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CLERK OF DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
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Attorneys for Defendants and CounterClaimants
NAME INTELLIGENCE, INC., JAY WESTERDAL
and Defendant PER WESTERDAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

THOUGHT CONVERGENCE, INC.,
a Delaware Corporation and NAME
INTELLIGENCE, LLC, a Delaware
limited liability company,

Plaintiffs,

vs.

JAY WESTERDAL, an individual;
PER WESTERDAL, an individual;
RAY BERO, an individual;
CAMERON JONES, an individual;
and NAME INTELLIGENCE, INC., a
Washington corporation; DOTMOVIE,
an unknown entity,

Defendants.

No. CV-09-03088 R (AJWx)
DEFENDANTS AND
COUNTERCLAIMANTS NAME
INTELLIGENCE, INC. AND JAY
WESTERDAL'S
COUNTERCLAIMS FOR:

- 1. BREACH OF CONTRACT;
- 2. BREACH OF REPRESENTATIONS AND WARRANTIES;
- 3. BREACH OF CONTRACT;

1 NAME INTELLIGENCE, INC., a
2 Washington corporation; and JAY
WESTERDAL, an individual;

3 Counterclaimants,

4 vs.

5 THOUGHT CONVERGENCE, INC.,
6 a Delaware Corporation and NAME
INTELLIGENCE, LLC, a Delaware
7 limited liability company

8 Counterdefendants.

- 4. MISREPRESENTATION AND FRAUD;
- 5. VIOLATION OF CORPORATIONS CODE OF CALIFORNIA; AND
- 6. BREACH OF CONTRACT.

DEMAND FOR JURY TRIAL

CrtRm: 8
Judge: Manuel L. Real

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10 Defendants and counterclaimants Name Intelligence, Inc. ("Name
11 Intelligence") and Jay Westerdal ("J. Westerdal") (collectively
12 "Counterclaimants") hereby demand a jury trial on their counterclaims and
13 allege as follows:

14 **INTRODUCTION**

15 1. This case involves the enforcement of a Securities Exchange
16 Agreement (the "Agreement"), entered into between Name Intelligence and
17 Thought Convergence, Inc. ("TCI") on or about May 2, 2008 and an Offer
18 Letter, entered into between J. Westerdal and Name Intelligence, LLC ("NIL")
19 on or about May 28, 2008. However, what these contractual agreements do
20 not show are the myriad of deliberate misrepresentations made by TCI during
21 the negotiation process and execution of the Agreement. TCI knowingly
22 misrepresented the stability of its business, its domain parking practices, its
23 reliance on a very small number of customers for the majority of its revenue
24 stream, its revenue loss free fall, its lack of debt, and its use of the banned
25 industry practice of arbitrage. Furthermore, TCI represented that its shares
26 were worth \$200 million, which was and is grossly inflated from its true
27 worth.
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1 12. Based on these representations, on or about May 2, 2008, the
2 Agreement was executed between Name Intelligence, the newly formed parent
3 company, TCI, and TrafficZ.

4 13. The Agreement provided that all of the shares and assets of Name
5 Intelligence would be acquired by TCI in exchange for \$16 million to be paid
6 in three installments and approximately 15.3% of the outstanding shares of
7 TCI.

8 14. TCI paid Name Intelligence the initial payment of \$6 million
9 upon executing the Agreement. Under the Agreement, TCI was required to
10 make two subsequent payments of \$5 million each to Name Intelligence on
11 May 2, 2009 and May 2, 2010.

12 15. Under the Agreement, TCI was required to create a non-
13 discriminatory Equity Incentive Plan (the "EIP") prior to the execution of the
14 Agreement.

15 16. Additionally, as part of the Agreement, TCI and/or TrafficZ
16 represented and warranted that there were no material adverse changes to its
17 business from December 31, 2006 through the time the Agreement was
18 executed.

19 17. TCI and/or TrafficZ further represented and warranted that it had
20 not suffered any extraordinary loss or damage to its business from December
21 31, 2006 through the time the Agreement was executed.

22 18. Upon information and belief, significant material adverse changes
23 to the business and financial status of TCI and TrafficZ occurred between
24 December 31, 2006 and the time the Agreement was executed.

25 19. TCI and TrafficZ did not disclose these material adverse changes
26 in its business or financial status to Name Intelligence prior to the time the
27 Agreement was executed, including significant decreases to TCI and/or
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1 TrafficZ's revenue stream and a substantial loan or loans made to TCI and
2 TrafficZ just prior to executing the agreement.

3 20. Name Intelligence has performed all of its obligations under the
4 Agreement.

