

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal No.

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. DAVID GLEN SHERMAN,

Defendant.

INDICTMENT

**18 U.S.C. § 1343 [Wire Fraud];
15 U.S.C. §§ 78j(b); 78ff; 17 C.F.R. § 240.10b-5 [Securities Fraud];
15 U.S.C. §§ 78m(a) and 78ff; 17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in Reports to the SEC];
15 U.S.C. §§ 78m(b)(2) and 78ff; 17 C.F.R. § 240.13b2-2 [False Statements to Auditors];
15 U.S.C. §§ 78m(b)(2)(A); 78m(b)(5), and 78ff; 17 C.F.R. § 240.13b2-1
[False books and records];
18 U.S.C. § 2 [Causing an Act to Be Done]**

The Grand Jury charges:

At all times relevant to this Indictment:

Introduction

1. Vari-L Company, Inc. (“Vari-L”) was a company that designed, manufactured and marketed a range of signal processing components that were used in communications equipment and systems, such as cellular telephones and base stations, local area computer networks, and other applications. Vari-L was located at 4895 Peoria Street, Denver, Colorado 80239.

2. Defendant DAVID GLEN SHERMAN (“SHERMAN”) held various executive positions at Vari-L, including Controller; Vice President-Finance and Assistant Secretary beginning in or about 1987. From November 1992 through in or about May 1997, SHERMAN

was Vari-L's President and Chief Financial Officer, with responsibility to oversee the Finance, Sales, and Marketing Departments of Vari-L. Between June 1, 1997 and in or about August 2000, SHERMAN was Vari-L's President and Chief Executive Officer. SHERMAN left Vari-L in or about August 2000.

3. Between May 1994 through June 30, 2000, Jon Clark ("Clark") was employed in the respective positions of controller and principal accounting officer, assistant treasurer, vice president of finance, and chief financial officer.

4. Between 1987 and May 2000, Sarah Hume, also known as Darce Hume ("Hume") was employed at Vari-L in various positions including, accounting manager, controller, and consultant to the controller.

5. Haugen, Springer & Co., P.C. ("Haugen Springer") was the accounting firm that was retained by Vari-L as its independent public accountant to audit Vari-L's annual financial statements and to review its quarterly financial statements. Haugen Springer served as Vari-L's accountants from approximately 1991 to 2000, when it was replaced by KPMG.

Vari-L's Initial Public Offering

6. In or about April 1994, Vari-L filed a registration statement and prospectus with the United States Securities and Exchange Commission ("SEC"), pursuant to which Vari-L sought to register its common stock for sale to members of the public in the United States. These filings provided financial, business and legal information about Vari-L, including financial statements for the years 1992 and 1993, which had been audited by Haugen Springer.

7. In or about April 1994, the SEC declared Vari-L's registration statement to be effective, which allowed Vari-L to conduct its initial public offering ("IPO"). As a result, Vari-L

sold 850,000 units of common stock to members of the public at a price of \$5.00 per unit, yielding total proceeds to Vari-L of approximately \$3,825,000.

8. As a result of the IPO, from in or about April 1994 through in or about September 2000, Vari-L's common stock was publicly traded on the national market of the National Association of Securities Dealers' Automated Quotation System ("NASDAQ"), an electronic trading system. Vari-L had shareholders located throughout the United States, including in the District of Colorado.

Required Record keeping, Internal Controls, and Financial Disclosures

9. As a public company, Vari-L was required to comply with regulations of the SEC. Under those regulations, Vari-L and its officers had a duty to: (a) make and keep books, records and accounts, which in reasonable detail, accurately and fairly reflected Vari-L's transactions and the disposition of its assets; (b) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the company's transactions were recorded as necessary to permit preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"); and (c) file with the SEC annual statements, prepared according to rules and regulations prescribed by the SEC and audited by an independent public accountant (on Form 10-KSB); and (d) file with the SEC quarterly updates of its financial statements that disclosed its financial condition and results of business operations for each three-month period (on Form 10-QSB).

Overview of the Scheme To Defraud

10. From the period including at least 1994 through May 16, 2000, defendant SHERMAN devised and intended to devise a scheme to defraud shareholders of Vari-L, the

investing public, and the SEC and to obtain money by means of false or fraudulent pretenses, representations or promises.

