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Attorneys for Plaintiffs/Cross-Defendants ROBIN MARIEN,
GABRIEL JEBB, and AIR CALIFORNIA ADVENTURE,
INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

ROBIN MARIEN, an individual;
GABRIEL JEBB, an individual; and
AIR CALIFORNIA ADVENTURE,
INC., a California corporation,

Plaintiffs,

v.

ROBERT MICHAEL KUCZEWSKI, an
individual; and DOES 1 THROUGH 20,
Inclusive,

Defendants.

Case No. 37-2015-00015685-CU-DF-CTL

**CROSS-DEFENDANTS' ROBIN
MARIEN, GABRIEL JEBB AND
AIR CALIFORNIA ADVENTURE,
INC.'S ANSWER TO FIRST
AMENDED CROSS-COMPLAINT**

Dept: C-66
Judge: Joel Pressman

AND RELATED CROSS-ACTION.

Cross-Defendants ROBIN MARIEN, GABRIEL JEBB, and AIR CALIFORNIA
ADVENTURE, INC. (collectively "CROSS-DEFENDANTS") answer the First Amended Cross-
Complaint ("FACC") as follows:

GENERAL DENIAL

1. It appearing herein that the First Amended Cross-Complaint on file is
unverified, Cross-Defendants hereby file their general denial, pursuant to the *Code*

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1 *of Civil Procedure* § 431.30(d).

2 2. Cross-Defendants herein deny generally and specifically, each and
3 every allegation of said First Amended Cross-Complaint, both conjunctively and
4 disjunctively and the whole thereof, and deny further that Cross-Complainant has
5 been damaged in the amount claimed or in any other sum whatsoever or at all.

6 3. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
7 answering Cross-Defendants allege that the First Amended Cross-Complaint and
8 each alleged cause of action therein, fails to state facts sufficient to constitute a
9 cause of action as to these answering Cross-Defendants.

10 4. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
11 answering Cross-Defendants allege that at the times and places mentioned in the
12 First Amended Cross-Complaint, Cross-Complainant was careless, reckless and
13 negligent in and about the matters and things alleged in the First Amended Cross-
14 Complaint, which said carelessness, recklessness and negligence concurred in point
15 of time with the alleged negligence of the Cross-Defendants, if any there may have
16 been, and proximately caused and contributed to whatever injury and/or damage
17 Cross-Complainant may have sustained, if any, and recovery by the Cross-
18 Complainant, if any, should be proportionately reduced according to the percentage
19 of comparative fault of the Cross-Complainant.

20 5. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
21 answering Cross-Defendants allege any damages incurred by the Cross-
22 Complainant was directly and proximately caused and contributed to by the conduct
23 of others.

24 6. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
25 answering Cross-Defendants allege that Cross-Complainant did, with full
26 knowledge of the consequences of Cross-Complainant's acts and with full
27 knowledge of the dangers incident thereto, voluntarily expose himself to all of the
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1 matters and things alleged in the First Amended Cross-Complaint and did thereby
2 assume the risk generally incident thereto.

3 7. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
4 answering Cross-Defendants allege that at the times and places mentioned in the
5 First Amended Cross-Complaint, Cross-Complainant did commit willful
6 misconduct in and about the matters and things alleged in the First Amended Cross-
7 Complaint, which said willful misconduct concurred in point of time with the
8 alleged willful misconduct of these answering Cross-Defendants, if any there may
9 have been, and proximately caused and contributed to whatever injury and/or
10 damage Cross-Complainant may have sustained, if any.

11 8. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
12 answering Cross-Defendants allege that the cause of action stated in the First
13 Amended Cross-Complaint herein is barred by §§ 337, 338, and 339 of the *Code of*
14 *Civil Procedure* of the State of California.

15 9. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
16 answering Cross-Defendants are informed and believe and on that basis allege that
17 Cross-Complainant was engaged in a joint and common enterprise with others, that
18 the conduct and guilty mind of each is imputed to the other; that the said Cross-
19 Complainant was careless, reckless, and negligent in and about the matters and
20 things alleged in its First Amended Cross-Complaint, which said carelessness,
21 recklessness, and negligence concurred in point of time with the alleged conduct of
22 these answering Cross-Defendants, if any there may have been, and proximately
23 caused and contributed to whatever injury and/or damage Cross-Complainant may
24 have sustained, if any.

25 10. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
26 answering Cross-Defendants allege that any and all of its alleged obligations,
27 rights, and duties have been fully performed and fulfilled.

