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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	No. CR 04-_____
)	
Plaintiff,)	<u>I N F O R M A T I O N</u>
v.)	
)	
THOMAS A. SEBASTIAN,)	[18 U.S.C. § 371: Conspiracy
)	to Commit Securities Fraud]
Defendant.)	
_____)	

The United States Attorney charges:

COUNT ONE

[18 U.S.C. § 371]

I. INTRODUCTION

1. At all times relevant to this information:

a. L90, Inc. ("L90") was a Delaware corporation headquartered and with its main operations in Santa Monica and Marina del Rey, California.

b. Defendant THOMAS A. SEBASTIAN ("SEBASTIAN") was L90's Chief Financial Officer.

c. Co-conspirator John C. Bohan ("Bohan") was a founder of L90, a member of L90's Board of Directors, and L90's President and Chief Executive Officer.

DAA:daa

1 d. Co-conspirator Mark D. Roah ("Roah") was a founder
2 of L90, a member of L90's Board of Directors, and L90's Senior
3 Vice President -- Business Development.

4 e Co-conspirator Lucrezia Bickerton ("Bickerton")
5 was an employee in and a consultant to L90's finance department
6 from the time of L90's incorporation through on or about February
7 1, 2002. At various times, Bickerton held the titles Director of
8 Finance, Controller, and Vice President -- Finance at L90.

9 **L90's Business**

10 2. L90's primary business was internet advertising
11 representation and sales. L90 would act as a sales
12 representative for a website's advertising space (such as space
13 on the website available for banner ads) and collected consumer
14 marketing information (such as electronic mail address lists). A
15 website for which L90 served as an advertising sales
16 representative was called an L90 "website partner." L90 would
17 sell the advertising inventory of its website partners, retaining
18 a portion of the sales price as profit.

19 3. In July 2000, L90 acquired a company called
20 Webmillion.com ("Webmillion") as a wholly-owned subsidiary.
21 Webmillion was an internet gaming website. Individual users
22 could register with Webmillion by providing personal information
23 requested by Webmillion. Once registered, the individual users
24 could play lottery-type and other games on Webmillion, with a
25 chance to win cash and other valuable prizes. Webmillion sold
26 advertising space on its website, and also sold the registration
27 information gathered from the Webmillion users to advertisers.

1 **Federal Financial Reporting and Record Keeping Requirements**

2 4. L90's common stock was registered with the United
3 States Securities and Exchange Commission ("SEC") and was traded
4 on the national market of the National Association of Securities
5 Dealers' Automated Quotation System ("NASDAQ"). L90 had
6 shareholders located throughout the United States, including in
7 the Central District of California.

8 5. As a public company, L90 was required to comply with
9 the rules and regulations of the SEC. Those rules and
10 regulations are designed to protect members of the investing
11 public by, among other things, ensuring that a company's
12 financial information is accurately recorded and disclosed to the
13 public.

14 6. Under those regulations, L90 and its officers had a
15 duty to, among other things: (a) make and keep books, records and
16 accounts which, in reasonable detail, fairly and accurately
17 reflected the company's business transactions; (b) devise and
18 maintain a system of internal accounting controls sufficient to
19 provide reasonable assurances that the company's transactions
20 were recorded as necessary to permit preparation of financial
21 statements in conformity with Generally Accepted Accounting
22 Principles ("GAAP"); and (c) file with the SEC quarterly reports
23 (on Form 10-Q) and annual reports (on Form 10-K) containing
24 information about the company's management, board of directors,
25 and business operations, as well as financial statements that
26 accurately presented its financial condition and results of its
27 business operations in accordance with GAAP.

28 / / /

1 7. L90's financial results were publicly reported four
2 times a year, that is quarterly, based on a fiscal year that
3 began January 1. Accordingly, L90's first fiscal quarter began
4 January 1 and ended March 31; its second fiscal quarter began
5 April 1 and ended June 30; its third fiscal quarter began July 1
6 and ended September 30; and its fourth fiscal quarter began
7 October 1 and ended December 31.

8 8. L90's annual financial statements were required to be
9 audited by an independent public accountant. L90's independent
10 public accountant was Arthur Andersen LLP ("Arthur Andersen").

