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Attorney for Defendant and Cross-Complainant
Charles W. Hayes

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CENTRAL DISTRICT

FREDERIC G. MARKS, JOSEPH HENTZ, STUART SMITH, JEAN MOLLENHAUER, ROGAN COOMBS, JOSEPH DROLL, GREGG ROOTEN, THOMAS R. WOOD, MARILYN WOOD, GREG STAININGER, and JOHN FOUNTAIN,

Plaintiffs,

vs.

WAYNE JOYNER and THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY TRUST, THE UNIVERSAL SCIENTIFIC PUBLICATIONS COMPANY, INC., THE NATURAL ESTATE TRUST, and DOES 1 through 50, Inclusive,

Defendants.

CHARLES W. HAYES as Trustees of the Natural Estate Trust under the Declaration of Trust dated April 16, 1992 where Andrew Galambos and Suzanne J. Galambos are Trustors,

Cross-Complainant,

vs.

FREDERIC G. MARKS, and ROES 1-50 inclusive,

Cross-Defendants.

CASE NO. BC352639
[Hon. Kenneth R. Freeman, Dept. 64]

DEFENDANT CHARLES W. HAYES' REPLY SEPARATE STATEMENT

[Filed concurrently with Defendant Hayes' Reply to Plaintiff's Opposition to Motion for Summary Judgment; Objections to Plaintiffs' Evidence & Reply Separate Statement and Reply to Plaintiffs' Separate Statement.]

DATE: May 7, 2007 (Reserved)
TIME: 8:30 a.m.
DEPT: 64

Motion Cut-Off: Per Code
Discovery Cut-Off: Per Code
Trial Date: June 6, 2007

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that pursuant to Code of Civil Procedure Section §437c(b), Defendant Charles W. Hayes submits the following Reply to Plaintiffs' Opposition to Separate Statement of Undisputed Material Facts.

Issue 1: The first, second, and third causes of action are barred by the applicable statute of limitations. (Code of Civ. Proc, secs. 337 (3).) (Separate Statement of Undisputed Facts, Nos. 1 to 11.)

Plaintiffs' Alleged Disputed Material Fact:	**Defendant's Response and Evidence:**
1. Defendant Hayes has wasted the assets of Galambos estate. **Alleged Supporting Evidence:** Declaration of Marks, ¶¶38-45.	Disputed; however, the allegation is irrelevant because the proferred evidence creates no triable issues of material fact and is inadmissible as it is total speculation, lacks foundation, assumes facts not in evidence. Dec. of Marks ¶¶38-45. Please see defendant's objections to plaintiffs' evidence.

Issue 3: The cause of action for breach of fiduciary duty fails to state a cause of action as a matter of law as plaintiffs cannot establish that there was any breach reflected by their vacuous discovery responses. (Separate Statement of Undisputed Facts, Nos. 21 to 32.)

Plaintiffs also contend that the following material fact is disputed.

Plaintiffs' Alleged Disputed Material Fact:	Defendant's Response and Evidence:
1. Defendant Hayes has wasted the assets of Galambos estate. **Alleged Supporting Evidence:** Declaration of Marks, ¶¶38-45.	Disputed; however, the allegation is irrelevant and immaterial because the proferred evidence creates no triable issues of material fact and is inadmissible as it is total speculation, lacks foundation, assumes facts not in evidence. Dec. of Marks ¶¶38-45. Please see defendant's objections to plaintiffs' evidence.

Issue 4: The cause of action for specific performance fails to state a cause of action as a matter of law because the contract is not amenable to specific performance. (Separate Statement of Undisputed Facts, Nos. 33 to 38.)

Plaintiffs also contend that the following material facts are disputed

Plaintiffs' Alleged Disputed Material Fact:	Defendant's Response and Evidence:
1. The tem "edited selections from the tape recorded lectures of AJG" was intended to mean and has been understood by the parties as lightly edited transcripts by the verbatim lectures of AJG without any alternation or omission of any words as he spoke them or their sequence in the lecture. **Alleged Supporting Evidence:** Declaration of Marks, ¶¶26, 48, 49.	Disputed but irrelevant and immaterial because the proferred evidence of Mr. Marks lacks foundation and is total speculation. (Please see defendant's objections to plaintiffs' evidence.)

Plaintiffs' Alleged Disputed Material Fact:	**Defendant's Response and Evidence:**
2. Verbatim transcripts of AJG's lectures in course V-201 exist and have been transferred to digital compact disc.	Undisputed, but irrelevant.
Alleged Supporting Evidence: Declaration of Marks, ¶48.	

DATED: May 2, 2007

LACEY, DUNN & DO
A Professional Corporation

By: _____

KEVIN S. LACEY
CATHERINE L. SEKELY
Attorneys for Defendant and
Cross-Complainant Charles W. Hayes

PROOF OF SERVICE

[CCP, 1013A(3) CRC Rule 2006(d) - Revised 3/1/92]

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 and not a party to the within action; my business address is 315 West Arden Avenue, Suite 11, Glendale, CA 91203.

On **May 2, 2007**, I served the foregoing document described as: **DEFENDANT CHARLES W. HAYES' REPLY SEPARATE STATEMENT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

☒ ***(BY MAIL)*** I caused such envelope with postage thereon fully prepaid to be placed in the U.S. mail at Glendale, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of a party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

☐ ***(BY PERSONAL DELIVERY)*** I delivered such envelope by hand to the office of the addressee(s) noted above.

☐ ***(BY FACSIMILE TRANSMISSION)*** I caused such document to be transmitted to the addressee(s) facsimile number noted above. The facsimile machine I used complied with Rule 2003(3) and the transmission was reported as complete and without error. Pursuant to Rule 2005(I), I caused the machine to print a transmission record of the facsimile transmission, a copy of which is attached to this declaration.

☐ ***(BY OVERNIGHT DELIVERY)*** I caused such envelope(s) to be deposited in a box or other facility regularly maintained by the Federal Express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served, at the office address as last given by that person on any document filed in the cause and served on the party making service.

Executed on **May 2, 2007**, Glendale, California.

☒ **[STATE]** I declare under penalty of perjury under the laws of the State of California that the above is true and correct and, that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☐ **[FEDERAL]** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Linda Lane

Linda Lane

SERVICE LIST

Re: Marks, et al., v. Joyner, et al.
LASC Case No. BC352639

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