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10 Attorneys for Plaintiff

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
12 IN AND FOR THE COUNTY OF PIMA
13

14 PENNSYLVANIA AVENUE EVENT)
DRIVEN FUND, On Behalf of Itself and)
15 All Others Similarly Situated,)

16 Plaintiff,)

17 vs.)

18 UNISOURCE ENERGY CORPORATION,)
ROBERT A. ELLIOTT, WARREN Y.)
19 JOBE, KENNETH HANDY, LAWRENCE)
J. ALDRICH, JAMES S. PIGNATELLI,)
20 DANIEL W. L. FESSLER, HAROLD W.)
BURLINGAME, LARRY W. BICKLE,)
21 JOHN L. CARTER and ELIZABETH T.)
BILBY,)

22 Defendants.)
23

Case No.

CLASS ACTION

COMPLAINT BASED UPON SELF-
DEALING AND BREACH OF
FIDUCIARY DUTY

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1 Plaintiff, by its attorneys, alleges as follows:

2 **SUMMARY OF THE ACTION**

3 1. This is a stockholder class action brought by plaintiff on behalf of the holders
4 of UniSource Energy Corporation (“UniSource” or the “Company”) common stock against
5 UniSource’s directors arising out of their attempts to provide certain UniSource insiders and
6 directors with preferential treatment in connection with their efforts to complete the sale of
7 UniSource to Saguaro Utility Group L.P. (the “Acquisition”). This action seeks equitable
8 relief only.

9 2. In pursuing the unlawful plan to sell UniSource, each of the defendants
10 violated applicable law by directly breaching and/or aiding the other defendants’ breaches of
11 their fiduciary duties of loyalty, due care, independence, good faith and fair dealing.

12 3. In fact, instead of attempting to obtain the highest price reasonably available
13 for UniSource for its shareholders, the individual defendants spent substantial effort tailoring
14 the structural terms of the Acquisition to meet the specific needs of Saguaro Utility Group
15 L.P. (“Saguaro”). Moreover, *after* the Company entered into a merger agreement and began
16 to solicit shareholders with its *stale* “fairness opinion,” the Company admitted that its *prior*
17 financial results were actually incorrect. In fact, the true results show that the Company’s net
18 income was actually greater, making the Company’s true results for three years grow. This
19 earnings revision was not factored into the defendants’ decision (or the shareholders’) and
20 the fairness opinion is equally flawed as it too does not take into account the Company’s true
21 earnings. The changes in the Company’s earnings are as follows:

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The Restatement Effect on Reported Net Income

Net Income (Millions of Dollars)	2001 ¹	2002	2003
Net Income Originally Reported	\$61.3	\$33.2	\$112.6
Restatement	\$2.5	\$1.7	\$1.3
Net Income Per Restatement	\$63.8	\$34.9	\$113.9
% of change	3.92%	4.87%	1.14%

The Restatements Effect on Reported EPS

EPS	2001	2002	2003
Earnings Per Share as Originally Reported	\$1.84	\$0.99	\$3.33
Restatement	\$0.07	\$0.05	\$0.04
EPS Per Restatement	\$1.91	\$1.04	\$3.37
% of change	3.92%	4.87%	1.14%

The Restatements Effect on Reported Shareholders' Equity

Shareholders Equity (millions of dollars)	2001	2002	2003
Ending Balance as Originally Reported	\$472.3	\$441.1	\$539.7
Restatement Adjustment	\$13.8	\$15.5	\$16.8
Ending Balance Per Restatement	\$441.1	\$456.6	\$556.5
% of change	3.13%	3.39%	3.02%

¹ The restatement also includes \$11.3 million addition to net income for the periods prior to December 31, 2000. This amount has not been broken down per period.

1 (c) unjustly enriching themselves at the expense or to the detriment of the
2 public shareholders.

3 22. Plaintiff alleges herein that the Individual Defendants, separately and together,
4 in connection with the sale of UniSource, violated the fiduciary duties owed to plaintiff and
5 the other public shareholders of UniSource, including their duties of loyalty, good faith and
6 independence, insofar as they stood on both sides of the transaction and engaged in self-
7 dealing and obtained for themselves personal benefits, including personal financial benefits
8 not shared equally by plaintiff or the Class.

