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SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
MAR 21 2017
Sherri R. Carter, Executive Officer/Clerk
By: Shaunya Bolden, Deputy

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Dallas

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DIVISION

BRYAN J. ROBERTS, an individual,

Plaintiff,

v.

ERIC SWALLOW, an individual; PROFITABLE CASINO, LLC, a Nevada limited liability company; SECURE STONE, LLC, a Delaware limited liability company; and DOES 1-50, inclusive,

Defendants.

Case No. BC603331
[Hon. Richard E. Rico, Dep't 17]

SECOND AMENDED COMPLAINT FOR:

1. **DECLARATORY RELIEF;**
2. **FRAUD;**
3. **BREACH OF PARTNERSHIP;**
4. **BREACH OF FIDUCIARY DUTY;**
5. **CONSTRUCTIVE FRAUD;**
6. **CONVERSION; AND**
7. **BREACH OF CONTRACT**

JURY TRIAL DEMANDED

Complaint Filed: December 4, 2015

INTRODUCTION AND SUMMARY OF CLAIM

1. This is a case about two partners. One created a valuable piece of software; the other took it, marketed it, made a lot of money off of it, stole the profits, and lied about it—at least until prosecutors got involved. Using his own proprietary platform, Plaintiff Bryan J. Roberts ("Roberts" or "Plaintiff") developed a casino management software solution (the "Casino Software"), for the purpose of benefitting his partnership with Defendant Eric Swallow ("Swallow"), Roberts's business mentor and a casino operator. It cannot be disputed that Roberts is ***at least*** a co-owner of the Casino Software. Despite this, Swallow went behind Roberts's back, collecting undisclosed licensing fees from various casinos, including Swallow's own, reaping millions of dollars in the process. Swallow never told Roberts about any of this, depriving Roberts of his equal share of those licensing fees. Instead, Swallow lied repeatedly to Roberts, telling him that the Casino Software was not making any money, and was instead being used on a trial basis to demonstrate its value and marketability. Roberts, quite reasonably, relied upon these and many other misrepresentations of fact, until Swallow was forced to concede his deception after the California Attorney General (the "Attorney General") investigated Swallow, revoked Swallow's gaming license, and fined him more than $14 million dollars. All told, Swallow's deception and theft of intellectual property constitutes a brazen, illegal, and malicious effort to deprive Roberts of his rightful 50% stake in the profits generated by licensing intellectual property that Roberts created. Swallow's many breaches of his fiduciary duties as a partner, and Swallow's intentional fraud, entitle Roberts to compensatory damages and punitive damages.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the parties' dispute because Plaintiff brings claims under the statutory and common law of the State of California for acts occurring in this jurisdiction. This Court has personal jurisdiction over Plaintiff because, by the filing of his initial Complaint, he willingly submitted to the same. This Court has general personal jurisdiction over Defendant Swallow because he is a resident and citizen of this state. Finally, this Court has personal jurisdiction over Defendants Profitable Casino, LLC ("Profitable Casino") and Secure Stone, LLC ("Secure Stone," with Profitable Casino, the "Entity Defendants") because the Entity Defendants have each previously entered a general appearance in this matter.

3. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395, *et seq.*, because the acts and omissions alleged in this Complaint took place in, and Plaintiff suffered his damages in, the State of California, County of Los Angeles. Moreover, Defendant Swallow committed many of the acts complained of herein within this jurisdiction.

THE PARTIES

4. Plaintiff Bryan J. Roberts is, and at all relevant times was, an individual residing in Brazoria County, State of Texas. Roberts is a professional software designer, and the sole author of each of the software programs at issue in this Complaint.

5. Defendant Eric Swallow is, and at all relevant times was, an individual residing in Los Angeles County, State of California. Also at all relevant times, at least until the revocation of his gaming license as described herein, Swallow was an owner and operator of Garden City Casino, Inc. ("Garden City"), which does business as Casino M8trix in the City of San Jose, California. Garden City is not a party to this action.

6. Defendant Profitable Casino, LLC ("Profitable Casino") is a Nevada limited liability company, and on information and belief, has its principal place of business in the State of California, County of Los Angeles. Profitable Casino was created by Defendant Swallow, ostensibly for the benefit of his partnership with Roberts, and with the business purpose of commercializing casino software created by Roberts for their mutual financial benefit. But, as described below, Profitable Casino was actually used by Swallow for Swallow's own benefit, to the exclusion of Roberts.

7. Defendant Secure Stone, LLC ("Secure Stone") is a Delaware limited liability company with a principal place of business in the State of California, County of Alameda. Secure Stone was also created by Defendant Swallow, without Roberts's knowledge, on information and belief for the purpose of commercializing casino software created by Plaintiff Roberts, but was also used by Swallow for Swallow's own benefit, to the exclusion of Roberts.

8. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by those Defendants.

9. Plaintiff is informed and believes, and based thereon alleges, that at all times material to this Complaint, each Defendant, whether expressly or fictitiously named, in addition to acting for himself, herself, or itself and on his, her, or its own behalf individually, is and was acting as the agent, servant, employee, partner, joint-venturer, or representative of, and with the knowledge, consent, and permission of, and in conspiracy with, each and all of the Defendants and within the course, scope, and authority of that agency, service, employment, partnership, joint venture, representation, and conspiracy. Plaintiff further alleges on information and belief that the acts of

each of the Defendants were fully ratified by each and all of the Defendants. Specifically, and without limitation, Plaintiff alleges on information and belief that the actions, failures to act, breaches, conspiracy, and misrepresentations alleged herein and attributed to one or more of the specific Defendants were approved, ratified, and done with the cooperation and knowledge of each and all of the Defendants.

10. Although Plaintiff is informed and believes that discovery will yield additional relevant facts, at least with respect to Defendants Profitable Casino and Secure Stone, Defendant Swallow totally and completely controlled the Entity Defendants, using them as a mere shell and/or conduit to conduct his personal affairs including, without limitation, using them as a pass-through for licensing fees to which he was not entitled and were not shared with Plaintiff in violation of law. On information and belief, Defendant Swallow wholly disregarded the corporate form with respect to the Entity Defendants, did not follow even basic corporate formalities, treated the assets of the Entity Defendants as his own, and specifically and intentionally used the Entity Defendants to hide income and assets from their rightful owner(s) (namely, Plaintiff), and to hide and conceal the many illegal acts described in this Complaint. Allowing Defendant Swallow to hide behind the corporate form of either Entity Defendant would irreparably harm Plaintiff, and serve to promote injustice.

