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7 Attorneys for Defendants

8 Monteverdi, LLC and Berggruen Institute

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF LOS ANGELES

12 MOUNTAINGATE OPEN SPACE
MAINTENANCE ASSOCIATION;
13 CREST/PROMONTORY COMMON AREA
ASSOCIATION
14

15 Plaintiffs,

16 v.

17 MONTEVERDI, LLC, a California limited
liability company; BERGGRUEN
18 INSTITUTE, a California non-profit
organization; and CASTLE & COOKE
19 CALIFORNIA, INC., a California corporation;
20 and DOES 1-10,

21 Defendants.
22

CASE NO. 19STCV33839

**DEFENDANT BERGGRUEN INSTITUTE'S
ANSWER TO PLAINTIFFS' FIRST
AMENDED COMPLAINT**

Dept.: 28

Judge: Rupert A. Byrdsong

Trial Date: None scheduled

Action filed: September 20, 2019

1 By submitting this Answer, Defendant Berggruen Institute (“Defendant”) does not waive its
2 rights and remedies under federal, state, and common law, including but not limited to its right to
3 challenge or appeal any rulings regarding its challenges to the First Amended Complaint or previous
4 versions of the complaint, and expressly reserves its rights and remedies under federal, state, and
5 common law, including but not limited to its right to challenge or appeal any rulings regarding its
6 challenges to the First Amended Complaint or previous versions of the complaint.

7 Defendant, for itself alone, hereby submits this Answer as to the First Amended Complaint of
8 Plaintiff Mountaingate Open Space Maintenance Association (“MOSMA”) and Crest/Promontory
9 Common Area Association (“Crest/Promontory”) (collectively “Plaintiffs”), as follows:

10 **GENERAL DENIAL**

11 1. Pursuant to Section 431.30 of the California Code of Civil Procedure, Defendant
12 hereby generally denies each and every allegation in Plaintiffs’ First Amended Complaint and, further,
13 denies that Plaintiffs have suffered damages or are entitled to any relief whatsoever.

14 2. Defendant does not waive, and expressly reserves, its rights and remedies under
15 federal, state, and common law.

16 3. Without admitting any of the facts alleged in the First Amended Complaint, Defendant
17 hereby asserts and alleges the following separate and additional defenses, without prejudice to
18 Defendant’s right to argue that Plaintiffs bear the burden of proof as to any one or more of said
19 defenses. Furthermore, all such defenses are pled in the alternative and do not constitute an admission
20 of liability or an admission that Plaintiffs are entitled to any relief whatsoever. Defendant may have
21 additional affirmative defenses of which it is not fully aware and reserves the right to assert additional
22 affirmative defenses after they are ascertained.

23 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

24 **(Failure to State a Claim)**

25 1. The First Amended Complaint, and each and every purported cause of action therein,
26 fails to state facts sufficient to constitute a cause of action against Defendant.

1 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

2 **(Failure to Plead with Certainty and Particularity)**

3 2. The First Amended Complaint is barred, in whole or in part, because it is not
4 supported by factual allegations, much less allegations that are pled with sufficient particularity.

5 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

6 **(Ripeness)**

7 3. Plaintiffs' claims should be dismissed for the reason that, among others, Plaintiffs'
8 claims for relief are not ripe.

9 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

10 **(Failure to Exhaust Administrative Remedies and/or ADR Procedures)**

11 4. Plaintiffs' claims are barred in whole or in part by Plaintiffs' failure to exhaust
12 administrative remedies and/or alternative dispute resolution procedures.

13 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

14 **(Lack of Standing)**

15 5. The First Amended Complaint is barred, in whole or in part, to the extent Plaintiffs
16 lack standing.

17 **SIXTH SEPARATE AND ADDITIONAL DEFENSE**

18 **(No Legal Duty or Breach)**

19 6. Plaintiffs are barred from recovery for some or all of the claims asserted against
20 Defendant because Defendant did not owe any legal duty to Plaintiffs or, if Defendant owed a legal
21 duty to Plaintiffs, Defendant did not breach that duty.

