

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10369 / June 9, 2017

SECURITIES EXCHANGE ACT OF 1934
Release No. 80901 / June 9, 2017

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 3874 / June 9, 2017

ADMINISTRATIVE PROCEEDING
File No. 3-18020

In the Matter of

**MICHAEL B. HAYFORD,
KEVIN D. McCLELLAND,
CPA, and DANIEL L.
ROTHBAUM, CPA.**

Respondents.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTIONS 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
4C AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE
102(e) OF THE COMMISSION'S
RULES OF PRACTICE, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND CEASE-
AND-DESIST ORDERS**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Michael B. Hayford, Kevin D. McClelland, CPA and Daniel L. Rothbaum, CPA (collectively, “Respondents”), and that public administrative proceedings be,

and hereby are, instituted against McClelland and Rothbaum pursuant to Section 4C¹ of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.²

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Sections 4C and 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings and Imposing Remedial Sanctions and Cease-and-Desist Orders ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offers, the Commission finds³ that:

SUMMARY

1. UniTek Global Services, Inc. ("UniTek") was until August 2014 a NASDAQ-listed U.S. company that provided infrastructure services to telecommunications, broadband cable, wireless, transportation and other industries. In April 2011, UniTek purchased Pinnacle

¹ Section 4C provides, in relevant part, that:

The Commission may censure any person, or deny, temporarily or permanently, to any person the privilege of appearing or practicing before the Commission in any way, if that person is found . . . (1) not to possess the requisite qualifications to represent others . . . (2) to be lacking in character or integrity, or to have engaged in unethical or improper professional conduct; or (3) to have willfully violated, or willfully aided and abetted the violation of, any provision of the securities laws or the rules and regulations thereunder.

² Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

³ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Wireless, Inc. (“Pinnacle”),⁴ a company whose largest source of revenue was a contract with the Port Authority of New York and New Jersey to provide equipment and services for rebuilding portions of the World Trade Center. As part of this project, Pinnacle entered into numerous long-term contracts with subcontractors to provide equipment and systems for use in the construction.

2. Between October 2011 and November 2012 (the “Relevant Period”), UniTek materially overstated its earnings in public filings with the Commission by improperly recognizing revenue generated by Pinnacle. The inaccuracies in UniTek’s publicly filed financial statements arose from the premature recognition of revenue based on goods and services purchased from subcontractors using the percentage of completion accounting model. These misstatements were the result of Respondents’ conduct described below and UniTek’s lack of sufficient internal accounting controls regarding proper revenue recognition for such goods and services.

3. On April 12, 2013, UniTek filed a Form 8-K with the Commission disclosing that several Pinnacle employees had engaged in “fraudulent activities that resulted in improper revenue recognition.” The activities included requesting invoices from six different subcontractors retained to provide goods and services to the company, and prematurely recognizing revenue. As a result, UniTek announced that its previously issued consolidated financial statements for each of the quarters from October 1, 2011 through September 29, 2012, and the fiscal year ended December 31, 2011 should no longer be relied on. For reporting purposes, Pinnacle’s financial information was consolidated with UniTek’s Engineering & Construction Segment, which was one of two segments broken out separately in UniTek’s quarterly and annual financial statements. UniTek also announced that it had terminated certain employees which included Respondents, among others. The price of UniTek stock shares dropped 50%, from \$3.01 per share to \$1.52 per share on the trading day following this announcement.

4. On August 12, 2013, UniTek filed a 10-K restating its financial information for the aforementioned periods, and disclosing material weaknesses in its internal control over financial reporting related to: entity level monitoring controls over the Pinnacle division; internal audit monitoring controls for the investigation and reporting of significant matters to the audit committee and board of directors; revenue and cost recognition under the percentage-of-completion method of accounting; and maintaining sufficiently experienced accounting personnel. The combination of the above internal material weaknesses resulted in material misstatements of UniTek’s financial statements that were not prevented or detected on a timely basis.

⁴ After the acquisition, Pinnacle Wireless, Inc. became Pinnacle Wireless, USA, a division of UniTek. Pinnacle, as used herein, refers to the division, not the predecessor company.