FACTUAL ALLEGATIONS

Roberts Creates the Original Software

11. In or around June 2000, Roberts authored a software management system, called the Orisis Content Management System (the "Original Software"). No other person or entity assisted Roberts in the creation of the Original Software, and Roberts was (and remains) the sole owner of the Original Software.

12. The Original Software is an internet-based software development platform that allows users to create customized, web-based operational and/or database solutions out of modular templates. This allows a user to create customized software applications to assist in the conduct of any type of business. The Original Software simplifies more traditional computer coding through the use of pre-coded functionality and modules to streamline the creation of web applications. The Original Software must be installed together with any software created using the Original Software, and the new software operates by accessing the pre-coded functions in the Original Software.

Roberts Meets Swallow, They Form a Partnership, and They Create a Company

13. Roberts met Swallow approximately mid-2003. Swallow was an investor in a startup company called Data Exchange Systems. Roberts, using the Original Software, wrote the key software for Data Exchange Systems. Swallow was intrigued by both Roberts and his Original

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Software. In turn, Roberts was impressed by Swallow's business acumen. By approximately 2004, Swallow was mentoring Roberts in business, and gained Roberts's trust.

14. In May of 2007, Swallow approached Roberts and noted that there might be business opportunities to market certain software solutions specific to the casino industry. Swallow's business idea was derived from his lay understanding of the Original Software and its capabilities, and Roberts believed that he would be able to create the contemplated solution, derived from his Original Software. Swallow initially wanted to purchase the resulting software from Roberts outright. However, Roberts responded that he was not interested in such a deal. Roberts explained to Swallow that Swallow's proposal was outside of Roberts's normal business practice, which was to maintain ownership of the software he created or developed for his clients, and then confer certain use rights upon them. Swallow did not want to pursue Roberts's standard arrangement.

15. The parties further evaluated their options, and discussed the matter over the next couple of days. A few days after he initially approached Roberts, Swallow proposed that the two become partners in a business to develop, prove, market, and sell casino management software, with the goal of earning profits, which profits they would split evenly among them. Roberts agreed. Thus, at the beginning of June 2007, Swallow and Roberts formed a legal partnership for those purposes as described herein.

16. Swallow, at the time, was an owner and operator of Casino M8trix. For this reason, Roberts thought Swallow's proposed partnership seemed like a great opportunity. Roberts readily agreed to explore these opportunities with Swallow as partners, relying upon Swallow's superior experience and knowledge in the casino industry. Roberts accordingly turned down or did not pursue other business opportunities available at the time.

17. Concurrently, Swallow specifically promised, and Roberts understood and agreed, that if Roberts did the work to design and create a casino-specific, business-management software based upon Roberts's Original Software, to specifications agreed upon between Roberts and Swallow, Swallow would be able to monetize that intellectual property for their mutual benefit.

18. Also concurrently, Swallow further specifically promised Roberts that the two of them would, without limitation (1) form a legal partnership for the purpose of commercializing the Casino Software, (2) create a company to license the Casino Software to casinos throughout California and the United States, and (3) equally split (50/50) any licensing or other related revenue.

19. As a result of the words and acts by and among Swallow and Roberts described in paragraphs 15 through 18, at the beginning of June 2007, Roberts and Swallow promised and agreed to join together as partners in a partnership for the purpose of operating a business for profit, the

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subject of which was to test, market, and sell the Casino Software (and related future software) in the casino industry, with the goal of gaining profits through licensing fees, or other related opportunities as they presented themselves. Roberts's value to the partnership came from his software expertise and the usefulness of his Original Software as a stepping stone for the creation of company and casino-specific software solutions that could be marketed to third parties. Swallow's value to the partnership derived from his actual ownership of an operating casino, and his contacts and experience in the casino industry.

20. Roberts immediately began expending efforts on behalf of the partnership, and went to work on the Casino Software immediately, in early June of 2007. The moment Roberts put pen to paper (or cursor to monitor, as the case may be), Roberts was the sole owner and 100% copyright holder of the Casino Software.

21. Roberts's partnership-related acts (i.e. conceiving and coding software, and ownership of intellectual property) are separate and apart from his subsequent acts of installing and maintaining systems that used the software at various casinos, as well as his superivision of IT employees, which acts were subject to separate, later-entered employment arrangements, negotiated directly between Roberts and various casinos, both contractual and otherwise, as also described herein.

22. In reliance upon the promises made to him by Swallow, Roberts did in fact put considerable time and effort into creating the casino business-management software solution contemplated by the parties' partnership (the "Casino Software"). The Casino Software worked exactly as the partners (Roberts and Swallow) intended. Because the software looked to be a success, Swallow specifically told Roberts that Swallow would use his status as a casino industry insider and his business skills to grow and expand their joint business together. Swallow further told Roberts that, despite its apparent functionality, the partners would need to prove the Casino Software worked in practice but, once proven, their partnership would profit handsomely from licensing deals Swallow could negotiate. Swallow told Roberts that those fees would be shared equally among the two, and that they would form "their" company for this purpose. Swallow made these representations to Roberts in mid-late June and July 2007, including without limitation on telephone calls that occurred on or about June 5, 11, and 18, 2007, and July 10, 2007. Swallow also reassured Roberts by telling him that Swallow would help Roberts to get hired as a full-time IT professional at Casino M8trix, where Swallow was a part owner—and that in this way, Roberts could support himself and his family while concurrently (but separately) working to benefit their partnership.

23. Notably, although the partners contemplated and did in fact form a partnership for the purpose of commercializing the Casino Software, none of the partnership, its individual partners, any entity created by the partnership or its partners, or any casinos using the Casino Software did or were to own the intellectual property in the Casino Software. Although at this time the parties intended for the partnership to split licensing fees 50/50, it was always the intent, understanding, and fact of the parties' relationship that Roberts retain whole and sole ownership of the Casino Software, at least when the partnership was created and then through June 2007.

24. Swallow, the partner with industry and business experience, was to be the face of Profitable Casino, and, in turn, Profitable Casino was to be the face of the Casino Software to the casino industry. Roberts, the partner who had created the Casino Software, continued to work on improving that software, using his Original Software.

25. Swallow then purchased an internet domain for the partners' company in August 2007. Confirming the partnership (and further inducing reasonable reliance on Roberts's part), on or about August 31, 2007, Swallow sent Roberts an email in which Swallow told Roberts that "I [Swallow] have reserved www.profitablecasino.com for our company. Profitable Casino is the company name."

