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CLERK U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO, FLORIDA  
CO. J. 21 11:30 AM '02

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

ATARA HIRTH on behalf of  
herself and all others similarly  
situated,

Plaintiff,

v.

SUNTERRA CORPORATION, L. STEVEN  
MILLER, RICHARD GOODMAN and JOSHUA  
S. FRIEDMAN

Defendants.

6:0-CV-79-ORL-99B

CIVIL ACTION NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF  
FEDERAL SECURITIES LAWS**

**JURY TRIAL DEMANDED**

Plaintiff makes the following allegations upon information and belief, except as to allegations specifically pertaining to plaintiff and her counsel, based on the facts alleged below, which are predicated upon the investigation undertaken by plaintiff's counsel, which investigation included analysis of publicly-available news articles and reports, public filings, press releases and other matters of public record. Plaintiff believes that further substantial evidentiary support will exist for the allegations set forth below after a reasonable opportunity for discovery.

**NATURE OF THE ACTION**

1. This is a class action on behalf of all purchasers of the common stock of Sunterra, Inc. ("Sunterra" or the "Company") between October 4, 1998, and January 19, 2000, inclusive, (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

GOODMAN RICHARD  
 1781 PARK CENTER DRIVE  
 ORLANDO, FL 32835  
 TREASURER

KANEKO OSAMU  
 5933 WEST CENTURY BLVD  
 LOS ANGELES, CA 90045  
 DIRECTOR

KENNINGER STEVEN C  
 1815 VIA EL PRADO, SUITE 102  
 REDONDO BEACH, CA 90277  
 DIRECTOR

MILLER L. STEVEN  
 1781 PARK CENTER DRIVE  
 ORLANDO, FL 32835  
 PRESIDENT

History:

| DATE       | TYPE                  | COMMENT |
|------------|-----------------------|---------|
| 08/03/1998 | NAME CHANGE AMENDMENT |         |

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## JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1337 and 1367 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

3. This action arises 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 (17 C.F.R. § 240.10b-5).

4. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b) and (c). Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District and Sunterra maintains its principal executive offices in this District.

5. In connection with the acts and omissions alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

## PARTIES

6. Plaintiff Atara Hirth purchased Sunterra common stock during the Class Period, as set forth in the accompanying certification which is incorporated herein by reference, and was damaged thereby.

7. Defendant Sunterra is a Florida corporation with its principal place of business at 1781 Park Center Drive,

Orlando, Florida, 32835. Sunterra describes itself as a vacation ownership company with 89 resort locations in North America, Europe, the Carribean and Japan. The Company markets and sells vacation ownership interests at its resort locations and off-site sales centers. These interests entitle the buyer to use a fully-furnished vacation residence, generally for a one week period each year in perpetuity; and vacation points which may be redeemed for occupancy rights for varying lengths of stay at participating resort locations.

8. The individual defendants, at all times relevant to this action, served in the capacities listed below and received substantial compensation:

| <u>Name</u>        | <u>Position</u>  |
|--------------------|--|
| L. Steven Miller   | President and Chief Executive Officer, effective October 1, 1998.                  |
| Richard Goodman    | Executive Vice President and Chief Financial Officer, effective December 21, 1998. |
| Joshua S. Friedman | Director   |

The Individual Defendants, as senior officers and/or directors of Sunterra were controlling persons of the Company. Each exercised his power and influence to cause Sunterra to engage in the fraudulent practices complained of herein.

9. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Sunterra common stock, by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the

investing public regarding Sunterra's business, its finances and the intrinsic value of Sunterra common stock; and (ii) caused plaintiff and other members of the Class to purchase Sunterra common stock at artificially inflated prices.

**PLAINTIFF'S CLASS ACTION ALLEGATIONS**

10. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who purchased or otherwise acquired Sunterra common stock between October 4, 1998 through January 19, 2000, inclusive (the "Class Period"), and who were damaged thereby. Excluded from the Class are defendants, members of the immediate family of each of the Individual Defendants, any subsidiary or affiliate of Sunterra and the directors, officers and employees of Sunterra or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

11. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of members of the Class located throughout the United States. As of November 12, 1999, there were reportedly more than 35.98 million shares of Sunterra common stock outstanding. Throughout the Class Period, Sunterra common stock was actively traded on the NYSE National Market System. Record owners and other members of the Class may be identified

from records maintained by Sunterra and/or its transfer agents and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

12. Plaintiff's claims are typical of the claims of the other members of the Class as all members of the Class were similarly affected by defendants' wrongful conduct in violation of federal law and state law that is complained of herein.

13. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

14. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(i) whether the federal securities laws were violated by defendants' acts and omissions as alleged herein;

(ii) whether defendants participated in and pursued the common course of conduct complained of herein;

(iii) whether documents, press releases, and other statements disseminated to the investing public and the Company's shareholders during the Class Period misrepresented material facts about the business, finances, financial condition and prospects of Sunterra;

(iv) whether statements made by defendants to the investing public during the Class Period misrepresented and/or

omitted to disclose material facts about the business, finances, value, performance and prospects of Sunterra;

(v) whether the market price of Sunterra common stock during the Class Period was artificially inflated due to the material misrepresentations and failures to correct the material misrepresentations complained of herein; and

(vi) to what extent the members of the Class have sustained damages and the proper measure of damages.

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

#### **SUBSTANTIVE ALLEGATIONS**

16. On January 20, 2000, Sunterra issued a press release via the PR Newswire, announcing that:

due to adverse factors in the fourth quarter of this year, preliminary results indicate that, before a special charge, earnings for the three month period will be in the range of \$.01 to \$.08 per diluted share, compared with \$.31 per diluted share reported in the same period last year.

17. The Company also announced that it expects to record a non-cash charge for the year of between \$38 million and \$45 million, after tax, related to various items on its balance sheet. Sunterra attributed the charge to "the result

of a special in-depth review" of its balance sheet, which the Company initiated at year-end. The largest part of the charge-off consists of delinquent receivables that remained on the Company's books.

18. The Company also announced that defendant, L. Steven Miller, the Company's Chief Executive Officer was being replaced. The new Chief Executive Officer, Richard Harrington, characterized the Company's fourth quarter results and the non-cash charge as "unacceptable" and attempted to reassure investors by stating that "the Company is taking actions to ensure that neither is repeated."

19. On January 20, 2000, after the Company released the fourth quarter operating results and multi-million dollar charge, the market for Sunterra common stock plunged, falling as much as  $2 \frac{3}{8}$  or 38.38% from  $6 \frac{3}{16}$  on January 19, 2000 on unusually large trading volumes of over 6,000,000 shares - an enormous increase from the Company's average trading volumes of 182,681.

20. As now revealed, at all times during the Class Period, defendants issued false and misleading financial statements and press releases concerning Sunterra's revenues, net income and earnings per share. The financial statements of the Company made during the Class Period, all of which implicitly and/or expressly were prepared in conformity with generally accepted accounting principles (GAAP), were materially false and misleading because the Company materially overstated its revenues income and earnings.

21. The Class Period commences on October 4, 1998. On that date the Company announced its financial results for the third quarter of fiscal year 1998, the quarterly period ended September 30, 1998. The Company reported "record financial performance", including: revenues of \$127.1 million, a 35% increase from the third quarter of 1997; \$14.2 million in interest income, a 23% increase from the third quarter of 1997; an increase in other income of 204% from the previous year; an increase in net income of 44% to \$14.3 million from \$9.9 million in the third quarter of 1997; EBITDA (Earnings before interest, tax, depreciation and amortization) for the third quarter increased 58% to \$41.1 million from EBITDA of \$26.1 million for the third quarter of 1997.

22. Commenting on the Company's seemingly stellar results, defendant Miller stated:

"For the ninth consecutive quarter since going public, we have delivered record year over year performances in revenues, net income and earnings per share. Our strong third quarter results reflect a substantial increase in recurring management fee income from acquired resorts, continuing improvement in operations at acquired companies and increased sales efficiency at mature resorts."

