

STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
) SS:  
COUNTY OF MARION ) CAUSE NO. \_\_\_\_\_

MARK BOSLER and )  
MICHAEL MURRAY, )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
SCOTT WISE, )  
) )  
Defendant. )  
)

**COMPLAINT AND JURY DEMAND**

Mark Bosler and Michael Murray, for their complaint and jury demand against the above-named Defendants, state as follows:

**I. INTRODUCTION**

1. This action arises from the sale of certain securities in the Scotty’s Brewhouse companies which were owned and operated by founder Scott Wise until their sale to Arizona-based private equity company Due North Holdings in December 2016. Wise engaged in a series of frauds and violations of the Indiana Securities Act which enriched himself and his business at the expense of the Plaintiffs, who combined lost over \$1 million.

**II. PARTIES, JURISDICTION, AND VENUE**

2. Mark Bosler (“Bosler”) is an individual with his residence and domicile in Fort Myers, Lee County, Florida.

3. Michael Murray (“Murray”) is an individual with his residence and domicile in Indianapolis, Marion County, Indiana.

4. Scotty's Holdings, LLC ("Scotty's Holdings") is an Indiana limited liability company with its principal place of business in Indianapolis, Marion County, Indiana.

5. Scott Wise ("Wise") is an individual with his residence and domicile in Indianapolis, Marion County, Indiana. At all relevant times, Wise was acting individually and as owner, agent, servant, employee, manager and officer of Scotty's Holdings.

6. This Court has jurisdiction pursuant to Ind. Tr. R. 4.4(A)(1), (4), (5) and (6).

7. Venue is proper in Marion County, Indiana, pursuant to Ind. Tr. R. 75(A)(1), (2), (4), (5), (8), and (10).

### **III. FACTS RELEVANT TO ALL CLAIMS**

#### *Formation and growth of the Scotty's Brewhouse brand*

8. Wise opened the first Scotty's Brewhouse restaurant on the campus of Ball State University in Muncie, Indiana in 1996.

9. The restaurant quickly became popular and Wise began to open other locations.

10. Between 1998 and 2016, the Scotty's Brewhouse expanded rapidly, adding stores in other "college towns," and beyond.

11. By 2016, the Scotty's Brewhouse brand had become an Indiana icon, well-known for its American cuisine and self-brewed beer.

12. Most Scotty's Brewhouse locations were operated as individual limited liability companies, with each entity being a wholly-owned subsidiary of Scotty's Holdings.

13. Stores were also opened under "management agreements" with outside investors as primary owners and Wise providing the restaurant's management.

14. Wise always maintained majority ownership and control of Scotty's Holdings and the Scotty's Brewhouse brand.

15. After the brand's popularity became apparent, Wise embarked upon a relentless and obsessive campaign to position Scotty's Holdings for a private equity sale, which Wise believed would require approximately twenty (20) or more restaurants.

16. During the financial crisis of 2008, with Wise deep into his aggressive growth plan, institutional lenders began to restrict his access to capital.

17. Wise borrowed money from friends and acquaintances until those sources of revenue were exhausted, and/or the prospect of repayment became untenable.

18. Wise then began to pursue individual "investors".

*Scott Wise solicits Mark Bosler to invest in Scotty's Holdings*

19. Bosler was introduced to Wise through a mutual friend in late 2008.

20. In early June 2009, Wise solicited Bosler to invest in Scotty's Holdings, telling Bosler that he would be the first equity holder, other than Wise's father, in Scotty's Brewhouse.

21. Wise specifically represented to Bosler that he would be the "second highest owner" of Scotty's Brewhouse, other than Wise himself.

22. On June 19, 2009, relying on Wise's representations, Bosler invested \$200,000 which gave him fifty (50) shares in each of the following Scotty's Brewhouse restaurant locations:

- A. Muncie (Ball State University)
- B. Bloomington (Indiana University);
- C. West Lafayette (Purdue University); and
- D. 96th Street.

23. Over the next several years, Wise borrowed over \$500,000.00 from Bosler through through approximately sixteen (16) independent short-term loans.

