

1 MILBERG WEISS BERSHAD
2 HYNES & LERACH LLP
3 WILLIAM S. LERACH (68581)
4 DARREN J. ROBBINS (168593)
5 401 B Street, Suite 1700
6 San Diego, CA 92101
7 Telephone: 619/231-1058
8 619/231-7423 (fax)

9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 COUCHMAN PARTNERS LP, On
14 Behalf of Itself and All Others Similarly
15 Situated,

16 Plaintiff,

17 vs.

18 L90, INC., JOHN C. BOHAN, and
19 THOMAS A. SEBASTIAN,

20 Defendants.

) No.

) CLASS ACTION

) COMPLAINT FOR VIOLATION OF
THE FEDERAL SECURITIES LAWS

) DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. This is a securities fraud class action against L90, Inc. ("L90" or the
3 "Company") and its senior insiders, on behalf of all persons who purchased the
4 common stock of L90 between July 26, 2001 and March 12, 2002, inclusive (the
5 "Class Period") for violation of the Securities Exchange Act of 1934 (the "1934 Act").

6 2. L90 is a provider of marketing services. The Company uses its
7 proprietary adMonitor technology and media expertise to provide companies with
8 turnkey solutions to close the marketing circle by helping them build brand, acquire
9 new customers, increase traffic, drive sales and grow customer relationships.

10 3. As part of their effort to boost the price of L90 stock, defendants
11 misrepresented L90's true prospects in an effort to conceal L90's improper acts until
12 they were able to conceal their fraud by selling the Company to a third party prior to
13 filing the Company's 10-K (due March 31, 2002). In order to overstate revenues and
14 assets in its second and third quarters of 2001, L90 violated Generally Accepted
15 Accounting Principles ("GAAP") and SEC rules by engaging in improper "roundtrip"
16 transactions with HomeStore.com and its customers. These transactions had the effect
17 of dramatically overstating revenues and assets.

18 4. On February 4, 2002, L90 issued a press release entitled, "L90 Reports
19 Regulatory Inquiries." The press release stated in part:

20 L90, Inc., an online media and direct marketing company, today
21 announced that the Company has received notice from the Securities and
22 Exchange Commission that the Commission is conducting an
23 investigation into the Company. In connection with this investigation,
24 the Commission has issued the Company and one of its directors
25 subpoenas requesting documents related primarily to the Company's
26 financial records. The Company also has received a letter from the
27 Nasdaq Listing Investigations requesting specific information pursuant
28 to Marketplace Rule 4330(c).

1 The Company intends to fully comply with the Commission's
2 investigation and Nasdaq's information request. The Company's Board
3 of Directors has authorized the Audit Committee of the Board of
4 Directors to commence an independent investigation into these matters.
5 The Audit Committee has retained outside counsel to aid it in its
6 investigation.

7 On February 1, 2002, the Company's Vice President, Finance,
8 tendered her resignation from the Company, effective immediately. The
9 circumstances of this resignation will be considered during the Audit
10 Committee's investigation.

11 The Company previously announced its agreement to merge with
12 eUniverse, Inc. In light of these recent regulatory inquiries, the closing
13 date of the eUniverse merger, and the related special distribution to
14 stockholders, will likely be delayed past the originally anticipated
15 February 28, 2002 closing date. Consequently, the Company expects
16 that its special meeting of stockholders to approve the merger will be
17 delayed to a date not earlier than late March 2002. The mailing of the
18 Company's proxy statement in connection with the merger also will be
19 delayed.

20 5. On this news the Company's shares plummeted by more than 50% the
21 following trading day and continued to plummet further in the weeks that followed
22 and defendants revealed further incriminating facts.

23 6. On March 11, 2002, a release ran on *PR Newswire* about the merger with
24 eUniverse entitled "eUniverse and L90 Agree to Terminate Merger Agreement." The
25 release stated in part:

26 eUniverse, Inc., the leading interactive entertainment network, and L90
27 today announced they have agreed in principle to terminate their merger
28 agreement, subject to final terms to be negotiated by the parties, to

1 include among other things cash reimbursement by L90 to eUniverse of
2 certain expenses incurred relating to the proposed merger.

