOLATIONS OF SECTION 20(a) OF THE EXCHANGE ACT**

55. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

56. The Individual Defendants, by virtue of their positions, stock ownership and/or specific acts described above, were, at the time of the wrongs alleged herein, controlling persons within the meaning of Section 20(a) of the Exchange Act.

57. The Individual Defendants had the power and influence and exercised the same to cause C&A to engage in the illegal conduct and practices complained of herein.

58. By reason of the conduct alleged in Count I of the Complaint, the Individual Defendants are liable jointly and severally and to the same extent as the Company for the aforesaid wrongful conduct, and are liable to Plaintiff and to the other

members of the Class for the substantial damages which they suffered in connection with their purchases of C&A's common stock during the Class Period.

WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for judgment as follows:

A. Declaring this action to be a proper class action and certifying Plaintiff as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of Plaintiff and the other members of the Class against all defendants, jointly and severally, for the damages sustained as a result of the wrongdoings of defendants, together with interest thereon;

C. Awarding Plaintiff the fees and expenses incurred in this action, including reasonable allowance of fees for Plaintiff's attorneys, and experts;

D. Granting extraordinary equitable and/or injunctive relief as permitted by law, equity and federal and state statutory provisions sued on hereunder; and

E. Granting such other and further relief as the Court may deem just and proper.

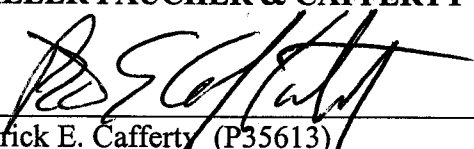
**JURY TRIAL DEMANDED**

Plaintiff demands a jury trial of all issues so triable.

Date: April 8, 2005

Respectfully submitted,

**MILLER FAUCHER & CAFFERTY LLP**

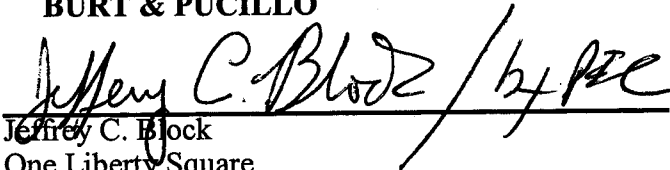


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(734) 769-2144

**Local Counsel for Plaintiff**

**BERMAN DEVALERIO PEASE TABACCO  
BURT & PUCILLO**

  
\_\_\_\_\_  
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One Liberty Square  
Boston, MA 02109  
(617) 542-8300

**Counsel for Plaintiff**

CERTIFICATION OF NAMED PLAINTIFF  
PURSUANT TO FEDERAL SECURITIES LAWS

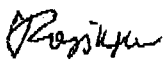
Gersh Korsinsky duly certifies and says, as to the claims asserted under the federal securities laws, that:

1. I have reviewed the complaint and authorized its filing.
2. I did not purchase the security that is the subject of this action at the direction of plaintiff's counsel or in order to participate in this private action.
3. I am willing to serve as a representative party on behalf of the class, including providing testimony at deposition and trial, if necessary.
4. I engaged in the following transactions in Collins & Aikman Corp. Common Stock during the class period:

<u>Date</u>	<u>Transaction</u>	<u>No. Shares</u>	<u>Price</u>
10/15/03	Buy	100	3.19

5. Within the last 3 years, I have not served as a class representative in any federal securities fraud case.
6. I will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, except as ordered or approved by the court, including any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I hereby certify, under penalty of perjury, that the foregoing is true and correct. Executed this 7<sup>th</sup> day of April 2005.

  
GERSH KORSINSKY

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

I. (a) PLAINTIFFS

GERSH KORSINSKY

(b) County of Residence of First Listed: Kings Co., NY

DEFENDANTS

COLLINS & AIKMAN CORP., JERRY L. MOSINGO, DAVID A. STOCKMAN, J. MICHAEL STEPP, and BRYCE KOTH,

County of Residence of First Listed: Oakland

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

(c) Attorneys (Name, Address and Telephone Number)

Patrick E. Cafferty (P35613) MILLER FAUCHER & CAFFERTY LLP 101 N. Main Ann Arbor, MI 48104 Tel: 734-769-2144 FAX: 734-769-1207

Attorneys (If Known)

JOHN CORBETT O'MEARA 05-60075

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- Citizen of This State, Citizen of Another, Citizen or Subject of Foreign Country, Incorporated or Principal of Business In This State, Incorporated and Principal of Business In Another State, Foreign Nation

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

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal categories like Insurance, Real Estate, Personal Injury, etc.

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Plaintiff alleges securities fraud in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), 78t(a).

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Battani

DOCKET NUMBER 2:05-CV-71325

DATE April 8, 2005

Patrick E. Cafferty

SIGNATURE OF ATTORNEY OF RECORD

X [Signature]

# PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes  
 No

If yes, give the following information:

Court: \_\_\_\_\_

Case No.: \_\_\_\_\_

Judge: \_\_\_\_\_

Notes:

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