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Attorney for Defendants Larry Geraci  
 and Rebecca Berry.

UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

DARRYL COTTON, an individual; JOE  
 HURTADO, an individual,

Plaintiffs,

v.

LARRY GERACI, an individual;  
 REBECCA BERRY aka REBECCA  
 ANN BERRY RUNYAN, an individual;  
 MICHAEL R. WEINSTEIN, an  
 individual; SCOTT TOOTHACRE, an  
 individual; FERRIS & BRITTON APC,  
 a California corporation; GINA M.  
 AUSTIN, an individual; AUSTIN  
 LEGAL GROUP APC, a California  
 corporation; SEAN MILLER, an  
 individual; FINCH THORTON &  
 BAIRD, a limited liability partnership;  
 DAVID DEMIAN, an individual;  
 ADAM WITT, an individual; and DOES  
 1 through 50, inclusive,

Defendants.

Case No. '18-CV-02751-GPC-MDD

ANSWER TO COMPLAINT OF  
 DEFENDANTS LARRY GERACI  
 AND REBECCA BERRY

JURY TRIAL DEMANDED

Come now defendants Larry Geraci and Rebecca Berry and answer the complaint  
 of plaintiffs Darryl Cotton and Joe Hurtado on file herein as follows:

1. Answering the allegations of paragraph 1 of the complaint, these answering  
 defendants admit that the origin of this action is a very simple real estate breach of

1 contract dispute between Darryl Cotton and Lawrence Geraci, admit that Darryl Cotton  
2 is the owner of real property commonly referred to as 6176 Federal Blvd., San Diego,  
3 Ca. 92114 (hereinafter the "Property"), and deny the remaining allegations of said  
4 paragraph.

5 2. Answering the allegations of paragraph 2 of the complaint, these answering  
6 defendants deny that Geraci served Cotton with a frivolous lawsuit and a copy of a *Lis*  
7 *Pendens* filed and recorded on the Property seeking to prevent the sale to Richard  
8 Martin and are without knowledge or information sufficient to form a belief as to the  
9 truth of the matters alleged in the remainder of the paragraph and based thereon deny  
10 the remaining allegations of said paragraph.

11 3. Answering the allegations of paragraph 3 of the complaint, these answering  
12 defendants admit that Cotton's allegations appear outlandish and deny the remaining  
13 allegations of said paragraph.

14 4. Answering the allegations of paragraph 4 of the complaint, these answering  
15 defendants deny that jurisdiction in this case is conferred upon this Court pursuant to  
16 any or all of 28 U.S.C. §§ 1331 and/or 1343(a), 18 U.S.C. § 1964, 18 U.S.C. § 1651 *et*  
17 *seq.* (incorrectly identified as the Federal Racketeering Act) and/or 28 U.S.C. § 1367(a).

18 5. Answering the allegations of paragraph 5 of the complaint, these answering  
19 defendants are without knowledge or information sufficient to form a belief as to why  
20 the action is brought and based thereon deny said allegation, deny jurisdiction in this  
21 case is conferred upon this Court pursuant to 42 U.S.C. § 1983, and deny the remaining  
22 allegations of said paragraph.

23 6. Answering the allegations of paragraph 6 of the complaint, these answering  
24 admit said allegations.

25 7. Answering the allegations of paragraph 7 of the complaint, these answering  
26 defendants admit said allegations.

27 8. Answering the allegations of paragraph 8 of the complaint, these answering  
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1 defendants are without knowledge or information sufficient to form a belief as to the  
2 truth of the matters alleged therein and based thereon deny said allegations.

3 9. Answering the allegations of paragraph 9 of the complaint, these answering  
4 defendants are without knowledge or information sufficient to form a belief as to the  
5 meaning of the term “financial advisor” as used therein and based thereon deny said  
6 allegation and, except as expressly admitted herein above, admit the remaining  
7 allegations of said paragraph.

8 10. Answering the allegations of paragraph 10 of the complaint, these  
9 answering defendants admit said allegations.

10 11. Answering the allegations of paragraph 11 of the complaint, these  
11 answering defendants admit the allegations of said paragraph except as follows: these  
12 answering defendants are without knowledge or information sufficient to form a belief  
13 regarding whether Michael Weinstein was at all time mentioned therein a “managing  
14 partner” of Ferris & Britton APC and based thereon deny said allegation.

15 12. Answering the allegations of paragraph 12 of the complaint, these  
16 answering defendants admit said allegations.

17 13. Answering the allegations of paragraph 13 of the complaint, these  
18 answering defendants admit the allegations of said paragraph except as follows: these  
19 answering defendants are without knowledge or information sufficient to form a belief  
20 regarding whether Gina Austin was the sole officer and director of Austin Legal Group,  
21 APC and based thereon deny said allegations; and these answering defendants deny that  
22 Gina Austin represented Geraci in the Geraci Litigation.

