



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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Case Number: CGC-11-514101

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COMPLAINT

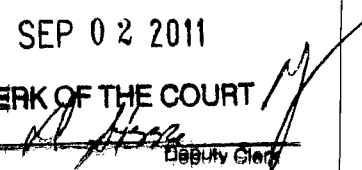
JOHN HITTER VS. SHIRLAWS (USA), INC. et al

001C03323881

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
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TELEPHONE NO.: (408) 573-1122 FAX NO.: (408) 573-1126
ATTORNEY FOR (Name): John Hittler

FOR COURT USE ONLY
FILED
San Francisco County Superior Court
SEP 02 2011
CLERK OF THE COURT
By:  Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center

CASE NAME:
John Hittler v. Shirlaws (USA), Inc. and Does 1-50, Inclusive

CIVIL CASE COVER SHEET
 Unlimited (Amount demanded exceeds \$25,000)
 Limited (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
CGC-11-514101
JUDGE:
DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

- Auto (22)
- Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
- Product liability (24)
- Medical malpractice (45)
- Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)
- Civil rights (08)
- Defamation (13)
- Fraud (16)
- Intellectual property (19)
- Professional negligence (25)
- Other non-PI/PD/WD tort (35)

Employment

- Wrongful termination (36)
- Other employment (15)

Contract

- Breach of contract/warranty (06)
- Rule 3.740 collections (09)
- Other collections (09)
- Insurance coverage (18)
- Other contract (37)

Real Property

- Eminent domain/Inverse condemnation (14)
- Wrongful eviction (33)
- Other real property (26)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38)

Judicial Review

- Asset forfeiture (05)
- Petition re: arbitration award (11)
- Writ of mandate (02)
- Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)
- Construction defect (10)
- Mass tort (40)
- Securities litigation (28)
- Environmental/Toxic tort (30)
- Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

- Enforcement of judgment (20)

Miscellaneous Civil Complaint

- RICO (27)
- Other complaint (not specified above) (42)

Miscellaneous Civil Petition

- Partnership and corporate governance (21)
- Other petition (not specified above) (43)

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. Large number of separately represented parties
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c. Substantial amount of documentary evidence
- d. Large number of witnesses
- e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

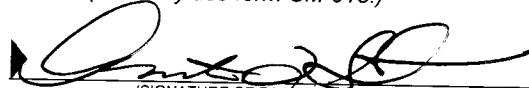
4. Number of causes of action (specify):

5. This case is is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 9/2/11

Anita L. Steburg
(TYPE OR PRINT NAME)


(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability (*not asbestos or toxic/environmental*) (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice (*not medical or legal*)
- Other Non-PI/PD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract (*not unlawful detainer or wrongful eviction*)
- Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage (*not provisionally complex*) (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
- Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment (*non-domestic relations*)
 - Sister State Judgment
 - Administrative Agency Award (*not unpaid taxes*)
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint (*not specified above*) (42)
 - Declaratory Relief Only
 - Injunctive Relief Only (*non-harassment*)
 - Mechanics Lien
 - Other Commercial Complaint Case (*non-tort/non-complex*)
 - Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition (*not specified above*) (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief From Late Claim
 - Other Civil Petition

NO SUMMONS ISSUED

FILED
San Francisco County Superior Court

SEP 02 2011

CLERK OF THE COURT

By: [Signature]
Deputy Clerk

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Attorneys for Plaintiff
JOHN HITTLER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION - CIVIL

No. CGC-11-514101

13 JOHN HITTLER,
14 Plaintiff,
15 v.
16 SHIRLAWS (USA), INC. and DOES
17 1-50, inclusive,
18 Defendants.

- COMPLAINT FOR:
- (1) DECLARATORY RELIEF
 - (2) FRAUD-INTENTIONAL MSREPRESENTATION
 - (3) FRAUD-NEGLIGENT MISREPRESENTATION
 - (4) FRAUD-CONCEALMENT
 - (5) PROMISE WITHOUT INTENT TO PERFORM
 - (6) BREACH OF CONTRACT
 - (7) BREACH OF FIDUCIARY DUTY
 - (8) PROMISSORY ESTOPPEL
 - (9) ACCOUNTING
 - (10) RESTITUTION

