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5 Attorneys for Defendant DARRYL COTTON

FILED
CIVIL BUSINESS OFFICE
CENTRAL DIVISION

16 MAR 15 AM 9:0

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

FILED
Clerk of the Superior Court

MAR 15 2016

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8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SAN DIEGO, CENTRAL DIVISION

10 CITY OF SAN DIEGO,) Case No.: 37-2016-00005526-CU-MC-CTL
11)
Plaintiff,) ANSWER TO COMPLAINT OF DARRYL
12 vs.) COTTON
13)
DARRYL COTTON in individual; and DOES) IMAGED FILE
1 through 50, inclusive,)
14 Defendants.)
15) Dept.: C-61
16) Judge: Hon. John S. Meyer
17) Cmpl. Filed: February 18, 2016
Trial Date: Not Set

18 Defendant DARRYL COTTON (Defendant), for himself alone and severed from all other
19 defendants, hereby answers Plaintiff CITY OF SAN DIEGO's Complaint as follows:

20 1. Defendant generally denies each and every allegation of the Complaint pursuant to Code
21 of Civil Procedure, section 446.

22 FIRST AFFIRMATIVE DEFENSE
23 (Failure to State Causes of Action)

24 2. Defendant alleges that each of Plaintiff's causes of action, individually, fails to state
facts sufficient to constitute a cause of action against Defendant.

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SECOND AFFIRMATIVE DEFENSE
(Failure to Mitigate)

3. Defendant is informed and believes and thereon alleges that Plaintiff has failed to take reasonable steps to mitigate its damages, if Plaintiff has incurred any damages.

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THIRD AFFIRMATIVE DEFENSE
(Failure to Perform Conditions Precedent)

4. Defendant is informed and believes and thereon alleges that Plaintiff failed to perform express conditions precedent to Defendant's performance, and such failure excuses non-performance by Defendant, if Defendant owes any performance to Plaintiff.

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FOURTH AFFIRMATIVE DEFENSE
(Statute of Limitations)

5. Defendant alleges that each and every one of Plaintiff's causes of action is untimely and barred because these causes of action have not been brought within the applicable statute of limitations.

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FIFTH AFFIRMATIVE DEFENSE
(Laches)

6. Defendant is informed and believes and thereon alleges that Plaintiff unreasonably has delayed the commencement of this action to the substantial prejudice of Defendant and by reason thereof has committed laches. Therefore, Plaintiff is precluded from recovery and relief in this action.

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SIXTH AFFIRMATIVE DEFENSE
(Unclean Hands)

7. Defendant is informed and believes and thereon alleges that Plaintiff's conduct with respect to the matters alleged in the Complaint deprives Plaintiff of clean hands, and by reason of not coming into court with clean hands, Plaintiff is precluded from recovery in this action.

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SEVENTH AFFIRMATIVE DEFENSE
(Complaint Frivolous and in Bad Faith)

8. Defendant alleges that Plaintiff's Complaint is frivolous and has not been filed in good faith as to Defendant, within the meaning of Code of Civil Procedure, section 128.5. As such,

1 Defendant is entitled to recover their reasonable expenses, including attorneys' fees, in defending this
2 action.

3 EIGHTH AFFIRMATIVE DEFENSE
4 (Plaintiff's Comparative Responsibility)

5 9. Defendant is informed and believes and thereon alleges that at all times herein Plaintiff
6 was responsible for and proximately caused the incident that is the basis for Plaintiff's Complaint.
7 Plaintiff's recovery, if any, should be reduced in proportion to the amount that Plaintiff's responsibility
8 contributed to the happening of the incidents alleged in the Complaint.

9 NINTH AFFIRMATIVE DEFENSE
(Estoppel)

10 10. Defendant is informed and believes and thereon alleges that the Plaintiff engaged in
11 conduct and activity with respect to the subject of this Plaintiff's Complaint, and by reason of such
12 conduct and activity is estopped from asserting any claims for damages or seeking any other relief
13 against Defendant.

14 TENTH AFFIRMATIVE DEFENSE
(Waiver)

15 11. Defendant is informed and believes and thereon alleges that Plaintiff has engaged in
16 conduct and activity sufficient to constitute a waiver of any alleged breach of duty, negligence, act,
17 omission, or any other conduct, if any, as set forth in Plaintiff's Complaint.

