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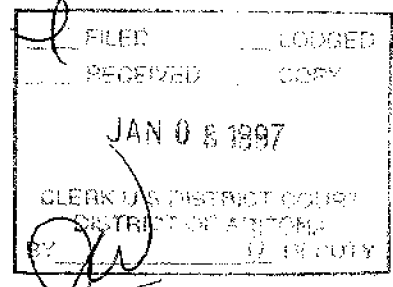
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

In re UNITECH)
SECURITIES LITIGATION)
_____)
This Document Relates To:)
All Cases)
_____)

Master File No. CIV 95-2892 PHX PGR
**CONSOLIDATED
CLASS ACTION COMPLAINT**



45

1 promulgated thereunder by the Securities and Exchange Commission (the "SEC");
2 Arizona Revised Statutes §§ 44-1991 and 44-1522; and the common law. This Court
3 has supplemental jurisdiction over the state law claims alleged herein pursuant to 28
4 U.S.C. § 1367(a).

5
6 3. Venue is proper in this District pursuant to Section 27 of the Exchange Act
7 and 28 U.S.C. §1391(b). Many of the acts and transactions giving rise to the violations
8 of law complained of herein, including the preparation and dissemination to the investing
9 public of false and misleading information, occurred in this District. Unitech has its
10 principal place of business in this District at 15035 North 7th Street, Scottsdale, Arizona
11 85260.

12
13 4. In connection with the acts, conduct and other wrongs complained of
14 herein, the Defendants, directly and indirectly, used the means and instrumentalities of
15 interstate commerce, the United States mails, and the facilities of the national securities
16 markets.

17 **THE PARTIES**

18 **Plaintiffs**

19 5. (a) Plaintiff Daniel B. Zonies purchased 2,000 shares of Unitech
20 common stock on October 13, 1995 at \$13.75 per share;

21 (b) Plaintiff Roger Anscher purchased 500 shares of Unitech common
22 stock on July 11, 1995 at \$12 7/8 per share;

23 (c) Plaintiff John O'Keefe purchased for his Individual Retirement
24 Account 200 shares of Unitech common stock on August 18, 1995 at \$15-1/4 per
25 share, 400 shares of Unitech common stock on August 23, 1995 at \$15 1/2 per share,
26 and 1,100 shares of Unitech common stock on August 24, 1995 at \$15-3/4 per share;

1 (d) Plaintiff Kevin O'Keefe purchased 200 shares of Unitech common
2 stock on September 7, 1995 at \$16 per share;

3 (e) Plaintiff Brian O'Keefe purchased for his Individual Retirement
4 Account 1,500 shares of Unitech common stock on August 24, 1995 at \$15-5/8 per
5 share;

6 (f) Plaintiff Mary Ellen Cahill purchased 500 shares of Unitech common
7 stock on August 17, 1995 at \$15-1/2 per share and 1,000 shares of Unitech common
8 stock on August 22, 1995 at \$15 1/2 per share;

9 (g) Plaintiff Dolores O'Keefe purchased 1,000 shares of Unitech
10 common stock on August 24, 1995 at \$15-3/4 per share, 500 shares of Unitech
11 common stock on November 7, 1995 at \$12 per share, and 300 shares for her
12 Individual Retirement Account on August 23, 1995 at \$15 1/2 per share;

13 (h) Plaintiff Kathleen Ryan purchased 500 shares of Unitech common
14 stock on September 5, 1995 at \$15-7/8 per share, and 300 shares of Unitech common
15 stock on October 9, 1995 at \$14-1/4 per share;

16 (i) Plaintiff J. Larry Black purchased 2,000 shares of Unitech common
17 stock on August 16, 1995 at \$16 per share;

18 (j) Plaintiff Richard Blank purchased 1,000 shares of Unitech common
19 stock on November 2, 1995 at \$12.50 per share;

20 (k) Plaintiffs Elaine Cozzetto and James F. Cozzetto, Sr., Joint Tenants,
21 purchased 1,000 shares of Unitech common stock on August 4, 1995 at \$14 3/8 per
22 share and 3,000 shares of Unitech common stock on October 12, 1995 at \$12 3/4 per
23 share;

24 (l) Plaintiff Gerald Finn purchased 1,000 shares of Unitech common
25 stock in December, 1995;

1 (m) Plaintiff Howard B. Franklin purchased 1,000 shares of Unitech
2 common stock on August 2, 1995 at \$14 3/8 per share;

3 (n) Plaintiff Henry B. George purchased 1,500 shares of Unitech
4 common stock on August 2, 1995 at \$14 3/8 per share;

5 (o) Plaintiff Louis Helleny purchased 2,000 shares of Unitech common
6 stock on October 26, 1995 at \$15 per share;

7 (p) Plaintiff Vinod Reddy purchased 400 shares of Unitech common
8 stock on September 20, 1995 at \$14.50 per share, 400 shares on October 2, 1995 at
9 \$13.75 per share, 300 shares on October 30, 1995 at \$12.25 per share, 300 shares
10 on November 7, 1995 at \$10.50 per share, and 300 shares on November 16, 1995 at
11 \$10 3/8 per share;

12 (q) Plaintiff Perry D. Pierre, custodian for Jessica L. Pierre, purchased
13 400 shares of Unitech common stock on August 24, 1995 at \$16.50 per share;

14 (r) Plaintiff Thomas Orndorff purchased 1,000 shares of Unitech
15 common stock on August 22, 1995;

16 (s) Plaintiffs John and Georgia N. Keogh, Joint Tenants, purchased
17 2,000 shares of Unitech common stock on August 4, 1995 at \$14 3/8 per share, and
18 1,000 shares of Unitech common stock on November 8, 1995 at \$11 3/8 per share;

19 (t) Plaintiff Joanne Cunningham purchased 1,000 shares of Unitech
20 common stock on October 23, 1995 at \$14.628 per share;

21 (u) Plaintiffs Arthur G. Benzle, III and Linda B. Benzle purchased the
22 following shares of Unitech common stock in the following amounts: Arthur G. Benzle,
23 III and Linda B. Benzle, Joint Tenants: 2,000 shares at \$11.25 per share on April 6,
24 1995; 1,000 shares at \$9.86 per share on June 1, 1995; 3,000 shares at \$9.93 per
25 share on June 1, 1995; and 2,000 shares at \$14.12 per share on September 18, 1995.
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1 Linda B. Benzle IRA: 2,300 shares at \$10.86 per share on April 17, 1995. Arthur G.
2 Benzle, III IRA: 3,500 shares at \$10.86 per share on April 17, 1995;

3 (v) Plaintiff James Barge purchased 1,000 shares of Unitech common
4 stock on July 18, 1995 at \$12.75 per share, 380 shares on September 25, 1995 at
5 \$14.50 per share, and 500 shares on November 8, 1995 at \$11.375 per share;

6 (w) Plaintiff Donald W. Alexander purchased 100 shares of Unitech
7 common stock on November 20, 1995 at \$9.50 per share;

8 (x) Plaintiff Eduard Korsinsky purchased 500 shares of Unitech common
9 stock on July 11, 1995 at \$12.875 per share; and

10 (y) Plaintiff Norman Weiss purchased 1,000 shares of Unitech common
11 stock on July 18, 1995 at \$12.25 per share.
12

13
14 **Unitech**

15 6. Unitech is a California corporation with executive offices located in
16 Scottsdale, Arizona. Unitech designs, develops, manufactures, and markets cellular
17 phone accessory products, including battery packs, battery chargers, power suppliers
18 and hands-free speaker phone kits. As of July 31, 1995, the Company had 6,432,152
19 shares of common stock outstanding. The Company's common stock was, until
20 February 9, 1996, actively traded on the NASDAQ market exchange. On January 25,
21 1996, Unitech filed for protection from creditors under Chapter 11 of the Bankruptcy
22 Code. Accordingly, because of the automatic stay provisions of the Bankruptcy Code,
23 Unitech is not named as a defendant in this Complaint.
24

25 **Defendants**

26 7. Defendant John F. Londelius ("Londelius") was President and Chief
27 Executive Officer of Unitech until December 15, 1995, and was a director of the
28

1 Company until December 20, 1995, when he resigned simultaneously with the public
2 disclosure that the Company's reported financial results may have been materially
3 misleading.

