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9 Roommate.com, LLC

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 FAIR HOUSING COUNCIL OF SAN)
13 FERNANDO VALLEY; FAIR)
14 HOUSING COUNCIL OF SAN)
15 DIEGO; each individually and on behalf)
16 of the GENERAL PUBLIC,)
17 Plaintiffs,)
18 v.)
19 ROOMMATE.COM, LLC,)
20 Defendant.)

CASE NO. CV03-9386 PA (RZx)

ANSWER TO FIRST AMENDED COMPLAINT

21 Defendant Roommate.com, LLC ("Roommate"), by and through its
22 undersigned attorneys, hereby answers the allegations in the First Amended
23 Complaint for Monetary, Declaratory & Injunctive Relief ("Complaint") brought
24 by Plaintiffs Fair Housing Council of San Fernando Valley and Fair Housing
25 Council of San Diego ("Plaintiffs"), each individually and on behalf of the general
26 public, as follows:
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1 **I. NATURE OF THE CASE**

2 1. Answering Paragraph 1 of the Complaint, Roommate denies generally
3 and specifically each and every allegation there.
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5 **II. JURISDICTION AND VENUE**

6 2. Answering Paragraph 2 of the Complaint, Roommate admits the
7 allegation that the Court has original subject matter jurisdiction over the First
8 Claim for Relief, and may exercise supplemental jurisdiction over the Second,
9 Third, and Fourth Claims for Relief. Except as expressly admitted, Roommate
10 denies each and every allegation there.

11 3. Answering Paragraph 3 of the Complaint, Roommate denies generally
12 and specifically each and every allegation there.

13 4. Answering Paragraph 4 of the Complaint, Roommate admits that the
14 cited statutes give courts discretion to award the cited relief when the suit is
15 properly brought by an injured party. Except as expressly admitted, Roommate
16 denies each and every allegation there.
17

18 **III. PARTIES**

19 5. Answering Paragraph 5 of the Complaint, Roommate is without
20 knowledge or information sufficient to form a belief as to the truth of the
21 allegations there, and on that ground Roommate denies generally and specifically
22 each and every allegation there.

23 6. Answering Paragraph 6 of the Complaint, Roommate is without
24 knowledge or information sufficient to form a belief as to the truth of the
25 allegations there, and on that ground Roommate denies generally and specifically
26 each and every allegation there.

27 7. Answering Paragraph 7 of the Complaint, Roommate admits that it is
28 a limited liability corporation under the laws of Arizona. Roommate further

1 admits that it uses the name "Roommates.com" in its trade, and operates an
2 interactive computer service located at <http://www.roommates.com> (hereinafter
3 referred to as "Roommates.com"). Except as expressly admitted, Roommate
4 denies each and every allegation there.

5 8. Answering Paragraph 8 of the Complaint, Roommate admits that the
6 users of Roommates.com post and view listings for shared living quarters.
7 Roommate also admits that it causes to be placed in *LA Weekly* an advertisement
8 for Roommates.com. Except as expressly admitted, Roommate denies each and
9 every allegation there.

10 9. Answering Paragraph 9 of the Complaint, Roommate admits that it is
11 not an Internet Service Provider ("ISP"). Except as expressly admitted, Roommate
12 denies generally and specifically each and every allegation there.

13

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IV. FACTS

15 10. Answering Paragraph 10 of the Complaint, Roommate admits that it
16 owns and operates a website on the Internet at <http://www.roommates.com>.
17 Roommate further admits that some users enter into agreements that allow them to
18 exchange information on Roommates.com for a fee. Except as expressly admitted,
19 Roommate denies generally and specifically each and every allegation there.

20 11. Answering Paragraph 11 of the Complaint, Roommate denies each
21 and every allegation there.

22 12. Answering Paragraph 12 of the Complaint, Roommate denies
23 generally and specifically each and every allegation there.

24 13. Answering Paragraph 13 of the Complaint, Roommate denies
25 generally and specifically each and every allegation there.

26 14. Answering Paragraph 14 of the Complaint, Roommate admits that
27 Plaintiffs sent a demand letter on November 21, 2003 and that Roommate
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1 responded on December 12, 2003. Except as expressly admitted, Roommate
2 denies each and every allegation there.

