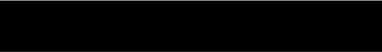


UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

 Individually  
and on Behalf of all Others Similarly  
Situating,

Plaintiff,

vs.

AVAYA, INC., DONALD K.  
PETERSON and GARRY K.  
McGUIRE, SR.,

Defendants.

---

) No.

) CLASS ACTION

) COMPLAINT FOR VIOLATIONS OF  
) FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

Plaintiff residing at 102 Salmon Isles, Greenacres, Florida, by and through his attorneys Lerach Coughlin Stoia Geller Rudman & Robbins LLP and Cohn Lifland Pearlman Herrmann & Knopf LLP, based upon the investigation of Plaintiff's counsel, which included a review of United States Securities and Exchange Commission ("SEC") filings by Avaya, Inc. ("Avaya" or the "Company"), as well as regulatory filings and reports, securities analysts reports and advisories about the Company, press releases and other public statements issued by the Company, and media reports about the Company, and based upon Plaintiff's belief that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery complains of the defendants as follows:

#### **NATURE OF THE ACTION**

1. This is a federal class action on behalf of purchasers of the common stock of Avaya between October 5, 2004 and April 19, 2005, inclusive (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act"). Defendant Avaya provides communication systems, applications and services for enterprises, including businesses, government agencies and other organizations.

#### **JURISDICTION AND VENUE**

2. The claims asserted herein arise under and pursuant §§10(b) and 20(a) of the Exchange Act [15 U.S.C. §§78j(b) and 78t(a)] and Rule 10b-5 promulgated thereunder by the SEC [17 C.F.R. §240.10b-5].

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1337, and §27 of the Exchange Act.

4. Venue is proper in this District pursuant to §27 of the Exchange Act and 28 U.S.C. §1391(b). Many of the acts charged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this District and Avaya conducts business in this District.

5. In connection with the acts alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

6. Plaintiff, [REDACTED] as set forth in the accompanying certification and incorporated by reference herein, purchased the common stock of Avaya at artificially inflated prices during the Class Period and has been damaged thereby.

7. Defendant Avaya is a corporation organized under the laws of Delaware, with its principal executive offices located in Basking Ridge, New Jersey. Avaya provides communication systems, applications and services for enterprises, including businesses, government agencies and other organizations.

8. (a) Defendant Donald K. Peterson (“Peterson”) was throughout the Class Period Avaya’s Chairman of the Board of Directors and Chief Executive

Officer. During the Class Period, defendant Peterson sold 100,000 Avaya shares for insider trading proceeds of \$1.4 million.

(b) Defendant Garry K. McGuire, Sr. (“McGuire”) was throughout the Class Period Avaya’s Chief Financial Officer. During the Class Period, defendant McGuire sold 251,760 Avaya shares for insider trading proceeds of \$3.7 million.

(c) Defendants Peterson and McGuire are referred to herein as the “Individual Defendants.”

9. During the Class Period, the Individual Defendants, as senior executive officers and/or directors of Avaya were privy to confidential and proprietary information concerning Avaya, its operations, finances, financial condition and present and future business prospects. The Individual Defendants also had access to material adverse non-public information concerning Avaya, as discussed in detail below. Because of their positions with Avaya, the Individual Defendants had access to non-public information about its business, finances, products, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, attendance at management and board of directors meetings and committees thereof and via reports and other information provided to them in connection therewith. Because of their possession of such information, the Individual Defendants knew or recklessly disregarded that the adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public.

10. The Individual Defendants are liable as direct participants in, and as co-conspirators with respect to the wrongs complained of herein. In addition, the Individual Defendants, by reason of their status as senior executive officers and/or directors were “controlling persons” within the meaning of §20 of the Exchange Act and had the power and influence to cause the Company to engage in the unlawful conduct complained of herein. Because of their positions of control, the Individual Defendants were able to and did, directly or indirectly, control the conduct of Avaya’s business.

11. The Individual Defendants, because of their positions with the Company, controlled and/or possessed the authority to control the contents of its reports, press releases and presentations to securities analysts and through them, to the investing public. The Individual Defendants were provided with copies of the Company’s reports and press releases alleged herein to be misleading, prior to or shortly after their issuance and had the ability and opportunity to prevent their issuance or cause them to be corrected. Thus, the Individual Defendants had the opportunity to commit the fraudulent acts alleged herein.

