

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

<p>ROBERT C. BURROW, on behalf of himself and others similarly situated,</p> <p style="text-align:right">Plaintiff,</p> <p>v.</p> <p>SYBARIS CLUBS INTERNATIONAL, INC. and RANDALL D. REPKE and CHARLENE FARRELL,</p> <p style="text-align:right">Defendants.</p>	<p>Case No. : 13-cv-02342</p> <p>CLASS ACTION COMPLAINT</p> <p>JURY TRIAL DEMAND</p>
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**DEFENDANTS' ANSWERS AND AFFIRMATIVE DEFENSES  
TO PLAINTIFF'S CLASS ACTION COMPLAINT**

Defendants, Sybaris Clubs International, Inc. and Randall D. Repke and Charlene Farrell, (collectively, "Defendants") submit the following Answer to Plaintiff's Class Action Complaint:

**I. NATURE OF THE ACTION**

1. This class action complains of the undisclosed recording and storage of all phone calls made to and from the reservations desk at a chain of "romantic getaway" motels called Sybaris Pool Suites. Every phone call made to or from the reservations desk at every one of the five Sybaris locations over the last two years has been intercepted, recorded and electronically archived without obtaining consent of either party to the calls. This ongoing conduct blatantly violates federal and state wiretapping laws; injunctive relief and recovery of damages are mandated. Moreover, due to the very sensitive nature of the wiretapped phone calls, punitive damages are necessary.

**ANSWER:** Defendants admit that the complaint purports to allege undisclosed recording and storage of phone calls. Defendants deny the remaining allegations of Paragraph 1.

**II. JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because Count I is brought under the Federal Wiretap Act, 18 U.S.C. § 2111. *et. seq.*, and pursuant to 28 U.S.C. § 1367 because Counts II-V are supplemental to the federal claim.

**ANSWER:** Paragraph 2 consists solely of a legal conclusion to which no response is required.

3. Venue is proper pursuant to 28 U.S.C. § 1391. A substantial part of the events giving rise to Plaintiff's claims occurred in this judicial district. Further, Defendants reside in this judicial district for purposes of § 1391. Also, Defendants have used the laws within, and have done substantial business in, this judicial district in that they promote, market and rent their motel suites in this judicial district. The unlawful conduct complained of herein arose in and emanated from business decisions made in this judicial district. Finally, there is personal jurisdiction over Defendants in this judicial district.

**ANSWER:** Paragraph 3 consists solely of a legal conclusion to which no response is required.

### **III. PARTIES**

4. Plaintiff is a citizen of the State of Illinois. He was employed by Defendants as a reservation-desk employee from March 2004 to May 2007, and from April 2008 to February 2013.

**ANSWER:** Defendants lack information or knowledge sufficient to respond to the first sentence. Defendants admit the second sentence.

5. Sybaris is an Illinois corporation with its principal place of business in Arlington Heights, Illinois. This defendant's registered agent is Thomas A. Korman, 222 North LaSalle Street, Suite 800, Chicago, Illinois 60601. Sybaris operates motels in Northbrook, Illinois; Frankfort, Illinois; Downers Grove, Illinois; Mequon, Wisconsin; and Indianapolis, Indiana. Repke is the president of Sybaris and a citizen of the State of Illinois. Farrell is the operations director of Sybaris and a citizen of the State of Illinois. Repke and Farrell are majority owners of Sybaris.

**ANSWER:** Defendants admit the first two sentences of Paragraph 5. Defendants state that Sybaris operates spa resorts in Glenview, Illinois, Frankfort, Illinois, Downers Grove, Illinois, Mequon, Wisconsin and Indianapolis, Indiana. Defendants admit the remainder of Paragraph 5.

#### IV. FACTUAL ALLEGATIONS

6. Since the early 1980s, Sybaris motel suites have been marketed solely as secluded havens for romantic interludes. Defendants' website currently states that "Sybaris is a romantic paradise to ignite feelings, rekindle romance and enjoy quality time together...It is the ultimate romantic experience." See <http://www.sybaris.com> (last visited March 26, 2013). More specifically, Sybaris suites have no windows or telephones. All suites have whirlpools, and many have private swimming pools with slides and waterfalls, as well as steam rooms and massage chairs. In addition to nightly rentals, each suite can be booked separately for a four-hour period in the afternoon. Notably, Defendants' website states that "you do not have to be married to enjoy a getaway at the Sybaris." See <http://www.sybaris.com/faq.php> (last visited March 26, 2013).