23 14. Answering the allegations of paragraph 14 of the complaint, these  
24 answering defendants are without knowledge or information sufficient to form a belief  
25 as to the truth of the matters alleged therein and based thereon deny said allegations.

26 15. Answering the allegations of paragraph 15 of the complaint, these  
27 answering defendants are without knowledge or information sufficient to form a belief  
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1 as to the truth of the matters alleged therein and based thereon deny said allegations.

2 16. Answering the allegations of paragraph 16 of the complaint, these  
3 answering defendants are without knowledge or information sufficient to form a belief  
4 as to the truth of the matters alleged therein and based thereon deny said allegations.

5 17. Answering the allegations of paragraph 17 of the complaint, these  
6 answering defendants note that the allegations of paragraph 17 are not factual in nature  
7 positing legal conclusions and arguments as to the meaning and content of cited code  
8 sections, admit that the cited code sections speak for themselves as to their content and  
9 meaning, and, except as expressly admitted herein above, are without knowledge or  
10 information sufficient to form a belief as to the truth of the matters alleged herein and  
11 based thereon deny the remaining allegations of said paragraph.

12 18. Answering the allegations of paragraph 18 of the complaint, these  
13 answering defendants admit that Geraci has previously been sanctioned as a property  
14 owner and, except as expressly admitted herein above, deny the remaining allegations  
15 of said paragraph.

16 19. Answering the allegations of paragraph 19 of the complaint, these  
17 answering defendants deny said allegations.

18 20. Answering the allegations of paragraph 20 of the complaint, these  
19 answering defendants admit that the cited declaration contains the words attributed to  
20 Gina Austin as alleged therein and that cited declaration otherwise speaks for itself as  
21 to its content and meaning and, except as expressly admitted herein above, deny the  
22 remaining allegations of said paragraph.

23 21. Answering the allegations of paragraph 21 of the complaint, these  
24 answering defendants deny that Sean Miller is an agent of Geraci and are without  
25 knowledge or information sufficient to form a belief as to the truth of the remaining  
26 allegations of said paragraph and based thereon deny said allegations.

27 22. Answering the allegations of paragraph 22 of the complaint, these  
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1 answering defendants are without knowledge or information sufficient to form a belief  
2 as to why Cotton hired FTB and based thereon deny said allegation, note that the  
3 allegations of paragraph 22 as to the content of pleadings and opinions in the cited  
4 *Engebretsen* cases are not factual in nature but posit legal conclusions and arguments  
5 as to the meaning and content of the cited pleadings and opinions, admit that the cited  
6 pleadings and opinions speak for themselves as to their content and meaning, and,  
7 except as expressly admitted herein above, deny the remaining allegations of said  
8 paragraph.

9 23. Answering the allegations of paragraph 23 of the complaint, these  
10 answering defendants deny said allegations.

11 24. Answering the allegations of paragraph 24 of the complaint, these  
12 answering defendants admit said allegations.

13 25. Answering the allegations of paragraph 25 of the complaint, these  
14 answering defendants are without knowledge or information sufficient to form a belief  
15 as to the truth of the matters alleged therein and based thereon deny said allegations.

16 26. Answering the allegations of paragraph 26 of the complaint, these  
17 answering defendants are without knowledge or information sufficient to form a belief  
18 as to the truth of the matters alleged therein and based thereon deny said allegations.

19 27. Answering the allegations of paragraph 27 of the complaint, these  
20 answering defendants are without knowledge or information sufficient to form a belief  
21 as to the truth of the matters alleged therein and based thereon deny said allegations.

22 28. Answering the allegations of paragraph 28 of the complaint, these  
23 answering defendants admit said allegations.

24 29. Answering the allegations of paragraph 29 of the complaint, these  
25 answering defendants admit said allegations.

26 30. Answering the allegations of paragraph 30 of the complaint, these  
27 answering defendants are without knowledge or information sufficient to form a belief  
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1 as to the truth of the matters alleged therein and based thereon deny said allegations.

2 31. Answering the allegations of paragraph 31 of the complaint, these  
3 answering defendants admit said allegations.

4 32. Answering the allegations of paragraph 32 of the complaint, these  
5 answering defendants are without knowledge or information sufficient to form a belief  
6 as to the truth of the matters alleged therein and based thereon deny said allegations.

7 33. Answering the allegations of paragraph 33 of the complaint, these  
8 answering defendants admit that Cotton's First Amended Cross-Complaint contained  
9 two causes of action which were not contained in Cotton's proper filing and are without  
10 knowledge or information sufficient to form a belief as to the truth of the remaining  
11 allegations of said paragraph and based thereon deny said allegations.