12. As senior executive officers and/or directors and as controlling persons of a publicly-traded company whose common stock was, and is, registered with the SEC pursuant to the Exchange Act, and was traded on the New York Stock Exchange (“NYSE”) and governed by the federal securities laws, the Individual Defendants had a duty to disseminate promptly accurate and truthful information with respect to

Avaya's financial condition and performance, growth, operations, financial statements, business, products, markets, management, earnings and present and future business prospects, to correct any previously issued statements that had become materially misleading or untrue, so that the market price of Avaya's common stock would be based upon truthful and accurate information. The Individual Defendants misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

13. The Individual Defendants are liable as participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on purchasers of Avaya common stock by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Avaya's business, operations and management and the intrinsic value of Avaya common stock; (ii) enabled the Individual Defendants to sell over 350,000 shares of their personally held Avaya stock and thereby reap over \$5.1 million in gross proceeds; and (iii) caused plaintiff and members of the Class to purchase Avaya common stock at artificially inflated prices.

#### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all those who purchased the securities of Avaya between October 5, 2004 to April 19, 2005, inclusive, and who were damaged thereby (the "Class"). Excluded from the Class are

defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

15. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Avaya common shares were actively traded on the NYSE. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Avaya or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

16. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

17. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

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

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

(b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business and operations of Avaya; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

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

### **SUBSTANTIVE ALLEGATIONS**

20. The Class Period begins on October 5, 2004. On that date, Avaya announced that it had signed a definitive agreement to acquire Tenovis GmbH & Co. KG, "a major European provider of enterprise communications systems and services." Avaya would pay \$370 million in cash and assume about \$265 million in debt. The press release continued, in pertinent part, as follows:

Avaya said after the acquisition is completed, it expects international revenues will account for about 40 percent of its total revenues, up from 25 percent today. The company's European revenues

would nearly triple, growing from about 12 percent to about 30 percent of Avaya's global business. When fully integrated, Avaya expects Tenovis will add about one billion dollars in annual revenues to Avaya.

"The acquisition of Tenovis significantly enhances Avaya's size and scale in Europe, and is a major step in Avaya's plan to grow its business globally," said Don Peterson, chairman and CEO, Avaya. "Tenovis brings Avaya an integrated sales and services organization and an extensive customer base in Europe. We have complementary businesses and strategies including a common understanding of the unique communications needs of the enterprise customer. We have a shared commitment to provide customers with a strong services capability as well as delivering to them the wide range of business benefits inherent in IP telephony solutions and applications."

\* \* \*

Avaya noted the addition of Tenovis is the latest in a series of targeted moves designed to expand the company's portfolio and global reach. The company increased its small and mid-market distribution channels in the United States with the addition of Expanets earlier this year. Its recent acquisition of a majority interest in Tata Telecom Ltd., now renamed Avaya GlobalConnect Ltd., improves Avaya's market position in India and the Asia Pacific region. With the addition of Spectel, Inc., Avaya significantly strengthened its conferencing applications.

\* \* \*

***The company said the acquisition is expected to be accretive by \$0.07 per share in fiscal year 2006, the first full year of combined results. Excluding non-recurring costs and start-up expenses of \$0.05 per share, the acquisition is expected to be dilutive by \$0.03 per share in fiscal year 2005. The transaction's impact on fiscal year 2005 results will include approximately nine months of Tenovis results; if a full year's results were included then the transaction would be breakeven in fiscal year 2005 excluding the non-recurring costs and start up expenses.***

***"Consistent with our corporate development framework, Tenovis is expected to have a positive financial impact within a short period of***

*time, and we will continue to maintain our financial strength and flexibility,” said Garry K. McGuire, chief financial officer, Avaya.*

McGuire noted at the end of the third fiscal quarter, Avaya’s cash position was \$1.5 billion and its net cash position was \$939 million, while operating cash flow through the first nine months was \$350 million. He said Avaya intends to continue its de-leveraging strategy so that after the acquisition closes, its total debt would be at or below its debt levels today.

(Footnote omitted.)