5. Throughout the Relevant Period, UniTek utilized the percentage of completion (“POC”) method as a model for recognizing revenue. POC accounting is an accounting method for incrementally recognizing revenue in connection with long-term contracts as progress is achieved toward contract completion. UniTek measured progress using the cost-to-cost method under which costs incurred to date for the contract are divided by the total amount of costs expected to be incurred upon completion of the contract. The percentage completion figure is then multiplied by the total project revenue to compute the amount of revenue that can be recognized as of that date.

6. During the Relevant Period UniTek set internal quarterly financial targets and, as Pinnacle’s President, Hayford was responsible for setting and monitoring Pinnacle’s internal forecasts. Hayford, who did not have a background in accounting and had no independent knowledge of the POC method of accounting, approached Rothbaum, Pinnacle’s Controller, and McClelland, UniTek’s Corporate Controller/Chief Accounting Officer to inquire whether costs and associated revenue could be recognized based upon the receipt of an invoice from a subcontractor under a long-term contract prior to the final delivery of goods or services. This inquiry was significant because under the POC method for long-term contracts, revenue is incrementally recognized based on a ratio of costs incurred to date compared with estimated contract costs. In these facts and circumstances, recognizing costs based on receipt of an invoice would have had the effect of allowing the company to recognize revenue earlier than it would have if it properly waited to do so until goods and services were actually delivered.

7. McClelland, who received a Certified Public Accountant (“CPA”) certificate, and Rothbaum, who is a CPA, were inexperienced in the POC method of accounting as applied to costs incurred for custom goods, and did not fully understand the relevant accounting principles with respect to this issue. Furthermore, neither individual sought advice from outside experts, conducted research, or sought training on the issue. As a result, they gave Hayford advice that was vague and erroneously indicated that costs and associated revenue could be recognized based upon the receipt of an invoice rather than upon the delivery of goods or services, provided that the invoice matched the corresponding purchase order and certain other conditions were met. Hayford, in turn, knew or should have known that, notwithstanding the advice he had received from McClelland and Rothbaum, it was improper to recognize revenue based on several of the invoices at issue because they contained inaccurate information about the value of goods delivered, payment terms, and quantity of work already completed.

8. Not only was this accounting advice incorrect, McClelland, Rothbaum and Hayford knew or should have known that UniTek lacked sufficient internal accounting controls over its process for recording and monitoring Pinnacle purchase orders. Hayford, as Pinnacle’s President, was most knowledgeable about the inability to accurately track purchase orders for comparison to invoices, yet he did not seek clarifying advice from Rothbaum, McClelland, or anyone else, to determine whether the invoices could still be relied upon as a basis for recognizing revenue.

9. Based on this erroneous advice, Hayford, Rothbaum, and others working at their direction, contacted subcontractors with whom UniTek had contracted to build custom ordered equipment or provide services, and requested they send invoices prematurely; i.e. before all, or in

some cases any, of the invoiced equipment or services had been delivered and without regard to the costs incurred by the subcontractor. In many instances the invoices were also facially inaccurate. Erroneously believing to be in compliance with Generally Accepted Accounting Principles (“GAAP”), the Respondents relied on these invoices as a basis to recognize revenue. Because they misapplied GAAP and failed to confirm the accuracy of certain invoices, their negligent conduct resulted in UniTek prematurely recognizing revenue and filing false and misleading financial statements.

10. In the course of the foregoing, and by their respective acts and omissions detailed below, Hayford, McClelland and Rothbaum committed or caused various violations of the antifraud, internal accounting controls, books-and-records, and reporting provisions of the federal securities laws.

RESPONDENTS

11. **Michael B. Hayford**, age 48, is a resident of El Cajon, CA. Hayford was President and one of the founders of Pinnacle Wireless, Inc. In April 2011, Pinnacle Wireless, Inc. was acquired by UniTek and became Pinnacle Wireless, USA, a division of UniTek. From April 2011 through April 2013, Hayford served as Division President of Pinnacle Wireless, USA. In April 2013, UniTek terminated Hayford’s employment.

12. **Kevin D. McClelland**, age 53, is a resident of Newtown Square, PA. From 2009 through 2013, McClelland served as UniTek’s Chief Accounting Officer and Corporate Controller. In April 2013, UniTek terminated McClelland’s employment. He passed the CPA exam and received a CPA certificate from the State of Illinois in 1987.