11. Among the goals of the scheme were:

- a. To ensure that Vari-L consistently reported that it had met or exceeded projected quarterly results for, among other things, revenue, net income, and earnings;
- b. To artificially increase and maintain the share price of company stock; and
- c. To enrich himself through stock options.

12. The means by which defendant SHERMAN achieved and attempted to achieve the goals of the scheme included:

- a. Falsely inflating quarterly and annual sales revenues by:
 - i. recording revenue on products that had not yet been shipped, or in some cases were not completed, called ship in place (“SIP”);
 - ii. falsifying sales orders and booking revenue from such fictitious orders, called bill in place (“BIP”); and
 - iii. holding Vari-L’s books for a particular quarter open in order to claim in the current quarter revenue from the following weeks or months of the next quarter;
- b. Making fraudulent entries to company books and records at quarter-end in order to reduce operating expenses through improper capitalization, and thereby meet quarterly net income and earnings goals;
- c. Making false statements to outside auditors;
- d. Filing materially false and misleading financial statements with the SEC; and
- e. Making materially false and misleading statements about Vari-L’s financial performance to the public in press releases, Annual Reports, and filings with the SEC.

13. It was part of the scheme to defraud that defendant SHERMAN and others known and unknown to the grand jury met during quarterly reporting periods to discuss, among other things, the status of sales for the quarter and to compare the company's likely quarterly performance with forecasted goals. If it appeared that the company would fall short of forecasts, SHERMAN and others agreed to and did engage in fraudulent practices to ensure that forecasts were met.

14. During the period when acting as the Chief Financial Officer, defendant SHERMAN instructed Hume that revenue goals for particular quarters should be achieved through holding the current quarter's books "open" to claim revenue from shipments that were actually sent in the subsequent financial quarter, and through recording SIP revenue. SIP invoices were created but were not sent to the customer, and were held in Vari-L files as back-up documentation for the accounting entries. SIP revenue was not legitimate revenue under GAAP, because the revenue had not yet been earned, and thus could not properly be recorded as revenue in Vari-L's internal books, or included as revenue within filings by Vari-L to the SEC.

15. During the period when acting as the Chief Financial Officer, defendant SHERMAN also instructed Hume that company expenses should be minimized by falsely capitalizing company expenditures, in order to reduce fraudulently Vari-L's expenses and increase its fixed assets. This capitalization was not legitimate under GAAP, because among other reasons, Vari-L had no documentation substantiating the amounts capitalized within Vari-L's filings to the SEC.

16. Between in or about January 1996 through in or about December 1998, at or near the end of each quarter, defendant SHERMAN advised Hume, in substance, that the revenue

calculation she proposed for that quarter's financial statement was insufficient, and that Hume needed to "find" additional revenue to reach SHERMAN's earlier forecast.

Fraud During Year Ending December 31, 1996

17. Defendant SHERMAN, Hume and others, engaged in the following improper practices and made the following misrepresentations, among others, during the year ending 1996:

a. In or about September 1996, defendant SHERMAN provided revenue forecasts to investment analysts that predicted Vari-L's net sales revenue for 1996 would be approximately \$11,700,000.

b. On or about December 31, 1996, defendant SHERMAN caused others to record in Vari-L's books approximately \$12,210,000 as revenue for Vari-L for 1996, which total included approximately \$425,793 in false SIP revenue. Those entries were in violation of GAAP, and had the effect of fraudulently increasing revenue for 1996.

c. On or about February 5, 1997, defendant SHERMAN and Hume signed a "management representation letter" to Haugen Springer in connection with the audit for Vari-L's 1996 annual 10-KSB report, which included the following materially false representations:

- i. "We have made available to you all financial records and related data."
- ii. "There have been no [i]rregularities involving management or employees who have significant roles in the internal control structure."
- iii. "There are no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements...."
- iv. "There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements."

d. On or about March 31, 1997, Vari-L filed a 10-KSB report with the SEC, reporting its financial results for the period ending December 31, 1996. The reported results were materially

false in that they included improperly recorded SIP revenue; failed to expense properly various items; improperly capitalized items; and failed to disclose that management was engaged in and directing others to engage in fraudulent accounting practices. SHERMAN signed the 10-KSB report.

