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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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Clerk of the Superior Court  
By Cody Newlan, Deputy Clerk

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Attorneys for Cross-Defendant  
REBECCA BERRY

**SUPERIOR COURT OF CALIFORNIA**

**COUNTY OF SAN DIEGO, CENTRAL DIVISION**

LARRY GERACI, an individual,

Plaintiff,

v.

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

Defendants.

DARRYL COTTON, an individual,

Cross-Complainant,

v.

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

Cross-Defendants.

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

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

**CROSS-DEFENDANT REBECCA  
BERRY'S NOTICE OF DEMURRER AND  
DEMURRER TO DEFENDANT'S  
CROSS-COMPLAINT**

**[IMAGED FILE]**

**Hearing Date: July 14, 2017**  
**Hearing Time: 9:00 a.m.**

Complaint Filed: March 21, 2017  
Trial Date: Not Yet Set

**TO EACH PARTY AND TO THE ATTORNEY OF THE RECORD FOR EACH PARTY:**

**PLEASE TAKE NOTICE** that, on July 14, 2017, at 9:00 a.m. or as soon thereafter as the matter may be heard in Department C-73 of this Court, located at 330 West Broadway, San Diego, California, 92101, Cross-Defendant, REBECCA BERRY (hereafter "Berry"), will and hereby does move the Court to sustain her demurrer to the Cross-Complaint filed on May 12, 2017, by Defendant and Cross-Complainant, DARRYL COTTON (hereafter "Cotton" or "Cross-Complainant"), on each of

1 the grounds set forth below.

2 **DEMURRER**

3 The Cross-Complaint's alleged first, second, eighth, ninth, tenth, and eleventh causes of action,  
4 and each of them, fail to state facts sufficient to constitute a cause of action against Cross-Defendant  
5 Berry (Cal. Code Civ. Proc. § 430.10(e)) on the grounds and for the reasons set forth below:

6 **FIRST CAUSE OF ACTION**

7 1. The first cause of action for quiet title does not state a cause of action against Berry  
8 because the allegations of the first cause of action are not verified under oath and an action to quiet title  
9 must be verified. (Cal. Code Civ. Proc. § 761.020).

10 2. The first cause of action for quiet title does not state a cause of action against Berry  
11 because it fails to allege she took actions which created a legally adverse interest in the subject  
12 property. The Cross-Complaint alleges Berry signed a CUP application stating she was the property  
13 owner; however, there is no allegation (and there can be no allegation) that the CUP application was  
14 recorded or otherwise created a lien against or cloud on title to the property so as to create a legally  
15 adverse interest.

16 **SECOND CAUSE OF ACTION**

17 3. The second cause of action for slander of title does not state a cause of action because it  
18 is based on allegations of wrongful acts that are privileged as a matter of law. The elements of a  
19 slander of title cause of action are: (1) a publication; (2) which is without privilege or justification;  
20 (3) which is false; and (4) which causes direct and immediate pecuniary loss. (*Alpha and Omega*  
21 *Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 664.) The wrongful acts  
22 alleged in support of his claim are the filing of the instant Complaint and the attendant filing and  
23 recording of a Lis Penden; however, the filing of a Complaint and the filing and recording of a Lis  
24 Pendens are each absolutely privileged pursuant to California Civil Code section 47, subdivision (b)  
25 and subdivision (b)(4) respectively. Moreover, Cross-Defendant Berry did not file the instant  
26 Complaint or the accompanying Lis Pendens, both of which were filed by the sole plaintiff, Larry  
27 Geraci.

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1 **EIGHTH CAUSE OF ACTION**

2 4. The eighth cause of action for breach of the implied covenant of good faith and fair  
3 dealing does not state a cause of action because Cross-Complainant fails to allege he entered into a  
4 contract with Berry. The first element of a breach of the covenant of good faith and fair dealing claim  
5 is the existence of a contract between the parties from which the covenant can be implied. Cross-  
6 Complainant's allegation admitting that he never had any contract or agreement of any kind with Berry  
7 is fatal to his claim.

8 **NINTH CAUSE OF ACTION**

9 5. The ninth cause of action for trespass does not state a cause of action against because it  
10 fails to allege that Berry intentionally or negligently entered Cross-Complainant's property. A trespass  
11 claim requires that the person intentionally or negligently enter onto the real property. (See  
12 CACI 2000.) Cross-Complainant has failed to allege that Berry either intentionally or negligently  
13 entered upon land owned by him. Rather, Cross-Complainant alleges only that "Larry Geraci or an  
14 agent under his direction" entered onto his real property.

15 **TENTH CAUSE OF ACTION**

16 6. The tenth cause of action for civil conspiracy fails to state a cause of action because  
17 there is no such cause of action in California. (*Moran v. Endres* (2006) 135 Cal.App.4th 952, 954.)  
18 Rather, conspiracy is "'a legal doctrine that imposes liability on persons who, although not actually  
19 committing a tort themselves, share with the immediate tortfeasors a common plan or design in its  
20 preparation.' ... 'A conspiracy cannot be alleged as a tort separate from the underlying wrong it is  
21 organized to achieve.' (Citation.)" (*Id.* at 954-955.)

22 **ELEVENTH CAUSE OF ACTION**

23 7. The eleventh cause of action for an injunction fails to state a cause of action because  
24 there is no such cause of action in California. "Injunctive relief is a remedy and not, in itself, a cause of  
25 action, and a cause of action must exist before injunctive relief may be granted. (Citation.)" (*Shell*  
26 *Oil Co. v. Richter* (1942) 52 Cal.App.2d 164, 168; see also *County of Del Norte v. City of Crescent City*  
27 (1999) 71 Cal.App.4th 965, 973 (a permanent injunction is attendant to an underlying cause of action).)

28 For each of such reasons, Cross-Defendant Berry moves for an order of this Court sustaining the

1 demurrers to the first, second, eighth, ninth, tenth and eleventh causes of action without leave to amend  
2 unless Plaintiff can make a sufficient offer of proof that he can cure the pleading deficiencies.

3 The demurrers are based upon this Notice of Demurrer and Demurrer, the attached supporting  
4 Request for Judicial Notice, the attached supporting Memorandum of Points and Authorities, the  
5 records and files in this action, and such further matters that may be properly presented prior to or at the  
6 time of hearing on the motion.

7 **NOTICE IS FURTHER GIVEN** that a tentative ruling is issued the day before the date set  
8 forth for hearing, this court follows rule 3.1308(a)(2) and no notice of intent to appear is required to  
9 appear for argument. The tentative ruling shall be made available at 3:30 p.m. on the court day prior to  
10 the scheduled hearing. The tentative ruling may direct the parties to appear for oral argument, and may  
11 specify the issues on which the court wishes the parties to provide further argument. The tentative  
12 ruling may be obtained by calling the court tentative ruling number at (619) 450-7381 or by navigating  
13 to the court's website [www.sandiego.courts.ca.gov](http://www.sandiego.courts.ca.gov).

14  
15 Dated: June 9, 2017

FERRIS & BRITTON,  
A Professional Corporation

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18 By: 

Michael R. Weinstein  
Scott H. Toothacre

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20 Attorneys for Cross-Defendant  
REBECCA BERRY