UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE SYMBOL TECHNOLOGIES LITIGATION :	No. 02-CIV-1383 (LDW)
THIS DOCUMENT RELATES TO: ALL ACTIONS :	

CONSOLIDATED AMENDED CLASS ACTION COMPLAINT

Court-appointed Lead Plaintiffs, the Louisiana Municipal Police Employees' Retirement System, the Louisiana Sheriff's Pension & Relief Fund and the City of Miami General Employees' & Sanitation Pension Fund & Relief ("Lead Plaintiffs"), on behalf of themselves and all others similarly situated, bring this action to recover damages caused by defendants' violations of the federal securities laws. Lead Plaintiffs allege upon personal knowledge as to themselves and their own acts, and upon the investigation of their counsel as to all other matters, the following allegations:

NATURE OF THE ACTION

1. This is a class action on behalf of all purchasers of the common stock of Symbol Technologies, Inc. ("Symbol" or the "Company") between April 26, 2000 and April 18, 2002, (the "Class Period"), to recover damages caused by defendants' violations of the Securities Exchange Act of 1934 (the "Exchange Act").

2. This case arises from defendants' efforts to artificially inflate Symbol's quarterly and annual revenues and profits by prematurely recognizing millions of dollars in revenue through "channel stuffing," fabricated sales, and a variety of other means. Faced with severe revenue shortfalls due to overly optimistic sales forecasts and deteriorating market conditions,

defendants, at the end of Symbol's fiscal quarters, artificially manufactured millions of dollars in last minute revenue by, among other things, shipping product on consignment -- *i.e.*, with no payment obligation and a full right of return -- to distributors and value added resellers ("VARs") that would be promptly returned in later quarters or written off as obsolete inventory or bad debt. Defendants also frequently recognized revenue on orders many months before the ordered products were actually configured or shipped to Symbol clients in violation of Generally Accepted Accounting Principles ("GAAP") and Symbol's own publicly-stated revenue recognition policy. Many of the fraudulent transactions were not only highly material to Symbol's financial results, but were engineered by senior management.

3. In May of 2001, Symbol received a letter from the Securities and Exchange Commission ("SEC") inquiring into two suspicious transactions in the fourth quarter of 2000. Symbol did not publicly disclose the existence of this letter or inquiry. Shortly after receiving the SEC letter, Symbol reported significant revenue short-fall in the second quarter of 2001, ended June 30, 2001. According to Symbol's former Senior Director of Internal Audit during the Class Period ("Witness 1"), who reported to Michael DeGennaro ("DeGennaro"), Symbol's former Senior Vice President of Finance, and defendant Harvey Mallement ("Mallement"), Chairman of Symbol's Audit Committee, the Company hired KPMG LLP ("KPMG") in August 2001 to conduct two simultaneous but separate engagements in response to the SEC inquiry and the second quarter shortfall. Neither engagement was publicly disclosed.

4. In the first engagement, KPMG auditors reviewed two Symbol business transactions from the fourth quarter of 2000 – deals involving CVS Corporation and Federal Express. This project was completed in late September or early October, 2001, and Leonard Sturm, the KPMG partner heading the project, discussed his team's findings with DeGennaro

and Symbol's Audit Committee of the Board of Directors in October of 2001. According to Witness 1, Mr. DeGennaro told him that the KPMG audit team had found "vast deficiencies" in Symbol's accounting for the 2000 fourth quarter transactions it reviewed.

5. In the second engagement, KPMG consultants conducted a broad study of Symbol's sales practices, as well as its internal controls. According to Witness 1, the KPMG consulting team completed its on-site review in late November, 2001. KPMG submitted a thick, 100 page spiral-bound report to the Board of Directors in February, 2002.

6. The report's main findings, stated in a draft cover letter accompanying the final report, were: (a) Symbol had no controls in place to ensure that it shipped products out before recognizing revenue; (b) many Symbol employees did not understand proper accounting rules and procedures, and (c) those Symbol employees who did understand such rules and procedures *disregarded them.* Witness 1 stated that he made sure that Symbol's improper revenue recognition practices were prominently displayed as a key finding in the cover letter so that Symbol's Audit Committee would understand what was going on. Concurrent with the two KPMG investigations, the Company's internal audit team uncovered numerous improper sales transactions at Symbol. According to Witness 1, the audit group identified $40 to $50 million in sales booked during the second half of 2001 that appeared improper and the internal audit team recommended reversing at least $20 to $40 million of this revenue. Witness 1 reported these findings to Audit Committee Chairman Mallement and Symbol's outside auditors, Deloitte & Touche LLP ("Deloitte") in early 2002. The findings from KPMG's two engagements, as well as Symbol's internal audit department review, were explicitly discussed among Symbol's management and Audit Committee prior to the filing of Symbol's 2001 Form 10-K, on March 26, 2002.

7. On February 13, 2002, *Newsday* published an article revealing the May 2001 SEC inquiry letter, several examples of fraudulent accounting and a highly material related-party transaction that Symbol had failed to disclose. The following day, on February 14, 2002, Symbol announced that its President and Chief Executive Officer ("CEO"), Tomo Razmilovic, was suddenly resigning from the Company and immediately relinquishing his duties. Symbol's stock price nose-dived from $14.20 on February 12th to $8.40 by February 15th, a decline of 40%.

8. On April 18, 2002, in a conference call with securities analysts and investors, Symbol executives publicly revealed that the SEC had initiated a formal, broad investigation into all of Symbol's 2000 and 2001 financial statements. On August 13, 2002, Symbol disclosed that it may be required to restate its prior two years of financial statements.

9. The SEC has refused to accept sworn certifications by Symbol Chief Financial Officer ("CFO") Kenneth J. Jaeggi and new Symbol CEO Richard Bravman purporting to attest to the accuracy of Symbol's financial statements, due to the SEC investigation and Symbol's statement that it may need to restate its financial results for all of 2000 and 2001. Symbol is one of only two United States companies whose certifications have been rejected by the SEC.

10. Finally, during the Class Period, several defendants engaged in heavy and unusual insider trading. For example, defendant Razmilovic sold or exercised an unusually large amount of shares or options in May 2001, one day before Symbol announced one of the worst quarters in its history, and again in early February 2002, shortly after KPMG submitted its report detailing Symbol's improper accounting.

JURISDICTION AND VENUE

11. The claims alleged in this Complaint arise under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78t, and Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder.

12. This Court has jurisdiction pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1331.

13. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. § 1391(b). Many of the acts alleged herein, including the public dissemination of misleading statements, occurred in substantial part in this District. Symbol also has its principal executive offices in this District.

14. In connection with the acts, transactions and conduct alleged in this Complaint, defendants used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and facilities of national securities exchanges and markets.

THE PARTIES

Plaintiffs

15. Co-lead Plaintiff the Louisiana Municipal Police Employees' Retirement System ("Louisiana Police") is a public pension fund established to provide benefits to the State of Louisiana's policemen and women upon their retirement. As demonstrated in Schedule A, annexed hereto, Louisiana Police suffered a loss of roughly $1.2 million from its purchases of Symbol common stock during the Class Period.

16. Co-lead Plaintiff the Louisiana Sheriff's Pension & Relief Fund ("Louisiana Sheriffs") is a public pension fund established to provide benefits to the State of Louisiana's

sheriffs upon their retirement or disability. As demonstrated in Schedule A, annexed hereto, Louisiana Sheriffs suffered a loss of roughly $672,500 from its purchases of Symbol common stock during the Class Period.

17. Co-lead Plaintiff the City of Miami General Employees' & Sanitation Pension Fund & Relief ("the Miami Retirement Trust") is a public pension fund established to provide benefits to employees of the City of Miami upon their retirement or disability. As demonstrated in Schedule A, annexed hereto, the Miami Retirement Trust suffered a loss of roughly $701,000 from its purchases of Symbol common stock during the Class Period.

18. The persons and entities listed on Schedule B, annexed hereto, are additional plaintiffs in this action. During the Class Period, each acquired Symbol common stock and suffered damages as a result of defendants' violations of law.

Defendants

19. Defendant Symbol Technologies, Inc. ("Symbol" or the "Company"), a Delaware corporation, maintains its principal executive offices at One Symbol Plaza, Holtsville, New York. Symbol stock trades on the New York Stock Exchange under the ticker symbol SBL. Symbol develops, manufactures, sells and services scanner-integrated mobile and wireless information management systems that consist of mobile computing devices, wireless local area networks, bar code reading devices, network appliance devices, peripheral devices, software and programming tools. The Company also provides a range of professional services to customers in connection with its products, including repair and maintenance services, network design services, and project management. The Company acquired a significant competitor, Telxon Corporation ("Telxon"), on November 30, 2000. Symbol operates on a calendar year, i.e., its fourth quarter and year end on December 31.

20. Defendant Tomo Razmilovic ("Razmilovic") served as the Company's President and Chief Operating Officer ("COO") starting in October 1995. Effective July 1, 2000, Razmilovic became Symbol's CEO and President. During the Class Period, Razmilovic signed all of the Company's quarterly Form 10-Q and annual Form 10-K filings with the SEC. He was quoted in and approved the Company's false and misleading press releases. On February 14, 2002, one day after *Newsday's* February 13, 2002 article revealed certain improprieties in Symbol's accounting, Symbol announced that Razmilovic was suddenly retiring from the Company and would immediately relinquish his duties as President and CEO.

21. Defendant Kenneth J. Jaeggi ("Jaeggi") has been employed by the Company since May 1997 and, at all relevant times, served as the Company's Senior Vice President of Finance and as Chief Financial Officer ("CFO"). During the Class Period, defendant Jaeggi signed all of the Company's quarterly Form 10-Q and annual Form 10-K filings with the SEC. Defendant Jaeggi was quoted in and approved the issuance of the Company's false and misleading press releases.

22. Defendant Jerome Swartz ("Swartz") co-founded Symbol and has been employed by the Company since 1975. He has been Chairman of the Board of Directors for more than fifteen years. He served as Chief Executive Officer ("CEO") for more than fifteen years, until July 1, 2000, when defendant Razmilovic replaced him. When defendant Razmilovic abruptly resigned on February 14, 2002, Swartz was re-named as CEO. He remained in that position until July 16, 2002, when Richard Bravman ("Bravman") replaced him. During the Class Period, Swartz signed the Company's quarterly filings with the SEC for the first quarter of 2000 and the Company's Form 10-K for the fiscal years 2000 and 2001. In addition, Swartz was quoted in and approved the Company's false and misleading press releases.

23. Defendant Frank Borghese ("Borghese") joined Symbol in 1988. During the Class Period, he was the Vice President of North American Sales and Services and was ultimately promoted to Senior Vice President and General Manager of Worldwide Sales and Services. Mr. Borghese reported directly to defendant Razmilovic and is listed as a senior corporate officer in Symbol's 2000 Form 10-K.

24. Defendant Brian Burke ("Burke") joined Symbol in 1987. During the Class Period, he served as Symbol's Senior Vice President of Worldwide Operations, where he oversaw all manufacturing. Mr. Burke is listed as a senior corporate officer in Symbol's April 2, 2001 Proxy Statement.

25. Because of their positions with the Company, defendants Razmilovic, Jaeggi, Swartz, Borghese and Burke had the power and authority to cause, and did cause, Symbol to engage in the wrongful conduct complained of herein by virtue of their respective positions as CEO, CFO and CEO/Chairman of Symbol, and by virtue of their substantial ownership of Symbol stock. These same defendants had the power and authority to control the contents of Symbol's public statements to the financial marketplace, including the false press releases and SEC filings, discussed herein.

26. Defendant Harvey P. Mallement ("Mallement") has served as a director of Symbol since 1977. At all relevant times, defendant Mallement chaired the Company's Audit Committee of the Board of Directors. During the Class Period, defendant Mallement signed the Company's Form 10-K for 2000 and 2001.

27. Defendant George Bugliarello ("Bugliarello") has served as a director of Symbol since 1992. At all relevant times, defendant Bugliarello was a member of the Audit Committee

of the Board of Directors. During the Class Period, defendant Bugliarello signed the Company's Form 10-K for 2000 and 2001

28. Defendant Leo A. Guthart ("Guthart") has served as a director of Symbol since 1999. At all relevant times, defendant Guthart was a member of the Audit Committee of the Board of Directors. During the Class Period, defendant Guthart signed the Company's Form 10-K for 2000 and 2001.

29. By reason of their positions at Symbol, each of the individual defendants named in this Complaint had access to internal Company documents, reports and other information, including adverse non-public information about its business, financial condition and future prospects, and attended management and/or board of director meetings. As a result, they were responsible for the truthfulness and accuracy of Symbol's public reports, statements and releases.

30. It is appropriate to treat the individual defendants as a group for pleading purposes and to presume that the false and misleading information contained in the Company's public filings, press releases and other statements, as alleged herein, are the collective actions of this narrowly defined group of defendants. By virtue of their high-level positions at Symbol, each of the defendants directly participated in the management of the Company and was privy to confidential, proprietary information about the Company's business, operations and accounting practices. They were involved or participated in drafting, producing, reviewing, approving and/or disseminating the false and misleading statements alleged in this Complaint and were thus aware that the statements were being made, or approved and ratified them, in violation of the federal securities laws.

SUBSTANTIVE ALLEGATIONS

Overview of Symbol's Business

31. Symbol develops, manufactures, sells and services scanner-integrated mobile and wireless information management products and systems. Those systems consist of Palm-OS and Microsoft compatible mobile computing devices, wireless networks, bar code reading devices, network appliances, peripheral devices, software and programming tools.

32. The Company also provides a range of professional services to customers implementing its products, including network design services, site surveys and project management. Under its service contracts, which usually have three to five year terms, the Company provides repair and maintenance services to its customers.

33. The Company sells products and services directly to mostly large end-user customers, such as Barnes & Noble or K-Mart, and indirectly through distributors or VARs. According to analyst reports, indirect sales accounted for over 60% of Symbol's total sales throughout the Class Period. Symbol sometimes customizes its products to a particular client's needs, a process referred to as "staging." In such cases, Symbol ships the products to a special "staging" warehouse for configuration to the customer's specifications before shipping the product.

The Company's "Book to Ship" Approach

34. For thirty-one consecutive quarters, ending with the fourth quarter of 2000, Symbol reported stellar revenue and income growth. It consistently met or beat analysts estimates, distinguishing itself from competitors who were suffering greatly from the economic downturn. In fact, after the Company reported a 27% revenue increase for fiscal year 2000,

defendant Razmilovic said "[w]e don't see a softening in our overall business activity." See "All That Glitters," *Forbes*, April 16, 2001.

35. The Company's purported growth translated into higher share prices. During the 1990s, Symbol's stock price increased steadily and, by the start of the Class Period, it was trading at roughly $40 per share.

36. Symbol's corporate culture was devoted to meeting Wall Street expectations at any cost. According to a former Senior Account Manager at Symbol based in Canada ("Witness 2") who reported to, at different times, (then) regional manager Steve Smith and later Mike Dolan, at the start of each quarter, account representatives and sales managers would meet at the Company's New York offices, or other locations in the United States, to set forecasts for the quarter. According to a former Materials Planner Analyst at Symbol who purchased parts from third-party vendors and was part of the Symbol "transition team" sent to Telxon ("Witness 3"), as well as several anonymous Symbol sources quoted in a March 4, 2002 *Newsday* article, sales goals were *not* set according to expected demand for Symbol products; rather, they were set at the levels necessary to meet or beat analyst expectations for the quarter. The Company then manufactured its products based on these sales forecasts, rather than on actual hard orders.