4 8. Defendant Kenneth F. Lind ("Lind") was Unitech's Chief Operating Officer
5 until December 15, 1995 and its President and a member of the Company's Board of
6 Directors until December 20, 1995, when he resigned simultaneously with the public
7 disclosure that the Company's reported financial results may have been materially
8 misleading.

9 9. Defendant Paul Janssens-Lens ("Janssens-Lens") was at all relevant times
10 a director of Unitech, and since Fall 1994, was the head of Patriot Growth Fund, L.P.
11 ("Patriot"), a Delaware limited partnership holding more than 20% of the voting stock
12 of Unitech.

13 10. Defendant P. Blake Willison ("Willison") was at all relevant times the Vice
14 President of Unitech.

15 11. Defendant John Epert ("Epert") was at all relevant times a director of
16 Unitech and a partner of Patriot.

17 12. Defendant Jonathan L. Cannon ("Cannon") was the Chief Financial Officer
18 of Unitech from the beginning of the Class Period through September, 1995.

19 13. Defendant Anthony J. Collura ("Collura") has, since September, 1995,
20 been the Chief Financial Officer of Unitech.

21 14. The Defendants listed above in paragraphs 7-13 are sometimes referred to
22 collectively hereafter as the "Individual Defendants."

23 15. Defendant Semple & Cooper, P.L.C. ("S&C") is a certified public
24 accounting firm headquartered in Phoenix, Arizona. S&C is engaged in the business of
25 providing accounting, auditing, consulting, and tax advisory services. S&C was the
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1 independent auditor for Unitech until March 31, 1995, when S&C resigned as the
2 Company's principal accountants. S&C issued an unqualified opinion on Unitech's
3 financial statements for the fiscal year ended October 31, 1994. S&C personnel were
4 frequently present at Unitech's corporate headquarters throughout the Class Period, and
5 had access to and knowledge of Unitech's confidential corporate financial, operating and
6 business procedures and information.
7

8 16. Defendants are liable, jointly and severally, as direct and/or indirect
9 participants in the wrongs complained of herein or as controlling persons of persons who
10 violated the Exchange Act. Defendants had a duty to establish appropriate internal
11 accounting controls in order to obtain materially accurate and truthful information with
12 respect to Unitech's operations and financial condition, to promptly disseminate
13 materially accurate and truthful information with respect to Unitech's operations and
14 financial condition and/or to cause and direct that such information be disseminated, to
15 promptly correct any previously disseminated information that had become materially
16 misleading to the market, and to disclose any trends that would materially affect the
17 present and future operating results of Unitech. As a result of Defendants' failures to
18 do so, the market price of Unitech common stock was artificially inflated during the
19 Class Period, causing injury to Plaintiffs and the Class.
20

21 17. Defendants participated in and knowingly or recklessly pursued the
22 unlawful conduct alleged herein in order to enrich themselves at the public's expense,
23 and/or to recover lucrative fees for professional services, and/or to protect emoluments
24 and privileges of corporate office, to enhance and/or maintain the value of their stock
25 holdings in Unitech, and/or to sell large blocks of Unitech stock at artificially inflated
26 prices, and/or to avoid embarrassment and loss of prestige.
27
28

CLASS ACTION ALLEGATIONS

1
2 **18. (a) Plaintiffs bring this action as a class action pursuant to Rule 23(a)**
3 **and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a Class consisting of**
4 **all persons who purchased the common stock of Unitech from February 13, 1995 (the**
5 **date the Company filed its 10-K for its fiscal year ended October 31, 1994) through**
6 **December 21, 1995, inclusive. Excluded from the Class are Unitech, the Defendants,**
7 **members of their immediate families, any entity in which any Defendant has a controlling**
8 **interest, and the legal affiliates, representatives, heirs, controlling persons, successors,**
9 **and predecessors in interest or assigns of any Defendant.**

10
11 **(b) Because over 6.4 million shares of the Company's common stock**
12 **were outstanding and because the Company's common stock was actively and**
13 **efficiently traded on the NASDAQ over-the-counter exchange during the Class Period,**
14 **the members of the Class are so numerous that joinder of all members is impracticable.**
15 **While the exact number of Class members can only be determined by appropriate**
16 **discovery, Plaintiffs believe that Class members are geographically dispersed and number**
17 **in the hundreds.**

18
19 **(c) Plaintiffs' claims are typical of the claims of the other members of**
20 **the Class because Plaintiffs and all of the Class members sustained damages which arise**
21 **out of the Defendants' wrongful conduct.**

22 **(d) Plaintiffs will fairly and adequately protect the interests of the Class**
23 **members and have retained counsel who are experienced and competent in class and**
24 **securities litigation. Plaintiffs have no interests which are contrary to or in conflict with**
25 **those of the members of the Class they seek to represent.**

26
27 **(e) A class action is superior to all other available methods for the fair**
28 **and efficient adjudication of this controversy. Plaintiffs know of no difficulty to be**

1 encountered in the management of this action that would preclude its maintenance as
2 a class action.

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

7
8 i) Whether federal and state securities laws were violated by
9 Defendants' acts as alleged herein;

10 ii) Whether the Company's publicly disseminated financial
11 statements during the Class Period omitted and/or misrepresented material facts and
12 whether Defendants breached any duty to convey material facts or to correct material
13 facts previously disseminated;

14 iii) Whether the Company lacked appropriate internal accounting
15 and auditing controls;

16 iv) Whether Defendants participated in and pursued the common
17 course of conduct complained of;

18 v) Whether the Defendants acted knowingly or recklessly in
19 omitting and/or misrepresenting material facts;

20 vi) Whether the Defendants were in a position of actual or potential
21 control of Unitech and were culpable participants in the alleged wrongful conduct;

22 vii) Whether the market prices of Unitech common stock during the
23 Class Period were artificially inflated due to the material nondisclosures and/or
24 misrepresentations complained of herein; and
25

26 viii) Whether the members of the Class have sustained damages
27 and, if so, what is the appropriate measure of damages.
28

1 **FACTUAL ALLEGATIONS**

2 **Background**

3 19. Established in 1987, Unitech makes batteries, chargers, and other
4 accessories for cellular phones, computers and other electronic products.

5 20. In early 1994, Brett Leon Bouchy ("Bouchy") of the now-closed Franklin
6 Lord stock brokerage firm in Scottsdale, Arizona, was involved in handling private
7 placement of Unitech stock. Bouchy, in June 1994, formed Patriot, a Delaware limited
8 partnership, which holds in excess of 20% of Unitech's common stock. Bouchy was
9 the President and Secretary of Appletree Capital Management Corp. ("Appletree"),
10 Patriot's general partner.
11

12 21. In the Fall of 1994, Defendant Janssens-Lens replaced Bouchy as the head
13 of Appletree because the National Association of Securities Dealers, which runs the
14 NASDAQ market exchange, would not allow Unitech to trade on the exchange given
15 Bouchy's record of securities violations.
16

17 22. In November, 1994, Unitech shares were first sold to the public in an initial
18 public offering ("IPO") of 2.5 million shares at \$6.00 per share. In the November 16,
19 1994 Prospectus for the IPO, it was represented that the Company anticipated, based
20 on its plans and assumptions at the time, that "the proceeds of [the] Offering, together
21 with projected cash flow from operations, will be sufficient to satisfy its contemplated
22 cash requirements for at least 18 months following the consummation of" the IPO
23 (Prospectus, p.8; see also id. at p.13).
24

25 23. On November 16, 1994, Unitech stock began trading on the NASDAQ
26 national market system under the symbol "UTII". Since going public, Unitech has
27 consistently reported growth in sales and earnings, causing its stock price to rise from
28 \$6 per share in the November 1994 IPO to a high of \$16.50 per share in August, 1995.

1 Defendants throughout that time and during the entire Class Period led securities
2 analysts and the investing public to believe that Unitech had been and would continue
3 to be profitable and growing, with sufficient sources of capital, and no liquidity
4 problems.

