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THE HONORABLE LINDA LAU

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

In re:

EXPEDIA HOTEL TAXES AND FEES  
LITIGATION

This Document Relates to: ALL  
ACTIONS

CONSOLIDATED CIVIL ACTION

Master No. 05-2-02060-1 SEA

EXPEDIA, INC.'S ANSWER TO FOURTH  
CONSOLIDATED AMENDED CLASS  
ACTION COMPLAINT

Defendant EXPEDIA, INC. ("Expedia") answers the Fourth Consolidated Amended Class Action Complaint ("Complaint") filed by Jose Alba and Michelle Huggins ("Plaintiffs"), by and through their attorneys on behalf of themselves and all others similarly situated.

**I. NATURE OF ACTION**

1. Expedia admits the allegations contained in Paragraph 1.
2. Expedia denies the allegations contained in Paragraph 2.
3. Expedia admits that when pre-paid hotel reservations are made through Expedia, Expedia charges "tax recovery charges." Expedia also admits that "tax recovery

EXPEDIA, INC.'S ANSWER TO FOURTH  
CONSOLIDATED AMENDED CLASS  
ACTION COMPLAINT – 1

34163-0072/LEGAL13186431.1

**Perkins Coie LLP**  
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2 charges” are described in at least one area of the Expedia website as “a recovery of all  
3 applicable transaction taxes (e.g., sales and use, occupancy, room tax, excise tax, value  
4 added tax, etc.) that Expedia Travel pays to the vendors (e.g. hotels, car suppliers, etc.) in  
5 connection with your travel arrangements.” Expedia denies the remaining allegations  
6 contained in Paragraph 3.  
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11 4. Expedia admits that when a consumer pays for a hotel room reservation  
12 through Expedia, the consumer is charged a combined amount for tax recovery charges and  
13 service fees. Expedia denies the remaining allegations contained in Paragraph 4.  
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17 5. Expedia denies the allegations contained in Paragraph 5.  
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19 6. Expedia denies the allegations contained in Paragraph 6.  
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21 7. Expedia denies the allegations contained in Paragraph 7.  
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23 8. Expedia denies the allegations contained in Paragraph 8.  
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25 9. Expedia denies the allegations contained in Paragraph 9.  
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27 10. Expedia denies the allegations contained in Paragraph 10.  
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29 11. Expedia admits that when a consumer pays for a hotel room reservation  
30 through Expedia, the consumer is charged a combined amount for tax recovery charges and  
31 service fees. Expedia denies the remaining allegations contained in Paragraph 11.  
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35 12. Expedia denies the allegations contained in Paragraph 12.  
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37 13. Expedia denies the allegations contained in Paragraph 13.  
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39 14. Expedia denies the allegations contained in Paragraph 14.  
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41 15. Expedia admits that it has made certain disclosures on its website, which  
42 speak for themselves. Expedia otherwise denies the allegations contained in Paragraph 15.  
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45 16. Expedia denies the allegations contained in Paragraph 16.  
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## II. PARTIES

17. Expedia admits that Plaintiff Alba reserved and paid for a travel package that included a hotel room reservation through Expedia, although he did not identify himself as the traveler. Expedia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 regarding Plaintiff Alba's residency and therefore denies the same. Expedia denies the remaining allegations contained in Paragraph 17.

18. Expedia admits that Plaintiff Huggins reserved and paid for one or more hotel rooms through Expedia. Expedia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 regarding Plaintiff Huggins' residency and therefore denies the same. Expedia denies the remaining allegations contained in Paragraph 18.

19. Expedia admits the allegations contained in Paragraph 19.

## III. JURISDICTION AND VENUE

20. Expedia denies that it has engaged in any wrongful conduct or that any alleged wrongful conduct emanated from or occurred or took place in the State of Washington. Expedia admits that its principal place of business is in Bellevue, Washington and that it transacts substantial business in the State of Washington. Expedia neither admits nor denies the remaining allegations contained in Paragraph 20, as they call for a legal conclusion to which no response is required.

