

STATE OF NORTH CAROLINA	File No. 12-CVS- <u>14344</u>
_____ <u>WAKE</u> _____ County	In The General Court of Justice <input type="checkbox"/> District <input checked="" type="checkbox"/> Superior Court Division

Name of Plaintiff
Lawrence Piazza and Salvatore Lampuri

Address

City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

VERSUS

Name of Defendant(s)
David Kirkbride, Gregory Brannon, and Robert Rice

Date Original Summons Issued

Date(s) Subsequent Summon(es) Issued

[REDACTED]

To Each of The Defendant(s) Named Below:

<i>Name And Address of Defendant 1</i> David Kirkbride 11113 Brass Kettle Road Raleigh, NC 27614	<i>Name And Address of Defendant 2</i> Gregory Brannon 108 Trident Court Cary, NC 27518
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A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

<i>Name And Address of Plaintiff's Attorney (If None, Address of Plaintiff)</i> Steven B. Epstein Poyner Spruill LLP P.O. Box 1801 Raleigh, NC 27602-1801	<i>Date Issued</i> 10-10-12	<i>Time</i> 2 — <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM
	<i>Signature</i> 	
	<input checked="" type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	

<input type="checkbox"/> ENDORSEMENT (ASSESS FEE)	<i>Date of Endorsement</i>	<i>Time</i> <input type="checkbox"/> AM <input type="checkbox"/> PM
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.	<i>Signature</i>	
	<input type="checkbox"/> Deputy CSC <input type="checkbox"/> Assistant CSC <input type="checkbox"/> Clerk of Superior Court	

NOTE TO PARTIES: Many counties have **MANDATORY ARBITRATION** programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

12CV014344

STATE OF NORTH CAROLINA

File No. 12-CVS-14344

WAKE County

In The General Court of Justice
District Superior Court Division

Name of Plaintiff
Lawrence Piazza and Salvatore Lampuri
Address
City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3, 4

VERSUS

Name of Defendant(s)
David Kirkbride, Gregory Brannon, and Robert Rice

Date Original Summons Issued
Date(s) Subsequent Summon(es) Issued

To Each of The Defendant(s) Named Below:

Name And Address of Defendant 1
Robert Rice
312 Shepherd Street
Raleigh, NC 27607

Name And Address of Defendant 2

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address of Plaintiff's Attorney (If None, Address of Plaintiff)
Steven B. Epstein
Poyner Spruill LLP
P.O. Box 1801
Raleigh, NC 27602-1801

Date Issued 10-10-12 Time 2 AM PM
Signature
Deputy CSC Assistant CSC Clerk of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

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12CV014344

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE WAKE COUNTY, C.S.C.

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
12 CVS _____

LAWRENCE PIAZZA and SALVATORE)
LAMPURI,)

Plaintiffs,)

v.)

DAVID KIRKBRIDE, GREGORY)
BRANNON, and ROBERT RICE,)
Defendants.)

COMPLAINT AND DEMAND
FOR JURY TRIAL

Plaintiffs Lawrence Piazza and Salvatore Lampuri, by and through counsel, complaining of Defendants David Kirkbride, Gregory Brannon, and Robert Rice, allege and say as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Lawrence Piazza ("Piazza") is a citizen and resident of the State of Maine.
2. Plaintiff Salvatore Lampuri ("Lampuri") is a citizen and resident of Wake County, North Carolina.
3. Defendant David Kirkbride ("Kirkbride") is a citizen and resident of Wake County, North Carolina.
4. Defendant Robert Rice ("Rice") is a citizen and resident of Wake County, North Carolina.
5. Defendant Gregory Brannon ("Brannon") is a citizen and resident of Wake County, North Carolina.
6. Jurisdiction is proper under N.C. Gen. Stat. § 1-75.4.

7. Venue is proper under N.C. Gen. Stat. § 1-82.

FACTS COMMON TO ALL CLAIMS

8. In January 2010, Brannon and Rice contacted Piazza about a new company Rice and Kirkbride had formed named Neogence Enterprises, Inc. (“Neogence”). Brannon and Rice asked Plaintiff to consider investing his personal funds in Neogence as an “angel investor.”

9. In January 2010, Neogence was a startup technology company principally focused on bringing to market an “augmented reality” (“AR”) application which could be loaded onto mobile devices such as smartphones. Neogence had named this application “Mirascape” and had begun the process to obtain patent protection for it.