5
6 **1994 Form 10-K and Annual Report**

7 24. On February 13, 1995, the beginning of the Class Period, Defendants filed
8 with the SEC Unitech's Form 10-K for the fiscal year ended October 31, 1994 (the
9 "1994 Form 10-K"). The 1994 Form 10-K was signed on February 9, 1995 by, among
10 others, Defendants Londelius, Lind, Cannon, Willison, Epert and Janssens-Lens. The
11 1994 Form 10-K reported significant growth in Unitech's sales and earnings, with
12 revenues for fiscal year 1994 of \$10,332,053 (a 26% increase over the prior year), net
13 income of \$1,057,159, and earnings per share of \$0.20 (a 173% increase over the prior
14 year). The 1994 Form 10-K also reported that Unitech management believed that cash
15 flow from operations, together with the net proceeds of the IPO, "will provide sufficient
16 capital and liquidity for the next 18 months." (p.10). Defendants reiterated these
17 statements in Unitech's Annual Report to Shareholders.
18

19 25. As set forth below, the above statements in the 1994 Form 10-K and
20 Annual Report to Shareholders were materially false and misleading. In truth, the
21 Company's sales, revenues, net income and earnings were materially overstated
22 because, among other things, they included consignment arrangements improperly
23 booked as sales, and due to the lack of internal accounting controls, lacked any
24 reasonable basis in fact. In fact, the Company has disclosed, as set forth in detail
25 below, that it has been advised by subsequent auditors that information had come to the
26 auditors' attention which, if further investigated, might materially impact the fairness or
27 reliability of the Company's fiscal 1994 financial statements. The Defendants
28

1 furthermore violated Item 303(a) of Regulation S-K, 17 C.F.R. § 229.303(a) by failing
2 to disclose in the 1994 Form 10-K known trends or uncertainties regarding Unitech's
3 true capital and liquidity condition.

4 **S&C's Statements Concerning**
5 **Unitech's 1994 Financial Statements**

6 26. Included in the 1994 Form 10-K and in the Annual Report to Shareholders
7 was a "clean" or unqualified audit opinion prepared by S&C. In the audit opinion, dated
8 January 10, 1995, S&C wrote:

9 We have audited the accompanying balance sheets of
10 Unitech Industries, Inc. as of October 31, 1994 and 1993,
11 and any related statements of operations, changes in
12 stockholders' equity, and cash flows for the years then
13 ended. These financial statements are the responsibility of
14 the Company's management. Our responsibility is to
15 express an opinion on these financial statements based on
16 our audits.

17 We conducted our audits in accordance with generally
18 accepted auditing standards. Those standards require that
19 we plan and perform the audit to obtain reasonable
20 assurance about whether the financial statements are free of
21 material misstatement. An audit includes examining, on a
22 test basis, evidence supporting the amounts and disclosures
23 in the financial statements. An audit also includes assessing
24 the accounting principles used and significant estimates
25 made by management, as well as evaluating the overall
26 financial statement presentation. We believe that our audits
27 provide a reasonable basis for our opinion.

28 In our opinion, the financial statements referred to above
present fairly, in all material respects, the financial position
of Unitech Industries, Inc. as of October 31, 1994 and
1993, and the results of its operations, changes in
stockholders' equity, and its cash flows for the years then
ended, in conformity with generally accepted accounting
principles.

26 27. S&C's audit opinion was materially false and misleading in that S&C failed
27 to examine sufficient competent evidential matter to ensure that Unitech had complied
28 with appropriate accounting principles and in that S&C, in performing their audit of the

1 Company's financial statements, failed to comply with generally accepted auditing
2 standards ("GAAS") so that Unitech's financial statements did not fairly present, in all
3 material respects, the Company's financial condition in accordance with generally
4 accepted auditing principles ("GAAP"). Thus, S&C knew or recklessly disregarded that
5 Unitech's 1994 financial statements were materially false and misleading when it issued
6 its unqualified or "clean" opinion.
7

8 28. S&C violated GAAS by, inter alia, issuing an unqualified opinion with
9 respect to Unitech's 1994 financial statements when application of proper auditing
10 procedures would have demonstrated that Unitech's revenues, earnings and assets were
11 materially overstated and not reported in conformity with GAAP. By virtue of its
12 knowledge of Unitech's affairs and/or access to Unitech's management, books and
13 records, S&C either knew of or recklessly disregarded the material risks and
14 contingencies that led to the Company inflating its revenues and income at the relevant
15 times. By way of examples, S&C allowed Unitech to treat consignment arrangements
16 as sales; S&C knew that Unitech lacked effective internal financial and accounting
17 controls necessary to insure the integrity of its assets, financial records and resulting
18 financial statements, such that all assets, revenue and income from transactions
19 reported by Unitech were materially misstated; and S&C knew that Unitech did not have
20 management systems or financial and accounting controls adequate for management to
21 monitor, determine or accurately report the financial performance of the Company on a
22 timely basis.
23

24 29. S&C either knew or recklessly disregarded that Unitech's 1994 financial
25 statements had not been audited in accordance with GAAS and were materially
26 inaccurate. S&C violated the following portions of GAAS:
27
28

1 (a) GAAS Standard No. 1 requires that the examination be performed
2 by a person or persons having adequate technical training and proficiency as an auditor.
3 Unitech's improper accounting actions and its lack of internal accounting and auditing
4 controls would have been discovered by adequately trained and proficient auditors.

5 (b) GAAS Standard No. 2 requires that an auditor maintain an
6 independent mental attitude while conducting an audit, and that in conducting the audit
7 the auditor not favor the interests of the client or any other party. S&C violated this
8 standard by accepting the representations of Unitech representatives without insistence
9 upon the proper evidentiary support and the establishment of the proper internal
10 controls.
11

12 (c) GAAS Standard No. 3 requires that an auditor exercise due
13 professional care in performing the examination and in preparing the report. S&C
14 violated this standard by, among other things, ignoring the lack of adequate internal
15 controls of Unitech and thereby accepting the Company's reporting of consignment
16 transactions as sales and accounts receivable.
17

18 (d) GAAS Standard of Fieldwork No. 2 requires a sufficient
19 understanding of the internal control structure to plan and conduct the audit. S&C
20 violated this standard by planning and conducting the audit without recognizing, or
21 despite its knowledge of, the lack of appropriate internal controls at Unitech.

22 (e) GAAS Standard of Fieldwork No. 3 requires that sufficient
23 competent evidentiary matter be obtained through inspection, observation, inquiries and
24 confirmations in order to afford a reasonable basis for an opinion regarding the financial
25 statements under examination. This standard was violated by S&C because, as
26 ascertained by Unitech's subsequent accountant, there was insufficient documentation
27 upon which to base representations regarding Unitech's true financial condition. S&C
28

1 failed to properly assess the internal control environment, especially as it applied to
2 sales, revenues, accounts receivables and inventory. This failure to correctly assess the
3 internal control environment had a direct bearing on the audit planing and subsequent
4 audit testing.

5 (f) GAAS Standard of Reporting No.1 requires that an audit report must
6 state whether the financial statements are presented in accordance with GAAP. As
7 alleged in greater detail below, S&C failed to comply with GAAP in reporting Unitech's
8 revenues, earnings, and assets throughout the Class Period.

9 (g) GAAS Standard of Reporting No. 3 requires that informative
10 disclosures in the financial statements are to be regarded as reasonably adequate unless
11 otherwise stated in the audit report. As alleged above, Unitech's 1994 financial
12 statements did not present a true financial statement of the Company's financial
13 condition due to Unitech's misapplication of revenue recognition policies and overstating
14 assets, revenues and net income. Thus, S&C violated this principal of GAAS in its
15 performance of its audit of Unitech's 1994 financial statements.

16 (h) GAAS Standard of Reporting No. 4 requires that when an opinion
17 on the financial statements as a whole cannot be expressed, for reasons including
18 violations of GAAP, an unqualified opinion may not be issued. As alleged above, an
19 opinion on Unitech's financial statements could not properly be given because of the
20 lack of sufficient competent evidence upon which to base such an opinion, the lack of
21 appropriate internal controls, and the misstatement of revenues, net income and assets
22 in Unitech's financial statements. Therefore, by issuing an unqualified opinion on
23 Unitech's 1994 financial statements, S&C violated this principle of GAAS.

24 30. In the course of rendering its unqualified opinion on Unitech's 1994
25 financial statements, S&C knew that it was required to adhere to each of the above-
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1 described standards of GAAS, including the requirement that the financial statements
2 comply in all respects with GAAP. S&C, in issuing its unqualified opinion, knew that by
3 doing so it was engaging in a gross departure from GAAP, or issued such opinion with
4 reckless disregard for whether or not GAAP was being complied with.