21. Expedia is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 and therefore denies the same.

## IV. SUBSTANTIVE ALLEGATIONS

22. Expedia admits the allegations contained in Paragraph 22.

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2 23. Expedia admits that it enters into agreements with hotels in order to offer to  
3 consumers the ability to facilitate reservations through Expedia. Expedia also admits that  
4 consumers can use Expedia's services either on the website or through customer service  
5 telephone representatives. Expedia also admits that it began offering prepaid hotel  
6 reservations in mid 2000. Expedia denies the remaining allegations contained in  
7  
8 Paragraph 23.  
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13 24. Expedia admits that customers using Expedia's on-line service are given a  
14 price quote for a reservation in a particular hotel in a particular city or town and are notified  
15 that there are additional charges for tax recovery charges and service fees. Expedia admits  
16 that it displays to consumers as one lump sum the tax recovery charges and service fees that  
17 the consumer will be charged and the amounts of tax recovery charges and service fees are  
18 not broken out from one another. Expedia denies the remaining allegations contained in  
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20 Paragraph 24.  
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27 25. Expedia admits that it displays to consumers as one lump sum the tax  
28 recovery charges and service fees that the consumer will be charged and the amounts of tax  
29 recovery charges and service fees are not broken out from one another. Expedia denies the  
30 remaining allegations contained in Paragraph 25.  
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35 26. Expedia denies the allegations contained in Paragraph 26.  
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37 27. Expedia denies the allegations contained in Paragraph 27.  
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39 28. Expedia denies the allegations contained in Paragraph 28.  
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41 29. Expedia admits that it requires customers to create an account in order to  
42 make reservations through Expedia, that customers provide email addresses as part of that  
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1 process, and that reservations are subject to the terms and conditions or terms of use.

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4 Expedia denies the remaining allegations contained in Paragraph 29.

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6 30. Expedia admits that customers who provide Expedia with an email address  
7 are sent a confirmation by email after a transaction is complete that incorporates Expedia's  
8 terms and conditions or terms of use. Expedia denies the remaining allegations contained in  
9  
10 Paragraph 30.

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13 31. Expedia admits the allegations contained in Paragraph 31.

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15 32. Expedia admits the allegations contained in Paragraph 32.

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17 33. Expedia admits the allegations contained in Paragraph 33.

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20 **V. CLASS ALLEGATIONS**

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22 34. Expedia neither admits nor denies the allegations contained in Paragraph 34,  
23 as they are only descriptions of Plaintiffs' litigation conduct to which no response is  
24 required or as to which Expedia is without knowledge or information sufficient to form a  
25 belief as to the allegations' truth and which Expedia therefore denies.

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29 35. Expedia admits that there are thousands of members of the proposed class as  
30 the class is described in Paragraph 35. Expedia denies the remaining allegations contained  
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32 in Paragraph 35.

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35 36. Expedia denies the allegations contained in Paragraph 36.

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37 37. Expedia denies the allegations contained in Paragraph 37, and each of its  
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39 subparagraphs.

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41 38. Expedia denies the allegations contained in Paragraph 38.

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43 39. Expedia denies the allegations contained in Paragraph 39.

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45 40. Expedia denies the allegations contained in Paragraph 40.

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2 41. Expedia denies the allegations contained in Paragraph 41.

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4 42. Expedia denies the allegations contained in Paragraph 42.

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6 43. Expedia denies the allegations contained in Paragraph 43.

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8 **VI. COUNT I**

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10 **VIOLATIONS OF THE WASHINGTON CONSUMER PROTECTION ACT**

11 44. Expedia repeats and realleges each of its responses to each allegation set  
12 forth in Paragraphs 1 through 43 as if fully set forth at length herein.

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14 45. Expedia neither admits nor denies the allegations contained in Paragraph 45,  
15 as they are only descriptions of Plaintiffs' litigation conduct to which no response is  
16 required or as to which Expedia is without knowledge or information sufficient to form a  
17 belief as to the allegations' truth and which Expedia therefore denies.

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19 46. Expedia neither admits nor denies the allegations contained in Paragraph 46,  
20 as they call for a legal conclusion to which no response is required.

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22 47. Expedia admits the allegations contained in Paragraph 47.

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24 48. Expedia denies the allegations contained in Paragraph 48.

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26 49. Expedia denies the allegations contained in Paragraph 49.

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28 50. Expedia denies the allegations contained in Paragraph 50.

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30 51. Expedia denies the allegations contained in Paragraph 51.

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32 52. Expedia denies the allegations contained in Paragraph 52.

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34 **VII. COUNT II**

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36 **BREACH OF CONTRACT**

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38 53. Expedia repeats and realleges each of its responses to each allegation set  
39 forth in Paragraphs 1 through 52 as if fully set forth at length herein.

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2 54. Expedia neither admits nor denies the allegations contained in Paragraph 54,  
3  
4 as they are only descriptions of Plaintiffs' litigation conduct to which no response is  
5  
6 required or as to which Expedia is without knowledge or information sufficient to form a  
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8 belief as to the allegations' truth and which Expedia therefore denies.

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10 55. Expedia denies the allegations contained in Paragraph 55.

