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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CR. 01- 0324

UNITED STATES OF AMERICA, Plaintiff, v. WILLIAM GRABSKE, Defendant.	No. VIOLATIONS: 18 U.S.C. § 371 – Conspiracy to Commit Securities Fraud; 15 U.S.C. §§ 78j, 78m, and 78ff, and 17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2 – Securities Fraud; 18 U.S.C. § 1001 – False Statements to the Securities and Exchange Commission; 18 U.S.C. §§ 1341, 1343, and 1346 – Mail and Wire Fraud; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing SAN FRANCISCO VENUE

INDICTMENT

The Grand Jury charges:

BACKGROUND

At all times relevant to this Indictment:

1. Indus International, Inc. ("Indus" or "the company") was a Delaware corporation with its headquarters in San Francisco, California. Indus was a provider of "Enterprise Asset Management" products and services, including computer software.

2. Indus was a publicly owned corporation. Its stock was registered with the National Association of Securities Dealers' Automated Quotation System ("NASDAQ") and traded under the symbol "IINT." Indus had shareholders throughout the United States, including in the Northern District of California.

3. Defendant WILLIAM GRABSKE ("GRABSKE") was the President and Chief Executive Officer of Indus. In 1999, GRABSKE received $701,018 in salary and $350,000 as a bonus from Indus. GRABSKE owned approximately 26,000 shares of Indus stock. GRABSKE also had been granted options to purchase 1,500,000 shares of Indus stock (including both exercisable and unexercisable options). As of December 31, 1999, these options had an approximate value of $8.5 million.

4. Robert Pocsik ("Pocsik") was the Senior Vice President for Human Resources and Administration, and the acting Senior Vice President for Sales.

5. As a public company, Indus was required to file quarterly reports on Form 10-Q with the Securities and Exchange Commission ("SEC"). The Forms 10-Q included unaudited financial statements, including revenue from software licensing and net income. As President and CEO, defendant GRABSKE signed the Form 10-Q for each fiscal quarter. Indus' fiscal year was coterminous with the calendar year. Indus' third fiscal quarter began on July 1 and ended on September 30.

Indus' Revenue Recognition Policy

6. Throughout 1999, Indus had a company policy for software revenue recognition which was developed in accordance with regulations prescribed by the SEC and with Generally Accepted Accounting Principles ("GAAP"). Software Revenue Recognition, Statement of Position 97-2 (Amer. Inst. of Certified Public Accountants 1997) ("SOP 97-2"), provides guidance on applying GAAP to computer software sales transactions. Among other requirements for recognizing revenue from software sales, transactions may not be subject to the right of return or other contingency.

7. Indus had a written revenue recognition policy that was developed with the assistance of Ernst & Young LLP, Indus' independent auditors. This policy was consistent with the requirements of SOP 97-2. The policy stated in part that "All obligations to the customer should be contained in the agreement (no side letters!). If a separate agreement must be made, a copy must be submitted to Finance for possible revenue recognition ramifications."

8. On August 17 and 18, 1999, defendant GRABSKE and Pocsik attended a meeting at which Indus' Chief Financial Officer ("the CFO") made a presentation that included a discussion of issues related to revenue recognition. During the presentation, the CFO explained that the use of side letters alters the ability to recognize revenue from a software sale. The CFO explained that Indus employees were not permitted to enter into side letters that were inconsistent with the terms of a sales contract.

Indus Customers

9. Holmes & Narver ("H&N") is an engineering, architectural, and management company located in Orange, California. H&N was an Indus customer.

10. Maxon Engineering Services, Inc. ("Maxon") was Indus' distributor in Puerto Rico. Maxon's primary customer for Indus products was the Puerto Rico Electric Power Authority ("PREPA").

Indus' Revision of Third Quarter 1999 Revenue

11. On January 27, 2000, Indus announced that it was conducting a review of its revenue recognition practices. In addition, the company announced that the preliminary results of the review indicated that revenue reported in the quarter ended September 30, 1999, was overstated by approximately $5 million, all of which was related to license fees. According to the company, the restatement was due to the discovery of side letters in connection with certain software license agreements.

12. Indus ultimately determined that revenue from contracts with H&N and Maxon had been improperly recognized. On November 13, 2000, Indus filed a Form 10-Q/A with the SEC in which the company restated its third quarter 1999 financial results, including revenue from software license fees, net income, and earning per share (diluted), as follows:

Q3 1999 Software License Fees (millions)			Q3 1999 Net Income (millions)			Earnings Per Share (diluted)		
Originally Reported	Restated	Overstated	Originally Reported	Restated	Overstated	Originally Reported	Restated	Overstated
$9.9 million	$4.9 million	50.5%	$3.5 million	$1.1 million	68.6%	$0.10	$0.03	70%

13. On January 27, 2000, Indus' stock closed at $9.6875. After the market closed, the company announced the preliminary restatement of revenue. The following day, as a result of Indus' announcement, Indus stock closed at $7.625, a drop of over 21% from the previous day's closing price.

