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16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
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19 STANLEY SILVER, on Behalf of Himself)
and All Others Similarly Situated,)

20 Plaintiff,)

21 v.)

22 CRITICAL PATH, INC., WILLIAM H.)
23 RINEHART and DAVID A. THATCHER,)

24 Defendants.)
25 _____)
26
27
28

CASE NO.

CLASS ACTION

COMPLAINT FOR VIOLATIONS OF THE
FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL

1 **SUMMARY OF THE ACTION**

2 1. This is a shareholder class action on behalf of all purchasers (the “Class” or “Class
3 Members”) of the securities of Critical Path, Inc. (the “Company” or “Critical Path”) between April
4 31, 2000 and October 19, 2000, inclusive (the “Class Period”), seeking to pursue remedies under the
5 Securities Exchange Act of 1934 (the “Exchange Act”).

6 2. Critical Path was founded in early 1997. The Company provides worldwide
7 messaging solutions to Internet service providers (“ISPs”), wireless and wireline carriers, postal
8 authorities, and corporations. Beginning in the Spring of 2000, many of Critical Path’s core ISP
9 customers were having difficulty raising money, impacting the Company's ability to collect
10 receivables. In addition, defendants knew that new accounting regulations would prevent the
11 Company from recognizing up-front license fees in Q4 2000. In an effort to artificially elevate the
12 Company’s stock price, and reap substantial bonuses, defendants issued a series of false statements
13 during the Class Period regarding the Company’s business and projections for Q3/Q4 2000. As a
14 result of defendants false statements, members of the Class purchased their shares of Critical Path
15 stock at artificially elevated prices and were damaged when the truth regarding defendant’s business
16 practices was revealed.

17 **JURISDICTION AND VENUE**

18 3. The claims herein arise under Sections 10(b) and 20(a) (15 U.S.C. §§78j(b) and
19 78t(a)) of the Securities and Exchange Act of 1934 (15 U.S.C. §78) (the “Exchange Act”) and Rule
20 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5).

21 4. This Court has subject matter jurisdiction of this action pursuant to Section 27 of the
22 Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and 28 U.S.C. §§ 1331 and 1337.

23 5. Venue is proper in this District pursuant to 28 U.S.C. §1391(b) because defendant
24 Critical Path maintains its corporate offices in this district and the violations of law complained of
25 herein occurred primarily in this district, including the dissemination of materially false and
26 misleading statements and the omission of material information complained of herein.

1 defendants, officers and directors of the Company, members of their immediate families, and their
2 legal representatives, heirs, successors or assigns and any entity in which defendants have or had a
3 controlling interest.

4 13. During the Class Period, thousands of shares of common stock of Critical Path were
5 traded on an efficient and developed securities market. Thousands of brokers nationwide have
6 access to trading information about Critical Path through the system. Within minutes of any
7 transaction taking place, this system displays the most recent trades and prices.

8 14. The members of the class are so numerous that joinder of all members is
9 impracticable. While the exact number of Class members is unknown to plaintiff at this time and
10 can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of
11 members of the Class. As of April 21, 2000, Critical Path had tens of millions of shares of common
12 stock outstanding and actively traded on the NASDAQ stock exchange, an efficient market, under
13 the ticker symbol "CPTH."

14 15. Plaintiff's claims are typical of the claims of the members of the Class as all
15 members of the Class are similarly affected by defendants' wrongful conduct in violation of federal
16 law that is complained of herein.

17 16. Plaintiff will fairly and adequately protect the interests of the members of the Class
18 and have retained counsel competent and experienced in class and securities litigation. Plaintiff has
19 no interests that are adverse or antagonistic to those of the Class.

20 17. A class action is superior to other available methods for the fair and efficient
21 adjudication of this controversy. Because the damages suffered by many individual Class members
22 may be relatively small, the expense and burden of individual litigation make it virtually impossible
23 for the Class members to individually seek redress for the wrongful conduct alleged herein.

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

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- 1 a. whether the federal securities laws were violated by defendants' acts as
2 alleged herein;
- 3 b. whether defendants participated in and pursued the common course of
4 conduct complained of herein;
- 5 c. whether documents, press releases and other statements disseminated to the
6 investing public and the Company's shareholders during the Class Period misrepresented the
7 business condition of Critical Path;
- 8 d. whether defendants failed to correct prior statements when subsequent events
9 rendered those prior statements untrue or inaccurate;
- 10 e. whether defendants acted willfully and/or with conscious or deliberate
11 recklessness in misrepresenting and/or omitting to state material facts;
- 12 f. whether the market price of Critical Path's common stock during the Class
13 Period was artificially inflated due to the misrepresentations and/or non-disclosures complained of
14 herein; and
- 15 g. whether the members of the Class have sustained damages, and, if so, what is
16 the proper measure thereof.