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12 56. Expedia denies the allegations contained in Paragraph 56.

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14 57. Expedia is without knowledge or information sufficient to form a belief as to  
15  
16 the truth of the allegations contained in Paragraph 57 that Plaintiffs and any unnamed  
17  
18 members of a proposed class entered into any contracts with Expedia and performed all of  
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20 their obligations thereunder and therefore denies the same.

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22 58. Expedia denies the allegations contained in Paragraph 58.

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24 59. Expedia denies the allegations contained in Paragraph 59.

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26 **VIII. AFFIRMATIVE DEFENSES**

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28 Expedia sets forth the following affirmative defenses and reserves its right to amend  
29  
30 this Answer to include additional affirmative defenses:

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32 **FIRST AFFIRMATIVE DEFENSE**

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34 The Complaint fails to state a claim or cause of action against Expedia upon which  
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36 relief can be granted.

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38 **SECOND AFFIRMATIVE DEFENSE**

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40 Plaintiffs have not instituted this action within the period specified under the  
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42 applicable statute of limitations.

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**THIRD AFFIRMATIVE DEFENSE**

The alleged causes of action are barred by the Voluntary Payment Doctrine because Plaintiffs, with knowledge of the facts, voluntarily paid the moneys at issue.

**FOURTH AFFIRMATIVE DEFENSE**

The alleged causes of action may be barred by contractual limitation of liability and indemnification clauses.

**FIFTH AFFIRMATIVE DEFENSE**

A cause of action under the Washington Consumer Protection Act may not be brought by persons who reside outside the State of Washington and were allegedly injured by conduct occurring outside the State of Washington.

**SIXTH AFFIRMATIVE DEFENSE**

The Court should abstain from granting Plaintiffs' requested injunctive relief because the question of whether to regulate the amount of service fees charged by Expedia and other online travel companies is primarily a legislative and not a judicial function and involves industry-wide economic policy that is ill-suited to determination by judicial review of, and ongoing court oversight through injunctive relief directed at, service fees charged by an online travel company.

**SEVENTH AFFIRMATIVE DEFENSE**

The causes of action and injunctive and equitable remedies alleged in the Complaint are barred in light of the fact that Plaintiffs have an adequate remedy at law.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs have not suffered any irreparable injury and therefore are not entitled to injunctive relief.

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**NINTH AFFIRMATIVE DEFENSE**

None of Expedia's actions, conduct, or business practices is actionable under the Washington Consumer Protection Act because they are reasonable in relation to the development and preservation of business and are not injurious to the public interest.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' causes of action are barred as a matter of law insofar as they seek refunds of tax charges allegedly over-assessed or withheld from the State of Washington. Claims to secure a tax refund can be brought only against the State of Washington in Thurston County Superior Court, and claims to collect owed taxes can be brought only by the State of Washington.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs are estopped from asserting their claims against Expedia.

**IX. PRAYER FOR RELIEF**

WHEREFORE, Expedia prays as follows:


1. That Plaintiffs take nothing by reason of their Complaint, and that judgment be rendered in favor of Expedia;
  2. That Expedia be awarded its costs of suit incurred in defense of this action;
- and

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3. For such other relief as the Court deems proper.

DATED: April 24, 2007

**PERKINS COIE LLP**

By:   
Thomas L. Boeder, WSBA No. 408  
Cori G. Moore, WSBA No. 28649

**JONES DAY**

James P. Karen, *pro hac vice* granted  
Deborah S. Sloan, *pro hac vice* granted

Attorneys for Defendant Expedia, Inc.

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THE HONORABLE LINDA LAU

SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KING COUNTY

In re EXPEDIA HOTEL TAXES AND FEES  
LITIGATION,  
  
This Document Relates to: ALL ACTIONS

CONSOLIDATED CIVIL ACTION  
MASTER NO. 05-2-02060-1 SEA  
CERTIFICATE OF SERVICE

The undersigned is a citizen of the United States and resident of the state of Washington, is over the age of 18 and is not a party to the within action.

On April 24, 2007 I caused to be served the following documents on counsel of record at the addresses stated below via the method of service indicated:

**Expedia, Inc.'s Answer to Fourth Consolidated Amended Class Action Complaint**

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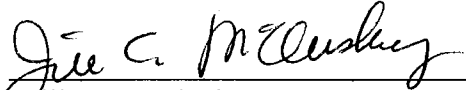
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I declare under penalty of perjury that the foregoing is true and correct. Signed at  
Seattle, Washington, on April 24, 2007.

By:   
Jill C. McCluskey