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DIVISION  
JUN 23 A 11:16  
SUPERIOR COURT  
SAN DIEGO, CA  
JUN 23 2011

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6 *Attorneys for Plaintiffs and Cross-Defendants,*  
*Windermere Real Estate Services Company, and*  
7 *Windermere Services Southern California, Inc.*

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN DIEGO

11 WINDERMERE REAL ESTATE SERVICES ) Case No. 37-2011-00089709-CU-BC-CTL  
12 COMPANY, a Washington corporation; and )  
WINDERMERE SERVICES SOUTHERN ) Assigned for All Purposes to Hon. Lisa Foster  
13 CALIFORNIA, INC., a California corporation; )  
14 ) Dept: C-60

14 Plaintiffs;

15 v.

16 LIFESTYLES SERVICES CORP., a California )  
corporation; LIFESTYLES SERVICES )  
17 SOLANA BEACH/RSF CORP., a California ) **ANSWER TO UNVERIFIED CROSS-**  
corporation; MRJR, Inc., a California ) **COMPLAINT**  
18 corporation; STEPHEN D. RODGERS, an )  
individual; MARK LOSCHER, an individual; )  
19 MAUREEN LOSCHER, an individual; JAMES )  
BROWNE, an individual; SHARON )  
20 BROWNE, an individual; LARRY )  
ANDERSON, an individual; BARBARA )  
21 ANDERSON, an individual; ROBERT BEHIC, )  
an individual; ROBIN BEHIC, an individual; )  
22 and DOES 1 through 50, inclusive, )

23 Defendants.  
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1 LIFESTYLES SERVICES CORP., a California )  
corporation; LIFESTYLES SERVICES )  
2 SOLANA BEACH/RSF CORP., a California )  
corporation; MRJR, INC., a California )  
3 corporation; )

4 Cross-Complainants; )

5 v. )

6 WINDERMERE REAL ESTATE SERVICES )  
COMPANY, LLC, a Washington corporation; )  
7 and WINDERMERE SERVICES SOUTHERN )  
CALIFORNIA, INC., a California corporation; )  
8 and ROES 1 through 50, inclusive, )

9 Cross- Defendants. )  
10 )  
11 )

12 Pursuant to California Code of Civil Procedure Section 431.30(d) and all other relevant and  
13 applicable law, cross-defendants Windermere Real Estate Services Company and Windermere  
14 Services Southern California, Inc. (collectively "Cross-Defendants") deny generally and specifically  
15 each and every allegation contained in cross-complainants Life Styles Services Corp., Life Styles  
16 Services Solana Beach/RSF Corp., and MRJR, Inc.'s (collectively "Cross-Complainants")  
17 unverified cross-complaint (the "Cross-Complaint").

18 Cross-Defendants further deny that Cross-Complainants have sustained, or will sustain, any  
19 injury, damage, or loss by reason of statement, act, omission, breach or any other conduct, or the  
20 absence thereof that is alleged by Cross-Complainants in the Cross-Complaint.

21 **AFFIRMATIVE DEFENSES**

22 As separate and distinct affirmative defenses, Cross-Defendants allege on information and  
23 belief as follows:

24 **FIRST AFFIRMATIVE DEFENSE**

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

26 The Cross-Complaint, and the purported causes of action alleged therein, fails to state facts  
27 sufficient to constitute any cause of action against Cross-Defendants.  
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**SECOND AFFIRMATIVE DEFENSE**

(Estoppel)

As a result of the acts, conduct and omissions of Cross-Complainants and their agents, each of the claims alleged in the Cross-Complaint is barred by the doctrine of estoppel.

**THIRD AFFIRMATIVE DEFENSE**

(Waiver)

Cross-Complainants are not entitled to any relief from Cross-Defendants because their purported causes of action are barred by the doctrine of waiver.

**FOURTH AFFIRMATIVE DEFENSE**

(Laches)

Cross-Complainants are not entitled to any relief from Cross-Defendants because their purported causes of action are barred by the doctrine of laches.

**FIFTH AFFIRMATIVE DEFENSE**

(Lack of Causation)

Cross-Complainants are not entitled to any relief from Cross-Defendants because no act or omission allegedly committed by Cross-Defendants (which Cross-Defendants deny) was the cause in fact or the proximate cause of any injury or damage alleged by Cross-Complainants.

**SIXTH AFFIRMATIVE DEFENSE**

(No Damages)

Cross-Complainants are not entitled to any relief from Cross-Defendants because Cross-Complainants have suffered no damages.

**SEVENTH AFFIRMATIVE DEFENSE**

(Unclean Hands)

Cross-Complainants, by their own conduct, are barred by their unclean hands, shared fault and otherwise from all legal and equitable relief sought in their Cross-Complaint.

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**EIGHTH AFFIRMATIVE DEFENSE**

(Privilege/Justification)

Cross-Complainants are not entitled to any relief from Cross-Defendants because Cross-Defendants' conduct was justified and/or privileged.

**NINTH AFFIRMATIVE DEFENSE**

(Truth and/or Opinion)

Cross-Complainants are not entitled to any relief from Cross-Defendants because Cross-Defendants' alleged statements were opinions and/or true statements.

**TENTH AFFIRMATIVE DEFENSE**

(Set-Off)

Any recovery sought by Cross-Complainants is subject to Cross-Defendants' claims for relief against Cross-Complainants.

**ELEVENTH AFFIRMATIVE DEFENSE**

(No Wrongful Conduct)

Cross-Complainants are not entitled to any relief from Cross-Defendants because Cross-Defendants did not engage in any wrongful acts or conduct.

**TWELFTH AFFIRMATIVE DEFENSE**

(Contributory Fault)

Cross-Complainants are not entitled to any relief from Cross-Defendant because a loss, if any, sustained by Cross-Complainants was proximately caused and contributed to by the negligence, improper conduct, or intervening acts of Cross-Complainants or Cross-Complainants' agents, officers, or employees.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(Third-Party Fault)

Cross-Complainants are not entitled to any relief from Cross-Defendant because Cross-Complainants' alleged damages and loss were proximately caused or contributed to, in whole or in part, by the fault of third parties.

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1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 (Failure to Minimize or Mitigate Damages)

3 Cross-Complainants have failed to take adequate steps to mitigate, alter, avoid, or otherwise  
4 diminish their alleged injury and damages, if any, and any damages awarded to Cross-Complainants  
5 should be reduced accordingly by such failure to minimize or mitigate damages.

6 **FIFTEENTH AFFIRMATIVE DEFENSE**

7 (Punitive Damages)

8 Cross-Complainants' claims for punitive damages cannot be sustained because, among other  
9 things, an award of punitive damages under California law without proof of every element by clear  
10 and convincing evidence would violate California law and Cross-Defendants' rights under the due  
11 process clauses of the United States and California Constitutions.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 (Uncertainty)

14 Cross-Defendants object to the Cross-Complaint on the grounds that the Cross-Complaint is  
15 uncertain in material respects and fails to allege any wrongful, actionable conduct by the Cross-  
16 Defendants.

17 **SEVENTEENTH AFFIRMATIVE DEFENSE**

18 (No Unfair Competition)

19 Cross-Defendants have not engaged in unfair competition as alleged in the Cross-Complaint.  
20 Further, Cross-Defendants are informed and believe that the conduct of Cross-Defendants as alleged  
21 in the Cross-Complaint is not an unlawful, unfair, or fraudulent business practice within the  
22 meaning of the Unfair Competition Law, Business and Professions Code section 17200 *et seq.*

23 **EIGHTEENTH AFFIRMATIVE DEFENSE**

24 (Adequate Remedy at Law)

25 Without conceding that Cross-Complainants are entitled to any relief whatsoever, to the  
26 extent Cross-Complainants seek equitable relief, any alleged injury or damage claimed by Cross-  
27 Complainants can be adequately compensated in an action at law. As such, Cross-Complainants are  
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1 not entitled to equitable relief under the Unfair Competition Law statute, Business and Professions  
2 Code section 17200 *et seq.*, or otherwise.

3 **NINETEENTH AFFIRMATIVE DEFENSE**

4 (Business Justification)

5 Cross-Complainants' alleged Unfair Competition Law claims are barred because the alleged  
6 conduct of Cross-Defendants was at all times lawful, justified, fair, and undertaken in the good faith  
7 exercise of a valid business purpose.

8 **TWENTIETH AFFIRMATIVE DEFENSE**

9 (Reservation of Rights)

10 Cross-Defendants presently have insufficient knowledge upon which to form a belief as to  
11 whether they may have additional, as yet unstated, affirmative defenses available. These Cross-  
12 Defendants hereby reserve their right to assert additional affirmative defenses in the event that  
13 further investigation and discovery indicates that such defenses would be appropriate.


14 **PRAAYER FOR RELIEF**

15 WHEREFORE, Cross-Defendants pray:

- 16 1. That Cross-Complainants' Cross-Complaint be dismissed with prejudice;
- 17 2. That Cross-Complainants take nothing by their Cross-Complaint;
- 18 3. For costs of this suit;
- 19 4. Reasonable attorneys' fees incurred herein; and
- 20 5. For such other and further relief as the Court deems just and proper.

21  
22 June 22 2011

**PESTOTNIK + GOLD LLP**

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24 Timothy R. Pestotnik  
 25 Russell A. Gold  
 26 Russell F. Winslow  
 27 Attorneys for Plaintiffs and Cross-Defendants  
 28 Windermere Real Estate Services Company, and  
 Windermere Services Southern California, Inc.