

General Denial

1 [REDACTED]
THE LAW OFFICES [REDACTED]
2 [REDACTED]
Desert Village, California
3 (555) 55 [REDACTED]
4 Attorney for Defendants
5 Nathan [REDACTED] and Robert [REDACTED]

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF DESERT PALMS

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11 FELICIA [REDACTED] et al.,) CASE NO. 2224 [REDACTED]
12 Plaintiffs,)
13 v.) ANSWER TO OBJECTIONS TO
14 NATHAN [REDACTED] et al.,) UNVERIFIED COMPLAINT
15 Defendants.)
16 _____)

17
18 Defendants Nathan [REDACTED] and Robert [REDACTED] hereby answer plaintiffs' unverified
19 complaint for Damages, Personal Injury and Injunctive Relief as follows:

20 **GENERAL DENIAL**

21 These answering defendants generally and specifically deny each and every allegation
22 contained in each and every paragraph of plaintiffs' complaint and each and every cause of
23 action thereof. These answering defendants further deny that they are responsible for any
24 damages, or any percentage of damages, claimed by plaintiffs herein, if any there be.
25

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Complaint Unintelligible and Uncertain)

FOR AND AS A FIRST AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that the complaint is unintelligible and uncertain.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

FOR AND AS A SECOND AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are limited or barred from recovery, if any, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

(Failure to State Facts Sufficient to Constitute a Cause of Action)

FOR AND AS A THIRD AFFIRMATIVE DEFENSE to all causes of action alleged in the complaint, these answering defendants allege that the complaint does not state facts sufficient to constitute a cause of action against these answering defendants.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

FOR AND AS A FOURTH AFFIRMATIVE DEFENSE to all causes of action alleged in the complaint, these answering defendants allege that plaintiffs failed to mitigate their damages.

FIFTH AFFIRMATIVE DEFENSE

(Comparative Fault)

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1 FOR AND AS A FIFTH AFFIRMATIVE DEFENSE to all causes of action in the
2 complaint, these answering defendants allege that damages suffered, if any, are a result of
3 comparative fault of plaintiffs such that any disbursements from defendants is barred and/or
4 must be adjusted and/or eliminated.

5 **SIXTH AFFIRMATIVE DEFENSE**

6 **(Waiver)**

7 FOR AND AS A SIXTH AFFIRMATIVE DEFENSE to all causes of action alleged in
8 the complaint, these answering defendants allege that by reason of the acts and omissions
9 of the plaintiffs, plaintiffs have waived any entitlement to any recovery, for any breach of
10 any contract or any duty, or for any other cause.
11

12 **SEVENTH AFFIRMATIVE DEFENSE**

13 **(Estoppel)**

14 FOR AND AS A SEVENTH AFFIRMATIVE DEFENSE to all causes of action alleged
15 in the complaint, these answering defendants allege that by reason of the acts and omissions
16 of the plaintiffs, plaintiffs are estopped from entitlement to any recovery, if any.

17 **EIGHTH AFFIRMATIVE DEFENSE**

18 **(Release and Discharge)**

19 FOR AND AS A EIGHTH AFFIRMATIVE DEFENSE to all causes of action alleged in
20 the complaint, these answering defendants allege that by reason of the acts and omissions of
21 the plaintiffs, plaintiffs have released and discharged defendants from any liability.
22

23 **NINTH AFFIRMATIVE DEFENSE**

24 **(Invalid Ordinances)**

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1 FOR AND AS A NINTH AFFIRMATIVE DEFENSE to all causes of action alleged in
2 the complaint, these answering defendants allege that the provisions of the Oakland
3 Ordinance by which plaintiffs seek a remedy and damages, are invalid in total and/or as
4 alleged against these defendants.

