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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

10 _____, individually and) 11 on behalf of all others similarly) 12 situated,) 13 Plaintiff,) 14 v.) 15 L90, INC., JOHN C. BOHAN and) 16 THOMAS A. SEBASTIAN) 17 Defendants.) _____)	Case No. <u>CLASS ACTION</u> COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAW <u>JURY TRIAL DEMANDED</u>
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INTRODUCTION

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

22 2. L90 is a provider of marketing services. The Company uses its proprietary ad Monitor
23 technology and media expertise to provide companies with turnkey solutions to close the marketing
24 circle by helping them build brand, acquire new customers, increase traffic, drive sales and grow
25 customer relationships.

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

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

9 L90, Inc., an online media and direct marketing company, today
10 announced that the Company has received notice from the Securities
11 and Exchange Commission that the Commission is conducting an
12 investigation into the Company. In connection with this investigation,
13 the Commission has issued the Company and one of its directors
14 subpoenas requesting documents related primarily to the Company's
15 financial records. The Company also has received a letter from the
16 Nasdaq Listing Investigations requesting specific information
17 pursuant to Marketplace Rule 4330(c).

18 The Company intends to fully comply with the Commission's
19 investigation and Nasdaq's information request. The Company's
20 Board of Directors has authorized the Audit Committee of the Board
21 of Directors to commence an independent investigation into these
22 matters. The Audit Committee has retained outside counsel to aid it
23 in its investigation.

24 On February 1, 2002, the Company's Vice President, Finance,
25 tendered her resignation from the Company, effective immediately.
26 The circumstances of this resignation will be considered during the
27 Audit Committee's investigation.

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

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

2 6. On March 11, 2002, a release ran on FR Newswire about the merger with eUniverse
3 entitled “eUniverse and L90 Agree to Terminate Merger Agreement.” The release stated in part:
4 eUniverse, Inc., the leading interactive entertainment network, and
5 L90 today announced they have agreed in principle to terminate their
6 merger agreement, subject to final terms to be negotiated by the
parties, to include among other things cash reimbursement by L90 to
eUniverse of certain expenses incurred relating to the proposed
merger.

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

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13 7. On March 12, 2002, L90 issued a press release entitled, “L90 Provides Additional
14 Information on Internal Investigation.” The press release stated in part:
15 L90, Inc., an online media and direct marketing company, today
16 provided additional information on the status of the ongoing internal
17 investigation by the Company and the Audit Committee of its board
of directors in response to the previously announced Securities and
Exchange Commission investigation of the Company, and the request
for information from Nasdaq Listing Investigations.

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

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JURISDICTION AND VENUE

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25 8. The claims asserted herein arise under and pursuant to §§10(b) and 20(a) of the 1934
26 Act [15 U. S. C. §§ 78j(b) and 78t(a)], and Rule 10b-5 [17 C. F. R. §240.10b-5] promulgated
27 thereunder by the SEC.

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

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

16 **SCIENTER ALLEGATIONS**

17 16. The Individual Defendants, because of their positions of control and authority as
18 officers and/or directors of the Company were able to and did control the contents of the various
19 quarterly and annual financial reports, SEC filings, press releases, and presentations to securities
20 analysts pertaining to L90. Each Individual Defendant was provided with copies of L90’s press
21 releases and SEC filings alleged herein to be misleading prior to or shortly after their issuance and
22 had the ability and opportunity to prevent their issuance or to cause them to be corrected. Because of
23 their board membership and/or executive and managerial positions with L90, each Individual
24 Defendant had access to the adverse non-public information about L90’s business, finances,
25 products, markets and present and future business prospects particularized herein, via access to
26 internal corporate documents, conversations or connections with corporate officers and employees,

1 attendance at L90's management and/or Board of Directors' meetings and committees thereof and
2 via reports and other information provided to them in connection therewith. The Individual
3 Defendants are liable for the false statements pleaded herein at ¶¶18-19 and 21, as those statements
4 were each "group published" information, the result of the collective action of the Individual
5 Defendants.