5
6 31. Specifically, S&C knew or recklessly disregarded that its actions
7 constituted violations of the following principles of GAAP, among others:

8 (a) The principle of fair presentation, because the 1994 financial
9 statements were not presented in conformity with GAAP (Statement 4 of the
10 Accounting Principles Board ("APB Statement No. 4"), ¶¶ 109, 189, 191);

11 (b) The principles of adequacy and fairness of disclosure, because
12 information was not presented in a way that facilitated understanding and avoided
13 erroneous implications (APB Statement No. 4, ¶¶ 39, 81, 104, 106);

14 (c) The principle that a conservative approach is appropriate, providing
15 early recognition of unfavorable events and minimizing the amount of net assets and
16 income reported (APB Statement No. 4, ¶¶ 28, 35, 171);

17 (d) The principle that the financial information presented should be
18 complete (APB Statement No. 4, ¶¶ 23, 94, 106);

19 (e) The principle that the economic substance of transactions should
20 be emphasized rather than formal considerations (APB Statement No. 4, ¶¶ 25, 35,
21 127);

22 (f) The principles concerning the earnings process, revenue recognition
23 and realization (APB Statement No. 4, ¶¶ 28, 134, 147, 148, 150-153);

24 (g) The principle of informed judgment (APB Statement No. 4, ¶¶ 25,
25 35, 124, 173-174);

26 (h) The principle of materiality (APB Statement No. 4, ¶¶ 25, 128);
27
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1 (i) The principle of relevance (APB Statement No. 4, ¶¶ 23, 88, 106);
2 (j) The principle of reliability (APB Statement No. 4, ¶¶ 77, 107-109);
3 (k) The principle of understandability (APB Statement No. 4, ¶¶ 23, 89,
4 106);

5 (l) The principle of verifiability (APB Statement No. 4, ¶¶ 23, 35, 90);
6 and
7

8 (m) The principle concerning the presentation of receivables and the
9 collectability thereof (Statement No. 5 of the Financial Accounting Standards Board --
10 SFAS No. 5).

11 32. As detailed above, each of the above violations of GAAP, GAAS and the
12 principles of fair reporting, and the failures to carry out its responsibilities with respect
13 to reviews, evaluations, and engagements to insure the reliability and integrity of
14 Unitech's policies and procedures as they relate to the financial statements, was known
15 to or recklessly disregarded by S&C in the conduct of its audit of Unitech's 1994
16 financial statements.
17

18
19 **First Quarter Reports**

20 33. On or about March 16, 1995, the Individual Defendants filed with the SEC
21 Unitech's Form 10-QSB for the quarter ended January 31, 1995 (the "First Quarter Form
22 10-Q"). The First Quarter Form 10-Q was signed on March 15, 1995 by Defendants
23 Londelius and Cannon. The First Quarter Form 10-Q reported increased revenues for the
24 quarter of \$3,011,657, increased net income of \$264,423, and earnings per share of
25 \$.048, compared to revenues of \$3,011,657, net income of \$192,052, and pro forma
26 earnings per share of \$0.035 in the prior year.
27
28

1 **34. Also on March 16, 1995, the Company, by press release, announced its**
2 **financial results for the first quarter ended January 31, 1995. According to the March**
3 **16, 1995 announcement, net income for the first quarter rose 38 percent on a 34**
4 **percent increase in sales, reportedly "as a result of higher sales to distribution customers**
5 **and slightly improved gross margins."**

6
7 **35. Defendant Londelius, commenting in the March 16, 1995 press release on**
8 **the first quarter results, reportedly stated, "We're pleased with our first quarter results**
9 **because it's historically a slower quarter in sales.... We expect sales in the second**
10 **quarter to continue to be strong...."**

11 **36. As set forth below, the above statements in the First Quarter Form 10-Q**
12 **and in the March 16, 1995 press release were materially false and misleading. In truth,**
13 **the Company's sales, revenues, net income and earnings were materially overstated**
14 **because, among other things, they included consignment agreements improperly booked**
15 **as sales, and due to the lack of internal accounting and auditing controls, lacked any**
16 **reasonable basis in fact. For the same reasons, there was no reasonable basis for**
17 **Londelius' publicly stated expectations of continuing "strong" sales. In fact, the**
18 **Company has admitted that its previous interim financial statements, including the First**
19 **Quarter Form 10-Q, may be materially misstated, and that it will take until completion**
20 **of its year-end audit to determine the extent of the overstatements. Defendants also**
21 **failed to disclose the liquidity problems or cash flow difficulties being experienced or that**
22 **were expected by the Company in violation of Rule 10b-5 and Item 303(b) of Regulation**
23 **S-K, 17 C.F.R. § 229.303(b).**

24
25
26 **37. On or about April 6, 1995, Unitech reported in a Form 8-K filed with the**
27 **SEC that on March 31, 1995, S&C had resigned as the Company's principal accountants**
28 **to audit the Company's financial statements. Unitech stated in the April 6, 1995 8-K**

1 that "[d]uring the Company's two most recent fiscal years ended October 31, 1993 and
2 1994, and through the date of this report, there were no disagreements with S&C on
3 any matters of accounting principles or practices, financial disclosures or auditing scope
4 or procedure." The Company further stated that it had selected Coopers & Lybrand,
5 L.L.P. ("C&L") to replace S&C as its principal independent accountants.
6

7 Second Quarter Reports

8 38. On June 19, 1995, the Company, by press release, announced its results
9 for the second quarter ended April 30, 1995. The Company reported a 97 percent
10 increase in its net income and a 140 percent jump in revenues for the second quarter.
11 Specifically, Unitech reported net income of \$395,405, or \$.07 per share, compared to
12 net income of \$200,949, and pro forma earnings of \$.03 a share for the same period
13 in 1994. The Company reported that its revenues increased to about \$5.9 million for
14 its second quarter of 1995, compared with about \$2.5 million for that quarter in 1994.
15

16 39. Commenting in the June 19, 1995 press release on the second quarter
17 results, Defendant Londelius emphasized the benefits of the Company's acquisition of
18 two companies, Hericson International, Ltd. ("Hericson") and Solidex, Inc., ("Solidex"),
19 which Londelius said "could add approximately \$24 million to Unitech's revenues during
20 the next 12 months." Londelius further stated, "[w]e expect our revenues for this year
21 to increase by 200 to 300% compared to last year," and concluded that "we are very
22 optimistic about the future of Unitech Industries. The actions we've taken in the first
23 half of this year strategically position the company long-term to be a leader in
24 developing, designing and manufacturing accessory products for the cellular, computer,
25 and video markets, as well as other high growth industries."
26

27 40. On or about June 20, 1995, the Individual Defendants filed with the SEC
28 Unitech's Form 10-QSB for the quarter ended April 30, 1995 (the "Second Quarter Form

1 10-Q"). The Second Quarter Form 10-Q was signed on June 19, 1995 by Defendants
2 Londelius and Cannon. The Second Quarter Form 10-Q reported that Unitech's revenues
3 for the quarter had increased 140% from the same period in 1994, to \$5,896,572, and
4 net income increased 97% to \$395,405 or \$.065 per share.

5
6 41. As set forth below, the above statements in the June 19, 1995 press
7 release and in the Second Quarter Form 10-Q were materially false and misleading. In
8 truth, the Company's sales, revenues, net income and earnings were materially
9 overstated, because among other things, they included consignment agreements
10 improperly booked as sales, and due to the lack of internal accounting and auditing
11 controls, lacked any reasonable basis in fact. For the same reasons, there was no
12 reasonable basis for Londelius' positive description of the benefits of Unitech's
13 acquisitions and the Company's future prospects, nor his projection of a 200 to 300%
14 revenue increase. In fact, the Company has admitted that its previous interim financial
15 statements, including the Second Quarter Form 10-Q, may be materially misstated, and
16 that it will take until completion of its year-end audit to determine the extent of the
17 overstatements. Defendants also failed to disclose the liquidity problems or cash flow
18 difficulties being experienced or expected by the Company in violation of Rule 10b-5 and
19 Item 303(b), of Regulation S-K, 17 C.F.R. § 229.303(b).
20

21 42. On or about August 9, 1995, Defendant Lind filed with the SEC a Form 4,
22 reporting the sale of all of his Unitech holdings (5,000 shares) on July 25, 1995 at a
23 price of \$13.12 per share. Lind, who had purchased those shares at a price of \$3.60
24 per share on December 1, 1994, thus reaped \$47,600 in profits from the sale of his
25 Unitech stock.
26
27
28

