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Superior Court of California, County of San Francisco

Case No. CGC 08 478207

Sharon Bridgewater v. Hayes Valley Limited Partnership

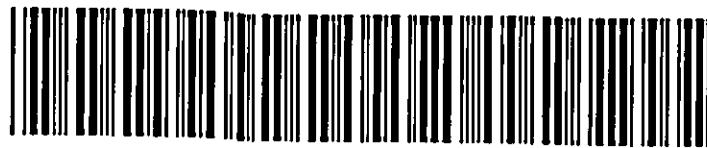
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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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ANSWER

SHARON BRIDGEWATER VS. HAYES VALLEY LIMITED PARTNERSHIP

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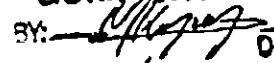
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12 HAYES VALLEY LIMITED PARTNERSHIP)

FILED
Superior Court of California
County of San Francisco

SEP 03 2008

GORDON PARK-LI, Clerk
BY:  Deputy Clerk

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF SAN FRANCISCO, UNLIMITED CIVIL JURISDICTION

16
17 SHARON BRIDGEWATER,) CASE NO. CGC-08-478207
18 Plaintiff,) ANSWER TO COMPLAINT
19 v.) ACTION FILED: August 4, 2008
20 HAYES VALLEY LIMITED PARTNERSHIP,) TRIAL DATE: None Set
21 Defendant.)

22 COMES NOW defendant HAYES VALLEY APARTMENTS II, LP (erroneously sued
23 herein as HAYES VALLEY LIMITED PARTNERSHIP) (hereinafter "defendant") answering the
24 unverified complaint ("complaint") of plaintiff SHARON BRIDGEWATER (hereinafter
25 "plaintiff") as follows:

26 **GENERAL DENIAL**

27 Under the provisions of Section 431.30 of the California Code of Civil Procedure,
28 defendant denies each, every and all of the allegations of the complaint and the whole thereof, and
denies that plaintiff has sustained damages in the sums alleged, or in any other sum, or at all.
Further answering plaintiff's complaint, and the whole thereof, defendant denies that plaintiff has
sustained any injury, damage or loss, if any, by reason of any act or omission of defendant or their
agents or employees.

WHEREFORE, this answering defendant prays for judgment as hereinafter set forth.

AFFIRMATIVE DEFENSES

1 As a first affirmative defense to the complaint, defendant alleges that all causes of action
2 stated in plaintiff's complaint fail to set forth facts sufficient to state a cause of action against this
3 answering defendant.

4 As a second affirmative defense to the complaint, defendant alleges that plaintiff is barred
5 from asserting each and every cause of action or otherwise asserting any right to relief against this
6 answering defendant because each and every cause of action is ambiguous and uncertain and not
7 specifically pled against answering defendant.

8 As a third affirmative defense to the complaint, defendant alleges that plaintiff is estopped
9 from asserting the allegations contained in the complaint and each and every allegation therein, by
10 reason of the acts, omissions, and course of conduct of plaintiff and her agents upon which
11 answering defendant have relied to their detriment and prejudice.

12 As a fourth affirmative defense to the complaint, defendant alleges that plaintiff, her
13 agents, employees, servants and representatives were partially, if not wholly, negligent or
14 otherwise at fault on their own part pursuant to the doctrine of comparative negligence, and should
15 be barred from recovery of that portion of the damages directly attributable to their proportionate
16 share of the negligence or fault.

17 As a fifth affirmative defense to the complaint, defendant alleges the damages sustained by
18 plaintiff, if any, were caused, in whole or in part, by the negligence or fault of others for which this
19 defendant is not liable or responsible.

20 As a sixth affirmative defense to the complaint, defendant alleges that the other defendants
21 in this lawsuit, as well as other persons and entities not parties to this lawsuit, were themselves
22 responsible for plaintiff's damages, if any there were. This defendant requests that its liability, if
23 any, be assessed in proportion to the liability of other co-defendants, persons, and entities who are
24 not parties to this action, and that this defendant be required to pay only for its proportionate share
25 of fault, if any there be.

26 As a seventh affirmative defense to the complaint, defendant alleges that parties or persons
27 other than this answering defendant were negligent or legally responsible or otherwise at fault for
28

1 the injuries, losses and/or claims alleged in the complaint and each claim presented therein pled
2 against this answering defendant. Therefore, this answering defendant requests that, in the event
3 of a finding of liability in favor of plaintiff and against either this answering defendant, whether by
4 settlement or judgment, an apportionment of fault be made among all parties by the court or jury,
5 and answering defendant requires a judgment and declaration of indemnification and contribution
6 against all other parties in accordance with the apportionment of fault principles.

7 As an eighth affirmative defense to the complaint, defendant alleges that the injuries,
8 damages, and losses alleged by plaintiff, if any, were proximately caused or contributed to by the
9 negligence or actionable conduct of persons or entities other than this answering defendant and
10 such negligence or actionable conduct was an intervening and superceding cause of injuries,
11 damages, and losses of which plaintiff complains.

