

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE COUNTY

08CV013352

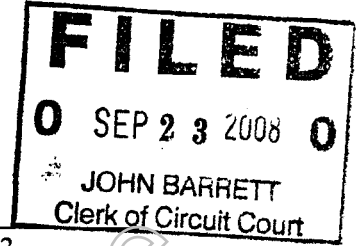
CONCIERGE WEB, LLC,
100 North Corporate Drive
Suite 170
Brookfield, Wisconsin 53045,

Plaintiff,

vs.

LAUGHLIN/CONSTABLE, INC.,
207 East Michigan Street
Milwaukee, Wisconsin 53202,

Defendant.



Case No.:
Case Code: 30303

JURY DEMAND

COMPLAINT

Plaintiff, Concierge Web, LLC, by its attorneys, Hale & Wagner, S.C., complains against defendant Laughlin/Constable, Inc. as follows:

1. Plaintiff Concierge Web, LLC ("Concierge Web") is a Wisconsin limited liability company with its principal office located at 100 North Corporate Drive, Suite 170, Brookfield, Wisconsin 53045.
2. Defendant Laughlin/Constable, Inc. ("Laughlin") is a Wisconsin corporation with a principal office located at 207 East Michigan Street, Milwaukee, Wisconsin 53202. Upon information and belief, the registered agent for Laughlin is Steven L. Laughlin at the same address.
3. The basis of this litigation is the failure of www.Boomertowne.com ("Boomertowne"), a website designed, built, branded and marketed by Laughlin.
4. Laughlin, at all relevant times, represented that it had knowledge, expertise and experience in website advertising, design, media, public relations and planning.

5. Concierge Web paid Laughlin \$5,826,901.62 over the course of two years for Laughlin's services related to Boomertowne, a website that is basically worthless because of Laughlin's various breaches, incompetence and misrepresentations.

BACKGROUND

6. During the Fall of 2006, members of Concierge Web contacted Laughlin. The principals of Concierge Web had prior experience in tele-medicine devices for the elderly and were considering the development of a website that would cater to the needs and issues of baby boomers.

7. Concierge Web had no expertise with website hosting or development and contacted Laughlin for advice.

8. At all relevant times, Laughlin represented itself as a full service advertising firm with expertise in website design, building, branding and marketing.

9. From October, 2006, through December, 2006, a series of meetings was held between Concierge Web and Laughlin's creative team and staff. During these meetings, Laughlin continually represented to Concierge Web that Laughlin had knowledge, experience and expertise in website design, building, branding and marketing.

10. Laughlin represented to Concierge Web that, in Boomertowne, Laughlin would "create an online community and online resource targeting the 79 million baby boomers in America." According to Laughlin, Boomertowne would be the "largest online community for the 79 million baby boomers in America."

11. Boomertowne was conceived as an advertisement driven website with revenue derived from advertising.

12. Among the material representations provided to Concierge Web by Laughlin was a revenue forecast for Boomertowne based upon Laughlin's professed knowledge, expertise and experience.

13. Laughlin advised Concierge Web that advertising revenues for Boomertowne would be calculated on a "CPM advertising model." CPM, when used in an advertising context, literally means the "Cost Per Thousand" impressions. CPM is an advertising matrix for determining the sale price and purchase price for website advertising. An "impression" is every instance an advertisement is displayed on a website regardless of whether the user clicks on the advertisement. Generally, the more "impressions," the greater the advertising revenue and, the higher the CPM price, the greater the advertising revenue.

14. At one of the first meetings with Laughlin, Laughlin provided Concierge Web with an initial draft revenue forecast for Boomertowne. Laughlin represented to Concierge Web that within the first fourteen (14) months after launch, Boomertowne would generate over seven hundred five million (705,000,000) impressions and Concierge Web would realize website advertising revenue of Sixteen Million Nine Hundred Forty-Three Thousand Nine Hundred Twenty-One and 00/100 Dollars (\$16,943,921.00). Laughlin's initial revenue forecast did not note the CPM advertising price but did include a disclaimer that the numbers "cannot be guaranteed." The initial draft revenue forecast is attached as **Exhibit A**.

15. The initial draft revenue forecast was provided to Concierge Web to induce it to employ Laughlin and agree to pay Laughlin millions of dollars to develop Boomertowne.

