

2/11/15

1 Laura C. Hess, Bar No. 198284
lhess@kringandchung.com
2 KRING & CHUNG, LLP
38 Corporate Park
3 Irvine, CA 92606-5105
Telephone: (949) 261-7700
4 Facsimile: (949) 261-8800

5 Attorneys for Defendants
ANDREW D. PEYKOFF II and JAIME PEYKOFF

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

| | | |
|---|---|-------------------------------------|
| 11 DONALD ENRIGHT, an individual, |) | Case No. 30-2014-00760175-CU-BC-CJC |
| 12 Plaintiff, |) | ANSWER TO COMPLAINT |
| 13 vs. |) | Judge: Hon. David T. McEachen |
| 14 ANDREW D. PEYKOFF II, an individual; |) | Dept: C21 |
| 14 JAMIE PEYKOFF, an individual; and DOES 1 |) | Action Filed: December 8, 2014 |
| 15 through 100, inclusive, |) | Trial Date: None Set |
| 16 Defendants. |) | |

17 Defendants ANDREW D. PEYKOFF II and JAIME PEYKOFF (hereinafter "Defendants")
18 answers the unverified Complaint of Plaintiff DONALD ENRIGHT ("Plaintiff"), for themselves
19 alone, for no others, and by virtue of the provisions of Code of Civil Procedure section 431.30(d),
20 and now files this general denial, denying each and every allegation of the Complaint and all of the
21 causes of action in each paragraph thereof, and denies that Plaintiff has been damaged in the sum or
22 sums alleged, in any other sum, or at all.

23 **FIRST AFFIRMATIVE DEFENSE**
24 **(FAILURE TO STATE CAUSE OF ACTION)**

25 1. As and for a first separate and affirmative defense, Defendants allege that the
26 Complaint and each and every purported Cause of Action alleged therein, fails to state facts
27 sufficient to constitute a cause of action against these answering Defendants.

28 //



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECOND AFFIRMATIVE DEFENSE

(TENDER OF PERFORMANCE)

2. As and for a second separate and affirmative defense, Defendants allege that any and all obligations existing between the parties have been extinguished by tender of performance. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

THIRD AFFIRMATIVE DEFENSE

(PLAINTIFF'S FRAUD)

3. As and for a third separate and affirmative defense, Defendants allege that any purported or alleged obligation owing to Plaintiff is void or voidable based upon Plaintiff's actual fraud as defined by Civil Code § 1572 and by Plaintiff's constructive fraud as defined by Civil Code § 1573. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

(MISTAKE OF FACT)

4. As and for a fourth separate and affirmative defense, Defendants allege that any purported or alleged obligation owing to Plaintiff is void or voidable based upon the mistake of fact which renders the purported obligation unconscionable. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

(FAILURE OF CONSIDERATION)

5. As and for a fifth separate and affirmative defense, Defendants allege that any purported or alleged obligation in the Complaint is void or voidable for failure of consideration. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

//
//



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH AFFIRMATIVE DEFENSE

(LACK OF CONSIDERATION)

6. As and for a sixth separate and affirmative defense, Defendants allege that any purported or alleged obligation of the Complaint is void or voidable for lack of consideration. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

(STATUTE OF FRAUDS)

7. As and for a seventh separate and affirmative defense, Defendants allege that the Complaint and each and every purported cause of action contained therein is barred by the statute of frauds. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

(MODIFICATION)

8. As and for an eighth separate and affirmative defense, Defendants allege the purported obligations alleged in the Complaint have been and were modified. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

(ALTERATION OF CONTRACTUAL RELATIONSHIP)

9. As and for a ninth separate and affirmative defense, Defendants allege that Plaintiff has altered the contractual relationship which existed between the parties without Defendants' consent. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

//
//
//



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TENTH AFFIRMATIVE DEFENSE

(WAIVER)

10. As and for an tenth separate and affirmative defense, Plaintiff has waived his claims as alleged. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(ESTOPPEL)

11. As and for a eleventh separate and affirmative defense, Defendants allege that Plaintiff is estopped from asserting his purported claims against Defendants. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

TWELFTH AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

12. As and for a twelfth separate and affirmative defense, Defendants allege that Plaintiff has failed to mitigate his damages. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

