

1 Jason M. Sherman (CSBN 232420)
2 TOCCHINI & ASSOCIATES PC
3 2271 Lava Ridge Court • Suite 200
4 Roseville, California 95661-3065 USA
5 Telephone: (916) 780-6600
6 Facsimile: (916) 780-6556

7 Attorneys for Enrique Aguirre

05 JAN -5 PM 11:10
LEGAL PROCESS #1



8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SACRAMENTO

10 ENRIQUE AGUIRRE, individually and doing
11 business as HENRY'S PIZZA AND SPORTS
12 LOUNGE;

13 Plaintiff(s),

14 v.

15 SCOTT REED, individually and doing business
16 as SRI EQUIPMENT & DESIGN; and DOES
17 1-10, inclusive;

18 Defendant(s).

NO.

VERIFIED COMPLAINT FOR
DAMAGES, RESTITUTION, AND
EQUITABLE RELIEF

05A500027

19 Plaintiff ENRIQUE AGUIRRE, individually and doing business as HENRY'S PIZZA
20 AND SPORTS BAR, alleges:

21 GENERAL ALLEGATIONS

22 1. Plaintiff ENRIQUE ("Henry") AGUIRRE, individually and doing business as
23 HENRY'S PIZZA AND SPORTS BAR ("Aguirre" or "Plaintiff") is, and at all times relevant to
24 this Complaint was, a natural person operating a sole proprietorship residing in Sacramento
25 County, California.

26 2. Defendant SCOTT REED, individually and doing business as SRI EQUIPMENT
27 & DESIGN ("Reed", "SRI" or "Defendant") is, and at all times relevant to this Complaint was, a
28 natural person operating a sole proprietorship residing in Sacramento County, California.

3. Plaintiff is ignorant of the true names and capacities of defendants sued herein as

3/17/02
SUMMONS ISSUED

1 DOES 1 through 10, inclusive, and therefore sues these defendants by such fictitious names.
2 Plaintiff will amend this Complaint to allege said defendants' true names and capacities when
3 ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously
4 named defendants is responsible in some manner for the occurrences herein alleged, and that
5 Plaintiff's damages herein alleged were proximately caused by said defendants' conduct.

6 4. Plaintiff is informed and believes and thereon alleges that a substantial amount of
7 the acts and omissions alleged in this Complaint occurred in the geographical area encompassed
8 by Sacramento County, California.

9 FACTUAL ALLEGATIONS

10 5. Scott Reed, doing business as SRI Equipment & Design, holds himself to be in
11 the business of restaurant architectural design, restaurant equipment service and repair, and
12 restaurant equipment and supplies, among others.

13 6. On or about June 29, 2004, Mr. Aguirre met with Scott Reed at Defendant's place
14 of business to discuss Plaintiff's desire to open a family-owned and operated restaurant in
15 September of 2004.

16 7. During this June 29, 2004 meeting, Mr. Aguirre stated that he needed
17 architectural designs that would meet Sacramento city and county ("city") requirements in order
18 to obtain the necessary building permits.

19 8. Mr. Aguirre also disclosed to Scott Reed that Mr. Aguirre was a painter by trade
20 and that he was looking to rely on Scott Reed's and SRI's experience and expertise in opening his
21 restaurant.

22 9. Scott Reed assured Mr. Aguirre at this meeting that Scott Reed and SRI would
23 draft architectural designs that would promptly be approved by city permit issuing authorities;
24 Scott Reed further assured Mr. Aguirre that Scott Reed and SRI had everything at their disposal
25 that Mr. Aguirre would need, including engineers, to obtain site approval.

26 10. Scott Reed further stated at this meeting that although the architectural designs
27 would take approximately thirty (30) days to design, the September 2004 opening was a "good
28

1 time frame" and that "it could get done."

2 11. After assuring Mr. Aguirre that Scott Reed and SRI would "take care of him,"
3 Defendant produced a sheet of paper that he explained to Mr. Aguirre would authorize Scott
4 Reed and SRI to draft the architectural designs in return for \$2,500.00.