13. **Daniel L. Rothbaum**, age 49, is a resident of Stamford, CT. From September 2011 through December 2012, Rothbaum served as Pinnacle’s Controller. Between December 2012 and February 2013, Rothbaum served as Pinnacle’s Accounting Manager. Rothbaum reported to McClelland on accounting related matters, including revenue recognition issues. In April 2013, Rothbaum was terminated by UniTek. He is a CPA licensed in New York.

OTHER RELEVANT ENTITIES

14. **UniTek** was a publicly traded company incorporated in Delaware with its principal executive offices in Blue Bell, PA. From 2010 to 2014, UniTek’s common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and quoted under the symbol “UNTK” on the NASDAQ Stock Market. The Company’s shares were delisted from NASDAQ in August 2014, and the company filed for bankruptcy protection in November 2014. The company is now privately owned. At all relevant times, UniTek’s fiscal year coincided with the calendar year.

15. **Pinnacle** is a wholly owned subsidiary of UniTek that was acquired by the company in April 2011. Before being bought by UniTek, Pinnacle was privately owned by

several individuals, including Hayford. Pinnacle's financial results and disclosures were incorporated into UniTek's public filings.

APPLICABLE GAAP PROVISIONS AND UNITEK'S POLICY FOR PERCENTAGE OF COMPLETION METHOD OF ACCOUNTING

16. Throughout the Relevant Period, UniTek utilized the POC method of accounting as the revenue recognition model for its long-term construction-type contracts. Prior to the Pinnacle acquisition in 2011, UniTek had limited experience with contract accounting for long-term construction-type contracts.

17. FASB Accounting Standards Codification 605 ("ASC 605") states that the POC methodology is one of two generally acceptable accounting methods for revenue recognition over long-term construction-type contracts. The POC method recognizes income incrementally as progress is achieved toward contract completion using reasonably dependable estimates about the extent of progress toward completion, contract revenues and contract costs.

18. Pursuant to GAAP, income is recognized as a percentage of estimated total income either (a) that incurred costs to date bear to estimated total costs after giving effect to estimates of costs to complete based on most recent information; or (b) that may be indicated by another measure of progress toward completion as may be appropriate based on work performed. See ASC 605-35-25-52. When calculating progress toward completion, costs incurred that do not relate to contract performance are not included in calculating progress toward completion. These include the costs of items such as uninstalled materials not specifically produced or fabricated for the project or of subcontracts that have not been performed. ASC 605-35-25-75.

19. Using the POC method, UniTek applied the cost-to-cost method of measuring progress toward contract completion. Pursuant to this method, progress (the percentage complete) is determined using cost input measures and involves dividing costs incurred to date for the contract by the total amount of costs expected to be incurred for the contract. The percentage completed figure is then multiplied by the total project revenue to compute revenue to date. The difference between revenue to date and costs incurred to date is the profit earned to date.

20. UniTek's internal accounting policy addressing its use of the cost-to-cost method stated that with respect to the wireless portion of the Engineering and Construction Segment, which included Pinnacle, "revenue from infrastructure equipment construction and installation contracts is recorded under the percentage of completion method based on the percentage that total direct costs incurred to date bear to estimated total costs at completion." The policy for revenue recognition stated "revenue is recognized on a percentage of completion basis based on costs incurred and invoiced upon completion of the job. Revenue is recorded as Unbilled AR until invoiced."

21. Contract costs generally include all direct costs, such as materials, direct labor and subcontracts, and indirect costs identifiable with or allocable to the contracts. See ASC 605-35-25-34. Costs are recognized under a POC model in the period in which the acquired asset is used

to produce output.⁵ ASC 605-35-25-32 requires that contract costs be identified, estimated, and accumulated with a reasonable degree of accuracy in determining income earned. GAAP requires that entities using the cost-to-cost method periodically review and confirm cost inputs using alternative measures that involve observation and inspection. See ASC 605-35-25-78.

FACTS

Premature Revenue Recognition

22. In April 2011, UniTek acquired Pinnacle for an aggregate purchase price of up to \$50.7 million, consisting of a base purchase price of \$20.7 million in cash and UniTek securities and earn out payments up to \$30.0 million in contingent consideration pursuant to the Asset Purchase Agreement (“Agreement”). Under the terms of the Agreement, UniTek agreed to pay Pinnacle’s prior owners, including Hayford, additional compensation if the division met certain milestones. Specifically, the Agreement provided that the owners would receive up to three separate earn-out payments in an amount not to exceed an aggregate of \$30 million in cash and UniTek securities if they met performance milestones during the period April 3, 2011 to September 30, 2011, April 3, 2011 to March 31, 2012, and April 1, 2012 to March 31, 2013.

