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7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10
11 ALAIN COHEN, an individual,

12 Plaintiff,

13 v.

14 GOT KOSHER?, INC., a California
15 Corporation; JOHN NOOHIAN, an
16 individual, and Does 1-10.

17 Defendants.

18 _____
19 JOHN NOOHIAN, an individual,

20 Cross-Complainant,

21 v.

22 ALAIN COHEN, an individual; LEE
23 SACKS, an individual; EVELYN
24 BARAN, an individual; and Does 1-
100,

25 Cross-Defendants.
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CASE NO: SC097050

CROSS-COMPLAINT FOR:

1. **Breach of Contract;**
2. **Fraud, Deceit, Intentional Misrepresentation;**
3. **Negligent Misrepresentation;**
4. **Constructive Fraud;**
5. **Conspiracy to Defraud;**
6. **Breach of Fiduciary Duty;**
7. **Intentional Interference with Prospective Economic Advantage;**
8. **Negligent Interference with Prospective Economic Advantage; and,**
9. **Negligence**

COMPLAINT FILED: February 13, 2008

TRIAL DATE: NO TRIAL DATE

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1 CROSS-COMPLAINANT complains of CROSS- DEFENDANTS, and alleges as follows:

2 **PRELIMINARY ALLEGATIONS**

3 1. Cross-Complainant, JOHN NOOHIAN (öCross-Complainantö) is, and was at
4 all relevant times, a resident of the County of Los Angeles, State of California.

5 2. Cross-Complainant is, and at all times relevant herein was, a shareholder, Chief
6 Executive Officer (öCEOö) and a member of the Board of Directors of GOT KOSHER?,
7 INC. (öGOT KOSHERö), a corporation created under the laws of the State of California, and
8 whose principle place of business office is located in the City of Los Angeles, Los Angeles
9 County, State of California.

10 3. Cross-Complainant is informed and believes, and thereon alleges, that Cross-
11 Defendant, ALAIN COHEN (öCOHENö), is now, and at all relevant times relevant herein
12 was, a resident of the County of Los Angeles, State of California, and was a shareholder,
13 Chief Financial Officer (öCFOö), and a member of the Board of Directors of GOT
14 KOSHER.

15 4. Cross-Complainant is informed and believes, and thereon alleges, that Cross-
16 Defendant, LEE SACKS (öSACKSö) is now, and was at all relevant times herein mentioned,
17 an attorney licensed to practice in the State of California, and is a resident of the County of
18 Los Angeles, State of California, and was legal counsel for GOT KOSHER.

19 5. Cross-Complainant is informed and believes, and thereon alleges, that Cross-
20 Defendant, EVELYN BARAN (öBARANö), is now, and at all relevant times relevant herein
21 was, a resident of the County of Los Angeles, State of California, and was a silent
22 shareholder of GOT KOSHER.

23 6. The true names and capacities, whether individual, corporate, partners, sole
24 proprietors, business entities, and associate, representative or otherwise, of Cross-Defendants
25 named herein as DOES 1 to 100, inclusive, are unknown to Cross-Complainant, who
26 therefore sues such Cross-Defendants by such fictitious names. Cross-Complainant will ask
27 for leave of court to amend this Cross-Complaint to show such true names and capacities
28 when the same has been ascertained, in accordance with Code of Civil Procedure § 474.

1 13. On or about August 24, 2007, COHEN together with BARAN and SACKS,
2 registered GK Provisions, LLC, and GK2, LLC with the California Secretary of State.

3 14. Prior to August 24, 2007 Cross-Complainant demanded that COHEN refrain
4 from incorporating and/or registering any businesses with names similar to GOT KOSHER
5 or names that would mislead the customers by making them believe that such businesses
6 have a connection with GOT KOSHER. Nevertheless, COHEN registered two (2)
7 companies with names that are abbreviated versions of GOT KOSHER, GK Provisions,
8 LLC, and GK2, LLC. Further, both GK Provisions, LLC, as well as GK2, LLC, used GOT
9 KOSHER's corporate address as their business address. These companies are exclusively
10 owned by COHEN, and Cross-Complainant does not have any interest in them. Cross-
11 Complainant is informed and believes, and thereon alleges, that COHEN used services of
12 SACKS for the purpose of creating and registering the above mentioned companies.

13 15. Cross-Complainant is informed and believes, and thereon alleges, that COHEN
14 and BARAN attempted to transfer several accounts from GOT KOSHER to his two (2) new
15 companies, GK Provisions, LLC, and GK2, LLC. Upon information and belief, COHEN
16 told several customers of GOT KOSHER that GOT KOSHER changed its name to GK
17 Provisions, LLC, and GK2, LLC.

18 16. Cross-Complainant is informed and believes, and thereon alleges, that due to
19 COHEN's focus on his new companies, the quality of GOT KOSHER's product has
20 suffered. Several customers have complained to Cross-Complainant about the quality of
21 GOT KOSHER's product.

22 17. Cross-Complainant is informed and believes, and thereon alleges that prior to
23 SACKS's involvement with GK Provisions, LLC, and GK2, LLC, COHEN hired SACKS as a
24 counsel for GOT KOSHER and had Cross-Complainant ratify Sack's employment. On or
25 about December 20, 2007, Cross-Complainant asked COHEN to refrain from allowing
26 SACKS, the attorney that COHEN hired to represent GOT KOSHER, to represent COHEN
27 as his attorney for GK2 and GK Provisions. Despite that request, COHEN continued to use
28 SACKS as the attorney for both, GK2, GK Provisions, and for GOT KOSHER. Further, on

1 multiple occasions since December 20, 2007, Cross-Complainant demanded that SACKS
2 discontinue either his representation of GOT KOSHER or of GK2 and GK Provisions. Until
3 February, 2008, SACKS continued to represent all three (3) companies.

4 18. Moreover, from approximately December, 2007, until the present, COHEN
5 engaged in improper behaviour that is disruptive to Cross-Complainant's and GOT
6 KOSHER's business and threatens GOT KOSHER's corporate stability and existence.