11 **The "Bartering" of Internet Advertising**

12 9. When a website on the internet had advertising
13 inventory that it was unable to sell, it was common for such a
14 website to "barter" that advertising inventory with another
15 website, i.e. to trade its own unsold advertising inventory for
16 unsold advertising inventory on the other website. In such a
17 manner, a website could obtain internet advertising for itself
18 without having to pay cash for such advertising.

19 10. From time to time, L90 would acquire advertising
20 inventory from its website partners. Beginning in or about April
21 1999, co-conspirators Bohan and Bickerton, and other persons,
22 caused L90 to seek advice from Arthur Andersen as to whether L90,
23 if it bartered such advertising inventory for other advertising
24 inventory, could record the "value" of the bartered inventory as
25 revenue. In or about September 1999, defendant SEBASTIAN, co-
26 conspirators Bohan and Bickerton, and other persons, learned from
27 Arthur Andersen that such barter transactions could be recorded
28 as revenue only if several requirements were met, and that any

1 recorded revenue would have to be disclosed as having been
2 derived from barter transactions. Among the requirements on
3 recording revenue from barter transactions was that L90 obtain an
4 independent appraisal of the fair value of the bartered
5 inventory. In or about October 1999, defendant SEBASTIAN caused
6 L90 to communicate to Arthur Andersen that L90 considered the
7 various requirements on recording revenue from barter
8 transactions to be prohibitive, and that L90 therefore would not
9 record advertising barter transactions as revenue.

10 11. On or about March 16, 2000, the Emerging Issues Task
11 Force ("EITF") of the Financial Accounting Standards Board
12 ("FASB") issued EITF Issue No. 99-17, entitled "Accounting for
13 Advertising Barter Transactions," which described requirements
14 for recognizing revenue from advertising barter transactions.
15 Among those requirements was that the fair value of the bartered
16 advertising be objectively assessed, and that the revenue be
17 disclosed in the bartering company's financial statements as
18 revenue from an advertising barter transaction.

19 **Overview of the Scheme to Defraud**

20 12. Defendant SEBASTIAN would cause L90 periodically to
21 announce to the investing public L90's projected future revenue
22 and other financial data. Outside analysts that covered L90
23 (hereinafter "Wall Street analysts") also would project estimated
24 future L90 revenue and other financial data, and would announce
25 their projections to the investing public.

26 13. Beginning in or about July 2000, co-conspirator Bohan
27 and other L90 executives became worried that L90's revenue for
28 the third quarter 2000 would fall short of projected revenue

1 estimates for that quarter. In order to ensure that L90's
2 reported revenue met or exceeded projections for the third
3 quarter 2000 and for subsequent quarters, defendant SEBASTIAN,
4 co-conspirators Bohan, Roah, and Bickerton, and others persons
5 embarked upon a series of artifices designed to inflate L90's
6 reported revenues to make them appear higher than they really
7 were.

8 14. Among the ways by which defendant SEBASTIAN, co-
9 conspirators Bohan, Roah, and Bickerton, and other persons
10 artificially inflated L90's revenue results was through
11 advertising barter transactions and corresponding "check swaps"
12 involving L90's subsidiary Webmillion. As described below,
13 Bohan, Roah, and other persons caused Webmillion to enter into
14 advertising barter transactions with other internet advertisers.
15 Bohan, Roah, Bickerton, and other persons then caused L90 and
16 those internet advertisers to exchange checks or wire transfers
17 in amounts representing the "value" assigned to the bartered
18 advertising. SEBASTIAN, Bohan, Bickerton, and other persons then
19 caused L90 to record the assigned "value" of the bartered
20 advertising as revenue, without disclosing that such revenue
21 resulted from barter transactions. SEBASTIAN, Bohan, and other
22 persons then knowingly made and caused to be made false and
23 misleading statements and/or material omissions about L90's
24 financial performance in L90's SEC filings, in press releases,
25 and during conference calls with Wall Street analysts.

26 15. This scheme to defraud caused L90 materially to
27 overstate its quarterly revenue results for the third and fourth
28 quarters of 2000, and for the first and second quarters of 2001.

1 Without the advertising barter revenue fraudulently included in
2 L90's quarterly financial results, L90 would have failed to meet
3 projected revenue estimates in the fourth quarter of 2000 and in
4 the first quarter of 2001. Specifically:

5 a. In the fourth quarter of 2000, L90's reported
6 revenue of \$18.3 million, which narrowly surpassed analyst
7 expectations of approximately \$18.2 million, contained more than
8 \$735,000 in fraudulently-recognized barter revenue.