23. During the Relevant Period, Pinnacle provided internal forecasts estimating revenue for each quarter. Because completion of the World Trade Center project was taking longer than anticipated, it became apparent to Hayford and Rothbaum that Pinnacle would not meet its late 2011 internal forecasts.

24. Hayford approached Rothbaum and McClelland to discuss whether Pinnacle could recognize revenue based upon the receipt of an invoice from a subcontractor who had agreed to provide custom equipment for Pinnacle, but had not yet performed under the contract. Despite their inexperience with POC accounting, neither Rothbaum nor McClelland sought advice from experts on the issue. Rothbaum, Pinnacle’s Controller, did not do any independent research on the topic nor did he review UniTek’s internal policies regarding revenue recognition. Instead, Rothbaum, who reported to McClelland, relied entirely upon McClelland, UniTek’s Chief Accounting Officer and Controller, for information on the topic. McClelland did not consult with outside experts or conduct independent research and instead provided advice to Rothbaum that was vague and incorrect. Rothbaum, in turn, provided that vague and incorrect advice to Hayford.

25. McClelland told Rothbaum that it was acceptable to recognize revenue based upon the receipt of an invoice for goods or services that had not yet been delivered so long as the invoice “matched” the purchase order. McClelland did not properly explain what this meant and Rothbaum did not seek clarification. McClelland further advised Rothbaum that if goods are not received or shipped prior to the receipt of the invoice, Rothbaum needed to ensure the invoice

⁵ See FASB Statement of Concepts 6, *Elements of Financial Statements*.

followed the purchase order terms, the goods were not cancellable and the materials were 100% custom for the World Trade Center project. Rothbaum told Hayford that to recognize revenue based upon receipt of the invoice, he needed to make sure the invoice stated “that the materials are for custom built equipment for the World Trade Center project.”

26. Notwithstanding the guidance he received from McClelland and Rothbaum, Hayford knew or should have known that it was improper to recognize revenue based on the invoices because they contained inaccurate information about the value of goods delivered, payment terms, and quantity of work already completed. In particular, it was unreasonable for Hayford to push for revenue recognition based on invoices that he knew: (a) inaccurately reflected that goods had already been shipped or services had already been performed; or (b) contained material terms that were inconsistent with the corresponding purchase orders.

27. Based on this advice, beginning in late 2011, in certain instances, UniTek recorded costs as incurred for POC purposes upon receipt of invoices from subcontractors rather than basing recognition of costs properly upon the related goods being received or services rendered or upon the subcontractors incurring costs related to contract performance necessary to allow UniTek to recognize the associated revenue. Hayford, Rothbaum, and other Pinnacle employees acting at their direction solicited invoices from six different subcontractors who were in the process of building equipment or providing services to the company in connection with the World Trade Center project.

28. This had the effect of increasing the cost-to-cost percentage complete calculation and thus increased the revenue and resulting profit for UniTek’s Engineering and Construction segment each fiscal quarter. Hayford and Rothbaum solicited these invoices knowing that not all of the billed costs were incurred by UniTek. The invoices in question prematurely billed Pinnacle for amounts ranging from approximately \$20,000 to \$1.7 million.

29. UniTek first recorded costs as incurred for POC purposes upon the receipt of an invoice rather than upon the goods or services themselves being provided in December 2011. In this instance, Hayford requested the subcontractor issue an invoice for as much as possible almost immediately after entering into a purchase agreement. No equipment had been shipped, and the subcontractor had not yet provided any services or incurred any costs. UniTek improperly recognized revenue of approximately \$860,000 in the fourth quarter of 2011 based upon the receipt of this invoice.

30. On March 27, 2012, after additional requests from Hayford and another Pinnacle employee, this same subcontractor issued Pinnacle an invoice for approximately \$310,000 despite only having shipped approximately \$166,000 worth of equipment to Pinnacle. UniTek improperly recognized revenue of over \$225,000 for the first quarter of 2012 based on this invoice.

