



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

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ANSWER

WILLIAM K. FLINT et al VS. STRAVA, INC.

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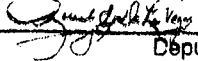
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COUNTY OF SAN FRANCISCO

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

14 WILLIAM K. FLINT I and
KATHLEEN B. FLINT

15 Plaintiffs,

16 v.

17
18 STRAVA, INC.; and DOES 1 through
19 20, inclusive,
Defendant.

Case No. CGC-12-521659

**DEFENDANT STRAVA, INC.'S
ANSWER TO UNVERIFIED
COMPLAINT**

22 Defendant Strava, Inc. ("Strava") answers the unverified Complaint ("Complaint")
23 filed by Plaintiffs William K. Flint I and Kathleen B. Flint ("Plaintiffs"), as follows:

24
25 Pursuant to California Civil Procedure Code § 431.30(d), Strava denies, generally
26 and specifically, each and every allegation set forth in the Complaint.

1 AS AND FOR ITS AFFIRMATIVE DEFENSES TO ALL CAUSES OF ACTION
2 PURPORTED TO BE SET FORTH AGAINST IT IN THE COMPLAINT HEREIN,
3 STRAVA ASSERTS THE FOLLOWING AFFIRMATIVE DEFENSES, WITHOUT
4 UNDERTAKING ANY BURDEN OF PROOF NOT OTHERWISE ASSIGNED TO IT
5 BY LAW:

6
7 **FIRST AFFIRMATIVE DEFENSE**

8 (Failure to State a Cause of Action)

9 1. Said causes of action, and each of them, fail to state facts sufficient to
10 constitute a cause of action.

11
12 **SECOND AFFIRMATIVE DEFENSE**

13 (Failure to State a Cause of Action as to Strava)

14 2. Said causes of action, and each of them, fail to state facts sufficient to
15 constitute a cause of action as against Strava.

16
17 **THIRD AFFIRMATIVE DEFENSE**

18 (Failure to State a Cause of Action for Damages)

19 3. Said causes of action, and each of them, fail to state facts sufficient to
20 constitute a cause of action against Strava for compensatory damages, actual or
21 consequential damages, special or incidental damages, disgorgement or restitution,
22 statutory penalties, interest, or attorneys' fees and costs.

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24 **FOURTH AFFIRMATIVE DEFENSE**

25 (Failure to Join Necessary and Indispensable Parties)

26 4. Plaintiffs may have failed to join the necessary and indispensable parties to
27 this action.

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FIFTH AFFIRMATIVE DEFENSE

(No Respondeat Superior Liability)

5. If Strava's employees or agents, or any of them, committed the acts alleged in the Complaint, although that is not admitted hereby or herein, those acts were committed outside the scope of employment and not by or as agents of Strava, and, thus, Strava is not liable for those acts.

SIXTH AFFIRMATIVE DEFENSE

(Comparative Negligence and Contributory Negligence)

6. Plaintiffs' Complaint is barred by the doctrines of comparative negligence and contributory negligence. If Plaintiffs were entitled to recover for any loss suffered or sustained at the time alleged, although that is not admitted hereby or herein, such damages were, either wholly or in part, negligently caused by either Plaintiffs' decedent or other persons, firms, corporations, or entities other than Strava, for whose conduct Strava is not legally responsible. Consequently, Plaintiffs' recovery from Strava, if any, should be reduced in proportion to the amount of negligence attributable to Plaintiffs' decedent or other persons, including but not limited to Plaintiffs' decedent's violations of Sections 22350 and 21650 of the California Vehicle Code, that directly and proximately contributed to Plaintiffs' alleged loss or damage.

SEVENTH AFFIRMATIVE DEFENSE

(Implied Assumption of Risk)

7. If Plaintiffs suffered or sustained any loss, damage or injury alleged, although that is not admitted hereby or herein, that loss, damage or injury was the direct and proximate result of the risks knowingly assumed by Plaintiffs' decedent.

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EIGHTH AFFIRMATIVE DEFENSE

(Express Assumption of Risk)

8. If Plaintiffs suffered or sustained any loss, damage or injury alleged, although that is not admitted hereby or herein, that loss was proximately caused by Plaintiffs' decedent's express agreement, pursuant to the Terms and Conditions with Strava (the "Terms and Conditions") then in effect, voluntarily to assume the risks of cycling. A true and correct copy of the Terms and Conditions is attached as Exhibit A.