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"During the quarter, we acquired a \$69.1 million portfolio of mortgages receivable from HTD in connection with our \$77.5 million cash purchase of the Ridge Tahoe project and sold without recourse \$101.9 million in cash and repaying \$17.5 million in debt. By turning these receivables into cash, we have eliminated our default risk and reduced our debt balances. As a result of the cash generated and debt retired in these sales, our net mortgages receivable balanced

increased only \$14.2 million and our total debt increased by \$1.5 million over the second quarter of 1998. The completion of these transactions demonstrates a ready and willing market to purchase our receivables at prices of book value or above. Having completed two of these transactions in a volatile market environment, we view our portfolio as a reliable source of low cost capital giving us financial flexibility to support continued growth."

23. According to the Company's financial results announced on October 4, 1998, at September 30, 1998, gross mortgages receivable were \$413.0 million, up from \$397.7 million at June 30, 1998. The Company's allowance for doubtful accounts as a percentage of gross mortgages receivable was 6.3%, unchanged from the quarter ended June 30, 1998. Delinquent consumer loans at September 30, 1998 were 4.4% as a percentage of gross mortgages receivable, down from 4.5% at September 30, 1997 and up from 4.2% at June 30, 1998. Consumer loans are considered delinquent in scheduled payments are more than 60 days past due. In addition, the Company had commenced deed-in-lieu of foreclosure or foreclosure proceedings on 2.5% of its consumer loans as of September 30, 1998, as compared to 2.4% as of June 30, 1998.

24. The Company's financial results detailed above were repeated in the quarterly report on Form 10-Q, for the quarterly period ended September 30, 1998, filed with the SEC on November 16, 1998. The Notes To Consolidated Financial Statements (Unaudited), contained within this Form 10-Q, stated with respect to these financial statements:

In the opinion of management, all adjustments considered necessary for a fair presentation have been included and are of a normal recurring nature...

25. The Company's statements detailed in ¶¶ 21-24 above, were materially false and misleading. Despite reporting "record financial performance" on October 4, 1998 and November 16, 1998, these results were materially inflated because at the time of issuance, defendants knew or recklessly disregarded that the Company's uncollectible receivables vastly exceeded the reported allowance for doubtful accounts. Defendants knew or recklessly disregarded that the Company's allowance for doubtful accounts as a percentage of gross mortgages receivable of 6.3% was woefully inadequate to reflect the amount of delinquent consumer loans the Company was then experiencing.

26. In response to the Company's news announcing "record" financial performance, Sunterra common stock soared from \$6 per share on October 5, 1998, to \$13.50 per share on November 17, 1998, after the Company filed its third quarter 1998 10-Q.

27. On February 10, 1999, the Company released its financial results for the three months and year ended December 31, 1998. Fourth quarter 1998 net income increased by 26.5% to a record \$12.9 million, or \$0.35 per diluted share, compared with recurring net income of \$10.2 million or \$0.28 per diluted share in the fourth quarter of 1997. Commenting on the results, defendant Miller stated:

"Sunterra's record fourth quarter sales and earnings performance marks our tenth

consecutive quarter of increasing value for our shareholders since the Company went public in August, 1996.... During 1998, we made significant progress in our strategy to convert our mortgages receivable into cash, reduce our leverage and also reduce the risk of portfolio default - and we expect to continue on this path in 1999. We accomplished this through a series of mortgages receivable sales, a securitization and a conduit transaction that generated combined cash inflows of \$420 million; this cash allowed us to not only to fund the nearly \$351 in mortgage receivables originated/acquired during the year, but also to refinance approximately \$69 million in debt at significantly lower interest rates. As a result, our net mortgages receivable increased only 1% during the year, to \$336.0 million at year-end 1998, despite a 28% increase in interval point sales over the same period."

28. For the year ended December 31, 1998, the Company reported total revenues of \$450 million, a 33.3% increase over the prior year.

29. The Company's statements detailed above were intended to, and did, convey a false message to the investing public. Not only were investors led to believe that the Company's receivables remained strong despite a significant increase in sales, they were also led to believe that the Company was successful in reducing the risk of portfolio default. In fact, as later revealed, a significant portion of the Company's receivables were delinquent and were not properly accounted for. As a result, the Company announced on January 20, 2000, that it would be forced to take as much as a \$45 million charge against earnings in connection with the delinquent receivables.