3 15. Answering Paragraph 15 of the Complaint, Roommate is without
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations there, and on that ground Roommate denies generally and specifically
6 each and every allegation there.

7 16. Answering Paragraph 16 of the Complaint, Roommate is without
8 knowledge or information sufficient to form a belief as to the truth of the
9 allegations there, and on that ground Roommate denies generally and specifically
10 each and every allegation there.

11 17. Answering Paragraph 17 of the Complaint, Roommate is without
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations there, and on that ground Roommate denies generally and specifically
14 each and every allegation there.

15 18. Answering Paragraph 18 of the Complaint, Roommate is without
16 knowledge or information sufficient to form a belief as to the truth of the
17 allegations there, and on that ground Roommate denies generally and specifically
18 each and every allegation there.

19 19. Answering Paragraph 19 of the Complaint, Roommate is without
20 knowledge or information sufficient to form a belief as to the truth of the
21 allegations there, and on that ground Roommate denies generally and specifically
22 each and every allegation there.

23 20. Answering Paragraph 20 of the Complaint, Roommate is without
24 knowledge or information sufficient to form a belief as to the truth of the
25 allegations there, and on that ground Roommate denies generally and specifically
26 each and every allegation there.

27 21. Answering Paragraph 21 of the Complaint, Roommate is without
28 knowledge or information sufficient to form a belief as to the truth of the

1 allegations there, and on that ground Roommate denies generally and specifically
2 each and every allegation there.

3 22. Answering Paragraph 22 of the Complaint, Roommate is without
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations there, and on that ground Roommate denies generally and specifically
6 each and every allegation there.

7 23. Answering Paragraph 23 of the Complaint, Roommate is without
8 knowledge or information sufficient to form a belief as to the truth of the
9 allegations there, and on that ground Roommate denies generally and specifically
10 each and every allegation there.

11 24. Answering Paragraph 24 of the Complaint, Roommate is without
12 knowledge or information sufficient to form a belief as to the truth of the
13 allegations there, and on that ground Roommate denies generally and specifically
14 each and every allegation there.

15 25. Answering Paragraph 25 of the Complaint, Roommate is without
16 knowledge or information sufficient to form a belief as to the truth of the
17 allegations there, and on that ground Roommate denies generally and specifically
18 each and every allegation there.

19 26. Answering Paragraph 26 of the Complaint, Roommate is without
20 knowledge or information sufficient to form a belief as to the truth of the
21 allegations there, and on that ground Roommate denies generally and specifically
22 each and every allegation there.

23 27. Answering Paragraph 27 of the Complaint, Roommate is without
24 knowledge or information sufficient to form a belief as to the truth of the
25 allegations there, and on that ground Roommate denies generally and specifically
26 each and every allegation there.

27 28. The Complaint does not have a Paragraph 28.
28

1 29. Answering Paragraph 29 of the Complaint, Roommate is without
2 knowledge or information sufficient to form a belief as to the truth of the
3 allegations there, and on that ground Roommate denies generally and specifically
4 each and every allegation there.

5 30. Answering Paragraph 30 of the Complaint, Roommate is without
6 knowledge or information sufficient to form a belief as to the truth of the
7 allegations there, and on that ground Roommate denies generally and specifically
8 each and every allegation there.

9 31. Answering Paragraph 31 of the Complaint, Roommate is without
10 knowledge or information sufficient to form a belief as to the truth of the
11 allegations there, and on that ground Roommate denies generally and specifically
12 each and every allegation there.

13 32. Answering Paragraph 32 of the Complaint, Roommate is without
14 knowledge or information sufficient to form a belief as to the truth of the
15 allegations there, and on that ground Roommate denies generally and specifically
16 each and every allegation there.

17 33. Answering Paragraph 33 of the Complaint, Roommate is without
18 knowledge or information sufficient to form a belief as to the truth of the
19 allegations there, and on that ground Roommate denies generally and specifically
20 each and every allegation there.

