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ANSWER TO COMPLAINT FILED BY DEFENDANT

ROSS J BOYERT VS. SAKTI INTERNATIONAL CORPORATION, INC., A et al

001C01765874


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FILED
San Francisco County Superior Court

MAY 10 2007

GORDON PARK-LI, Clerk
BY:  Deputy Clerk

7 Attorneys for Defendants/ Cross-Complainants
8 SAKTI INTERNATIONAL CORPORATION,
INC., A CALIFORNIA CORPORATION, AND
9 WALLYSON'S, INC., A WASHINGTON
CORPORATION

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SAN FRANCISCO
12 UNLIMITED JURISDICTION

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13
14 ROSS BOYERT, an individual,
15 Plaintiff,

No. CGC-07-460255
Action Filed: February 6, 2007

16 v.

17 SAKTI INTERNATIONAL
CORPORATION, INC., a California
18 corporation; WALLYSON'S, INC., a
Washington corporation; and DOES 1-20,
19 inclusive,
20 Defendants.

VERIFIED ANSWER OF
DEFENDANTS SAKTI
INTERNATIONAL CORPORATION.
AND WALLYSON'S, INC. TO
VERIFIED COMPLAINT FOR
DAMAGES; CROSS-COMPLAINT

JURY TRIAL DEMANDED

21 SAKTI INTERNATIONAL,
CORPORATION, INC., a California
22 corporation; WALLYSON'S, INC., a
Washington corporation,
23
24 Cross-Complainants,

25 v.

26 ROSS BOYERT, an individual,
Counterclaim-Defendant; and DOES 1-20,
27 inclusive,
28 Cross-Defendants.

ANSWER

1
2 Defendants Sakti International Corporation, Inc. ("Sakti") and Wallyson's, Inc.
3 ("Wallyson's") (collectively, "Defendants") hereby answer the Verified Complaint for
4 Damages ("Complaint") of Plaintiff Ross Boyert ("Boyert" or "Plaintiff") as follows:
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GENERAL ALLEGATIONS

1. Defendants admit the allegations of paragraph 1 of the Complaint.

2. As to the allegations of paragraph 2 of the Complaint, Defendants admit that Sakti is a California corporation with its principal place of business in San Francisco, California and that Sakti was incorporated in 1987. Except as otherwise expressly admitted herein, Defendants deny each allegation of paragraph 2 of the Complaint.

3. As to the allegations of paragraph 3 of the Complaint, Defendants admit that beginning September 10, 1987, Sakti's designated Chief Executive Officer, Secretary, and Chief Financial Officer was Mahmud Taib. Defendants further admit that Sulaiman Abdul Rahman Taib ("Rahman") later became the sole officer and director of Sakti. Defendants are presently without knowledge or information sufficient to form a belief as to the truth of the allegation that Rahman became the sole officer and director of Sakti before 1994, and on that basis deny this allegation. Except as otherwise expressly admitted or denied herein, Defendants deny each allegation of paragraph 3 of the Complaint.

4. As to the allegations of paragraph 4 of the Complaint, Defendants admit that the original members of Sakti's Board of Directors were Onn Mahmud, Arip Mahmud, and Mahmud Taib. Defendants further admit that the original shareholders of Sakti were Mahmud Taib, Onn Mahmud, Jamilah Taib, Arip Mahmud, and Rahman. Except as otherwise expressly admitted herein, Defendants deny each allegation of paragraph 4 of the Complaint.

5. As to the allegations of paragraph 5 of the Complaint, Defendants admit that W.A. Boylston, Inc. ("Boylston") is a California corporation, formed in 1991 as an entity to hold and manage a single asset. Defendants further admit that this single asset is residential

1 real property located at, and commonly known as, 1117 Boylston Street, Seattle,
2 Washington. Except as otherwise expressly admitted herein, Defendants deny each
3 allegation of paragraph 5 of the Complaint.

4 6. Defendants admit the allegations of paragraph 6 of the Complaint.

