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CATHERINE SHAFFER,

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

EL DIABLO, INC., a Washington corporation doing business as "Peso's Kitchen & Lounge" in Seattle, King County, Washington, and BRIAN P. HUTMACHER, a single man and resident of Seattle, King County, Washington,

Plaintiffs,

v.

MEL-OPP & GRIFF LLC, a Washington limited liability company doing business as "The Matador" in Seattle, King County, and Tacoma, Pierce County, Washington; NATHAN ("NATE") J. OPPER, a single man and resident of Seattle, King County, Washington; ZAK MELANG and RENESSA S. MELANG and the marital community composed thereof, residents of Seattle, King County, Washington; THOMAS ("TOM") FLOYD GRIFFITH and ELIZABETH A. GRIFFITH and the marital community composed thereof, residents of Kirkland, King County, Washington; SHANE D. OPPER, a single man and resident of Seattle, King County, Washington; BRIAN S. OKROY, a single man and resident of Everett, Snohomish County, Washington; MARK APPLETON STEVENS, a single man and resident of Seattle, King County, Washington; and ANNA SHER, a single woman and resident of Seattle, King County, Washington;

Defendants.

Case No.

07 -2 - 01203 - 6 SEA

COMPLAINT FOR DAMAGES AND INJUNCTION

1 Plaintiffs El Diablo, Inc., doing business as “Peso’s Kitchen & Lounge” (hereinafter “Peso’s”),  
2 and Brian P. Hutmacher (herein “Brian Hutmacher”) allege as follows:

3 **PART I**

4 **A. PARTIES**

5 1. Plaintiff Peso’s is a corporation organized and existing under the laws of the State of  
6 Washington and owns and operates a restaurant located in the lower Queen Anne neighborhood  
7 of Seattle, King County, Washington.

8 2. Plaintiff Brian P. Hutmacher is a single man residing in Seattle, King County, Washington,  
9 and in early 1999 was the fifty percent shareholder, an officer and director of Peso’s and in or  
10 about 2006 became the sole shareholder of Peso’s.

11 3. On information and belief, Mel-Opp & Griff LLC:

12 a. is a Washington limited liability company doing business as “The Matador” (herein “The  
13 Matador”);

14 b. owns and operates two restaurants in Seattle, King County, and a restaurant in Tacoma,  
15 Pierce County, Washington, using “The Matador” as the trade name of the restaurants;

16 c. is governed by its founders, the defendants Nathan (“Nate”) J. Opper, Zak Melang, and  
17 Thomas (“Tom”) Floyd Griffith;

18 d. consented to, approved, authorized, directed, ratified, conspired with, and/or assisted one  
19 or more of the other defendants’ respective wrongful acts and omissions and unlawful conduct  
20 alleged herein, including without limitation, acts and omissions and unlawful conduct that took  
21 place in Seattle, King County, Washington;

22 e. unless enjoined by this Court, will likely consent to, approve, authorize, direct, ratify,  
23 conspire with and/or assist continuing and/or future new wrongful acts and omissions and  
24 unlawful conduct, including without limitation, acts and omissions and unlawful conduct that  
25 will likely take place in part in Seattle, King County, Washington; and  
26

1 f. through its employees and agents, including without limitation one or more of the  
2 defendant founding members and one or more of the other defendants named herein, committed  
3 and/or engaged in wrongful acts and omissions and unlawful conduct alleged herein, including  
4 without limitation in Seattle, King County, Washington, and unless enjoined by this Court, will  
5 likely commit and/or engage in continuing and/or future new wrongful acts and omissions and  
6 unlawful conduct alleged herein, including without limitation in Seattle, King County,  
7 Washington, for the benefit of itself, its founding members, and other defendants named herein.  
8 4. On information and belief, defendant Nathan ("Nate") J. Opper:  
9 a. is a resident of Seattle, King County, Washington,  
10 b. is the brother of defendant Shane Opper with whom he lived during some of the time  
11 described in this Complaint;  
12 c. is a founding and governing member of The Matador;  
13 d. consented to, approved, authorized, directed, ratified, conspired with and/or assisted one  
14 or more of the other defendants' respective wrongful acts and omissions and unlawful conduct  
15 alleged herein, including without limitation, acts and omissions and unlawful conduct that took  
16 place in Seattle, King County, Washington;  
17 e. unless enjoined by this Court, will likely consent to, approve, authorize, direct, ratify,  
18 conspire with and/or assist continuing and/or future new wrongful acts and omissions and  
19 unlawful conduct, including without limitation, acts and omissions and unlawful conduct that  
20 will likely take place in part in Seattle, King County, Washington; and  
21 f. committed and/or engaged in wrongful acts and omissions and unlawful conduct,  
22 including without limitation in Seattle, King County, Washington, and unless enjoined by this  
23 Court, will likely continue to commit and/or engage in continuing and/or future new wrongful  
24 acts and omissions and unlawful conduct alleged herein, including without limitation in Seattle,  
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1 King County, Washington, for the benefit of himself, The Matador and its other founding  
2 members, his brother Shane Opper, and one or more of the other defendants named herein.  
3 5. On information and belief, defendants Zak Melang and Renessa S. Melang (together the  
4 "Melangs") are husband and wife, constitute a marital community, and are residents of Seattle,  
5 King County, Washington; and  
6 a. Zak Melang is a founding and governing member of The Matador;  
7 b. Renessa Melang is a manager of The Matador;  
8 c. each of the Melangs consented to, approved, authorized, directed, ratified, conspired with  
9 and/or assisted one or more of the other defendants' respective wrongful acts and omissions and  
10 unlawful conduct alleged herein, including without limitation, acts and omissions and unlawful  
11 conduct that took place in Seattle, King County, Washington; and  
12 d. unless enjoined by this Court, each of the Melangs will likely consent to, approve,  
13 authorize, direct, ratify, conspire with and/or assist continuing and/or future new wrongful acts  
14 and omissions and unlawful conduct, including without limitation, acts and omissions and  
15 unlawful conduct that will likely take place in part in Seattle, King County, Washington; and  
16 e. each of the Melangs committed and/or engaged in wrongful acts and omissions and  
17 unlawful conduct alleged herein, including in Seattle, King County, Washington, and unless  
18 enjoined by this Court, each of the Melangs will likely continue to commit and/or engage in  
19 continuing and/or future new wrongful acts and omissions and unlawful conduct alleged herein,  
20 including without limitation in Seattle, King County, Washington, for the benefit of each of  
21 themselves and their marital community, The Matador and its other founding members, and one  
22 or more of the other defendants named herein.  
23 6. On information and belief, defendants Thomas ("Tom") Floyd Griffith and Elizabeth A.  
24 Griffith (together the "Griffiths") are husband and wife, constitute a marital community, and are  
25 residents of the State of Washington; and  
26

- 1 a. Tom Griffith is a founding and governing member of The Matador;
- 2 b. Tom Griffith consented to, approved, authorized, directed, ratified, conspired with, and/or
- 3 assisted one or more of the other defendants' respective wrongful acts and omissions and
- 4 unlawful conduct alleged herein, including without limitation, acts and omissions and unlawful
- 5 conduct that took place in Seattle, King County, Washington;
- 6 c. unless enjoined by this Court, Tom Griffith will likely consent to, approve, authorize,
- 7 direct, ratify, conspire with and/or assist continuing and/or future new wrongful acts and
- 8 omissions and unlawful conduct, including without limitation, acts and omissions and unlawful
- 9 conduct that will likely take place in part in Seattle, King County, Washington; and
- 10 d. Tom Griffith committed and/or engaged in wrongful acts and omissions and unlawful
- 11 conduct alleged herein, including without limitation in Seattle, King County, Washington, and
- 12 unless enjoined by this Court, he will commit and/or engage in continuing and/or future new
- 13 wrongful acts and omissions and unlawful conduct alleged herein, including without limitation in
- 14 Seattle, King County, Washington, for the benefit of himself, his spouse, and the Griffiths'
- 15 marital community, The Matador and its other founding members, and one or more of the other
- 16 defendants named herein.
- 17 7. On information and belief, defendant Shane D. Opper is a single man, a resident of Seattle,
- 18 King County, Washington, and the brother of defendant Nate Opper; and
- 19 a. either as an independent contractor or employee or both at different times alleged herein,
- 20 unlawfully provided services and assistance (including in Seattle, King County, Washington) to
- 21 The Matador in its planning, design, construction, operations and related business affairs,
- 22 including without limitation the first Seattle "The Matador" restaurant and later one or more of
- 23 the other "The Matador" restaurants;
- 24 b. consented to, approved, authorized, directed, ratified, conspired with, and/or assisted one
- 25 or more of the other defendants' respective wrongful acts and omissions and unlawful conduct
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1 alleged herein, including without limitation, acts and omissions and unlawful conduct that took  
2 place in Seattle, King County, Washington;

3 c. unless enjoined by this Court, will likely consent to, approve, authorize, direct, ratify,  
4 conspire with and/or assist continuing and/or future new wrongful acts and omissions and  
5 unlawful conduct, including without limitation, acts and omissions and unlawful conduct that  
6 will likely take place in part in Seattle, King County, Washington; and

7 d. committed and/or engaged in wrongful acts and omissions and unlawful conduct alleged  
8 herein, including without limitation in Seattle, King County, Washington, and unless enjoined by  
9 this Court, will commit and/or engage in continuing and/or future new wrongful acts and  
10 omissions and unlawful conduct alleged herein, including without limitation in Seattle, King  
11 County, Washington, for the benefit of himself, The Matador and its founding members, his  
12 brother Nate Opper and one or more of the other defendants named herein.