30. The Company's financial results were repeated in the Company's annual report on Form 10-K for the year ended December 31, 1998, filed on March 31, 1999, signed by defendants Goodman, Miller and Friedman. The annual report reiterated the financial results announced on February 10, 1999. With respect to defaults, the Company stated:

Consumer loans in excess of 60 days past due, including defaulted loans and loans in the deed-in-lieu process, at December 31, 1998 were 7.4%, as a percentage of gross mortgages receivable. The Company's allowance for doubtful accounts, which is net of recoveries, was 6.4% as a percentage of gross mortgages receivable. Management believes that this percentage is an adequate reserve for expected loan losses because the past due loan amounts do not include amounts recovered from the underlying Vacation Interests nor do all past due loans become defaulted loans.

31. The Company's statements detailed in ¶¶ 27-30 above, were materially false and misleading. As defendants knew or recklessly disregarded, 7.4% was nowhere near sufficient to account for the Company's doubtful accounts receivables. As revealed on January 20, 2000, the Company was forced to incur substantial costs in connection with the Company's delinquent receivables.

32. On May 5, 1999, the Company announced its financial results for the first quarter of fiscal year 1999 for the three months ended March 31, 1999. The Company reported "record" first quarter results, with first quarter total revenues up 27%, net income up 38% and Earnings Per Share ("EPS") up 35%. First quarter 1999 net income increased to a "record" \$10.0

million compared with net income of \$7.3 million in the first quarter of 1998. First quarter 1999 earnings per diluted share increased to \$0.27 from \$0.20 in the first quarter of 1998. Revenues reached a "record" \$114.3 million, up from \$89.7 million in the first quarter of 1998.

33. Commenting on the results, defendant Miller stated:

"We are very pleased to report our eleventh consecutive quarter of record year-over-year growth in sales, income and earnings per share. Our business is strong, with consumer demand and awareness of vacation ownership increasing as we enter our strongest selling season between now and the end of Summer.

34. With respect to the Company's receivables, defendant Miller stated:

"At March 31, 1999, net mortgages receivable were \$344.5 million, an increase of \$8.5 million from \$336.0 million at December 31, 1998, and a \$9.9 million decrease from \$354.4 million at March 31, 1998."

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"Consumer loans serviced by the Company in excess of 60 days past due, including defaulted loans and loans in the deed-in-lieu process at March 31, 1999, improved to 6.8%, as a percentage of gross mortgages receivable, from 6.9% at March 31, 1998. Net of inventory recoveries, these same percentages would decrease to 4.6% and 4.7% respectively. The Company's allowance for doubtful accounts, as a percentage of gross mortgages receivable, was 6.4% at both March 31, 1999 and at December 31, 1998.

35. These results were repeated in the quarterly report on Form 10-Q, for the quarterly period ended March 31, 1999, filed with the SEC on or about May 13, 1999, and signed by

defendant Goodman. The Notes To Consolidated Financial Statements (Unaudited), contained within this Form 10-Q, stated with respect to these financial statements:

In the opinion of management, all adjustments considered necessary for a fair presentation have been included and are of a normal recurring nature...

36. The Company's statements concerning its "record" first quarter 1999 results were materially false and misleading. The financial results which purported to represent the "eleventh consecutive quarter of record year-over-year growth in sales, income and earnings per share" were materially overstated as a result of defendants' failure to adequately reserve for uncollectible receivables. Similarly, the Company's assurances that the financial statements "considered all adjustments necessary for a fair presentation" of the financial results was false and misleading. As revealed on January 20, 2000:

(a) the Company would be forced to take up to a \$45 million non-cash charge for fiscal 1999 related to "various items" on its balance sheet; which if reported accurately during the Class Period would have resulted in significantly lower reported earnings;

(b) the Company's lack of internal controls necessitated a "in-depth review of its balance sheet";

(c) the Company's delinquent receivables remaining on the Company's books was significantly higher than reported; and

(d) the Company did not have an adequate system to keep track of its receivable servicing operations.

