

1 HELANE L. MORRISON (State Bar No. 127752)
2 JAMES A. HOWELL (State Bar No. 92721)
3 CHRISTOPHER C. COOKE (State Bar No. 142342)
4 PATRICK THOMAS MURPHY (NY State Bar No. 2685717)

5 Attorneys for Plaintiff
6 SECURITIES AND EXCHANGE COMMISSION
7 44 Montgomery Street, Suite 1100
8 San Francisco, California 94104
9 Telephone: (415) 705-2500
10 Facsimile: (415) 705-2501

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

<p>14 SECURITIES AND EXCHANGE COMMISSION, 15 Plaintiff, 16 vs. 17 REZA MIKAILLI, GARY F. PADO, and UNIFY CORPORATION, 18 Defendants.</p>	<p>Civil Action No. 02-2426 RS COMPLAINT (E-Filed)</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------

19 Plaintiff Securities and Exchange Commission (the “Commission”) alleges:

20 **SUMMARY OF THE ACTION**

21 1. From at least September 1999 through May 2000, Unify Corporation (“Unify”
22 or the “Company”), a Sacramento, California management software company, reported false
23 financial results to its shareholders, the Commission and the public. These false financial reports
24 were the direct result of the fraudulent efforts of Reza Mikailli, the former President and Chief
25 Executive Officer (“CEO”) of Unify, and Gary F. Pado, Unify’s Chief Financial Officer (“CFO”).

26 2. Mikailli and Pado orchestrated the fraudulent scheme by essentially causing
27 Unify to “buy” its own sales revenue. This was accomplished by structuring transactions in a manner
28 where Unify provided funds to its customers so that the customers could use those funds to buy Unify

1 product. Mikaili and Pado also created false revenue by entering into concealed side agreements
2 with customers that granted the customer a right of cancellation, the right not to pay at all, or
3 extended payment terms. These transactions possessed no net economic benefit to the Company or
4 its shareholders, were not properly recognizable as revenue, and artificially inflated the value of
5 Unify's stock.

6 3. As a consequence of the actions of Mikaili and Pado, Unify issued press
7 releases and filed quarterly reports with the Commission, on Form 10-Q, that contained materially
8 false and misleading information concerning Unify's revenue and income for the quarters ended July
9 31, 1999, October 31, 1999, and January 31, 2000. As a further consequence of the actions of
10 Mikaili and Pado, the Company also issued a press release announcing materially false revenue for
11 the quarter and the fiscal year ended April 30, 2000.

12 4. The Commission seeks to enjoin all defendants from future violations of the
13 federal securities laws, and bar Mikaili and Pado from serving as directors or officers of companies
14 reporting to the Commission. In addition, the Commission seeks to obtain disgorgement of all
15 benefits received by Mikaili from his violations of the securities laws and to obtain civil monetary
16 penalties against Mikaili and Pado for their violations.

17 **JURISDICTION, VENUE AND INTRADISTRICT ASSIGNMENT**

18 5. The Commission brings this action pursuant to Sections 21(d), 21(e), and 21A
19 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d), 78u(e), and 78u-
20 1(a)]. This Court has jurisdiction over this action pursuant to Sections 21(e) and 27 of the Exchange
21 Act [15 U.S.C. §§ 78u(e) and 78aa].

22 6. Mikaili, Pado, and Unify made use of the means and instrumentalities of
23 interstate commerce, of the mails, or of the facilities of a national securities exchange, in connection
24 with the acts, practices, and courses of business and transactions alleged herein.

25 7. This district is an appropriate venue for this action under Section 27 of the
26 Exchange Act [15 U.S.C. § 78aa]. Certain of the transactions, acts, practices and courses of business
27 constituting the violations alleged herein occurred within the Northern District of California.
28

1 NASDAQ on October 23, 2000, and the stock is currently quoted by various broker dealers in the
2 OTC market.

3 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

4 **A. Unify Was Required To Accurately Report Its Financial Condition And Results.**

5 12. In order to sell its common stock and other securities to members of the public
6 and maintain public trading of its securities, Unify was required to comply with statutes, rules and
7 regulations designed to ensure that the Company's financial information was accurately recorded and
8 disclosed to the investing public. Under these statutes, rules and regulations, Unify had a duty to,
9 among other things: (a) make and keep books, records and accounts which, in reasonable detail,
10 accurately and fairly reflected its transactions and dispositions of assets; (b) devise and maintain a
11 system of internal accounting controls sufficient to provide reasonable assurances that transactions
12 are recorded as necessary to permit preparation of financial statements in conformity with generally
13 accepted accounting principles and to maintain accountability for assets; (c) file with the Commission
14 an annual report on the appropriate form (known as a "Form 10-K") for each fiscal year including a
15 financial statement including a balance sheet and statements of income and cash flows prepared in
16 conformity with generally accepted accounting principles and certified by an independent public
17 accountant; and (d) file with the Commission quarterly reports on the appropriate form (known as a
18 "Form 10-Q") for each of the first three quarters of each fiscal year including financial statements
19 that disclose its financial condition and results of business operations for each three-month period.

20 13. Under generally accepted accounting principles, Commission rules and
21 regulations, and Unify's publicly stated accounting policies, Unify's sales revenues and income were
22 recorded and reported for specific reporting periods – that is, by fiscal quarter and by fiscal year.
23 Unify could recognize revenues from the sale of software during a particular reporting period only if
24 there was persuasive evidence of a sale to a customer, delivery of the software had occurred, the price
25 for the software was fixed or determinable, collectibility was reasonably assured, and Unify had
26 substantially performed all of its obligations to the customers.

1 **B. Defendants Mikaili And Pado Carried Out A Fraudulent Scheme To Misrepresent**
2 **Unify's Financial Results**

3 14. During Unify's fiscal year 2000 beginning on May 1, 1999, and ended on
4 April 30, 2000, Mikaili and Pado approved and issued quarterly announcements of Unify's revenue
5 and earnings. Unify also filed with the Commission quarterly reports on Form 10-Q for the first three
6 quarters of the fiscal year containing the same revenue and earnings information. The Form 10-Qs
7 were approved by Mikaili, and signed by Pado. For the purpose of registering the sale of stock to
8 the public, Mikaili also signed a registration statement for the Company's common stock on Form S-
9 3 that was filed with the Commission on March 14, 2000. This registration statement incorporated by
10 reference each of the Company's Form 10-Q filings for the prior three quarters.

11 15. As CEO and CFO, Mikaili and Pado had frequent communications with
12 investors and market analysts (persons or companies who followed Unify's stock and published
13 opinions concerning the Company's past performance and expected future performance). They
14 closely followed analysts' announcements of revenue and earnings expectations. Beginning in May
15 of 1999, Mikaili and Pado communicated to these analysts and investors that Unify was in the
16 process of transitioning from a traditional database software company into an emerging e-commerce
17 company with internet-based products. In conjunction with these communications, Mikaili and Pado
18 provided guidance and created expectations with the analysts and investors that quarterly sales would
19 continually increase.