13 8. On information and belief, defendant Brian S. Okroy is a single man and a resident of  
14 Everett, Snohomish County, Washington; and

15 a. as an independent contractor to or employee of The Matador or both at different periods  
16 alleged herein, unlawfully provided services and assistance (including in Seattle, King County,  
17 Washington) to The Matador in its planning, design, construction, operations and related  
18 business affairs, including without limitation with respect to the start-up and operations for the  
19 first Seattle "The Matador" restaurant and later one or more of the other "The Matador"  
20 restaurants;

21 b. consented to, approved, authorized, directed, ratified, conspired with, and/or assisted one  
22 or more of the other defendants' respective wrongful acts and omissions and unlawful conduct  
23 alleged herein, including without limitation, acts and omissions and unlawful conduct that took  
24 place in Seattle, King County, Washington;

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1 c. unless enjoined by this Court, will likely consent to, approve, authorize, direct, ratify,  
2. conspire with and/or assist continuing and future wrongful acts and omissions and unlawful  
3 conduct, including without limitation, acts and omissions and unlawful conduct that will likely  
4 take place in part in Seattle, King County, Washington; and

5 d. committed and/or engaged in wrongful acts and omissions and unlawful conduct alleged  
6 herein, including in Seattle, King County, Washington, and unless enjoined by this Court, will  
7 likely commit and/or engage in continuing and/or future new wrongful acts and omissions and  
8 unlawful conduct alleged herein, including without limitation in Seattle, King County,  
9 Washington, for the benefit of himself, The Matador and its founding members, and other  
10 defendants named herein.

11 9. On information and belief, defendant Mark Appleton Stevens is a single man or a married  
12 man that is in the process of a marital dissolution and is a resident of Seattle, King County,  
13 Washington; and

14 a. as an independent contractor, unlawfully provided to The Matador services, goods and  
15 assistance (including without limitation in Seattle, King County, Washington) that was used  
16 unlawfully by The Matador, including without limitation the provision of services, goods and  
17 assistance to the first Seattle "The Matador" restaurant and later one or more of the other "The  
18 Matador" restaurants;

19 b. as an independent contractor to Peso's, asked for and was paid by Peso's in or about 2004  
20 Three Thousand Dollars (\$3,000) for the making of a chandelier that was never delivered to  
21 Peso's and that has not been returned to Peso's;

22 c. consented to, approved, authorized, directed, ratified, conspired with, and/or assisted one  
23 or more of the other defendants' respective wrongful acts and omissions and unlawful conduct  
24 alleged herein, including without limitation, acts and omissions and unlawful conduct that took  
25 place in Seattle, King County, Washington;

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COMPLAINT - 7

1 d. unless enjoined by this Court, will likely consent to, approve, authorize, direct, ratify,  
2 conspire with and/or assist continuing and/or future new wrongful acts and omissions and  
3 unlawful conduct, including without limitation, acts and omissions and unlawful conduct that  
4 will likely take place in part in Seattle, King County, Washington; and

5 e. committed and/or engaged in wrongful acts and omissions and unlawful conduct alleged  
6 herein, including without limitation in Seattle, King County, Washington, and unless enjoined by  
7 this Court, will likely commit or engage in continuing and/or future new wrongful acts and  
8 omissions and unlawful conduct alleged herein, including in Seattle, King County, Washington,  
9 for the benefit of himself, The Matador and its founding members, and one or more of the other  
10 defendants named herein.

11 10. On information and belief, defendant Anna Sher is a single woman and is a resident of  
12 Seattle, King County, Washington; and

13 a. as an independent contractor to or employee of defendant Stevens or as an independent  
14 contractor to The Matador, unlawfully provided to the Matador services, goods and assistance  
15 (including without limitation in Seattle, King County, Washington) that was used unlawfully by  
16 The Matador, including without limitation the provision of services, goods and assistance to the  
17 first Seattle "The Matador" restaurant and later one or more of the other "The Matador"  
18 restaurants;

19 b. consented to, approved, authorized, directed, ratified, conspired with, and/or assisted one  
20 or more of the other defendants' respective wrongful acts and omissions and unlawful conduct  
21 alleged herein, including without limitation, acts and omissions and unlawful conduct that took  
22 place in Seattle, King County, Washington;

23 c. unless enjoined by this Court, will likely consent to, approve, authorize, direct, ratify,  
24 conspire with and/or assist continuing and future wrongful acts and omissions and unlawful  
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1 conduct, including without limitation, acts and omissions and unlawful conduct that will likely  
2 take place in part in Seattle, King County, Washington; and

3 d. committed and/or engaged in wrongful acts and omissions and unlawful conduct alleged  
4 herein, including without limitation in Seattle, King County, Washington, and unless enjoined by  
5 this Court, will likely commit and/or engage in continuing and/or future new wrongful acts and  
6 omissions and unlawful conduct alleged herein, including in Seattle, King County, Washington,  
7 for the benefit of herself, The Matador and its founding members, and one or more of the other  
8 defendants named herein.

9 **B. JURISDICTION AND VENUE**

10 11. Each of the defendants' respective wrongful acts and omissions and unlawful conduct alleged  
11 herein include without limitation wrongful acts and omissions and unlawful conduct in Seattle,  
12 King County, Washington, as well as in other locations in Washington.

13 12. The above-entitled Court has personal jurisdiction over each of the parties named herein and  
14 also has subject matter jurisdiction over the causes of action stated herein.

15 **PART II - ADDITIONAL FACTUAL ALLEGATIONS**

16 **A. PESO'S TRADE DRESS, TRADE SECRETS, MENUS AND RECIPES**

17 13. In or around January 1999, Brian Hutmacher became a fifty percent shareholder of and a  
18 principal officer and operating executive for Peso's.

19 14. Prior to becoming an owner of Peso's, Brian Hutmacher had over ten years of various dining  
20 and restaurant and operational experiences, including extensive training and experience in fine  
21 dining and gourmet restaurants.

22 15. From about the beginning of 1999 through the date of this Complaint, Brian Hutmacher  
23 devoted substantial personal time and creative efforts into the development and implementation  
24 of a design, décor and appearance to evoke a distinctive "look and feel" and customer  
25 experience, in order to distinguish Peso's from other restaurants in Washington.

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1 16. During the aforesaid period, Brian Hutmacher's efforts and Peso's investments (in amounts  
2 in the hundreds of thousands of dollars) were made to create an inherently distinctive  
3 atmosphere, look and feel and trade dress for Peso's.

4 17. During the aforesaid period, Brian Hutmacher conceived, designed, researched, developed,  
5 caused to be implemented, modified and improved Peso's look and feel, including without  
6 limitation the incorporation in Peso's atmosphere, look and feel and trade dress nonfunctional  
7 ornamentation, designs, and decorative elements in sconces, lighting, chandeliers, wall surface  
8 treatments and colors, ceiling panels and colors, furnishings, Mexican "Day of the Dead" themes  
9 and the adoption of a matador graphic design and icon on the menu cover, Peso's business cards,  
10 business letterhead, and marketing, advertising and promotional materials and collateral.

11 18. During the aforesaid period, Peso's (under Brian Hutmacher's direction) spent substantial  
12 amounts during the course of the creation of the atmosphere, look and feel and trade dress  
13 conceived by Brian Hutmacher.

14 19. Also during the aforesaid period, Brian Hutmacher researched, developed, tested, and  
15 instructed and collaborated with Peso's kitchen staff and others to develop menu items and  
16 recipes for Peso's, including without limitation research, development, and testing of hundreds  
17 of preparations and recipes.

18 20. Brian Hutmacher selected about 100 to 125 recipes of the aforesaid hundreds of recipes and  
19 preparations to try out with the public.

20 21. The selected approximately 100 to 125 recipes were tested with the public to find out what  
21 sold and what did not and over the course of time and by 2003, Brian Hutmacher and Peso's had  
22 narrowed down the choices and improved them to create Peso's signature menu items and  
23 recipes.

24 22. During the aforesaid period, as an additional tool in testing the attractiveness of menu items  
25 and recipes, Brian Hutmacher used Peso's proprietary, confidential and trade secrets information,  
26

1 including without limitation data contained in Peso's computer business systems and database  
2 tracking sales of specific menu items.

3 23. Peso's computerized financial data provided sales information for each menu item that Brian  
4 Hutmacher would consider in his research and development and testing of menu items and  
5 recipes.

6 24. During the aforesaid period, Peso's and Brian Hutmacher also relied heavily on the  
7 responses, opinions, and feedback of Peso's employees and customers over time to discover  
8 which menu items and preparations were distinctive and well-received and which ones were not.

9 25. Recipes for menu items were and are kept in Peso's computer systems.

10 26. During the aforesaid period, Brian Hutmacher worked with a graphics designer Alaric Cox,  
11 in selection and composition of layout, text, font styles, look and feel, designs, and icons for  
12 Peso's printed menus, Peso's Web site pages and layouts, and marketing, advertising and  
13 promotional materials.

14 27. During the aforesaid period, Brian Hutmacher decided and caused Peso's to incorporate a  
15 matador design and logo for all of Peso's printed menus covers, business cards, business  
16 letterhead, and nearly all marketing, advertising and promotional materials and collateral used to  
17 represent Peso's in printed or published media.

18 28. On information and belief by early 2003 Brian Hutmacher and Peso's had successfully  
19 created a trade dress that was inherently distinctive (hereinafter the "Peso's Trade Dress").