3 "We believe that based on the preliminary terms we have reached
4 with L90 governing the termination of the merger agreement, coupled
5 with the uncertainty of the conclusion of L90's pending SEC
6 investigation, it is in the best interest of our shareholders at this time to
7 terminate the existing merger agreement with L90," said Brad
8 Greenspan, Chairman and CEO of eUniverse[.] "Going forward,
9 eUniverse continues to evaluate other strong acquisition opportunities
10 and will also continue to explore the possibility of purchasing selected
11 assets of L90 in the future.["]

12 7. On March 12, 2002, L90 issued a press release entitled, "L90 Provides
13 Additional Information on Internal Investigation." The press release stated in part:

14 L90, Inc., an online media and direct marketing company, today
15 provided additional information on the status of the ongoing internal
16 investigation by the Company and the Audit Committee of its board of
17 directors in response to the previously announced Securities and
18 Exchange Commission investigation of the Company, and the request for
19 information from Nasdaq Listing Investigations.

20 As previously disclosed in a press release on February 4, 2002, the
21 documents and information requested by the Commission and Nasdaq
22 relate primarily to the Company's financial records. Given the nature of
23 these inquiries, the internal investigation is principally focused on two
24 transactions between the Company and homestore.com, Inc. in the
25 second and third quarters of 2001, any barter transactions involving the
26 Company, and any other transactions of a similar nature, to determine
27 whether the Company's revenues may have been overstated or misstated
28 during previous periods.

1 employees, attendance at management and Board of Directors' meetings and
2 committees thereof and via reports and other information provided to him in
3 connection therewith. During the Class Period, Bohan participated in the issuance of
4 false and/or misleading statements, including the preparation of the false and/or
5 misleading press releases and SEC filing detailed in ¶¶18-19 and 21.

6 14. Defendant Thomas A. Sebastian was, at all times relevant hereto, CFO
7 of L90. Because of Sebastian's position with the Company, he knew the adverse non-
8 public information about the business of L90, as well as its finances, markets and
9 present and future business prospects via access to internal corporate documents
10 (including L90's operating plans, departmentalized actual and projected quarterly
11 reports, and weekly reports comparing actual revenues to projected revenues and
12 actual expenses to budgeted expenses), conversations and connections with other
13 corporate officers and employees, attendance at management and Board of Directors'
14 meetings and committees thereof and via reports and other information provided to
15 him in connection therewith. During the Class Period, Sebastian participated in the
16 issuance of false and/or misleading statements, including the preparation of the false
17 and/or misleading press releases and SEC filing detailed in ¶¶18-19 and 21 and signed
18 the Company's 10-Qs, which claimed that the Company's financial statements
19 complied with GAAP.

20 15. By reason of their positions, the officers and/or directors identified above
21 in ¶¶13-14 (collectively the "Individual Defendants") had access to material inside
22 information about L90 and were able to control directly or indirectly the acts of L90
23 and the contents of the representations disseminated during the Class Period by or in
24 the name of L90.

25 **SCIENTER ALLEGATIONS**

26 16. The Individual Defendants, because of their positions of control and
27 authority as officers and/or directors of the Company were able to and did control the
28 contents of the various quarterly and annual financial reports, SEC filings, press

1 releases, and presentations to securities analysts pertaining to L90. Each Individual
2 Defendant was provided with copies of L90's press releases and SEC filings alleged
3 herein to be misleading prior to or shortly after their issuance and had the ability and
4 opportunity to prevent their issuance or to cause them to be corrected. Because of
5 their board membership and/or executive and managerial positions with L90, each
6 Individual Defendant had access to the adverse non-public information about L90's
7 business, finances, products, markets and present and future business prospects
8 particularized herein, via access to internal corporate documents, conversations or
9 connections with corporate officers and employees, attendance at L90's management
10 and/or Board of Directors' meetings and committees thereof and via reports and other
11 information provided to them in connection therewith. The Individual Defendants are
12 liable for the false statements pleaded herein at ¶¶18-19 and 21, as those statements
13 were each "group published" information, the result of the collective action of the
14 Individual Defendants.

15 17. Each of the defendants either knew or deliberately disregarded the fact
16 that the illegal acts and practices and misleading statements and omissions described
17 herein would adversely affect the integrity of the market for L90 stock and would
18 artificially inflate or maintain the price of that stock. Each of the defendants, by
19 acting as herein described, did so knowingly or in such a reckless manner as to
20 constitute a fraud and deceit upon plaintiff and members of the Class plaintiff seeks
21 to represent.