37. As a March 4, 2002 *Newsday* article described it, this practice was referred to internally as being "booked to ship," and it placed enormous pressure on Symbol's sales force and accounting department to ship product – and book revenue – at any cost. According to the article:

> Once primarily engineering driven, the company has become a volume-driven machine, obligated to trim costs and maintain growth in a slowing, more competitive market. Its engineering expertise remains highly regarded but the addiction to volume has caused this Long Island stalwart to stumble. …

> Several sources familiar with the changes at Symbol said increased pressure from Wall Street to extend its long string of revenue and earnings increases led to an environment of tremendous pressure on its sales force, and a new, more aggressive outlook within its finance and accounting departments. Symbol, they said, became a company that was heavily "booked to ship."
>
> In essence, that means Symbol had become a well-oiled volume machine whose finances – relying largely on internal sales forecasts – more or less required that everything it built was shipped out in short order.
>
> "The company is extremely heavily booked to ship," said a person familiar with the changes. Such companies, he said, require a strong forecasting process, one that relies heavily on the often-optimistic projection of its sales force. "If the sales guys say they can hit their number and it falls the wrong way, you're in trouble," said the source. "You're not subject to missing your quarter."

38. Witness 3 confirmed that Symbol would manufacture products based on forecasts rather than on actual orders. This was a gamble, because if Symbol did not book enough orders during a quarter, the Company would be stuck with a significant amount of excess inventory. As this former employee put it, "We'd build it and then hopefully the order comes in. The bad thing is if [the order] doesn't come in we're sitting on a lot of inventory." In fact, Symbol lost the gamble. During the Class Period, customer demand for Symbol products was declining. Symbol manufactured a great deal of unordered product and went to great lengths to cover-up its misplaced bet through improper channel stuffing (discussed below) and fraudulent inventory write-downs.

39. Despite the fall-off in Symbol's business, defendants publicly touted the Company's ability to grow. Each quarter, sales goals outstripped reality, resulting in more and more excess product that needed to be pushed out the door. Moreover, in 1999, Symbol adopted a new Executive Bonus Plan, which directly linked executive's compensation to the Company's earnings per share. Thus, defendants put tremendous pressure on sales employees to "make the numbers" each quarter by any means necessary. On the finance side, this meant relaxing or

ignoring credit standards so that sales could be booked. On the accounting side, this meant allowing revenue to be booked in circumstances that clearly violated GAAP. According to the former Vice President of Sales for Strategic Accounts at Symbol ("Witness 4"), "with Tomo [Razmilovic], if you made your numbers *he would look the other way*."

<u>Defendants Use Improper Revenue Recognition Techniques to Make the Numbers Each Quarter</u>

40. During the Class Period, defendants fabricated the appearance of continued growth by means of improper revenue recognition schemes, all of which were intended to and did artificially boost the Company's reported results, enabling the Company to continually meet its earnings expectations. This accounting legerdemain included (among other things): (1) aggressive "channel stuffing," or end-of-quarter consignment shipments to distributors and VARs who had no obligation to pay for the products: (2) booking revenue before products shipped (if they shipped at all); (3) booking revenue before products were configured (or manufactured); (4) booking fictitious sales; (5) extending payment terms to 90 or 120 days in order to allow Symbol to recognize revenue in one quarter while the customer did not have to pay for months; (6) shipping product to customers whose ability to pay was doubtful; and (7) intentionally shipping non-conforming or unordered products to customers.

<u>Symbol Routinely "Stuffed the Channel" By Shipping Products to "Buyers" With an Unconditional Right of Return and No Payment Obligation</u>

41. During the Class Period, the Company repeatedly engaged in fraudulent end-of the quarter "channel stuffing" by shipping tens of millions of dollars in products to distributors and VARs either who had not ordered the products, or to customers, where Symbol gave its distributors and VARs the right to return the products, with no obligation to pay for them. In general, channel stuffing is a practice whereby a manufacturer intentionally oversupplies its

resellers and distributors with products at the end of each quarter to artificially inflate reported revenues. Channel stuffing accelerates product shipments and inflates revenues in one quarter while stealing, or "cannibalizing," business in future quarters. Channel stuffing thus both misrepresents the true state of a company's current business, and has a material adverse effect on a company's business going forward.

42. Here, defendants' egregious repeated channel stuffing violated GAAP because these shipments were usually nothing more than consignment arrangements. They were not genuine sales. A consignment arrangement is a transaction in which goods are shipped to a middleman, such as a distributor or VAR, without title to the goods passing to the middleman. The middleman is granted an unconditional right to return the goods if he or she cannot sell them, and the middleman is not obligated to pay the shipper for the goods until and unless he or she sells them. Symbol essentially parked its products with such middlemen with no payment obligation, so it could claim that it "sold" the products.

43. According to interviews with several witnesses, Symbol engaged in channel stuffing with all of the following distributors and VARs: Tolt Technologies, located in Washington State; Datavision-Prologix (f/k/a/ Datavision), located in Pennsylvania; Data Recognition, located in Richardson, Texas; Texas Bar Code, located in Plano, Texas; Unimicro, located in Mexico; ScanSource, headquartered in Greenville, South Carolina; Wincor Nixdorf, Inc., located in Austin, Texas; and WAV, Inc. located in Chicago, Illinois.

44. Numerous former Symbol employees located across the country confirmed Symbol's channel stuffing. According to Witness 1, the term "channel stuffing" was used frequently at the Company. The practice was so widespread at the Company that employees openly discussed and even joked about it.

45. According to Witness 4, "channel stuffing" deals were known by defendants and regularly discussed in quarterly meetings at Symbol's corporate headquarters in Holtsville and in meetings in Dallas. Defendant Borghese ran the meetings in Holtsville, which were also attended by Tim Curran, Vice President for North American Field Operations, and other Company sales vice presidents. According to a Field Service Supervisor for the Soutwest Region ("Witness 5"), in one Dallas meeting during the second or third quarter of 2001, Paul Shiman, Vice President of Sales for the Southwest Region, complained that there was a lot of "phony stuff" on the books that he had to clean up in early 2001.

46. The former head of Business Development in Supply Chain Selling at Symbol during the Class Period ("Witness 6") has also stated that Symbol engaged in widespread channel stuffing, or consignment arrangements. "We're talking millions of dollars, tens of millions of dollars in shipments to partners with no intention to fill orders."

47. Similarly, according to a former Senior Manager in the Worldwide Logistics department ("Witness 7"), employees in Symbol's Bohemia, Long Island warehouse told him in December 2000 that Symbol arranged end-of-the-quarter "sales" "all the time" with distributors/VARs who agreed to take a large amount of inventory and then later send it back as a return and that these transactions were usually for large amounts of money. In fact, this witness stated that he assisted with a large scanner order at the very end of December, 2000. In March 2001, he saw the same boxes, undisturbed, back in Symbol's warehouse. "The shipping labels we applied previously were still on it. It was the same customer, the same product."

48. A former Manager of Professional Services, Central Region ("Witness 8") stated that Symbol forced distributors/VARs to purchase millions of dollars in unwanted product at the

end of many quarters. Symbol's attitude was, "We're going to dump $10 million [in product] in your warehouse. Pay for it when you can."

49. Witness 5 further confirmed this widespread channel stuffing. This witness stated that by the end of 2000, Symbol was shipping products to VARs and invoicing them for products that were not even ordered. "They would just ship them and invoice them. The VAR would say, 'We didn't order this.' The salesman would tell the VAR, 'It's okay, just hold on to it and we'll credit you back, or send it back in the next quarter." According to this witness, two VARs, Data Recognition and Texas Bar Code, told him that they received unordered products from Symbol.

50. According to Witness 8, when customers complained about receiving product they did not need or want, or that was not yet supposed to be delivered, the Company would claim the shipments resulted from "clerical errors" and offer the customers inducements to keep the product. In some cases, distributors were simply told to keep the product without further obligations. Other times, distributors and resellers were told that they could return the product, but only after the end of the quarter.

51. According to Witness 8, Tim Moynihan, Vice President of Sales for the Central Region, instructed his account managers to take customers who complained about extra or unwanted and unordered shipments out to dinner to "smooth things over" and convince them to keep the product. Account managers would also tell distributors/VARs that, "You don't have to pay until next month [or later]." According to this witness, VARs ScanSource and WAV, Inc. both received unwanted "stuffed" products from Symbol. Symbol's former Senior Director of Worldwide Logistics ("Witness 9") and Witness 3 also stated that Symbol dumped, or stuffed, a particularly large amount of unwanted inventory on ScanSource.

52. According to Witness 4 and a former Symbol Southern Region Sales Director who worked at Symbol during the Class Period ("Witness 10"), defendant Borghese controlled all major distributor deals. This was corroborated by Witness 8 who stated that defendant Borghese orchestrated the channel stuffing transactions with distributors and major customers. Witness 8 stated, "At the end of a quarter, Frank Borghese would work his magic. *It was common knowledge that he was dumping product*."

53. In fact, the Company pushed so much extra product on distributors, that by the time the products were sold to end-users, the one-year warranty periods had frequently expired. At the end of 2000, the Company received such customer complaints about expired warranties from at least two Texas-based distributors: Data Recognition and Texas Bar Code.

54. According to numerous former employees, defendants repeatedly booked phony revenue on purported sales to distributors and VARs during the Class Period. For example:

a. According to a purchaser at Wincor-Nixdorf ("WN") ("Witness 11"), one of Symbol's VAR customers during the last month of the second quarter of 2001, defendant Borghese negotiated a $25 million deal with the Chief Executive Officer of WN. The shipment was unusual in size because WN's total sales for the entire prior year were less than this one order. The deal was split into five purchase orders, dated from June 21 through June 25, 2001, so the overall size of the order would not attract attention. Symbol shipped the products during the second quarter and recognized $25 million in revenue in that quarter. WN accepted the products as an accommodation to Symbol and it stored the product in its Austin, Texas warehouse. According to the WN purchaser who handled this transaction, the shipment came with a "return material authorization" so that if

WN did not sell the product to its end-user customer (which it did not), WN had the unconditional right to return all of the products to Symbol. According to this former purchaser, WN returned the products to Symbol for full credit roughly two weeks to a month after it was received.

b. According to Witnesses 1 and 3, Symbol had an arrangement with ScanSource, Inc., a distributor in Greenville, South Carolina, to regularly take millions of dollars in excess products so that Symbol could make its quarterly sales numbers. ScanSource was Symbol's biggest channel partner in the United States, so deals were done at the corporate level, not by the Company's field force of sales agents. Defendant Borghese participated in all significant deals with ScanSource. According to a March 4, 2002 *Newsday* article, Symbol often parked inventory at ScanSource. Former Symbol employees confirmed this fact. According to Witness 1, one such "park" occurred at the end of 2001. The Company shipped $5 million to $10 million worth of products to ScanSource without a purchase order or invoice. The revenue was recorded in the fourth quarter of 2001. When this witness requested documentation supporting the sale, Greg Mortenson, Symbol's Controller for Sales Finance, said that no purchase order existed and that defendant Razmilovic had personally approved this shipment.

55. According to Witness 1, a review of roughly 20 Symbol "sales transactions" conducted by Symbol's internal audit department revealed that although Symbol recognized full revenue for these transactions immediately, many of the transactions were in fact "bill and hold" consignment arrangements where revenue recognition was inappropriate. The review

determined that products for many of these transactions had in fact been returned to Symbol within six months of their shipment.

56. This witness also recalls sitting in on an interview between KPMG representatives and employee Stan Jaworski, an important marketing executive in charge of Symbol's channel partner accounts, in the fall of 2001. Jaworski told the KPMG representatives, "*Let's get one thing straight. Most of our channel sales should be treated as consignment arrangements.*"

<u>Symbol Booked Revenue Before Products Were Shipped</u>

57. For companies like Symbol that primarily sell products, revenue is generally earned when the products are shipped. *See* Concept No. 5, ¶¶ 83-84. In fact, Symbol's internal revenue recognition policies, as described in its fiscal 2000 Form 10-K, say that "[r]evenue from sales of the Company's products is recognized upon shipment." Nonetheless, during the Class Period, Symbol routinely recognized tens of millions of dollars in revenue on purported "sales" before its products had been shipped, in violation of GAAP and the Company's own accounting rules.

58. According to Witness 1, at the end of 2001 Barnes & Noble contacted Symbol about leasing scanners beginning in June or July of 2002. Barnes & Noble requested a 30 to 36 month lease and did not want the product delivered, or to begin paying for it, until July, 2002. Yet Symbol Leasing, a special purpose entity ("SPE"), set up the transaction as a 6 month leasing deal, beginning immediately in December 2001. Symbol sent an invoice to Barnes & Noble in December 2001 and booked the revenue in its fourth quarter of 2001 but told Barnes & Noble it did not have to pay for the scanners until mid-2002, as requested.

59. Unaware of this side deal, employees in Symbol's credit and collections department began calling Barnes & Noble for payment in the first quarter of 2002. According to

a credit and collections department employee who spoke with Witness 1, Barnes & Noble told them that, "We're not supposed to pay until June." Because Barnes & Noble became upset at receiving calls from Symbol's collections department, a meeting was arranged at Barnes & Noble's offices between defendant Brian Burke, then Symbol's head of sales financing, and Barnes & Noble executives. At the meeting, Barnes & Noble reportedly told Burke, "We don't want any part of this. We don't want the product at all," and then abruptly ended the meeting, essentially kicking him out of their offices. Barnes & Noble subsequently canceled its entire order.

60. Also, according to Witness 8, on December 30, 2000, Tim Moynihan, Symbol's Central region Vice President of Sales, and Bob Bloom, Symbol's Detroit Sales Manager, took a K-Mart executive out to dinner. At the end of the evening, after beseeching by Symbol, the K-Mart representative approved a deal with Symbol that was written on a napkin. Symbol recorded $46 million in revenue from this deal in its 2000 fourth quarter so that Symbol could meet its quarterly and annual numbers for the fourth quarter and year ended December 31, 2000, even though the products to be delivered to K-Mart required staging, *i.e.*, custom-configuration by Symbol, over a two to three month period. The product was not shipped for one or two quarters later.

61. According to Witness 1, in late 2001 Symbol and Super Value, a Midwestern supermarket chain, discussed entering into a transaction. Symbol recorded the transaction as a roughly $2 million sale on its books in the fourth quarter of 2001. When Witness 1 asked to see the purchase order, he discovered there was no purchase order. In fact, when he asked to see the invoice and the shipping documents, he discovered there were no shipping documents. When he

spoke to the credit and collections department regarding this transaction, he was told there were no documents because the products had never even been manufactured, let alone shipped.

62. According to a former Program Manager in the Returned Goods and Inventory Department who began working at Telxon in 1996 and continued working at Symbol after the Telxon acquisition until February, 2002 ("Witness 12"), in August of 2001, Texas-based Mervyn's Department store placed a $900,000 order with Symbol for hand-held scanners. Due to a parts problem, Symbol was not able to ship the scanners to Mervyn's until October or November 2001. Nevertheless, the Company recorded this revenue during the third quarter of 2001, when the order was placed, rather than in the fourth quarter of that year, when the products were actually shipped. When a program manager spoke with Jim Heuschneider, an employee working for defendant Burke, about the fact that the order could not be shipped in the third quarter, Heuschneider told the manager that they would handle the journal entry and that they intended to take the revenue in the third quarter because they needed it.

63. According to Witness 12, after Symbol acquired its largest competitor, Telxon on November 30, 2000, Symbol stopped manufacturing Telxon's products, except for a few used by WalMart and other key Telxon customers. In early-to-mid December, as part of its integration of the two companies, Symbol disposed of Telxon's obsolete inventory by selling it to Triangle, a scrap house on Long Island. Ernie Bursalis, an employee in Symbol's finance department, was responsible for selling this inventory. He reported to defendant Burke. After the sale, several Telxon customers wanted to purchase some of the products that Symbol had sent to Triangle. Symbol took orders for these products until the end of December 2000, immediately recognizing the revenue on these sales even though the Company no longer had the Telxon products in inventory and was experiencing substantial delays in getting them back from the scrap house.

