

Law Offices of
SHERWOOD AND HARDGROVE

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

SEP 25 2011

John A. Clarke, Executive Officer/Clerk
By Amber Lafleur-Clayton, Deputy
AMBER LAFLEUR-CLAYTON

Attorneys for Defendants,
DOUGLAS EMMETT 2002, LLC, a Delaware limited liability company
(sued and served herein as Douglas Emmett 2002, LLC dba San Vicente Plaza) and
DOUGLAS EMMETT MANAGEMENT, LLC, a Delaware limited liability company

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES (CENTRAL DISTRICT)**

WANTON GROUP BTWD, LLC d/b/a
CHIN CHIN BTWD,

Plaintiff,

vs.

DOUGLAS EMMETT 2002, LLC dba
SAN VICENTE PLAZA; DOUGLAS
EMMETT MANAGEMENT, LLC and
DOES 1 through 20, inclusive,

Defendants.

Case No. BC457620
[Case Assigned to The Honorable Zaven
V. Sinanian]

**ANSWER OF DEFENDANTS
DOUGLAS EMMETT 2002, LLC AND
DOUGLAS EMMETT
MANAGEMENT, LLC TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Complaint Filed: 03/18/11
Trial Date: 05/07/12

Defendants DOUGLAS EMMETT 2002, LLC, a Delaware limited liability
company (sued and served herein as Douglas Emmett 2002, LLC dba San Vicente Plaza),
and DOUGLAS EMMETT MANAGEMENT, LLC, a Delaware limited liability
company ("Answering Defendants"), for themselves alone and no other defendant,
herewith answer the first amended complaint of plaintiff WANTON GROUP BTWD,
LLC, a California limited liability company dba Chin Chin BTWD ("Plaintiff"), as
follows:

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11812 SAN VICENTE BLVD

Fees pd 4/11/11 Mr. Pao

ANSWER AS TO EACH CAUSE OF ACTION

1
 2 1. Pursuant to California *Code of Civil Procedure* § 431.30, Answering
 3 Defendants deny generally and specifically each and every allegation contained in the
 4 First Amended Complaint For: Breach of Written Contract; Declaratory Relief;
 5 Injunctive Relief; Unfair Trade and Business Practices; Negligent Misrepresentation;
 6 Fraud (hereinafter referred to as the "FAC"), conjunctively and disjunctively, and every
 7 part thereof, and further denies that these Answering Defendants caused Plaintiff any
 8 injuries or damage in any amount whatsoever.

9
 10 **AS A FURTHER, SEPARATE AND FIRST**
AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE

11 **[Failure to State Facts]**

12 2. These Answering Defendants are informed and believe, and based on
 13 such information and belief allege that each and every purported cause of action, if any,
 14 set forth in the Complaint fails to state facts sufficient to constitute a cause of action
 15 against these Answering Defendants.

16 **AS A FURTHER, SEPARATE AND SECOND**
AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE

17 **[Condition Precedent]**

18 3. If these Answering Defendants failed to perform any obligation pursuant
 19 to the agreement alleged in the Complaint (which supposition is expressly denied, but
 20 posed only for purposes of this affirmative defense), such failure was proximately
 21 caused by the failure of Plaintiff to perform obligations that were conditions precedent
 22 to and/or conditions concurrent with these Answering Defendants' performances.
 23

24 **AS A FURTHER, SEPARATE AND THIRD**
AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE

25 **[Failure to Mitigate Damages]**

26 4. These Answering Defendants are informed and believe, and based on
 27 such information and belief allege, that Plaintiff failed to take reasonable steps to
 28

1 mitigate its damages, if any, and therefore, Plaintiff is barred from recovery against
2 these Answering Defendants to the extent Plaintiff failed to act reasonably to mitigate
3 its damages.

4 **AS A FURTHER, SEPARATE AND FOURTH**
5 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

6 [Laches]

7 5. The Plaintiff's claims, if any, set forth in its FAC are barred by the
8 equitable doctrine of laches due to Plaintiff's unreasonable delay in asserting the
9 claims.

10 **AS A FURTHER, SEPARATE AND FIFTH**
11 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

12 [Waiver]

13 6. These Answering Defendants are informed and believe, and based on
14 such information and belief allege, that Plaintiff's conduct constitutes a waiver of its
15 rights under the agreement alleged in the Complaint. Plaintiff's waiver of its claims
16 against these Answering Defendants arises by the conduct of Plaintiff. By reason of
17 such waiver, these Answering Defendants are excused from performance of their
18 obligations in connection therewith.

