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FILED
LOS ANGELES SUPERIOR COURT

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Attorneys for Defendant/Cross-Complainant/Cross-Defendant
DOUGLAS EMMETT 1995, LLC,
a Delaware limited liability company

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES (WEST DISTRICT)**

Law Offices of
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12400 Wilshire Boulevard, Suite 290
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TRUECAR, INC., a Delaware corporation,
Plaintiff,

vs.

DOUGLAS EMMETT 1995, LLC,
a Delaware limited liability company;
DARDEN RESTAURANTS, INC.,
a Florida corporation; and DOES 1-10,
inclusive,

Defendants,

Case No. SC118105

*[Re-Assigned to the Honorable Gerald
Rosenberg, Department K]*

**ANSWER OF DEFENDANT/CROSS-
COMPLAINANT AND CROSS-
DEFENDANT DOUGLAS EMMETT
1995, LLC TO CROSS-COMPLAINT
OF N AND D RESTAURANTS, INC.**

Complaint Filed:
Trial Date:

August 15, 2012
None

N AND D RESTAURANTS, INC.,
a Florida corporation,

Cross-Complainant,

vs.

DOUGLAS EMMETT 1995, LLC,
a Delaware limited liability company; and
ROES 11 through 21, inclusive,

Cross-Defendants,

AND RELATED CROSS-ACTION.

1 COMES NOW Defendant/Cross-Complainant and Cross-Defendant
2 DOUGLAS EMMETT 1995, LLC, a Delaware limited liability company
3 (hereinafter referred to as "**Answering Cross-Defendant**"), and for itself alone and
4 no other party, hereby answers the Cross-Complaint of N AND D RESTAURANTS,
5 INC., a Florida corporation, as follows:

6 1. Pursuant to California *Code of Civil Procedure* §431.30, Answering Cross-
7 Defendant denies each and every allegation contained in the Cross-Complaint,
8 conjunctively and disjunctively, and every part thereof, and denies that Cross-
9 Complainant was damaged in the sum or sums alleged, or to be alleged, or in any other
10 sum or sums whatsoever.

11 **AS A FURTHER, SEPARATE AND FIRST AFFIRMATIVE DEFENSE,**

12 **ANSWERING CROSS-DEFENDANT ALLEGES**

13 **(Failure to State a Cause of Action)**

14 2. The Cross-Complaint and each and every cause of action contained therein
15 fails to allege facts sufficient to state a cause of action against Answering Cross-
16 Defendant.

17 **AS A FURTHER, SEPARATE AND SECOND AFFIRMATIVE DEFENSE,**

18 **ANSWERING CROSS-DEFENDANT ALLEGES**

19 **(Negligence of Cross-Complainant)**

20 3. If Cross-Complainant sustained any loss, injury or damage, either as
21 alleged in the Cross-Complaint or at all, the same was directly and proximately caused
22 and contributed to by Cross-Complainant's own negligence in that it failed to take proper
23 and reasonable measures for its own well-being, and failed to conduct itself in a manner
24 ordinarily expected of a reasonably prudent entity or person in the conduct of its, his or
25 her affairs. Therefore, Cross-Complainant's recovery, if any, should be diminished to the
26 extent that the damages are attributable to Cross-Complainant's own negligence or fault.

1 **AS A FURTHER, SEPARATE AND THIRD AFFIRMATIVE DEFENSE,**
2 **ANSWERING CROSS-DEFENDANT ALLEGES**

3 **(Negligence of Third Parties)**

4 4. If Cross-Complainant sustained any loss or damage, either as alleged in the
5 Cross-Complaint or at all, the same was directly and legally caused and contributed to by
6 the negligence or fault of other parties, persons or entities, and that said negligence was
7 an intervening and superseding cause of Cross-Complainant's loss or damage, if any,
8 either as alleged in the Cross-Complaint or at all.

9 **AS A FURTHER, SEPARATE AND FOURTH AFFIRMATIVE DEFENSE,**
10 **ANSWERING CROSS-DEFENDANT ALLEGES**

11 **(Failure to Mitigate Damages)**

12 5. Cross-Complainant has failed to mitigate the damages, if any, which Cross-
13 Complainant claims in the Cross-Complaint, and has failed to exercise reasonable care to
14 avoid the consequence of harm, if any, in that, among other things, Cross-Complainant
15 has failed to use reasonable diligence in caring for any loss or damages, has failed to use
16 reasonable means to prevent aggravation of any alleged loss or damages, and has failed to
17 take reasonable precautions to reduce any loss or damages.

18 **AS A FURTHER, SEPARATE AND FIFTH AFFIRMATIVE DEFENSE,**
19 **ANSWERING CROSS-DEFENDANT ALLEGES**

20 **(No Damage)**

21 6. Cross-Complainant has suffered no damage as a result of any of the alleged
22 acts or omissions of Answering Cross-Defendant and, therefore, Cross-Complainant is
23 not entitled to any sum or amount whatsoever from Answering Cross-Defendant.

24 **AS A FURTHER, SEPARATE AND SIXTH AFFIRMATIVE DEFENSE,**
25 **ANSWERING CROSS-DEFENDANT ALLEGES**

26 **(Estoppel)**

27 7. Because of negligent or improper conduct, acts or omissions of Cross-
28

1 Complainant, Cross-Complainant is equitably estopped from claiming the damages and
2 other relief sought in the Cross-Complaint.

3 **AS A FURTHER, SEPARATE AND SEVENTH AFFIRMATIVE DEFENSE,**
4 **ANSWERING CROSS-DEFENDANT ALLEGES**

5 **(Waiver)**

6 8. The Cross-Complaint, and each and every cause of action contained therein,
7 is barred by the doctrine of waiver.