**ANSWER:** Defendants deny the characterization of Sybaris in the first sentence of paragraph 6. Defendants admit that Sybaris operates spa resorts marketed as destinations for romantic getaways since the 1970s. Defendants further state that several of its rooms have telephones, but those phone lines are never recorded. Defendants admit the remainder of Paragraph 6.

7. At each of the five Sybaris locations, employees such as Plaintiff operate the reservations desk by fielding incoming phone calls and checking in new guests. These employees report to the general manager of their Sybaris location.

**ANSWER:** Defendants admit Paragraph 7.

8. Each of the five Sybaris locations has a general manager.

**ANSWER:** Defendants admit Paragraph 8.

9. The general manager's report to officers at Sybaris' corporate headquarters, including Repke and Farrell.

**ANSWER:** Defendants admit Paragraph 9.

10. In 2011, Defendants installed a new digital telephone system at corporate headquarters and all five motel properties. All incoming calls to the five Sybaris locations are routed through a central processor. The new phone system, a ShoreTel Sky system, was intentionally configured by Defendants to automatically record every phone call that comes in to or out of the reservation desk at every Sybaris location. The system was also configured to allow Sybaris management or other employees to eavesdrop "live" on customer and/or employee phone conversations, and also had a "whisper mode" feature which allowed management to speak with an employee during a customer conversation without the customer hearing management. Recordings of the calls are archived on computer servers and can be accessed and downloaded by Defendants and other individuals remotely via a web interface. The manufacturer of

Defendant's ShoreTel Sky phone system offers an add-on service called RePlay Hosted Call Recording, which can be configured to automatically record all calls and save the recordings for access and downloading via a web interface. ShoreTel Sky warns its customers on its website that they are responsible for following applicable state and federal laws regarding recording of phone calls. See <http://www.shoretelsky.com/products/add-on-services/hosted-call-recording> (last visited March 26, 2013).

**ANSWER:** Defendants deny Paragraph 10.

11. Participants in the Sybaris phone calls are never informed that their conversations are being recorded. Sybaris customers are not informed their calls are recorded. Sybaris employees, other than general managers, were not informed by Defendants that their phone calls were being recorded.

**ANSWER:** Defendants deny Paragraph 11.

12. Plaintiff received both personal and work-related phone calls while working at the reservation desk at Sybaris' Downers Grove location. For a period of at least one month after the new phone system was installed in 2011, Plaintiff had conversations on the phone that were recorded without his knowledge or consent. Defendants never informed reception-desk employees such as Plaintiff that the new system was recording all phone calls. Rather, some employees — to the extent they ever found out — eventually learned of the across-the-board eavesdropping through casual conversations with general managers or workplace gossip. No formal notice was ever made by Company officers or owners to its employees that all phone calls were being eavesdropped and recorded.

**ANSWER:** Defendants lack information or knowledge to respond to the first sentence of Paragraph 12. Defendants deny the remainder of Paragraph 12.

13. It is technologically feasible for Defendants to configure their phone system to alert callers that they are being recorded. Indeed, many businesses warn customers that their phone calls may be recorded for quality control purposes. Defendants have never configured their phone system to include such a warning.

**ANSWER:** Defendants deny Paragraph 13.

14. Defendants disclose the contents of the intercepted communications by allowing certain employees, including general managers, to access and download these recordings through company computers.

**ANSWER:** Defendants admit that management employees have limited access to recordings made by the telephone system, but deny that the contents of the communications are generally available to employees or disclosed to employees. General managers may access

recordings of telephone calls made to their location, and general managers may review them with the employees who participated in the calls. Additionally, a management employee whose job is to grade telephone calls may review the recordings.

15. While the recordings are often accessed directly through the phone system's web interface, Defendants and Sybaris general managers also download individual recording files and email the files amongst themselves using the company's Google Mail system.

**ANSWER:** Defendants deny Paragraph 15. Further answering, Defendants state that general managers access and email recording to the management employee at the central office responsible for completing phone grades.

16. The recordings are ostensibly intended to be used for employee training and quality control purposes. For example, reservationists are "graded" weekly on their customer phone skills. Supervisors review taped phone calls to complete these weekly evaluations.

