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**IN THE THIRD JUDICIAL DISTRICT COURT OF UTAH, IN AND FOR
THE COUNTY OF SUMMIT**

LEO MAK, as an individual and personal representative
for MEGAN MAK, a minor

Plaintiff,

v.

VAIL RESORTS, INC.

Defendant.

:
: **DEFENDANT VAIL**
: **RESORTS, INC.'S ANSWER**
: **TO THE COMPLAINT**
:
: Civil No. 240500046
:
: Judge: Mrazik
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Defendant Vail Resorts, Inc.¹ ("VRI" or "Defendant"), by and through its counsel of record, Adam Strachan, of Strachan Strachan & Simon, P.C., hereby answers Plaintiffs' Complaint and alleges as follows:

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint should be dismissed with prejudice for failure to state a claim upon which relief can be granted.

¹ Vail Resorts, Inc. is not, as Plaintiffs allege, the owner or operator of Park City Mountain. VR CPC Holdings, Inc. d/b/a Park City Mountain is the proper entity.

SECOND AFFIRMATIVE DEFENSE

With respect to the specific allegations of Plaintiffs' Complaint, Defendant hereby admits, denies or otherwise states as follows:

1. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

2. Defendant admits the allegations contained in this paragraph of Plaintiffs' Complaint.

3. Defendant admits the allegations contained in this paragraph of Plaintiffs' Complaint.

4. The allegation contained in this paragraph of Plaintiffs' Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies such allegation.

5. The allegation contained in this paragraph of Plaintiffs' Complaint is a legal conclusion to which no response is required. To the extent a response is required, Defendant denies such allegation.

6. Defendant denies this is a Tier III case.

7. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint. VR CPC Holdings Inc., d/b/a Park City Mountain is the owner and operator of Park City Mountain.

8. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

9. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

10. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

11. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

12. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

13. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

14. This paragraph of Plaintiff's Complaint contains no allegations against Defendant.

15. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

16. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

17. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

18. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

19. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

20. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

21. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

22. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

23. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

24. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

25. Defendant is without sufficient knowledge or information at this time to form a belief or opinion as to the truth of the matters asserted in this paragraph of Plaintiffs' Complaint and therefore denies the same.

26. Defendant incorporates by reference its answers to all preceding paragraphs of Plaintiffs' Complaint, and all Affirmative Defenses, as if fully set forth herein.

27. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

28. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint, including all subparts thereto.

29. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

30. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

31. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

32. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

33. Defendant denies the allegations contained in this paragraph of Plaintiffs' Complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred due to express and implied waiver, release and agreement to indemnify, defend and hold Defendant harmless for all claimed damages.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred pursuant to the primary and/or secondary assumption of risk doctrines.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by Utah's Inherent Risk of Skiing statute, Utah Code Ann. § 78B-4-401 *et seq.*

SIXTH AFFIRMATIVE DEFENSE

Defendant alleges that any fault of Defendant, which fault is expressly denied, must be offset by the fault of Plaintiffs and/or the fault of any third party and/or the fault of any co-defendant, and any damages Plaintiffs are permitted to recover must be reduced by the percentage of fault attributable to Plaintiffs and/or the fault attributable to any third party and/or co-defendant.

SEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that to the extent any duty existed, Defendant did not breach any duty to Plaintiffs and, thus, Plaintiffs' claims are barred.

EIGHTH AFFIRMATIVE DEFENSE

Defendant alleges that any negligence of Defendant, which negligence is expressly denied, was not the proximate cause of the injuries allegedly sustained by Plaintiffs and, therefore, Plaintiffs' claims are barred.

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NINTH AFFIRMATIVE DEFENSE

Defendant is not and was not liable, negligent, or reckless because Defendant exercised reasonable care at all times relevant to this action.

TENTH AFFIRMATIVE DEFENSE

Even assuming Defendant did not exercise reasonable care, which Defendant expressly denies, reasonable care would not have eliminated or alleviated the risks relevant to this litigation and, thus, Defendant cannot be held liable.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant alleges that Plaintiffs were negligent, that Plaintiffs' own negligence was at least 50% responsible for Plaintiffs' alleged injuries and damages, and recovery is thus barred.

TWELFTH AFFIRMATIVE DEFENSE

Defendant is not liable to Plaintiffs to the extent the danger, if any, was a known and obvious danger and Defendant could not anticipate such harm in light of the fact the danger, if any, was known and obvious.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the economic waiver or estoppel or the doctrine of unclean hands.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred for failure to join necessary or indispensable parties.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred for failure to mitigate damages, if any.

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SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Defendant are barred or should be reduced to the extent that: (1) Defendant was not the proximate cause of any damages claimed by Plaintiffs; (2) there were intervening or superseding causes; or (3) the damages were not foreseeable.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the doctrine of laches and/or failure of diligent pursuit of claim.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages should be barred to the extent that they are the result of intervening and/or superseding causes or are the result of unforeseeable causes for which Defendant cannot be held liable.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' damages should be barred or reduced to the extent that Plaintiffs' injuries or damages, if any, were caused by a preexisting and/or unrelated medical, metabolic, genetic and/or environmental conditions, diseases or illnesses for which Defendant are not responsible.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims should be dismissed for abuse of process, frivolous and/or vexatious litigation and/or other sanctionable conduct that may occur.

TWENTYFIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims should be dismissed for spoliation of evidence.

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TWENTYSECOND AFFIRMATIVE DEFENSE

To the extent that the Plaintiffs expressly and impliedly waived, released and indemnified Defendant, and/or otherwise relinquished their claims against Defendant, Plaintiffs' claims should be reduced.

TWENTYTHIRD AFFIRMATIVE DEFENSE

Defendant may assert other affirmative defenses that may develop during the course of discovery, pre-trial investigation, and/or during or after trial.

WHEREFORE, Defendant prays that Plaintiffs' claims be dismissed with prejudice, and that Defendant be awarded its costs incurred in the defense of this action. Defendant gives notice of its intent to pursue attorneys' fees pursuant to contract, agreement, and to Utah Code Ann. §78B-5-825. Defendant gives notice of its intent to apportion fault to Plaintiffs and any currently named or unnamed party to this action who may be responsible, in part or in whole, for Plaintiffs' alleged injuries and/or damages.

DATED this 27th day of February, 2024.

STRACHAN STRACHAN & SIMON

Adam Strachan
Adam Strachan
Attorney for Vail Resorts, Inc.

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: **TO THE COMPLAINT**
: (CERTIFICATE OF SERVICE)
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: Civil No. 240500046
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I hereby certify that a true and correct copy of the foregoing **DEFENDANT VAIL RESORTS, INC.'S ANSWER TO THE COMPLAINT** was served via email and/or the Greenfiling system on this 27th day of February 2024.

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