DEMAND FOR JURY TRIAL

27 Plaintiff JOHN HITTLER ("Plaintiff") complains and alleges as follows:

28 PARTIES

- 1 1. Plaintiff is a natural person and at all times herein mentioned is a competent adult.
- 2 2. Plaintiff is informed and believes and thereon alleges Defendant SHIRLAWS (USA)
- 3 INC., (“Shirlaws”) is, and at all times mentioned in this herein is, a corporation organized and
- 4 existing under the laws of Delaware and qualified to do business in California.
- 5 3. Shirlaws has a headquarters located in San Francisco, California.
- 6 4. Plaintiff does not know the true names or capacities of those defendants named herein
- 7 as DOES 1 through 50. Plaintiff will amend this Complaint to allege their true names and
- 8 capacities when the same have been ascertained, or according to proof at the time of trial.
- 9 Plaintiff is informed and believes, and upon such information and believe allege, that each of
- 10 the fictitiously named defendants is responsible in some manner for the acts and occurrences
- 11 alleged hereafter.
- 12 5. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
- 13 each defendant was the agent, servant, partners, and/or employees of co-Defendants, and in
- 14 doing the actions mentioned below were, unless otherwise alleged, within the course and
- 15 scope of their authority as such agent, servant, partner, and/or employee, with the permission
- 16 and consent and/or subsequent ratification of co-Defendants.
- 17 6. Jurisdiction of this court over this instant action is based upon Cal. Civ. Proc. § 88.
- 18 7. Venue is properly placed in San Francisco County because this transaction results from
- 19 Defendant’s business practices in San Francisco County. In addition, most acts alleged in
- 20 this Complaint took place in San Francisco County and the funds were tendered to the San
- 21 Francisco headquarters of Shirlaws.
- 22 8. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
- 23 through 50, inclusive, and therefore sues these Defendants by those fictitious names. Plaintiff
- 24 will amend this complaint to allege their true names and capacities when they are ascertained.
- 25 Plaintiff is informed and believes that each of these Defendants is responsible in some
- 26 manner for the occurrences alleged in this complaint and that Plaintiffs’ damages as alleged
- 27 in this complaint were proximately caused by these defendants.

28 **FACTUAL BACKGROUND**

- 1 9. In January of 2008, at the request of Shirlaws's agent, Marc Johnstone and Stewart
2 Gall, Plaintiff met with them and they made, among other things, the following
3 representations to Plaintiff: (a) Plaintiff was informed that there was an opportunity to invest
4 in Shirlaws as a shareholder; (b) Plaintiff would be a shareholder in a successful international
5 business that was built upon trust and mutual respect; (c) Shirlaws represented to Plaintiff
6 that Shirlaws was successful; (d) based upon the above facts, Shirlaws proffered to Plaintiff
7 that Plaintiff should invest in the business for \$50,000 in order to obtain an equity interest as
8 a shareholder in the company in the floating pool and role of partner in Shirlaws.
- 9 10. On or about January 29, 2008, Plaintiff, for valuable consideration, made, executed
10 and delivered to Shirlaws, funds in the amount of \$50,000.00, a copy of which is attached as
11 Exhibit A.
- 12 11. On around June 2008, Shirlaws requested a "cash call" from its investors of \$10,000.
13 This was originally classified as a short term loan.
- 14 12. On or about June 26, 2008, Plaintiff, for valuable consideration, made, executed and
15 delivered to Shirlaws additional funds of \$10,000. A letter from Shirlaws confirming receipt
16 of the funds is attached as Exhibit B.
- 17 13. Subsequently, the additional investment of \$10,000 was reclassified as a short term
18 loan to an equity position by Shirlaws when Shirlaws could not repay any of the \$10,000
19 short term loans which were made.
- 20 14. On or about March 30, 2009, a written request was made to issue shares to Plaintiff or
21 return the funds invested.
- 22 15. On or about April 10, 2009, Shirlaws's Chairman, Adrian Bray, stated that Shirlaws
23 was "unable to issue equity" until Shirlaws completes the change in their equity structure. A
24 copy of this letter is attached as Exhibit C.
- 25 16. On or about February 21, 2010, Shirlaws sent written correspondence to Plaintiff that
26 they are still unable or unwilling to issue shares and the funds received were being "held on
27 the books as a nonrecourse loan."
- 28 17. Plaintiff was also repeatedly told that Shirlaws will continue to seek new partners to
come into the business and these newly invested funds would be the source to purchase his

1 equity and/or nonrecourse loan. Additionally, Plaintiff was encouraged to find new investors
2 for Shirlaws. The new investor's funds would be the source of funds to repay Plaintiff.