5 7. As to the allegations of paragraph 7 of the Complaint, Defendants admit that
6 Sakti International Holdings, Inc. ("Sakti Holdings") is a California corporation, located in
7 San Francisco, California, and formed in 1993. Defendants are presently without knowledge
8 or information sufficient to form a belief as to the truth of the allegation that Sakti Holdings
9 was formed for the purpose of holding all of the shares of Sakti, Boylston, and W.A. Everett,
10 Inc. ("Everett"), and on that basis deny this allegation. Defendants further admit that all
11 shares in Sakti, Boylston and Everett were transferred to Sakti Holdings. Defendants further
12 admit that the original shareholders of Sakti Holdings were Mahmud Taib, Onn Mahmud,
13 Jamilah Taib, Arip Mahmud, and Rahman. Upon information and belief, Defendants admit
14 that Mahmud Taib, Onn Mahmud, Jamilah Taib, Arip Mahmud, and Rahman are still
15 shareholders of Sakti Holdings. Except as otherwise expressly admitted or denied herein,
16 Defendants deny each allegation of paragraph 7 of the Complaint.

17 8. As to the allegations of paragraph 8 of the Complaint, Defendants are presently
18 without knowledge or information sufficient to form a belief as to the truth of the allegation
19 that Sogo Holdings, Inc. ("Sogo") is an offshore company located in the Channel Islands and
20 on that basis deny this allegation. Upon information and belief, Defendants deny that all of
21 the shares of Sakti Holdings are presently held by Sogo. Except as otherwise expressly
22 denied herein, Defendants deny each allegation of paragraph 8 of the Complaint.

23 9. Defendants admit the allegations of paragraph 9 of the Complaint.

24 10. As to the allegations of paragraph 10 of the Complaint, Defendants admit that
25 from 1994 through March 21, 2007, Rahman was the sole officer and director of Wallyson's.
26 Defendants lack sufficient information and belief as to what Plaintiff means by the term
27 "indirect shareholder" and on that basis deny the allegation that Rahman was at all times an
28 "indirect shareholder" of Wallyson's. Except as otherwise expressly admitted or denied

1 herein, Defendants deny each allegation of paragraph 10 of the Complaint.

2 11. Defendants admit the allegations of paragraph 11 of the Complaint.

3 12. As to the allegations of paragraph 12 of the Complaint, Defendants admit that on
4 or about December 1994, Sakti hired Boyert as its Vice President. Defendants further admit
5 that Boyert's duties included managing 260 California Street, overseeing the renovation of
6 260 California Street, overseeing the on-site property manager for the Third Avenue
7 building, and any additional properties that Sakti might acquire. Except as otherwise
8 expressly admitted herein, Defendants deny each allegation of paragraph 12 of the
9 Complaint.

10 13. As to the allegations of paragraph 13 of the Complaint, Defendants admit that
11 Boyert's compensation consisted of a base salary of \$75,000. Defendants further admit that
12 beginning on July 12, 1995, Boyert's compensation, while employed, included a leasing
13 commission of 10% of the total leasing commissions payable for a new tenant and 5% of
14 total leasing commissions payable on a renewal tenant. Defendants further admit that
15 effective March 1, 1997, for lease extensions, renewals and options negotiated without a
16 listing broker, Boyert was entitled, while employed, to receive an incentive fee equal to 50%
17 of the fee typically charged by a listing broker for a new lease with similar terms and
18 conditions, which was agreed at that time to be twenty-five cents (\$.25) per square foot per
19 year in San Francisco and seventeen and one-half cents (\$.175) per square foot per year in
20 Seattle, and was never subsequently changed. Except as otherwise expressly admitted
21 herein, Defendants deny each allegation of paragraph 13 of the Complaint.

22 14. As to the allegations of paragraph 14 of the Complaint, Defendants are without
23 knowledge or information sufficient to form a belief as to the truth of the allegation that
24 no written employment contract was entered into as between Sakti and Boyert and on
25 that basis deny that allegation. Except as otherwise expressly denied herein, Defendants
26 deny each allegation of paragraph 14 of the Complaint.