5 **FIRST CAUSE OF ACTION**

6 **(Breach of Contract for Failure to Pay)**

7 21. The allegations of Paragraphs 1 through 20 are incorporated
8 herein by reference.

9 22. On or about May 2, 2008, Name Intelligence and TCI entered
10 into the Agreement. Under the Agreement, Name Intelligence agreed to
11 transfer all of its stock and assets to TCI.

12 23. Under the Agreement, TCI agreed to pay Name Intelligence \$16
13 million, in three installments, and approximately 15.3% of the outstanding
14 shares of TCI.

15 24. Pursuant to the Agreement, Name Intelligence transferred all of
16 its stock and assets to TCI and further performed its other responsibilities, if
17 any, as required under the Agreement.

18 25. In breach of the Agreement, TCI failed to timely pay the second
19 installment to Name Intelligence on May 2, 2009.

20 26. As a direct and proximate result of TCI's failure to pay the
21 amounts owed, Name Intelligence has suffered damages in an amount to be
22 proven at trial.

23 **SECOND CAUSE OF ACTION**

24 **(Breach of Representations and Warranties)**

25 27. The allegations of Paragraphs 1 through 26 are incorporated
26 herein by reference.

1 28. As part of the Agreement, TCI and/or TrafficZ represented and
2 warranted that there were no material adverse changes to its business from
3 December 31, 2006 through the time the Agreement was executed.

4 29. TCI and/or TrafficZ further represented and warranted that it had
5 not suffered any extraordinary loss or damage to its business from December
6 31, 2006 through the time the Agreement was executed.

7 30. Upon information and belief, significant material adverse changes
8 to the business and financial status of TCI and TrafficZ occurred between
9 December 31, 2006 and the time the Agreement was executed, including
10 significant decreases to TCI and/or TrafficZ's revenue stream and a substantial
11 loan or loans made to TCI and TrafficZ just prior to executing the agreement.

12 31. TCI and TrafficZ did not disclose material adverse changes in its
13 business or financial status to Name Intelligence prior to the time the
14 Agreement was executed.

15 32. Upon information and belief, the affirmative representations and
16 warranties of TCI and TrafficZ made in the Agreement were not accurate,
17 were incomplete, misstated facts and, ultimately, were misrepresentations of
18 its business and financial status.

19 33. As a direct and proximate result of the aforementioned wrongful
20 conduct of TCI in breaching the representations and warranties section of the
21 Agreement, Name Intelligence has suffered, and continues to suffer, damages
22 including but not limited to interest and other incidental and consequential
23 damages in an amount to be proven at trial.

1 **THIRD CAUSE OF ACTION**
2 **(Breach of Contract for Failure to Properly**
3 **Form an Equity Incentive Plan)**

4 34. The allegations of Paragraphs 1 through 33 are incorporated
5 herein by reference.

6 35. As part of the Agreement, TCI was required to create a non-
7 discriminatory Equity Incentive Plan (“EIP”) prior to the execution of the
8 Agreement.

9 36. In breach of the Agreement, TCI failed to create the EIP prior to
10 the execution of the Agreement.

11 37. Only recently did TCI attempt to implement an EIP. However,
12 TCI failed to properly form and implement the EIP in accordance with the
13 Agreement.

14 38. As a direct and proximate result of TCI’s failure to form the EIP
15 in accordance with the Agreement, Name Intelligence has suffered, and
16 continues to suffer, damages in addition to interest and other incidental and
17 consequential damages in an amount to be proven at trial.

18 **FOURTH CAUSE OF ACTION**
19 **(Misrepresentation and Fraud)**

20 39. The allegations of Paragraphs 1 through 38 are incorporated
21 herein by reference.

22 40. As part of the Agreement and throughout the negotiation process,
23 TCI and/or TrafficZ represented and warranted that there were no material
24 adverse changes to its business from December 31, 2006 through the time the
25 Agreement was executed.

26 41. TCI and/or TrafficZ further represented and warranted in the
27 Agreement that it had not suffered any extraordinary loss or damage to its
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1 business from December 31, 2006 through the time the Agreement was
2 executed.

3 42. TCI representatives also represented to Name Intelligence that
4 they were in the process of negotiating an IPO with the Name Intelligence
5 business assets as part of the IPO. Furthermore, the TCI representatives
6 guaranteed that, as part of the Agreement, the Name Intelligence shares in TCI
7 would be worth approximately \$32 million.

8 43. Additionally, during the negotiation of the Agreement, TCI failed
9 to disclose its use of the banned industry practice of arbitrage and reliance on
10 this practice for a significant portion of its revenues.