THE CONSPIRACY AND SCHEME TO DEFRAUD

14. Beginning by at least September 1999 and continuing through in or about January 2000, within the Northern District of California and elsewhere, defendant GRABSKE and others knowingly and intentionally conspired to commit crimes against the United States and devised a scheme and artifice to defraud Indus, its shareholders, and the investing public.

Object and Purpose of the Conspiracy and Scheme

15. The object and purpose of the conspiracy and scheme to defraud was to falsely inflate Indus' revenue and profits, to meet or exceed Indus' internal and Wall Street forecasts and targets for software sales revenue, and thereby to maintain and increase the value of defendant GRABSKE's stock and the value of his stock options, as well as his position in the company.

16. It was part of the conspiracy and the scheme to defraud that defendant GRABSKE, directly and indirectly, did the following:

a. cause false sales to be recorded as revenue by Indus in violation of GAAP and Indus' internal accounting policies and procedures; and

b. make and cause to be made material false statements to Indus' financial officers and employees, Indus' auditors, the SEC, and the public regarding Indus' revenue and profits.

False Transactions and Accounting Entries

17. It was part of the conspiracy and scheme to defraud that defendant GRABSKE and others engaged in and concealed the following transactions:

a. Illusory Sale to Holmes and Narver:

18. On or about September 30, 1999, Indus entered into a written software licensing and service agreement with H&N. Under the terms of the agreement, H&N agreed to purchase a license to use certain Indus computer software for $1,718,650 and to pay support fees in the amount of $309,357. The agreement did not contain any contingencies.

19. At the direction of defendant GRABSKE, Indus employees caused a separate letter to be sent to H&N on or about September 29, 1999, which gave H&N the right to cancel the contract and return the software to Indus without any cost or penalty before October 20, 1999. This letter was concealed from Indus' CFO and the company's accountants.

20. At the direction of defendant GRABSKE, on or about October 25, 1999, Indus employees entered into an addendum to the software licensing and service agreement. The addendum extended H&N's cancellation option to October 31, 1999. This addendum was concealed from Indus' CFO and the company's accountants.

21. On or about November 1, 1999, H&N cancelled the software licensing and service agreement and returned the Indus software. H&N never paid Indus any money under the agreement.

22. After defendant GRABSKE learned that the software had been returned by H&N, he directed Pocsik to send two bottles of wine to H&N by Federal Express. Defendant GRABSKE intended to use the shipping receipt as evidence that software had been sent by Indus to H&N. On or about November 16, 1999, at Pocsik's direction, Indus employees sent the wine by Federal Express to H&N.

23. On or about November 19, 1999, defendant GRABSKE directed Pocsik to provide another letter to H&N extending the contract termination date to January 31, 2000. This letter was concealed from Indus' CFO and the company's accountants.

24. Indus recorded $1,718,650 in revenue from the H&N contract for the fiscal quarter ending September 30, 1999, in violation of GAAP, SOP 97-2, and the company's internal accounting policies. This revenue was reported by the company to the SEC and the investing public, as alleged in paragraphs thirty-six through thirty-nine of this Indictment.

b. Illusory Sale to Maxon Engineering Services:

25. On or about September 30, 1999, Indus entered into a contract with Maxon under which Maxon agreed to pay $2,000,000 for a license to use certain Indus software. Maxon also agreed that the annual support fee would be $360,000. On the original agreement, Maxon typed the following contingency: "Note: This contract is subject to cancellation by Maxon Engineering Services within 90 days and without any cancellation charges." This version of the contract was not provided to Indus' CFO or the company's accountants.

26. Also on September 30, 1999, defendant GRABSKE directed Pocsik to send a letter to Maxon which gave Maxon the right to cancel the agreement within 90 days. This letter was concealed from Indus' CFO and the company's accountants.

27. On October 1, 1999, at the direction of Pocsik, an Indus employee removed the cancellation language that had been typed on the agreement by Maxon.

28. On December 29, 1999, Pocsik sent Maxon a second letter extending the contract cancellation date another 90 days. This letter was concealed from Indus' CFO and the company's accountants.

29. Maxon neither paid Indus nor received software under this contract. Nevertheless, Indus recorded $2,000,000 in revenue from the Maxon contract for the fiscal quarter ending September 30, 1999, in violation of GAAP, SOP 97-2, and company's internal accounting policies. This revenue was reported by the company to the SEC and the investing public, as alleged in paragraphs thirty-six through thirty-nine of this Indictment.

