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Superior Court of California,
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Clerk of the Superior Court
By E- Filing, Deputy Clerk

Pro Se Plaintiff in Pro Per

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, HALL OF JUSTICE**

*IF YOU ARE EVER IN A SITUATION where SOMEONE or GROUP SELECTS TO REMOVE YOUR EXISTENCE
ALWAYS*

REMEMBER BUILDING YOUR MINDSET IS YOUR FIRST DEFENSE - EVERYTHING ELSE BECOMES A SACRIFICE

An unhealthy mind is in the person who conceives a theory, then uses its tools of expertise in order to execute a finish to its satisfaction.

*MR. TOM GILDRED is no VICTIM only suddenly he's a COWARD to implement the tools of a CPA, effectiveness of Psychiatric Consult,
Doctrines of Blameless Authority, MONEY and the FREENESS of its implementation to ASSUAGE the Propensity of a Culprit in You.*

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Defendants assuage the intermittently signed Contract in a rush on the eve of its Trial to which Gildred was not prepared. Plaintiff with extreme courtesies sought to keep private the Undoing of Gildred's Inevitability.

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Defendants Days before trial Hon. Judge Cantanarro advised Gildred (Chic-Peas) at \$350 per Day to favor Foster for a total of \$750,000.00. At Eve of Trial Judge Louis Nock Assuage Gildred: Simply submit the intermittently signed Settlement Agreement forthwith to include terms as discuss: 1) Legal purpose, 2) Offerings/3) Acceptances (Both Sides), 4) Validities, 5) mutual assent, 6) Waiver of points to unknown claims, 7) Resignations and 8) Confidentiality. Gildred added its own version of terms to the intermittent contract.

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*The Defense Demurrer should be overruled as it invites the Court to draw factual inference upon factual inference against Plaintiffs, interpret their meanings and intent behind **UNJUST ENRICHMENT** to Defendants "Gildred et al as such inference Actions are entirely improper as the Defense has an opportunity to make these fact-based arguments, at the pleadings stage. The demurrer should be overruled as it overlooks Plaintiff's facts 1-14*

Defendant Demurrer should be overruled as it invites the Court to infer Defendant own version Above the facts over Clearly Stated in 1-8 of Plaintiffs' Cause of Action.

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L.G.S.P. #2



L.G.S.P. #3



L.G.S.P. GOLD

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ALWAYS
REMEMBER BUILDING YOUR MINDSET IS YOUR FIRST DEFENSE - EVERYTHING ELSE BECOMES A SACRIFICE
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MR. TOM GILDRED is no VICTIM only suddenly he's a COWARD to implement the tools of a CPA, effectiveness of Psychiatric Consult, Doctrines of Blameless Authority, MONEY and the FREENESS of its implementation to ASSUAGE the Propensity of a Culprit in You.

INTRODUCTION (1)

(The Defense Demurrer generally disregards Plaintiffs' allegations in favor of its preferred version.)

On Aug.29, 2023 The California Superior Court in the County of San Diego Hall of Justice Civil Unlimited Duly Issued Entries of Plaintiff's filings into its Publicly Accessible "Records of Actions" #1: "The Complaint" in which Short Titled the names of Defendants "Gildred et al" and #2: The Court's Cover Sheet. On Sep.05, 2023 The Court Issued an Entry Order as for the Poor Person Fee Waiver "GRANTED in FULL" #8 and, following a Certified Summons to be served on all Defendants according to the Court's ROA's.

On or as early as Oct.10, 2023 The Courts Records of Action #13, #16 and #17, indicates Proof of Service had been completed on all Defendants to included Plaintiff's Affidavit, the Summons, Complaint for Damages 24pgs, Civil Case Cover 2pgs, Case Management Statement 2pgs, Stipulation 1pg, an Alternative to Stipulation of use Settlement 2pgs, A Courtesy copy of plaintiff's Restraining Order "*Intent to File*" via; eService, USPS, Digital eService, and by Personal Service on Oct.20th.23.

On Oct.20th 2023 Defendant **Thompson Philip Gildred** "*An Individual*" conceded, accepted and received Personal Service of these documents on behalf of himself and Lead Defendant **Philip T. Gildred** a/k/a *Tom Gildred; Gildred Professional Businesses; (GildredCo Direct Associates) "FMT Consultants, Emerald Textiles, Gildred Development Companies, Dr. Lindsey Morin, Mr. Terrence Leo Greene, Delmore Greene LLP, Mr. John R. Mayor, Eric Cassazza, FMT Financial Services, Jaye Park, Carolina Gildred, Gildred Building Development Companies, Gildred Legal Group", and The Gildred Family of San Diego; "Tory Gildred, Mrs Carolina Gildred, Ms Diana Hernandez, Mr. & Mrs Lynn and Phillip Gildred, Mr. Bryant Hernandez, and Mrs Jennifer Gildred Connolly, respectively."* All personally served by License Service Processor RYAN A NORRIS PSC 6212 on Oct.20.23, after several attempts at the home of Defendant **Thompson Philip Gildred**.

On Nov.14.23, Lead Defendant Gildred Philip T. a/k/a *Tom Gildred*, informed the Court and Plaintiff by eLetter that he had indeed retained adequate Counsel on the exact day this Court made its Certified Entries. The letter also states intent to Demur (or) Letter to Meet on issues of facts and law in the letter at best equates to filings during the Discovery Process or Argued in Briefs Prior to His Trial. The Demurrer in full reads as content lifted from the popular GPT AI Legal chat Module using keywords; "*How to Demur a Complaint in California*".

On Nov.16, 2023 Lead Defendant enters an appearance by Counsels Delmore Greene LLP in copious filings ROA#s 20-28. Here, Declarations aren't clear on Counsel's prior and current business associations to Defendant **Gildred Professional Businesses; "Gildred Building Development Companies"**. By and large Counsel is "Leading Defense To San Diego's Pest Control and BLDG/MGT FIRMS" and, A Defendant.