20 16. During each quarter of fiscal year 2000, Mikaili and Pado closely monitored
21 the general progress of Unify's sales and assessed the likelihood that particular sales would close.
22 They obtained this information through reports, meetings, and communications with Unify
23 employees and potential customers. In the last two weeks of each quarter, Mikaili and Pado were in
24 continual contact with each other to closely monitor potential sales and compare these potential sales
25 with the expectations of the market analysts and investors.

26 17. When demand for Unify's products was insufficient to meet the expectations
27 communicated to the analysts, Mikaili and Pado resorted to creating fictitious sales revenue to meet
28

1 these expectations. To increase the reported revenue for each quarter of Unify's fiscal year 2000,
2 Mikaili and Pado negotiated and executed transactions that were either contingent or reciprocal.

3 18. A "contingent sale" refers to a sales contract in which the customer does not
4 have a binding obligation to pay for the goods purchased. A contingent sale may arise where a
5 customer is informally assured that it does not have to pay for goods it has purportedly purchased,
6 where the customer may postpone payment, or where a customer has the right to cancel a sales
7 contract before any payment is made. Under generally accepted accounting principles, contingent
8 sales may not be recognized as revenue because the price of the software is not fixed and
9 determinable and the collectibility of the sales price is not probable.

10 19. A "reciprocal transaction" refers to a sales contract in which a customer agrees
11 to purchase software from Unify on the condition that Unify provide the customer with the funds to
12 make that purchase. Unify did this either by purchasing the same amount of a customer's product or
13 services as the customer was purchasing from Unify (also known as a "barter"), or by paying a
14 customer, through an investment or separate agreement, an amount sufficient to fund the customer's
15 purchase from Unify (also known as a "round-tripping"). The effect of such transactions was that
16 Unify would not receive any net economic benefit because it was essentially using its own funds to
17 purchase revenue. No assets were derived from such activity. Under generally accepted accounting
18 principles, Unify could not recognize revenue on such reciprocal transactions with customers because
19 Unify's revenue was contingent on Unify's performance of its obligation to the customer.

20 20. Mikaili and Pado created contingent transactions by executing a contract
21 while simultaneously granting the customer the right not to pay, to cancel the contract, or to extend
22 payment beyond the payment terms specified in the contract. Mikaili and Pado agreed to grant
23 contingencies to customers because these customers were unwilling or unable to enter into binding
24 contracts with Unify absent such concessions. As a result of the contingencies, the customers had no
25 binding obligation to pay Unify. Both Mikaili and Pado knew that contingent transactions lacked a
26 binding obligation of payment, resulted in the improper recognition of revenue, and violated both
27 generally accepted accounting principles and Unify's revenue recognition policy.
28

1 21. Mikailli and Pado created reciprocal transactions by persuading customers to
2 purchase Unify product in exchange for Unify's promise to provide something of substantially
3 equivalent economic value to offset the purchase price. Reciprocal transactions were structured in
4 three separate forms: an outright barter transaction where Unify purchased the same amount of
5 product from a customer as the customer was purchasing from Unify; funded transactions where
6 Unify made an investment in a customer in order to provide the customer with the funds it needed to
7 purchase Unify's product; or funded transactions where Unify would provide funds for a customer's
8 product purchase by executing a separate agreement to pay the customer for software development
9 work that was never completed. In providing funds to a customer or purchasing an identical amount
10 of product from a customer in exchange for a purchase of its product, Unify was engaging in an
11 offsetting swap that failed to create any net economic benefit to the Company. Both Mikailli and
12 Pado knew, or were reckless in not knowing, that reciprocal transactions did not conform with
13 generally accepted accounting principles and resulted in the improper recognition of revenue.

14 22. Mikailli and Pado were unable to maintain their fraudulent revenue recognition
15 scheme beyond fiscal year 2000. During the second half of fiscal year 2000, Mikailli and Pado were
16 actively attempting to sell Unify, and had communicated with several companies about a potential
17 acquisition. Mikailli had frequent discussions with and provided documentation to two larger
18 companies. In or around the first two weeks of May, the first company informed Mikailli that it was
19 not interested in acquiring Unify. On or about June 2, 2000, Mikailli was informed by the second
20 company that it was not interested in acquiring Unify. On June 6, 2000, Unify issued a press release
21 stating that Mikailli had suffered a heart attack and was taking a leave of absence. On or around June
22 20, 2000, Mikailli informed Unify's Human Resource Manager that he had sold all of his Unify
23 stock.

24 23. Unify's management, including Mikailli and Pado, reported to the company's
25 board of directors. A committee of the board of directors, the Audit Committee, had specific
26 responsibility to monitor Unify's financial reporting and the Company's relationship with
27 independent certified public accountants that performed audits and reviews of the Company's
28 financial statements ("independent auditors"). On July 5, 2000, the Unify Audit Committee

1 authorized an independent investigation of Unify's revenue recognition practices. The Audit
 2 Committee contacted Unify's independent auditors regarding the investigation, and the auditors
 3 suspended their ongoing year-end audit. On July 31, 2000, Unify issued a press release stating that
 4 the Company's board of directors had become aware of improper accounting practices and improper
 5 revenue recognition. The press release also stated that the Company would delay filing its annual
 6 report or Form 10-K, and would be filing amended Form 10-Qs for each of the first three quarters of
 7 fiscal year 2000. It also announced that Mikaili and Pado were being placed on administrative leave
 8 during the investigation, and cautioned that its financial results for the first quarter of fiscal year 2001
 9 would not meet market analysts' expectations with respect to revenue and net earnings. NASDAQ
 10 suspended trading in Unify common stock prior to the opening of trading on July 31, 2000, and
 11 delisted the stock on October 23, 2000.

12 24. On November 17, 2000, Unify announced that Mikaili had been terminated,
 13 Pado had resigned, and a new President and CEO had been appointed by the board of directors.

