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**FOURTH DISTRICT COURT, STATE OF UTAH
UTAH COUNTY, PROVO DEPARTMENT**

PLAINTCO, LLC, Plaintiff, vs. DEFENDCO LLC, and STEVE STEVERINI, Defendants.	COMPLAINT Civil No. _____
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COMES NOW the Plaintiff, PLAINTCO LLC, a Utah Limited Liability Company, by and through its attorney Arlen L. Card, and for causes of action alleges as follows:

Jurisdiction and Venue

1. Plaintiff is now, and has been at all times relevant to this matter, a duly authorized Utah Limited Liability Company, doing business in the State of Utah, with its primary place of business located in Utah County, State of Utah.
2. Defendant Steve Steverini is a natural person domiciled in Utah County, State of Utah.
3. Defendant Defendco LLC is a Utah Limited Liability Company, domiciled in Utah County, State of Utah.
4. Inasmuch as the time for filing claims has not expired, there may be other defendants,

who may hold an interest in this lawsuit. The Plaintiff will seek leave to amend this Complaint to assert the true names of such parties when the identity of them becomes known to Plaintiff.

5. The Plaintiff seeks relief against Defendants, jointly and severally, for the following causes of action: breach of contract, quantum meruit, claim for account stated, equitable estoppel, promissory estoppel, substantial performance, breach of the covenant of good faith and fair dealing, and alter ego.
6. Venue is proper in that the contract was formed, and Defendants' acts or omissions giving rise to these causes of action, occurred, at all times pertinent to these claims, in Utah County, State of Utah.

First Claim for Relief

Breach of Contract

7. Plaintiff incorporates by reference all of the allegations set forth above.
8. Defendant Steverini, as an individual, and also doing business as Defendco LLC of Provo, Utah, executed a written contract with Plaintiff, on or about June 20, 2014. Exhibit 1, Software Development Agreement.
9. Said contract was for the development of "Phase One" of a software product ("product") custom made for Defendants, and payment for Phase One would be given in three installments, as follows: 30% upon execution of the contract, 30% upon beta, and the remainder at completion of the project. *Id.*, page 2.
10. Defendants chose an option in the contract that expressly bypassed a "detail analysis," a breakdown that would specify the nature and function of every individual feature of the product, and instead ordered Plaintiff to proceed immediately with development of the product at the contract price with the product defined "as Plaintiff understands." Exhibit 1.
11. The contract specified that "[a]dditions and changes will be billed at \$90.00 per hour"

(overrun fees), that “[i]nterest w[ould] be charged at the rate of 1 ½% per month (18% per annum) if the account bec[ame] past due”, and that recovery of any costs and legal fees expended in collection of delinquent accounts, would be charged along with principal. *Id.*, pages 2-4

12. Plaintiff provided to Defendants a Product Requirements Document (“PRD”) which specified the features of the product according to Plaintiff’s understanding, to which Defendants did not timely object.
13. After Plaintiff had performed most of the work originally specified, Defendants began to demand additional features and changes, which were not included on the original PRD or in any prior discussion of product features.
14. In good faith, and in order to expedite receipt of remaining payments, Plaintiff agreed to add some, but not all, of the demanded additions to Phase One of the project.
15. Plaintiff made the additions, but Defendants thereafter refused to pay, and notified Plaintiff of their intent to renege on the contract.
16. Defendants paid only the first of the three installments, despite the fact that Plaintiff completed the software product at an even higher level than that specified in the PRD.
17. According to the contract between the parties, Plaintiff has suffered damages in the amount of the unpaid contract fees, overrun costs, late charges in the form of interest, and costs and fees of collection.
18. Mitigation is not commercially reasonable under the circumstances as the product is custom made for one narrow industry, and Plaintiff has no viable way to identify, locate, or attract any other potential client in that industry who would want a software product created with specifications substantially the same as those required by Defendants.
19. Plaintiff is entitled, under terms of the contract, to judgment against the Defendants, jointly and severally, in the amount of unpaid installments, \$18,900 as of June 17, 2016, additional hourly fees of \$5,940 as of November 17, 2016 as overrun charges for changes and expansions demanded by Defendants but not reflected in the original contract, and

late charges of \$2,389.50 as accrued from December, 2015, at 1.5 percent per month, plus legal fees and costs in the amount of \$1,200 to date, for a total of \$28,429.50, plus any further fees and costs thus chargeable before resolution of this matter.