Fraud During Year Ending December 31, 1997

18. Defendant SHERMAN, and others, engaged in the following improper practices and made the following misrepresentations, among others, during the year ending 1997:

a. On or about April 2, 1997, defendant SHERMAN provided revenue forecasts to investment analysts that predicted Vari-L's net sales revenue for 1997 would be approximately \$18,000,000.

b. On or about December 31, 1997, at the direction of SHERMAN, Hume recorded SIP revenue on the books of Vari-L for the accounting period ending December 31, 1997, in the approximate amount of \$787,000. On or about January 1, 1998 through January 16, 1998, at the direction of SHERMAN, Hume caused the recording of BIP revenue on the books of Vari-L for the accounting period ending December 31, 1997, in the amount of \$1,332,976. Those entries were in violation of GAAP, and had the effect of artificially increasing annual net sales.

c. On or about January 20, 1998, defendant SHERMAN caused Vari-L to issue a press release announcing results for the period ending December 31, 1997. The announcement was materially false in that it included false SIP and BIP revenue for 1997, and false SIP revenue for 1996.

d. On or about February 24, 1998, defendant SHERMAN and Hume signed a "management representation letter" to Haugen Springer in connection with the audit for Vari-L's 1997 annual 10-KSB report, which included the following materially false representations:

- i. “We have made available to you all financial records and related data.”
 - ii. “There have been no [i]rregularities involving management or employees who have significant roles in the internal control structure.”
 - iii. “There are no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements....”
 - iv. “There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements.”
- e. On or about March 11, 1998, Vari-L filed a 10-KSB report with the SEC, reporting its financial results for the period ending December 31, 1997. The reported results were materially false in that they:
- i. included improperly recorded SIP revenue;
 - ii. included improperly recorded BIP revenue;
 - iii. failed to properly expense various items;
 - iv. improperly capitalized items; and
 - v. failed to disclose that management was engaged in and directing others to engage in fraudulent accounting practices.

Defendant SHERMAN signed the 10-KSB report.

Fraud During Year Ending December 31, 1998

19. Defendant SHERMAN and others engaged in the following improper practices and made the following misrepresentations, among others, during the period ending December 31, 1998:

- a. In or about January 1998, defendant SHERMAN directed Hume to find approximately \$1.3 million in additional revenue – in addition to the false SIP – to be recorded for the period

ending December 31, 1997, and instructed her in substance that defendant SHERMAN “did not care how she got it.”

b. Between January 6, 1998 to January 13, 1998, Vari-L accounting personnel inputted SIP transactions for a total of approximately \$787,000. Shortly thereafter, Vari-L accounting personnel created and inputted invoices for non-existent BIP transactions totaling an additional \$1,332,976.

c. In or about early 1998, defendant SHERMAN provided revenue forecasts to investment analysts that predicted Vari-L’s net sales revenue for 1998 would be approximately \$22,200,000.

d. On or about January 14, 1998, Vari-L commercial production personnel produced a “Daily Sales Report,” addressed to SHERMAN and others, reflecting that SIP revenue for the first quarter of 1998 would be \$581,241.

e. On or about January 13, 1998, Hume caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$787,000. On or about January 31, 1998 through March 31, 1998, Hume caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,296,251.

f. On or about March 31, 1998, at the direction of SHERMAN, Hume caused the recording of SIP revenue on the books of Vari-L in the approximate amount of \$469,000. On or about March 31, 1998, Hume directed and caused the recording of BIP revenue on the books of Vari-L in the amount of \$1,296,251. Those SIP and BIP entries were in violation of GAAP, and had the effect of artificially increasing Vari-L’s revenue.

g. On or about April 15, 1998, Hume caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$469,000. On or about June 30, 1998, Hume caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,209,128.

h. On or about June 30, 1998, at the direction of SHERMAN, Hume caused the recording of SIP revenue on the books of Vari-L in the approximate amount of \$816,000. On or about June 30, 1998, Hume caused the recording of BIP revenue on the books of Vari-L in the amount of \$1,209,128. Those SIP and BIP entries were in violation of GAAP, and had the effect of artificially increasing Vari-L's revenue.