14 25. On December 20, 2000, Unify issued a press release announcing restated
 15 financial results for the first three quarters, and revised results for the fourth quarter and the fiscal
 16 year ended April 30, 2000. On the same day the Company filed its amended Form 10-Qs and its
 17 delayed Form 10-K for fiscal year 2000. As these amended 10-Qs and the 10-K set forth, Unify's
 18 quarterly revenues were overstated from 58% to 150%. The difference in the financial results
 19 reported by Unify and the actual results achieved is set forth in the chart below:

20
 21 **RESTATED UNIFY FINANCIAL RESULTS BY QUARTER**

22	23 NET REVENUE			24 NET INCOME (LOSS)			
	25 (millions)			26 (millions)			
27	28 <u>Quarter</u> <u>Ending</u>	<u>Originally</u> <u>Reported/</u> <u>Announced</u>	<u>As Restated</u>	<u>Percentage</u> <u>Overstated</u>	<u>Originally</u> <u>Reported/</u> <u>Announced</u>	<u>As Restated</u>	<u>Percentage</u> <u>Overstated</u>
29	7/31/99	\$ 8.7	\$ 5.4	61.1%	\$ 1.7	\$(2.4)	170.8%
30	10/31/99	\$ 9.2	\$ 5.8	58.6%	\$ 2.1	\$(1.3)	261.5%
31	1/31/00	\$ 10.1	\$ 5.3	90.6%	\$ 2.8	\$(.8)	450.0%
32	4/30/00	\$ 11.5	\$ 4.6	150.0%	\$ 8.6	\$(3.2)	368.8%
33	<u>TOTAL</u>	<u>\$ 39.5</u>	<u>\$ 21.1</u>	<u>87.2%</u>	<u>\$ 15.3</u>	<u>\$(7.7)</u>	<u>298.7%</u>

1
2 **B. Unify Reports False Revenue For The First Quarter Ended July 31, 1999.**

3 26. On September 10, 1999, Unify filed with the Commission its Form 10-Q for
4 the quarter ended July 31, 1999. The Company had previously issued a press release on August 17,
5 1999 detailing the same quarterly results and highlighting the “continued momentum of e-commerce”
6 sales. The Company’s reported total revenue and net income for the period were \$8.7 million and
7 \$1.7 million, respectively. Unify’s restated financial results for this period decreased total revenue to
8 \$5.4 million and decreased income to a net loss of \$2.4 million due to improper accounting practices.
9 The original 10-Q overstated revenue by over 61% and net income by over 170%.

10 *The Open SA Contingent Sale*

11 27. In order to meet earnings expectations for first quarter of fiscal year 2000, on
12 July 30, 1999, Mikaili and Pado negotiated and executed a contract with Open SA, a Panamanian
13 company. At that time Open SA had an existing agreement with Unify on which it still owed
14 payment in the amount of \$400,000. Despite the outstanding obligation, Mikaili convinced Open
15 SA to commit to the new contract and additional payment obligations of \$1.15 million. The CEO of
16 Open SA informed Mikaili and Pado that Open SA lacked the financial ability to commit to any
17 additional payment obligations. Mikaili orally informed the Open SA CEO that he should agree to
18 the additional payment obligations because he would not have to worry about making any actual
19 payments.

20 28. Prior to July 30, 1999, both Mikaili and Pado had been informed that Unify’s
21 independent auditors would not allow Unify to recognize new revenue from Open SA as long as
22 Open SA had not paid off its prior \$400,000 payment obligation. Accordingly, Mikaili wired
23 \$400,000 of his personal funds to Open SA that Open SA then forwarded as payment to Unify for its
24 prior obligation. Pursuant to the terms of the new \$1.15 million payment obligations, Open SA was
25 required to pay Unify on September 15, 1999. In order to hide the fact that Open SA was not going
26 to make any payment, Pado recorded revenue based upon a “deposit in transit.”

27 29. As both Mikaili and Pado knew, because of the oral contingency granting
28 Open SA the right not to pay and the funding by Mikaili of Open SA’s payment to Unify in the

1 amount of \$400,000, the recording of the new \$1.15 million Open SA contract as revenue violated
2 generally accepted accounting principles and Unify's revenue recognition policy. Accordingly, in
3 including the Open SA revenue in the first quarter 10-Q and the press release, Mikaili and Pado
4 knowingly made false and misleading statements regarding the revenue of Unify.

5 *The Databyte, Inc. Contingent Sale*

6 30. On July 30, 1999, Mikaili and Pado had Unify record \$250,000 in revenue
7 from a contract with Databyte, Inc. This revenue was required in order to meet the expectations of
8 analysts for the quarter. As Mikaili and Pado knew, the Databyte contract was a contingent contract
9 not properly recognizable as revenue under generally accepted accounting principles.

10 31. As Mikaili and Pado knew, Databyte was unwilling to enter into a contract to
11 purchase product from Unify until it had reached a separate agreement to sell Unify product to an
12 unrelated third party. In order to persuade Databyte to sign the deal, Pado provided two separate side
13 letter agreements to Databyte. The first letter agreed that Unify would partially fund Databyte's
14 payment to Unify by providing a \$100,000 commission payment. The second letter expressly
15 granted Databyte the right to cancel the purchase from Unify in the event it did not reach a deal with
16 the unrelated third party. Mikaili and Pado approved the terms of each side letter agreement, and
17 Pado signed both.

18 32. As Mikaili and Pado knew, because the side letter agreements granted
19 Databyte the contingent right not to pay under the contract and Unify had partially funded the
20 purchase through a \$100,000 commission payment, the recording of the Databyte revenue violated
21 generally accepted accounting principles and Unify's revenue recognition policy. Accordingly, by
22 including the Databyte revenue in the quarterly financial results reported in the 10-Q and the press
23 release, Mikaili and Pado knowingly made false and misleading statements regarding the revenue of
24 Unify.

25 **C. Unify Reports False Revenue For The Second Quarter Ended October 31, 1999.**

26 33. On December 15, 1999, Unify filed with the Commission its Form 10-Q for
27 the quarter ended October 31, 1999. The Company had previously issued a press release on
28 November 16, 1999 detailing the same quarterly results and again highlighting "increased momentum

1 with e-commerce” sales. The Form 10-Q and the press release reported revenue of \$9.2 million and
2 net income of \$2.1 million. Unify’s restated financial results for this period decreased total revenue
3 to \$5.8 million and income to a net loss of \$1.3 million. Due to the fraud orchestrated by Mikaili
4 and Pado, the original 10-Q overstated revenue by over 58% and net income by over 260%.

5 *The Arango Software Reciprocal Transaction*

6 34. On October 31, 1999, the last day of the second quarter of fiscal year 2000,
7 Unify recognized \$500,000 in revenue from Arango Software (“Arango”), a Panamanian company.
8 Mikaili and Pado structured this transaction as a reciprocal transaction in violation of generally
9 accepted accounting principles. In its restatement, Unify eliminated all of this revenue.

10 35. During September 1999, Mikaili directly negotiated with Arango, including
11 by traveling to Panama. In order to persuade Arango to purchase Unify’s product, and thereby
12 generate revenue for Unify, Mikaili proposed to Arango that Unify would fund Arango’s purchase of
13 Unify product by providing funds through a purported investment. A deal proposal forwarded to
14 Arango, and approved by Mikaili and Pado, explicitly stated that Arango would buy Unify’s product
15 but that “the actual cost is actually financed through the investment.” Arango accepted the proposal
16 and bought Unify product using the investment funds from Unify. The payments were scheduled to
17 ensure that Unify first paid Arango for the investment and then Arango paid the same amount back to
18 Unify.