27 15. As to the allegations of paragraph 15 of the Complaint, Defendants admit that in
28 1998, Boyert became employed by Wallyson's and assumed on-site property management

1 responsibility for the Third Avenue Building. Defendants further admit that Boyert's
2 agreed-upon compensation from Wallyson's for this responsibility was \$30,000 annually.
3 Defendants are presently without knowledge or information sufficient to form a belief as to
4 the truth of the allegation that Boyert's salary from Wallyson's was one half of the salary of
5 the previous on-site property manager, and on that basis deny this allegation. Except as
6 otherwise expressly admitted or denied herein, Defendants deny each allegation of
7 paragraph 15 of the Complaint.

8 16. Defendants deny the allegations of paragraph 16 of the Complaint.

9 17. As to the allegations of paragraph 17 of the Complaint, Defendants admit that
10 Boyert's initial duties involved the oversight of those day-to-day operations of the company
11 typically handled by a Vice President. Defendants further admit that Boyert was initially
12 involved with, among other things, terminating property management contracts, creating an
13 operating company to assume the property management function, and working on a planned
14 renovation of 260 California Street. Defendants are presently without knowledge or
15 information sufficient to form a belief as to the truth of the allegations that the planned
16 renovation of 260 California Street was for \$7,750,000, that Boyert was involved in
17 commencing the renovation, and that at the time of Boyert's hiring, 260 California Street
18 was 40-50% vacant, and on that basis deny these allegations. Defendants admit that Boyert
19 was able to obtain tenants for 260 California Street by using existing capital for leasing and
20 renovation expenses and by obtaining financing. Defendants are presently without
21 knowledge or information sufficient to form a belief as to the truth of the allegation that
22 there was only \$62,000 in existing capital for leasing and renovation expenses and that the
23 lending market was depressed at the time, and on that basis deny these allegations.
24 Defendants admit that between September 1995 and December 1997, Boyert obtained five
25 separate loans for 260 California Street to keep the construction and leasing activity going.
26 Defendants are presently without knowledge or information sufficient to form a belief as to
27 the truth of the allegation that Sakti informed Boyert that no additional equity capital or
28 investment funds would be provided, either for the renovation or to acquire new properties,

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1 and on that basis deny this allegation. Defendants admit that the original construction team
2 was terminated between September 1995 and December 1997. Defendants are presently
3 without knowledge or information sufficient to form a belief as to the truth of the allegation
4 that the original design team was terminated between September 1995 and December 1997,
5 and on that basis deny that allegation. Defendants expressly deny that Sean Murray was the
6 head of the original design and construction teams. Defendants admit that Sean Murray is
7 the brother-in law of Rahman by virtue of Murray's marriage to Jamilah Taib-Murray.
8 Defendants further admit that the renovation of 260 California Street was completed in early
9 1997 and that the remaining floors were renovated as they became vacant during 1997, 1998,
10 and 1999. Defendants are presently without knowledge or information sufficient to form a
11 belief as to the truth of the allegation that 260 California Street was in need of cash because
12 payments for the final construction costs were overdue, and on that basis deny that
13 allegation. Defendants admit that at sometime in 1999, 260 California Street's contractor
14 was threatening to lien the property. Defendants further admit that at sometime in 1999,
15 Sakti was delinquent in paying its property taxes. Defendants are presently without
16 knowledge or information sufficient to form a belief as to the truth of the allegation that if
17 260 California Street's property taxes were left unpaid, it would cause a default in the loan
18 agreement for 260 California Street, and on that basis deny this allegation. Defendants
19 admit that in December 1997 or early 1998, Rahman promoted Boyert from VP to Executive
20 Vice President ("Exec. VP") and Chief Operating Officer ("COO") of Sakti. Except as
21 otherwise expressly admitted or denied herein, Defendants deny each allegation of
22 paragraph 17 of the Complaint

23 18. As to the allegations of paragraph 18 of the Complaint, Defendants admit that
24 Boyert began his management duties as to the Third Avenue building with Northern Life as
25 a tenant. Defendants are presently without knowledge or information sufficient to form a
26 belief as to the truth of the allegations that Wallyson's had purchased the building from
27 Northern Life in the late 1980's and that Northern Life had ten months left on its lease when
28 Boyert began his management duties, and on that basis deny these allegations. Defendants