11 44. Contrary to TCI and/or TrafficZ's representations, significant
12 material adverse changes to the business and financial status of TCI and
13 TrafficZ occurred between December 31, 2006 and the time the Agreement
14 was executed, including significant decreases to TCI and/or TrafficZ's
15 revenue stream and a substantial loan or loans made to TCI and TrafficZ just
16 prior to executing the agreement.

17 45. TCI and TrafficZ knew that significant material adverse changes
18 to the business and financial status of TCI and TrafficZ occurred between
19 December 31, 2006 and the time the Agreement was executed, including
20 significant decreases to TCI and/or TrafficZ's revenue stream and a loan or
21 loans made to TCI and TrafficZ just prior to executing the agreement.

22 46. TCI intended to deceive Name Intelligence by actively
23 misrepresenting that there not had been significant material adverse changes to
24 the business and financial status of TCI and TrafficZ that occurred between
25 December 31, 2006 and the time the Agreement was executed and failing to
26 disclose significant decreases to TCI and/or TrafficZ's revenue stream and a
27 loan or loans made to TCI and TrafficZ just prior to executing the agreement.
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1 47. Name Intelligence relied on the misrepresentations made by TCI
2 and/or TrafficZ regarding its business and financial status at the time the
3 Agreement was entered into.

4 48. As a direct and proximate result of the aforementioned wrongful
5 and fraudulent acts of TCI and/or TrafficZ, Name Intelligence has suffered,
6 and continues to suffer, damages as well as interest and other incidental and
7 consequential damages in an amount to be proven at trial.

8 **FIFTH CAUSE OF ACTION**

9 **(Violation of California Corporations Code § 25401)**

10 49. The allegations of Paragraphs 1 through 48 are incorporated
11 herein by reference.

12 50. TCI and TrafficZ offered to purchase and sell securities to Name
13 Intelligence as described in the Agreement.

14 51. Upon information and belief, during the course of an offer to sell
15 or purchase securities, TCI and TrafficZ made written and oral
16 communications to Name Intelligence that included untrue statements of
17 material facts and omitted material facts necessary in order to make prior
18 statements to Name Intelligence not misleading.

19 52. Specifically, as part of the Agreement, TCI and/or TrafficZ
20 represented and warranted that there were no material adverse changes to its
21 business from December 31, 2006 through the time the Agreement was
22 executed.

23 53. TCI and/or TrafficZ further represented and warranted in the
24 Agreement that it had not suffered any extraordinary loss or damage to its
25 business from December 31, 2006 through the time the Agreement was
26 executed.

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1 54. TCI representatives also represented to Name Intelligence that
2 they were in the process of negotiating an IPO with the Name Intelligence
3 business assets as part of the IPO. Furthermore, the TCI representatives
4 guaranteed that, as part of the Agreement, the Name Intelligence shares in TCI
5 would be worth approximately \$32 million.

6 55. Additionally, during the negotiation of the Agreement, TCI failed
7 to disclose its use of the banned industry practice of arbitrage and reliance on
8 this practice for a significant portion of its revenues.

9 56. Contrary to TCI and/or TrafficZ's representations, significant
10 material adverse changes to the business and financial status of TCI and
11 TrafficZ occurred between December 31, 2006 and the time the Agreement
12 was executed, including significant decreases to TCI and/or TrafficZ's
13 revenue stream and a loan or loans made to TCI and TrafficZ just prior to
14 executing the agreement.

15 57. As a direct and proximate result of the aforementioned wrongful
16 acts of TCI and/or TrafficZ, Name Intelligence has suffered, and continues to
17 suffer, damages including, but not limited to, interest and other incidental and
18 consequential damages in an amount to be proven at trial.

19 **SIXTH CAUSE OF ACTION**

20 **(Breach of Contract for Failures to Pay)**

21 58. The allegations of Paragraphs 1 through 57 are incorporated
22 herein by reference.

23 59. As part of the Agreement, NIL agreed to pay J. Westerdal
24 \$430,000, plus 8% interest, on the date of the first post-closing payment. NIL
25 failed to pay this amount when due.

26 60. As part of the Offer Letter, NIL agreed to compensate J.
27 Westerdal, as an employee, at a gross annual rate of \$120,000.00.

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1 61. NIL failed to compensate J. Westerdal in the agreed upon
2 amount.

3 62. J. Westerdal performed his obligations of employment to NIL
4 under the Offer Letter, or was excused from doing so because of NIL's breach
5 of the Offer Letter.