20 29. On information and belief by early 2003, the Peso's Trade Dress was also becoming well  
21 known and highly regarded by customers and potential customers inside and outside of the City  
22 of Seattle.

23 30. On information and belief by early 2003 Brian Hutmacher and Peso's had created the Peso's  
24 Trade Dress to avoid confusion with and to distinguish from other restaurants or lounges located  
25 either inside or outside of the City of Seattle.

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1 31. On information and belief, the plaintiff's efforts and investments related to the Peso's Trade  
2 Dress and Peso's menu items and recipes resulted in Peso's experiencing average revenues that  
3 exceeded the average revenues for restaurants and lounges of similar size and kind from about  
4 1999 through 2002 and even substantially greater monthly revenue increases by about 2003  
5 through the first part of 2004.

6 32. On information and belief and as a result of plaintiffs' efforts and investments, Peso's Trade  
7 Dress and menu items and recipes resulted in favorable published restaurant reviews, customer  
8 "blogs," and consumer word of mouth referrals.

9 33. During the aforesaid period, in order for Peso's to invest monies into the creation of the  
10 Peso's Trade Dress and menu items and recipes, Brian Hutmacher took substantially less monies  
11 from Peso's than he could have otherwise taken, choosing instead to have such monies invested  
12 into Peso's Trade Dress, menu items, and recipes.

13 34. On information and belief by at least 2002, Peso's became a "destination" restaurant and not  
14 merely a restaurant that catered to locals within the near neighborhood.

15 35. On information and belief, Peso's customers were not only coming from the Puget Sound  
16 region and included professional athletes, business travelers, tourists and others that were visiting  
17 Seattle, Washington.

18 36. During the aforesaid period, Brian Hutmacher believed that the Peso's Trade Dress and  
19 Peso's menus and recipes could possibly be expanded as a restaurant concept in and outside the  
20 State of Washington.

21 37. On information and belief, by 2003 the Peso's Trade Dress and Peso's menu items and  
22 recipes had developed into very valuable intangible assets for Peso's that could be duplicated in  
23 potential new Peso's locations.

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1 **B. DEFENDANTS' KNOWLEDGE OF PESO'S TRADE DRESS AND/OR ACCESS TO**  
2 **TRADE SECRETS**

3 38. From about June 29, 1999 until about the early part of August 2000, Peso's employed  
4 defendant Nate Opper as a bartender.

5 39. From about August 7, 2000 until about January 1, 2002, Peso's employed Nate Opper as a  
6 general manager or manager.

7 40. While so employed as a general manager or manager, Nate Opper was given authorized  
8 access only while so employed to Peso's computer systems and records in order to perform some  
9 of his manager duties.

10 41. From about October 31, 2002 until about January 8, 2004, Peso's employed Nate Opper as a  
11 bartender.

12 42. Brian Hutmacher developed a personal friendship with Nate Opper.

13 43. Brian Hutmacher told Nate Opper on many occasions about Brian Hutmacher's vision of  
14 creating an inherently distinctive look and feel for Peso's, as well as distinctive menu items and  
15 associated recipes.

16 44. On information and belief by early 2003, Nate Opper knew or had reason to know of Brian  
17 Hutmacher's personal efforts and Peso's substantial economic investments in developing the  
18 Peso's Trade Dress and Peso's menu items and recipes.

19 45. On information and belief, Nate Opper knew or had reason to know that Peso's had and has  
20 proprietary and confidential information and trade secrets, including without limitation,  
21 computerized business records, recipes, methods and techniques relating to the research,  
22 development, testing, vendors, construction and implementation of the combination of elements  
23 for the Peso's Trade Dress, menu items and recipes.

24 46. On information and belief, Nate Opper knew or had reason to know that Peso's adapted a  
25 matador logo, icon and designs as part of Peso's Trade Dress and for representation of Peso's in  
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1 nearly all forms of printed material, including printed menu covers, business cards, business  
2 letterhead, and nearly all forms of marketing, advertising and promotional materials and  
3 collateral.

4 47. In many communications to Brian Hutmacher, Nate Opper stated that he recognized that  
5 Peso's and Brian Hutmacher had developed a valuable distinctive look and feel, menu items and  
6 recipes.

7 48. From in or about January 2003 through about November 2003, Peso's employed Nate  
8 Opper's brother defendant Shane Opper as an independent contractor to perform construction-  
9 related services at Peso's restaurant.

10 49. During Shane Opper's engagements as an independent contractor, Brian Hutmacher taught,  
11 trained and instructed Shane Opper on materials, techniques, and methods for creating the wall  
12 and ceiling treatments and color schemes and textures that are part of Peso's Trade Dress.

13 50. On information and belief, Nate Opper and Shane Opper lived together at times during the  
14 periods that Peso's employed or engaged one or both of them.

15 51. On information and belief, Shane Opper knew or had reason to know that Peso's had and has  
16 proprietary and confidential information and trade secrets, including without limitation,  
17 computerized business records, recipes, methods and techniques relating to the research,  
18 development, testing, vendors, construction and implementation of the combination of elements  
19 for the Peso's Trade Dress, menu items and recipes.

20 52. On information and belief, Shane Opper knew or had reason to know of Brian Hutmacher's  
21 personal efforts in creating Peso's Trade Dress and Peso's menu items and recipes and also had  
22 some understanding of the scope of Peso's financial investments in Peso's Trade Dress, menu  
23 items and recipes.

24 53. On information and belief, Shane Opper knew or had reason to know that Peso's adapted a  
25 matador logo, icon and designs as part of Peso's Trade Dress.

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1 54. During the periods from about June 29, 1999 through about November 2, 2002 and about  
2 April 28, 2003 through about January 8, 2004, Peso's employed defendant Brian Okroy as a  
3 bartender.

4 55. On information and belief, Brian Okroy knew or had reason to know that Peso's had and has  
5 proprietary and confidential information and trade secrets, including without limitation,  
6 computerized business records, recipes, methods and techniques relating to the research,  
7 development, testing, vendors, construction and implementation of the combination of elements  
8 for the Peso's Trade Dress, menu items and recipes.

9 56. On information and belief, Brian Okroy knew or had reason to know of Brian Hutmacher's  
10 personal efforts in creating Peso's Trade Dress and Peso's menu items and recipes, and also  
11 some understanding of the scope of Peso's financial investments in the Peso's Trade Dress,  
12 menu items and recipes.

13 57. On information and belief, Brian Okroy knew or had reason to know that Peso's adapted a  
14 matador logo, icon and designs as part of Peso's Trade Dress.

15 58. From about 1999 through 2003, Peso's (through Brian Hutmacher) engaged defendant Mark  
16 Stevens to make metal works incorporating decorative designs and features conceived and  
17 designed in whole or in part by Brian Hutmacher to create a singular atmosphere, look and feel,  
18 and trade dress for Peso's.

19 59. Peso's paid Mark Stevens for metal works that were incorporated into Peso's Trade Dress.

20 60. On information and belief, Mark Stevens knew or had reason to know that Peso's had and  
21 has proprietary and confidential information and trade secrets, including without limitation,  
22 computerized business records, recipes, methods and techniques relating to the research,  
23 development, testing, vendors, construction and implementation of the combination of elements  
24 for the Peso's Trade Dress, menu items and recipes.

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- 1 61. On information and belief, Mark Stevens knew or had reason to know of Brian Hutmacher's  
2 personal efforts in creating Peso's Trade Dress and Peso's menu items and recipes, and also  
3 some understanding of the scope of the related financial investments by Peso's.
- 4 62. On information and belief, Mark Stevens knew or had reason to know that Peso's adapted a  
5 matador logo, icon and designs as part of Peso's Trade Dress.
- 6 63. On information and belief prior to the opening of The Matador in about February 2004, Mark  
7 Stevens employed or engaged defendant Anna Sher either as an independent contractor or  
8 employee to help make metal works for The Matador that were used by The Matador to infringe  
9 upon the Peso's Trade Dress.
- 10 64. In discussions and meetings with Mark Stevens related to metal works to be delivered to  
11 Peso's, Brian Hutmacher provided conceptual designs, sketches, and concepts for the metal  
12 works that Mark Stevens made or which were planned to be made for Peso's.
- 13 65. On information and belief, defendants Mark Stevens and Anna Sher knew or had reason to  
14 know that metal works purchased by Peso's were incorporated into Peso's Trade Dress.
- 15 66. On information and belief, Anna Sher knew or had reason to know that Peso's had and has  
16 proprietary and confidential information and trade secrets, including without limitation,  
17 computerized business records, recipes, methods and techniques relating to the research,  
18 development, testing, vendors, construction and implementation of the combination of elements  
19 for the Peso's Trade Dress, menu items and recipes.
- 20 67. On information and belief, Anna Sher knew or had reason to know of Brian Hutmacher's  
21 personal efforts in creating Peso's Trade Dress and Peso's menu items and recipes, and also  
22 some understanding of the scope of the related financial investments by Peso's.
- 23 68. On information and belief, Anna Sher knew or had reason to know that Peso's adapted a  
24 matador logo, icon and designs as part of Peso's Trade Dress and in advertising, marketing and  
25 promotional materials and collateral.  
26



1 69. On information and belief during the periods described herein, Tom Griffith was an owner of  
2 entities that owned and operated "Floyd's Place" and "10 Mercer" restaurants and was an owner  
3 of the entity that owned and operated "TS McHughs" (believed to be sold to third parties in or  
4 about 2006).