12 As a ninth affirmative defense to the complaint, defendant alleges that plaintiff and/or her
13 agents, at all times, gave their consent, express or implied, to any and all conduct, acts and
14 omissions by this answering defendant as alleged in the complaint and each and every alleged
15 cause of action contained therein.

16 As a tenth affirmative defense to the complaint, defendant alleges that plaintiff is barred
17 from asserting each and every cause of action contained in the complaint or otherwise asserting
18 any other right to relief against this answering defendant because plaintiff and/or his agents ratified
19 all conduct and actions taken by this answering defendant.

20 As an eleventh affirmative defense to the complaint, defendant alleges that plaintiff and/or
21 her agents have expressly and/or impliedly, or by operation of law, excused this answering
22 defendant from any and all obligations relating to any and all causes of action alleged in the
23 complaint.

24 As a twelfth affirmative defense to the complaint, defendant alleges that plaintiff and/or her
25 agents have failed to take reasonable steps to avoid the damages, if any, alleged in the complaint.
26 To the extent that such damages, if any, were incurred, plaintiff's recovery, if any, should be
27 reduced accordingly.

28

1 As a thirteenth affirmative defense to the complaint, defendant alleges that plaintiff
2 voluntarily encountered the danger, known to her, which is alleged as a basis for the complaint,
3 knew of and appreciated the risks involved, and assumed the risk of said injuries, legally causing
4 or contributing to the damages alleged, and therefore plaintiff's recovery should be reduced by
5 plaintiff's proportional share of the negligence or fault.

6 As a fourteenth affirmative defense to the complaint, defendant alleges that plaintiff's
7 action is barred under the doctrine of primary assumption or risk because plaintiff voluntarily
8 participated in the activities alleged in the complaint and knew of and appreciated the specific risk
9 which resulted in plaintiffs' injuries, thereby relieving defendant of any legal duty to protect
10 plaintiff from that risk.

11 As a fifteenth affirmative defense to the complaint, defendant alleges that plaintiff failed to
12 mitigate her damages.

13 As a sixteenth affirmative defense to the complaint, defendant alleges that the provisions of
14 the "Fair Responsibility Act of 1986" (commonly known as Proposition 51, Civil Code §§ 1430,
15 1431, 1431.1, 1431.2, 1431.3, 1431.4, 1431.5 and 1432) are applicable to this action to the extent
16 that plaintiff's injuries and damages, if any, were legally caused or contributed to by the negligence
17 or fault of persons or entities other than this answering defendant.

18 As a seventeenth affirmative defense to the complaint, defendant alleges that there is a
19 defect or misjoinder of parties pursuant to Code of Civil Procedure § 430.10(d). Specifically,
20 plaintiff failed to join all parties necessary for final determination of this action.

21 As an eighteenth affirmative defense to the complaint, defendant alleges that plaintiff's
22 complaint, and each cause of action therein, is barred by the doctrine of laches.

23 As a nineteenth affirmative defense to the complaint, defendant alleges that plaintiff's
24 complaint, and each cause of action therein, is barred by the doctrine of unclean hands.

25 As a twentieth affirmative defense to the complaint, defendant alleges that plaintiff and/or
26 her agents have expressly and/or impliedly waived any and all claims arising from the allegations
27 in the complaint and each and every cause of action contained therein against this answering
28 defendant.

1 As a twenty-first affirmative defense to the complaint, defendant alleges that the incident,
2 injuries, and damages in question were not proximately caused by any act or omission of this
3 defendant.

4 As a twenty-second affirmative defense to the complaint, defendant alleges that plaintiff
5 has released, settled, entered into an accord and satisfaction or otherwise compromised her claims
6 herein, and accordingly, said claims are barred by operation of law; or alternatively, plaintiff has
7 accepted compensation as payment of those claims for which this answering defendant is entitled
8 to a set-off.

9 As a twenty-third affirmative defense to plaintiff's complaint, defendant alleges that the
10 complaint and causes of action therein are barred by the applicable statute of limitations, including
11 but not limited to, California Code of Civil Procedure section 335, *et seq.*

12 As a twenty-fourth affirmative defense to each cause of action of plaintiff's complaint,
13 defendant alleges that the complaint and causes of action therein are barred as there was a failure
14 of consideration for the contract referred to in plaintiff's complaint.

15 As a twenty-fifth affirmative defense to each cause of action of plaintiff's complaint,
16 defendant alleges that it was mistaken about the facts surrounding the contract, referred to in
17 plaintiff's Complaint, plaintiff knew that defendant was mistaken about these facts and used that
18 mistake to take advantage of defendant; and, defendant would not have agreed to enter into the
19 contract if it had known about the mistake. Therefore, plaintiff's cause of action for breach of
20 contract is barred.

21 As a twenty-sixth affirmative defense to each cause of action of plaintiff's complaint,
22 defendant alleges that both parties were mistaken about the facts surrounding the contract referred
23 to in plaintiff's complaint, and defendant would not have agreed to enter into this contract if it had
24 known about the mistake, and, therefore, there was no contract.

25 As a twenty-seventh affirmative defense to each cause of action of plaintiff's complaint,
26 defendant entered into the subject agreement referred to in the complaint under the duress of
27 plaintiff.