5 12. Mr. Aguirre signed this page before he was given an opportunity to review the
6 other pages of the three page agreement ("Contract"). Exhibit "A" is a copy of the alleged
7 Contract.

8 13. The day after the June 29, 2004 meeting, Mr. Aguirre and Scott Reed visited the
9 site where the restaurant was to be located. After seeing the site, which was commercial office
10 space that Mr. Aguirre intended to convert to restaurant space, Scott Reed further assured Mr.
11 Aguirre that the site was good and that the architectural designs would be approved and the
12 permits issued.

13 14. Based on Defendant's assurances that the plans would be approved by the permit
14 issuing authorities with "no problem," over the next several weeks Mr. Aguirre purchased more
15 than fifty-thousand dollars (\$50,000) worth of restaurant equipment and supplies from Scott
16 Reed and SRI.

17 15. On or about July 29, 2004, Defendant provided Mr. Aguirre with the architectural
18 designs to take to the permit issuing authorities.

19 16. On or about July 30, 2004, Mr. Aguirre took the architectural designs to the city
20 for review and approval.

21 17. When Mr. Aguirre met with city planners for an initial review of the designs, they
22 told Mr. Aguirre the architectural designs were wholly deficient and that important design
23 requirements were missing.

24 18. Subsequently, Defendant made revisions to the architectural designs that were
25 again rejected by the city as being deficient and sub-par.

26 19. Despite Defendant's assertions that Defendant was qualified to draft architectural
27 designs that would be approved by permit issuing authorities, Plaintiff realized that no
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1 architectural design prepared by Defendant would ever be approved by the city or county.

2 20. Much of the equipment delivered to Mr. Aguirre from Scott Reed and SRI was
3 not the equipment that Plaintiff had ordered or was delivered well past the date it was scheduled
4 for delivery.

5 21. Mr. Aguirre thereafter retained the services of an architectural firm to re-draft the
6 architectural designs.

7 22. Ultimately, the cost to convert the commercial office space to restaurant space
8 was cost-prohibitive for Mr. Aguirre, a conclusion which a trained professional of the kind
9 Defendant held itself out to be should have known and therefore should have warned and advised
10 Mr. Aguirre, who was relying on Defendant's knowledge and claimed expertise for guidance.

11 23. Mr. Aguirre has offered the return and of all equipment of which he is currently in
12 possession to Scott Reed and SRI in return for a full refund but Defendant has refused.

13 **FIRST CAUSE OF ACTION**

14 **(Declaratory Relief - Illegal Contract Civil Code § 1668)**

15 24. Plaintiff alleges a First Cause of Action against Scott Reed and SRI in the
16 following manner:

17 25. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
18 through 24, inclusive.

19 26. Defendant holds itself out to the public as providing architectural services.

20 27. At the time Mr. Aguirre entered into the alleged Contract with Defendant for
21 architectural designs, Defendant was not a licensed architect nor was Defendant a licensed
22 engineer.

23 28. At the time Mr. Aguirre signed the alleged Contract with Defendant, Mr. Aguirre
24 was not provided with the first two pages of the Contract.

25 29. Plaintiff requests a judicial declaration of the parties' respective rights and duties
26 under the alleged Contract. Specifically, Plaintiff requests a judicial declaration that the alleged
27 Contract is void as against the policy of the law.

1 30. The declaration is necessary and appropriate so the parties may determine their
2 respective rights and duties under the alleged Contract.

3 31. The alleged Contract, if enforceable, provides that any claim or controversy
4 arising out of or relating to the alleged Contract shall be settled by arbitration.

5 **SECOND CAUSE OF ACTION**

6 **(Breach of Contract – Civil Code §§ 1622 and 3300)**

7 32. Plaintiff alleges a Second Cause of Action against Scott Reed and SRI in the
8 following manner:

9 33. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
10 through 32, inclusive.