5 70. On information and belief during the periods described herein, Tom Griffith was also an  
6 active operator of all three aforesaid restaurants.

7 71. 10 Mercer and T.S. McHugh's were and are within one block of Peso's restaurant in the  
8 lower Queen Anne neighborhood of Seattle, King County, Washington.

9 72. Floyd's Place is within two blocks of Peso's restaurant in the lower Queen Anne  
10 neighborhood of Seattle, King County, Washington.

11 73. On information and belief, defendants Nate Opper and Zak Melang had a business,  
12 employment and/or social relationship with Tom Griffith or one of his restaurants.

13 74. On information and belief, Tom Griffith was and is an investor in other restaurants in  
14 Washington.

15 75. On information and belief, Tom Griffith knew about Peso's Trade Dress and menu items.

16 76. On information and belief, Tom Griffith knew or had reason to know that Peso's had and has  
17 proprietary and confidential information and trade secrets, including without limitation,  
18 computerized business records, recipes, methods and techniques relating to the research,  
19 development, testing, vendors, construction and implementation of the combination of elements  
20 for the Peso's Trade Dress, menu items and recipes.

21 77. On information and belief, Tom Griffith knew or had reason to know of the scope of the  
22 financial investments by Peso's in the Peso's Trade Dress, menu items and recipes.

23 78. On information and belief, Tom Griffith knew or had reason to know that Peso's adapted a  
24 matador logo, icon and designs as part of Peso's Trade Dress.

1 79. On information and belief by 2003 each of the defendants Nate Opper, Zak Melang, Tom  
2 Griffith, Shane Opper, Brian Okroy, Mark Stevens and Anna Sher knew or had reason to know  
3 that Peso's Trade Dress was commercially valuable.

4 80. On information and belief by 2003, each of the defendants Nate Opper, Zak Melang, Tom  
5 Griffith (and through them The Matador), Shane Opper and Brian Okroy knew or had reason to  
6 know that Peso's menu items and recipes were commercially valuable.

7 **C. DEFENDANTS' INVOLVEMENT IN THE START UP, BUILD-OUT AND**  
8 **OPERATIONS OF THE MATADOR RESTAURANTS.**

9 81. In late 2002, defendants Nate Opper and Zak Melang told Brian Hutmacher that they were  
10 planning to start up their own "bar" in the Fremont neighborhood of Seattle, King County,  
11 Washington.

12 82. Nate Opper and Zak Melang told Brian Hutmacher that their "bar" would occupy the  
13 basement space located below "The Dubliner," a bar and restaurant located in the Fremont  
14 neighborhood of Seattle, King County, Washington.

15 83. Nate Opper and Zak Melang told Brian Hutmacher that they planned to name the bar "The  
16 Cellar."

17 84. In late 2002, Nate Opper consulted Brian Hutmacher's opinions and advice about the "The  
18 Cellar," showing to Brian Hutmacher a proposed menu, a floor plan, and sales and income  
19 estimates, and other materials, including some that Nate Opper said had been prepared by Zak  
20 Melang and an architect.

21 85. Nate Opper told Brian Hutmacher that "The Cellar" would be successful because both Nate  
22 Opper and Zak Melang were well known personalities in the restaurant and bar industry in  
23 Seattle and that therefore other members of the bar and restaurant industry would patronize and  
24 support their establishment.

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1 86. In several discussions, Brian Hutmacher expressed his opinion to Nate Opper had not shown  
2 to Brian that "The Cellar" had no distinctively identifiable theme, look and feel, or menu.

3 87. In such discussions, Brian Hutmacher suggested that Nate Opper develop a distinctive theme,  
4 look and feel and menu that the public would find attractive and that therefore their new venture  
5 would not be dependent upon their physical presence and personalities in order to be successful.

6 88. On information and belief in late 2002 or in early 2003, Nate Opper and Zak Melang decided  
7 not to enter into any lease for "The Cellar" for their contemplated location in the Fremont  
8 neighborhood of Seattle.

9 89. On information and belief in late 2002 and early 2003, Nate Opper and Zak Melang  
10 continued their search for commercial retail space where they could open their own bar.

11 90. In about early 2003, Nate Opper told Brian Hutmacher that Nate Opper and Zak Melang had  
12 come to the opinion that the latter's advice was sound and that they planned to develop a  
13 distinctive theme, look and feel, and menus for their bar.

14 91. In about early 2003, Nate Opper told Brian Hutmacher that Nate Opper and Zak Melang  
15 decided to abandon "The Cellar" concept.

16 92. In or about February 2003, Nate Opper informed Brian Hutmacher that Nate Opper and Zak  
17 Melang were considering the purchase and lease of the "Dao Thai" restaurant located in the  
18 Fremont neighborhood of Seattle, King County, Washington, and that they were in serious  
19 discussions with its owner and agent.

20 93. The Dao Thai restaurant was just down the street from where "The Cellar" was originally  
21 proposed to be located by Nate Opper and Zak Melang.

22 94. In or about February 2003, Nate Opper invited Brian Hutmacher to have lunch at the Dao  
23 Thai restaurant so that Brian Hutmacher could see the space and offer his advice on what could  
24 be constructed there and what possible concepts could fit the space.

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1 95. During the aforesaid lunch after looking at the space, Brian Hutmacher suggested that Nate  
2 Opper open a Texas-Southern barbecue themed restaurant, which Brian Hutmacher thenceforth  
3 referred to as "Opper Hall," since the space was long, narrow, and shaped like a hall.

4 96. On information and belief, both Brian Hutmacher and Nate Opper used "Opper Hall" as a  
5 temporary name until a better trade name for the proposed restaurant would be chosen.

6 97. At this lunch, Nate Opper and Brian Hutmacher discussed a decorative scheme, look and  
7 feel, and menu for a Texas-Southern barbecue themed restaurant that would fit the space.

8 98. Shortly after this lunch, Nate Opper stated to Brian Hutmacher that Nate Opper and Zak  
9 Melang would go ahead and develop the Texas-Southern barbecue themed concept.

10 99. In or about February of 2003, Brian Hutmacher helped draft for Nate Opper and Zak Melang  
11 a letter of intent to purchase the Dao Thai restaurant lease, which document on information and  
12 belief were signed by Nate Opper and Zak Melang and delivered to Dao Thai's owner and  
13 agents.

14 100. In or about February of 2003 Brian Hutmacher discussed with Nate Opper and Zak Melang a  
15 potential investment by Brian Hutmacher and a partnership interest in "Opper Hall," as then  
16 conceived to be a Texas-Southern barbecue themed restaurant and lounge.

17 101. As a result of and during such discussions, Brian Hutmacher devoted substantial time in 2003  
18 in developing a menu, ideas for a decorative scheme, sales and income projections and other  
19 planning for "Opper Hall" and also participated in lease discussions and met with potential third  
20 party contractors for creating the proposed "Opper Hall."

21 102. The proposed "Opper Hall" decorative scheme and menu conceived of and developed by  
22 Brian Hutmacher were not similar to Peso's Trade Dress and Peso's menu and could not have  
23 been confused in any way with Peso's Trade Dress and menu.

24 103. At all times, Brian Hutmacher informed Nate Opper and Zak Melang that "Opper Hall" must  
25 not be similar to or confusing with Peso's Trade Dress and Peso's menus and recipes.

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1 104. Brian Hutmacher did not want any potential confusion between "Opper Hall" and Peso's and  
2 did not want "Opper Hall" to copy the inherently distinctive trade dress that he had created and  
3 implemented for Peso's.

4 105. During the aforesaid discussions and work, Brian Hutmacher also repeatedly told Nate Opper  
5 and Zak Melang that any venture with them will be distinctly different from Peso's in all aspects.

6 106. On information and belief, partly as a result of advice and opinions expressed by Brian  
7 Hutmacher, Nate Opper and Zak Melang appeared to have an appreciation of the merits in  
8 having a distinctive look and feel and distinctive menus and recipes for "Opper Hall."

9 107. On information and belief, neither Nate Opper nor Zak Melang had expressed the same  
10 degree of appreciation of having any distinctive look and feel, menus and recipes, in their earlier  
11 discussions with Brian Hutmacher.

12 108. Brian Hutmacher considered any potential investment in "Opper Hall" as personal and not  
13 through Peso's.

14 109. Partly as a result of his interactions with Zak Melang during the aforesaid discussions, Brian  
15 Hutmacher ultimately decided not to invest in the "Opper Hall" venture.

16 110. Brian Hutmacher decided that he did not wish to have Zak Melang as a partner and told this  
17 to Nate Opper.

18 111. On information and belief, Nate Opper told Zak Melang what Brian Hutmacher explained  
19 and that he did not wish to have Zak Melang as a partner.

20 112. Brian Hutmacher continued however to try to be a mentor to Nate Opper who Brian  
21 Hutmacher considered still to be a personal friend and who also was an employee of Peso's.

22 113. Peso's, through Brian Hutmacher, continued to employ Nate Opper as a bartender to provide  
23 him with some income as Nate Opper worked on starting up a new restaurant.