Second Claim for Relief

Quantum Meruit

20. Plaintiff Plaintiffco LLC incorporates by reference all of the allegations set forth above.
21. Plaintiff invested 366 hours in the creation of the software product ordered by defendants.
22. Plaintiff charges a standard \$90 per hour for such services.
23. Plaintiff has at all times acted with the reasonable expectation of due compensation for the services it rendered to Defendants, and not as a volunteer or intermeddler.
24. Defendants acknowledged Plaintiff's right to be paid for software creation services by making one payment on or about September 1, 2015, but have since failed to respond with further payment to Plaintiff as the parties' agreement, and equitable principles of commercial fairness, dictate.
25. Plaintiff has suffered considerable detriment in lost earnings, time, and alternative business opportunity for its unremunerated service of creating custom software for Defendants.
26. Said detriment would not have been suffered by Plaintiff but for Defendants' assurances that they would pay Plaintiff to perform the originally requested services.
27. There exists between the parties an implied-in-law contract based on the relationship between and/or behavior of the parties in this matter.
28. Plaintiff seeks the reasonable value of services rendered to Defendants under theory of *quantum meruit* in the amount of unpaid principal balance plus overrun fees, late fees, costs, and legal fees as accrued until such time as relief is granted.

Third Claim for Relief

Claim for Account Stated

29. Plaintiff incorporates by reference all of the allegations set forth above.
30. Throughout the duration of their business relationship, Plaintiff has communicated to Defendants periodic notices of amounts due and owing for services provided to Defendants by Plaintiff.
31. No objection was ever raised by Defendants as to the amounts given in billing notices provided by Plaintiff, and Defendants have acknowledged Plaintiff's entitlement to payment for services rendered by paying the first installment for commencement of those services.
32. Plaintiff has suffered loss of the amounts due and fairly expected in billing notices, but as yet unpaid.
33. Plaintiff is entitled to recover from Defendants the amounts set forth in the billing statements, pursuant to the account stated, together with overrun costs, late fees, and collection costs and attorneys' fees as accrued.

Fourth Claim for Relief

Equitable Estoppel

34. Plaintiff incorporates by reference all of the allegations set forth above.
35. Plaintiff asserts the doctrine of equitable estoppel against Defendants because Defendants' false language and/or conduct induced Plaintiff to render services in behalf of Defendants, which services rendered have caused detriment to Plaintiff.
36. The elements for equitable estoppel are fulfilled because:
 - a. There was a representation or statement by Defendants to Plaintiff that Defendants would pay for services to be rendered and/or that communication regarding the parameters of the product were mutually understood per the PRD;
 - b. Plaintiff reasonably and justifiably relied on the representation or statement,

above, such that Plaintiff detrimentally changed its position based on that reliance by investing substantial time in developing the software product for Defendants; and

- c. Injury will result to Plaintiff if Defendants are allowed to repudiate the representation or statement upon which Plaintiff relied when it developed the software product for Defendants.

- 37. Plaintiff Plaintiffco LLC is therefore entitled, under theory of equitable estoppel, to unpaid contract amounts or value of services rendered but unpaid, plus overrun charges, interest, and fees and costs of collection to the date relief is granted.

Fifth Claim for Relief

Promissory Estoppel

- 38. Plaintiff incorporates by reference all of the allegations set forth above.
- 39. Plaintiff asserts the theory of promissory estoppel against Defendants because Plaintiff acted prudently in reasonable reliance on Defendants' promise to pay for services, Defendants knew of Plaintiff's reliance on said promise, Defendants were aware of all the material facts regarding the parties' agreement, and Plaintiff suffered detriment in lost time and earning potential for the rendering of the services for which Defendants promised to pay.
- 40. Plaintiff is therefore entitled to relief for detriment suffered according to the agreement giving rise to the promise to pay or, in the alternative, the fair billable value of Plaintiff's time expended; either of the foregoing, plus overrun costs, interest, and costs and fees expended in pursuit of this claim until such time as relief is granted.

Sixth Claim for Relief

Substantial Performance

- 41. Plaintiff incorporates by reference all of the allegations set forth above.