19 **AS A FURTHER, SEPARATE AND SIXTH**
20 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

21 [No Damage]

22 7. That Plaintiff has suffered no damage as a result of any of the alleged acts
23 or omissions of these Answering Defendants and, therefore, Plaintiff is not entitled to
24 any sum or amount whatsoever from these Answering Defendants.

25 ///

26 ///

27 ///

28 ///

1 **AS A FURTHER, SEPARATE AND SEVENTH**
2 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

3 **[Impossibility]**

4 8. The condition of the agreement alleged in the Complaint was impossible
5 for these Answering Defendants to perform at the time these Answering Defendants
6 were to have performed it.

7 **AS A FURTHER, SEPARATE AND EIGHTH**
8 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

9 **[Prevention of Performance]**

10 9. These Answering Defendants have performed all of the conditions of the
11 subject lease agreement on their part to be performed. If these Answering Defendants
12 failed to perform any condition of the subject lease agreement, the failure to perform
13 was caused by Plaintiff's breach of the agreement which excused performance by these
14 Answering Defendants.

15 **AS A FURTHER, SEPARATE AND NINTH**
16 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

17 **[Estoppel]**

18 10. The Complaint is barred by the conduct, actions and inactions of Plaintiff,
19 which amount to and constitute an estoppel of the causes of action and any relief sought
20 thereby.

21 **AS A FURTHER, SEPARATE AND TENTH**
22 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

23 **[Good Faith Conduct]**

24 11. With respect to the matters alleged in the Complaint, these Answering
25 Defendants, at all times, acted in good faith and in accordance with reasonable
26 commercial standards, thus precluding any recovery by Plaintiff.

27 ///

28 ///

1 **AS A FURTHER, SEPARATE AND ELEVENTH**
2 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

3 **[Direct and Proximate Result of Other Parties]**

4 12. All of the matters alleged in the Complaint were proximately caused by
5 and contributed to by the intentional, negligent and other legal fault of Plaintiff and
6 were further proximately caused and contributed to by the intentional, negligent and
7 other legal fault of persons and entities other than these Answering Defendants, and if
8 Plaintiff recovers any sum whatsoever herein, such amount must be reduced in
9 proportion to Plaintiff's and/or such other's own intentional, negligent and other legal
10 fault which proximately caused or contributed to Plaintiff's claimed injuries and
11 damages and request for relief. If there is a verdict in favor of said Plaintiff and against
12 these Answering Defendants, said verdict should be in proportion to these Answering
13 Defendants' pro rata responsibility, and to the extent that it is necessary, these
14 Answering Defendants may be entitled to a partial or total indemnity from others on a
15 comparative fault basis and/or comparative right to relief basis.

16 **AS A FURTHER, SEPARATE AND TWELFTH**
17 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

18 **[Privilege and Justification]**

19 13. Any recovery on Plaintiff's Complaint or any purported cause of action
20 alleged therein, is barred because these Answering Defendants' conduct was privileged
21 and/or justified under California law and according to the agreement(s) of the parties.

22 **AS A FURTHER, SEPARATE AND THIRTEENTH**
23 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

24 **[Conduct Not "Unlawful"]**

25 14. The business practices alleged by Plaintiff in the FAC, if any, are not
26 "unlawful" within the meaning of *Business and Professions Code* § 17200 in that they
27 do not violate any underlying regulation.

28 ///

1 **AS A FURTHER, SEPARATE AND FOURTEENTH**
2 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

3 **[Conduct Not “Fraudulent” Nor “Likely to Mislead”]**

4 15. The business practices alleged by Plaintiff in the FAC, if any, are and
5 were not likely to mislead the public.

6 **AS A FURTHER, SEPARATE AND FIFTEENTH**
7 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

8 **[Conduct Not “Unfair”]**

9 16. The business practices alleged by Plaintiff in the FAC, if any, are not
10 “unfair” within the meaning of *Business and Professions Code* § 17200.

11 **AS A FURTHER, SEPARATE AND SIXTEENTH**
12 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

13 **[“Absolute Barrier to Relief”]**

14 17. Plaintiff’s fourth cause of action is barred in light of the California
15 Supreme Court’s observation in *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998)
16 17 Cal.4th 553, 566 that “the UCL cannot be sued to state a cause of action the gist of
17 which is absolutely barred under some other principal of law.”