8
9 **AS A FURTHER, SEPARATE AND EIGHTH AFFIRMATIVE DEFENSE,**
10 **ANSWERING CROSS-DEFENDANT ALLEGES**

11 **(Laches)**

12 9. To the extent the Cross-Complaint seeks equitable relief, such relief
13 is barred by the doctrine of laches due to Cross-Complainant's unreasonable delay
14 in seeking such relief.

15 **AS A FURTHER, SEPARATE AND NINTH AFFIRMATIVE DEFENSE,**
16 **ANSWERING CROSS-DEFENDANT ALLEGES**

17 **(Actions in Good Faith)**

18 10. Answering Cross-Defendant is excused from any and all liability under the
19 facts alleged in the Cross-Complaint because at all material times Answering Cross-
20 Defendant acted in good faith and conducted all aspects of the disputed transactions
21 in good faith.

22 **AS A FURTHER, SEPARATE AND TENTH AFFIRMATIVE DEFENSE,**
23 **ANSWERING CROSS-DEFENDANT ALLEGES**

24 **(Unclean Hands)**

25 11. As a result of the Cross-Complainant's own misconduct in connection with
26 the events alleged in the Cross-Complaint, Cross-Complainant comes before this Court
27 with unclean hands and should, therefore, be denied the relief sought in the Cross-
28

1 Complaint.

2 **AS A FURTHER, SEPARATE AND ELEVENTH AFFIRMATIVE DEFENSE,**

3 **ANSWERING CROSS-DEFENDANT ALLEGES**

4 **(Intervening and Superseding Factors)**

5 12. The injuries and damages allegedly sustained by Cross-Complainant,
6 if any, were proximately caused by the intervening and superseding actions of others,
7 which intervening and superseding actions bar and/or diminish Cross-Complainant's
8 recovery, if any, against Answering Cross-Defendant.

9 **AS A FURTHER, SEPARATE AND TWELFTH AFFIRMATIVE DEFENSE,**

10 **ANSWERING CROSS-DEFENDANT ALLEGES**

11 **(Incorporation of Allegations of Cross-Complaint)**

12 13. Answering Cross-Defendant incorporates by reference its Cross-Complaint
13 filed herein and by this reference incorporates the same herein as though fully set forth.

14 **AS A FURTHER, SEPARATE AND THIRTEENTH AFFIRMATIVE DEFENSE,**

15 **ANSWERING CROSS-DEFENDANT ALLEGES**

16 **(Release)**

17 14. By virtue of the terms and conditions of the written lease agreement
18 between Cross-Complainant and Answering Cross-Defendant, including without
19 limitation Section 9.3 and Section 12.11, Cross-Complainant has released this Answering
20 Cross-Defendant from liability for the claims asserted in the Cross-Complaint.

21 **AS A FURTHER, SEPARATE AND FOURTEENTH AFFIRMATIVE DEFENSE,**

22 **ANSWERING CROSS-DEFENDANT ALLEGES**

23 **(Statute of Frauds)**

24 15. To the extent any of the claims asserted in the Cross-Complaint are based
25 on oral promises or statements, such claims are barred and unenforceable due to Section
26 1624 of the California *Civil Code*, the Statute of Frauds.

1 **AS A FURTHER, SEPARATE AND FIFTEENTH AFFIRMATIVE DEFENSE,**
2 **ANSWERING CROSS-DEFENDANT ALLEGES**
3 **(Failure of Condition Precedent)**

4 **16.** Cross-Complainant's claims based on an alleged breach of the Lease by
5 Answering Cross-Defendant, including without limitation the Second Cause of Action of
6 the Cross-Complaint, are invalid due to Cross-Complainant's failure to allege that written
7 notice of the alleged breach was given to Answering Cross-Defendant as required by
8 Section 17.6 and Section 16.1 of the Lease.

9
10 **WHEREFORE,** Answering Cross-Defendant requests Judgment as follows:

- 11 **1.** That Cross-Complainant take nothing by way of its Cross-Complaint;
12 **2.** For the entry of a Judgment of Dismissal in favor of Answering Cross-
13 Defendant;
14 **3.** For Answering Cross-Defendant's reasonable attorneys' fees, costs and
15 expenses; and
16 **4.** For such other and further relief as the Court may deem just and proper.

17
18 Dated: July 17, 2013

SHERWOOD AND HARDGROVE

19
20 By: 

Don C. Sherwood

Charles G. Brackins

Attorneys for Defendant/Cross-Complainant/Cross-
Defendant DOUGLAS EMMETT 1995, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 12400 Wilshire Boulevard, Suite 290, Los Angeles, California 90025-1055.

On July 17, 2013 I served the foregoing document described as: ANSWER OF DEFENDANT/CROSS-COMPLAINANT AND CROSS-DEFENDANT DOUGLAS EMMETT 1995, LLC TO CROSS-COMPLAINT OF N AND D RESTAURANTS, INC. on the interested parties in this action by placing a true and correct copy of said document in a sealed envelope addressed as follows:

Richard B. Sheldon, Esq.
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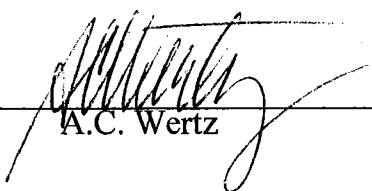
Telephone: 310-203-8080
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Attorneys for Defendant N and D
RESTAURANTS, INC.

BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 17, 2013 at Los Angeles, California.


A.C. Wertz

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