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FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2008 DEC -5 AM 9:37

H. CHING
CLERK

and

JAMES J. BICKERTON 3085
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745 Fort Street, Suite 801
Honolulu, Hawaii 96813
Telephone: (808) 599-3811

Attorneys for Plaintiff,
ARYN NAKAOKA,
individually and on behalf
of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

Plaintiff,

vs.

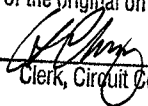
HILTON HAWAIIAN VILLAGE, LLC,
d.b.a. HILTON HAWAIIAN VILLAGE
BEACH RESORT AND SPA; and DOE
DEFENDANT 1-50,

Defendant.

Civil No. 08-1-2512-12 **V S M**
(Class Action)

**COMPLAINT; EXHIBIT "1"; DEMAND
FOR JURY TRIAL; SUMMONS**

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.


Clerk, Circuit Court, First Circuit

COMPLAINT

Plaintiff ARYN NAKAOKA, individually and on behalf of all persons

similarly situated, alleges as follows:

Parties

1. Plaintiff ARYN NAKAOKA (“NAKAOKA”) is, and at all times relevant hereto was a resident of the City and County of Honolulu, State of Hawaii.

2. Defendant HILTON HAWAIIAN VILLAGE, LLC (“Defendant”) owns, operates and does business as the HILTON HAWAIIAN VILLAGE BEACH RESORT AND SPA (“the Resort” or “HHV”) and has its principal place of business in the City & County of Honolulu, State of Hawaii. The Resort is a hotel and resort, located at 2005 Kalia Road, Honolulu, Hawaii 96815. In addition to the hotel and resort services provided by the Resort, it also provides food and beverage service from its banquet department, its restaurants, and through room service.

3. Doe Defendant 1-50 are persons, partnerships, associations, corporations, governmental agencies or units, or entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or her attorneys, except that Doe Defendant 1-50 were and/or are connected in some manner with the Defendant and/or were the agents, principals, parents, subsidiaries, servants, employees, representatives, co-venturers, associates, consultants, owners, lessees, lessors, guarantors, assignees, assignors, licensees, and/or licensors of Defendant and were or are in some manner presently unknown to Plaintiff or her attorneys engaged, or involved in the activities alleged herein or responsible for the activities of which Plaintiff complains, or should be subject to the relief Plaintiff seeks. Plaintiff prays for leave to certify the true names, identities, capacities, activities and/or responsibilities of Doe Defendant 1-50 when, through further discovery in this case, the same are ascertained. Plaintiffs have made a good faith effort to identify said Doe Defendant prior to filing the Complaint, including interviewing witnesses and reviewing documents and records.

Class Action Allegations

4. Plaintiff brings this case as a class action pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure, on behalf of himself and all others who are similarly situated consisting of:

All customers who paid a "service charge" to the HILTON HAWAIIAN VILLAGE BEACH RESORT AND SPA in connection with the purchase of food or beverages which the Resort did not distribute in its entirety to its employees, which group of customers is hereafter referred to as "the Class."

5. Hundreds if not thousands of HHV customers have paid a "service charge" in connection with their purchase of food and/or beverages from the Defendant. Thus, the members of the Class are so numerous that joinder of all members is impracticable.

6. A class action is appropriate in this case for one or more of the following reasons:

a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, the amount at stake for many of the Class members, while not insignificant, may not be great enough to enable them to maintain separate suits against Defendant.

b. The Defendant has acted and/or refused to act on grounds generally applicable to the class, making appropriate relief with respect to the class as a whole as set forth below.

7. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class, and a class

action is superior to other available methods for the fair and efficient adjudication of the controversy. Among the questions of law and fact common to the named Plaintiff and the Class are, *inter alia*:

- a) Whether Defendant has imposed service charges on its customers for food and beverage without disclosing to customers that part of the service charge would be retained by the Defendant and would not be distributed to the employees who provided the service;
- b) Whether such conduct by Defendant violated HRS Section 481B-14;
- c) Whether Defendant's above-described conduct violates HRS Section 480-2; and
- d) The nature and extent of class-wide injuries and the measure of damages for the injuries.

8. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single action simultaneously, efficiently, and without duplication of the expenses that numerous individual actions would entail. No difficulties are likely to arise in the management of this class action that will preclude its purpose as a class action, and no superior alternatives exist for the fair and efficient adjudication of this controversy. Without a class action, Defendant will likely retain the benefit of its wrongdoing and may continue the course of its actions, which could result in further damages.

9. The information relating to these charges is kept in the normal course of business by Defendant, which reflects the food and beverage sales for which service charges were

imposed, the dollar amounts of those charges, the amounts that were distributed to employees and the amounts that were retained by Defendant HHV, and the dates of the events associated with those charges. Thus, these records are readily available for purposes of identifying and providing notice of the instant class action to all class members.

10. Plaintiff NAKAOKA will fairly and adequately represent the interests of the class. Plaintiff knows of no conflicts of interest among members of the class.

11. The Plaintiff Class is represented by counsel who have experience litigating class action litigation in this jurisdiction and who will adequately represent the interests of the entire class.

Factual Allegations

12. For banquets, events, meetings, room service and in other instances, the Defendant adds a preset “service charge” to customers’ bills for food and beverage provided by the hotel and/or its restaurants. At the vast majority of the aforesaid functions, Defendant charged the customer a “service charge” that was calculated as percentage of the total cost of food and beverage, typically ranging between 15% and 23%. Defendant HHV failed to clearly disclose to Plaintiff and its other customers that a portion of the service charge was not distributed to the employees and was in fact retained by Defendant HHV.