22 **SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

23 **(Not a Party to the Contract)**

24 7. Plaintiffs' claims are barred, in whole or in part, because Defendant is not a party to
25 the contract.

1 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Breach of Contract)**

3 8. Plaintiffs' claims are barred, in whole or in part, due to MOSMA's breach or
4 anticipatory breach of the agreement.

5 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(Anticipatory Breach)**

7 9. Plaintiffs' claims are barred in whole or in part by the doctrine of anticipatory breach.

8 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

9 **(Omissions of Plaintiffs)**

10 10. The First Amended Complaint is barred, in whole or in part, to the extent that
11 damages, if any, resulted from the acts and/or omissions of Plaintiffs.

12 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

13 **(Lack of Reliance)**

14 11. Plaintiffs' claims are barred because of Plaintiffs' lack of reliance on any statements or
15 representations made by Defendant.

16 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

17 **(No Damages)**

18 12. The First Amended Complaint is barred, in whole or in part, to the extent that
19 Plaintiffs have not been damaged in the sums or manner alleged, or in any sum or manner at all.

20 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

21 **(Failure to Mitigate Damages/Acts)**

22 13. The First Amended Complaint is barred, in whole or in part, to the extent that
23 Plaintiffs failed to mitigate damages and/or because damages, if any, resulted from the acts and/or
24 omissions of Plaintiffs.

25 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

26 **(Attorney's Fees)**

27 14. Plaintiffs' claims for attorney's fees are barred because there is no contractual,
28 statutory, or other basis for such claims.

1 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Uncertainty/Speculative)**

3 15. Plaintiffs are not entitled to the relief requested in the Complaint because the Court
4 lacks any sufficiently certain, nonspeculative basis for fashioning such relief.

5 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(Adequate Remedy at Law/No Imminent or Irreparable Injury or Harm)**

7 16. Plaintiffs' claims for equitable relief are barred in whole or in part on the basis that
8 there is an adequate remedy at law, and because Plaintiffs have not suffered injury or harm and will
9 not suffer imminent and irreparable injury or harm as a result of any action or conduct by Defendant.

10 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

11 **(Unjust Enrichment)**

12 17. Plaintiffs may not recover under a theory of unjust enrichment because Plaintiffs have
13 failed to allege any cognizable "enrichment" of Defendant. Moreover, Plaintiffs' claims are barred to
14 the extent they result in an unjust enrichment to Plaintiffs.

15 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 **(Disgorgement)**

17 18. The remedy of disgorgement is barred because Defendant did not profit from the
18 violations alleged in the First Amended Complaint, and any such disgorgement does not reasonably
19 approximate the amount of any alleged unjust enrichment.

20 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

21 **(Frustration of Purpose)**

22 19. The First Amended Complaint is barred, in whole or in part, by the doctrine of
23 frustration of purpose.

24 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

25 **(Impossibility/Impracticability)**

26 20. The First Amended Complaint is barred, in whole or in part, by the doctrine of
27 impossibility and/or impracticability.

1 **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

2 **(Does Not Run with the Land)**

3 21. Plaintiffs' claims are barred in whole or in part because any alleged rights or
4 obligations do not run with the land.

5 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(Easement Rights)**

7 22. Plaintiffs' claims are barred, in whole or in part, by the common law abutter's rights
8 doctrine. Moreover, Plaintiff's claims are barred, in whole or in part, because any easement rights
9 have been expressly reserved.

10 **TWENTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

11 **(Laches, Unclean Hands, Estoppel/Waiver)**

12 23. The First Amended Complaint is barred, in whole or in part, by the doctrines of
13 laches, unclean hands, estoppel, waiver, and/or the after-acquired evidence doctrine.