10. At all relevant times material to this action, Kirkbride, Brannon, and Rice served on Neogence’s board of directors.

11. On February 5, 2010, Piazza invested \$13,900 in Neogence in exchange for a convertible promissory note which was to mature on September 30, 2010. As of the promissory note’s maturity date, at his option, Piazza could seek return of his investment, plus accrued interest, or could convert his investment into shares of Neogence stock.

12. On or about February 17, 2010, Brannon discussed with Lampuri the possibility of Lampuri making an investment in Neogence.

13. On February 26, 2010, Piazza invested an additional \$36,100 in Neogence in exchange for a convertible promissory note which was to mature on September 30, 2010. As of the promissory note’s maturity date, at his option, Piazza could seek return of his investment, plus accrued interest, or could convert his investment into shares of Neogence stock.

14. On or about March 16, 2010, Brannon again discussed with Lampuri the possibility of Lampuri making an investment in Neogence.

15. On or about April 30, 2010, Brannon sent an e-mail to Piazza and other existing and potential angel investors stating that Neogence's chief sales officer, John Cummings ("Cummings"), "just had a meeting in NY with Verizon. We need \$100 - \$200K ASAP, in 3-4 weeks we go back to Verizon *we have an oppurtunity [sic] to be their featured AR*. Rob is going to send out a summary later today. I know all of you are BUSY!!! I need you to give a few minutes to look at this potential. THANK YOU for your TRUST!! Greg." (Emphasis added.)

16. On or about April 30, 2010, Rice sent an e-mail to Piazza and other existing and potential angel investors – and copied to Brannon – providing further details regarding the meeting Mr. Cummings had with the "director of new technologies at Verizon." Rice stated, among other things, that "[t]he *opportunity here is to become the featured AR application for Verizon, OEM'd on all of the DROID smartmobiles*, and leverage their marketing." (Emphasis added.) Rice also stated:

The challenge here, is that we have to jump to warp speed to accelerate development . . . not only to meet our milestones, but to WOW Verizon. This is a one-shot opportunity. As things currently are, we are crawling along to meeting the milestones, but there is no way we can deliver the perfect demo for Verizon without immediate funding. I need resources to bring on additional developers as a strike team to do this fast, hard, and well. Not only do we need to take the app and the website to the next level, but we need to make it look fantastic, as well as the actual demo/presentation This is a huge chance and opportunity, but we can't do it alone. We need help finding additional angel capital that can make a decision and move quickly.

We need \$200k. That's four people at \$50k. We are perfectly positioned to take down some phenomenal strategic partnerships and deals (on top of what we already have done), launch on the market, blow every other AR company

completely out of the water, and take the lead in this industry. Even beyond that, opportunities like this emerging industry only happen once a decade or so

17. At the time he made the representations referenced in the preceding paragraph, Rice was serving as the chief executive officer of Neogence.

18. Piazza relied on the representations made by Brannon and Rice in their respective e-mails and was thereby induced to consider making an additional investment in Neogence.

19. In early to mid-May 2010, Kirkbride further discussed with Piazza by telephone the possibility of Piazza making an additional investment in Neogence. During those telephone conversations, Kirkbride reiterated that Verizon had offered Neogence the opportunity for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones and that additional angel investor funding was needed to permit Neogence to take advantage of that opportunity.

20. To further discuss such possible investment, Kirkbride and Cummings flew to Bangor, Maine on or about May 26, 2010 to discuss with Piazza conditions for his additional investment. During his dinner meeting with Piazza, Kirkbride reiterated that Verizon had offered Neogence the opportunity for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones and that additional angel investor funding was needed to permit Neogence to take advantage of that opportunity.

21. At the time he made the representations referenced in the preceding paragraphs, Kirkbride was serving as the chief executive officer of Neogence.

22. On or about May 25, 2010, Brannon again discussed with Lampuri the possibility of Lampuri making an investment in Neogence. During that discussion, Brannon informed

Lampuri that Neogence had an opportunity for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones.

23. As a direct result of the representations made by Brannon and Rice in their respective e-mails to Piazza, and by Kirkbride during his telephone discussions and dinner meeting with Piazza, on or about May 28, 2010, Piazza invested an additional \$150,000 in Neogence in exchange for a convertible promissory note which was to mature on May 30, 2011. As of the promissory note's maturity date, at his option, Piazza could seek return of his investment, plus accrued interest, or could convert his investment into shares of Neogence stock.