24. By mid-to-late 2011, Wise was significantly indebted to Bosler.

25. Wise began looking to securitize Bosler's loans to avoid repayment.

26. On January 1, 2012, Wise and Bosler agreed to a Contribution Agreement which converted all of Bosler's loans, plus an additional \$100,000 (for a total investment of \$500,000), into 525.80 ownership units, or a 5.0686% interest equity stake in Scotty's Holdings.<sup>1</sup>

27. In converting the loans to equity, Wise promised Bosler that he would "double his money" in a year and that the equity sale would total \$20 million with the company having \$5 million in debt.

28. Wise never informed Bosler that he was seeking other investors, or that Bosler would eventually not have the level of ownership interest originally promised.

*Scott Wise invites Mike Murray to invest in Scotty's Holdings*

29. Murray met Wise through a mutual friend in approximately 2005.

30. During his cash shortage in 2008, Wise requested financial assistance from Murray just as he had with Bosler, specifically to assist in the buildout of the downtown restaurant.

31. Similar to Bosler, Murray made loans to Wise of \$60,000 and \$150,000; which included the balance of the first loan, and an additional \$100,000 to expire some company debt.

32. At a meeting during the second quarter of 2015, Wise asked Murray whether he wanted to "own a restaurant or make some real money."

33. Wise then told Murray that Scotty's Holdings had received interest from some private equity firms and that a broker had been shopping the company to these firms with some very promising numbers being discussed.

34. Wise told Murray that the selling price would be \$20 million, which would include expiring the company's \$5 million debt, for a net sale price of \$15 million.

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<sup>1</sup> The Contribution Agreement is attached to this Complaint as Exhibit A.

35. Wise told Murray that each percentage of ownership in Scotty's Holdings for new investors would cost \$100,000 and that each would double within the calendar year.

36. On May 6, 2015, Wise's Chief Financial Officer Brenda West sent Murray an email which outlined the investment described above and confirmed that Wise had "only allowed YOU [Murray] to do this" deal and again gave an example of the return Murray would see when Scotty's Holdings sold for \$20 million after payment of the company's \$5 million in debt.

37. Later in May 2015, based upon Wise's representations, Murray agreed to invest in Scotty's Holdings, and signed documents which gave him a deal almost identical to that which Wise had previously struck with Bosler – converting Murray's outstanding loans, along with an additional cash payment, into a \$500,000 equity interest in Scotty's Holdings.<sup>2</sup>

38. To ensure the books were clean, Wise issued Murray the sum of his outstanding loans and equity in the Mishawaka restaurant, and Murray in turn issued a \$500,000 personal check to Wise dated May 12, 2015.

39. At Wise's request, the parties backdated the investment to January 1, 2015.

40. Murray's equity now consisted of 525 units, or a 5.25% ownership interest.

41. At no time did Wise ever tell Murray about his deal with Bosler, nor did they inform Bosler of the new equity issuance to Murray.

*The Shares of Scotty's Holdings Were Not Registered*

42. The Scotty's Holdings investments that Murray and Bosler purchased were securities under the Indiana Securities Act, codified at Ind. Code § 23-19-1-0.2.

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<sup>2</sup> The agreements related to this deal are attached to this Complaint as Exhibit B.

43. Neither Scotty's Holdings, nor Wise, were registered as an issuer or issuer agent, broker dealer or broker dealer agent, investment advisor or investment advisor representative at the time of the sale of the investments in Scotty's Holdings to Murray and Bosler.

44. Neither Scotty's Holdings nor Wise applied for registration licenses as a security or exemption from registration license as a security for Scotty's Holdings at the time of the sale of the investments to Murray and Bosler.

45. Neither Bosler or Murray were ever issued a prospectus, private placement memorandum, or any other disclosure or information about the securities they were sold.

46. On January 12, 2016, Wise registered Scotty's Holdings with the United States Securities and Exchange Commission (SEC) as a Regulation D filing.

47. Wise never registered Scotty's Holdings with the Indiana Secretary of State's Office, or any other Indiana government office or agency.