21 34. Answering Paragraph 34 of the Complaint, Roommate denies
22 generally and specifically each and every allegation there.

23 35. Answering Paragraph 35 of the Complaint, Roommate denies
24 generally and specifically each and every allegation there.

25 36. Answering Paragraph 36 of the Complaint, Roommate denies
26 generally and specifically each and every allegation there.

27 37. Answering Paragraph 37 of the Complaint, Roommate denies
28 generally and specifically each and every allegation there.

1 38. Answering Paragraph 38 of the Complaint, Roommate denies
2 generally and specifically each and every allegation there.

3 39. Answering Paragraph 39 of the Complaint, Roommate denies
4 generally and specifically each and every allegation there.

5 40. Answering Paragraph 40 of the Complaint, Roommate denies
6 generally and specifically each and every allegation there.

7 41. Answering Paragraph 41 of the Complaint, Roommate denies
8 generally and specifically each and every allegation there.

9 42. Answering Paragraph 42 of the Complaint, the allegations are
10 unintelligible, and on that ground Roommate denies generally and specifically
11 each and every allegation there.

12 43. Answering Paragraph 43 of the Complaint, Roommate denies
13 generally and specifically each and every allegation there.

14 44. Answering Paragraph 44 of the Complaint, Roommate is without
15 knowledge or information sufficient to form a belief as to the truth of the
16 allegations there, and on that ground Roommate denies generally and specifically
17 each and every allegation there.

18 45. Answering Paragraph 45 of the Complaint, Roommate is without
19 knowledge or information sufficient to form a belief as to the truth of the
20 allegations there, and on that ground Roommate denies generally and specifically
21 each and every allegation there.

22 46. Answering Paragraph 46 of the Complaint, Roommate denies
23 generally and specifically each and every allegation there.

24 47. Answering Paragraph 47 of the Complaint, Roommate denies
25 generally and specifically each and every allegation there.

26 48. Answering Paragraph 48 of the Complaint, Roommate is without
27 knowledge or information sufficient to form a belief as to the truth of the
28

1 allegations there, and on that ground Roommate denies generally and specifically
2 each and every allegation there.

3 49. Answering Paragraph 49 of the Complaint, Roommate is without
4 knowledge or information sufficient to form a belief as to the truth of the
5 allegations there, and on that ground Roommate denies generally and specifically
6 each and every allegation there.

7 50. Answering Paragraph 50 of the Complaint, Roommate denies
8 generally and specifically each and every allegation there.

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10 **V. CLAIMS FOR RELIEF**

11 **A. FIRST CLAIM**

12 **[FAIR HOUSING ACT]**

13 51. Answering Paragraph 51 of the Complaint, Roommate incorporates
14 by reference each and every one of its denials and admissions in Paragraphs 1
15 through 50.

16 52. Answering Paragraph 52 of the Complaint, Roommate denies
17 generally and specifically each and every allegation there.

18 53. Answering Paragraph 53 of the Complaint, Roommate denies
19 generally and specifically each and every allegation there.

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21 **B. SECOND CLAIM**

22 **[CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT]**

23 54. Answering Paragraph 54 of the Complaint, Roommate incorporates
24 by reference each and every one of its denials and admissions in Paragraphs 1
25 through 53.

26 55. Answering Paragraph 55 of the Complaint, Roommate denies
27 generally and specifically each and every allegation there.

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1 56. Answering Paragraph 56 of the Complaint, Roommate denies
2 generally and specifically each and every allegation there.

3 57. Answering Paragraph 57 of the Complaint, Roommate denies
4 generally and specifically each and every allegation there.

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C. THIRD CLAIM

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[UNRUH CIVIL RIGHTS ACT]

8 58. Answering Paragraph 58 of the Complaint, Roommate incorporates
9 by reference each and every one of its denials and admissions in Paragraphs 1
10 through 57.

11 59. Answering Paragraph 59 of the Complaint, Roommate denies
12 generally and specifically each and every allegation there.

13 60. Answering Paragraph 60 of the Complaint, Roommate denies
14 generally and specifically each and every allegation there.

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D. FOURTH CLAIM

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[UNFAIR BUSINESS PRACTICES]

18 61. Answering Paragraph 61 of the Complaint, Roommate incorporates
19 by reference each and every one of its denials and admissions in Paragraphs 1
20 through 60.

21 62. Answering Paragraph 62 of the Complaint, Roommate denies
22 generally and specifically each and every allegation there.

23 63. Answering Paragraph 63 of the Complaint, Roommate denies
24 generally and specifically each and every allegation there.

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1 **E. FIFTH CLAIM**

2 **[NEGLIGENCE]**

3 64. Answering Paragraph 64 of the Complaint, Roommate incorporates
4 by reference each and every one of its denials and admissions in Paragraphs 1
5 through 63.

6 65. Answering Paragraph 65 of the Complaint, Roommate denies
7 generally and specifically each and every allegation there.

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9 **VI. AFFIRMATIVE DEFENSES**

10 Roommate also asserts the following Separate and Additional Defenses. By
11 alleging the Separate and Additional Defenses set forth below, Roommate is not in
12 any way agreeing or conceding that it has the burden of proof or the burden of
13 persuasion on any of these issues.

14 **First Affirmative Defense**

15 (Failure to State a Claim)

16 The Complaint fails to state facts sufficient to constitute a claim for relief
17 upon which relief can be granted.

18 **Second Affirmative Defense**

19 (Barred by 47 U.S.C. § 230)

20 Plaintiffs' claims are absolutely barred by the Communications Decency Act
21 of 1996, 47 U.S.C. § 230.

22 **Third Affirmative Defense**

23 (First Amendment of the United States Constitution)

24 Plaintiffs' claims are barred by the First Amendment to the United States
25 Constitution.

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1 **Fourth Affirmative Defense**

2 (Lack of Standing)

3 Plaintiffs lack standing to sue Roommate because they are not real parties in
4 interest and they have suffered no injury as a result of the alleged conduct.

5 **Fifth Affirmative Defense**

6 (Right to Privacy)

7 Roommate has no liability because the users of Roommates.com have a
8 right to privacy under the United States Constitution and Article I, Section 1 of the
9 California Constitution, which allows them to choose by whatever criteria they
10 please, those people who will reside with them.

11 **Sixth Affirmative Defense**

12 (Right to Freedom of Intimate Association)

13 Roommate has no liability because the users of Roommates.com have a
14 right to freedom of intimate association under the California Constitution and the
15 First Amendment to the United States Constitution, as articulated in Hart v. Cult
16 Awareness Network, 13 Cal. App. 4th 777, 16 Cal. Rptr. 2d 705 (1993), which
17 allows them to exclude anyone (even protected classes of citizens) from intimate
18 associations, such as exclusive clubs or shared living arrangements.

19 **Seventh Affirmative Defense**

20 (Standing)

21 Plaintiffs have not suffered any injury or damage as a result of any act or
22 conduct by Roommate, and therefore Plaintiffs are not entitled to any relief.

23 **Eighth Affirmative Defense**

24 (Laches)

25 Plaintiffs' claims are barred by the doctrine of laches.

26 **Ninth Affirmative Defense**

27 (Waiver)

28 Plaintiffs' claims are barred by the doctrine of waiver.

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Tenth Affirmative Defense

(Equal Protection)

The imposition of punitive or treble damages would deny equal protection of the laws, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 7 and Article IV, Section 16 of the California Constitution. Therefore, Plaintiff cannot obtain punitive or treble damages in this case.

Eleventh Affirmative Defense

(Causation)

Plaintiffs are not entitled to relief to the extent that Plaintiffs' purported injuries and damages were not proximately caused by any acts or omissions of Roommate.

Twelfth Affirmative Defense

(Unconstitutional Compelled Speech)

The relief sought constitutes compelled speech in violation of the First Amendment to the United States Constitution and Art. I § 2 of the California Constitution.

Thirteenth Affirmative Defense

(Unconstitutional Prior Restraint)

The relief sought constitutes a prior restraint in violation of the First Amendment to the United States Constitution and Art. I § 2 of the California Constitution.

Fourteenth Affirmative Defense

(Duplicative Damages)

The monetary damages sought by Plaintiffs are duplicative.

1 **Fifteenth Affirmative Defense**

2 (Unconstitutional Punitive and Treble Damages)

3 The punitive and treble damages sought by plaintiff are unconstitutional
4 under the First and Fourteenth Amendments to the United States Constitution and
5 under Article I, Section 2 of the California Constitution. Accordingly, Plaintiffs
6 are not entitled to such damages.

7 **Sixteenth Affirmative Defense**

8 (Due Process)

9 To the extent that the Complaint seeks punitive or treble damages, it
10 violates Roommate's right to procedural and substantive due process under the
11 Fifth and Fourteenth Amendments to the United States Constitution and Article I,
12 Section 7 of the California Constitution, because, among other things, of the
13 vagueness and uncertainty of the criteria for the imposition of punitive or treble
14 damages and the lack of fair notice of what conduct will result in the imposition of
15 such damages. Therefore, Plaintiff cannot recover punitive or treble damages in
16 this case.

17 **Seventeenth Affirmative Defense**

18 (Improper Request for Disgorgement)

19 To the extent that the Complaint seeks disgorgement of Roommate's profits,
20 it seeks relief that is not available to individual plaintiffs bringing a suit in their
21 capacity as a "private attorney general" under Section 17200.

22
23 Roommate has insufficient knowledge or information upon which to form a
24 belief as to whether it may have additional, as yet unstated, separate defenses
25 available. Roommate reserves its right to amend this Answer to add, delete, or
26 modify defenses based on legal theories that may or will be divulged through
27 clarification of Plaintiffs' vague complaint, through discovery, or through further
28 legal analysis of Plaintiffs' positions in this litigation.

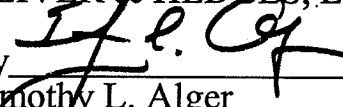
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THEREFORE, Roommate prays as follows:

1. That Plaintiffs take nothing by their Complaint;
 2. That the Complaint be dismissed with prejudice;
 3. That Roommate recover the cost of suit incurred herein, including its attorneys' fees and costs;
 4. Any other relief to which Roommate is entitled by statute or contract;
- and
5. For such other and further relief as the Court may deem just and proper.

DATED: June 30, 2004

QUINN EMANUEL URQUHART
OLIVER & HEDGES, LLP

By 

Timothy L. Alger
Attorneys for Defendant
Roommate.com, LLC

1 **PROOF OF SERVICE**

2
3 I am a resident of the State of California, over the age of eighteen years,
4 and not a party to the within action. My business address is Quinn Emanuel Urquhart
5 Oliver & Hedges, LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, California
6 90017-2543.

7 On June 30, 2004, I served the within document:

8 **ANSWER TO FIRST AMENDED COMPLAINT**

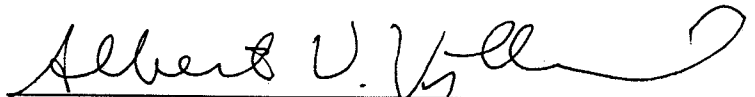
9 on the interested parties in this action by placing a true copy thereof, enclosed in a sealed
10 envelope, addressed as stated:

11 **Gary W. Rhoades**
12 **Law Offices of Gary W. Rhoades**
13 **834 1/2 S. Mansfield Ave.**
14 **Los Angeles, CA 90036**
Telephone: 323.937.7095
Fax: 775.640.2274

15 [MAIL] As follows: I am "readily familiar" with the firm's practice of
16 collection and processing correspondence for mailing. Under that practice
17 it would be deposited with U.S. postal service on that same day with
18 postage thereon fully prepaid at Los Angeles, California in the ordinary
19 course of business, addressed as set forth below. I am aware that on
20 motion of the party served, service is presumed invalid if postal
21 cancellation date or postage meter date is more than one day after date of
22 deposit for mailing in affidavit.

23 I declare that I am employed in the office of a member of the bar of this
24 court at whose direction the service was made.

25 Executed on June 30, 2004, at Los Angeles, California.

26 

27 **ALBERT V. VILLAMIL**