7 Among other things:

- 8 a. Cross-Complainant expressly requested that his approval need to be given
9 for the creation of any minutes created from a corporate meeting. Despite
10 this request, upon information and belief, without notifying Cross-
11 Complainant, COHEN held a special meeting of shareholders of GOT
12 KOSHER. At the meeting, without Cross-Complainant's presence,
13 approval and without quorum being met, COHEN without authority,
14 attempted to grant shares of stock to his girlfriend BARAN, and prepared
15 minutes of the special meeting. Furthermore, at said meeting, without
16 authority added the minutes to GOT KOSHER's corporate records. This
17 transfer was done without any approval of Cross-Complainant or
18 notification beforehand.
- 19 b. COHEN prevented Cross-Complainant and GOT KOSHER from
20 conducting regular business by (1) changing the passwords on all the
21 computers in the company and refusing to inform Cross-Complainant of
22 these new passwords; (2) bringing a bodyguard to the GOT KOSHER's
23 principal business office for the sole purpose of preventing Cross-
24 Complainant's access to the company's computers and corporate
25 information; (3) withdrawing money from the company's bank account,
26 thus causing the company to be unable to meet its payroll for employees,
27 and billing obligations.

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- 1 c. Upon information and belief, COHEN removed all GOT KOSHER's
2 accounting information from GOT KOSHER's premises and, despite
3 Cross-Complainant's repeated requests to provide all accounting documents
4 for GOT KOSHER for Cross-Complainant's review, COHEN refused,
5 claiming that the documents belonged to COHEN.
- 6 d. Upon information and belief, COHEN directed/instructed Schneider, the
7 CPA for GOT KOSHER, to remove all checks and check registers from the
8 GOT KOSHER's premises, and not to include Cross-Complainant on the
9 2006 tax return for GOT KOSHER, and refused to allow Cross-
10 Complainant to review said tax return prior to filing.
- 11 e. Upon information and belief, COHEN interfered with Cross-Complainant's
12 and GOT KOSHER's ability to obtain permits necessary to open a new
13 store by, among other things, threatening contractors hired by GOT
14 KOSHER and by Cross-Complainant.
- 15 f. Taking the articles of incorporation from the principal place of business.
16 Cross-Complainant requested the return of the articles of incorporation to
17 the principal place of business, but COHEN refused.
- 18 g. Breaching his fiduciary duty, and failing to act in good faith by
19 intentionally creating two (2) competing companies with similar names, and
20 using his connection with GOT KOSHER, to trick clients of GOT
21 KOSHER and Cross-Complainant into becoming clients of these two
22 competing companies. The creation of these actions and changing of
23 clients was done without knowledge and to the detriment of Cross-
24 Complainant and GOT KOSHER.

25 19. Furthermore, at all relevant times herein COHEN failed to properly pay Cross-
26 Complainant his salary from GOT KOSHER.

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- 1 KOSHER in the kosher food business;
- 2 b. diverting accounts from GOT KOSHER to GK Provisions, LLC, and GK2,
- 3 LLC;
- 4 c. conspiring with SACKS and BARAN to defraud Cross-Complainant and
- 5 GOT KOSHER and to cause Cross-Complainant and GOT KOSHER
- 6 damages;
- 7 d. commencing and continuing a scheme designed to prevent Cross-
- 8 Complainant and GOT KOSHER from doing business and to transfer GOT
- 9 KOSHER's accounts to other entities that belonged to COHEN and
- 10 BARAN;
- 11 e. failing to properly pay Cross-Complainant;
- 12 f. engaging in improper behaviour that is disruptive to GOT KOSHER's
- 13 business and threatens GOT KOSHER's corporate stability and existence;
- 14 g. creating corporate minutes for GOT KOSHER prior to obtaining Cross-
- 15 Complainant's approval and adding the minutes to GOT KOSHER's
- 16 corporate records without the approval of Cross-Complainant;
- 17 h. holding at least one (1) special meeting of shareholders of GOT KOSHER
- 18 without notifying Cross-Complainant;
- 19 i. holding at least one (1) corporate meeting and creating corporate minutes
- 20 without quorum being present;
- 21 j. granting shares of stock to BARAN without having Cross-Complainant
- 22 approve such transfer of shares to BARAN;
- 23 k. preventing Cross-Complainant and GOT KOSHER from doing business by:
- 24 (1) changing passwords on all the computers and refusing to inform Cross-
- 25 Complainant of the new passwords; (2) bringing a bodyguard to the GOT
- 26 KOSHER's principal business office for the sole purpose of preventing
- 27 Cross-Complainant's access to the company's computers and corporate
- 28 information; (3) withdrawing money from the company's bank account,

1 thus causing the company to be unable to meet the payroll;

- 2 l. removing all GOT KOSHER's accounting information from GOT
3 KOSHER's premises and, despite Cross-Complainant's repeated requests to
4 provide all accounting documents for GOT KOSHER for Cross-
5 Complainant's review, COHEN refusing to provide any documentation to
6 Cross-Complainant, claiming that the documents belonged to COHEN;
- 7 m. directing/instructing Schneider, the CPA for GOT KOSHER, to remove all
8 checks and check registers from the GOT KOSHER's premises, and not to
9 include Cross-Complainant on the 2006 tax return for GOT KOSHER, and
10 refusing to allow Cross-Complainant to review said tax return prior to
11 filing;
- 12 n. removing, and/or causing it to be removed, stocks, checks, corporate
13 records, accounting documents, and other financial records from GOT
14 KOSHER and refusing to return them;
- 15 o. interfering with Cross-Complainant's and GOT KOSHER's ability to
16 obtain permits necessary to open a new store by, among other things,
17 threatening contractors hired by GOT KOSHER and by Cross-
18 Complainant;
- 19 p. Taking the articles of incorporation from the principal place of business and
20 refusing both oral and written requests to return the articles of incorporation
21 to the principal place of business;
- 22 q. Breaching his fiduciary duty, and failing to act in good faith by
23 intentionally creating two (2) competing companies with similar names, and
24 using his connection with GOT KOSHER and Cross-Complainant, to trick
25 clients of GOT KOSHER and Cross-Complainant into becoming clients of
26 these two competing companies; and,
- 27 r. otherwise as alleged herein and as determined at trial.

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1 25. Cross-Complainant has performed all acts, duties and considerations under the
2 parties' contractual agreement.

3 26. COHEN has not performed, and willfully breached, his duties under the
4 contract.

5 27. Cross-Complainant and GOT KOSHER were harmed by COHEN's breach of
6 the agreement between them.

7 28. Cross-Complainant and GOT KOSHER, therefore, suffered damages as a
8 direct and foreseeable result of COHEN's breach of the contract, including but not limited to
9 lost profits, lost property and assets, lost compensation, lost benefits, and other damages
10 according to proof at trial.

11 **LEE SACKS**

12 29. Cross-Complainant realleges and incorporates by reference paragraphs 1-28 of
13 this Cross-Complaint as if fully set forth herein.

14 30. There existed a valid written and oral contract between Cross-Complainant,
15 GOT KOSHER, and SACKS, and SACKS was bound to the terms of said contract.