11 34. On or about June 29, 2004, Plaintiff entered into an alleged Contract with
12 Defendant wherein Mr. Aguirre promised to pay Defendant \$2,500.00 in return for Defendant's
13 promise to provide architectural designs for Plaintiff's restaurant.

14 35. As a material inducement to Plaintiff entering into the alleged Contract,
15 Defendant orally promised that its architectural designs would promptly and easily meet all
16 requirements of the city in order for Mr. Aguirre to obtain the necessary building permits.

17 36. Plaintiff has at all times performed the terms of this alleged Contract in the
18 manner specified by the Contract.

19 37. Defendant has failed to carry out his promise to provide architectural designs to
20 Plaintiff that would meet with city and county approval.

21 38. Defendant's failure to perform its oral promise entitles Plaintiff to compensatory
22 damages for breach of contract in an amount and to an extent to be determined according to
23 proof at trial, but, for purposes of this pleading, of at least \$60,000.

24 39. Plaintiff is entitled to recover damages from Scott Reed and SRI, jointly and
25 severally, in an amount equal to \$60,000, plus costs and prejudgment interest at the maximum
26 allowable rate under California State law.

27 **THIRD CAUSE OF ACTION**

1 (Actual Fraud by a Party to a Contract – Civil Code § 1572)

2 40. Plaintiff alleges a Third Cause of Action against Scott Reed and SRI in the
3 following manner:

4 41. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
5 through 40, inclusive.

6 42. On information and belief, in making the oral promise outlined in Count (2)
7 above, Defendant was aware that the representations made to Mr. Aguirre, as set forth above,
8 were false when the representations were made, and Defendant made the representations with the
9 intent to defraud Plaintiff by inducing his reliance on the misrepresentations.

10 43. At the time these misrepresentations were made, Plaintiff was unaware of their
11 falsity, but believed them to be true. Had Plaintiff been aware of the true facts, he would not
12 have paid for the architectural designs nor would he have purchased any restaurant equipment
13 from Defendant.

14 44. In reliance on Defendant's misrepresentations, Plaintiff purchased the
15 architectural designs and restaurant equipment at issue.

16 45. As a direct and proximate result of Defendant's intentional misrepresentations,
17 Plaintiff has suffered damages, the amount and the extent of which will be determined according
18 to proof at trial, but, for purposes of this pleading, of at least \$60,000.00.

19 46. Scott Reed and SRI acted with malice, fraud and oppression, and Mr. Aguirre is
20 entitled to recover damages for the sake of example and by way of punishing Defendant.

21 **FOURTH CAUSE OF ACTION**

22 **(Constructive Fraud – Civil Code § 1573)**

23 47. Plaintiff alleges a Fourth Cause of Action against Scott Reed and SRI in the
24 following manner:

25 48. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
26 through 47, inclusive.

27 49. Defendant, as a party to the alleged contract, owed Plaintiff a duty of good faith
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1 and fair dealing.

2 50. Scott Reed and SRI breached this duty by misleadingly promising Plaintiff that
3 the architectural designs would pass all city requirements to obtain all necessary permits.

4 51. Defendant's misleading statements resulted in Defendant's gaining a financial
5 advantage over Mr. Aguirre to Plaintiff's prejudice because Plaintiff paid for architectural
6 designs that did not get city approval and purchased restaurant equipment that as a result of the
7 city's denial, were unusable by Mr. Aguirre.

8 52. As a direct and proximate result of Defendant's constructive fraud, Plaintiff has
9 suffered damages, the amount and the extent of which will be determined according to proof at
10 trial, but, for purposes of this pleading, of at least \$60,000.

11 53. Scott Reed and SRI acted with malice, fraud and oppression, and Mr. Aguirre is
12 entitled to recover damages for the sake of example and by way of punishing Defendant.

13 **FIFTH CAUSE OF ACTION**

14 **(Deceit Based on Intentional Misrepresentation – Civil Code § 1710(1))**

15 54. Plaintiff alleges a Fifth Cause of Action against Scott Reed and SRI in the
16 following manner:

17 55. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
18 through 54, inclusive.

