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11 CANDU CAPITAL GROUP, LLC; RITU VOHRA AND ARJUN DUTT

ELECTRONICALLY

FILED

*Superior Court of California,
County of San Francisco*

APR 24 2015

Clerk of the Court
BY: MEREDITH GRIER
Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

STAN HELLER, KATHLEEN DREW, SOPHIA
HELLER, and CRAIG PURSELL,

Plaintiffs,

vs.

CANDU CAPITAL GROUP, LLC., RITU
VOHRA, ARJUN DUTT, et al.,

Defendants.

Case No.: CGC-15-543483
UNLIMITED JURISDICTION

ASSIGNED TO FOR ALL PURPOSES:
DEPT: Not Assigned

**ANSWER TO FIRST AMENDED
COMPLAINT**

COME NOW the Defendants, CANDU CAPITAL GROUP, LLC; RITU VOHRA AND
ARJUN DUTT, above named, and in answer to the First Amended Complaint of Plaintiffs on file herein
admit, deny and allege as follows:

I

Under the provisions of Section 431.30 of the California Code of Civil Procedure, these
answering Defendants deny each, every and all of the allegations of said First Amended Complaint, and
the whole thereof, and deny Plaintiffs have sustained damages in any sum or sums alleged, or in any
other sum or at all.

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II

Further answering Plaintiffs' First Amended Complaint on file herein, and the whole thereof, these answering defendants deny that the Plaintiffs have sustained any injury, damages or loss, if any, by reason of any act or omission of these answering Defendants or their agents or employees.

FIRST AFFIRMATIVE DEFENSE

That the First Amended Complaint and each of the alleged causes of action fails to state facts sufficient to constitute a cause of action against these answering defendants.

SECOND AFFIRMATIVE DEFENSE

That all times mentioned in the First Amended Complaint, the plaintiffs so carelessly, recklessly and negligently conducted and maintained themselves so as to cause and contribute in some degree to the alleged incident and to the damages and injuries, if any, alleged to have been sustained by said plaintiffs and therefore said negligence completely bars any recovery or in the alternative, it reduces the right of recovery by that amount said negligence contributed to this incident as set forth under the doctrine of comparative negligence.

THIRD AFFIRMATIVE DEFENSE

That at all times mentioned in the First Amended Complaint, the plaintiffs knowing the probable consequences thereof, placed themselves in a position of danger and freely and voluntarily participated in all the activities alleged herein, and thereby assumed all the risks attendant thereto.

FOURTH AFFIRMATIVE DEFENSE

That Plaintiffs are barred from asserting any causes of action by virtue of their consent to the alleged acts or conditions.

FIFTH AFFIRMATIVE DEFENSE

That if there was any negligence and carelessness contributing to the damages and/or injuries, it was the negligence and carelessness of some entity or individual other than these answering Defendants.

SIXTH AFFIRMATIVE DEFENSE

That the benefits of the alleged business practice outweigh whatever particular harm or impact the alleged practice may cause to an alleged victim.

SEVENTH AFFIRMATIVE DEFENSE

1 That plaintiffs failed to exercise reasonable care and diligence to mitigate any damages sustained
2 by reason of defendants' alleged acts. Therefore, any damages awarded to plaintiffs shall be limited to
3 the damages plaintiffs would have sustained had plaintiffs mitigated their damages.

4 **EIGHTH AFFIRMATIVE DEFENSE**

5 That plaintiffs are barred from any recovery as to these answering defendants, in that any
6 damage proven to have been sustained by plaintiffs was the direct and proximate result of the
7 independent and superseding action of plaintiffs and other persons or parties, and not due to any act or
8 omission on the part of these defendants.

9 **NINTH AFFIRMATIVE DEFENSE**

10 That the First Amended Complaint and each alleged cause of action thereof, fails to state facts
11 sufficient to constitute a cause of action in that said First Amended Complaint, and each cause of action
12 thereof, is barred by the statute of limitations as stated in Part Two, Title II, Chapter 3, of the California
13 Code of Civil Procedure, beginning with Section 335, and continuing through section 349.4 and, more
14 particularly, but not limited, to Sections 337, 337.1, 337.15, 337.5, 338, 339, 340, 343 and to California
15 Business and Professions Code §17208.

16 **TENTH AFFIRMATIVE DEFENSE**

17 That Chapter 37 of the San Francisco Administrative Code is unconstitutional under Federal and
18 State constitutions because, as a local governmental agency, the City and County of San Francisco does
19 not have the power to create a private right of action for damages or for the trebling of actual damages
20 and because a private cause of action and trebling of damages are not required in enforcement of
21 eviction controls imposed therein.