26. On information and belief, in furtherance of his fraudulent scheme, Swallow actually incorporated Profitable Casino some time in 2008. On further information and belief, Swallow used Profitable Casino to license and market the Casino Software, as described herein, to third parties (and his own casino) in an apparently-legitimate manner, but did not provide Roberts with his rightful share. Concurrently, and throughout this period, Swallow specifically stated to Roberts that the purpose of creating a company was to market the Casino Software, generate revenue for the company through licensing fees, and pursue other business opportunities that presented themselves as a result of the partnership's success.

27. Of course, none of the foregoing was true—Swallow's true intent was to control and dominate the affairs of Profitable Casino, using the entity to license the Casino Software for Swallow's own and exclusive financial benefit, and to hide his conduct from Roberts—which Swallow did, depriving Roberts of his rightful share of licensing fees actually earned.

28. In addition, Swallow's promises to Roberts that they would commercialize the Casino Software as equal partners, create a company together to license that software, and split any proceeds, were in fact false when made. Swallow knew these statements were false at the time that he made them, as he had no intention of upholding his end of the deal with Roberts.

29. The true facts were that Swallow made these promises intending to deceive Roberts. Swallow's actual intent was to dupe Roberts into creating the Casino Software (which Roberts did), but then license the software to Swallow's own and other casinos, thereafter surreptitiously reap then conceal the profits, and never pay Roberts his equal, 50% interest in the same (all of which Swallow accomplished for his own benefit).

30. Roberts reasonably relied upon Swallow's false promises described herein, and continued to perfect the Casino Software, foregoing other business opportunities, throughout this period. In further reliance upon Swallow's misrepresentations and promises, Roberts also continued to develop new modules and updates for the base Casino Software, through at least April 2008.

31. All told, in reliance upon Swallow's deceit, Roberts spent many thousands of hours developing, improving, and updating the code for the Casino Software using his own Original Software, all with the intent and belief (a reasonable belief, given Roberts's pre-existing relationship with Swallow, Swallow's sole possession of material facts and repeated assurances) that those efforts would be rewarded financially through at least an equal share of revenues eventually earned through the licensing of the intellectual property Roberts created. Notably, the hours previously described in this paragraph are separate and apart from the thousands of hours that Roberts devoted to physically installing and maintaining the Casino Software, and supervising IT staff, some of which resulted in payments to Roberts as a result of separate contracts for employment as an independent contractor directly between Roberts and various casinos, and others which Swallow insisted upon on the theory that those efforts would benefit the partnership and, by extension, Roberts personally.

32. To this day, Roberts has only been paid a tiny fraction of his half of revenues generated through licensing of the Casino Software. Swallow paid Roberts in excess of $150,000.00 (but less than $200,000.00) as Roberts's purported "cut" of revenues earned by licensing the banking software module within the Casino Software, which is described in more detail below. Roberts also earned a salary for his day-to-day labor as an IT professional working at various casinos where the Casino Software was installed, which salary was competitive within the industry, at times was as high as $15,000.00 per month. ***However, there is a clear and critical distinction between a co-owner earning his share of fees paid to license intellectual property that he owns, on the one hand, and being paid for installation and maintenance of software and supervision of casino IT staff, on the other.*** Roberts readily acknowledges he was paid the latter; he certainly was paid nowhere near his fair share of the former, as described throughout this Complaint. Specifically with respect to licensing fees, Swallow has earned more than $19 million, all the while illegally and

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maliciously excluding his partner Roberts. It defies logic that Roberts invented and owns the Casino Software, yet his take on more than $19 million is less than $200,000.00.

The Parties Execute a Services Agreement to Prove Roberts's Casino Software Works

33. As Roberts worked tirelessly to craft and refine the Casino Software for the benefit of their partnership through Summer 2007, as above, Swallow repeatedly told Roberts that if Roberts was able to prove the effectiveness of the Casino Software in practice, the partners could make a significant amount of money, into the many millions of dollars, licensing the Casino Software to other casinos. Swallow further told Roberts that Swallow knew of other casinos that could benefit from the installation of the Casino Software—if it worked. Swallow also told Roberts that Swallow was committed to making their joint project successful and profitable.

34. The next step, Swallow told Roberts, was installing, testing, and successfully utilizing the Casino Software in an actual casino. Swallow also told Roberts that they needed to be prepared to install and maintain the Casino Software as soon as it was proven to work in an actual, operating casino, and that it would be important for Roberts to train on-site staff so that there would be people available on-site to troubleshoot and respond to problems as they arose.

35. Swallow made each of these representations described in paragraphs 33 and 34 on telephone calls and in emails during mid-late June and July 2007, and continued to make the same or substantively similar statements into August 2007.

36. Accordingly, in July 2007, after Roberts had already begun drafting the Casino Software, Roberts, on the one hand, and Swallow, on the other, executed a Services Agreement (the "Services Agreement"). At its core (and by its plain terms), the Services Agreement provided for Roberts to physically travel to Casino M8trix, which was part-owned by Swallow, and provide in-person, location-specific installation, maintenance, training, and related services. The Services Agreement provided for a limited number of hours for this work, and for the payment of $15,000.00 for those installation and maintenance services, ***which money was paid by Casino M8trix, not Swallow***. After those hours were exhausted, Casino M8trix hired Roberts full-time as an independent contractor to maintain the Casino Software, and paid him separately for those services (Casino M8trix continued to employ Roberts in that role until October 2014). None of these contracts or arrangements were related in any way to ownership of intellectual property or licensing deals for the same, other than memorializing and confirming the parties' earlier agreement to split revenue.

37. Instead, as a Services Agreement (and by its plain terms), that agreement is silent with respect to the manner or method of paying, receiving, or disbursing licensing fees for the

Casino Software. Those matters are wholly outside the scope of a contract (the Services Agreement) that deals with post-coding installation or operation; necessarily, software can only be used and maintained after the intellectual property itself has been created. The Services Agreement therefore has no bearing upon the fact of Roberts's ownership or creation of the Original Software, or Roberts's initial ownership of 100% of the copyrights in the Casino Software.

38. Notably, initial drafts of the Services Agreement explicitly confirmed (although it was unnecessary under federal and state law) that Roberts would continue to be the sole owner of the Casino Software, and any software that might subsequently be developed during the course of performance of the Services Agreement. Swallow balked at this commonsense, confirmatory, and at the time, unnecessary term.

39. So, Swallow unilaterally changed the language of the draft services agreement "so [Swallow] would own the software as well." Whether Swallow's chosen contract language actually conferred upon Swallow a fifty percent (50%) ownership interest in any of the intellectual property at issue in this Complaint is one of the matters for which Roberts seeks a judicial declaration here.