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

13 **DEFENDANTS' FRAUDULENT SCHEME**
14 **AND UNLAWFUL COURSE OF BUSINESS**

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

18 L90, Inc., the premier marketing, technology, and media company,
19 today announced its financial results for the second quarter of 2001.
20 The Company produced system revenue of \$12.7 million in the
21 second quarter, which represents a 20.6 percent increase over the first
22 quarter of 2001. The Company's GAAP revenue was \$9.0 million for
23 the second quarter. L90 also generated \$5.4 million of gross profit in
24 the second quarter which reflects a gross margin of 60.4 percent of
25 GAAP revenue or 42.8 percent of system revenue.

22 "Despite the challenging economic climate, L90 continued to execute
23 on our business plan in the second quarter," said John Bohan, CEO
24 and President of L90. "Our 21 percent growth was an
25 accomplishment in an environment where many companies
26 experienced negative growth."

25 During the second quarter, L90 added 240 new marketing clients to
26 its portfolio, including large traditional companies such as Fischer
27 Price and Schering- Plough. L90 also added 64 new publishing clients

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1 to the L90 Network during the quarter, including brand names such as
2 The Golf Channel and WomensForum. L90 has a very diversified
3 customer base with approximately 1,750 marketing clients and 600
4 publishing clients, none of which accounted for more than 5% of the
5 Company's revenue during the second quarter of 2001.

6 The adMonitor for Publishers division also had a strong quarter,
7 doubling the number of publishing clients that use L90's ad serving
8 technology on an outsourced basis. The ad serving volume of this
9 division nearly tripled during the quarter to 2.4 billion impressions
10 per month. "L90 continues to expand our customer base because of
11 our differentiated marketing technology and media solutions," said
12 Bohan. "We are very well positioned to take advantage of the further
13 expansion and evolution of this market and to continue to expand our
14 market share."

15 19. On October 25, 2001, L90 issued a press release entitled "L90 Reports 17% Sequential
16 Increase in System Revenue." The press release stated in part:

17 L90, Inc., an online media and direct marketing company, today
18 announced its financial results for the third quarter of 2001, which
19 met analyst expectations for both system revenue and EPS, excluding
20 non-recurring charges. The Company produced system revenue of
21 \$14.9 million in the third quarter, which represents a 17.4 percent
22 increase over the second quarter and a decline of 7.6% relative to the
23 third quarter of last year. The Company's GAAP revenue was \$8.4
24 million for the third quarter. L90 also generated \$5.3 million of gross
25 profit in the third quarter, which reflects a gross margin of 62.7
26 percent of GAAP revenue or 35.3 percent of system revenue.

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

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

During the third quarter, L90 added 242 new marketing clients to its
portfolio, including large traditional companies such as Lions Gate
Films and Mitsubishi. L90 has a very diversified customer base with
approximately 2,000 marketing clients, none of which accounted for
more than 5% of the Company's system revenue during the third
quarter.

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

21. On January 3, 2002, L90 and eUniverse issued a press release over FR Newswire entitled “eUniverse to Acquire L90; Acquisition Significantly Strengthens eUniverse’s Business; L90 Shareholders To Receive Premium Above Stock Price.” The press release stated in part:

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

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

L90’s CEO John Bohan added, “This merger will create a company with a large presence in the online marketplace, a strong sales and marketing team, and a very attractive platform for both publishing and advertising clients. L90 will continue to service its publishing and advertising clients as a distinct brand under the eUniverse umbrella. Given that the two companies have similar cultures that value innovation and hard work, we believe that the integration process will be very smooth.”

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

1 L90 and eUniverse - Leveraging Company Strengths

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

4 - Increased Distribution for Products and Services

5 eUniverse, through L90, is expected to offer its growing suite of
6 proprietary Web products and services, such as Cupid Junction and
7 Fitness Heaven, to more than 100 Web sites in the L90 network.
8 Through the introduction of these products and services, the Web
9 sites in the L90 network are expected to benefit from incremental
10 monetization of their audiences.