3 18. SHIRLAWS has unilaterally recharacterized Plaintiff's status from a partner or
4 shareholder to a holder of nonrecourse debt.

5 19. Plaintiff has since received financial statements for Shirlaws for tax years 2008 and
6 2009 without any supporting detail. Shirlaws does not appear to be profitable when Plaintiff
7 made his investment.

8 20. Based on the financial statements, Shirlaws was not profitable in 2008 or 2009.
9 However, there was no back up or detailed information to the financial statements which
10 were provided.

11 21. Plaintiff is informed and believes and thereon alleges, that Shirlaws is diverting funds
12 to unknown third parties and purposefully and intentionally undercapitalizing Shirlaws and
13 its ability to pay back its investors.

14 22. Plaintiff has not received notices of the annual meeting of shareholders or the annual
15 financial statements with a detailed backup and since Shirlaws has reclassified his

16 23. Plaintiff is informed and believes and thereon alleges that other investors of Shirlaws
17 are similarly situated. However, since Plaintiff has been deprived of his status as a
18 shareholder, he is unable to exercise his rights to review the books or request an accounting
19 of Shirlaws.

20 **FIRST CAUSE OF ACTION**

21 **(Declaratory Relief to Declare Nature of Plaintiff's Interest in Shirlaws)**

22 24. Plaintiff realleges and incorporates by reference each and every allegation contained in
23 Paragraphs 1 through 23 above.

24 25. Plaintiff initially invested with the understanding that he would have duly signed stock
25 certificate stating the number of shares and class of stock he owns.

26 26. Even after Plaintiff demanded the Shirlaws issue the certificates as required by law,
27 Shirlaws refused to do so.

28 27. Shirlaws unilaterally classified Plaintiff's investment as nonrecourse loans.

1 28. Shirlaws's actions have left Plaintiff without any recourse. Plaintiff cannot excise his
2 rights as a shareholder as Shirlaws does not recognize him as such. Plaintiff cannot sell his
3 shares as he has never been issued such shares and Shirlaws has consistently stated the only
4 shares that have been issued are the one issued at incorporation.

5 29. Plaintiff requests a judicial determination of the respective interest of Plaintiff and
6 Defendant, and Does 1-50. An actual controversy has arisen and now exists between Plaintiff
7 and Defendant regarding Plaintiff's right to share in fees, distributions, and Defendant's
8 attempts to reclassify the investment as nonrecourse loans.

9 30. A judicial determination regarding the above dispute is appropriate and necessary in
10 order to determine the respective rights between Plaintiff and Defendants.

11 **SECOND CAUSE OF ACTION**

12 **(Declaratory Relief to Determine Structure of Business Entity)**

13 31. Plaintiff realleges and incorporates by reference each and every allegation contained in
14 Paragraphs 1 through 30 above.

15 32. Shirlaws is an entity incorporated in Delaware and qualified to do business in
16 California.

17 33. Shirlaws has not issued duly authorized stock certificates to any shareholder other than
18 the certificate issued at incorporation.

19 34. Plaintiff believes and thereby alleges that Shirlaws has unilaterally changed the
20 characterization of investments from equity positions to nonrecourse loans with shareholders
21 similarly situated as Plaintiff.

22 35. Plaintiff is informed and believes and thereon alleges, that Shirlaws is diverting funds
23 to unknown third parties and purposefully and intentionally undercapitalizing Shirlaws and
24 its ability to pay back its investors.

25 36. Plaintiff is informed and believes and thereon alleges that Shirlaws repays its investors
26 as new partners are enticed to invest in the business and these funds are used to repay the
27 former investors.
28

1 37. Plaintiff seeks to have the court determine whether Shirlaws is properly structured and
2 operating as a corporation and has afforded itself the liability protection afforded to the
3 corporate structure.