1 admit that Northern Life decided not to renew its lease and that it was necessary to secure a
2 major tenant. Defendants admit that a new tenant in the federal General Services
3 Administration ("GSA") was found, and that the new lease was specifically for a use of the
4 property by the Federal Bureau of Investigation ("FBI") for its Northwest Regional
5 Headquarters. Defendants are presently without knowledge or information sufficient to form
6 a belief as to the truth of the allegations that the leasing of the Third Avenue building to the
7 GSA was done without an outside broker, saving Wallyson's approximately \$2 million in
8 leasing commissions, and on that basis deny these allegations. Defendants admit that the
9 GSA required that unless its tenant improvements were constructed and completed by
10 November 1, 1999, the lease could be terminated. Defendants admit that the construction
11 schedule between January and October of 1999 included gutting the building, replacing all
12 major systems, seismic upgrades, and all interior improvements. Defendants are presently
13 without knowledge or information sufficient to form a belief as to the truth of the allegation
14 that Boyert secured 100% construction financing without equity capital because Wallyson's
15 did not invest money of its own, and on that basis deny this allegation. Defendants are
16 presently without knowledge or information sufficient to form a belief as to the truth of the
17 allegations that the construction loan required the approval of the construction budget
18 estimates by the lender and acceptance by the GSA of its tenant improvement costs, and on
19 that basis deny these allegations. Defendants admit that in early 1999, the GSA expanded its
20 original lease to 99% of the Third Avenue building. Defendants are presently without
21 knowledge or information sufficient to form a belief as to the truth of the allegation that the
22 GSA expanded its lease from 80% of the Third Avenue building, and on that basis deny this
23 allegation. Defendants are presently without knowledge or information sufficient to form a
24 belief as to the truth of the allegation that the GSA refused to sign the Lease Expansion
25 Agreement and that the lender required the lease expansion documentation be signed prior to
26 funding construction costs, and on that basis deny these allegations. Defendants are
27 presently without knowledge or information sufficient to form a belief as to the truth of the
28 allegation that Conning Asset Management Company substantially changed the terms of its

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1 permanent loan, which led to its rejection, and on that basis deny these allegations.
2 Defendants are presently without knowledge or information sufficient to form a belief as to
3 the truth of the allegations that the construction loan was linked to the permanent loan and
4 that at this time \$1,000,000.00 of overdue construction bills needed to be paid, and on that
5 basis deny these allegations. Defendants admit that Boyert proceeded with Union Labor
6 Life Insurance Company ("ULLICO") to arrange for a permanent loan on the Third Avenue
7 building. Defendants admit that Boyert identified a different lender to provide bridge
8 financing for the difference between the construction loan and the permanent loan.
9 Defendants admit that Boyert was also negotiating with the GSA to sign a lease amendment.
10 Defendants further admit that Boyert was negotiating with the GSA to complete its review of
11 cost allocations, which had to be resolved prior to obtaining any funds for the construction
12 loan. Defendants are presently without knowledge or information sufficient to form a belief
13 as to the truth of the allegations that Boyert was negotiating with the GSA to complete its
14 review of the construction budget, which had to be approved prior to obtaining any funds for
15 the construction loan, and on that basis deny these allegations. Defendants admit that Boyert
16 was able to obtain permanent and bridge financing commitments; that Wallyson's did not
17 have the funds required to pay the lenders' commitment fees; and that \$100,000.00 was
18 borrowed from Sequoia Bank to pay the construction lender loan commitment fee.
19 Defendants are presently without knowledge or information sufficient to form a belief as to
20 the truth of the allegation that the commitment fees owed to its construction lender totaled
21 \$123,000.00, and on that basis deny that allegation. Defendants admit that money was
22 borrowed to pay the permanent lender Wallyson's commitment fees of \$183,750.00.
23 Defendants are presently without knowledge or information sufficient to form a belief as to
24 the truth of the allegation that, because the project was so overextended, the full deposit
25 could not be paid, and on that basis deny this allegation. Defendants admit that the lender
26 took a promissory note for the unfunded portion of \$58,750.00, but are presently without
27 knowledge or information sufficient to form a belief as to the truth of the allegation that
28 Boyert convinced the lender to do this, and on that basis deny this allegation. Defendants

