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5 Attorney for Plaintiff
ORGANIC SOIL PRODUCTS SALES CORP.
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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF CONTRA COSTA
10

11	ORGANIC SOIL PRODUCTS SALES CORP.,)	CASE NO. L 10-06959
12	a California corporation,)	
13	Plaintiff,)	REPLY TO OPPOSITION TO MOTION TO
14	v.)	COMPEL MEDIATION; OR IN THE
15	LEAP OF FAITH FARMS, LLC; a California)	ALTERNATIVE FOR CONTEMPT OF
16	limited liability company; and DOES 1 through)	COURT BY LEAP OF FAITH FARMS, LLC;
17	10, inclusive,)	DECLARATION OF BAYLEIGH JORDAN
18	Defendant.)	PETTIGREW
		Date: June 17, 2011
		Time: 8:30 a.m.
		Dept: 19
		Trial Date: October 7, 2011

19 |
20 LEAP OF FAITH FARMS, LLC HAS IGNORED THE COURTS
21 ORDER

22 Defendant, LEAP OF FAITH FARMS, LLC (hereinafter "LEAP OF FAITH")
23 argues without authority that a party can unilaterally violate a court order. This is for the simple
24 reason that there is no such authority. Defendant was ordered to mediate by the Court and it
25 refused to do so in spite of Plaintiff's repeated attempts to secure the Defendant's cooperation.

26 The case relied on by LEAP OF FAITH for its defense is distinguishable from the
27 case at hand. In that case, Jeld-Wen was a cross-defendant in a complex, multi-party
28 construction case seeking damages greater than \$500,000.00. Jeld-Wen, Inc. v. Superior

1 Court of San Diego County, 146 Cal.App.4th 536, 539, 53 Cal.Rptr.3d 115 (2007). The trial
2 court proposed the case management orders providing deadlines to demand and conduct
3 mediation, unless excused by the court. Id. Jeld-Wen **timely objected** to the mediation
4 provisions of the proposed order, but the trial court overruled the objection. Jeld-Wen
5 subsequently indicated to the real parties of interest that it would not attend mediation. Id.

6 The court stated that the trial court must consider the expressed views of the
7 parties before ordering a case to mediation. Id. at 541. Ultimately, the court held that “... we
8 conclude that a trial court exceeds its authority by mandating that the parties attend and pay
9 for private mediation **over their objection**.” (emphasis added) Id. at 541.

10 The courts have also held that where an attorney initially agreed to attend
11 mediation, but then timely sought to withdraw from participating, prior to the appointment of a
12 mediator, by a written letter to the court asking to be excused from mediation that the request
13 must be granted. Kirschenman v. Superior Court of Contra Costa County, 30 Cal.App.4th 832,
14 834, 36 Cal.Rptr.2d 166 (1994). In both Jeld-Wen and Kirschenman, the party actively gave
15 notice to the court prior to any deadlines, requesting to withdraw from mediation or revoking its
16 consent to mediation. Statutory law also allows withdrawal from mediation if a party **revokes**
17 his consent, **withdraws** from dispute resolution, and **seeks** judicial or administrative redress.
18 California Business & Profession Code § 467.7.

19 The distinction here is that Defendant did not object, it just ignored the Court’s
20 order. LEAP OF FAITH knowingly refused to communicate anything to the Court, causing
21 ORGANIC SOIL to incur great expense in attempting to comply with the court’s order and then
22 ultimately in bringing this motion.

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2 LEAP OF FAITH MISREPRESENTS THAT MEDIATION IS
3 INAPPROPRIATE BECAUSE THE COST OF MEDIATION
4 WOULD EXCEED THE DISPUTED AMOUNT