4 **THIRD CAUSE OF ACTION**

5 **(Fraud-Intentional Misrepresentation)**

6 38. Plaintiff realleges and incorporates by reference each and every allegation contained in
7 Paragraphs 1 through 37 above.

8 39. Since 2008, Shirlaws represented to Plaintiff that they were a valid corporation and
9 offered Plaintiff the opportunity to invest in Shirlaws. Plaintiff gave Shirlaws the initial
10 \$50,000 and later an additional \$10,000 for an ownership interest in the corporation.

11 40. The representations made by Shirlaws were in fact false. The true facts were that the
12 Shirlaws did not intend to issue equity to Plaintiff with the intent of having Plaintiff as a
13 shareholder.

14 41. When the Shirlaws made the above representation he knew them to be false and he
15 made these representations with the intention to deceive and defraud the Plaintiff in order to
16 induce Plaintiff to give them money (a total of \$60,000) in order to become a shareholder in
17 Shirlaws.

18 42. At all times herein, Plaintiff was ignorant of the falsity of Shirlaws's representations
19 and believed them to be true. Plaintiff did not learn of Shirlaws's fraud until 2010 when
20 Shirlaws refused to issue stock certificates or return funds provided to Shirlaws.

21 43. Plaintiff was also repeatedly told by Shirlaws that the return of his funds was
22 dependent upon a new investor investing funds into Shirlaws. Once a new investor was able
23 to be obtained, Shirlaws would repay Plaintiff. Plaintiff was encouraged to find a new
24 investor by Shirlaws to assist in the repayment of funds to Plaintiff.

25 44. In reliance on Shirlaws's misrepresentations, Plaintiff provided Shirlaws \$60,000 in
26 order to become a shareholder in Shirlaws. Had the Plaintiff known the actual facts, he
27 would not have given Shirlaws the \$60,000.

28 45. Numerous times since the funds were provided to Shirlaws, Shirlaws has refused to
issue stock certificates evidencing ownership in the company or returning the funds. Plaintiff

1 was not provided any documentation for his investment. Without any indicia of ownership,
2 Plaintiff cannot sale his shares. Shirlaws has effectively forced Plaintiff to provide a zero
3 interest loan since he cannot resale his shares and Shirlaws will not return the funds.

4 Plaintiff's reliance on each of the Shirlaws's representations was justifiable because he
5 trusted Shirlaws and had known the agent of Shirlaws who offered him the opportunity to
6 invest in Shirlaws for quite some time.

7 46. As a proximate result of the fraudulent conduct of the Shirlaws as alleged above, the
8 Plaintiff has suffered damages of \$60,000 plus lost opportunities in the form of interest.

9 47. The above mentioned conduct of the Shirlaws was intentional misrepresentation of a
10 material fact known to the Shirlaws with the intention of depriving plaintiff of property or
11 other legal rights or causing injury and was despicable conduct that subjected Plaintiff to
12 cruel and unjust hardship in conscious disregard of Plaintiffs' rights so as to justify an award
13 of exemplary and punitive damages.

14 **FOURTH CAUSE OF ACTION**

15 **(Fraud-Negligent Misrepresentation)**

16 48. Plaintiff realleges and incorporates by reference each and every allegation contained in
17 Paragraphs 1 through 47 above.

18 49. When Shirlaws made the representations alleged in the above paragraphs, Plaintiff had
19 no reasonable ground for believing said representations to be true in that Shirlaws never
20 intended to issue stock certificates to Plaintiff and the return of his investment was dependent
21 upon new investor contributions instead of performance of the Shirlaws.

22 50. The SHIRLAWS made these representations with the intention of inducing the
23 Plaintiff to deliver to him \$60,000 in reliance on these representations.

24 51. At all times herein, Plaintiff was ignorant of the falsity of Shirlaws's representations
25 and believed them to be true. Plaintiff did not learn of Shirlaws's fraud until 2010 when
26 SHIRLAWS refused to either issue stock certificates or return the initial investment. He also
27 did not know until 2010 that the return of his investment was dependent upon new investor
28 funds being obtained. Had the Plaintiff known the actual facts, he would not have given
\$60,000 to the SHIRLAWS.