24. In mid-July 2010, Lampuri was invited to the Neogence office to preview a demonstration of Mirascape. In attendance at this demonstration were Rice, Kirkbride, and Cummings. Rice, Kirkbride, and Cummings informed Lampuri that they were getting ready to make a presentation to Verizon in New York to follow through on an opportunity Verizon had provided Neogence for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones.

25. In early August 2010, Lampuri again met with Rice, Kirkbride, and Cummings at Neogence's office to learn more about Neogence and how funds he might invest in Neogence would be utilized. During that meeting, Rice, Kirkbride, and Cummings reiterated that Verizon had provided Neogence the opportunity for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones.

26. Lampuri relied on the representations made by Brannon, Rice, and Kirkbride regarding the opportunity that existed for Mirascape to become a featured AR application pre-

installed on all Verizon DROID smartphones and was thereby induced to consider making an investment in Neogence.

27. As a direct result of the representations made by Brannon, Rice and Kirkbride, regarding the opportunity Neogence had for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones, on or about September 24, 2010, Lampuri invested \$100,000 in Neogence in exchange for a convertible promissory note which was to mature on December 31, 2011. As of the promissory note's maturity date, at his option, Lampuri could seek return of his investment, plus accrued interest, or could convert his investment into shares of Neogence stock.

28. The representations made by Brannon, Rice, and Kirkbride to both Piazza and Lampuri regarding the opportunity for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones were false and misleading. At no time did any person associated with Verizon ever discuss with John Cummings or any other Neogence officer, director, or employee any opportunity for Mirascape or Neogence technology to become a featured AR application pre-installed on all – or any – Verizon DROID smartphones.

29. Neogence was never successful in marketing Mirascape, or any other technology, to Verizon or to any other company.

30. Following the maturity of his three convertible promissory notes with Neogence, Piazza demanded that Neogence return to him his principal and all accrued interest. In response to Piazza's demand, the entire board of directors of Neogence resigned and the company ceased to function.

31. Piazza thereafter filed suit against Neogence seeking all principal and interest, and attorneys fees, to which he was entitled regarding the three convertible promissory notes that were issued to him. Piazza obtained a default judgment against Neogence which, to date, has not been satisfied even in part.

32. As the result of the Defendants' wrongful conduct and Neogence's demise, Piazza lost all \$200,000 he invested in Neogence.

33. As the result of Defendants' wrongful conduct and Neogence's demise, Lampuri lost all \$100,000 he invested in Neogence.

FIRST CLAIM FOR RELIEF
Common Law Fraud

34. The allegations set forth in paragraphs 1-33 are realleged as if fully stated herein.

35. Defendants each falsely represented to Plaintiffs that Verizon had offered Neogence the opportunity to become a featured AR application pre-installed on all Verizon DROID smartphones.

36. Defendants made these false representations knowingly, intentionally and/or recklessly, without regard for their truth or falsity, and with the intent to deceive Plaintiffs and to induce Plaintiffs to make significant investments in Neogence.

37. Plaintiffs reasonably and justifiably relied upon the representations made by Defendants and would not have made their investments in Neogence except for their reliance on those representations. Consequently, those representations were material to Piazza's decision to make his \$150,000 investment in Neogence on or about May 28, 2010 and to Lampuri's decision to make his \$100,000 investment in Neogence on or about September 24, 2010.

38. As a direct and proximate result of his reliance upon the false representations made by Defendants, Piazza lost \$150,000 via his investment in Neogenex and is therefore entitled to recover damages in that amount.

39. As a direct and proximate result of his reliance upon the false representations made by Defendants, Lampuri lost \$100,000 via his investment in Neogenex and is therefore entitled to recover damages in that amount.

SECOND CLAIM FOR RELIEF
Negligent Misrepresentation (Alternative Claim)

40. The allegations set forth in paragraphs 1-39 are realleged as if fully stated herein.

41. By their conduct described above, each of the Defendants made negligent misrepresentations to Plaintiffs intended to cause Plaintiffs to make investments in Neogenex.

42. Defendants made such misrepresentations knowingly or recklessly, and without regard for their truth or falsity.

43. Plaintiffs reasonably and justifiably relied upon the negligent misrepresentations made by Defendants and would not have made their investments in Neogenex in May 2010 (Piazza) and September 2010 (Lampuri) except for their reliance on those misrepresentations. Consequently, those misrepresentations were material to Plaintiffs' decisions to make those investments.

44. As a direct and proximate result of his reliance upon the negligent misrepresentations made by Defendants, Piazza lost \$150,000 via his May 2010 investment in Neogenex and is therefore entitled to recover damages in that amount.