40. In any event, the final Services Agreement, as fully executed by the parties in mid-July 2007, reflects Swallow's drafting, and Roberts's understanding.[1] It reads at Section 8:

> 8. Proprietary Rights. [Swallow] and [Roberts] shall own any and all documentation used in connection with the provision of Services, together with any computer source and object code developed in conjunction with the provision of Services.

41. Roberts and Swallow never executed a licensing agreement by or among themselves for or even relating to the Casino Software, any software described in this Complaint, or any other intellectual property. In Roberts and Swallow's minds, there was no need: as partners, each of Swallow and Roberts expressly agreed, orally, by implication, and by operation of law as co-owners/co-tenants of copyrights, to equally share (50/50) in any and all fees, profits, monies, or other benefits derived or relating to the Casino Software and/or any other software described herein.[2]

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[1] To be clear, Swallow did not propose or insert any language that in any way related to the parties' respective entitlement to profits, fees, or other benefits derived from their co-ownership or intellectual property. Swallow's refusal to recognize Roberts's legal rights to at least half of licensing fees and/or profits generated through the intellectual property described in this Complaint is one of the bases for Roberts's request for a judicial declaration of the parties' respective rights and obligations with respect to the same.

[2] If the parties are not partners, and the Services Agreement did not legally confer a 50% interest in the Casino Software to Swallow (who had no claim to any ownership interest other than that possibly so conferred), then Roberts by operation of law did and still does own 100% of the intellectual property described herein, entitling him to all of the licensing fees Swallow surreptitiously generated using Roberts's software.

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42. Roberts agreed (at least he believed he agreed) to give Swallow co-ownership of the Casino Software via the Services Agreement because of Swallow's many and repeated promises that the partners would share in the licensing fees generated by the Casino Software, recognizing that Swallow's experience and contacts in the industry and promotion of the same induced Roberts to essentially give away half of his valuable intellectual property. Roberts would not have given (or attempted to give) half of his valuable intellectual property to Swallow, but for Swallow's promises to split licensing profits, and Roberts's understanding that co-ownership meant an equal entitlement to licensing profits. In doing so, unless the Services Agreement is held invalid, by operation of law Roberts and Swallow are co-owners of the copyright interest in the Casino Software which, in turn and again by operation of law, makes them tenants-in-common of all benefits, rights, and responsibilities represented by that interest, which rights cannot be reserved or divested except by express, written agreement. Roberts is not a lawyer, and did not feel it necessary to consult a lawyer, because he believed a 50/50 split was fair, given the parties were partners.

43. Throughout this time, Roberts justifiably believed each of Swallow's many intentional misrepresentations, not knowing that Swallow actually intended to argue Roberts did not have any ownership interest at all in the Casino Software[3] or its revenues, and conceal and keep for himself the more than $19 million in licensing fees that software generated. Swallow apparently never intended to share with Roberts the actual intellectual property, or the millions of dollars it earned.

44. If Roberts had known the truth, he never would have agreed to partner with Swallow, purported to cede a 50% ownership interest to Swallow, or agreed to install his intellectual property pursuant to the Services Agreement to prove its effectiveness. But, Roberts did not know the truth because of Swallow's ongoing and continuous deceit. Swallow was a savvy business man, a mentor, and Roberts's partner. Roberts was a naïve computer programmer and business amateur, who looked up to and relied on Swallow's business acumen. Moreover, Swallow had arranged for several casinos to pay Roberts for his professional IT services, thereby keeping Roberts financially afloat while representing to Roberts that the partners were working toward future profits once the Casino Software actually began earning licensing fees (in truth, it already was, unbeknownst to Roberts). Roberts understandably believed what Swallow told him.

[3] Swallow appears to have changed his position regarding co-ownership of the Casino Software, and denies Roberts's rightful claim to at least co-ownership of the same.

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Swallow Surreptitiously Licenses the Casino Software to His Own Casino, Makes a Lot of Money, and Does Not Tell Roberts, Who Unknowingly Facilitates the Fraud

45. After the parties formed their partnership, but before the Services Agreement was executed, Swallow again told Roberts that there was no point to seeking out a casino to accept the Casino Software, untested and sight unseen. Instead, Swallow stated, Swallow's Casino M8trix could serve as Casino Software's proving ground, acting as a "proof of concept" or, "test bed" for the purpose of evaluating the viability and marketability of the Casino Software, the potential cash cow of the partnership. This conversation occurred in late June 2007.

46. On telephone calls during this period, Swallow stressed to Roberts that their partnership would only be able to make money if the Casino Software became a proven commodity.

47. Swallow also specifically represented to Roberts that Casino M8trix would not pay for the use of the Casino Software and, relatedly, that neither the partnership nor Swallow would charge or receive a licensing fee from Casino M8trix for the use of that software. Roberts relied upon each of these representations, and agreed to install the Casino Software at Casino M8trix.

48. In fact, Roberts himself aided in that installation, and Casino M8trix paid Roberts for the specific services he provided in connection with the install. These payments had zero relationship with or to Roberts's ownership stake in the Casino Software. Roberts does not seek to recover anything by this Complaint for his services in installing the Casino Software.

49. From a business perspective, it was likely true that the marketability of the Casino Software would be enhanced by a successful test run in an actual, operating casino under normal operating conditions. But, everything else Swallow told Roberts was intentionally false.

50. In fact, Swallow did charge a licensing fee to Casino M8trix—a casino Swallow partly owned—for the use of the Casino Software. Swallow did not tell Roberts that Casino M8trix was paying licensing fees, much less provide Roberts with his 50% share of those fees.

51. Instead, Swallow continued to represent to Roberts that a successful test run was needed before any actual licensing fees would be generated for the partnership. As just one example, in September 2007, Swallow emailed Roberts, telling Roberts that through the use of consultants, Swallow had identified at least two casinos in Las Vegas, Nevada that were interested in licensing the Casino Software. Roberts believed this, and continued to believe the software was not yet capable of generating significant licensing fees.

Swallow Licenses the Casino Software to the 101 Casino, Illegally Excluding Roberts

52. In or around mid-2008, Swallow negotiated the terms of a licensing deal for the Casino Software with The 101 Casino ("The 101") in Petaluma, California. The 101 is owned by

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John Park ("Park"), and Park has interests in several other gaming establishments. The 101 is not a party to this action.

53. Swallow told Roberts at this time that he agreed to a licensing deal with The 101, but never disclosed the true terms of this deal to Roberts.

