

DOCKET NO.: HHD-CV-15-6058382 S : SUPERIOR COURT  
WILLIAM GHIO AND JANET GHIO : J.D. OF HARTFORD  
v. : AT HARTFORD  
PAUL PENDERGAST, ET AL : OCTOBER 23, 2018

**STIPULATION FOR JUDGMENT**

The parties to this stipulation in the above-entitled matter are William Ghio, Janet Ghio, Paul Pendergast, J. Reid Gorman, Carlos Silva, Charles Cox and Back9 Network, Inc.

Whereas the plaintiffs were investors in the defendant Back9;

Whereas the plaintiffs filed suit in April of 2015 claiming, *inter alia*, violations of C.G.S. § 36a-4 and CUTPA violations;

Whereas the plaintiffs sued Back9, which eventually filed bankruptcy, however, the plaintiffs and Back9 agreed in the bankruptcy court that the plaintiffs could pursue this lawsuit against Back9 with recovery limited to the Directors' and Officers' liability insurance policy ("D&O carrier").

Whereas at all times relevant hereto, the D&O carrier was Liberty Insurance Underwriters, Inc., policy # DONYA AOAZK003, and whereas from April of 2015 through October 10, 2018, the D&O carrier had not issued any reservation of rights letter or disclaimers to at least Defendants Pendergast,

Cox or Silva, and whereas the D&O carrier has been paying for the defense of the instant lawsuit on behalf of the Defendants, in part;

Whereas the D&O carrier has now issued a declination of coverage;

Whereas the individual defendants have each represented that they each have modest net worths and would be unable to satisfy the plaintiffs' judgment; and

Whereas the parties wish to avoid the unnecessary cost and expense of litigation, and hereby stipulate and agree as follows:

1. The Defendants hereby acknowledge and admit that a reasonable jury could find that at least one of the individual defendants made material omissions from information disclosed to the plaintiffs, which would have affected the plaintiffs' decisions to invest in Back9. These were not intentional but negligent oversights, as follows:

a. At least one of the individual Defendants failed to disclose to the Ghios that Back9 did not have a commitment for the reserve necessary for Back9 to operate, and in fact had been turned down by 75 institutional investment entities;

b. At least one of the individual Defendants failed to disclose to the Ghios that, while Comcast was approached to carry Back9, it ultimately

indicated that it was not likely to complete a contract to carry Back9 as a cable channel until after completion of its contemplated merger with Time Warner;

c. At least one of the individual Defendants failed to disclose to the Ghios that Jamie Bosworth was the individual at Back9 who had a relationship with Clint Eastwood and that Clint Eastwood's involvement with Back9 terminated, although Back9's office continued to have a locker with Clint Eastwood's name on it, in its Hartford, Connecticut offices after June 2014, even though he had never even visited same;

d. At least one of the individual Defendants failed to disclose to the Ghios that budgetary issues had become acute by the Summer of 2014, or provide the Ghios with a list or summary of the institutional investors that had declined to invest in Back9, which affected staffing that could be employed;

e. At least one of individual Defendants failed to disclose to the Ghios that by Fall of 2014, budgetary concerns for Back9 became a weekly and monthly concern, such that the payables began to accrue significantly, and on a weekly basis, the defendants were trying to allocate funds to even meet payroll;

f. At least one of the individual Defendants failed to disclose that by December of 2014, the payables had accumulated into millions of dollars, Back9 was past due on many of its accounts, Back9 had unsuccessfully tried to renegotiate the terms of its \$580,000 carriage fee with DirectTV; Back9 was relying upon its ability to get more investor funds, largely from individual investors;

g. that while at least one of the individual Defendants had referenced potential investors associated with sports who had the potential to invest more than \$1 million in Back9, there was no commitment from any substantial investor by December of 2014;

h. that while at least one of the individual Defendants had referred to a number of high end retail vendors as possible as possible advertisers, only a couple of those advertisers committed to spending advertising revenue in Back9;

i. that at least one of the individual Defendants failed to disclose to the Ghios that Back9 had not received commitments to fund the full \$10 million convertible note offering that was needed to financially bridge the Company to a Series D offering, and at least one of the Defendants did not

indicate that Back9 had not received a commitment for institutional funding for such round

j. that while the individual plaintiffs believed that they were purchasing additional stock in December of 2014 in a so-called Series D offering, the defendants maintain that the plaintiffs were actually lending money pursuant to this convertible loan transaction; neither the Series D security offering nor the convertible loan, either of which would have constituted securities, were ever registered or filed with state or federal authorities, although the defendants relied on attorneys representing Back9 to handle same;

k. that a reasonable jury could find that at least one of the individual Defendants failed to secure the plaintiff Janet Ghio's signature on investment documents, even though stock certificates were issued to William and Janet Ghio, and the Defendants knew that Janet Ghio was to be an investor;

l. that to the extent that any of the individual Defendants had valued the company at the time of each offering, the defendants failed to secure an independent third party valuation, even though their accountants had referred to the fact that no such valuation had been performed;

m. that Paul Pendergast's principal function was to secure investors, although he was neither licensed as an investment advisor, nor registered with the State of Connecticut as a solicitor for investors;

n. that to the extent that there were securities violations in regard to the offerings, violating the Connecticut securities laws, at all times all of the defendants relied upon Back9's corporate counsel for timely filing and complying with Connecticut law;

o. that while none of the individual Defendants has a specific recollection of statements made to the plaintiffs, to the extent that the plaintiffs were advised that the company had the financial viability to continue in business, even in December of 2014, and that it was not going to shut the lights off and close its doors, any such misrepresentations were not intentionally made, but made out of the belief that the Defendants could make Back9 a reality.