5 **TENTH AFFIRMATIVE DEFENSE**

6 (Statute of Frauds)

7 FOR AND AS A TENTH AFFIRMATIVE DEFENSE to all causes in the complaint,
8 defendants allege that plaintiffs are barred from any recovery by the Statute of Frauds.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 (Unclean Hands)

11 FOR AND AS A ELEVENTH AFFIRMATIVE DEFENSE to all causes of action in the
12 complaint, these answering defendants allege that plaintiffs are barred from recovery, if any,
13 by unclean hands.
14

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 (Premises Exempt)

17 FOR AND AS A TWELFTH AFFIRMATIVE DEFENSE to all causes of action in the
18 complaint, these answering defendants allege that plaintiffs are barred from any relief or
19 remedy because the premises is exempt from the Oakland Rent Ordinance.
20

21 **THIRTEENTH AFFIRMATIVE DEFENSE**

22 (Laches)

23 FOR AND AS A THIRTEENTH AFFIRMATIVE DEFENSE to all causes of action in
24 the complaint, these answering defendants allege that plaintiffs are barred from any recovery
25 by the doctrine of laches.

FOURTEENTH AFFIRMATIVE DEFENSE

(Breach of Contract)

FOR AND AS A FOURTEENTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from recovery, because of their breaches of contract, and by their breaches of the covenants and conditions of the rental agreement including the covenant of good faith and fair dealing, thereby extinguishing and terminating the duties allegedly owed by these answering defendants, and/or reducing or abating the amount of damages to which plaintiffs are entitled, if any.

FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Comply with Ordinances)

FOR AND AS A FIFTEENTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from any remedy or recovery pursuant to Oakland Ordinances because plaintiffs failed to comply with the ordinances.

SIXTEENTH AFFIRMATIVE DEFENSE

(Carelessness, Negligence, and/or Fault by Plaintiff)

FOR AND AS A SIXTEENTH AFFIRMATIVE DEFENSE to all causes of actions alleged in the complaint, these answering defendants allege that plaintiffs are barred from recovering any damages because of plaintiffs' own acts of carelessness, negligence and/or other fault, and further, that such carelessness, negligence and/or other fault proximately contributed to the happening of any alleged incidents, injuries, and damages complained of, if any.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim for Award of Attorneys Fees)

FOR AND AS A SEVENTEENTH AFFIRMATIVE DEFENSE to all causes of actions alleged in the complaint, these answering defendants allege that plaintiffs have failed to state a claim upon which attorney's fees can be awarded.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Consent)

FOR AND AS A EIGHTEENTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from asserting any causes of action by virtue of thier consent to the alleged acts or conditions.

NINETEENTH AFFIRMATIVE DEFENSE

(Alleged Damages not caused by Defendants)

FOR AND AS A NINETEENTH AFFIRMATIVE DEFENSE to all causes of actions alleged in the complaint, these answering defendants allege that to the extent that plaintiffs suffered any damages alleged, such damages were not caused by defendants but by the acts or omissions of plaintiffs and/or others.

TWENTIETH AFFIRMATIVE DEFENSE

(Lack of Notice)

FOR AND AS A TWENTIETH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from any recovery, because of plaintiffs' lack of notice to defendants.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure of Performance)

FOR AND AS A TWENTY-FIRST AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from any recovery because plaintiffs failed to perform their obligations under the rental agreement, settlement agreement and/or releases.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Assumption of Risk)

FOR AND AS A TWENTY-SECOND AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that in taking the actions plaintiffs allege defendants have taken, plaintiffs assumed the risk of injury and that defendants are not responsible in law or fact for plaintiffs' injuries, if any.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Violations of State and Local Laws)

FOR AND AS A TWENTY-THIRD AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from any relief, based on plaintiffs' violations of State and Local Laws.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Fraud)

FOR AND AS A TWENTY-FOURTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs are barred from any relief, based on fraud by plaintiffs and/or their agents.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Reasonable and Good Faith Belief of Performance of Legal Rights)

FOR AND AS A TWENTY-FIFTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that the actions complained of were made without malice or wrongful intent on the part of defendants and in reasonable and good faith belief of thier legal right to perform the actions complained of.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Plaintiff's Action Barred by Civil Code Section 1473)

FOR AND AS A TWENTY-SIXTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that prior to the commencement of this action, these answering defendants duly performed, satisfied and discharged all duties and obligations they may have owed to plaintiffs arising out of any and all agreements. Representations, or contracts made by or on behalf of these answering defendants and this action is therefore barred by the provisions of California Civil Code Section 1473.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Plaintiffs Failure to Comply with Civil Code Sections 1928, 1929, and 1941.2.)

FOR AND AS A THIRTY-FIRST AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that plaintiffs failed to comply with the provisions of Civil Code sections 1928, 1929 and/or 1941.2.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Conditions Did Not Create a Substantial Risk of Injury When Used with Due Care)

FOR AND AS A TWENTY-EIGHTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that said conditions complained of in

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1 plaintiffs' complaint are not and were not dangerous conditions and did not create a
2 substantial risk of injury when it was used with due care in a manner in which it was
3 reasonably foreseeable that it would be used.

4 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

5 **(Conditions Did Not Create a Substantial Risk of Injury)**

6 FOR AND AS A TWENTY-NINTH AFFIRMATIVE DEFENSE to all causes of action
7 in the complaint, these answering defendants allege that any and all acts or omissions of this
8 answering defendants, their agents or employees, which allegedly created the condition of
9 property at the time and place alleged in the complaint, did not constitute a substantial risk of
10 injury, but, if any risk at all, merely constitutes a minor, trivial, or insignificant risk which
11 did not create a dangerous condition of property.
12

13 **THIRTIETH AFFIRMATIVE DEFENSE**

14 **(Lack of Facts to Constitute a Claim for Punitive Damages)**

15 FOR AND AS A THIRTIETH AFFIRMATIVE DEFENSE to all causes of action in the
16 complaint, these answering defendants allege that the complaint fails to state facts sufficient
17 to state any claim upon which an award of punitive damages can be made.
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19 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

20 **(Condition Precedent)**

21 FOR AND AS A THIRTY-FIRST AFFIRMATIVE DEFENSE to all causes of action
22 alleged in the complaint, these answering defendants allege that recovery by plaintiffs is
23 precluded for failure of the occurrence of a condition precedent.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Force Majeur)**

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1 FOR AND AS A THIRTY-SECOND AFFIRMATIVE DEFENSE to all causes of action
2 in the complaint, these answering defendants allege that plaintiffs are barred from any relief
3 or remedy and/or defendants were prevented and/or excused from performing any duty or
4 obligation to them, by force majeure.

5 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6 **(Failure to Exhaust Administrative Remedies)**

7 FOR AND AS A THIRTY-SIXTH AFFIRMATIVE DEFENSE to all causes of action in
8 the complaint, these answering defendants allege that plaintiffs are barred from any relief or
9 remedy for failure to exhaust administrative remedies.

10 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

11 **(Reservation of Right to Assert or Delete Affirmative Defenses)**

12 FOR AND AS A THIRTY-FOURTH AFFIRMATIVE DEFENSE to all causes of
13 action in the complaint, these answering defendants allege that they have not knowingly or
14 intentionally waived any applicable affirmative defenses and reserve the right to assert and
15 rely on such other applicable affirmative defenses as may come available or apparent
16 during discovery proceedings and further reserve the right to amend this answer and
17 defenses accordingly and to delete defenses if determined are not applicable during the
18 course of discovery and other proceedings in this case.

19 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

20 **(Punitive Damages Unconstitutional)**

21 FOR AND AS A THIRTY-FIFTH AFFIRMATIVE DEFENSE to all causes of action in
22 the complaint, these answering defendants allege that punitive damages may not be
23 awarded as an award of punitive damages would violate the Eighth Amendment to the
24 United States Constitution.
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THIRTY-SIXTH AFFIRMATIVE DEFENSE

(No Breach of Duty)

FOR AND AS A THIRTY-SIXTH AFFIRMATIVE DEFENSE to all causes of action in the complaint, these answering defendants allege that they did not breach any duty to plaintiffs.

WHEREFORE, defendants pray that:

1. Plaintiffs take nothing by their complaint and that said complaint and each cause of action therein be dismissed as to defendants;
2. For defendants' cost of suit herein;
3. For reasonable attorney's fees; and
4. For such other relief the court deems proper.

July 30, 2004

[Redacted]
Attorney for Defendants Nathan [Redacted]
and Robert [Redacted]