22 **DEFENDANTS' FRAUDULENT SCHEME**
23 **AND UNLAWFUL COURSE OF BUSINESS**

24 18. On July 26, 2001, the Company issued a press release entitled "L90
25 Reports 21% Sequential Increase in System Revenue; Company Adds 240 New
26 Marketing Clients and 64 New Publishing Clients During the Quarter." The press
27 release stated in part:

28 L90, Inc., the premier marketing, technology, and media company, today
announced its financial results for the second quarter of 2001. The

1 Company produced system revenue of \$12.7 million in the second
2 quarter, which represents a 20.6 percent increase over the first quarter of
3 2001. The Company's GAAP revenue was \$9.0 million for the second
4 quarter. L90 also generated \$5.4 million of gross profit in the second
5 quarter which reflects a gross margin of 60.4 percent of GAAP revenue
6 or 42.8 percent of system revenue.

7 "Despite the challenging economic climate, L90 continued to
8 execute on our business plan in the second quarter," said John Bohan,
9 CEO and President of L90. *"Our 21 percent growth was an
10 accomplishment in an environment where many companies
11 experienced negative growth."*

12 During the second quarter, L90 added 240 new marketing clients
13 to its portfolio, including large traditional companies such as Fischer
14 Price and Schering-Plough. L90 also added 64 new publishing clients
15 to the L90 Network during the quarter, including brand names such as
16 The Golf Channel and WomensForum. L90 has a very diversified
17 customer base with approximately 1,750 marketing clients and 600
18 publishing clients, none of which accounted for more than 5% of the
19 Company's revenue during the second quarter of 2001.

20 The adMonitor for Publishers division also had a strong quarter,
21 doubling the number of publishing clients that use L90's ad serving
22 technology on an outsourced basis. The ad serving volume of this
23 division nearly tripled during the quarter to 2.4 billion impressions per
24 month. "L90 continues to expand our customer base because of our
25 differentiated marketing technology and media solutions," said Bohan.
26 "We are very well positioned to take advantage of the further expansion
27 and evolution of this market and to continue to expand our market
28 share."

1 19. On October 25, 2001, L90 issued a press release entitled "L90 Reports
2 17% Sequential Increase in System Revenue." The press release stated in part:
3 L90, Inc., an online media and direct marketing company, today
4 announced its financial results for the third quarter of 2001, *which met*
5 *analyst expectations for both system revenue and EPS*, excluding non-
6 recurring charges. The Company produced system revenue of \$14.9
7 million in the third quarter, which represents a 17.4 percent increase over
8 the second quarter and a decline of 7.6% relative to the third quarter of
9 last year. The Company's GAAP revenue was \$8.4 million for the third
10 quarter. L90 also generated \$5.3 million of gross profit in the third
11 quarter, which reflects a gross margin of 62.7 percent of GAAP revenue
12 or 35.3 percent of system revenue.

13 On the bottom line, L90 produced a net loss of \$4.9 million or 20
14 cents per share excluding non-recurring items. The non-recurring items
15 were related to the company's recent sale of its technology assets and the
16 write down of its investment in a private company called Zondigo. L90
17 finished the quarter with \$60.9 million of cash, cash equivalents and
18 restricted cash.

19 "Despite the September 11 tragedy and the challenging economic
20 climate, L90 continued to execute on our business plan in the third
21 quarter," said John Bohan, CEO and President of L90. "While we are
22 not completely satisfied with the third quarter results, we believe that we
23 are making the necessary adjustments to streamline our cost structure
24 and enable us to focus on our core business of online media and direct
25 marketing."

26 During the third quarter, L90 added 242 new marketing clients to
27 its portfolio, including large traditional companies such as Lions Gate
28 Films and Mitsubishi. L90 has a very diversified customer base with

1 approximately 2,000 marketing clients, none of which accounted for
2 more than 5% of the Company's system revenue during the third quarter.

3 20. After the report of the Company's third quarter results, defendants were
4 scrambling to hide their fraud and in the wake of the Enron scandal became concerned
5 that the Company's auditor would refuse to endorse the Company's financials in its 10-
6 K (due March 31, 2002). Defendants sought to quickly have the Company acquired
7 on or before March 31, 2002, thus negating the need for the Company to file its 10-K.