18 **AS A FURTHER, SEPARATE AND SEVENTEENTH**
19 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

20 **[Adequate Remedy At Law]**

21 18. Plaintiff’s causes of action, and each of them, and its injunctive and
22 restitution remedies, are barred in light of the fact that Plaintiff has an adequate remedy
23 at law for damages.

24 **AS A FURTHER, SEPARATE AND EIGHTEENTH**
25 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

26 **[Authorization]**

27 19. Any recovery on Plaintiff’s Complaint or any purported cause of action
28 alleged therein, is barred because these Answering Defendants’ conduct was authorized

1 by Plaintiff according to the agreement(s) of the parties.

2 **AS A FURTHER, SEPARATE AND NINETEENTH**
3 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

4 **[Unjust Enrichment]**

5 20. The Complaint herein is barred, or, in the alternative, any recovery by
6 Plaintiff should be reduced by reason of the services provided to Plaintiff by these
7 Answering Defendants has caused Plaintiff to become unjustly enriched at the expense
8 of these Answering Defendants.

9 **AS A FURTHER, SEPARATE AND TWENTIETH**
10 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

11 **[Statute of Limitations]**

12 21. The Complaint and each purported cause of action, or portions thereof,
13 are barred by the applicable statutes of limitations, including but not limited to
14 California *Code of Civil Procedure* §§ 337, 338, and 339, and each of them, and
15 *Business and Professions Code* § 17208.

16 **AS A FURTHER, SEPARATE AND TWENTY-FIRST**
17 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

18 **[Defendants are Due a Setoff]**

19 22. The Complaint herein is barred, or, in the alternative, any recovery by
20 Plaintiff should be reduced by reason of amounts due and owing from Plaintiff to these
21 Answering Defendants pursuant to the terms of the agreement(s), if any, that are alleged
22 by the Complaint.

23 **AS A FURTHER, SEPARATE AND TWENTY-SECOND**
24 **AFFIRMATIVE DEFENSE, ANSWERING DEFENDANTS ALLEGE**

25 **[Unknown Affirmative Defenses]**

26 23. These Answering Defendants are informed and believe and thereon allege
27 that there may be other applicable affirmative defenses not alleged herein because of
28 facts not yet known to these Answering Defendants, and these Answering Defendants

1 reserve the right to supplement or amend these affirmative defenses as they become
2 known.

3 WHEREFORE, Answering Defendants requests Judgment as follows:

- 4 1. That Plaintiff takes nothing by way of its FAC;
- 5 2. For the entry of a Judgment of Dismissal in favor of these Answering
6 Defendants;
- 7 3. For attorneys' fees and costs of suit herein; and
- 8 4. For such other and further relief as the Court may deem just and proper.

9 Dated: September 26, 2011

SHERWOOD AND HARDGROVE

11 By: *Patrick H. Sherwood*
12 Don C. Sherwood
13 Patrick H. Sherwood
14 Attorneys for defendants
15 DOUGLAS EMMETT 2002, LLC, and
16 DOUGLAS EMMETT MANAGEMENT, LLC

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1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

4 I am employed in the County of Los Angeles, State of California. I am over the
5 age of 18 and not a party to the within action. My business address is 11812 San
6 Vicente Boulevard, Suite 210, Los Angeles, California 90049-6622.

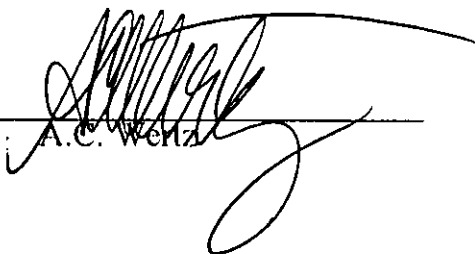
7 On September 26, 2011, I served the foregoing document described as:
8 **ANSWER OF DEFENDANTS DOUGLAS EMMETT 2002, LLC AND
9 DOUGLAS EMMETT MANAGEMENT, LLC TO PLAINTIFF'S FIRST
10 AMENDED COMPLAINT** on the interested parties in this action by placing a true
11 and correct copy of said document in a sealed envelope addressed as follows:

12 **Michael J. Simkin, Esq.**
13 **SIMKIN & ASSOCIATES, INC.**
14 1925 Century Park East, Suite 2120
15 Los Angeles, California 90067-2722
16
17 TEL 310.788.9089; FAX 310.282.7590

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

25 X (STATE) I declare under penalty of perjury under the laws of the State of
26 California that the above is true and correct.

27 Executed on September 26, 2011 at Los Angeles, California.

28

A.C. Wenz