37. In response to the Company's announcement of strong financial performance and improved default rates, the price of Sunterra common stock increased from \$11.50 per share on May 5, 1999 to over \$12 per share on May 6, 1999, reaching over \$14.8 per share on May 20, 1999 after the Company's first quarter 10-Q was disseminated to the market.

38. Despite announcing unprecedented financial success, Sunterra insiders, who were privy to the Company's true financial and operating condition - including the Company's former Chairman of the Board, Co-Chief Executive Officer and Directors - sold over 476,500 of their Sunterra shares between May 10, 1999 and June 7, 1999, at artificially inflated prices, reaping proceeds of over \$11,166,134. Defendant Friedman himself reaped proceeds of over \$6,000,000. The investing public, unaware of the Company's soon to be announced deteriorating financial condition and increase in delinquent receivables were not as fortunate, and continued to purchase Sunterra common stock at grossly inflated prices reaching as \$14.82 per share in July of 1999.

39. On August 4, 1999, Sunterra announced "record" financial performance for the second quarter and six months ended June 30, 1999. The Company reported that second quarter 1999 net income increased by 39% to a record \$13.5 million compared with net income of \$9.7 million in the second quarter of 1998. Over the same period, diluted earnings per share rose 33%, to \$0.36

per share from \$0.27 per share. According to the press release, a "27% increase in revenues drove the record profitability."

Revenues were \$134.5 million in the second quarter of 1999, up from \$106.3 million in the second quarter of 1998. EBITDA for the second quarter of 1999 increased by 24% to \$38.8 million from \$31.2 million in the second quarter of 1998.

40. According to the Company's August 4, 1999 press release detailed above, as of June 30, 1999, consumer loans serviced by the Company in excess of 60 days past due totaled 6.9% as a percentage of gross mortgages receivable, up slightly from 6.7% in the comparable period of 1998. Net of inventory recoveries, these same percentages decrease to 4.7% and 4.5%, respectively. The Company increased its allowance for doubtful accounts, as a percentage of gross mortgages receivable, to 6.5% at June 30, 1999 up from 6.3% in the year-earlier period.

41. These results were repeated in the quarterly report on Form 10-Q, for the quarterly period ended June 30, 1999, filed with the SEC on August 16, 1999, and signed by defendant Goodman. The Notes To Consolidated Financial Statements (Unaudited), contained within this Form 10-Q, stated with respect to these financial statements:

In the opinion of management, all adjustments considered necessary for a fair presentation have been included and are of a normal recurring nature.

42. The Company's second quarter results were materially false and misleading, and including grossly overstated earnings. As revealed on January 20, 2000:

(a) the Company would be forced to take up to a \$45 million non-cash charge for fiscal 1999 related to "various items" on its balance sheet; which if reported accurately during the Class Period would have resulted in significantly lower reported earnings;

(b) the Company's lack of internal controls necessitated a "in-depth review of its balance sheet";

(c) the Company's delinquent receivables remaining on the Company's books was significantly higher than reported; and

(d) the Company did not have an adequate system to keep track of its receivable servicing operations.

43. On November 3, 1999, the Company again announced "record" third quarter results, "building on its record first half performance." Third quarter revenues were up 21% to a "record" \$153 million." According to the Company, "this top line growth generated a 22% rise in net income and a 21% increase in diluted earnings per share." Net income for the quarter reached \$17.5 million versus \$14.3 million in the comparable year-earlier period, and diluted EPS was \$0.46 per share, up from \$0.38 in the previous year.

44. Commenting on the purported "top line growth", defendant Miller stated:

"Our third quarter performance was very strong across the board. We had solid top line growth; and with the cost of sales and

advertising/sales/marketing costs within target ranges, we were able to generate commensurate bottom line growth."

45. With respect to the Company's receivables, the Company reported a pretax gain of \$2.5 million on the sale of about \$72 million of mortgages receivable, most of which were sold into the Company's "off-balance sheet conduit" as part of Sunterra's "continuing program of monetizing the sales that [Sunterra] finances for [its] customers." According to the Company's announcement, at the end of the third quarter, mortgages serviced by the Company (including securitized mortgages) in excess of 60 days past due totaled 6.4% as a percentage of gross mortgages receivable, down from 6.9% in the comparable year-earlier period. Net of inventory recoveries, these percentages are 4.4% and 4.7%, respectively. The allowance for doubtful accounts as a percentage of gross mortgages receivable was 6.4%, up from 6.3% in the previous year.