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

19 a. defendants made public misrepresentations or omitted material facts during
20 the Class Period, as alleged herein;

21 b. the misrepresentations and/or omissions were material;

22 c. Critical Path's common stock was traded on an efficient market;

23 d. the misrepresentations and/or omissions alleged tended to induce reasonable
24 investors to misjudge the value of Critical Path shares; and

25 e. plaintiff and members of the Class acquired their shares between the time
26 defendants made the misrepresentations and/or omissions and the time the truth was revealed,
27 without knowledge of the falsity of the misrepresentations.

28

1 23. On May 10, 2000, Bloomberg published a report on the Company entitled, "Critical
2 Path Anticipates 8-Fold Revenue Increase This Year" following the Chase H&Q Technology
3 conference in San Francisco which stated in part:

4 Critical Path, Inc., which manages companies' e-mail and messaging; services,
5 expects this year's sales to exceed last year's by more than eight-fold as e-mail use
6 grows, President David Thatcher said.

7 Critical Path expects \$130 million in revenue this year and \$2401 million in 2001,
8 Thatcher said. The company had sales of \$16.2 million last year. Thatcher said
9 Critical Path will be profitable by the fourth quarter of this year.

10 The company was expected to have \$128 million in revenue this year and \$235
11 million next year, the average estimate of five analysts polled by IBES International
12 Inc. The fourth-quarter loss was expected to be 18 cents a share.

13 San Francisco-based Critical Path charges companies to set up and manage electronic
14 mailboxes. Critical Path plans to announce that it has won Sun Microsystems Inc. as
15 a customer, Thatcher said, without elaborating.

16 "E-mail is something that's becoming required as a primary communication
17 tool," said Thatcher, who spoke at the Chase H&Q Technology Conference in San
18 Francisco.

19 Critical Path shares fell 3 29/64 to 38 35/64 in Nasdaq Stock Exchange trading.
20 They've fallen 53 percent over the last year.

21 24. On June 14, 2000, Doug Hickey was interviewed by Market Watch. During that
22 interview Mr. Hickey stated:

23 CLAMAN: Your company did quite nicely during the fast quarter of the year 2000
24 with revenues rising 200 percent, how do you keep up that level of growth?

25 HICKEY: Well, we feel confident we can. I think one of the reasons that we can do
26 that is by virtue of really building true end-to-end applications in partnering with
27 companies like Aether that are world leaders at what they do. So we are confident
28 that we will continue to grow the company very, very aggressively but not just top
line. Analysts' estimates have the company profitable in Q4 this year, which we feel
very comfortable with.

29 25. On July 19, 2000, Critical Path issued a press release entitled, "Critical Path Reports
30 Record Second Quarter Revenue of \$33.5 Million, Up More Than 1500 Percent From Prior Year;
31 Net Revenue, Gross Margin and EPS Significantly Exceed First Call Estimates." The press release
32 stated:

1 Critical Path, Inc. the dominant global provider of business-to-business messaging
2 solutions, today announced record financial results-for the quarter and six months
ended June 30, 2000.

3 Revenue for -the quarter reached \$33.5 million, a 36 percent sequential increase over
4 revenue of \$24.6 million in the first quarter, and more than a 1,500 percent increase
5 over revenue of \$2.0 million in the same quarter of the prior year. The net loss for
6 the quarter, excluding special charges, was \$20.2 million, or \$0.34 per share,
7 compared with a net loss, excluding special charges, of \$16.8 million, or \$0.33 per
8 share, in the first quarter this year, and a net loss of \$6.9 million, or \$0.21 per share,
9 in the same quarter a year ago. The Company also reported gross margin of \$16.0
10 million, a 74 percent increase over gross margin of \$9.2 million in the quarter ended
11 March 31, 2000.