NINTH AFFIRMATIVE DEFENSE

(Intervening or Superseding Events)

9. Plaintiffs' injuries and damages, if any, were caused not by the conduct of Strava as this conduct was not a substantial factor in bringing about Plaintiffs' injuries and damages. Such conduct was superseded by the tortious conduct by one or more third parties, including Plaintiffs' decedent, whose conduct was an independent, intervening, sole and proximate cause of any alleged injuries or damages suffered.

TENTH AFFIRMATIVE DEFENSE

(Lack of Causation)

10. Strava alleges that if Plaintiffs have suffered any loss, damage, or injury, such loss, damage, or injury was not caused, either legally or proximately, by any act or omission of Strava.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

11. The Complaint may be barred, in whole or in part, by the failure to mitigate any alleged damages.

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TWELFTH AFFIRMATIVE DEFENSE

(Equitable Indemnity)

12. Strava alleges that if it is determined to be liable to Plaintiffs, such liability is based on conduct that is passive and secondary to the active and primary wrongful conduct of other parties, including Plaintiffs' decedent, in this action. Strava is therefore entitled to total, equitable indemnity from such other parties.

THIRTEENTH AFFIRMATIVE DEFENSE

(Contractual Indemnity)

13. Pursuant to the contractual indemnity contained in the Terms and Conditions, Strava is entitled to a right of indemnity against all parties and persons whose acts or omissions contributed to the occurrence of the alleged damages.

FOURTEENTH AFFIRMATIVE DEFENSE

(Failure to Exercise Reasonable Care)

14. Strava alleges that any damage caused to Plaintiffs was obvious and foreseeable and could have been avoided by Plaintiffs' decedent's exercise of reasonable care.

FIFTEENTH AFFIRMATIVE DEFENSE

(No Negligent Conduct/Failure to Act)

15. Strava alleges that the damages alleged in the Complaint were not the result of negligent conduct or of a negligent failure to act by Strava and therefore Plaintiffs' claims are barred in whole or in part.

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SIXTEENTH AFFIRMATIVE DEFENSE

(No Duty and/or Breach of that Duty)

16. There is no legal duty or obligation of any kind whether arising from common law, statute, contract, tort, or otherwise owed by Strava to Plaintiffs and/or Plaintiffs' decedent, now or at the time of the events of which the Plaintiffs complain. In the alternative, if any duty was owed, there was no breach of that duty by Strava.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Speculative Damages)

17. Certain of the claims for damages have not accrued, are purely speculative and are uncertain and contingent.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Laches)

18. The Complaint and each claim for relief asserted against Strava is barred by the doctrine of laches.

NINETEENTH AFFIRMATIVE DEFENSE

(Release)

19. Pending further discovery, Plaintiffs' claims, or some of them, are barred in whole or in part because the claims have been released by Plaintiffs' decedent pursuant to the Terms and Conditions.

TWENTIETH AFFIRMATIVE DEFENSE

(Waiver, Discharge and Abandonment)

20. Plaintiffs' claims, or some of them, are barred in whole or in part because the claims have been waived, discharged and/or abandoned.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Estoppel)

21. Plaintiffs' claims, or some of them, are barred in whole or in part because Plaintiffs are estopped by their own conduct and/or the conduct of Plaintiffs' decedent to claim any right to damages or monetary relief from Strava.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Comparative Negligence)

22. Plaintiffs' decedent had special skills with respect to the dangerous conditions alleged by Plaintiffs and, as such, had an extraordinary duty of care with respect to his own negligence.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

23. Strava alleges that all of Plaintiffs' claims for relief are barred in whole or in part by the doctrine of unclean hands.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(First Amendment to the United States Constitution)

24. Plaintiffs' claims are barred in whole or in part because the conduct of which it complains is protected by the First Amendment to the United States Constitution.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Communications Decency Act, 47 U.S.C. § 230)

25. Plaintiffs' claims are barred in whole or in part by the Communications Decency Act, 47 U.S.C. § 230, which creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Additional Affirmative Defenses)

26. Strava is informed and believes and on that basis alleges that it may have additional defenses to it, which are not fully known and of which Strava is not presently aware. Strava reserves the right to raise and assert additional defenses after such defenses have been discovered.