The Company was not able to actually ship the Telxon products to its customers until April or May 2001, at least one or more quarters after it booked the revenue.

64. Former Symbol employees confirmed that the Company frequently recognized revenue from orders that never left its warehouses. According to a former senior director in transportation, the following would happen in the Bohemia, New York warehouse at the end of the quarters: on the last day of the quarter, sales people or the "customer response team" would enter an order into Symbol's SAP ERP computer system. The delivery order automatically dropped down into the warehouse, where employees worked until 11 p.m. The orders were pulled and would either sit on the docks in the warehouse or were given to a local carrier on Long Island to hold for a few days, and then the orders were returned to Symbol.

65. Symbol's premature revenue recognition was not limited to its product sales. The Company also prematurely recognized revenue from service contracts. Under its internal revenue recognition rules, if service revenues were "recorded prior to providing repair and maintenance services," they were supposed to be "deferred and recognized over the term of the related agreements."

66. According to an anonymous source who contacted the SEC and Witness 1, in December 2000, Symbol entered into a $700,000 service contract with Federal Express Transportation and Logistics Installation Services. Under the contract, Symbol was to perform services during 2001. However, defendants recorded all revenues associated with the contract in the fourth quarter of 2000, before Symbol was scheduled to perform any of the services. The Company gave Federal Express extended payment terms under which it did not have to pay Symbol until after the Company's Professional Services Group performed the work.

Symbol Booked Revenue Before Products Were Configured

67. Symbol often prematurely recognized revenue on transactions requiring "staging," whereby Symbol first customized one or more of its products to fit a particular customer's requirements before shipping these products to the customer. Generally, for orders requiring staging, Symbol shipped the products from one of its main warehouses in Long Island to another Company warehouse, including ones in Pittsburgh, Pennsylvania and Arlington Heights, Illinois. There, Symbol technicians would configure the products to the customer's specifications. After products were reconfigured, the Company would ship them to the customer. The configuration process usually took at least 2 or 3 months. Under GAAP, Symbol was not permitted to recognize revenues from these product sales until contingencies, like the performance of "staging" services, had been completed and the finished products shipped to customers.

68. At all relevant times, Charlie Lamberti headed Symbol's staging operations. In November 2001, Mr. Lamberti told Witness 1 that Symbol's customers would not pay for or accept product shipments until *after* staging had been completed.

69. In violation of GAAP, Symbol accounted for many of these transactions fraudulently by deliberately recognizing revenue for them before the ordered products had been customized, let alone shipped to the client. During the Class Period, Symbol became so desperate to book revenue that it took the position that, as long as the products were in staging, even if they were months away from shipment, revenue could be recognized.

70. According to Witness 1, an audit conducted in the fall of 2001 of approximately twenty sales transactions revealed that although Symbol recognized full revenue for these transactions immediately, many of the transactions were staged transactions and products for

many of these deals were *still located at Symbol's warehouses (awaiting configuration or assembly) and had yet to be shipped to the client*. Not surprisingly, there were no shipping documents for these transactions. The internal auditors concluded that the orders had come in too late to get them out by the end of the quarter, that the staging story was being improperly used as a justification for booking revenue despite the lack of shipments, and that this was being done simply to achieve sales goals.

71. Mr. Lamberti told this witness that the Company had been playing games with its staging services. If it appeared that the Company would not make its quarterly sales goals, employees would simply book orders and say the products were in staging when asked why there were no documents evidencing shipment of the orders. According to Witness 1 and Mr. Lamberti, this practice had been going on for years at the Company and routinely occurred with end-of-quarter orders.

72. According to Witness 8, at the end of 2000, Symbol improperly recorded $15 million in revenue for a staging order from Sears. After Sears placed its order, Symbol shipped the products to its warehouse in Pittsburgh, Pennsylvania for configuration. Defendants immediately booked the full contract amount as revenue. However, the final products were not shipped to Sears until early 2002, *more than a year after Symbol recorded the revenue*.

73. According to Witness 1, in December 2001, defendant Burke, then Symbol's Senior Vice President of Worldwide Operations, struck a deal with Bed, Bath & Beyond ("BBB"). The products BBB ordered required staging work. Defendant Burke negotiated an arrangement whereby Symbol would ship the un-configured products to BBB, which then immediately shipped them back to Symbol for staging services. The Company booked the revenue for this transaction in the fourth quarter of 2001. However, BBB did not have to pay for

the products until *after* the staging. When senior BBB officers learned about this back-and-forth arrangement, they cancelled the order with Symbol.

74. According to a former Senior Account Executive at Symbol's Houston office ("Witness 13"), J.C. Penney ordered equipment from Symbol that required staging. In the weeks and months following the order, as the Company configured the products, it would ship them directly to the individual J.C. Penney stores. Defendants recorded all of the revenue from this deal upfront, rather than follow its stated rules and properly record it over the later quarters as the final products were shipped.

75. The Company's internal accounting rules precluded the recognition of revenue until the final, staged products had been shipped. Symbol's Form 10-K for fiscal years 2000 and 2001 state that Symbol recognized revenue from contracts involving bundled products, services or maintenance, like staging contracts, in accordance with Statement of Position ("SOP") 97-2:

> if products, services or maintenance are bundled in a single contract, revenue will be recognized once all elements of the contract are completed unless the following criteria are met: (1) the product has been delivered; (2) the undelivered services or maintenance are not essential to the delivered products; (3) the fee for the product is not subject to forfeiture, refund or concession based on performance of the services or maintenance; (4) the fair value of services and maintenance are determined based on the price charged by Symbol, or the price charged by competitors when similar services or maintenance are sold separately; and (5) the revenue related to any element of the contract is not subject to customer acceptance; in which case the revenues for each element will be recognized independently.

76. Symbol's staging services were substantial, took months to complete, essential to the delivered products, and a condition to the customers' obligation to pay. Thus, defendants' immediate recognition of revenue from these product sales prior to shipment violated GAAP and the Company's own revenue recognition policies.

Symbol Booked Revenue on Deals That Were Not Final

77. According to a former Manager in Symbol's service and support group ("Witness 14") in Bohemia, New York in December 2000, Symbol prematurely shipped and booked $3.5 million in product to CVS, despite the fact that the Company had not issued a purchase order and Symbol was still negotiating the deal. Symbol asked CVS to hold the product until CVS wanted it, in mid-2001, following expiration of a lease on its older Symbol equipment. Defendant Borghese and Steven Johnson, a Vice President of Sales, went ahead and booked the revenue anyway to help make the quarter even though they knew that the quantity, delivery dates, and payment terms for the deal had not been finalized.

Fictitious Sales

78. In addition, the Company resorted to simply creating fictitious sales to make its quarterly sales numbers. According to Witness 4, senior management routinely reached agreements with certain customers to accept product even though the customer was given the right to, and intended to, return it for credit during the weeks or months following the close of the quarter.

79. In some cases, Symbol did not even bother to ship the "orders." It merely held the products in its own warehouses despite publicly recording revenue from the bogus transactions. After the quarter closed, Symbol would credit-back the customers and either take back the products (if they had been shipped) or let the customer keep them, free of charge. No money changed hands.

80. In some cases, Symbol employees created fake invoices and other order documentation. According to Witness 4, Tim Curran, who worked for defendant Borghese, was responsible for doctoring paperwork to make sales look legitimate. Among other things, he

would draft fake letters from customers authorizing shipments. The customers never saw these letters and these orders were typically held in Symbol's warehouse or some other location.

81. According to Witness 1, in early 2001, Symbol entered into a sham business transaction worth more than $6 million with Unimicro, a VAR in Mexico, so that Symbol could post good quarterly numbers. Witness 1 stated that Symbol owned a part of UniMicro but did not disclose this relationship. According to this witness, an employee in Symbol's credit and collections department told him that when he called Unimicro to collect the $6 million receivable, UniMicro told him there was no sale.

82. Unimicro then contacted Symbol's South America and Mexico region sales manager regarding the transaction, and the Symbol sales manager arranged a conference call between himself, the above-referenced collections employee and Unimicro. Shortly before the call or shortly after its inception, the Symbol sales manager told the collections employee that the deal was a "bogus transaction" and that it was "his problem" -- not the collection employee's problem. This employee told Witness 1 that he was afraid to make collection calls after that.

Symbol Extended Credit Terms Without Required Disclosure

83. According to Witness 1, Symbol's internal policy was to give customers 30 days to pay for their orders. In a number of instances, however, defendants secretly agreed to give customers 90 days or more to pay for their orders, so that they would not have to pay for the products until they actually wanted them. These extended payment terms were set when the order was placed, often in return for the customer agreeing to accept shipments of the products earlier than it wanted and before the customer had agreed to pay for them. GAAP requires that any unusual change in the length of time to pay for a product or service must be disclosed in the company's financial statements.

84. According to Witness 1, during the fourth quarter of 2001, Symbol shipped at least $1 million worth of products to Motorola. The Company booked this revenue immediately, even though Motorola refused to accept the product until the end of March or early April 2002. Symbol gave Motorola an extended payment term of almost four months so that Motorola would not have to pay for the products until it wanted them (if ever), which allowed the Company to improperly recognize the full amount of the "sale" in 2001.

Symbol Booked Revenue Where Collectibility Was Doubtful

85. In addition, during the Class Period, defendants repeatedly recorded sales where it was doubtful that the customer could pay for the products, in violation of GAAP and the Company's internal policy of only recognizing revenue when "collectibility is reasonably assured." According to Witness 1, the Company would place credit holds on distributors/VARs with outstanding balances beyond their credit limits. However, defendant Jaeggi would personally lift these credit holds to permit additional orders to be sent to channel partners if additional sales were needed to make Wall Street's expectations for the quarter.

Symbol Booked Revenue on Shipments of Non-Conforming Products

86. According to Witness 1, Symbol employees intentionally shipped non-conforming products to their customers in order to record sales in earlier quarters. For example, if a customer wanted to purchase products that were not in stock or otherwise available, Symbol employees would go into the Company's computer system and temporarily change the customer's order. Employees in Symbol's invoicing and traffic departments told Witness 1 that defendant Burke was the architect of this product-switching strategy.

87. By shipping and invoicing customers for non-conforming products, Symbol bought itself additional time to build or secure the products that had actually been ordered. It

would then take back the non-conforming goods and replace them with the correct products in a later quarter. According to Witness 1, these transactions usually occurred at the close of quarters and the shipments were done at that instruction of defendants Razmilovic and Burke.

Symbol's Undisclosed and Premature Recognition of Revenue from Related-Party AirClic

88. During the third quarter of 2000, Symbol sold a license of its scanning technology to a start-up company called AirClic, Inc. ("AirClic") for $15 million. This transaction was highly material to the Company's financial results for the quarter, and was a related-party transaction that Symbol was required to disclose in its financial statements for that period. However, in violation of GAAP, Symbol only disclosed this transaction 18 months later, in its 2001 Form 10-K, after *Newsday* published an article discussing it and Symbol at first denied that it was required to disclose this transaction.

89. AirClic was formed in 1999. According to news reports and analyst reports, in the Summer of 2000, Symbol, Motorola, AirClic and a subsidiary of Ericsson (Connect Things) announced that that they would form a joint venture to promote a new technology which would allow advertisers to direct readers and consumers directly to their Web pages using bar-code scanning technology. In late 2000, AirClic acquired the Ericsson subsidiary, and Motorola, Symbol and Ericsson invested their money directly into AirClic in exchange for equity interests in AirClic. Thus, in November 2001, Symbol invested $50 million in AirClic.

90. The *Newsday* article disclosed the existence of this transaction (as well as the May 2001 SEC letter and KPMG's investigation into Symbol's accounts) and cited several anonymous sources who said that Symbol needed the $15 million in revenue from the "sale" to AirClic to meet Wall Street's expectations for the third quarter of 2000.

91. In fact, without this revenue, Symbol would have missed its third quarter earnings expectations by a wide margin. By including this revenue, Symbol was able to boost its net income for the quarter from $25.5 million to $40.5 million and therefore meet analyst estimates for the period.

92. In the *Newsday* article, defendant Jaeggi stated that Symbol was not required to disclose the deal as a related-party transaction and that it was "approved by Symbol's internal and external auditors." However, he did acknowledge that the AirClic royalty payment was unusually large in amount.

93. Yet, only one month after the *Newsday* article, Symbol finally disclosed the AirClic transaction in its 2001 Form 10-K, admitting that it was a material related-party transaction that required disclosure. The 10-K confirms that Symbol did not actually enter into the licensing transaction with AirClic until the 2001 fourth quarter, when Symbol also made its $50 million investment in Airlic (which presumably gave AirClic the ability to actually pay for the license). GAAP provides not only that related party transactions must be timely disclosed, but that the failure to disclose a related party deal renders the issuer's financial statements, even if otherwise accurate, *per se* false and misleading. However, in this case, the 2001 Form 10-K also revealed that Symbol should not have booked the revenue from this deal in the 2001 third quarter.

94. Specifically, the Form 10-K stated that:

> *In November 2000, the Company invested $50 [million] in and licensed certain intellectual property to* AirClic Inc. ("AirClic"). In return, the Company received convertible preferred stock in AirClic. . . .
>
> Because the Company does not have the ability to exercise significant influence over AirClic, it accounts for this investment using the cost method. . . . *For the year ended December 31, 2000 the Company received royalty payments of $15 [million] relating to*

> *the licensing of certain intellectual property, in the ordinary course of business. All other related party transactions between the two entities have not been material.*

(Emphasis added).

95. In other words, Symbol recognized the $15 million in AirClic revenue *before it had even formally granted AirClic any intellectual property rights*. In addition, the 10-K attempts to hide the fact, disclosed by defendant Jaeggi to *Newsday*, that the AirClic royalty payment was unusually large in timing and amount and was in fact an extraordinary event that, pursuant to GAAP, should have been accounted for *separately* from Symbol's ongoing operations and financial results.

96. On July 11, 2002, Symbol issued a press release stating that it would record a $47.2 million pre-tax charge during the second quarter of 2002 to write down the value of its $50 million investment in AirClic.

Symbol's Fraudulent Write-Down of Its Own Inventory As Telxon Inventory

97. By late 2000 and early 2001, the Company's distribution channels were so stuffed with excess product that customers were refusing to accept more products. This was causing an inventory backup within the Company. According to Witness 7, the Finance Department estimated the Company had at least $60 million worth of obsolete inventory sitting in its own warehouses. Witness 9 confirmed that it was easily this much. Defendants kept the obsolete inventory in three warehouses in Bohemia, New York, as well as a fourth warehouse nearby owned by a third party storage provider.

98. The fact that the Company had so much obsolete inventory on hand was a "joke throughout the company," according to Witness 7.

99. On November 30, 2000, Symbol purchased Telxon. In its 2000 Form 10-K, the Company took a $274 million charge to establish a reserve for costs associated with this

acquisition. Of this $274 million, Symbol recorded a $63.9 million non-ordinary "inventory impairment" charge to write-down the value of obsolete or discontinued Telxon inventory.

100. In reviewing Symbol's accounting treatment of its Telxon acquisition, *Forbes* magazine noted, "A cynic might suspect that Symbol used the cloak of the Texlon acquisition to book ongoing expenses as little-noticed, one-time write-offs, since Wall Street ignores these charges." These suspicions have been confirmed by plaintiffs' investigation.

101. According to Witness 12, Ernie Bursalis, an employee in the Finance Department who reported directly to defendant Burke, directed Symbol employees to ship thousands of obsolete and returned products from its Long Island warehouses to Telxon's warehouse in Texas, so that they could be included with the discontinued and obsolete Telxon products being shipped *back to Long Island* to a scrap house. In this fashion, Symbol included its own obsolete products in its write-off for the Telxon acquisition. According to this witness, *"It looked like Telxon inventory and they could blame it on Telxon. They took their own obsolete inventory and charged it off to Telxon.*"

102. Witness 3 corroborated that Symbol's reported restructuring charge for the Telxon acquisition included write-downs for *both* Symbol's and Telxon's inventory.