19 56. Defendant, as outlined above, induced Mr. Aguirre to purchase architectural
20 designs and restaurant equipment on the oral promise that the designs would promptly meet with
21 city planning approval in order to obtain the necessary permits for Plaintiff's family restaurant.

22 57. The representations made by Defendant to Plaintiff were, in fact, false. The true
23 facts were that the architectural designs were patently incomplete and defective and would never
24 meet the city requirements.

25 58. On information and belief, Defendant was aware the representations made to
26 Plaintiff, as set forth above, were material to the decision of Mr. Aguirre to purchase the
27 architectural designs and the restaurant equipment from Scott Reed and SRI.

1 59. On information and belief, Defendants were aware that the representations made
2 to Mr. Aguirre, as set forth above, were false when the representations were made, and the
3 Defendant made the representation with the intent to deceive Plaintiff.

4 60. At the time these misrepresentations were made, plaintiff was unaware of the
5 falsity, but believed them to be true. Had Plaintiff been aware of the true facts, he would not
6 have purchased the architectural designs and restaurant equipment.

7 61. In reliance on Defendant's misrepresentations, Plaintiff purchased the
8 architectural designs and restaurant equipment at issue.

9 62. As a direct and proximate result of Defendant's deceit, Plaintiff has suffered
10 damages, the amount and the extent of which will be determined according to proof at trial, but,
11 for purposes of this pleading, of at least \$60,000.

12 63. Scott Reed and SRI acted with malice, fraud and oppression, and Mr. Aguirre is
13 entitled to recover damages for the sake of example and by way of punishing Defendant.

14 **SIXTH CAUSE OF ACTION**

15 **(Deceit Based on Negligent Misrepresentation – Civil Code § 1710(2))**

16 64. Plaintiff alleges a Sixth Cause of Action against Scott Reed and SRI in the
17 following manner:

18 65. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
19 through 64, inclusive.

20 66. Scott Reed and SRI were aware that the representations made to Plaintiff, as set
21 forth above, were material to the decision of Mr. Aguirre to purchase the architectural designs
22 and restaurant equipment from Defendant.

23 67. On information and belief, Defendant made the representations to Plaintiff
24 without reasonable grounds for believing them to be true, and Defendant made the
25 representations with the intent to induce Plaintiff to rely on the representations.

26 68. At the time these misrepresentations were made, Mr. Aguirre was unaware of
27 their falsity, but acted in justifiable reliance on the truth of the representation. Had Mr. Aguirre
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1 been aware of the true facts, he would not have purchased the architectural designs and the
2 restaurant equipment.

3 69. In reliance on Defendant's misrepresentations, Plaintiff purchased the
4 architectural designs and restaurant equipment at issue to Plaintiff's detriment.

5 70. As a direct and proximate result of Defendant's deceit, Plaintiff has suffered
6 damages, the amount and the extent of which will be determined according to proof at trial, but,
7 for purposes of this pleading, of at least \$60,000.

8 71. Scott Reed and SRI acted with malice, fraud and oppression, and Mr. Aguirre is
9 entitled to recover damages for the sake of example and by way of punishing Defendant.

10 **SEVENTH CAUSE OF ACTION**

11 **(Deceptive Practices – Civil Code § 1770)**

12 72. Plaintiff alleges a Seventh Cause of Action against Scott Reed and SRI in the
13 following manner:

14 73. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
15 through 72, inclusive.

16 74. Plaintiff's purpose in obtaining architectural designs from Defendant was to be
17 able to build a family-owned and operated restaurant.

18 75. Defendant deceived Plaintiff by representing that the architectural designs were of
19 a quality which they were not.

20 76. At least thirty days prior to the commencement of this action, Plaintiff complied
21 with the provisions of Civil Code § 1782 by notifying and demanding Defendant to remedy the
22 consequences of Defendant's deceptive practices but Defendant has refused.

