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Attorneys for Defendants  
FAIRMONT HOTELS & RESORTS (U.S.), INC. dba  
THE FAIRMONT ORCHID HAWAII and  
FHR (ML) OPERATING COMPANY, LLC

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

BRIAN FLYNN and NICHOLAS  
BONAR, individually and on behalf of  
all others similarly situated,

Plaintiffs,

vs.

FAIRMONT HOTELS & RESORTS  
(U.S.), INC. dba THE FAIRMONT  
ORCHID, HAWAII; FHR (ML)  
OPERATING COMPANY, LLC, a  
Delaware corporation, and DOE  
DEFENDANTS 1-50,

Defendants.

CIVIL NO. 10-00285 DAE/LEK

DEFENDANT FAIRMONT HOTELS &  
RESORTS (U.S.), INC. AS  
MANAGING AGENT FOR THE  
FAIRMONT ORCHID, HAWAII'S  
ANSWER TO FIRST AMENDED  
COMPLAINT FILED ON MAY 18,  
2010; CERTIFICATE OF SERVICE

**DEFENDANT FAIRMONT HOTELS & RESORTS (U.S.), INC. AS  
MANAGING AGENT FOR THE FAIRMONT ORCHID, HAWAII'S  
ANSWER TO FIRST AMENDED COMPLAINT FILED ON MAY 18, 2010**

Defendant Fairmont Hotels & Resorts (U.S.), Inc. as managing agent for The Fairmont Orchid, Hawaii (“Fairmont”), by and through its attorneys, Kobayashi, Sugita & Goda, for its Answer to First Amended Complaint filed on May 18, 2010 (“First Amended Complaint”), in the above-entitled action alleges and avers as follows:

**FIRST DEFENSE**

1. Plaintiffs fail to state a claim against Fairmont upon which relief can be granted.

**SECOND DEFENSE**

2. Fairmont denies each and every allegation contained in Paragraphs 9, 10, 11, 13, 14, 19, 20, 21, 22, 24, 25, and 26 of the First Amended Complaint, and any and all corresponding subsections in those Paragraphs.

3. Fairmont is without knowledge or information sufficient at the present time to form a belief as to the truth or falsity of the allegations contained in Paragraphs 1, 2, 6, 7, and 12 of the First Amended Complaint, and therefore denies the allegations therein and any implications arising therefrom.

4. With respect to the allegations in Paragraph 3 of the First Amended Complaint, Fairmont admits that it is a Delaware corporation with its controlling

mind and corporate office in Toronto, Ontario, Canada. Fairmont responds that it does not do business as The Fairmont Orchid, Hawaii (the “Hotel”). Fairmont states that the Hotel is located at One North Kaniku Drive, Waimea, Hawaii, Hawaii 96743. Fairmont admits that it provides food and beverage services including through its banquet department, restaurants and room service. Fairmont denies all other allegations in Paragraph 3 of the First Amended Complaint and any implications arising therefrom.

5. With respect to the allegations in Paragraph 4 of the First Amended Complaint, Fairmont states that it is informed and believes that FHR (ML) Operating Company LLC (“FHRML”), which is a Delaware corporation with its controlling mind and corporate office in Toronto, Ontario, Canada, employed individuals at the Hotel. Fairmont is without knowledge or information sufficient at this present time to form a belief as to the truth or falsity of the other allegations contained in Paragraph 4 of the First Amended Complaint, and therefore denies all other allegations in Paragraph 4 and any implications arising therefrom.

6. With respect to the allegations in Paragraph 5 of the First Amended Complaint, Fairmont denies that it employed Plaintiffs and other putative class members. Fairmont states that it only managed the Hotel on behalf of FHRML. Fairmont is without knowledge or information sufficient at this present time to form a belief as to the truth or falsity of the other allegations contained in

Paragraph 5 of the First Amended Complaint, and therefore denies all other allegations in Paragraph 5 and any implications arising therefrom.