19 36. Mikaili and Pado were also aware that Unify’s independent auditors might
20 question the deal. Accordingly, they structured the deal so that Unify’s investment would occur in
21 the following quarter (but before Arango had to pay for the Unify product). By placing the sale and
22 the investment in different reporting periods, Mikaili and Pado were able to obscure the fact that the
23 investment was funding the product purchase.

24 37. Unify issued a press release on December 1, 1999 that quoted Mikaili
25 highlighting Arango’s decision to purchase Unify software and the “tremendous momentum” it
26 generated for Unify. The press release failed to mention the offsetting investment in Arango by
27 Unify.
28

1 38. As Mikaili and Pado knew, because of the offsetting investment by Unify that
2 funded the product purchase by Arango, the recording of the Arango revenue violated generally
3 accepted accounting principles. Accordingly, by including the Arango revenue in the quarterly
4 financial results reported in the 10-Q and the press release, Mikaili and Pado knowingly made false
5 and misleading statements regarding the revenue of Unify.

6 *The Evergreen Internet, Inc. Reciprocal Transaction*

7 39. On October 31, 2000, the last day of the second quarter, Unify recognized
8 \$500,000 in second quarter revenue from a sale of product to Evergreen Internet, Inc (“Evergreen”).
9 In order to meet the expectation of their quarterly revenue numbers, Mikaili and Pado fraudulently
10 created this deal as a reciprocal transaction in violation of generally accepted accounting principles.
11 Unify’s restatement eliminated all \$500,000 of this revenue.

12 40. In or around August 1999, Mikaili was in discussions with Evergreen
13 regarding a potential strategic relationship between the two companies. Mikaili informed the CEO
14 of Evergreen that in order for such a relationship to exist, Evergreen would have to generate some
15 revenue for Unify by purchasing some of its product. Evergreen’s CEO informed Mikaili that
16 Evergreen did not want to spend any of its funds to buy Unify’s product. Accordingly, Pado
17 simultaneously executed a licensing contract where Evergreen agreed to purchase \$500,000 of Unify
18 product and a “Funded Development Agreement” pursuant to which Unify would pay Evergreen
19 \$545,000 for software development work. Pado also executed a letter to Evergreen which explicitly
20 stated that Evergreen’s obligation to make payments to Unify for Unify product were “contingent
21 upon payment by Unify of the \$545,000 set forth in the Funded Development Agreement.”

22 41. As Mikaili and Pado knew, because of the funding of Evergreen’s purchase of
23 Unify product through the Funded Development Agreement, the recording of the Evergreen revenue
24 violated generally accepted accounting principles. Accordingly, by including the Evergreen revenue
25 in the quarterly financial results reported in the Form 10-Q and the press release, Mikaili and Pado
26 knowingly made false and misleading statements regarding the revenue of Unify.

27 *The Ichatbox, Inc. Reciprocal Transaction*

1 42. At the close of the second quarter, Unify recognized \$100,000 in revenue from
2 a license agreement with Ichatterbox, Inc. (“Ichatterbox”). Mikaili and Pado fraudulently created
3 this transaction as a reciprocal transaction in order to meet quarterly revenue expectations. Unify’s
4 restatement eliminated all \$100,000 of the Ichatterbox revenue.

5 43. In or around July 1999, Mikaili was in discussions with the CEO of
6 Ichatterbox about the possibility of joining the board of directors of Ichatterbox. Mikaili told the
7 Ichatterbox CEO that he could only join the board if Ichatterbox purchased some of Unify’s product.
8 Ichatterbox was a small start-up with little cash and had no business purpose for utilizing Unify’s
9 software. Mikaili told the Ichatterbox CEO that it would not cost Ichatterbox anything to purchase
10 Unify’s software because Unify would fund the purchase.

11 44. On or around October 15, 1999, Pado executed a contract with Ichatterbox,
12 wherein Ichatterbox agreed to buy \$100,000 of Unify product. On or around the same date, Mikaili
13 paid Ichatterbox \$300,000, and instructed the Ichatterbox CEO that \$100,000 was to be used to buy
14 Unify’s product and the remainder was to be for an investment in Ichatterbox. In accordance with
15 these instructions, Ichatterbox used the funds from Mikaili to purchase \$100,000 of Unify product.
16 At Pado’s instruction, Unify reimbursed Mikaili \$300,000.

17 45. As Mikaili and Pado knew, because Unify funded the product purchase by
18 Ichatterbox through a reciprocal offsetting investment, the recording of the Ichatterbox revenue
19 violated generally accepted accounting principles. As a result, by including the Ichatterbox revenue
20 in the quarterly financial results reported in the 10-Q and the press release, Mikaili and Pado
21 knowingly made false and misleading statements regarding the revenue of Unify.

22 *The Triple G, Inc. Contingent Sale*

23 46. At the close of the second quarter, Unify recognized \$1.5 million in second
24 quarter revenue from Triple G, Inc. (“Triple G”), a Canadian company. In order to meet the analysts’
25 expectations of their quarterly revenue numbers, Mikaili and Pado fraudulently created this deal as a
26 contingent transaction in violation of generally accepted accounting principles. Unify’s restatement
27 eliminated \$1.2 million of this revenue.

1 47. At the time of the fraud, Triple G was an existing Unify customer that had
2 made a significant commitment to using Unify software in its business. In July 1999, Mikaili was in
3 negotiations with the CEO of Triple G. Mikaili informed the Triple G CEO that Triple G would
4 have to commit to buying an additional \$1.5 million in software from Unify or would lose the right to
5 use Unify software in the future. The Triple G CEO informed Mikaili that his company lacked the
6 financial ability to make such a commitment. As a result, Mikaili proposed that Triple G make a
7 partial payment with shares of its stock, along with the right to pay cash in the future by repurchasing
8 its stock via a buy-back right.

9 48. As Mikaili and Pado knew, Triple G's payment with stock, along with its buy-
10 back right, could potentially disable Unify from recognizing revenue. Accordingly, they consulted
11 with Unify's independent auditors prior to executing the transaction. The auditors informed them
12 that they could do the deal as long as the stock buy-back right did not extend beyond 12 months.
13 However, Triple G informed Mikaili and Pado that they required the stock buy-back right to extend
14 for 24 months. Accordingly, Pado executed a side letter agreement stating that Triple G could
15 repurchase one-half of the stock for a period of 24 months. In order to ensure the recognition of the
16 revenue, Mikaili and Pado hid the side letter from Unify's auditors. After the fraud was uncovered,
17 Pado told one of Unify's auditors that "we hid [the side letter] from you so we could get our
18 numbers."