THIRTEENTH AFFIRMATIVE DEFENSE

(LACHES)

13. As and for a thirteenth separate and affirmative defense, Defendants allege that the Complaint, and each and every purported cause of action alleged therein, is barred under the doctrine of laches. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

(UNCLEAN HANDS)

14. As and for a fourteenth separate and affirmative defense, Defendants allege that the Complaint, and each and every cause of action purportedly alleged therein, is barred under the doctrine of unclean hands. In making said affirmative defense, Defendants do not admit, but in fact expressly deny, any liability to Plaintiff as alleged in the Complaint.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIFTEENTH AFFIRMATIVE DEFENSE

(STATUTE OF LIMITATIONS)

15. As and for a fifteenth separate and affirmative defense, Defendants allege that Plaintiff's Complaint and each and every purported cause of action contained therein is barred by the applicable statute of limitations.

SIXTEENTH AFFIRMATIVE DEFENSE

(PLAINTIFF'S BREACH OF AGREEMENT)

16. As and for an sixteenth separate and affirmative defense, Defendants allege that Plaintiff has breached the agreement claimed in the Complaint. In making this affirmative defense, Defendants do not admit, but in fact expressly deny any liability to Plaintiff as alleged in the Complaint.

SEVENTEENTH AFFIRMATIVE DEFENSE

(FAULT OF OTHERS)

17. As and for a seventeenth separate and affirmative defense, Defendants deny that Plaintiff was damaged as a proximate result of any conduct on the part of these answering Defendants. These answering Defendants affirmatively allege that Plaintiff's damages, if any, were proximately caused by the independent conduct of third parties or entities whether or not parties to this action. Plaintiff's recovery against these answering defendants, if any, must therefore be reduced to the extent that those damages, if any, were caused by the independent conduct of third parties.

EIGHTEENTH AFFIRMATIVE DEFENSE

(FAILURE TO PERFORM CONDITION PRECEDENT)

18. As and for an eighteenth separate and affirmative defense, Defendants allege that Plaintiff failed to perform express contractual conditions precedent to Defendants' performance, and such failure excuses any nonperformance by these answering Defendants. In making this affirmative defense, Defendants do not admit, but in fact expressly deny any liability to Plaintiff as alleged in the Complaint.

//



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NINETEENTH AFFIRMATIVE DEFENSE

(RESERVATION)

19. As and for a nineteenth separate and affirmative defense, Defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet, unstated affirmative defenses available. Answering Defendants reserve herein the right to assert additional defenses in the event that the discovery indicates they would be appropriate.

TWENTIETH AFFIRMATIVE DEFENSE

(DISCHARGE)

20. As and for a twentieth separate and affirmative defense, Defendants allege that the obligations of Defendants under the terms and conditions of the alleged contract have been discharged by operation of law. In making this affirmative defense, Defendants do not admit, but in fact expressly deny any liability to Plaintiff as alleged in the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(OFFSET)

21. If it is determined that any amount is due and owing to complainant, such amount must be offset by the damages inflicted upon Defendants by Plaintiff's wrongful acts. The wrongful acts by Plaintiff include, but are not limited to, the filing of this action which is without merit. In making this affirmative defense, Defendants does not admit, but in fact expressly deny any liability to Plaintiff as alleged in the Complaint.

WHEREFORE, these answering Defendants pray judgment against Plaintiff as follows: 1) that Plaintiff take nothing by reason of his Complaint on file herein; 2) for attorney's fees; 3) for costs of suit; and 4) for such other and further relief as the court deems just and proper.

Dated: February 11, 2015

KRING & CHUNG, LLP

By: _____



Laura C. Hess
Attorneys for Defendants
ANDREW D. PEYKOFF II and JAIME
PEYKOFF



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, the undersigned, am employed in the County of Orange, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 38 Corporate Park, Irvine, CA 92606-5105.

On February 11, 2015, I served true copies of the foregoing document(s) described as **ANSWER TO COMPLAINT** on the interested parties in this action, addressed as follows:

Andrew W. Couch
Attorney at Law
P.O. Box 8648
Newport Beach, CA 92660

BY U.S. MAIL: The documents were placed in sealed, addressed envelopes on the above date and placed for collection and mailing at my place of business. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 11, 2015, at Irvine, California.



NENA CALOCA