i. On or about July 21, 1998, Hume caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$816,000. On or about September 30, 1998, Hume caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,209,128.

j. On or about September 30, 1998, at the direction of SHERMAN, Hume caused the recording of SIP revenue on the books of Vari-L in the approximate amount of \$556,000, and BIP revenue on the books of Vari-L in the amount of \$1,333,028. Those SIP and BIP revenue entries were in violation of GAAP, and had the effect of artificially increasing Vari-L's revenue.

k. On or about October 31, 1998, Hume caused the reversal of SIP revenue on the books of Vari-L in the approximate amount of \$556,000.

l. In or about November 1998, at defendant SHERMAN's direction, Clark met with Hume to discuss how to "fix" the approximately \$1.3 million problem of falsely claimed BIP revenue.

m. On or about December 12, 1998, Hume caused the reversal of BIP revenue on the books of Vari-L in the amount of \$1,333,028. Specifically, at SHERMAN's direction, in substance, to "solve the problem," Hume reversed the \$1,333,028 in BIP revenue on the books of Vari-L into an asset account on the balance sheet, ultimately creating a false fixed asset, which had a final value of \$1,082,976, after being offset by an additional \$250,000 BIP transaction. On

December 31, 1998, Hume then moved the \$1,082,976 item to the Machinery & Equipment balance sheet account on Vari-L's books. Those entries were in violation of GAAP.

n. On or about January 29, 1999, SHERMAN and Hume signed a "management representation letter" to Haugen Springer in connection with the audit for Vari-L's 1998 10-KSB annual report, which included the following materially false representations:

- i. "We have made available to you all financial records and related data."
- ii. "There have been no [i]rregularities involving management or employees who have significant roles in the internal control structure."
- iii. "There are no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements...."
- iv. "There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements."

o. On or about March 16, 1999, Vari-L filed a 10-KSB report with the SEC, reporting its financial results for the period ending December 31, 1998. The reported results were materially false in that they:

- i. included \$1,082,976 falsely added to Vari-L's property and equipment fixed assets;
- ii. included improperly recorded SIP revenue for 1997 comparative revenue;
- iii. included improperly recorded BIP revenue for 1997 comparative revenue;
- iv. included improper capitalization amounts; and
- v. failed to disclose that management was engaged in and directing others to engage in fraudulent accounting practices.

SHERMAN signed the 10-KSB report.

Defendant SHERMAN's stock sales

20. From in or about April 1994 through April 30, 2000, Vari-L's share price, adjusted for splits, rose from \$5.00 per share to over \$20 per share.

21. During that period, defendant SHERMAN sold approximately 212,500 shares of Vari-L stock, earning gross proceeds of approximately \$3,673,000.

Vari-L's Restatement of Financial Statements

22. On May 17, 2000, Vari-L issued a press release announcing that it was restating its financial results for 1997, to reduce the reported revenue for 1997 from \$17,385,364 to \$16,053,364.

23. Vari-L filed restated financial statements on Form 10-KT on February 14, 2001, which stated, among other things, that Vari-L's property and equipment had been overstated by amounts in excess of \$21 million.

**COUNTS ONE THROUGH FIVE
[18 U.S.C. § 1343; 18 U.S.C. § 2]**

USE OF THE WIRES

24. On or about the dates listed below, in the State and District of Colorado, defendant DAVID GLEN SHERMAN, for the purpose of executing the scheme to defraud or to obtain money, as described in ¶¶ 10-21, above, which are incorporated herein by reference, caused the following writings, signs, signals or pictures to be transmitted by means of wire communication in interstate commerce:

<u>COUNT</u>	<u>DATE</u>	<u>WIRE TRANSMISSION</u>
1	3/16/99	Vari-L's 1998 Form 10-KSB electronically filed from Denver, Colorado to the SEC in Alexandria, Virginia.
2	5/17/99	Vari-L's (1 st Quarter) 1999 Form 10-QSB electronically filed from Denver, Colorado to the SEC in Alexandria, Virginia.
3	8/16/99	Vari-L's (2nd Quarter) 1999 Form 10-QSB electronically filed from Denver, Colorado to the SEC in Alexandria, Virginia.
4	11/9/99	Vari-L's (3rd Quarter) 1999 Form 10-QSB electronically filed from Denver, Colorado to the SEC in Alexandria, Virginia.
5	3/30/00	Vari-L's 1999 Form 10-KSB electronically filed from Denver, Colorado to the SEC in Alexandria, Virginia.