21. On October 26, 2004, Avaya released its financial and operational results for the fourth quarter and fiscal year 2004 . The press release stated, in pertinent part, as follows:

“Avaya’s results this quarter cap a year of substantial accomplishment and progress,” said Don Peterson, chairman and CEO, Avaya. “We capitalized on our market leadership in IP telephony and delivered accelerating product sales growth through the year. The U.S. continues to lead the transition to IP telephony and in the fourth quarter we had double-digit product growth in this key market, both sequentially and compared to last year.

“Our international product sales grew at a double-digit rate compared to last year and we took major steps to continue this momentum. Our announcement earlier this month of the planned acquisition of Tenovis will greatly enhance our presence in Europe, making us number three in market share in the region. This move closely follows the addition of Tata Telecom, now Avaya GlobalConnect, which expands our market opportunity in Asia.”

\* \* \*

### **Highlights from Year**

Since the end of the last quarter, Avaya made a number of corporate and product portfolio announcements:

The company signed a definitive agreement to acquire Tenovis GmbH & Co. KG, a major European provider of enterprise communications systems and services, from affiliates of Kohlberg Kravis Roberts & Co. *After the acquisition is completed, Avaya expects its European revenues would nearly triple, growing from about 12 percent to about 30 percent of Avaya's global business. When fully integrated, Avaya expects Tenovis will add about one billion dollars to its annual revenues.*

22. On October 29, 2004, Avaya issued a press release in which it provided financial guidance for fiscal years 2005 and 2006. The press release stated, in pertinent part, as follows:

*Avaya said its operating margin goal for fiscal year 2005 is between 8.5 percent and 9 percent on fiscal 2005 revenues that are expected to grow by between 25 percent to 27 percent compared to fiscal year 2004 revenues of \$4.055 billion. Operating margin for fiscal year 2004 was 7.6 percent. Avaya said the expected growth in fiscal 2005 revenues will come from its existing businesses and the impact of its acquisition of Spectel, its majority interest in Avaya GlobalConnect (formerly Tata Telecom), and assuming a Jan. 1, 2005 close of its pending acquisition of Tenovis.*

For fiscal year 2006 the company has an operating margin goal of between 10 percent and 12 percent.

Avaya reiterated its existing balance sheet goals of maintaining a strong net cash position and keeping debt at a level no higher than its debt level prior to the planned acquisition of Tenovis. The company also said its longer-term goals of improving its credit rating to investment grade, opportunistically deleveraging its balance sheet and maintaining a cash position of approximately one billion dollars remain.

(Footnote omitted.)

23. On November 18, 2004, Avaya announced that it had completed its acquisition of Tenovis.

24. On January 25, 2005, Avaya released its financial and operational results for the first quarter of fiscal 2005. The press release stated, in pertinent part, as follows:

“We continue to improve our profitability with operating income rising 70 percent year-over-year,” said Don Peterson, chairman and CEO, Avaya. “We completed the Tenovis acquisition, shipped our five millionth IP telephony line and substantially reduced our debt. Our first quarter results position us to meet our goals for the year.”

*Avaya said its fiscal 2005 goals are to increase revenues between 25 and 27 percent compared to fiscal 2004 revenues of \$4.055 billion, grow operating income by 40 percent compared to \$311 million in fiscal 2004 and raise annualized operating margin to between 8.5 and 9 percent compared to 7.7 percent last year.*

(Footnote omitted.)

25. On February 24, 2005, Avaya announced that it had completed “a new \$400 million five-year unsecured revolving credit facility. The new facility replaces Avaya’s existing \$250 million secured credit facility, which would have expired in September 2005. The new facility was over-subscribed as commitments exceeded \$600 million.” The press release continued, in pertinent part, as follows:

“We appreciate the confidence and support from our banking partners as this facility provides flexibility for Avaya to continue executing its growth strategy,” said Garry K. McGuire, Chief Financial Officer and senior vice president, Corporate Development, Avaya. “The de-leveraging of our long-term debt, this new credit facility, and the removal of the bank group’s security interest are all key steps in Avaya’s long-stated financial strategy to restore its investment grade rating.”