24 114. Peso's would not have continued to employ Nate Opper in any capacity if Nate Opper at any  
25 time informed Brian Hutmacher that Nate Opper and Zak Melang would infringe upon the  
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1 *Peso's Trade Dress, copy Peso's menu items, use Peso's recipes, and take confidential files and*  
2 *information and solicit Peso's then employees to leave Peso's.*

3 *115. During 2003 and in providing help to Nate Opper, Brian Hutmacher recommended various*  
4 *vendors to Nate Opper for "Opper Hall," including without limitation National Business Systems*  
5 *for the computerized Point of Sale system that the new restaurant would likely need.*

6 *116. Sometime in 2003, Nate Opper informed Brian Hutmacher that Tom Griffith had decided to*  
7 *co-found the new restaurant with Nate Opper and Zak Melang.*

8 *117. When he told of Tom Griffith's involvement, Nate Opper also told Brian Hutmacher that*  
9 *Nate Opper, Zak Melang and Tom Griffith planned to develop the Texas-barbecue themed*  
10 *concept for "Opper Hall."*

11 *118. At no time throughout 2003 did Nate Opper, Zak Melang, or Tom Griffith tell Brian*  
12 *Hutmacher that their new venture would be opening a restaurant that would infringe upon the*  
13 *Peso's Trade Dress, copy Peso's menus, and unlawfully use Peso's recipes.*

14 *119. Before 2003 and at various times in 2003, Brian Hutmacher told Nate Opper that Peso's*  
15 *hoped at some time to expand with other restaurants on what Brian Hutmacher and Peso's were*  
16 *building for its look and feel (the Peso's Trade Dress) and Peso's menus and recipes, including*  
17 *for example and without limitation, potential expansion into Portland, Oregon.*

18 *120. In or around August or September 2003 Nate Opper informed Brian Hutmacher that the*  
19 *name of Nate Opper's and Zak Maleng's new bar and restaurant would be "The Matador."*

20 *121. At the same time Nate Opper represented to Brian Hutmacher that he and his partners (Zak*  
21 *Melang and Tom Griffith) had agreed on a new name but that the Texas-Southern barbecue*  
22 *themed restaurant was still going to be what they planned to open.*

23 *122. When told of the name change, Brian Hutmacher reminded Nate Opper that Peso's had*  
24 *adopted a matador as an icon and logo and in nearly all forms of Peso's printed and published*  
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1 materials, including without limitation menu covers, business cards, business letterhead, and  
2 nearly all advertising, marketing and promotional materials and collateral.

3 123. In response, Nate Opper reassured Brian Hutmacher that "The Matador" was just a name  
4 change for the Texas-Southern barbecue themed restaurant and that the new restaurant would  
5 otherwise be dissimilar to Peso's.

6 124. In about October of 2003, Nate Opper and Zak Maleng represented to Brian Hutmacher that  
7 they were going to abandon the Texas-barbecue theme restaurant and that instead they planned to  
8 create a "Mexican" themed restaurant and lounge.

9 125. At that time, Nate Opper and Zak Maleng also represented to Brian Hutmacher that "The  
10 Matador" would have its own unique décor, look and feel, and menus and that it would be  
11 impossible for Peso's customers or the general public to confuse Peso's with what they planned  
12 for "The Matador".

13 126. On information and belief, the Peso's Trade Dress and menus and recipes were inherently  
14 distinctive from all other Mexican-themed restaurants in Washington.

15 127. Brian Hutmacher had at various times expressed his opinion to Nate Opper and Zak Melang  
16 that Peso's was not "just" a Mexican restaurant and that its look and feel, menus and recipes  
17 were inherently distinctive.

18 128. In reliance on Nate Opper and Zak Melang's representations that "The Matador" could not  
19 be confused with Peso's menu and Peso's Trade Dress, Brian Hutmacher and Peso's did not  
20 object to the use of "The Matador" as a trade name for what Nate Opper and Zak Melang  
21 represented the new restaurant would be.

22 129. At no time prior to the opening of The Matador did Nate Opper or Zak Melang tell Brian  
23 Hutmacher that effectively they were going to make The Matador a "copy" of Peso's.

24 130. On information and belief, at the time that they told Brian Hutmacher of a decision that "The  
25 Matador" would have a Mexican-theme, Nate Opper and Zak Melang had to have already made  
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1 substantial plans for the designs and architectural plans, licenses and permits, construction and  
2 interior finishing, orders for and purchase of furnishings, fixtures, equipment, supplies and other  
3 goods, and related work for The Matador's first restaurant that later opened on or about February  
4 1, 2004.

5 131. On information and belief, Nate Opper and Zak Melang's representations that "The Matador"  
6 would be dissimilar to "Peso's" and would cause no confusion of any kind were false.

7 132. On information and belief, Nate Opper and Zak Melang knew that such representations were  
8 materially false when they made them to Brian Hutmacher.

9 133. On information and belief, Nate Opper and Zak Melang omitted material facts that made  
10 their representations to Brian Hutmacher misleading and false.

11 134. On information and belief, Nate Opper and Zak Melang intentionally did not disclose such  
12 material facts.

13 135. On information and belief, Nate Opper and Zak Melang intended that Brian Hutmacher and  
14 Peso's would rely on their misrepresentations and omissions.

15 136. Brian Hutmacher and Peso's reasonably relied on Nate Opper's and Zak Melang's  
16 representations and omissions.

17 137. On information and belief, Nate Opper and Zak Melang knew or should have known that  
18 Peso's, Brian Hutmacher and his then 50% co-owner Allen Hutmacher (Brian Hutmacher's  
19 brother) would have terminated Nate Opper's employment but for such misrepresentations and  
20 omissions.

21 138. On information and belief, Nate Opper and Zak Melang wanted Nate Opper to keep his  
22 position as a bartender at Peso's in part so that he would have continued access (whether  
23 authorized or not) to Peso's confidential and proprietary information and trade secrets and could  
24 take additional actions so that The Matador could infringe upon Peso's Trade Dress, copy Peso's  
25 menus, and unlawfully use Peso's recipes.

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1 139. On information and belief, each of Nate Opper's and Zak Melang's respective acts and  
2 omissions and conduct in 2003 through the opening of The Matador were done as an agent for  
3 and to benefit The Matador, themselves and the founders.

4 140. Throughout the remainder of Nate Opper's employment by Peso's until he resigned on or  
5 about January 8, 2004, Brian Hutmacher and Peso's reasonably relied on Nate Opper's and Zak  
6 Melang's respective representations and omissions.

7 141. On information and belief, Nate Opper, Zak Melang, and Tom Griffith intended that Brian  
8 Hutmacher would rely on Nate Opper's representations and omissions.

9 142. Brian Hutmacher and Peso's further expected that Nate Opper would observe his fiduciary  
10 duties to Peso's and its two owners and also that Nate Opper was an honest friend to Brian  
11 Hutmacher.

12 143. On information and belief throughout 2003 and until "The Matador" opened in or about  
13 February 1, 2004, Brian Hutmacher, Allen Hutmacher and Peso's did not know of the falsity of  
14 Nate Opper's and Zak Melang's respective misrepresentations and omissions nor of the related  
15 acts and omissions and conduct of other defendants and third parties that were enlisted to help  
16 The Matador.

17 144. On information and belief, The Matador and its founders, as well as other defendants, did not  
18 inform Brian Hutmacher, Allen Hutmacher and Peso's about what The Matador would be so that  
19 plaintiffs could not take any actions to stop them before The Matador opened its first restaurant in  
20 or about February 1, 2004.

21 **D. DEFENDANTS' MISAPPROPRIATION OF TRADE SECRETS AND**  
22 **INFRINGEMENT OF TRADE DRESS.**

23 145. The Matador opened its first restaurant in or about February 1, 2004, in the Ballard  
24 neighborhood of Seattle, King County, Washington.

1 146. On information and belief (and unknown to the plaintiffs until later in 2004), during the  
2 planning for the first "The Matador" restaurant, Nate Opper had without authority copied or  
3 obtained one or more electronic copies of Peso's menu templates (including without limitation,  
4 text, fonts, style and layout) and used such copy or copies to create The Matador menus.

5 147. On information and belief (and unknown to plaintiffs until about mid-2006) and prior to or  
6 about the time that its computer systems were being set up for opening, The Matador had in its  
7 computers electronic data files and copies of Peso's proprietary and confidential information and  
8 trade secrets that were in Peso's computers, including without limitation, sales information for  
9 Peso's menu items.

10 148. To plaintiffs' respective knowledge and belief, only Nate Opper of the defendants had at one  
11 period of his employment been given any authorized access to such records, but such  
12 authorization expired when Peso's terminated Nate Opper's employment as a manager on or  
13 about January 1, 2002.

14 149. On information and belief, The Matador and its founders copied Peso's menu items for use  
15 based on proprietary and confidential information and trade secrets about Peso's top selling  
16 menu items.

17 150. On information and belief and unknown to the plaintiffs until after The Matador opened in  
18 2004, The Matador unlawfully obtained information about the actual recipes of Peso's menu  
19 items from one or more of Peso's employees that were copied as menu items for The Matador's  
20 menus and/or from the menu documents in Peso's computer systems.

21 151. On information and belief, Nate Opper hired Peso's designer Alaric Cox to duplicate the look  
22 and feel, names and descriptions of the menu items, font, pricing, and layout of Peso's menus.

23 152. On information and belief, Nate Opper falsely told Alaric Cox that Brian Hutmacher and  
24 Peso's approved such duplication.

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1 153. Plaintiffs had never authorized, approved, or otherwise communicated any such consent to  
2 Nate Opper.

3 154. In or about mid-January 2004, plaintiffs through Brian Hutmacher had expressly forbidden  
4 Nate Opper either to duplicate Peso's menu or to use Peso's recipes.

5 155. Plaintiffs did not know until after The Matador opened its first restaurant that Nate Opper  
6 had used Alaric Cox to adapt copies of Peso's menus for use at The Matador.