12 26. On July 20, 2000, Hickey was again interviewed by Market Watch. Mr. Hickey
13 stated:

14 CLAMAN: We have some e-mail questions that I wanted to perhaps address,
15 because we had some viewers who are interested. William wanted to know when do
16 you expect your earnings to turn positive? This, of course, is a big question that we
17 often here about some of these Internet companies.

18 HICKEY: Sure, and it is an absolutely vital and rightful question. If you look at the
19 analysts' estimates and what we have said in the market, we fully expect to be
20 profitable in Q4 of this year. And we have also given guidance for, our 2001
21 numbers, both increasing revenue and moving our EPS number from \$0.18 for the
22 full year of 2000 to \$0.39. So you are seeing incredible tracks in both top line and
23 bottom line with the company.

24 27. On October 19, 2000, After the close of the market and the Class Period, Critical
25 Path reported record Q3 2000 revenue of \$45 million and increased estimates for Q4 2000 and fiscal
26 2001, in a press release entitled, "Net Loss Cut in Half from Prior Quarter, Clearing Company's Path
27 to Profitability." The press release stated, in part:

28 Critical Path, Inc. the dominant global provider of business-to-business Internet
messaging infrastructure solutions, today announced record financial results for the
quarter and nine months ended September 30, 2000.

Revenue for the quarter reached nearly \$45.0 million, a 34 percent sequential
increase over revenue of \$33.5 million in the second quarter, and an 815 percent
increase over revenue of \$4.9 million in the same quarter of the prior year. The net
loss for the quarter, excluding special charges, was \$8.7 million, or \$0.14 per share,
compared with a net loss, excluding special charges, of \$20.2 million, or \$0.34 per
share, in the second quarter of this year, and a net loss of \$6.2 million, or \$0.17 per
share, in the same quarter a year ago. The Company also reported gross margin,
excluding special charges, of \$25.3 million, a 58 percent increase over gross margin
of \$16.0 million in the quarter ended June 30, 2000.

* * *

1 As a result of our acquisition of PeerLogic and the strength we see in our business
2 going forward, we are increasing our estimates for revenue for the fourth quarter of
3 this year, and revenue and earnings per share for the full year 2001," said Hickey.
4 The Company expects revenue for the fourth quarter ending December 31, 2000 of
5 between \$54 million and \$56 million, and fully diluted earnings per share, excluding
6 special charges, for the period estimated at \$0.01. For the year 2001, revenue is
7 expected between \$300 million and , \$310 million, with fully diluted earnings per
8 share, excluding special charges, of \$0.39 to \$0.41.

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9 28. On November 2, 2000, Critical Path issued a press release entitled, "Critical Path
10 Provides Financial Guidance for Anticipated Fourth Quarter 2000 and Full Year 2001; Company
11 Capitalizes on Infrastructure Opportunity to Drive to Profitability and Join Elite Group of Profitable
12 New Economy Companies." In that press release the Company stated:

13 Critical Path, Inc., today provided financial guidance for the fourth quarter 2000 and
14 the full year 2001, incorporating the expected contribution from the recent
15 acquisition of PeerLogic. This guidance, which was provided in New York City in a
16 meeting with over 100 investors and analysts, is intended to provide all investors
17 with information the Company believes is important in evaluating Critical Path's
18 business.

19 Citing the broad market opportunity, the Company expects revenue for the fourth
20 quarter ending December 31, 2000 of between \$54 million and \$56 million, which
21 represents growth of approximately 22 percent over the third quarter of 2000. The
22 Company expects pro forma earnings per share for the period to improve from a loss
23 of \$0.14 to a gain of approximately \$0.01 per share. For the year 2001, revenue is
24 expected to grow approximately 95 percent over 2000, to between \$300 million and
25 \$310 million, with pro forma earnings per share growing to a level ranging between
26 \$0.39 and \$0.41. These pro forma per share; estimates exclude special charges
27 related to the amortization of goodwill and purchased technology, acquisition-related
28 retention bonuses and stock-based charges.

29 "The fourth quarter of 2000 is a pivotal one for Critical Path, one in which we join an
30 elite group of profitable 'new economy' companies. Critical Path is executing across
31 all product segments and target markets, said Doug Hickey, Critical
32 Path's CEO, "We anticipate continued high demand for our product and service
33 offerings, and leverage in our operations to deliver initial profitability in Q4 2000
34 and increase in our profit ability in 2001."