11 - Raising the Profile of eUniverse With Advertisers

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

17 - Strengthening L90 Through eUniverse Performance Expertise

18 eUniverse will introduce its performance advertising and direct
19 marketing based technology and tools to L90, allowing L90 to work
20 with an even broader base of clientele and at the same time increase
21 its effective pricing yield on advertising. This in turn is expected to
22 greatly benefit the Web site clientele it represents.

23 - Incorporating L90Direct into eUniverse's Profitable e-mail Network

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

- Structure of the Transaction

Under the terms of the agreement, unanimously approved by both
Boards of Directors, it is estimated that L90's shareholders would
receive between \$2.00 and \$2.20 per share in cash, which represents a
premium above recent stock price levels. The payment to L90's
shareholders would have two components. The first component
would be a special cash distribution by L90 currently estimated to be
between \$1.80 and \$2.00 per share to be paid immediately prior to the

1 Merger. The amount of the special distribution that the L90
2 shareholders would receive is to be calculated using a pre-defined
3 formula and will be based upon the amount of cash held by L90
4 immediately prior to the Merger and the amount of certain balance
5 sheet items. Following the special distribution, eUniverse would
6 acquire all of the outstanding shares of L90 at a price of
7 approximately \$0.20 per share or \$5.1 million in the aggregate.
8 eUniverse's net cash outflow, however, would be \$2 million because
9 L90 would leave \$3.1 million in the company to satisfy certain
10 liabilities.

11 The Merger is subject to L90 shareholder approval and other
12 customary closing conditions and is expected to close within
13 approximately 90 days. Upon completion of the Merger, L90 will no
14 longer be publicly traded.

15 22. On March 11, 2002, a release ran on PR Newswire about the merger entitled
16 "eUniverse and L90 Agree to Terminate Merger Agreement." The press release stated in part:
17 eUniverse, Inc., the leading interactive entertainment network, and
18 L90 today announced they have agreed in principle to terminate their
19 merger agreement, subject to final terms to be negotiated by the
20 parties, to include among other things cash reimbursement by L90 to
21 eUniverse of certain expenses incurred relating to the proposed
22 merger.

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

29 23. On March 12, 2002, L90 issued a press release entitled, "L90 Provides Additional
30 Information on Internal Investigation." The press release stated in part:
31 L90, Inc., an online media and direct marketing company, today
32 provided additional information on the status of the ongoing internal
33 investigation by the Company and the Audit Committee of its board
34 of directors in response to the previously announced Securities and
35 Exchange Commission investigation of the Company, and the request
36 for information from Nasdaq Listing Investigations.

37 As previously disclosed in a press release on February 4, 2002, the
38 documents and information requested by the Commission and Nasdaq

1 relate primarily to the Company's financial records. Given the nature
2 of these inquiries, the internal investigation is principally focused on
3 two transactions between the Company and homestore.com, Inc. in
4 the second and third quarters of 2001, any barter transactions
5 involving the Company, and any other transactions of a similar
6 nature, to determine whether the Company's revenues may have been
7 overstated or misstated during previous periods.

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

13 **FALSE FINANCIAL STATEMENTS**

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

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

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

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

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

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

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

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

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

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

27 CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAW

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1 questions include, *inter alia*, the following:

2 i. Whether the defendants' acts as alleged herein violated the federal
3 securities laws;

4 ii. Whether defendants participated in and pursued the common course of
5 conduct complained of herein;

6 iii. Whether documents, SEC filings, press releases and other statements
7 disseminated to the investing public and L90's common stockholders during the Class Period
8 misrepresented material facts about the operations, financial condition and earnings of L90;

9 iv. Whether the market price of L90 stock during the Class Period was
10 artificially inflated due to material misrepresentations and the failure to correct the material
11 misrepresentations complained of herein; and

12 v. To what extent the members of the Class have sustained damages and
13 the proper measure of damages.

14 c. Plaintiffs claims are typical of the claims of other members of the Class and
15 plaintiff has no interests that are adverse or antagonistic to the interests of the Class.