46. The "record" results reported in the November 4, 1999 press release detailed above were repeated in the Company's Form 10-Q filed on November 12, 1999, signed by defendant Goodman. The Notes To Consolidated Financial Statements (Unaudited), contained within this Form 10-Q, stated with respect to these financial statements:

In the opinion of management, all adjustments considered necessary for a fair presentation have been included and are of a normal recurring nature.

47. The Company's third quarter results were false and misleading. As defendants knew or recklessly disregarded by the

time of the issuance of its third quarter results, the Company was not experiencing "top line growth" and was in fact experiencing a significant increase in the amount of delinquent accounts receivable - a fact that defendants knew by virtue of the "in-depth" ongoing review of the Company's internal controls and balance sheets revealed on January 20, 2000.

48. On November 3, 1999, after news of the Company's repeated "record" financial results, Sunterra common stock traded at artificially inflated prices, reaching \$10.875 on November 4, 1999 and climbing even further to \$12.25 per share on November 5, 1999, as the Company's financial results were absorbed by the market.

49. On January 20, 2000, the Company made the announcement detailed in ¶¶ 16-19, above, revealing that it would be forced to record a non-cash charge for the year of between \$38 million and \$45 million, a charge which would result in dramatically lower earnings per diluted share. In fact, rather than earning \$.31 per diluted share as the Company reported in the same quarter the previous year, investors were informed that they could expect earnings per diluted share of as little as \$.01 to \$.08 per diluted share.

50. Although the news was a complete surprise to the investing community, defendants were already aware of the Company's increased delinquent receivables, and in fact had already initiated a "special in-depth review of its balance sheet" at year-end. Commenting on the fourth quarter charge, defendant Goodman stated:

"While we regret having to take this non-cash charge, we believe that we have put these balance sheet issues behind us and placed the Company in a stronger position going forward...During 1999, the Company centralized its receivable servicing operation, which should strengthen our internal controls going forward. We are also currently working to identify and implement control improvements that will help keep our balance sheet strong."

Defendant Goodman's statements revealed that not only were defendants aware of the Company's lack of internal controls, but had in fact already - - during 1999 - - taken steps to "centralize" its receivable servicing operation" and "strengthen" its internal controls.

51. In response to the news, Sunterra stock dropped to close at its all-time low, dropping over \$2 per share or 35.35% on volumes of 6,409,300.

52. The same day, Merrill Lynch issued an analyst opinion downgrading Sunterra from Buy to Neutral. The downgrade was based on Sunterra's poor across the board results, as well as the announced non-cash charge. Commenting on Sunterra's announcement, the report stated:

- Clearly, we are disturbed by today's developments. Over the last two weeks, we have spoken with management several times, and they reaffirmed confidence in their earnings expectations...Although the shares are relatively inexpensive, we have reduced confidence in management, and are unclear of the company's fundamentals going forward.

53. The market for Sunterra's common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures

to disclose, Sunterra common stock traded at artificially inflated prices during the Class Period until the time the fact that Sunterra had engaged in the wrongful course of conduct described herein was finally communicated to an understood by the securities markets. Plaintiff and other members of the Class purchased or otherwise acquired Sunterra common stock relying upon the integrity of the market price of Sunterra stock and market information relating to Sunterra and have been damaged thereby.

54. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Sunterra stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business, finances and operations, including, inter alia:

- that the Company's financial statements were not prepared in accordance with generally accepted accounting principles and in accordance with the federal securities laws and SEC regulations concerning fair reporting;

- that the Company's seeming growth was the result of improper accounting estimates; and

- that the Company's estimates, projections and opinions as to its expected revenues, earnings, income and value

of its stock were lacking in reasonable basis at all relevant times.

55. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Sunterra's business, business practices and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Sunterra and its business, finances and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiffs and other members of the Class purchasing the Company's common stock at an artificially inflated price, thus causing the damages complained of herein.