35 29. On December 6, 2000, Critical Path issued a press release entitled, "Critical Path
36 Appoints New Chief Financial Officer; Lawrence P. Reinhold Succeeds Mark Rubash, Former
37 CFO; Company on Track to Deliver Profitability in Q4 and 2001." The press release stated in part:
38

1 Critical Path, Ins., the dominant global provider of business-to-business Internet
2 messaging infrastructure solutions, today announced that Lawrence P. Reinhold will
3 join the company as Executive Vice President and Chief Financial Officer. Mark
4 Rubash, the company's former CFO, has resigned for personal reasons following a
5 leave of absence due to family illness.

6 Reinhold brings almost 20 years of experience with technology companies' finance
7 operations to Critical Path from PricewaterhouseCoopers. With extensive experience
8 in accounting practices, public and private offerings, merger and acquisitions, and
9 managing company growth, Reinhold will add to Critical Path's leadership
10 bandwidth. Reinhold is the Managing Partner of PwC's Midwest Region
11 Technology, Information/Communications and Entertainment (TICE) practice. He
12 also serves on the leadership team for the entire U.S. TICE practice.

13 "We are extremely excited to have Larry join the Critical Path leadership team. We
14 selected Larry for three important criteria: experience managing growth and
15 expanding margins, hands on leadership, and fit within the CP team and the dynamic
16 market opportunity," said Doug Hickey, CEO of Critical Path. "In addition to our
17 executive team, we have a deep bench of experience in our finance group and we're
18 all committed to working with Larry through this pivotal quarter of profitability and
19 beyond. We continue to be very bullish on both our short and long term prospects."

20 "Critical Path is defining the market for Internet messaging infrastructure solutions. It
21 has an exciting and highly leverageable business model, a great leadership position,
22 and its accomplishments to date speak for the team's quality of execution," said
23 Larry Reinhold. "Critical Path's messaging infrastructure products and services
24 continue to find high demand across geographies and customer segments," continued
25 Hickey. "Our business model and financial controls are working, and we continue to
26 eagerly anticipate Critical Path's turning the corner to profitability in the fourth
27 quarter." For specific financial guidance, the company continues to refer investors to
28 the previously stated guidance in a press release of November 1, 2000.

"Mark has been a valuable asset to Critical Path during this year of growth,"
continued Hickey. "As we emerge into the profitable phase, we will build on the
fruits of Mark's tenure. He contributed to the creation of a company infrastructure
that will scale to the next level of success. We thank him, and wish him the best in
his future endeavors."

30. On January 18, 2001, Critical Path issued a press release entitled, "Critical Path
Reports Fourth Quarter Revenue of \$52 Million; Company Revises Guidance for 2001." The press
release went on to state:

Critical Path, Inc., the dominant global provider of business-to-business Internet
messaging infrastructure solutions, today announced record financial results for the
quarter and year ended December 31, 2000.

Revenue for the quarter reached \$52.0 million, a 16 percent sequential increase over
revenue of \$45.0 million in the third quarter of 2000, and a 534 percent increase over
revenue of \$8.2 million in the fourth quarter of 1999. The net loss for the quarter,
excluding special charges, was \$11.5 million, or \$0.16 per share, compared with a
net loss, excluding special charges, of \$8.7 million, or \$0.14 per share, in the third
quarter of 2000, and a net loss of \$11.0 million, or \$0.26, per share, in the fourth

1 quarter of 1999. The Company also reported gross profit, excluding special charges,
2 of \$29.1 million, a 15 percent increase over gross profit of \$25.3 million in the third
3 quarter of 2000.

4 The reported revenues for the quarter do not include \$7.0 million related to a large
5 enterprise license agreement that was executed during the quarter. Due to complex
6 and evolving rules governing revenue recognition for software license arrangements,
7 the Company, in consultation with its outside auditors, determined that the revenue
8 from this transaction required deferral as of December 31, 2000. The Company
9 anticipates recognizing the revenue from this transaction on a "sell through" basis in
10 the future rather than as an up-front license fee in the fourth quarter of 2000, as
11 anticipated.

12 "Despite a difficult economic environment, Critical Path achieved solid revenue
13 growth and improved gross margins, while adding over 200 new customers and
14 further solidifying our category leadership position," said Doug Hickey, Critical
15 Path's CEO.