31. Further, Hayford knew or should have known that the invoices from this subcontractor were inaccurate because the first invoice incorrectly stated that all equipment had been delivered when it had not, and the second invoice over-reported the amount of equipment that had been delivered. Despite these inaccuracies and the difficulties with identifying original

purchase order terms, Hayford did not seek clarifying information about whether inaccurate invoices could be relied upon for purposes of POC accounting.

32. On several other occasions during the first three quarters of 2012, upon the request of Hayford, Rothbaum and/or other Pinnacle employees, subcontractors issued invoices to Pinnacle for dollar amounts in excess of the value of equipment provided to the company or greater than Pinnacle was then obligated to pay.

33. For example, in the first quarter of 2012, Pinnacle hired a subcontractor to produce custom radio and communications equipment. The purchase order for this equipment, dated February 15, 2012, included the following term: "Request: IMPORTANT NOTE: SHIP DATE MARCH 26, 2012." The purchase order did not set forth a payment schedule or require Pinnacle to make any payments prior to delivery of equipment. On March 12, 2012 this subcontractor notified Rothbaum, Hayford, and others that it would not be shipping all of the equipment by the "ship date" of March 26, or even the end of the month, i.e. end of the first quarter, and that only a partial shipment would be made by quarter-end.

34. Hayford instructed a Pinnacle employee to request that the subcontractor issue an invoice for the full amount of the order. On March 16, 2012, the subcontractor issued an invoice to Pinnacle for the full \$345,690. This invoice was premature because no equipment was shipped as of that date. By month's end, a partial delivery had been made, but not the full amount reported in the invoice. As a result, UniTek improperly over-recognized revenue of approximately \$200,000 for the first quarter of 2012 based on the inflated costs associated with this invoice.

35. In another instance, a subcontractor retained to provide engineering services to Pinnacle in connection with the World Trade Center project issued invoices for services not yet completed. Under the terms of the purchase order, dated March 1, 2012, Pinnacle agreed to pay the subcontractor on a bi-monthly basis for all engineering services provided. The total costs to Pinnacle for the agreed upon services was \$565,275.

36. On May 25, 2012, the subcontractor issued an invoice to Pinnacle for \$45,980; an amount purporting to represent \$19,980 of engineering services provided in May and \$26,000 of engineering services provided in June. Although, over time, the subcontractor provided some services to Pinnacle, the portion of the invoice related to part of May and all of June should not have been recorded as a cost incurred for POC purposes since the services had not yet been provided.

37. A Pinnacle employee acting at the direction of Hayford and Rothbaum instructed the subcontractor to issue invoices every month for as much as possible. From June 2012 through September 2012, Pinnacle received monthly invoices for \$103,859 with each of the invoices seeking payment in advance for services to be performed the following month. For example, the invoice issued July 27, 2012, stated it was for "August Office Engineering Services."

38. Respondents knew, or should have known, that the invoices created by the subcontractor were issued prematurely. It was clear from the face of the invoices, which Rothbaum and McClelland reviewed, that the invoices were sent monthly rather than bi-monthly as agreed to, provided no detail about the work performed, were for future time periods, and were for an identical amount of money each month. Further, Hayford and Rothbaum were told by Pinnacle staff that this subcontractor had not yet completed the services reflected on the invoices. UniTek overstated revenue of more than \$150,000 in the second quarter of 2012 and more than \$350,000 in the third quarter of 2012 as a result of these invoices.

UniTek's Public Filings Contained Material Misrepresentations

39. Because UniTek prematurely recognized revenue, its quarterly and annual reports with the Commission contained material misrepresentations regarding the financial performance of the Engineering and Construction segment, which included Pinnacle. The Engineering and Construction segment represented 33% of UniTek's fiscal year 2011 reported revenue and 30% of UniTek's fiscal year 2012 reported revenue. The Engineering and Construction segment played a significant role in UniTek's operations and profitability.

40. On March 7, 2012, UniTek filed its Form 10-K with the Commission which incorporated the 2011 fourth quarter results. In its filing, UniTek included revenue from the Engineering and Construction segment of approximately \$143 million for the 2011 fiscal year of which nearly \$40 million related to revenue from the Engineering and Construction segment for the last quarter of 2011. As a result of the conduct described herein, this figure over-reported the segment's quarterly revenues by 2.2%. Further, UniTek under-reported the Engineering and Construction segment's quarterly losses by 4.9%.

