UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE

U.S. SECURITIES AND EXCHANGE COMMISSION,	:
Plaintiff,	:
v.	:
KEVIN B. COLLINS,	:
Defendant.	:

COMPLAINT

Plaintiff United States Securities and Exchange Commission (the "Commission") alleges that:

SUMMARY OF ALLEGATIONS

1. In 2000 and 2001, Defendant Kevin B. Collins, an International Business Machines Corporation ("IBM") Business Unit Executive, assisted the commission of accounting fraud by Dollar General Corporation ("Dollar General") through a sham transaction. The transaction was conceived by Collins and was designed to achieve a particular accounting result for Dollar General.

2. In 1999, IBM and Dollar General agreed that Dollar General would lease new electronic cash registers from IBM to replace Dollar General's old Omron-brand cash registers. As originally planned, Dollar General would phase out the old registers and purchase the new IBM equipment over a multi-year period. In the second half of 2000, however, IBM, through Collins, suggested that Dollar General accelerate the roll-out of new IBM equipment by leasing for approximately $10 million all of the new equipment by the end of 2000. This would have the

result of increasing IBM's revenue for fiscal year 2000, as well as increasing Collins' bonus compensation for that period. Dollar General initially rejected the proposal, however, due to an accounting problem. Specifically, if Dollar General replaced all of the Omron equipment, it would be required to write off the book value of that equipment as an expense. This "book loss" problem, as it became known, in turn, would have a negative impact on Dollar General's earnings for its fiscal year 2000, which ended February 2, 2001.

3. IBM, through Collins, devised a way to solve Dollar General's "book loss" problem. Specifically, Collins proposed that IBM would purchase the old Omron equipment for approximately $11 million. By selling the equipment at that price, Dollar General would avoid most of the negative consequences of having to write off the book value of the equipment that would have occurred if it simply replaced the old registers with the new IBM equipment. The proposed "purchase," however, was not a bona fide transaction because, among other reasons, IBM's purchase price for the Omron equipment was repaid to IBM by an offsetting increase in the amount that Dollar General was to pay for the new IBM equipment. In addition, although IBM agreed to buy the Omron equipment for more than Dollar General was going to pay for the new IBM registers, IBM and Collins knew that the Omron equipment was worthless, IBM intended to destroy it, and ultimately IBM never took possession of any of the sales registers. Nevertheless, the "purchase" occurred and Dollar General removed the Omron equipment from its books and minimized the negative impact on its earnings in fiscal year 2000.

JURISDICTION

4. This Court has jurisdiction over this action pursuant to Sections 21(d), 21(e) and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e) and 78aa]. The Defendant made use of the means or instruments of interstate commerce, of the mails,

and the facilities of a national securities exchange in connection with the acts, transactions, practices and courses of business alleged herein.

DEFENDANT

5. **Kevin B. Collins**, age 47, has been a Business Unit Executive in IBM's Retail Stores Solutions business unit from January 1996 through the present. He resides in Tennessee.

THE OMRON TRANSACTION

IBM Proposal for an Accelerated Roll-Out is Rejected

6. In 1999, Dollar General decided to lease new electronic cash registers from IBM to replace Dollar General's old Omron-brand cash registers over a multi-year roll-out period. In November of 2000, IBM, through Collins, suggested that Dollar General accelerate the roll-out of the new electronic cash registers by leasing all the 4,224 remaining registers under the agreement before December 31, 2000. IBM offered to lease the new equipment to Dollar General for approximately $10 million, which included a one million dollar discount to encourage Dollar General to agree to the deal. After receiving the proposal, Dollar General concluded that the negative impact on Dollar General's earnings for its fiscal year 2000 from writing off the remaining book value for the Omron registers would outweigh the benefit of the transaction.

7. Dollar General rejected IBM's offer on November 29, 2000, explaining to Collins, an IBM Business Unit Executive from IBM's Retail Store Solutions business unit, that it was not worth it to Dollar General to acquire the new registers in 2000 because of the additional expense Dollar General would incur in writing off the remaining book value of the Company's old equipment. Internal communications at IBM make clear that Collins understood that Dollar General's accounting issue, specifically the write-off of the remaining book value, was a significant obstacle to completing the December 2000 roll-out of the IBM equipment.