16 According to Chief Financial Officer Larry Reinhold, other factors in addition to the
17 deferred revenue mentioned previously had an impact on results in the fourth quarter
18 of 2000. These factors included a non-operating foreign exchange loss due primarily
19 to currency fluctuations in U.S. dollar-denominated European revenues, higher than
20 expected operating expenses in the recently acquired PeerLogic business as full
21 synergies have not yet been achieved, and the provision of a significant allowance for
22 doubtful accounts.

23 "While we are disappointed with the bottom-line impact of these charges, we are
24 evaluating and will be taking concrete steps to control the underlying factors
25 impacting these areas," said Reinhold.

26 Hickey stated, "Taking into account economic indicators that seem to be affecting the
27 technology sector across the board, we are also reevaluating our guidance for 2001
28 and taking a very conservative stance toward the Company's financial expectations.
The Company expects revenue for the first quarter 2001 of between \$54 million and
\$56 million, and a loss per share, excluding special charges, estimated between \$0.15
and \$0.16. For the full year 2001, revenue is expected between \$255 million and
\$260 million, with the Company becoming profitable in the third quarter.

"It's disappointing to lower the expectations for Critical, Path, but macroeconomic
forecasts and reports from leaders in the technology space lead us to believe it is
prudent to be conservative at this time;" said Hickey. "It is our strategy to make this
move now and position the Company to execute effectively throughout the year,"

Hickey went on to discuss the positive indications for the quarter and the year.
"Regardless of near term uncertainty, I continue to be excited at the size and potential
of the Internet messaging solutions market, and my confidence is bolstered by our
success in addressing that market. We have the best and broadest suite of messaging
solutions, the most flexible delivery capability and the unique ability to scale to meet
the demands of the largest customers," he said.

Enterprise Customers

The Company has stated that penetrating the enterprise market is a major goal.
During the quarter, Critical Path signed long-term contracts with more than 200

1 customers and partners. According to Hickey, approximately 62 percent of those
2 contracts were with corporate enterprises, including Applied Materials, Wells Fargo,
Farmers Insurance and Concentra Health.

3 "As enterprises continue to maximize the value of their IT resources and reduce
4 costs, they are turning to Critical Path as the single organization uniquely positioned
5 to help them reap value from their assets. Choosing our Internet messaging
6 infrastructure solution solves a number of problems relating to cost, security and
7 reliability, particularly for enterprises with widely distributed operations and offices,"
8 he said.

9 Messaging Reach and Scale

10 Critical Path has stated as its goal to "touch every user" on the Internet, with a
11 messaging infrastructure that, through the Company's directory and meta-directory
12 capabilities, scales to magnitudes unequaled in the industry. At the dose of the
13 quarter, Critical Path powered a total of approximately 178 million mailboxes and
14 wireless devices, including approximately 125 million licensed boxes, 27 million
outsourced email boxes, and 26 million wireless devices worldwide.

15 "Our messaging infrastructure, including the directory products from PeerLogic,
16 delivers mega-scalability not only to large service providers and enterprises, but also
17 to major Internet business exchanges and many of the postal services worldwide,"
18 said Hickey. "These customers are building their eBusiness offering on our ability to
19 manage tens of millions of messages and transactions simultaneously in a secure
20 environment. We are the only provider who can do that, and only we are prepared to
scale our customers to even greater capacity in the future."

21 Wireless Partners and Services

22 Critical Path continued to make progress and achieve significant customer wins in
23 the emerging wireless sector. During the quarter, the Company announced
24 relationships with Logica for 2-way short messaging services, with Verizon to host
25 email for its paging customers, and with SK Telecom, Korea's largest wireless
26 provider.

27 "Our strategy of offering a variety of services that support any wireless protocol on
28 any type of device presents us with a greater market opportunity than is available to
other providers," said Hickey.

International Business

Enabling international enterprises and service providers with Internet messaging
infrastructure solutions is intrinsic to Critical Path's strategy to "touch every user" on
the Internet. Hickey noted that approximately 33 percent of the revenue in the fourth
quarter came from international customers. "Because Europe, Latin America and
Asia are at an earlier stage of Internet adoption than the U.S., there are tremendous
opportunities to penetrate new markets," said Hickey.

During the quarter, Critical Path announced contracts with ZipMail and Diveo in
Latin America, and BT CellNet in Europe.

Full Year Results

1 The Company reported revenue for 2000 of \$155.0 million, compared with revenue
2 of \$16.2 million in 1999. The net loss for the year, excluding special charges, was
3 \$57.2 million, or \$0.95 per share, compared with a net loss, excluding special
4 charges, of \$29.4 million, or \$0.99 per share, in 1999.

