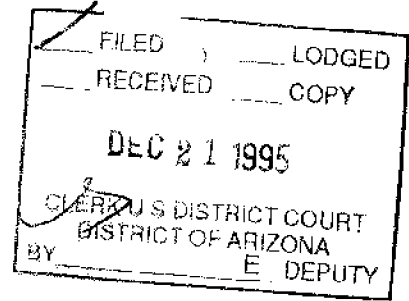


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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

DANIEL B. ZONIES, individually
and on behalf of all others
similarly situated,

Plaintiff,

v.

UNITECH INDUSTRIES, INC., JOHN F.
LONDELIUS, and KENNETH F. LIND,

Defendants.

CIVIL ACTION NO. *CIV 95-2892 PHX PGR*

CLASS ACTION COMPLAINT

Jury Trial Demanded

-----X

Plaintiff and all others similarly situated, by and through his attorneys, alleges the following upon information and belief, except as to those allegations concerning himself, which are alleged upon personal knowledge. Plaintiff's information and belief is based inter alia, on the investigation made by and through plaintiff's attorneys.

①

NATURE OF THE CASE

1. This is a shareholders' class action on behalf of all persons, other than defendants and their affiliates, who purchased the common stock of Unitech Industries, Inc. ("Unitech" or the "Company") between March 16, 1995 and December 21, 1995, inclusive (the "Class Period"), seeking to pursue remedies under federal law. During the Class Period, the defendants caused or permitted the Company to issue a series of materially false and misleading public statements about the Company's operations and prospects. These public statements operated to inflate artificially the market price of the Company's common stock during the Class Period, thereby damaging plaintiff and the Class, who purchased the Company's common stock relying on the market price thereof to accurately reflect its true value.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78aa; and 28 U.S.C. §1331. The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC").

3. 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 and transactions giving rise to the violations of law complained of

herein, including the preparation and dissemination to the investing public of false and misleading information, occurred in this District. Defendant Unitech has its principal place of business in this District at 15035 North 7th Street, Scottsdale, Arizona 85260.

4. In connection with the acts, conduct and other wrongs complained of herein, the defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, the United States mails, and the facilities of the national securities markets.

THE PARTIES

5. Plaintiff Daniel B. Zonies purchased 2,000 shares of the common stock of Unitech on October 13, 1995 at \$13.75 per share, and has been damaged as a result of defendants' conduct as described herein.

6. Defendant Unitech designs, develops, manufactures, and markets cellular phone accessory products, including battery packs, battery chargers, power suppliers and hands-free speaker phone kits. As of July 31, 1995, the Company had 6,432,152 shares of common stock outstanding. The Company's common stock is actively traded on the NASDAQ market.

7. Defendant John F. Londelius ("Londelius") was formerly President and Chief Executive Officer of Unitech, and, until December 20, 1995, was a director of the Company. On December 20, 1995, the Company announced that its Board of Directors had

accepted the resignation of defendant Londelius from the Company's Board of Directors.

8. Defendant Kenneth F. Lind ("Lind") was, at all times relevant hereto, President of Unitech and a member of the Company's Board of Directors. The Company announced on December 20, 1995 that its Board of Directors had accepted defendant Lind's resignation from Unitech's Board of Directors and as the Company's President.

9. Defendants Londelius and Lind are referred to collectively herein as the "Individual Defendants."

10. The defendants are liable, jointly and severally, as direct and/or indirect participants in the wrongs complained of herein or as controlling persons of persons who violated the Exchange Act. Defendants had a duty to promptly disseminate accurate and truthful information with respect to the Company's operations and financial condition or to cause and direct that such information be disseminated and to promptly correct any previously disseminated information that was misleading to the market. As a result of their failure to do so, the market price of Unitech common stock was artificially inflated during the Class Period, causing injury to plaintiff and the Class.

11. The defendants participated in and consciously or recklessly pursued the unlawful conduct alleged herein in order to enrich itself/himself at the public's expense, to protect emoluments and privileges of corporate office, to maintain the

accepted the resignation of defendant Londelius from the Company's Board of Directors.

8. Defendant Kenneth F. Lind ("Lind") was, at all times relevant hereto, President of Unitech and a member of the Company's Board of Directors. The Company announced on December 20, 1995 that its Board of Directors had accepted defendant Lind's resignation from Unitech's Board of Directors and as the Company's President.

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11. The defendants participated in and consciously or recklessly pursued the unlawful conduct alleged herein in order to enrich itself/himself at the public's expense, to protect emoluments and privileges of corporate office, to maintain the

value of their stock holdings in Unitech, and/or to avoid embarrassment and loss of prestige.

CLASS ACTION ALLEGATIONS

12. (a) Plaintiff brings this action as a class action pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a class (the "Class") consisting of all persons who purchased the common stock of Unitech from March 16, 1995 (the date the Company announced its first quarter results) through December 21, 1995, inclusive (the "Class Period"). Excluded from the Class are the defendants herein, members of the immediate family of any of the individual defendants, any entity in which any defendant has a controlling interest, and the legal affiliates, representatives, heirs, controlling persons, successors, and predecessors in interest or assigns of any defendant.

(b) Because over 6.4 million shares of the Company's common stock were outstanding and because the Company's common stock was actively traded on the NASDAQ over-the-counter exchange during the Class Period, the members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members can only be determined by appropriate discovery, plaintiff believes that Class members number in the hundreds.

(c) Plaintiff's claims are typical of the claims of the Class because plaintiff and all of the Class members sustained

damages which arise out of the defendants' wrongful conduct complained of herein.

(d) Plaintiff will fairly and adequately protect the interests of the Class members and has retained counsel who are experienced and competent in class and securities litigation. Plaintiff has no interest which is contrary to or in conflict with those of the members of the Class she seeks to represent.

(e) A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Plaintiff knows of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

(f) Questions of law and fact common to the members of the Class predominate over any questions which may affect only individual members in that defendants have acted on grounds generally applicable to the entire Class. Among the questions of law and fact common to the Class are:

i. Whether the federal securities laws were violated by defendants' acts as alleged herein;

ii. Whether the Company's publicly disseminated financial statements during the Class Period omitted and/or misrepresented material facts and whether defendants breached any duty to convey material facts or to correct material facts previously disseminated;

iii. Whether defendants participated in and pursued the common course of conduct complained of;

iv. Whether the defendants acted willfully or recklessly in omitting and/or misrepresenting material facts or in aiding and abetting the making of such misstatements;

v. Whether the market prices of Unitech common stock during the Class Period were artificially inflated due to the nondisclosures and/or misrepresentations complained of herein; and

vi. Whether the members of the Class have sustained damages and, if so, what is the appropriate measure of damages.

FACTUAL ALLEGATIONS

13. Unitech, established in 1987, makes batteries, chargers, and other accessories for cellular phones, computers and other electronic products. In November, 1994, Unitech shares were first sold to the public in an initial offering of 2.2 million shares. Since going public, the Company has reported consistent growth in sales and revenues, causing its stock price to rise from \$6 per share in the November 1994 IPO to a high of \$16.50 per share in August, 1995. Thus, securities analysts and the investing public were led to believe that the Company's profitability and growth would continue unabated.

14. On March 16, 1995, the start of the Class Period, the Company announced its financial results for the first quarter ended January 31, 1995. According to the March 16, 1995

announcement, net income for the first quarter rose 38 percent on a 34 percent increase in sales, reportedly "as a result of higher sales to distribution customers and slightly improved gross margins." Unitech reported net income for the first quarter of \$264,423 or \$0.048 per share, compared to net income of \$192,052 and proforma earnings per share of \$0.035 in the prior year.

15. Defendant Londelius, commenting on the first quarter results, reportedly stated, "We're pleased with our first quarter results because it's historically a slower quarter in sales.... We expect sales in the second quarter to continue to be strong...."

16. On June 19, 1995, the Company announced its results for the second quarter ended April 30, 1995. The company reported a 97 percent increase in its net income and a 140 percent jump in revenues for the second quarter. Unitech reported net income of \$395,949, or 7 cents per share, compared to net income of \$200,949, and pro forma earnings of 3 cents a share for the same period last year. The Company reported its revenues increased to about \$5.9 million for its second quarter of 1995, compared with about \$2.5 million for that quarter in 1994.

17. Commenting on the June 19, 1995 announcement of second quarter results, defendant Londelius emphasized the benefits of the Company's acquisition of two companies, Hericson and Solidex, which defendant Londelius said "could add approximately \$24 million to Unitech's revenues during the next 12 months."

18. On September 19, 1995, Unitech announced a 585 percent increase in net income on a 344 percent increase in net

sales for the third quarter ended July 31, 1995. The Company attributed the increase in net income to higher sales of accessory products, as well as Unitech's second quarter acquisition of a computer, cellular and video manufacturing company and a retail, brand distribution company.

19. For the third quarter, Unitech's net income was \$584,349, or \$.09 per share, compared to net income of \$85,352 and pro forma earnings per share of \$.01 in the prior year. Sales for the quarter were \$9.9 million compared to \$2.2 million in the same period a year ago.

20. In connection with the announcement, defendant Londelius stated, "Sales and earnings were strong for the third quarter, as we continue to see growth related to our acquisitions, as well as expansion in our primary business of cellular phone accessories." Londelius further stated that "With the integration of the acquisitions [of Hericson and Solidex] substantially behind us, we expect continued record growth in both top and bottom line numbers in the fourth quarter and in 1996."

21. In an October 15, 1995 article published in The Arizona Republic, the defendants touted Unitech's current and future business prospects, with defendant Londelius boasting that "We're the only publicly traded U.S. manufacturer of accessory products for cellular phones," and "We're one of the two largest manufacturers of video rewinders in the world."

22. In the same October 15, 1995 Arizona Republic article, Bo O'Brien, an analyst for Tecumseh Asset Management in

Highland Park, Illinois, projected that the Company would earn 41 cents per share for the 1995 fiscal year, which would end October 31, 1995. In response to the question of why he thought Unitech's stock had lost nearly 25 percent of its value since hitting its high in August, 1995, O'Brien reportedly stated that he believed the price decline reflected recent weakness in technology stocks generally and profit-taking in Unitech after a sustained rally.

23. The Arizona Republic article also questioned whether the Company had experienced difficulties in collecting debts and selling products, pointing to an increase in the Company's accounts receivable. However, in an effort to disguise the Company's true financial condition, defendant Lind reportedly stated that "these increases [in accounts receivable] come in anticipation of the holiday season, the busiest time of year for sales to mass merchandisers."

24. The Arizona Republic further quoted defendant Lind as saying that "As we close the year, you'll see inventories and receivables drop dramatically." [emphasis added].

25. At Mid-December, 1995, Unitech stock was trading as high as \$12 per share.

26. Given the defendants' prior consistently positive statements and Unitech's pattern of consistent growth, the market was stunned when, on December 20, 1995, without warning, the Company announced that it would record a significant net loss for the fiscal year ended October 31, 1995, and that as a result of the magnitude of this loss, the Company believes that financial results

reported in its Quarterly Reports on Form 10-Q for the last three fiscal quarters ended July 31, 1995, April 30, 1995, and January 31, 1995 may have been materially misstated.

27. The Company further announced in the December 20, 1995 press release that until the year-end audit is completed by its outside auditors, the actual magnitude of the loss will not be known. Further, the Company disclosed that it is "experiencing cash flow difficulties that, if not remedied, may cause the Company to default on its current debt obligations," in which case the Company may be forced to seek protection from its creditors. The Company also revealed that "[m]anagement believes that a significant infusion of capital is necessary to allow the Company to meet its current obligations and conduct its business."

28. Also as part of the December 20, 1995 announcement, the Company revealed that its Board of Directors had accepted the resignation of defendants Londelius (the Company's former President and CEO) and Lind (the Company's President) from the Board of Directors, and that defendant Lind had also resigned as the Company's President.

29. In connection with the news reported by the Company on December 20, 1995, Unitech requested that NASDAQ suspend trading of the Company's stock. When trading in the Company's stock resumed on December 21, 1995, the stock opened as low as \$1.50 per share, down approximately \$8 from December 20, 1995.

30. During the Class Period, the true nature of Unitech's actual financial condition and its future prospects were

hidden by defendants' deceptive and materially false and misleading representations made in publicly issued financial statements and other reports, press releases and statements. These statements and reports were designed to and did create the illusion that Unitech was financially strong, and had steady and substantial earnings growth. These reports, releases, and statements, among others, were materially false and misleading because they misrepresented or failed to disclose the materially adverse information about Unitech's business, products, operations, markets, financial condition and future prospects as follows:

31. (a) Defendants failed to disclose that the Company's Quarterly Reports on Form 10-Q for the fiscal quarters ended July 31, 1995, April 30, 1995, and January 31, 1995 and the Company's announced results were materially misleading in that they did not accurately report the Company's financial results for those quarters.

(b) Defendants failed to disclose that the revenues and earnings of Unitech were improperly and materially overstated and inflated throughout the Class Period;

(c) Defendants failed to disclose that the earnings, assets, and net worth of Unitech were improperly and materially overstated and inflated throughout the Class Period and that the Company's future business, revenues and profit expectations were not accurately presented, due to defendants' misrepresentations regarding Unitech's ability to maintain the purported levels of growth predicted;

(d) Defendants failed to disclose that the Company had no reasonable basis to expect or project continued high levels of growth in revenues in 1995; and

(e) Defendants failed to disclose, as required by the rules and regulations promulgated by the SEC, including, inter alia, Item 303 of Regulations S-K, 17 C.F.R. §2229.303, et. seq., the existence of a known "trend, demand, commitment, event or uncertainty" at Unitech "that ha[s] had or that [Unitech] reasonably expects will have a material . . . unfavorable impact on net sales or revenues or income from operations," and there was no reasonable basis for defendants' projections of profitability made during the Class Period.