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1 admit that, at some point, the architect for the Third Avenue building liened the Third
2 Avenue building for nonpayment. Defendants are presently without knowledge or
3 information sufficient to form a belief as to the truth of the allegation that the amount of
4 nonpayment of fees totaled \$1,000,000.00, and on that basis deny this allegation.
5 Defendants are presently without knowledge or information sufficient to form a belief as to
6 the truth of the allegation that construction costs were nearly \$5,000,000.00, and on that
7 basis deny that allegation. Defendants admit that as of May 1999, Wallyson's was 30 days
8 behind on its Prudential loan payment for the Third Avenue building and a tax payment of
9 approximately \$74,000.00 was overdue. Defendants are presently without knowledge or
10 information sufficient to form a belief as to the truth of the allegation in paragraph 18 of the
11 Complaint that, if the tax payment was unpaid, it could create a default with the lender, and
12 on that basis deny that allegation. Except as otherwise expressly admitted or denied herein,
13 Defendants deny each allegation of paragraph 18 of the Complaint.

14 19. As to the allegations of paragraph 19 of the Complaint, Defendants admit that
15 Boyert and Rahman met in 1999, but Defendants are presently without knowledge or
16 information sufficient to form a belief as to the truth of the allegation that Boyert and
17 Rahman met in April 1999, and on that basis deny this allegation. Defendants admit that at
18 some point, Rahman told Boyert that bankruptcy was not an option and that Rahman
19 suggested getting a loan using the Boylston property as collateral, but Defendants are
20 presently without knowledge or information sufficient to form a belief as to the truth of the
21 allegation that this suggestion occurred at a face-to-face meeting with Boyert. Except as
22 expressly admitted or denied herein, Defendants deny each allegation of paragraph 19 of the
23 Complaint and particularly, but without limitation, deny that as an incentive for Boyert to
24 remain an employee of both Sakti and Wallyson's, Rahman offered Boyert the responsibility
25 to manage all aspects of both operations and that Rahman offered Boyert additional
26 compensation in the form of (a) commissions and fees from Wallyson's of the same type and
27 amount as Boyert allegedly had in connection with Sakti operations and (b) one-half the
28 value of the net proceeds of any future sale of 260 California and one-half the value of the

1 net proceeds of any future sale of the Third Avenue building.

2 20. As to the allegations of paragraph 20 of the Complaint, Defendants admit that
3 Rahman gave Boyert authority to get equity out of 260 California Street to assist in
4 addressing Wallyson's cash requirements and that Boyert obtained a loan commitment from
5 American California Bank for a \$150,000 unsecured line of credit to Sakti, which was used
6 to pay Wallyson's loan commitment fees. Defendants further admit that Boyert obtained a
7 second mortgage on 260 California Street principally for the benefit of Wallyson's and that
8 Rahman's signature was required and obtained for the \$150,000 unsecured line of credit.
9 Except as otherwise expressly admitted herein, Defendants deny each allegation of
10 paragraph 20 of the Complaint.

11 21. As to the allegations of paragraph 21 of the Complaint, Defendants admit that
12 Wallyson's's problems were resolved without bankruptcy but expressly deny that Boyert
13 resolved these problems on his own. Defendants admit that the contractors continued on the
14 Third Avenue building until funding of the construction loan. Defendants are presently
15 without knowledge or information sufficient to form a belief as to the truth of the allegations
16 that Boyert convinced the contractors to continue on the Third Avenue building until
17 funding of the construction loan, and on that basis deny this allegation. Defendants are
18 presently without knowledge or information sufficient to form a belief as to the truth of the
19 allegations that Boyert was able to successfully negotiate all lease expansion and cost
20 allocation issues with the GSA, as well as the construction budget issues, and on that basis
21 deny these allegations. Defendants are presently without knowledge or information
22 sufficient to form a belief as to the truth of the allegation that Boyert was able to overcome a
23 crucial impasse regarding the final budget approvals, which resulted in the issuance of a
24 Notice to Proceed, and on that basis deny this allegation. Defendants are presently without
25 knowledge or information sufficient to form a belief as to the truth of the allegation that
26 Boyert prevailed in negotiations with the GSA regarding tenant improvement cost
27 allocations, and on that basis deny that allegation. Defendants admit that the Third Avenue
28 Building construction project was completed on time. Defendants are presently without

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1 knowledge or information sufficient to form a belief as to the truth of the allegation that the
2 Third Avenue Building construction project was completed on budget, and on that basis
3 deny this allegation. Except as otherwise expressly admitted or denied herein, Defendants
4 deny each allegation of paragraph 21 of the Complaint.