5 "Our balance sheet remains very strong and our financial resources are a strategic
6 advantage by which we can continue to pursue profitable business and investment
7 opportunities," said Hickey. The Company reported that as of December 31, 2000,
8 its cash and cash equivalents totaled \$216.5 million. During the fourth quarter of
9 2000, the Company used \$25.9 million in cash.

10 31. February 2, 2001, Critical Path issued a press release entitled, "Critical Path Forms
11 Special Committee of the Board of Directors to Conduct Investigation into Revenue Recognition
12 Issues; Two Officers Put on Administrative Leave." The press release stated, in relevant part:

13 Critical Path, Ira announced today that the Board of Directors hits formed a special
14 committee of the Board to conduct an investigation into the Company's revenue
15 recognition practices. The Company has discovered a number of transactions that
16 put into question the Company's financial results.

17 On January 18, 2001, the Company announced Fourth Quarter revenue of \$52
18 million in revenue [sic] and [a] net loss, excluding special charges, of 411.5 million.
19 The Company now believes that these results may be materially misstated. The
20 Company cautioned that the investigation has just begun. Effective immediately, the
21 Board of Directors has placed on administrative leave David Thatcher, the
22 Company's president, and William Rinehart, the vice president of worldwide sales.

23 The special committee and the Company are working with its independent auditors,
24 PricewaterhouseCoopers, and outside counsel, Wilson Sonsini Goodrich & Rosati.

25 32. Each of the statements made by defendants between April 21, 2000 and October 19,
26 2000 were false or misleading when issued. The true facts, which were known to defendants, were:

- 27 a. Critical Path's revenue and EPS would fall materially short of meeting its
28 forecasted results as a result of newly implemented accounting regulations;
- 29 b. Critical Path's reported Q1 and Q2 were materially false and misleading;
- 30 c. Critical Path's ability to meet even the projected results, including reaching
31 profitability, was contingent upon its ability to improperly recognize revenue;
- 32 d. Demand for Critical Path's products was not nearly as healthy as represented
33 due to the inability of much of Critical Path's customer base to pay for products; and

1 e. As a result of (a)-(d) above, it was impossible for defendants to achieve
2 projected Q4 revenue and EPS of \$55 million and \$0.01, respectively.

3
4 **CRITICAL PATH'S FALSE FINANCIAL REPORTING**
5 **DURING THE CLASS PERIOD**

6 33. In order to inflate the price of Critical Path's stock, defendants caused the Company
7 to falsely report its results during 2000 through improper revenue recognition. Critical Path
8 eventually revealed that it had "discovered a number of transactions that put into question the
9 Company's financial results" and that it was placing on leave its president and its vice president of
10 worldwide sales.

11 34. Critical Path reported the following amounts for Q1 and Q2 2000:

	3/31/00	6/30/00
Total Revenue	\$24.6 M	\$33.5 M
Total Net Loss*	\$ 16.8 M	\$20.2 M
Loss Per Share*	\$0.33	\$0.34

16 * Excluding special charges

17 35. These Q1 and Q2 2000 results were included in Form 10-Q's filed with the SEC. The
18 results were included in press releases disseminated to the public.

19 36. Critical Path has now admitted that it inappropriately recorded transactions,
20 transactions, including in its Q4 2000 results, and that the financial results may have been materially
21 misstated such that they were not a fair presentation of Critical Path's results and were presented in
22 violation of GAAP and SEC rules because of improper revenue recognition.

23 37. GAAP are those principles recognized by the accounting profession as the
24 conventions, rules and procedures necessary to define accepted accounting practice at a particular
25 time, SEC Regulation S-X (17 C.F.R. §210.4-01(a)(1)) states that financial statements filed with the
26 SEC which are not prepared in compliance with GAAP are presumed to be misleading and
27 inaccurate, despite footnote or other disclosure. Regulation S-X requires that interim financial
28

1 statements must also comply with GAAP, with the exception that interim financial statements need
2 not include disclosure which would be duplicative of disclosures accompanying annual financial
3 statements. 17 C.F.R. §210.10-01(a).