1 52. Plaintiff's reliance on each of the Shirlaws's misrepresentations was justifiable
2 because he trusted Shirlaws's agents.

3 53. As a proximate result of the fraudulent conduct of the Shirlaws as alleged above, the
4 Plaintiff suffered damages in the amount of at least \$60,000.

5 54. The above mentioned conduct of commensurate Shirlaws was an intentional
6 misrepresentation of a material fact known to the Shirlaws with the intention of depriving
7 plaintiff of property or other legal rights or otherwise causing injury and was despicable
8 conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of
9 Plaintiff's rights so as to justify an award of exemplary and punitive damages.

10 **FIFTH CAUSE OF ACTION**

11 **(Fraud-Concealment)**

12 55. Plaintiff realleges and incorporates by reference each and every allegation contained in
13 Paragraphs 1 through 54.

14 56. However, Shirlaws failed to reveal and suppressed the following facts (1) Shirlaws did
15 not intent to issue stock certificates with the intent of having Plaintiff as a shareholder along
16 with the rights and duties owed to a shareholder; (2) the return of the investment of Plaintiff
17 was dependent upon an investor or investors being secured and using their funds to pay off
18 Plaintiff; (3) Shirlaws never intended to make him a shareholder of the corporation
19 commensurate with the amount of money that Plaintiff had invested with Shirlaws. The
20 suppression of these facts was likely to mislead Plaintiff and did in fact mislead Plaintiff.

21 57. Shirlaws owed a duty to disclose to Plaintiff all relevant facts and information to
22 Plaintiff regarding his intentions as to the represented investment.

23 58. The representations and failure to disclose to Plaintiff all relevant facts and
24 information herein alleged to have been made by Defendant were made/done by Shirlaws
25 with the intent to induce Plaintiff to act in the manner alleged in reliance thereon.

26 59. At the time of the concealment and/or suppression, Shirlaws had no intention of
27 disclosing to Plaintiff the truth involving its actions and thereby concealed the truth regarding
28 these matters from Plaintiff. Plaintiff did not learn of Shirlaws's fraud until 2010.

1 60. At all times herein, Plaintiff was ignorant of the facts that Shirlaws suppressed and
2 failed to disclose. Plaintiff did not learn of Shirlaws's fraud until 2010. If plaintiff had been
3 aware of the existence of the facts not disclosed by the Shirlaws, then the plaintiff would not
4 have given Shirlaws \$60,000 to be an investor or shareholder in Shirlaws.

5 61. Plaintiff's reliance on each of the Shirlaws's representations was justifiable because he
6 trusted the SHIRLAWS whom he had known for quite some time.

7 62. As a proximate result of the fraudulent conduct, the Plaintiff has suffered damages of
8 at least \$60,000.

9 63. The above mentioned conduct of commensurate Shirlaws was an intentional
10 misrepresentation of material fact know to the Shirlaws with the intention of depriving
11 Plaintiff of property or other legal rights or otherwise causing injury and was despicable
12 conduct that subjected Plaintiff to a cruel and unjust hardship in conscious disregard of
13 Plaintiff's rights so as to justify an award of exemplary and punitive damages.

14 **SIXTH CAUSE OF ACTION**

15 **(Promise without Intent to Perform)**

16 64. Plaintiff realleges and incorporates by reference each and every allegation contained in
17 Paragraphs 1 through 63 above.

18 65. At the time Plaintiff invested the funds, Shirlaws did not have the intention of issuing
19 the stock certificates.

20 66. Shirlaws has repeatedly promised Plaintiff that the stock issuance will be done in due
21 course yet the only stock certificates that have ever been issued was when the corporation was
22 initially formed.

23 67. Shirlaws has also steadfastly refused to return funds to Plaintiff. Plaintiff has a right to
24 receive the stock certificates or have his funds returned. As of today, three years after the
25 initial investment, Shirlaws has done neither despite repeated demands for Shirlaws to do so.

26 **SEVENTH CAUSE OF ACTION**

27 **(Breach of Oral Contract)**

28 68. Plaintiff realleges and incorporates by reference each and every allegation contained in
Paragraphs 1 through 67 above.