5 22. As to the allegations of paragraph 22 of the Complaint, Defendants are presently
6 without knowledge or information sufficient to form a belief as to the truth of the allegation
7 that Boyert successfully resolved the 260 California funding issues without any recording of
8 mechanics liens on the property, and on that basis deny this allegation.

9 23. As to the allegations of paragraph 23 of the Complaint, Defendants admit that
10 Boyert met with Rahman in December 1999 for the purpose of signing the permanent loan
11 documentation and paying Boyert his incentive compensation. Defendants are presently
12 without knowledge or information sufficient to form a belief as to the truth of the allegation
13 that Rahman has not met with Boyert since December 1999, and on that basis deny that
14 allegation. Defendants admit that Boyert and Rahman have spoken on the telephone since
15 December 1999, but are presently without knowledge or information sufficient to form a
16 belief as to the truth of the allegation that Rahman and Boyert have spoken to each other
17 only two or three times by telephone (sometime between April 1999 and 2003) and on that
18 basis deny this allegation. Defendants admit that Boyert submitted budgets to Rahman
19 which were sent to Rahman in Asia. Defendants are presently without knowledge or
20 information sufficient to form a belief as to the truth of the allegation in paragraph 23 of the
21 Complaint that these budget worksheets were sent to Rahman annually, and on that basis
22 deny this allegation. Defendants admit that Boyert signed the tax returns for Sakti and
23 Wallyson's for 2004 and 2005. Except as otherwise expressly admitted or denied herein,
24 Defendants deny each allegation of paragraph 23 of the Complaint.

25 24. As to the allegations of paragraph 24 of the Complaint, Defendants admit that
26 Sean Murray called Boyert stating that he was assuming control of Sakti. Defendants are
27 presently without knowledge or information sufficient to form a belief as to the truth of the
28 allegation in paragraph 24 of the Complaint that this telephone call took place in February

1 2005, and on that basis deny this allegation. Defendants admit that Murray had not talked to
2 Boyert since the 1990's, but expressly deny that Murray was fired from the 260 California
3 renovation project. Defendants admit that Murray sent a letter to Boyert on September 14,
4 2005 informing Boyert that overall management responsibility had been assigned to Murray.
5 Defendants further admit that, at that time, Murray provided no supporting documents to
6 verify that this was the case but deny that such documentation was required or needed.
7 Defendants admit that Boyert continued to manage the operations of Sakti and Wallyson's
8 for a time and that Boyert negotiated a refinancing of 260 California Street with Prudential.
9 Except as otherwise expressly admitted or denied herein, Defendants deny each allegation of
10 paragraph 24 of the Complaint.

11 25. Defendants admit the allegations of paragraph 25 of the Complaint.

12 26. As to the allegations of paragraph 26 of the Complaint, Defendants admit that, in
13 a letter dated July 6, 2006, Murray again informed Boyert that he had been appointed
14 Rahman's replacement effective immediately. Defendants admit that a Sakti Board
15 Resolution confirmed this change. Except as otherwise expressly admitted herein,
16 Defendants deny each allegation of paragraph 26 of the Complaint.

17 27. As to the allegations of paragraph 27 of the Complaint, Defendants admit that on
18 January 9, 2007, Murray met with Boyert at the Sakti offices. Except as otherwise expressly
19 admitted herein, Defendants deny each allegation of paragraph 27 of the Complaint.

20 28. Defendants deny each allegation of paragraph 28 of the Complaint.

21 29. Defendants deny each allegation of paragraph 29 of the Complaint.

22 30. Defendants admit the allegations of paragraph 30 of the Complaint.

23 31. Defendants admit the allegations of paragraph 31 of the Complaint.

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25 **FIRST CAUSE OF ACTION**

26 **(Breach of oral employment contract—against Sakti, only)**

27 32. Defendants incorporate by reference their responses to paragraphs 1 through 31.

28 33. Defendants deny each allegation of paragraph 33 of the Complaint.