19 49. As Mikaili and Pado knew, because of the side letter agreement extending the
20 term of Triple G's buy-back right beyond 12 months, the recording of the Triple G revenue violated
21 generally accepted accounting principles and Unify's revenue recognition policy. Accordingly, by
22 including the Triple G revenue in the quarterly financial results reported in the 10-Q and the press
23 release, Mikaili and Pado knowingly made false and misleading statements regarding the revenue of
24 Unify.

25 **C. Unify Reports False Revenue For The Third Quarter Ended January 31, 2000**

26 50. On March 14, 2000 Unify filed with the Commission its Form 10-Q for the
27 quarter ended January 31, 2000. The Company had previously issued a press release detailing the
28 same quarterly results to the public and highlighting "accelerating revenue from e-commerce

1 solutions.” The revenue in the 10-Q and the press release was reported as \$10.1 million and net
2 income of \$2.8 million. In its December 20, 2000 restatement, Unify decreased total revenue to \$5.3
3 million and income to a net loss of \$0.8 million for the third quarter ended January 31, 2000. Due to
4 the fraud orchestrated by Mikaili and Pado, the original 10-Q overstated quarterly revenue by over
5 90% and net income by over 450%.

6 *The Actuate Reciprocal Transaction*

7 51. On January 31, 2000, the last day of the third quarter, Unify recognized \$2.25
8 million in revenue from Actuate Corporation (“Actuate”), a company based in South San Francisco,
9 California. In order to meet its quarterly revenue expectations, Mikaili and Pado fraudulently
10 created this deal as a reciprocal barter transaction in violation of generally accepted accounting
11 principles. Unify’s restatement eliminated the entire amount of this transaction.

12 52. In December 1999, Mikaili approached the CEO of Actuate and proposed a
13 deal in which Unify and Actuate would buy product from each other. From the outset, Mikaili
14 proposed that the two deals would be equal in dollar amount, and therefore would offset each other.
15 In order to hide the offsetting nature of the deals from the quarterly review of Unify’s auditors,
16 Mikaili also required each deal to originate in a different quarter.

17 53. On January 31, 2000, the last day of Unify’s third quarter, Pado executed
18 contracts in which Actuate agreed to pay Unify a total of \$2.25 million for products and services.
19 Mikaili, Pado, the CEO of Actuate, and the CFO of Actuate, agreed that Actuate was only
20 purchasing Unify’s product because Unify was agreeing to purchase the same dollar amount of
21 product from Actuate. In order to guarantee that Unify would purchase product from Actuate in the
22 next quarter, on January 31, 2000, Unify provided Actuate with a check for \$1 million post-dated to
23 Unify’s next quarter. Actuate used the funds from Unify to pay for the purported purchase of Unify
24 product.

25 54. On March 8, 2000, Unify issued a press release that quoted Mikaili
26 highlighting Actuate’s decision to purchase Unify software. The press release failed to mention the
27 offsetting purchase of Actuate’s product by Unify.
28

1 55. As Mikaili and Pado knew, because the offsetting product purchases produced
2 no net economic benefit to Unify, the recording of the Actuate revenue violated generally accepted
3 accounting principles. Accordingly, by including the Actuate revenue in the quarterly financial
4 results reported in the 10-Q and the press release, Mikaili and Pado knowingly made false and
5 misleading statements regarding the revenue of Unify.

6 *The First Arsin Corporation Reciprocal Transaction*

7 56. At the close of the third quarter, Unify recognized \$500,000 in revenue from
8 Arsin Corporation (“Arsin”), a company in Santa Clara, California. In order to meet its quarterly
9 revenue expectations, Mikaili and Pado created this fraudulent reciprocal transaction. Unify’s
10 restatement eliminated \$450,000 of this revenue.

11 57. Arsin had previously been retained by Unify to do software development work
12 for \$50,000. Mikaili, who sat on Arsin’s board of directors, persuaded the CEO of Arsin to purchase
13 Unify’s product by telling him that it would not cost Arsin anything because Unify would fund the
14 payment. As a result, on or around January 24, 2000, Pado simultaneously executed a software
15 license contract where Arsin agreed to buy \$500,000 of Unify product, and an amendment to the
16 Funded Development Agreement pursuant to which Unify agreed to pay Arsin an additional
17 \$450,000. Arsin paid Unify \$500,000 under the agreement. However, Mikaili and Pado were
18 informed by Arsin’s CEO that Arsin lacked the funds to clear the check. As a result, Mikaili and
19 Pado had Unify refrain from depositing Arsin’s check until Arsin had received funds from Unify
20 under the Funded Development Agreement.

21 58. As Mikaili and Pado knew, because Unify funded the Arsin purchase of Unify
22 product through payments under the Funded Development Agreement, the recording of the Arsin
23 revenue violated generally accepted accounting principles. Accordingly, by including the Arsin
24 revenue in the quarterly financial results reported in the 10-Q and the press release, Mikaili and Pado
25 knowingly made false and misleading statements regarding the revenue of Unify.

26 *The Colorado Property Investors Contingent Sale*

27 59. Unify recognized \$150,000 in third quarter revenue from Colorado Property
28 Investors (“CPI”). In order to meet targeted revenue expectations for the quarter, Mikaili and Pado

1 created this deal as a fraudulent contingent transaction. Unify's restatement eliminated all of this
2 revenue.

3 60. On January 31, 2000, the last day of the quarter, Pado sent an e-mail to the
4 CEO of CPI stating that "it is the end of my quarter today and I am interested in maximizing Unify's
5 potential" and offered contract terms as long as the deal could be closed that day. After CPI's CEO
6 responded by voicemail and expressed reluctance to sign an agreement on such short notice, Pado
7 sent another e-mail, which was also forwarded to Mikaili, offering to pay for the CPI's CEO to visit
8 Unify, and offering "the ability to cancel the contract after you visit." This contingency persuaded
9 CPI to sign an agreement for the purchase of \$150,000 of Unify product. However, the actual
10 contract was not executed until February 2, 2000, after Unify's third quarter books had been closed.
11 Nonetheless, Mikaili and Pado had Unify recognize this revenue as third quarter revenue.

12 61. As Mikaili and Pado knew, because Pado granted CPI a right of cancellation,
13 the recording of the CPI revenue violated generally accepted accounting principles and Unify's
14 revenue recognition policy. Accordingly, by including the CPI revenue in the quarterly financial
15 results reported in the 10-Q and the press release, Mikaili and Pado knowingly made false and
16 misleading statements regarding the revenue of Unify.