Each of the foregoing counts was in violation of Title 18, United States Code, Sections 1343 and 2(b).

COUNT SIX

**15 U.S.C. §§ 78j(b); 78ff; 17 C.F.R. § 240.10b-5 [Securities Fraud];
18 U.S.C. § 2 [Causing an Act to Be Done]**

25. Paragraphs 1 through 23 are realleged as though fully set forth herein.

26. For the period of at least in or about January 1997 through in or about March 2000, in the State and District of Colorado, defendant SHERMAN, and others, knowingly and willfully, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by Vari-L, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by: (a) employing devices,

schemes, and artifices to defraud; (b) making and causing Vari-L to make untrue statements of material fact and omitting to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Vari-L securities.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT SEVEN
15 U.S.C. §§ 78m(a) and 78ff;
17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in a Report Filed with the SEC]
18 U.S.C. § 2 [Causing an Act to be Done]

27. On or about March 16, 1999, in the State and District of Colorado, in a Form 10-KSB filed with the SEC for the period ending December 31, 1998, defendant SHERMAN knowingly and willfully caused Vari-L to (a) make a materially false and misleading statement, and (b) omit material facts necessary in order to make the statement made not misleading, in light of the circumstances under which the statement was made, in a report and document which was required to be filed with the SEC.

28. Specifically, Vari-L's 1998 Form 10-KSB:

- a. Falsely reported that Vari-L's machinery and equipment was properly valued at \$22,299,396.
- b. Omitted to disclose that Hume had reversed the \$1,333,028 in falsely recorded BIP revenue into an asset account, which had a final value of \$1,082,976, after being offset by an additional \$250,000 BIP transaction;

c. Omitted to disclose that the fraudulent entries for SIP, BIP and to “fix” the problem were made at the direction of Vari-L management, specifically, defendant SHERMAN.

All in violation of Title 15, United States Code, §§ 78m(a) and 78ff; Title 17 Code of Federal Regulations, §§ 240.12b-20; 240.13a-1; 240.13b2-2; and Title 18, United States Code, § 2.

COUNT EIGHT
15 U.S.C. §§ 78m(a) and 78ff;
17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in a Report Filed with the SEC]
18 U.S.C. § 2 [Causing an Act to be Done]

29. On or about May 17, 1999, in the State and District of Colorado, in a Form 10-QSB filed with the SEC for the period ending March 31, 1999, defendant SHERMAN knowingly and willfully caused Vari-L to (a) make a materially false and misleading statement, and (b) omit material facts necessary in order to make the statement made not misleading, in light of the circumstances under which the statement was made, in a report and document which was required to be filed with the SEC.

30. Specifically, Vari-L’s (1st Quarter) 1999 Form 10-QSB:

- a. Falsely reported that Vari-L’s machinery and equipment was properly valued at \$23,512,000.
- b. Omitted to disclose that the entries for net sales revenues for the comparative 1998 period improperly included false SIP and BIP revenue;
- c. Falsely reported operating expenses that had been reduced, and net income that had been inflated, as a result of fraudulent capitalization entries to company books and records; and

d. Omitted to disclose that those fraudulent entries were made at the direction of Vari-L management, specifically defendant SHERMAN.

All in violation of Title 15, United States Code, §§ 78m(a) and 78ff; Title 17, Code of Federal Regulations, §§ 240.12b-20; 240.13a-1; 240.13b2-2; and Title 18, United States Code, § 2.

COUNT NINE
15 U.S.C. §§ 78m(a) and 78ff;
17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in a Report Filed with the SEC]
18 U.S.C. § 2 [Causing an Act to be Done]

31. On or about August 16, 1999, in the State and District of Colorado, in a Form 10-QSB filed with the SEC for the period ending June 30, 1999, defendant SHERMAN knowingly and willfully caused Vari-L to (a) make a materially false and misleading statement, and (b) omit material facts necessary in order to make the statement made not misleading, in light of the circumstances under which the statement was made, in a report and document which was required to be filed with the SEC.