42. Plaintiff Plaintiffco avers that it followed its best understanding of the performance contracted for at the time of agreement, and that the agreement between the parties is complete because Plaintiff's performance fulfilled the essential purpose of the agreement, and Plaintiff acted at all times in good faith.
43. Plaintiff Plaintiffco therefore seeks relief under theory of substantial performance for the full, unpaid balance of the contracted fee, plus overrun costs as accrued to accommodate Defendants' after-ordered changes and expansions of the project, late charges in the form of interest, and fees and costs of collection to the date that relief is granted.

Seventh Claim for Relief

Breach of Covenant of Good Faith and Fair Dealing

44. Plaintiff incorporates by reference all of the allegations set forth above.
45. Upon information and belief, Plaintiff avers that Defendants breached the contract with Plaintiff and/or caused detriment to Plaintiff with dishonesty of belief or purpose constituting breach of the implied covenant of good faith and fair dealing between contracting parties under Utah law because Defendants intentionally and/or recklessly dealt unfairly as follows:
46. Defendants demanded addition of features not previously agreed between the parties in order to delay and hold hostage payment of the second installment of contracted fees and increase the eventual project feature set beyond specifications originally understood and set forth; and
47. Defendants withheld payment already fairly earned under the express terms of the contract.
48. In committing the acts or omissions enumerated above, Defendants intentionally, or with reckless disregard for the consequences of their acts or omissions, destroyed or injured Plaintiff's right to receive the fruits of the contract.
49. Because of this breach of the implied covenant of good faith and fair dealing, Plaintiff

should be entitled to an award of damages against Defendants in an amount to be determined by the finder of fact according to evidence.

Eighth Claim for Relief

Alter Ego

50. Plaintiff incorporates by reference all of the allegations set forth above.
51. Although the contract between the parties is nominally between Plaintiff and Defendco, Inc., as a business, Plaintiff Plaintiffco avers that Defendco LLC, is merely the alter ego of the principals of Defendco, per the following:
52. Because of commingling of funds, among other reasons, upon information and belief, Defendco, Inc. is not a valid limited liability entity, and individual Defendants' conduct with regard to Defendco, Inc., is not consistent with that of separate legal entities, and they are in fact one and the same, with Defendco LLC, serving as an alter ego of Defendant Steve Steverini, and not effective to shield the natural persons from liability.
53. Because Defendants have not serviced the debt which is the subject of these claims, it is likely that Defendant Defendco LLC, is insolvent or otherwise unable to pay any damages that might be awarded under these claims, and a grave injustice to Plaintiff would result from judgment being rendered against Defendant Defendco LLC, alone.
54. For the above reasons, Plaintiff requests that the Court find that Defendco LLC, is the alter ego, and a mere instrumentality, of Steve Steverini, and that they are in fact one and the same legal entity, jointly and severally, for purposes of these claims.

Prayer for Relief

Wherefore, Plaintiff Plaintiffco, LLC, prays for Judgment against Defendants Steve Steverini, and Defendco LLC, jointly and severally, as follows:

1. For judgment in the amount of \$28,429.50 as of June 17, 2014, and incidental and consequential damages, together with any and all lien fees, late charges, costs, and

- attorneys' fees that have accrued from that date until the date relief is granted;
2. For the unremunerated benefit conferred by Plaintiff upon Defendants, according to proof, together with all accrued interest, costs, and fees, as above;
 3. For damages in an amount sufficient to remedy all detriment suffered by Plaintiff in reliance on Defendants' promises, statements, or conduct of any kind;
 4. For damages as determined by the Court and/or the finder of fact for Defendants' breach of the covenant of good faith and fair dealing;
 5. For late fees (in the form of interest);
 6. For costs and attorneys' fees;
 7. That Defendco LLC is the alter ego, and a mere instrumentality, of Defendant Steve Steverini, and that they are in fact the same.
 8. That Defendants Defendco LLC and Steve Steverini be held jointly and severally liable for satisfaction of any judgment imposed by the Court.
 9. For such other relief as the court deems just and proper.

Dated this 23rd day of August, 2016.

ARLEN L. CARD
Attorney for Plaintiff, LLC

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Address of Steve Steverini:
Any Available Room
CS Building
Utah Valley University
Orem, Utah 84058

Address of Defendco LLC
1500 North State
Arlensville, Utah 84007