False Statements to and Concealing Information From Indus' CFO

30. It was further part of the conspiracy and scheme to defraud that defendant GRABSKE and others made false statements to Indus' CFO and withheld material information regarding the H&N and Maxon contracts from her.

31. Defendant GRABSKE and others acting at his direction, specifically Pocsik and other Indus employees, concealed from the CFO and her subordinates the existence of side letters and contingencies to the contracts with H&N or Maxon, as alleged in paragraphs eighteen through twenty-nine of this Indictment.

32. On or about November 3, 1999, the CFO learned that H&N had returned the software it had received from Indus, and reported that fact to defendant GRABSKE. On or about November 8, 1999, defendant GRABSKE told the CFO that he would speak to H&N to ensure that the agreement was free of contingencies and arrange for the re-shipment of the software to H&N.

33. On or about November 15, 1999, defendant GRABSKE falsely told the CFO that he had spoken with H&N and that there were no contingencies on the H&N agreement. Defendant GRABSKE also falsely told the CFO that he had instructed an Indus employee to re-ship the software to H&N.

34. In fact, defendant GRABSKE never spoke to H&N. Instead, he directed Indus employees to ship two bottles of wine to H&N and to use the shipping receipt as proof of the software re-shipment.

False Statements to the SEC and the Investing Public

35. It was further part of the conspiracy and scheme to defraud that defendant GRABSKE made and caused Indus to make false statements to the investing public and to the SEC.

36. On or about October 28, 1999, Indus issued a press release announcing its Q3 1999 financial results which included the revenue for the H&N and Maxon transactions. The press release reported revenues of $50.9 million, software licensing fees of $9.9 million, and net income of $3.4 million. Defendant GRABSKE was quoted as saying, "[s]oftware license fees

exceeded our quarterly targets while continuing to be affected by a general industry slowdown."

37. The revenues, fees, and income announced in the press release were false because they included the H&N and Maxon transaction. Defendant GRABSKE's statement regarding the software license fees was false because, without the H&N and Maxon transactions, Indus failed to meet its quarterly targets.

38. On or about November 15, 1999, Indus filed its Form 10-Q for the quarter ending September 30, 1999, with the SEC. Defendant GRABSKE signed the Form 10-Q.

39. The Form 10-Q contained several statements that defendant GRABSKE knew were false, including software license fees ($9.935 million), total revenues ($50.88 million), and net income ($3.52 million).

Defendant GRABSKE Fired The CFO

40. Prior to November 15, 1999, defendant GRABSKE and Pocsik agreed that the CFO would be fired because of questions she asked regarding the H&N and Maxon transactions.

41. On or about November 18, 1999, defendant GRABSKE fired the CFO. Defendant GRABSKE waited until after the CFO finalized and signed the SEC Form 10-Q.

False and Misleading Statements to Indus' External Auditors

42. It was further part of the conspiracy and scheme to defraud that defendant GRABSKE and others caused H&N to make false and misleading statements to Indus' external auditors, Ernst & Young.

43. On or about November 19, 1999, defendant GRABSKE directed Pocsik to ask H&N to falsely respond to an audit confirmation request in connection with Indus' audit by Ernst & Young. On or about January 4, 2000, H&N responded to Ernst & Young by acknowledging the existence of a contract between H&N and Indus.

COUNT ONE: (18 U.S.C. § 371 – Conspiracy to Commit Securities Fraud)

44. Paragraphs One through Forty-Three of this Indictment are realleged and incorporated here by reference.

45. Beginning in or about September 1999 and continuing to on or about January 11, 2000, both dates being approximate and inclusive, in the Northern District of California, and elsewhere, the defendant

WILLIAM GRABSKE

and others, did knowingly and intentionally conspire to commit the offenses alleged in Counts Two through Ten of this Indictment.

46. In furtherance of the conspiracy and to effect the objects thereof, in the Northern District of California and elsewhere, the defendant and others committed the acts described in paragraphs Fourteen through Forty-Three of this Indictment, which are realleged and incorporated here by reference.

All in violation of Title 18, United States Code, Section 371.

COUNT TWO: (15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5 – Fraud in Connection with the Purchase and Sale of Securities; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

47. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

48. Beginning in or about September 1999 and continuing to on or about January 11, 2000, both dates being approximate and inclusive, in the Northern District of California, and elsewhere, the defendant

WILLIAM GRABSKE

and others, knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities issued by Indus, 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 Indus 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 Indus securities.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

COUNT THREE: (15 U.S.C. § 78ff and 17 C.F.R. § 240.13b2-2(a) – Making and Causing to be Made False and Misleading Statements in Reports Required to be Filed Under the Securities and Exchange Act of 1934; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

49. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

50. On or about November 15, 1999, in the Northern District of California, the defendant

WILLIAM GRABSKE

did willfully and knowingly make and cause to be made materially false and misleading statements in a Form 10-Q filed by Indus with the Securities and Exchange Commission. Specifically, the Form 10-Q for the third quarter of 1999 contained the false and misleading statements alleged in paragraph Thirty-Nine of this Indictment.

