

1 **PAHL & McCAY**  
A Professional Law Corporation  
2 **Servando R. Sandoval, Esq.** (State Bar No. 205339)  
3 **Helene A. Simvoulakis, Esq.** (State Bar No. 256334)  
225 West Santa Clara Street, Suite 1500  
San Jose, California 95113-1752  
4 Telephone: (408) 286-5100  
Facsimile: (408) 286-5722

5 Attorneys for Defendant  
6 VILLAS PAPIILLON, LLC

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF ALAMEDA**

10 VICTOR FERNANDEZ and SEIFEDDIN )  
ABURAS )

11 Plaintiffs )

12 v. )

13 VILLAS PAPIILLON, LLC; and DOES 1 )  
14 through 10, inclusive, )

15 Defendant )

Case No. RG13683606

**ANSWER OF DEFENDANT VILLAS  
PAPIILLON LLC TO PLAINTIFFS'  
UNVERIFIED FIRST AMENDED  
COMPLAINT**

Assigned to: Hon. Steven Brick  
Dept.: 17

Action Filed: June 14, 2013  
Trial Date: N/A

17 Defendant VILLAS PAPIILLON, LLC ("VILLAS PAPIILLON" or "Defendant") hereby  
18 answers the unverified First Amended Complaint ("Complaint") of Plaintiffs VICTOR  
19 FERNANDEZ and SEIFEDDIN ABURAS ("Plaintiffs"), as follows:

20 **GENERAL DENIAL**

21 Pursuant to California Code of Civil Procedure Section 431.30, Defendant denies each and  
22 every allegation, all and singular, both generally and specifically, contained in the Complaint and  
23 each purported cause of action contained therein. Defendant further denies that Plaintiffs have  
24 been damaged in the amount or manner alleged in the Complaint, or in any other amount or  
25 manner, by any act or omission of this Defendant. In addition to the above general denial to  
26 Plaintiffs' Complaint, Defendant alleges the following affirmative defenses:

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ANSWER OF DEFENDANT VILLAS PAPIILLON, LLC TO PLAINTIFFS' UNVERIFIED  
FIRST AMENDED COMPLAINT

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(Case No. RG13683606)

1 DEFENSE, Defendant alleges that as applied to the allegations of the Complaint, Business and  
2 Professions Code Section 17200, et. seq., violate Defendant's rights to substantive and  
3 procedural due process under Article I, Section 7 of the California Constitution and the  
4 Fourteenth Amendment to the United States Constitution, in that it would render a judgment for  
5 persons that are not parties to this lawsuit, who have not been given notice of these proceedings  
6 and/or an opportunity to be heard, and over whom this Court has no jurisdiction, and because  
7 the claims alleged under Business and Professions Code Section 17200, et. seq., would present  
8 the possibility of duplicative recoveries.

9 AS AND FOR A NINTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
10 Defendant alleges that Plaintiffs' purported representative claim under Business & Professions  
11 Code Section 17200, et. seq., is barred by the provisions of Business & Professions Code  
12 Sections 17203 and 17204.

13 AS AND FOR A TENTH, SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE,  
14 Defendant alleges that Plaintiffs approved and/or ratified the conduct of this answering  
15 Defendant, and that Plaintiffs are therefore estopped from asserting any claim based thereon.

16 AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
17 DEFENSE, Defendant alleges that Plaintiffs lack standing to bring one or more of the causes of  
18 action stated in the Complaint.

19 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
20 DEFENSE, Defendant alleges that Plaintiffs' Complaint, and each cause of action therein, is  
21 vague, uncertain, ambiguous, or unintelligible as it pertains to Defendant.

22 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
23 DEFENSE, Defendant alleges that Plaintiffs' Complaint and each claim for relief thereof, is  
24 barred in whole or in part because Plaintiffs have sustained no injury or damage by reason of  
25 acts or omissions of this Defendant.

26 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
27 DEFENSE, Defendant alleges that Defendant was substantially compliant pursuant to California  
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Pahl & McCoy  
A Professional Corp  
725 W. Santa Clara  
Suite 1500  
San Jose, CA 95112  
(408) 256-5100

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1 Code of Civil Procedure Section 1947.7(c).

2 AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
3 DEFENSE, Defendant alleges that the answering Defendant at all times acted in compliance with  
4 all contracts, statutory and regulatory requirements applicable to their activities, and otherwise  
5 conducted themselves as a reasonable business under the circumstances.

6 AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
7 DEFENSE, Defendant alleges that Defendant did not engage in any extreme and/or outrageous  
8 conduct towards Plaintiffs, thereby preventing Plaintiffs from recovering damages for intentional  
9 infliction of emotional distress as well as any claim for other physical and/or mental injuries.

10 AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
11 DEFENSE, Defendant alleges that Defendant's conduct was a just and proper exercise of  
12 management discretion undertaken in a fair and honest manner, without malice or unlawful  
13 motive, and regulated by good faith under the circumstances that existed at the time.

14 AS AND FOR AN EIGHTEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
15 DEFENSE, Defendant alleges that all of Defendant's actions and omissions, as alleged by  
16 Plaintiffs, were justified by business necessity.

17 AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT AFFIRMATIVE  
18 DEFENSE, Defendant alleges that Plaintiffs' Complaint and each claim for relief thereof (1) fails  
19 to allege that Defendant has not breached a consensual term, (2) fails to allege, nor can it allege, a  
20 breach of an express term conferring the exercise of discretionary authority upon this answering  
21 Defendant; and (3) improperly invokes the implied covenant to attempt to substitute for or  
22 derogate from the express terms of the written contract.

23 AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
24 DEFENSE, Defendant alleges that there was a mutual mistake of fact or law, or a unilateral  
25 mistake of fact or law by this answering Defendant.

26 AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
27 DEFENSE, Defendant alleges that Plaintiffs' Complaint, and each claim stated therein, is barred

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Pahl & McCay  
A Professional Corp  
215 W. Santa Clara  
Suite 1100  
San Jose, CA 95111  
408) 286-5100

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1 by the parol evidence rule because the agreements alleged in the Complaint are fully integrated,  
2 embodying the complete terms of the agreements between the parties.

3 AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT  
4 AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs' Complaint, and each claim  
5 stated therein, is barred because Plaintiffs failed to exhaust the administrative remedies.

6 AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT AFFIRMATIVE  
7 DEFENSE, Defendant alleges that Plaintiffs' Complaint, and each claim stated therein, is  
8 barred because of failure of consideration for any alleged contracts or modifications to the  
9 alleged contracts.

10 AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT  
11 AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs are barred from recovery due to  
12 their failure to mitigate damages.

13 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT AFFIRMATIVE  
14 DEFENSE, Defendant alleges that Plaintiffs' damages, if any, are too speculative and remote to  
15 justify recovery.

16 AS AND FOR AN TWENTY-SIXTH, SEPARATE AND DISTINCT AFFIRMATIVE  
17 DEFENSE, Defendant alleges that Plaintiffs' Complaint, and each cause of action thereof, for  
18 injunctive relief, disgorgement, and restitution is barred in whole or in part because at all times  
19 Defendant was acting upon a reasonable good faith belief that its actions were lawful, just, and  
20 proper.

21 AS AND FOR AN TWENTY-SEVENTH, SEPARATE AND DISTINCT  
22 AFFIRMATIVE DEFENSE, Defendant alleges that Plaintiffs have failed sufficiently to plead  
23 special damages. Accordingly, Plaintiffs are not entitled to recover such damages.

24 AS AND FOR A TWENTY-EIGHTH, SEPARATE AND DISTINCT AFFIRMATIVE  
25 DEFENSE, Defendant alleges that Plaintiffs' Complaint, and each cause of action thereof, is  
26 barred in whole or in part because Plaintiffs have sustained no injury or damage by reason of  
27 acts or omissions of this Defendant.  
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Pahl & McCay  
A Professional Corp  
225 W. Santa Clara  
Suite 1500  
San Jose, CA 95113  
(408) 286-5100  
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1 AS AND FOR A TWENTY-NINTH, SEPARATE AND DISTINCT AFFIRMATIVE  
2 DEFENSE, this answering Defendant alleges that Plaintiffs' Complaint violates Defendant's right  
3 to due process as provided in the Fifth and Fourteenth Amendments to the U.S. Constitution and  
4 Article I, Section 13 of the Constitution of the State of California and therefore fails to state a  
5 cause of action upon which punitive or exemplary damages may be awarded.