8 21. On January 3, 2002, L90 and eUniverse issued a press release over *PR*
9 *Newswire* entitled "eUniverse to Acquire L90; Acquisition Significantly Strengthens
10 eUniverse's Business; L90 Shareholders To Receive Premium Above Stock Price."

11 The press release stated in part:

12 eUniverse, Inc., the leading interactive entertainment network, and L90,
13 Inc., an online media and direct marketing company, today announced
14 that they have entered into an Agreement and Plan of Merger pursuant
15 to which L90, Inc. will be acquired by eUniverse through a wholly
16 owned subsidiary of eUniverse in a cash merger.

17 "eUniverse has developed a diversified and profitable online
18 business model," said Brad Greenspan, chairman and CEO of eUniverse.
19 "Our acquisition of L90 will help solidify our existing operating base and
20 provide us with additional momentum to grow our business and enhance
21 shareholder value. eUniverse expects that the acquisition will add more
22 than \$2 million to its net income in the first 12 months after closing.
23 This incremental profit will be achieved through the synergies that are
24 realized by combining the operations of the two companies."

25 L90's CEO John Bohan added, "This merger will create a
26 company with a large presence in the online marketplace, a strong sales
27 and marketing team, and a very attractive platform for both publishing
28 and advertising clients. L90 will continue to service its publishing and

1 advertising clients as a distinct brand under the eUniverse umbrella.
2 Given that the two companies have similar cultures that value innovation
3 and hard work, we believe that the integration process will be very
4 smooth."

5 "With our experienced management team, I am confident that we
6 will be able to execute a smooth integration," continued Greenspan.
7 "Both companies have their headquarters in Los Angeles, which should
8 help facilitate the integration process. Additionally, we have received
9 customary voting agreements from holders of more than 35% of L90's
10 stock, voting in favor of the transaction."

11 L90 and eUniverse – Leveraging Company Strengths

12 As a result of the acquisition, eUniverse management sees the
13 following as just a few of the expected synergies:

14 – Increased Distribution for Products and Services

15 eUniverse, through L90, is expected to offer its growing suite of
16 proprietary Web products and services, such as Cupid Junction and
17 Fitness Heaven, to more than 100 Web sites in the L90 network.
18 Through the introduction of these products and services, the Web sites
19 in the L90 network are expected to benefit from incremental
20 monetization of their audiences.

21 – Raising the Profile of eUniverse With Advertisers

22 eUniverse will gain access to hundreds of new advertisers that spend
23 money monthly on the L90 network. L90's experienced sales force will
24 introduce eUniverse's Web and e-mail properties to these advertisers and
25 offer them the opportunity to reach a valuable demographic through
26 innovative marketing techniques.

27 – Strengthening L90 Through eUniverse Performance Expertise

28 eUniverse will introduce its performance advertising and direct

1 marketing based technology and tools to L90, allowing L90 to work with
2 an even broader base of clientele and at the same time increase its
3 effective pricing yield on advertising. This in turn is expected to greatly
4 benefit the Web site clientele it represents.

5 – Incorporating L90Direct into eUniverse's Profitable e-mail
6 Network

7 The addition of L90Direct, L90's offline direct marketing and list
8 management division, adds a new distribution channel for eUniverse's e-
9 mail network. L90Direct will allow eUniverse to introduce its e-mail
10 newsletters and online database services to the many direct marketers
11 and advertisers that work with L90Direct.

12 Structure of the Transaction

13 Under the terms of the agreement, unanimously approved by both
14 Boards of Directors, it is estimated that L90's shareholders would receive
15 between \$2.00 and \$2.20 per share in cash, which represents a premium
16 above recent stock price levels. The payment to L90's shareholders
17 would have two components. The first component would be a special
18 cash distribution by L90 currently estimated to be between \$1.80 and
19 \$2.00 per share to be paid immediately prior to the Merger. The amount
20 of the special distribution that the L90 shareholders would receive is to
21 be calculated using a pre-defined formula and will be based upon the
22 amount of cash held by L90 immediately prior to the Merger and the
23 amount of certain balance sheet items. Following the special
24 distribution, eUniverse would acquire all of the outstanding shares of
25 L90 at a price of approximately \$0.20 per share or \$5.1 million in the
26 aggregate. eUniverse's net cash outflow, however, would be \$2 million
27 because L90 would leave \$3.1 million in the company to satisfy certain
28 liabilities.