54. Instead, Swallow told Roberts at this time that the cost associated with the installation and early maintenance of the Casino Software at The 101 exceeded any licensing revenue, leaving nothing to be split. Swallow also told Roberts that between server costs, liability insurance, and related expenditures, there were no profits to share from licensing fees. Roberts believed Swallow's representations. But, these statements were all false, and Swallow knew they were false when he made them.

55. Despite being told there were no licensing fees to be had, at Swallow's urging and for the benefit of their partnership, in order to prove the Casino Software and earn future revenues, Roberts helped install and maintain the Casino Software at The 101. Roberts was paid little or no compensation for those specific services, which compensation would have been separate and apart from any ownership, partnership, or similar interest in any licensing fees generated by the Casino Software. Roberts only agreed to install the software because Swallow told Roberts that their partnership would benefit from Roberts's labor because, as Swallow put it, another successful test run, in a different casino, would open up opportunities for the partners to earn more licensing fees from other customers. Swallow stated that if Park was impressed by the Casino Software, he might purchase it for use at his other casinos, thereby generating significant revenue for the partnership.

56. The foregoing scenario at The 101 continued for almost a year, until Roberts complained to Swallow about the lack of any licensing fees being generated. The absence of any tangible or obvious benefit to the partnership led Roberts to insist that the partners consider dropping The 101 as a client.

57. In truth, Swallow had already received, and was continuing to receive, significant licensing fees for the Casino Software from The 101, which were paid to entities wholly under Swallow's control, namely Profitable Casino and Secure Stone. None of this was known or disclosed to Roberts.

58. In response to Roberts's reasonable protest, Swallow again lied, telling Roberts that Swallow had gone to Park and gotten money to pay Roberts for Roberts's installation and related services only, so that Roberts could afford to continue performing the same while waiting on licensing fees to be generated. Swallow again assured Roberts that licensing fees were dependent on proving the concept, and that they would be substantial, very soon. The little Roberts was paid for

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physical services came through Profitable Casino, but Swallow repeatedly represented that they came from Park and The 101. Swallow told Roberts to "find the positive," and told him to focus on making sure that Park was impressed with the Casino Software, so that Park might purchase the Casino Software for use in his other casinos. In reliance upon these statements, Roberts agreed to perform (and did) the installation, maintenance, and supervisory work, but did not further inquire whether he, as an owner of the software and a partner in Profitable Casino, was entitled to any licensing fees.

59. As a result of the foregoing deception by Swallow, Roberts remained in the dark about Swallow's use and licensing of the technologies Roberts himself had created. Swallow never told Roberts that Profitable Casino and Swallow actually made a significant sum of money through the licensing of the Casino Software to The 101.

Swallow Tricks Roberts Into Creating a Banking Software, Then Steals the Profits

60. After the Casino Software had been successfully installed and was operating at both Casino M8trix and The 101—with Swallow pocketing large sums of money via licensing fees from those casinos, unbeknownst to Roberts—in and around August and September 2008, Swallow asked Roberts, his partner, to develop a related software for use in casinos, this time specifically relating to a subset of the gaming industry, known as casino "bankers." According to Swallow, this software, too, was meant for the benefit of the partnership, with each of Roberts and Swallow sharing equally in any profits or licensing fees.

61. By way of background, "bankers" play a critical role in casino gaming in California, as California law prevents casino establishments from either collecting lost bets or paying winning bets. Instead, the "house" at a California casino makes money by charging a per-hand, hourly, or similar "fee" to players, sometimes referred to as a "rake." "Bankers," in California casinos, play the traditional role of the house, in that the banker is the individual or entity responsible for paying bets when the dealer loses, or conversely paying out player wins. Table games could not exist in state-licensed casinos in California without someone playing the role of "banker." This symbiotic relationship is lucrative for those involved, and as an owner and operator of a California casino, Swallow was quite knowledgeable about how to, and did in fact, game the system to his benefit, to Roberts's detriment.

62. Believing Swallow's representations described in paragraph 60, Roberts went about creating a new management solution software specifically related to casino bankers (the "Banking Software"). Swallow told Roberts that Park had rejected using the Banking Software. Because Swallow was the partner with the relationship with Park, Roberts believed Swallow.

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63. Roberts was the sole author of the Banking Software. But, admittedly and by operation of law via the Services Agreement, Roberts and Swallow were (and are) co-owners of the Banking Software, since it was a module within the Casino Software.[4] This represents something of a windfall for Swallow, who arguably enjoys the benefits of co-ownership, but did none of the work to create the valuable intellectual property. Regardless of the equities, it cannot be disputed that Roberts is ***at least*** a co-owner of the Banking Software.

64. Then, in early 2010, Swallow told Roberts that their partnership would license the Banking Software to Team View Player Services ("Team View"), for a fee. At the time, Team View provided banker services to Swallow's casino, Casino M8trix.

65. Roberts completed his work such that the Banking Software was ready for launch in May 2010, and Team View began using it immediately. Separate and apart from his partnership with Swallow, and further separate and apart from his ownership interest in the Casino Software and Banking Software (plus fees derived from either), Roberts provided technical support services to Team View as the Banking Software was rolled out at Casino M8trix. This just made sense: If others could not use the Banking Software and see its value, it would not generate any licensing fees for the partnership.

66. In January 2010, Swallow began paying Roberts an additional approximately $1,000.00 per month, through Profitable Casino, ostensibly for Roberts's labor with respect to IT support and maintenance at The 101 Casino (again, this payment was for services actually rendered, ***not*** Roberts's ownership of any intellectual property at issue in this case). Later, in May 2010, Swallow began paying Roberts an additional $3,000.00 per month. Swallow told Roberts that the additional $3,000.00 per month represented the entirety of Roberts's fifty percent (50%) of licensing fees derived from the Banking Software. Swallow knew that the Banking Software was generating a lot more than $6,000.00 per month of profits, and that he was concealing a lot of additional money from Roberts. But, Roberts actually and justifiably relied upon Swallow, his partner and fiduciary, given Swallow possessed the superior business experience and casino industry connections. This reliance was misplaced, because Swallow was again lying to steal from Roberts.

67. The true facts were that Swallow made a great deal more than $6,000.00 per month on the licensing fees from the Banking Software ($6,000.00 being two times the amounts Swallow represented to Roberts as Roberts's half share of licensing fees). On information and belief,

[4] This assumes that the Services Agreement did in fact confer a 50% interest in the Casino Software and its derivatives upon Swallow. If it did not, Roberts is the sole and full owner of the same, entitled to all of the licensing fees derived therefrom.