4 38. In Critical Path's 1999 Form 10-K, it represented the following with respect to its
5 revenue recognition on licenses:

6 Revenues for software licenses for which collection of the resulting receivable is
7 deemed probable are recognized upon delivery of the product provided there is
8 persuasive evidence of an arrangement, the fee is fixed and determinable, and
9 the agreement does not require significant customization of the software. Revenues
10 from software maintenance are recognized ratably over the maintenance term.
11 Revenues from the Company's enhanced facsimile, long distance and, other services
12 are recognized as the services are performed. Amounts billed or received in advance
13 of service delivery are recorded as deferred revenue.

14 39. Pursuant to GAAP, as set forth in AICPA Statement of Position ("SOP") 97-2, which
15 describes the accounting for software licenses, revenue should not be recognized unless there is
16 persuasive evidence of an agreement, collection is probable and delivery has occurred. Critical Path
17 improperly recognized revenue even though these conditions did not exist during the Class Period.

18 40. Unfortunately for investors, these results, and the representations concerning them,
19 were false. Absent the Company's improper revenue recognition, Critical Path would have reported
20 materially lower revenues and higher losses in 2000.

21 41. Due to these accounting improprieties, the Company represented its financial results
22 and statements in a manner which violated GAAP, including the following fundamental accounting
23 principles:

24 a. The principle that interim financial reporting should be based upon the same
25 accounting principles and practices used to prepare annual financial statements was violated (APB
26 No. 28, ¶10);

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

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

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

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

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

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

18 g. The principle of completeness, which means that nothing is left out of the
19 information that may be necessary to insure that it validly represents underlying events and
20 conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

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

25 42. Further, the undisclosed adverse information concealed by defendants during the
26 Class Period is the type of information which, because of SEC regulations, regulations of the
27 national stock exchanges and customary business practice, is expected by investors and securities
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1 analysts to be disclosed and is known by corporate officials and their legal and financial advisors to
2 be the type of information which is expected to be and must be disclosed.

3 **DEFENDANTS' SCIENTER**

4 43. During the Class Period, the Individual Defendants who were senior executives
5 and/or directors of Critical Path was privy to confidential and proprietary information concerning
6 Critical Path, its operations, finances, financial condition, products and business prospects.

7 44. The Individual Defendants were provided with copies of Critical Path's
8 management reports, press releases, SEC filings and/or handouts at investment advisor conferences
9 alleged herein to be misleading prior to or shortly after their issuance. The Individual Defendants
10 had the ability and opportunity to prevent their issuance or cause them to be corrected.

11 45. During the Class Period, defendants directly and indirectly engaged and
12 participated in a continuous course of conduct to misrepresent the results of Critical Path's
13 operations and to conceal adverse material information regarding the current financial status and
14 future financial prospects of Critical Path as specified herein. Defendants employed devices,
15 schemes, and artifices to defraud, and engaged in acts, practices, and a course of conduct as herein
16 alleged in an effort to increase and maintain an artificially high market prices for the common stock
17 of the Company. This included the formulation, making, and/or participation in the making of
18 untrue statements of material facts, and the omission to state material facts necessary in order to
19 make the statements made, in light of the circumstances under which they were made, not
20 misleading, which operated as a fraud and deceit upon and the other members of the Class.

21 46. The defendants are liable, jointly and severally, as direct participants in the
22 wrongs complained of herein. Defendants had a duty to promptly disseminate accurate and truthful
23 information with respect to Critical Path's products, operations, financial condition and business
24 prospects or to cause and direct that such information be disseminated so that the market price of
25 Critical Path stock would be based on truthful and accurate information.

26 47. The Company and, as an officer, director and/or controlling person of a
27 publicly held company whose common stock is registered with the SEC under the Exchange Act,
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1 traded on the NASDAQ system, and governed by the provisions of the Exchange Act, the Individual
2 Defendants had a duty to promptly disseminate accurate and truthful information with respect to the
3 Company's operations, business, products, markets, management, earnings and business prospects,
4 to correct any previously issued statements from any source that had become untrue, and to disclose
5 any trends that would materially affect earnings and the present and future financial operating
6 results of Critical Path, so that the market price of the Company's publicly traded securities would
7 be based upon truthful and accurate information.