7. With respect to the allegations in Paragraph 8 of the First Amended Complaint, Fairmont responds that it sometimes imposed a service charge in accordance with the applicable collective bargaining agreement(s) and because Fairmont is required by law to withhold and pay taxes, including but not limited to, the employee's share of Federal Insurance Contributions Act ("FICA"). Fairmont further responds that the statute cited by Plaintiffs speaks for itself. Fairmont denies all other allegations in Paragraph 8 of the First Amended Complaint and any implications arising therefrom.

8. With respect to the allegations in Paragraph 15 of the First Amended Complaint, Fairmont responds that Plaintiff Brian Flynn worked at the Hotel from approximately September 19, 2006 to February 24, 2009. Fairmont denies all other allegations in Paragraph 15 of the First Amended Complaint and any implications arising therefrom.

9. With respect to the allegations in Paragraph 16 of the First Amended Complaint, Fairmont responds that Plaintiff Nicholas Bonar worked at the Hotel from approximately September 19, 2006 to March 21, 2010. Fairmont denies all other allegations in Paragraph 16 of the First Amended Complaint and any implications arising therefrom.

10. With respect to the allegations in Paragraphs 17, 18, and 23 of the First Amended Complaint, Fairmont responds that it sometimes imposed a service charge in accordance with the applicable collective bargaining agreement(s) and because Fairmont is required by law to withhold and pay taxes including but not limited to the employee's share of FICA. Fairmont denies all other allegations in Paragraphs 17, 18, and 23 of the First Amended Complaint and any implications arising therefrom.

11. Fairmont denies each and every allegation contained in the First Amended Complaint that is not expressly responded to above.

THIRD DEFENSE

12. Plaintiffs have failed to join an indispensable party or parties.

FOURTH DEFENSE

13. Fairmont intends to rely on the defense that Plaintiffs have failed to mitigate their damages, if any.

FIFTH DEFENSE

14. Fairmont intends to rely on the defense that Plaintiffs' claim for punitive damages is unconstitutional.

SIXTH DEFENSE

15. Fairmont intends to rely on the defense that Plaintiffs consented to and/or voluntarily participated in acts that they now allege resulted in harm or injury.

SEVENTH DEFENSE

16. Fairmont intends to rely on the defense that Plaintiffs lack standing to assert the claims set forth in the Complaint.

EIGHT DEFENSE

17. Fairmont intends to rely on the defense of license.

NINTH DEFENSE

18. Fairmont intends to rely on the defense that Plaintiffs are estopped from asserting their claims.

TENTH DEFENSE

19. The claims for relief of the Complaint are barred by lack of jurisdiction.

ELEVENTH DEFENSE

20. Fairmont intends to rely upon any and all common law and statutory defenses, privileges and immunities available against Plaintiffs' claim.

TWELFTH DEFENSE

21. Fairmont intends to rely on the defense that Plaintiffs' claims are barred by the defense of contributory and/or comparative negligence.

THIRTEENTH DEFENSE

22. Fairmont intends to rely on the defense of waiver, laches, and unclean hands.

FOURTEENTH DEFENSE

23. Fairmont intends to rely on the defense that Plaintiffs' claims are barred by failure of consideration.

FIFTEENTH DEFENSE

24. The claims for relief are barred by lack of privity.

SIXTEENTH DEFENSE

25. The claims for relief are barred by the statute of frauds.

SEVENTEENTH DEFENSE

26. Fairmont intends to rely on the defense that Plaintiffs' claims are barred by the statute of limitations.

EIGHTEENTH DEFENSE

27. Fairmont intends to rely on the defense that it made a good faith effort to comply with the applicable laws.

NINETEENTH DEFENSE

28. Fairmont intends to rely on the defense that Plaintiffs are barred from maintaining this action against Fairmont based on Plaintiffs' fraud, intentional misrepresentations and/or negligent misrepresentations.

TWENTIETH DEFENSE

29. Fairmont intends to rely on the defense of accord and satisfaction.

TWENTY-FIRST DEFENSE

30. Fairmont intends to rely on the defense of preemption under applicable law including but not limited to the National Labor Relations Act, 29 U.S.C. §§ 151, et. seq., and/or the Labor Management Relations Act, 29 U.S.C. §§ 141 et. seq.

