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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

HEATHMAN HOTEL PORTLAND LLC,
an Oregon limited liability company,

Plaintiff,

v.

MCCORMICK & SCHMICK RESTAURANT
CORP., a Delaware corporation,

Defendant.

Case No. 1404-04587

**ANSWER AND AFFIRMATIVE
DEFENSES**

Fee authority: ORS 21.135(1)(2)(g)

For its answer to plaintiff's complaint, defendant McCormick & Schmick Restaurant Corp. ("M&S") admits, denies and alleges as follows:

1.

On information and belief, M&S admits the allegations contained in paragraph 1.

2.

M&S admits the allegations contained in paragraph 2.

3.

In response to the allegations contained in paragraph 3, M&S admits that it is a party to a lease dated September 20, 2000 (the "Lease"), and that the leased property is the restaurant and kitchen space within the Heathman Hotel. M&S further admits that the Lease speaks for itself. M&S denies the remaining allegations contained in paragraph 3.

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4.

In response to the allegations contained in paragraph 4, M&S admits that the Lease speaks for itself. M&S denies the remaining allegations contained in paragraph 4.

5.

In response to the allegations contained in paragraph 5, M&S admits that it exercised its option to renew and extend the lease term and that it was entitled to do so under the Lease. M&S denies the remaining allegations contained in paragraph 5.

6.

M&S admits the allegations contained in paragraph 6.

7.

In response to the allegations contained in paragraph 7, M&S admits that the lease amendment speaks for itself. M&S denies the remaining allegations contained in paragraph 7.

8.

In response to the allegations contained in paragraph 8, M&S admits that the lease amendment speaks for itself. M&S denies the remaining allegations contained in paragraph 8.

9.

In response to the allegations contained in paragraph 9, M&S admits that the lease amendment speaks for itself. M&S denies the remaining allegations contained in paragraph 9.

10.

M&S denies the allegations contained in paragraph 10.

11.

The allegations contained in paragraph 11 are a legal conclusion to which no response is required. To the extent a response is required, M&S denies the allegations contained in paragraph 11.

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12.

M&S denies the allegations contained in paragraph 12.

13.

In response to the allegations contained in paragraph 13, M&S admits that the Lease and the lease amendment speak for themselves. M&S denies the remaining allegations contained in paragraph 13.

14.

In response to the allegations contained in paragraph 14, M&S admits that the Lease and the lease amendment speak for themselves. M&S is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 14 and on that basis denies them.

15.

M&S denies the allegations contained in paragraphs 15, 16 and 17.

16.

Except as expressly admitted herein, M&S denies each and every allegation contained in plaintiff's complaint and the whole thereof.

FIRST AFFIRMATIVE DEFENSE

(Waiver)

17.

Plaintiff has waived its right to assert a claim for declaratory relief.

SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

18.

Plaintiff's claim is barred by the doctrine of unclean hands.

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1 THIRD AFFIRMATIVE DEFENSE

2 (Failure to State a Claim)

3 19.

4 Plaintiff has failed to allege facts sufficient to support a claim for relief.

5 FOURTH AFFIRMATIVE DEFENSE

6 (No Justiciable Controversy)

7 20.

8 There is no *bona fide* controversy or justiciable dispute between plaintiff and M&S and
9 plaintiff's claim is therefore barred.

10 FIFTH AFFIRMATIVE DEFENSE

11 (*In Pari Delicto*)

12 21.

13 Plaintiff's claim is barred because of plaintiff's own conduct under the Lease and the
14 lease amendment.

15 22.

16 M&S reserves the right to amend this answer to add additional affirmative defenses and
17 counterclaims as they become apparent through discovery.

18 WHEREFORE, having answered plaintiff's complaint and having asserted affirmative
19 defenses, defendant McCormick & Schmick Restaurant Corp. requests:

20 A. that plaintiff's complaint be dismissed in its entirety with prejudice, without costs
21 or fees of any kind to plaintiff;

22 B. that defendant recover from plaintiff its reasonable expenses incurred in
23 defending this action, including its costs and attorney fees; and

24 ///

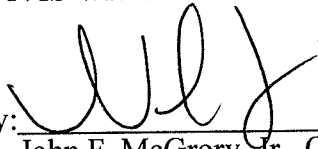
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26 ///

1 C. that defendant be granted such other and further relief as this Court may deem just
2 and equitable.

3 DATED this 21st day of May, 2014.

4 DAVIS WRIGHT TREMAINE LLP

5
6 By: 
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8 Nicholas A. Kampars, OSB #063870
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10 Of Attorneys for Defendant
11 McCormick & Schmick Restaurant Corp.

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1 CERTIFICATE OF SERVICE

2 I hereby certify that I served a copy of the foregoing **ANSWER AND AFFIRMATIVE**
3 **DEFENSES** on:

4 Edwin C. Perry
5 Tonkon Torp LLP
6 888 SW Fifth Avenue, Suite 1600
7 Portland, OR 97204
8 Telephone: (503) 802-2026
9 Facsimile: (503) 972-3726
10 Email: ned.perry@tonkon.com

11 Of Attorneys for Plaintiff

12 by mailing a copy thereof in a sealed, first-class postage prepaid envelope,
13 addressed to said attorney's last-known address and deposited in the U.S. mail at Portland,
14 Oregon on the date set forth below;

15 by faxing a copy thereof to said attorney at his last-known facsimile number on
16 the date set forth below; or

17 by emailing a copy thereof to said attorney at his last-known email address as set
18 forth above.

19 Dated this 21st day of May, 2014.

20 DAVIS WRIGHT TREMAINE LLP

21 By: 

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29 Of Attorneys for Defendant
30 McCormick & Schmick Restaurant Corp.