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Swallow was making closer to $100,000.00 per month from the Banking Software. Swallow had exclusive knowledge of this, but never told Roberts.

Swallow Once Again Licenses the Casino Software to Another Casino, and Collects Further Licensing Profits Without Roberts's Knowledge

68. Before March 2012, Swallow began evaluating an opportunity to purchase interests in the Hollywood Park Casino in Inglewood, California ("Hollywood Park"). Swallow told Roberts that he would be purchasing Hollywood Park in or around March 2012. Swallow asked Roberts to reconfigure the Casino Software for use specifically at Hollywood Park, and for Roberts's help to install and implement the adapted technology at Hollywood Park.

69. Because his partner asked for help, Roberts configured the Casino Software for use at Hollywood Park (the "Hollywood Park Software"), and brought the Hollywood Park Software online in March 2013. Roberts rightfully believed that if the partnership made money, or if he was entitled to any fees or profits, his partner Swallow would properly distribute the same. Swallow told Roberts again that once the partnership made real money from licensing fees, it would be split 50/50. Roberts was wrong to believe this.

70. Swallow did not tell Roberts that he had already secured a deal to license the Hollywood Park Software. Swallow arranged for Hollywood Park casino to pay Roberts salary-like payments for the specific acts of installing and maintaining, and training others on, the Hollywood Park Software. Again, this labor and service-specific work had nothing to do with Roberts's ownership of or interest in licensing fees generated by the Hollywood Park Software (or any other software described in this Complaint).

71. Put more directly, none of these payments described in the preceding paragraph bore any actual or legal relationship to Roberts's ownership interest in the Casino Software or the Hollywood Park Software.

72. Swallow further did not disclose to Roberts that, without limitation, Hollywood Park was paying for the use of the Casino Software and/or the Hollywood Park Software to entities under Swallow's dominion and control (including Defendant Secure Stone), such that Swallow (and the Entity Defendants) was greatly profiting, with Roberts taking nothing from his ownership of these software. At the time, Swallow told Roberts that "we [the partnership] are not being paid any licensing fees from Hollywood Park."

73. Swallow's partnership with Roberts, or, in the alternative, his fiduciary duty(ies) to Roberts as co-owners of the Casino Software, or, in the alternative, his total and complete control and knowledge of facts material to the many transactions he had with Roberts, imposed a duty to

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disclose the existence and amount of the licensing fees Swallow and his affiliates derived from the Casino Software and/or the Hollywood Park Software. Swallow's failure to disclose was therefore unlawful, causing Roberts damage.

Swallow Had, and Withheld, Exclusive Knowledge of the Facts of His Fraud

74. At all times described above, Swallow was in complete, unfettered control of all efforts to profit from the licensing of the Casino Software, the Banking Software, the Hollywood Park Software, plus other intellectual property(ies) created solely by Roberts. Roberts created these intellectual properties for the joint benefit of Roberts and Swallow and their partnership. But, Roberts never saw any profit from his efforts—only Swallow did.

75. Because of this, and/or because of Swallow's consistent, repeated, and varied outright lies to Roberts and other deception, there was no way Roberts could have known of Swallow's violations of their partnership, fraud, theft, conversion, and related acts.

76. Instead, as discussed below, it was only after the Attorney General concluded a character investigation into Swallow, and initiated an administrative action against Swallow in May 2014, that Roberts learned of the more than $19 million in licensing fees that had been wrongfully, illegally, and/or fraudulently kept by Swallow from his business partner Roberts.

The Attorney General Initiates a Fraud Investigation Into Swallow

77. On May 2, 2014, the Attorney General filed an accusation with the Bureau of Gambling Control (the "Bureau"), which is a governmental agency within the state Department of Justice. That administrative action (the "Action") sought to revoke Swallow's gaming license, a requisite for casino ownership and/or operation in this jurisdiction, and to impose fines against Swallow for providing false and misleading information to the Bureau. On August 15, 2015, the Bureau began its administrative trial (the "License Revocation Trial") against Swallow.

78. Roberts did not become aware of the Action until mid-summer 2014. At that time, Roberts was shocked to learn that his business partner was accused of gross illegality, and was even more surprised to learn that a government agency, through its subpoena and related investigatory powers, alleged Swallow was involved in a scheme whereby Casino M8trix, owned and controlled by Swallow, and other casinos paid more than $19 million to Profitable Casino, also owned and controlled by Swallow.

79. Roberts, of course, when he learned of the accusation, asked his business partner Swallow about the accusation and investigation. Swallow denied the allegations. Swallow accused the city of San Jose and the Bureau of conspiring against him. Swallow told Roberts to focus on the

positive, that this would blow over, and that they would make money together once the investigation concluded.

80. Before this, Roberts had reasonably relied upon Swallow's many statements that Roberts would receive his fair share of licensing fees, which Swallow said were always small or nonexistent due to the peculiarities of the casino industry. Roberts's reliance upon those statements was reasonable and warranted: Swallow, ostensibly Roberts's partner, had deep experience in business, and connections throughout the casino business, an industry wholly outside the scope of Roberts's own knowledge and experience.

81. During Swallow's License Revocation Trial, the Attorney General presented compelling evidence that, among others, (1) Casino M8trix (owned, operated, and controlled at the time by Swallow) paid Profitable Casino (also owned, operated, and controlled by Swallow) $13,950,000.00 to license the Casino Software and related software created by Roberts between 2009 and 2012, (2) The 101 paid Swallow more than $36,000.00 per month to license the Casino Software and other related, software created by Roberts, which payments totaled $1,764,735.00, and (3) Team View paid Defendant Secure Stone nearly $3.6 million to license the Casino Software and/or related software created by Roberts. Swallow did not deny or controvert these facts during the License Revocation Trial.

82. Swallow's gaming license was ultimately revoked, and Swallow was fined more than $14 million by the Bureau.

83. To be clear, in this action, Roberts wishes only to recover his rightful 50% of the profits paid to Swallow and/or entities controlled by him, in return for use of proprietary intellectual property that Roberts himself created, and shared with Swallow in the course of the partnership between Roberts and Swallow. Roberts also seeks a judicial declaration of the parties' respective ownership interests in the intellectual property described herein, and entitlement to licensing fees earned or generated by the same.

FIRST CAUSE OF ACTION

(Declaratory Relief – Against All Defendants)

84. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

85. As a result of the facts alleged herein, there was, is, and persists an actual and real controversy by and among Plaintiff, on the one hand, and Swallow and/or the Entity Defendants, on the other, with respect to, without limitation, the authorship and ownership of the intellectual property described herein, the rights and responsibilities of the parties concerning the same, and

Plaintiff's entitlement to his rightful share of the more than $19 million in licensing fees derived from the licensing of the Casino Software and other software created by Plaintiff.