**ANSWER:** Defendants deny that recordings are "ostensibly" used for employee training and quality control purposes. Defendants state that the recordings are used solely for employee training and quality control purposes. Defendants admit the remainder of Paragraph 16.

17. Recordings are also used for training new employees, i.e., to show good and bad examples of customer interaction.

**ANSWER:** Defendants deny that that they used recordings of bad examples of customer interaction but admit the remainder of Paragraph 17. Defendants further state that employees were only allowed to listen to telephone calls in which they personally participated.

18. But sometimes employees were able to listen to certain recordings for their own amusement.

**ANSWER:** Defendants deny Paragraph 18.

19. In the late spring or early summer of 2012, Defendants issued a memorandum to their general managers stating that "going forward," only general managers would be allowed to listen to the recorded phone calls.

**ANSWER:** Defendants admit that Sybaris issued a memorandum to its general managers in June, 2012, at the completion of the installation of the telephone system, concerning the use of telephone recordings. Defendants deny that the memorandum referred to the policy “going forward” which suggests a change in procedure.

20. After recordings of phone calls are disclosed for training, quality control, entertainment or other purposes, they are not destroyed or deleted. Indeed, there is no indication Defendants have deleted any of the phone calls recorded by the new phone system installed in 2011. Nor is there any indication that the Company deletes the recorded calls that are circulated via e-mail.

**ANSWER:** Defendants deny Paragraph 20.

21. Defendants continue to intercept, record and archive all phone calls made to and from the five Sybaris locations.

**ANSWER:** Defendants deny paragraph 21.

22. The recordings continue to be disclosed to general managers and other individuals, and circulated via e-mail.

**ANSWER:** Defendants deny paragraph 22. Further answering, Defendants state that recordings were accessed by and the management employee responsible for completing phone grades and general managers, but only for phone calls to their locations. Recordings were disclosed only to employees who participated in the calls.

## **V. CLASS ACTION ALLEGATIONS**

23. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23 on behalf of the following class:

All persons in the United States whose oral communications were intercepted by Defendants.

Excluded from the class are Defendants; their officers and directors; any entity in which Defendants have a controlling interest; the affiliates, legal representatives, attorneys, heirs, and assigns of Defendants; any federal, state or local government entity; and any judge, justice or judicial officer presiding over this matter and the members of their immediate families and judicial staffs.

**ANSWER:** Defendants admit that Plaintiff purports to allege a class action.

Defendants deny that this action satisfies the requirements for class certification.

24. **Numerosity.** Upon information and belief, there are tens of thousands of class members. The Sybaris website states that more than 50,000 couples visit its 120 suites every year. Each suite may be rented separately in the afternoon and the evening. Accordingly, the members of the class are so numerous that their individual joinder would be impracticable.

**ANSWER:** Paragraph 24 consists solely of a legal conclusion to which no response is required. Defendants further deny that Plaintiff is an appropriate class representative or that class certification is appropriate in this case.

25. **Commonality.** There are numerous questions of law and fact that are common to the Plaintiff and all members of the class, including, but not limited to the following:

- a) whether Defendants intercepted Plaintiff's and class members' communications;
- b) whether Defendants disclosed and used Plaintiff's and class members' intercepted communications;
- c) whether Defendants violated the applicable state and federal wiretap laws;
- d) whether Plaintiff and class members have suffered damages;
- e) whether Plaintiff and class members are entitled to statutory damages;
- f) whether Plaintiff and class members are entitled to punitive damages;
- g) whether Plaintiff and class members are entitled to injunctive relief;
- h) whether Plaintiff and class members are entitled to equitable relief.

**ANSWER:** Paragraph 25 consists solely of a legal conclusion to which no response is required. Defendants further deny that class certification is appropriate in this case.

26. **Typicality.** Plaintiff is a member of the class and has claims that are typical of all members of the class. Plaintiff's claims and all of the class members' claims arise out of the same uniform course of conduct by Defendant and may be remedied under the same legal theories.

**ANSWER:** Paragraph 26 consists solely of a legal conclusion to which no response is required. Defendants further deny that Plaintiff is an appropriate class representative or that class certification is appropriate in this case.

27. **Adequacy.** Plaintiff will fairly and adequately represent the interests of the members of the class. Plaintiff has no conflicts of interest with or interests that are any different from those of the other class members. Plaintiff has retained competent counsel experienced in class action and other complex litigation.