7 156. On information and belief, Nate Opper told Alaric Cox that Brian Hutmacher had approved  
8 such use of Peso's menus.

9 157. Any such representation by Nate Opper was false.

10 158. On information and belief (and unknown to plaintiffs until after the first "The Matador"  
11 restaurant first opened), The Matador engaged defendants Mark Stevens and Anna Sher to make  
12 metal works like Peso's metal works so that The Matador could incorporate them into a décor  
13 that would infringe upon Peso's Trade Dress.

14 159. On information and belief, Mark Stevens and Anna Sher knew that The Matador intended to  
15 use such metal works to "copy" Peso's.

16 160. On information and belief (and unknown to plaintiffs until after the first "The Matador"  
17 restaurant opened), The Matador engaged defendant Shane Opper to help create the wall and  
18 ceiling treatments so that The Matador could infringe upon Peso's Trade Dress.

19 161. On information and belief, defendant Shane Opper knew that The Matador intended to use  
20 his knowledge of Peso's wall and ceiling treatments in order to "copy" Peso's.

21 162. On information and belief (and unknown to plaintiffs until after the first "The Matador"  
22 restaurant opened), The Matador and its founders Nate Opper, Zak Melang, and Tom Griffith,  
23 jointly and severally and with each founder's consent, authorization, approval, direction and  
24 ratification) committed unlawful acts and omissions and conduct to infringe upon Peso's Trade  
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1 Dress, to copy Peso's menus and to misappropriate Peso's recipes for benefit of The Matador  
2 and its owners, among others.

3 163. In or about the middle of January 2004 and for the first time, Mark Stevens said to Brian  
4 Hutmacher that The Matador looks 'just like' Peso's and further said "it's all Peso's in there".

5 164. Brian Hutmacher received these statements in disbelief.

6 165. Until the aforesaid statement by Mark Stevens, no one had expressed any such opinion to  
7 plaintiffs.

8 166. In or about the middle of January 2004, Nate Opper showed Brian Hutmacher a document  
9 with what Nate Opper said was a menu that The Matador was considering using.

10 167. The menu shown to Brian Hutmacher did not on that occasion have the layout, font, style or  
11 other characteristics of Peso's menus, except that some of The Matador menu items and related  
12 texts looked as if they were literal copies of the text in Peso's menus.

13 168. The menu shown to Brian Hutmacher was not any of the Peso's menus that Nate Opper  
14 requested Alaric Cox to help adapt for The Matador for the menus that The Matador actually  
15 used at its opening and later.

16 169. On reviewing the text in the menu document, Brian Hutmacher told Nate Opper that The  
17 Matador could not copy Peso's menus.

18 170. In response, Nate Opper suggested that he would be creating a new menu.

19 171. Brian Hutmacher visited The Matador's first restaurant at its public opening in or about  
20 February 1, 2004.

21 172. On such date, based on what he saw and tasted, Brian Hutmacher believed that The Matador  
22 had in fact infringed upon Peso's Trade Dress, copied Peso's menus and used Peso's recipes.

23 173. Later in February 2004, Peso's through a public relations advisor released a press release to  
24 try to mitigate against what The Matador had done.

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1 174. On information and belief and based on comments by customers, persons in the trade,  
2 reviews and other sources, plaintiffs received much evidence in early 2004 of actual public  
3 confusion between Peso's and The Matador as to their respective ownership, the trade dress, and  
4 their menus and recipes.

5 175. During 2004 and 2005, Brian Hutmacher made numerous unsuccessful demands that The  
6 Matador cease infringing upon Peso's Trade Dress, copying Peso's menu items and  
7 misappropriating Peso's recipes.

8 176. Most of Brian Hutmacher's demands were directly communicated to Zak Melang, but such  
9 demands were rejected.

10 177. On information and belief after The Matador opened its first restaurant in 2004, Allen  
11 Hutmacher told Nate Opper that what he and his partners did was wrong and that The Matador  
12 should not be copying Peso's.

13 178. On information and belief during 2004, Allen Hutmacher made numerous demands to Nate  
14 that the Matador cease

15 179. On information and belief after The Matador opened its first restaurant in 2004, Nate Opper  
16 admitted to Allen Hutmacher that Nate Opper copied Peso's menus and recipes for use at The  
17 Matador.

18 180. On information and belief, Zak Melang and Nate Opper informed their co-founders that such  
19 demands had been made by Brian Hutmacher or Allen Hutmacher.

20 181. Brian Hutmacher's demands were made to Zak Melang because Nate Opper and Brian  
21 Hutmacher were no longer talking to each other.

22 182. During 2004 and 2005, plaintiffs through Brian Hutmacher also made numerous demands to  
23 Mark Stevens and Anna Sher that they stop making metal works for The Matador that were  
24 being used by The Matador to infringe upon Peso's Trade Dress.

1 183. In 2004, based on responses that were then made by Mark Stevens and Anna Sher to the  
2 aforesaid demands, plaintiffs were led to believe that Mark Stevens and Anna Sher would stop  
3 helping The Matador infringe upon Peso's Trade Dress and instead create metal works that were  
4 of distinctively different designs for The Matador that would not be confused with metal works  
5 used for Peso's Trade Dress.

6 184. In or about October 2004, Peso's paid Mark Stevens \$ 3,000.00 as the down payment to  
7 make another chandelier to incorporate into Peso's Trade Dress.

8 185. In late 2005, Brian Hutmacher discovered that Mark Stevens and Anna Sher were continuing  
9 to make new metal works for The Matador's continuing infringement of Peso's Trade Dress in  
10 new "The Matador" restaurants.

11 186. In response to Brian Hutmacher's disapproval, protests, and demands to stop when he  
12 discovered that contrary to previous representations by the metal workers, Mark Stevens said that  
13 he agreed with opinions expressed by other third parties that Peso's should sue The Matador for  
14 copying but that in the meantime, he and Anna Sher planned to continue supplying The Matador  
15 with such metal works.

16 187. At one of such discussions between Brian Hutmacher and Mark Stevens, Anna Sher  
17 informed Brian Hutmacher that she hoped Peso's would not sue the Matador.

18 188. At the same time, Anna Sher told Brian Hutmacher that she recognized that The Matador had  
19 "copied" Peso's look and feel and Peso's menus.

20 189. On information and belief such statements by Mark Stevens and Anna Sher, among others,  
21 that they had made to Brian Hutmacher indicate that they in fact knew or had sufficient reason to  
22 know that The Matador was using their metal works to infringe upon Peso's Trade Dress.

23 190. On information and belief, Mark Stevens and Anna Sher made a decision to profit from The  
24 Matador's infringement and dilution of the Peso's Trade Dress by supplying the metal work  
25 elements.

26

COMPLAINT - 30

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1 191. On information and belief, defendants Shane Oppen and Brian Okroy are independent  
2 contractors to or employees of The Matador and have assisted and continue to assist The  
3 Matador in infringing upon Peso's Trade Dress.

4 192. On information and belief, Shane Oppen and Brian Okroy made a decision to profit from  
5 such infringement and from continuing infringements by The Matador.

6 193. On information and belief and prior to its opening in 2004 and later, The Matador obtained  
7 help from and also later employed then current kitchen employees of Peso's to implement the  
8 recipes for The Matador menu items copied from Peso's.

9 194. On information and belief, a second "The Matador" restaurant opened in 2005 in the West  
10 Seattle Junction neighborhood of Seattle, King County, Washington.

11 195. On information and belief, a third "The Matador" restaurant opened in or about late 2006 in  
12 Tacoma, Pierce County, Washington.

13 196. On information and belief, all The Matador restaurants infringe upon the Peso's Trade Dress  
14 and copy Peso's menu items and unlawfully use Peso's recipes.

15 197. On information and belief, Mark Stevens and Anna Sher made and continue to make metal  
16 works for all the restaurants opened by The Matador that are incorporated by The Matador to  
17 infringe upon the Peso's Trade Dress.

18 198. As of the date of this Complaint and on information and belief, Mark Stevens has neither  
19 completed work on the chandelier paid for by Peso's nor returned to Peso's the \$ 3,000.00 paid  
20 to him to start work on the chandelier.

21 **D. INFRINGEMENT AND DILUTION OF TRADE DRESS AND ACTUAL AND**  
22 **POTENTIAL CONFUSION.**

23 199. The Peso's Trade Dress is inherently distinctive and has commercial value.  
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1 200.The Matador and its founding defendant members, with the assistance and participation of  
2 the other individual defendants, have infringed upon Peso's Trade Dress and on information and  
3 belief, intend to continue to infringe upon Peso's Trade Dress.

4 201.Since The Matador opened its first restaurant and to the date of this Complaint, on  
5 information and belief, there have also been and continue to exist potential and actual confusion  
6 about the relationship between Peso's and The Matador, including without limitation, ownership,  
7 trade dress, menus and recipes, among consumers, restaurant reviewers, vendors, others in the  
8 restaurant business, and the public.

9 202.Since The Matador opened its first restaurant and to the date of this Complaint, the inherent  
10 distinctiveness of the Peso's Trade Dress has been injured by The Matador's infringement of the  
11 Peso's Trade Dress.

12 203.On information and belief since The Matador began its operations, customers who had not  
13 previously patronized Peso's but who had previously patronized only the Matador have asked  
14 personnel at Peso's whether Peso's is a "copy" of The Matador, where such customers  
15 apparently had visited The Matador first.

16 204.On information and belief and after The Matador began its operations, customers, vendors,  
17 professionals in the restaurant industry, and members of the public have asked Peso's staff  
18 whether The Matador and Peso's shared the same ownership.