86. Plaintiff accordingly and respectfully requests a judicial determination of the following:

a. That Plaintiff is at least a 50% co-owner of the Casino Software;

b. That Plaintiff is at least a 50% co-owner of the Banking Software;

c. That Plaintiff is at least a 50% co-owner of the Hollywood Park Software;

d. That Plaintiff is at least a 50% co-owner of any other software derived from the Casino Software as a result of the performance of the Services Agreement;

e. That Plaintiff is entitled to at least half (50%) of the licensing fees, profits, funds, monies, and/or other benefits obtained by Defendants in any way relating to the Casino Software, Banking Software, Hollywood Park Software, and/or other software created or inspired by Plaintiff according to proof;

f. That Plaintiff and Swallow, as 50% co-owners of any copyright described herein, are tenants-in-common with respect to the relevant copyright, and owe one another attendant fiduciary duties, including a duty to account for any profits derived therefrom; and/or

g. In the alternative, in the event this Court holds that Plaintiff and Swallow are not co-owners of any intellectual property, copyright, software, or other matter described herein, that Plaintiff is the original author, sole owner, and rightful beneficiary of the same.

87. The requested declaration is timely, necessary, and appropriate so that Plaintiff may ascertain his rights and obligations relating to the significant past fees and profits obtained by Defendants via the Casino Software and related software, and secure his rights with respect to any future fees or profits relating to the same.

SECOND CAUSE OF ACTION

(Fraud – Against Swallow)

88. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

89. As described in more detail above, Swallow made many false representations of fact to Plaintiff, including that Plaintiff and Swallow would create a partnership between them to commercialize the Casino Software and related software, that Swallow would seek out business opportunities for the benefit of that partnership, that Swallow would not acquire licensing fees for his own benefit or the benefit of entities he controlled to the exclusion of Plaintiff, that Swallow and Plaintiff would equally split any and all licensing or other fees in any way related to the Casino Software or related intellectual property, and that the little money actually received and described as

Plaintiff's "cut" of his ownership interest in the intellectual property described herein represented the entirety of Plaintiff's interest in any fees or profits.

90. Each of these statements by Swallow was false when made.

91. Swallow made these false statements knowing they were false, and with the intent to induce Plaintiff's reliance.

92. Swallow's true intent in making the statements described as fraudulent above was to deceive Plaintiff, and to keep the substantial licensing fees related to the Casino Software and related software, which fees totaled more than $19,000,000.00, for himself and for his own benefit, to the exclusion of Plaintiff and, to Plaintiff's detriment.

93. Plaintiff reasonably relied upon Swallow's fraudulent statements.

94. Plaintiff has been damaged by the fraud perpetuated upon him by Swallow as described above, in an amount to be proven at trial, but in excess of the jurisdictional minimum of this Court.

95. For the reasons described above, Plaintiff did not, and could not, have discovered Swallow's fraud until it was revealed by the California Attorney General, which has special investigative powers not available to Plaintiff, who at all times reasonably believed the misstatements of fact (and concealment of material facts) perpetrated by Swallow, given that without limitation Swallow at all times was in full control of the relevant information.

96. Plaintiff is informed and believes, and therefore alleges, that Swallow acted with malice, oppression, and fraud, and a deliberate intent to injure Plaintiff, or with conscious disregard for Plaintiff's rights. Accordingly, an award of punitive damages is justified in an amount according to proof at trial.

THIRD CAUSE OF ACTION

(Breach of Partnership – Against Swallow)

97. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

98. Plaintiff, on the one hand, and Defendant Swallow, on the other, expressly agreed and understood that they would operate a business to license the Casino Software and related software for profit, as full and equal partners, owning equal (50/50) interests in both the intellectual property represented therein, and any fees, profits, or other benefits therefrom.

99. By agreeing to create, operate, further, benefit, and profit from their business of licensing the Casino Software and related software, Swallow and Plaintiff expressly entered into a partnership. In the alternative, the acts described herein created an implied partnership by, between, and among Swallow, on the one hand, and Plaintiff, on the other.

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100. As partners (whether express or implied), each of Plaintiff and Swallow owed the other fiduciary duties, including the duties of candor, loyalty, care, and to account for profits.

101. Swallow breached both the partnership agreement between himself and Plaintiff (whether express or implied), and violated his fiduciary duties to Plaintiff, through the acts complained of herein, including without limitation the concealment and stealing away of licensing fees from the Casino Software and related software. Swallow further breached the parties' partnership, and his fiduciary duties to Plaintiff, by denying Plaintiff his rightful share of the fees and profits. Swallow further breached the parties' partnership, and his fiduciary duties, by fraudulently and intentionally misrepresenting and concealing material facts relating to the performance of the partnership's business, including without limitation the receipt and amount of licensing fees for the Casino Software and related software.

102. Plaintiff performed all of his obligations and duties as a partner of Swallow, except where excused or prevented from performance. Plaintiff moreover acted at all times in good faith, and consistent with his fiduciary duties to Swallow.

103. As a direct and proximate result of Swallow's breaches of the parties' partnership, Plaintiff has suffered damages in an amount subject to proof at trial, but in excess of the jurisdictional minimum of this Court.

104. Plaintiff is informed and believes, and therefore alleges, that Swallow acted with malice, oppression, and fraud, and a deliberate intent to injure Plaintiff, or with conscious disregard for Plaintiff's rights. Accordingly, an award of punitive damages is justified in an amount according to proof at trial.

FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty – Against Swallow)

105. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

106. As partners, implied partners, and/or co-owners of the Casino Software and related software, Plaintiff and Swallow owed one another the highest levels of fiduciary duty, including the duties of care, loyalty, candor, and to account for profits.

107. Swallow violated his fiduciary duties by engaging in the misconduct described above, including without limitation concealing and stealing away licensing fees derived from the Casino Software and related software. Each of Swallow's acts and deceit described herein were taken for the benefit of Swallow, to Plaintiff's detriment. Swallow placed his own interests above the interests of the partnership and Plaintiff, and Swallow otherwise failed to exercise reasonable care in the performance of his fiduciary duties to Plaintiff.

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108. As a direct and proximate result of Swallow's many and varied breaches of his fiduciary duties to Plaintiff, Plaintiff has been damaged in an amount to be proven at trial, but in excess of the jurisdictional minimum of this Court.

