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2019 SEP 21 11:00 AM

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN DIEGO, NORTH COUNTY DIVISION

10 JAMES R. REED,

11 Plaintiff,

12 v.

13 JOHN C. MATTMAN, an individual; J.
14 MATTMAN SECURITY, INC., a California
15 Corporation dba THE MATTMAN COMPANY;
16 and DOES 1 through 100, inclusive,

17 Defendants.

Case No.: GIN055725

FIRST AMENDED
COMPLAINT FOR: INTENTIONAL
MISREPRESENTATION,
NEGLIGENT MISREPRESENTATION;
BREACH OF WRITTEN CONTRACT;
BREACH OF ORAL CONTRACTS;
ACCOUNTS STATED; AND MONEY
HAD AND RECEIVED

GENERAL CIVIL: UNLIMITED

18 Plaintiff alleges:

19 **Preliminary Allegations**

20 1. This action is a money demand in excess of \$25,000.00 and therefore is within the
21 jurisdictional limits of this Court. All relevant acts herein alleged occurred or were to be performed
22 in the City of San Marcos, County of San Diego. Accordingly, proper venue lies with this Court.

23 2. Plaintiff JAMES R. REED is and at all times herein mentioned was a resident of the
24 County of San Diego, State of California.

25 3. Plaintiff is informed and believes that at all times herein mentioned Defendant
26 JOHN C. MATTMAN ("MATTMAN") is and was a resident of the County of San Diego, State of
27 California, and conducting business in the City of San Marcos, and County of San Diego.
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1 4. Plaintiff is informed and believes that at all times herein mentioned Defendant J.
2 MATTMAN SECURITY, INC., a California Corporation ("MATTMAN, INC.") was a corporation
3 with its principal place of business in the City of San Marcos, County of San Diego, State of
4 California, and doing business under the fictitious name THE MATTMAN COMPANY.

5 5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
6 DOES 1 through 100, inclusive, and therefore sues these Defendants by such fictitious names.
7 Plaintiff will amend this Complaint to allege their true names and capacities when the same are
8 ascertained.

9 6. Plaintiff is informed and believes and thereon alleges that at all times herein
10 mentioned each of the Defendants was the agent of the remaining Defendants and at all times
11 herein was acting within the scope of said agency and further that all said Defendants are liable
12 for the amounts claimed herein.

13 7. Plaintiff is informed and believes and thereon alleges that at all times herein
14 mentioned there existed a unity of interest and ownership between MATTMAN, INC. and
15 MATTMAN and DOES 1 through 20, such that any individuality and separateness between these
16 Defendants have ceased, and that MATTMAN and DOES 1 through 20 are the alter egos of
17 MATTMAN, INC., in that:

18 (a) Plaintiff is informed and believes and thereon alleges that MATTMAN and
19 DOES 1 through 20 exercise complete control and dominion over MATTMAN, INC. and the
20 liabilities and assets of MATTMAN and DOES 1 through 20 are so interwoven with MATTMAN,
21 INC. that any individuality or separateness between MATTMAN, DOES 1 through 20, and
22 MATTMAN, INC. at all times herein mentioned did not exist; and/or

23 (b) Plaintiff is informed and believes and thereon alleges that MATTMAN, INC.
24 continues to be so inadequately capitalized that compared with the business to be done by
25 MATTMAN, INC. and the risk of loss attendant thereon, the capitalization is illusory; and/or

26 (c) Plaintiff is informed and believes and thereon alleges that MATTMAN and
27 DOES 1 through 20 used the assets of MATTMAN, INC. in such a way that may have caused
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1 them to be transferred among themselves without adequate consideration.

2 8. Plaintiff is informed and believes and thereon alleges that the adherence to the
3 fiction of the separate existence among and between MATTMAN, DOES 1 through 20 and
4 MATTMAN, INC. would permit an abuse of the corporate privilege and would promote an injustice
5 in that Defendants represented to Plaintiff that they were financially solvent and properly
6 conducting business within the City of San Marcos, County of San Diego.

7 9. At all relevant times herein, Plaintiff was an employed by MATTMAN, INC.

8 **FIRST CAUSE OF ACTION – INTENTIONAL MISREPRESENTATION**

9 **Against MATTMAN, INC. and MATTMAN**

10 10. Plaintiff repleads and realleges and by this reference herein incorporates each and
11 every allegation set forth in paragraphs 1 through 9, inclusive, of the Preliminary Allegations.