12 34. Answering the allegations of paragraph 34 of the complaint, these  
13 answering defendants are without knowledge or information sufficient to form a belief  
14 as to the truth of the matters alleged therein and based thereon deny said allegations.

15 35. Answering the allegations of paragraph 35 of the complaint, these  
16 answering defendants are without knowledge or information sufficient to form a belief  
17 as to the truth of the matters alleged therein and based thereon deny said allegations.

18 36. Answering the allegations of paragraph 36 of the complaint, these  
19 answering defendants are without knowledge or information sufficient to form a belief  
20 as to the truth of the matters alleged therein and based thereon deny said allegations.

21 37. Answering the allegations of paragraph 37 of the complaint, these  
22 answering defendants are without knowledge or information sufficient to form a belief  
23 as to the truth of the matters alleged therein and based thereon deny said allegations.

24 38. Answering the allegations of paragraph 38 of the complaint, these  
25 answering defendants refer to and incorporate their responses herein above to the cited  
26 paragraphs.

27 39. Answering the allegations of paragraph 39 of the complaint, these  
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1 answering defendants admit that in the summer of 2016, Geraci contacted Cotton  
2 seeking to purchase the Property in order to apply for a CUP to establish and operate a  
3 Marijuana Outlet at the Property, that Geraci and Cotton thereafter met, spoke by  
4 telephone, and emailed and texted one another working to negotiate the terms of the  
5 potential sale of the Property to Geraci, and are without knowledge or information  
6 sufficient to form a belief as to the truth of the remaining allegations of said paragraph  
7 and based thereon deny said allegations.

8 40. Answering the allegations of paragraph 40 of the complaint, these  
9 answering defendants deny said allegations.

10 41. Answering the allegations of paragraph 41 of the complaint, these  
11 answering defendants admit that on or around October 31, 2016 Geraci asked Cotton to  
12 execute Form DS-318, admit that the subject Form DS-318 stated that Rebecca Berry  
13 was a “lessee” of the Property, and deny the remaining allegations of said paragraph.

14 42. Answering the allegations of paragraph 42 of the complaint, these  
15 answering defendants are without knowledge or information sufficient to form a belief  
16 as to the truth of the allegation that on November 2, 2016, Cotton was actively  
17 negotiating with various parties regarding the purchase and sale of the Property and  
18 based thereon deny said allegations, and deny the remaining allegations of said  
19 paragraph.

20 43. Answering the allegations of paragraph 43 of the complaint, these  
21 answering defendants deny said allegations.

22 44. Answering the allegations of paragraph 44 of the complaint, these  
23 answering defendants admit said allegations.

24 45. Answering the allegations of paragraph 45 of the complaint, these  
25 answering defendants admit that Geraci filed the complaint in the Geraci Litigation and  
26 that the complaint speaks for itself as to its allegations and content, and deny the  
27 remaining allegations of said paragraph.  
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1       46. Answering the allegations of paragraph 46 of the complaint, these  
2 answering defendants refer to and incorporate their responses herein above to the cited  
3 paragraphs.

4       47. Answering the allegation of paragraph 47 of the complaint, these answering  
5 defendants deny said allegations except as follows: Geraci filed a *lis pendens* on the  
6 property.

7       48. Answering the allegation of paragraph 48 of the complaint, these answering  
8 defendants deny said allegations.

9       49. Answering the allegation of paragraph 49 of the complaint, these answering  
10 defendants deny said allegations.

11       50. Answering the allegation of paragraph 50 of the complaint, these answering  
12 defendants deny said allegations.

13       51. Answering the allegations of paragraph 51 of the complaint, these  
14 answering defendants refer to and incorporate their responses herein above to the cited  
15 paragraphs.

16       52. Answering the allegations of paragraph 52 of the complaint, these  
17 answering defendants deny said allegations.

18       53. Answering the allegations of paragraph 53 of the complaint, these  
19 answering defendants deny said allegations.

20       54. Answering the allegations of paragraph 54 of the complaint, these  
21 answering defendants deny said allegations.

22       55. Answering the allegations of paragraph 55 of the complaint, these  
23 answering defendants deny said allegations.

24       56. Answering the allegations of paragraph 56 of the complaint, these  
25 answering defendants deny said allegations.

26       57. Answering the allegations of paragraph 57 of the complaint, these  
27 answering defendants deny said allegations.  
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1       58. Answering the allegations of paragraph 58 of the complaint, these  
2 answering defendants deny said allegations.

3       59. Answering the allegations of paragraph 59 of the complaint, these  
4 answering defendants refer to and incorporate their responses herein above to the cited  
5 paragraphs.