17 *The Plurify Software Reciprocal Transaction*

18 62. Unify recognized \$200,000 in third quarter revenue from Plurify Software, a
19 Brazilian company. In order to meet their revenue expectations for the third quarter, Mikaili and
20 Pado created this revenue through a fraudulent reciprocal transaction. Unify's restatement eliminated
21 all \$200,000 of this revenue.

22 63. Prior to fiscal year 2000, Plurify had entered into a distributorship agreement
23 with Unify. Beginning in September 1999, Mikaili directly negotiated with Plurify in an attempt to
24 increase Plurify's payment obligations to Unify under this distributorship agreement. Plurify,
25 through its President, repeatedly informed Mikaili and Pado that it lacked the financial ability to
26 commit to additional payment obligations because of the deteriorating economic situation in Brazil.
27 In order to persuade Plurify, Mikaili and Pado threatened Plurify's President with canceling the
28 existing distributorship agreement. Plurify agreed to the additional \$200,000 in payment terms based

1 upon a simultaneous Funded Development Agreement in which Unify agreed to pay \$200,000 to
2 Plurify. Pado drafted and signed the Funded Development Agreement, and acknowledged in an e-
3 mail to Plurify that he “tried to make it look very official.” Pado also provided a post-dated letter
4 stating that Unify had accepted the software development work. In addition to getting paid for
5 development work it never performed, Plurify’s President stated in an e-mail sent to Pado that Plurify
6 agreed to the additional payment obligations because he had been persuaded by Mikaili that “it will
7 show for Unify sales an additional commitment of 200k that will help the stocks.”

8 64. As Mikaili and Pado knew, because Unify funded the purchase of its product
9 through payments under the Funded Development Agreement, the recording of \$200,000 of the
10 Plurify revenue violated generally accepted accounting principles. Accordingly, by including the
11 Plurify revenue in the quarterly financial results reported in the 10-Q and the press release, Mikaili
12 and Pado knowingly made false and misleading statements regarding the revenue of Unify.

13 **C. Unify Announces False Revenue For The Fourth Quarter Ended April 30, 2000**

14 65. On May 23, 2000, Unify issued a press release announcing the results of its
15 fourth quarter and fiscal year ended April 30, 2000, and highlighting again “increased revenue and
16 momentum from Unify e-wave commerce solutions.” This press release announced fourth quarter
17 revenue and net income of \$11.5 million and \$8.6 million, respectively. On December 20, 2000,
18 Unify finally filed its Form 10-K that corrected the originally announced results by decreasing
19 revenue to \$4.6 million and income to a net loss of \$3.2 million. Due to the fraud orchestrated by
20 Mikaili and Pado, the press release overstated quarterly revenue by 150% and income by 368%.

21 *The Second Arsin Corporation Reciprocal Transaction*

22 66. Unify recognized fourth quarter revenue in the amount of \$500,000 on a
23 second licensing deal with Arsin. In order to meet their quarterly revenue expectations, Mikaili and
24 Pado created this revenue through a fraudulent reciprocal transaction. Unify’s restatement eliminated
25 all of this revenue.

26 67. On April 29, 2000, Pado signed an agreement with Arsin whereby Arsin
27 purchased the right to incorporate Unify’s product into a product Arsin hoped to develop. Prior to
28 this transaction, Arsin had been involved only in consulting, and not in producing or selling its own

1 product. The agreement required Arsin to pay Unify \$500,000 the same day the agreement was
2 executed, and Arsin provided Unify with a check for the full amount. However, Arsin's CEO had an
3 oral agreement with Mikaili and Pado that Unify would not deposit the check until Arsin obtained
4 sufficient funds for it to clear. Despite this agreement, a member of Unify's accounting staff
5 deposited the check, which bounced due to insufficient funds. In order to clear the check, Pado
6 executed a wire transfer to Arsin in the amount of \$500,000. Pado wrote notes on the wire transfer
7 receipt stating that the funds wired to Arsin were to be used to clear Arsin's bounced check. After
8 the wire transfer, Mikaili proposed to Arsin's CEO that Arsin keep the money and consider it an
9 investment by Unify. However, no documentation of the investment or transfer of shares ever
10 occurred.

11 68. As Mikaili and Pado knew, because Unify funded the purchase of its product
12 by Arsin through a wire transfer, the recording of the Arsin revenue violated generally accepted
13 accounting principles. Accordingly, by including the Arsin revenue in the quarterly financial results
14 reported in the 10-Q and the press release, Mikaili and Pado knowingly made false and misleading
15 statements regarding the revenue of Unify.

16 *The Fujisaki Contingent Transaction*

17 69. Unify recognized fourth quarter revenue in the amount of \$1.3 million from a
18 sale of Unify product to Fujisaki, a Japanese company. In order to meet their quarterly revenue
19 expectations, Mikaili and Pado created this revenue through a fraudulent contingent transaction.
20 Unify's restatement eliminated all of this revenue.

21 70. In late December 1999, Mikaili and Pado traveled to Japan to negotiate the
22 acquisition by Unify of a subsidiary of Fujisaki. In these negotiations, Mikaili informed Fujisaki
23 that in order for Unify to acquire the subsidiary, Fujisaki would have to create revenue for Unify by
24 purchasing Unify product. Fujisaki would not purchase Unify product unless Unify provided the
25 funds for it to do so and a written guarantee that Fujisaki had no obligation to purchase Unify product
26 unless Unify paid Fujisaki for the acquisition of the subsidiary. Accordingly, Mikaili and Pado
27 agreed to inflate the proposed acquisition price of the subsidiary by \$1.3 million in return for
28 Fujisaki's agreement to purchase \$1.3 million of Unify product. In addition, on or around January

1 31, 2000, Mikaili signed a side letter agreement stating that the purchase of Unify product by
2 Fujisaki would be “cancelled” if the acquisition of the subsidiary was not completed.

3 71. Despite the side letter agreement in January 2000, Unify did not recognize the
4 revenue at that time because Fujisaki refused to pay for the product purchase until Unify provided the
5 funds to do so. In order to be able to recognize the revenue in the fourth quarter, Mikaili and Pado
6 had Unify provide the funds to Fujisaki by making a down payment on the intended acquisition of the
7 subsidiary in the amount of \$1.5 million. Of this amount, \$500,000 was paid directly to Fujisaki, and
8 the remaining \$1 million was placed in escrow pending the completion of the acquisition. Only then
9 did Fujisaki agree to pay Unify the \$1.3 million for Unify product.

10 72. As Mikaili and Pado knew, because the side letter agreement granted Fujisaki
11 a right of cancellation and Unify funded the product purchase, the recording of the Fujisaki revenue
12 violated generally accepted accounting principles and Unify’s revenue recognition policy.
13 Accordingly, by including the Fujisaki revenue in the quarterly financial results reported in the 10-Q
14 and the press release, Mikaili and Pado knowingly made false and misleading statements regarding
15 the revenue of Unify.