16. Laughlin's material representations in its initial draft revenue forecast for Boomertowne were exponentially inflated and had no remote connection with a realistic assessment of revenues for Boomertowne.

17. Based on Laughlin's professed knowledge, expertise and experience, it knew or should have known that the initial draft revenue forecast was false at the time it was presented to Concierge Web.

18. Not long after being provided the initial draft revenue forecast by Laughlin, Laughlin provided Concierge Web with a revised draft revenue forecast. Based upon Laughlin's research and its knowledge, expertise and experience, Laughlin's new forecast calculated impressions at 3.6 billion for the first fourteen (14) months after launch and website advertising revenues for that time period of Thirty-Six Million Five Hundred Sixty-Nine Thousand and 00/100 Dollars (\$36,569,000.00). The second revenue forecast noted an initial CPM of \$10. The second revenue forecast also removed any disclaimer. The second revenue forecast is attached as **Exhibit B**.

19. Laughlin's material representations in the second revenue forecast, as Concierge Web would later learn, had no connection with reality and were designed to induce Concierge Web into spending millions of dollars on Laughlin's services.

20. Based on Laughlin's professed knowledge, expertise and experience, it knew or should have known that the second draft reserve forecast was false at the time it was presented to Concierge Web.

21. Based on the representations by Laughlin and Laughlin's professed knowledge, expertise and experience in website design and advertising, Concierge Web opted to go forward with the investment in Boomertowne and Laughlin.

22. To meet the revenue forecast presented to Concierge Web, Laughlin advised Concierge Web what investment would be necessary. Concierge Web complied with all of Laughlin's pre-launch advice and paid Laughlin accordingly.

23. Approximately three weeks before Concierge Web was to make a \$1.5 million dollar payment to Laughlin, Concierge Web and Laughlin discussed the expected revenue for Boomertowne. On February 13, 2007, Steven Laughlin sent an email to Concierge Web that further verified the forecast, stating that “[o]ur original projections are still valid”.

24. Laughlin knew or should have known at this time that its revenue forecasts were ridiculously inflated and had no connection to reality.

25. Laughlin’s statement was designed to induce Concierge Web to invest in Boomertowne and spend money on Laughlin.

26. Boomertowne was launched in April, 2007. The site had an initial spike in visitors, but did not come close to matching the number of visitors that Laughlin advised Concierge Web could expect.

27. The numbers were so bleak that, shortly after launch, Laughlin knew or should have known that Boomertowne would never come close to achieving the website advertising revenue advised by Laughlin or attracting the visitors Laughlin advised would be using the website.

28. Boomertowne’s performance did not improve. Within the first fourteen (14) months of existence, the site had 722,949 absolutely unique visitors, had less than two million total visitors, and had revenues of less than three hundred thousand dollars. This is an incredibly poor performance given the material representations by Laughlin that were relied upon by Concierge Web which stated the website would have one hundred eighteen million (118,000,000) visitors within the first fourteen months and revenues greater than thirty-six million dollars.

29. Instead of providing Concierge Web with realistic, competent advice, Laughlin continued to have meetings to address Boomertowne’s abysmal failure, claiming that the solution was for Concierge Web to invest more money in Laughlin’s advertising campaign. By this time,

Laughlin unquestionably knew that its initial projections had no basis in reality and were false and misleading. Laughlin, however, never advised Concierge Web of this fact, but continued to advise Concierge Web to give more money to Laughlin.

30. Laughlin never advised Concierge Web that Laughlin's revenue forecast was in error.

31. Laughlin never advised Concierge Web that Laughlin's revenue forecast should be altered.

32. Despite the woeful advertising revenues being turned in by Boomertowne, Laughlin continued to represent to Laughlin that Boomertowne would be successful, all in an effort to justify Laughlin's material representations as to website advertising revenue and continuous billing for hundreds of thousands of dollars in work.

33. Despite any noticeable lack of improvement in the number of visitors to Boomertowne, Laughlin continued to spend Concierge Web monies on travel and overnight stays at \$500 per night hotel rooms and invoice Concierge Web for hundreds of thousands of dollars of work for "account supervision" and "public relations".