19 205.On information and belief, such aforesaid inquiries show that such persons had erroneous  
20 beliefs or were confused about the ownership and other aspects of "The Matador" restaurants  
21 and Peso's, including without limitation Peso's Trade Dress and Peso's menus and recipes.

22 206.On information belief and after The Matador began its operations, customers, vendors,  
23 restaurant professionals, and members of the public have asked Brian Hutmacher how The  
24 Matador was doing.

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1 207. On information and belief, these inquiries also show that such persons had erroneous beliefs  
2 or were confused as to the ownership and other aspects of "The Matador" restaurants and  
3 Peso's, including without limitation Peso's Trade Dress and Peso's menus and recipes.

4 208. Since the Matador began its operations, customers and vendors have asked Brian Hutmacher  
5 whether the next restaurant that he might open would be named "The Matador" or "Peso's."

6 209. On information and belief, these inquiries also show that such persons had erroneous beliefs  
7 or were confused as to the ownership and other aspects of "The Matador" restaurants and  
8 Peso's, including without limitation Peso's Trade Dress and Peso's menus and recipes.

9 210. On information and belief and since the Matador began its operations, customers, vendors,  
10 and professionals in the restaurant industry have expressed their opinions to Brian Hutmacher  
11 and/or Peso's staff, that The Matador and Peso's offer the same look and feel (trade dress) and  
12 nearly identical menus.

13 211. On information and belief, these opinions also show that such persons had erroneous beliefs  
14 or were confused as to the ownership and other aspects of "The Matador" restaurants and  
15 Peso's, including without limitation Peso's Trade Dress and Peso's menus and recipes.

16 212. On information and belief and after the Matador opened its first restaurant in 2004 in the  
17 Ballard neighborhood of Seattle, King County, Washington, customers have made comments to  
18 Peso's staff and/or directly to Brian Hutmacher that they were thankful that Peso's opened "The  
19 Matador" restaurant in the Ballard thereby saving these particular customers' travel time to  
20 another "Peso's" restaurant.

21 213. On information and belief, these comments also show that such customers had erroneous  
22 beliefs or were confused as to the ownership and other aspects of "The Matador" Ballard  
23 restaurant and Peso's, including without limitation Peso's Trade Dress and Peso's menus and  
24 recipes.

1 214. On information and belief and after the Matador opened its second restaurant in 2005 in the  
2 West Seattle Junction neighborhood of Seattle, King County, Washington, customers have made  
3 comments to Peso's staff and/or directly to Brian Hutmacher that they were thankful that Peso's  
4 opened "The Matador" restaurant in the West Seattle Junction neighborhood thereby saving  
5 these particular customers' travel time to another "Peso's" restaurant.

6 215. On information and belief, these comments also show that such customers had erroneous  
7 beliefs or were confused as to the ownership and other aspects of "The Matador" West Seattle  
8 Junction restaurant and Peso's, including without limitation Peso's Trade Dress and Peso's  
9 menus and recipes.

10 216. On information and belief and after The Matador began its operations, customers and  
11 vendors have inquired of Peso's staff and/or Brian Hutmacher whether certain Peso's employees  
12 were allowed to work at The Matador and Peso's locations or if they were allowed to work at  
13 only one location.

14 217. On information and belief, these inquiries also show that such persons had erroneous beliefs  
15 or were confused as to the ownership and other aspects of "The Matador" West Seattle Junction  
16 restaurant and Peso's, including without limitation Peso's Trade Dress and Peso's menus and  
17 recipes.

18 218. On information and belief and after The Matador began its operations, callers to Peso's have  
19 asked Peso's staff for the phone numbers, addresses and directions to Peso's other "The  
20 Matador" restaurants.

21 219. On information and belief, these calls also show that such persons had erroneous beliefs or  
22 were confused as to the ownership and other aspects of "The Matador" restaurants, first as to the  
23 Ballard location and then later as to both the Ballard and West Seattle locations, including  
24 without limitation Peso's Trade Dress and Peso's menus and recipes.

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1 220. On several different occasions, Brian Hutmacher received information from persons  
2 acquainted with Nate Opper, Shane Opper and/or Zak Melang that they and others associated  
3 with The Matador at times refer to the first "The Matador" restaurant in the Ballard  
4 neighborhood of Seattle as "Peso's West," "Peso's Ballard," "Mini-Peso's," "Peso's Two" or  
5 "Peso's Dos."

6 221. On several different occasions, Brian Hutmacher received information from persons  
7 acquainted with Nate Opper, Shane Opper and/or Zak Melang that they at times refer to the  
8 second "The Matador" restaurant in the West Seattle Junction neighborhood of Seattle as another  
9 "Peso's West", "Peso's West Seattle", "Mini Peso's" or as "Treso's."

10 222. Three of the sources of the information described in the preceding two paragraphs are  
11 defendants Brian Okroy, Mark Stevens, and Anna Sher.

12 223. On information and belief and by 2003, the Peso's Trade Dress had become and still is a  
13 famous mark under Washington statutes and common laws.

14 **E. FALSE ADVERTISING BY THE MATADOR AND ITS FOUNDERS.**

15 224. On information and belief, The Matador and its founders through The Matador's Website  
16 published and continues to publish false and misleading information and engages in false  
17 advertising.

18 225. For example only and not by way of limitation, The Matador at its Web site falsely and  
19 misleadingly states that

20 "Much of the inspiration for The Matador restaurants comes from his [Zak  
21 Melang's] travels in Mexico and Spain. ... Zak is responsible in large part for  
22 the décor of The Matador Restaurant, along with manager Shane Opper."  
23 [Nate Opper] "managed Peso's Mexican Restaurant for four years prior to  
24 opening The Matador."

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1 "In addition to operational duties, Nate [Opper] is part of the genius behind the  
2 food of The Matador."

3 226. These aforesaid statements and other published statements are misleading and falsely imply  
4 that the defendants Zak Melang, Nate Opper and Shane Opper independently created décor, look  
5 and feel, themes, and other elements of trade dress, menus and recipes that were in fact the result  
6 of Brian Hutmacher's efforts and Peso's investments.

7 227. On information and belief, The Matador through its founders, employees and agents have  
8 fostered consumer, vendor and public confusion about whether Peso's may be a "copy" of The  
9 Matador or whether Peso's and The Matador had or have the same ownership.

10 228. On information and belief, The Matador through one or more of its founders or employees  
11 have told customers and vendors that The Matador's relationship with Peso's is cooperative and  
12 that Peso's approved of The Matador's duplication of Peso's.

13 229. On information and belief and after The Matador opened its first restaurant, The Matador  
14 through its founders, managers, employees, agents and independent contractors continued to add  
15 additional decorative features and elements so that its look and feel would be less distinguishable  
16 from the Peso's Trade Dress.

17 230. On information and belief, these additional acts and conduct since on or about February 1,  
18 2004 were continuing and new acts of infringement of Peso's Trade Dress.

19 231. On information and belief and after The Matador first began operations, The Matador  
20 changed menu titles and descriptions to mirror changes that Peso's made after The Matador  
21 opened.

22 232. Many of such aforesaid changes were made by Peso's in part in order to mitigate against the  
23 various defendants' wrongful acts and omissions and unlawful conduct.

1 **F. DILUTION AND DAMAGES.**

2 233. On information and belief, defendants through their respective wrongful acts and omissions  
3 and unlawful conduct knowingly, intentionally, recklessly, negligently and/or willfully caused in  
4 whole or in part The Matador to infringe upon and dilute Peso's Trade Dress.

5 234. On information and belief, the defendants' respective wrongful acts and omissions and  
6 unlawful conduct causes irreparable harm to the goodwill of the Peso's, diluted and damaged the  
7 Peso's Trade Dress, and damaged both plaintiffs.

8 235. On information and belief, such dilution, harm and damages are continuing.

9 236. On information and belief, the defendants' wrongful and unlawful conduct causes actual  
10 and/or potential confusion about the relationship between Peso's and The Matador and causes  
11 and will cause harm to each of plaintiff's respective business and property interests.

12 237. On information and belief, defendants' respective wrongful acts and omissions and unlawful  
13 conduct have caused damages to each of plaintiffs and will cause future damages to the plaintiffs  
14 in amounts to be determined at trial of this action.

15 **PART III – CAUSES OF ACTION**

16 **FIRST CAUSE OF ACTION**

17 ***Infringement of Peso's Trade Dress***

18 ***(Peso's against all defendants)***

19  
20 238. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 237 above.

21 239. The Peso's Trade Dress is not a registered mark.

22 240. The Peso's Trade Dress is a "famous mark" under Washington laws.

23 241. On information and belief, the defendants' respective wrongful acts and omissions and  
24 unlawful conduct caused dilution of Peso's Trade Dress.

1 242. On information and belief, each defendant willfully intended that their wrongful acts and  
2 omissions and wrongful conduct would allow, support, assist, result in and otherwise cause The  
3 Matador to trade on Peso's reputation and/or to cause dilution of Peso's Trade Dress.

4 243. On information and belief, each defendant willfully intended that such defendant's respective  
5 wrongful acts and omissions and wrongful conduct would allow, support, assist, result in and/or  
6 otherwise cause The Matador to infringe upon Peso's Trade Dress.

7 244. On information and belief, the defendants are jointly and severally liable to Peso's for  
8 diluting and infringing upon Peso's Trade Dress.

9 245. On information and belief, the defendants are jointly and severally liable to Peso's for  
10 damages caused by their dilution and infringement of Peso's Trade Dress.