41. UniTek filed its Q1 2012 Form 10-Q with the Commission on May 9, 2012. In its filing, UniTek reported revenue of approximately \$38 million from the Engineering and Construction segment. As a result of the conduct described herein, this figure over-reported the segment's quarterly revenues by 10.3%. Further, UniTek under-reported the segment's quarterly losses by 38.9%.

42. UniTek filed its Q2 2012 Form 10-Q with the Commission on August 8, 2012. In its filing, UniTek reported revenue of approximately \$43.5 million from the Engineering and Construction segment. As a result of the conduct described herein, this figure over-reported the segment's quarterly revenues by 4.6%. Further, UniTek under-reported the segment's quarterly losses by 224.9%.

43. UniTek filed its Q3 2012 Form 10-Q with the Commission on November 8, 2012. In its filing, UniTek reported revenue of approximately \$47.5 million from the Engineering and Construction segment. As a result of the conduct described herein, this figure over-reported the segment's quarterly revenues by 7.2%. Further, UniTek overstated the segment's quarterly income by 73.4%.

UniTek's Lax Internal Accounting Control Environment

44. During the Relevant Period, UniTek had material weaknesses in its internal control over financial reporting that compromised the company's ability to prevent or detect material misstatements of revenue and earnings on both a reportable segment and consolidated basis. Specifically, UniTek lacked the sufficiently trained accounting personnel necessary to ensure that revenue was appropriately recognized.

45. With respect to the POC method of accounting, UniTek failed to implement alternative measures involving observation or inspection to periodically review and confirm cost inputs. Neither UniTek nor Pinnacle had controls in place to verify cost inputs by validating the receipt of goods and services invoiced by subcontractors or that the subcontractors had incurred the costs necessary to allow UniTek to recognize the associated revenue.

46. UniTek also lacked the internal accounting controls necessary to track when modifications to Pinnacle purchase orders were made and determine which version of the purchase orders were final for purposes of determining UniTek's costs incurred. In addition, UniTek lacked internal accounting controls necessary to ensure that payment terms included on the purchase orders were clear and ascertainable. In fact, many of Pinnacle's purchase orders were vague and unclear as to when the company would become financially liable to its subcontractors. Several purchase orders, for example, included billing milestones and payment terms that were inconsistent and ambiguous.

47. Further, purchase orders and invoices relevant to the World Trade Center project were stored on an internal database maintained by Pinnacle employees. Although the terms of purchase orders - including quantities ordered, delivery terms, and payment dates - were modified by the parties over time, the internal database recorded the amended purchase orders using the same date and purchase order number. Accordingly, the database contained multiple versions of identically dated purchase orders such that users were unable to determine when change orders had taken place and which version of the purchase order was the most current. Because UniTek and Pinnacle lacked policies or procedures to track the change order process and maintain control over its purchase orders, the company's employees were unable to identify and confirm the final terms of the purchase order.

Respondents Caused UniTek's Failure to Devise and Maintain a Sufficient System of Internal Accounting Controls

48. As Chief Accounting Officer and Corporate Controller, McClelland was responsible for ensuring that he and his staff were adequately trained in revenue recognition, including the POC method. Similarly, Rothbaum, as Pinnacle's Controller, was responsible for ensuring that he was adequately trained in revenue recognition, including the POC method.

49. McClelland was also responsible for the accuracy of UniTek's financial statements, and for establishing and maintaining its internal accounting control environment. McClelland, however, relied on Hayford and Rothbaum, and failed to ensure that the company properly recorded revenue in compliance with GAAP. McClelland also failed to implement

sufficient internal accounting controls related to revenue recognition, notwithstanding his awareness that Rothbaum was inexperienced in the POC method of accounting and that Hayford had an incentive to prematurely recognize revenue.

50. Rothbaum, as Pinnacle's Controller, was responsible for completing entries in Pinnacle's general ledger, which tracked costs that could impact revenue recognition at the Pinnacle division and result in inaccurate financial statements filed by UniTek. In addition, Rothbaum was responsible for preparing the POC Checklist and POC Report, both of which were reviewed by McClelland, and used by Rothbaum for completing the POC method calculations. The POC Checklist, which functioned as an internal control, included a list of tasks to be completed monthly to track costs incurred, calculate progress completed and compute revenue for the period. For example, the POC Checklist required Rothbaum to review purchase orders or signed contracts with subcontractors to determine whether UniTek could recognize revenue based on costs incurred.