1 ***The Merger is subject to L90 shareholder approval and other***
2 ***customary closing conditions and is expected to close within***
3 ***approximately 90 days. Upon completion of the Merger, L90 will no***
4 ***longer be publicly traded.***

5 22. On March 11, 2002, a release ran on *PR Newswire* about the merger
6 entitled "eUniverse and L90 Agree to Terminate Merger Agreement." The press
7 release stated in part:

8 eUniverse, Inc., the leading interactive entertainment network, and L90
9 today announced they have agreed in principle to terminate their merger
10 agreement, subject to final terms to be negotiated by the parties, to
11 include among other things cash reimbursement by L90 to eUniverse of
12 certain expenses incurred relating to the proposed merger.

13 "We believe that based on the preliminary terms we have reached
14 with L90 governing the termination of the merger agreement, coupled
15 with the uncertainty of the conclusion of L90's pending SEC
16 investigation, it is in the best interest of our shareholders at this time to
17 terminate the existing merger agreement with L90," said Brad
18 Greenspan, Chairman and CEO of eUniverse[.] "Going forward,
19 eUniverse continues to evaluate other strong acquisition opportunities
20 and will also continue to explore the possibility of purchasing selected
21 assets of L90 in the future.["]

22 23. On March 12, 2002, L90 issued a press release entitled, "L90 Provides
23 Additional Information on Internal Investigation." The press release stated in part:

24 L90, Inc., an online media and direct marketing company, today
25 provided additional information on the status of the ongoing internal
26 investigation by the Company and the Audit Committee of its board of
27 directors in response to the previously announced Securities and
28

1 Exchange Commission investigation of the Company, and the request for
2 information from Nasdaq Listing Investigations.

3 As previously disclosed in a press release on February 4, 2002, the
4 documents and information requested by the Commission and Nasdaq
5 relate primarily to the Company's financial records. Given the nature of
6 these inquiries, the internal investigation is principally focused on two
7 transactions between the Company and homestore.com, Inc. in the
8 second and third quarters of 2001, any barter transactions involving the
9 Company, and any other transactions of a similar nature, to determine
10 whether the Company's revenues may have been overstated or misstated
11 during previous periods.

12 The special counsel to the Audit Committee of the Company's
13 board of directors has engaged a forensic accounting firm to assist in the
14 internal investigation. The Company estimates that the internal
15 investigation, which is progressing as rapidly as possible, will not be
16 completed until another two to three weeks. The Company continues to
17 fully cooperate with the Commission's investigation and Nasdaq's
18 information request.

19 **FALSE FINANCIAL STATEMENTS**

20 24. In order to overstate revenues in the second and third quarter of 2001,
21 L90 violated GAAP and SEC rules by engaging in improper "roundtrip" transactions.
22 These transactions had the effect of dramatically overstating revenues and assets.

23 25. The second and third quarter 2001 financial results and the statements
24 about them were false and misleading, as such financial information was not prepared
25 in conformity with GAAP, nor was the financial information a fair presentation of the
26 Company's operations due to the Company's improper accounting for its revenue in
27 violation of GAAP and SEC rules.
28

1 26. GAAP are those principles recognized by the accounting profession as
2 the conventions, rules and procedures necessary to define accepted accounting
3 practice at a particular time. Regulation S-X (17 C.F.R. §210.4-01(a) (1)) states that
4 financial statements filed with the SEC which are not prepared in compliance with
5 GAAP are presumed to be misleading and inaccurate. Regulation S-X requires that
6 interim financial statements must also comply with GAAP, with the exception that
7 interim financial statements need not include disclosure which would be duplicative
8 of disclosures accompanying annual financial statements. 17 C.F.R. §210.10-01(a).

