

1 PAUL B. DERBY [SBN 211352]  
 2 pderby@skiermontderby.com  
 3 MIEKE K. MALMBERG [SBN 209992]  
 4 mmalmberg@skiermontderby.com  
 5 JOHN J. O'KANE IV [SBN 268632]  
 6 jokane@skiermontderby.com  
 7 SKIERMONT DERBY LLP  
 8 800 Wilshire Boulevard, Suite 1450  
 9 Los Angeles, California 90017  
 10 Telephone: (213) 788-4500  
 11 Facsimile: (213) 788-4545

12 JON A. ATABEK [SBN 269497]  
 13 ATABEK & ASSOCIATES, P.C.  
 14 16330 Bake Parkway  
 15 Irvine, California 92618  
 16 Telephone: (213) 394-5943  
 17 Facsimile: (213) 402-3413

18 Attorneys for Plaintiff  
 19 BRYAN J. ROBERTS

20 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
 21 **COUNTY OF LOS ANGELES, CENTRAL DIVISION**

22 BRYAN J. ROBERTS, an individual,  
 23 Plaintiff,

24 v.

25 ERIC SWALLOW, an individual;  
 26 PROFITABLE CASINO, LLC, a Nevada limited  
 27 liability company; SECURE STONE, LLC, a  
 28 Delaware limited liability company; and DOES  
 29 1-50, inclusive,

30 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

**COPY**

**CONFORMED COPY  
 ORIGINAL FILED  
 SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF LOS ANGELES**

**MAR 21 2017**

Sherri R. Carter, Executive Officer/Clerk  
 By: Shaunya Bolden, Deputy

## 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

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

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

### 17 **FACTUAL ALLEGATIONS**

#### 18 **Roberts Creates the Original Software**

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

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

#### 30 **Roberts Meets Swallow, They Form a Partnership, and They Create a Company**

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



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

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

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

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

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

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

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

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

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

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

18 22. In reliance upon the promises made to him by Swallow, Roberts did in fact put  
19 considerable time and effort into creating the casino business-management software solution  
20 contemplated by the parties' partnership (the "Casino Software"). The Casino Software worked  
21 exactly as the partners (Roberts and Swallow) intended. Because the software looked to be a  
22 success, Swallow specifically told Roberts that Swallow would use his status as a casino industry  
23 insider and his business skills to grow and expand their joint business together. Swallow further told  
24 Roberts that, despite its apparent functionality, the partners would need to prove the Casino Software  
25 worked in practice but, once proven, their partnership would profit handsomely from licensing deals  
26 Swallow could negotiate. Swallow told Roberts that those fees would be shared equally among the  
27 two, and that they would form "their" company for this purpose. Swallow made these  
28 representations to Roberts in mid-late June and July 2007, including without limitation on telephone  
29 calls that occurred on or about June 5, 11, and 18, 2007, and July 10, 2007. Swallow also reassured  
30 Roberts by telling him that Swallow would help Roberts to get hired as a full-time IT professional at  
31 Casino M8trix, where Swallow was a part owner—and that in this way, Roberts could support  
32 himself and his family while concurrently (but separately) working to benefit their partnership.  
33



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

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

12           25.     Swallow then purchased an internet domain for the partners' company in August  
13 2007. Confirming the partnership (and further inducing reasonable reliance on Roberts's part), on or  
14 about August 31, 2007, Swallow sent Roberts an email in which Swallow told Roberts that "I  
15 [Swallow] have reserved www.profitablecasino.com for our company. Profitable Casino is the  
16 company name."

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

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

29           28.     In addition, Swallow's promises to Roberts that they would commercialize the Casino  
30 Software as equal partners, create a company together to license that software, and split any  
31 proceeds, were in fact false when made. Swallow knew these statements were false at the time that  
32 he made them, as he had no intention of upholding his end of the deal with Roberts.  
33

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

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

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

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



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.<sup>1</sup> 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.<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> 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.



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

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

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

30  
31  
32           <sup>3</sup> Swallow appears to have changed his position regarding co-ownership of the Casino Software, and  
33 denies Roberts's rightful claim to at least co-ownership of the same.

**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



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

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

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

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

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

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

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

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

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

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

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

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

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



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.<sup>4</sup> 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,

<sup>4</sup> 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.

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

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

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

10 69. Because his partner asked for help, Roberts configured the Casino Software for use  
11 at Hollywood Park (the "Hollywood Park Software"), and brought the Hollywood Park Software  
12 online in March 2013. Roberts rightfully believed that if the partnership made money, or if he was  
13 entitled to any fees or profits, his partner Swallow would properly distribute the same. Swallow  
14 told Roberts again that once the partnership made real money from licensing fees, it would be split  
15 50/50. Roberts was wrong to believe this.

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

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

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

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



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

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

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

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

13 76. Instead, as discussed below, it was only after the Attorney General concluded a  
14 character investigation into Swallow, and initiated an administrative action against Swallow in May  
15 2014, that Roberts learned of the more than \$19 million in licensing fees that had been wrongfully,  
16 illegally, and/or fraudulently kept by Swallow from his business partner Roberts.