1 69. In or around January of 2008, Plaintiff and Shirlaws entered into a legally binding and
2 enforceable oral contract.

3 70. Plaintiff fully performed all of his obligations under the oral contract.

4 71. Plaintiff at the request of Shirlaws, Plaintiff met with an agent of Shirlaws, and made,
5 among other things, the verbal representations of fact to Plaintiff: (a) the agent told Plaintiff
6 that there was an opportunity to invest in Shirlaws as a shareholder; (b) Plaintiff would be a
7 shareholder in a business that was built upon trust and integrity; (c) it was represented to
8 Plaintiff that Shirlaws was making a profit; (d) based upon the above facts, Shirlaws through
9 the agent offered to Plaintiff that Plaintiff should invest in the business for \$50,000 in order
10 to obtain an equity interest as a shareholder in the company in the floating pool and role of
11 partner in Shirlaws; and (e) in June 2008, Shirlaws offered Plaintiff an additional investment
12 opportunity of \$10,000.

13 72. Through Defendant's acts as set forth above, Shirlaws has materially breached the
14 express provisions of the oral contract between Plaintiff and Shirlaws.

15 73. Shirlaws's conduct, as alleged in this Complaint, constitutes a material breach of the
16 implied covenant of good faith and fair dealing implied in all contracts.

17 74. By attempting to unilaterally recharacterize the funds invested in Shirlaws as a
18 nonrecourse loan Shirlaws has breached its obligation to Plaintiff.

19 75. As a proximate result of Shirlaws breaches, Plaintiff has been damaged, including the
20 fees and costs it has incurred and will incur through this action.

21 **EIGHTH CAUSE OF ACTION**

22 **(Breach of Fiduciary Duty)**

23 76. Plaintiff realleges and incorporates by reference each and every allegation contained in
24 Paragraphs 1 through 75.

25 77. Shirlaws is obligated to act in the best interest of Plaintiff.

26 78. By attempting to reclassify the contributions as a nonrecourse loan, and refusing to
27 either issue the stock shares or return the funds, Shirlaws has wasted the funds and breached
28 its duty to protect the interest of Plaintiff.

1 79. As a proximate result of the breach, Plaintiff has been damaged in an amount to be
2 proven at trial, including but not limited to damages for Plaintiff's lost profits and
3 opportunities.

4 **NINTH CAUSE OF ACTION**

5 **(Promissory Estoppel)**

6 80. Plaintiff realleges and incorporates by reference each and every allegation contained in
7 Paragraphs 1 through 79.

8 81. Shirlaws promised, assured and represented to Plaintiff that he would be a shareholder.
9 In reliance thereon, Plaintiff provided funds to Shirlaws.

10 82. In so promising, assuring and representing to Plaintiff, Shirlaws knew or should have
11 known that Plaintiff would be reasonably induced to rely on Shirlaws's promises, assurances
12 and representations.

13 83. Plaintiff reasonably relied on Shirlaws's promises, assurances and represents to his
14 direct damage and detriment.

15 84. Shirlaws has not performed any part of their promises, assurances, or representations.

16 85. Plaintiff has sustained damages in an amount to be proven at trial.

17 **TENTH CAUSE OF ACTION**

18 **(Accounting)**

19 86. Plaintiff realleges and incorporates by reference each and every allegation contained in
20 Paragraphs 1 through 85.

21 87. Plaintiff is entitled to an accounting of all monies spent and earned by Shirlaws and
22 Does 1-50 as well as any and all profits.

23 **ELEVENTH CAUSE OF ACTION**

24 **(Restitution)**

25 88. Plaintiff realleges and incorporates by reference each and every allegation contained in
26 Paragraphs 1 through 87.

27 89. Defendants have been unjustly enriched in the amount of the funds provided to
28 Shirlaws.

29 90. Plaintiff is thus entitled to full restitution of all monies paid to Shirlaws.

1 91. Plaintiff is also entitled to prejudgment interest on all such funds.


