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6/1/2023 11:46 AM
Superior Court of California
County of Fresno
By: S. Garcia, Deputy

ATTORNEYS FOR PLAINTIFF CATALYST COMMUNICATIONS, INC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

CATALYST COMMUNICATIONS, INC.,

Plaintiff,

vs.

JAKE SOBERAL, AN INDIVIDUAL; BW
INDUSTRIES, INC. A DELAWARE
CORPORATION; AND DOES 1 THROUGH
50,

Defendants,

Case No.: 23CECG02145

COMPLAINT FOR:

FRAUD; INJUNCTIVE RELIEF

I

INTRODUCTION

1. Plaintiff CATALYST COMMUNICATIONS, INC. ("Plaintiff") brings this action to rectify blatant fraudulent misrepresentations made by Defendants and to avoid immediate irreparable harm to an innocent entity which acted in good faith at all times relevant hereto.

COMPLAINT FOR FRAUD; INJUNCTIVE RELIEF

2. Plaintiff made Defendants a loan of Two Hundred Thousand Dollars based upon the representation that the loan would be secured by a Corporate Guarantee from a borrower which claimed revenues of over Two Hundred Million annually and cash on hand of over Sixty-Five Million dollars.

3. These claims of financial strength and reliability were completely and utterly false when made. The unfortunate truth is that Defendants have recently failed to make payroll payments to their employees, have furloughed their entire workforce, and are substantially behind on property tax and lease payments.¹ Accordingly, Plaintiff requests that Defendants be immediately enjoined from making any expenditures of any kind pending resolution of this matter.

II

PARTIES

4. Plaintiff is a corporation organized and existing pursuant to the laws of State of California and licensed to business in California.

5. Defendant JAKE SOBERAL is an individual residing and conducting business in Fresno County, California.

6. Defendant BW Industries, Inc. is and at all relevant times hereto was, a Delaware Corporation conducting business in Fresno, County, California.

¹ See, e.g., Bitwise Industries Furloughs Entire Workforce, The Sun, May 29, 2022, <https://sjvsun.com/business/bitwise-industries-furloughs-entire-workforce/>.

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2 7. Plaintiff is ignorant of the true names and capacities of the defendants sued herein
3 as Does 1
4

5 through 50, inclusive, and therefore sues these Doe defendants by such fictitious names.
6 Plaintiff will amend this complaint to allege the true names and capacities when ascertained.
7

8 8. At all relevant times as alleged herein each Defendant acted as an agent, servant,
9 employee, co-conspirator, alter ego and/or joint venturer of the other Defendants, and in doing
10 the things alleged herein acted within the course and scope of such agency, employment, alter
11 ego and/or in furtherance of the joint venture. Each of the Defendants' acts alleged herein was
12 done with the permission and consent of each of the other Defendants.
13

14 9. At all times relevant hereto, Defendant BW Industries, Inc. was the alter ego of
15 Defendant Jake Soberal and there exists, and at all times relevant hereto, there existed, a unity
16 of interest and ownership between Defendants such that any separateness between them has
17 ceased to exist in that Defendant Jake Soberal completely controlled, dominated, managed and
18 operated the other Defendant to suit his convenience.
19

20 10. Specifically, at all times relevant hereto, Defendant Jake Soberal (1) controlled
21 the business and affairs of BW Industries, Inc., including any and all of its affiliates; (2)
22 commingled the funds and assets of the corporate entities, and diverted corporate funds and
23 assets for his own personal use; (3) disregarded legal formalities and failed to maintain arm's
24 length relationships among the corporate entities; (4) inadequately capitalized BW Industries
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2 Inc.; (5) used the same office or business location and employed the same employees for the
3 corporate entity; (6) held himself out as personally liability for the debts of the corporate
4 entity; (7) used the corporate entities as mere shells, instrumentalities or conduits for himself
5 and/or his individual businesses; (8) used the corporate entities to procure labor, services or
6 merchandise for other persons or entities; (9) used the corporate entity to shield against
7 personal obligations and in particular the obligations as alleged in this complaint.
8
9

10 11. At all times relevant hereto Defendant BW Industries, Inc. was not only
11 influenced and governed by Defendant Jake Soberal, but there was such a unity of interest and
12 ownership that the individuality or separateness of Defendant Jake Soberal and BW Industries,
13 Inc. ceased to exist, and the facts are such that an adherence to the fiction of the separate
14 existence of this entity would, under the particular circumstances, sanction a fraud or promote
15 injustice. Accordingly, Defendant Jake Soberal should be held liable and accountable for the
16 debts of BW Industries, Inc.
17
18

