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Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Katelin O'Keefe, Deputy Clerk

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Attorneys for Plaintiff and Cross-Defendant
LARRY GERACI

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

**NOTICE OF DEMURRER AND
DEMURRER BY CROSS-DEFENDANT
LARRY GERACI TO SECOND
AMENDED CROSS-COMPLAINT BY
DARRYL COTTON**

[IMAGED FILE]

DATE: November 3, 2017
TIME: 9:00 a.m.
DEPT: C-73

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

TO EACH PARTY AND THEIR ATTORNEYS OF THE RECORD:

PLEASE TAKE NOTICE that, on November 3, 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, Plaintiff and Cross-Defendant, LARRY GERACI (hereafter "Geraci"), will and hereby does move the Court to sustain his demurrer to the Second Amended Cross-Complaint filed on August 25, 2017, by Defendant and Cross-Complainant, DARRYL COTTON (hereafter "Cotton" or

1 "Cross-Complainant"), on each of the grounds set forth below.

2 **DEMURRER**

3 The Cross-Complaint's alleged first, second, third, and fourth causes of action, and each of
4 them, fail to state facts sufficient to constitute a cause of action against Geraci (Code Civ. Proc.,
5 § 430.10(e)) on the grounds and for the reasons set forth below and explained in detail in the
6 accompanying Memorandum of Points and Authorities.

7 **FIRST CAUSE OF ACTION**

8 1. The first cause of action for breach of contract fails to state a cause of action against
9 Geraci because Cross-Complainant alleges an oral agreement (or partly oral, partly written agreement)
10 for the purchase and sale of the subject real property that is barred by the applicable statute of frauds.

11 2. The first cause of action for breach of contract fails to state a cause of action because it
12 fails to allege facts resulting in an actionable breach. (Cal. Code Civ. Proc. § 430.10(e).)

13 **SECOND CAUSE OF ACTION**

14 3. The second cause of action for intentional misrepresentation does not state a cause of
15 action because it fails to allege facts which, if true, are sufficient to establish the element of justifiable
16 reliance. (Cal. Code Civ. Proc. § 430.10(e).)

17 **THIRD CAUSE OF ACTION**

18 4. The third cause of action for negligent misrepresentation does not state a cause of action
19 because it fails to allege facts which, if true, are sufficient to establish the element of justifiable
20 reliance. (Cal. Code Civ. Proc. § 430.10(e).)

21 5. The third cause of action for negligent misrepresentation fails to state a cause of action
22 because under California law, a party cannot plead both a cause of action for negligent
23 misrepresentation and promissory fraud. (Cal. Code Civ. Proc. § 430.10(e).)

24 **FOURTH CAUSE OF ACTION**

25 6. The fourth cause of action for false promise does not state a cause of action because it
26 fails to allege facts which, if true, are sufficient to establish the element of justifiable reliance. (Cal.
27 Code Civ. Proc. § 430.10(e).)

28 For each of such reasons, Geraci moves for an order of this Court sustaining the demurrers to

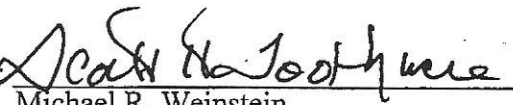
1 the first, second, third, and fourth causes of action without leave to amend unless Cross-Complainant
2 can make a sufficient offer of proof that he can cure the pleading deficiencies.

3 The demurrers are based upon this Notice of Demurrer and Demurrer, the supporting
4 Memorandum of Points and Authorities, the supporting Declaration of Michael R. Weinstein, 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.

14
15 Dated: September 28, 2017

FERRIS & BRITTON,
A Professional Corporation

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18 By 
19 Michael R. Weinstein
20 Scott H. Toothacre
21 Attorneys for Plaintiff and Cross-Defendant
22 LARRY GERACI
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