Comes now Lead Defendant Gildred Philip T; a/k/a *Tom Gildred* filings of the "DEMURRER" 78 Days old at the eve of a Deadlines to Answer in Simple a Believable Initial Unamended Complaint, to request the Court: 1. To Strike The Unamended Complaint, 2. To Allow No Permissions For Leave To Amend The Unamended Complaint, and 3. Request For The Courts Favor For Any Additional Relief As This Court Sees Fit.

BACKGROUND

(A) Defendants Gildred are the Serial Breach of Contract Group. Defendants Breaches of Contracts to Plaintiff surreptitiously commenced during the Months of May through September 2016;

SYNOPSIS: *To Fund 3 Consecutive First Class Airfares and Luxury Hotel Accommodations NY/SD, and To Provide an upfront fee of \$5,000.00 forwarded to Plaintiff and drawn against the Contract 1).* *To Lift Content Trade Secrets from FostersNet.com, DefenseDataRecovery.com and ManhattanEpages.com unto FMTConsultants.com, 2).* *To include Defendant Spouse Carolina in events Produced by Plaintiff in Los Angeles Santa Monica's Monsoon Cafe, and a Culver City Pub through LaTangoBar.com, and to export and launch Plaintiffs' VirtualTBS.com, Technique and Balance Studios (TandBStudios.com) 303 W 42nd St. TimesSquare New York's Live Ballroom Lessons to Defendant's Las Ventanas Resident and 3).* *To Install at said resident Live Video Camera Streaming Equipment at costs to Plaintiffs' from MCSI.Camera and MetroCommuteSecurity.com.*

(B) Defendants' Assuage Criminal Conduct, Mental Adversities and Preemptive Conceiving falsely to Plaintiff.

(C) Defendants' Commenced Actions to recruit and dispatch, in support of above (B), those 1-10 fictitiously named individuals as included in Defendant's Cross-Complaint. (*Pg 2/#9 of paragraph 3 of Defendant Gildred Cross-Complaint*).

(D) Defendants' Commenced a Lawsuit Gildred v Foster 153445/17 at the New York Supreme Court in Support of Defendant's Efforts to Publish and make Public above (B) to Punish Plaintiff and to enjoy unjust enrichments from Plaintiff's trade secrets.

(E) Defendants' in support of (B), with the use of above (C) enforced multiple out of court tactics including (According to an NYPD Harassment Report) Defendant Gildred in a group of 3-4 used "*Passively Violent*" Accoustive obstructionists addressings conjunctively at Plaintiff's face in the mid-Manhattan-city-sidewalk to incriminate an assault on Gildred himself.

(F) Defendants' in support of (B), continued use of those 1-10 fictitiously named individuals as listed in

Defendants Cross-Complaint to threaten Plaintiff of criminal arrests, to cause Plaintiff lost of His Primary Apartment, His Office, New and Ongoing Business MCSI Security Installation Contracts, Trade Secrets, Personal Items, personal friends, Access to Restaurants, Pubs and Clubs frequently use by Plaintiff and Access to Online Network Enterprises.

(G) Defendants' in support of (B), continued use of those of its 1-10 fictitiously named individuals as listed in Defendant's Cross-Complaint to constantly stalk, spam and to imply professional relationships, friendship and even once a romantic relation proposals to Plaintiff.

(H) Defendants' in support of (B), continued use of those 1-10 fictitiously named individuals as listed in Defendants Cross-Complaint to Publish Publicly, and use of at least one of those 1-10 fictitiously named in his Cross-Complaint to Compute, Script and Published Publicly a Statement Assumed by the public to be "A Professional Opinion" in which it "*Falsely Assert Plaintiff as a Client to Defendants x-Spouse A Doctor of Psychiatry*".

(I) Defendants' in support of (B), continued use of those 1-10 fictitiously named individuals as listed in Defendants Cross-Complaint to avoid Plaintiff's conclusive addendum to the Agreement in the immediate hours after the agreement contract signing verbally implied by defendant to execute the addendum to include the mutually agreed terms and conditions.

(J) Defendants' in support of (B), continued use of those 1-10 fictitiously named individuals as listed in its Cross-Complaint to issue Letters to "*The Witness*" and (Notes) to others threatening criminal indoctrinations if Defendants Breaches to the Agreement are to be contested. (*Defendants 1-10 fictitiously named individuals are fictitiously uncertain until properly determined by his lawful exterminator*).

(K) Defendants' in support of (B), continued use of those 1-10 fictitiously named individuals as listed in Defendants Cross-Complaint to avoid "*Gently*" the admonishments of "*The Witness*" off the record and in Video Conferences to Reconsider Defendant's Breaches to the Contract Particularly to Clear or edit decisive, arrogant lapses and to include edits to the agreement by end of said day all Costs payments reasonably expected as agreed upon by plaintiff, the withdrawal of its false criminal reports purported to have named plaintiff criminally indulgent and the uses of Defendant's Professional Businesses Wires to reWrite, unPublished Articles, photoshop pictures defaming Plaintiff by; Don Boudier of the San Diego Reader, Julia K. Marsh of The New York Post, The Online Press Reader and Rexton Rex Brown of the Daily News.

(L) Defendants' in support of (B), discontinued the use of those 1-10 fictitiously named individuals as listed in Defendants Cross-Complaint as of the day it began filings by Demurrer to Plaintiff's Unamended Complaint, in Gildreds' corpious filings, and in Defendants Unadjudicated Cross-Complaint.

B. **Plaintiff's Unamended Complaint is Simple, Believable and Straightforward.**

1. As for: COUNT 1 to 8, Defendant selectively lifted its own version of facts but did not Deny reasonably implied and definitive factual statements in each of Plaintiff 1 to 8 Cause of Actions.
2. As such and for these reasons Defendants' Demurrer Should be Overruled. Intermittently even if Defendant's Demurrer is given any considerations by the Court, Defendant Must Now Provide Forthwith its Answer to the Unamended Complaint and properly with omissions and, not to include any of the selective facts it attempted here; by way of its Demurrer to the Unamended Complaint.

LEGAL STANDARD

Rule:

A settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts.

When considering a demurrer, the advocating party's "allegations . . . must be liberally construed."

Teva Pharms. USA, Inc. v. Superior Ct., 217 Cal. App. 4th 96, 102 (2013) (quoting Cal. Code Civ. Proc. § 452). The court "take[s] all properly pleaded facts as true, and draw[s] all reasonable inferences in favor of the plaintiff." Bank of N.Y. Mellon v. Citibank, N.A., 8 Cal. App. 5th 935, 943 (2017).

As for Count V111 CAUSE OF ACTION 8

The Demurrer to Plaintiffs' Unamended Complaint to strike clause 8 should be overruled without leave to appeal for the following reasons;

Lead Defendant Philip Gildred T. *a/k/a Tom Gildred*; confuses "*Legal interest vs Equitable Interest*" as outlined in the complaint of the said agreement leading up to and the immediate hours post the signing of the agreement.

Equitable interest applies to those transactions specific to Defendants enjoyment for The use of Plaintiffs' Trade Secret "*TRM - Tennant Relationship Management*" from Plaintiffs' website ManhattanEpages.com for the benefit of "*Gildred Building Development Companies*" Defendant's confer interest by registering itself as the Trademark "*Tom Gildred*" to provide services in equitable interest to Plaintiff Intellectual Properties and Corporate Governance Trade Secrets via FostersNet.com and MCSI Intelligent Security in which to enhance the services of FMTConsultants.com.

1. Responsibilities implied and on execution of the agreement were mutually accepted by all parties

Defendants Unjust Enrichment:

2. Defendants confer restitution to Plaintiff equitable interest, but adduce deficiency to Defendants obligation upon Plaintiff execution of the agreement, as a result Defendants benefited from Plaintiffs equitable interest to the agreement.
3. It is inequitable for Defendants as an individual or as Principal to Defendant's Professional Businesses and or The Gildred Family of San Diego to accept and retain the benefit of the payments as a result of Plaintiff's equitable interest to the agreement.
4. Plaintiff is entitled to recover from Lead Defendant Gildred Philip T. *a/k/a Tom Gildred*; Defendants: Thompson Philip Gildred; Gildred Professional Businesses; and or The Gildred Family of San Diego; the amount of this unjust enrichment jointly in an amount of which will be presented Upon at an Evidentiary proceeding, upon submission of Plaintiff's Bills of Cost and or proven at trial or Plaintiff relief to be ascertained by the court as to determine the extent of damages Plaintiff is entitled to.
5. Defendants, actions as an individual and Principal to Defendant's Businesses & The Gildred Family of San Diego an affluent individual with adequate legal counsel at all times, and successor to, defendant babilities, is also liable to Plaintiff for these damages.
6. At the time of the agreement, hours to signing and the immediate hours thereafter, the Defendants acted with adequate legal counsel.

7. At the time of the agreement signing the Defendants minutes post and prior signing of the agreement understood its responsibilities for restitution to Plaintiff's equitable interest as such to be included in the addendum to the agreement.
8. Defendants hours post to the agreement lapse to meeting its obligations thereunto and thereafter upon Plaintiff's execution, and remain in breach of the agreement to date.
9. The Defendants jointly acknowledged and benefited from Plaintiff's equitable interest.
10. Defendants were fully aware of and enjoyed the benefits provided by Plaintiff, a poor person without legal help.
11. Under the circumstances, it is unfair for Defendants to accept and keep the profits derived from Plaintiff's equitable interest without fulfilling Defendant's restitution obligations.
12. Plaintiff has the right to recover the amount of unjust enrichment, the specific amount jointly of which will be presented to the Court Upon an Evidentiary order proceeding, upon submission of Plaintiff's appropriate Bills of Cost and or proven at trial.
13. As a successor to the defendant's liabilities, the Defendant is also held liable for the damages incurred by Plaintiff.
14. Plaintiff relief to the court is to determine the extent of damages and the Defendants, whether as or and as for Defendants responsibility.

As for Count V11

CAUSE OF ACTION 7

The Demurrer to Plaintiffs' Unamended Complaint to strike clause 7 should be overruled without leave to appeal for the following reasons;

Count VII. DEFENDANTS version ask the Court to infer that "*Count Seven does not state facts sufficient to constitute cause of action*" but failed to deny Count Seven is clear as for certain:

Count VII. Defendants Negligence.

1. Defendant by adjoining itself to the agreement contract
2. Defendant implied confidence, of plaintiffs experienced and competent ability to perform the work necessary fully to execute the instrument, to the agreement.
3. Defendants knew the agreement contract implied Plaintiff as a competent employee, Contractee, experienced, and capable of executing the agreement on contract with equitable interest.

4. Defendants actions negligence as for having adequate legal counsel to the agreement contract, actions as contractor infer plaintiff as contractee proximately caused Plaintiff to suffer economic losses, thereby entitling Plaintiff to damages.

As for Count V1 CAUSE OF ACTION 6

The Demurrer to Plaintiffs' Unamended Complaint to strike clause 6 should be overruled without leave to appeal for the following reasons;

Count VI. DEFENDANTS version ask the Court to infer that *"Plaintiff has failed to allege the elements of "negligent misrepresentation"* but failed to deny Count Six is clear as for certain on:

Count VI. Defendant Negligent Misrepresentations:

1. Defendants negligently made, infer and implied, false statements of material fact to Plaintiff regarding the obligations set forth under the instruments of the agreement to which certain facts described in deliberate content of the addendum to the agreement contract to which defines thievery and and implied expenses to be incurred by plaintiff upon execution thereof to be the conduct of criminal indulgence.
2. Defendants had no reasonable basis for believing the false statements enlisted in the agreement contract and the addendum to the agreement contract to be true, in particular the statements of thievery.
3. Defendants knew that Plaintiff, a poor person without legal counsel would rely on its statements and Plaintiff justifiably relied on such statements to plaintiff's detriment, resulting in damages for the Plaintiff.
4. Defendants Philip T Gildred as individual and and Principal to Defendants Professional Businesses & The Gildred Family of San Diego's companies and successors to defendant liabilities, are also liable to Plaintiff, a poor person without legal counsel for these damages.

As for Count V CAUSE OF ACTION V

The Demurrer to Plaintiffs' Unamended Complaint to strike clause 5 should be overruled without leave to appeal for the following reasons;

Count V5. DEFENDANTS version again replete itself to ask the Court to infer Count V *"Intentional Misrepresentation"* of the Complaint does not state facts, but neglect to admit or deny the following statement of facts to Count V: Count V. Intentional Misrepresentation.

1. Defendant Philip T Gildred, actions as an individual and Principal to Defendants Businesses & The Gildred Family of San Diego an affluent individual with adequate legal counsel at all times coerce Plaintiff an individual, a poor person, without legal counsel.
2. Defendant Philip T Gildred acted Recklessly as an individual and Principal to Defendant's Businesses & The Gildred Family of San Diego, Defendants intentionally by fact and opinion implied the inaction of duties by Plaintiff but misrepresented fact and opinion expenses incurred by and due to Plaintiff as a result of the agreement.
3. Plaintiff reasonably relied on such false statements and was induced to, among other things, by fact and opinion implied by the agreement of equitable interest to be paid to Plaintiff upon executing the instruments of the agreement and with Defendant Philip T Gildred except for instruments deflecting FRAUD & Thieveries.
4. By relying on such false statements, Plaintiff has suffered damages including economic losses and the loss of goodwill and Plaintiff is entitled to judgment against Defendant Philip T Gildred, actions as an individual and Principal to Defendant's Businesses & The Gildred Family of San Diego to recover these damages.

As for Count 1V CAUSE OF ACTION 4

The Demurrer to Plaintiffs' Unamended Complaint to strike clause 4 should be overruled without leave to appeal for the following reasons;

Count 1V. DEFENDANTS version *of the facts* by Lead Defendant Philip Gildred T. *a/k/a Tom Gildred*; confuses "*Legal interest vs Equitable Interest*" as outlined in the complaint of the said agreement leading up to and the immediate hours post the signing of the agreement.

Count IV. Intentional Misrepresentation.

1. The "Agreement" therein constitutes Defendant Philip T Gildred as "Contractor" and Plaintiff as "Contractee". The "Agreement" by written content broadly implies that Plaintiff (Contractee) will "Execute" and "Carry-Out" and "accomplish" a specific and certain "Tasks" for a fee which at minimal equates to a "Debt" owed to Defendant (Creditor).
2. Defendant Philip T Gildred is a business man of reputable standings - "A recognized Ernst & Young

Entrepreneur of the Year Awardee”.

3. Plaintiff holds the USPTA trademark “MCSI Intelligent Security” and so does the Defendant who holds A USTA trademark Tom Gildredtm, which defines Defendant as a “Service” not an “Individual”.
4. Defendant actions frame a Malicious Intent against Plaintiff, by relying on false statement, PLaintiff has suffered damages including economic losses and the loss of goodwill and Plaintiff is entitled to judgment against Defendant Philip T Gildred, as an individual and Principal to Defendant’s Businesses & The Gildred Family of San Diego to recover these damages.

As for Count 111 CAUSE OF ACTION 3

The Demurrer to Plaintiffs’ Unamended Complaint to strike clause 3 should be overruled without leave to appeal for the following reasons;

Count III. Malicious prosecution claim and breach of fiduciary duty, negligence, waste, and intentional interference with prospective economic advantage and bad faith.

1. Lead Defendant Philip T Gildred intentionally made fraudulent and false material statements, false representations to Plaintiff.
2. Plaintiff reasonably relied on Defendant Philip T Gildred and entered the Agreement Contract, leading to fraud in the inducement and resulting in economic damages, loss of goodwill and punitive damages.

As for Count 11 CAUSE OF ACTION 2

The Demurrer to Plaintiffs’ Unamended Complaint to strike clause 2 should be overruled without leave to appeal for the following reasons;

Count II. Fraud in the inducement. Misrepresentation.

1. Defendant Philip T Gildred actions intentionally lead to fraudulent statements regarding his obligations under the Original Agreement Contract and the addendum to the Agreement Contract which was prepared by the Defendant as an individual and as Principal to Defendants Professional Business & The Gildred Family of San Diego.
2. Defendant Philip T Gildred knowingly asserted and made false representations and misrepresentations.
3. Under these misrepresentations the Plaintiff entered into the Contract, leading to fraud in the inducement.

4. As a result of these false representations made by the Defendants and Philip T Gildred, the Plaintiff has suffered economic damages and the loss of goodwill.
5. The Plaintiff is entitled to judgment against Defendant Philip T Gildred, as an individual and Principal to Defendant's Professional Businesses & The Gildred Family of San Diego, and to recover these damages, including but not limited to Gildred Development Companies, FMT Financial Services, FMT Consultants and Defendant Philip T Gildred. "The Gildred Family of San Diego" ascribed to Defendant Philip T Gildred, or successor are by these terms of the Agreement Contract liable to Plaintiff for these damages.

As for Count 1
CAUSE OF ACTION 1
BREACH of CONTRACT

The Demurrer to Plaintiffs' Unamended Complaint to strike clause 1 should be overruled without leave to appeal for the following reasons;

Count I. Breach of contract. "Claims specific to fraud and thievery" Defendants Demurrer failed to assert the following facts:

1. Defendant Philip T Gildred created illegal duties to which if executed will impede criminal conduct to Plaintiff, and such other duties whereas if not actionable by Plaintiffs a breach of contract of that duty may be actionable against Plaintiff.
2. Plaintiffs have fully performed all of the obligations reasonably imposed on it under the OriginalContract Terms verbal, written or implied.
3. Lead Defendant was fully aware about the severity of contractual implications and the obligations to each just and equitable interest to the adjoined parties.
4. Plaintiff is entitled to recover the full amount of actual, consequential and incidental damages it suffered and continues to suffer (financial and over excessive hardship) as the results of the Lead Defendant actions.
5. Lead Defendant is liable for these damages as an individual and Principal to Defendants Business & The Gildred Family of San Diego's Professional Businesses., including to Gildred Development Companies, FMT Financial Services, FMT Consultants and Defendant Philip T Gildred, by these terms of the Agreement Contract.

LEGAL STANDARD

When considering a demurrer, a complaint’s “allegations . . . must be liberally construed.” *Teva Pharms. USA, Inc. v. Superior Ct.*, 217 Cal. App. 4th 96, 102 (2013) (quoting Cal. Code Civ. Proc. § 452). The court “take[s] all properly pled facts as true, and draw[s] all reasonable inferences in favor of the plaintiff.” *Bank of N.Y. Mellon v.*

Citibank, N.A., 8 Cal. App. 5th 935, 943 (2017).

“A cardinal rule of pleading” is that plaintiffs need allege only “ultimate facts.” *Ludgate Ins. Co., Ltd. v.*

Lockheed Martin Corp., 82 Cal. App. 4th 592, 606 (2000). Thus, “each evidentiary fact that might eventually

form part of the plaintiff’s proof need not be alleged.” *Pich v. Lightbourne*, 221 Cal. App. 4th 480, 495 (2013).

The Court must accept as true not only the Complaint’s factual allegations but also “facts that reasonably can be inferred from those expressly pleaded.” *Fremont Indemn. Co. v. Fremont Gen. Corp.*, 148 Cal. App. 4th 97, 111

(2007). Thus, if a plaintiff’s allegations on the face of the complaint support a claim “under any possible legal theory,” the demurrer must be overruled. *Sheehan v. San Francisco 49ers, Ltd.*, 45 Cal. 4th 992, 998 (2009).

“[D]emurrers for uncertainty are disfavored, and are granted only if the pleading is so incomprehensible that a defendant cannot reasonably respond.” *Lickiss v. Fin. Indus. Regul. Auth.*, 208 Cal. App. 4th 1125, 1135 (2012);

Mahan v. Charles W. Chan Ins. Agency, Inc., 14 Cal. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23

24 25 26 27 28 -4- MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEMURRER

App. 5th 841, 848 n.3 (2017). Courts “strictly construe such demurrers because ambiguities can reasonably be clarified under modern rules of discovery.” *Lickiss* at 1135; see also *Khoury v. Maly’s of California, Inc.*, 14 Cal.

App. 4th 612, 616 (1993) (citing 5 Witkin, Cal. Procedure (3d ed. 1985) Pleading, § 927, p. 364); *Chen v.*

Berenjian, 33 Cal. App. 5th 811, 822 (2019). A demurrer for uncertainty will not lie where ambiguous facts are

presumptively within the knowledge of the defendant. *Bacon v. Wahrhaftig*, 97 Cal. App. 2d 599, 605 (1950)

(“Such a demurrer for uncertainty is not intended to reach the failure to incorporate sufficient facts in the

pleading, but is directed at the uncertainty existing in the allegations actually made.”). Courts “treat the demurrer

as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law ...

[courts] also consider matters which may be judicially noticed.” *Serrano v. Priest*, 5 Cal. 3d 584, 591 (1971)

(internal citation omitted). “Further, [courts] give the complaint a reasonable interpretation, reading it as a whole

and its parts in their context.” *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985).

ARGUMENT

THE PRO SE COMPLAINANT'S COMPLAINT IS SUFFICIENTLY SPECIFIC.

DEFENDANT GILDRED PHILIP T. a/k/a TOM GILDRED demurrer argues for dismissal in conflict with California law, raises factual questions inappropriate for resolution on a demurrer. Generally Gildred filings are dissuasive, implying thin layers of threats to appeal the Court's Denial regardless. The filings overall is a portrait of arrogant affluence in adverse to “The Gildred Family of San Diego” named A DEFENDANT “Gildred et al” by the Court in Plaintiff’s filings. The DEMURRER is clear without legal courtesies to the Courts Judicial Officer The Hon. Keri Katz. The Notice of Demurrer is aggressive and concurrent filings are untimely: “Motion To Strike and Cross-Complaint” Judicial Notices are baseless and are all besides the point.

1. **COUNT 1 Breach of Contract:** The Demurrer could not deny Plaintiff unamended Complaint pleaded history of “implied conduct” and “implied conduct” of Defendant actions hours prior and immediately after. By Defendants’ own admission in its Cross-complaint an implied-in-fact contract coexisted. (Arcade Cnty. Water Dist. v. Arcade Fire Dist., 6 Cal. App. 3d 232, 236 (1970); 1 Witkin, Summ. of Cal. Law (11th ed.) Contracts, §§ 116, 117.

Count 1 Breach of Contract: Plaintiff unamended Complaint properly pleads facts to Breach of Contract (; Robinson Helicopter, Inc. v. Dana Corp. (2004) 34 Cal.4th 979, 990). Defendants Verbally, Written and Implied the contract. Defendants Demurrer did not conflict the unamended Complaints pleadings; the existence of Defendant Deposits of \$5,000.00, receipts of 3-luxury hotel stays, and first class airfares, the conduct of Defendants hours prior, and hours immediately after the written contract execution. The pleadings implied-in-fact to a contract..California recognizes an implied contract as one that is “manifested by conduct.” Cal. Civ. Code § 1621.

Count 1 Breach of Contract: Plaintiff at minimum, in the unamended Complaint’s asserts allegations present fact issues even at best not ripe for resolution Defendant’s demurrer. Del E. Webb Corp. v. Structural Materials Co., 123 Cal. App. 3d 593, 611 (1981).

2. **COUNT 2 FRAUD:** Plaintiff unamended Complaint adequately pleads a) FRAUD, (“SOF”)

Statute of Fraud, Defendants is estopped because of Gildred's unjust enrichment and unconscionable conduct by Gildred's from 2016 early investments 2016, causing unconscionable injuries to Plaintiff by unauthorized access to plaintiff's trade secrets and Defendants conduct hours prior and after execution of the written contract . (Byrne v. Laura, 52 Cal. App. 4th 1054, 1068 (1997)).

3. **COUNT 3 "Fraud in the Inducement:** Plaintiff unamended Complaint adequately pleads this cause: Plaintiff was induced by fraud. Defendants conduct includes trickeries to persuade witnesses and plaintiff was deliberate. Defendants knowingly, intentionally misrepresented, concealed material fact in portrait with respect to professional courtesy at the time of execution of the stipulation Contract agreement and with the intention caused harm to Plaintiff legal rights. Mutual assent was formed but is not present and a contract is formed exclusively by defendants, inducement, by reason of the fraud, was voidable (Hinesley v. Oakshade Town Center (2005) 135 Cal.App.4th 289, 294–295 [37 Cal. Rptr. 3d 364]; accord, Geraghty v. Shalizi (2017) 8 Cal.App.5th 593, 597 [215 Cal. Rptr. 3d 61].)
4. **COUNT 4 Intentional Misrepresentation:** Plaintiff unamended Complaint adequately pleads Defendants Gildred et al (a) misrepresentation, (b) knowledge of falsity (or scienter), (c) intent to defraud, (d) justifiable reliance, and (e) resulting damage. (Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951.), (Robinson Helicopter, Inc. v. Dana Corp. (2004) 34 Cal.4th 979, 990 [elements of fraudulent misrepresentation]; SAC ¶¶ 2, 28, 44-45, 53, 60, 123-128, 123-131, 133.).
5. **COUNT 5 :** The Demurrer to Plaintiffs' Unamended Complaint to strike clause 5 should be overruled without leave to appeal for the following reasons; Gildred et al with legal counsel coerce plaintiff a poor person without legal counsel, Plaintiff unamended Complaint adequately pleads this actionable cause.
6. **COUNT 6:** Plaintiff unamended Complaint adequately pleads this cause: Plaintiff was induced by Defendant Gildred et al fraud. a) Defendants Demurrer lift if its version of facts is minute

without addressing the general context of the cause of action of the complaint (unamended). b) Defendant Gildred PHILIP T. a/k/a Tom Gildred demurrer in which he files for Judicial Notice is not properly argued on inference of adequate facts. (Donabedian v. Mercury Ins. Co. (2004) 116 Cal.App.4th 968, 994.).

7. **COUNT 7:** Defendant Gildred Philip T. a/k/a Tom Gildred Demurrer is untimely "the purpose of the statute permitting amendments to complaints in answers to a demurrer as ruled upon is to promote judicial efficiency and reduce the costs of litigation. 11 (Barton v. Khan (2007) 157 Cal. App. 4th 1216, 1221.) Plaintiff unamended Complaint adequately pleads count 7.
8. **COUNT 8 is Properly pled:** Plaintiff unamended Complaint adequately pleads this cause:
Defendant Gildred Philip T. *a/k/a Tom Gildred* Demurrer barely contends the facts allegedly pled by Plaintiff and as a whole defendant as such did not allow liberal timeliness in given response for Plaintiff to amend in its request to Demur without leave to amend plaintiff's unamended complaint. Plaintiff factual allegations in a complaint is prudent, clear and easily understandable." (Redfearn v. Trader Joe's Co. (2018) 20 Cal. App. 5th 989, 996.) The Court must determine "whether the complaint alleges facts sufficient to state a cause of action or discloses a complete defense. " (Id.) The Court assumes "the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded and matters of which judicial notice has been taken. 11 (Id.) "As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be," unless the "complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed." (Del E. Webb Corp. v. Structural Materials Co. (1981) 123 Cal. App. 3d 593, 604.) "The court does not, however, assume the truth of contentions, deductions or conclusions of law. 11 (Aubry v. Tri-City Hosp. Dist. (1992) 2 Cal. 4th 962, 967.) Courts "give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (Goncharov v. Uber Techs., Inc. (2018) 19 Cal. App. 5th 1157, 1165.).

CONCLUSION

For the foregoing reasons, the Court should overrule Defendants' demurrer in its entirety.

Alternatively, Plaintiffs respectfully request leave to amend and cure. *See Howard v. Cnty. of San Diego*, 184 Cal. App. 4th 1422, 1428 (2010) ("The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified.").

CONCLUSION (2) IN THE ALTERNATIVE

For the foregoing reasons, the Court should overrule Defendants' demurrer in its entirety without option/permission to appeal the Court's Ruling on overruling Defendant's Demurrer in its entirety. In the alternative subject to Denial the Court may allow definitive Time as is, of essence in response to the unamended complaint by Lead Defendant Gildred Philip T. a/k/a Tom Gildred only to include facts other than those inferred facts alluded to in Defendant's Demurring papers.

Alternatively, Plaintiffs respectfully request leave to amend and cure. *See Howard v. Cnty. of San Diego*, 184 Cal. App. 4th 1422, 1428 (2010) ("The policy favoring amendment is so strong that it is a rare case in which denial of leave to amend can be justified.").

Plaintiff request the Courts injunctive judicial intervention given the largesse of Plaintiff being a poor person appearance in Pro Se in consecutive filings to which includes "The unamended Complaint"

SUMMARY OF INTERMITTENT RELIEF SOUGHT (pg8) Sec. 07: Line 1: "*A Declarative Order from the Court sufficiently to Cancel or suspend the Agreement Contract forthwith on toward an injunction against the Defendant*" (attached Herein as Exhibit "A") and any additional relief this Court deems fit.


Herein above the affirmation of Plaintiff,

State of New York
County of NY

Subscribed and sworn to before me
this 6th day of December, 2023
by

Notary Public

WILLIAM Y. CHOI
Notary Public, State of New York
NO. 01CH6047664
Qualified in Queens County
Certificate Filed in New York County
Commission Expires SEPTEMBER 6, 2026


Michael Foster

128 East Broadway Unit 260
New York, New York 10002

cc:POS eService
Defendants "Gildred et al"

EXHIBIT

"A"

THE CONTRACT DRAFTED ENTIRELY BY LEAD DEFENDANT GILDRED PHILIP T. a/k/a TOM GILDRED AN AFFLUENT INDIVIDUAL WITH ADEQUATE COUNSEL AT ALL TIMES FOR AND ON BEHALF OF "GILDRED ET AL" AND BETWEEN PLAINTIFF MICHAEL FOSTER A POOR PERSON WITHOUT LEGAL COUNSEL.