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

COUNT FOUR: (18 U.S.C. § 1001 – Making False Statements to the Securities and Exchange Commission; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

51. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

52. On or about November 15, 1999, in the Northern District of California, the defendant

WILLIAM GRABSKE

did knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in a Form 10-Q filed by Indus with the Securities and Exchange Commission, a part of the executive branch of the Government of the United States. Specifically, the defendant made the false, fictitious, and fraudulent statements and representations alleged in paragraph Thirty-Nine of this Indictment.

All in violation of Title 18, United States Code, Sections 1001 and 2.

COUNT FIVE: (15 U.S.C. § 78ff and 17 C.F.R. § 240.13b2-2(b) – Omitting to State Material Facts to an Accountant; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

53. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

54. On or about and between September 30, 1999, and November 15, 1999, both dates being approximate and inclusive, in the Northern District of California, the defendant

WILLIAM GRABSKE

did knowingly and willfully omit to state, and cause another person to omit to state, material facts necessary in order to make statements to an accountant not misleading in connection with the preparation or filing of a document and report required to be filed with the SEC. Specifically, the defendant concealed from Indus' CFO that Indus had entered into side agreements with H&N and Maxon. Those side agreements precluded Indus from recognizing and reporting revenue from the H&N and Maxon contracts in Indus' SEC Form 10-Q for the third quarter of 1999.

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

COUNT SIX: (15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), and 78ff, and 17 C.F.R. § 240.13b2-1 – Falsifying Books, Records, and Accounts; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

55. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

56. On or about and between September 30, 1999, and January 11, 2000, in the Northern District of California, the defendant

WILLIAM GRABSKE

did knowingly and willfully, directly and indirectly, falsify and cause other Indus employees to falsify books, records, and accounts that were required under Section 13(b)(2)(A) of the Securities and Exchange Act to accurately and fairly reflect the transactions of Indus.

57. Specifically, the defendant caused Indus to recognize revenue from the H&N and Maxon transactions and concealed material information from Indus' CFO and Indus' external auditors regarding those transactions for the purpose of falsifying Indus' books, records, and accounts relating to the third fiscal quarter of 1999.

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

COUNT SEVEN: (15 U.S.C. §§ 78m(b)(2)(B)(ii)(I), 78m(b)(5), and 78ff – Circumventing Internal Accounting Procedures and Systems of Accounting Controls; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

58. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

59. On or about and between September 30, 1999, and January 11, 2000, in the Northern District of California, the defendant

WILLIAM GRABSKE

did knowingly and willfully, directly and indirectly, circumvent Indus' system of internal accounting controls, required under Section 13(b)(2)(B) of the Securities and Exchange Act of 1934.

60. Specifically, the defendant caused revenue from the H&N and Maxon transactions to be recognized in violation of GAAP and Indus' internal policies and procedures for recognizing revenue.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(B)(ii)(I), 78m(b)(5), and 78ff; and Title 18, United States Code, Section 2.

COUNTS EIGHT, NINE, AND TEN: (18 U.S.C. §§ 1341, 1343, and 1346 – Mail and Wire Fraud; 18 U.S.C. § 2 – Aiding, Abetting, and Willfully Causing)

61. Paragraphs One through Thirteen and Eighteen through Forty-Three of this Indictment are realleged and incorporated here by reference.

62. On or about the following dates, within the Northern District of California and elsewhere, for the purpose of executing the scheme and artifice to defraud described in paragraphs Fifteen and Sixteen of this Indictment, to obtain money and property, and to deprive his employer Indus of its right to his honest services, defendant WILLIAM GRABSKE did cause the following items to be sent by mail and transmitted by wire in interstate commerce:

Count	Approximate Date	Description	Form of Communication
EIGHT	October 28, 1999	Press Release Announcing Third Quarter Results	Wire
NINE	November 15, 1999	SEC Form 10-Q	Wire
TEN	November 16, 1999	Bottles of Wine to H&N	Federal Express (Mail)

All in violation of Title 18, United States Code, Sections 1341, 1343, and 1346.

DATED:

A TRUE BILL.

_____
FOREPERSON

ROBERT S. MUELLER, III
United States Attorney

DAVID W. SHAPIRO
Chief, Criminal Division

(Approved as to form: _____)
AUSA John H. Hemann