Third Quarter Reports

1
2 **43. On or about September 19, 1995, the Individual Defendants filed with the**
3 **SEC Unitech's Form 10-QSB for the quarter ended July 31, 1995 (the "Third Quarter**
4 **Form 10-Q"). The Third Quarter Form 10-Q was signed on September 18, 1995 by**
5 **Defendants Londelius and Collura. The Third Quarter Form 10-Q reported that Unitech**
6 **had reported revenues for the quarter of \$9,901,413, which represented a 344%**
7 **increase, and a 585% increase in net income to \$584,349 or earnings per share of**
8 **\$.09.**
9

10 **44. Also on September 19, 1995, Unitech announced in a press release the**
11 **same third quarter results. The Company attributed the increase in net income to higher**
12 **sales of accessory products, as well as to Unitech's second quarter acquisition of**
13 **Hericson and Solidex.**
14

15 **45. In connection with the September 19, 1995 announcement, Defendant**
16 **Londelius stated, "Sales and earnings were strong for the third quarter, as we continue**
17 **to see growth related to our acquisitions, as well as expansion in our primary business**
18 **of cellular phone accessories." Londelius further stated that "With the integration of the**
19 **acquisitions [of Hericson and Solidex] substantially behind us, we expect continued**
20 **record growth in both top and bottom line numbers in the fourth quarter and in 1996."**
21

22 **46. As set forth below, the above statements in the Third Quarter Form 10-Q**
23 **and in the September 19, 1995 press release were materially false and misleading. In**
24 **truth, Unitech's sales, revenues, net income and earnings were materially overstated,**
25 **because among other things they included consignment agreements improperly booked**
26 **as sales, and due to the lack of internal accounting and auditing controls, lacked any**
27 **reasonable basis in fact. For the same reasons, there was no reasonable basis for**
28 **Londelius' characterization of Third Quarter Sales as "strong," nor for his stated**

1 expectations of "continued record growth" for the fourth quarter and for 1996. In fact,
2 the Company has admitted that its previous interim financial statements, including the
3 Third Quarter Form 10-Q, may be materially misstated, and that it will take until
4 completion of its year-end audit to determine the extent of the overstatements. The
5 Individual Defendants also failed to disclose the true liquidity problems and cash flow
6 difficulties being experienced or expected by the Company, in violation of Rule 10b-5
7 and Item 303(b) of Regulation S-K, 17 C.F.R. § 229.303(b). In addition, the Individual
8 Defendants failed to disclose that the Company was simultaneously restating downward
9 its Second Quarter Report.
10

11 Amended Second Quarter Reports

12 47. On or about September 19, 1995, the Individual Defendants filed with the
13 SEC Unitech's Form 10-QSB/A (the "Form 10-Q/A"), amending the Second Quarter Form
14 10-Q and restating the Company's Second Quarter financials. The Form 10-Q/A was
15 signed on September 18, 1995 by Defendants Londelius and Collura. The Form 10-Q/A
16 restated Unitech's previously reported revenue for the Second Quarter of 1995 (ended
17 April 30, 1995) from \$5,896,572 to \$5,333,264, net income from \$395,405 to
18 \$124,822, and earnings per share from \$.065 to \$.02. No explanation was given for
19 the changes.
20

21 48. As set forth below, the above statements in the Form 10-Q/A were
22 materially false and misleading. In truth, the Company's sales, revenues, net income
23 and earnings were materially overstated because they included consignment agreements
24 improperly booked as sales and, due to the lack of internal controls, lacked any
25 reasonable basis in fact. In fact, the Company has admitted that its previous interim
26 financial statements, including the Form 10-Q/A, may be materially misstated, and that
27 it will take until completion of its year-end audit to determine the extent of the
28

1 overstated. The Individual Defendants also failed to disclose the liquidity problems
2 or cash flow difficulties being experienced or expected by the Company in violation of
3 Rule 10b-5 and Item 303(b) of Regulation S-K, 17 C.F.R. § 229.303(b).

4 **Defendants' Additional Misstatements and Omissions**

5 49. In an October 15, 1995 article published in The Arizona Republic,
6 Defendants touted Unitech's current and future business prospects, with Londelius
7 boasting that "We're the only publicly traded U.S. manufacturer of accessory products
8 for cellular phones," and "We're one of the two largest manufacturers of video
9 rewinders in the world."
10

11 50. Although the Arizona Republic article questioned whether Unitech had
12 experienced difficulties in collecting debts and selling products, pointing to an increase
13 in the Company's accounts receivable and inventories, in an effort to disguise the
14 Company's true financial condition, Defendant Lind was quoted as stating that "these
15 increases [in inventories and accounts receivable] come in anticipation of the holiday
16 season, the busiest time of year for sales to mass merchandisers," and that "[a]s we
17 close the year, you'll see inventories and receivables drop dramatically." [emphasis
18 added].
19

20 51. Similarly, Defendant Collura, in a September 27, 1995 interview for the
21 Arizona Republic, stated that Unitech was "vibrant" and had a minimum of debt.

22 52. These statements by the Individual Defendants made to and/or reported
23 by the Arizona Republic were materially false and misleading. In truth, Unitech was
24 experiencing undisclosed cash flow and liquidity problems and, due to its lack of internal
25 accounting and auditing controls, there was no reasonable basis for its assertions that
26 accounts receivables and inventory build-ups were mere seasonal fluctuations that would
27
28

1 "drop dramatically" as the year closed, or that Unitech's situation was "vibrant" with
2 a minimal amount of debt.

3 53. Shortly after making these materially false and misleading statements,
4 Defendants Willison, Janssens-Lens, and Londelius sold large blocks of their Unitech
5 stock at artificially inflated prices. Specifically, on October 17, 1995, Defendant
6 Willison sold 5,000 shares of his Unitech stock at a price of \$13.75 per share, reducing
7 his total holdings to 3,000 shares. On the same day, Defendant Janssens-Lens sold
8 41,250 shares of Unitech stock at a price of \$13.24 per share. Two days later, on
9 October 19, 1995, Defendant Londelius sold almost half of his 45,000 share stake in
10 Unitech, at prices ranging from \$13.41 to \$14.00 per share.

12 54. On December 15, 1995, PR Newswire reported that Unitech announced
13 that day that its Board of Directors had approved the appointment of Gerald "Jerry" C.
14 Bellis to Chief Executive Officer and Chief Operating Officer, and that former Chief
15 Operating Officer Lind would become President. The Company reported that the
16 changes came as a result of the decision by Defendant Londelius to retire. In the same
17 PR Newswire, it was reported that Londelius said that "This is a very positive move for
18 Unitech Industries and for myself. During my tenure, Unitech was transformed into a
19 publicly-held highly competitive, growing company in the booming wireless, computer
20 and home entertainment accessories market."

22 55. Londelius' statement was materially false and misleading. In truth, rather
23 than being a "highly competitive, growing" company, Unitech was in fact on the brink
24 of bankruptcy and was suffering substantial losses and liquidity problems.
25
26
27
28

1 **Misrepresentations and Omissions Regarding Funding**

2 56. The Individual Defendants knew that Unitech's access to reliable sources
3 of working capital was essential to convey to investors the impression that Unitech was
4 a rapidly growing, financially sound company with sufficient sources of capital. To this
5 end, the Individual Defendants used false and misleading financial statements to obtain
6 the Company's credit facilities, as is detailed below.
7

8 57. On April 26, 1995, the Individual Defendants caused the Company to file
9 a Form 8-K (the "April 8-K"). The April 8-K reported, among other things, that Unitech
10 had obtained a line of credit from Imperial Bank totaling \$6,500,000 and that Unitech
11 had obtained an increase to \$5,000,000 and an extension until April 30, 1997 of its line
12 of credit with Merrill Lynch Business Financial Services ("Merrill Lynch"). The April 8-K
13 was materially false and misleading because, among other things, it failed to disclose
14 that the credit agreements with Merrill Lynch and Imperial Bank were obtained only by
15 Unitech's submission of materially false and misleading financial statements.
16

17 58. Unitech's Second Quarter Form 10-Q contains a section entitled "Unitech
18 Industries, Inc. Notes to Financial Statements (unaudited)" ("Second Quarter Notes").
19 Subsection 3 of the Second Quarter Notes, entitled "Notes Payable," states, among
20 other things, that:

21 The Company had a \$1,350,000 revolving line of credit with Merrill Lynch
22 Business Financial Services, Inc. The line of credit was payable April 30,
23 1995 with an interest rate of prime plus .75%; collateralized by
24 substantially all corporate assets. In April, 1995 the line was increased to
25 \$5,000,000, the maturity extended to April, 1997 and the interest rate
26 changed to either the 30 day commercial rate or the one month LIBOR rate
27 (at the Company's option), plus 2.65%. The Company had a term loan
28 with Merrill Lynch Business Financial Services, Inc. The loan was payable
April 30, 1995, with an interest rate of prime plus 1.35%. Substantially
all payments were prepaid. The total outstanding balance was due at
maturity; collateralized by substantially all assets of the Company.