103. Thus, during the first quarter of 2001, Symbol's declining sales were masked by the additional sales of Telxon products (*see* ¶63, *supra*) and the improper inclusion of Symbol expenses in the Telxon reserve, including expenses for disposing of its own obsolete and excess inventory. As a result, even though Symbol reported a 12% decline in earnings compared to the prior quarter, it was still able to beat analyst expectations by $0.02 per share.

The SEC Letter and 2001 Second Quarter

104. In May of 2001, Symbol received an inquiry letter from the SEC regarding two transactions in the fourth quarter of 2000 – apparently the transactions involving CVS and Federal Express (*see* ¶77, *supra*). According to Witness 1, defendants responded to the agency's inquiry in the early fall of 2001 and re-submitted their response after the original was lost during the September 11, 2001 World Trade Center attack.

105. On July 16, 2001, the Company issued a warning that its revenue and earnings for the 2001 second quarter ended June 30, 2001 would be significantly below estimates. It reported no increase in revenues compared to the prior year's second quarter. Net income fell from $36.2 million, or $0.16 per share, to a dismal $7 million, or $0.03 per share, when compared to the same period of the prior year. Analysts had been expecting the Company to report $0.15 per share in earnings. In the wake of this news, Symbol's stock fell from $18.45 to $12.95 per share, or 30%.

106. However, at the time of this announcement, defendants did not reveal the true reasons for the shortfalls – namely, that Symbol's improper accounting practices were beginning to catch up to it. Instead, defendants falsely represented to the investing public that its poor results were the result of a weak economy and poor sales by its distributors. Specifically, defendants falsely attributed the poor second quarter to a "global slowdown in information technology capital spending" and an "unexpected" decline in sales at the end of June.

107. Defendants' improper revenue recognition practices created a situation where quarterly sales were increasingly back-end loaded. For example, in the second quarter of 2000, roughly 50% of the Company's shipments were made in the third month of the quarter. By the third quarter of 2000, this percentage had increased to 55% to 60%. Symbol's improper revenue

recognition practices also adversely affected Symbol's accounts receivable balances and days sales outstanding ("DSO") levels. This not only reflected the impact of Symbol's channel stuffing, but it put even more pressure on Symbol to do last-minute deals to make its numbers.

108. Both accounts receivable and DSO levels were going up. In the second quarter of 2000, DSO - which measures the number of days it takes, on average, to collect accounts receivable - was 79 days. This increased to 89 days in the third quarter of 2000 and rose to 119 days by the end of the second quarter of 2001. During Symbol's second quarter 2001 earnings conference call on July 26, 2001, defendants falsely represented that the increase in DSO and accounts receivable levels was the result of the weak economy and poor sales by distributors.

The Audit Committee's Duties and Responsibilities

109. Symbol's Audit Committee consisted of defendants Mallement, Bugliarello and Guthart, with defendant Mallement chairing the Committee. According to Symbol's 2001 and 2002 Proxy Statements, the "primary functions of the Audit Committee were to review Symbol's financial statements, to recommend the appointment of Symbol's independent auditors and to review the overall scope of the audit."

110. According to the "Audit Committee Charter," attached as Annex A to Symbol's 2001 Proxy Statement, the committee's role was to "assist the Board in fulfilling its responsibility for oversight of the quality and integrity of the account, auditing, and reporting practices of the Company and such other duties as directed by the Board." Moreover, "[t]he Audit Committee is expected to maintain free and open communications (including private sessions at least annually) with the independent accountant, the internal auditors, and the management of the Company. In discharging this oversight role, the committee is empowered to

investigate any matter brought to its attention, with full power to retain outside counsel or other experts for this purpose."

111. The Charter also states that the primary responsibilities of the Audit Committee include:

a. "Provision of guidance and oversight to the internal audit function of the Company, including review of the organization, plans and results of such activity."

b. "Review of financial statements (including quarterly reports) with management and the independent auditor. It is anticipated that these discussions will include quality of earnings, review of reserves and accruals, consideration of the suitability of accounting principles, review of highly judgmental areas, audit adjustments, whether or not recorded, and such other inquiries as the committee deems appropriate."

c. "Discussions with management and the auditors of the quality and adequacy of the Company's internal controls."

d. "[R]eporting on audit committee activities to the full board and issuance annually of a summary report."

112. According to Symbol's SEC filings, Symbol's Audit Committee met six times during 2000 and eight times during 2001. Amidst the SEC inquiry and internal investigations in late 2001 and early 2002, the audit committee convened *monthly*.

113. During both 2000 and 2001, the Audit Committee publicly reported that it took the following actions in its review of Symbol's year-end results:

a. it reviewed and discussed the audited financial statement with Symbol's management;

b. it discussed with Deloitte all matters required to be discussed by SAS 61 (Communications with Audit Committee); and

c. it received written disclosure and a letter from Deloitte required by Independence Standards Board Standard No. 1, and discussed with Deloitte their independence, and "considered whether the provision of non-audit services is compatible with maintaining [Deloitte's] independence.

The KPMG Engagements

114. Following Symbol's disastrous 2001 second quarter and notice of the SEC investigation, Symbol's board of directors retained KPMG to conduct two separate engagements relating to Symbol's accounts.

115. First, beginning in August 2001, a KPMG audit team reviewed the two December 2000 transactions being investigated by the SEC. Second, beginning in September 2001, a KPMG consulting team performed a wide-ranging review of Symbol's sales and service functions, including how the Company made and recorded sales, how marketing and production worked, and the adequacy of internal controls in the sales area. The two KPMG investigations proceeded simultaneously, although the two teams worked independently of one another.

116. KPMG's audit team completed its review of the two December 2000 transactions in October of 2001. According to Witness 1, KPMG's audit team discovered "vast deficiencies" in Symbol's accounting for these transactions. According to this witness, in October 2001, Leonard Strum -- the KPMG partner heading the investigation -- discussed the firm's findings and conclusions with defendant Jaeggi and Mike DeGennaro, Symbol's Senior Vice President of Finance. That same month, Strum also discussed his team's findings and conclusions with Symbol's Audit Committee.

117. According to Witness 1, KPMG's consulting team completed its on-site investigation of Symbol's sales practices in late November 2001. This witness sat in on approximately 65 interviews that KPMG conducted with Symbol employees.

118. Defendant Borghese and Chris DeSantis, Vice President of Sales, both left Symbol abruptly around November, 2001, when KPMG's on-site investigations were concluding.

119. In December 2001, Witness 1 discussed the findings and conclusions of both KPMG engagements with his boss, Michael DeGennaro. This witness stated that he and other internal auditors met with Deloitte & Touche LLP ("Deloitte"), Symbol's outside auditor, and informed Deloitte that company investigations revealed $40 to $50 million in questionable sales during the second half of 2001. The internal auditors gave Mike Liberator, one of the Deloitte auditors, a lengthy list of the transactions and a recommendation that $20 to $40 million in revenues be reversed, or backed out, of the Company's reported financial results for 2001.

120. On January 9, 2002, Witness 1 discussed the principal findings of the KPMG consulting engagement and his department's own internal audit with defendant Mallement, Chairman of the Audit Committee, who had not yet seen the final version of the KPMG report. This witness communicated KPMG's findings and conclusions to Mr. Mallement to ensure that he would not be surprised when he received the final report. The two also discussed the $40 to $50 million worth of improper sales transactions in the third and fourth quarters of 2001. Witness 1 even told Mr. Mallement that he had heard a rumor that defendant Jaeggi referred to the Company's reserves as a "tango sheet" and played with them to get Symbol's numbers to where the Company "wanted them to be."

121. According to Witness 1, defendant Mallement discussed these findings with defendant Swartz and Leonard H. Goldner, Symbol's Executive Vice President, General Counsel and Secretary, shortly thereafter. These communications all occurred prior to the filing of Symbol's 2001 Form 10-K.

122. In February 2002, the KPMG consulting team submitted a 100 page spiral-bound report to Symbol's Audit Committee and Board of Directors. The report's main findings, which were summarized in a draft cover letter accompanying the final report, were: (a) Symbol had no

controls in place to ensure that it actually shipped products out prior to recognizing revenue; (b) many Symbol employees did not understand proper accounting rules and procedures; and (c) *those Symbol employees who did understand such rules and procedures disregarded them*. According to Witness 1, the cover letter "packed a punch" and would certainly have put a reader on notice that there were serious problems. The report detailed the very types of improper revenue recognition practices alleged in this Complaint.

123. The defendants received the spiral-bound KPMG consulting report regarding Symbol's non-existent internal controls and improper sales practices before they reviewed, signed and filed Symbol's Year 2001 Form 10-K on March 26, 2002.

124. In late March 2002, after Symbol's Form 10-K was filed, Witness 1 again met with defendant Mallement, as well as Pat Gardner, Symbol's future Director of Internal Audit. He informed defendant Mallement and Mr. Gardner that Symbol's revenue recognition problems had not yet been fixed and that employees were still trying to record revenue prematurely. Defendant Mallement spoke with defendant Swartz about this. Shortly thereafter, Symbol retained an outside law firm to further investigate its sales practices.

<u>Symbol Falsified its Financial Statements In Order To Meet Analysts' Expectations</u>

125. Stated simply, Symbol cooked its books to meet the expectations of Wall Street analysts. As the chart below reflects, with the exception of one quarter in 2000, for each quarter in 2000 and 2001, Symbol reported earnings, which either met exactly or just beat expectations.

Q1 ‘00	Q2 ‘00	Q3 ‘00	Q4 ‘00
.22 Estimate* .22 Actual	.24 Estimate .25 Actual	.28 Estimate .28 Actual	.30 Estimate .17 Actual
Q1 ‘01	**Q2 ‘01**	**Q3 ‘01**	**Q4 ‘01**
.10 Estimate .12 Actual	.03 Estimate .03 Actual	.05 Estimate .06 Actual	.06 Estimate .06 Actual

*Reflects the mean estimate from all analyst reports included on FirstCall.

<u>The Truth Emerges</u>

126. On February 13, 2002, *Newsday* published an article written by staff reporter Mark Harrington that began to expose Symbol’s fraud. It reported that Symbol acknowledged that in May 2001, it had received an SEC “inquiry” regarding two sales booked at the end of the prior year. The article also said that the Company had retained KPMG to review its sales practices after revenues “fell off a cliff” in the second quarter of 2000. In the article, defendant Jaeggi also acknowledged for the first time the “one time royalty payment in excess of $15 million” that the Company had booked as revenue from AirClic.

127. The *Newsday* article said that according to a source close to the Company, during the first quarter of 2001, Symbol booked more than $40 million in revenues from customer orders that were either subject to side agreements allowing the customers to delay payments or return merchandise, or for products that “never left the warehouse.” It added that Wall Street analysts were suggesting that Symbol had used expenses associated with its acquisition of Telxon to mask declining sales.

128. In the wake of the article, Symbol lost more than $560 million in market capitalization. Its stock price fell $2.50, or 17%, in heavy trading, closing at $11.70 per share on February 13.

129. The next day, after the market closed, Symbol issued a press release saying that defendant Razmilovic, its President and CEO, had suddenly resigned and that defendant Swartz was immediately assuming the position as CEO. Richard Bravman was named President and COO.

130. In response, on February 15, 2002, Symbol stock continued to fall, hitting a 52-week low of $8.40 per share on very heavy trading.

131. On February 15, 2002, *Newsday* published a follow-up story on the AirClic transaction and the Company's improper sales practices. Defendant Swartz responded that *Newsday* had "blown out of proportion" a series of innocent matters. "The real story is that our accounting is sound," he assured investors.

132. On March 4, 2002, *Newsday* reported further on the SEC investigation and the Company's refusal to discuss it in detail. The article quoted John Gavin, president of *SEC Insight*: "If a company's not willing to answer that question, it should make investors nervous. If there's nothing to hide, explain the inquiry."

133. On March 22, 2002, *Newsday* reported that the SEC had broadened its inquiry to include the Company's accounting for all of 2000 and 2001. The article reported that Symbol had responded to earlier inquiries regarding two transactions booked at the end of fiscal 2000, and that "Symbol executives told analysts they have had no contacts with the SEC regarding its financial statements since mid-February and said it stands by its previous financial statements."

134. On April 18, 2002, defendants issued a press release announcing the Company's results for the first quarter of 2002, ended March 31, 2002. The Company also held an analyst conference call that afternoon. During the call, Symbol for the first time publicly revealed that the SEC had initiated a formal investigation of the Company concerning its 2000 and 2001 financial statements.

135. In response to the SEC revelations during the April 18, 2002 conference call, the price of Symbol common stock declined 17% to close at $9.01 on April 19, 2002, a decrease of $1.86 per share from the previous day's close price of $10.87.

136. Pursuant to the SEC's June 27, 2002 Order requiring companies with revenues exceeding $1.2 billion to file statements under oath, from senior officers regarding the accuracy of their companies' financial statements and their consultation with the companies' audit committees (SEC Order No. 4-460: Order Requiring the Filing of Sworn Statements Pursuant to Section 21(a)(1) of the Securities Exchange Act of 1934), on August 13, 2002, Symbol CEO Richard Bravman and defendant Jaeggi attempted to file sworn statements with the SEC attesting to the accuracy of Symbol's prior filings.

137. At the same time that Bravman and Jaeggi attempted to file their certifications, Symbol filed its Form 10-Q for the second quarter, ended June 30, 2002. The Company disclosed for the first time that as a result of the expanded SEC investigation and the Company's own internal investigation, Symbol may be forced to restate its prior financial statements for 2000 and 2001.

138. Specifically, the Company said:

> The [SEC] has issued a Formal Order Directing Private Investigation and Designating Officers to Take Testimony with respect to certain accounting matters, principally concerning the timing and amount of revenue recognized by the Company during the

> period from January 1, 2000 to December 31, 2001. The Company is cooperating with the Commission, and has produced documents in response to the Commission's inquiries.
>
> In addition, the Company has commenced its own investigation of these matters with the assistance of an outside law firm and an independent accounting firm. The Company's investigation is still in progress and has not yet reached a final conclusion. It is anticipated that the Company's investigation will be concluded in the Fall of 2002. *Since both the Commission's investigation and the Company's investigation are continuing, there can be no assurance that the outcome will not require the Company to restate reported revenue for some or all of the periods in question.*

(Emphasis added).

139. In the wake of these disclosures, the price of Symbol stock fell another 9% to close at $8.27 on August 13, 2002.

140. The SEC has refused to accept the sworn statements submitted by Messrs. Bravman and Jaeggi. Out of the almost 1,000 companies which filed these certifications, Symbol is *one out of only two United States companies* whose certifications have been refused or rejected.

141. On August 23, 2002, a *Newsday* article reported on the SEC's refusal to accept Bravman's and Jaeggi's sworn statements:

> The Securities and Exchange Commission has refused to certify the sworn statements of Symbol Technologies executives vouching for the accuracy of company financial records.
>
> [Symbol] … issued a news release last week that chief executive Richard Bravman and chief financial officer Kenneth Jaeggi had met the SEC's Aug. 14 deadline for submitting letters that vouched for the accuracy and completeness of company financial documents.
>
> But a week later, SEC officials announced they had finished reviewing the letters. They certified 674 firms that complied, and rejected 16 firms that refused or failed to file proper affirmations. That left Symbol and Nicor, an Illinois energy company, as the only U.S. corporations that say they compiled but haven't received the SEC imprimatur . . . .

142. To date, Symbol has not disclosed the results of the SEC investigation or its internal investigations regarding its sales practices, or indicated how and to what extent its prior financial statements need to be restated.