*Wise fervently seeks a buyer for Scotty's Holdings*

48. By early 2016, Wise realized that his efforts to expand Scotty's Holdings to position it for a sale had stretched the company thin financially and that he needed to find a buyer soon.

49. On March 23, 2016, Brenda West sent a generic e-mail to Bosler and Murray, among other Scotty's personnel, which called an "Annual Meeting" for March 31, 2016 at the Scotty's Brewhouse in Noblesville.

50. Scotty's Holdings held the all-investor Annual Meeting on March 31, 2016, at the Scotty's Brewhouse in Noblesville, at which Bosler and Murray met for the first time.

51. During that March 31, 2016 meeting, Wise bragged about the performance of the company and announced that an earlier private equity sale had fallen through because the price had been "too low" and Wise wanted to ensure shareholders were "taken care of."

52. Wise again told the group that the private equity buyout would be \$20 million with \$5 million in debt being expired out of the purchase price.

53. Wise also requested \$100,000 loans from all meeting attendees with a \$105,000 return in three months to raise “short term capital for immediate growth opportunities.”

54. Bosler decided to lend the money and was repaid.

55. Murray did not lend any additional money to Wise, as he was content to realize the gains of his investment upon consummation of the anticipated sale of the company.

#### *Wise Sells to Due North*

56. By late Spring 2016, the only legitimate buyer interested in Scotty’s Holdings was an Arizona-based private equity company called Due North.

57. Wise explained to Bosler and Murray that Due North had agreed to “wipe out the debt on the books” which would make the financials look good for the sale.

58. Throughout the Spring and early Summer of 2016, Wise continued to express to Murray and Bosler that the private equity deal would be \$20 million and that Holdings had \$5 million of debt which would be paid from the purchase price.

59. Wise routinely assured Bosler and Murray that he was going to “make them whole” and ensure that they made “a lot of money” in the deal he was working to close.

60. On April 18, 2016, Murray sent Wise an e-mail inquiring about the possible payout scenarios he could expect based upon his 5.25% ownership percentage should the private equity sale close for \$15 million, which he thought was a conservative assumption given the \$20 million (with \$5 million in debt) Wise had mentioned repeatedly, including at the Annual Meeting.

61. Wise knew all along that the company would never sell for anywhere near \$20 million, and that the Scotty’s Holdings debt well-exceeded \$5 million.

62. Nobody ever shared that information with Bosler or Murray.

*The terms of the Due North deal start to change*

63. On October 29, 2016, Brenda West sent Bosler, Murray, and other Scotty's Holdings personnel an e-mail stating that Wise had signed a deal with PRP Scotty's Holdings (a new entity created by Wise and Due North) for the purchase of Scotty's Holdings.

64. That e-mail also included a redemption agreement for PRP Scotty's Holdings to purchase all outstanding ownership units of Scotty's Holdings, and again represented the deal was for \$20,000,000 with an undetermined amount of debt, expressed to Bosler and Murray as no more than \$5 million.

65. Murray and Bosler both signed a *Redemption Agreement for Certain Ownership Units In Scotty's Holdings* ("Redemption Agreement")<sup>3</sup> along with *Assignment of Limited Liability Company Ownership Units* ("Assignment of Units")<sup>4</sup> on October 31, 2016.

66. Murray and Bosler also signed the *First Amendment to Purchase Agreement for Member Interest in Scotty's Holdings, LLC* ("First Amendment").<sup>5</sup>

67. The Redemption Agreement provided the terms under which Bosler and Murray would return their shares to Scotty's Holdings, while the Assignment of Units actually conveyed those units back to the company.

68. The Redemption Agreement provided for a three-year payment schedule, the first payment to be at the time of the sale.

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<sup>3</sup> This Agreement is attached to the Complaint as Exhibit C.

<sup>4</sup> This Agreement is attached to the Complaint as Exhibit D.

<sup>5</sup> This Agreement is attached to the Complaint as Exhibit E.



69. Neither Bosler nor Murray received any of the payments provided for in the Redemption Agreement.

70. The October 29 e-mail concluded by indicating that the deal would close by November 13, 2016.

*The deception begins to unravel*

71. On October 31, 2016, Murray sent an e-mail to Wise questioning Brenda West's contention in the October 29 e-mail that Murray had a 5.061% ownership interest in Scotty's Holdings as opposed to the 5.25% he acquired in January 2015.

