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ROBERT TAYAC AND ERIC PARTON

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

04/09/2024
Clerk of the Court
BY: ANNIE PASCUAL
Deputy Clerk

8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

10 PHILIP COOKE,) Case No. CGC-21-594052
11)
Plaintiff,) **DEFENDANTS ERIC PARTON AND**
12) **ROBERT TAYAC’S ANSWER TO**
vs.) **PLAINTIFF’S FIRST AMENDED**
13) **COMPLAINT**
ROBERT TAYAC, ERIC PARTON and)
14)
DOES 1 through 10, inclusive,)
15)
Defendants.) Complaint: July 23, 2021
16) Amended Complaint: March 26, 2024
17) Trial Date: To be Determined
18)
19)
20)
21)
22)
23)

18 Defendants ERIC PARTON and ROBERT TAYAC (hereinafter “Defendants”),
19 answering the First Amended Complaint (“Amended Complaint”) of Plaintiff PHILIP
20 COOKE (“Plaintiff”) deny generally and specifically, each and every, all and singular, the
21 allegations of said Amended Complaint for damages and each cause of action thereof, and
22 deny that Plaintiff has been damaged in an sum or sums, or at all.

23 **AFFIRMATIVE DEFENSES**

24 As a first affirmative defense to each cause of action of the Amended Complaint,
25 the Amended Complaint fails to state facts sufficient to constitute a cause of action against
26 these answering Defendants.

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1 As a second affirmative defense to each cause of action of the Amended Complaint,
2 Plaintiff has waived and/or is estopped from alleging the matters set forth against these
3 answering Defendants.

4 As a third affirmative defense to each cause of action of the Amended Complaint,
5 Plaintiff acknowledged, ratified, consented to and/or acquiesced in the alleged acts or
6 omissions, if any, of these Defendants, thereby barring Plaintiff's recovery.

7 As a fourth affirmative defense to each cause of action of the Amended Complaint,
8 Plaintiff's Amended Complaint, and each cause of action contained therein, is barred by the
9 doctrine of laches.

10 As a fifth affirmative defense to each cause of action of the Amended Complaint,
11 Plaintiff's Amended Complaint, and each cause of action contained therein, is barred
12 because Plaintiff prevented and/or refused to allow Defendants to complete their
13 performance, and this action is therefore barred by the provisions of California Civil Code
14 sections 1512, 1514, and 1515.

15 As a sixth affirmative defense to each cause of action of the Amended Complaint,
16 Plaintiff's Amended Complaint, and each cause of action contained therein, is barred by the
17 doctrine of equitable estoppel.

18 As a seventh affirmative defense to each cause of action of the Amended
19 Complaint, the damages allegedly sustained by Plaintiff, if any, were caused in whole or in
20 part by Plaintiff's own willful misconduct for which these Defendants are neither
21 responsible nor liable.

22 As an eighth affirmative defense to each cause of action of the Amended Complaint
23 asserted against these answering Defendants, Plaintiff failed to mitigate his damages.

24 As a ninth affirmative defense to each cause of action of the Amended Complaint,
25 Plaintiff's Amended Complaint, and each cause of action contained therein, is barred in all
26 and/or in part, because Plaintiff breached his contractual obligations to Defendants by
27 failing to perform in accordance with the terms thereof.

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1 As a tenth affirmative defense to each cause of action of the Amended Complaint,
2 Plaintiff s Amended Complaint, and each cause of action therein, is barred because these
3 Defendants owe no duty to Plaintiff.

4 As an eleventh affirmative defense to the Amended Complaint, Defendants allege
5 that any recovery by Plaintiff must be set off or reduced, abated, or apportioned to the
6 extent that any other party’s actions caused and/or contributed to damages, if any there
7 were.

8 As a twelfth affirmative defense to the Amended Complaint, Plaintiff would be
9 unjustly enriched if allowed to recovery on his Amended Complaint as against Defendants.

10 As a thirteenth affirmative defense to each cause of action of the Amended
11 Complaint, prior to the commencement of this action, Defendants duly performed, satisfied
12 and discharged all duties and obligation they may have owed to Plaintiff arising out of any
13 and all agreements, representations and/or contracts made by them or on behalf of
14 Defendants, and this action is therefore barred.

15 As a fourteenth affirmative defense to each cause of action of the Amended
16 Complaint, Plaintiff has failed to state a claim against Defendants upon which attorney fees
17 can be awarded.