26. The statements referenced above in ¶¶20-25 were each materially false and misleading when made because defendants failed to disclose and/or

misrepresented the following adverse facts, which were known to defendants, or recklessly disregarded by them, at all relevant times:

(a) the cost of the integration of Tenovis was much greater than represented and rather than being “accretive” to fiscal 2005 earnings or having a positive financial impact within a short period of time, the acquisition would, in fact, reduce Avaya’s earnings by at least \$.06 per share during fiscal 2005;

(b) Avaya’s changes in its delivery methods of products to market was creating severe disruptions in sales;

(c) Avaya was experiencing a dramatic reduction of demand in its U.S. market; and

(d) based on the foregoing, Avaya had no reasonable basis to project an increase in profits or an increase in revenues of 25-27% for fiscal 2005.

### **The Truth Begins to Emerge**

27. On April 19, 2005, Avaya shocked the investing public when it released its financial and operational results for the second quarter of fiscal 2005 and reported revenues and earnings far short of previous guidance and analyst expectations of earnings of \$0.17 a share on revenue of \$1.29 billion. The press release stated, in pertinent part, as follows:

Avaya Inc., a leading global provider of business communications software, systems and services, today reported income from continuing operations of \$36 million or seven cents per diluted share in the second fiscal quarter of 2005. These results include six cents of dilution related to the results of operations from the Tenovis acquisition. . . .

In the same quarter last year the company reported income from continuing operations of \$103 million or 22 cents per diluted share. Included in the \$103 million were one-time items that had a net favorable impact of \$63 million or 13 cents per diluted share....

Avaya's second fiscal quarter 2005 revenues increased 21 percent to \$1.222 billion compared to revenue of \$1.006 billion in the second fiscal quarter of 2004. The revenue increase reflected the impact of recent acquisitions and revenue growth outside of the United States. The company said U.S. product and services revenues declined year-over-year. Avaya's overall IP product sales rose nearly 30 percent year-over-year. Outside of the United States, IP product sales rose more than 50 percent compared to the year ago period.

"Although our performance this quarter was not up to our expectations, we're confident in the opportunity in IP telephony and our competitive advantage," said Don Peterson, chairman and CEO, Avaya. "Three key factors affected our overall performance: our implementation of a new go-to-market model in the United States, which has created some disruption affecting U. S. sales, the impact of the Tenovis integration and early signs of potential softness in the U.S. technology market. We will take actions to manage our business, including a tighter focus on cost control, to meet these challenges, improve our performance in the United States and build on our strength in other markets."

\* \* \*

### **Outlook For The Year**

Avaya said it expects its performance in the second half will improve with sequential increases in the third fiscal quarter in revenues and profitability and with revenue growth and profitability accelerating in the fourth fiscal quarter. However, the company believes it will not meet its previously stated goals for growing revenues, operating income and operating margin in fiscal 2005.

28. The investing public's reaction was swift and negative. One analyst at J.P. Morgan called the results "horrid" and cut its rating on the stock to "neutral" from

“overweight.” The stock fell more than 25% on April 20, 2005, the single biggest loser on the NYSE, on extremely heavy trading volume.

29. On April 19, 2005, *MarketWatch* issued an article entitled “Avaya’s income falls; issues warning.” The article stated in part:

Avaya fell well short of Wall Street’s forecast. The company was expected to earn 17 cents a share on revenue of \$1.29 billion, according to the consensus of analysts surveyed by Thomson First Call.

While the company predicted business would pick up in the second half of the fiscal year, Avaya said it no longer believes it can meet its prior financial forecast.

In January, the company projected that annual revenue would rise as much as 27 percent above 2004’s level to as high as \$5.14 million.

### **Undisclosed Adverse Information**

30. The market for Avaya common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Avaya’s common stock traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Avaya common stock relying upon the integrity of the market price of Avaya’s common stock and market information relating to Avaya, and have been damaged thereby.

31. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Avaya’s common stock, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants’ statements, as set forth herein, not false and misleading. Said statements

and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

32. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Avaya's business, prospects and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Avaya and its business, prospects and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times.

33. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing the Company's common stock at artificially inflated prices, thus causing the damages complained of herein.

#### **Additional Scienter Allegations**

34. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly

and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Avaya, their control over, and/or receipt and/or modification of Avaya allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Avaya, participated in the fraudulent scheme alleged herein.

35. Defendants were further motivated to engage in this course of conduct in order to (i) enter into a \$400 million unsecured revolving credit facility on more favorable terms than it would have had the truth been known; and (ii) enable the Individual Defendants to sell over 350,000 shares of their personally held Avaya stock and thereby reap over \$5 million in gross proceeds. The details of the Individual Defendants' stock sales are set forth in the chart below:

	Date	Shares	Price	Proceeds
<b>Garry K. McGuire</b>	11/1/2004	20,000	\$14.450	\$289,000
	11/3/2004	111,760	\$14.500	\$1,620,520
	12/15/2004	3,600	\$16.700	\$60,120
	12/15/2004	3,000	\$16.690	\$50,070
	12/15/2004	2,200	\$16.730	\$36,806
	12/15/2004	1,900	\$16.600	\$31,540
	12/15/2004	1,900	\$16.640	\$31,616
	12/15/2004	1,800	\$16.630	\$29,934
	12/15/2004	1,700	\$16.650	\$28,305
	12/15/2004	1,600	\$16.740	\$26,784
	12/15/2004	1,500	\$16.750	\$25,125
	12/15/2004	1,400	\$16.660	\$23,324
	12/15/2004	1,400	\$16.720	\$23,408
	12/15/2004	1,100	\$16.680	\$18,348
	12/15/2004	1,000	\$16.710	\$16,710
	12/15/2004	700	\$16.590	\$11,613
	12/15/2004	600	\$16.620	\$9,972
	12/15/2004	600	\$16.610	\$9,966

	12/15/2004	500	\$16.500	\$8,250
	12/15/2004	400	\$16.570	\$6,628
	12/15/2004	300	\$16.760	\$5,028
	12/15/2004	300	\$16.490	\$4,947
	12/15/2004	300	\$16.550	\$4,965
	12/15/2004	300	\$16.480	\$4,944
	12/15/2004	300	\$16.670	\$5,001
	12/15/2004	200	\$16.770	\$3,354
	12/15/2004	200	\$16.780	\$3,356
	12/15/2004	200	\$16.510	\$3,302
	12/15/2004	200	\$16.580	\$3,316
	12/15/2004	100	\$16.530	\$1,653
	12/15/2004	100	\$16.800	\$1,680
	12/15/2004	100	\$16.450	\$1,645
	12/15/2004	100	\$16.440	\$1,644
	12/15/2004	100	\$16.460	\$1,646
	12/15/2004	100	\$16.470	\$1,647
	12/15/2004	100	\$16.520	\$1,652
	12/15/2004	100	\$16.560	\$1,656
	1/3/2005	2,200	\$17.020	\$37,444
	1/3/2005	2,200	\$17.010	\$37,422
	1/3/2005	2,100	\$17.140	\$35,994
	1/3/2005	2,000	\$17.150	\$34,300
	1/3/2005	1,500	\$17.180	\$25,770
	1/3/2005	1,400	\$17.130	\$23,982
	1/3/2005	1,300	\$17.110	\$22,243
	1/3/2005	1,200	\$17.220	\$20,664
	1/3/2005	1,000	\$17.070	\$17,070
	1/3/2005	1,000	\$17.090	\$17,090
	1/3/2005	1,000	\$17.160	\$17,160
	1/3/2005	1,000	\$17.040	\$17,040
	1/3/2005	1,000	\$17.000	\$17,000
	1/3/2005	1,000	\$17.050	\$17,050
	1/3/2005	800	\$17.200	\$13,760
	1/3/2005	800	\$17.190	\$13,752
	1/3/2005	800	\$17.120	\$13,696
	1/3/2005	800	\$17.030	\$13,624
	1/3/2005	700	\$17.170	\$12,019
	1/3/2005	600	\$16.990	\$10,194
	1/3/2005	500	\$17.290	\$8,645
	1/3/2005	500	\$17.100	\$8,550
	1/3/2005	400	\$17.080	\$6,832
	1/3/2005	400	\$17.350	\$6,940
	1/3/2005	400	\$17.340	\$6,936
	1/3/2005	400	\$16.960	\$6,784
	1/3/2005	300	\$17.330	\$5,199
	1/3/2005	300	\$17.360	\$5,208
	1/3/2005	300	\$17.270	\$5,181
	1/3/2005	300	\$17.210	\$5,163
	1/3/2005	300	\$16.980	\$5,094

