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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

APR 30 2008

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SUPERIOR COURT OF CALIFORNIA
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ALAN SLATER, Clerk of the Court
V. Elias
BY V. ELIAS

APR 30 2008

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
10

11 BRIAN FARMER,) CASE NO: 30-2008 00103341
12 Plaintiff,)
13 vs.) Assigned for all purposes to
14 ERIC J. PARK, an individual,) Hon. Sheila Fell, Judge
and DOES 1 through 10 inclusive,) Dept: C22
15 Defendants.)
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ANSWER TO COMPLAINT

18 Defendant ERIC J. PARK, for himself alone and no others, answers the Complaint filed
19 by Plaintiff BRIAN FARMER, individually and responds as follows:

20 1. Under the provisions of section 431.30 of the California Code of Civil Procedure,
21 answering Defendant denies generally and specifically each and every allegation contained in
22 the Complaint, and the whole thereof, and each and every alleged cause of action thereof, and
23 denies that Plaintiff sustained damages in the sums alleged, or in any sum, or at all, by reason
24 of any act, failure to act, breach or omission on the part of this answering Defendant, or any
25 agent, servant or employee of answering Defendant.

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AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Failure To State Cause of Action)

2. Plaintiff's Complaint on file herein, and each and every cause of action therein, fails to state facts sufficient to constitute a cause of action against answering Defendant.

AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Failure To Exercise Ordinary Care)

3. Defendant is informed and believes, and thereon alleges, that by the exercise of reasonable effort, Plaintiff could have prevented all of his damages alleged in Plaintiff's Complaint, or at least mitigated the amount of damages he purportedly suffered, had Plaintiff acted properly and reasonably, and any injury or damages to Plaintiff was legally caused by the negligence of Plaintiff in that he failed to exercise ordinary care under the circumstances and is therefore barred from recovery herein.

AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Comparative Negligence)

4. Defendant is informed and believes, and thereon alleges, that the damages of which Plaintiff complain were caused by and/or are otherwise the fault of others, including, but not limited to, Plaintiff, Plaintiff's agents, employees, and/or other Defendants or Cross-Defendants, and/or such parties not presently known to answering Defendant, and that if any liability is found on the part of answering Defendant, then Plaintiff's recovery should be barred or reduced by such above-mentioned parties' comparative or contributory negligence, or conduct.

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AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Unclean Hands)

5. Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint is barred as to answering Defendant by the doctrine of unclean hands. The Plaintiff is not entitled to the relief requested in his Complaint in this action because the Plaintiff does not come to court with clean hands.

AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Estoppel)

6. Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint is barred as to answering Defendant by the doctrine of estoppel. The Plaintiff is not entitled to the relief requested in his Complaint in this action because the Plaintiff is estopped to make the claims asserted.

AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Waiver)

7. Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint is barred as to answering Defendant by the doctrine of waiver.

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AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,

TO THE COMPLAINT, DEFENDANT ALLEGES:

(Failure To Mitigate)

8. Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint is barred by the improper conduct of Plaintiff, including his failure to mitigate damages and take proper action to mitigate or reduce Plaintiff's alleged losses, if any.

AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE,

TO THE COMPLAINT, DEFENDANT ALLEGES:

(Failure To Exercise All Available Remedies)

9. Defendant is informed and believes, and thereon alleges, that the causes of action alleged in the Complaint herein are barred by Plaintiff's failure to exercise all reasonably available remedies prior to commencing this present action. Moreover, Plaintiff failed to exercise reasonable care in protecting his own interests in relation to the events alleged in the Complaint herein in that the loss and damage allegedly sustained by him was legally and proximately caused by his own conduct.

AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE,

TO THE COMPLAINT, DEFENDANT ALLEGES:

(Claims Barred By Contractual Provisions)

10. Defendant is informed and believes, and thereon alleges, that the cause(s) of action alleged in the Complaint herein are barred by the contractual provisions of the parties' agreement regarding the transaction between Plaintiff and answering Defendant, and/or the conditions precedent to claim under such agreement have not or never occurred.

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1 **AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
2 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

3 **(Failure To Avoid Damages)**

4 11. Defendant is informed and believes, and thereon alleges, that the causes of action
5 alleged in the Complaint herein are barred by Plaintiff's comparative or contributory negligence,
6 in his failure to exercise reasonable and ordinary care, caution, or prudence for his own
7 protection and well-being in order to avoid the alleged loss or damages. The resulting loss or
8 damages, if any, sustained by Plaintiff were proximately caused and contributed to by the
9 negligence of Plaintiff.

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11 **AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
12 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

13 **(Affirmative and Active Misconduct of Others)**

14 12. Defendant is informed and believes, and thereon alleges, that the cause(s) of action
15 alleged in the Complaint herein are barred by the affirmative negligence and active misconduct
16 by other party Defendants or other unnamed parties, as a result of which answering Defendants
17 could not have prevented or been accountable for the alleged loss or damages to Plaintiff.

18
19 **AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
20 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

21 **(Failure to State Statutory Basis of Liability)**

22 13. Defendant is informed and believes, and thereon alleges, that the Plaintiff's
23 Complaint on file herein, and each and every cause of action therein, fails to state facts sufficient
24 to constitute a cause of action against answering Defendant in that Plaintiff has failed to state
25 the statutory basis of liability.