**ANSWER:** Paragraph 27 consists solely of a legal conclusion to which no response is required. Defendants further deny that Plaintiff is an appropriate class representative or that class certification is appropriate in this case.

28. **Predominance.** Common questions of law and fact predominate over questions affecting only individual class members, and the court, as well as the parties, will spend the vast majority of their time working to resolve these common issues.

**ANSWER:** Paragraph 28 consists solely of a legal conclusion to which no response is required. Defendants further deny that class certification is appropriate in this case.

29. **Superiority.** A class action is superior to all other feasible alternatives for the resolution of this matter. Individual litigation of multiple cases would be highly inefficient, a gross waste of the resources of the court and of the parties, and potentially could lead to inconsistent results that would be contrary to the interests of justice.

**ANSWER:** Paragraph 29 consists solely of a legal conclusion to which no response is required. Defendants further deny that class certification is appropriate in this case.

30. **Manageability.** This case is well suited for treatment as a class action and can easily be managed as a class action because evidence of both liability and damages can be adduced, and proof of liability and damages can be presented, on a class-wide basis, while the allocation and distribution of damages to class members would be essentially a ministerial function.

**ANSWER:** Paragraph 30 consists solely of a legal conclusion to which no response is required. Defendants further deny that class certification is appropriate in this case.



31. Although some class members may not want to be contacted directly regarding this action, many Sybaris customers have already consented to receive mailings and newsletters at their home addresses. These class members may be directly issued notice of this action using Defendants' records. Other class members, including those who have informed Defendants they do not wish to receive Sybaris mailings at their homes, may be notified via publication.

**ANSWER:** Defendants deny the allegations of Paragraph 31.

32. Defendants have acted on grounds generally applicable to Plaintiff and class members by uniformly intercepting and disclosing their oral communications in violation of federal and state law. Accordingly, injunctive relief, as well as legal and/or equitable monetary relief (such as disgorgement and/or restitution), along with corresponding declaratory relief and punitive damages are appropriate with respect to the class as a whole.

**ANSWER:** Defendants deny Paragraph 32.

## **VI. CAUSES OF ACTION**

### **COUNT I** **Federal Wiretap Act** **18 U.S.C. § 2511, 2520**

33. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate their answer to the previous paragraphs as if fully set forth herein.

34. The Federal Wiretap Act imposes liability on anyone who "intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication." 18 U.S.C. § 2511(a). The Act defines "intercept" to mean "the aural or other acquisition of the contents of any wire, electronic, or oral communications through the use of any electronic, mechanical, or other device." *Id.* at § 2510(4). "[A]ny person whose wire, oral, or electronic communication is intercepted, disclosed, or intentionally used" has a private right of action to recover from the person or entity that engaged in the interception any relief that may be appropriate — including preliminary, equitable and declaratory relief; actual, statutory and punitive damages; and reasonable attorneys' fees and costs. *Id.* at § 2520.

**ANSWER:** Paragraph 34 consists solely of a legal conclusion to which no response is required.

35. Defendants intentionally intercepted Plaintiff's oral communications through the use of an electronic device.

**ANSWER:** Defendants deny Paragraph 35.

36. Defendants disclosed and intentionally used Plaintiff's intercepted communications.

**ANSWER:** Defendants deny Paragraph 36.

37. Plaintiff did not consent to his phone conversations being intercepted, nor did the other parties to Plaintiff's conversations.

**ANSWER:** Defendants deny Paragraph 37.

38. As a result of Defendants' unlawful conduct, Plaintiff and members of the class have been damaged.

**ANSWER:** Defendants deny Paragraph 38.

**COUNT II**  
**Illinois Eavesdropping Statute**  
**720 ILCS 5/14-1 et. seq.**

39. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate their answer to the previous paragraphs as if fully set forth herein.

40. Under the Illinois Eavesdropping Statute, a person commits eavesdropping when he "[k]nowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation" without the consent of all parties to the conversation. 720 ILCS 5/14-2(a). The statute defines a conversation as "any oral communication between 2 or more persons regardless of whether one or more of the parties intended their communications to be of a private nature under circumstances justifying that expectation." *Id.* at 5/14-1(d). The statute defines an eavesdropping device as "any device capable of being used to hear or record oral conversation...whether such conversation...is conducted in person, by telephone, or by other means." *Id.* at 5/14-1(a). "[A]ny or all parties to any conversations upon which eavesdropping is practiced...shall be entitled to" civil remedies including injunction, actual damages and punitive damages. *Id.* at 5/14-6(a)-(c).