1 In the Section of the Second Quarter Form 10-Q entitled "Liquidity and Capital
2 Resources," it was similarly represented that the Company obtained an increase and
3 extension of its line of credit with Merrill Lynch, to \$5,000,000 and until April 30,
4 1997, respectively. These statements in the Second Quarter 10-Q were materially false
5 and misleading because they failed to disclose that Unitech obtained the credit increase,
6 extension and advances based upon materially false and misleading financial statements.
7

8 59. Unitech's Form 10-Q/A also contains a section entitled "Liquidity and
9 Capital Resources". The section on Liquidity and Capital resources states, among other
10 things, that:

11 On April 12, 1995, the Company obtained a line of credit from Imperial
12 Bank totaling \$6,500,000. The line was obtained in conjunction with the
13 Solidex acquisition. The credit facility bears interest at prime plus 1% to
14 1-1/2% and is secured by the accounts receivable and inventories of the
Solidex acquisition. The line of credit matures on July 31, 1995 and is
used for working capital.

15 * * *

16 On April 21, 1995, the Company obtained an increase and extension of its
17 line of credit with Merrill Lynch Business Financial Services. The facility
18 was increase to \$5,000,000 and extended to April 30, 1997. The line
19 bears interest at either the 30-day Commercial Paper rate or the one-
month LIBOR rate (at the Company's option) plus 2.65%. The line is
20 secured by accounts receivable and inventories [sic] is used for working
capital.

21 The above statements were materially false and misleading because they failed to
22 disclose that Unitech obtained the credit increase, extension and advances based upon
23 materially false and misleading financial statements.

24 60. Similarly, Unitech's Third Quarter Form 10-Q contains a section entitled
25 "Liquidity and Capital Resources," in which it was represented that:

26 On April 12, 1995, the Company obtained a line of credit from Imperial
27 Bank totaling \$6,500,000. The line was obtained in conjunction with the
28 Solidex acquisition. The credit facility bears interest at prime plus 1% to
1-1/2% and is secured by the accounts receivable and inventories of the

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Solidex acquisition. The line of credit matures on March 31, 1996 and is used for working capital.

*** * ***

On April 21, 1995, the Company obtained an increase and extension of its line of credit with Merrill Lynch Business Financial Services. The facility was increased to \$5,000,000 and extended to April 30, 1997. The line bears interest at either the 30-day Commercial Paper rate or the one-month LIBOR rate (at the Company's option) plus 2.65%. The line is secured by accounts receivable and inventories [sic] is used for working capital.

The above statements were materially false and misleading because they failed to disclose that Unitech obtained the credit increase, extension and advances based upon materially false and misleading financial statements.

61. The Merrill Lynch revolving line of credit and term loan described above contain provisions for, among other things, Unitech's submission, on a timely basis, of its audited year-end financial statements, statement for profit and loss for each quarter, and a balance sheet as of the close of each fiscal quarter, all certified by Unitech's Chief Financial Officer. The Individual Defendants knowingly or recklessly failed to submit accurate financial statements to Merrill Lynch because they knew that doing so would place Unitech in default under its loans and lines of credit, thus destroying the false image of success and growth the Individual Defendants sought to create for Unitech.

62. In fact, in the action Merrill Lynch Business Financial Services, Inc. v. Unitech Industries, Inc., Case No. CV96-01218 (Superior Ct., Maricopa County, filed January 23, 1996), Merrill Lynch has confirmed that in issuing the loan, making advances under the line of credit, and increasing the amount of the loan, it relied on Unitech's financial information, which Unitech had falsely represented to be accurate. Moreover, in its Notice of Default dated January 18, 1996, Merrill Lynch, in notifying Unitech of its defaults under the loan agreements, stated that one of the events of

1 default was the fact that "the financial information submitted to [Merrill Lynch] for the
2 periods ending January 31, 1995, April 30, 1995, and July 31, 1995 were materially
3 misstated."

4 **Insider Sales**

5 63. While the Individual Defendants were misleading the investing public about
6 Unitech's performance and financial condition, they engaged in insider sales of shares
7 of their own Unitech stock during the Class Period at artificially inflated prices, thereby
8 reaping over \$950,000 in proceeds, as follows:
9

10

<u>Insider</u>	<u>Sale Date</u>	<u># Shares Sold</u>	<u>Price Per Share</u>	<u>Total Proceeds</u>
11 1. Kenneth F. Lind 12 (Officer and Director)	07/25/95	6,000	\$13.12	\$ 65,600
13 2. Paul Janssens-Lens 14 (Director)	10/17/95	41,250	\$13.24	\$ 546,150
15 3. P. Blake Willison 16 (Vice President)	10/17/95	5,000	\$13.75	\$ 68,750
17 4. John F. Londelius 18 (President & CEO)	10/19/95 10/19/95	10,000 <u>10,000</u> 20,000	\$13.41 \$14.00	\$ 134,100 <u>\$ 140,000</u> \$ 274,100
	TOTAL	<u>71,250</u>	TOTAL	<u>\$ 954,800</u>

19

20 Defendant Epert also reportedly sold a significant number of shares of Unitech common
21 stock after October 1, 1995 and before the end of the Class Period.

22 64. Based on their positions as officers and directors within the Company, the
23 Individual Defendants were privy to confidential information concerning Unitech's lack
24 of accounting procedures, cash flow difficulties, inflated financial performance, and/or
25 business and earnings prospects -- as is evidenced by their insider sales of Unitech
26 stock. Notwithstanding their duty to refrain from trading in the Company's common
27 stock under these circumstances, the Individual Defendants indicated above sold stock
28 during the Class Period and prior to the public disclosure of the material adverse facts
described herein.

1 **Disclosure**

2 **65. Given the Defendants' prior consistently positive statements and Unitech's**
3 **reported pattern of consistent growth, the market was stunned when, on December 20,**
4 **1995, the Company, without warning, announced by press release that it would record**
5 **a significant net loss for the fiscal year ended October 31, 1995, and that as a result**
6 **of the magnitude of this loss, the Company believed that financial results reported in its**
7 **Quarterly Reports on Form 10-Q for the last three fiscal quarters ended July 3, 1995,**
8 **April 30, 1995, and January 31, 1995, may have been materially misstated.**

9
10 **66. The Company also announced in the December 20, 1995 press release that**
11 **until the Company's year-end audit is completed by its outside auditors, the actual**
12 **magnitude of the loss will not be known. Further, the Company disclosed for the first**
13 **time that it was "experiencing cash flow difficulties that, if not remedied, may cause the**
14 **Company to default on its current debt obligations," in which case the Company might**
15 **be forced to seek protection from its creditors. The Company also revealed for the first**
16 **time that "[m]anagement believes that a significant infusion of capital is necessary to**
17 **allow the Company to meet its current obligations and conduct its business."**

18
19 **67. Also as part of the December 20, 1995 announcement, the Company**
20 **revealed that its Board of Directors had accepted the resignation of Defendant Londelius**
21 **(the Company's former President and CEO) and Defendant Lind (the Company's**
22 **President) from the Board of Directors, and that Lind had also resigned as the**
23 **Company's President.**

24 **The Fallout**

25
26 **68. On December 20, 1995, NASDAQ suspended trading of the Company's**
27 **stock. When trading resumed on December 21, 1995, the stock traded as low as \$1.50**
28 **per share, down approximately \$8 (or 79%) from its trading level before the disclosures.**

1 **69.** In an article in The Arizona Republic on December 23, 1995, Londelius
2 admitted that Unitech "has faced some cash flow problems recently." Londelius also
3 admitted that (despite his position and positive public statements regarding Unitech's
4 financial condition and prospects), he was not involved in the financial aspects of the
5 Company for the three months leading up to his retirement as President and CEO on
6 December 15, 1995.