16 d. Plaintiff is committed to the vigorous prosecution of this action and has
17 retained competent counsel experienced in litigation of this nature. Accordingly, plaintiff is an
18 adequate representative of the Class and will fairly and adequately protect the interests of the Class.

19 e. Plaintiff anticipates that there will not be any difficulty in the management of
20 this litigation as a class action.

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

25 **COUNT I**

26 **For Violation of Section 10(b) of the 1934 Act and Rule 10b-5**

27 **Promulgated Thereunder Against Alt Defendants**

28 CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAW

1 32. Plaintiff repeats and realleges the allegations set forth above as though fully set forth
2 herein.

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

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

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

21 36. Defendants, individually and in concert, directly and indirectly, by using the means
22 and instrumentalities of interstate commerce and/or of the mails, engaged and participated in a
23 continuous course of conduct to conceal adverse material information about the business, operations
24 and future prospects of L90 as specified herein. The defendants employed devices, schemes and
25 artifices to defraud, while in possession of material adverse non-public information and engaged in
26 acts, practices, and a course of conduct as alleged herein in an effort to assure investors of L90's

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1 value and performance and continued substantial growth, which included the making of, or the
2 participation in the making of, untrue statements of material facts and omitting to state material facts
3 necessary in order to make the statements made about L90 and its business operations and future
4 prospects, in light of the circumstances under which they were made, not misleading, as set forth
5 more particularly herein, and engaged in transactions, practices and a course of business which
6 operated as a fraud and deceit upon the purchasers of L90 stock during the Class Period.

7 37. The primary liability and controlling person liability of defendants arises from the fact
8 that during the Class Period, the defendants engaged in a scheme to conceal L90's badly flagging
9 growth in order to prevent the decline in the price of L90 stock so that defendants could sell the
10 Company, hide the fraud they had committed in the previous two quarters and cash out of their own
11 shares.

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

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

1 high prices and were damaged thereby.

2 40. At the time of said misrepresentations and omissions, plaintiff and other members of
3 the Class were ignorant of their falsity and believed them to be true. Had plaintiff and the other
4 members of the Class and the marketplace known of the true financial condition and business
5 prospects of L90, which were not disclosed by defendants, plaintiff and other members of the Class
6 would not have purchased L90 stock during the Class Period, or, if they had purchased such stock
7 during the Class Period, they would not have done so at the artificially inflated prices which they
8 paid.

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

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

14 **COUNT II**
15 **For Violation of Section 20(a) of the**
16 **1934 Act Against All Defendants**

17 43. Plaintiff repeats and realleges the allegations set forth above as if set forth
18 fully herein.

19 44. Defendants acted as controlling persons of L90 within the meaning of § 20(a) of
20 the 1934 Act as alleged herein. By virtue of their high-level positions, substantial stock holdings,
21 participation in and/or awareness of L90's operations and/or intimate knowledge of its internal
22 financial condition, business practices, products and the actual progress of development and
23 marketing efforts, the Individual Defendants had the power to influence and control and did
24 influence and control, directly or indirectly, the decision- making of L90, including the content
25 and dissemination of the various statements which plaintiff contends are false and misleading.
26 L90 controlled the Individual Defendants and all of its employees. Each of the Individual

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1 Defendants was provided with or had unlimited access to copies of L90's internal reports, press
2 releases, public filings and other statements alleged by plaintiff to be misleading prior to and/or
3 shortly after these statements were issued and had the ability to prevent the issuance of the
4 statements or cause the statements to be corrected.

5 45. In particular, each of the Individual Defendants had direct involvement in or
6 intimate knowledge of the day-to-day operations of L90 and therefore is presumed to have had
7 the power to control or influence the particular transactions giving rise to the securities violations
8 as alleged herein, and exercised the same.

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

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

15 **PRAYER FOR RELIEF**

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

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

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

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

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

26 **JURY DEMAND**

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1 Plaintiff demands a trial by jury.

2 DATED: November 22, 2004

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