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8 Attorneys for Defendant
CASTLE & COOKE, INC.
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE**

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

15 Plaintiffs,

16 v.

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

20 Defendants.

Case No. 19STCV33839

The Honorable Rupert A. Byrdsong, Dept 28

**DEFENDANT CASTLE & COOKE
CALIFORNIA, INC.'S ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

FAC Filed: October 18, 2019
Complaint Filed: September 20, 2019

1 Defendant Castle & Cooke California, Inc. (“Castle & Cooke”) answers the First
2 Amended Complaint (the “FAC”) filed by plaintiffs Mountaingate Open Space
3 Maintenance Association and Crest/Promontory Common Area Association (“Plaintiffs”)
4 as follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure section 431.30, Castle & Cooke
7 generally denies each and every allegation contained in the FAC and further denies that
8 Plaintiffs have sustained any damages for which Castle & Cooke can be held liable.

9 **DEFENSES**

10 Without conceding that it has the burden of proof as to any of these matters, Castle
11 & Cooke submits the following defenses:

12 **FIRST DEFENSE**

13 **(Failure to State a Claim Upon Which Relief Can Be Granted)**

14 The FAC, and each purported cause of action therein, fails to state facts sufficient to
15 constitute a cause of action or to state a claim upon which relief can be granted.

16 **SECOND DEFENSE**

17 **(Statute of Limitations)**

18 The FAC, and each purported cause of action therein, may be barred by the
19 applicable statute of limitations.

20 **THIRD DEFENSE**

21 **(Conduct of Third Parties)**

22 Without admitting that Plaintiffs were in any way damaged, Castle & Cooke is
23 informed and believes, and based thereon alleges, that if Plaintiffs were damaged, the
24 damage was caused in whole or in part by the acts of third-parties other than Castle &
25 Cooke.

26 **FOURTH DEFENSE**

27 **(Unclean Hands)**

28 The FAC, and each purported cause of action therein, may be barred by the doctrine

1 of unclean hands.

2 **FIFTH DEFENSE**

3 **(Waiver)**

4 Plaintiffs waived the right to maintain some or all of the causes of action asserted
5 against Castle & Cooke in the FAC.

6 **SIXTH DEFENSE**

7 **(Estoppel)**

8 Castle & Cooke is informed and believes that Plaintiffs are estopped from
9 maintaining some or all causes of action asserted in the FAC.

10 **SEVENTH DEFENSE**

11 **(Failure to Mitigate)**

12 Without admitting that Plaintiffs were in any way damaged, Castle & Cooke is
13 informed and believes, and based thereon alleges, Plaintiffs' alleged damages were
14 aggravated by its failure to use reasonable diligence to mitigate them.

15 **EIGHTH DEFENSE**

16 **(Authorized Acts)**

17 Castle & Cooke is informed and believes that its actions were authorized under the
18 parties' agreement and/or applicable law.

19 **NINETH DEFENSE**

20 **(Failure to Perform Obligations)**

21 Plaintiffs' causes of action against Castle & Cooke are barred in whole or in part due
22 to its failure to fully perform the terms and conditions required of it under the agreement it
23 seeks to enforce.

24 **TENTH DEFENSE**

25 **(Excused Performance)**

26 Castle & Cooke is informed and believes that if it failed to fully perform any
27 obligations required of it (which Castle & Cooke denies), such performance was prevented,
28 excused, or frustrated by the acts or omissions of Plaintiffs and/or other parties and/or by

1 operation of law.

2 **ELEVENTH DEFENSE**

3 **(Lack or Failure of Consideration)**

4 Castle & Cooke alleges that some or all of the causes of action asserted in the FAC
5 are barred, in whole or in part, because the alleged contract was breached and/or is
6 unenforceable due to a lack, or failure, of consideration from Plaintiffs.

7 **TWELFTH DEFENSE**

8 **(Declaratory Relief Not Necessary or Proper)**

9 Castle & Cooke alleges that the declaratory relief sought by Plaintiffs is not
10 necessary or proper under all the circumstances and the court should decline to exercise its
11 power to grant such relief pursuant to Code of Civil Procedure section 1061.