9 27. Due to these accounting improprieties, the Company presented its
10 financial results and statements in a manner which violated GAAP, including the
11 following fundamental accounting principles:

12 (a) The principle that interim financial reporting should be based upon
13 the same accounting principles and practices used to prepare annual financial
14 statements was violated (APB No. 28, ¶10);

15 (b) The principle that financial reporting should provide information
16 that is useful to present and potential investors and creditors and other users in making
17 rational investment, credit and similar decisions was violated (FASB Statement of
18 Concepts No. 1, ¶34);

19 (c) The principle that financial reporting should provide information
20 about the economic resources of an enterprise, the claims to those resources, and
21 effects of transactions, events and circumstances that change resources and claims to
22 those resources was violated (FASB Statement of Concepts No. 1, ¶40);

23 (d) The principle that financial reporting should provide information
24 about how management of an enterprise has discharged its stewardship responsibility
25 to owners (stockholders) for the use of enterprise resources entrusted to it was
26 violated. To the extent that management offers securities of the enterprise to the
27 public, it voluntarily accepts wider responsibilities for accountability to prospective
28 investors and to the public in general (FASB Statement of Concepts No. 1, ¶50);

1 (e) The principle that financial reporting should provide information
2 about an enterprise's financial performance during a period was violated. Investors
3 and creditors often use information about the past to help in assessing the prospects
4 of an enterprise. Thus, although investment and credit decisions reflect investors'
5 expectations about future enterprise performance, those expectations are commonly
6 based at least partly on evaluations of past enterprise performance (FASB Statement
7 of Concepts No. 1, ¶42);

8 (f) The principle that financial reporting should be reliable in that it
9 represents what it purports to represent was violated. That information should be
10 reliable as well as relevant is a notion that is central to accounting (FASB Statement
11 of Concepts No. 2, ¶¶58-59);

12 (g) The principle of completeness, which means that nothing is left out
13 of the information that may be necessary to insure that it validly represents underlying
14 events and conditions was violated (FASB Statement of Concepts No. 2, ¶79); and

15 (h) The principle that conservatism be used as a prudent reaction to
16 uncertainty to try to ensure that uncertainties and risks inherent in business situations
17 are adequately considered was violated. The best way to avoid injury to investors is
18 to try to ensure that what is reported represents what it purports to represent (FASB
19 Statement of Concepts No. 2, ¶¶95, 97).

20 28. Further, the undisclosed adverse information concealed by defendants
21 during the Class Period is the type of information which, because of SEC regulations,
22 regulations of the national stock exchanges and customary business practice, is
23 expected by investors and securities analysts to be disclosed and is known by
24 corporate officials and their legal and financial advisors to be the type of information
25 which is expected to be and must be disclosed.

26 **CLASS ACTION ALLEGATIONS**

27 29. Plaintiff brings this lawsuit pursuant to Rule 23(a) and (b)(3) of the
28 Federal Rules of Civil Procedure, on behalf of itself and on behalf of a class of

1 persons who purchased L90 common stock from July 26, 2001 through March 12,
2 2002, inclusive (the "Class"). Excluded from the Class are defendants herein,
3 members of the immediate families of each of the defendants, any person, firm, trust,
4 corporation, officer, director or other individual or entity in which any defendant has
5 a controlling interest or which is related to or affiliated with any of the defendants, and
6 the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of
7 any such excluded party.

8 30. This action is properly maintainable as a class action for the following
9 reasons:

10 (a) The Class is so numerous that joinder of all Class members is
11 impracticable. As of November 6, 2001, L90 had approximately 24.9 million shares
12 outstanding. Members of the Class are scattered throughout the United States.

13 (b) There are questions of law and fact which are common to members
14 of the Class and which predominate over any questions affecting only individual
15 members. The common questions include, *inter alia*, the following:

16 (i) Whether the defendants' acts as alleged herein violated the
17 federal securities laws;

18 (ii) Whether defendants participated in and pursued the common
19 course of conduct complained of herein;

20 (iii) Whether documents, SEC filings, press releases and other
21 statements disseminated to the investing public and L90's common stockholders
22 during the Class Period misrepresented material facts about the operations, financial
23 condition and earnings of L90;

24 (iv) Whether the market price of L90 stock during the Class
25 Period was artificially inflated due to material misrepresentations and the failure to
26 correct the material misrepresentations complained of herein; and

27 (v) To what extent the members of the Class have sustained
28 damages and the proper measure of damages.