9 23. Because the Individual Defendants have breached their duties of loyalty, good
10 faith and independence in connection with the sale of UniSource, the burden of proving the
11 inherent or entire fairness of the Acquisition, including all aspects of its negotiation and
12 structure, is placed upon the Individual Defendants as a matter of law.

13 CLASS ACTION ALLEGATIONS

14 24. Plaintiff brings this action on its own behalf and as a class action pursuant to
15 Arizona Rule of Civil Procedure 23 on behalf of all holders of UniSource stock who are
16 being and will be harmed by defendants' actions described below (the "Class"). Excluded
17 from the Class are defendants herein and any person, firm, trust, corporation, or other entity
18 related to or affiliated with any defendant.

19 25. This action is properly maintainable as a class action.

20 26. The Class is so numerous that joinder of all members is impracticable.
21 According to UniSource's Securities and Exchange Commission ("SEC") filings, there are
22 more than 34 million shares of UniSource common stock outstanding.

23 27. There are questions of law and fact which are common to the Class and which
24 predominate over questions affecting any individual Class member. The common questions
25 include, *inter alia*, the following:

26 (a) whether defendants have breached their fiduciary duties of undivided
27 loyalty, independence or due care with respect to plaintiff and the other members of the
28 Class in connection with the Acquisition;

1 (b) whether the Individual Defendants are engaging in self-dealing in
2 connection with the Acquisition;

3 (c) whether the Individual Defendants are unjustly enriching themselves
4 and other insiders or affiliates of UniSource;

5 (d) whether defendants have breached any of their other fiduciary duties to
6 plaintiff and the other members of the Class in connection with the Acquisition, including
7 the duties of good faith, diligence, honesty and fair dealing;

8 (e) whether the defendants, in bad faith and for improper motives, have
9 impeded or erected barriers to discourage other offers for the Company or its assets; and

10 (f) whether plaintiff and the other members of the Class would suffer
11 irreparable injury were the transactions complained of herein consummated.

12 28. Plaintiff's claims are typical of the claims of the other members of the Class
13 and plaintiff does not have any interests adverse to the Class.

14 29. Plaintiff is an adequate representative of the Class, has retained competent
15 counsel experienced in litigation of this nature and will fairly and adequately protect the
16 interests of the Class.

17 30. The prosecution of separate actions by individual members of the Class would
18 create a risk of inconsistent or varying adjudications with respect to individual members of
19 the Class which would establish incompatible standards of conduct for the party opposing
20 the Class.

21 31. Plaintiff anticipates that there will be no difficulty in the management of this
22 litigation. A class action is superior to other available methods for the fair and efficient
23 adjudication of this controversy.

24 32. Defendants have acted on grounds generally applicable to the Class with
25 respect to the matters complained of herein, thereby making appropriate the relief sought
26 herein with respect to the Class as a whole.

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1 TEP's customer base continued its strong growth during the second
2 quarter of 2003. The utility's average number of retail customers increased by
2.3 percent to 362,375 between the second quarters of 2002 and 2003.

3 35. This grave projection sent the Company's shares down 10%, to \$17.81.

4 36. Then, with the Company's shares trading at artificially depressed levels, the
5 Company announced that the Board had approved the sale of the Company. On November
6 24, 2003, the Company issued a press release entitled "UniSource Energy Approves
7 Transaction with Investor Group; Significant Equity Investment Would Strengthen Local
8 Utilities." The press release stated in part:

9 The Board of Directors of UniSource Energy Corporation has approved an
10 investor group's offer to acquire all of the company's outstanding shares in a
transaction that would strengthen the capital base of the company's regulated
11 utility operations.

12 The transaction provides up to \$260 million of additional capital to
Tucson Electric Power Company (TEP), UniSource Energy's principal
13 subsidiary, including the retirement of a \$95 million inter-company loan from
TEP to UniSource Energy.