12 **THIRTEENTH DEFENSE**

13 **(Declaratory Relief Not Justiciable)**

14 Castle & Cooke alleges that the declaratory relief claim fails, in whole or in part, due
15 to lack of justiciability, lack of an actual controversy, lack of standing, lack of ripeness,
16 and/or mootness.

17 **FOURTEENTH DEFENSE**

18 **(No Declaratory Relief for Past Wrongs)**

19 Castle & Cooke alleges that the declaratory relief sought by Plaintiffs cannot be
20 obtained because declaratory relief is not available as a remedy for past wrongs.

21 **FIFTEENTH DEFENSE**

22 **(Privilege)**

23 Castle & Cooke alleges its conduct was privileged and, therefore, not actionable.

24 **SIXTEENTH DEFENSE**

25 **(Frustration of Purpose)**

26 Castle & Cooke alleges that the contract-based claims in the FAC are barred under
27 the doctrine of frustration of purpose.

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1 **SEVENTEENTH DEFENSE**

2 **(Impracticability)**

3 Castle & Cooke alleges that the contract-based claims in the FAC are barred under
4 the doctrine of impracticability.

5 **EIGHTEENTH DEFENSE**

6 **(Failure of Condition Precedent)**

7 Castle & Cooke alleges that the contract-based claims in the FAC are barred due to
8 failure of a condition precedent.

9 **NINETEENTH DEFENSE**

10 **(Plaintiff's Breach of Contract)**

11 Castle & Cooke alleges that the contract-based claims asserted in the FAC may be
12 barred due to Plaintiffs' own material breach of the alleged agreement.

13 **TWENTIETH DEFENSE**

14 **(Parol Evidence Rule)**

15 Castle & Cooke alleges that the contract-based claims asserted in the FAC are barred
16 because the alleged terms thereof alleged violate the Parol Evidence Rule.

17 **TWENTY-FIRST DEFENSE**

18 **(Laches)**

19 Castle & Cooke is informed and believe that some or all of the claims alleged in the
20 FAC are barred by the doctrine of laches and Castle & Cooke has been prejudiced thereby.

21 **TWENTY-SECOND DEFENSE**

22 **(Speculative Damages)**

23 Without admitting that Plaintiffs were in any way damaged, Castle & Cooke is
24 informed and believes, and based thereon alleges, that Plaintiffs' damages or losses, if any,
25 are speculative and/or uncertain, and therefore not compensable.

26 **TWENTY-THIRD DEFENSE**

27 **(Mistake)**

28 Castle & Cooke is informed and believes that the contract-based causes of action

1 asserted in the FAC may be barred, in whole or in part, by the doctrine of unilateral or
2 bilateral mistake.

3 **PRAYER FOR RELIEF**

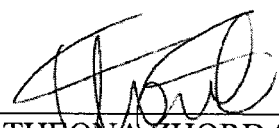
4 WHEREFORE, Castle & Cooke prays for relief as follows:

- 5 1. That Plaintiffs take nothing by way of the FAC and that the action be
6 dismissed in its entirety;
- 7 2. That Castle & Cooke be awarded its costs of suit incurred herein, including
8 reasonable attorney's fees to the extent such fees are recoverable; and
- 9 3. For such other and further relief, at law or in equity, as this Court may deem
10 just and proper.

11
12 Dated: November 18, 2019

13 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

14
15 By



16 THEONA ZHORDANIA
17 CHARLES DANAHER

18 Attorneys for Defendant
19 CASTLE & COOKE, INC.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 333 South Hope Street, 43rd Floor, Los Angeles, CA 90071-1422.

On November 18, 2019, I served true copies of the following document(s) **DEFENDANT CASTLE & COOKE, CALIFORNIA INC.'S ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

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BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred.

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

Executed on November 18, 2019, at Los Angeles, California.

/s/Elisabeth Walters
Elisabeth Walters