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7 Attorney for Plaintiff,
8 BRUSH CREEK MONTESSORI EMPLOYEES, LLC

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
7/1/2021 8:00 AM

Arlene D. Junior, Clerk of the Court
By: Jennifer Ellis, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SONOMA**

11 **BRUSH CREEK MONTESSORI**
12 **EMPLOYEES, LLC**

13 **Plaintiff,**

14 **vs.**

15 **BRUSH CREEK MONTESSORI SCHOOL;**
16 **and DOES 1 through 10, inclusive,**
17 **Defendants.**

18 **AND RELATED CROSS-ACTIONS**

19 **Case No. SCV 268449**

20 **BRUSH CREEK MONTESSORI**
21 **EMPLOYEES, LLC'S VERIFIED**
22 **ANSWER TO CROSS-COMPLAINT**

23 **Trial Date: None Set**
24 **Complaint Filed : June 11, 2021**
25 **Dept.: 19**

26 **Assigned for All Purposes to the**
27 **Honorable Gary Nadler**

28 **Cross-defendant, BRUSH CREEK MONTESSORI EMPLOYEES, LLC, hereby**
answers Cross-complainant's verified Cross-complaint as follows:

1. Cross-defendant admits the allegations set forth in paragraph 1.
2. Cross-defendant admits the allegations set forth in paragraph 2.
3. Cross-defendant lacks information and belief as to the allegations set forth in paragraph 3 and on that basis denies said allegation.
4. Cross-defendant admits the allegations set forth in paragraph 4.
5. Cross-defendant admits the allegations set forth in paragraph 5.
6. Cross-defendant admits the allegations set forth in paragraph 6.
7. Cross-defendant admits the allegations set forth in paragraph 7.
8. Cross-defendant admits the allegations set forth in paragraph 8.
9. Cross-defendant admits the allegations set forth in paragraph 9.

Plaintiff/Cross-defendant Brush Creek Montessori Employees, LLC's Verified Answer to Cross-complaint

1 RON DERING, ESQ. (SBN 164452)
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3 SANTA ROSA, CA 95402
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8 BRUSH CREEK MONTESSORI EMPLOYEES, LLC

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7. Cross-defendant admits the allegations set forth in paragraph 7.
8. Cross-defendant admits the allegations set forth in paragraph 8.
9. Cross-defendant admits the allegations set forth in paragraph 9.

1 10. Cross-defendant admits the allegations set forth in paragraphs 10.

2 11. Cross-defendant lacks information and belief as to the allegations set forth in
3 paragraph 11 and on that basis denies said allegation.

4 12. Cross-defendant lacks information and belief as to the allegations set forth in
5 paragraph 12 and on that basis denies said allegation.

6 13. Cross-defendant admits the allegations set forth in paragraph 13.

7 14. Cross-defendant admits the allegations set forth in paragraph 14.

8 15. Cross-defendant admits only that "Cross-defendant Brush Creek Montessori,
9 Employees, LLC, *"...was formed on March 17, 2011 by Cross-defendant Susan Cohn"*
10 and denies the remainder of the allegations set forth in paragraph 15.

11 16. Cross-defendant admits the allegations stated in paragraph 16 excepting the
12 allegation *"...forming the LLC was the only way to facilitate the purchase of the property*
13 *and ensure that the School could continue operation on the Property"* of which said
14 quoted partial allegation Cross-defendant denies.

15 17. Cross-defendant admits allegations set forth in the first sentence of paragraph
16 17 and denies the allegations set forth in the second sentence of this paragraph based
17 upon the lack of information and belief.

18 18. Cross-defendant denies the allegation set forth in the first sentence of
19 paragraph 18 and denies the allegations set forth in the second sentence of this
20 paragraph based upon the lack of information and belief

21 19. Cross-defendant admits the allegations stated in paragraph 19.

22 20. Cross-defendant denies the allegation set forth in the first and second
23 sentences set forth in paragraph 20. As to the third sentence set forth in paragraph 20
24 Cross-defendant denies the inference that Cross-complainant has realized *"substantial*
25 *gain in equity without any contribution"* as at all times relevant was a lessee with no
26 known contractual right to "contribution".

27 21. Cross-defendant lacks information and belief as to the allegations set forth in
28

1 paragraph 21 and on that basis denies said allegation.

2 22. Cross-defendant admits the allegations set forth in the first sentence of
3 paragraph 22. As to the remaining allegations set forth in paragraph 22, Cross-defendant
4 lacks information and belief as to said allegations and on that basis denies said
5 allegations.

6 23. Cross-Cross-defendant lacks information and belief as to the allegations set
7 forth in paragraph 23 and on that basis denies said allegation.

8 24. Cross-Cross-defendant lacks information and belief as to the allegations set
9 forth in paragraph 24 and on that basis denies said allegation

10 25. Cross-defendant admits the allegations set forth in the first sentence of
11 paragraph 25 excepting the allegation that cross-defendant, Jessica Omar, was the “then
12 Director of Operations” and/or a “Head of School”, which allegation is denied. Cross-
13 defendant admits the allegations set forth in the second sentence of Paragraph 25

14 26. Cross-defendant admits the allegations stated in paragraph 26.

15 27. Cross-defendant admits the allegation set forth in the first sentence of
16 paragraph 27 that the LLC drafted the lease agreement between the School and the LLC
17 but denies the allegation inference that said lease “...is heavily in favor of the LLC.”

18 28. Cross-Cross-defendant lacks information and belief as to the allegations set
19 forth in paragraph 28 and on that basis denies said allegations.

20 29. Cross-defendant denies the allegations set forth in paragraph 29.

21 30. Cross-defendant denies the allegations set forth in paragraph 30.

22 31. Cross-defendant lacks information and belief as to the allegations set forth in
23 paragraph 31 and on that basis denies said allegations.

24 32. Cross-defendant lacks information and belief as to the allegations set forth in
25 paragraph 32 and on that basis denies said allegations.

26 33. Cross-defendant lacks information and belief as to the allegations set forth in
27 paragraph 33 and on that basis denies said allegations.

1 34. Cross-defendant denies the allegations set forth in paragraph 34.

2 35. Cross-defendant denies the allegations set forth in paragraph 35.

3 36. Cross-defendant denies the allegations set forth in paragraph 36.

4 37. Cross-defendant lacks information and belief as to the allegations set forth in
5 paragraph 37 and on that basis denies said allegations.

6 38. Cross-defendant denies the allegations set forth in paragraph 38.

7 39. Cross-defendant denies the allegations set forth in paragraph 39.

8 40. Cross-defendant denies the allegations set forth in the first and second
9 sentences of paragraph 40. As to the remaining allegations contained within paragraph
10 40 Cross-defendant lacks information and belief as to the allegations set forth in
11 paragraph 40 and on that basis denies said allegations

12 41. Cross-defendant denies the allegations set forth in paragraph 41 with regard
13 to the inferences that Jed Burchett and Jessica Omar made any "demands" or made
14 attempts to "dictate" replacements of outgoing board members. The quoted December
15 15, 2020 email reference speaks for itself.

16 42. Cross-defendant lacks information and belief as to the allegations set forth in
17 paragraph 42 and on that basis denies said allegations.

18 43. Cross-defendant admits the allegations set forth in the first sentence of
19 paragraph 43. Cross-defendant denies the remaining allegations set forth in paragraph
20 43.

21 44. Cross-defendant denies the allegations set forth in paragraph 44.

22 45. Cross-defendant admits the allegations set forth in paragraph 45.

23 46. Cross-defendant denies the allegations set forth in the first sentence of
24 paragraph 46. As to the allegations set forth in the second sentence of paragraph 46
25 Cross-defendant lacks information and belief as to the allegations set forth in paragraph
26 denies said allegations

27 47. Cross-defendant denies the allegations set forth in paragraph 47.
28

1 48. Cross-defendant denies the allegations set forth in paragraph 48.

2 49. Cross-defendant lacks information and belief as to the allegations set forth in
3 paragraph 49 and on that basis denies said allegations.

4 50. Cross-defendant denies the allegations set forth in paragraph 50.

5 51. Cross-defendant denies those allegations set forth in paragraphs 51 through
6 60, inclusive, as said allegations do not pertain to LLC.

7 52. Paragraph 61 is a statement of pleader which requires no response.

8 53. Cross-defendant denies the allegations set forth in paragraph 62.

9 53. Cross-defendant lacks information and belief as to the allegations set forth in
10 paragraph 63 and on that basis denies said allegations.

11 54. As to the allegations set forth in paragraph 64 Cross-defendant admits only
12 that on or about 2011 lender Exchange Bank advised that securing a purchase money
13 loan to purchase the Property required the formation of an LLC entity and denies all other
14 remaining allegations set forth within the paragraph.

15 55. Cross-defendant denies the allegations set forth in paragraph 65.

16 56. Cross-defendant denies the allegations set forth in paragraph 66.

17 57. Paragraph 67 is a statement of pleader which requires no response.

18 58. Cross-defendant denies the allegations set forth in paragraph 68.

19 59. Cross-defendant admits the allegations set forth in the first sentence of
20 paragraph 69. As to the remaining allegations set forth in paragraph 69 Cross-defendant
21 lacks information and belief as to the allegations set forth in paragraph 69 and on that
22 basis denies said allegations.

23 60. As to the allegations set forth in paragraph 70 Cross-defendant admits only
24 that on or about 2011 lender Exchange Bank advised that securing a purchase money
25 loan to purchase the Property required the formation of an LLC entity and denies all other
26 remaining allegations set forth within the paragraph.

27 61. Cross-defendant denies the allegations set forth in paragraph 71.

1 62. Cross-defendant denies the allegations set forth in paragraph 72.

2 63. Cross-defendant denies the allegations set forth in paragraph 73.

3 64. Paragraph 74 is a statement of pleader which requires no response.

4 65. Cross-defendant denies the allegations set forth in paragraph 75.

5 66. Cross-defendant denies the allegations contained with in the first sentence of
6 paragraph 76 As to the allegations set forth in the second sentence of paragraph 76
7 Cross-defendant admits only that pursuant to the express terms of the parties' lease it
8 chose not to renew the lease with the school and denies an inference that there was ever
9 any express or implied intention "...to provide a permanent home for the School."

10 67. Cross-defendant denies the allegations set forth in paragraph 77.

11 68. Cross-defendant lacks information and belief as to the allegations set forth in
12 paragraph 78 and on that basis denies said allegations.

13 69. Cross-defendant lacks information and belief as to the allegations set forth in
14 paragraph 79 and on that basis denies said allegations.

15 70. Cross-defendant denies the allegations set forth in paragraph 80.

16 71. Cross-defendant denies the allegations set forth in paragraph 81.

17 72. Cross-defendant denies the allegations set forth in paragraph 82.

18 73. Paragraph 83 is a statement of pleader which requires no response.

19 74. Cross-defendant denies the allegations set forth in paragraph 84.

20 75. Cross-defendant denies the allegations set forth in paragraph 85.

21 76. Cross-defendant lacks information and belief as to the allegations set forth in
22 paragraph 86 and on that basis denies said allegations.

23 77. Cross-defendant denies the allegations set forth in paragraph 87.

24 78. Cross-defendant denies the allegations set forth in paragraph 88.

25 79. Cross-defendant denies the allegations set forth in paragraph 89.

26 80. Cross-defendant denies the allegations set forth in paragraph 90.

27 81. Paragraph 91 is a statement of pleader which requires no response.

28 82. Cross-defendant admits the allegations set forth in paragraph 92.

1 83. As to the allegations set forth in paragraph 93 Cross-defendant admits that on
2 or about December 30, 2011 it executed a Promissory Note Secured by a Deed of trust in
3 the amount of 200,000.

4 84. As to the allegations set forth in paragraph 94 Cross-defendant admits only
5 that on or about December 30, 2011 it executed a Promissory Note Secured by a Deed
6 of trust in the amount of 60,000.

7 85. Cross-defendant denies the allegations set forth in paragraph 95. The parties
8 lease did not contain an express duty of good faith and fair dealing by and between the
9 parties.

10 86. Cross-defendant denies the allegations set forth in paragraph 96.

11 87. Cross-defendant denies the allegations set forth in paragraph 97.

12 88. To the extent that the "agreement" alleged in paragraph 98 pertains to the
13 parties' lease agreement, cross-defendant admits that the terms and obligations set forth
14 within the parties' lease agreement were mutually binding and enforceable.

15 89. Cross-defendant denies the allegations set forth in paragraph 99.

16 90. Cross-defendant denies the allegations set forth in paragraph 100.

17 91. Paragraph 101 is a statement of pleader which requires no response.

18 92. Cross-defendant lacks information and belief as to the allegations set forth in
19 paragraph 102 and on that basis denies said allegations.

20 93. As to paragraph 103 Cross-defendant admits only that there is no known oral
21 or written agreement between the parties with regard to the perpetual renewal of the
22 parties' 2011 lease and denies all remaining allegations within this paragraph.

23 94. Cross-defendant denies the allegations set forth in paragraph 104.

24 95. Cross-defendant denies the allegations set forth in paragraph 105.

25 96. Cross-defendant denies the allegations set forth in paragraph 106.

26 97. Cross-defendant denies the allegations set forth in paragraph 107.

27 98. Paragraph 108 is a statement of pleader which requires no response.

28 99. As to the first sentence within paragraph 109 Cross-defendant admits only

1 that it received economic benefit from the School in the form of rents received and
2 property alterations, improvements, and repairs made by the School pursuant to the
3 express terms of the parties' lease and denies all other allegations set forth within this
4 paragraph. As to the second sentence within this paragraph Cross-defendant lacks
5 information and belief as to the allegations set forth in paragraph and on that basis
6 denies said allegations.

7 100. Cross-defendant denies the allegation set forth within paragraph 110 that the
8 School "*conferred*" benefits upon the LLC. Any and all such alleged benefits such as
9 loans made, rent payments, or improvements were the results of mutual negotiation
10 and/or contractual obligation.

11 101. Cross-defendant denies the allegations set forth with paragraph 111.

12 102. Cross-defendant denies the allegations set forth with paragraph 112.

13 102. Paragraph 113 is a statement of pleader which requires no response.

14 103. Cross-defendant denies the allegations set forth with paragraph 114.

15 104. Cross-defendant denies the allegations set forth with paragraph 115.

16 105. Cross-defendant denies the allegations set forth with paragraph 116.

17 106. To the extent that paragraph 117 sets forth an allegation against Cross-
18 defendant, Cross-defendant denies said allegation to the extent that it presupposes the
19 existence of a binding "promise" by the LLC "*....to purchase the Property for the use of*
20 *the School, so long as it was in operation*".

21 107. Cross-defendant denies the allegations set forth with paragraph 118.

22 108. Paragraph 119 is a statement of pleader which requires no response.

23 109. Cross-defendant denies the allegations set forth with paragraph 120.

24 110. Cross-defendant denies the allegations set forth in the first sentence of
25 Paragraph 121. As set forth in the second sentence of this paragraph Cross-defendant
26 lacks information and belief as to such allegations and on that basis denies said
27 allegations.

28 111. Cross-defendant denies the allegations set forth with paragraph 122.

1 112. Cross-defendant lacks information and belief as to the allegations set forth in
2 paragraph 123 and on that basis denies said allegations.

3 113. Cross-defendant denies the allegations set forth with paragraph 124.

4 114. Cross-defendant denies the allegations set forth with paragraph 125.

5 115. Paragraph 126 is a statement of pleader which requires no response.

6 116. Paragraph 127 does not contain any factual allegations and, therefore, does
7 not require a response.

8 117. Cross-defendant denies the allegations set forth with paragraph 128.

9 118. Cross-defendant denies the allegations set forth with paragraph 129.

10 119. Paragraph 130 is a statement of pleader which requires no response.

11 120. Cross-defendant lacks information and belief as to the allegations set forth in
12 paragraph 131 and on that basis denies said allegations.

13 121. Cross-defendant lacks information and belief as to the allegations set forth in
14 paragraph 132 and on that basis denies said allegations.

15 122. Cross-defendant lacks information and belief as to the allegations set forth in
16 paragraph 133 and on that basis denies said allegations.

17 123. Paragraph 134 is a statement of pleader which requires no response.

18 124. As to the allegations set forth in paragraph 135 Cross-defendant admits only
19 that a controversy exists between itself and the School as to the legal interpretation of an
20 implied oral agreement and denies all other remaining allegations within this paragraph.

21 125. Cross-defendant denies the allegations set forth in paragraph 136 and
22 denies further that Cross-Complainant is entitled to the relief sought.

23 126. Paragraph 137 is a statement of pleader which requires no response.

24 127. As to the allegations set forth in paragraph 138 Cross-defendant denies the
25 existence of any agreement of any kind to purchase the property for the express benefit
26 of the School. Cross-defendant further denies by lack of information of belief the
27 remaining allegations set forth in this paragraph with regard to borrowing all of the
28

1 School's cash reserves or that said sum was equivalent to approximately 27 percent of
2 the purchase price.

3 128. Cross-defendant lacks information and belief as to the allegations set forth in
4 paragraph 139 and on that basis denies said allegations.

5 129. Cross-defendant lacks information and belief as to the allegations set forth in
6 paragraph 140 and on that basis denies said allegations.

7 130. Cross-defendant denies the allegations set forth in paragraph 141.

8 131. Cross-defendant denies the allegations set forth in paragraph 142.

9 132. As to paragraph 143 Cross-defendant denies the allegation that it made any
10 binding implied oral promises to the School and, as such, admits that it never had any
11 intention of performing such alleged no-existent promises.

12 133. Cross-defendant denies the allegations set forth in paragraph 144.