22 **ELEVENTH AFFIRMATIVE DEFENSE**

23 That to the extent Plaintiff base their claim for attorneys' fees upon a violation of Chapter 37 of
24 the San Francisco Administrative Code, Defendants allege that such recovery for attorneys' fees is in
25 direct conflict with and preempted by general common law and California *Code of Civil Procedure*
26 Section 1021.

27 **TWELFTH AFFIRMATIVE DEFENSE**

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1 That Defendants are in compliance with Chapter 37 of the San Francisco Rent Ordinance. To
2 the extent that the local ordinance provides for a remedy other than restitutionary recovery against a
3 landlord who is in substantial compliance with the Ordinance, the Ordinance is preempted by Civil Code
4 Section 1947.7.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 That Plaintiffs have waived and/or released their right to maintain the action filed in this case.

7 **FOURTEENTH AFFIRMATIVE DEFENSE**

8 To the First Amended Complaint and each and every cause of action thereof, these answering
9 Defendants allege that Plaintiffs are estopped by action of law or by conduct from maintaining the action
10 filed in this case, including, but not limited to the doctrines of res judicata and collateral estoppel.

11 **FIFTEENTH AFFIRMATIVE DEFENSE**

12 To the First Amended Complaint and each and every cause of action thereof, these answering
13 Defendants allege that the action filed in this case is not maintainable under the equitable doctrine of
14 laches.

15 **SIXTEENTH AFFIRMATIVE DEFENSE**

16 To the First Amended Complaint and each and every cause of action thereof, these answering
17 Defendants allege that Plaintiffs in this case are barred from recovery in this case under the doctrine of
18 unclean hands.

19 **SEVENTEENTH AFFIRMATIVE DEFENSE**

20 To the First Amended Complaint and each and every cause of action thereof, these answering
21 Defendants allege that Plaintiffs have failed to state a claim upon which attorneys' fees can be awarded.

22 **EIGHTEENTH AFFIRMATIVE DEFENSE**

23 To the First Amended Complaint and each and every cause of action thereof, these answering
24 Defendants allege that the actions complained were made without malice or wrongful intent on the part
25 of defendants and in a reasonable and good faith belief of their legal right to perform the actions
26 complained of.

27 **NINETEENTH AFFIRMATIVE DEFENSE**

1 That prior to the commencement of this action these answering Defendants allege duly
2 performed, satisfied and discharged all duties and obligations they may have owed to the plaintiffs
3 arising out of any and all agreements, representations, or contracts made by or on behalf of these
4 answering Defendants and this action is therefore barred by the provisions of California Civil Code
5 Section 1473.

6 **TWENTIETH AFFIRMATIVE DEFENSE**

7 That Plaintiffs violated material covenants and conditions of the rental agreement, including the
8 covenant of good faith and fair dealing, thereby terminating and extinguishing the duties allegedly owed
9 by these answering Defendants allege, or reducing or abating the amount of damages to which Plaintiffs
10 are entitled, if any.

11 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

12 That plaintiffs failed to comply with the provisions of Civil Code Sections 1928, 1929, 1930,
13 1931 and 1941.2.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

15 That if any damages are awarded to plaintiffs, the amount of damages should be offset by the
16 amounts, if any, owed to defendants pursuant to the terms of the rental agreement.

17 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

18 That the said conditions complained of in plaintiffs' First Amended Complaint are not and were
19 not dangerous conditions, and did not create substantial risk of injury when it was used with due care in
20 a manner in which it was reasonably foreseeable that it would be used.

21 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

22 That any and all acts or omissions of these answering Defendants, their agents or employees,
23 which allegedly created the condition of property at the time and place alleged in the First Amended
24 Complaint, did not constitute a substantial risk of injury, but, if any risk at all, merely constituted a
25 minor, trivial, or insignificant risk which did not create a dangerous condition of property.

26 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

27 That at all times herein relevant that all alleged efforts to recover possession of the premises are
28 privileged pursuant to the litigation privileges pursuant to Civil Code Sec. 47(b).

1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 That plaintiffs' First Amended Complaint to the extent that it seeks exemplary or punitive
3 damages pursuant to California Civil Code Section 3294, violate defendants' right to procedural due
4 process under the Fourteenth Amendment of the United States Constitution, and Article I, Section 7 of
5 the Constitution of the State of California, and therefore fails to state a cause of action upon which either
6 punitive or exemplary damages can be awarded.

7 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

8 That said First Amended Complaint, to the extent that it seeks punitive or exemplary damages
9 pursuant to California Civil Code Section 3294, violate defendants' right to protection from "excessive
10 fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 17
11 of the Constitution of the State of California, and violate defendants' right to substantive due process as
12 provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution
13 of the State of California, and therefore fails to state a cause of action supporting the punitive or
14 exemplary damages claimed.