16 *The WillNet Reciprocal Transaction*

17 73. Unify recognized \$300,000 in fourth quarter revenue from WillNet, a Japanese
18 company. In order to meet their quarterly revenue expectations, Mikaili and Pado created this
19 revenue through a fraudulent reciprocal transaction. Unify’s restatement eliminated all of this
20 revenue.

21 74. Mikaili and Pado had planned to obtain \$300,000 in revenue from WillNet in
22 order to meet their quarterly revenue expectations. The President of Unify Japan informed Pado and
23 Mikaili that WillNet would only agree to purchase Unify product if it was part of a swap transaction
24 resulting in no net loss of cash to WillNet. Accordingly, on or around April 28, 2000, Pado drafted
25 and signed a Funded Development Agreement backdated to September 1999, which provided
26 payment from Unify to WillNet in the amount of \$300,000 for software development work to be
27 completed on April 28, 2000. WillNet never performed any software development work.

1 75. As Mikaili and Pado knew, because Unify funded WillNet's purchase through
2 payments under the Funded Development Agreement, the recording of the WillNet revenue violated
3 generally accepted accounting principles. Accordingly, by including the WillNet revenue in the
4 quarterly financial results reported in the 10-Q and the press release Mikaili and Pado knowingly
5 made false and misleading statements regarding the revenue of Unify.

6 *The False Recording Of Service Revenue*

7 76. At the close of the quarter, on or around April 28, 2000, Mikaili and Pado
8 realized that Unify was going to fall short of its revenue expectations. In order to ensure that the
9 Company met the expectations, Mikaili and Pado instructed Unify's Director of Accounting to make
10 a journal entry recognizing service revenue. The Director of Accounting objected to Pado that it was
11 improper to recognize revenue that did not exist. Nonetheless, due to pressure from Mikaili and
12 Pado, the Director of Accounting made an unsupported journal entry recognizing revenue in the
13 amount of \$200,000.

14 77. As Mikaili and Pado knew that recording revenue that did not exist violated
15 generally accepted accounting principles. Accordingly, by including the undocumented and
16 unsupported revenue in the quarterly financial results announced in the fourth quarter press release,
17 Mikaili and Pado knowingly made false and misleading statements regarding the revenue of Unify.

18 **D. Mikaili and Pado Made False Statements To Unify's Independent Auditors**

19 78. On August 13, 1999, Mikaili and Pado signed a letter addressed to Unify's
20 independent auditors, Deloitte & Touche LLP, in which they falsely represented that the financial
21 information for the quarter ended July 31, 1999, that had been provided by Unify to the independent
22 auditors for review was fairly presented in conformity with generally accepted accounting principles.
23 Mikaili and Pado also falsely represented to the independent auditors that they had made available to
24 the auditors all applicable contractual information regarding revenue recognition. Mikaili and Pado
25 further falsely represented to the independent auditors that they had not entered into any informal
26 side agreements, including modifications, or verbal arrangements related to the contractual
27 information they had provided. As Mikaili and Pado well knew, Unify had entered into a number of
28

1 contingent sales and reciprocal transactions, had improperly recognized revenues from those
2 transactions, and had concealed the true nature of those transactions from its independent auditors.

3 79. On November 12, 1999, Mikaili and Pado signed a letter addressed to Unify's
4 independent auditors, Deloitte & Touche LLP, in which they falsely represented that the financial
5 information for the quarter ended October 31, 1999, that had been provided by Unify to the
6 independent auditors for review was fairly presented in conformity with generally accepted
7 accounting principles. Mikaili and Pado also falsely represented to the independent auditors that
8 they had made available to the auditors all applicable contractual information regarding revenue
9 recognition. Mikaili and Pado further falsely represented to the independent auditors that they had
10 not entered into any informal side agreements, including modifications, or verbal arrangements
11 related to the contractual information they had provided. As Mikaili and Pado well knew, Unify had
12 entered into a number of contingent sales and reciprocal transactions, had improperly recognized
13 revenues from those transactions, and had concealed the true nature of those transactions from its
14 independent auditors.

15 80. On March 13, 2000, Mikaili and Pado signed a letter addressed to Unify's
16 independent auditors, Deloitte & Touche LLP, in which they falsely represented that the financial
17 information for the quarter ended January 31, 2000, that had been provided by Unify to the
18 independent auditors for review was fairly presented in conformity with generally accepted
19 accounting principles. Mikaili and Pado also falsely represented to the independent auditors that
20 they had made available to the auditors all applicable contractual information regarding revenue
21 recognition. Mikaili and Pado further falsely represented to the independent auditors that they had
22 not entered into any informal side agreements, including modifications, or verbal arrangements
23 related to the contractual information they had provided. As Mikaili and Pado well knew, Unify had
24 entered into a number of contingent sales and reciprocal transactions, had improperly recognized
25 revenues from those transactions, and had concealed the true nature of those transactions from its
26 independent auditors.

27 81. On March 13, 2000, Mikaili and Pado signed a letter addressed to Unify's
28 independent auditors, Deloitte & Touche LLP, in which they falsely represented that the Company's

1 unaudited financial statements and schedules on Form 10-Q for the prior three quarters that had been
2 incorporated by reference in the Company's registration statement on Form S-3 were fairly
3 presented. Mikaili and Pado also falsely represented to the independent auditors that no events had
4 occurred subsequent to April 30, 1999 that had a material effect on the financial statements. Mikaili
5 and Pado further falsely represented to the independent auditors that no matters had come to their
6 attention that would cause them to believe that the representations made by them on August 13, 1999
7 and November 12, 1999 were no longer true.

8 **E. Mikaili's Insider Trading And Ill-Gotten Gains.**

9 82. Mikaili profited from the fraud by engaging in illegal insider trading of Unify
10 stock, and receiving sales commissions and bonuses.

11 83. From September 1999 through June 2000, during the course of the fraud, and
12 while in possession of material non-public information concerning Unify, Mikaili sold all of his
13 shares of Unify stock. Mikaili received gross proceeds from these sales of approximately \$8.2
14 million. During all of Unify's fiscal year 2000, from May 1, 1999 through April 30, 2000, Mikaili
15 knew that Unify was reporting fraudulent revenue and was communicating false expectations of
16 revenue to market analysts and investors. Despite being reminded on a monthly basis to do so and
17 despite the fact that he had done so in prior years, Mikaili failed to file forms with the Commission
18 reporting his sales of Unify stock.

19 84. Mikaili also received \$400,000 in sales commissions for his role in
20 negotiating transactions with customers, including Ichatbox, Arsin, and Arango. Mikaili's
21 compensation agreement did not allow for him to be paid sales commissions. Mikaili also received a
22 bonus totaling \$300,000 for fiscal year 2000. However, his compensation agreement limited his
23 bonus to \$150,000.