Insider Trading

143. Defendants Ravmilovic, Jaeggi and Swartz engaged in heavy and highly irregular insider trading. In 1999, Symbol adopted a new Executive Bonus Plan, which tied the level of annual executive compensation to the financial performance of the Company. According to Symbol's Definitive Proxy Statement on Form Def 14A filed with the SEC on April 18, 2001:

> Under the Executive Bonus Plan, each year we establish corporate financial performance objectives (exclusive of extraordinary revenues and charges), *based on earnings per share*. We have identified three levels of performance:
>
> o threshold performance, at which the minimum award (one-half a participant's target bonus) will be earned and below which no award will be earned
> o target performance, at which the target award will be earned; and
> o maximum performance, at which the maximum award (twice a participant's target bonus) will be earned and above which no additional award will be earned.

144. Thus, Symbol's executives had a direct financial incentive to report earnings that were as high as possible. Not surprisingly, as identified in ¶¶34, 35, the Company's earnings consistently met or exceeded expectations throughout the Class Period. As a result, executives were rewarded. In 2000, defendant Razmilovic earned a base salary of $832,770 and a performance bonus of $949,400, or nearly 115% of his base salary. For the same year, defendant Swartz earned a base salary of $959,578 and a performance bonus of $1,092,800, or nearly 115% of his base salary. Similarly, for 2000, defendant Jaeggi earned a base salary of $400,442 and a performance bonus of $228,300, or more than 50% of his base salary.

145. Other Symbol executives directly involved in the fraud alleged herein received similar incentive bonuses under Symbol's Executive Bonus Plan. Defendant Goldner received a base salary of $415,854 in 2000, and a performance bonus of $237,000, more than 56% of his base salary. Similarly, in 2000, defendant Burke, received a base salary of $325,000 and a performance bonus of $185,300, or more than 57% of his base salary. Symbol's 2000 Proxy Statement also stated that defendant Borghese participated in a "sales incentive compensation plan." Therefore, defendant Borghese was rewarded based on the Company's reported sales.

146. According to the defendants' Form 4 filings with the SEC, the Individual defendants took advantage of the artificially inflated price of Symbol's common stock and made significant profits as a result by engaging in insider trading. The majority of these sales and options purchases and exercises were attributable to shares and options obtained through the executive compensation plan.

147. During the Class Period, defendants anticipated a significant decline in Symbol's stock price due to the eventual disclosure of Symbol's improper revenue recognition practices. For this reason these three defendants all purchased "European collars," or "zero-cost collars," which enabled them to essentially lock-in their Symbol stock and options at the prices that existed on the days they purchased these collars. Thus, if Symbol's stock plummeted, which it did, they would nonetheless earn large profits from their collars that would offset the loss in value of their stock holdings due to a decline in Symbol's stock price.

148. Symbol insiders entered into "zero-cost collars," which meant that they purchased equal amounts of put options and call options that expired on the same date. At the expiration date, only one of the options, usually the put, would be "in the money," or of value. Thus,

defendants Swartz, Razmilovic, and Jaeggi purchased put options, thereby actually profiting from the decline in Symbol's stock price upon disclosure of the fraud.

149. As a result of his transactions involving options earned as employee compensation, defendant Swartz recognized over $30 million in proceeds during the relevant period.

150. As Chairman of Symbol (and CEO for a lesser time), defendant Swartz knew of the Company's channel stuffing behavior and its premature revenue recognition manipulations. On March 6-7, 2001, just three weeks before the filing of the 2000 Form 10-K, Swartz sold 435,604 shares of Symbol stock for proceeds in excess of $13.8 million. In addition, knowing that Symbol's stock price would decline upon a poor 2001 second quarter, Swartz entered into two separate collar arrangements on March 7, where he purchased over 200,000 put options.

151. Just days after the Company's second quarter press release on July 18, 2001, in which Swartz was quoted as saying that "the Company's second-quarter performance is encouraging," Swartz sold 1,049,999 shares of Symbol stock for proceeds of approximately $10.9 million.

152. Even more than Swartz, defendant Razmilovic profited enormously from two stock sales that immediately proceeded negative Company announcements. On May 2, 2001, defendant Razmilovic sold 264,415 shares of Symbol stock, reaping proceeds of in excess of $7.4 million. *The very next day, the Company issued a press release in which it announced that first quarter 2000 earnings would be 12% lower from the same period the year before.* In addition, defendant Razmilovic stated that the Company would be lowering its guidance for the remainder of fiscal 2001. Over the two weeks following the announcement, Symbol's stock fell

almost 24% from its May 2nd closing price of $30.80 per share, closing at $23.55 on May 15, 2001.

153. Razmilovic's next sale of Symbol stock occurred on February 1, 2002. On that day, Razmilovic disposed of more than half of his holdings of Symbol stock by selling 1,084,150 shares of Symbol for proceeds of approximately $16.4 million. At this time, Razmilovic had received the draft KPMG report which identified serious material accounting irregularities of Symbol and its utter lack of internal control, as described in ¶123, above. The sale also occurred less than two weeks before *Newsday's* February 13th bombshell article which exposed the accounting improprieties at Symbol and which occasioned Razmilovic's firing on the very next day. Again the timing of this very, very large sale could not be more damning.

154. On March 1, 2002, just two weeks after being fired from Symbol but before Symbol filed its 2001 Form 10-K, defendant Razmilovic sold 756,549 shares of Symbol stock for proceeds of approximately $6.8 million.

155. Similar to Razmilovic, on May 2-3, 2001, just days before the announcement of Symbol's enormous 2001 second quarter revenue shortfall, defendant Jaeggi sold off 196,423 shares, *nearly half of his holdings of Symbol common stock*, for approximately $3.5 million. In addition, on May 3, 2001, in an effort to profit from the impending fall of Symbol stock, Jaeggi purchased 183,714 shares of Symbol stock in put options, guaranteeing further profits. These very large and unusual stock and option transactions demonstrate Jaeggi's intent to trade on his insider knowledge of Symbol's forthcoming negative news.

156. The following chart represents the insiders trading conducted by the defendants during the Class Period:

Insider	Date	Shares Sold	Proceeds	# of Shares in Put Options	Value of Put Options
Razmilovic	5/1/00	203,218	$ 10,340,951		
	5/1/00	10,615	$ 534,391		
	11/3/00			100,000	$3,226,200
	5/2/01	264,415	$ 7,432,705		
	2/1/02	1,084,150	$ 16,435,714		
	3/1/02	731,549	$ 6,471,868		
	3/1/02	25,000	$ 223,815		
Jaeggi	11/3/00			88,000	$2,613,416
	5/2/01	24,300	$ 299,230		
	5/2/01	10,124	$ 110,605		
	5/2/01	10,124	$ 125,446		
	5/3/01	151,875	$ 2,983,129		
	5/3/01			183,714	$6,326,926
	12/13/01			32,400	$ 277,214
Swartz[1]	8/11/00	125,000	$ 4,176,013		
	11/30/00			88,000	$1,165,664
	11/30/00			44,000	$ 832,832
	3/6/01	125,593	$ 3,869,020		
	3/6/01	287,187	$ 9,187,400		
	3/6/01	22,824	$ 785,000		
	3/7/01			100,000	$4,178,200
	3/7/01			107,000	$1,608,531
	3/9/01	5,000	$ 155,000		
	7/27/01	1,049,999	$ 10,924,189		
	12/6/01	150,000	$ 2,595,000		
	12/20/01	10,094	$ 155,447		
	1/28/02			173,154	$1,066,629

False and Misleading Statements

157. Throughout the Class Period, defendants made a series of materially false and misleading statements regarding Symbol's publicly reported financial results. These statements were set forth in earnings releases, SEC filings, and other public statements.

[1] According to Defendant Swartz's Form 4 filings, in addition to his excessive sales of Symbol stock during the Class Period as summarized in the chart above, in direct violation of Section 20(a) of the Exchange Act, Swartz's wife sold an additional 187,918 shares of Symbol stock during the Class Period and recognized approximately $3.69 million as a result.

158. On April 26, 2000 (the first day of the Class Period), following the close of the market, defendants issued a press release announcing the Company's results for the first quarter of 2000, ended March 31, 2000. In the press release, the Company stated:

> Revenue for the first quarter ended March 31, 2000, was $320.0 million, 23.2 percent higher than the $259.7 million in the corresponding year-earlier period. Net income for the quarter was $31.7 million, or $0.33 diluted earnings per share on a pre-split basis and $0.22 on a post-split basis, 30.5 percent higher than the $24.3 million, or $0.26 diluted earnings per share on a pre-split basis and $0.17 on a post-split basis in the quarter ended March 31, 1999.

Defendant Swartz was quoted in the press release as saying:

> We built on the company's strong performance in 1999 and delivered another solid quarter to start the new year . . . . Revenues and EPS both grew over 20 percent, driven by strength in both international and domestic markets across all our major business lines. Our momentum continues and we are well-positioned to achieve continued strong growth and profitability going forward.

159. On May 2, 2000, the Company filed its Quarterly Report on Form 10-Q, which was signed by defendants Razmilovic and Jaeggi, with the SEC for the period ended March 31, 2000 (the "First Quarter 2000 10-Q"), reporting essentially the same results as reported in the April 26, 2000 press release. In addition, the First Quarter 2000 10-Q stated:

> In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all necessary adjustments (consisting of normal recurring accruals) and present fairly the Company's financial position as of March 31, 2000, and the results of its operations and its cash flows for the three months ended March 31, 2000 and 1999, in conformity with generally accepted accounting principles for interim financial information applied on a consistent basis.
>
> Current assets increased by $71,326,000 from December 31, 1999 principally due to an increase in accounts receivable as a result of the increase in net revenue, inventories due to increased operating levels . . . .

160. In addition, the statements identified in paragraphs 159 to 161 were materially false and misleading when made and or/omitted to disclose material facts due to, *inter alia*:

a. Symbol's financial statements were not prepared in accordance with GAAP;

b. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

c. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

161. On July 26, 2000, defendants issued a press release announcing record revenue and net income for the second quarter ended June 30, 2000. In the press release, the Company stated:

> Revenue for the second quarter ended June 30, 2000, was $341.4 million, 24.6 percent higher than the $274.1 million in the corresponding year-earlier period. Net income for the quarter was $36.2 million, or $0.25 diluted earnings per share, 30.2 percent higher than the $27.8 million, or $0.20 diluted earnings per share in the quarter ended June 30, 1999. All information has been adjusted to reflect a three-for-two split of the Company's common stock on April 5, 2000.

Defendant Razmilovic was quoted in the press release stating:

> Revenues and EPS both grew at approximately 25% in the second quarter, fueled by our new mobile and wireless systems products . . . . The quarter was again marked by several significant announcements – including our agreement with Motorola to create a new company that will allow one-scan access to the Internet through embedding bar-code scanners in wireless phones, cable TV set-top terminals and Internet-enabled devices. We remain excited about our future and will continue to capitalize on the significant potential in our traditional and emerging businesses.

Also on July 26, 2000, the Company announced that it would acquire Telxon in a stock-for-stock merger.

162. Following the Company's second quarter 2000 earnings release announcing record revenue and net income and the Telxon deal, several analysts issued highly positive reports, praising the Company's ability to grow earnings. For example, on or about July 26,

2000, Merrill Lynch Capital Markets issued a report on Symbol maintaining its long-term "Buy" rating and increasing its 2000 earnings estimate from $1.03 to $1.05 per share. The report noted "[t]his marks the 12th consecutive quarter that EPS has grown in excess of 20%, and the 29th consecutive quarter that the company has met/exceeded consensus expectations."

163. On August 2, 2000, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended June 30, 2000 (the "Second Quarter 2000 10-Q"), reporting essentially the same results as reported in the July 26, 2000 press release. In addition, the Second Quarter 2000 10-Q stated:

> In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all necessary adjustments (consisting of normal recurring accruals) and present fairly the Company's financial position as of June 30, 2000, and the results of its operations and its cash flows for the three and six months ended June 30, 2000 and 1999, in conformity with generally accepted accounting principles for interim financial information applied on a consistent basis.
>
> Current assets increased by $179,954,000 from December 31, 1999 principally due to an increase in accounts receivable as a result of the increase in net revenue, inventories and other current assets due to increased operating levels . . . .

164. The statements identified in paragraphs 162 to 165 were materially false and misleading when made and or/omitted to disclose material facts due to, *inter alia*:

a. Symbol's financial statements were not prepared in accordance with GAAP;

b. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

c. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

165. Just weeks before the stock-for-stock acquisition of Telxon, on October 19, 2000, after the close of the markets, defendants issued a press release announcing, "record revenue and net income for the third quarter ended September 30, 2000." As much as 30% of that income was apparently attributable to the AirClic transaction discussed in ¶¶88-94, *supra*. In the press release, the Company reported:

> Revenue for the third quarter ended September 30, 2000, was \$373.2 million, 27.4 percent higher than the \$293.0 million in the corresponding year-earlier period. Net income for the quarter was \$40.5 million, or \$0.28 diluted earnings per share, 31.5 percent higher than the \$30.8 million, or \$0.22 diluted earnings per share in the quarter ended September 30, 1999.

Defendant Razmilovic was quoted in the October 19, 2000 press release as stating:

> Symbol's business momentum remained strong, as we produced another record quarter . . . . We were again pleased with our ability to drive sales of new products, with almost two-thirds of third quarter revenue attributable to products that had initial volume shipments after June 1998, and are experiencing tremendous response to our Palm-based scanner-integrated wireless mobile devices.

166. In response to the October 19, 2000 press release, the price of Symbol common stock rose more than 36% to close at \$25.417 on October 20, 2000, an increase of \$6.792 per share from the previous day's closing price of \$18.625.

167. Following the Company's October 19, 2000 press release reporting record revenue and net income, several analysts issued highly positive reports which again highlighted the fact that Symbol had met or exceeded analysts expectations. For example, on or about October 20, 2000, Chase Hambrecht & Quist Inc. issued a report on Symbol stating "This is the 30th sequential quarter SBL's EPS has met or exceeded the First Call consensus." Accordingly, Chase Hambrecht & Quist increased its revenue outlook for Symbol to \$1.43 billion, and concluded that Symbol shares were "unreasonably depressed."

168. On October 31, 2000, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended September 30, 2000 (the "Third Quarter 2000 10-Q"), reporting essentially the same results as reported in the October 19, 2000 press release. In addition, the Third Quarter 2000 10-Q stated in part:

> In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all necessary adjustments (consisting of normal recurring accruals) and present fairly the Company's financial position as of September 30, 2000, and the results of its operations and its cash flows for the three and nine months ended September 30, 2000 and 1999, in conformity with generally accepted accounting principles for interim financial information applied on a consistent basis.
>
> Current assets increased by $276,563,000 from December 31, 1999 principally due to an increase in accounts receivable as a result of the increase in net revenue, inventories and other current assets due to increased operating levels.