12 11. Between June 2005 and December 2005, Defendants induced Plaintiff to loan them
13 the following sums of money: \$45,000.00 on June 24, 2005; \$40,000.0 on July 14, 2005;
14 \$20,000.00 on September 16, 2005; and \$20,000.00 on December 14, 2005, for a total sum of
15 \$125,000.00. During this same period of time, Plaintiff was induced to incur certain charges on
16 his personal credit card for the benefit of Defendants which now exceed a balance due of
17 \$18,951.30. Defendants represented that these sums would be used by Defendants as short term
18 loans to Defendants to cover certain payroll and manufacturing expenses. Defendants
19 represented that each loan and credit card advance would be repaid within a couple of weeks
20 from sums received by Defendants on guaranteed production contracts. Plaintiff was further
21 induced by Defendants to make these loans and advances because he had made previous loans
22 of money which were repaid and Defendant Mattman continued to guarantee personally that
23 Plaintiff would be repaid.
24

25 12. The representations made by Defendants were in fact false. The true facts were
26 that Defendants:

27 (a) Had already encumbered its production contracts and proceeds therefrom to
28

1 multiple senior lienholders;

2 (b) Had no ability to repay Plaintiff's loans and credit card advances at the time
3 requested by Defendants; and

4 (c) Had no intention of repaying Plaintiff except for the repayment of sums
5 totaling \$55,000.00 tendered between November 11, 2005 and January 4, 2006.

6 13. Plaintiff is informed and believes and thereupon alleges that when Defendants
7 made the above representations, they knew the representations to be false, they made the
8 representations with the intent to defraud and deceive Plaintiff, and with the intent to induce
9 Plaintiff to continue to loan and advance monies to Defendants.

10 14. At the time the representations were made by Defendants and at the time Plaintiff
11 acted herein, Plaintiff was ignorant of the falsity of Defendants' representations and believed
12 them to be true. Based on prior conduct by Defendants, Plaintiff had no reason to believe that
13 Defendants would not honor and perform on their representations. Had Plaintiff known the actual
14 facts, he would not have continued to contract with Defendants and loaned and advanced
15 \$143,951.30.
16

17 15. As a result of Defendants' fraud and deceit and the facts herein alleged, Plaintiff has
18 been damaged in a principal sum believed to be in excess of \$88,951.30, plus accrued interest,
19 subject to proof at the time of trial.

20 16. In doing the acts herein alleged, Defendants acted with oppression, fraud and
21 malice, and Plaintiff is entitled to punitive damages in a sum to be shown according to proof at the
22 time of trial.

23 **SECOND CAUSE OF ACTION – NEGLIGENT MISREPRESENTATION**

24 **Against MATTMAN, INC. and MATTMAN**

25 17. Plaintiff repleads and realleges, and by this reference incorporates, each and every
26 allegation in all matters set forth in paragraphs 1 through 9, inclusive, of the Preliminary
27 Allegations, and paragraphs 11 through 16 of the First Cause of Action.

28 18. When Defendants made the representations set forth in paragraphs 11 and 12

1 above, Defendants had no reasonable grounds for believing them to be true. These
2 representations were made by Defendants with the intent to induce Plaintiff to act in the manner
3 herein alleged.

4 19. As a result of Defendants' negligent misrepresentations and the facts herein
5 alleged, Plaintiffs have been damaged in a principal sum believed in excess of \$88,951.30, plus
6 accrued interest, subject to proof at the time of trial.

7 **THIRD CAUSE OF ACTION – BREACH OF WRITTEN CONTRACT**

8 **Against MATTMAN, INC., MATTMAN, and DOES 1 through 10**

9 20. Plaintiff repleads and realleges, and by this reference herein incorporates, each and
10 every allegation in all matters set forth in paragraphs 1 through 9, inclusive, of the Preliminary
11 Allegations, paragraphs 11 through 16 of the First Cause of Action, and paragraphs 18 through
12 19 of the Second Cause of Action.

13 21. As set forth in paragraph 11 above, between June 2005 and December 2005,
14 Plaintiff loaned and advanced money to Defendants in a principal sum exceeding \$143,951.30,
15 and in exchange Defendants agreed to repay Plaintiff these sums with interest within a couple of
16 weeks of each loan. These loans are evidenced by writings which include Plaintiff's checks and
17 credit card statements and by Defendants' own written ledger of Plaintiff's loans to Defendants
18 and alleged repayments, attached hereto as Exhibit 1 and incorporated herein. These loans are
19 further evidenced by a proposed Promissory Note and a Security Agreement, attached hereto as
20 Exhibits 2 and 3 and incorporated herein, which were tendered by Defendants to Plaintiff in
21 Defendants' effort to document the loans and to propose a new repayment schedule and terms.

22 22. Commencing on or about January 15, 2006, Defendants breached their Agreement
23 by failing to repay Plaintiff the principal sum of \$88,951.30, plus accrued interest.

24 23. Plaintiff has performed all conditions, covenants and promises required of him to be
25 performed in accordance with the terms of the Agreement.

26 24. As a result of Defendants' breach of contract, Plaintiff has been damaged in the
27 principal sum exceeding \$88,951.30, together with interest, to be shown according to proof at the
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1 time of trial.