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1 34. Defendants deny each allegation of paragraph 34 of the Complaint.

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4 **SECOND CAUSE OF ACTION**

5 **(Breach of oral employment contract—against Wallyson’s, only)**

6 35. Defendants incorporate by reference their responses to paragraphs 1 through 34.

7 36. Defendants deny each allegation of paragraph 36 of the Complaint.

8 37. Defendants deny each allegation of paragraph 37 of the Complaint.

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11 **THIRD CAUSE OF ACTION**

12 **(Breach of Labor Code Section 201—against Sakti, only)**

13 38. Defendants incorporate by reference their responses to paragraphs 1 through 37.

14 39. Defendants deny each allegation of paragraph 39 of the Complaint.

15 40. Defendants deny each allegation of paragraph 40 of the Complaint.

16 41. Defendants deny each allegation of paragraph 41 of the Complaint.

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19 **FOURTH CAUSE OF ACTION**

20 **(Anticipatory breach of oral employment contract—against Sakti, only)**

21 42. Defendants incorporate by reference their responses to paragraphs 1 through 41.

22 43. Defendants deny each allegation of paragraph 43 of the Complaint.

23 44. Defendants deny each allegation of paragraph 44 of the Complaint.

24 45. Defendants deny each allegation of paragraph 45 of the Complaint.

FIFTH CAUSE OF ACTION

(Anticipatory breach of oral employment contract—against Wallyson’s, only)

- 46. Defendants incorporate by reference their responses to paragraphs 1 through 45.
- 47. Defendants deny each allegation of paragraph 47 of the Complaint.
- 48. Defendants deny each allegation of paragraph 48 of the Complaint.
- 49. Defendants deny each allegation of paragraph 49 of the Complaint.

SIXTH CAUSE OF ACTION

(Breach of the covenant of good faith and fair dealing —against Sakti, only)

- 50. Defendants incorporate by reference their responses to paragraphs 1 through 49.
- 51. Defendants admit the allegations of paragraph 51 of the Complaint.
- 52. Defendants deny each allegation of paragraph 52 of the Complaint.
- 53. Defendants deny each allegation of paragraph 53 of the Complaint.
- 54. Defendants deny each allegation of paragraph 54 of the Complaint.

SEVENTH CAUSE OF ACTION

(Breach of the covenant of good faith and fair dealing —against Wallyson’s, only)

- 55. Defendants incorporate by reference their responses to paragraphs 1 through 54.
- 56. Defendants admit the allegations of paragraph 56 of the Complaint.
- 57. Defendants deny each allegation of paragraph 57 of the Complaint.
- 58. Defendants deny each allegation of paragraph 58 of the Complaint.
- 59. Defendants deny each allegation of paragraph 59 of the Complaint.

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EIGHTH CAUSE OF ACTION

(Fraud—promise without intention to perform —against Sakti, only)

- 60. Defendants incorporate by reference their responses to paragraphs 1 through 59.
- 61. Defendants deny each allegation of paragraph 61 of the Complaint.
- 62. Defendants deny each allegation of paragraph 62 of the Complaint.
- 63. Defendants deny each allegation of paragraph 63 of the Complaint.
- 64. Defendants deny each allegation of paragraph 64 of the Complaint.
- 65. Defendants deny each allegation of paragraph 65 of the Complaint.
- 66. Defendants deny each allegation of paragraph 66 of the Complaint.

NINTH CAUSE OF ACTION

(Fraud—promise without intention to perform —against Wallyson’s, only)

- 67. Defendants incorporate by reference their responses to paragraphs 1 through 66.
- 68. Defendants deny each allegation of paragraph 68 of the Complaint.
- 69. Defendants deny each allegation of paragraph 69 of the Complaint.
- 70. Defendants deny each allegation of paragraph 70 of the Complaint.
- 71. Defendants deny each allegation of paragraph 71 of the Complaint.
- 72. Defendants deny each allegation of paragraph 72 of the Complaint.
- 73. Defendants deny each allegation of paragraph 73 of the Complaint.