72. Brenda West responded by e-mail the same day and claimed that the decrease in Murray's ownership interest was due to Scotty's Holdings issuance of additional ownership units to certain company employees after Murray had consummated his deal in 2015.

73. In a response the same day, Wise apologized to Murray, and admitted that he had not informed Murray of the issuance of additional ownership units out of Murray's share.

74. During a November 2016 call, Wise officially – and for the first time – informed Murray that the terms of the deal had in fact changed, and that Scotty's Holdings would be sold for \$10,000,000 and that the company's debt was \$8,000,000.

75. Murray communicated to Wise that the new terms of the deal were unacceptable in terms of zero liquidity up front and having only the ability to make back the initial investment over the course of multiple years. Wise told Murray that there was “no choice,” that the deal was “done,” and that there was “nothing [Murray] can do about it” given that Wise had a controlling interest in Holdings and had essentially already agreed to Due North's proposal.

76. Wise mentioned that a representative of Due North, Kevin Blackwell, would be coming to Indianapolis the following week to discuss the deal with all investors.

*Investors are coerced into signing new contracts with different terms*

77. That Due North meeting was indeed held on November 17, 2016, at the newest Scotty's restaurant, "Scotty's Dawghouse," located on the campus of Butler University.

78. Wise and Blackwell informed investors that the deal "is what it is" and that Wise had a majority ownership, so the others had no voice in the matter.

79. Given that their ownership share was insufficient to stop the sale, Murray and Bosler were fearful that if they did not sign the terms of the new deal being pushed by Wise, Due North, and Blackwell, they would lose any chance of recouping their investments.

*The new deal closes on terms disadvantageous to shareholders*

80. On November 30, 2016, the deal closed and Scotty's Holdings was sold to Due North through its new entity, PRP Scotty's Holdings.

81. Murray and Bosler begrudgingly signed the *Second Amended and Restated Limited Liability Company Operating Agreement*, which provided for the sale of Scotty's Holdings, LLC to PRP Scotty's Holdings, LLC for \$10,000,000 in EBITA, which – ironically – was the exact total amount of all investor equity payments combined.<sup>6</sup>

82. In sum, the best Bosler and Murray could hope for under the new agreement was to get a return on their original investments over time and without any profit or interest.

83. The sale netted Wise a salary of \$350,000 per year for five years with a five percent (5%) payout if the Scotty's Brewhouse brand were later sold again; facts which were never disclosed to Bosler or Murray.

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<sup>6</sup> This Agreement is attached to the Complaint as Exhibit F.

*The broker reveals Wise's fraud and settles with Wise*

84. After the investor meeting on November 17, Susan Harriman, who was the original broker Wise had used to try and locate a private equity buyer, telephoned Murray and informed him that Wise "had been lying about the deal specifics the whole time," or words to that effect.

85. Harriman went on to tell Murray that Wise cut her out of the deal and that she intended to file a lawsuit against him.

86. Murray later learned from Blackwell during a conference call that Harriman settled her disputes with Wise for \$600,000.

*Wise attempts to secure releases of liability from Bosler and Murray*

87. In early April 2017, Bosler and Murray had their first quarterly investor call with Due North representatives.

88. Immediately after the meeting, Wise texted both Murray and Bosler and asked what they discussed during their phone meeting with Blackwell; neither Murray nor Bosler immediately responded to Wise.

89. On April 14, 2017, Wise sent an e-mail to Bosler and Murray which claimed that he wanted to "make them more comfortable" with the Due North deal and wanted to put into writing his "promise to make them whole and then some."

90. After Bosler and Murray discussed the matter, Murray responded and asked Wise to send them a draft.

91. Wise sent both men an *Indemnity Agreement* which released Wise of all liability if he were to pay both men \$500,000, based upon certain company performance metrics, and an additional \$50,000 each if PRP Scotty's met its sales targets.