19 III

20 JURISDICTION AND VENUE

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22 12. This Court has jurisdiction over this action pursuant to Code of Civil Procedure
23 Section 410.10 and Section 395 since some of the Defendants reside in Fresno County,
24 California and the acts complained of herein were perpetrated in Fresno County, California.
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27 COMPLAINT FOR FRAUD; INJUNCTIVE RELIEF
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IV

FACTUAL BACKGROUND

13. Plaintiff was contacted by Defendant Soberal on May 10th, 2023, regarding a loan Defendant Soberal was allegedly soliciting for Defendant BW Industries, Inc. A true and correct copy of the email from Defendant Soberal to Plaintiff's CEO Mark Astone is attached hereto as Exhibit A. In that email Defendant Soberal, in response to Plaintiff's inquiry regarding a loan guarantee or a Deed of Trust to secure the loan represented that Defendant BW Industries was earning over \$200,000,000 in annual revenue and had \$65,000,000 in cash on hand, therefore no Deed of Trust on real property was required to secure the loan.

14. In reliance upon Defendant's representations regarding financial viability Plaintiff decided to fund the loan. Accordingly, Plaintiff executed the "TERM NOTE", a true and correct copy of which is attached here at Exhibit B. Plaintiff wired the amount of \$200,000 to Defendant's account at First Republic Bank, which deposit was confirmed by Defendant Soberal via email on May 12, 2023.

V

COMPLAINT FOR FRAUD; INJUNCTIVE RELIEF

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3 **CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**
5 **(FRAUD-Against all Defendants)**

6 15. Plaintiff hereby re-allege all prior paragraphs as though fully set forth herein.

7
8 16. Defendants, and each of them, represented to Plaintiff that Defendant BW
9 Industries, Inc. was generating over \$200,000,000 per year in annual revenue and had
10 \$65,000,000 of cash on hand at of May 10th, 2023. Plaintiff is informed and believes and based
11 thereon alleges that Defendants' representations regarding the financial strength of Defendant
12 BW Industries, Inc. was false. Plaintiff is informed and believes that Defendants'
13 representations regarding Defendant BW Industries, Inc.'s were intentional misrepresentations
14 made in order to induce Plaintiff to fund the \$200,000 loan requested of Plaintiff.
15

16 17. Plaintiff reasonably relied on Defendants' representations regarding the financial
17 strength of Defendant BW Industries and has suffered damages as a result of said
18 representations.
19

20 18. Defendant's misrepresentations as described herein constitute the type of willful
21 and malicious fraud so as to justify an award of punitive damages pursuant to California Civil
22 Code section 3294.
23

24 WHEREFORE, Plaintiff requests the relief as set forth below.
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26 **COMPLAINT FOR FRAUD; INJUNCTIVE RELIEF**
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3 **SECOND CAUSE OF ACTION**

4 **(INJUNCTIVE RELIEF-Against all Defendants)**

5 19. Plaintiff hereby re-alleges all prior paragraphs as though fully set forth herein.

6 20. Based upon Defendants' fraudulent misrepresentation regarding the financial
7 wherewithal of Defendant BW Industries, Inc. Plaintiff further seeks a temporary restraining
8 order and preliminary and permanent injunctions, compelling, restraining, and enjoining
9 Defendants and any other person or entity who may have possession, custody, or control of
10 the property of Plaintiff or of any interest therein, including without limitation
11 their respective agents, representatives, assignees, and employees as follows:
12

13 (a) To immediately freeze and cease transaction activity for any all accounts,
14 including but not limited to the Deposit Accounts owned by Defendant BW
15 Industries, or any of its subsidiaries and any and all accounts owned by Defendant Jake
16 Soberal.
17

18 (b) To immediately turn over to Plaintiff all books, leases, documents, and
19 records relating to Defendants, and each of them;
20

21 (c) For expedited discovery, including the production of documents within three
22 business days of the Court's entry of a Temporary Restraining Order
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24 WHEREFORE, Plaintiff prays for relief as set forth below:
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3 **PRAYER FOR RELIEF**

4 **WHEREFORE** Plaintiff prays for judgment against Defendants and Does 1-50 as follows:

5 **On the First Cause of Action:**

6 1. For compensatory damages, according to proof, but in an amount
7 exceeding \$25,000.

8 2. For all other damages and remedies, according to proof.

9 3. For punitive damages according to proof and in the minimum amount of
10 \$500,000.00

11 **On the Second Cause of Action:**

12 4. For a temporary restraining order and preliminary and permanent
13 injunctions, compelling, restraining, and enjoining Defendants and any other person or entity
14 who may have possession, custody or control of Plaintiff's including without limitation their
respective agents, representatives, assignees, and employees as described herein.

15 **On all Causes of Action:**

16 5. For attorneys' fees and costs of suit incurred herein.