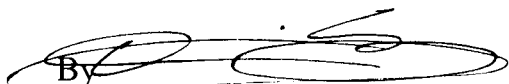
WHEREFORE, Defendant Strava prays for judgment as follows:

- (1) That Plaintiffs' Complaint and each cause of action thereof be dismissed with prejudice;
- (2) That Plaintiff take nothing by Plaintiffs' Complaint;
- (3) That Strava be awarded its costs incurred herein, including attorneys' fees; and
- (4) That the Court order such other and further relief for Strava as the Court may deem just and proper.

Dated: October 1, 2012

Respectfully submitted,

O'MELVENY & MYERS LLP
DARIN SNYDER
SCOTT VOELZ
MEGHANN HISCOCKS



By _____
Darin Snyder
Attorneys for Defendant
Strava, Inc.

EXHIBIT A

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Payments

If you choose to become a member of Strava, you must designate and provide information about your preferred payment method (e.g., credit card, online payment service or any other payment method made available by Strava) ("Payment Method"). You may switch to a different Payment Method or update your information by visiting the "Modify Membership" page under your main account page or by contacting us by email at membership@strava.com. You will immediately be charged for your membership fees after you click "Submit" on the confirmation page and your account will be activated to "Strava Member" status. You agree to pay all membership fees and other charges incurred in connection with your username and password for your Strava account.

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You may elect to pay membership fees on a monthly or annual basis. All membership fees are payable in advance. Membership fees will be billed automatically to the Payment Method at the start of the monthly or annual period, as applicable, and will auto-renew until your membership is terminated. The renewal membership fees will be the same as the initial charges unless you are otherwise notified in advance. You authorize Strava to charge your Payment Method for the appropriate membership charges and fees and for any other purchases you elect to make via the Site. Strava reserves the right to increase membership fees or to institute new fees at any time upon reasonable notice posted in advance on this Site. Members changing from monthly to annual memberships will have the annual rates take effect at the beginning of the next billing date. If you upgrade your membership or add new categories of service to your account, such changes may result in a new billing date effective upon the date you elect such upgrade or addition. ALL PURCHASES ARE FINAL AND NO REFUND WILL BE GIVEN FOR UNUSED PORTIONS

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c/o Strava, Inc.

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Hanover, NH 03755

E-mail: support@strava.com

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Email (support@strava.com)

Blog (<http://blog.strava.com>) **Message Boards**

We strive to respond to support requests within 48 hours after the request is placed.

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PROOF OF SERVICE

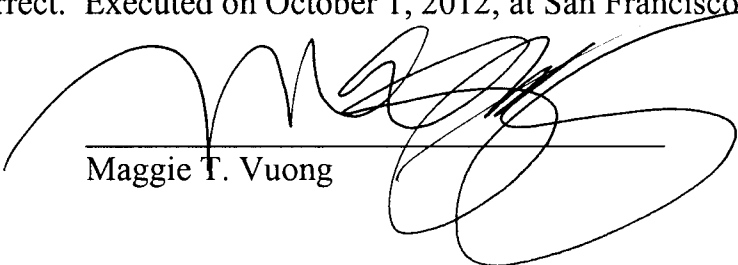
I am a citizen of the United States and employed in the County of San Francisco, State of California, at the law firm of O’Melveny & Myers, located at Two Embarcadero Center, 28th Floor, San Francisco, CA 94111-3823. I am not a party to this action. On October 1, 2012, I served the following document:

DEFENDANT STRAVA, INC.’S ANSWER TO UNVERIFIED COMPLAINT

by placing the document listed above in a sealed envelope with postage thereon fully prepaid in the United States mail at San Francisco, California addressed as set forth below. I am readily familiar with the firm’s practice of collecting and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

Richard W. Meier, Esq.
Susan Y. Kang, Esq.
Law Office of Richard W. Meier
11 Embarcadero West, Suite 133
Oakland, CA 94607

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on October 1, 2012, at San Francisco, California.


Maggie T. Vuong

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