16 31. Pursuant to the terms of the contract, in consideration for, among other things,
17 Cross-Complainant's ratification of SACKS's representation and Cross-Complainant's and
18 GOT KOSHER's promise to pay SACKS for his services, SACKS promised to, among other
19 things, provide legal representation to GOT KOSHER as its attorney and to act in the best
20 interest of GOT KOSHER and Cross-Complainant.

21 32. SACKS breached the contract by, among other things:

- 22 a. agreeing to represent COHEN in his creation of GK Provisions, LLC, and
23 GK2, LLC, two (2) companies that directly compete with GOT KOSHER;
- 24 b. failing to fully disclose to Cross-Complainant that he represented GK
25 Provisions, LLC, and GK2, LLC;
- 26 c. failing to act in the best interest of Cross-Complainant and GOT KOSHER;
- 27 d. continuing to accept payment from Cross-Complainant and from GOT
28 KOSHER while acting contrary to its best interest; and,

1 e. otherwise as alleged herein and as determined at trial.

2 33. Cross-Complainant has performed all acts, duties and considerations under the
3 parties' contractual agreement.

4 34. SACKS has not performed, and willfully breached, his duties under the
5 contract.

6 35. Cross-Complainant and GOT KOSHER were harmed by SACKS' breach of
7 the agreement between them.

8 36. Cross-Complainant and GOT KOSHER, therefore, suffered damages as a
9 direct and foreseeable result of SACKS' breach of the contract, including but not limited to
10 lost profits, lost property and assets, lost compensation, lost benefits, and other damages
11 according to proof at trial.

12 **SECOND CAUSE OF ACTION**

13 **FRAUD, DECEIT, AND INTENTIONAL MISREPRESENTATION**

14 **AS AGAINST ALAIN COHEN, LEE SACKS, EVELYN BARAN, AND DOES 1-100**

15 37. Cross-Complainant realleges and incorporates by reference paragraphs 1-36 of
16 this Cross-Complaint as if fully set forth herein.

17 **ALAIN COHEN**

18 38. From approximately December 2004, until the present, COHEN, orally and,
19 upon information and belief, in writing, represented to Cross-Complainant that COHEN
20 possessed special knowledge, education, training and considerable experience in the area of
21 restaurant business. Further, from approximately December 2004, until the present,
22 COHEN, orally and, upon information and belief, in writing, represented to Cross-
23 Complainant that COHEN would devote his special knowledge, education, training and
24 considerable experience for the sole benefit of GOT KOSHER.

25 39. All such representations were made either in Cross-Complainant's presence, at
26 the GOT KOSHER's principal place of business, or via telephone.

27 40. Based on such representations by COHEN, Cross-Complainant agreed to enter
28 into a business relationship with COHEN.

1 41. Said representations were false and misleading and made with intent to defraud
2 Cross-Complainant, and COHEN intended or knew them to be false and misleading at the
3 time he made them, or he made the representations recklessly and without regard for their
4 truth to induce Cross-Complainant to enter into a business relationship with COHEN and to
5 contribute \$122,000.00 into the business.

6 42. In reality, upon information and belief, COHEN always intended to create
7 companies to compete with GOT KOSHER and always intended to transfer GOT
8 KOSHER's accounts to those competing companies, to the detriment of GOT KOSHER and
9 Cross-Complainant.

10 43. The true facts are that COHEN created and, thereafter, concealed from Cross-
11 Complainant the creation of two (2) additional companies, GK Provisions, LLC, and GK2,
12 LLC, which directly compete with GOT KOSHER in the kosher food distribution market.

13 44. Despite the creation of these companies, COHEN continued and continues to
14 represent to Cross-Complainant and to GOT KOSHER, both, orally and in writing, that
15 COHEN was devoting his energy solely for the benefit of GOT KOSHER.

16 45. Due to COHEN's involvement with GK Provisions, LLC, and GK2, LLC, the
17 quality of GOT KOSHER's product has suffered. Several customers have recently
18 complained to Cross-Complainant about the quality of GOT KOSHER's product.

19 46. Cross-Complainant, at the time all these representations were made by
20 COHEN and at the time Cross-Complainant took the actions herein alleged, was unaware of
21 the falsity of COHEN's representations and believed them to be true. It was not until
22 approximately December of 2007 that Cross-Complainant became aware of the falsity of
23 COHEN's representations.

24 47. Cross-Complainant justifiably relied on COHEN's representations because, at
25 the time COHEN made the above-mentioned representations to Cross-Complainant and to
26 GOT KOSHER, Cross-Complainant had no reason to mistrust COHEN.

27 48. Cross-Complainant's reliance on COHEN's representations was a substantial
28 factor in causing Cross-Complainant harm.

1 55. At the time SACKS made the above representations to Cross-Complainant,
2 SACKS never intended to act in the best interest of GOT KOSHER and Cross-Complainant.
3 Upon information and belief, SACKS always intended to assist COHEN in creating GK
4 Provisions, LLC, and GK2, LLC, to directly compete with GOT KOSHER in the kosher
5 food distribution market. Further, upon information and belief, SACKS always intended to
6 assist COHEN to cause damages to Cross-Complainant and to GOT KOSHER by
7 representing GOT KOSHER, GK Provisions, LLC, and GK2, LLC, and COHEN.

8 56. Cross-Complainant, at the time these representations were made by SACKS
9 and at the time Cross-Complainant took the actions herein alleged, was unaware of the falsity
10 of SACKS's representations and believed them to be true. It was not until approximately
11 December, 2007 that Cross-Complainant became aware of the falsity of SACKS's
12 representations.

13 57. Cross-Complainant justifiably relied on SACKS's representations because, at
14 the time SACKS made the above-mentioned representations to Cross-Complainant and to
15 GOT KOSHER, Cross-Complainant had no reason to mistrust SACKS.

16 58. Cross-Complainant's reliance on SACKS's representations was a substantial
17 factor in causing Cross-Complainant harm.

18 59. As a result of SACKS's representations to Cross-Complainant and Cross-
19 Complainant's reliance on them, Cross-Complainant suffered damages according to proof at
20 trial.

21 60. The aforementioned conduct of SACKS constitutes intentional
22 misrepresentation, fraud, deceit and/or concealment of material facts known to SACKS, with
23 the intention on the part of SACKS of thereby depriving Cross-Complainant of property,
24 legal rights or otherwise causing injury. Such conduct was malicious and despicable and was
25 in conscious disregard of Cross-Complainant's rights and subjected Cross-Complainant to
26 cruel and unjust hardship and justifies an award of exemplary and punitive damages.