9 b. In the first quarter of 2001, L90's reported
10 revenue of \$10.6 million, which narrowly surpassed analyst
11 expectations of approximately \$10.5 million, contained more than
12 \$2.1 million in fraudulently-recognized barter revenue.

13 II. THE OBJECTS OF THE CONSPIRACY

14 16. From in or about July 2000, and continuing through in
15 or about February 2002, within the Central District of California
16 and elsewhere, defendant SEBASTIAN, co-conspirators Bohan, Roah,
17 and Bickerton, and other persons knowingly and unlawfully
18 combined, conspired, and agreed to commit the following offenses
19 against the United States:

20 a. to employ a device, scheme and artifice to defraud
21 in connection with the purchase and sale of L90 securities, using
22 the means and instrumentalities of interstate commerce, in
23 violation of Title 15, United States Code, Sections 78j(b) and
24 78ff, and Title 17, Code of Federal Regulations, Section
25 240.10b-5;

26 b. to make untrue, false, and misleading statements
27 of material fact in reports and documents required to be filed
28 under the Securities Exchange Act of 1934 and the rules and

1 regulations thereunder, in violation of Title 15, United States
2 Code, Sections 78m(a) and 78ff, and Title 17, Code of Federal
3 Regulations, Sections 240.12b-20, 240.13a-1, and 240.13a-13; and

4 c. to knowingly make and cause to be made materially
5 false and misleading statements to Arthur Andersen in connection
6 with its review of L90's financial statements and the preparation
7 of reports required to be filed with the SEC, in violation of 15
8 U.S.C. § 78ff, and Title 17, Code of Federal Regulations,
9 Section 240.13b2-2.

10 III. THE MANNER AND MEANS OF THE CONSPIRACY

11 17. The objects of the conspiracy were carried out by the
12 following means, among others:

13 a. From the third quarter 2000, through and including
14 the second quarter 2001, co-conspirators Bohan and Roah
15 and other persons caused L90's subsidiary Webmillion to enter
16 into advertising barter transactions with other internet
17 advertisers whereby an internet advertiser would purchase
18 advertising from Webmillion, and in exchange Webmillion would
19 purchase a similar dollar amount of advertising from the internet
20 advertiser. Typically, the dollar amounts assigned to the
21 advertising bought and sold pursuant to these transactions were
22 inflated, and did not represent the fair value of the
23 advertising.

24 b. In connection with each of these barter
25 transactions, co-conspirators Bohan, Roah, Bickerton, and other
26 persons caused L90 and the internet advertiser that was a party
27 to the barter transaction to engage in a "check swap," that is,
28 an exchange of checks or wire transfers for similar dollar

1 amounts that corresponded to the purported value of the
2 advertising exchanged. Frequently, a third-party intermediary
3 would be inserted into the check swap, the purpose of which was
4 to disguise the true nature of the transaction in order to make
5 it appear as though the buyer of advertising from Webmillion and
6 the seller of advertising to Webmillion were different entities,
7 when in fact they were the same.

8 c. Within L90, these transactions were referred to as
9 "Mark Roah," "MR," "Co-Marketing," or "CM" deals, so as to
10 disguise the fact that they were in fact barter transactions.

11 d. The amount paid by L90 less the amount received by
12 L90 pursuant to these barter and check swap agreements netted, in
13 essence, to zero. According to GAAP, the amounts received
14 through these barter and check swap agreements could not be
15 recognized as revenue and, to the extent these amounts were
16 included in L90's financial statements, they had to be disclosed
17 as having been derived from barter transactions.

18 e. It was part of the conspiracy that defendant
19 SEBASTIAN, co-conspirators Bohan and Bickerton, and other persons
20 regularly met and spoke in person and by telephone, and
21 corresponded by electronic mail messages during the relevant time
22 period to discuss, among other things, the status of revenue for
23 the quarter, and to compare L90's likely quarterly revenues with
24 Wall Street analysts' projected revenues and other targets. If
25 it appeared that L90 would fall short of these projections,
26 Bohan, Roah, and other persons would cause Webmillion to enter
27 into barter agreements with internet advertisers, and cause L90
28 and those internet advertisers to enter into corresponding "check

1 swaps" in a total amount sufficient to cover any shortfall.