92. Wise also included a provision that Bosler and Murray would pay \$100,000 for any disparaging remarks they might make about him to third parties – neither Bosler nor Murray ever signed the Indemnity Agreement.

#### **IV. CAUSES OF ACTION**

##### **COUNT 1**

##### **– Securities Violation (Ind. Code § 23-19 -3-1): Failure to Register –**

93. Plaintiffs hereby incorporate by reference the allegations contained in each of the paragraphs cited above.

94. Wise violated Ind. Code § 23-19-3-1 by unlawfully selling Murray and Bosler securities in Scotty’s Holdings in Indiana that were not federally covered securities; the securities were not exempt from registration under Ind. Code § 23-19-2-1 through Ind. Code § 23-19-2-3; and the securities were indeed not registered under the Indiana Securities Act.

95. Wise is liable as a “control person” and/or “associated person” and/or partner, manager, and executive officer of Scotty’s Holdings per Ind. Code § 23-19-5-9(d).

WHEREFORE, Plaintiffs pray for judgment against Defendant Wise for:

- A. The return of the approximately \$1 million invested by Plaintiffs in Scotty’s Holdings;
- B. Interest at the rate of eight percent (8%) per annum on the monies invested by Plaintiffs in Scotty’s Holdings;
- C. Costs and reasonable attorney’s fees;
- D. Punitive damages; and
- E. All other just and appropriate relief in the premises.

## COUNT 2

### – Securities Violation (Ind. Code § 23-19-5-1) Misrepresentations/Omissions -

96. Plaintiffs hereby incorporate by reference the allegations contained in each of the paragraphs cited above.

97. At all times relevant, Wise was acting as a promoter, broker-dealer, and/or agent of Scotty's Holdings as well as an employee, chief executive officer, and manager of Scotty's Holdings under the Indiana Securities Act..

98. In connection with the transactions described above, Wise made one or more untrue statements of material fact and/or omitted to state material facts necessary in order to make the statements not misleading. These misrepresentations include, but are not limited to the following:

- A. Wise told Bosler in June 2009 that Bosler was the “first and only investor in Scotty's Holdings and the Wise was offering him a “special deal.”
- B. Wise told Murray in May 2015 that Murray was “the only one being offered to invest” in Scotty's Holdings at that level of equity ownership.
- C. Wise told Bosler and Murray that they “would double their money by the end of the year.”
- D. Wise told Bosler and Murray that Scotty's Holdings carried \$5 million or less in debt.
- E. Wise told Bosler and Murray that there were discussions happening about selling Scotty's Holdings to a private equity group for \$20 million with \$5 million in debt.
- F. Wise misrepresented the amount of Murray's investment and failed to disclose that Murray's shares had been diluted without his knowledge, approval, or consent.
- G. Wise failed to tell Bosler and Murray that he only intended to position Scotty's Holdings for a sale that enriched himself and had no concern for whether they got repaid or not and that their input would not matter.

99. The standard of liability necessary to prove a violation of the Indiana Securities Act is negligence. *See Crook v. Shearson Loeb Rhoades, Inc.*, 591 F.Supp. 40, 49 (N.D. Ind. 1983); *Rousseff v. Dean Witter & Company, Inc.*, 453 F.Supp. 774, 779 (N.D. Ind. 1978).

100. Therefore Plaintiffs need not prove fraudulent intent to prove a claim under the Indiana Securities Act, although they do not concede that Wise did not act with intent.

101. Wise negligently and/or intentionally violated the Indiana Securities Act.

102. As a direct and proximate result of Wise's negligence, Murray and Bosler have been damaged and lost the use of approximately \$1 million.

103. The conduct of Wise constituted gross negligence, and may also have been reckless or intentional, entitling Plaintiffs to punitive damages.

WHEREFORE, Plaintiffs pray for judgment against Defendant Wise for:

- A. The return of the approximately \$1 million invested by Plaintiffs in Scotty's Holdings;
- B. Interest at the rate of eight percent (8%) per annum on the monies invested by Plaintiffs in Scotty's Holdings;
- C. Costs and reasonable attorney's fees;
- D. Punitive damages; and
- E. All other just and appropriate relief in the premises.