	1/3/2005	200	\$17.300	\$3,460
	1/3/2005	200	\$17.370	\$3,474
	1/3/2005	200	\$17.280	\$3,456
	1/3/2005	200	\$16.970	\$3,394
	1/3/2005	100	\$17.320	\$1,732
	1/3/2005	100	\$17.260	\$1,726
	1/3/2005	100	\$17.230	\$1,723
	1/3/2005	100	\$17.250	\$1,725
	1/3/2005	100	\$17.240	\$1,724
	1/3/2005	100	\$17.060	\$1,706
	1/3/2005	100	\$16.930	\$1,693
	2/1/2005	30,000	\$14.300	\$429,000
	3/1/2005	30,000	\$14.000	\$420,000
<b>Total</b>		251,760		\$3,772,094
<b>Donald K. Peterson</b>	11/1/2004	50,000	\$14.200	\$710,000
	2/4/2005	50,000	\$14.130	\$706,500
<b>Total</b>		100,000		\$1,416,500
<b>Grand Total</b>		<b>351,760</b>		<b>\$5,188,594</b>

**Applicability of Presumption of Reliance:  
Fraud on the Market Doctrine**

36. At all relevant times, the market for Avaya stock was an efficient market for the following reasons, among others:

(a) Avaya's stock met the requirements for listing, and was listed and actively traded on the NYSE, a highly efficient and automated market;

(b) As a regulated issuer, Avaya filed periodic public reports with the SEC and the NYSE;

(c) Avaya regularly communicated with public investors via established market communication mechanisms, including through regular disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

(d) Avaya was followed by several securities analysts employed by major brokerage firms who wrote reports, which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

37. As a result of the foregoing, the market for Avaya's common stock promptly digested current information regarding Avaya from all publicly available sources and reflected such information in Avaya's stock price. Under these circumstances, all purchasers of Avaya's common stock during the Class Period suffered similar injury through their purchase of Avaya's stock at artificially inflated prices and a presumption of reliance applies.

#### **NO SAFE HARBOR**

38. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, 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 does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular

forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Avaya who knew that those statements were false when made.

### **LOSS CAUSATION/ECONOMIC LOSS**

39. During the Class Period, as detailed herein, defendants engaged in a scheme to deceive the market and a course of conduct that artificially inflated Avaya's stock price and operated as a fraud or deceit on Class Period purchasers of Avaya stock by misrepresenting the Company's business success and future business prospects. Defendants achieved this façade of success, growth and strong future business prospects by blatantly misrepresenting the Company's business prospects. Later, however, when defendants' prior misrepresentations and fraudulent conduct were disclosed and became apparent to the market, Avaya stock fell precipitously as the prior artificial inflation came out of Avaya's stock price. As a result of their purchases of Avaya stock during the Class Period, plaintiff and other members of the Class suffered economic loss, *i.e.*, damages, under the federal securities laws.

40. During the Class Period, the defendants presented a misleading picture of Avaya's business and prospects. Thus, instead of truthfully disclosing during the Class Period that Avaya's business was not as healthy as represented, defendants caused Avaya to falsely represent demand from customers and forecasted earnings. During the Class Period, defendants repeatedly emphasized Avaya's successful integration of Tenovis.

41. These false claims of strong future results and the successful integration of Tenovis caused and maintained the artificial inflation in Avaya's stock price throughout the Class Period and until the truth was revealed to the market.

42. Defendants' false and misleading statements had the intended effect and caused Avaya stock to trade at artificially inflated levels throughout the Class Period, reaching as high as \$17.73 per share.

43. On April 19, 2005, defendants were forced to publicly disclose that: (1) Avaya's "go-to-market" model had disrupted its sales; (2) its fiscal 2005 results would be worse than prior representations; and (3) the integration of Tenovis had not been nearly as successful as prior representations. These public revelations indicated that Avaya's fiscal 2005 financial results would be much worse than prior representations, that Avaya had failed to achieve the operational efficiencies represented through Tenovis and thus the Company's prospects for business success and earnings growth for fiscal 2005 and beyond were severely diminished. As investors and the market became aware that Avaya's actual business prospects were poorer than represented, which had been obfuscated by defendants, the prior artificial inflation came out of Avaya's stock price, damaging investors.

