

MARR JONES & WANG
A LIMITED LIABILITY LAW PARTNERSHIP

BARRY W. MARR 1937-0
RICHARD M. RAND 2773-0
MELANIE MITO MAY 6739-0
Pauahi Tower
1003 Bishop Street, Suite 1550
Honolulu, Hawaii 96813
Tel. No. (808) 536-4900
Fax No. (808) 536-6700

Attorneys for Defendant
Hilton Hawaiian Village, LLC

1ST CIRCUIT COURT
STATE OF HAWAII
FILED
2008 DEC 29 PM 2:14
J. KUBO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

ARYN NAKAOKA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

HILTON HAWAIIAN VILLAGE, LLC, d.b.a.
HILTON HAWAIIAN VILLAGE BEACH
RESORT AND SPA; and DOE DEFENDANT
1-50,

Defendant.

CIVIL NO. 08-1-2512-12 VSM
(Class Action)

DEFENDANT HILTON HAWAIIAN
VILLAGE, LLC's **ANSWER TO
COMPLAINT FILED DECEMBER 5,
2008; CERTIFICATE OF SERVICE**

No Trial Date Set.

**DEFENDANT HILTON HAWAIIAN VILLAGE, LLC's
ANSWER TO COMPLAINT FILED DECEMBER 5, 2008**

Comes now Defendant Hilton Hawaiian Village, LLC dba Hilton Hawaiian
Village Beach Resort and Spa ("Hilton") for an Answer to the Complaint filed herein against
them on December 5, 2008 admits, denies and avers as follows.

1. Hilton admits the allegations of paragraphs 1 and 2 of the Complaint.
2. Hilton denies the allegations of paragraphs 3, 4, 5, 6, 7, 8, 10, 11, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24 [sic], and 25 of the Complaint.
3. In response to the allegations of paragraph 9 of the Complaint, Hilton admits that it maintains in the normal course of business information relating to service charges imposed and amounts distributed to employees (including management) but denies the remaining allegations of paragraph 9 of the Complaint.
4. In response to the allegations of paragraph 12 of the Complaint, Hilton admits that for certain functions as required by its collective bargaining agreement, it adds a service charge to purchasers' bills for food and beverage, or food, or beverage, or use of a function room. Hilton denies the remaining allegations of paragraph 12 of the Complaint.
5. In response to the allegations of paragraph 13 of the Complaint, Hilton avers that it follows the applicable provisions of its collective bargaining agreement with Unite HERE Local 5 with respect to the distribution of service charges, avers that it discloses to the purchasers and did disclose to the purchaser in this particular situation, that the service charge "is not a gratuity and is not the property of the employees providing service to you." The disclaimer specifically allocated a portion of the service charge "to waiters, waitresses, and where applicable, bus help and/or bartenders engaged in the event," and 21.4% to supervisory, sales, and other banquet personnel." Hilton denies the remaining allegations of paragraph 13 of the Complaint.
6. In response to the allegations of paragraph 18 of the Complaint, Hilton avers that Plaintiff's then fiancée was the purchaser of Hilton's services for the wedding reception, that she was charged a service charge as she agreed to in the Banquet Contract and

Policies, admits that Exhibit "1" is the invoice given to Plaintiff's fiancée and denies the remaining allegations of paragraph 18 of the Complaint.

7. Each and every allegation of the Complaint not specifically admitted is denied.

First Affirmative Defense

Plaintiff lacks standing to bring this lawsuit.

Second Affirmative Defense

The Complaint fails to state a claim upon which relief can be granted.

Third Affirmative Defense

The Complaint and all claims herein must be submitted to mandatory and binding arbitration.

Fourth Affirmative Defense

Plaintiff has failed to mitigate his damages, if any.

Fifth Affirmative Defense

Plaintiff is not a "purchaser" as that term is used in H.R.S. § 481B-14.

Sixth Affirmative Defense

Plaintiff has not suffered damages and is not a consumer as that term is used under Chapter 480, H.R.S.

Seventh Affirmative Defense

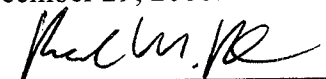
To the extent Plaintiff argues that H.R.S. § 481B-14 requires a hotel or restaurant to distribute service charges only to those employees who assist in serving food and beverages, such a claim is preempted by federal law.

Eighth Affirmative Defense

The named plaintiff does not meet the adequacy or typicality requirements of Rule 23, and cannot fairly and adequately protect the interest of any class of Plaintiffs.

Wherefore Defendant Hilton prays that the Complaint filed against it be referred to arbitration as required, or in the alternative, that it be dismissed with prejudice and that Hilton be awarded its costs, attorneys' fees, and other such relief as the Court may deem just and proper under the circumstances.

DATED: Honolulu, Hawaii, December 29, 2008.



BARRY W. MARR
RICHARD M. RAND
MELANIE MITO MAY

Attorneys for Defendant
Hilton Hawaiian Village, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ARYN NAKAOKA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

HILTON HAWAIIAN VILLAGE, LLC, d.b.a.
HILTON HAWAIIAN VILLAGE BEACH
RESORT AND SPA; and DOE DEFENDANT
1-50,

Defendant.

CIVIL NO. 08-1-2512-12 VSM
(Class Action)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 29, 2008, the following
document was duly served upon the following via U.S. Mail, first-class postage prepaid:

Brandee J. K. Faria, Esq.
John F. Perkin, Esq.
Perkin & Faria, LLLC
Davies Pacific Center
841 Bishop Street, Suite 2000
Honolulu, HI 96813

James J. Bickerton Esq.
Bickerton Lee Dang & Sullivan
Topa Financial Center
Fort Street Tower, Suite 801
745 Fort Street
Honolulu, HI 96813

Attorneys for Plaintiff
ARYN NAKAOKA

DATED: Honolulu, Hawaii, December 29, 2008.



BARRY W. MARR
RICHARD M. RAND
MELANIE MITO MAY

Attorneys for Defendant
Hilton Hawaiian Village, LLC