

1 Peter K. Solecki (SBN 159742)
2 Steven W. Winton (SBN 114425)
3 WINTON LARSON & SOLECKI LLP
4 11770 Bernardo Plaza Court - Suite 255
5 San Diego, California 92128
6 Tel: (858) 385-0040
7 Fax: (858) 385-0050

8 Robert Zarco (Florida Bar No. 502138) (Pro Hac Vice Pending)
9 ZARCO EINHORN SALKOWSKI & BRITO, P.A.
10 100 S.E. 2nd Street - Suite 2700
11 Miami, Florida 33131
12 Tel: (305) 374-5418
13 Fax: (305) 374-5428

14 Attorneys for Defendants and Cross-Complainants

15 SUPERIOR COURT OF CALIFORNIA

16 COUNTY OF SAN DIEGO, CENTRAL DIVISION

17 WINDERMERE REAL ESTATE SERVICES) CASE NO. 37-2011-00089709-CU-BC-CTL
18 COMPANY, LLC, a Washington corporation; and)
19 WINDERMERE SERVICES SOUTHERN) Assigned for All Purposes:
20 CALIFORNIA, INC., a California corporation) Judge: William R. Nevitt
21) Dept.: C-64
22 Plaintiffs,)

23 vs.)

24 LIFESTYLES SERVICES CORP., a California)
25 corporation; LIFESTYLES SERVICES SOLANA)
26 BEACH/ RSF CORP., a California corporation;)
27 MRJR, INC. a California corporation; STEPHEN)
28 D. RODGERS, an individual; MARK LOSCHER,)
an individual; MAUREEN LOSCHER, an)
individual; JAMES BROWNE, an individual;)
SHARON BROWNE, an individual; LARRY)
ANDERSON, BARBARA ANDERSON, an)
individual; ROBERT BEHIC, an individual;)
ROBIN BEHIC, an individual;)
and DOES 1 through 50, inclusive.) Complaint Filed: April 15, 2011

Defendants.)

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1 Defendants LIFESTYLES SERVICES CORP., a California corporation; LIFESTYLES
2 SERVICES SOLANA BEACH/ RSF CORP., a California corporation; MRJR, INC. a California
3 corporation; STEPHEN D. ~~ROGERS~~ ^{RODGERS & S.}, an individual; MARK LOSCHER, an individual;
4 MAUREEN LOSCHER, an individual, JAMES BROWNE, an individual; SHARON BROWNE,
5 an individual; LARRY ANDERSON, an individual, BARBARA ANDERSON, an individual;
6 ROBERT BEHIC, an individual; and ROBIN BEHIC, an individual, for themselves alone, and
7 for no other person, corporation or legal entity, answer the unverified Complaint on file herein as
8 follows:
9

10 1. Pursuant to the provisions of Section 431.30(d) of the California Code of Civil
11 Procedure, Defendants deny, generally and specifically, each and every allegation in each and
12 every paragraph, in each and every cause of action, of the unverified Complaint, and the whole
13 thereof, and further deny that Plaintiffs have been injured or damaged in the sum or sums
14 alleged, or in any sum or sums at all, and state that Plaintiffs are not entitled to the relief sought
15 in the Complaint, or any other relief whatsoever.
16

17 AFFIRMATIVE DEFENSES

18 First Affirmative Defense

19 (Failure to State a Claim)

20 2. Plaintiffs' Complaint fails to state a cause of action upon which relief may be
21 granted.
22

23 Second Affirmative Defense

24 (Unclean Hands)

25 3. Plaintiffs' claims are barred by the doctrine of unclean hands. As set forth in
26 Defendants' Cross Complaint, filed concurrently herewith, Plaintiffs' claims are barred in whole
27 or in part by Plaintiffs' prior breaches of the franchise agreements with Defendants. Specifically,
28

1 Plaintiffs wrongfully and intentionally interfered with Defendants' ability to operate their
2 businesses when they were still Windermere franchisees, constituting a tortious interference of
3 the rights that Defendants possessed pursuant to the Franchise License Agreements.

4
5 **Third Affirmative Defense**

6 **(Failure to Mitigate Damages)**

7 4. Plaintiffs have failed to take reasonable steps to mitigate their alleged damages.
8 Plaintiffs failed to take any action to cure the breaches of contract and other wrongful conduct
9 alleged in Defendants' Cross-Complaint. But for Plaintiffs' actions and inactions, Plaintiffs'
10 alleged damages, to the extent they are proven to exist, would have been mitigated.

11 **Fourth Affirmative Defense**

12 **(Plaintiffs' Wrongful Conduct)**

13
14 5. Any damages suffered by Plaintiffs resulted from their own wrongful actions and
15 wrongful conduct, as alleged in Defendants' Cross Complaint.

16 **Fifth Affirmative Defense**

17 **(Set Off)**

18 6. Defendants assert that to the extent the Plaintiffs are awarded any damages,
19 liability for which Defendants wholly deny, that Defendants are entitled to claim a set-off for the
20 amounts owed to Defendants by Plaintiffs.

21
22 **Sixth Affirmative Defense**

23 **(Plaintiffs' Breach)**

24 7. As to any alleged breaches by Defendants, even if true, such breaches are excused
25 by earlier repeated and substantial breaches by Plaintiffs of the franchise agreements.

26 **Seventh Affirmative Defense**

27 **(Estoppel)**
28

1 8. Any recovery by Plaintiffs is barred by the doctrine of estoppel.

2 **Eighth Affirmative Defense**

3 **(Waiver)**

4 9. Any recovery by Plaintiffs is barred by the doctrine of waiver.

5 **Ninth Affirmative Defense**

6 **(Failure of Consideration)**

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8 10. The consideration relied upon by Plaintiffs in assertion of their claims against
9 these Answering Defendants failed in all material respects as to certain of these Answering
10 Defendants.

11 **Tenth Affirmative Defense**

12 **(Reservation of Rights to Amend Answer)**

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14 11. These Answering Defendants expressly reserve their right to amend this Answer
15 to assert additional affirmative defense hereafter and to supplement those asserted herein upon
16 further investigation and discovery.

17 **WHEREFORE**, Defendants pray for judgment as follows:

- 18 1. That judgment be entered in favor of Defendants and against Plaintiffs;
19 2. That the Complaint be dismissed in its entirety with prejudice;
20 3. That Defendants be awarded their attorney's fees;
21 4. That Defendants be awarded their costs of suit incurred herein; and
22 5. That Defendants be awarded such other and further relief as the Court may deem
23 proper and just.

24 Respectfully submitted,

25 Winton Larson & Solecki, LLP

26
27 By: 

28 Steven W. Winton

Attorneys for Cross-Complainants

Dated: May 23, 2011