169. The Third Quarter 2000 10-Q and press release in paragraphs 160 to 168 were false and misleading, in part, because *inter alia*:

a. they included $15 million in improperly recognized revenue from the AirClic transaction without disclosing this transaction, *see* ¶¶88-96, *supra*. Defendants Razmilovic and Jaeggi signed the Third Quarter 2000 10-Q;

b. Symbol's financial statements were not prepared in accordance with GAAP;

c. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

d. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

170. On February 27, 2001, after the close of the markets, defendants issued a press release announcing the Company's 2000 fourth quarter and full-year results. In the press release the Company stated:

> Revenue for the fourth quarter ended December 31, 2000, was $414.8 million, 32.7 percent higher than the $312.5 million in the corresponding year-earlier period. Net income, before non-recurring charges associated with the acquisition of Telxon Corporation, was $23.5 million or $0.17 diluted earnings per share in the year-earlier period. Net income for the fourth quarter ended December 31, 2000, including approximately $0.14 per share dilution associated with the operations of Telxon Corporation. Including non-recurring charges consisting of restructuring, impairment and merger integration of $113.2 million after tax and in-process research and development charges of $87.6 million after tax, the net loss for the fourth quarter was $177.3 million or $1.26 per share.
>
> Revenue for the year ended December 31, 2000, was $1.450 billion, 27.3 percent higher than the $1.139 billion in the corresponding year-earlier period. Net income, before non-recurring charges associated with the acquisition of Telxon Corporation was $131.9 million, or $0.96 diluted earnings per share compared to $116.4 million or $0.82 diluted earnings per share in the year-earlier period. Including non-recurring charges consisting of restructuring, impairment, merger integration and in-process research and development, the net loss for the year ended December 31, 2000 was $68.9 million or $0.50 per share.

Defendant Razmilovic was quoted in the press release as stating:

> We were very pleased with our performance in the fourth quarter and the full year 2000, particularly the bookings momentum that has continued into 2001 . . . . The integration of Telxon is proceeding well and we are on-track to achieve the synergies we have targeted. Although conditions can change quickly and dramatically in the current economic environment, we don't see a softening in our overall business activity.

Defendant Swartz was also quoted in the press release as stating:

> We remain optimistic about Symbol's long-term prospects . . . . The continuing need of our customers to cut costs, improve efficiencies, and create new revenue streams coupled with the increasing use of mobile devices and the ongoing evolution of the hybrid 'brick-and-click' extended supply chain bodes well for Symbol for the foreseeable future.

171. In response to the February 27, 2001 press release, the price of Symbol common stock rose more than 15% to close at $30.90 on February 28, 2000, an increase of $4.06 per share from the previous day's closing price of $26.84.

172. On March 30, 2001, the Company filed its annual report on Form 10-K for the period ended December 31, 2000, reporting essentially the same results as reported in the February 27, 2001 earnings release. The 2000 10-K stated in pertinent part:

> Revenue Recognition
>
> Revenue related to sales of the Company's products and systems is generally recognized when products are shipped or services are rendered, the risk of loss has passed to the customer, the sales price is fixed or determinable, and collectibility is reasonably assured. The Company accrues related product return reserves and warranty expenses at the time of sale. Service and maintenance sales are recognized over the contract term. In accordance with Statement of Position ("SOP") 97-2, "Software Revenue Recognition", as amended, and Staff Accounting Bulletin ("SAB") No. 101 "Revenue Recognition in Financial Statements", if products, services or maintenance are bundled in a single contract, revenue will be recognized once all elements of the contract are completed unless the following criteria are met: (1) the product has been delivered; (2) the undelivered services or maintenance are not essential to the delivered products; (3) the fee for the product is not subject to forfeiture, refund or concession based on performance of the services or maintenance; (4) the fair value of services and maintenance are determined based on the price charged by Symbol, or the price charged by competitors when similar services or maintenance are sold separately; and (5) the revenue related to any element of the contract is not subject to customer acceptance; in which case the revenues for each element will be recognized independently, in accordance with the company's policy . . . .
>
> Included in the net inventory balance at December 31, 2000 is an aggregate provision of approximately $63,904[,000] recorded in December 2000 relating to management's decision to eliminate redundant and discontinued products and product lines principally due to the Telxon acquisition. . . . .
>
> [Operating Results for Fiscal 2000] includes pre-tax charges for costs associated with restructuring, impairment and the acquisition of Telxon Corporation of $273,521[,000] or ($1.46) diluted loss per share.

The 2000 10-K and press release were false and misleading, in part, because, in addition to including improper revenues recognized throughout the first three quarters of 2000, they improperly recognized revenue from the following transactions: the K-Mart transaction, *see* ¶60, *supra*, the CVS transaction, *see* ¶77, *supra*, and the Federal Express transaction, *see* ¶66, *supra*. The 2000 10-K also falsely stated that Symbol was taking a $63.9 million inventory write-off charge in connection with the Telxon acquisition, *see* ¶99, *supra*, and it referred to Symbol's investment in AirClick without disclosing AirClic's royalty payment to Symbol. Defendants Razmilovic, Swartz, Jaeggi and the audit committee defendants signed the 2000 10-K.

173. In addition, the statements identified in paragraphs 172 to 174 were materially false and misleading when made and or/omitted to disclose material facts due to, *inter alia*:

a. Symbol's financial statements were not prepared in accordance with GAAP;

b. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

c. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

174. On May 2, 2001, defendant Razmilovic sold 264,415 shares of Symbol common stock, reaping proceeds in excess of $7.4 million. The very next day, on May 3, 2001, defendants issued a press release which reported that the Company's results for the first quarter of 2001 would be lower than the same quarter of the prior year and lowered the Company's guidance for the remainder of 2001. In the press release the Company stated:

> Revenue for the first quarter ended March 31, 2001, was $450.2 million, 40.7 percent higher than the $320.0 million in the corresponding year-earlier period. Net income for the quarter was $27.9 million, or $0.18 diluted earnings per share on a pre-split basis, and $0.12 on a post-split basis, 12.0 percent lower than the $31.7 million, or $0.22 diluted earnings per share on a pre-split basis and $0.14 on a post-split basis in the quarter ended March 31, 2000.

In the press release defendant Razmilovic was quoted as stating:

> Symbol had an outstanding first quarter as our business results remained strong despite an increasingly challenging IT market . . . . Given the uncertainty of the current economic climate, ***we now expect lower sequential quarterly growth than we originally planned for 2001***. However, unlike many technology companies that are reporting dramatic revenue fall-offs, we expect to produce robust year-over-year revenue and EPS growth for 2001 and beyond. By taking efficiency actions now, we believe we can significantly offset any adverse impact on our earnings from lower revenue growth.

The press release further quoted defendant Swartz as stating:

> Symbol's powerful competitive position, and the cost-effective products and applications we provide our customers, leave us ideally positioned for sustained long-term growth . . . . The slowing economy creates renewed demand for increased efficiencies, productivity improvements and new ways to deliver Symbol's 'sweet spot.' The Company's business remains broad, balanced and stable, and we continue to see significant new opportunities in our historical markets, as well as from new vertical market applications and customers.

175. In response to the disclosures, over the course of the next two weeks, Symbol stock dropped nearly 24% in price, from its opening price of $30.80 on May 2 (the day Razmilovic sold) to closing at $23.55 on May 15. Nevertheless, following the Company's May 4, 2001 earnings release, several analysts still issued positive reports. For example, on or about May 4, 2001, Salomon Smith Barney issued a report maintaining its "Outperform" rating of the Company and noting that Symbol's earnings of $0.12 per share beat its estimates and consensus estimates by $0.02. The Salomon Smith Barney report noted the Company's revised guidance and stated: "[l]ooking ahead, management's lowered guidance for 2001 on the topline reflects a more conservative outlook relative to the economic backdrop" and "[w]e are maintaining our Outperform rating given that we continue to believe the company's long-term story is sound and that expectations are now in more achievable territory."

176. On May 11, 2001, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended March 31, 2001 (the "First Quarter 2001 10-Q"), reporting essentially the same results as reported in the May 2, 3001 press release. In addition, the First Quarter 2001 10-Q stated:

> In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all necessary adjustments (consisting of normal recurring accruals) and present fairly the Company's financial position as of March 31, 2001, and the results of its operations and its cash flows for the three months ended March 31, 2001 and 2000, in conformity with generally accepted accounting principles for interim financial information applied on a consistent basis.
>
> Current assets increased by $85,375 from December 31, 2000 principally due increases in accounts receivable resulting from increased revenue, and an increase in inventories and other current assets resulting from increased operating levels.

177. The First Quarter 2001 10-Q and press release in paragraphs 174 to 176 were materially false and misleading, in part, because, *inter alia*:

a. they included improperly recognized revenue from the phony UniMicro transaction, *see* ¶¶81-82 supra. Defendants Razmilovic and Jaeggi signed the First Quarter 2001 10-Q. One day before signing the First Quarter 2001 10-Q, Jaeggi sold 196,423 shares of Symbol common stock for $934,750 and Razmilovic sold 264,415 shares of Symbol common stock for over $7.4 million.

b. Symbol's financial statements were not prepared in accordance with GAAP;

c. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

d. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

178. On July 16, 2001, the Company issued a press release announcing that revenues and earnings for the second quarter ended June 30, 2001 were expected to be significantly below analyst. The Company stated in the press release that:

> [R]evenue and earnings for the second quarter ended June 30, 2001 are expected to be significantly below analyst estimates due to new signs of weakness in Symbol's vertical markets and an increase in the global slowdown in information technology capital spending.
>
> Revenue for the second quarter is now expected to be approximately equal to the $341.4 million reported in the year-ago quarter. Net income for the second quarter is now expected to be approximately $7 million, or approximately $0.03 per diluted share, compared to net income of $36.2 million, or $0.16 per diluted share, in the second quarter of 2000. Second quarter 2001 results include a provision of approximately $11 million net of taxes for reduced collectibility of accounts receivable due to challenges facing OEM partners and the worsening capital spending environment and excludes the inventory write down discussed below.
>
> Symbol also expects to record an inventory write down of approximately $70 million net of taxes, or $0.31 per diluted share, in the second quarter reflecting lower demand for current radio frequency (RF) infrastructure and systems products from major networking/communications and other OEM partners coupled with technological obsolescence due to planned introductions of new RF infrastructure products and mobile computing appliances. After the one-time non-cash charge, Symbol expects to report a quarterly net loss of approximately $63 million, or approximately $0.28 per diluted share.

The press release quoted defendant Razmilovic as stating:

> Symbol normally generates the majority of each quarter's revenues from orders for immediate shipment in the last few weeks of the quarter, but in the second half of June we experienced a rapid and unexpected decline in orders for immediate shipment from a wide range of customers and partners. Although our bookings in the second quarter were down marginally from the 2001 first quarter, on the positive side, our bookings showed solid growth of approximately 20% year-over-year with an equipment book-to-bill ratio of approximately 1.5 to 1 in the second quarter. Our backlog is solid – up approximately 40% year-over-year – albeit skewed toward the fourth quarter of 2001 and into 2002.

179. On July 26, 2001, after the close of the markets, defendants issued a press release announcing the Company's results for the second quarter of 2001, ended June 30, 2001. In the press release the Company stated:

> Revenue for the second quarter ended June 30, 2001 was $340.2 million, as compared to $341.4 million in the corresponding year-earlier period. Net income, before a non-recurring charge, was $7.5 million or $0.03 diluted earnings per share, compared to $36.2 million or $0.16 diluted earnings per share in the year-earlier period. Including a non-recurring charge associated with an inventory write-down of $67.1 million after tax, the net loss for the second quarter was $58.6 million or $0.27 per share.

Defendant Razmilovic was quoted in the press release as stating:

> As we pre-announced on July 16th, the second quarter was a difficult one for Symbol as we experienced rapid and unexpected decline in orders for immediate shipment from a wide range of customers and partners. We believe we have taken the appropriate steps to address the current market realities and give Symbol a solid foundation for growth when market conditions improve . . . . We continue to have a strong order backlog from leading customers, and are cautiously optimistic that revenue and profit growth at Symbol's historic levels will resume in 2002 and beyond.

180. On August 14, 2001, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended June 30, 2001 (the "Second Quarter 2001 10-Q"), reporting essentially the same results as reported in the July 26, 2001 press release. The Second Quarter 2001 10-Q stated in part:

> In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all necessary adjustments (consisting of normal recurring accruals) and present fairly the Company's financial position as of June 30, 2001, and the results of its operations and its cash flows for the three and six months ended June 30, 2001 and 2000, in conformity with generally accepted accounting principles for interim financial information applied on a consistent basis.
>
> Current assets increased by $120,420,000 from December 31, 2000 principally due to an increase in accounts receivable as a result of the increase in net revenue, inventories and other current assets due to an increase in anticipated increased operating levels . . . .

181. The Second Quarter 2001 10-Q and the two press releases in paragraphs 180 to 182 were materially false and misleading, in part, because, *inter alia*:

a. they included improperly recognized revenue from the WN transaction, *see* ¶¶54; 55, *supra*; they falsely attributed the source of Symbol's revenue shortfall to a "global slowdown in information technology capital spending" and an "unexpected" decline in sales at the end of June when in fact the shortfall was caused by management's concern over the SEC inquiry letter and the boomerang effect of too much prior channel stuffing; and they state false reasons for Symbol's inventory write-down. Defendants Razmilovic and Jaeggi signed the Second Quarter 2001 10-Q;

b. Symbol's financial statements were not prepared in accordance with GAAP;

c. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above, including recognizing $25 million in revenue from a sale of goods to Wincor Nixdorf that was subject to an unconditional right of return; and

d. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

182. On October 18, 2001 after the market closed, defendants issued a press release announcing the Company's results for the third quarter of 2001, ended September 30, 2001. In the press release, the Company stated:

> Revenue for the third quarter ended September 30, 2001 was $331.2 million, as compared to $373.2 million in the corresponding year-earlier period. Net earnings, before a non-recurring charge, was $12.6 million or $0.06 diluted earnings per share (which included an extraordinary gain of $0.8 million, net of tax), compared to $40.5 million or $0.18 diluted earnings per share in the year-earlier period. Additionally, the Company recorded a non-recurring pre-tax charge associated with the reorganization of the Company's manufacturing facilities of $59.7 million, which resulted in a net loss for the third quarter of $35.7 million or $0.16 per share.

Defendant Razmilovic was quoted in the release stating:

> Symbol's third quarter earnings were in line with expectations . . . . We were particularly pleased with the breadth of significant customer wins in the quarter as well as our substantial progress in strengthening the Company's balance sheet. Despite the current macroeconomic uncertainty, we believe our industry leadership, strong customer relationships and productivity-enhancing offerings will leave us well positioned for the long term. Given current conditions, however, we remain cautious near-term and now expect fourth quarter revenue to be in the range of $330 to $360 million, with EPS of $0.05 to $0.08.

183. On November 2, 2001, the Company filed its Quarterly Report on Form 10-Q with the SEC for the period ended September 30, 2001 (the "Third Quarter 2001 10-Q"), reporting essentially the same results as reported in the October 18, 2001 press release. In addition, the Third Quarter 2001 10-Q stated:

> In the opinion of management, the accompanying unaudited condensed consolidated financial statements include all necessary adjustments (consisting of normal recurring accruals) and present fairly the Company's financial position as of September 30, 2001, and the results of its operations and its cash flows for the three and nine months ended September 30, 2001 and 2000, in conformity with generally accepted accounting principles for interim financial information applied on a consistent basis.

184. The Third Quarter 2001 10-Q and press release in paragraphs 182 to 183 were materially false and misleading, in part, because, *inter alia:*

a. the Barnes & Noble transaction, *see* ¶¶57; 59, *supra*, the Mervyn's transaction, *see* ¶62, *supra*, the SuperValue transaction, *see* ¶61, *supra*, and the Bed Bath and Beyond transaction;

b. Symbol’s financial statements were not prepared in accordance with GAAP;

c. The Company’s purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

d. The defendants knew, or recklessly disregarded that the Company’s reported financial results were materially inflated by the improper accounting identified above.