13 134. Cross-defendant lacks information and belief as to the allegations set forth in
14 paragraph 145 and on that basis denies said allegations.

15 135. Cross-defendant denies the allegations set forth in paragraph 145 and
16 denies further that Cross-Complainant is entitled to the relief sought.

17 **AFFIRMATIVE DEFENSES**

18 **First Affirmative Defense**

19 The causes of action set forth in the Cross-Complaint are barred by the statute of
20 limitations, including but not limited to Code of Civil Procedure sections 337(1), 337(2),
21 337(3), 337.1(a), 337.1(b), 337.15, 338(a), 338(b), 338(c), 338(d), 338(g), 338(h), 338(i),
22 338(j), 338(k), 338(l), 338(m), 339(1), 339(2), 339(3), 340(1), 340(2), 340(3), 340(5), 343
23 and California Civil Code section 896, et seq.

24 **Second Affirmative Defense**

25 The Cross-Complaint and each of its causes of action are barred by the doctrines
26 of waiver, estoppel, and consent.

27 **Third Affirmative Defense**

28 The Cross-Compliant was not brought in good faith and is frivolous pursuant to

1 Code of Civil Procedure Section 128.7.

2 **Fourth Affirmative Defense**

3 The Cross-complaint and each of its causes of action are barred by the Statute of
4 Frauds (CCP

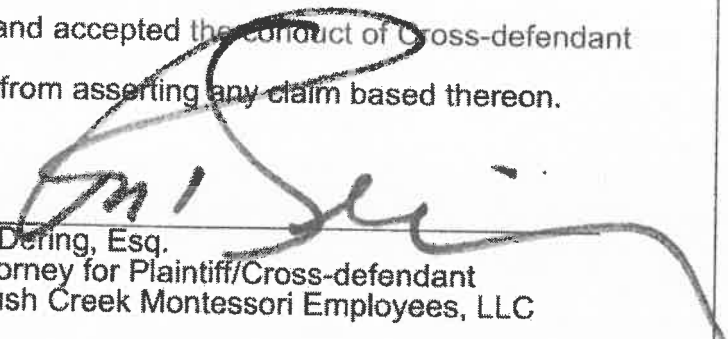
5 **Fifth Affirmative Defense**

6 The Cross-Complaint and each of its causes of action fails to state facts to state a
7 claim for which relief can be granted against Cross-Defendants

8 **Sixth Affirmative Defense**

9 That Cross-complainant, its predecessors in interest, agents, and employees
10 directed, ordered, approved, ratified, and accepted the conduct of Cross-defendant
11 complained of and are now estopped from asserting any claim based thereon.

12
13 Dated 6-30-21

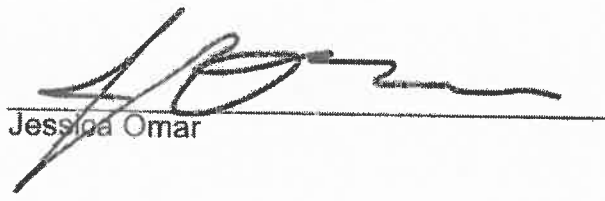
14 
15 Ron Dering, Esq.
16 Attorney for Plaintiff/Cross-defendant
17 Brush Creek Montessori Employees, LLC

18 **VERIFICATION**

19 I, Jessica Omar, am a member of the Brush Creek Montessori, Employees, LLC,
20 the plaintiff and Cross-defendant in the above entitled action. I have read the foregoing
21 answer to cross-complaint and know the contents thereof. The same is true as to my
22 own knowledge, except as to those matters which are stated on information and belief,
23 and as to those matters, I believe them to be true.

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

26 Dated: 6/30/21

27 
28 Jessica Omar

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PROOF OF SERVICE

I, the undersigned, say:

1. I am a citizen of the United States. My mailing address is PO Box 5380 Santa Rosa, CA 95402. I am over the age of eighteen years.

2. On the date set forth below I served the following document described as:

**PLAINTIFF AND CROSS-DEDENDANT BRUSH CREEK MONTESSORI
EMPLOYEES, LLC'S VERIFIED ANSWER TO CROSS-COMPLAINT**

by mailing same to the person(s) whose address(es) appear below:

**JOHN BORBA, ESQ.
BORBA FRIZZELL KERNS, P.C.
50 OLD COURTHOUSE SQUARE - STE 605
SANTA ROSA, CA 95404**

3. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed this date at Santa Rosa, California.

Date: 7.1.30



RON DERING, ESQ.