**THE COMPANY'S FINANCIAL STATEMENTS  
AND RELATED REPRESENTATIONS  
WERE MATERIALLY FALSE AND MISLEADING**

56. All of the reported financial statements and the related discussions contained therein, which the Individual Defendants caused the Company to file and issue during the Class Period, and in public reports about and press releases issued by the Company were false products of financial manipulations which

deceived members of the investing public who purchased Sunterra securities based upon those representations.

57. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Sunterra securities by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its financial performance, accounting, reporting and condition, including, inter alia:

- During the Class Period, the Company reported revenues, income and earnings per share that were materially overstated;

- The Company's financial statements did not present, in all material respects, the Company's true financial condition, and did not reflect all adjustments which were necessary for a fair statement of the interim and full year period presented;

- The Company's internal controls were inadequate and, as a result, the Company improperly and prematurely recognized revenues; and

- The Company's interim financial statements for at least fiscal year 1999 were not presented in conformity with GAAP or principles of fair reporting.

58. In addition, the defendants falsely and materially overstated the Company's net income and earnings per share for each

of the Company's quarterly periods during the Class Period.  
Moreover:

- Defendants failed to disclose the existence of known trends, events or uncertainties that it reasonably expected would have a material unfavorable impact on net revenues or income or that were reasonably likely to result in the Company's liquidity decreasing in a material way, in violation of Item 303 of Regulation S-K under the federal securities laws (17 C.F.R. 229.303), and that failure to disclose rendered the statements that were made during the Class Period materially false and misleading; and

- By failing to file financial statements with the SEC which conformed to the requirements of GAAP, such financial statements were presumptively misleading and inaccurate pursuant to Regulation S-X, 17 CFR 210.4-01(a)(1).

59. As a result of its accounting improprieties, particularly with respect to the Company's revenue recognition practices, the Company's reported financial results (and all defendants) also violated at least the following provisions of GAAP for which each defendant is responsible:

- The principle that financial reporting should provide information that is useful to present to potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶ 34);

- The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions,

events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶ 40);

- The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶ 50);

- The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶ 42);

- The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant to a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶ 58-59);

- The principle of completeness, which means that nothing is left out of the information that may be necessary to

ensure that it validly represents underlying events and conditions, was violated (FASB Statement of Concepts No. 2, ¶ 79); and

- The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶ 95, 97).

**APPLICABILITY OF PRESUMPTION OF RELIANCE:  
FRAUD-ON-THE-MARKET DOCTRINE**

60. At all relevant times, the market for Sunterra common stock was an efficient market for the following reasons, among others:

- Sunterra common stock met the requirements for listing, and was listed and actively traded, on the NASDAQ National Market System, a highly efficient market;

- As a regulated issuer, Sunterra filed periodic public reports with the SEC and the NASD;

- Sunterra stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

- Sunterra regularly issued press releases which were carried by national newswires. Each of these releases was publicly available and entered the public marketplace.

61. As a result, the market for Sunterra securities promptly digested current information with respect to Sunterra from all publicly-available sources and reflected such information in Sunterra's stock price. Under these circumstances, all purchasers of Sunterra common stock during the Class Period suffered similar injury through their purchase of stock at artificially inflated prices and a presumption of reliance applies.

**NO SAFE HARBOR**

62. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The specific statements pleaded herein were not identified as "forward-looking statements" when made. Nor was it stated with respect to any of the statements forming the basis of this complaint that actual results "could differ materially from those projected." To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking was made the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Sunterra who knew that those statements were false when made.

### SCIENTER ALLEGATIONS

63. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Sunterra and its business practices, their control over and/or receipt of Sunterra's allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Sunterra were active and culpable participants in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity and misleading nature of the information which they caused to be disseminated to the investing public. This case does not involve allegations of false forward-looking statements or projections but instead involves false statements concerning the Company's business, finances and operations. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

64. The Individual Defendants engaged in such a scheme to inflate the price of Sunterra common stock in order to: (i) protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby; (ii) enhance the value of their personal holdings of Sunterra common stock and options; and (iii) permit profitable insider sales by Sunterra insiders.