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1 11. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
2 answering Cross-Defendants allege that the Cross-Complainant is guilty of laches
3 and has waived in whole or in part, the claims, if any, alleged in his First Amended
4 Cross-Complaint.

5 12. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
6 answering Cross-Defendants allege that the Cross-Complainant engaged in
7 wrongful and/or unlawful conduct and activities with respect to the occurrences and
8 incidents which are the subject of the First Amended Cross-Complaint, and by
9 reason of said activities and conduct are estopped from asserting any claims for
10 damages or seeking any other relief against these answering Cross-Defendants.

11 13. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
12 answering Cross-Defendants allege that the contracts/obligations which are the
13 subject of this lawsuit were procured by the fraud and misrepresentation of Cross-
14 Complainant thereby barring his right to the damages alleged in the First Amended
15 Cross-Complaint.

16 14. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
17 answering Cross-Defendants are informed and believe and thereon allege that they
18 is excused from performing any and all of the duties and/or obligations alleged in
19 the First Amended Cross-Complaint.

20 15. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
21 answering Cross-Defendants are informed and believe and thereon allege that with
22 respect to each and every cause of action set forth in the First Amended Cross-
23 Complaint, Cross-Defendants acted in good faith and did not, in any manner,
24 directly or indirectly, perform any act, or fail to perform any act, which violated any
25 of Cross-Complainant's alleged rights or failed to perform any of Cross-
26 Defendant's alleged duties and/or obligations.

27 16. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
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1 answering Cross-Defendants are informed and believe and thereon allege that
2 Cross-Complainant has failed to mitigate, minimize, or avoid his alleged damages,
3 if any.

4 17. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
5 answering Cross-Defendants allege that as to the matters alleged in the First
6 Amended Cross-Complaint it owed no duty, fiduciary or otherwise, to the Cross-
7 Complainant.

8 18. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
9 answering Cross-Defendants allege that Cross-Complainant's claims are barred by
10 his failure to administratively exhaust his claims pursuant to the Government Tort
11 Claims Act, California Government Code §§ 810, *et seq.*

12 19. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
13 answering Cross-Defendants allege that Cross-Complainant is barred from the
14 damages alleged in the First Amended Cross-Complaint by the economic loss rule.

15 20. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
16 answering Cross-Defendants are informed and believe and thereon allege that
17 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
18 by Cross-Defendants' common-law right to use reasonable force to defend the
19 property subject to their leasehold and concession.

20 21. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
21 answering Cross-Defendants are informed and believe and thereon allege that
22 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
23 because Cross-Complainant was a trespasser.

24 22. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
25 answering Cross-Defendants are informed and believe and thereon allege that
26 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
27 by Cross-Defendants' right to use reasonable force under the circumstances known
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1 and as they appeared to be to Cross-Defendants and reasonable persons in a similar
2 situation with similar knowledge.

3 23. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
4 answering Cross-Defendants state, without shifting the burden of proof, that their
5 actions, or those of their agents, servants, or employees, resulted from a mistake of
6 law.

7 24. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
8 answering Cross-Defendants state, without shifting the burden of proof, that their
9 actions, or those of their agents, servants, or employees, resulted from a mistake of
10 fact.

11 25. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
12 answering Cross-Defendants state, that their actions, or those of their agents,
13 servants, or employees, were taken in good faith and without malice.

14 26. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
15 answering Cross-Defendants state, that their actions, or those of their agents,
16 servants, or employees, were taken in good faith and without malice, entitling them
17 to qualified immunity from suit and liability on some or all of the claims set forth in
18 First Amended Cross-Complaint based upon Cross-Complainant's claim that Cross-
19 Defendants were government actors.

20 27. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
21 answering Cross-Defendants state that their conduct, if any, was privileged such
22 that Cross-Complainant cannot state a claim.

23 28. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
24 answering Cross-Defendants allege that their conduct was at all times reasonable.

25 29. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
26 answering Cross-Defendants allege that the Cross-Complainant has engaged in
27 conduct and activities sufficient to constitute a waiver of any alleged breach of
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1 duty, negligence, act, omission, or any other alleged in the First Amended Cross-
2 Complaint.

3 30. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
4 answering Cross-Defendants allege that the injuries and damages of which Cross-
5 Complainant complains was proximately caused by or contributed to by the acts of
6 Cross-Complainant and/or other persons and/or entities and that said acts were an
7 intervening and/or superseding cause of the injuries and damages, if any, of which
8 Cross-Complainant complains, thus barring Cross-Complainant from any recovery
9 against these answering Cross-Defendants.