2 f. Defendant SEBASTIAN, co-conspirators Bohan and
3 Bickerton, and other persons would cause L90 fraudulently to
4 recognize revenue from these advertising barter transactions in
5 the amount necessary to make it appear that the quarterly targets
6 had been met.

7 g. Defendant SEBASTIAN, co-conspirator Bickerton, and
8 other persons would knowingly cause false statements and/or
9 material omissions to be made to Arthur Andersen to make it
10 appear as though the fraudulently-recorded barter transactions
11 were in fact legitimately-recorded advertising sales.

12 h. Defendant SEBASTIAN, co-conspirators Bohan and
13 Bickerton, and other persons would knowingly cause materially
14 false and misleading financial statements to be made on Forms 10-
15 Q and 10-K with the SEC.

16 i. Defendant SEBASTIAN, co-conspirators Bohan and
17 Bickerton, and other persons would knowingly cause materially
18 false and misleading statements about L90's financial performance
19 to be made in press releases.

20 j. Defendant SEBASTIAN and co-conspirator Bohan would
21 tout L90's fraudulent revenue numbers during conference calls
22 with Wall Street analysts.

23 18. The fraudulent recognition of revenue from the
24 transactions described above, and the fraudulent reporting that
25 L90 had met or exceeded projected quarterly and annual revenue
26 results when, in truth, L90's financial results were materially
27 overstated and L90 had not met projected revenue results, had a
28 material impact on the share price of L90.

1 IV. OVERT ACTS

2 19. In furtherance of the conspiracy and in order to
3 accomplish its objects, defendant SEBASTIAN, co-conspirators
4 Bohan, Roah, and Bickerton, and other persons committed and
5 caused to be committed the following overt acts, among others,
6 within the Central District of California and elsewhere:

7 OVERT ACT NO. 1: On or about August 15, 2000, Bickerton
8 sent an electronic mail message to defendant SEBASTIAN and
9 another person in which she stated that she had been working with
10 Roah on Webmillion barter deals.

11 OVERT ACT NO. 2: On or about November 27, 2000, Bickerton
12 sent an electronic mail message to defendant SEBASTIAN, Bohan,
13 Roah, and other persons in which she stated that L90 had \$1.8
14 million in "Mark Roah - webMillion" deals available to be
15 recorded in the fourth quarter of 2000.

16 OVERT ACT NO. 3: On or about December 29, 2000, defendant
17 SEBASTIAN, Bohan, Bickerton, and other persons received an
18 electronic mail message, to which was attached a spreadsheet that
19 identified the dollar amount of "Mark Roah" deals that was
20 available to be recorded in the fourth quarter of 2000.

21 OVERT ACT NO. 4: In or about December 2000, defendant
22 SEBASTIAN, Bohan, Bickerton, and other persons caused L90
23 improperly to recognize in the fourth quarter of 2000 over
24 \$735,000 in revenue from advertising barter transactions, in
25 violation of GAAP.

26 OVERT ACT NO. 5: On or about February 9, 2001, defendant
27 SEBASTIAN, Bohan, Bickerton, and another person signed a
28 "management representation letter" to Arthur Andersen in

1 connection with its audit of L90's fiscal year 2000 financial
2 statements. The letter included the following materially false
3 representations:

4 (i) "The financial statements referred to above [for the
5 year ended December 31, 2000] are fairly presented in conformity
6 with accounting principles generally accepted in the United
7 States."

8 (ii) "There are no material transactions that have not been
9 properly recorded in the accounting records underlying the
10 financial statements."

11 (iii) "There has been no . . . [f]raud involving management
12 or employees who have significant roles in internal control."

13 OVERT ACT NO. 6: On or about February 15, 2001, defendant
14 SEBASTIAN, Bohan, Bickerton, and other persons caused L90 to
15 issue a press release announcing financial results for the fourth
16 quarter 2000. The announcement was materially false in that,
17 among other things, it reported that revenues for the quarter
18 were \$18.3 million. In fact, revenues were materially overstated
19 by in excess of \$735,000.