That a reasonable jury could find that at times relevant to Plaintiffs' investments in Back9, the individual Defendants were assisting the Company in securing investors for Back9, including the Plaintiffs.

2. Judgment shall enter against the Defendants on Count One, in the amount of \$860,000, statutory interest of \$275,200, \$350,000 in attorney's fees, and offer of judgment interest of \$415,856, totaling \$1,901,056.

3. Since Plaintiffs \$360,000 investment by check dated December 31, 2014 made reference to a Series D security, the security had not yet been created, and no stock was ever delivered to the plaintiffs, a reasonable jury could find that same constitutes a material misrepresentation or omission.

4. Interest shall accrue on the judgment at 10% per annum.

5. The plaintiffs agree to seek satisfaction of this or any related judgment not from the personal assets of any of the individual Defendants, but to seek satisfaction and recovery solely and exclusively from the D&O carrier, and the defendants hereby unconditionally assign all of their rights under said D&O policy to the plaintiffs. Plaintiffs hereby covenant and agree not to bring any further claim, suit or cause of action, whether in law or equity, against any of the individual Defendants relating in any way to this action or Plaintiffs' investments in Back9.

6. The Defendants hereby direct their counsel to turn over promptly to plaintiffs' attorney another copy of the D&O policy, including declaration page, a copy of all correspondence with the D&O carrier that are in the

possession of any of the individual Defendants' or their counsel relating to the existence of insurance coverage, including bills, redacted to the extent permitted for any applicable privilege, sent to the D&O carrier for which partial payment was made by the D&O carrier.

7. The individual Defendants agree to voluntarily appear at depositions or otherwise provide reasonably available documents within their control at reasonable times and places if necessary, and enforcement of this provision, if necessary, will not be deemed to be a violation of paragraph 6.

8. Judgment shall enter for the plaintiffs on the Defendants' counterclaim.



PLAINTIFFS,

By 

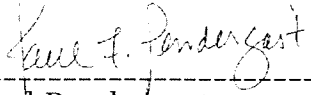
Richard P. Weinstein, Esquire of  
WEINSTEIN & WISSER, P.C.  
29 South Main Street, Suite 207  
West Hartford, CT 06107  
Telephone No. (860) 561-2628  
Juris No. 45674  
[rpw@weinsteinwisser.com](mailto:rpw@weinsteinwisser.com)

DEFENDANTS,

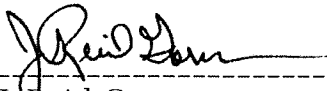
By 

Joshua Berman, Esquire  
Natalie Fernandez, Esquire  
Gina Chiappetta, Esquire  
White & Case, LLP  
1221 Avenue of the Americas  
New York, NY 10020-1095  
Telephone No. (212) 819-8547  
Juris No. 458538  
[Joshua.Berman@whitecase.com](mailto:Joshua.Berman@whitecase.com)  
[natalie.fernandez@whitecase.com](mailto:natalie.fernandez@whitecase.com)  
[Gina.Chiappetta@whitecase.com](mailto:Gina.Chiappetta@whitecase.com)

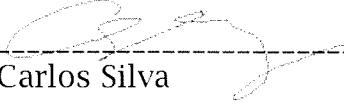
**ACKNOWLEDGED AND AGREED TO BY:**

  
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Paul Pendergast


October 22, 2018  
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Date

  
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J. Reid Gorman

October 22, 2018  
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Date

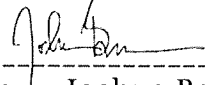
  
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Carlos Silva

October 22, 2018  
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Date

  
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Charles Cox

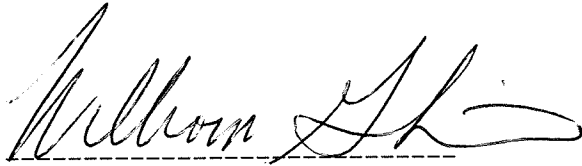
October 22, 2018  
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Date

Back9 Network, Inc.

  
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By Joshua Berman  
Its Attorney

October 22, 2018  
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Date

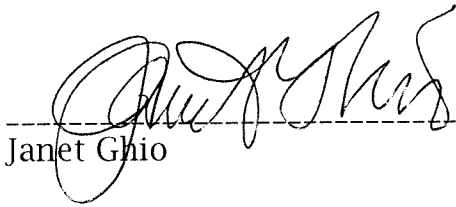
**ACKNOWLEDGED AND AGREED TO BY:**



William Ghio

10/22/2018

Date



Janet Ghio

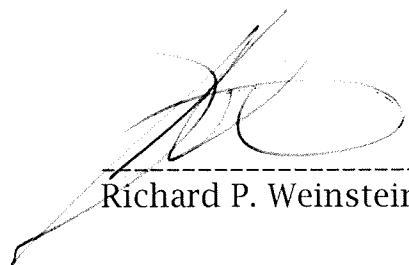
10.22.18

Date

**CERTIFICATION**

This is to certify that on the 24<sup>th</sup> day of October 2018, a copy of the foregoing was served upon:

Joshua Berman, Esquire  
Natalie Fernandez, Esquire  
Gina Chiappetta, Esquire  
White & Case, LLP  
1221 Avenue of the Americas  
New York, NY 10020-1095  
[Joshua.Berman@whitecase.com](mailto:Joshua.Berman@whitecase.com)  
[natalie.fernandez@whitecase.com](mailto:natalie.fernandez@whitecase.com)  
[Gina.Chiappetta@whitecase.com](mailto:Gina.Chiappetta@whitecase.com)



Richard P. Weinstein