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EVELYN BARAN

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2 61. Cross-Complainant realleges and incorporates by reference paragraphs 1-60 of
3 this Cross-Complaint as if fully set forth herein.

4 62. From approximately July 2005, until the present, BARAN, orally and in
5 writing, represented to Cross-Complainant that she would financially invest in GOT
6 KOSHER. For this financial investment it was agreed that BARAN would become a
7 shareholder of GOT KOSHER, and would provide her knowledge and skills for the sole
8 benefit of Cross-Complainant and GOT KOSHER.

9 63. All such representations to Cross-Complainant and to GOT KOSHER were
10 made orally and in writing via telephone or in Cross-Complainant's presence.

11 64. In reality, upon information and belief, BARAN always intended to defraud
12 and/or cause damages to Cross-Complainant and GOT KOSHER by using the specialized
13 knowledge received from her business experience with GOT KOSHER to assist directly and
14 actively in the creation of competing kosher food market companies, GK Provisions, LLC,
15 and GK2, LLC, with COHEN.

16 65. BARAN knew and intended for these two (2) companies to directly compete in
17 the kosher food market and be detrimental to both Cross-Complainant and GOT KOSHER.
18 Further, BARAN intended for these new companies to take over Cross-Complainant and
19 GOT KOSHER's account, by using the specialized knowledge received from her business
20 experience with GOT KOSHER and using similar intellectual property names to GOT
21 KOSHER of GK Provisions, LLC, and GK2, LLC, to effectively trick GOT KOSHER
22 clients into thinking they are doing business with the same company and shareholder.

23 66. Cross-Complainant, at the time these representations were made by BARAN
24 and at the time Cross-Complainant took the actions herein alleged, was unaware of the falsity
25 of her representations and believed them to be true. It was not until approximately
26 December of 2007 that Cross-Complainant became aware of the falsity of BARAN's
27 representations.

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1 67. Cross-Complainant justifiably relied on BARAN's representations because, at
2 the time BARAN made the above-mentioned representations to Cross-Complainant and to
3 GOT KOSHER, Cross-Complainant had no reason to mistrust BARAN.

4 68. Cross-Complainant's reliance on BARAN's representations was a substantial
5 factor in causing Cross-Complainant harm.

6 69. As a result of BARAN's representations to Cross-Complainant and Cross-
7 Complainant's reliance on them, Cross-Complainant suffered damages according to proof at
8 trial.

9 70. The aforementioned conduct of BARAN constitutes intentional
10 misrepresentation, fraud, deceit and/or concealment of material facts known to BARAN,
11 with the intention on the part of BARAN of thereby depriving Cross-Complainant of
12 property, legal rights or otherwise causing injury. Such conduct was malicious and
13 despicable and was in conscious disregard of Cross-Complainant's rights and subjected
14 Cross-Complainant to cruel and unjust hardship and justifies an award of exemplary and
15 punitive damages.

16 **THIRD CAUSE OF ACTION**

17 **NEGLIGENT MISREPRESENTATION**

18 **AS AGAINST ALAIN COHEN, LEE SACKS, AND DOES 1-100**

19 71. Cross-Complainant realleges and incorporates by reference paragraphs 1-70 of
20 this Cross-Complaint as if fully set forth herein.

21 **ALAIN COHEN**

22 72. From approximately December, 2004, until the present, COHEN, orally and,
23 upon information and belief, in writing, represented to Cross-Complainant that COHEN
24 possessed special knowledge, education, training and considerable experience in the area of
25 restaurant business. Further, from approximately December, 2004, until the present,
26 COHEN, orally and, upon information and belief, in writing, represented to Cross-
27 Complainant that COHEN would devote his special knowledge, education, training and
28 considerable experience for the sole benefit of GOT KOSHER.

1 73. All such representations were made either in Cross-Complainant's presence, at
2 the GOT KOSHER's principal place of business, or via telephone.

3 74. Based on such representations by COHEN, Cross-Complainant agreed to enter
4 into a business relationship with COHEN.

5 75. Said representations were false and misleading and made with intent to defraud
6 and induce Cross-Complainant into relying on said representations, and COHEN intended or
7 knew them to be false and misleading at the time he made them, or he made the
8 representations recklessly and without regard for their truth to induce Cross-Complainant to
9 enter into a business relationship with COHEN and to contribute \$122,000.00 into the
10 business.

11 76. In reality, upon information and belief, COHEN always intended to create
12 companies to compete with GOT KOSHER and always intended to transfer GOT
13 KOSHER's accounts to those competing companies, to the detriment of GOT KOSHER and
14 Cross-Complainant.

15 77. The true facts are that COHEN created and, thereafter, concealed from Cross-
16 Complainant the creation of two (2) additional companies, GK Provisions, LLC, and GK2,
17 LLC, which directly compete with GOT KOSHER in the kosher food distribution market.

18 78. Despite the creation of these companies, COHEN continued to represent to
19 Cross-Complainant and to GOT KOSHER, both, orally and in writing, that COHEN was
20 devoting his energy solely for the benefit of GOT KOSHER.

21 79. The true facts are that, due to COHEN's involvement with GK Provisions,
22 LLC, and GK2, LLC, the quality of GOT KOSHER's product has suffered. Several
23 customers have recently complained to Cross-Complainant about the quality of GOT
24 KOSHER's product.

25 80. Cross-Complainant, at the time these representations were made by COHEN
26 and at the time Cross-Complainant took the actions herein alleged, was unaware of the falsity
27 of COHEN's representations and believed them to be true. It was not until approximately
28 December of 2007 that Cross-Complainant became aware of the falsity of COHEN's

1 representations.

2 81. Cross-Complainant justifiably relied on COHEN's representations because, at
3 the time COHEN made the above-mentioned representations to Cross-Complainant and to
4 GOT KOSHER, Cross-Complainant had no reason to mistrust COHEN.

5 82. As a result of COHEN's representations to Cross-Complainant and Cross-
6 Complainant's reliance on them, Cross-Complainant suffered damages according to proof at
7 trial.

8 83. The aforementioned conduct of COHEN constitutes negligent
9 misrepresentation of material facts without any reasonable grounds for believing it was true.
10 Such conduct was reckless, despicable and was in reckless disregard of Cross-Complainant's
11 rights and subjected Cross-Complainant to cruel and unjust hardship and justifies an award
12 of exemplary and punitive damages.

13 **LEE SACKS**

14 84. Cross-Complainant realleges and incorporates by reference paragraphs 1-83 of
15 this Cross-Complaint as if fully set forth herein.