185. On February 14, 2002, after the market closed, defendants issued a press release announcing the Company’s 2000 fourth quarter and full-year results. In the press release, the Company stated:

> Revenue for the fourth quarter ended December 31, 2001, was $331.1 million, 20.2 percent lower than the $414.8 million in the corresponding year-earlier period. Net income was $13.4 million or $0.06 diluted earnings per share, compared to net income, before non-recurring charges associated with the acquisition of Telxon Corporation, of $23.5 million, or $0.11 diluted earnings per share in the year-earlier period. Including non-recurring charges consisting of restructuring, impairment and merger integration of $113.2 million after tax and in-process research and development charges of $87.6 million after tax, the net loss for the fourth quarter of 2000 was $177.3 million or $0.84 per share.
>
> Revenue for the year ended December 31, 2001, was $1.453 billion, slightly higher than the $1.450 billion in the corresponding year-earlier period. Net income before non-recurring charges was $61.5 million, or $0.27 diluted earnings per share compared to $131.9 million or $0.64 diluted earnings per share in the year-earlier period. Including non-recurring charges for the reorganization of the Company's manufacturing facilities and an inventory writedown, the net loss for the year ended December 31, 2001 was $53.9 million or $0.24 per share. Including non-recurring charges consisting of restructuring, impairment, merger integration and in-process research and development related to the Telxon acquisition, the net loss for the year ended December 31, 2000 was $68.9 million or $0.33 per share.

Defendant Swartz was quoted in the press release as stating:

> This was a tough quarter for Symbol ending a difficult year for the entire IT industry. However, customer interest in our products and mobile systems remains strong, our market share is growing, and our financial position is solid. Symbol has significant

> operating leverage, and when the economy turns, we expect to see a rebound in revenue and profit growth.

186. In response to the February 14, 2002 press release, the price of Symbol common stock plunged 29% to close at $8.40 on February 15, 2002, a decrease of $3.39 per share from the previous day's closing price of $11.79.

187. On March 26, 2002, the Company filed its annual report on Form 10-K or the period ended December 31, 2001 (the "2001 10-K"), reporting essentially the same results as reported in the February 14, 2001 press release. The 2001 10-K stated:

> Management believes the following critical accounting policies, among others, affect its more significant judgments and estimates used in the preparation of its consolidated financial statements.
>
> The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period.
>
> Revenue Recognition.
>
> Revenue related to sales of the Company's products and systems is generally recognized when products are shipped or services are rendered, the title and risk of loss has passed to the customer, the sales price is fixed or determinable, and collectibility is reasonably assured. The Company accrues related product return reserves and warranty expenses at the time of sale. Service and maintenance sales are recognized over the contract term.
>
> In accordance with Statement of Position ("SOP") 97-2, "Software Revenue Recognition", as amended, and Staff Accounting Bulletin ("SAB") No. 101 "Revenue Recognition in Financial Statements", if products, services or maintenance are bundled in a single contract, revenue will be recognized once all elements of the contract are completed unless the following criteria are met: (1) the product has been delivered; (2) the undelivered services or maintenance are not essential to the delivered products; (3) the fee for the product is not subject to forfeiture, refund or concession based on performance of the services or maintenance; (4) the fair value of services and maintenance are determined based on the price charged by the Company, or the price charged by competitors when similar services or maintenance are sold separately; and (5) the revenue related to any element of the contract is not subject to customer acceptance; in which case the revenues for each element will be recognized independently, in accordance with the Company's policy . . . .

(Emphasis added).

188. The 2001 10-K and press release in paragraphs 185 to 187 were materially false and misleading, in part, because, *inter alia*:

a. they included improperly recognized revenue from the following transactions: the Motorola transaction, *see* ¶89, *supra*, and the ScanSource transaction, *see* ¶¶84-89, *supra*. The 10-K was also false and misleading because it did not disclose that while Symbol invested $50 million in AirClic in the fourth quarter of 2000, it recognized $15 million from AirClic in the third quarter of 2000, even though the transactions were simultaneous. Defendants Swartz, Razmilovic, Jaeggi and the Audit Committee Defendants signed the 2001 10-K.

b. Symbol's financial statements were not prepared in accordance with GAAP;

c. The Company's purported revenue and earnings growth was, in significant part, the product of the accounting machinations set forth above; and

d. The defendants knew, or recklessly disregarded that the Company's reported financial results were materially inflated by the improper accounting identified above.

Defendants' Numerous GAAP violations

189. The SEC requires that publicly traded companies present their financial statements in accordance with GAAP. 17 C.F.R. § 210.4-01(a)(1). GAAP consists of those principles recognized by the accounting profession as the conventions, rules, and procedures necessary to define accepted accounting practices at the particular time. Regulation S-X, to which the Company is subject as a registrant under the Exchange Act, 17 C.F.R § 210.4-01(a)(1),

provides that financial statements filed with the SEC that are not prepared in compliance with GAAP are presumed to be misleading and inaccurate. Accounting Series Release ("ASR") 4, codified at SRA 34.

190. As set forth in Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Concepts No. 1, one of the fundamental objectives of financial reporting is to provide accurate and reliable information concerning an entity's financial performance during the period being presented. Concept Statement No. 1, ¶42 states:

> Financial reporting should provide information about an enterprise's financial performance during a period. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investments and credit decisions reflect investors' and creditors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of enterprise performance.

191. Additionally, Section 13 of the Exchange Act requires, in part, that companies like Symbol

> devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that - -
>
> [* * *]
>
> transactions are recorded as necessary (I) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;

15 U.S.C. § 78m(b).

192. Defendants' representations that Symbol's financial statements were prepared in accordance with GAAP were materially false and misleading because, as alleged in this Complaint, they and other Company employees: (1) engaged in the numerous and varied fraudulent revenue recognition practices detailed in this Complaint, all of which materially overstated the Company's reported revenues, accounts receivable and other financial results and

enabled the Company to falsely represent that it had met or beat analyst estimates; (2) failed to disclose material trends in sales and billing practices that would have a significant, adverse effect on future results; (3) failed to disclose the existence of a material related party transaction; and (4) failed to disclose the lack of internal controls necessary to ensure that orders were not improperly booked. Each of these misrepresentations, material omissions and fraudulent revenue recognition practices, standing alone, was a material breach of GAAP, applicable SEC regulations and the Company's own accounting policies.

Improper Revenue Recognition and Valuation of Accounts Receivable

193. Under GAAP, revenue should not be recognized until it is both earned and collectible. SFAC No. 5, ¶¶83-84. Under GAAP, these two conditions are generally met when *all* of the following criteria are met:

a. Persuasive evidence of an arrangement exists. SFAC No. 2, ¶63;

b. Delivery has occurred or services have been rendered. SFAC No. 5, ¶84;

c. The seller's price to the buyer is fixed or determinable. SFAC No. 5, ¶83; *and*

d. Collectibility is reasonably assured. ARB 43, CH 1A ¶1, APB 10, ¶12.

194. For companies like Symbol that sell mostly products, revenue is thus earned when the products are shipped. As detailed herein, Symbol violated GAAP by repeatedly recognizing revenue before products were shipped.

195. In addition, pursuant to SFAC No. 5, revenues are considered "earned" only when the entity has "substantially accomplished what it must do to be entitled to the benefits represented by the revenues," SFAC 5, ¶83(b), and thus a company cannot recognize revenue on an order for a customized product until the product is actually configured to meet a customer's

specifications. As demonstrated herein, Symbol violated GAAP by repeatedly recognizing revenue before products were even configured.

196. FASB's Statement of Financial Accounting Standards ("SFAS") No. 48 requires that where the right of return is granted to customers, either implicitly or explicitly, revenue should be deferred unless certain conditions exist, including:

a. the seller's price to the buyer is substantially fixed or determinable at the date of sale;

b. the buyer has paid the seller, or the buyer is obligated to pay the seller and the obligation is not contingent on resale of the product; *and*

c. the amount of future returns can be reasonably estimated.

197. Even where the above conditions of SFAS No. 48 are met, an entity is required to accrue adequate and timely reserves for returns and allowances for sales returns and for bad debts. SFAS No. 5, Accounting for Contingencies, ¶¶22-23, SFAS 48, ¶7.

198. As detailed herein, Symbol violated GAAP by repeatedly recognizing revenue before products were customers were granted a full, unconditional right of return.

199. The SEC's Staff Accounting Bulletin ("SAB") 101 recognizes that only in extremely limited circumstances, may revenue be realized and earned before actual delivery occurs. SAB 101 sets forth specific criteria that should be met in order for a registrant to consider recognizing revenue on a "sale" where delivery has not yet occurred, including:

a. the risks of ownership must have passed to the buyer;

b. the customer must have made a fixed commitment to purchase the goods, preferably in written documentation;

c. there must be a fixed schedule for delivery of the goods;

d. the seller must not have retained any specific performance obligations such that the earning process is not complete; *and*

e. the product must be complete and ready for shipment.

200. As noted in SAB 101, the SEC further requires that the following items be disclosed and discussed by all registrants, in accordance with the SEC's Financial Reporting Release No. 36:

a. Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period;

b. Granting of extended payment terms that will result in a longer collection period for accounts receivable; and

c. Changing trends in shipments into, and sales from, a sales channel or separate class of customer that could be expected to have a significant effect on future sales or sales returns.

201. These same straight-forward accounting principles are also reflected in Symbol's own revenue recognition policy. Symbol's 2000 Form 10-K represented the Company's revenue recognition policy as follows:

> Revenue related to sales of the Company's products and systems is generally recognized when products are shipped or services are rendered, the title and risk of loss has passed to the customer, the sales price is fixed or determinable, and collectibility is reasonably assured. The Company accrues related product return reserves and warranty expenses at the time of sale. Service and maintenance sales are recognized over the contract term.
>
> In accordance with Statement of Position ("SOP") 97-2, "Software Revenue Recognition", as amended, and Staff Accounting Bulletin ("SAB") No. 101 "Revenue Recognition in Financial Statements", if products, services or maintenance are bundled in a single contract, revenue will be recognized once all elements of the contract are completed unless the following criteria are met: (1) the product has been delivered; (2) the undelivered services or maintenance are not essential to the delivered products; (3) the fee for the product is not subject to forfeiture, refund or concession based on performance of the services or maintenance; (4) the fair value of services and maintenance are determined based on the price charged by the Company, or the price charged by competitors when

> similar services or maintenance are sold separately; and (5) the revenue related to any element of the contract is not subject to customer acceptance; in which case the revenues for each element will be recognized independently, in accordance with the Company's policy.

202. As detailed herein, Symbol violated both GAAP and its own revenue recognition policies by repeatedly recognizing revenue before products were shipped or services rendered, and/or where: title to the products never passed from Symbol to their alleged buyer; the buyer had no fixed payment obligation; the products had not been delivered; undisclosed extended payment terms were provided to buyers; or collectability was not reasonably assured.

203. Symbol also materially overstated its accounts receivable. Accounting Research Bulletin No. 43 and SFAS No. 5, Accounting for Contingencies, require that entities report accounts receivable at "net realizable value."

204. SFAS No. 5 "Accounting for Contingencies" requires that an estimated loss from a loss contingency be recognized by a charge to income if both of the following conditions are met:

a. Information available prior to issuance of the financial statements indicated that it is probable that an asset had been impaired or a liability had been incurred at the date of the financial statements; and

b. The amount of the loss can be reasonably estimated.

Under SFAS No. 5 ¶ 3, "probable" means that the "future event or events are likely to occur."

205. By recording bogus transactions and otherwise fraudulent orders as legitimate sales, Symbol materially overstated its reported accounts receivable during the Class Period. Many customers had no obligation to pay for the products Symbol sold them, and it was more probable than not (indeed, in many cases it was agreed upon) that customers would *not* pay the amounts purportedly owed. Defendants were required to reverse the transactions and restate their results.

206. The Company did not make adequate disclosures in its financial filings. As noted in SAB 101, the SEC Staff requires that the following items be disclosed and discussed by all registrants, in accordance with the SEC's Financial Reporting Release No. 36:

a. Shipments of product at the end of a reporting period that significantly reduce customer backlog and that reasonably might be expected to result in lower shipments and revenue in the next period;

b. Granting of extended payment terms that will result in a longer collection period for accounts receivable; and

c. Changing trends in shipments into, and sales from, a sales channel or separate class of customer that could be expected to have a significant effect on future sales or sales returns.

207. As detailed above, defendants engaged in each of the three activities listed above. They systematically robbed future quarters of revenue to meet earnings expectations for the then-current quarter. They were required to disclose those practices and their effect on Symbol's current and future financial performance. Defendants failed to do so.

Improper Use of Reserves

208. Under GAAP, when it is probable that a loss has been incurred and the amount of the loss can be reasonably estimated, a company must record a reserve in order to reduce assets or income for the amount of the probable loss. See SFAS No. 5. SFAS No. 5, "Accounting for Contingencies," defines a contingency as "an existing condition, situation, or set of circumstances involving uncertainty as to possible gain (hereinafter a "gain contingency") or loss (hereinafter a "loss contingency") to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur." SFAS 5 ¶1. A transaction that is not legitimate from the very start, however, is not a contingency, and, therefore, it is not proper to reserve for such transactions. Rather, such sales are required to be *reversed*.

209. In the second half of 2001, Symbol's internal audit group identified roughly $40 to $50 million in revenue from improper "sales" transactions, including: consignment sales, fictitious sales, booking revenue before products were shipped, booking revenue were no products were shipped, shipping product without purchase orders, booking revenue where customers had no obligation to pay, booking orders on products that were not manufactured, shipping product to customers whose collectibility was doubtful, and shipping non-conforming product or unordered product. The internal audit group prepared a list of these transactions and gave it to D&T, Symbol's external auditors, with the recommendation that $20 to $40 million of this revenue be *reversed*. Witness 1 made the same recommendation to DeGennaro and Greg Mortenson, the controller in sales finance.

210. In violation of GAAP, however, *none* of this revenue was *reversed*. Instead, defendants simple set up a reserve for a portion of the overall value of these receivables.

The AirClic Transaction

211. Article 4 of Regulation S-X and GAAP, in FASB's SFAS No. 57, required the Company to disclose in its financial statements relevant information regarding related parties and related party transactions. In violation of these rules and procedures, Symbol's financial statements failed to disclose the large and unusual royalty payment from AirClic.

212. Article 1 of Regulation S-X refers to the term "related parties" as defined in SFAS 57, which defines "related parties" as follows:

> Related parties. Affiliates of the enterprise; entities for which investments are accounted for by the equity method by the enterprise; trusts for the benefit of employees, such as pension and profit sharing trusts that are managed by or under the trusteeship of management; principal owners of the enterprise; its management; members of the immediate families of principal owners of the enterprise and its management; and other parties with which the enterprise may deal if one party controls or can significantly influence the management or operating policies of the other to an extent that one of the transaction parties

> might be prevented from fully pursuing its own separate interest. Another party also is a related party if it can significantly influence the management operating policies of the transacting parties or if it has an ownership interest in one of the transacting parties and can significantly influence the other to an extent that one or more of the transacting parties might be prevented from fully pursuing its own separate interests. SFAS 57 ¶24.

213. SFAS 57 requires financial statements to include disclosures of material related party transactions, other than compensation arrangements, expense allowances, and other similar items in the ordinary course of business. SFAS 57 ¶2.

214. In addition, SAB 101 requires disclosure in the MD&A of "unusual or infrequent transactions" which have had a material effect on revenue and/or income in order to provide investors with a historical and prospective analysis of the registrant's financial condition.

215. As alleged herein, during the third quarter of 2000, Symbol recorded $15 million in revenue from a license agreement with AirClic. This was a unique and infrequent transaction for Symbol and the Company ultimately admitted that the payment was admittedly larger than typical royalty payments received by Symbol. Also undisclosed was the fact that at or around the same time that Symbol recorded the $15 million in revenue, Symbol invested approximately $50 million in AirClic, thereby creating a related party relationship.

216. Under GAAP, defendants were required to disclose that AirClic was the source of the $15 million royalty payment in the third quarter of 2000. Such disclosure would have informed investors of the quality and true origin of Symbol's revenues and would have influenced investors in making investment decisions. In addition, under GAAP, Symbol was required to account for the transaction as a non-recurring, extraordinary event.