32. Defendants allowed Unitech's false and misleading reports and statements made during the Class Period to remain uncorrected and unrevised when defendants learned during the Class Period that such statements were materially false and misleading.

33. As a result of the dissemination of the aforementioned false and misleading statements and documents, the market price of Unitech common stock was artificially inflated throughout the Class Period. In ignorance of the complete truth of the adverse facts concerning Unitech's financial condition, plaintiff and members of the Class purchased Unitech stock at artificially high prices, relying either upon the integrity of the market and/or in reliance on Unitech's public statements and reports, and were damaged thereby. Had plaintiff and the members of the Class known of the material adverse information not

disclosed by the defendants, they would not have purchased Unitech stock, or would not have purchased it at the artificially inflated prices at which they did purchase. As a result of the wrongdoing alleged herein, plaintiff and the members of the Class have been damaged by their purchase of Unitech common stock. As a result of the subsequent disclosures of Unitech's true financial status and the financial and operating condition of Unitech, the value of its stock has declined substantially.

Insider Sales

34. During the time defendants were misleading the investing public about the facts regarding Unitech's condition, several Company insiders sold 48,250 shares of their own stock during the Class Period at artificially inflated prices, thereby reaping over \$637,750 in proceeds, as follows:

<u>Insider</u>	<u>Sale Date</u>	<u># Shares Sold</u>	<u>Price Per Share</u>	<u>Total Proceeds</u>
1. Kenneth F. Lind (Officer and Director)	07/25/95	5,000	\$13.12	\$ 65,600
2. Paul Janssens (Director)	10/17/95	41,250	\$13.24	\$ 546,150
3. Blake P. Willison (Vice President)	07/25/95	2,000	\$13.00	\$ 26,000
		<u>48,250</u>		<u>\$ 637,750</u>

COUNT I
SECTIONS 10(b) AND 20 OF THE EXCHANGE ACT
AND RULE 10b-5 AGAINST ALL DEFENDANTS

35. Plaintiff incorporates by reference and realleges all paragraphs previously alleged herein.

36. During the Class Period, defendants, individually and in concert, engaged in a plan, scheme and course of conduct, pursuant to which they knowingly and/or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud upon plaintiff and other members of the Class, and made various untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to plaintiff and other Class members as set forth above. The purpose and effect of said scheme were to induce plaintiff and the Class to purchase the Company's common stock during the Class Period at artificially inflated prices.

37. By reason of the foregoing, defendants violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they themselves or a person whom they controlled (a) employed devices, schemes and artifices to defraud, (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, or (c) engaged in acts, practices and a course of business which operated as a fraud or deceit upon plaintiff and other members of

the Class in connection with their purchases of the Company's common stock during the Class period.

38. Each of the defendants participated in and joined the alleged scheme and course of conduct specified above and each is liable primarily for the aforesaid wrongful acts and statements specified above.

39. The Individual Defendants are liable under Section 20(a) as control persons since, by virtue of their executive positions, their knowledge of and involvement in the Company's business and/or Board membership and positions and/or stock ownership and/or power and ability to make public statements on behalf of the Company to shareholders, potential investors and the media, they had the power and ability to control the actions of the Company.

40. As a result of the foregoing, the market price of the Company's common stock was artificially inflated during the Class Period. In ignorance of the false and misleading nature of the representations described above, plaintiff and other members of the Class relied, to their damage, on the integrity of the market both as to price and as to whether to purchase these securities.

41. The price of the Company's common stock declined materially upon the public disclosure of the facts that had been misrepresented or concealed as alleged in this Complaint. Plaintiff and other members of the Class have suffered substantial damages as a result.

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

(a) Declaring this action to be a class action pursuant to Rule 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Class defined herein;

(b) Awarding plaintiffs and the members of the Class compensatory damages in an amount which may be proven at trial, together with interest thereon;

(c) Awarding plaintiff and the members of the Class, prejudgment and post-judgment interest, as well as their reasonable attorneys' and experts' witness fees and other costs; and

(d) Awarding such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

Dated: December 21, 1995

BONNETT FAIRBOURN FRIEDMAN
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