17 **The Attorney General Initiates a Fraud Investigation Into Swallow**

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

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

30 79. Roberts, of course, when he learned of the accusation, asked his business partner  
31 Swallow about the accusation and investigation. Swallow denied the allegations. Swallow accused  
32 the city of San Jose and the Bureau of conspiring against him. Swallow told Roberts to focus on the  
33

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

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

9 81. During Swallow's License Revocation Trial, the Attorney General presented  
10 compelling evidence that, among others, (1) Casino M8trix (owned, operated, and controlled at the  
11 time by Swallow) paid Profitable Casino (also owned, operated, and controlled by Swallow)  
12 \$13,950,000.00 to license the Casino Software and related software created by Roberts between  
13 2009 and 2012, (2) The 101 paid Swallow more than \$36,000.00 per month to license the Casino  
14 Software and other related, software created by Roberts, which payments totaled \$1,764,735.00, and  
15 (3) Team View paid Defendant Secure Stone nearly \$3.6 million to license the Casino Software  
16 and/or related software created by Roberts. Swallow did not deny or controvert these facts during  
17 the License Revocation Trial.

18 82. Swallow's gaming license was ultimately revoked, and Swallow was fined more than  
19 \$14 million by the Bureau.

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

### 26 **FIRST CAUSE OF ACTION**

#### 27 **(Declaratory Relief – Against All Defendants)**

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

29 85. As a result of the facts alleged herein, there was, is, and persists an actual and real  
30 controversy by and among Plaintiff, on the one hand, and Swallow and/or the Entity Defendants, on  
31 the other, with respect to, without limitation, the authorship and ownership of the intellectual  
32 property described herein, the rights and responsibilities of the parties concerning the same, and  
33



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

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

- 5 a. That Plaintiff is at least a 50% co-owner of the Casino Software;  
6 b. That Plaintiff is at least a 50% co-owner of the Banking Software;  
7 c. That Plaintiff is at least a 50% co-owner of the Hollywood Park Software;  
8 d. That Plaintiff is at least a 50% co-owner of any other software derived from  
9 the Casino Software as a result of the performance of the Services Agreement;  
10 e. That Plaintiff is entitled to at least half (50%) of the licensing fees, profits,  
11 funds, monies, and/or other benefits obtained by Defendants in any way relating to the Casino  
12 Software, Banking Software, Hollywood Park Software, and/or other software created or inspired by  
13 Plaintiff according to proof;  
14 f. That Plaintiff and Swallow, as 50% co-owners of any copyright described  
15 herein, are tenants-in-common with respect to the relevant copyright, and owe one another attendant  
16 fiduciary duties, including a duty to account for any profits derived therefrom; and/or  
17 g. In the alternative, in the event this Court holds that Plaintiff and Swallow are  
18 not co-owners of any intellectual property, copyright, software, or other matter described herein, that  
19 Plaintiff is the original author, sole owner, and rightful beneficiary of the same.

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

24 **SECOND CAUSE OF ACTION**

25 **(Fraud – Against Swallow)**

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

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

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

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

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

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

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

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

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

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

### 23 THIRD CAUSE OF ACTION

#### 24 **(Breach of Partnership – Against Swallow)**

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

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

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









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.

///

///

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:



PAUL B. DERBY  
MIEKE K. MALMBERG  
JOHN J. O'KANE IV

JON A. ATABEK  
ATABEK & ASSOCIATES, P.C.

Attorneys for Plaintiff  
BRYAN J. ROBERTS



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

3 **PROOF OF SERVICE**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

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

10 **PLEASE SEE ATTACHED SERVICE LIST**

- 11 ☒ **(BY MAIL)** By placing a true copy thereof in a sealed envelope addressed as above, and  
12 placing it for collection and mailing following ordinary business practices. I am readily  
13 familiar with Skiermont Derby LLP's practice of collecting and processing correspondence  
14 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.
- 15 ☐ **(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).
- 16 ☐ **(BY PERSONAL SERVICE)** I caused the above-referenced document(s) to be delivered to  
17 \_\_\_\_\_ for delivery to the above address(es).
- 18 ☐ **(BY FACSIMILE)** I caused the above-referenced document to be transmitted via facsimile  
19 from Fax No. \_\_\_\_\_ to Fax No. \_\_\_\_\_ directed to \_\_\_\_\_.  
20 The facsimile machine I used complies with Rule 2003(3) and no error was reported by the  
21 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.
- 22 ☐ **BY E-MAIL:** I caused the above-referenced document to be transmitted via e-mail from  
23 mjung@skiermontderby.com to \_\_\_\_\_.
- 24 ☒ (State) I declare under penalty of perjury under the laws of State of California that the above  
25 is true and correct.

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

27  
28  
29  
30   
Mandi Jung

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

3 **SERVICE LIST**

4 Gregory S. Gabriel, Esq. *Attorneys for Defendant Secure Stone, LLC*  
5 Kinsella Weitzman Iser Kump & Alidesert LLP  
6 808 Wilshire Boulevard, Third Floor  
7 Santa Monica, California 90401  
8 Telephone: (310) 566-9800  
9 Facsimile: (310) 566-9850  
ggabriel@kwikalaw.com

10 Sa'id Vakili, Esq. *Attorneys for Defendants Eric Swallow and*  
11 Vakili & Leus, LLP *Profitable Casino, LLC*  
12 3701 Wilshire Boulevard, Suite 1135  
13 Los Angeles, California 90010  
14 Telephone: (213) 380-6010  
15 Facsimile: (213) 380-6051  
svakili@me.com