34. Despite a number of impressions for Boomertowne less than 2% of Laughlin's material representations to Concierge Web, Laughlin's advice, as the experts in websites and advertising, was to turn Boomertowne into a "dating service", generate following through a "trivia contest", and suggest the creation of Boomertowne hats, mugs and knickknacks.

35. Concierge Web now knows that Laughlin's representations regarding Boomertowne were a joke. In two years, Concierge Web spent approximately \$9,000,000.00 in developing the website, paid Laughlin \$5,826,901.62 for services performed and realized revenue of \$334,280.00.

36. Concierge Web now knows that most, if not all, of the publicity promised by Laughlin for Boomertowne did not happen.

COUNT I
DECEPTIVE ADVERTISING IN VIOLATION OF WIS. STATE. SEC. 100.18

37. Concierge Web repeats and realleges Paragraphs 1 through 36 as set forth herein.

38. Laughlin, as an advertising agency, represented to Concierge Web that it had knowledge, expertise and experience in website development, website advertising and full circle branding.

39. In meetings with Concierge Web, Laughlin stated to Concierge Web on multiple occasions and through general conversations, that Laughlin, would design, build, market and brand Boomertowne to be the largest online community for the 79 million baby boomers in America and that the website would generate advertising revenue in excess of \$36,000,000.00 for Concierge Web.

40. In meetings with Concierge Web, Laughlin presented elaborate marketing, publicity and advertising for Boomertowne that included the use of the Late Show with David Letterman, a viral e-mail campaign, and a long-term care calculation.

41. Laughlin's website stated, among other things, that:

- i. As to the company: "We give birth to ideas that make a difference.";
- ii. In terms of advertising: "We brand companies by making them attractive at first sight.";
- iii. As to digital media: "We know how digital media brings brands and customers closer, from experience. Digital brand strategies. E-commerce solutions. Site architecture. Digital design. On their own or integrated with traditional media, the business of digital marketing lives here."; and
- iv. In terms of planning: "We hit home runs."

42. Laughlin further stated, after the initial launch of Boomertowne, that if Concierge Web invested further in Laughlin that the initial projections would be realized.

43. All these representations and statements were made in order to induce an obligation on the part of Concierge Web.

44. The representations and statements outlined above were untrue, deceptive or misleading.

45. The representations and statements were significant factors in contributing to Concierge Web's decision to use and continue to use Laughlin in the design, construction, marketing, and branding of a website that became known as Boomertowne.

46. The representations and statements by Laughlin were a material inducement to Concierge Web in its decision to work and continue to work with Laughlin.

47. The representations were made in violation of Wis. Stat. § 100.18.

48. The representations caused Concierge Web pecuniary damage and Concierge Web is entitled to recover its damages, including actual attorney's fees.

COUNT II
Fraud

49. Concierge Web repeats and realleges Paragraphs 1 through 48 as set forth herein.

50. On meetings held between October and December, 2006, the exact date of which is unknown, Laughlin presented Concierge Web with an initial draft revenue forecast for advertising revenue on the Boomertowne website and a second revenue forecast for advertising revenue on the Boomertowne website.

51. Laughlin, in its selling and marketing of services as an advertising agency, knew that the draft revenue forecast were false, not connected to reality, and could not be achieved and failed to disclose these facts to Concierge Web.

52. Laughlin knew, and intended that its concealment of actual facts, and express misrepresentations as to the revenue forecast for website advertising on the Boomertowne website would create a false impression in Concierge Web in order to induce Concierge Web to work with and hire Laughlin in the design, building, marketing, and branding of the Boomertowne website.

53. After the completion of the Boomertowne website, Laughlin ignored feedback from the drastically under-performing website and advised Concierge Web that it should spend more money in operating, marketing and branding the Boomertowne website.

54. Despite its knowledge of these false representations and despite its knowledge that the representations were material, Concierge Web failed to disclose the false representations to Concierge Web.

55. Laughlin had a duty to disclose the true facts regarding the advertising revenue forecast for website advertising on the Boomertowne website. Laughlin knew and intended that its concealment of and failure to disclose the true facts regarding advertising revenue forecasts would create a false impression in Concierge Web.

56. Concierge Web reasonably relied on Laughlin's misrepresentations and omissions.

57. Concierge Web suffered damage in an amount to be determined at trial based on the actions of Laughlin.

58. Laughlin and/or its insureds are responsible for these damages.

59. The conduct of Laughlin was committed with malice or an intentional disregard of Concierge Web's rights justifying an award of punitive damages.