18 As a fifteenth affirmative defense to each cause of action of the Amended
19 Complaint, Plaintiff’s Amended Complaint, and each cause of action contained therein, is
20 barred by the doctrines of unclean hands and/or *in pari delicto*.

21 As a sixteenth affirmative defense to each cause of action of the Amended
22 Complaint, Plaintiff’s Amended Complaint, and each cause of action contained therein, are
23 barred because the Promissory Notes attached to the Amended Complaint are unsigned and
24 therefore the allegations in the Amended Complaint based on these Promissory Notes
25 defective and void.

26 As an seventeenth affirmative defense to each cause of action of the Amended
27 Complaint, Plaintiff’s Amended Complaint, and each cause of action contained therein,
28 because it is barred by the doctrines of accord and satisfaction as defined by California

1 Civil Code sections 1521 and 1523.

2 As an eighteenth affirmative defense to each cause of action of the Amended
3 Complaint, Plaintiff's Amended Complaint may be defective for failure to join
4 indispensable parties. There may be a non-joinder of one or more parties who are subject to
5 service of process, whose joinder will not deprive this Court of jurisdiction of the subject
6 matter of this action, and whose absence may result in incomplete relief or subject those
7 who are already parties subject to a risk of incurring double, multiple, or otherwise
8 inconsistent obligations and, for these reasons, the action should be abated and/or
9 dismissed.

10 As a nineteenth affirmative defense to each cause of action of the Amended
11 Complaint, Plaintiff's Amended Complaint, and each cause of action contained therein, is
12 barred due to Plaintiff's non-compliance with the Court's Order dated March 19, 2024,
13 issued by the Honorable Ronald E. Quidachy.

14 As a twentieth affirmative defense to each cause of action of the Amended
15 Complaint, Plaintiff's Amended Complaint, and each cause of action contained therein, is
16 barred by Plaintiff's failure to comply with procedural rules governing amendment.

17 As a twenty-first affirmative defense to the first cause of action of the Amended
18 Complaint (Breach of Contract), this cause of action is barred by the applicable statute of
19 limitations and/or is otherwise untimely.

20 As a twenty-second affirmative defense to the first cause of action of the Amended
21 Complaint (Breach of Contract), this cause of action fails for lack of consideration.

22 As a twenty-third affirmative defense to the first cause of action of the Amended
23 Complaint (Breach of Contract), this cause of action is barred by the doctrine of judicial
24 estoppel.

25 As a twenty-fourth affirmative defense to the first cause of action of the Amended
26 Complaint (Breach of Contract), this cause of action is barred in that it is based on
27 allegations that are in direct conflict with Plaintiff's original Complaint and/or which
28 contradict admission(s) made in Plaintiff's original Complaint.

1 As a twenty-fifth affirmative defense to the fifth cause of action of the Amended
2 Complaint (Usury), fails to state a cause of action Defendant Robert Tayac.

3 As a twenty-sixth affirmative defense to the fifth cause of action of the Amended
4 Complaint (Usury) is void as to Defendant Robert Tayac because Plaintiff lacks standing o
5 assert this claim against Defendant Robert Tayac.

6 As a twenty-seventh affirmative defense to the first cause of action of the Amended
7 Complaint (Breach of Contract), because Plaintiff failed to comply with all of the material
8 obligations he was required to perform as per the alleged oral contract.

9 As a twenty-eighth affirmative defense to the third cause of action of the Amended
10 Complaint (Fraud), this cause of action is defective and void because the allegations within
11 this cause of action lack the required specificity and do not plead facts which show the
12 specifics of the alleged fraud.

13 As a twenty-ninth affirmative defense to the third cause of action of the Amended
14 Complaint (Fraud), this cause of action fails for lack of allegations sufficient to establish
15 any alleged reliance.

16 As a thirtieth affirmative defense to the fourth cause of action of the Amended
17 Complaint (Conversion), this cause of action fails because no money was wrongfully taken
18 and/or such attorney fees were valid and reasonable.

19 As a thirty-first affirmative defense to the first and second causes of action of the
20 Amended Complaint (Breach of Contract and Rescission), Plaintiff failed to mitigate his
21 damages and any judgment and/or verdict in his favor should be reduced based on his
22 failure to mitigate his damages.

23 As a thirty-second affirmative defense to the fifth cause of action of the Amended
24 Complaint (Usury), this cause of action fails for lack of willful intent.

25 As a thirty-third affirmative defense to the fifth cause of action of the Amended
26 Complaint (Usury), Plaintiff cannot recover principal on this cause of action and/or for
27 amounts not actually received by Defendants.

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