10 31. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
11 answering Cross-Defendants allege that their conduct with regard to the matters
12 alleged in the First Amended Cross-Complaint were justified, and by reason of the
13 foregoing, Cross-Complainant is barred from any recovery against these answering
14 Cross-Defendants.

15 32. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
16 answering Cross-Defendants allege that they did not act intentionally.

17 33. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
18 answering Cross-Defendants allege that Cross-Complainant knowingly or
19 voluntarily, or both, assented to the conduct alleged in the Cross-Complaint.

20 34. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
21 answering Cross-Defendants allege that the conduct alleged in the Cross-Complaint
22 was not a substantial factor in the harm alleged by Cross-Complainant.

23 35. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
24 answering Cross-Defendants allege Cross-Complainant suffered no harm or
25 damages cognizable at law or in equity.

26 36. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
27 answering Cross-Defendants allege an independent determination of probable cause
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1 was made by peace officers prior to arrest, if any there were.

2 37. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
3 answering Cross-Defendants allege that peace officers had reasonable cause to
4 believe that Cross-Complainant had committed a misdemeanor in their presence or
5 a felony and, accordingly, had the authority to arrest Cross-Complainant without a
6 warrant.

7 38. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
8 answering Cross-Defendants are informed and believe and thereon allege that
9 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
10 because Cross-Complainant refused to leave the premises of the leasehold after
11 being instructed to do so by the leaseholder and peace officers.

12 39. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
13 answering Cross-Defendants are informed and believe and thereon allege that
14 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
15 because Cross-Complainant's conduct provided sufficient basis for peace officers to
16 detain and question Cross-Complainant, or engage in some other limited sort of
17 investigation, which led to his arrest.

18 40. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
19 answering Cross-Defendants are informed and believe and thereon allege that
20 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
21 because Cross-Complainant's conduct provided a reasonable basis for Cross-
22 Defendants to detain or seek the detention of Cross-Complainant.

23 41. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
24 answering Cross-Defendants are informed and believe and thereon allege that
25 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
26 because any use of force by Cross-Defendants against Cross-Complainant was a
27 reasonable and proportional use of force to protect themselves, others, or their
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1 property.

2 42. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
3 answering Cross-Defendants are informed and believe and thereon allege that
4 Cross-Complainant's First Amended Cross-Complaint is barred in whole or in part
5 because Cross-Complainant was not the object of intentional or reckless conduct.

6 43. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
7 answering Cross-Defendants allege that they have no liability for attorneys' fees
8 alleged in Plaintiff's First Amended Cross-Complaint.

9 44. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
10 answering Cross-Defendants allege Cross-Complainant has been fully compensated
11 for all damages suffered as alleged in his First Amended Cross-Complaint.

12 45. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
13 answering Cross-Defendants allege that punitive damages are violative of the due
14 process, equal protection, and right of privacy provisions of the United States and
15 California State Constitutions and that this court, therefore, does not have subject
16 matter jurisdiction to hear the punitive damage claim.

17 46. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
18 answering Cross-Defendants alleges that Cross-Complainant's damages, if any,
19 were caused by the willful or intentional conduct of others, for which these
20 answering Cross-Defendants cannot be held responsible.

21 47. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
22 answering Cross-Defendants allege that the Complaint is barred in whole or in part,
23 because Cross-Defendants had an honest, reasonable, and good faith belief in the
24 facts upon which it based its acts, omissions, and conduct taken with respect to
25 Cross-Complainant.

26 48. FOR A FURTHER, SEPARATE AND DISTINCT DEFENSE, these
27 answering Cross-Defendants reserve the right to amend this answer to assert such
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1 additional defenses as they become apparent during the continuing course of
2 discovery in this matter.

3 WHEREFORE, these answering Cross-Defendants pray that Cross-
4 Complainant take nothing by way of his First Amended Cross-Complaint and
5 Cross-Defendants goes hence with Cross-Defendants' costs of suit and reasonable
6 attorney's fees incurred.

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8 Dated: January 25, 2016

SHEWRY & SALDAÑA, LLP

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11 By: _____

Christopher C. Saldaña

12 Attorneys for Plaintiffs/Cross-Defendants ROBIN
13 MARIEN, GABRIEL JEBB, and AIR
14 CALIFORNIA ADVENTURE, INC.