COUNT III
STRICT RESPONSIBILITY FOR MISREPRESENTATION

60. Concierge Web repeats and realleges Paragraphs 1 through 59 as set forth herein.

61. Laughlin, in its work and performance in designing, building, marketing, and branding Boomertowne, represented to Concierge Web that Boomertowne would be the largest online community for the 79 million baby boomers in America and the website would generate revenue for Concierge Web in excess of \$36,000,000.00.

62. These representations were untrue.

63. Laughlin ought to have known the truth or untruth of its representations based upon the skill it holds itself out to possess as an advertising agency that the knowledge, expertise and experience in website advertising.

64. Laughlin had an economic interest in the transaction and stood to make a financial gain if Concierge Web accepted Boomertowne with the untrue representations unknown to Concierge Web.

65. Concierge Web believed the representations of Laughlin to be true and that were unknown to Concierge Web.

66. Concierge Web relied upon the representations of Laughlin in investing in the design, building, marketing, and branding of the Boomertowne website.

67. Laughlin knew or ought to have known that Concierge Web would rely upon Laughlin's representations.

68. As a result of Laughlin's representations, Concierge Web suffered damage.

69. As a result of Laughlin's representations and in light of Laughlin's economic interest in the transaction, Laughlin is strictly responsible to the plaintiffs for incurred damages.

**COUNT IV
NEGLIGENT MISREPRESENTATION**

70. Concierge Web repeats and realleges Paragraphs 1 through 69 and set forth fully herein.

71. Laughlin, in its work and performance in developing and overseeing the construction and building of Boomertowne, represented to Concierge Web that Boomertowne would generate revenue in excess of \$36,000,000.00 and become the largest online website for the baby boomer generation.

72. These representations were untrue.

73. Laughlin failed to exercise ordinary care in making the representations under circumstances in which a person of ordinary intelligence and prudence ought to reasonably foresee that such representations subject the interests of Concierge Web's web to an unreasonable risk of damage.

74. Concierge Web believed the representations of Laughlin to be true and relied upon them in making investments in Boomertowne and in spending monies in advertising and other branding efforts performed by Laughlin.

75. As a result of Laughlin's negligent representations, Concierge Web suffered damage.

**COUNT V
FRAUDULENT CONCEALMENT**

76. Concierge Web repeats and realleges Paragraphs 1 through 75 as set forth herein.

77. Laughlin, in its work and assertions as an advertising agency with full circle branding, knew or should have known that revenues for Boomertowne would not exceed \$36,000,000.00 for the first fourteen (14) months after launch.

78. Despite its knowledge of its over-inflated revenue forecast and knowledge of the industry, Laughlin failed to disclose the unknown nature of its forecast, that the forecast was significantly over-inflated, and that the actual revenue could be a fraction of the forecasted revenue.

79. Laughlin had a duty to disclose the true facts regarding its revenue forecast for Boomertowne. Laughlin knew and intended that its concealment of and failure to disclose the actual revenue forecast would create a false impression in Concierge Web.

80. Concierge Web reasonably relied upon Laughlin's deceit and concealment in investing and spending monies on Boomertowne and the services of Laughlin.

81. Laughlin and/or its insurers are responsible for these damages.

**COUNT VI
BREACH OF CONTRACT FOR SERVICES**

82. Concierge Web repeats and realleges Paragraphs 1 through 81 as set forth herein.

83. During the Fall of 2006, Concierge Web and Laughlin entered into an oral contract in which Laughlin was to design, build and market a website that became known as Boomertowne, targeting the 79 million baby boomers in America to become the largest online community for baby boomers with advertising revenues in excess of \$36,000,000.00.

84. From the Fall of 2006 until the present, a Boomertowne website was created by Laughlin that failed to generate even one percent (1%) of the revenue forecast by Laughlin and services provided by Laughlin failed to meet the terms of the oral contract between the parties.

85. Laughlin's failure to meet the terms of the oral contract constituted a breach of that agreement and has damaged Concierge Web.

86. Concierge Web has sustained significant damage from the breach.

**COUNT VII
NEGLIGENCE**

87. Concierge Web repeats and realleges Paragraphs 1 through 86 as set forth herein.

88. Laughlin had a duty, at all times relevant hereto, to research, design, build and provide a revenue forecast that would be justifiable and reasonably attainable.

