

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By: Patrick Gonzaga, Deputy Clerk

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LARRY GERACI

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 LARRY GERACI, an individual,

11 Plaintiff,

12 v.

13 DARRYL COTTON, an individual; and
DOES 1 through 10, inclusive,

14 Defendants.

15
16 DARRYL COTTON, an individual,

17 Cross-Complainant,

18 v.

19 LARRY GERACI, an individual, REBECCA
BERRY, an individual, and DOES 1
20 THROUGH 10, INCLUSIVE,

21 Cross-Defendants.

Case No. 37-2017-00010073-CU-BC-CTL

Judge: Hon. Joel R. Wohlfeil
Dept.: C-73

**CROSS-DEFENDANT LARRY GERACI'S
ANSWER TO CROSS COMPLAINANT
DARRYL COTTON'S UNVERIFIED
SECOND AMENDED CROSS-
COMPLAINT**

[IMAGED FILE]

Filed: March 21, 2017
Trial Date: May 11, 2018

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23 Cross-Defendant LARRY GERACI answers Cross-Complainant DARRYL COTTON's
24 unverified Second Amended Cross-Complaint, dated August 25, 2017, as follows:

25 **GENERAL DENIAL**

26 Under the provisions of section 431.30 of the California Code of Civil Procedure, this
27 answering Cross-Defendant denies, generally and specifically, each and every and all allegations in the
28 Second Amended Cross-Complaint, and the whole thereof, including each and every purported cause of

1 action contained therein, and denies that Cross-Complainant has sustained damages as alleged by
2 reason of any alleged act, breach, or omission on the party of this answering Cross-Defendant.

3 **AFFIRMATIVE DEFENSES**

4 For a further and separate answer to the Second Amended Cross-Complaint, and by way of
5 affirmative defenses, this answering Cross-Defendant alleges as follows:

6 **FIRST AFFIRMATIVE DEFENSE**

7 **(Failure to State a Cause of Action)**

8 Each of Cross-Complainant's purported causes of action against this answering Cross-
9 Defendant fails to state facts sufficient to constitute a cause of action against this answering Cross-
10 Defendant.

11 **SECOND AFFIRMATIVE DEFENSE**

12 **(Statute of Frauds)**

13 Cross-Complainant's purported first cause of action for breach of contract is barred by the
14 Statute of Frauds (Civ. Code §1624(a)(3).)

15 **THIRD AFFIRMATIVE DEFENSE**

16 **(Failure to State a Cause of Action for Breach of an Agreement to Negotiate)**

17 Cross-Complainant's purported first cause of action for breach of contract, to the extent it
18 purports to state a cause of action for breach of an agreement to negotiate, fails to allege facts sufficient
19 to state such a claim under *Copeland v. Baskin Robbins USA*, 96 Cal.App.4th 1251 (2002).

20 **FOURTH AFFIRMATIVE DEFENSE**

21 **(Waiver)**

22 Cross-Complainant's purported second cause of action for intentional misrepresentation is
23 barred by the doctrine of waiver in that Cross-Complainant has accepted a substantial benefit in the
24 form of the efforts and substantial expense undertaken by Cross-Defendants to apply for and obtain
25 approval of a Conditional Use Permit.

26 **FIFTH AFFIRMATIVE DEFENSE**

27 **(Reservation of Right to Assert Further Defense)**

28 This answering Cross-Defendant currently has insufficient information upon which to form a

1 belief as to the existence of additional and as yet unstated affirmative defenses. This answering Cross-
2 Defendant reserves the right to assert additional affirmative defenses in the event discovery discloses
3 the existence of said affirmative defenses.

4 **WHEREFORE**, Cross- Defendant LARRY GERACI prays as follows:

- 5 1. That the Second Amended Cross-Complaint be dismissed and Cross-Complainant take
6 nothing against this answering Cross-Defendant; and
- 7 2. Such other and further relief as the Court may deem just and proper.

8 Dated: November 20, 2017

FERRIS & BRITTON,
A Professional Corporation

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10
11 By: Michael R. Weinstein
12 Michael R. Weinstein
13 Scott H. Toothacre
14 Attorneys for Plaintiff
15 LARRY GERACI
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