17 6. For such other and further relief, including equitable and injunctive
18 relief, as the court deems just and proper.

19
20 Dated: May 31, 2023

21 

22 _____
23 Brian N. Folland, Esq., Attorneys for
24 Plaintiff

EXHIBIT A

On Thu, May 11 2023 at 12:24 PM, Mark Astone
<mastone@teamcatalyst.com> wrote:

Hi Jake. Im leaning toward putting in 200k. When do you need it?
How much do you need to raise total?

Sent from my iPhone

On May 10, 2023, at 2:14 PM, Jake Soberal
<jsoberal@bitwiseindustries.com> wrote:

Mark,

Thanks for the quick return call.

Quick summary on the debt opportunity, here:

- 120 day term
- 15% fixed return (i.e., you put in \$100k, you get back \$115k)
- Corporate Guarantee from Bitwise (We're doing ~\$200M in revenue and have ~\$65M in cash)

Attached are the very simple docs we use for the deal.
Would love to team up on this!

Best,

Jake

Jake A. Soberal (he/him)

Co-Founder & CEO | Bitwise Industries

559.618.1279 | jsoberal@bitwiseindustries.com |
bitwiseindustries.com

Stay up-to-date on everything Bitwise

<Bitwise Loan - Promissory Note - 120 Days.docx>

<ASTONE - Bitwise Loan - Promissory Note - 120 Days .docx>

2 attachments

 **ASTONE - Bitwise Loan - Promissory Note - 120 Days .pdf**
84K

EXHIBIT B

TERM NOTE

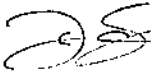
This *Term Note* (hereinafter this "Term Note"), dated May 12, 2023 ("Effective Date"), is made by BW Industries, Inc., a Delaware Corporation, with a business address of 700 Van Ness Ave, Fresno, California 93721 (collectively the "Borrower") in favor of Catalyst Communications, Inc. (the "Lender").

1. Promise to Pay. For value received, the Borrower promises to pay to the Lender the principal amount of TWO HUNDRED THOUSAND DOLLARS AND NO CENTS (\$200,000.00; "Principal"), at the times described below, together with Interest (as defined below).
2. Fixed Loan Fee. Borrower shall pay Lender a fixed loan fee of THIRTY THOUSAND DOLLARS AND NO CENTS (\$30,000.00), all due at maturity.
3. Term. The term of this Note shall be one hundred and twenty (120) days from the Effective Date. Borrower shall pay the Principal and all accrued interest owing under this Term Note in full on or before September 12, 2023.
4. Prepayments. Borrower may prepay all or part of the Term Note at any time, without discount or penalty.
5. Default. Each of the following shall be an event of default under this Term Note:
 - a. Borrower's failure to pay any amount due under the Term Note required hereunder.
6. Applicable Law and Jurisdiction. This Term Note shall be governed by and interpreted according to the laws of California and that any action or proceeding arising under this Term Note may be commenced in any federal or state court of the State of California sitting in Fresno County.
7. Attorney's Fees. If this Term Note is not paid when due, or if an event of default occurs, Borrower promises to pay all costs of collection including, but not limited to, reasonable attorney's fees incurred by Lender on account of such collection whether or not suit is filed hereon.

[Signatures on following page.]

IN WITNESS WHEREOF, the Borrower hereby executes this Term Note as of the Effective Date.

BORROWER:

Date: 

BW INDUSTRIES, INC.,
a Delaware Corporation

By: 05 / 11 / 2023
Jake A. Soberal,
Chief Executive Officer

LENDER:

Date: 05 / 11 / 2023

Lender Name: Catalyst Communications, Inc.

Signature: 

Signer Name: Mark Astone

Signer Title: Chief Executive Officer

Title	Bitwise Loan Docs // Mark Astone
File name	ASTONE - Bitwise ... - 120 Days .pdf
Document ID	4f9d4cb0cb50b5e2138cc6115cbc08af4a3c2e7f
Audit trail date format	MM / DD / YYYY
Status	• Signed

Document History



SENT

05 / 11 / 2023
17:11:06 UTC-7

Sent for signature to Mark Astone (mastone@teamcatalyst.com)
from jsoberal@bitwiseindustries.com
IP: 73.66.234.208



VIEWED

05 / 11 / 2023
17:16:34 UTC-7

Viewed by Mark Astone (mastone@teamcatalyst.com)
IP: 75.104.89.18



SIGNED

05 / 11 / 2023
17:19:26 UTC-7

Signed by Mark Astone (mastone@teamcatalyst.com)
IP: 75.104.89.18



COMPLETED

05 / 11 / 2023
17:19:26 UTC-7

The document has been completed.