16 85. In approximately 2007, SACKS represented to Cross-Complainant and GOT
17 KOSHER that he was a licensed, skilled professional who possessed special knowledge,
18 education, training and experience in the legal area. SACKS represented to Cross-
19 Complainant and GOT KOSHER that he would provide legal representation to GOT
20 KOSHER as its attorney and would act in the best interest of Cross-Complainant and GOT
21 KOSHER.

22 86. All such representations to Cross-Complainant and to GOT KOSHER were
23 made orally and in writing, and were made either at SACKS's law offices, or via telephone, in
24 Cross-Complainant's presence.

25 87. Said representations were false and misleading and made with intent to defraud
26 Cross-Complainant and GOT KOSHER, and SACKS intended or knew them to be false and
27 misleading at the time he made them, or he made the representations recklessly and without
28 regard for their truth. Further, SACKS made all such representations with the specific intent

1 to induce Cross-Complainant to hire SACKS as GOT KOSHER's attorney and/or to ratify
2 COHEN's decision to hire SACKS, so that SACKS could receive payment for his services
3 from Cross-Complainant and/or GOT KOSHER's funds.

4 88. At the time SACKS made the above representations to Cross-Complainant,
5 SACKS never intended to act in the best interest of Cross-Complainant and GOT KOSHER.
6 Upon information and belief, SACKS always intended to assist COHEN in creating GK
7 Provisions, LLC, and GK2, LLC, to directly compete with GOT KOSHER in the kosher
8 food distribution market. Further, upon information and belief, SACKS always intended to
9 assist COHEN to cause damages to Cross-Complainant and to GOT KOSHER by
10 representing GOT KOSHER, GK Provisions, LLC, and GK2, LLC, and COHEN.

11 89. Cross-Complainant, at the time these representations were made by SACKS
12 and at the time Cross-Complainant took the actions herein alleged, was unaware of the falsity
13 of SACKS's representations and believed them to be true. It was not until approximately
14 December of 2007 that Cross-Complainant became aware of the falsity of SACKS's
15 representations.

16 90. Cross-Complainant justifiably relied on SACKS's representations because, at
17 the time SACKS made the above-mentioned representations to Cross-Complainant and to
18 GOT KOSHER, Cross-Complainant had no reason to mistrust SACKS.

19 91. As a result of SACKS's representations to Cross-Complainant and Cross-
20 Complainant's reliance on them, Cross-Complainant suffered damages according to proof at
21 trial.

22 92. The aforementioned conduct of SACKS constitutes negligent
23 misrepresentation of material facts without any reasonable grounds for believing it was true.
24 Such conduct was reckless, despicable and was in reckless disregard of Cross-Complainant's
25 rights and subjected Cross-Complainant to cruel and unjust hardship and justifies an award
26 of exemplary and punitive damages.

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1 **FOURTH CAUSE OF ACTION**

2 **CONSTRUCTIVE FRAUD**

3 **AS AGAINST ALAIN COHEN, LEE SACKS, AND DOES 1-100**

4 93. Cross-Complainant realleges and incorporates by reference paragraphs 1-92 of
5 this Cross-Complaint as if fully set forth herein.

6 **ALAIN COHEN**

7 94. As the CFO of GOT KOSHER, COHEN owed a fiduciary duty of highest good
8 faith and utmost loyalty to Cross-Complainant and to GOT KOSHER.

9 95. As specified above, from approximately 2004, until the present, COHEN made
10 representations to Cross-Complainant and to GOT KOSHER that COHEN possessed special
11 knowledge, education, training and considerable experience in the area of restaurant business
12 and that COHEN would devote his special knowledge, education, training and considerable
13 experience for the sole benefit of GOT KOSHER.

14 96. By, among other things, creating GK Provisions, LLC, and GK2, LLC, and
15 diverting accounts from GOT KOSHER to GK Provisions, LLC, and GK2, LLC, COHEN
16 breached his fiduciary duty owed to Cross-Complainant and to GOT KOSHER and caused
17 Cross-Complainant and GOT KOSHER considerable damages, in the amount to be
18 determined at trial. Further, as a direct and proximate result of this breach, COHEN gained
19 an economic advantage and allowed his other two (2) companies, GK Provisions, LLC, and
20 GK2, LLC to benefit from Cross-Complainant's and GOT KOSHER's success and clients.
21 Moreover, at all times that COHEN made the above representations to Cross-Complainant
22 and to GOT KOSHER, and at times when COHEN engaged in creation of GK Provisions,
23 LLC, and GK2, LLC, COHEN mislead Cross-Complainant and GOT KOSHER to their
24 prejudice.

25 97. As a direct and proximate result of the aforementioned constructive fraud,
26 Cross-Complainant suffered damages in the amount to be determined at trial.

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LEE SACKS

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2 98. Cross-Complainant realleges and incorporates by reference paragraphs 1-97 of
3 this Cross-Complaint as if fully set forth herein.

4 99. As the attorney for GOT KOSHER, SACKS owed a fiduciary duty of highest
5 good faith and utmost loyalty to Cross-Complainant and to GOT KOSHER.

6 100. SACKS breached his fiduciary duty owed to Cross-Complainant and to GOT
7 KOSHER by, among other things representing to Cross-Complainant and to GOT KOSHER
8 that he would be the attorney for GOT KOSHER and that he would represent GOT
9 KOSHER in all of its business affairs and would act in the best interest of GOT KOSHER,
10 and also agreeing to represent COHEN in his creation of GK Provisions, LLC, and GK2,
11 LLC, two (2) companies that directly compete with GOT KOSHER, to the detriment of GOT
12 KOSHER. Additionally, SACKS failed to fully disclose to Cross-Complainant that he
13 represented GK Provisions, LLC, and GK2, LLC, and continued to accept payment from
14 GOT KOSHER while acting contrary to its best interest.

15 101. By committing the acts described above, SACKS breached his fiduciary duty
16 owed to Cross-Complainant and to GOT KOSHER and caused Cross-Complainant and GOT
17 KOSHER considerable damages, in the amount to be determined at trial. Further, as a direct
18 and proximate result of this breach, SACKS gained an economic advantage from Cross-
19 Complainant~~s~~ and GOT KOSHER by receiving payment(s) from GOT KOSHER.
20 Moreover, at all times that COHEN made the above representations to Cross-Complainant
21 and to GOT KOSHER, and at times when SACKS engaged in conduct alleged herein,
22 SACKS mislead Cross-Complainant and GOT KOSHER to their prejudice.