FILED: NEW YORK COUNTY CLERK 04/14/2021 12:31 PM INDEX NO. 153554/2017
NYSCEF DOC. NO. 1626 RECEIVED NYSCEF: 04/14/2021 RECEIVED NYSCEF: 01/17/2020 (53)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
CAROLINA GILDRED

OLD Stipulation

53554/2017
ORDER
STIPULATION OF SETTLEMENT

Michael L. Foster, an individual

Do

Revised 11/1/2017
The Parties agree to the following conditions set forth below:

1. Mr. Foster agrees that on or before February 3, 2020, he will cause the permanent removal, depublishing and/or taking down of any and all content over which he has possession, custody or control, whether directly or indirectly, concerning Mrs. Carolina Gildred, her husband Mr. Phillip T. Gildred any member of the Mr. or Mrs. Gildred's family, Mr. Gildred's professional, business or social organizations and attorneys Seth Rafkin and Jennifer Bogue and Rafkin Esq., PLLC. This obligation, includes, but is not limited to, causing the permanent removal, depublishing and/or taking down all of the sites, channels, profiles etc., listed in Exhibit A hereto.

2. Mr. Foster further agrees that he will not, directly or indirectly, make any further statements regarding Mrs. Gildred or Mr. Gildred or any member of the Mr. or Mrs. Gildred's family, Mr. Gildred's professional, business or social organizations or attorneys Seth Rafkin or Jennifer Bogue or Rafkin Esq., PLLC, that in any manner disparages, defames or reflects negatively upon any of them. This obligation applies to statements made in any form of media, including, but not limited to, postings on or to any internet site, YouTube, emails, chats, etc.

3. Mr. Foster further agrees that he will not make any attempt, directly or indirectly, to contact in any manner, Mrs. Gildred or Mr. Gildred, any member of Mr. or Mrs. Gildred's family or Mr. Gildred's professional, business or social organizations.

In the event Mr. Foster fails to comply with his obligations under this Stipulation of Settlement, then, as permitted under New York Civil Practice Law and Rules 3215(i), Mrs. Gildred and/or Mr. Gildred shall be permitted to apply for entry of judgment in the amount of \$150,000.00 against Mr. Foster. Pursuant to Rule 3215(i), the Clerk of the Court shall enter judgment without further notice against Mr. Foster.

Amended Handwritten Note by Hon. Judge [Name] Respondent Request

Selected: This was done as a result of coercion - By Appointing Attorney's own admissions: NYSCF Doc # 221 Page # 4

SS: #2

THIS ALSO APPLIES AS AN EXAMPLE TO ANY ONE WHO WILL NOT SAY VERY GOOD THINGS ABOUT EACH OF THE ABOVE LISTED PARTIES.

Coercion coupled with expense. The Judge and His Chambers to consider Refusal.

64

Foster in said amount upon filing of: this Stipulation of Settlement, an affidavit as to the failure to comply with the terms thereof, together with a complaint or a concise statement of the facts on which the claim was based. Said judgment shall include statutory interest accruing from February 10, 2020. Mrs. or Mr. Gildred shall also be permitted to seek an order compelling Mr. Foster to comply with his obligations under this Stipulation of Settlement.

4. The Parties understand and agree that this Stipulation of Settlement shall effect a dismissal of the action with prejudice including all claims asserted against Mr. Foster and all counterclaims by Mr. Foster.

5. This Stipulation of Settlement shall be governed by and construed in accordance with the laws of the State of New York.

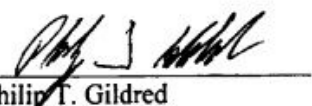
6. This Stipulation of Settlement constitutes the entire agreement between the Parties, and supersedes any prior written or oral agreements, representations, warranties or statements. This Stipulation of Settlement may not be modified, amended or supplemented in any way except by a writing executed by the Parties hereto.


Defendant Michael Foster

January 17, 2020


Plaintiff Carolina Gildred

January 17, 2020


Philip T. Gildred

January 17, 2020

This is
embarrassing?
on all parties
including the
presiding judge

SO ORDERED

HON. LOUIS L. NOCK
J.S.C.

Jan. 17, 2020

(SS)

Respondent's
LOST OFBusiness -
Effectual
not a stipulation
and unrelated
to complaints claims

EXHIBIT A

t.com

info

ss: #7
adtextiles.info

6 → ???

(Years In Business)

www.MichaelTango.com

SS: #8 ← est. 2001

e. www.NewYorkTango.org

SS: #9 ← est. 2005

f. www.LATangoBar.com

SS: #10 ← est. 2007

g. www.FostersNet.com

SS: #11 ← est. since 1992

h. www.MetroCommuteSecurity.com

SS: #12 ← est. 2004

i. www.ReunitedWeb.com

SS: #13 2007-2017 Depreciated

j. www.Re-UnitedWeb.com

SS: #14 2007-2017 Depreciated

k. www.TekcTek.com

SS: #15 ← est. 2014

l. www.TipsOnly.com

SS: #16 ← est. 2007

m. www.NYRestel.com

SS: #17 ← est. 2015

n. www.FamousNewYorker.com

SS: #18 ← est. 2011

o. www.NYSuperTickets.com

SS: #19 ← est. 2012

p. www.TandBStudios.com

SS: #20 ← est. 2010-2013 closed

q. www.virtualtbs.com

SS: #21 ← est. 2013 Depreciated 2019

r. www.fosters.net

SS: #22 unrelated

s. https://twitter.com/FostersNet

SS: #23 BIZ-social media

t. https://www.facebook.com/NewYorkTango/

SS: #24 - 2009

u. https://www.facebook.com/MichaelTango

SS: #25 - 2008

up to

30

unrelated

Business

Titles shows

Vindictiveness

+ extortion on the

behalf of complainant

(56)

- v. <https://www.facebook.com/DanceWithMe.org> SS: #26 - 2016
- w. <https://www.instagram.com/tangomichael/> SS: #27 - 2015
- x. <https://www.instagram.com/newyorktango/> SS: #28 - 2011
- y. <https://vine.co/u/1301587504348225536> SS: #29 unrelated
- z. https://www.youtube.com/channel/UC_EwOwM2a17O5JGSoAw
- 5Abg. SS: #30 unknown
- aa. <https://www.youtube.com/channel/UCVikwgixAQcGDNTzXTR9>
- 4cA. SS: #31 unknown
- bb. <https://www.youtube.com/user/BoomshakalakalaaaH> SS: #32 ???
- cc. <https://www.youtube.com/channel/UCp3z6Ax6OhEr9ZMZbY15> ???

d8g SS: #33

Take down of He Gilded Soot to imposed:-

① with PR and to the
Gilded's own original
summons and complaint

② Extortion: \$150,000.00

③ Defamation
and

④ IIED:- Equivalent to suicide
IF Respondent's life time
of business is taken down.