44. As a direct result of defendants' admissions and the public revelations regarding the truth about Avaya's previous representations and its actual business prospects going forward, Avaya's stock price plummeted 25%, on unusually high volume, falling from \$10.69 on April 19, 2005 to \$8.01 per share on April 20, 2005, a

one day drop of \$2.68 per share. This drop removed the inflation from Avaya's stock price, causing real economic loss to investors who had purchased the stock during the Class Period. In sum, as the truth about defendants' fraud and Avaya's business performance was revealed, the Company's stock price plummeted, the artificial inflation came out of the stock and plaintiff and other members of the Class were damaged, suffering economic losses of up to \$2.68 per share.

45. The 25% decline in Avaya's stock price at the end of the Class Period was a direct result of the nature and extent of defendants' fraud finally being revealed to investors and the market. The timing and magnitude of Avaya's stock price declines negate any inference that the loss suffered by plaintiff and other Class members was caused by changed market conditions, macroeconomic or industry factors or Company-specific facts unrelated to the defendants' fraudulent conduct. During the same period in which Avaya's stock price fell 25% as a result of defendants' fraud being revealed, the Standard & Poor's 500 securities index was flat. The economic loss, *i.e.*, damages, suffered by plaintiff and other members of the Class was a direct result of defendants' fraudulent scheme to artificially inflate Avaya's stock price and the subsequent significant decline in the value of Avaya's stock when defendants' prior misrepresentations and other fraudulent conduct was revealed.

## COUNT I

### **Violation of Section 10(b) of the Exchange Act and Rule 10b-5 Promulgated Thereunder Against All Defendants**

46. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

47. During the Class Period, Avaya and the Individual Defendants, and each of them, carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (a) deceive the investing public, including plaintiff and other Class members, as alleged herein; (b) artificially inflate and maintain the market price of Avaya common stock; and (c) cause plaintiff and other members of the Class to purchase Avaya common stock at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

48. Defendants: (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements made not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain an artificially high market price for Avaya's common stock in violation of §10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the

wrongful and illegal conduct charged herein or as controlling persons as alleged below.

49. In addition to the duties of full disclosure imposed on defendants as a result of their making of affirmative statements and reports, or participation in the making of affirmative statements and reports to the investing public, defendants had a duty to promptly disseminate truthful information that would be material to investors in compliance with the integrated disclosure provisions of the SEC as embodied in SEC Regulation S-X (17 C.F.R. §210.01, *et seq.*) and Regulation S-K (17 C.F.R. §229.10, *et seq.*) and other SEC regulations, including accurate and truthful information with respect to the Company's operations, financial condition and earnings so that the market price of the Company's stock would be based on truthful, complete and accurate information.

50. Avaya and the Individual Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the business, operations and future prospects of Avaya as specified herein.

51. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Avaya's value and performance and continued substantial growth, which included the

making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Avaya and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Avaya common stock during the Class Period.

52. The Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (a) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period; (b) the Individual Defendants were privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; and (c) the Individual Defendants were aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

53. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Avaya's operating condition and future business prospects from the

investing public and supporting the artificially inflated price of its stock. As demonstrated by defendants' overstatements and misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

54. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Avaya common stock was artificially inflated during the Class Period. In ignorance of the fact that the market price of Avaya common stock was artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trade, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during the Class Period, plaintiff and the other members of the Class acquired Avaya common stock during the Class Period at artificially high prices and were damaged thereby.

55. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known of the true financial condition and business prospects of Avaya, which were not disclosed by

defendants, plaintiff and other members of the Class would not have purchased or otherwise acquired their Avaya common stock, or, if they had acquired such stock during the Class Period, they would not have done so at the artificially inflated price which they paid.

56. By virtue of the foregoing, defendants have violated §10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

57. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's common stock during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of the Exchange Act Against All Defendants**

58. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

59. The Individual Defendants acted as controlling persons of Avaya within the meaning of §20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants 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 which plaintiff contends 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 by plaintiff 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.

60. 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. The Company controlled the Individual Defendants and all of its employees.

61. As set forth above, Avaya and the Individual Defendants each violated §10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of Avaya's and the Individual Defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's common stock during the Class Period.

#### **PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating plaintiff as lead plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as lead counsel;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

D. Such equitable/injunctive or other and further relief as the Court may deem just and proper.

### **JURY TRIAL DEMANDED**

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury on all issues so triable.

DATED: April 29, 2005