7
8 **70.** At a meeting with representatives of Unitech's largest creditors on
9 December 28, 1995, Unitech privately admitted that in reality it "did not know" the true
10 state of its accounts receivable and its inventory valuation, that it had improperly
11 recognized consignment transactions as sales and/or accounts receivable, and that there
12 had been other similar mischaracterizations in its financial books and records. At the
13 meeting, which took place at Unitech's Scottsdale, Arizona offices, Unitech indicated
14 that C&L had been retained as its independent accountants, with C&L's first priorities
15 to be establishing internal accounting controls, ascertaining Unitech's actual accounts
16 receivables, and valuing correctly Unitech's inventory.

17
18 **71.** Less than 30 days thereafter, Unitech was sued by its two largest
19 creditors, Imperial Bank and Merrill Lynch. Defendants Epert and Janssens-Lens were
20 both copied on Merrill Lynch's January 18, 1996 Notice of Default, reflecting their direct
21 personal involvement in the financial affairs of Unitech.

22 **72.** On January 15, 1996, C&L resigned as Unitech's independent auditors.
23 The reason for the resignation was not disclosed at the time. However, in a Form 8-K
24 filed with the SEC on January 19, 1996, the Company disclosed:

25
26 Coopers & Lybrand L.L.P. ("C&L") resigned as the
27 Company's independent auditors on January 15, 1996. C&L
28 was engaged to audit the Company's financial statements
for the fiscal year ended October 31, 1995, but C&L has not
rendered an opinion on such financial statements. No
decision had been made by the Company to change its

1 independent auditors prior to C&L's resignation. During
2 C&L's engagement, there were no disagreements with C&L
3 on any matter of accounting principles or practices, financial
4 statement disclosure, or auditing scope or procedure, which
5 disagreements, if not resolved to the satisfaction of C&L,
6 would have caused C&L to make reference to the subject
7 matter of the disagreement in connection with its audit
8 report.

9 Prior to resigning, C&L had advised the Company that:

- 10 i) the Company's internal controls might not be sufficient to enable
11 the Company to develop reliable financial statements;
- 12 ii) due to the extent of turnover in financial and accounting personnel,
13 current management might not have sufficient personal knowledge
14 and access to documentation to make representations regarding the
15 Company's financial statements upon which C&L could rely;
- 16 iii) C&L might have to expand the scope of its audit to take into
17 account the results of ongoing investigations into compliance with
18 applicable securities laws; and
- 19 iv) information had come to C&L's attention which, if further
20 investigated, might materially impact the fairness or reliability of the
21 Company's fiscal 1994 financial statements and the Company's
22 financial statements for the first three quarters of the fiscal year
23 ended October 31, 1995. Due to C&L's resignation, C&L did not
24 conduct such further investigation.

25 * * *

26 73. On January 25, 1996, Unitech filed for Chapter 11 bankruptcy protection.
27 Unitech stated in a press release that claims and demands by its secured and unsecured
28 creditors, as well as a continuing cash flow shortage, left it with "no practical
alternative" but to file the bankruptcy proceeding.

74. On February 9, 1996, Unitech stock was delisted from the NASDAQ
market exchange.

75. During the Class Period, the actual nature of Unitech's financial condition
and its future prospects were hidden by Defendants' deceptive and materially false and
misleading representations and omissions made in publicly issued financial statements

1 and other reports, press releases and statements, as set forth above in Paragraphs 24
2 to 55. These statements and reports were designed to and did create the illusion that
3 Unitech was financially strong, and had steady and substantial earnings growth.

4 76. S&C had the ability to cause Unitech to change its reported financial
5 results for its fiscal year ended October 31, 1994. This is so because the scheme of
6 federal securities law regulation contemplates and provides for significant input by
7 independent public accountants into the presentation of a company's financial
8 statements. Unitech was registered with the SEC pursuant to Section 12 of the
9 Exchange Act and accordingly was required to file with the SEC an annual report
10 containing an auditor's opinion on Form 10-K and to make such reports available to the
11 investing public.
12

13 77. Because they issued documents to the investing public or made filings with
14 the SEC, Defendants owed a duty of due care to Plaintiffs and the other members of the
15 Class in connection with the accuracy of the press releases and other statements they
16 issued or allowed to be released to the investing public regarding Unitech. Defendants
17 knowingly or recklessly breached this duty by omitting to state material facts necessary
18 in order to make the statements made, in light of the circumstances under which they
19 were made, not misleading.
20

21 78. Defendants allowed Unitech's materially false and misleading reports and
22 statements made during the Class Period to remain uncorrected and unrevised despite
23 Defendants' knowledge during the Class Period that such statements were materially
24 false and misleading.
25

26 79. As a result of the omissions and the dissemination of the aforementioned
27 materially false and misleading statements and documents, the market price of Unitech
28 common stock was artificially inflated throughout the Class Period. In ignorance of the

1 truth of the adverse material facts concerning Unitech's financial condition, Plaintiffs and
2 the other members of the Class purchased Unitech stock at artificially high prices,
3 relying upon the integrity of the market and/or upon the public statements and reports
4 made or caused to be made by Defendants, and were damaged thereby. Had Plaintiffs
5 and the other members of the Class known that the statements were materially
6 misleading or of the material adverse information not disclosed by the Defendants, they
7 would not have purchased Unitech stock, or would not have purchased it at the
8 artificially inflated prices at which they did purchase. As a result of the wrongdoing
9 alleged herein, Plaintiffs and the other members of the Class have been damaged by
10 their purchases of Unitech common stock. As a result of the subsequent disclosures of
11 Unitech's true financial status and the financial and operating condition of Unitech, the
12 market price of its stock has declined substantially. Indeed, as of this time the market
13 for Unitech stock is nearly non-existent.
14

15
16 80. The Defendants engaged in the above scheme or course of conduct in
17 order to maintain the illusion of Unitech's continually increasing growth; to protect and
18 enhance their executive positions and substantial compensation; to enhance the value
19 of their personal Unitech stock holdings; and/or to sell shares of Unitech common stock
20 that they owned at materially inflated prices and thereby obtain improper profits.

21 **COUNT I**
22 **SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5**
23 **AGAINST ALL DEFENDANTS AND SECTION 20(a) OF THE**
24 **EXCHANGE ACT AGAINST THE INDIVIDUAL DEFENDANTS**

25 81. During the Class Period, Defendants, individually and in concert, engaged
26 in a plan, scheme and course of conduct, pursuant to which they knowingly and/or
27 recklessly engaged in acts, transactions, practices, and courses of business which
28 operated as a fraud upon Plaintiffs and other members of the Class, and made various
untrue statements of material fact and omitted to state material facts necessary in order

1 to make the statements made, in light of the circumstances under which they were
2 made, not misleading, to Plaintiffs and other Class members. The Individual Defendants
3 did this by, among other things:

4 a. in the 1994 Form 10-K, materially misstating
5 Unitech's financial results for the fiscal year ended October
6 31, 1994 and representing that the 1994 financial
7 statements had been audited or reviewed in accordance with
8 GAAS and fairly presented in accordance with GAAP;

9 b. in press release and in the First Quarter Form 10-Q,
10 materially misstating Unitech's financial results for the First
11 Quarter 1995;

12 c. in a press release and in the Second Quarter Form 10-
13 Q and Form 10-Q/A, materially misstating Unitech's financial
14 results for the Second Quarter 1995;

15 d. in a press release and in the Third Quarter Form 10-Q,
16 materially misstating Unitech's financial results for the Third
17 Quarter 1995;

18 e. failing to disclose material information adversely
19 impacting the reported financial results for the first three
20 Quarters of 1995, including specifically that, inter alia,
21 Unitech had improperly recognized consignment sales as
22 receivables and that it lacked proper internal accounting and
23 auditing controls, without which Defendants were unable to
24 represent accurately their sales, receivables and inventories;

25 f. making repeated public statements of expectations of
26 "strong" sales and "record growth" for 1995 and 1996
27 which lacked any reasonable basis in fact;

28 g. disguising Unitech's true financial condition by
publicly attributing increased inventories to build-up for
seasonal sales which could be expected to "drop
dramatically" by year-end;

h. failing to disclose that the Company was experiencing
cash flow difficulties that could (and, ultimately, did) cause
it to default on its current obligations and seek bankruptcy
protection; and

i. failing to correct, revise, or update representations
regarding Unitech's financial performance and condition
promptly after and to the extent subsequent events had
rendered those statements materially misleading.