TENTH CAUSE OF ACTION

(Violation of Business & Professions Code Section 17200 —against Sakti, only)

- 74. Defendants incorporate by reference their responses to paragraphs 1 through 73.
- 75. Defendants deny each allegation of paragraph 75 of the Complaint.
- 76. Defendants deny each allegation of paragraph 76 of the Complaint.
- 77. Defendants deny each allegation of paragraph 77 of the Complaint.

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ELEVENTH CAUSE OF ACTION

(Fraud—promise without intention to perform —against Wallyson’s, only)

78. Defendants incorporate by reference their responses to paragraphs 1 through 77.

79. Defendants deny each allegation of paragraph 79 of the Complaint.

80. Defendants deny each allegation of paragraph 80 of the Complaint.

81. Defendants deny each allegation of paragraph 81 of the Complaint.

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AFFIRMATIVE DEFENSES

As separate defenses to the Complaint, and each cause of action contained therein, and without conceding that the burden of proof as to any of these matters lies with Defendants, Defendants allege as follows:

FIRST AFFIRMATIVE DEFENSE

1. Each and every separate cause of action alleged in the Complaint fails to state facts sufficient to constitute a cause of action against Defendants and fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

2. Each and every separate cause of action alleged in the Complaint is barred by the statute of frauds.

THIRD AFFIRMATIVE DEFENSE

3. Each and every separate cause of action alleged in the Complaint fails because those persons allegedly acting on behalf of Defendants lacked actual or ostensible authority to bind Defendants to the contracts alleged by Boyert.

FOURTH AFFIRMATIVE DEFENSE

4. No relief may be obtained under each and every separate cause of action alleged in the Complaint by reason of the undue influence exercised by Boyert over Defendants that invalidates the purported contracts upon which Boyert's claims are based.

FIFTH AFFIRMATIVE DEFENSE

5. Each and every separate cause of action alleged in the Complaint is barred by Sakti and/or Wallyson's's business compulsion.

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SIXTH AFFIRMATIVE DEFENSE

6. Boyert is barred from recovering any damages or other relief for each and every separate cause of action alleged in the Complaint by reason of the lack or inadequacy of consideration that defeats the effectiveness of the purported contracts between Boyert and Sakti and/or Boyert and Wallyson's.

SEVENTH AFFIRMATIVE DEFENSE

7. Each and every separate cause of action alleged in the Complaint is barred by failure of consideration.

EIGHTH AFFIRMATIVE DEFENSE

8. Each and every separate cause of action alleged in the Complaint is barred by mistake.

NINTH AFFIRMATIVE DEFENSE

9. Each and every separate cause of action alleged in the Complaint is barred by the applicable statutes of limitations, including Code of Civil Procedure Sections 337, 338, and 339 and Business and Professions Code Section 17208.

TENTH AFFIRMATIVE DEFENSE

10. Boyert may not recover on any of the causes of action pleaded in the Complaint because the damages sought are too speculative and remote.

ELEVENTH AFFIRMATIVE DEFENSE

11. Boyert's Eighth, Ninth, Tenth and Eleventh causes of action are barred, in whole or in part, because Boyert has an adequate remedy at law.

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TWELFTH AFFIRMATIVE DEFENSE

12. No relief may be obtained under each and every separate cause of action alleged in the Complaint by reason of Boyert's failure to do equity in the matters alleged in the Complaint and the Cross-Complaint filed herein.

THIRTEENTH AFFIRMATIVE DEFENSE

13. Boyert is barred from obtaining equitable relief on each and every separate cause of action alleged in the Complaint by the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

14. Each and every separate cause of action alleged in the Complaint is barred by the doctrine of laches.

FIFTEENTH AFFIRMATIVE DEFENSE

15. Each and every separate cause of action alleged in the Complaint is barred because Boyert would be unjustly enriched if he were allowed to recover anything on his claims.

SIXTEENTH AFFIRMATIVE DEFENSE

16. All of Boyert's causes of action are barred by the doctrine of express or implied waiver.

SEVENTEENTH AFFIRMATIVE DEFENSE

17. Boyert, by his conduct, is estopped from asserting each and every separate cause of action alleged in the Complaint against Defendants.

EIGHTEENTH AFFIRMATIVE DEFENSE

18. Boyert, by his conduct, is barred from recovering any relief on his First, Second,

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