14 An affiliate of Saguaro Utility Group, L.P. has agreed to pay \$25.25 per
15 share of UniSource Energy common stock, representing a premium of 30
percent over the closing price on Friday, November 21, 2003. The group's
16 general partner is Sage Mountain, L.L.C., an Arizona company managed and
owned by Frederick B. Rentschler, former president and chief executive
17 officer of Armour-Dial, Beatrice Companies and Northwest Airlines. The
group's limited partners are investment funds affiliated with Kohlberg Kravis
18 Roberts & Co., J.P. Morgan Partners, LLC, and Wachovia Capital Partners.

19 ***The approximately \$3 billion transaction would leave UniSource***
Energy's senior management team in place, and the company's headquarters
20 would remain in Tucson. No changes in UniSource Energy's operations or
personnel are anticipated as a result of this transaction.

21 "This transaction gives our local management team additional resources
22 to help us serve the energy needs of communities across Arizona," said James
S. Pignatelli, who would continue as UniSource Energy's Chairman, President
23 and Chief Executive Officer under the proposed purchase.

24 "We will be a stronger company as a result of this transaction. This
investment ensures that we can maintain the service and reliability that have
25 become our hallmarks while pursuing our plans to bring service improvements
to our customers and communities," Pignatelli said.

26 ***Our Board of Directors approved this transaction after careful***
consideration of the best interests of all of our constituents, including our
27 ***shareholders***, customers, communities and employees. ***Shareholders of***
UniSource Energy will realize the full value of their investments, our
28 customers and communities will benefit from a significantly strengthened,

1 locally operated utility company, and our employees will enjoy the enhanced
2 opportunities that will accompany our development,” Pignatelli said.

3 37. On February 17, 2004, the Company issued a press release entitled “UniSouce
4 Energy Reports Earnings For 2003.” The press release stated in part:

5 ***UniSource Energy Corp. today reported earnings for 2003 of \$112.6 million,
6 or \$3.33 per share of common stock.***

7 UniSource Energy’s 2003 results include the adoption of Financial
8 Accounting Standard 143 (FAS 143), a new rule related to accounting for
9 plant retirement and removal costs. In the first quarter of 2003, Tucson
10 Electric Power Co. (TEP), UniSource Energy’s principal subsidiary, recorded
11 a \$67.5 million after-tax gain, or \$1.99 per UniSource Energy share, as a result
12 of adopting FAS 143. Excluding the impact of FAS 143, UniSource Energy’s
13 2003 earnings were \$45.1 million, or \$1.34 per share. Also, in December
14 2003, TEP recognized \$15 million of tax benefits related to prior years’ net
15 operating losses and investment tax credits.

16 Income from newly acquired gas and electric systems and the
17 development fee for a new coal-fired generator were among several factors
18 that contributed to 2003 earnings. The year’s results also include \$2.7 million
19 of expenses related to the proposed acquisition of UniSource Energy. In 2002,
20 UniSource Energy reported earnings of \$33.3 million, or \$0.99 per share.

21 “In 2003, we acquired a utility with more than 200,000 electric and gas
22 customers, arranged for the construction of a new 400-MW coal-fired unit at
23 the Springerville Generating Station and provided shareholders with a solid
24 return on their investment,” said James S. Pignatelli, chairman, president and
25 chief executive officer of UniSource Energy. “We achieved several
26 significant goals while setting the stage for another promising year.”

27 In November 2003, UniSource Energy entered into an acquisition
28 agreement that provides for the acquisition of all of the outstanding common
stock of UniSource Energy for \$25.25 per share by Saguaro Utility Group
L.P., an Arizona limited partnership whose general partner is Sage Mountain,
L.L.C. and whose limited partners include investment funds affiliated with
Kohlberg Kravis Roberts & Co., L.P., J.P. Morgan Partners, LLC, and
Wachovia Capital Partners.

The board of directors of UniSource Energy has scheduled a special
meeting for March 29, 2004, for its shareholders to formally consider a
proposal to approve the acquisition agreement. The record date for this special
meeting is Feb. 23, 2004. Only shareholders of record will be eligible to
participate in the special meeting in person or by proxy. Shareholders of
record should expect to receive proxy materials by mail in early March. The
acquisition, which also requires certain regulatory approvals, is expected to
occur in the second half of 2004.

UniSource Energy Development Co. (UED) recognized a \$6 million
after-tax gain from the development fee it received for making arrangements
for the construction of a new unit at TEP’s Springerville Generating Station
(SGS). Construction on SGS Unit 3 began last year, and the generator is
expected to be operational by December 2006. Tri-State Transmission and

1 Generation Association, a wholesale power cooperative, will be the lessee of
2 the completed unit and take 300 MW of the power it produces. TEP will
3 operate the unit and take as much as 100 MW of capacity from Tri-State for up
to five years. The remaining 100 MW will be purchased by Phoenix-based
Salt River Project under a 30-year contract with Tri-State.

4 38. These 2003 results of \$3.33 earnings per share were not only *greater* than the
5 Company's revised downward forecast, but also the Company's original forecast.
6 Unfortunately for shareholders, they did not see the benefit of these results because
7 defendants had already agreed to sell the Company to Saguaro and agreed to pay
8 termination/cost fees of \$25 million if they walked away, renegotiated, or terminated the
9 transaction.

10 39. On August 5, 2004, the Company issued a press release entitled "UniSource
11 Energy Delays Filing to Examine Unbilled Revenue." The press release stated in part:

12 UniSource Energy announced today that its release of earnings for the three-
13 and six-month periods ended June 30, 2004, will be delayed. The company
also indicated it will likely delay the filing of its Quarterly Report on Form 10-
14 Q for the quarter ended June 30, 2004.

15 During the second quarter of 2004, Tucson Electric Power (TEP),
16 UniSource Energy's principal subsidiary, adopted new estimating procedures
to determine unbilled revenues. The company believes that on a cumulative
17 basis since 1998 or earlier, additional revenues at TEP that should be
recognized could amount to as much as \$37 million (\$22 million after tax).

18 UniSource Energy is determining what portion of these additional TEP
19 revenues should be recognized in the three- and six-month periods ended June
30, 2004. The company also is considering whether it would be appropriate to
20 restate financial statements to recognize portions of these revenues in prior
periods.

21 ***UniSource Energy's management has reaffirmed its 2004 full-year
22 earnings estimate of between \$1.25 and \$1.60 per share, excluding the
recognition of revenue related to the change in estimation methodology.***

23 Meanwhile, the company continues to progress toward an Arizona
24 regulatory ruling on the proposed acquisition of UniSource Energy by Saguaro
Utility Group, L.P. Public hearings on the matter were conducted before an
25 administrative law judge of the Arizona Corporation Commission (ACC) and
concluded on July 1, 2004.

26 In testimony during that hearing, the ACC staff stated that UniSource
27 Energy had addressed many concerns raised in its initial testimony. The
company proposed some 40 conditions that provide significant protections for
28 the company's regulated subsidiaries, TEP and UniSource Energy Services
(UES). The staff has voiced its concern regarding several remaining issues

1 related to the financial protection of TEP and UES as well as maintaining
2 service quality and reliability.

3 Initial post-hearing briefs were filed on July 30, 2004 by the staff and
4 other parties supporting their respective testimony at the hearing.

5 James S. Pignatelli, Chairman, President and Chief Executive Officer
6 of UniSource Energy, said the overwhelming evidence in the case supports a
7 decision in favor of the proposed transaction.

8 “This transaction would give us the financial resources to meet the
9 growing demand in our utility service territories while maintaining the high
10 levels of service and reliability customers have come to expect,” Pignatelli
11 said. “It provides quantifiable, real and significant benefits for customers,
12 communities and shareholders.”

13 40. On August 23, 2004, the Company issued a press release entitled “UniSource
14 Energy Reports Solid Second Quarter Earnings.” The press release stated in part:

15 UniSource Energy Corp. today reported earnings for the second quarter of
16 2004 of \$13 million, or \$0.37 per share of common stock.

17 Increased retail and wholesale electricity sales at Tucson Electric Power
18 Co. (TEP), UniSource Energy’s principal subsidiary, and higher availability of
19 TEP’s coal-fired generators were among several factors that contributed to
20 improved second quarter earnings.

21 During the second quarter of 2004, TEP determined that its
22 methodology for estimating unbilled revenues resulted in an under-reporting
23 of revenues in prior periods. As a result, TEP adopted new methodology to
24 estimate unbilled revenues. UniSource Energy and TEP will amend their prior
25 Securities and Exchange Commission filings on Form 10-K for the year ended
26 Dec. 31, 2003 and on Form 10-Q for the quarter ended March 31, 2004 to
27 reflect the effect of these procedural changes in its prior financial statements.

28 These changes will result in TEP (and UniSource Energy on a
consolidated basis) recognizing additional net income of \$1.3 million in 2003,
\$1.7 million in 2002, and \$2.5 million in 2001. The restated net income for
UniSource Energy is \$113.9 million in 2003, \$34.9 million in 2002 and \$63.8
million in 2001. In addition, the effect of restating periods prior to 2001
resulted in an \$11.3 million increase in common stock equity from \$374.2
million to \$385.5 million as of Dec. 31, 2000.

In the second quarter of 2004, TEP’s utility gross margin (total
operating revenues minus fuel and purchased energy) increased \$14 million, or
10 percent, compared with the second quarter of 2003. In the three months
ended June 30, 2003, UniSource Energy’s restated earnings of \$7 million, or
\$0.20 per share, reflect the impact of unplanned plant outages which led to
reduced wholesale energy sales and higher replacement power costs.

“Our strong performance reflects the reliability of our utility operations,
continued growth in our service territories and the dedication of our
employees,” said James S. Pignatelli, chairman, president and chief executive
officer of UniSource Energy. “We haven’t allowed our company’s pending

1 acquisition to distract us from our central mission to meet the needs of our
2 customers and deliver results for shareholders.”

3 In November 2003, UniSource Energy entered into an agreement that
4 provides for the acquisition of all of the company’s outstanding common stock
5 for \$25.25 per share by Saguaro Utility Group L.P., an Arizona limited
6 partnership whose general partner is Sage Mountain, L.L.C. and whose limited
7 partners include investment funds affiliated with Kohlberg Kravis Roberts &
8 Co., L.P., J.P. Morgan Partners, LLC, and Wachovia Capital Partners.
9 UniSource Energy’s shareholders voted on March 29, 2004 to approve the
10 acquisition agreement. The acquisition, which also requires certain regulatory
11 approvals, is expected to occur in the fourth quarter of 2004. **Results from the
12 second quarter of 2004 included \$1 million in expenses related to the
13 proposed acquisition of UniSource Energy.**

14 UniSource Energy Services (UES), a subsidiary that provides natural
15 gas and electricity in northern and southern Arizona, contributed \$0.5 million
16 to second quarter earnings. Millennium Energy Holdings (MEH), which
17 oversees UniSource Energy's unregulated investments, reported a net loss of
18 \$3 million in the second quarter of 2004 after recording a net loss of \$4
19 million in the same period last year.

20 Tucson Electric Power Co.

21 TEP reported second quarter earnings of \$18 million, or \$0.52 per
22 UniSource Energy share, compared with restated earnings of \$14 million, or
23 \$0.40 per UniSource Energy share, in the same period last year. Retail
24 kilowatt-hour (kWh) sales increased 5 percent in the second quarter of 2004
25 over the same period last year.

26 Retail revenues increased by \$12 million compared with the second
27 quarter of 2003. TEP’s retail customer base grew 2 percent to 370,894
28 between the second quarters of 2003 and 2004.

Higher power prices and the increased availability of TEP’s coal-fired
generating facilities during the second quarter of 2004 led to a \$7 million
increase in TEP’s wholesale revenues compared to the same period last year.
Wholesale power prices on the Dow Jones Palo Verde Index averaged \$44 per
megawatt-hour (MWh) during the second quarter of 2004, compared with \$39
per MWh during the second quarter of 2003. Energy output from TEP’s coal-
fired generating facilities increased 10 percent in the second quarter of 2004
over the same period last year.

Other factors affecting TEP’s earnings include a \$4 million increase in
Transition Recovery Asset amortization and a \$3 million decline in total
interest expense resulting from lower rates under TEP’s credit agreement and
lower capital lease obligation balances compared with last year. TEP recorded
a \$3 million reserve in the second quarter of 2004 to further reduce the amount
of its outstanding receivable related to wholesale sales made to California in
2001 and 2000 that it believes are collectable. This amount was recorded as a
reduction to wholesale revenue.

UniSource Energy Services

1 UES reported earnings of \$0.5 million, or \$0.02 per UniSource Energy
2 share. The utility began providing gas and electric service through UNS Gas
3 and UNS Electric in northern and southern Arizona in August 2003. During
4 the second quarter of 2004, UNS Electric recorded retail revenues of \$35
5 million, while UNS Gas produced retail revenues of \$21 million.

6 Customer growth at UES remains strong. Both UNS Gas' and UNS
7 Electric's retail customer bases grew by over 1 percent during the second
8 quarter of 2004.

9 Millennium Energy Holdings

10 MEH reported a net loss of \$3 million, or \$0.10 per UniSource Energy
11 share, compared with a loss of \$4 million in the second quarter of 2003.
12 Global Solar Energy, an MEH subsidiary, lost \$2 million during the second
13 quarter of 2004, compared with a loss of \$4 million in the same period last
14 year.

15 Year-to-Date

16 UniSource Energy's consolidated year-to-date earnings through June
17 30, 2004, were \$19 million, or \$0.56 per share, compared to \$59 million, or
18 \$1.75 per share, during the same period last year as restated.

19 Last year's results reflected the adoption of Financial Accounting
20 Standard 143 (FAS 143), a new rule related to accounting for plant retirement
21 and removal costs. TEP recorded a \$67 million after-tax gain, or \$2.00 per
22 UniSource Energy share, in the first quarter of 2003 as a result of adopting
23 FAS 143. Excluding the impact of FAS 143, UniSource Energy's consolidated
24 year-to-date restated loss through June 2003 was \$8 million, or \$0.25 per
25 share.

26 41. The tables below summarize the impact on the Company's financials:

27 **The Restatement Effect on Reported Net Income**

28 Net Income (Millions of Dollars)	2001 ²	2002	2003
Net Income Originally Reported	\$61.3	\$33.2	\$112.6
Restatement	\$2.5	\$1.7	\$1.3
Net Income Per Restatement	\$63.8	\$34.9	\$113.9
% of change	3.92%	4.87%	1.14%

² The restatement also includes \$11.3 million addition to net income for the periods prior to December 31, 2000. This amount has not been broken down per period.

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The Restatements Effect on Reported EPS

EPS	2001	2002	2003
Earnings Per Share as Originally Reported	\$1.84	\$0.99	\$3.33
Restatement	\$0.07	\$0.05	\$0.04
EPS Per Restatement	\$1.91	\$1.04	\$3.37
% of change	3.92%	4.87%	1.14%

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The Restatements Effect on Reported Shareholders Equity

Shareholders Equity (millions of dollars)	2001	2002	2003
Ending Balance as Originally Reported	\$472.3	\$441.1	\$539.7
Restatement Adjustment	\$13.8	\$15.5	\$16.8
Ending Balance Per Restatement	\$441.1	\$456.6	\$556.5
% of change	3.13%	3.39%	3.02%

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42. Despite the impact to the Company's previous financials, the fact that the defendants illegally induced shareholders to vote on a defective Proxy Statement, and the fact that the Company's fairness opinion is not only defective but stale, defendants have announced their intentions to move forward with the planned sale of the Company without renegotiating the price, amending the Proxy Statement, or even updating the fairness opinion.

SELF-DEALING

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43. By reason of their positions with UniSource, the Individual Defendants are in possession of non-public information concerning the financial condition and prospects of UniSource, and especially the true value and expected increased future value of UniSource

1 and its assets, which they have not disclosed to UniSource’s public stockholders. Moreover,
2 despite their duty to maximize shareholder value, the defendants have clear and material
3 conflicts of interest and are acting to better their own interests at the expense of UniSource’s
4 public shareholders.

5 44. The proposed sale is wrongful, unfair and harmful to UniSource’s public
6 stockholders, and represents an effort by defendants to aggrandize their own financial
7 position and interests at the expense of and to the detriment of Class members. The
8 Acquisition is an attempt to deny plaintiff and the other members of the Class their rights
9 while usurping the same for the benefit of Saguaro on unfair terms.

10 45. In light of the foregoing, the Individual Defendants must, as their fiduciary
11 obligations require:

- 12 • Enjoin the payment of the \$25 million termination/cost fees.
- 13 • Withdraw their consent to the sale of UniSource and allow the shares to trade
14 freely – without impediments.
- 15 • Act independently so that the interests of UniSource’s public stockholders will
16 be protected, including, but not limited to, the retention of truly independent
17 advisors and/or the appointment of a truly independent Special Committee.
- 18 • Adequately ensure that no conflicts of interest exist between defendants’ own
19 interests and their fiduciary obligation to maximize stockholder value or, if
20 such conflicts exist, to ensure that all conflicts be resolved in the best interests
21 of UniSource’s public stockholders.
- 22 • Update the Company fairness opinion, which is approximately 10 months old
23 and based on flawed financials and projections.

24 46. The Individual Defendants have also approved the Acquisition so that it
25 transfers 100% of UniSource’s revenues and profits to Saguaro, thus all of UniSource’s
26 operations will now accrue to the benefit of Saguaro.

27 **CAUSE OF ACTION**

28 **Claim for Breach of Fiduciary Duties**

47. Plaintiff repeats and realleges each allegation set forth herein.

1 48. The defendants have violated fiduciary duties of care, loyalty, candor and
2 independence owed under Arizona law to the public shareholders of UniSource and have
3 acted to put their personal interests ahead of the interests of UniSource’s shareholders.

4 49. By the acts, transactions and courses of conduct alleged herein, defendants,
5 individually and acting as a part of a common plan, are attempting to advance their interests
6 at the expense of plaintiff and other members of the Class.

7 50. The Individual Defendants have violated their fiduciary duties by entering into
8 a transaction with Saguaro without regard to the fairness of the transaction to UniSource’s
9 shareholders. Defendant UniSource directly breached and/or aided and abetted the other
10 defendants’ breaches of fiduciary duties owed to plaintiff and the other holders of UniSource
11 stock.

12 51. As demonstrated by the allegations above, the Individual Defendants failed to
13 exercise the care required, and breached their duties of loyalty, good faith, candor and
14 independence owed to the shareholders of UniSource because, among other reasons:

15 (a) they failed to properly value UniSource; and

16 (b) they ignored or did not protect against the numerous conflicts of interest
17 resulting from their own interrelationships or connection with the Acquisition.

18 52. Because the Individual Defendants dominate and control the business and
19 corporate affairs of UniSource, and are in possession of private corporate information
20 concerning UniSource’s assets, business and future prospects (including its fiscal Q3 2004
21 results), there exists an imbalance and disparity of knowledge and economic power between
22 them and the public shareholders of UniSource which makes it inherently unfair for them to
23 pursue any proposed transaction wherein they will reap disproportionate benefits.

24 53. By reason of the foregoing acts, practices and course of conduct, the
25 defendants have failed to exercise ordinary care and diligence in the exercise of their
26 fiduciary obligations toward plaintiff and the other members of the Class.

27 54. As a result of the actions of defendants, plaintiff and the Class will suffer
28 irreparable injury as a result of defendants’ self dealing.

1 D. Directing the Individual Defendants to exercise their fiduciary duties to obtain
2 a transaction which is in the best interests of UniSource's shareholders;

3 E. Rescinding, to the extent already implemented, the Acquisition or any of the
4 terms thereof;

5 F. Awarding plaintiff the costs and disbursements of this action, including
6 reasonable attorneys' and experts' fees; and

7 G. Granting such other and further equitable relief as this Court may deem just
8 and proper.

9 DATED: August 25, 2004

BONNETT, FAIRBOURN, FRIEDMAN
& BALINT, P.C.
ANDREW S. FRIEDMAN

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