6 63. As a direct and proximate result of NIL's failure to compensate J.
7 Westerdal in accordance with the Offer Letter, J. Westerdal has suffered, and
8 continues to suffer, damages in addition to interest and other incidental and
9 consequential damages in an amount to be proven at trial.

10 **PRAYER FOR RELIEF**

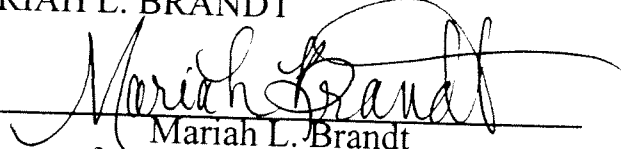
11 WHEREFORE, Defendants pray for judgment as follows:

- 12 1. Judgment in favor of Defendants as to all counterclaims;
- 13 2. Compensatory damages, as well as all incidental and
14 consequential damages in an amount to be proven at trial;
- 15 3. Exemplary damages according to proof at trial;
- 16 4. An award of attorney's fees and costs as authorized by section
17 7.12 of the Securities Exchange Agreement and applicable statutory
18 provisions; and
- 19 5. For such other and further relief as the Court deems proper.

20 Dated: June 26, 2009

21 HOLMQUIST & GARDINER PLLC
22 HAMILTON H. GARDINER

23 PILLSBURY WINTHROP SHAW
24 PITTMAN LLP
25 ROBERT L. WALLAN
26 MARIAH L. BRANDT

27 By 
28 Mariah L. Brandt
Attorneys for Defendants and Counter-
claimant NAME INTELLIGENCE, INC. and
JAY WESTERDAL and Defendant PER
WESTERDAL

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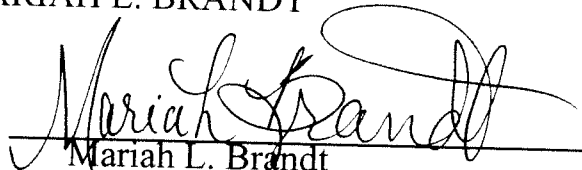
Demand for Trial By Jury

Counterclaimants Name Intelligence, Inc. and Jay Westerdal demand a trial by jury pursuant to Federal Rule of Civil Procedure 38 for all issues that are triable by jury in the above captioned action.

Dated: June 26, 2009

HOLMQUIST & GARDINER PLLC
HAMILTON H. GARDINER

PILLSBURY WINTHROP SHAW
PITTMAN LLP
ROBERT L. WALLAN
MARIAH L. BRANDT

By 
Mariah L. Brandt
Attorneys for Defendants and
Counterclaimants NAME INTELLIGENCE,
INC. and JAY WESTERDAL and Defendant
PER WESTERDAL

Docket No. CV-09-03088 R (AJWx)

PROOF OF SERVICE

I am employed in State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My email and business addresses are sherette.duffus@pillsburylaw.com and Pillsbury Winthrop Shaw Pittman LLP, 725 South Figueroa Street, Suite 2800, Los Angeles, CA 90017-5406. On June 26, 2009, I serve the document titled **DEFENDANTS AND COUNTERCLAIMANTS NAME INTELLIGENCE, INC. AND JAY WESTERDAL'S COUNTERCLAIMS AND DEMAND FOR JURY TRIAL** on the parties in this action as follows:

Kent B. Goss, Esq.
Christopher J. Chaudoir, Esq.
Orrick, Herrington & Sutcliffe LLP
777 S. Figueroa Street
Suite 3200
Los Angeles, CA 90017-5855
KGoss@orrick.com
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(BY MAIL) I caused each envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, CA. I am readily familiar with the practice of Pillsbury Winthrop Shaw Pittman LLP for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

(BY FACSIMILE) The above-referenced document was transmitted by facsimile transmission and the transmission was reported as complete and without error to the numbers listed above.

(BY EMAIL TRANSMISSION) The above-referenced document is transmitted via electronic transmission to the persons at the electronic-email addresses indicated above.

1 **(BY PERSONAL SERVICE)** I delivered to an authorized courier or
2 driver authorized by _____ to receive documents to be delivered on the
3 same date. A proof of service signed by the authorized courier will be filed
4 forthwith.

5 **(BY OVERNIGHT COURIER)** I am readily familiar with the practice of
6 Pillsbury Winthrop Shaw Pittman LLP for collection and processing of
7 correspondence for overnight delivery and know that the document(s)
8 described herein will be deposited in a box or other facility regularly
9 maintained by _____ for overnight delivery.

10 I declare under penalty of perjury that the foregoing is true and correct.

11 Executed this 26th day of June, 2009, at Los Angeles, California.

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Sherette W. Duffus