24 **FIRST CLAIM FOR RELIEF**

25 *Violations of Section 10(b) of the Exchange Act*
26 *and Rule 10b-5 by Mikaili and Pado.*

27 85. The Commission realleges and incorporates by reference Paragraphs 1 through
28 84 above.

1 86. During the relevant period, Mikaili and Pado, directly or indirectly, in
2 connection with the purchase or sale of securities, by the use of means or instrumentalities of
3 interstate commerce, or of the mails, with scienter:

4 (a) employed devices, schemes, or artifices to defraud;

5 (b) made untrue statements of material facts or omitted to state material facts
6 necessary in order to make the statements made, in the light of the
7 circumstances under which they were made, not misleading; and

8 (c) engaged in acts, practices, or courses of business which operated or would
9 operate as a fraud or deceit upon other persons, including purchasers and
10 sellers of securities.

11 87. Mikaili and Pado, have violated and, unless restrained and enjoined, will
12 continue to violate Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R.
13 §240.10b-5.

14 **SECOND CLAIM FOR RELIEF**

15 *Violations of Section 13(a) of the*
16 *Exchange Act and Rules 12b-20 and 13a-13 by Unify.*

17 88. The Commission realleges and incorporates by reference Paragraphs 1 through
18 84 above.

19 89. As described above, by filing with the Commission materially misleading
20 financial statements in its periodic reports for the quarters ended July 31, 1999, October 31, 1999,
21 and January 31, 1999, Unify violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-
22 13 thereunder.

23 90. Unify has violated and, unless restrained and enjoined, will continue to violate
24 Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rules 12b-20, 17 C.F.R. §240.12b-20, and
25 13a-13, 17 C.F.R. §240.13a-13.
26
27
28

THIRD CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 by Mikaili and Pado.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

91. The Commission realleges and incorporates by reference Paragraphs 1 through 84 above.

92. Unify violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

93. By engaging in the conduct described above, Mikaili and Pado knowingly provided Unify substantial assistance with respect to its violations of Sections 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder, and therefore are liable as aiders and abettors pursuant to Section 20(e) of the Exchange Act, 15 U.S.C. §78t(e).

94. Mikaili and Pado have violated and, unless restrained and enjoined, will continue to violate Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and Rules 12b-20, 17 C.F.R. §240.12b-20, and 13a-13, 17 C.F.R. §240.13a-13.

FOURTH CLAIM FOR RELIEF

Violations of Section 13(b)(2)(A) of the Exchange Act By Unify.

95. The Commission realleges and incorporates by reference Paragraphs 1 through 84 above.

96. As described above, by failing to make and keep books and records that accurately reflected the disposition of its assets during fiscal year 2000, Unify violated Section 13(b)(2)(A) of the Exchange Act.

97. Unify has violated, and, unless restrained and enjoined, will continue to violate Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §78m(b)(2)(A).

FIFTH CLAIM FOR RELIEF

Aiding and Abetting Violations of Section 13(b)(2)(A) of the Exchange Act By Mikaili and Pado.

98. The Commission realleges and incorporates by reference Paragraphs 1 through 84 above.

1 99. Unify violated Section 13(b)(2)(A) of the Exchange Act.

2 100. By engaging in the conduct described above, Mikaili and Pado knowingly
3 provided Unify substantial assistance with respect to its violation of Sections 13(b)(2)(A) of the
4 Exchange Act, and therefore are liable as aiders and abettors pursuant to Section 20(e) of the
5 Exchange Act, 15 U.S.C. §78t(e).

6 101. Mikaili and Pado have violated and, unless restrained and enjoined, will
7 continue to violate Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C. §78m(b)(2)(A).

8 **SIXTH CLAIM FOR RELIEF**

9 *Violations of Section 16(a) of the Exchange Act and Rule 16a-3 by Mikaili*

10 102. The Commission realleges and incorporates by reference Paragraphs 1 through
11 84 above.

12 103. As described above, by failing to file statements with the Commission
13 regarding his change in ownership of Unify shares during fiscal year 2000, Mikaili knowingly
14 violated Section 16(a) of the Exchange Act.

15 104. Mikaili has violated and, unless restrained and enjoined, will continue to
16 violate Section 16(a) and Rule 16a-3 of the Exchange Act.

17 **SEVENTH CLAIM FOR RELIEF**

18 *Violations of Rule 13b2-2 by Mikaili and Pado*

19 105. The Commission realleges and incorporates by reference Paragraphs 1 through
20 84 above.

21 106. By engaging in the conduct described above, and in connection with an audit
22 or examination of the financial statements of Unify and the preparation and filing of statements and
23 reports with the Commission, Mikaili and Pado, directly or indirectly, made or caused to be made
24 materially false or misleading statements to accountants and omitted to state, or caused another
25 person to omit to state to accountants material facts necessary in order to make statements made to
26 the accountants, in light of the circumstances under which such statements were made, not
27 misleading.

1 107. Mikailli and Pado have violated and, unless restrained and enjoined, will
2 continue to violate Rule 13b2-2, 17 C.F.R. § 240.13b2-2.

3
4 **PRAYER FOR RELIEF**

5 WHEREFORE, the Commission respectfully requests that this Court:

6 I.

7 Permanently enjoin defendants Mikailli and Pado from violating Sections 10(b), 13(a),
8 and 13(b)(2)(A) of the Exchange Act and Rules 10b-5, 12b-20, 13a-13, 13b2-1 and 13b2-2.

9 II.

10 Permanently enjoin defendant Mikailli from violating Section 16(a) and Rule 16a-3.

11
12
13 III.

14 Permanently enjoin defendants Mikailli and Pado from serving as an officer or
15 director of any entity having a class of securities registered with the Commission pursuant to Section
16 12 of the Exchange Act [15 U.S.C. §78l] or that is required to file reports pursuant to Section 15(d)
17 of the Exchange Act [15 U.S.C. §78o(d)].

18 IV.

19 Order defendant Mikailli to disgorge any wrongfully obtained benefits, including
20 prejudgment interest.

21 V.

22 Order defendants Mikailli to pay civil penalties under Sections 21(d)(3) and 21A of
23 the Exchange Act [15 U.S.C. § 78u(d)(3) and 78u-1] and Pado to pay civil penalties under Section
24 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

25 VI.

26 Permanently enjoin defendant Unify from violating Sections 13(a), and 13(b)(2)(A) of
27 the Exchange Act and Rules 12b-20, and 13a-13.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as this Court may determine to be just and necessary.

Dated: May 20, 2002

Respectfully submitted,

Patrick Thomas Murphy
Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION