

**GOPY**

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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

OCT 17 2017

*Attorneys for Defendant*  
FRHI HOTELS & RESORTS (CANADA) INC.

BY   
JASMIN CASILLAS, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN BERNARDINO

11 MIKE SPITZER and MICHELLE  
12 MACOMBER, individually and on behalf of a  
13 class and subclass of similarly situated  
14 individuals,

Case No.: CIVDS1712220

[Honorable Keith D. Davis, Dept. S25]

CLASS ACTION

Plaintiffs,

**ANSWER TO FIRST AMENDED  
COMPLAINT**

v.

15 FRHI HOTELS & RESORTS (CANADA),  
16 INC.; and DOES 1 through 10, inclusive,

Date Action Filed: June 22, 2017

FAC Filed: July 28, 2017

Defendants.

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
LOS ANGELES

1 Defendant FRHI HOTELS & RESORTS (CANADA) INC. (“Defendant”) hereby answers  
2 the unverified First Amended Complaint (the “Complaint”) of plaintiffs MIKE SPITZER and  
3 MICHELLE MACOMBER (collectively, “Plaintiffs”), as set forth below:

4 **GENERAL DENIAL**

5 Pursuant to section 431.30(d) of the California Code of Civil Procedure, Defendant  
6 denies, generally and specifically, each and every allegation set forth in Plaintiffs’ Complaint,  
7 each and every purported cause of action in it, and further denies that Plaintiffs or any member of  
8 the purported Class or Subclass have been damaged or are entitled to any monetary or equitable  
9 relief whatsoever as alleged in the Complaint.

10 **AFFIRMATIVE DEFENSES**

11 As separate and distinct affirmative defenses to Plaintiffs’ Complaint, Defendant alleges  
12 as follows:

13 **FIRST AFFIRMATIVE DEFENSE**

14 **(Failure to State a Claim)**

15 1. Defendant alleges that the Complaint, and each purported claim for relief alleged  
16 therein, fails to state a claim upon which relief can be granted against Defendant as a matter of  
17 law and fact.

18 **SECOND AFFIRMATIVE DEFENSE**

19 **(Performance of Duties)**

20 2. Defendant alleges that it fully performed any and all contractual, statutory, and  
21 other duties owed to Plaintiffs, and they are therefore estopped from asserting any cause of action  
22 against Defendant.

23 **THIRD AFFIRMATIVE DEFENSE**

24 **(No Standing)**

25 3. Defendant alleges that Plaintiffs are not entitled to relief under the statutes and  
26 legal theories invoked in the Complaint because they lack standing.

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**FOURTH AFFIRMATIVE DEFENSE**

**(Substantial Compliance)**

4. Plaintiffs' claims are barred, in whole or in part, because Defendant has substantially complied with the requirements of the law as they pertain to this lawsuit.

**FIFTH AFFIRMATIVE DEFENSE**

**(No Reasonable Expectation of Privacy)**

5. Defendant alleges that Plaintiffs' causes of action are barred, in whole or in part, because Plaintiffs had no reasonable expectation of privacy.

**SIXTH AFFIRMATIVE DEFENSE**

**(Cause in Fact)**

6. Plaintiffs' claims are barred, in whole or in part, because no alleged act or omission by Defendant or by any person or entity for which Defendant was responsible was the cause in fact of any injury, damages, or loss alleged by Plaintiffs.

**SEVENTH AFFIRMATIVE DEFENSE**

**(No Proximate Cause)**

7. Plaintiffs' claims are barred, in whole or in part, because no alleged act or omission by Defendant, or by any person or entity for which Defendant was responsible, was the proximate cause of any injury or harm alleged by Plaintiff.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Superseding Cause)**

8. Plaintiffs' claims are barred, in whole or in part, because any and all violations alleged in the Complaint were the result of superseding or intervening causes arising from the acts or omissions of parties that Defendant neither controlled nor had the legal right to control, and such alleged violations were not proximately or otherwise caused by any act, omission, or other conduct of Defendant.

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**NINTH AFFIRMATIVE DEFENSE**

**(Contribution)**

9. Plaintiffs' claims are barred, in whole or in part, because any and all violations alleged in the Complaint were proximately caused or contributed to by the acts, omissions, conduct, or products of persons or entities other than Defendant.

**TENTH AFFIRMATIVE DEFENSE**

**(Consent)**

10. Plaintiffs' claims are barred, in whole or in part, because Plaintiffs expressly and/or impliedly consented to and/or had knowledge of all activities or conditions alleged in the Complaint to have caused their harm.

**ELEVENTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate)**

11. If Plaintiffs have suffered any injury or harm, which Defendant expressly denies, their recovery or entitlement to relief is barred by their failure to mitigate, reduce or otherwise avoid their alleged damages or injury.

**TWELFTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

12. Plaintiffs' claims are barred by the doctrine of equitable estoppel.

**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Waiver)**

13. Plaintiffs' claims are barred by the doctrine of waiver.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Statute of Limitations)**

14. Plaintiffs' claims are barred by the applicable statutes of limitations.

**FIFTEENTH AFFIRMATIVE DEFENSE**

**(Laches)**

15. Plaintiffs' claims are barred by the doctrine of laches.

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1                                    **SIXTEENTH AFFIRMATIVE DEFENSE**

2                                    **(Unclean Hands)**

3            16.     Plaintiffs’ claims are barred by virtue of their own unclean hands.

4                                    **SEVENTEENTH AFFIRMATIVE DEFENSE**

5                                    **(Not Maintainable As a Class Action)**

6            17.     This action is barred, in whole or in part, because Plaintiffs’ causes of action are  
7 not maintainable as a class action, there are not sufficiently common issues as to the individual  
8 members of the purported class and/or subclass, and the named Plaintiffs are not an adequate,  
9 typical, suitable, or appropriate representatives of the purported class and/or subclass.

10                                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

11                                   **(No Attorneys’ Fees)**

12           18.     The Complaint fails to state a claim for attorney’s fees or to set forth facts  
13 sufficient to support such a claim.

14                                   **NINETEENTH AFFIRMATIVE DEFENSE**

15                                   **(Ratification)**

16           19.     Plaintiffs ratified and accepted the alleged acts or omissions alleged in the  
17 Complaint.

18                                   **TWENTIETH AFFIRMATIVE DEFENSE**

19                                   **(Good Faith)**

20           20.     Defendant alleges that at all times, it acted in good faith and within reasonable  
21 commercial standards as to the matters alleged in the Complaint.

22                                   **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23                                   **(Conflict In Laws)**

24           21.     Plaintiffs’ claims are barred due to a conflict in laws.

25                                   **TWENTY-SECOND AFFIRMATIVE DEFENSE**

26                                   **(Right To Assert Additional Affirmative Defenses)**

27           22.     Defendant presently has insufficient knowledge or information on which to form a  
28 belief as to whether it may have additional, yet unstated affirmative defenses. Defendant reserves

1 the right to assert additional affirmative defenses in the event discovery or further investigation  
2 indicates that asserting additional affirmative defenses would be warranted.

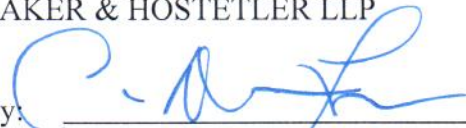
3 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant  
4 prays as follows:

- 5 1. That Plaintiffs take nothing by their Complaint in this action;
- 6 2. That the Complaint be dismissed with prejudice;
- 7 3. That Defendant recover its costs and reasonable attorneys' fees; and
- 8 4. For such other and further relief as may be deemed proper.

9  
10 Dated: October 17, 2017

Respectfully submitted,

11 BAKER & HOSTETLER LLP

12   
13 By: \_\_\_\_\_

Margaret Rosenthal  
C. Dennis Loomis

14  
15 *Attorneys for Defendant*  
16 FRHI HOTELS & RESORTS (CANADA)  
17 INC.

BAKER & HOSTETLER LLP  
ATTORNEYS AT LAW  
LOS ANGELES

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**PROOF OF SERVICE**

I, Priscilla Markus, declare:

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, CA 90025-0509. On October 17, 2017 I served a copy of the within document(s):

**ANSWER TO FIRST AMENDED COMPLAINT**

**VIA U.S. MAIL** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

<p>Kenneth S. Gaines, Esq. Daniel F. Gaines, Esq. Alex P. Katofsky, Esq. Evan S. Gaines, Esq. <b>GAINES &amp; GAINES, APLC</b> 27200 Agoura Road, Suite 101 Calabasas, CA 91301 Telephone: (818) 703-8985 Facsimile: (818) 703-8984 Emails: ken@gaineslawfirm.com daniel@gaineslawfirm.com alex@gaineslawfirm.com evan@gaineslawfirm.com</p>	<p><i>Attorneys for Plaintiffs</i> MIKE SPITZER and MICHELLE MACOMBER</p>
<p>Scot Bernstein, Esq. <b>LAW OFFICES OF SCOT D. BERNSTEIN, A PROFESSIONAL CORPORATION</b> 101 Parkshore Drive, Suite 100 Folsom, CA 95630 Telephone: (916) 447-0100 Facsimile: (916) 933-5533 Email: swampadero@sberinsteinlaw.com</p>	<p><i>Attorneys for Plaintiffs</i> MIKE SPITZER and MICHELLE MACOMBER</p>
<p>Eric A. Grover, Esq. Rachel G. Jung, Esq. <b>KELLER GROVER LLP</b> 1965 Market Street San Francisco, CA 94103 Telephone: (415) 543-1305 Facsimile: (415) 543-7861 Emails: eagrover@kellergrover.com rjung@kellergrover.com</p>	<p><i>Attorneys for Plaintiffs</i> MIKE SPITZER and MICHELLE MACOMBER</p>

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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 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 October 17, 2017, at Los Angeles, California.

  
\_\_\_\_\_  
Priscilla Markus

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ATTORNEYS AT LAW  
LOS ANGELES