109. Plaintiff is informed and believes, and therefore alleges, that Defendants acted with malice, oppression, and fraud, and a deliberate intent to injure Plaintiff, or with conscious disregard for Plaintiff's rights. Accordingly, an award of punitive damages is justified in an amount to be proven at trial.

FIFTH CAUSE OF ACTION

(Constructive Fraud – Against Swallow)

110. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

111. As partners, implied partners, and/or co-owners of the Casino Software, the Banking Software, the Hollywood Park Software, and potentially other software according to proof, Plaintiff and Swallow were partners and therefore fiduciaries of one another, and tenants-in-common with respect to the copyright(s) in the software described herein, excluding the Original Software.

112. For the reasons described in the preceding paragraphs, Plaintiff and Swallow owed one another the highest levels of fiduciary duty, including the duties of care, loyalty, candor, and good faith.

113. By failing to disclose, and instead actively concealing, the substantial licensing and related fees and profits obtained by Swallow for licensing the intellectual properties described in the preceding paragraphs to various third parties (and parties controlled by Swallow) as alleged herein, Swallow engaged in self-dealing, and committed many acts in bad faith, each and all of which by operation of law worked a constructive fraud upon Plaintiff.

114. Moreover, by actively misrepresenting and concealing the existence and amounts of fees and profits from the licensing of the intellectual property described in the preceding paragraphs, Swallow committed further acts of constructive fraud upon Plaintiff. Swallow used various sham corporate and related business entities, with the intent and result of deceiving Plaintiff by, at a minimum, concealing the fees and profits to which Plaintiff was entitled.

115. By the acts complained of herein, Swallow intended to, and did in fact, deceive Plaintiff.

116. Plaintiff reasonably and justifiably relied upon each of the misrepresentations and concealments by Swallow complained of herein.

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117. As a direct and proximate result of Swallow's many breaches of fiduciary duties owed to Plaintiff complained of above, Plaintiff has suffered damages in an amount to be proven at trial, but in excess of the jurisdictional minimum of this Court.

118. Plaintiff is informed and believes, and therefore alleges, that Swallow acted with malice, oppression, and fraud, and a deliberate intent to injure Plaintiff, or with conscious disregard for Plaintiff's rights. Accordingly, an award of punitive damages is justified in an amount according to proof at trial.

SIXTH CAUSE OF ACTION

(Conversion – Against Swallow)

119. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

120. As the creator and/or copyright owner of the Casino Software, the Banking Software, the Hollywood Park Software, and/or other software according to proof, Plaintiff owned, possessed, and/or had a right to possess the same.

121. Swallow intentionally and substantially interfered with Plaintiff's property described in the preceding paragraphs by taking possession of, preventing Plaintiff's access to, and keeping and/or refusing to return the same to Plaintiff.

122. Plaintiff did not consent to the acts of Swallow complained of herein.

123. Plaintiff has been harmed by the acts complained of herein.

124. Swallow's conduct was a substantial factor in causing Plaintiff's harm. Plaintiff has suffered damages in an amount to be proven at trial, but in excess of the jurisdictional minimum of this Court.

125. Plaintiff is informed and believes, and therefore alleges, that Swallow acted with malice, oppression, and fraud, and a deliberate intent to injure Plaintiff, or with conscious disregard for Plaintiff's rights. Accordingly, an award of punitive damages is justified in an amount according to be proven at trial.

SEVENTH CAUSE OF ACTION

(Breach of Contract – Against Swallow)

126. Plaintiff re-alleges Paragraphs 1 through 83 above as if set forth fully herein.

127. As described above, in early June 2007, Plaintiff, on the one hand, and Swallow, on the other hand, entered into a valid and binding oral contract under California law to create the Casino Software, license the same, and split the profits.

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128. At all times, Plaintiff performed, or substantially performed, all of the significant things that the parties' contract required him to do, except where excused, including without limitation performing the coding and related functions required to create the Casino Software.

129. Swallow, on the other hand, did not evenly split the monies, fees, and/or profits that he and the entities under his control earned through the licensing of the Casino Software, in breach of the parties' agreement.

130. As a result of Swallow's breach of the parties' agreement, Plaintiff has been damaged in an amount to be proven at trial, which amount is at least half of the nearly $19 million in fees Swallow generated through the licensing of the Casino Software.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For judgment in favor of Plaintiff and against Defendants;

2. For an award of compensatory damages in favor of Plaintiff in an amount to be proven at trial, plus interest at the legal rate;

3. For a judicial declaration of the parties' respective rights and ownership interests in each and all of the intellectual property described herein, and their respective entitlements to the licensing fees generated by the same.

4. For injunctive relief enjoining Defendants from engaging in the conduct alleged herein;

5. For an award of punitive damages in an amount to be proven at trial;

6. For costs of suit, and any fees, costs, or other monies available; and

7. For such other and further relief as this Court may deem just and proper, and/or any other recovery or matter allowed under law.

DATED: March 21, 2017

SKIERMONT DERBY LLP

By: _____

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Case Name: ***Bryan J. Roberts v. Eric Swallow, et al.***
Case No.: **BC603331**

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 800 Wilshire Boulevard, Suite 1450, Los Angeles, California 90017.

On March 21, 2017, I served the foregoing document described as **SECOND AMENDED COMPLAINT** on all interested parties to this action as follows: ☒ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list:

PLEASE SEE ATTACHED SERVICE LIST

☒ **(BY MAIL)** By placing a true copy thereof in a sealed envelope addressed as above, and placing it for collection and mailing following ordinary business practices. I am readily familiar with Skiermont Derby LLP's practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

☐ **(BY OVERNIGHT CARRIER)** I caused the above-referenced document to be delivered via FedEx for next day delivery to counsel at the above-referenced address(es).

☐ **(BY PERSONAL SERVICE)** I caused the above-referenced document(s) to be delivered to _____ for delivery to the above address(es).

☐ **(BY FACSIMILE)** I caused the above-referenced document to be transmitted via facsimile from Fax No. _____ to Fax No. _____ directed to _____. The facsimile machine I used complies with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(1), I caused the machine to print a record of the transmission, a copy of which is attached to this declaration.

☐ **BY E-MAIL:** I caused the above-referenced document to be transmitted via e-mail from mjung@skiermontderby.com to _____.

☒ (State) I declare under penalty of perjury under the laws of State of California that the above is true and correct.

Executed on March 21, 2017, at Los Angeles, California.

Mandi Jung

Case Name: ***Bryan J. Roberts v. Eric Swallow, et al.***
Case No.: **BC603331**

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