Symbol's Lack Of Internal Controls To Prevent Improper Recognition

217. Article 11 of Regulation S-X and GAAP, in FASB's SFAS No. 5, required Symbol to disclose in the footnotes of its financial statements during the Class Period that the

internal control problems identified by KPMG and Symbol's internal audit group could reasonably cause the Company's financial statements to be materially misstated. In violation of GAAP, Symbol's financial statements failed to disclose that these internal control weaknesses were reasonably likely to have a material adverse effect on Symbol's results.

218. In addition, Item 7 of Form 10-K and Item 2 of Form 10-Q, Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), required Symbol to furnish information required by Item 303 of Regulation S-K [17 C.F.R. 229.303]. In discussing results of operations, Item 303 of Regulation S-K says a registrant must:

> Describe any known trends or uncertainties that have had or that the registrant reasonably expects will have a material favorable or unfavorable impact on net sales or revenues or income from continuing operations.

The Instructions to Paragraph 303(a) add:

> The discussion and analysis shall focus specifically on material events and uncertainties known to management that would cause reported financial information not to be necessarily indicative of future operating results.

:

219. In its May 18, 1989 Interpretive Release No. 34-26831, the SEC indicated that registrants should employ the following two-step analysis in determining when a known trend or uncertainty is required to be included in the MD&A disclosure pursuant to Item 303 of Regulation S-K:

> A disclosure duty exists where a trend, demand, commitment, event or uncertainty is both presently known to management and is reasonably likely to have a material effect on the Registrant's results of operations.

220. Defendants knew or recklessly disregarded that Item 303 of Regulation S-K required Symbol to disclose that it lacked internal controls necessary to prevent revenue recognition abuses identified by KPMG and the internal audit group, and that the absence of such internal controls was reasonably likely to have a material adverse effect on the Company's

operating results. Disclosure of this information was necessary for a proper understanding and evaluation of Symbol's operating performance and an informed investment decision.

Additional Violations of GAAP

221. In addition to the accounting violations described above, defendants allowed Symbol to present its financial statements in a manner that violated, among others, the following GAAP principles:

a. the principle that a conservative approach be taken to ensure that uncertainty and risks inherent in business situations are adequately considered, and that errors in measurement be in the direction of understatement rather than overstatement of net income and net assets. (See SFAC No. 2 ¶¶ 91-97);

b. the principle that the financial information presented should be complete. (See SFAC No. 2, ¶¶ 79-80);

c. the principle of fair presentation ("presents fairly"). (See SFAC No. 1, ¶33);

d. the principle of adequacy and fairness of disclosure. (See SFAC No. 1, ¶34 and SFAC No. 5, ¶¶7, 12);

e. the principle of materiality concerning information that is significant enough to affect the judgment of a reasonable person. (See SFAC No. 2, ¶132);

f. the principle that the financial statements contain and disclose relevant and timely information for the economic decisions of the user. (See SFAC No. 2, ¶¶ 47, 48, 52, 56);

g. the principle that the financial statements provide reliable financial information that represents the economic conditions or events that it purports to represent. (See SFAC No. 2, ¶¶ 58, 62);

h. the principle that financial information should be comparable and consistent with similar information about other enterprises and with similar information about the same enterprise for some other period or some other point in time. (See SFAC No. 2 ¶¶ 111, 115, 117, 120);

i. the principle that financial information should be neutral, or free from bias towards a predetermined result. (See SFAC No. 2 ¶¶ 98, 99);

j. the principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events, and circumstances that change resources and claims to those resources. (See SFAC No. 1 ¶40);

k. the principle that financial reporting should provide information that is useful to users of the financial statements in making rational investment, credit, and similar decisions. (See SFAC No. 1 ¶34);

l. the principle that accounts receivable must be reported in the financial statements at net realizable value. (See ARB 43, Chapter 3A); and

m. the principle that disclosure of an entity's accounting policies should identify and describe the accounting principles followed by the reporting entity and the methods of applying those principles that materially affect the determination of financial position, changes in financial position, or results of operations because information about the accounting policies adopted by a reporting entity is essential for financial statement users. (See APB 22, ¶8, 12).

CLASS ACTION ALLEGATIONS

222. Court-appointed Lead Plaintiffs bring this action as a class action pursuant to Federal Civil Procedure Rules 23(a) and (b)(3) on behalf of a class of all persons who purchased Symbol's publicly traded common stock (the "Class") on the open market between April 26, 2000 and April 18, 2002 (the "Class Period"). Excluded from the Class are defendants and Symbol's other directors, employees and/or business affiliates, subsidiaries and/or joint ventures, as well as the legal representatives, heirs, successors and assigns of any excluded party.

223. The members of the Class are so numerous that joinder of all members is impracticable. Plaintiffs believe there are, at a minimum, thousands of Class members who purchased Symbol stock during the Class Period. The Company had in excess of 229.45 million shares of its common stock outstanding as of June 30, 2002.

224. Plaintiffs' claims are typical of other Class members. Like other Class members, plaintiffs purchased Symbol's common stock during the Class Period on the open market and suffered damages as a result of defendants' wrongful conduct.

225. Plaintiffs will fairly and adequately protect the interests of Class members and have retained counsel competent and experienced in class actions and securities litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

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

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

a. whether the Exchange Act was violated by defendants;

b. whether Symbol issued false and misleading statements during the Class Period;

c. whether the individual defendants caused Symbol to issue false and misleading statements;

d. whether defendants acted knowingly or recklessly in making the allegedly false and misleading statements;

e. whether the market prices for Symbol stock during the Class Period were artificially inflated due to the improper conduct by defendants' alleged in this complaint; and

f. whether Class members have sustained damages and if so, the proper measure of those damages.

FRAUD ON THE MARKET PRESUMPTION

228. Plaintiffs will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine, in that:

a. Defendants made public misrepresentations or failed to disclose material facts regarding Symbol's revenues, profits and sales during the Class Period;

d. Their alleged misrepresentations and omissions were material;

e. Symbol common stock traded on the NYSE, an open and efficient market;

f. The misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of Symbol's common stock;

g. Plaintiffs and the members of the Class purchased their Symbol stock between the time defendants failed misrepresented or failed to disclose material facts and the time that the true facts became known, without knowledge of the misrepresented facts; and

h. Symbol was followed by numerous analysts including Solomon Smith Barney, Lehman Brothers, ING Barings, J.P. Morgan, Gerard Klauer, Raymond James, U.S. Bancorp Piper Jaffray, ABN AMRO and Bear, Stearns. At all relevant times, the price of Symbol stock reflected the effect of news disseminated in the market.

229. Based on the foregoing, plaintiffs and the other Class members are entitled to the presumption of reliance upon the integrity of the market.

THE SAFE HARBOR PROVISION DOES NOT APPLY

230. The PSLRA statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false and misleading statements plead in this Complaint. The statements alleged to be false and misleading all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward-looking, they were not adequately identified as "forward-looking statements" when made and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of them were made, the particular speaker had actual knowledge that those statement were materially false or misleading, and/or the forward-looking statement was authorized or approved by an executive officer of Symbol who knew that those statements were false when made.

CLAIMS

Count I
Violation of Section 10(b) and Rule 10b-5 Against All Defendants

231. Plaintiffs repeat and re-allege each and every preceding allegation as if fully set forth herein.

232. This Count is asserted against all defendants for violations of section 10(b) of the 1934 Act, 15 U.S.C. § 78j(b), and SEC Rule 10b-5, as promulgated thereunder.

233. During the Class Period, the Company and the individual defendants, singly and in concert, directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon plaintiffs and the other members of the Class, and made various deceptive and untrue statements of material facts and omitted to state material facts in order to make the statements made, in light of the circumstances under which they were made, not misleading to plaintiff and the other members of the Class. The purpose and effect of said scheme, plan, and unlawful course of conduct was, among other things, to induce plaintiff and the other members of the Class to purchase Symbol common stock during the Class Period at artificially inflated prices.

Scienter

234. Defendant Symbol acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because it: intentionally engaged in all of the wrongful conduct described herein; issued all of the false and misleading statements described herein; and concealed all of the material facts described herein.

235. Defendant Razmilovic acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because: he engaged in significant insider trading, *see* ¶¶152-154, *supra*; he directed Mr. Borghese to engage in end-of-quarter channel stuffing deals to distributors and VARs, *see* ¶¶52-54b, *supra*; he personally directed Symbol's recognition of revenue relating to a consignment arrangement with ScanSource in late 2001, *see* ¶¶54b-56, *supra*; he directed or influenced Symbol's end-of-quarter shipments of non-

conforming products to distributors or VARs, *see* ¶¶86-87, *supra*; and he lied about the true reasons for Symbol's poor results in the second quarter of 2001, *see* ¶¶176, *supra*.

236. As previously discussed, defendant Razmilovic's May, 2001 and February, 2002 insider sales were unusually large in volume and irregular in timing and demonstrate his knowledge that Symbol's stock price was about to decline due to the fraudulent conduct complained of herein. These trades further establish his motive and opportunity to commit fraud.

237. Defendant Jaeggi acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because: he engaged in significant insider trading, *see* ¶155, *supra*; he knew that Symbol improperly recognized revenue from the AirClic transaction and should have disclosed it, *see* ¶¶92-94, *supra*; he personally lifted credit holds on high-risk distributors and VARs at the end of several quarters so that Symbol could meet Wall Street estimates, *see* ¶121, *supra*; he was principally responsible for Symbol's recognition of revenue and had knowledge of the accounting for all large transactions; he directed an employee not to cooperate with the internal investigation conducted by Witness 1, *see* ¶117, *supra*; and the KPMG audit engagement was personally discussed with him and DeGennaro by Mr. Sturm, *see* ¶116, *supra*.

238. As previously discussed, defendant Jaeggi's May, 2001 insider sales were unusually large in volume and irregular in timing and demonstrate his knowledge that Symbol's stock price was about to decline due to the fraudulent conduct complained of herein. These trades further establish his motive and opportunity to commit fraud.

239. Defendant Swartz acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts because: he engaged in significant insider trading, *see* ¶¶148-151, *supra*; he stated that one or more *Newsday* stories had "blown out

of proportion" fully audited, unrelated accounting matters while assuring investors that "[t]he real story is that our accounting is sound," *see* ¶131, *supra*; and because he reviewed, approved and signed Symbol's 2001 10-K despite the following the fact that KPMG audit engagement was discussed with him; the KPMG consulting engagement was discussed with him; the KPMG report was provided to him; he discussed the KPMG engagement findings as well as the internal audit department findings with defendant Mallement at least twice in early 2002 and was repeatedly warned that Symbol was improperly recognizing revenue for several 2001 business transactions, *see* ¶¶122-125, *supra*.

240. As previously discussed, defendant Schwartz's March, 2001 and January, 2002 sales and options purchases were unusually large in volume and irregular in timing and demonstrate his knowledge that Symbol's stock price was about to decline due to the fraudulent conduct complained of herein. These trades further establish his motive and opportunity to commit fraud.

241. Defendant Borghese acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because: he directed and controlled all of Symbol's end-of-quarter channel stuffing deals to distributors and VARs, *see* ¶52, *supra*; he influenced or directed Tim Curran to doctor paperwork for several sales transactions, *see* ¶80, *supra*; and he personally negotiated and directed Symbol's improper recognition of revenue from WN, ScanSource and CVS, *see* ¶174, *supra*.

242. Defendant Burke acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because: he was the architect of Symbol's product switching strategy, *see* ¶63, *supra*; he personally directed the improper shipment of obsolete Symbol inventory to Texas to write-off as part of the Telxon acquisition

charge, *see* ¶63, *supra*; and he personally negotiated and directed Symbol's improper recognition of revenue from Barnes & Noble, Mervyn's and Bed Bath and Beyond, *see* ¶185, *supra*.

243. Defendant Mallement acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because he reviewed, approved and signed Symbol's 2001 10-K despite the following: the KPMG audit engagement was discussed with him, *see* ¶241, *supra*; the KPMG consulting engagement was discussed with him, *see* ¶241, *supra*; the KPMG report was provided to him, *see* ¶241, *supra*; he discussed the KPMG engagement findings as well as the internal audit department findings with Witness 1 in January of 2002 and was repeatedly warned by this witness that Symbol was improperly recognizing revenue for several 2001 business transactions, *see* ¶241, *supra*; and the Audit Committee together discussed the KPMG engagement findings as well as the internal audit department findings.

244. Defendant Bugliarello acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because he reviewed, approved and signed Symbol's 2001 10-K despite the following: the KPMG audit engagement was discussed with him; the KPMG consulting engagement was discussed with him; the KPMG report was provided to him; and the Audit Committee together discussed the KPMG engagement findings as well as the internal audit department findings.

245. Defendant Guthart acted either intentionally or recklessly in issuing false and misleading statements, and/or concealing material facts, because he reviewed, approved and signed Symbol's 2001 10-K despite the following: the KPMG audit engagement was discussed with him; the KPMG consulting engagement was discussed with him; the KPMG report was

provided to him; and the Audit Committee together discussed the KPMG engagement findings as well as the internal audit department findings.

Defendants' Desire to Complete the Telxon Acquisition

246. In addition, defendants were also motivated to inflate the value of the Company's stock in order to effectuate the acquisition of its largest competitor, Telxon. The higher the share price, the more buying power each share had. On July 26, 2000, Symbol and Telxon issued a joint press release announcing a stock-for-stock merger. Under the terms of the merger agreement, Telxon shareholders would receive 0.5 of a Symbol share for each one Telxon share. Based on Symbol's closing price the day preceding the joint announcement, $49.88, the transaction had a total equity value of approximately $465 million.

247. The exchange ratio set in the merger agreement was fixed, and the merger agreement did not allow adjustments in the event of any increase or decrease in the market price of Symbol shares. The merger's approval, however, was dependent on Telxon shareholders voting in its favor, and Telxon shareholders were urged to obtain current market quotations for Symbol shares before voting on the merger. Therefore, the approval of the merger was dependent upon Symbol maintaining a sufficiently high market price for its stock that the merger would be deemed attractive by Telxon shareholders.

248. Through the improper accounting transactions outline above, the defendants were able to maintain an inflated stock price and were able to complete the merger. The merger closed after the close of business on November 30, 2000. Symbol stock closed at $40.06 on November 30, 2000.

Count II

Violation of Section 20A Against All individual Defendants

249. Plaintiffs repeat and re-allege each and every preceding allegation as if fully set forth herein.

250. During the Class Period, by virtue of their positions, stock ownership and/or specific acts described above, the individual defendants were at the time of the wrongs alleged herein controlling persons of Symbol within the meaning of § 20(a) of the 1934 Act.

251. As the most senior officers at the Company, the individual defendants had the power to control and influence the conduct, acts and practices of Symbol.

252. By reason of the conduct alleged in the Complaint, each of the individual defendants named in this count are liable for the violations of the federal securities laws by Symbol and are liable to plaintiffs and the other Class members for the damages they suffered in connection with their purchases of Symbol common stock during the Class Period at artificially inflated prices.

WHEREFORE, on their own behalf and on behalf of the Class, plaintiffs pray for judgment as follows:

A. Declaring this action to be a proper class action and certifying plaintiffs as class representatives under Rule 23 of the Federal Rules of Civil Procedure;

B. Awarding compensatory damages in favor of plaintiffs and the other members of the Class against defendants for the damages sustained as a result of their wrongdoings, together with interest thereon;

C. Awarding plaintiffs the fees and expenses incurred in this action, including reasonable allowance of fees for plaintiffs' attorneys, and experts;

D. Granting extraordinary equitable and/or injunctive relief as permitted by law, equity and federal and state statutory provisions sued on hereunder; and

E. Granting such other and further relief as the Court may deem just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated: September 27, 2002

Respectfully submitted,

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