1 (c) Plaintiff's claims are typical of the claims of other members of the
2 Class and plaintiff has no interests that are adverse or antagonistic to the interests of
3 the Class.

4 (d) Plaintiff is committed to the vigorous prosecution of this action
5 and has retained competent counsel experienced in litigation of this nature.
6 Accordingly, plaintiff is an adequate representative of the Class and will fairly and
7 adequately protect the interests of the Class.

8 (e) Plaintiff anticipates that there will not be any difficulty in the
9 management of this litigation as a class action.

10 31. For the reasons stated herein, a class action is superior to other available
11 methods for the fair and efficient adjudication of this action and the claims asserted
12 herein. Because of the size of the individual Class members' claims, few, if any, Class
13 members could afford to seek legal redress individually for the wrongs complained
14 of herein.

15 **COUNT I**

16 **For Violation of Section 10(b) of the 1934 Act and Rule 10b-5** 17 **Promulgated Thereunder Against All Defendants**

18 32. Plaintiff repeats and realleges the allegations set forth above as though
19 fully set forth herein.

20 33. This Count is brought by plaintiff pursuant to §10(b) of the 1934 Act and
21 Rule 10b-5 promulgated thereunder by the SEC against all defendants.

22 34. The defendants: (a) employed devices, schemes, and artifices to defraud;
23 (b) made untrue statements of material fact and/or omitted to state material facts
24 necessary in order to make the statements made not misleading; and (c) engaged in
25 acts, practices, and a course of business which operated as a fraud and deceit upon the
26 purchasers of L90 stock in an effort to maintain an artificially high market price for
27 L90 stock in violation of §10(b) of the 1934 Act and Rule 10b-5. Defendants are sued
28 as primary participants in the wrongful and illegal conduct charged herein and/or as
controlling persons as alleged below.

1 35. In addition to the duties of full disclosure imposed on the defendants by
2 their status as controlling persons of L90, as a result of their affirmative statements
3 and reports, or participation in the making of affirmative statements and reports to the
4 investing public, defendants had a duty to promptly disseminate truthful information
5 that would be material to investors in compliance with the integrated disclosure
6 provisions of the SEC as embodied in SEC regulations S-X (17 C.F.R. §210.01,
7 *et seq.*) and S-K (17 C.F.R. §229.10, *et seq.*) and other SEC regulations, including
8 accurate and truthful information with respect to L90's stock, operations, financial
9 condition and earnings so that the market price of L90 stock would be based on
10 truthful, complete and accurate information.

11 36. Defendants, individually and in concert, directly and indirectly, by using
12 the means and instrumentalities of interstate commerce and/or of the mails, engaged
13 and participated in a continuous course of conduct to conceal adverse material
14 information about the business, operations and future prospects of L90 as specified
15 herein. The defendants employed devices, schemes and artifices to defraud, while in
16 possession of material adverse non-public information and engaged in acts, practices,
17 and a course of conduct as alleged herein in an effort to assure investors of L90's value
18 and performance and continued substantial growth, which included the making of, or
19 the participation in the making of, untrue statements of material facts and omitting to
20 state material facts necessary in order to make the statements made about L90 and its
21 business operations and future prospects, in light of the circumstances under which
22 they were made, not misleading, as set forth more particularly herein, and engaged in
23 transactions, practices and a course of business which operated as a fraud and deceit
24 upon the purchasers of L90 stock during the Class Period.

25 37. The primary liability and controlling person liability of defendants arises
26 from the fact that during the Class Period, the defendants engaged in a scheme to
27 conceal L90's badly flagging growth in order to prevent the decline in the price of L90
28

1 stock so that defendants could sell the Company, hide the fraud they had committed
2 in the previous two quarters and cash out of their own shares.

3 38. The defendants had actual knowledge of the misrepresentations and
4 omissions of material facts set forth herein. Such defendants' material
5 misrepresentations or omissions were done knowingly and for the purpose and effect
6 of concealing L90's operating condition and future business prospects from the
7 investing public and supporting the artificially inflated price of their stock, as
8 demonstrated by said defendants' overstatements and misstatements of L90's business,
9 operations and future earnings prospects and/or financial statements throughout the
10 Class Period.