6 AS AND FOR A THIRTIETH, SEPARATE AND DISTINCT AFFIRMATIVE  
7 DEFENSE, this answering Defendant alleges that the punitive damages sought by Plaintiffs are  
8 barred because there is no allegation of sufficient facts to warrant an award of punitive damages.

9 AS AND FOR A THIRTY-FIRST, SEPARATE AND DISTINCT AFFIRMATIVE  
10 DEFENSE, this answering Defendant alleges that the penalties sought by the First Amended  
11 Complaint violate the excessive fines clause of the United States and California Constitutions.

12 AS AND FOR A THIRTY-SECOND, SEPARATE AND DISTINCT AFFIRMATIVE  
13 DEFENSE, Defendant alleges that Defendant presently has insufficient knowledge or information  
14 on which to form a belief as to whether they may have additional, as yet unstated, affirmative  
15 defenses available. Defendant reserves herein the right to assert additional defenses in the event  
16 that discovery indicates that they would be appropriate.

17 WHEREFORE, Defendant VILLAS PAPIILLON, LLC, seeks such relief as may be  
18 appropriate, including judgment in favor of Defendant VILLAS PAPIILLON, LLC, and against  
19 Plaintiffs VICTOR FERNANDEZ and SEIFEDDIN ABURAS as follows:

- 20 1. That Plaintiffs' Complaint be dismissed with prejudice in its entirety;
- 21 2. That Plaintiffs take nothing by this action;
- 22 3. That costs of suit and attorneys' fees, if appropriate, incurred in the defense of this  
23 action be awarded to Defendant VILLAS PAPIILLON; and

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Pahl & McCay  
A Professional Corp.  
225 W. Santa Clara  
Suite 1100  
San Jose, CA 95113  
(408) 286-5100  
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4. For such other relief as the Court deems just and proper.

DATED: June 24, 2014

PAHL & McCAY  
A Professional Law Corporation

By:   
Helene A. Simvoulakis

Attorneys for Defendant  
VILLAS PAPILLON, LLC

Pahl & McCay  
A Professional Corp  
225 W. Santa Clara  
Suite 1500  
San Jose, CA 95113  
4081286-5100  
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1 Fernandez v. Villas Papillon, LLC  
Case No.: RG13683606

2 PROOF OF SERVICE

3 State of California )  
4 County of Santa Clara ) xx

5 I am a citizen of the United States and an employee of the County aforesaid. I am  
6 over the age of eighteen years and not a party to the within action. My business address is  
7 225 West Santa Clara Street, Suite 1500, San Jose, California 95113-1752. On the date  
8 mentioned below, I caused a true copy(ies) of the following document(s) to be served on the  
9 parties below using the method(s) checked:

10 \* **ANSWER OF DEFENDANT VILLAS PAPILLON LLC TO PLAINTIFFS'  
UNVERIFIED FIRST AMENDED COMPLAINT**

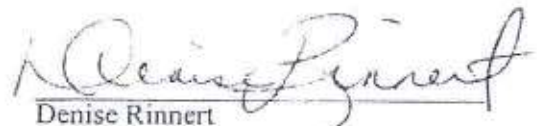
11 On the Addressee(s) below named in said action by:

- 12  First Class Mail. I am familiar with the regular mail collection and  
13 processing practices of the business. The mail will be deposited with  
14 the United States Postal Service on the same day following ordinary  
15 business practices. I enclosed the above-mentioned document(s) in a  
16 sealed envelope with postage thereon fully prepaid in the United States  
17 Post Office mail box at San Jose, California.
- 18  Facsimile at the fax numbers shown after each name below.
- 19  By Personal Delivery.
- 20  By Federal Express pursuant to Code of Civil Procedure § 1005.
- 21  By Electronic Mail.

22 Addressee(s):

23 Chris Beatty, Esq.  
24 Law Offices of Andrew Wolff, PC  
25 1970 Broadway, Suite 210  
26 Oakland, CA 94612  
27 Telephone: (510) 834-3300  
28 Fax: (510) 834-3377  
Email: CHRIS@awolfflaw.com

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct. Executed on June 24, 2014, at San Jose, California.

  
Denise Rinnert

Pahl & McCoy  
A Professional Corp  
225 W. Santa Clara St.  
Suite 1500  
San Jose, CA 95113  
408 286-1100

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