ATTORNEY OR PARTY WITHOUT ATTORNEY STATE BAR NO NAME Michael Foster FIRM NAME STREET ADDRESS 1-3 Eldridge St #C2 CITY New York STATE NY ZIP CODE 10002 TELEPHONE NO 212-766-2000 FAX NO E MAIL ADDRESS Michael.Foster@MetroCommuteSecurity.com ATTORNEY FOR (name) Plaintiff in Propria Persona (eService Process by Onelegal LLC,)		FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS 330 West Broadway MAILING ADDRESS 330 West Broadway CITY AND ZIP CODE San Diego, CA 92101 BRANCH NAME Central Division - Civil Unlimited		
PLAINTIFF/PETITIONER: MICHAEL FOSTER, an individual, and USPTO Owner MCSI Intelligent Security, FD-2014/06/10 US Class Codes 021, 023, 026, 036, 03 SN 86304785 DEFENDANT/RESPONDENT: PHILIP T. GILDRED a/k/a: Tom Gildred, Thompson Philip Gildred, Philip T Gildred Professional Businesses, The Gildred Family of San Diego		CASE NUMBER No, 37-2023-00038883-CU-Co-CTL
		JUDICIAL OFFICER The Hon. Keri Katz
PROOF of SERVICE		DEPARTMENT C-74

SERVICE LIST:

On the parties as follows:

MICHAEL FOSTER, an individual, and USPTO Owner MCSI Intelligent Security, FD-2014/06/10 US Class Codes 021, 023, 026, 036, 03 SN 86304785

Plaintiff,

v.

PHILIP T. GILDRED a/k/a Tom Gildred; Thompson Philip Gildred, Philip T. Gildred Professional Businesses, The Gildred Family of San Diego.

DEFENDANTS.

OPPOSITION TO LEAD DEFENDANT GILDRED PHILIP T. a/k/a TOM GILDRED: DEMURRER TO THE UNAMENDED COMPLAINT AND OPPOSITION TO THE MEMORANDUM OF POINTS, AUTHORITIES IN SUPPORT OF

THE DEFENDANT'S DEMURRER
Opposition to Lead Defendant Gildred Philip T Request for Judicial Notice, Opposition to said Motion to Strike, and Answer to Defendant Cross-Complaint, Prepared concurrently with Plaintiff Request for Judicial Notice And,

Orders Default Judgment Entries Proposed:
 DEFENDANTS: *Thompson Philip Gildred (an individual), Gildred Professional Businesses; (Direct Associates) FMT Consultants, Emerald Textiles, Gildred Building Development Company, Dr. Lindsey Morin, Mr.*

eMailed: Cross-Complaint-Plaintiff/Lead Defendant: **Philip T. Gildred** eService@onelegal.com confirm/receipt on: on Defendant Attorney **tjenkins@delmoregreene.com**, **tgreene@delmoregreene.com**

Email DEFENDANT **Philip T. Gildred Professional Businesses** eService@onelegal.com confirm/receipt on: **Mr. Jaye.Park** jayepark@gmail.com, **Mr. Eric Casazza** info@fntconsultants.com, **Lien Chen** lienchi74@gmail.com, **John R. Mayer** john@johnrmayer.net **Mr. Terrence Leo Greene** tgreene@delmoregreene.com, **Miss Diana Acevedoa** dianaacevedoa@icloud.com, **Dr. Lindsey Morin** drlindseymorin@gmail.com, **Emerald Textiles** info@emeraldsd.com, **Mrs Carolina Gildred** carolinah77@yahoo.com, **Mrs. C Gildred** carolinagildred@gmail.com, Email DEFENDANT **The Gildred Family of San Diego** eService@onelegal.com confirm/receipt on: **Mss. Diana Hernandez** cdiana796@gmail.com **Tory Gildred** Joseph.krocheski@molinahealthcare.com, **Tory Gildred** info@gildredlawgroup.com, **Mrs Carolina Gildred** carolinah77@yahoo.com, **Mrs. C Gildred** carolinagildred@gmail.com.

ELECTRONIC MAIL eSERVICE BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused the document(s) to be sent from e-mail address eService@onelegal.com to the Lead Defendant Mr. Philip T. Gildred attorney Delmore Greene LLP, DEFENDANT The Gildred Family of San Diego, and DEFENDANT Philip T. Gildred Professional Businesses at the e-mail addresses listed herein. I received delivery confirmation and within a reasonable time after the transmission, electronic message indication that the transmission was successful.

I caused such documents to be sent via eService by submitting an electronic version of the document(s) at One Legal, LLC, access to San Diego Superior Court eFile user interface.

State of New York
 County of NY

Subscribed and sworn to before me,
 this 6th day of December, 2023 by

Notary Public

Executed on December 6, 2023 at New York, NY
WILLIAM Y. CHOI
 Notary Public, State of New York
 NO. 01CH6047664
 Qualified in Queens County
 Certificate Filed in New York County
 Commission Expires SEPTEMBER 6, 2026

Michael Foster

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MINIMUM \$100 DONATION
YOU WILL NEVER REGRET SHOWING YOUR SUPPORT FOR
MICHAEL FOSTER
The Tango Instructor dance NewYorkTango.org MichaelTango.com
LATangoBar.com DanceWithMe.org

FOSTER'S

"THE COMPANY"

As a result of the unprecedented Covid19 Pandemic until further notice:
All L.G.S.P. Foster's Life Global Stewardship Policies are free with any level DONATION



L.G.S.P. #1



L.G.S.P. #2



L.G.S.P. #3



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PLY NOW

MCSD
Security

Re-United
Security

Net-Working
Security

Since 1992
Since 1992

Dispute
Dispute

Dispute
Dispute

Join L.G.S.P. (Life Global Stewardship
s Economical Services Co. Inc., is true to it's name. Since 1992 we've been connecting professional partners & b