TWENTY-SECOND DEFENSE

31. Fairmont intends to rely on the defense of exemption under applicable law including but not limited to Hawaii Revised Statutes § 480-10, Section 17 of the Clayton Act, 15 U.S.C.A. § 17, the Norris-Laguardia Act, the National Labor Relations Act, 29 U.S.C. §§ 151, et. seq., the Labor Management Relations Act, 29 U.S.C. §§ 141. et. seq. and/or the non-statutory exemption from anti-trust liability.

TWENTY-THIRD DEFENSE

32. Fairmont intends to rely on the defense that Plaintiffs failed to exhaust administrative remedies and procedures.

TWENTY-FOURTH DEFENSE

33. Fairmont intends to rely on the defense that Plaintiffs have failed to exhaust contractual remedies and procedures.

TWENTY-FIFTH DEFENSE

34. Fairmont intends to rely on the defense that this Court lacks jurisdiction due to agreement(s) to arbitrate.

TWENTY-SIXTH DEFENSE

35. Fairmont intends to rely on the defense that Plaintiffs have not suffered any actual injury and/or damage.

TWENTY-SEVENTH DEFENSE

36. Plaintiffs are not entitled to class certification pursuant to Hawaii Revised Statutes § 480-13 and/or Federal Rules of Civil Procedure Rule 23 and Plaintiffs are not proper representatives of any purported class.

TWENTY-EIGHTH DEFENSE

37. Plaintiffs are not entitled to an injunction pursuant to Hawaii Revised Statutes § 480-13 and/or Federal Rules of Civil Procedure Rule 65.

TWENTY-NINTH DEFENSE

38. Plaintiffs are not entitled to a declaratory judgment pursuant to Federal Rules of Civil Procedure Rule 57.

THIRTIETH DEFENSE

39. Fairmont intends to rely upon any other defenses, including but not limited to affirmative defenses, set forth in Rules 8(c), 9, 12(b) and 12(h) of the Federal Rules of Civil Procedure, or as provided by law or statute, which may apply, and which are not alleged in this Answer.

THIRTY-FIRST DEFENSE

40. There may be other affirmative defenses that would be applicable to Plaintiffs' claims. Should it be hereafter determined that any additional defenses are applicable, Fairmont reserves the right to assert such affirmative defenses and/or claims.

WHEREFORE, Fairmont prays as follows:

1. That the Complaint be dismissed with prejudice;
2. That Plaintiffs' claims for relief be denied;
3. That certification of any putative class be denied;
4. That the Court award Fairmont its reasonable attorneys' fees and costs; and

5. That the Court award Fairmont such other and further relief as the Court deems just and equitable.

DATED: Honolulu, Hawaii, June 15, 2010.

/s/ Doris Tam

GREGORY M. SATO  
KENNETH M. NAKASONE  
DORIS TAM

Attorneys for Defendants  
FAIRMONT HOTELS & RESORTS (U.S.),  
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DEFENDANTS 1-50,

Defendants.

CIVIL NO. 10-00285 DAE/LEK

CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date the foregoing will be served upon the following parties at their last known addresses by U.S. Mail, postage prepaid:

JAMES J. BICKERTON, ESQ.  
Bickerton Lee Dang & Sullivan  
745 Fort Street, Suite 801  
Honolulu, Hawaii 96813

JOHN F. PERKIN, ESQ.  
BRANDEE J.K. FARIA, ESQ.  
Perkin & Faria  
2000 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawaii 96813

Attorneys for Plaintiffs

DATED: Honolulu, Hawaii, June 15, 2010.

/s/ Doris Tam  
GREGORY M. SATO  
KENNETH M. NAKASONE  
DORIS TAM

Attorneys for Defendants  
FAIRMONT HOTELS & RESORTS (U.S.),  
INC. dba THE FAIRMONT ORCHID  
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