28

1 As a twenty-eighth affirmative defense to each cause of action of plaintiff's complaint,
2 there was a no contract created between plaintiff and defendant because defendant was unfairly
3 pressured by plaintiff into consenting to the contract.

4 As a twenty-ninth affirmative defense to each cause of action of plaintiff's complaint, no
5 contract was created because defendant's consent was obtained by the fraud of plaintiff.

6 As a thirtieth affirmative defense to each cause of action of plaintiff's complaint, the
7 complaint is barred by virtue of the terms and provisions of the agreement(s) entered into between
8 plaintiff and defendant, as referenced in plaintiff's complaint.

9 As a thirty-first affirmative defense to each cause of action of plaintiff's complaint, the
10 agreement(s) referenced in plaintiff's complaint is unlawful, void, and unenforceable.

11 As a thirty-second affirmative defense to each cause of action of plaintiff's complaint, as
12 part of the agreement(s) entered into between plaintiff and defendant, as referenced in plaintiff's
13 complaint, plaintiff agreed, among other things, to timely pay rent in accordance with the terms
14 thereof, that plaintiff breached said agreement(s) in that she failed to do so.

15 As a thirty-third affirmative defense to each cause of action of plaintiff's complaint, prior
16 to the commencement of this action, this answering defendant duly performed, satisfied and
17 discharged all duties and obligations it may have owed to the plaintiff arising out of any and all
18 agreement(s), representation(s) or contract(s) made by or on behalf of this answering defendant
19 and this action is therefore barred by the provisions of California Civil Code section 1473.

20 As a thirty-fourth affirmative defense to each cause of action of plaintiff's complaint, any
21 and all representation(s) and statement(s) made, if any, by or on behalf of this defendant
22 concerning or referring to plaintiff were and are true.

23 As a thirty-fifth affirmative defense to each cause of action of plaintiff's complaint,
24 defendant alleges that plaintiff lacks privity with this answering defendant and therefore cannot
25 maintain a claim against this defendant.

26 As a thirty-sixth affirmative defense to each cause of action of plaintiff's complaint,
27 plaintiff's injuries, damages or losses as alleged in the complaint were caused by pre-existing

1 medical conditions, subsequent medical conditions and/or natural course of conditions for which
2 this defendant is not responsible.

3 As a thirty-seventh affirmative defense to each cause of action of plaintiff's complaint,
4 defendant presently has insufficient knowledge or information on which to form a belief as to
5 whether they may have additional, as yet unstated, defenses available. Defendant reserves herein
6 the right to assert additional defenses in the event discovery indicates that they would be
7 appropriate.

8 WHEREFORE, this answering defendant prays for judgment as follows:

- 9 i. That plaintiff take nothing by reason of the complaint on file herein;
- 10 ii. For reasonable attorney fees;
- 11 iii. For costs of suit incurred herein; and
- 12 iv. For such other and further relief as the Court deems just and proper.

13 DATED: September 3, 2008

LEWIS BRISBOIS BISGAARD & SMITH LLP

14 By _____
15

Jeffery G. Bairey

John A. Toal

16 Attorneys for Defendant HAYES VALLEY
17 APARTMENTS II, LP (erroneously sued herein as
18 HAYES VALLEY LIMITED PARTNERSHIP)

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CALIFORNIA STATE COURT PROOF OF SERVICE
Bridgewater v. Hayes Valley Limited Partnership
San Francisco County Superior Court Case No. CGC-08-478207

3 STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

4 At the time of service, I was over 18 years of age and not a party to the action. My business address is One Sansome Street, Suite 1400, San Francisco, California 94104.

On September 3, 2008, I served the following document(s):

ANSWER TO COMPLAINT

7 I served the documents on the following persons at the following addresses (including fax
8 numbers and e-mail addresses, if applicable):

Sharon Bridgewater 1271 D. Street Hayward, CA 94545	Attorneys for plaintiff <i>IN PRO PER</i> Telephone: (808) 205-3114 Facsimile:
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12 The documents were served by the following means:

13 [X] (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to
14 the persons at the addresses listed above and (specify one):

15 [] Deposited the sealed envelope or package with the U.S. Postal Service, with the postage fully prepaid.

16 [X] Placed the envelope or package for collection and mailing, following our ordinary
17 business practices. I am readily familiar with the firm's practice for collection and processing
18 correspondence for mailing. Under that practice, on the same day that correspondence is placed
for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal
Service, in a sealed envelope or package with the postage fully prepaid.

19 [] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package
20 provided by an overnight delivery carrier and addressed to the persons at the addresses
21 listed above. I placed the envelope or package for collection and delivery at an office or a
regularly utilized drop box of the overnight delivery carrier.

22 [] (BY MESSENGER SERVICE) I served the documents by placing them in an envelope or
23 package addressed to the persons at the addresses listed above and providing them to a
professional messenger service. (A proof of service executed by the messenger will be
filed in compliance with the Code of Civil Procedure.)

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

26 Executed on September 3, 2008, at San Francisco, California.

Karla A. Vitalie