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AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Right To Indemnification)

14. Defendant is informed and believes, and thereon alleges, that the damage to Plaintiff, if any, was actually and proximately caused by the acts and omissions of Co-Defendants, and answering Defendant is therefore entitled to be indemnified and held harmless by each and every other Defendant herein, with regard to liability, if any, which may be attributed to them.

AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Claims Outside Agreement of Parties)

15. Defendant is informed and believes, and thereon alleges, that the allegations regarding the obligations of Defendant are and were non-existent, not contracted for and/or outside the agreement of the parties. Therefore, Plaintiff herein is barred from seeking recovery against answering Defendant.

AS A FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:

(Assumption of Risk)

16. Defendant is informed and believes, and thereon alleges, that if Plaintiff or any other party or person in this action has sustained injury or damages, if any, all such injuries and damages were the direct result of risk assumed by and on the part of Plaintiff.

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1 **AS A SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
2 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

3 **(Intervening and Superseding Causes)**

4 17. Defendant is informed and believes, and thereon alleges, that if Plaintiff or any
5 other party or person in this action has sustained injury or damages, if any, all such injuries and
6 damages were the direct result and proximately caused or contributed to by the conduct or
7 omissions of other parties, persons, entities, or conditions, and said conduct or omissions of other
8 parties, persons, entities, or conditions were intervening and superseding causes of the damages
9 allegedly suffered.

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11 **AS A SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
12 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

13 **(No Fault)**

14 18. Defendant is informed and believes, and thereon alleges, that if Plaintiff or any
15 other party or person in this action has sustained injury or damages, if any, all such injuries and
16 damages were proximately caused or contributed to by persons other than answering Defendant
17 or conditions beyond the control of answering Defendant. The liability of all parties, named or
18 unnamed, should be apportioned according to their relative degree of fault, the liability of
19 answering Defendant, if any, should be reduced accordingly, and Civil Code sections 1431 *et*
20 *seq.* should be applied.

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22 **AS A EIGHTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**
23 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

24 **(Consent)**

25 19. Defendant is informed and believes, and thereon alleges, that if Plaintiff or any
26 other party or person in this action has sustained injury or damages, if any, all such injuries and
27 damages were the direct result of consent by Plaintiff.

1 **AS A NINETEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,**

2 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

3 **(Privilege or Justification)**

4 20. Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint
5 is barred as to answering Defendant by the fact that all acts were undertaken or performed by
6 answering Defendant with privilege or justification.

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8 **AS A TWENTIETH, SEPARATE AND AFFIRMATIVE DEFENSE,**

9 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

10 **(Reasonable and Good Faith Acts)**

11 21. Defendant is informed and believes, and thereon alleges, that Plaintiff's Complaint
12 is barred as to answering Defendant by the fact that all acts were undertaken or performed by
13 answering Defendant in a permissible way, in good faith, and in the reasonable belief that such
14 actions or conduct were lawful and valid.

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16 **AS A TWENTY-FIRST, SEPARATE AND AFFIRMATIVE DEFENSE,**

17 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

18 **(Limitation of Actions)**

19 22. Defendant is informed and believes, and thereon alleges that the damages of which
20 Plaintiff complains are barred by the applicable statute of limitations, four years on contractual
21 obligations in writing.

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23 **AS A TWENTY-SECOND, SEPARATE AND AFFIRMATIVE DEFENSE,**

24 **TO THE COMPLAINT, DEFENDANT ALLEGES:**

25 **(Business Judgment Rule)**

26 23. Defendant is informed and believes, and thereon alleges that the damages of which
27 Plaintiff complains are barred by the provisions of the business judgment rule in regard to
28 corporate entities.

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**AS A TWENTY-THIRD, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:**

(No Standing)

24. Defendant is informed and believes, and thereon alleges that Plaintiff has no standing to assert the claims for the damages of which Plaintiff complains, and Plaintiff has failed to comply with the requirements for derivative actions.

**AS A TWENTY-FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:**

(Indispensable Parties)

25. Defendant is informed and believes, and thereon alleges that Plaintiff has failed to name indispensable parties to assert the claims for the damages of which Plaintiff complains.

**AS A TWENTY-FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE,
TO THE COMPLAINT, DEFENDANT ALLEGES:**

(Offer To Compromise)

26. Defendant is informed and believes, and thereon alleges that Plaintiff improperly relies on matters which are not admissible and excluded as part of the law and rules in regard to offers to compromise.

AS TO ALL CAUSES OF ACTION, DEFENDANT ALLEGES:

(Reasonable Opportunity for Further Investigation)

27. The allegations of this Answer stated upon information and belief are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.


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WHEREFORE, Defendant prays that the Plaintiff take nothing by his Complaint, and that Defendant be awarded his costs of suit, including but not limited to reasonable attorneys' fees and costs.

Dated: April 28, 2008


By: ERIC M. SASAHARA,
LEE & SASAHARA, APC
Attorneys for Defendant
ERIC J. PARK