89. Laughlin breached its duty by providing a revenue forecast to Concierge Web that was not reasonably attainable.

90. Laughlin breached its duty by providing a revenue forecast to Concierge Web that was a ruse to explain and justify millions of dollars in excessive billing.

91. Laughlin also breached its duty by not revising revenue forecasts after Boomertowne was in existence and by otherwise failing to justify the millions of dollars invoiced for services Laughlin performed for a website that has generated little or no revenue.

92. As a result of one or more of the breaches by Laughlin, Concierge Web invested in a website that does not make a profit, has generated less than 1% of the revenue forecast by Laughlin and is virtually worthless.

93. Concierge Web has suffered damages as a result of Laughlin's breach.

94. Laughlin is responsible for this damage.

**COUNT VIII
BREACH OF FIDUCIARY DUTY**

95. Concierge Web repeats and realleges Paragraphs 1 through 94 as set forth herein.

96. As a result of its relationship with Laughlin, Concierge Web placed its trust and confidence in Laughlin and relied on Laughlin's integrity and fidelity. Concierge Web relied on Laughlin's judgment and advice, based on Laughlin's purported knowledge, expertise and experience in website design, building, marketing and branding.

97. Laughlin owed a fiduciary duty to Concierge Web.

98. The obligations of Laughlin to Concierge Web compelled Laughlin to discharge its duties with absolute fidelity and loyalty to the interests of Concierge Web; to keep Concierge Web informed with respect to, and to make full disclosure to Concierge Web of all material facts that affect the subject of Laughlin's role as an advertising agency; to consult with Concierge Web on emergency developments, if opportunity exists to do so; to exercise the skill and care standard for such employment in the community, in all respects; and to discharge faithfully Laughlin's duties, so as to protect and serve the best interests of Concierge Web.

99. Laughlin breached its fiduciary duty to Concierge Web by, among other things, forecasting revenues and producing presentation materials for the Boomertowne website that were not close to realistic expectations for such a website; excessively invoicing and billing for time spent on a valueless, woefully underperforming website; and advising Concierge Web to continue investing and paying Laughlin for work on a worthless website.

100. As a result of one or more of the breaches by Laughlin, Concierge Web paid Laughlin millions of dollars for services on the Boomertowne website that is now valueless.

101. Laughlin's breaches have injured and continue to injure Concierge Web.

102. By its actions, Laughlin has breached its fiduciary duty to Concierge Web and Concierge Web has been damaged thereby, and is also entitled to punitive damages.

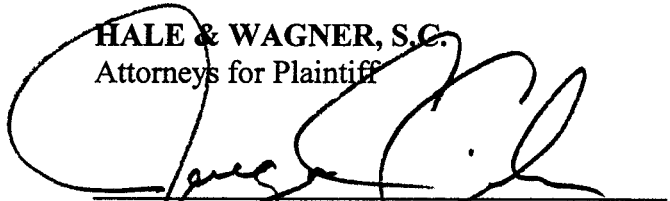
WHEREFORE, Plaintiff, Concierge Web, LLC, demands the following:

- i. for judgment in plaintiff's favor and against the defendant;
- ii. for compensatory and punitive damages in an amount to be determined at trial;
- iii. for the plaintiff's costs and disbursements in bringing this action, with interest;
- iv. plaintiff's actual attorney's fees in bringing this action; and
- v. for whatever further relief the Court deems just and equitable.

PLAINTIFF DEMANDS A SIX (6) PERSON JURY

Dated this 23rd day of September, 2008.

HALE & WAGNER, S.C.
Attorneys for Plaintiff



Christopher F. Hale (SBN 1016363)
K. Scott Wagner (SBN 1004668)
Jacques C. Condon (SBN 1033963)

POST OFFICE ADDRESS:

205 East Wisconsin Avenue, Suite 300
Milwaukee, Wisconsin 53202
Telephone: 414.278.7000
Facsimile: 414.278.7590

CO-COUNSEL

Michael F. Hart
Kohler & Hart LLP
735 North Water Street, #1212
Milwaukee, WI 53202-4105
Telephone: 414.271.9595
Facsimile: 414.271.3701