**COUNT 3**  
**– Breach of Fiduciary Duty –**

104. Plaintiffs hereby incorporate by reference the allegations contained in each of the paragraphs cited above.

105. Wise, as a member of Scotty's Holdings, owed a duty to deal openly, fairly, and honestly with Bosler and Murray, and all other shareholders and members of the company.

106. Wise made numerous written and oral statements and engaged in various acts and omissions related to the management and sale of Scotty's Holdings which breached those fiduciary duties and caused Bosler and Murray damages in that they lost a combined \$1 million in investments along with interest, returns, and the use and enjoyment of the same.

107. Instead of dealing with Bosler and Murray openly and honestly, Wise engaged in an ongoing and deliberate campaign of deceit which was intended to enrich himself at the expense of shareholders, including Bosler and Murray, and to secure for himself a nearly \$2 million windfall with the potential for significantly more if the Scotty's Brewhouse brand was sold again while Bosler and Murray had only a chance of repayment of their original investment.

108. The actions contained herein, and throughout this Complaint consisted of a willful, deliberate, and extensive breach of the fiduciary duties Wise owed to Bosler and Murray.

WHEREFORE, Plaintiffs pray for judgment against Defendant Wise for:

- A. The return of the approximately \$1 million invested by Plaintiffs in Scotty's Holdings;
- B. Interest at the rate of eight percent (8%) per annum on the monies invested by Plaintiffs in Scotty's Holdings;
- C. Costs and reasonable attorney's fees;
- D. Punitive damages; and
- E. All other just and appropriate relief in the premises.

**COUNT 4**  
**- Fraud -**

109. Plaintiffs hereby incorporate by reference the allegations contained in each of the paragraphs cited above.

110. In the alternative, the actions of Wise, which are detailed herein, constituted common law fraud based upon the theories described in detail above.

111. Wise made an intentional misrepresentation of facts and statistics relating to the Plaintiffs' potential return on investment and used fraudulent statements to induce Bosler and Murray to part with their money, which directly resulted in injury to them in that they essentially lost their entire investment.

WHEREFORE, Plaintiffs pray for judgment against Defendant Wise for:

- A. The return of the approximately \$1 million invested by Plaintiffs in Scotty's Holdings;
- B. Interest at the rate of eight percent (8%) per annum on the monies invested by Plaintiffs in Scotty's Holdings;
- C. Costs and reasonable attorney's fees;
- D. Punitive damages; and
- E. All other just and appropriate relief in the premises.

**COUNT 5**  
**– Unjust Enrichment –**

112. Plaintiffs hereby incorporate by reference the allegations contained in each of the paragraphs cited above.

113. Bosler and Murray conferred a measurable benefit upon Wise at his express or implied request, collectively the sum of \$1 million not inclusive of interest or the loss of the use and enjoyment of the same.

114. Wise expanded, sold, made profits, and obtained other things of value through the Scotty's Brewhouse entities because of Bosler and Murray's \$1 million investment.

115. Bosler and Murray expected to receive investment income, dividends, and other competent and valuable consideration for money invested but have not received even minimal value – indeed have not received a single dollar – for the benefit conferred to Defendants.

116. Meanwhile, Wise caused significant profit to be issued to himself.



WHEREFORE, Plaintiffs pray for judgment against Defendant Wise for:

- A. The return of the approximately \$1 million invested by Plaintiffs in Scotty's Holdings;
- B. Interest at the rate of eight percent (8%) per annum on the monies invested by Plaintiffs in Scotty's Holdings;
- C. Costs and reasonable attorney's fees;
- D. Punitive damages; and
- E. All other just and appropriate relief in the premises.

**V. JURY DEMAND**

Plaintiffs hereby demand a jury trial as to all claims asserted herein that involve issues triable of right by a jury.

Respectfully submitted,

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*Mark Bosler and Mike Murray*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served this \_\_\_th day of April 2018, by depositing a copy of the same in the United States Mail, certified, prepaid, and addressed to the following:

Mr. Scott Wise  
c/o Jason L. Fulk, Esq.  
HOOVER HULL TURNER LLP  
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