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**SUPERIOR COURT OF THE STATE CALIFORNIA
COUNTY OF SAN DIEGO**

ROBERT FOLTYN, an individual,
Plaintiff,
v.
WILLIAM DeBERRY, an individual,
DeBERRY ENGINEERING
ASSOCIATES, INC., a California
corporation, FRED PATRICK, an
individual, and DOES 1 through 50,
inclusive,
Defendants.

Case No.: 37-2012-00056240-CU-PN-NC

~~PROPOSED~~ JUDGMENT ON JURY
VERDICT

Complaint Filed: August 13, 2012
I/C Judge: Hon. Robert P Dahlquist
Department: N-29
Trial Date: October 19, 2015

This action came on regularly for jury trial on November 2, 2015, continuing through November 18, 2015, in Department N-29 of the Superior Court, the Honorable Judge Robert P. Dahlquist presiding. Andrew Lloyd and Katherine Dwyer of RUPP JOHNSTON & LLOYD, LLP, appeared for Plaintiff ROBERT FOLTYN (hereinafter "Plaintiff"); Shawn D. Morris, Will Lemkul, and Mark Uremovich of MORRIS SULLIVAN & LEMKUL, LLP, appeared for Defendant LINDA PATRICK, THE SUCCESSOR IN INTEREST FOR DEFENDANT FRED PATRICK dba DESIGN & CONSTRUCTION ASSOCIATES (Erroneously sued herein as Fred Patrick, an individual) (hereinafter "Defendant PATRICK"); Jeffery Morris appeared for LINDA

1 PATRICK; and Richard Roy of THE LAW OFFICE OF RICHARD ROY, APC,
2 appeared for Defendants WILLIAM DEBERRY and DEBERRY ENGINEERING
3 ASSOCIATES, INC. (hereinafter "Defendant DEBERRY").

4 A jury of 12 persons was regularly impaneled and sworn. Witnesses were sworn
5 and testified. After hearing the evidence and arguments of counsel, the jury was duly
6 instructed by the Court and the cause was submitted to the jury with directions to return a
7 verdict on special issues. ~~An exemplar copy of the special verdict form provided to the~~
8 ~~jury is attached to this judgment as Exhibit "A."~~ The jury deliberated and thereafter
9 returned into court with its verdict as follows:

10 **Section 1. Breach of Contract Against Fred Patrick**

11 Question 1: Did Plaintiff and Fred Patrick enter into a contract?

12 Answer: Yes.

13 Question 2: Did Fred Patrick fail to do something that the contract required him to
14 do?

15 Answer: No.

16 **Section 2. Negligence Against William DeBerry and/or Fred Patrick**

17 Question 4 (A): Was William DeBerry negligent?

18 Answer: Yes.

19 Question 4 (B): Was Fred Patrick negligent?

20 Answer: No.

21 Question 5 (A): Was the negligence of William DeBerry a substantial factor in
22 causing harm to Robert Foltyn?

23 Answer: No.

24 **Section 3. Promise Without the Intent to Perform Against Fred Patrick**

25 Question 9: Did Fred Patrick make a promise to Robert Foltyn?

26 Answer: No.

27 **Section 4. Concealment Against Fred Patrick**

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1 Question 15: Did Fred Patrick intentionally fail to disclose a fact that Robert
2 Foltyn did not know and could not have reasonably discovered?

3 Answer: No.

4 **Section 5. Intentional Misrepresentation against William DeBerry**

5 Question 19: Did William DeBerry make a false representation to Robert Foltyn?

6 Answer: No.

7 **Section A and Section B**

8 Given the jury's responses in Section 4 and Section 5, Section A, which included
9 subsections for "Conspiracy Questions: William DeBerry," "Aiding and Abetting
10 Questions: William DeBerry," "Conspiracy Questions: Fred Patrick," and "Aiding and
11 Abetting Questions: Fred Patrick," became inapplicable. Section B for Damages also
12 became inapplicable as a result of the jury's responses.

13 NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

14 1. That judgment be entered in favor of Defendant LINDA PATRICK, THE
15 SUCCESSOR IN INTEREST FOR DEFENDANT FRED PATRICK dba
16 DESIGN & CONSTRUCTION ASSOCIATES (Erroneously sued herein as
17 Fred Patrick, an individual).

18 2. *Defendant Linda Patrick shall recover her costs of suit*
~~Defendant, California Code of Civil Procedure § 1032, California Code of~~
from plaintiff Robert Foltyn;
~~Civil Procedure § 1032.5, California Civil Code § 1717, California Code of~~
~~Civil Procedure § 1031, California Code of Civil Procedure § 909, and~~
~~California Rules of Court Rule 3-1702, Plaintiff shall pay to Defendant~~
~~LINDA PATRICK, THE SUCCESSOR IN INTEREST FOR~~
~~DEFENDANT FRED PATRICK dba DESIGN & CONSTRUCTION~~
~~ASSOCIATES (Erroneously sued herein as Fred Patrick, an individual)~~
costs, fees, and disbursements totaling \$ _____ . [Court to
26 enter upon filing of Memorandum of Costs and Motion for Award of
27 ~~Attorney's Fees~~]

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3. That judgment be entered in favor of Defendants WILLIAM DEBERRY and DEBERRY ENGINEERING ASSOCIATES, INC.

4. ~~Defendants William Deberry and Deberry Engineering Associates, Inc. Pursuant to California Code of Civil Procedure § 1033 and California Code of Civil Procedure § 1033.5, Plaintiff shall pay to Defendant WILLIAM DEBERRY costs and disbursements totaling \$ [Amount to accompany filing of Memorandum of Costs]~~
Defendants William Deberry and Deberry Engineering Associates, Inc. shall recover their costs of suit from Plaintiff Robert Foltyn, Civil Procedure § 1033.5, Plaintiff shall pay to Defendant WILLIAM DEBERRY costs and disbursements totaling \$ [Amount to accompany filing of Memorandum of Costs]

5. That Plaintiff ROBERT FOLTYN takes nothing by way of his First Amended Complaint.

6. Any request for attorney fees shall be made by noticed motion.

IT IS SO ORDERED.

Dated: December 16, 2015

Robert P. Dahlquist
Hon. Robert P. Dahlquist
JUDGE OF THE SUPERIOR COURT