11 39. As a result of the dissemination of the materially false and misleading
12 information and failure to disclose material facts by all defendants, as set forth above,
13 the market price of L90 stock was artificially inflated during the Class Period. In
14 ignorance of the fact that the market price for L90 stock was artificially inflated, and
15 relying directly or indirectly on the false and misleading statements made by
16 defendants, or upon the integrity of the market in which the shares trade, and the truth
17 of any representations made to appropriate agencies and to the investing public, at the
18 times at which any statements were made, and/or on the absence of material adverse
19 information that was known by defendants but not disclosed in public statements by
20 defendants during the Class Period, plaintiff and the other members of the Class
21 acquired L90 stock during the Class Period at artificially high prices and were
22 damaged thereby.

23 40. At the time of said misrepresentations and omissions, plaintiff and other
24 members of the Class were ignorant of their falsity and believed them to be true. Had
25 plaintiff and the other members of the Class and the marketplace known of the true
26 financial condition and business prospects of L90, which were not disclosed by
27 defendants, plaintiff and other members of the Class would not have purchased L90
28

1 stock during the Class Period, or, if they had purchased such stock during the Class
2 Period, they would not have done so at the artificially inflated prices which they paid.

3 41. By virtue of the foregoing, defendants have violated §10(b) of the 1934
4 Act and Rule 10b-5 promulgated thereunder.

5 42. As a direct and proximate result of the wrongful conduct of the
6 defendants, plaintiff and the other members of the Class suffered damages in
7 connection with their purchases of L90 stock during the Class Period.

8 **COUNT II**

9 **For Violation of Section 20(a) of the**
10 **1934 Act Against All Defendants**

11 43. Plaintiff repeats and realleges the allegations set forth above as if set
12 forth fully herein.

13 44. Defendants acted as controlling persons of L90 within the meaning of
14 §20(a) of the 1934 Act as alleged herein. By virtue of their high-level positions,
15 substantial stock holdings, participation in and/or awareness of L90's operations
16 and/or intimate knowledge of its internal financial condition, business practices,
17 products and the actual progress of development and marketing efforts, the Individual
18 Defendants had the power to influence and control and did influence and control,
19 directly or indirectly, the decision-making of L90, including the content and
20 dissemination of the various statements which plaintiff contends are false and
21 misleading. L90 controlled the Individual Defendants and all of its employees. Each
22 of the Individual Defendants was provided with or had unlimited access to copies of
23 L90's internal reports, press releases, public filings and other statements alleged by
24 plaintiff to be misleading prior to and/or shortly after these statements were issued and
25 had the ability to prevent the issuance of the statements or cause the statements to be
26 corrected.

27 45. In particular, each of the Individual Defendants had direct involvement
28 in or intimate knowledge of the day-to-day operations of L90 and therefore is

1 presumed to have had the power to control or influence the particular transactions
2 giving rise to the securities violations as alleged herein, and exercised the same.

3 46. As set forth above, defendants violated §10(b) of the 1934 Act and Rule
4 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their
5 positions as controlling persons, defendants are liable pursuant to §20(a) of the 1934
6 Act.

7 47. As a direct and proximate result of the wrongful conduct of defendants,
8 plaintiff and other members of the Class suffered damages in connection with their
9 purchases of L90 stock during the Class Period.

10 PRAYER FOR RELIEF

11 WHEREFORE, plaintiff, on behalf of itself and the Class, prays for judgment
12 as follows:

13 A. Declaring this action to be a class action properly maintained pursuant
14 to Rule 23 of the Federal Rules of Civil Procedure;

15 B. Awarding plaintiff and other members of the Class damages together
16 with interest thereon;

17 C. Awarding plaintiff and other members of the Class costs and expenses
18 of this litigation, including reasonable attorneys' fees, accountants' fees and experts'
19 fees and other costs and disbursements; and

20 D. Awarding plaintiff and other members of the Class such
21 equitable/injunctive and/or other and further relief as may be just and proper under the
22 circumstances.

23 JURY DEMAND

24 Plaintiff demands a trial by jury.

25 DATED: March 20, 2002

MILBERG WEISS BERSHAD
26 HYNES & LERACH LLP
27 WILLIAM S. LERACH
28 DARREN J. ROBBINS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DARREN J. ROBBINS

401 B Street, Suite 1700
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

Attorneys for Plaintiff