23 76. As a direct and proximate result of Defendant's deceptive practices, Plaintiff has
24 suffered damages, the amount and the extent of which will be determined according to proof at
25 trial, but, for purposes of this pleading, of at least \$60,000.

26 77. Scott Reed and SRI acted with malice, fraud and oppression, and Mr. Aguirre is
27 entitled to recover damages for the sake of example and by way of punishing Defendant.

1 EIGHTH CAUSE OF ACTION

2 (Negligence)

3 78. Plaintiff alleges a Seventh Cause of Action against Scott Reed and SRI in the
4 following manner:

5 79. Plaintiff realleges and incorporates as though fully set forth herein Paragraphs 1
6 through 78, inclusive.

7 80. Scott Reed and SRI owed Mr. Aguirre a duty of care in that Defendant knew Mr.
8 Aguirre was relying on Defendant's purported expertise and knowledge in obtaining the
9 necessary permits and purchasing the necessary equipment.

10 81. Scott Reed and SRI breached their duty of care to Mr. Aguirre by providing
11 architectural designs that did not obtain city approval, by not informing Mr. Aguirre that
12 remodeling the proposed commercial site for Plaintiff's restaurant was cost-prohibitive, and by
13 recommending, and then selling, restaurant equipment to Mr. Aguirre prematurely.

14 82. As a direct and proximate result of Defendant's breach of his duty of care,
15 Plaintiff has suffered damages, the amount and the extent of which will be determined according
16 to proof at trial, but, for purposes of this pleading, of at least \$60,000.

17 83. Scott Reed and SRI acted with malice, fraud and oppression, and Mr. Aguirre is
18 entitled to recover damages for the sake of example and by way of punishing Defendant.

19 PRAAYER

20 WHEREFORE, Plaintiff prays for judgment against Defendant Scott Reed and SRI and
21 DOE, jointly and severally in the following manner:

22 1. For his claim for equitable relief against Defendants, an order and judgment by
23 this Court declaring the alleged Contract to be void as against the policy of the law;

24 2. For his claims for relief against Defendants, a money judgment against them, and
25 against each of them, in an undetermined amount according to proof at trial, but, for purposes of
26 this pleading, of not less than \$60,000 for expectation, restitutionary, reliance, and compensatory
27 damages sustained as hereinabove set forth;

1 3. For their claims for relief against Defendants, a money judgment of treble
2 damages sustained as hereinabove set forth, according to statute; and

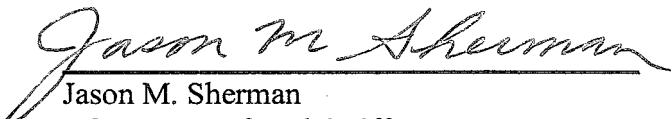
3 4. For their claims for relief against Defendants, a money judgment of exemplary or
4 punitive damages sustained as hereinabove set forth;

5 5. An award of reasonable attorney fees, costs, and disbursements incurred herein as
6 against all defendants including expert witness fees, according to statute; and

7 6. For such other and further relief as the Court may deem just and equitable in the
8 circumstances.

9 Dated: December 31, 2004.

TOCCHINI & ASSOCIATES PC


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11 
12 Jason M. Sherman
Of Attorneys for Plaintiff

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15 **VERIFICATION**

16 THE UNDERSIGNED DECLARES, subject to penalty of perjury under the laws of the
17 State of California, the following:

- 18 1. I am the plaintiff in the above-captioned action.
- 19 2. I have read the foregoing VERIFIED COMPLAINT FOR DAMAGES, RESTITUTION,
20 AND EQUITABLE RELIEF; the contents thereof are true and of my own knowledge,
21 except as to those matters stated on information or belief, and as to those matters, I
22 believe them to be true.

23 DATED this 31 day of December, 2004, at Roseville, California.

24
25 
26 Enrique Aguirre - Plaintiff
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