23 102. As a direct and proximate result of the aforementioned constructive fraud,
24 Cross-Complainant suffered damages in the amount to be determined at trial.

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1 **FIFTH CAUSE OF ACTION**

2 **CONSPIRACY TO DEFRAUD**

3 **AS AGAINST ALAIN COHEN, LEE SACKS, EVELYN BARAN AND DOES 1-100**

4 103. Cross-Complainant realleges and incorporates by reference paragraphs 1-102
5 of this Cross-Complaint as if fully set forth herein.

6 104. Cross-Complainant is informed and believes, and based thereon that COHEN,
7 SACKS, and BARAN, as stated above, all conspired, planned and operated a scheme
8 intending to defraud Cross-Complainant, by among other things, taking the specialized
9 knowledge and experience received from employment at GOT KOSHER, using it to create
10 their own competing companies in the kosher food market to the detriment of Cross-
11 Complainant and GOT KOSHER, and inducing Cross-Complainant into investing
12 122,000.00 in GOT KOSHER.

13 105. As alleged before, all Cross-Defendants, were directly and knowingly involved
14 in the creation of two (2) other kosher food marked companies, GK Provisions, LLC, and
15 GK2, LLC, which did, and were intended to, directly compete with GOT KOSHER in the
16 kosher food market.

17 106. In furtherance of the conspiracy, among other things, Cross-Defendants made
18 false representations to Cross-Complainant to induce him into hiring SACKS as GOT
19 KOSHER's attorney, so that SACKS could receive payment for his services from Cross-
20 Complainant and/or GOT KOSHER's funds, and to allow for BARAN to make a large
21 investment to gain specialized knowledge and business experience from GOT KOSHER.

22 107. In furtherance of the conspiracy, among other things, Cross-Defendants
23 knowingly created companies with similar names to GOT KOSHER, in creating GK
24 Provisions, LLC, and GK2, LLC. This intentional overt act was done in an effort to confuse
25 and trick clients of GOT KOSHER and Cross-Complainant to instead do business with these
26 competing companies. This plan did work in part, and, upon information and belief, certain
27 clients were stolen from GOT KOSHER by these competing companies.

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1 108. In furtherance of the conspiracy, among other things, COHEN, SACKS, and
2 BARAN worked together and in agreement to present these false and misleading
3 representations to Cross-Complainant, with the intent to defraud Cross-Complainant and
4 GOT KOSHER, in favor of the two (2) new businesses of similar name.

5 109. Cross-Complainant, at the time these representations were made, and at the
6 time Cross-Complainant took the actions herein alleged, was unaware of the falsity of
7 COHEN's, SACKS's and BARAN's representations and believed them to be true. It was not
8 until approximately December of 2007 that Cross-Complainant became aware of the falsity
9 of COHEN's, SACKS's and BARAN's representations.

10 110. Cross-Complainant justifiably relied on COHEN's, SACKS's and BARAN's
11 representations because, at the time they made the above-mentioned representations to
12 Cross-Complainant and to GOT KOSHER, Cross-Complainant had no reason to mistrust
13 COHEN and/or SACKS and/or BARAN.

14 111. Cross-Complainant's reliance on the above representations was a substantial
15 factor in causing Cross-Complainant harm.

16 112. As a result of the above representations to Cross-Complainant and Cross-
17 Complainant's reliance on them, Cross-Complainant suffered damages according to proof at
18 trial.

19 113. The aforementioned conduct of COHEN, SACKS, and BARAN constitutes
20 conspiracy to defraud Cross-Complainant. This action was done in an effort to deny Cross-
21 Complainant of property, legal rights or otherwise cause him injury. Such conduct was
22 malicious and despicable and was in conscious disregard of Cross-Complainant's rights and
23 subjected Cross-Complainant to cruel and unjust hardship and justifies an award of
24 exemplary and punitive damages.

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SIXTH CAUSE OF ACTION
BREACH OF FIDUCIARY DUTY
AS AGAINST ALAIN COHEN, LEE SACKS, AND DOES 1-100

114. Cross-Complainant realleges and incorporates by reference paragraphs 1-113 of this Cross-Complaint as if fully set forth herein.

ALAIN COHEN

115. Officers of a corporation are trustees for the other officers and the corporation, and in all matters connected with the corporation business, each officer is bound to act in the highest good faith towards the other officers and the corporation, and may not obtain any unfair advantage or secure any undue benefit by even the slightest misrepresentation, concealment, threat, or adverse act of any kind, and must refrain from breaching the trust and confidence of the other officers. Accordingly, as the CFO of GOT KOSHER, COHEN owed a fiduciary duty of highest good faith and utmost loyalty to Cross-Complainant and to GOT KOSHER.

116. COHEN breached his fiduciary duty to GOT KOSHER and to Cross-Complainant by, among other things:

- a. creating GK Provisions, LLC, and GK2, LLC to compete with GOT KOSHER in the kosher food business;
- b. diverting accounts from GOT KOSHER to GK Provisions, LLC, and GK2, LLC;
- c. conspiring with SACKS and BARAN to defraud Cross-Complainant and GOT KOSHER and to cause Cross-Complainant and GOT KOSHER damages;
- d. commencing and continuing a scheme designed to prevent Cross-Complainant and GOT KOSHER from doing business and to transfer GOT KOSHER's accounts to other entities that belonged to COHEN and BARAN;
- e. Failing to properly pay Cross-Complainant;

- 1 f. engaging in improper behaviour that is disruptive to GOT KOSHER's
2 business and threatens GOT KOSHER's corporate stability and existence;
- 3 g. creating false statements or entries in the corporate minutes for GOT
4 KOSHER prior to obtaining Cross-Complainant's approval and adding the
5 minutes to GOT KOSHER's corporate records without the approval of
6 Cross-Complainant;
- 7 h. holding at least one (1) special meeting of shareholders of GOT KOSHER
8 without Quorum without Cross-Complainant, which invalidates all actions
9 taken; wherein the minutes reflected the following: (1) COHEN was
10 appointed as a Chairman; (2) Cross-Complainant was appointed as a
11 Secretary; (3) the directors shall serve without compensation; (4) BARAN
12 was issued a total of 33 1/3% of shares of total stock in GOT KOSHER; (5)
13 SACKS was appointed as the corporate attorney for GOT KOSHER; and,
14 (6) Robert Schneider was appointed as the corporate accountant for GOT
15 KOSHER;
- 16 i. granting shares of stock to BARAN without having Cross-Complainant
17 approve such transfer of shares to BARAN;
- 18 j. preventing Cross-Complainant and GOT KOSHER from doing business,
19 and failing to exercise powers in good faith by: (1) changing passwords on
20 all the computers and refusing to inform Cross-Complainant of the new
21 passwords; (2) bringing a bodyguard to the GOT KOSHER's principal
22 business office for the sole purpose of preventing Cross-Complainant's
23 access to the company's computers and corporate information; (3)
24 withdrawing money from the company's bank account, thus causing the
25 company to be unable to meet the payroll;
- 26 k. removing all GOT KOSHER's accounting information from GOT
27 KOSHER's premises and, despite Cross-Complainant's repeated requests
28 both orally and in writing to provide all accounting documents for GOT