5 LEAP OF FAITH states in its opposition that the amount at issue was originally
6 \$3,000.00, in comparing it to the amount allegedly owed by Jeld-Wen to assert that the
7 mediation costs would exceed the disputed amounts. Opposition page 3, lines 12-13. This is
8 only true if LEAP OF FAITH continues to make voluntary monthly payments, which it can stop
9 at any time. LEAP OF FAITH’s argument is unavailing. In Jeld-Wen, the court had ordered that
10 the mediation not exceed more than one hundred (100) hours at five (5) hours per day, without
11 further instruction by the court. The Court overruled objections by the Party. It was a complex
12 construction defect case involving multiple parties alleging more than \$500,000.00 in costs of
13 repairs, but the liability alleged to Jeld-Wen was merely \$2,799.00, which the court found was
14 likely far less than the cost of mediating all the multiple parties. Jeld-Wen at 539-540. LEAP
15 OF FAITH says that “there is no dispute on the underlying amount owing,” Opposition page 3,
16 lines 13-14, and that therefore mediation costs would exceed the amount owed by LEAP OF
17 FAITH. This is incorrect.

18 LEAP OF FAITH refused to pay invoices for products received from ORGANIC
19 SOIL in a sum totaling TWENTY-THOUSAND NINE HUNDRED SIXTEEN DOLLARS AND
20 FIFTEEN CENTS (\$20,916.15), plus interest due on late payments at eighteen percent (18%)
21 per annum, so when demands for payment were refused, ORGANIC SOIL was forced to
22 pursue this litigation. PETTIGREW Declaration, ¶ 5. In December 2010, when LEAP OF FAITH
23 refused to participate in the court ordered ADR selection and failed to notify the court and other
24 parties of its revocation of its consent to mediation and its withdrawal from mediation, LEAP
25 OF FAITH owed ORGANIC SOIL \$20,916.15, plus interest in an amount no less than
26 \$3,458.59, plus attorneys fees and costs incurred in the collection of the debt. Id.

27 Although LEAP OF FAITH began to make payments toward its debt on January
28 6, 2011, there is no guarantee that it will continue to do so. It has refused to stipulate to
judgment.

1 As of May 1, 2011, LEAP OF FAITH owes ORGANIC SOIL no less than
2 \$17,377.42, plus attorneys fees and costs incurred in the collection of the debt. PETTIGREW
3 Declaration, ¶ 6.

4 III

5 ONLY LEAP OF FAITH FARMS, LLC HAS DIVULGED
6 PRIVILEGED INFORMATION IN VIOLATION OF STATUTORY
7 AUTHORITY

8 LEAP OF FAITH's claims that the Motion should be stricken in its entirety
9 because it violates California Code of Civil Procedures (CCP), § 1775.10 is unavailing. CCP §
10 1775.10 refers only to statements "... made by parties **during mediation**" and CCP § 1775.1
11 defines "mediation" as "a process in which a neutral person or persons facilitate
12 communication between the disputants to assist them in reaching a mutually acceptable
13 agreement." Obviously, no mediation has occurred. Therefore, this authority is irrelevant to
14 LEAP OF FAITH's claims. LEAP OF FAITH disobeyed the court order to participate in
15 mediation.

16 Furthermore, ORGANIC SOIL's Motion and the facts stated therein were not
17 offered to prove LEAP OF FAITH's liability or the invalidity of LEAP OF FAITH's claim. The
18 court has held that "... § 1154 [of California Evidence Code] only precludes admission of
19 evidence of statements made in such negotiations "to prove the invalidity of the claim or any
20 part of it." Zhou v. Unisource Worldwide, Inc., 157 Cal.App.4th 1471, 1478, 69 Cal.Rptr.3d 273
21 (2007). It goes on to note that "Evidence Code § 1152 provides that evidence that a party has
22 offered to compromise a claim is inadmissible to prove liability for a *claim*." Id. Nothing
23 provided by ORGANIC SOIL was offered "during mediation" or to prove liability for or invalidity
24 of the underlying claim.

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1 IV

2 CONCLUSION

3 LEAP OF FAITH violated a court order and purposefully failed to communicate its
4 intent to revoke its consent and withdraw to both the court and ORGANIC SOIL, despite
5 ORGANIC SOIL's great efforts to meet and confer on the issue of mediation and to comply
6 with the court's order. Contrary to LEAP OF FAITH's assertion that the case will resolve itself
7 "of its own accord by the end of summer," LEAP OF FAITH's credibility is belied by its conduct
8 in failing to meet and confer with ORGANIC SOIL, its misrepresentations regarding the amount
9 due and the payments necessary to fully satisfy its obligations, and its refusal to execute any
10 type of written guarantee to back up its claims that there are no issues to mediate. Opposition
11 page 3, line 14; page 4, lines 3-4. Accordingly, ORGANIC SOIL respectfully requests this court
12 to:

- 13 1. Grant its Motion to Compel Mediation, Or In The Alternative, for Contempt
14 of Court;
15 2. To award sanctions against the Defendant as prayed for.
16

17 DATED: April _____, 2012

18 MORRIS & ASSOCIATES

19
20 By: _____
21 BAYLEIGH J. PETTIGREW
22 Attorney for Plaintiff
23 ORGANIC SOIL PRODUCTS SALES
24 CORP.

25 organic-leapoffaith.rply.mtn.compel.arb/4/8/12/ji

1 responsive to my communications and given me notice that LEAP OF FAITH did not intend to
2 participate in the court ordered Mediation.

3 5. Pursuant to the Complaint, LEAP OF FAITH, outstanding balance for
4 products received from ORGANIC SOIL at the time the Complaint was filed was \$20,916.15,
5 plus interest due late payments at eighteen percent (18%) per annum. By December 2010,
6 LEAP OF FAITH not only owed the original balance of TWENTY THOUSAND NINE
7 HUNDRED SIXTEEN DOLLARS AND FIFTEEN CENTS (\$20,916.15) to ORGANIC SOIL, but
8 also interest in an amount no less than \$3,458.59, as well as the attorneys fees and costs
9 incurred in the collection of the debt that its agreement with LEAP OF FAITH provided for.

10 6. I am unaware of any written Settlement Agreements executed between
11 ORGANIC SOIL and LEAP OF FAITH regarding the total amount due to ORGANIC SOIL.
12 According to the calculation stated in the Complaint, as of May 1, 2011, LEAP OF FAITH will
13 have made four (4) payments of \$2,000.00 each to ORGANIC SOIL with a remaining balance
14 of \$17,377.42, plus attorneys fees and costs incurred in the collection of the debt. I additionally
15 calculate that even LEAP OF FAITH continued to make monthly payments of \$2,000.00
16 through October of 2011, the outstanding amount due to ORGANIC SOIL will be no less than
17 \$5,913.34 of principal and interest, plus the attorney's fees and costs associated with the
18 collection of the debt.

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

21 Executed this ____ day of May, 2012, at Burbank, California.

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24 _____
BAYLEIGH J. PETTIGREW
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of **Los Angeles**, State of California. I am over the
4 age of 18 and not a party to the within action. My business address is **2312 West Victory
Boulevard, Burbank California 91506-1227.**

5 On April _____, 2012, I served the foregoing document described as **REPLY TO
6 OPPOSITION TO MOTION TO COMPEL MEDIATION; OR IN THE ALTERNATIVE FOR CONTEMPT
7 OF COURT BY LEAP OF FAITH FARMS, LLC; DECLARATION OF BAYLEIGH JORDAN
PETTIGREW** on interested parties in this action

8 By placing: the original a true copy thereof
enclosed in sealed envelopes addressed as follows:

9 **MARK S. WILLIAMS**
10 **Fagen Friedman & Fulfrost, LLP**
11 **70 Washington St., Ste. 205**
Oakland, CA 94607

12 **BY MAIL:** I caused such envelope with postage thereon fully prepaid to be placed in
13 the United States mail at Burbank, California.

14 **BY FAX:** I caused such document to be transmitted by facsimile transmission to
15 _____, facsimile number (____) ____-____, on April _____, 2012. The
16 transmission was reported as complete and without error. A copy of the transmission
report is attached hereto. The transmission report was properly issued by the
17 transmitting facsimile machine.

18 **BY PERSONAL SERVICE:** I caused such an envelope to be delivered by hand to the
offices of the addressee.

19 Executed on April _____, 2012, at Burbank, California.

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

21 (Federal) I declare that I am employed in the office of a member of the bar of this
22 Court at whose direction the service was made.

23
24 TRACEY DAVENPORT

Signature