2 **FOURTH CAUSE OF ACTION – BREACH OF ORAL CONTRACT**

3 **Against MATTMAN, INC., MATTMAN and DOES 1 through 20**

4 25. Plaintiff repleads and realleges, and by this reference incorporates herein, each and
5 every allegation in all matters set forth in paragraphs 1 through 9, inclusive, of the Preliminary
6 Allegations, paragraphs 11 through 16 of the First Cause of Action, paragraphs 18 through 19 of
7 the Second Cause of Action, and paragraphs 21 through 24 of the Third Cause of Action.

8 26. Between June 2005 and December 2005, Plaintiff loaned Defendants \$143,951.30
9 and Defendants agreed orally to repay Plaintiff those sums plus interest within a couple of weeks
10 of each loan and advance. Mattman personally assured and guaranteed Plaintiff that he would
11 be repaid in full.

12 27. Plaintiff has performed all conditions, covenants and promises required of him to be
13 performed in accordance with the terms and conditions of this oral Agreement.

14 28. Commencing on or about January 15, 2006, Defendants breached the Agreement
15 by failing and refusing to repay Plaintiff the sum of \$88,951.30, pursuant to the oral Agreement.

16 29. As a result of Defendants' breach of contract, and failure to pay Plaintiff for amounts
17 owing, Plaintiff has been damaged in a principal sum exceeding \$88,951.30, together with
18 interest, to be shown according to proof at the time of trial.

19 30. Plaintiff is entitled to recover reasonable attorneys fees incurred herein pursuant to
20 the provisions of *California Civil Code* Section 1717.5.

21 **FIFTH CAUSE OF ACTION – ACCOUNTS STATED**

22 **Against All Defendants**

23 31. Plaintiff repleads and realleges, and by this reference herein incorporates, each and
24 every allegation in all matters set forth in paragraphs 1 through 9, inclusive, of the Preliminary
25 Allegations, paragraphs 11 through 16 of the First Cause of Action, paragraphs 18 through 19 of
26 the Second Cause of Action, paragraphs 21 through 24 of the Third Cause of Action, and
27 paragraphs 26 through 30 of the Fourth Cause of Action,
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1 every allegation in all matters set forth in paragraphs 1 through 9, inclusive, of the Preliminary
2 Allegations.

3 39. Plaintiff was employed by Defendant MATTMAN, INC. over the past 15 years and
4 was the production manager during the past year. In this capacity Plaintiff was to be paid wages
5 between \$26.00 and \$39.00 per hour for employment services he rendered to Defendants.

6 40. Commencing on or about July 28, 2006 Defendants breached this Employment
7 Agreement by failing to pay Plaintiff salary and accrued vacation benefits in the gross principal
8 sum of \$6,127.42, plus accrued interest.

9 41. Plaintiff has performed all conditions, covenants and promises required of him to be
10 performed in accordance with the terms of his Employment Agreement.

11 42. As a result of Defendants' breach of contract, Plaintiff has been damaged in the
12 principal sum exceeding \$6,127.42 together with interest, to be shown according to proof at the
13 time of trial.
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15
16 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as follows:

17 **On the First Cause of Action**

18 1. For damages in excess of \$88,951.30 with interest thereon to be shown according
19 to proof at the time of trial;

20 2. For general damages to be shown according to proof; and

21 3. For punitive and exemplary damages in a sum to be shown according to proof at
22 the time of trial.

23 **On the Second Cause of Action**

24 1. For damages in excess of \$88,951.30 with interest thereon to be shown according
25 to proof at the time of trial; and

26 2. For general damages to be shown according to proof.

27 **On the Third Cause of Action**

28 1. For damages in excess of \$88,951.30, with interest thereon, to be shown according

1 to proof at the time of trial;

- 2 2. For general damages to be shown according to proof; and
3 3. For attorneys fees and Court costs.

4 **On the Fourth Through Sixth Causes of Action**

- 5 1. For general damages in the sum of \$88,951.30;
6 2. For interest at the legal rate to be shown according to proof at the time of trial; and
7 3. For reasonable attorneys fees to be shown according to proof at the time of trial.

8 **On the Seventh Cause of Action**

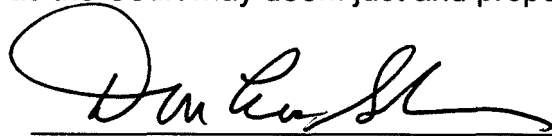
- 9 1. For general damages in the sum of \$6,127.42;
10 2. For interest at the legal rate to be shown according to proof at the time of trial; and
11 3. For reasonable attorneys fees to be shown according to proof at the time of trial

12 **On All Causes of Action**

- 13 1. For costs of suit herein incurred; and
14 2. For such other and further relief as the Court may deem just and proper.

15 Dated:

16 September 20, 2006

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18 DON ERIC SALOM, Attorney for Plaintiff