32. Specifically, Vari-L's (2nd Quarter) 1999 Form 10-QSB:

a. Falsely reported that Vari-L's machinery and equipment was properly valued at \$25,259,000.

b. Omitted to disclose that the entries for net sales revenues for the comparative 1998 period improperly included false SIP revenue.

c. Falsely reported operating expenses that had been reduced, and net income that had been inflated, as a result of fraudulent capitalization entries to company books and records; and

d. Omitted to disclose that those fraudulent entries were made at the direction of Vari-L management, specifically defendant SHERMAN.

All in violation of Title 15, United States Code, §§ 78m(a) and 78ff; 17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2; and 18 U.S.C. § 2.

COUNT TEN
15 U.S.C. §§ 78m(a) and 78ff;
17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in a Report Filed with the SEC]
18 U.S.C. § 2 [Causing an Act to be Done]

33. On or about October 9, 1999, in the State and District of Colorado, in a Form 10-QSB filed with the SEC for the period ending September 30, 1999, defendant SHERMAN knowingly and willfully caused Vari-L to (a) make a materially false and misleading statement, and (b) omit material facts necessary in order to make the statement made not misleading, in light of the circumstances under which the statement was made, in a report and document which was required to be filed with the SEC.

34. Specifically, Vari-L's (3rd Quarter) 1999 Form 10-QSB:

- a. Falsely reported that Vari-L's machinery and equipment was properly valued at \$26,341,000.
- b. Omitted to disclose that the entries for sales revenues for the comparative 1998 period improperly included false SIP revenue.
- c. Falsely reported operating expenses that had been reduced, and net income that had been inflated, as a result of fraudulent capitalization entries to company books and records; and
- d. Omitted to disclose that those fraudulent entries were made at the direction of Vari-L management, specifically defendant SHERMAN.

All in violation of Title 15, United States Code, §§ 78m(a) and 78ff; Title 17, Code of Federal Regulations, §§ 240.12b-20; 240.13a-1; 240.13b2-2; and Title 18, United States Code, § 2.

COUNT ELEVEN
15 U.S.C. §§ 78m(a) and 78ff;
17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2
[False Statements in a Report Filed with the SEC]
18 U.S.C. § 2 [Causing an Act to be Done]

35. On or about March 30, 2000, in the State and District of Colorado, in a Form 10-KSB filed with the SEC for the period ending December 31, 1999, defendant SHERMAN knowingly and willfully caused Vari-L to (a) make a materially false and misleading statement, and (b) omit material facts necessary in order to make the statement made not misleading, in light of the circumstances under which the statement was made, in a report and document which was required to be filed with the SEC.

36. Specifically, Vari-L's 1999 Form 10-KSB:

- a. Falsely reported that Vari-L's machinery and equipment was properly valued at \$27,949,000.
- b. Falsely reported operating expenses that had been reduced, and net income that had been inflated, as a result of fraudulent capitalization entries to company books and records; and
- c. Omitted to disclose that those fraudulent entries were made at the direction of Vari-L management, specifically defendant SHERMAN.

All in violation of Title 15, United States Code, §§ 78m(a) and 78ff; 17 C.F.R. §§ 240.12b-20; 240.13a-1; 240.13b2-2; and 18 U.S.C. § 2.

COUNT TWELVE
15 U.S.C. §§ 78m(b)(2) and 78ff;
17 C.F.R. § 240.13b2-2
[False Statements to Auditors]
18 U.S.C. § 2 [Causing an Act to be Done]

37. Paragraphs 10 through 23 are realleged as though fully set forth herein.

38. On or about March 15, 2000, within the State and District of Colorado, defendant DAVID GLEN SHERMAN, an officer of Vari-L, knowingly and willfully made and caused to be made materially false and misleading statements to Haugen Springer in connection with an audit of Vari-L's financial statements and the preparation of an annual report required to be filed with the SEC for the period ended December 31, 1999. SHERMAN also omitted to state, and caused others to omit to state, material facts that were necessary in order to make the statements that were made, in light of the circumstances under which they were made, not misleading. Specifically, SHERMAN signed a management representation letter to Haugen Springer containing the following statements:

- a. "We have made available to you all financial records and related data."
- b. "There are no material transactions that have not been properly recorded in the accounting records underlying the financial statements."
- c. "There has been no [f]raud involving management or employees who have significant roles in internal control."
- d. "There are no violations or possible violations of laws or regulations whose effects should be considered for disclosure in the financial statements. . ."