1 KOSHER for Cross-Complainant's review, COHEN refusing to provide
2 any documentation to Cross-Complainant, claiming that the documents
3 belonged to COHEN;

- 4 l. directing/instructing Schneider, the CPA for GOT KOSHER, to remove all
5 checks and check registers from the GOT KOSHER's premises, and not to
6 include Cross-Complainant on the 2006 tax return for GOT KOSHER, and
7 refusing to allow Cross-Complainant to review said tax return prior to
8 filing;
- 9 m. removing and/or causing it to be removed stocks, checks, corporate records,
10 accounting documents, and other financial records from GOT KOSHER
11 and refusing to return them;
- 12 n. interfering with Cross-Complainant and GOT KOSHER's ability to obtain
13 permits necessary to open a new store by, among other things, threatening
14 contractors hired by GOT KOSHER and by Cross-Complainant, etc.; and,
15 o. otherwise as alleged herein and as determined at trial.

16 117. As a proximate result of the breaching actions of COHEN, herein described,
17 Cross-Complainant has been damaged in an amount as yet unascertained, but which will be
18 proven at trial.

19 118. COHEN's conduct was a substantial factor in causing Cross-Complainant's
20 harm.

21 119. COHEN's actions toward Cross-Complainant breached his fiduciary duty,
22 and were committed with the specific intent of causing Cross-Complainant injury and
23 damage and/or were in conscious disregard of Cross-Complainant's rights. Accordingly,
24 Cross-Complainant is entitled to recover exemplary and punitive damages.

25 **LEE SACKS**

26 120. Cross-Complainant realleges and incorporates by reference paragraphs 1-119
27 of this Cross-Complaint as if fully set forth herein.

28 //

1 ALAIN COHEN

2 127. As more fully explained above, during the time of the alleged conduct, a
3 business relationship existed between COHEN, the CFO of GOT KOSHER, and Cross-
4 Complainant, the CEO of GOT KOSHER.

5 128. As also more fully explained above, Cross-Complainant and COHEN had both
6 financially invested in GOT KOSHER, and were business partners. GOT KOSHER was a
7 thriving company, which had obtained high profile clients and lucrative accounts. These
8 accounts would have provided both Cross-Complainant and GOT KOSHER future economic
9 benefit.

10 129. COHEN, to the detriment of Cross-Complainant, and GOT KOSHER,
11 intentionally disrupted this relationship, by creating two (2) rival companies, GK Provisions,
12 LLC, and GK2, LLC that directly competed in the kosher food market with Cross-Complaint
13 and GOT KOSHER. Cross-Complainant has no interest in, or connection to these
14 companies.

15 130. Further, COHEN intentionally and knowingly transferred clients from Cross-
16 Complainant and COHEN's GOT KOSHER to only COHEN's two (2) competing
17 companies GK Provisions, LLC, or GK2, LLC. COHEN knowingly represented to GOT
18 KOSHER's clients that the company was changing its name and operating as either GK
19 Provisions, LLC, or GK2, LLC.

20 131. This intentional act resulted in several of Cross-Complainant and GOT
21 KOSHER's clients becoming clients of either GK Provisions, LLC, or GK2, LLC, breaking
22 their future business with Cross-Complainant and GOT KOSHER.

23 132. As a direct and proximate result of the aforementioned acts of COHEN, Cross-
24 Complainant has suffered damages in an amount to be proven at trial.

25 LEE SACKS

26 133. Cross-Complainant realleges and incorporates by reference paragraphs 1-132
27 of this Cross-Complaint as if fully set forth herein.

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1 thriving company, which had obtained high profile clients and lucrative accounts. These
2 accounts would have provided both Cross-Complainant and GOT KOSHER future economic
3 benefit.

4 142. As CFO of GOT KOSHER, COHEN owed a fiduciary duty to both Cross-
5 Complainant and GOT KOSHER.

6 143. COHEN, to the detriment of Cross-Complainant, and GOT KOSHER,
7 intentionally or negligently disrupted this relationship, by creating two (2) rival companies,
8 GK Provisions, LLC, and GK2, LLC that directly competed in the kosher food market with
9 Cross-Complaint and GOT KOSHER. Cross-Complainant has no interest in, or connection
10 to these companies.

11 144. Further, COHEN intentionally and knowingly or negligently transferred clients
12 from Cross-Complainant and COHEN's GOT KOSHER to only COHEN's two (2)
13 competing companies GK Provisions, LLC, or GK2, LLC. COHEN knowingly or
14 negligently represented to GOT KOSHER's clients that the company was changing its name
15 and operating as either GK Provisions, LLC, or GK2, LLC.

16 145. This intentional or negligent act resulted in several of Cross-Complainant and
17 GOT KOSHER's clients becoming clients of either GK Provisions, LLC, or GK2, LLC,
18 breaking their future business with Cross-Complainant and GOT KOSHER.

19 146. As a direct and proximate result of the aforementioned acts of COHEN, Cross-
20 Complainant has suffered damages in an amount to be proven at trial.

21 **LEE SACKS**

22 147. Cross-Complainant realleges and incorporates by reference paragraphs 1-146
23 of this Cross-Complaint as if fully set forth herein.

24 148. As more fully explained above, during the time of the alleged conduct, a
25 business relationship existed between SACKS and Cross-Complainant.

26 149. Also, as more fully explained above, Cross-Complainant and SACKS worked
27 together as CEO and legal counsel of GOT KOSHER. GOT KOSHER was a thriving
28 company, which had obtained high profile clients and lucrative accounts. These accounts

1 would have provided both Cross-Complainant and GOT KOSHER future economic benefit.

2 150. As legal counsel of GOT KOSHER, SACKS owed a fiduciary duty to both
3 Cross-Complainant and GOT KOSHER.