**ANSWER:** Paragraph 40 consists solely of a legal conclusion to which no response is required.

41. Defendants knowingly and intentionally used an eavesdropping device to record Plaintiff's oral conversations without the consent of all parties to the conversation.

**ANSWER:** Defendants deny Paragraph 41.

42. As a result of Defendants' unlawful conduct, Plaintiff and members of the class have been damaged.

**ANSWER:** Defendants deny Paragraph 42.

**COUNT III**  
**Indiana Wiretap Act**  
**IN ST 35-33.5-5-4**

43. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate their answer to the previous paragraphs as if fully set forth herein.

44. Under the Indiana Wiretap Act, "[a] person whose communications are intercepted, disclosed or used in violation" of the Act has a civil cause of action for actual damages or statutory damages; punitive damages; court costs and reasonable attorneys' fees. IN ST 35-33.5-5-4. "Interception" for purposes of the Act "means the intentional recording or acquisition of the contents of an electronic communication by a person other than a sender or receiver of that communication, without the consent of the sender or receiver, by means of any instrument, device, or equipment..." IN ST 35-31.5-2-176. "Electronic Communication" for purposes of the Act "means any transfer of signs, signals, writing, images, sounds, data, oral communication, digital information, or intelligence of any nature transmitted in whole or in part by a wire..." *Id.* at 2-110.

**ANSWER:** Paragraph 44 consists solely of a legal conclusion to which no response is required.

45. Defendants intentionally intercepted Plaintiff's electronic communication without the consent of either the sender or receiver of that communication.

**ANSWER:** Defendants deny Paragraph 45.

46. As a result of Defendants' unlawful conduct, Plaintiff and members of the class have been damaged.

**ANSWER:** Defendants deny Paragraph 46.

**COUNT IV**  
**Wisconsin Wiretap Act**  
**Wis. Stat. Ann. § 968.31**

47. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate their answer to the previous paragraphs as if fully set forth herein.

48. The Wisconsin Wiretap Act imposes liability on anyone who "[i]ntentionally intercepts...any wire, electronic or oral communication," intentionally uses any electronic, mechanical or other device to intercept oral communication, and intentionally discloses or uses intercepted oral communications. Wis. Stat. Ann. § 968.31(a)-(d). The Act defines "intercept" to mean "aural or other acquisition of the contents of any wire, electronic or oral communication through the use of any electronic, mechanical or other device." Wis. Stat. Ann. § 968.27. "Any person whose wire, electronic or oral communication is intercepted [or] disclosed...shall have a civil cause of action against any person who intercepts, discloses or uses...the communication" and shall be entitled to recover actual damages, statutory damages, punitive damages, costs and reasonable attorneys' fees. Wis. Stat. Ann. § 968.31(2m).

**ANSWER:** Paragraph 48 consists solely of a legal conclusion to which no response is required.

49. Defendants intentionally intercepted Plaintiff's oral communications through the use of an electronic device.

**ANSWER:** Defendants deny Paragraph 49.

50. Defendants disclosed and intentionally used Plaintiff's intercepted communications.

**ANSWER:** Defendants deny Paragraph 50.

51. Plaintiff did not consent to his phone conversations being intercepted, nor did the other parties to Plaintiff's conversations.

**ANSWER:** Defendants deny Paragraph 51.

52. As a result of Defendants' unlawful conduct, Plaintiff and members of the class have been damaged.

**ANSWER:** Defendants deny Paragraph 52.

**COUNT V**  
**Invasion of Right of Seclusion**

53. Plaintiff incorporates the allegations in the previous paragraphs of this Complaint as if fully set forth herein.

**ANSWER:** Defendants incorporate their answer to the previous paragraphs as if fully set forth herein.

54. The interception and disclosure of Plaintiff's oral communications without his consent constituted an unauthorized invasion or prying upon Plaintiff's seclusion.

**ANSWER:** Paragraph 54 consists solely of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 54.

55. This intrusion is offensive or objectionable to a reasonable person.

**ANSWER:** Paragraph 55 consists solely of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 55.

56. The matter upon which the intrusion occurred is private.

**ANSWER:** Paragraph 56 consists solely of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 56.

57. The intrusion caused anguish and suffering.

**ANSWER:** Paragraph 57 consists solely of a legal conclusion to which no response is required. To the extent a response is required, Defendants deny Paragraph 57.