**FIRST CLAIM**

**(Violations Of Section 10(b) Of The Exchange Act  
And Rule 10b-5 Promulgated Thereunder Against  
All Defendants)**

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65. Plaintiff repeats and realleges each and every allegation contained above.

66. Each of the defendants: (a) knew or recklessly disregarded material adverse non-public information about Sunterra's financial results and then existing business conditions, which was not disclosed; and (b) participated in drafting, reviewing and/or approving the misleading statements, releases, reports and other public representations of and about Sunterra.

67. During the Class Period, defendants, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements specified above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

68. Defendants have violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make 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 that operated as a fraud or deceit upon the purchasers of Sunterra stock during the Class Period.

69. Plaintiff and the Class have suffered damage in that, in reliance on the integrity of the market, they paid artificially inflated prices for Sunterra stock. Plaintiff and the Class would not have purchased Sunterra stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' false and misleading statements.

**SECOND CLAIM**

**(Violation Of Section 20(a) Of The Exchange Act  
Against Individuals Defendants)**

70. Plaintiff repeats and realleges each and every allegation contained above.

71. The Individual Defendants acted as controlling persons of Sunterra within the meaning of Section 20(a) of the Exchange Act. By reason of their senior executive and/or Board positions they had the power and authority to cause Sunterra to engage in the wrongful conduct complained of herein.

72. By reason of such wrongful conduct, Sunterra and the Individual Defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Sunterra stock during the Class Period..

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

i) Determining that this action is a proper class action and certifying plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

ii) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

iii) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

iv) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: January 21, 2000

**MILBERG WEISS BERSHAD  
HYNES & LERACH LLP**

By:

  
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counsel)

(Fla. Bar No. 169668)

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**Attorneys for Plaintiff**

**CERTIFICATION OF NAMED PLAINTIFF  
PURSUANT TO FEDERAL SECURITIES LAWS**

I, Atara Hirth ("Plaintiff"), declare the following as to the claims asserted under the federal securities laws, that:

1. Plaintiff has reviewed the complaint filed in this matter and has authorized the filing of a complaint based on similar allegations in a related or amended complaint. Plaintiff retains Bernstein Liebhard & Lifshitz, LLP and such co-counsel it deems appropriate to associate with to pursue such action on a contingent fee basis.

2. Plaintiff did not purchase the security that is the subject of this action at the direction of Plaintiff's counsel or in order to participate in this private action.

3. Plaintiff is willing to serve as a representative party and lead plaintiff on behalf of the class, including providing testimony at deposition and trial, if necessary. I understand that the litigation is not settled, this is not a claim form, and sharing in any recovery is not dependent upon execution of this Certification.

4. Plaintiff's transaction(s) in the SUNTERRA CORP. security that is the subject of this action during the class period as follows:

| <u>No. of Shares</u> | <u>Stock Symbol</u> | <u>Buy/Sell</u> | <u>Date</u> | <u>Price Per Share</u> |
|----------------------|---------------------|-----------------|-------------|------------------------|
| 1000                 | OWN                 | Buy             | 8/28/98     | \$8.75                 |
| 1000                 | OWN                 | Buy             | 10/8/98     | \$3.875                |
| 1000                 | OWN                 | Buy             | 3/16/99     | \$10.375               |
| 1000                 | OWN                 | Buy             | 1/5/00      | \$10.00                |

Please list other transactions on a separate sheet of paper, if necessary.

5. During the three years prior to the date of this Certification, Plaintiff has sought to serve or served as a representative party for the class in the following action(s) filed under the federal securities laws (If none, so indicate):

6. Plaintiff will not accept any payment for serving as a representative party on behalf of the class beyond the Plaintiff's pro rata share of any recovery, or as ordered or approved by the court, including any award for reasonable costs and expenses (including lost wages) directly relating to the representation of the class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20<sup>th</sup> day of January, 2000.

Atara Hirth  
Signature

ATARA HIRTH  
Print Name

1275 E. 29<sup>th</sup> Street  
Address

Brooklyn N.Y. 11210  
City, State, Zip

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Phone Number

\_\_\_\_\_  
Email Address