45. As a direct and proximate result of his reliance upon the negligent misrepresentations made by Defendants, Lampuri lost \$100,000 via his September 2010 investment in Neogence and is therefore entitled to recover damages in that amount.

THIRD CLAIM FOR RELIEF
Securities Fraud

46. The allegations set forth in paragraphs 1-45 are realleged as if fully stated herein.

47. The May 28, 2010 convertible promissory note Neogence issued to Piazza in exchange for his \$150,000 investment was a security as that term is defined in N.C. Gen. Stat. § 78A-2(11).

48. The September 24, 2010 convertible promissory note Neogence issued to Lampuri in exchange for his \$100,000 investment was a security as that term is defined in N.C. Gen. Stat. § 78A-2(11).

49. As set forth above, in connection with the offer and sale of such securities to Plaintiffs, Defendants directly and indirectly: (a) employed devices, schemes, and artifices to defraud Plaintiffs; (b) made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaged in a course of business which operated as a fraud upon Plaintiffs.

50. Defendants' false and misleading representations included the representation that Neogence had an existing opportunity with Verizon for Mirascape to become a featured AR application pre-installed on all Verizon DROID smartphones.

51. Defendants knowingly, intentionally, and/or recklessly engaged in the aforementioned devices, schemes and artifices to defraud Plaintiffs, made untrue statements of material fact, omitted to state material facts, and engaged in fraudulent acts, practices, and a course of business.

52. Plaintiffs reasonably and justifiably relied upon the representations made by Defendants and would not have made their \$150,000 investment in Neogence in May 2010 (Piazza) and \$100,000 investment in Neogence in September 2010 (Lampuri) except for their reliance on those representations. Consequently, those representations were material to Plaintiffs' decisions to make those investments.

53. As a direct and proximate result of his reliance upon the false representations made by Defendants, Piazza lost \$150,000 via his May 28, 2010 investment in Neogence and is therefore entitled to recover damages in that amount.

54. As a direct and proximate result of his reliance upon the false representations made by Defendants, Lampuri lost \$100,000 via his September 24, 2010 investment in Neogence and is therefore entitled to recover damages in that amount.

55. Based on the above-mentioned conduct, Defendants have violated N.C. Gen. Stat. § 78A-8.

56. Pursuant to N.C. Gen. Stat. § 78A-56(a) and (c), Defendants are liable to Piazza for the loss of his \$150,000 investment together with interest at the legal rate from the date of payment, costs, and reasonable attorneys fees.

57. Pursuant to N.C. Gen. Stat. § 78A-56(a) and (c), Defendants are liable to Lampuri for the loss of his \$100,000 investment together with interest at the legal rate from the date of payment, costs, and reasonable attorneys fees.

FOURTH CLAIM FOR RELIEF
Unfair or Deceptive Trade Practices (Alternative Claim)

58. The allegations set forth in paragraphs 1-57 are realleged as if fully stated herein.

59. Defendants' conduct described above was in and affecting commerce and constitutes unfair or deceptive trade practices within the meaning of N.C. Gen. Stat. § 75-1.1.

60. As a direct and proximate result of Defendants' unfair or deceptive trade practices, as alleged above, Piazza lost his \$150,000 investment in Neogence.

61. As a direct and proximate result of Defendants' unfair or deceptive trade practices, as alleged above, Lampuri lost his \$100,000 investment in Neogence.

62. Plaintiffs are entitled to recover treble damages pursuant to N.C. Gen. Stat. § 75-16 and reasonable attorneys fees pursuant to N.C. Gen. Stat. § 75-16.1.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that judgment be entered in their favor for the following relief, jointly and severally, against Defendants:

1. Compensatory damages in excess of \$10,000, as may be established at the trial of this matter, plus interest as provided by law;
2. Punitive damages in excess of \$10,000 as provided by law;
3. Treble damages pursuant to N.C. Gen. Stat. § 75-16;

4. Reasonable attorneys fees incurred by Plaintiffs, pursuant to N.C. Gen. Stat. §§ 78A-56(a) or 75-16.1;

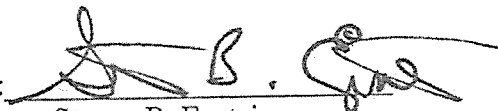
5. That the costs of this action be taxed against Defendants; and

6. For such other and further relief as the Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

This the 10th day of October, 2012.

POYNER SPRUILL LLP

By: 

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