1 S&C did this by, among other things:

2 a. in the 1994 Form 10-K, materially misstating
3 Unitech's financial results for the fiscal year ended October
4 31, 1994 and representing that the 1994 financial
5 statements had been audited or reviewed in accordance with
6 GAAS and fairly presented in accordance with GAAP;

7 b. issuing an unqualified or "clean" audit opinion on the
8 1994 Unitech financial statements; and

9 c. failing to correct, revise, or update representations
10 regarding Unitech's financial performance and condition
11 promptly after and to the extent subsequent events had
12 rendered those statements materially misleading.

13 82. By reason of the foregoing, Defendants violated Section 10(b) of the
14 Exchange Act and Rule 10b-5 promulgated thereunder in that they themselves or a
15 person whom they controlled (a) employed devices, schemes and artifices to defraud,
16 (b) made untrue statements of material fact or omitted to state material facts necessary
17 in order to make the statements made, in light of the circumstances under which they
18 were made, not misleading, or (c) engaged in acts, practices and a course of business
19 which operated as a fraud or deceit upon Plaintiffs and other members of the Class in
20 connection with their purchases of the Company's common stock during the Class
21 Period.

22 83. Each of the Defendants participated in and joined the alleged scheme and
23 course of conduct specified above and each is liable primarily for the wrongful acts and
24 statements specified above.

25 84. The Individual Defendants are liable under Section 20(a) as controlling
26 persons because, by virtue of their executive positions, their knowledge of and
27 involvement in the Company's day-to-day business and/or Board membership and
28 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

1 power and ability to control the actions of the Company. Furthermore, the Individual
2 Defendants were culpable participants in the wrongdoing, as they:

- 3 (a) engaged in insider trading of the Company's stock;
4
5 (b) knew of, but failed to disclose information contrary to
6 the false impressions of the Company's growth and earnings
7 prospects that they and other Company representatives had
8 foisted on the market; and
9
10 (c) shared collective responsibility for the Form 10-Q's,
11 the press releases, and other "group published" information
12 disseminated by the Company to the market.

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

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

22 87. This action has been brought within one year after the discovery of the
23 untrue statements and omissions and within three years after the issuance of the
24 statements and omissions complained of herein.

25 88. This action was filed prior to December 22, 1995, and is therefore not
26 subject to the Private Securities Litigation Reform Act of 1995.

27 **COUNT II**

28 **A.R.S. § 44-1991 AGAINST ALL DEFENDANTS**

89. Under A.R.S. § 44-1991, it is a fraudulent practice and unlawful for a
person, in connection with a transaction or transactions within or from Arizona involving

1 an offer to sell or buy securities, or a sale or purchase of securities, directly or indirectly
2 to do any of the following:

- 3 1. Employ any device, scheme or artifice to defraud.
- 4 2. Make any untrue statement of material fact, or omit
5 to state any material fact necessary in order to make the
6 statements made, in the light of the circumstances under
7 which they were made, not misleading.
- 8 3. Engage in any transaction, practice or course of
9 business which operates or would operate as a fraud or
10 deceit.

11 90. The Individual Defendants have violated A.R.S. § 44-1991 by, among other
12 things:

- 13 a. in the 1994 Form 10-K materially misstating Unitech's
14 financial results for the fiscal year ended October 31, 1994
15 and representing that the 1994 financial statements had
16 been audited or reviewed in accordance with GAAS and
17 fairly presented in accordance with GAAP;
- 18 b. In a press release and in the First Quarter Form 10-Q,
19 materially misstating Unitech's financial results for the First
20 Quarter 1995;
- 21 c. In a press release and in the Second Quarter Form 10-
22 Q and Form 10-Q/A, materially misstating Unitech's financial
23 results for the Second Quarter 1995;
- 24 d. In a press release and in a Third Quarter Form 10-Q,
25 materially misstating Unitech's financial results for the Third
26 Quarter 1995;
- 27 e. failing to disclose material information adversely
28 impacting the reported financial results for the first three
Quarters of 1995, including specifically that, inter alia, that
Unitech had improperly recognized consignment sales as
receivables and that it lacked proper internal accounting and
auditing controls, without which Defendants were unable to
represent accurately their sales, receivables and inventories;
- f. making repeated public statements of expectations of
"strong" sales and "record growth" for 1995 and 1996
which lacked any reasonable basis in fact;

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g. **disguising Unitech's true financial condition by publicly attributing increased inventories to build-up for seasonal sales, which were expected to "drop dramatically" by year end;**

h. **failing to disclose that the Company was experiencing cash flow difficulties that could (and, ultimately, did) cause it to default on its current obligations and seek bankruptcy protection; and**

i. **failing to correct, revise, or update representations regarding Unitech's financial performance and condition promptly after and to the extent subsequent events had rendered those statements materially misleading.**

91. S&C violated A.R.S. § 44-1991 by, among other things:

a. **in the 1994 Form 10-K materially misstating Unitech's financial results for the fiscal year ended October 31, 1994 and representing that the 1994 financial statements had been audited or reviewed in accordance with GAAS and fairly presented in accordance with GAAP;**

b. **issuing an unqualified or "clean" audit opinion on Unitech's 1994 financial statements; and**

c. **failing to correct, revise, or update representations regarding Unitech's financial performance and condition promptly after and to the extent subsequent events had rendered those statements materially misleading.**

92. Reliance is not an element of statutory fraud under A.R.S. § 44-1991.

93. Scienter is not an element of statutory fraud under A.R.S. § 44-1991.

94. Defendants have violated similar laws of other states prohibiting securities fraud.

95. Plaintiffs and the other members of the Class have been damaged by Defendants' violations of A.R.S. § 44-1991 in an amount to be determined at trial, plus all taxable costs and reasonable attorneys' fees.

96. Defendants' conduct reflects a conscious disregard for the interests of Plaintiffs and the other Class Members, and warrants the imposition of punitive damages.

1 business transactions, and thus are subject to liability for pecuniary loss caused to
2 Plaintiffs by Plaintiffs' justifiable reliance upon the information supplied. Defendants at
3 a minimum failed to exercise reasonable care and competence in obtaining or
4 communicating such information to Plaintiffs.

5
6 105. Plaintiffs relied, directly or indirectly, upon the financial statements and
7 other statements set forth above published by Defendants as Defendants reasonably
8 knew they would.

9
10 106. Defendants' negligent misrepresentation thus breached a duty of care
11 owed to the Plaintiffs, proximately causing Plaintiffs pecuniary loss in connection with
12 their purchases of Unitech securities in amounts to be established at trial.

13 WHEREFORE, Plaintiffs, on their own behalf and on behalf of the other
14 members of the Class, pray for judgment as follows:

15 (a) Declaring this action to be a class action pursuant to Rule 23(a) and
16 23(b)(3), Federal Rules of Civil Procedure, on behalf of the Class defined herein, and
17 certifying the Plaintiffs as Class representatives and undersigned counsel as Class
18 counsel;

19 (b) Awarding Plaintiffs and the other members of the Class compen-
20 satory and punitive damages in an amount which may be proven at trial, together with
21 interest thereon;

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

25
26 (d) Awarding such other and further relief as this Court may deem just
27 and proper.

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: January 8, 1997.

**BONNETT FAIRBOURN FRIEDMAN
& BALINT, P.C.**

By: _____

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ORIGINAL and one copy of the foregoing
filed this 8th day of January, 1997,
with:

Clerk
UNITED STATES DISTRICT COURT
230 North First Avenue
Phoenix, Arizona 85025

COPY of the foregoing hand-delivered
this 8th day of January, 1997, to:

Honorable Stephen M. McNamee
United States District Court
230 N. First Ave., Room 6077
Phoenix, Arizona 85025-0085
(Case No. CIV 96-0094 PHX SMM)

Honorable Robert C. Broomfield
United States District Court
230 N. First Ave., Room 7025
Phoenix, Arizona 85025-0085
(Case No. CIV 96- 0132PHX RCB)

Honorable Paul G. Rosenblatt
United States District Court
230 N. First Ave., Room 7012
Phoenix, Arizona 85025-0085
(Case No. CIV 95-2892 PHX PGR)

COPY of the foregoing mailed this
8th day of January, 1997, to

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