51. Rothbaum was aware that purchase order issues existed at Pinnacle that prevented personnel from tracking change orders and confirming final contract terms. Rothbaum was also aware purchase orders were vague, incomplete, and often drafts. Accordingly, Rothbaum knew or should have known that Pinnacle could not reliably identify whether costs had been incurred upon which UniTek could recognize revenue and that the POC Checklist was therefore inherently flawed and could not satisfy its control objective. The POC Report, also an internal control, was a spreadsheet Rothbaum maintained to track costs and associated revenue. Because of the aforementioned change order tracking and purchase order issues and Rothbaum's inexperience in the POC method of accounting, Rothbaum and McClelland knew or should have known that the POC Report was also inherently flawed and could not satisfy its control objective.

52. Hayford, as Division President, was responsible for negotiating and approving purchase orders and, at times, solicited premature invoices from Pinnacle's subcontractors. Hayford, like Rothbaum, was aware that final purchase orders were not easily identifiable within the database, and that the payment terms identified in the purchase orders were often vague. Further, Hayford knew that Rothbaum prepared the POC Checklist and POC Report based on incomplete information saved on the database. Thus, Hayford should have known that the POC Checklist and POC Report could not satisfy their control objectives.

53. Rothbaum and Hayford executed quarterly sub-certifications during the Relevant Period attesting that "adequate controls are in place and operating effectively for us to certify that the revenue and EBITDA reported for the quarter are accurate representation of the operations of the business" despite knowing, for example, that purchase orders were not accurately tracked and maintained as they should have been and that UniTek and/or Pinnacle otherwise lacked the information necessary to identify, estimate, and accumulate costs with a reasonable degree of accuracy for, among other things, purposes of revenue recognition under the POC method of accounting.

Respondents Caused UniTek's Failure to Make and Keep Fair and Accurate Books and Records

54. During the Relevant Period, Respondents caused UniTek's failure to maintain fair and accurate books and records related to the POC method of accounting. Respondents were responsible for ensuring that all POC method revenue calculations and associated accounting entries were appropriately performed, documented, and recorded. Hayford and Rothbaum solicited invoices that they knew did not accurately reflect timing of when the goods and services were provided by the relevant subcontractors or when UniTek was obligated to pay the associated costs, which led to the improper recording of revenue under GAAP.

55. Respondents were responsible for maintaining accurate records of transactions with subcontractors and ensuring that the POC schedule was being properly maintained. They failed to maintain adequate records demonstrating that: (a) services had been provided by a subcontractor; (b) materials related to the World Trade Center project had been shipped; or (c) UniTek had otherwise incurred costs related to the World Trade Center project.

56. As a result of the conduct described above, Hayford, Rothbaum, and McClelland caused UniTek's reporting, record keeping, and internal accounting controls violations.

UniTek Registered the Offering of UniTek Shares Previously Issued to Hayford and Others

57. During the relevant period, UniTek filed a registration statement on Form S-3 to register the offering of UniTek shares previously issued to Hayford and others. The registration statement incorporated certain filings, including, but not limited to, UniTek's 2011 Form 10-K and 2012 Form 10-Qs, which materially over-reported UniTek's earnings and revenue.

VIOLATIONS

58. As a result of the conduct described above, Hayford violated Securities Act Section 17(a)(3), Exchange Act Section 13(b)(5), and Exchange Act Rule 13b2-1, and caused UniTek to violate Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1 and 13a-13 thereunder.

59. As a result of the conduct described above, McClelland willfully⁶ violated Securities Act Section 17(a)(3), and Exchange Act Rule 13b2-1, and caused UniTek to violate Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1 and 13a-13 thereunder.

⁶ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

60. As a result of the conduct described above, Rothbaum willfully violated Securities Act Section 17(a)(3), Exchange Act Section 13(b)(5), and Exchange Act Rule 13b2-1, and caused UniTek to violate Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 12b-20, 13a-1, and 13a-13 thereunder.

61. As a result of the conduct described above, McClelland and Rothbaum willfully violated the federal securities laws or rules and regulations thereunder pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offers. Accordingly, pursuant to Section 8A of the Securities Act, Sections 4C and 21C of the Exchange Act and Rule 102(e) of the Commission's Rules of Practice, it is hereby ORDERED that:

A. Respondents Hayford, Rothbaum and McClelland cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act, Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-13, and 13b2-1 thereunder; and Respondents Hayford and Rothbaum further cease and desist from committing or causing any violations and any future violations of Section 13(b)(5) of the Exchange Act.