**VII. JURY DEMAND**

58. Plaintiff and members of the class request a jury trial.

**ANSWER:** Paragraph 58 consists solely of a legal conclusion to which no response is required.

### VIII. PRAYER FOR RELIEF

59. Plaintiff, on behalf of himself and members of the class, respectfully requests that this Court:

- a) Certify the class as requested herein, appoint Plaintiff as Class Representative and his selection of counsel as Class Counsel, and order class-wide relief;
- b) Adjudge and decree that Defendants have engaged in the conduct alleged herein;
- c) Enjoin and restrain Defendants and its officers and agents from continuing or engaging in similar conduct as alleged herein;
- d) Order that Defendants destroy all copies of recordings of intercepted oral communications made by the unlawful conduct alleged herein;
- e) Order that Defendants take down their website that contains and/or allows access to the recordings of intercepted oral communications, and destroy the data contained therein made by the unlawful conduct alleged herein;
- f) Order that Defendants pay restitution to Plaintiff and the class which would restore Plaintiff and the class to the financial position they would have been in absent Defendant's unlawful conduct;
- g) Order that Defendants pay all statutory damages as a result of their unlawful conduct;
- h) Order that Defendants pay all compensatory damages as a result of their unlawful conduct;
- i) Order that Defendants pay punitive damages as a result of their unlawful conduct;
- j) Order that Defendants pay interest on the monies wrongfully obtained from the date of collection through the date of entry of judgment in this action;
- k) Order Defendants to identify victims of its unlawful conduct;
- l) Order that Defendants are financially responsible for notifying all
- m) members of the class of the unlawful conduct set forth herein;

- n) Award attorneys' fees, expenses, and recoverable costs reasonably incurred in connection with the commencement and prosecution of this action; and
- o) Grant all other such relief as the Court deems necessary and proper.

**ANSWER:** Paragraph 59 consists solely of a prayer for relief to which no response is required.

WHEREFORE, Defendants respectfully requests that this Court deny Plaintiff's request for class certification, dismiss the Complaint with prejudice and grant such other and further relief as the Court deems just and proper.

#### **AFFIRMATIVE DEFENSES**

Without assuming any burden that it would not otherwise bear, and reserving its right to assert additional defenses including after obtaining discovery, Defendants assert the following affirmative defenses to the Complaint:

1. The ShoreTel phone system is not a device within the meaning of 18 UCS 2510(5)(a)(1), and the recordings were made in the ordinary course of Sybaris' business. Therefore, the recordings are exempt from the Wiretap Act under the "business extension exemption."
2. Plaintiff, and other employees of Sybaris, consented to the recordings. All of the employees had actual knowledge of the recordings and voluntarily participated in the recordings.
3. Plaintiff's claims may be barred by the applicable statute of limitations. Depending on which state's law applies, the claim should be dismissed if the applicable statute of limitation bars a putative class member's claim.

4. Plaintiff had prior knowledge of recordings and even participated in listening to recordings. Plaintiff's claims are barred by laches, waiver, estoppel and other equitable defenses.

5. Plaintiff lacks standing to assert claims on behalf of customers and on behalf of other employees who reside outside of Illinois. Plaintiff further lacks standing because he did not suffer any injury-in-fact.

6. Any recovery of actual damages must be reduced to the extent that Plaintiff or other members of the putative class failed to mitigate, minimize or otherwise avoid their claimed damages.

7. Any recording was undertaken by and on behalf of Sybaris. Defendants Farrell and Repke did not actively participate in any recording of any telephone call, and at all relevant time, acted solely on behalf of the corporation, and not in their individual capacities.

Respectfully submitted,

**SYBARIS CLUBS INTERNATIONAL, INC.  
and RANDALL D. REPKE and CHARLENE  
FARRELL**

By: /s/ Ellen M. Chapelle  
One of their attorneys

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**CERTIFICATE OF SERVICE**

I, Ellen M. Chapelle, an attorney, hereby certify that on this 2<sup>nd</sup> day of December, 2013, I filed the foregoing **DEFENDANTS' ANSWERS AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S CLASS ACTION COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send as notification of such filing to all counsel of record.

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/s/ Ellen M. Chapelle  
Ellen M. Chapelle