6       60. Answering the allegations of paragraph 60 of the complaint, these  
7 answering defendants deny said allegations.

8       61. Answering the allegations of paragraph 61 of the complaint, these  
9 answering defendants refer to and incorporate their responses herein above to the cited  
10 paragraphs.

11       62. Answering the allegations of paragraph 62 of the complaint, these  
12 answering defendants are without knowledge or information sufficient to form a belief  
13 as to the truth of the matters alleged therein and based thereon deny said allegations.

14       63. Answering the allegations of paragraph 63 of the complaint, these  
15 answering defendants are without knowledge or information sufficient to form a belief  
16 as to the truth of the matters alleged therein and based thereon deny said allegations.

17       64. Answering the allegations of paragraph 64 of the complaint, these  
18 answering defendants are without knowledge or information sufficient to form a belief  
19 as to the truth of the matters alleged therein and based thereon deny said allegations.

20       65. Answering the allegations of paragraph 65 of the complaint, these  
21 answering defendants are without knowledge or information sufficient to form a belief  
22 as to the truth of the matters alleged therein and based thereon deny said allegations.

23                                   AFFIRMATIVE DEFENSES

24       As separate and additional defenses, these answering defendants, upon  
25 information and belief, allege as follows:

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1 FIRST AFFIRMATIVE DEFENSE

2 (Failure to State a Claim)

3 The complaint on file herein fails to allege facts sufficient to state a claim for  
4 relief.

5 SECOND AFFIRMATIVE DEFENSE

6 (Lack of Jurisdiction)

7 This Court lacks jurisdiction as to the complaint on file herein and some or all of  
8 the claims alleged therein.

9 THIRD AFFIRMATIVE DEFENSE

10 (Statutes of Limitation)

11 The complaint on file herein, and some or all of the claims alleged therein, are  
12 barred by any and all applicable statutes of limitation.

13 FOURTH AFFIRMATIVE DEFENSE

14 (Litigation Privilege)

15 The complaint on file herein, and some or all of the claims alleged therein, are  
16 barred by application of the litigation privilege.

17 SIXTH AFFIRMATIVE DEFENSE

18 (Unclean Hands)

19 The complaint on file herein, and some or all of the claims alleged therein, are  
20 barred by the doctrine of unclean hands.

21 SEVENTH AFFIRMATIVE DEFENSE

22 (Estoppel)

23 The complaint on file herein, and some or all of the claims alleged therein, are  
24 barred by the doctrine of estoppel.

25 EIGHTH AFFIRMATIVE DEFENSE

26 (No Injury or Damages)

27 Plaintiffs are barred from obtaining any relief from these answering defendants  
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1 because plaintiffs have suffered no injury or damage as a result of any act or conduct by  
2 defendants.

3 NINTH AFFIRMATIVE DEFENSE

4 (Failure to Mitigate Damages)

5 Plaintiffs' claims are barred, in whole or in part, by plaintiffs' failure to mitigate  
6 its alleged damages.

7 TENTH AFFIRMATIVE DEFENSE

8 (Justification/Good Faith)

9 All actions by these answering defendants, of which plaintiffs complain in the  
10 complaint on file herein, were justified and these answering defendants have at all times  
11 acted in good faith.

12 ELEVENTH AFFIRMATIVE DEFENSE

13 (No Proximate Cause)

14 The injuries and damages alleged by plaintiffs, if any, were proximately caused  
15 by persons or entities other than these answering defendants.

16 TWELFTH AFFIRMATIVE DEFENSE

17 (Reservation)

18 These answering defendants presently have insufficient knowledge or information  
19 on which to form a belief as to whether they have additional, as yet unstated, defenses  
20 to the complaint and reserve their rights to assert such additional defenses, if appropriate  
21 under Rule 8(c) of the Federal Rules of Civil Procedure, and any other defenses, at law  
22 or in equity that may be available now or may become available in the future based on  
23 discovery or any other factual investigation in this case.

24 PRAYER

25 Wherefore, these answering defendants pray for judgment as follows:

- 26 1. That plaintiffs take nothing on its complaint on file herein;  
27 2. That the complaint on file herein be dismissed in its entirety with  
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1 prejudice;

2 3. That these answering defendants be awarded their costs and attorney's  
3 fees incurred herein; and,

4 4. That these answering defendants be awarded such other further relief as  
5 the court deems just and proper.

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7 Date: March 26, 2019

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/s/ James D. Crosby  
Attorney for Defendants Larry Geraci and  
Rebecca Berry

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JURY DEMAND

11 Defendants hereby demand a trial by jury of all issues in the complaint on file  
12 herein.

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14 Date: March 26, 2019

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/s/ James D. Crosby  
Attorney for Defendants Larry Geraci and  
Rebecca Berry

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