39. In fact, as SHERMAN well knew:

- a. Management was violating applicable SEC rules and directing others to do so;
- b. At the direction of management, Vari-L was improperly reducing expenses and recording improper capitalization amounts.

All in violation of Title 15, United States Code, Sections 78m(b)(2) and 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT THIRTEEN
15 U.S.C. §§ 78m(b)(2)(A); 78m(b)(5), and 78ff;
17 C.F.R. § 240.13b2-1 [False books and records]
18 U.S.C. § 2 [Causing an Act to be Done]

40. Paragraphs 10 through 23 are realleged as though fully set forth herein.

41. From at least December 1997 through December 1999, in the State and District of Colorado, defendant DAVID GLEN SHERMAN, knowingly and willfully caused to be falsified books, records, and accounts of Vari-L. Specifically, defendant SHERMAN caused to be falsified Vari-L's revenue on its accounting records, and later caused Hume to "fix" the BIP problem by creating additional false entries to convert the false revenue into a fixed asset, as described above.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1, and Title 18, United States Code, Section 2.

A TRUE BILL.

FOREPERSON

JOHN W. SUTHERS
United States Attorney

by: PATRICIA W. DAVIES
Assistant U.S. Attorney

by: ROBERT MYDANS
Assistant U.S. Attorney

DATE: March 10, 2004

DEFENDANT: DAVID GLEN SHERMAN

DOB: 9/24/44

ADDRESS: 19431 Rue de Valore, #22H
Foothill Ranch, CA 92610-2312

LOCATION OF
OFFENSE: Denver, CO

OFFENSE: **Counts 1 through 5:** 18 U.S.C. § 1343 - Wire Fraud and
Causing an Act to be Done

Count 6: 15 U.S.C. §§ 78j(b); 78ff; 17 C.F.R. §240.10b-5
Securities Fraud and Causing an Act to be Done

Counts 7 through 11: 15 U.S.C. §§ 78m(a) and 78ff; 17 C.F.R. §§
240.12b-20; 240.13a-1; 240.13b2-2 - False Statements in a Report Filed
with the SEC and Causing Acts to be Done

Count 12: 15 U.S.C. §§ 78m(b)(2) and 78ff; 17 C.F.R. §§ 240.13b2-2 -
False Statements to Auditors and Causing Acts to be Done

Count 13: 15 U.S.C. §§ 78m(b)(2)(A); 78m(b)(5), and 78ff;
17 C.F.R. § 240.13b2-1 - False books and records and Causing Acts
to be Done

PENALTY: **Counts 1 through 5:**
NMT 5 years incarceration;¹ NMT \$250,000 fine; restitution; \$100.00
Special Assessment; 3 years Supervised Release (**per count**)

Counts 6 through 13:
NMT 10 years incarceration; NMT \$2,000,000 fine; restitution; \$100.00
Special Assessment; 3 years Supervised Release.² (**per count**)

¹By statute enacted July 30, 2002, the maximum statutory period of imprisonment was increased from 5 years to 20 years. However, due to the dates of the alleged offense conduct and *ex post facto* considerations, the government believes that the penalties above will apply to this case.

²By statute enacted July 30, 2003, the penalties identified above were amended to 20 years incarceration or \$2,000,000 fine, or both. Due to the dates of the alleged offense conduct and *ex post facto* considerations, the government believes that the penalties above will apply to this case.

AGENT: Inspector George Allen
United States Postal Inspection Service

Special Agent Kevin Knierim
Federal Bureau of Investigation

AUTHORIZED BY: Patricia W. Davies
Assistant U.S. Attorney

ESTIMATED TIME OF TRIAL:
 X five days or more

THE GOVERNMENT
 X will not seek detention in this case

The statutory presumption of detention **is not** applicable to this defendant.