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10 **STATUTORY SAFE HARBOR**

11 48. The statutory safe harbor providing for forward-looking statements under
12 certain circumstances does not apply to any of the false forward-looking statements, if any, pleaded
13 in this Complaint. None of the forward-looking statements pleaded herein were sufficiently
14 identified as a "forward-looking statement" when made. Nor did meaningful cautionary statements
15 identifying important factors that could cause actual results to differ materially from that in the
16 forward-looking statements accompany those statements. To the extent that the statutory safe
17 harbor does apply to any forward-looking statements pleaded, the defendants are liable for those
18 false forward-looking statements because at the time each of those statements was made, the speaker
19 actually knew the forward-looking statement was false and the forward-looking statement was
20 authorized and/or approved by an executive officer of Critical Path who actually knew that those
21 statements were false when made.

22 **COUNT I**

23 **(Violations of Section 10(b) of the Exchange Act
24 and Rule 10-5 Promulgated Thereunder, Against All Defendants)**

25 49. Plaintiff repeats and realleges the allegations above as though fully set forth herein.

26 50. During the Class Period, the defendants, and each of them, carried out a plan, scheme
27 and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the
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1 investing public, including plaintiff and the other Class Members, as alleged herein; (ii) artificially
2 inflate and maintain the market price of Critical Path stock; and (iii) cause plaintiff and other
3 members of the Class to purchase Critical Path securities at inflated prices. In furtherance of this
4 unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set
5 forth herein. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue
6 statements of material fact and/or omitted to state material facts necessary to make the statements
7 not misleading; and (c) engaged in acts, practices, and a course of business which operated as a
8 fraud and deceit upon the purchasers of the Company's stock in an effort to maintain artificially
9 high market prices for Critical Path securities in violation of section 10(b) of the Exchange Act and
10 Rule 10b-5.

11 51. The statements made by defendants during the Class Period were materially false and
12 misleading because at the time they were made, the Company and persons acting as corporate
13 officers either knew or, with conscious or deliberate recklessness, disregarded but failed to disclose,
14 the matters set forth herein.

15 52. In ignorance of the artificially high market prices of Critical Path's publicly traded
16 securities, and relying directly on defendants or indirectly on the false and misleading statements
17 made by defendants, upon the integrity of the market in which the securities trade, on the integrity of
18 the regulatory process and the truth of representations made to appropriate agencies throughout the
19 Class Period and/or on the absence of material adverse information that was known to defendants
20 but not disclosed in public statements by defendants during the Class Period, plaintiff and the other
21 members of the Class acquired Critical Path securities during the Class Period at artificially high
22 prices and were damaged thereby.

23 53. Had plaintiff and the other members of the Class and the marketplace known of the
24 true financial condition, business prospects and character of leadership of Critical Path which were
25 not disclosed by defendants, plaintiff and other members of the Class would not have purchased or
26 otherwise acquired their Critical Path securities during the Class Period, or would have not done so

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1 at the artificially inflated prices which they paid. Hence, plaintiff and the Class were damaged by
2 defendants' violations of Section 10(b) and Rule 10b-5.

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4 **COUNT II**

5 **(Violation of Section 20(a) of the Exchange Act
6 Against the Individual Defendants)**

7 54. Plaintiff incorporates by reference the above paragraphs above as if set forth fully
8 herein. This Count is asserted against the Individual Defendants.

9 55. Defendants Hickey, Hayden, Thatcher, Duncan and Rinehart acted as controlling
10 persons of Critical Path within the meaning of Section 20 of the Exchange Act as alleged herein. By
11 reasons of their executive, managerial or director positions with Critical Path, the Individual
12 Defendants had the power and authority to cause the Company to engage in the wrongful conduct
13 complained of herein.

14 56. By reasons of the aforementioned wrongful conduct, defendant Hickey, Hayden,
15 Thatcher, Duncan and Rinehart are liable pursuant to Section 20(a) of the Exchange Act. As a
16 direct and proximate result of their wrongful conduct, plaintiff and the other members of the Class
17 suffered damages in connection with purchasing the Company's securities during the Class period.

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

19 1. Determining that this action is a proper class action, certifying plaintiff as
20 class representatives under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel
21 as class counsel;

22 2. Awarding compensatory damages in favor of plaintiff and the other Class
23 Members against all defendants, jointly and severally, for all damages sustained as a result of
24 defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

25 3. Awarding plaintiff and the Class their reasonable costs and expenses
26 incurred in this action, including counsel fees and expert fees; and

27 4. Such other and further relief as the Court may deem just and proper.

28 **JURY DEMAND**

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Plaintiff hereby demands a trial by jury.

Dated: March 21, 2002

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