4 151. SACKS was hired to represent GOT KOSHER in all business aspects.
5 Subsequently, SACKS agreed to assist COHEN in creating two (2) competing kosher food
6 companies, GK Provisions, LLC, and GK2, LLC these companies have no relation to Cross-
7 Complainant and GOT KOSHER. Both of these companies directly compete with Cross-
8 Complainant and GOT KOSHER in the kosher food market

9 152. The intentional and negligent acts of SACKS, resulted in harm to Cross-
10 Complainant and GOT KOSHER's reputation and profits. As a result of the creation of GK
11 Provisions, LLC, and GK2, LLC, several GOT KOSHER clients have become clients of
12 either GK Provisions, LLC, or GK2, LLC.

13 153. As a direct and proximate result of the aforementioned acts of COHEN, Cross-
14 Complainant has suffered damages in an amount to be proven at trial.

15 **NINTH CAUSE OF ACTION**

16 **NEGLIGENCE**

17 **AS AGAINST ALAIN COHEN AND LEE SACKS AND DOES 1-100**

18 154. Cross-Complainant realleges and incorporates by reference paragraphs 1-153
19 of this Cross-Complaint as if fully set forth herein.

20 **ALAIN COHEN**

21 155. As alleged above, COHEN owed a duty to Cross-Complainant as the CFO of
22 GOT KOSHER that, among other things, he would devote his talents, and specialized
23 knowledge to GOT KOSHER. Further, COHEN owed a duty to work in the best interest of
24 GOT KOSHER as CFO.

25 156. COHEN negligently breached this duty when, among other things, he
26 concealed from Cross-Complainant that he created two additional companies, GK
27 Provisions, LLC, and GK2, LLC, which directly compete with GOT KOSHER in the kosher
28 food distribution market and he transferred several accounts from GOT KOSHER to his two

1 new companies, GK Provisions, LLC, and GK2, LLC, by telling several customers that GOT
2 KOSHER changed its name to GK Provisions, LLC, and GK2, LLC.

3 157. As a direct and proximate result of COHEN's breach, Cross-Complainant and
4 GOT KOSHER has suffered damages in an amount to be proved at trial.

5 **LEE SACKS**

6 158. Cross-Complainant realleges and incorporates by reference paragraphs 1-157
7 of this Cross-Complaint as if fully set forth herein.

8 159. As alleged above, SACKS owed a duty to Cross-Complainant to, among other
9 things, act in Cross-Complainant's best interest.

10 160. SACKS breached this duty when, among other things, SACKS agreed to
11 represent COHEN in a personal capacity to assist COHEN in creating GK Provisions, LLC,
12 and GK2, LLC, two companies which directly compete with GOT KOSHER.

13 161. As direct and proximate result a result of SACKS's breach, Cross-Complainant
14 and GOT KOSHER has suffered damages in an amount to be proven at trial.

15 WHEREFORE, Cross-Complainant prays for judgment as follows:

16 **AS TO THE FIRST CAUSE OF ACTION:**

- 17 1. For damages according to proof;
18 2. For interest on said sum;

19 **AS TO THE SECOND CAUSE OF ACTION:**

- 20 1. For exemplary and punitive damages;
21 2. For damages according to proof;
22 3. For interest on said sum;

23 **AS TO THE THIRD CAUSE OF ACTION:**

- 24 1. For exemplary and punitive damages;
25 2. For damages according to proof;
26 3. For interest on said sum;

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1 **AS TO THE FOURTH CAUSE OF ACTION:**

- 2 1. For damages according to proof;
3 2. For interest on said sum;

4 **AS TO THE FIFTH CAUSE OF ACTION:**

- 5 1. For exemplary and punitive damages;
6 2. For damages according to proof;
7 3. For interest on said sum;

8 **AS TO THE SIXTH CAUSE OF ACTION:**

- 9 1. For exemplary and punitive damages;
10 2. For damages according to proof;
11 3. For interest on said sum;

12 **AS TO THE SEVENTH CAUSE OF ACTION:**

- 13 1. For damages according to proof;
14 2. For interest on said sum;

15 **AS TO THE EIGHTH CAUSE OF ACTION:**

- 16 1. For damages according to proof;
17 2. For interest on said sum;

18 **AS TO THE NINETH CAUSE OF ACTION:**

- 19 1. For damages according to proof;
20 2. For interest on said sum;

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AS TO ALL CAUSES OF ACTION:

- 1. For prejudgment interest according to proof;
- 2. For cost of suit including, but not limited to, attorneys fees in an amount to be determined; and,
- 3. For such relief as the court may deem proper.

Dated: March 10, 2008 HOLLINS ÉSCHECHTER

By: _____
KATHLEEN MARY KUSHI CARTER
LUKASZ I. WOZNIAK
Attorneys for Defendant/Cross-Complainant,
JOHN NOOHIAN

1 **PROOF OF SERVICE**

2 **(1013a(3) Code Civ. Proc. Revised 5/1/88)**

3 STATE OF CALIFORNIA, COUNTY OF ORANGE

4 I am employed in the county of Orange, State of California. I am over the age of 18
5 and not a party to the within action; my business address is 1851 E. First Street, 6th Floor,
6 Santa Ana, California 92705-4017

7 On March 12, 2008, I served the foregoing document described as **CROSS-**
8 **COMPLAINT** on the interested parties in this action by placing true copies thereof
9 enclosed in sealed envelopes addressed as stated on the attached mailing list.

10 by overnight delivery via Federal Express pursuant to Code of Civil Procedure
11 section 1013.

12 by FAX. I faxed said document pursuant to Rules of Court rule 2.306, on
13 _____, at approximately _____ from my facsimile telephone number
14 714.558.9091.

15 The document was transmitted by facsimile transmission and the transmission was
16 reported as complete and without error. The transmission report was properly issued by
17 the transmitting facsimile machine. A copy of the transmission report is attached to this
18 proof of service.

19 by mail as follows: I am "readily familiar" with the firm's practice of collecting and
20 processing correspondence for mailing. Under that practice, it would be deposited with
21 the U.S. Postal Service on that same day with postage thereon fully prepaid at Santa Ana,
22 California in the ordinary course of business. I am aware that on motion of the party
23 served, service is presumed invalid if postal cancellation date or postage meter date is
24 more than one day after date of deposit for mailing in affidavit.

25 (STATE) I declare under penalty of perjury under the laws of the State of
26 California that the above is true and correct.

27 (FEDERAL) I declare that I am employed in the office of a member of the bar of
28 this Court at whose direction the service was made.

Executed on March 12, 2008, at Santa Ana, California.

ROSA DiGAUDIO

1 **Case Name: GOT KOSHER**
2 **Case No.: SC097050**
3 **Our File No.: GL 16083**

4 **MAILING LIST**

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