2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as
4 follows:

- 5 1. For a declaratory relief against Shirlaws declaring that Plaintiff is a
- 6 shareholder;
- 7 2. For declaratory relief against Shirlaws declaring their structure is not organized
- 8 as a valid corporation;
- 9 3. For a declaration of the parties' respective rights and interest;
- 10 4. For actual and consequential damages;
- 11 5. Prejudgment and postjudgment interest;
- 12 6. For attorney's fees according to proof;
- 13 7. For restitution;
- 14 8. For costs of suit herein incurred;
- 15 9. For punitive damages in an amount proved at trial;
- 16 10. For exemplary damages in an amount proved at trial; and
- 17 11. For such other and further relief as the court may deem proper.

18 STEBURG LAW FIRM

19
20 Dated: September 2, 2011


21 ANITA L. STEBURG, Attorney for
22 Plaintiff JOHN HITTLER

4556 (10/99)

 **WASHINGTON MUTUAL** **5000000**
FIVE ZERO ZERO ZERO ZERO CTSCTS

*****Feb 4, 2008 50 THOUSAND DOLLARS AND 00 CENTS *****

PAY SHIRLAWS (USA) INC
TO
THE
ORDER
OF

Washington Mutual Bank
DRAWER / PURCHASER COPY
NON-NEGOTIABLE

REMITTER
JOHN HITTLER

1552 501

Issued by Integrated Payment Systems Inc., Englewood, Colorado Wells Fargo Bank Ltd, N.A., Los Angeles, CA

Exhibit A

February, 21 2010

Mr John Hittler
5734 La Seyne Place
San Jose
CA 95138

Dear John,

As per our telephone discussion I am writing to confirm the receipts of funds as follows:

29 January 2008 \$50,000

For access into the floating pool and role of partner in Shirlaws. This shown as a Non-recourse Loan at 0% (zero interest)

26 June 2008 \$10,000

As a non-Recourse loan further to the May 08 Partner meeting at 0% (zero interest).

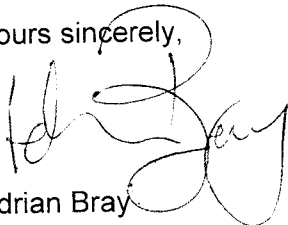
In September 2008 there was a shareholder decision to move from the floating pool to Fixed you chose to move the \$60,000 into 200 shares.

This change hasn't yet been formalized as the project was stopped when you left. As you recall the attorneys being used advised us they could no longer work with Shirlaws due to potential conflict of interest. As you are aware 2009 was a year of 'survive' and the business did not have the capital to pick up the project and get it cleaned up.

As it stands no share certificates have been issued and these will be issued once the participating shareholders agreement is finalized and signed. It is at this point that the implementation into Fixed Equity will take place.

Your money is held on the books as 'A Non-Recourse Loan'.

Yours sincerely,



Adrian Bray
US Chair.

Exhibit B

WITHOUT PREJUDICE

April 10, 2009

Mr. John Hittler

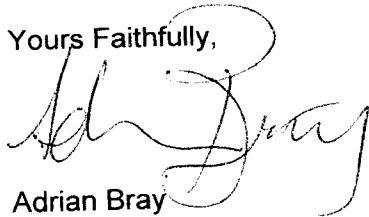
Dear John,

In response to your email (attached) as you were aware we were away at a conference, which delayed my response to you. In terms of your two demands –

1. We informed you verbally and in writing that Shirlaws would not be able to pay you back immediately for your investments in the business and also encouraged you to find buyers in the business.
2. Regarding receiving fully vested shares, as you are also aware we are in the middle of moving from the floating pool to a fixed equity structure and you were both working to provide the legal agreement that would allow us to issue the share certificates. This transition has not been completed and until the shareholder agreement is in place we are unable to issue equity in the form you requested. As a result no share certificates have been issued yet to any investors in the business apart from the one issued at incorporation.

I will keep you posted on our progress on both of these items on a regular basis.

Yours Faithfully,



Adrian Bray
Chairman

Shirlaws (USA) Inc
S1797 Union Street,
San Francisco CA 94123

Tel +1 (415) 346 6650

Web
www.shirlawiscoaching.com

RE-REGISTERED IN UNITED
STATES OF AMERICA
DELAWARE

Exhibit C