B. Respondent Hayford shall, within ten (10) days of the entry of this Order, pay disgorgement of \$35,000 and prejudgment interest in the amount of \$3,500, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Respondent Hayford shall pay a civil penalty of \$125,000 to the Securities and Exchange Commission. Payment of the civil penalty shall be made in the following installments: one installment of \$50,000 due within 10 days of the entry of this Order, and then three installments of \$25,000 each plus post-judgment interest calculated in accordance with 28 U.S.C §1961(a) due within 90, 180, and 270 days of the date of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of disgorgement, prejudgment interest, and civil penalties, plus any additional interest accrued pursuant to SEC Rule of Practice 600 and/or 31 U.S.C. §3717, shall be due and payable immediately, without further application.

C. Respondent McClelland shall pay a civil money penalty in the amount of \$75,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments: one installment of \$25,000 due within 10 days of the entry of this Order, and then two installments of \$25,000 each plus post-judgment interest calculated in accordance with 28 U.S.C §1961(a) due within 120, and 240 days of the date of the entry of this Order. If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any

additional interest accrued pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

D. Respondent Rothbaum shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$25,000, to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If payment of this civil penalty is not timely made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

1. Respondents may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
2. Respondents may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
3. Respondents may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Respondent as a Respondent in these proceedings, and the file number of these proceedings. A copy of the cover letter and check or money order, or documentation of whatever other form of payment is used, must be simultaneously sent to G. Jeffrey Boujoukos, Regional Director, Division of Enforcement, Securities and Exchange Commission, 1617 JFK Boulevard, Suite 520, Philadelphia, Pennsylvania 19103.

E. Pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Respondent McClelland is denied the privilege of appearing and practicing before the Commission as an accountant.

1. After three (3) years from the date of this Order, Respondent McClelland may request that the Commission consider his reinstatement by submitting an application (Attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:
 - a. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial

statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Respondent McClelland's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

- b. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the role of the audit committee in financial and accounting matters; and/or
- c. An independent accountant. Such application must satisfy the Commission that:
 - (1) Respondent McClelland, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (2) Respondent McClelland, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;
 - (3) Respondent McClelland has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
 - (4) Respondent McClelland acknowledges his responsibility, as long as Respondent McClelland appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the

Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

2. The Commission will consider an application by Respondent McClelland to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent McClelland's character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission's processes.

F. Pursuant to Section 4C of the Exchange Act and Rule 102(e)(1)(iii) of the Commission's Rules of Practice, Respondent Rothbaum is denied the privilege of appearing and practicing before the Commission as an accountant.

1. After three (3) years from the date of this Order, Respondent Rothbaum may request that the Commission consider his reinstatement by submitting an application (Attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

- a. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission (other than as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Exchange Act of 1934). Such an application must satisfy the Commission that Respondent Rothbaum's work in his practice before the Commission as an accountant will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or
- b. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission as a member of an audit committee, as that term is defined in Section 3(a)(58) of the Securities Act of 1934. Such an application will be considered on a facts and circumstances basis with respect to such membership, and the applicant's burden of demonstrating good cause for reinstatement will be particularly high given the

role of the audit committee in financial and accounting matters;
and/or

- c. An independent accountant. Such application must satisfy the Commission that:
- (1) Respondent Rothbaum, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board (“Board”) in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;
 - (2) Respondent Rothbaum, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent’s or the firm’s quality control system that would indicate that the respondent will not receive appropriate supervision;
 - (3) Respondent Rothbaum has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and
 - (4) Respondent Rothbaum acknowledges his responsibility, as long as Respondent Rothbaum appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

2. The Commission will consider an application by Respondent Rothbaum to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission’s review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent Rothbaum’s character, integrity, professional conduct, or qualifications to appear or practice before the Commission as an accountant. Whether an application demonstrates good cause will be considered on a facts and circumstances basis with due regard for protecting the integrity of the Commission’s processes.

G. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondents Hayford, McClelland, and Rothbaum, and further, any debt for civil penalty or other amounts due by each of the aforementioned Respondents under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by said Respondents of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary