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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

<b>PESSY HORWATH, on behalf of herself and all others similarly situated,</b>	:	<b>Civil Action No.</b>
<b>Plaintiff,</b>	:	
<b>vs.</b>	:	
<b>MEDI-HUT CO., INC., JOSEPH A. SANPIETRO, LAURENCE M. SIMON, ROBERT RUSSO, VINCENT J. SANPIETRO, JAMES A. AARON, and JAMES S. VACARRO,</b>	:	<b><u>CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE FEDERAL SECURITIES LAWS</u></b>
<b>Defendants.</b>	:	<b>JURY TRIAL DEMANDED</b>
	:	

Plaintiff Pessy Horwath (“Plaintiff” or “Horwath”), individually and on behalf of all others similarly situated, by and through her attorneys, alleges the following upon personal knowledge as to herself and her acts and as to all other matters upon information and belief based upon, *inter alia*, the investigation made by and through her attorneys, including a review of the public filings of Medi-Hut, Co., Inc. (“Medi-Hut,” “MHUT” or the “Company”), with the United States Securities and

Exchange Commission (“SEC”), as well as published reports, Company press releases, and news articles and other publicly available information concerning MHUT. Plaintiff believes that further substantial evidentiary support exists for the allegations as set forth below after a reasonable opportunity for discovery.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78aa and 28 U.S.C. § 1331.

2. The claims alleged herein 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(a), and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.

3. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §1391(b). Many of the acts and omissions constituting the violations of the laws complained of herein, including the preparation and dissemination to the investing public of false and misleading information, occurred in substantial part in this Judicial District. Moreover, the Company’s corporate headquarters are located in this Judicial District, and MHUT does substantial business within this Judicial District.

4. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce, including the United States mails, interstate telephone communications and the facilities of the national securities exchanges.

### **NATURE OF THE ACTION**

5. This is a class action brought by plaintiff on behalf of himself and a Class consisting of all other persons who purchased MHUT common stock during the period from April 4, 2000 through and including February 4, 2002 (the "Class Period"), to recover damages caused by the defendants' violation of the various federal securities laws. During the Class Period, the defendants issued and/or failed to correct false and misleading financial statements and/or press releases concerning the Company's publicly reported revenues and earnings directed to the investing public by, inter alia, failing to disclose material related-party transactions as is required by Generally Accepted Accounting Principals ("GAAP"), and BY using related-party sales and other sales transactions to parties who also served as the Company's suppliers to inflate its earnings.

### **THE PARTIES**

6. Plaintiff Pessy Horwath, a resident of \_\_\_\_\_, Pennsylvania, purchased shares of MHUT common stock during the Class Period, as set forth in her accompanying Certification, and was damaged thereby as set forth herein.

7. Defendant Medi-Hut maintains corporate headquarters at 1935 Swarthmore Avenue, Lakewood, New Jersey 08701. The company, once incorporated in Delaware, is now incorporated in the state of Nevada. As of January 9, 2002, there were approximately 14,400,000 million shares of MHUT common stock issued and outstanding. During the Class Period, MHUT common stock was actively traded on the NASDAQ National Market System. According to the Company's press releases and SEC filings, MHUT sells brand name drugs and medical products, including safety syringes, condoms, alcohol preps, hot packs and cold packs to medical supply wholesalers. The Company conducts business from its headquarters in New

Jersey, and does not usually take possession of the products it sells. Products are warehoused by third-party manufacturers and/or suppliers. MHUT, once it receives an order from one of its customers, provides the manufacturer or supplier with delivery or shipping instructions. During fiscal year 2001, approximately 87% of Medi-Hut's net sales were to three wholesale drug distributors. The lion's share of the net sales came from Larval Corp. ("Larval"), which accounted for 62% of MHUT's net sales and which was owned and controlled by MHUT Vice-President Lawrence Marasco ("Marasco").

8. Defendant Joseph A. Sanpietro ("Joseph Sanpietro" or "CEO Sanpietro") was the President and Chief Executive Officer of MHUT at all times relevant hereto. Joseph Sanpietro signed each of the Company's materially false and misleading Forms 10-Q and 10-K filed with the SEC during the Class Period.

9. Defendant Laurence M. Simon ("Simon") was the Chief Financial Officer of Medi-Hut at all times relevant hereto. Simon signed the Company's Form 10-Q for the quarter ended July 31, 2000 and the Company's Form 10-K for fiscal year 2001, each filed with the SEC during the Class Period.

10. Defendant Robert Russo ("Russo") was the Treasurer of Medi-Hut at all times relevant hereto. Russo signed each of the Company's materially false and misleading Forms 10-Q and 10-K filed with the SEC during the Class Period.

11. Defendant Vincent J. Sanpietro ("Vincent Sanpietro") was the Secretary of Medi-Hut at all times relevant hereto. Vincent Sanpietro signed each of the Company's materially false and misleading forms filed with the SEC during the Class Period, including the Forms 10-Q and 10-K.

12. Defendant James G. Aaron ("Aaron") was a member of the Board of Directors of

Medi-Hut at all times relevant hereto. Aaron signed the Company's Form 10-K for fiscal year 2001, filed with the SEC during the Class Period.

13. Defendant James S. Vacarro ("Vacarro") was a member of the Board of Directors of Medi-Hut at all times relevant hereto. Vacarro signed the Company's Form 10-K for fiscal year 2001, filed with the SEC during the Class Period.

14. Defendants Joseph Sanpietro, Simon, Russo, Vincent Sanpietro, Aaron and Vacarro are sometimes referred to herein as the "Individual Defendants."

15. The Individual Defendants, by reason of their management positions and responsibilities as officers and/or directors on behalf of a publicly held company whose common stock is registered with the SEC under the Exchange Act and traded on the NASDAQ during the time period relevant to this Complaint, were "controlling persons" of MHUT within the meaning of Section 20 of the Exchange Act. The Individual Defendants, because of their positions as officers and/or directors of MHUT, had access to internal Company documents, reports and other information, including the adverse non-public information concerning the Company's relation to Larval, and attended management and/or board of directors meetings. As a result of the foregoing, they were responsible, individually and/or in concert, for the truthfulness and accuracy of the Company's public filings described herein.

16. MHUT, and the Individual Defendants as officers and/or directors of a publicly-held company, had a duty to promptly disseminate truthful and accurate information with respect to Medi-Hut and to promptly correct any public statements issued by or on behalf of the Company which had become false or misleading.

17. Each of the defendants knew, individually and/or in concert, or recklessly disregarded that the false and/or misleading statements and omissions complained of herein

would adversely affect the integrity of the market for the Company's stock and would cause the price of the Company's common stock to become artificially inflated. Each of the defendants acted knowingly or in such a reckless manner as to constitute a fraud and deceit upon plaintiff and each and every member of the Class.

18. Defendants are jointly and severally liable for the wrongs complained of herein.

### **CLASS ACTION ALLEGATIONS**

19. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons who purchased MHUT securities during the Class Period (the "Class"). Excluded are the defendants, any entity in which the defendants have a controlling interest or is a parent or subsidiary of or is controlled by the Company, and the defendants' officers, directors, employees, affiliates, legal representatives, heirs, predecessors, successors and assigns.

20. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff reasonably believes that there are hundreds, and maybe thousands of members of the Class located throughout the United States. The Company had approximately 14,450,000 shares of its common stock outstanding as of January 9, 2002.

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

- (1) whether the federal securities laws were violated by defendants' acts as alleged herein;

- (2) whether the Company issued false and misleading financial statements during the Class Period;
- (3) whether defendants acted knowingly or recklessly in issuing false and misleading financial statements;
- (4) whether the market prices of the Company's securities during the Class Period were artificially inflated because of the defendants' conduct complained of herein; and
- (5) whether the members of the Class have sustained damage and, if so, what is the appropriate measure of damages.

22. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and the other members of the Class each sustained damages arising out of the defendants' wrongful conduct in violation of the federal securities laws as alleged herein.

23. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class action and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

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

**APPLICABILITY OF FRAUD ON THE MARKET  
DOCTRINE AND THE PRESUMPTION OF RELIANCE**

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

- (1) defendants made public misrepresentations or failed to disclose material facts during the Class Period;
- (2) the omissions and misrepresentations were material;
- (3) the securities of the Company traded in an open and efficient market;
- (4) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- (5) plaintiff and the other members of the Class purchased Medi-Hut stock between the time the defendants failed to disclose or misrepresented material facts and the time the true facts were disclosed, without knowledge of the omitted or misrepresented facts.

26. Based upon the foregoing, plaintiff and the other members of the Class are entitled to the presumption of reliance upon the integrity of the market.

**NO STATUTORY SAFE HARBOR**

27. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the false statements pleaded in this Complaint because none of the statements pleaded herein are "forward-looking" statements, nor were they identified as "forward-looking statements" when made. Nor did meaningful cautionary statements identifying important factors that could cause actual results to differ accompany those statement. To the extent that the statutory safe harbor does apply to any statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those statements was made, the speaker actually knew those forward-looking statement were false



and/or the statement was authorized and/or approved by an executive officer of MHUT who actually knew that the statements were false when made.

### **HISTORY OF THE COMPANY AND THE MEDI-HUT/LARVAL RELATIONSHIP**

28. MHUT was formed in 1982 by Defendant Joseph Sanpietro and Defendant Vincent Sanpietro as a distributor of pharmaceutical and healthcare products. MHUT sells brand name drugs and medical products, including safety syringes, condoms, alcohol preps, hot packs and cold packs, to medical supply wholesalers.

29. During the Company's early years, approximately two-thirds of its sales were to a single customer, Rugby Laboratories ("Rugby"), in Norcross, Georgia which employed, among other persons, Lawrence Marasco.

30. In 1992, Marasco left Rugby to start his own company, Vallar Consulting Corp. ("Vallar"). Vallar was also a medical supply wholesaler and became one of Medi-Hut's "major customers."

31. In January 1998, MHUT entered into a merger agreement with Indwest, Inc. ("Indwest"), a penny-stock company incorporated in Utah. Pursuant to the merger agreement and plan of reorganization, Indwest, the surviving company, changed its name to Medi-Hut. Indwest was a shell company and had no operations or assets immediately prior to the merger.

32. On April 4, 2000, Medi-Hut acquired its "customer" Vallar from Marasco in what the Company described in their 10-Q for the quarter ended April 30, 2000 as "an arm's length transaction." In exchange for Vallar's assets and receivables, Medi-Hut, rather than paying cash, issued 350,000 shares of Medi-Hut common stock to Marasco valued at \$1,340,500.

33. Marasco, in addition to receiving the stock, became employed by the Company as a Vice President of Sales and Marketing, a position which he currently holds with the Company.

34. Although Marasco had sold Vallar to Medi-Hut, he continued to own Larval, a separate medical supply wholesaler. Larval was Medi-Hut's largest customer in fiscal year 2001, accounting for 62% of Medi-Hut's total sales during that time. In the first quarter of 2002, Larval continued to account for at least 25% of MHUT's total sales.

**MEDI-HUT'S FALSE AND MISLEADING STATEMENTS DURING THE CLASS PERIOD**

35. The Class Period begins on April 4, 2000 following the Company's acquisition of Vallar, which greatly increased Medi-Hut's reported net sales. As a result of the acquisition, Vallar was folded into Medi-Hut and Marasco became an employee of Medi-Hut. However, the material fact that Marasco owned another company known as Larval in the same line of business as Vallar was not disclosed to the public. Larval would replace Vallar as a Medi-Hut customer.

36. On January 17, 2001, Medi-Hut filed with the SEC its form 10-K for the fiscal year ended October 31, 2000. In the 10-K, the Company reported net sales of \$8.13 million for fiscal year 2000, compared with net sales of \$4.75 million during fiscal year 1999. This filing assured the investing public that Medi-Hut's reported financial results were presented in conformity with GAAP.

37. Notwithstanding that the Company acquired Vallar on April 4, 2000, and that sales to the Marasco-owned Larval subsequent to this acquisition clearly qualified as related party transactions, Medi-Hut's 10-K for fiscal year 2000 did not disclose that a significant portion of the Company's revenues were generated by sales to a related party, rendering the results false and misleading. Indeed, the sole related transaction identified in the Company's 10-

K for fiscal year 2000 was as follows:

For the fiscal year 2000 and 1999, we paid \$23,302 and \$5,635, respectively, to Koenig, Russo & Associates LLC for the accounting services provided to us by Robert Russo, our Treasurer and Director. Mr. Russo is the Managing Member of Koenig, Russo & Associates LLC.

38. The material non-disclosures continued in 2001, as on January 10, 2002, Medi-Hut filed with the SEC its form 10-K for fiscal year ended October 31, 2001. In it the Company reported net sales of \$12.95 million, compared with \$8.13 million in sales during the previous year. This filing also assured the investing public that Medi-Hut's reported financial results were presented in conformity with GAAP. CEO Joseph Sanpietro stated on January 10, 2002 in a press release announcing these results, "As I reviewed the list of accomplishments, financial and otherwise, that the Company achieved during this past fiscal year, I was extremely impressed and deeply proud of the growth and progress of Medi-Hut. Our efforts will be resolute to continue generating significant increased value for our shareholders during the next fiscal year."

39. These financial results and pronouncements were false and misleading, as again the Company failed to disclose that a significant portion of its sales, 62% in fiscal year 2001, were to a related party. The only related party transactions concerned the provision of accounting services by a firm in which defendant Russo was a member, the provision of legal services by a firm in which defendant Aaron was a shareholder, and the hiring of defendant Simon from Rosenberg, Rich, Baker, Berman & Company, MHUT's auditors.

40. Immediately following the Company's positive pronouncements regarding its 2001 year end results, on January 15, 2002, CEO Sanpietro sold 100,000 MHUT shares for proceeds of \$500,000.

41. On January 16, 2002, facing rumors of improprieties, defendant Simon stated

“The Management of Medi-Hut reiterates its positive financial results and trends for the past FYE October 31, 2001. The Company is stronger than it has ever been and the prospects for FYE October 31, 2002 are brighter than ever. The contradictory statements made about the Company's financial results are disturbing. We believe the statements should be corrected immediately. The Company has taken steps to notify the proper regulatory authorities.”

42. This pronouncement was false and misleading, as again the Company failed to disclose that a significant portion of its sales, 62% in fiscal year 2001, were to a related party.

43. The Company continued to work feverishly to fight these allegations of improprieties in an effort to conceal their fraudulent scheme. On January 22, 2002, CEO Sanpietro stated in a press release, “The Company is strong and its future looks brighter than ever. We are still in some dismay over why or how this misinformation was created. Since these reports have surfaced I have received a number of disturbing phone calls from stockholders concerned about the misinformation, and I felt it was my responsibility as CEO to take the necessary steps to correct it. This call is one of the steps taken by Medi-Hut to set the record straight with the financial community and investing public.”

44. This pronouncement was false and misleading, as again the Company failed to disclose that a significant portion of its sales, 62% in fiscal year 2001, were to a related party.

45. On January 28, 2002, the Company announced that it had retained Grant, Thornton, LLP as its auditor. CEO Sanpietro stated in a press release, “We are so pleased to have a firm of Grant Thornton's stature as our independent auditors. This hiring further illustrates the emerging growth of Medi-Hut in the medical supplies industry and financial markets.”

46. On February 1, 2002, during the trading day, the Company issued a press release in

which CEO Sanpietro announced that the Company anticipated that it would meet its first quarter 2002 sales targets of \$10-12 million and its yearly revenue target of \$60 million. The press release also revealed that preliminary results for the first quarter 2002 indicated that 50-60% of MHUT's pharmaceutical division and sundry products were wholesaled to three (3) customers: Anda, Kinray, and 824 Drug. Kinray and 824 Drug had been named as MHUT's only suppliers of name brand drugs in MHUT's form 10-K for the fiscal year ended October 31, 2001.

47. On the strength of the bright, but clearly incomplete, pictures painted by the Company regarding purported increases in its revenues and the seeming improvements in its overall financial performance during the Class Period, the Company's shares had climbed from approximately \$3.00 per share in April 2000 to a high of near \$14.00 per share in December 2001.

### **THE TRUTH EMERGES**

48. On February 4, 2002, it was revealed in a New York Post article written by Christopher Byron that Medi-Hut Vice President Lawrence Marasco has a controlling ownership interest in the Company's largest customer, Larval, which accounted for approximately 62% of MHUT revenues in 2001. The article stated in relevant part:

Medi-Hut is just a hiccup in the grand sweep of things on Wall Street - a company with, at latest reckoning, barely \$12 million in annual revenues, if even that.

But investors have been beguiled by Medi-Hut's dramatically growing sales, which have soared more than 15-fold in the last three years.

That in turn has lifted Medi-Hut's stock price from pennies per share three years ago to a post-Christmas peak of nearly \$14, creating a more than \$200 million market cap for the company.

Now the stock has begun precipitously to weaken as doubts about its financials have begun to spread.

But for many investors it may already be too late to escape without big losses.

Medi-Hut is run by a fellow named Joe Sanpietro and his brother Vince, who together started the firm back in 1982 to sell syringes, condoms and other healthcare type products in the wholesale trade.

Two-thirds of their business went to a single customer, Rugby Laboratories, in Norcross, Ga., which employed a fellow named Larry Marasco.

In 1992, Marasco started a business of his own called Vallar Consulting Corp., which thereafter became a customer for Joe and Vince, whose total Medi-Hut revenues for 1998 amounted to less than \$780,000.

Most of the business came from the sale of Korean-made condoms, and most of the rest from syringes and alcohol swabs. Not much of a business.

But in 1998 things began to change.

As the stock market soared higher and higher in the final blow-out phase of the 1990s bull market, Joe and Vince exchanged their company for a 39 percent stake in a defunct Utah penny-stock company.

In this way, Medi-Hut became a publicly traded stock company without the expense or bother of going through an actual IPO.

The brothers next took 350,000 of those Medi-Hut shares and swapped them, in April of 1998, for 100 percent of Larry Marasco's Vallar Consulting outfit, and folded it into Medi-Hut.

In the process, Marasco became a Medi-Hut vice

president.

Meanwhile, Medi-Hut's revenues began to soar, and Larry Marasco may have played an undisclosed role.

**Though he had sold Vallar Consulting to Medi-Hut, Marasco owned a separate, sound-alike outfit by the name of Larval Corp. that was in the same line of work as Vallar had been.**

**There is some dispute over whether Marasco continued to own Larval after he sold the sound-alike Vallar, but there is no question from Medi-Hut's own financials that Larval wound up replacing Vallar as a Medi-Hut customer.**

According to Medi-Hut's latest audited financial report, filed just last month on Jan. 10, Larval Corp. accounted in 2001 for 62 percent of Medi-Hut's revenues.

**But is Marasco, who continues to be a Medi-Hut employee, also the head of Larval?**

**If so, Medi-Hut's sales to Larval would have constituted a "related party transaction," and should have been disclosed in Medi-Hut's financials.**

**But no such disclosure appears in the financials, even though the business records of the Dunn & Bradstreet reporting agency - an accepted and authoritative source of business information on small, privately held companies such as Larval - lists Marasco as Larval's current president.**

**The D&B file gives Larval's only known business address as a 1,050-square-foot storage locker in an industrial park in Farmingdale, Long Island.**

I called Medi-Hut's offices in Lakewood, N.J., to ask for a comment about all this funny business, and a man named Lawrence Simon, Medi-Hut's chief

financial officer, said it was news to him that Marasco was the man behind Larval.

Later, Simon sent a letter stating that the Dun & Bradstreet report is "in need of an update" and Marasco "relinquished his ownership and position as an officer with Larval Corp. a few years ago. Therefore, there is no relationship to disclose."

**Yet Dun & Bradstreet's current "Business Information Report" on Larval Corp. contains an entry that reads, "On June 21, 2001, Larry Marasco, pres., deferred financial statement. He submitted the following partial estimates dated June 21, 2001: projected annual sales are \$3,500,000."**

So let's sum up: The principal customer of a Nasdaq-traded company with a \$200 million market cap turns out to be a 1,050-square foot storage locker that may be secretly leased by one of the company's own employees? Sounds good to me. So is Medi-hut on the square?

Maybe Medi-Hut is on the square, and maybe it isn't.

But I - for one - would certainly feel better about handing over my money for some of its stock if I knew someone at the SEC - indeed, anyone - was bothering even to read the financials of public companies before waving them past the metal detectors on the way to the capital trough of Wall Street.

Yet I'm not holding my breath for any answers, and you shouldn't either - lest you turn blue...

49. The investing public, recognizing that a majority of the Company's 2001 sales were to a heretofore undisclosed related party, and that Medi-Hut's 2001 revenues and financial performance were therefore overstated as a result, reacted swiftly and severely. Savvy investors had already begun to question the fact that Kinray and 824 Drug had been named as MHUT's



only suppliers of name brand drugs in MHUT's form 10-K for the fiscal year ended October 31, 2001, yet the preliminary results for the first quarter 2002 indicated that 50-60% of MHUT's combined pharmaceutical division and sundry products were wholesaled to Kinray and 824 Drug, along with Anda.

50. By the close of business on February 4, 2002, shares of Medi-Hut had lost approximately 51% percent of their value, falling \$3.41 from \$6.70 per share to \$3.29 per share in trading volume of 3,140,000, 16 times the Company's three-month trading average.

51. Analysts Metro Trading, Inc. questioned the Company's financial practices on February 8, 2002:

**In a January 2002 phone call to CFO Larry Simon, we asked about any "ties" or "conflicts of interest" with any Medi-Hut management and present suppliers or customers. Mr. Simon assured us there were none, and our notes indicate that Mr. Simon confirmed that Larval Corporation represented 62% of Medi-Hut sales and receivables. In a Feb. 8, 2002, article in the Asbury Park Press, Mr. Simon was quoted as saying "Larval now accounts for less than 25% of the company's sales."**

Due to a Feb. 4, 2002, New York Post article, Medi-Hut's Vice President of Marketing Larry Marasco's role and certain conflicts were brought into question. On Feb. 4, 2002, Medi-Hut issued a press release stating, "Presently, the company is investigating the circumstances in an attempt to clarify the relationship between Larry Marasco and Larval." In our opinion, this insinuates they were not aware of any current relation.

On Feb. 7, 2002, Medi-Hut confirmed a current relationship exists with Larval and Mr. Marasco and also provided additional insight in its press release, which states, "Medi-Hut officially

acquired Mr. Marasco's company, Vallar Consulting, in April of 2000, at which time Mr. Marasco became an employee of Medi-Hut. His responsibility included the acquisition of new medical products and distribution channels for Medi-Hut. Shortly after the acquisition of Mr. Marasco's company, he transferred his ownership interest in Larval. As part of his understanding with Medi-Hut, Mr. Marasco was allowed to continue to work as an outside sales broker for Larval with medical products unrelated to Medi-Hut's products. A practice not unusual in the medical supply business."

Medi-Hut went on to state, "Mr. Marasco received a monthly salary from Medi-Hut and received other outside income, some of which was derived from commissioned sales of other products through Larval."

**This appears to be, at least to us, an admission that back in April of 2000 or soon thereafter, Medi-Hut management had knowledge of the current Larval relation. If so, what was there to investigate on Feb. 4, 2002? If not, then why wasn't this relation explained and understood by the company during the due diligence process involving the acquisition of Vallar?**

52. The investing public's discomfort was further magnified on February 19, 2002, when the Company announced that, effective February 8, 2002, Grant Thornton LLP had resigned its position as Medi-Hut's independent auditors after only two weeks. Grant Thornton served as the Company's auditors from January 24, 2002 through February 8, 2002, a mere two weeks. No reason was given for the termination of the relationship.

#### **MEDI-HUT'S FAILURE TO DISCLOSE RELATED PARTY TRANSACTIONS**

53. By virtue of the facts set forth above, Larval was a "related party" to Medi-Hut as that term is defined by Financial Accounting Standards Board ("FASB") No. 57.

54. FASB No. 57 defines a related party as follows:

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 transacting parties might be prevented from fully pursuing its own separate interests. Another party also is a related party if it can significantly influence the management or 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.

55. Because Larval, Medi-Hut's largest customer by far, was owned and controlled by Marasco, a MHUT vice president, it is clear that MHUT could "significantly influence [Larval] to an extent that [Larval] might be prevented from fully pursuing its own separate interests." Accordingly, GAAP required that Medi-Hut treat Larval as a related party during the Class Period, and disclose the relationship.

56. Medi-Hut, by not reporting the true nature of the Company's relationship with Larval, failed to disclose that its financial statements filed with the SEC throughout the Class Period were not prepared in accordance with GAAP, and in fact, constituted a substantial departure from GAAP.

57. According to GAAP (FASB No. 57):

Reliability of financial information involves ‘assurance that accounting measures represent what they purport to represent.’ Without disclosure to the contrary, there is a general presumption that transactions reflected in a financial statement have been consummated on an arms-length basis between independent parties. However, that presumption is not justified when related party transactions exist because the requisite conditions of competitive, free-market dealings may not exist. Because it is possible for related party transactions to be arranged to obtain certain results desired by the parties, the resulting accounting measures may not represent what they usually would be expected to represent.

FASB No. 57 further provides:

Information about transactions with related parties is useful to users of financial statements in attempting to compare an enterprise's results of operations and financial position with those of prior periods and with those of other enterprises. It helps them to detect and explain possible differences.

58. Because of this, GAAP (FASB No. 57) requires that:

[I]nformation about transactions with related parties that would make a difference in decision making should be disclosed so that users of the financial statements can evaluate their significance.

59. As FASB No. 57 notes, "as part of Accounting Series Release No. 280,

General Revisions of Regulation S-X, the Securities and Exchange Commission

integrated the disclosure requirements . . . pertaining to related party transactions into

Regulation S-X." In addition, GAAP (FASB No. 57) mandates that “financial statements

shall include disclosures of material related party transactions” and that disclosures

“shall” include:

- (a) The nature of relationship(s) involved;
- (2) A description of the transactions, including transactions in which no amounts or nominal amounts were ascribed, for each of the periods for which income statements were presented, and such other information deemed necessary to an understanding of the effects of the transactions on the financial statements;
- (3) The dollar amounts of transactions for each of the periods for which income statements are presented and the effects of any change

in the method of establishing the terms from that used in the preceding period; and

- (4) Amounts due from or to related parties as of the date of each balance sheet presented and, if not otherwise apparent, the terms and the manner of settlement.

60. In contravention of the provisions of GAAP, MHUT's financial statements filed in connection with the Company's 10-Qs and 10-Ks filed with the SEC during the Class Period were devoid of disclosures concerning the nature of the Company's business transactions with Larval and the control relationship detailed above.

61. The disclosures that are required by GAAP are intended to clarify the investment community's understanding of the operations and performance of the Company, and to keep the investing public fully and fairly informed. As stated by the SEC in the Accounting Series Release No. 173: "it is important that the overall impression created by the financial statements be consistent with the business realities of the company's financial position and operations..." In this regard, GAAP (FASB No. 57) requires full disclosure of relevant aspects of related party transactions and requires accounting for substance over form.

62. As alleged herein, transactions between MHUT and Larval, clearly related party transactions, were arranged to obtain certain results desired by the related parties. In accounting for these transactions, the resulting accounting measures did not represent what they usually would be expected to represent because the economic and substantive nature of the transactions was ignored for financial accounting purposes. Consequently, the overall impression created by the financial statements was inconsistent with the business realities of the Company's financial position and operations, and created a misleading picture for the public. Accordingly, the financial statements of Medi-Hut included in the quarterly and annual reports filed with the SEC during the Class Period were not presented fairly or in conformity with GAAP, and were

therefore false and misleading.

63. The SEC requires that publicly-traded companies present their financial statements in accordance with GAAP. 17 C.F.R. § 210.4-01(a)(1). Financial statements filed with the SEC which are not prepared in accordance with GAAP "will be presumed to be misleading or inaccurate, despite footnote or other disclosures, unless the Commission has otherwise provided." 17 C.F.R. § 210.4-01(a)(1).

64. The defendants violated the following GAAP guidelines, among others:

- (1) the principle that a conservative approach be taken, minimizing the amount of income reported (See Statement No. 4 of the Accounting Principles Board ("APB") at ¶¶ 28, 35, 171);
- (2) the principle that the financial information presented should be complete (See APB No. 4 at ¶¶ 28, 35, 88, 171);
- (3) the principle of fair presentation ("presents fairly") (See APB No. 4 at ¶¶ 109, 138, 189);
- (4) the principle of adequacy and fairness of disclosure (See APB No. 4 at ¶¶ 81, 106, 189, 199);
- (5) the principle of materiality concerning information that is significant enough to affect evaluations or decisions (See APB No. 4 at ¶¶ 25, 128);
- (6) the principle that the substance of transactions rather than form should be reflected (See APB No. 4 at ¶¶ 25, 35, 127);
- (7) the principle that informed judgment based on background and knowledge should be applied (See APB No. 4 at ¶¶ 25, 35, 124, 173, 174);
- (8) the principle that the financial statements contain and disclose relevant,

understandable, and timely information for the economic decisions of the user (See APB No. 4 at ¶¶ 23, 88, 89, 92);

- (1) the principle that the financial statements provide reliable financial information about the enterprise for the economic decisions of the user (See APB No. 4 at ¶¶ 77, 78, 107, 108); and
- (10) the principle that transactions between related parties must be disclosed in accordance with FASB No. 57.

65. During the Class Period, MHUT materially misled the investing public, thereby inflating the price of MHUT's securities, by publicly issuing false and misleading financial statements and omitting material facts necessary to make MHUT's financial statements not false and misleading. Throughout the Class Period, each defendant knew or recklessly disregarded that MHUT's true sales and earnings were not as represented in the Company's SEC filings because, in order to generate the appearance of prospering performance and favorable financial results, defendants had to, and did, violate GAAP. As a result of these false and misleading statements, the Company's shares were traded at artificially inflated prices, causing damage to plaintiff and the other members of the Class when it was revealed that the Company's revenues were artificially inflated as a result of the undisclosed related party transactions.

## **SCIENTER ALLEGATIONS**

66. The facts alleged herein compel a strong inference that the Individual Defendants made materially false and misleading statements to the investing public with scienter. The Individual Defendants knew that the public statements issued or disseminated in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements as primary violators of the federal securities laws. Moreover, the Individual Defendants knowingly and/or recklessly caused Medi-Hut to engage in irregular accounting practices by failing to disclose related-party transactions, and in turn, caused Medi-Hut to report artificially inflated financial results.

67. The fraudulent scheme allowed CEO Sanpietro to sell 100,000 shares of MHUT common stock on January 15, 2002, for proceeds of \$500,000.

## **COUNT I**

### **VIOLATION OF SECTION 10(b) OF THE EXCHANGE ACT AND RULE 10b-5 BROUGHT AGAINST ALL DEFENDANTS**

68. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

69. During the Class Period, defendants directly engaged in a common plan, scheme, and unlawful course of conduct, pursuant to which the defendants knowingly or recklessly engaged in acts, transactions, practices, and courses of business which operated as a fraud and deceit upon plaintiff and the other members of the Class. Defendants made various deceptive and untrue statements of material facts, and omitted 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 the scheme, plan, and unlawful course of conduct was, among other things, to deceive the investing public, including plaintiff and the other members of the Class, and to induce plaintiff and the other members of the Class to purchase Medi-Hut common stock during the Class Period at artificially inflated prices.

70. During the Class Period, the defendants, pursuant to said scheme, plan, and unlawful course of conduct, knowingly and/or recklessly issued, caused to be issued, participated in the issuance of, the preparation and/or issuance of deceptive and materially false and misleading statements to the investing public as particularized above.

71. As a result of the defendants' dissemination of and/or failure to correct the false and misleading statements set forth above, the market price of MHUT common stock was artificially inflated during the Class Period. Unaware of the false and misleading nature of the statements described above and the deceptive and manipulative devices and contrivances employed by the defendants, plaintiff and the other members of the Class relied, to their detriment, on the integrity of the market price of the stock in purchasing Medi-Hut common stock. Had plaintiff and the other members of the Class known the truth, they would not have purchased Medi-Hut shares or would not have purchased them at the inflated prices that they did.

72. Plaintiff and the other members of the Class have suffered damages as a result of the wrongs herein alleged in an amount to be proved at trial.

73. By reason the foregoing, the defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder and are liable to plaintiff and the other members of the Class for damages which they suffered in connection with their purchases of Medi-Hut stock during the Class Period.

## COUNT II

### **VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT BROUGHT AGAINST THE INDIVIDUAL DEFENDANTS**

74. Plaintiff repeats and realleges each and every allegation contained in each of the foregoing paragraphs as if set forth fully herein.

75. The Individual Defendants acted as controlling persons of the Company within the meaning of section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and active participation in and/or awareness of the Company's day-to-day operations, and/or intimate knowledge of the Company's expansion plans and implementation thereof, each Individual Defendant had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements that plaintiff alleges are false and misleading. The Individual Defendants were provided with, or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged herein to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

76. In particular, the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, are presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

77. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to section 20(a) of the Exchange Act. As a direct and proximate result of the wrongful conduct, plaintiff and the other members of the Class suffered damages in connection

with their purchases of the Company's securities during the Class Period.

WHEREFORE, plaintiff, on her behalf and on behalf of the Class, respectfully requests that this Court:

A. Declare this action to be a proper class action and certify plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

B. Award monetary damages against all of the defendants, jointly and severally, in favor of plaintiff and the other members of the Class for all losses and damages suffered as a result of the wrongdoings alleged herein, including punitive damages where appropriate, together with interest thereon;

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

D. Grant plaintiff and the other members of the Class such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury.

Dated: March 27, 2002

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