20 OVERT ACT NO. 7: On or about February 15, 2001, defendant
21 SEBASTIAN told Wall Street analysts and other persons on an
22 earnings release conference call that L90's revenues for the
23 fourth quarter 2000 were \$18.3 million, and that L90 had met
24 analysts' projected revenue expectations of \$18.3 million. These
25 statements were materially false and misleading in that, among
26 other things, revenues were materially overstated by \$735,000 of
27 fraudulently-recorded barter revenue, and without such revenue
28 L90 had failed to meet analysts' projections.

OVERT ACT NO. 8: On or about March 26, 2001, defendant
SEBASTIAN, Bohan, Bickerton, and other persons received an
electronic mail message in which was identified several hundred

1 thousand dollars of "Roah deals" that had been and were being
2 recorded as revenue at the end of the first quarter 2001.

3 OVERT ACT NO. 9: On or about March 30, 2001, defendant
4 SEBASTIAN, Bohan, Bickerton, and other persons caused L90 to file
5 a report with the SEC on Form 10-K, reporting its financial
6 results for the year 2000 and for the fourth quarter 2000. The
7 reported results were materially false and misleading in that
8 they included improperly recorded revenue, failed to disclose
9 that more than \$735,000 of the reported revenue for the fourth
10 quarter 2000 resulted from barter transactions, and failed to
11 disclose that management was engaged in and directing others to
12 engage in fraudulent accounting practices.

13 OVERT ACT NO. 10: In or about March 2001, defendant
14 SEBASTIAN, Bohan, Bickerton, and other persons caused L90
15 improperly to recognize in the first quarter of 2001 over \$2.1
16 million in revenue from advertising barter transactions, in
17 violation of GAAP.

18 OVERT ACT NO. 11: On or about April 26, 2001, defendant
19 SEBASTIAN, Bohan, Bickerton, and other persons caused L90 to
20 issue a press release announcing financial results for the first
21 quarter 2001. The announcement was materially false in that,
22 among other things, it reported that revenues for the quarter
23 were \$10.6 million and were "in line with analyst expectations."
24 In fact, revenues were materially overstated by in excess of \$2.1
25 million.

26 OVERT ACT NO. 12: On or about April 26, 2001, defendant
27 SEBASTIAN told Wall Street analysts and other persons on an
28 earnings release conference call that L90's revenues were \$10.6

1 million, and that L90 had met analysts' projected revenue
2 expectations of \$10.55 million. These statements were materially
3 false and misleading in that, among other things, revenues were
4 materially overstated by \$2.1 million in fraudulently-recorded
5 barter revenue, and without such revenue L90 had failed to meet
6 analysts' projections.

7 OVERT ACT NO. 13: On or about May 10, 2001, defendant
8 SEBASTIAN, Bohan, Bickerton, and other persons caused L90 to file
9 a report with the SEC on Form 10-Q, reporting its financial
10 results for the first quarter 2001. The reported results were
11 materially false and misleading in that they included improperly
12 recorded revenue, failed to disclose that more than \$2.1 million
13 of the reported revenue for the first quarter 2001 resulted from
14 barter transactions, and failed to disclose that management was
15 engaged in and directing others to engage in fraudulent
16 accounting practices.

17 OVERT ACT NO. 14: On or about January 3, 2002, defendant
18 SEBASTIAN, Bohan, and other persons caused L90 to file a report
19 with the SEC on Form 8-K, which announced that L90 and eUniverse
20 had agreed to merge; attached a copy of a press release
21 announcing that L90 stockholders would receive between \$2 and
22 \$2.20 per share in connection with the merger; and attached a
23 copy of the merger agreement between L90 and eUniverse. The
24 merger agreement attached to the Form 8-K, which had been signed
25 by Bohan on or about January 2, 2002, contained the following
26 materially false and misleading representations and warranties:
27 (a) all of L90's reports that previously had been filed with the
28 SEC were free from any materially misleading statement or

1 omission; (b) all of L90's financial statements contained in its
2 previous SEC filings had been prepared in accordance with GAAP
3 and had fairly presented the true financial condition of L90; and
4 (c) L90 had complied with all laws applicable to the conduct of
5 its business.

6 DEBRA W. YANG
7 United States Attorney

8 STEVEN D. CLYMER
9 Special Assistant U.S. Attorney
Chief, Criminal Division

10 GREGORY J. WEINGART
11 Assistant United States Attorney
12 Chief, Major Frauds Section

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