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SONOMA MISSION INN MANAGEMENT
8 COMPANY, LLC d/b/a THE FAIRMONT
SONOMA MISSION INN
9

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SONOMA**

13 LANESSA THOMAS, DAVID PRETE, And
LISA SHIGA, on behalf of all others similarly
14 situated, aggrieved employees, and the State of
California,

15 Plaintiffs,

16 v.

17 SONOMA MISSION INN MANAGEMENT
18 COMPANY, LLC, d/b/a THE FAIRMONT
SONOMA MISSION INN, and DOES 1-25,

19 Defendants.
20

Case No. SCV 257470

**DEFENDANT SONOMA MISSION INN
MANAGEMENT COMPANY, LLC'S
ANSWER TO UNVERIFIED CLASS
ACTION COMPLAINT**

Assigned for All Purposes to:
Hon. Elliot Lee Daum, Courtroom 16

Action Filed: July 22, 2015
Trial Date: None Set

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1 Defendant SONOMA MISSION INN MANAGEMENT COMPANY, LLC ("Defendant"
2 or "Hotel") hereby answers the class action complaint filed on July 22, 2015 (the "Complaint") by
3 plaintiffs LaNessa Thomas, David Prete, and Lisa Shiga, individually, and on behalf of others
4 alleged to be similarly situated, as follows:

5 **GENERAL DENIAL**

6 1. Pursuant to Code of Civil Procedure § 431.30(d), Defendant denies, generally and
7 specifically, each and every allegation contained in the Complaint, and further alleges that
8 Plaintiffs, and the members of the purported class Plaintiffs seek to represent, have not been
9 damaged in any amount whatsoever as a result of the conduct or omission of Defendant, and
10 denies that Plaintiffs, and the members of the purported class Plaintiffs seek to represent, are
11 entitled to any of the other relief prayed for, or any relief whatsoever.

12 2. In addition, Defendant alleges the following separate and distinct affirmative
13 defenses to the causes of action set forth in the Complaint, which affirmative defenses are alleged
14 upon information and belief and which may be amended or revised after reasonable opportunity
15 for further investigation and discovery:

16 **AFFIRMATIVE DEFENSES**

17 **FIRST AFFIRMATIVE DEFENSE**
18 **(Failure to State a Cause of Action)**

19 3. The Complaint, and each cause of action stated therein, fail to state a cause of
20 action against Defendant.

21 **SECOND AFFIRMATIVE DEFENSE**
22 **(Statute of Limitations)**

23 4. The first, second, and third causes of action are time-barred by California Code of
24 Civil Procedure Section 338(a) to the extent they seek recovery for violations of Labor Code
25 provisions allegedly occurring prior to July 22, 2012; the fourth, fifth, and eighth causes of action
26 are time-barred by California Code of Civil Procedure Section 340 to the extent they seek
27 statutory penalties for conduct occurring more than one year prior to the filing of the complaint;
28 and the sixth cause of action is barred by Business and Professions Code Section 17208 to the
extent it seeks restitutionary or other relief respecting wages allegedly payable four or more years

1 prior to the filing of the Complaint. The Seventh Cause of Action is time-barred to the extent the
2 claims for which it seeks declaratory relief are subject to such time limitations.

3 **THIRD AFFIRMATIVE DEFENSE**
4 **(Business Necessity)**

5 5. Defendant's actions, policies, and/or practices about which Plaintiffs complain, on
6 behalf of themselves and the members of the purported class they seeks to represent (the existence
7 of such class being expressly denied), were at all times justified by lawful business necessities,
8 and those business necessities bar the claims.

9 **FOURTH AFFIRMATIVE DEFENSE**
10 **(Estoppel, Waiver)**

11 6. Plaintiffs, and the members of the purported class they seek to represent (the
12 existence of such class being expressly denied), are estopped from pursuing the claims asserted in
13 the Complaint by reason of their own actions and course of conduct, or have waived their right, if
14 any, to pursue the claims asserted in the Complaint.

15 **FIFTH AFFIRMATIVE DEFENSE**
16 **(Unclean Hands)**

17 7. Recovery for the claims asserted in the Complaint is barred, in whole or in part, by
18 the doctrine of unclean hands.

19 **SIXTH AFFIRMATIVE DEFENSE**
20 **(Consent)**

21 8. Plaintiffs, and the members of the purported class they seeks to represent (the
22 existence of such class being expressly denied), consented to, requested, ratified, and/or approved
23 of all the practices, policies, and/or rules about which Plaintiffs now complain, and they are,
24 accordingly, barred, in whole or in part, from any recovery against Defendant.

25 **SEVENTH AFFIRMATIVE DEFENSE**
26 **(De Minimis Time)**

27 9. Recovery for any claims asserted by the Complaint is barred to the extent that some
28 of all of the hours that Plaintiffs, and any member of the purported class they seek to represent (the
existence of such class being expressly denied), contend that were uncompensated were *de*
minimis and therefore do not qualify as compensable hours within the meaning of the California

1 Labor Code and the Wage Orders issued by the California Industrial Wage Commission.

2 **EIGHTH AFFIRMATIVE DEFENSE**
3 **(Unjust Enrichment)**

4 10. Any recovery from the claims asserted in the Complaint is barred because any
5 recovery from Defendant would result in unjust enrichment.

6 **NINTH AFFIRMATIVE DEFENSE**
7 **(Inappropriate For Class Action or Representative Action Treatment)**

8 11. Plaintiffs' claims are not appropriate for adjudication on a class-wide basis, or as a
9 representative action, because (a) Plaintiffs are an inadequate representative of the purported class
10 because, among other things, their interests are in conflict with the interest of members of the
11 purported class that they seek to represent; (b) Plaintiffs cannot establish predominant common
12 questions of law and facts; (c) Plaintiffs cannot establish typicality; (d) the individualized nature
13 of Plaintiffs' claims, as well as of each of the members of the purported class Plaintiffs seek to
14 represent, make class treatment inappropriate; (e) class treatment of Plaintiffs' claims is not
15 superior to other methods of adjudicating the controversy, (f) Plaintiffs are not a member of the
16 class or classes they seek to represent, and have no standing to represent the class or some of the
17 classes of individuals they seek to represent, (g) Plaintiffs have not alleged an ascertainable class,
18 and individual "mini-trials" would be needed simply to determine membership in the purported
19 class(es); (h) the purported class is not numerous enough so that it would be impracticable to join
20 individual class members who contend they have not been properly compensated or have
21 otherwise allegedly been subjected to violations of their rights; and/or (i) the claims as asserted by
22 Plaintiffs are subject to unique defenses.

23 **TENTH AFFIRMATIVE DEFENSE**
24 **(No Standing to Bring Claim For Penalties Under Labor Code and the Business &
25 Professions Code)**

26 12. Plaintiffs lack standing to bring a claim for penalties under those sections of the
27 Labor Code or the Business & Professions Code that do not provide for a private right of action.

28 **ELEVENTH AFFIRMATIVE DEFENSE**
(Vagueness)

13. Plaintiffs' Complaint, and more specifically, the Seventh Cause of Action, are

1 vague and do not provide any factual basis upon which relief could be granted, to Plaintiffs or to
2 the members of the purported class they seek to represent (the existence of such class being
3 expressly denied).

4 **TWELFTH AFFIRMATIVE DEFENSE**
5 **(Payment)**

6 14. Recovery for the claims asserted in the Complaint is barred, in whole or in part, to
7 the extent that Defendant has paid Plaintiffs, and the members of the purported class they seek to
8 represent (the existence of such class being expressly denied), all monies due to them as wages, or
9 for overtime and other extra work performed.

10 **THIRTEENTH AFFIRMATIVE DEFENSE**
11 **(Failure to Mitigate Damages)**

12 15. Plaintiffs, and the members of the purported class they seek to represent (the
13 existence of such class being expressly denied), have failed and neglected to mitigate their alleged
14 damages, injuries, and/or losses and, therefore, any recovery against Defendant must be barred or
15 reduced by reason thereof.

16 **FOURTEENTH AFFIRMATIVE DEFENSE**
17 **(Comparative Fault/Negligence)**

18 16. The damages, injuries, and/or losses allegedly suffered by Plaintiffs and the
19 members of the purported class they seek to represent (the existence of such class being expressly
20 denied), if any, were proximately caused and contributed to by their own negligence, and, by
21 reason thereof, any recovery by Plaintiffs, and the members of the purported class they seeks to
22 represent, against Defendant must be reduced by an amount equal to their proportionate fault.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**
24 **(Set-Off)**

25 17. Defendant is entitled to a set-off of any monetary damages pursuant to Code of
26 Civil Procedure § 431.70.

27 **SIXTEENTH AFFIRMATIVE DEFENSE**
28 **(No Penalties)**

18. Assuming, *arguendo*, that Plaintiffs, and the members of the purported class they
seek to represent (the existence of such class being expressly denied), are entitled to additional

1 wages for hours actually worked, they are not entitled to additional penalties by reason of their
2 own actions and course of conduct.

3 **SEVENTEENTH AFFIRMATIVE DEFENSE**
4 **(No Penalties Pursuant to Labor Code § 203 - Good Faith Defense)**

5 19. The Complaint fails to state a claim for penalties under Labor Code § 203, in that
6 an essential element of Plaintiff's claim for waiting time penalties is that the defendant "willfully"
7 withheld wages, and Defendant's failure to pay wages due, if any, was not willful. Defendant
8 acted, at all times, in good faith. A good faith dispute that any wages are due precludes imposition
9 of waiting time penalties. Any act(s) and/or omission(s) which may be found to be in violation of
10 the rights afforded by California law occurred in good faith with reasonable grounds for believing
11 that Defendant was acting in accordance with the accepted industry custom, and in full compliance
12 with California law, as applicable.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**
14 **(Penalties Not Cognizable)**

15 20. The penalty provisions provided for through California Labor Code are not
16 cognizable under the sixth cause of action, alleging violations of Business and Professions Code
17 section 17200, *et seq.*

18 **NINETEENTH AFFIRMATIVE DEFENSE**
19 **(Exempt from Overtime and/or Meal and Rest Period Requirements)**

20 21. Recovery for any claims asserted by the Complaint is barred to the extent that
21 Plaintiffs, or any member of the purported class they seek to represent (the existence of such class
22 being expressly denied), are exempt from the overtime and/or meal and rest period provisions of
23 the California Industrial Welfare Commission ("IWC") Wage Orders and the California Labor
24 Code.

25 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
26 **(Failure to Comply with Labor Code §§ 2854, 2856, 2858, and 2859)**

27 22. Recovery for any claims asserted by the Complaint is barred to the extent that
28 Plaintiffs, and any member of the purported class they seek to represent (the existence of such
class being expressly denied), failed to use ordinary care and diligence in the performance of their
duties, failed to substantially comply with the reasonable directions of their employer, including

1 but not limited to its meal and rest period policies, and failed to exercise a reasonable degree of
2 skill in performing their job duties.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
4 **(Laches)**

5 23. Recovery for any claims asserted by the Complaint is barred to the extent that
6 Plaintiffs, and any member of the purported class they seek to represent (the existence of such
7 class being expressly denied), unreasonably delayed bringing this action, to Defendant's prejudice.

8 **TWENTY-THIRD AFFIRMATIVE DEFENSE**
9 **(Accord and Satisfaction, Release, Settlement)**

10 24. The claims of some members of the putative class are barred in whole or in part by
11 accord and satisfaction, release, settlement, and/or a covenant not to sue.

12 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**
13 **(Other Defenses)**

14 25. Defendant reserves the right to add or rely upon other defenses as they become
15 known to it through investigation, discovery, or analysis.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Defendant prays for relief as follows:

18 1. That this action not be certified as a class action and the class allegations be
19 stricken from the Complaint;

20 2. That Plaintiffs and the purported class take nothing by reason of the Complaint, and
21 that the Complaint be dismissed in its entirety with prejudice on the merits;

22 3. That Defendant be awarded a judgment in its favor against Plaintiffs and the
23 purported class;

24 4. That Defendant be awarded its attorneys' fees and costs of suit herein pursuant to
25 Labor Code § 218.5; and

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5. That Defendant be awarded such other and further relief as the Court may deem just and proper.

DATED: September 8, 2015

COBLENTZ PATCH DUFFY & BASS LLP

By: 
Susan K. Jamison
Attorneys for Defendants
SONOMA MISSION INN MANAGEMENT
COMPANY, LLC d/b/a THE FAIRMONT
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is One Montgomery Street, Suite 3000, San Francisco, CA 94104-5500.

On September 8, 2015, I served true copies of the following document(s) described as

**DEFENDANT SONOMA MISSION INN MANAGEMENT COMPANY,
LLC'S ANSWER TO UNVERIFIED CLASS ACTION COMPLAINT**

on the interested parties in this action as follows:

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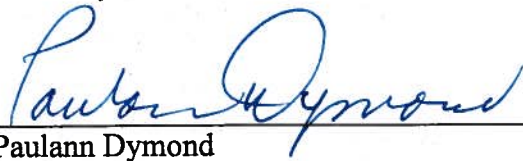
*Attorneys for Plaintiffs
Lanessa Thomas, David Prete, and Lisa Shiga*

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Coblentz Patch Duffy & Bass LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address pdymond@coblentzlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on September 8, 2015, at San Francisco, California.


Paulann Dymond