Collins Proposes "Purchase" of Omron Registers to Solve
Dollar General's Accounting Concern

8. On behalf of IBM, Collins devised and proposed a solution to, as he wrote in an e-mail, "help fix [Dollar General's] Omron book value issue." Specifically, IBM offered to "purchase" the Omron registers from Dollar General to accomplish the goal of helping Dollar General to minimize the impact of writing off the book value of Dollar General's Omron registers. On November 30, 2000, Collins contacted Dollar General's Treasurer and Dollar General's vice president of information services to discuss a proposal to address Dollar General's "accounting concerns." The proposal was that Dollar General lease, by December 31, 2000, all of the new equipment then currently scheduled to be leased in future years. If Dollar General agreed, IBM would "purchase" the Omron registers for a specified amount and would offset that purchase price by increasing the price Dollar General would pay to lease the new IBM registers by approximately the same amount. Initially, the proposal was that the Omron purchase price would be repaid immediately by Dollar General; ultimately, IBM agreed that its "purchase price" would be repaid over time by Dollar General as part of the financing arrangements for the new equipment.

9. At the same time that IBM agreed to "purchase" the Omron registers, Collins and various other IBM personnel knew that the Omron equipment was worthless. An IBM Asset Manager had determined by December 5, 2000, that the Omron registers had no value to IBM and communicated this to an IBM Client Manager. In addition, an IBM Business Operations Manager for the North American sales team for IBM's Retail Store Solutions checked with an IBM contractor to see if there was any market value for the Omron registers. The contractor told the IBM Business Operations Manager that there was no domestic resale value for the equipment. Collins ultimately told Dollar General that the Omron registers were worthless to IBM and that

IBM intended to destroy them.

10. IBM allowed Dollar General to set the "purchase" price for the equipment. After considering the book value of the Omron registers, Dollar General determined that the best price would be between $10 million and $11 million and communicated that to IBM. Thus, IBM was asked to pay as much or more for the worthless Omron registers as IBM had proposed Dollar General would pay for the new IBM equipment.

11. Collins and others at IBM also understood from the outset that the purchase price IBM proposed to pay for the older registers would not be at risk because it would be repaid by Dollar General in the form of an increased lease price for the new equipment. In effect, there was no "purchase" of Omron equipment; instead the amount was to be a loan from IBM to Dollar General. Internal IBM documents make clear the relationship between the Omron purchase price and the offsetting price increase for IBM equipment. For example, in a December 3, 2000, email, Collins described the new price for the IBM equipment as $20,530,000 – over double the approximately $10 million originally contemplated. The new purchase price now took into account the price of the Omron equipment, which, at that time, was specified in the email as $10,030,000.

12. The entire transaction was to be financed by IBM. The financing terms for Dollar General were to involve "one payment of $10,030,000 in February 2001, and the rest [of the $20,530,000] deferred with a payment start date of August 2001." Under these terms, the portion of the purchase price attributed to the Omron equipment would be promptly reimbursed, while the amount Dollar General owed on the new IBM equipment would be financed over a longer period. Moreover, during the course of negotiations, there was a nexus between the price of the Omron equipment and the final price. For example, in a December 15, 2000 email written by Collins, he

explained that since Dollar General was "now asking for the $10,030,000 to go to $11,030,000, we will need to do a similar analysis for $19,620,480 + $1,000,000 more in Omron for a new total of $20,620,480 financed."

13. It was clear to Collins and certain IBM and Dollar General personnel that the only reason for the purported purchase of the Omron equipment was to solve Dollar General's accounting issues. For example, Collins wrote in a December 3, 2000 email that "a buyback of the Omron equipment will erase the book loss issue, removing this as an obstacle to a more rapid roll-out." In the same email, Collins also stated that the proposed purchase should "significantly reduce or eliminate any negative P&L issues, and remove the lurking book loss issue." In turn, as Dollar General evaluated the offer, the company was seeking to determine whether the new proposal put Dollar General in a better position than it would have been if it held to the original roll-out schedule. In a December 5, 2000 email, Collins wrote: "The Customer is evaluating two things. Can we help fix their Omron book value issue (which we can and have already agreed to) and what is the comparative [net present value] of our best offer in December versus their current plan of acquiring [the equipment] . . . ."

14. In addition, completing the Omron "purchase" would increase IBM's earnings for the quarter by allowing it to close the accelerated roll-out transaction. Collins wrote in an email that "this would be quite a nice deal to put this much business this far forward at a time when IBM desperately needs to show revenue growth." In addition, Collins had a direct incentive to close the deal. Collins' annual bonus was based in part on the total revenue from the sales "price" for the new IBM equipment (which was artificially inflated to offset the purchase price for the Omron transaction). Specifically, almost 50% of Collins' bonus for 2000 was attributable to the Dollar General transaction.

IBM and Dollar General Finalize Contract Terms

15. After negotiating the terms of the financing and other arrangements over the course of a few weeks, Dollar General finalized the two-part transaction by agreements dated December 22, 2000. Under one agreement, IBM agreed to purchase 14,070 Omron registers from Dollar General for $11,098,672, with payment to be made to Dollar General no later than January 31, 2001 – just two days before the end of Dollar General's fiscal year 2000. On the same day, Dollar General signed a separate agreement committing the company to lease 4,224 new IBM registers for approximately $21 million. That purchase price was to be financed by IBM Credit Corporation and would be repaid by Dollar General over five years, starting in January 2001.

IBM "Buys" the Omron Registers

16. Collins understood that Dollar General needed to receive the check for the sale of the Omron registers by the end of January 2001 to achieve the desired accounting result. The written agreement also required that IBM make the payment to Dollar General no later than January 31, 2001. On January 17, 2001, Collins sent an internal email to several IBM employees seeking to have the check for the Omron registers issued. In the email, he stated: "It is critical that this check gets cut ASAP to Dollar General for $11,216,995. Their fiscal year ends 01/31/01 and this must be in house at DG."

17. Notably, the $11.2 million amount referenced in Collins' email includes both the purchase price of $11,098,672 and an additional $118,323 that IBM was paying to cover the cost of disposal of the very equipment that it was purchasing. Although various IBM personnel saw the check request and one individual noted that the whole transaction seemed "a little peculiar and may be worth asking . . . questions [about]," the check request was approved and the check was issued to Dollar General shortly before January 31, 2001, two days before the end of Dollar

General's fiscal year 2000.

18. Despite the purchase agreement, almost two years later in late 2002, none of the Omron registers purportedly purchased by IBM had left Dollar General's custody, nor were they destroyed. They were stored in Dollar General distribution centers awaiting disposal.

IBM's and Dollar General's Respective
<u>Accounting for the Transaction</u>

19. Dollar General received significant accounting benefits from the Omron transaction. Dollar General utilized the Omron purchase payment from IBM to improperly reduce certain expenses for its fiscal year 2000, thereby inflating its reported pre-tax income. Specifically, Dollar General improperly reduced the loss on Omron registers accounted for as having been removed from service in 2000.

20. The Omron transaction also served to enable Dollar General to avoid addressing an unrelated accounting issue pertaining to the Omron equipment – specifically, the fact that Dollar General had not sufficiently depreciated the Omron equipment during fiscal year 2000. At the time Dollar General entered into the multi-year agreement with IBM to replace the Omron equipment, Dollar General should have reassessed the remaining useful lives of the Omron equipment and accelerated the depreciation on that equipment consistent with the equipment removal and replacement schedule. In the fourth quarter 2000, at the time Dollar General entered into the Omron transaction with IBM, Dollar General had not depreciated the Omron equipment sufficiently (by approximately $7.9 million) during fiscal year 2000. The Omron transaction, which removed the assets from the books, alleviated the need for Dollar General to face this problem. Utilizing the cash received from IBM for the Omron equipment, Dollar General instead minimized the loss on disposal of Omron registers and did not incur a substantial depreciation charge.

21. By improperly reducing expenses that Dollar General should have recognized, the net effect of Dollar General's accounting for the payment from IBM was to increase Dollar General's pretax income for fiscal 2000 by $7.1 million, or 6.5% of Dollar General's restated pretax fiscal year 2000 income.

22. IBM, in contrast, ultimately accounted for the transaction by netting out the impact of the "purchase" of Omron equipment. IBM treated the purchase price for the Omron registers as a trade-in credit against the full purchase price of the new IBM equipment. IBM, however, did have to undertake unusual journal entries in order to accomplish this task because the transactions were separately documented. Consequently, as Collins wrote in a December 21, 2000 email, the "[l]edger amount to IBM Retail Store Solutions" was the net of the full purchase price, less the Omron price, for a total of approximately $10.1 million. As structured, however, certain IBM employees received credit for the full $21 million purchase price for purposes of bonus calculations. Consequently, certain IBM employees, including Collins, received bonuses that were higher than they would have been but for the transaction with Dollar General.

FIRST CLAIM

Collins' Aiding and Abetting Dollar General's Violations of Section 10(b)(5) of the Exchange Act and Rule 10b-5 Thereunder

23. Paragraphs 1 through 22 above are realleged and incorporated by reference herein.

24. As set forth more fully above, Dollar General, directly or indirectly, by use of the means or instrumentalities of interstate commerce, or of the mails, or of any facility of a national exchange, in connection with the purchase or sale of Dollar General securities, have with knowledge or recklessly, (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged

in acts, practices, and course of business which operate or would operate as a fraud or deceit upon any person.

25. By reason of the foregoing, Dollar General violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5].

26. Defendant Collins knowingly provided substantial assistance to Dollar General in its violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Exchange Act Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

27. By reason of the foregoing, Collins aided and abetted Dollar General's violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

SECOND CLAIM

Collins' Aiding and Abetting Dollar General's Violations of Section 13(a) of the Exchange Act and Exchange Act Rules 12b-20 and 13a-11

28. Paragraphs 1 through 27 above are realleged and incorporated by reference herein.

29. Dollar General filed materially false and misleading Forms 8-K on January 23, 2001, and February 28, 2001, in which it announced certain financial results. Those filings reflected the impact of the Omron transaction, which resulted in an overstatement of Dollar General's pre-tax income.

30. As a result of the foregoing, Dollar General violated Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20 and 13a-11 [17 C.F.R. §§ 240.12b-20 and 240.13a-11].

31. Defendant Collins provided substantial assistance to Dollar General in its violation

of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20 and 13a-11 [17 C.F.R. §§ 240.12b-20 and 240.13a-11].

32. By reason of the foregoing, Defendant Collins aided and abetted Dollar General's violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Exchange Act Rules 12b-20 and 13a-11 [17 C.F.R. §§ 240.12b-20 and 240.13a-11].

THIRD CLAIM

Collins' Aiding and Abetting of Violations of Section 13(b)(2)(A) of the Exchange Act

33. Paragraphs 1 through 32 above are realleged and incorporated by reference herein.

34. Dollar General violated Section 13(b)(2)(A) of the Exchange Act by failing to make and keep books, records, and accounts which accurately and fairly reflected the Omron transaction in reasonable detail.

35. Defendant Collins knowingly provided substantial assistance to Dollar General in its violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)].

36. By reason of the foregoing, Defendant Collins aided and abetted Dollar General's violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C §§ 78m(b)(2)(A)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a judgment:

(a) permanently enjoining Defendant Collins from aiding and abetting violations of Sections 10(b), 13(a) and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20 and 13a-11 thereunder;

(b) ordering Defendant Collins to disgorge ill-gotten gains, with prejudgment interest;

(c) ordering Defendant Collins to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]; and

(d) granting such other and further relief as this Court deems necessary and appropriate under the circumstances.

Dated: June 22, 2007
Washington, D.C.

__/S/ Carl A. Tibbetts_______________
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