11 246. On information and belief and pursuant to RCW Chapter 19.77 and under the common law,  
12 Peso's is entitled to injunctive and other equitable relief against all the defendants and any third  
13 parties affiliated with, controlled by, or otherwise acting in concert with or otherwise assisting  
14 them, including without limitation a permanent injunction against any continuing or future trade  
15 dress infringement and keeping or having the benefits of any trade dress infringement.

16 247. Peso's is entitled to recover its attorney fees and costs from the defendants.

17 **SECOND CAUSE OF ACTION**

18 ***Misrepresentation/Fraud***

19  
20 ***(Plaintiffs against The Matador and Its Defendant Founders)***

21 248. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 247 above.

22 249. On information and belief, defendants Nate Opper and Zak Melang, as agents for and with  
23 the knowledge by and/or notice to all the founders of The Matador and for the benefit of and as  
24 agents for The Matador, made misrepresentations and omitted material facts as here before  
25 alleged.

- 1 250. On information and belief, said representations and omissions were of material facts.
- 2 251. On information and belief, said representations and omissions were false.
- 3 252. On information and belief, these defendants knew that they were false or were reckless with  
4 the truth or falsity of the representations and omissions.
- 5 253. On information and belief, these defendants intended that such representations and omissions  
6 would cause plaintiffs to rely on them.
- 7 254. Plaintiffs were ignorant of their falsity.
- 8 255. Plaintiffs relied upon the aforesaid representations and omissions.
- 9 256. Plaintiffs had a right to rely upon the aforesaid representations and omissions.
- 10 257. Plaintiffs were damaged by the aforesaid representations and omissions.
- 11 258. The defendants are jointly and severally liable to each of Peso's and Brian Hutmacher for  
12 damages.
- 13 259. Plaintiffs are entitled to injunctive and other equitable relief against each of the defendants.

14 **THIRD CAUSE OF ACTION**

15 ***Misappropriation of Trade Secrets***

16  
17 ***(Peso's against Nate Opper, Shane Opper, Brian Okroy, The Matador and Other Founders)***

- 18 260. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 259 above.
- 19 261. On information and belief, the defendants Nate Opper, Shane Opper, and Brian Okroy  
20 misappropriated and/or consented to, approved, directed, authorized, and/or ratified the  
21 misappropriation of Peso's confidential and proprietary information and trade secrets.
- 22 262. On information and belief, these defendants' respective misappropriations of trade secrets  
23 were made for the benefit of The Matador and its founders and for each of themselves.
- 24 263. The aforesaid misappropriations caused harm to Peso's and damaged Peso's in amounts to be  
25 proven at trial.

26

1 264. On information and belief, these defendants' individual, joint and/or collective wrongful acts  
2 and omissions and unlawful conduct constitute misappropriation of trade secrets in violation of  
3 RCW 19.108 et seq.

4 265. On information and belief, these defendants' wrongful acts and omissions and unlawful  
5 conduct constitute willful and malicious misappropriation of trade secrets.

6 266. On information and belief, these defendants are jointly and severally liable to Peso's for its  
7 damages.

8 267. Peso's is entitled to recover its damages and its reasonable attorney fees and costs, plus  
9 exemplary damages under RCW 19.108.030, from these defendants.

10 268. Peso's is entitled to injunctive and other equitable relief against each of the aforesaid  
11 defendants and any other defendants and third parties affiliated with, controlled by, or otherwise  
12 acting in concert with them, including without limitation a permanent injunction against any  
13 continuing or future misappropriation or unlawful use of Peso's trade secrets or keeping or  
14 having any benefits from any such misappropriation or unlawful use.

15 **FOURTH CAUSE OF ACTION**

16 *Tortious Interference*

17  
18 *(Peso's against Nate Opper, The Matador and its Other Founders)*

19 269. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 268 above.

20 270. On information and belief, defendant Nate Opper knew or had reason to know that Peso's  
21 employees owed fiduciary duties and had confidentiality obligations to Peso's.

22 271. On information and belief, Nate Opper enlisted the assistance of one or more employees  
23 and/or vendors of Peso's to provide Peso's proprietary and confidential information and trade  
24 secrets, including without limitation, financial and other data in Peso's computer systems and  
25 recipes for Peso's menus, to use for the benefit of The Matador and its defendant founders.  
26



1 272. On information and belief, the other defendant founders Zak Melang and Tom Griffith knew  
2 or had reason to know that The Matador had obtained such trade secrets from Peso's through  
3 Peso's employees and/or vendors.

4 273. On information and belief, the aforesaid defendants are liable to Peso's for interfering with  
5 the employment obligations of Peso's employees to Peso's,

6 274. On information and belief, such tortious interference damaged Peso's in amounts to be  
7 proven at trial.

8 275. On information and belief, these defendants are jointly and severally liable to Peso's for its  
9 damages.

10 276. Peso's is entitled to injunctive and other equitable relief against each of the aforesaid  
11 defendants and any other defendants and third parties affiliated with, controlled by, or otherwise  
12 acting in concert with them, including without limitation a permanent injunction against any  
13 continuing or future tortious interference and keeping or having the benefits of such tortious  
14 interference.

15 **FIFTH CAUSE OF ACTION**

16 ***Breaches of fiduciary duties***

17 ***(Peso's Against Former Employees Nate Opper and Brian Okroy)***

18 277. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 276 above.

19 278. Each of defendants Nate Opper and Brian Okroy owed fiduciary duties to Peso's as their  
20 employer.

21 279. Each of the aforesaid defendants breached their fiduciary duties to Peso's.

22 280. Their respective breaches caused harm to the Peso's Trade Dress and damaged Peso's in  
23 amounts to be proven at trial.  
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1 281. On information and belief, these defendants are jointly and severally liable to Peso's for its  
2 damages.

3 282. On information and belief, these defendants continue to be employed by The Matador as  
4 employees or independent contractors.

5 283. Peso's is entitled to injunctive and other equitable relief against each of the aforesaid  
6 defendants and any other defendants and third parties affiliated with, controlled by, or otherwise  
7 acting in concert with them, including without limitation a permanent injunction against any  
8 continuing or future breaches of fiduciary duties and keeping or having the benefits of such  
9 breaches.

10 **SIXTH CAUSE OF ACTION**

11 ***Common Law Unfair Competition***

12 ***(Plaintiffs against all Defendants)***

13 284. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 283 above.

14 285. The unlawful acts and omissions and conduct of each of the defendants constitute common  
15 law unfair competition.

16 286. Such unfair competition has damaged each of the plaintiffs in amounts to be proven at trial.

17 287. Each plaintiff is entitled to recover its damages from defendants.

18 288. Each plaintiff is entitled to equitable relief, including without limitation, injunctive relief.

19 **SEVENTH CAUSE OF ACTION**

20 ***Breach of Contract***

21 ***(Peso's against Mark Stevens)***

22 289. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 288 above.

23 290. Mark Stevens accepted \$ 3,000.00 from Peso's in 2004 for a chandelier.

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1 291. On information and belief, Mark Stevens had performed little work for such order.  
2 292. Mark Stevens owes a refund to Peso's of the \$ 3,000.00.  
3 293. Peso's is entitled to recover \$ 3,000.00 from Mark Stevens, plus prejudgment interest.

4 **EIGHTH CAUSE OF ACTION**

5 ***Violation of Consumer Protection Act; Unfair and Deceptive Practices***

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7 ***(Plaintiffs against all Defendants)***

8 294. Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 293 above.  
9 295. Defendants' respective wrongful acts and omissions and unlawful conduct constitute unfair  
10 competition and unfair and deceptive practices and occurred in the State of Washington.  
11 296. Defendants' respective wrongful acts and omissions and unlawful conduct impact upon the  
12 public by deceiving or having a tendency to deceive the public as to the nature, quality, source,  
13 sponsorship and origin of defendant's business, goods and services.  
14 297. Defendants respective wrongful acts and omissions and unlawful conduct violate the public  
15 policies of the State of Washington, as expressed, for example only and without limitation, in  
16 RCW Chapters 19.77 and 19.80.  
17 298. Defendant's acts and omissions and conduct constitute unfair and deceptive practices in  
18 violation of the Washington Consumer Protection Act, RCW §§ 19.86.020, *et. seq.*  
19 299. Defendants' acts and omissions and conduct have damaged each of the plaintiffs in amounts  
20 to be proven at trial.  
21 300. The plaintiffs are entitled to equitable relief, including without limitation, injunctive relief.

1 NINTH CAUSE OF ACTION

2 *Unjust Enrichment*

3  
4 *(Plaintiffs against all Defendants)*

5 301.Plaintiffs reallege and incorporate herein by reference paragraphs 1 through 300 above.

6 302.The unlawful acts and omissions and wrongful conduct of each of the defendants constitute  
7 inequitable conduct upon which each of them has been unjustly enriched.

8 303.Plaintiffs are entitled to an order requiring each of defendants to account to, disgorge and pay  
9 to plaintiffs amounts to which each such defendant was unjustly enriched.

10 304.Defendant Mark Stevens was unjustly enriched in the amount of the \$ 3,000.00 that he  
11 received from Peso's.

12 305.Peso's is entitled to recovery of the \$ 3,000.00 paid to defendant Mark Stevens.

13 306.Plaintiffs are entitled to other equitable relief, including without limitation, injunctive relief.  
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1           6.       That the Court awards plaintiffs such other and further relief as the Court deems  
2 just and proper.

3                   DATED the 2<sup>nd</sup> of January, 2007.

4  
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