14 **TWENTY-FOURTH SEPARATE AND ADDITIONAL DEFENSE**

15 **(Waiver/Abandonment)**

16 24. Plaintiffs' claims are barred in whole or in part by the doctrine of waiver and/or
17 abandonment

18 **TWENTY-FIFTH SEPARATE AND ADDITIONAL DEFENSE**

19 **(First Amendment)**

20 25. Plaintiffs' claims are barred, in whole or in part, because they violate Defendant's
21 rights under the First Amendment to the United States Constitution and the California Constitution,
22 including the right to freedom of speech and to petition the government.

23 **TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

24 **(Noerr-Pennington)**

25 26. Plaintiffs' claims are barred, in whole or in part, by the First Amendment to the United
26 States Constitution and the *Noerr-Pennington* doctrine, to the extent their claims are premised, in whole
27 or in part, on alleged statements or conduct in judicial, legislative, or administrative proceedings, of
28 any kind or at any level of government.

1 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(Additional Defenses)**

3 27. The First Amended Complaint does not describe the events and claims therein with
4 sufficient particularity to enable Defendant to determine what defenses may exist to such events and
5 claims. Defendant therefore does not knowingly and intentionally waive any affirmative defenses,
6 and reserves the right to allege additional defenses, as they become known during additional
7 investigation and discovery, and to amend their defenses accordingly.

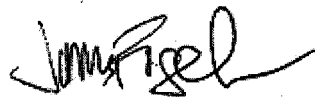
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Defendant Berggruen Institute prays for relief as follows:

- 10 1. That Plaintiffs takes nothing by this action;
- 11 2. That Plaintiffs' requests for declaratory relief be denied;
- 12 3. That the First Amended Complaint and all purported causes of action alleged therein
13 be dismissed with prejudice;
- 14 4. That Defendant Berggruen Institute be awarded its costs of suit and reasonable
15 attorneys' fees; and
- 16 5. That Defendant Berggruen Institute be awarded such further relief as this Court deems
17 appropriate.

18
19 DATED: November 20, 2019

20 GIBSON, DUNN & CRUTCHER LLP

21 

22
23 By: _____
James P. Fogelman

24 Attorneys for Defendant BERGGRUEN INSTITUTE

1 **PROOF OF SERVICE**

2 I, Rosemarie F. McBride, declare as follows:

3 I am employed in the County of Los Angeles, State of California; I am over the age of
4 eighteen years and am not a party to this action; my business address is 333 South Grand Avenue,
5 Los Angeles, CA 90071-3197, in said County and State. On November 20, 2019, I served the
6 following document(s):

7 **DEFENDANT BERGGRUEN INSTITUTE'S ANSWER TO PLAINTIFFS'
8 FIRST AMENDED COMPLAINT**

9 on the parties stated below, by the following means of service:

| | |
|--|---|
| <p>10 William M. Brody 11 Arthur Fels 12 Loeb & Loeb LLP 13 10100 Santa Monica Boulevard, Suite 2200 14 Los Angeles, CA 90067 15 Tel: (310) 282-2000 16 Fax: (310) 282-2200 17 wbrody@loeb.com 18 afels@loeb.com</p> <p>19 Ryan S. Gores 20 Castle & Cooke, Inc. 21 One Dole Drive 22 Westlake Village, CA 91362 23 Tel: (818) 879-6657 24 Fax: (818) 879-6613 25 rgores@castlecooke.com</p> | <p>26 Attorneys for Plaintiffs 27 Mountaingate Open Space Maintenance 28 Association and Crest/Promontory Common Area Association</p> <p>Attorney for Defendant Castle & Cooke California, Inc.</p> |
|--|---|

- 19 **BY OVERNIGHT DELIVERY:** On the above-mentioned date, I enclosed the documents in an envelope or
20 package provided by an overnight delivery carrier and addressed to the persons at the addresses shown above.
I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop
21 box of the overnight delivery carrier with delivery fees paid or provided for.
- 22 I am employed in the office of James P. Fogelman, a member of the bar of this court, and that the foregoing
document(s) was(were) printed on recycled paper.
- 23 (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true
24 and correct.

25 Executed on November 20, 2019.

26 _____
27 Rosemarie F. McBride
28