18 ELEVENTH AFFIRMATIVE DEFENSE
19 (Consideration/Condition Precedent/Impossibility)

20 12. Defendant is informed and believes and thereon alleges that any obligation alleged in
21 this Complaint as having been entered into or any duty of performance allegedly owed by Defendant is
22 excused by reason of failure of consideration, breach of condition precedent, impossibility of purpose,
23 waiver by Plaintiff, and acceptance by Plaintiff.
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1 TWELFTH AFFIRMATIVE DEFENSE
2 (Ambiguity)

3 13. The Complaint fails to state a cause of action upon which relief can be granted to
4 Plaintiff because the subject agreements are vague, ambiguous, and uncertain.

5 THIRTEENTH AFFIRMATIVE DEFENSE
6 (Impracticability)

7 14. The Complaint fails to state a cause of action upon which relief can be granted to
8 Plaintiff because the performance called for by Defendant, if any, was commercially impracticable.

9 FOURTEENTH AFFIRMATIVE DEFENSE
10 (Failure to Cooperate)

11 15. The Complaint fails to state a cause of action upon which relief can be granted to
12 Plaintiff because Plaintiff failed to provide Defendant with the cooperation necessary for Defendant to
13 be able to render performance, if any was due.

14 FIFTEENTH AFFIRMATIVE DEFENSE
15 (Illegality)

16 16. The Complaint fails to state a cause of action upon which relief can be granted to
17 Plaintiff because any and all agreements alleged in the Complaint are illegal and unenforceable.

18 SIXTEENTH AFFIRMATIVE DEFENSE
19 (Reservation)

20 17. Defendant presently has insufficient knowledge and information upon which to form a
21 belief as to whether they may have additional affirmative defenses available. Defendant reserve the
22 right to assert additional defenses in the event that discovery indicates they would be appropriate.


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1 WHEREFORE, Defendants request that Plaintiff takes nothing by reason of his Complaint,
2 requests costs of suit, and requests any and all further relief that the Court deems appropriate.

3 Respectfully submitted,

4 Dated: 3/15/10

JEFFREY A. LAKE, A.P.C.

6 By: 
7 Jeffrey A. Lake, Esq.
8 Attorneys for Defendant
9 DARRYL COTTON

1 **NAME OF ACTION:** *City of San Diego v. Darryl Cotton*
2 **CASE NUMBER:** 37-2016-00005526-CU-MC-CTL

CIVIL BEHAVIORAL JUSTICE
CENTRAL DIVISION
16 MAR 15 AM 9:01
CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

MAR 15 '16 PM 1:19

3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA, COUNTY SAN DIEGO

5 I, **JEFFREY A. LAKE**, am employed in the County of San Diego, CA. I am over the age of
6 18 years and not a party to the within action; my business address is 444 west C Street, Suite 400, San
7 Diego, CA 92101.

8 On 3/15, 2016 I served the foregoing document(s) described as on the interested parties
9 as follows: **ANSWER OF DARRYL COTTON.**

10 Onu O. Omordia, Esq. 11 1200 Third Ave., Ste. 700 12 San Diego, CA 92101	
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13 **BY MAIL:** I placed the documents in a sealed envelope and deposited such envelope in the
14 mail at San Diego, California. The envelope was mailed with postage thereon fully prepaid. I
15 am readily familiar with the firm's practice of collecting and processing correspondence for
16 mailing. It is deposited with U.S. postal service on that same day in the ordinary course of
17 business. I am aware that on motion of party served, service is presumed invalid if postal
18 cancellation date or postage meter date is more than one day after the date of deposit for
19 mailing in this proof of service.

20 **BY PERSONAL DELIVERY:** I hand-delivered a copy of the papers referenced above to
21 the above-referenced person together with an unsigned copy of this proof of service.

22 **BY ELECTRONIC SERVICE:** I caused a true PDF of the document to be transmitted by
23 my office computer at 444 west C Street, Suite 400, San Diego, CA 92101 on this date to the
24 interested parties at their email addresses referenced above.

(STATE): I declare under penalty of perjury under the laws of the State of California, that
the foregoing is true and correct.

Executed on 3/15, 2016 at San Diego, California.


JEFFREY A. LAKE