15 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

16 That said First Amended Complaint, and each cause of action therein, fails to state facts
17 sufficient to warrant an award of exemplary or punitive damages.

18 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

19 That defendants' alleged practice is not unlawful, unfair, or likely to mislead.

20 **THIRTIETH AFFIRMATIVE DEFENSE**

21 That plaintiffs' causes of action, and each of them, and their injunctive and restitution remedies,
22 are barred in light of the fact that plaintiffs have an adequate remedy of money damages.

23 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

24 That plaintiffs had a reasonably available alternative source of supply from which to obtain the
25 good/service.

26 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

1 That plaintiffs' claim is barred by the fact that the alleged deceptive statements were such that no
2 reasonable person in plaintiffs' position could have reasonably relied on or misunderstood defendants'
3 statement for claims of fact.

4 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

5 Defendants are not liable on plaintiffs' causes of action because defendants acted at all times in
6 reasonable and good faith reliance on the opinion and advice of counsel based on counsel's full and
7 complete understanding of all relevant facts [or initiated by counsel on counsel's own familiarity with
8 the facts].

9
10 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

11 As and for a further, separate and distinct affirmative defense to the First Amended Complaint on
12 file herein, it is hereby alleged upon information and belief that at the time of the accident described in
13 the First Amended Complaint, plaintiffs were in the course and scope of his/her employment with these
14 answering defendants. Therefore, the Worker's Compensation statutes and/or laws and the Worker's
15 Compensation Appeals Board have exclusive jurisdiction over and concerning plaintiffs' claims and as a
16 result the First Amended Complaint is barred with this court having no jurisdiction.

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18 WHEREFORE, defendants pray as follows:

- 19 1. That plaintiffs take nothing by reason of their said First Amended Complaint;
20 2. That these Defendants be dismissed hence with prejudice;
21 3. For defendants' costs, including attorneys' fees, costs, and expert witness fees incurred in
22 defense of this action;
23 4. For such other, further relief as this Court may deem just and proper.

24 **NOTICE**

25 By placing the following statement in the answer, neither these Defendants nor their counsel
26 waives any privilege or objection regarding the admissibility of the following statement (or the existence
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1 of insurance coverage for these Defendants), and requests that this statement be redacted as may be
2 necessary and appropriate to protect these answering Defendants.

3 All attorneys and staff of the office of Stratman, Patterson & Hunter are employees of Farmers
4 Insurance Exchange, a Member of the Farmers Insurance Group of Companies, and not a partnership.

5
6 DATED: April 24, 2015

7 STRATMAN, PATTERSON & HUNTER

8 BY:  for

9 DAVID W. CHEN, ESQ.

10 Attorney for Defendants,

11 CANDU CAPITAL GROUP, LLC; RITU
12 VOHRA AND ARJUN DUTT
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1 Re: Heller v. Candu Capital Group, LLC, et al
2 Case Number: CGC-15-543483

3 **PROOF OF SERVICE**
4 **Code of Civil Procedure §§ 1013a, 2015.5**

5 I am a resident of the State of California and over the age of eighteen years, and not a party to the
6 within action. My business address is 505 14th Street, Suite 400, Oakland, CA 94612-1913. On April
7 24, 2015, I served the following document(s):

8 **ANSWER TO FIRST AMENDED COMPLAINT**

9 By placing the document(s) listed above in a sealed envelope, addressed as set forth
10 below, and placing the envelope for collection and mailing in the place designated for
11 such in our offices, following ordinary business practices.

12 By transmitting via facsimile the document(s) listed above to the fax number(s) set
13 forth below on this date before 5:00 p.m.

14 By causing a true copy thereof to be personally delivered to the person(s) at the
15 address(es) set forth below.

16 By electronically serving the document(s) described above via a Court approved File
17 & Serve vendor on those recipients designated on the Transaction Receipt located on
18 the vendor's Website.

19 By electronically serving the document(s) to the electronic mail address set forth
20 below on this date before 5:00 p.m. pursuant to the signed stipulation of the parties
21 and consistent with Code of Civil Procedure section 1010.6(a)(2).

22 **SEE ATTACHED SERVICE LIST**

23 I am readily familiar with the firm's practice of collection and processing correspondence for
24 mailing with the United States Postal Service. Under that practice, it would be deposited with U.S.
25 Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I
26 am aware that on motion of the party served, service is presumed invalid if postal cancellation date or
27 postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on April 24, 2015, at Oakland, California.


LESLIE A. ENGELMEIER

1 Re: Heller v. Candu Capital Group, LLC, et al
2 Case Number: CGC-15-543483

3 **SERVICE LIST**

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