

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PHOENIX DIVISION

CASE NO. CIV 03 1555 PHX SRB

MARVIN SAPIRO and
GLORIA SAPIRO, his wife,

Plaintiffs,

vs.

SUNSTONE HOTEL INVESTORS, L.L.C.,
SUNSTONE HOTEL INVESTORS, L.P.,

Defendants.

DECLARATION OF MATTHEW FREIJE

I, Matthew Freije, declare under penalty of perjury that the following is true and correct:

1. I am over eighteen years of age, and I have personal knowledge of the facts set forth below. I make this declaration in support of the motion by the plaintiffs in the *Sapiro v. Sunstone*, No. CIV-03-1555-PHX-SRB, and *Sudbeck v. Sunstone*, No. CV-04-1535-PHX-JWS, motion to consolidate, now pending in the District Court for the District of Arizona.
2. With respect to *Sudbeck v. Sunstone Hotel Properties, Inc.*, et al., I have reviewed the Allison and Assimacopoulos reports, Plaintiff's initial disclosure statement, St. Mary's Healthcare Center and Avera McKennan Hospital discharge summaries, the South Dakota Department of Health report, and the Centers for Disease Control and Prevention report.
3. The opinions I gave to Steven Davis of Boies, Schiller and Flexner LLP, in my report of February 11, 2005, apply with reasonable scientific probability also to Gilbert Sudbeck, as follows:
4. Gilbert Sudbeck was exposed to *Legionella* bacteria during his June 2002 stay at the San Marcos Resort in Arizona.
5. Significant levels of *Legionella* bacteria were found in water samples collected at the San Marcos in May and August 2003. Based on the nature of *Legionella* bacteria in plumbing systems, it is very likely that *Legionella* bacteria had been in the San Marcos domestic water system for several months or years prior to May 2003. Without evidence that a specific incident introduced *Legionella* bacteria into the system between June 2002 and May 2003, or that the system was free of detectable *Legionella* bacteria prior to June 2002, my opinion with reasonable scientific probability, based on studies

of *Legionella* and biofilms, and my knowledge of and experience with domestic water disinfection, is that the *Legionella*-contaminated biofilm within the San Marcos domestic water system in May 2003 existed also in June 2002.

6. Gilbert Sudbeck would not have been exposed to high levels of *Legionella* bacteria during his stay at the San Marcos if Sunstone had routinely tested the hotel water systems for *Legionella* and taken appropriate steps in response to the results.
7. Sunstone failed to exercise reasonable care to prevent Legionnaires' Disease at the San Marcos. Guidelines for preventing the disease, including Sunstone's in-house manual, were available prior to June 2002.

Executed on the 7th day of December, 2005, in Fallbrook, California.