13. In Plaintiff NAKAOKA’s case and in the case of all other members of the prospective class described above, a portion of the service charge was paid to employees who rendered the service, however, in each instance at least a portion of the service charge was retained by the Defendant. Defendant HHV has a policy and practice of retaining for itself a portion of these service charges and/or using some of it to pay manager or other salaried or non-

tipped employees who do not serve or assist in serving food and beverages. Defendant HHV did not distribute all of the service charge to the employees who provided the service.

14. Defendant HHV did not disclose to NAKAOKA and did not disclose to its other customers that the service charges are not distributed in full to the employees who serve the food and beverages.

15. For this reason, Plaintiff NAKAOKA and other customers have been misled into believing that the entire service charge imposed by Defendant is being distributed to the employees who serve the food or beverages when, in fact, only a portion is being remitted to these employees.

16. In 2008, Plaintiff NAKAOKA contacted the Defendant seeking its banquet services in connection with his wedding reception planned for June 7, 2008.

17. Arrangements were made for the Defendant to provide the banquet services for the reception for Plaintiff NAKAOKA.

18. Defendant provided the banquet services for Plaintiff NAKAOKA'S June 7, 2008 wedding reception. Attached hereto as Exhibit "1" is a true and correct copy of the banquet check for the NAKAOKA reception. As set forth therein, Defendant charged Plaintiff NAKAOKA a 20% service charge on the food, equaling \$3,566.38. In addition, Defendant charged Plaintiff NAKAOKA Hawaii State General Excise Tax on the forgoing service charge equal to approximately \$168.04.

19. There was no disclosure on the final bill or elsewhere, nor was Plaintiff NAKAOKA ever advised by Defendant HHV, that the service charge he paid in connection with his wedding reception was not distributed in its entirety to the service employees, and that some or all of it was unlawfully retained by the Defendant.

20. Plaintiff and the members of the Class are either or both (a) "consumers" (as that term is defined in Haw. Rev. Stat. § 480-1) injured by an unfair or deceptive act or practice and unfair methods of competition or (b) a person injured in their business or property by an unfair method of competition, as those terms are defined in HRS Chapter 480, and Plaintiff and the members of the Class therefore are authorized to bring suit pursuant to Haw. Rev. Stat. § 480-13.

21. The actions of Defendant HHV as set forth above are in direct violation of Hawaii Revised Statutes §481B-14, which provides:

Any hotel or restaurant that applies a service charge for the sale of food or beverage services shall distribute the service charge directly to its employees as tip income or clearly disclose to the purchaser of the services that the service charge is being used to pay for costs or expenses other than wages and tips of employees.

22. Pursuant to HRS §481B-4, "Any person who violates this chapter [HRS 481B] shall be deemed to have engaged in an unfair method of competition or unfair and deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2."

23. Defendant HHV'S conduct complained of herein constitutes unfair or deceptive acts or practices in the conduct of a trade or commerce and/or unfair methods of competition and is therefore unlawful pursuant to Haw. Rev. Stat. § 480-2.

24. As Defendant HHV'S acts violate HRS §481B-14, Defendant HHV is *per se* liable for violations of Haw. Rev. Stat. § 480-2.


24. Plaintiff and the members of the class have been injured by the conduct of Defendant HHV described herein and are therefore entitled to damages under HRS Section 480-13.

25. Plaintiff and the Class are entitled to have their actual damages trebled, in accordance with HRS Section 480-13.

WHEREFORE, Plaintiff, individually and on behalf of all those similarly situated, prays for relief as follows:

- (1) For damages against Defendant HHV and Doe Defendants in an amount to be determined at trial;
- (2) For treble damages against said Defendants;
- (3) For an order of disgorgement and/or restitution against Defendant HHV in an amount to be proven at trial.
- (5) For an order preliminarily and permanently enjoining Defendants from continuing to engage in the practices described above which are in direct violation of HRS §481B-14, and for an order directing Defendants to comply with the requirements of HRS §481B-14, and also for such other injunctive relief as provided by law;
- (6) For reimbursement of costs and expenses, including reasonable provision for attorneys' fees to the full extent permitted by Chapter 480, Hawaii Revised Statutes.
- (7) For prejudgment interest; and
- (8) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, December 5, 2008



BRANDEE J.K. FARIA
JOHN FRANCIS PERKIN
JAMES J. BICKERTON
Attorneys for Plaintiff
ARYN NAKAOKA, individually and on behalf
of all others similarly situated.

Hilton Hawaiian Village

Check#: 77690
 Page: 1 of 2
 Created: 6/5/2008

2005 Kalia Road • Honolulu, Hawaii 96815-1999 • (808) 949-4321 • Fax (808) 948-7748

Banquet Check

| | |
|---|---|
| Account: HHV-2008 Weddings | Event Date: Saturday, June 7, 2008 |
| Post As: Aryn Nakaoka and Darcie Shiinoki's Wedding Receptio | Contact: Ms. Darcie Shiinoki |
| BEO Name: Cocktails/Pupus/Served Dinner | Phone: (808) 258-8034 |
| Address: 1200 Queen Emma Street, #904 Honolulu, HI USA 96813-6303 | Fax: |
| | On-Site: Ms. Dee Takeno |

| Quantity | Food | Price | Amount |
|--------------------------------|--|------------------|-----------|
| 10 | Bowls (30 servings) Tortilla Chips | 38.85 Per Bowl | 388.50 |
| 8 | Bowls (32 oz.) Salsa | 25.75 Per 32 oz. | 206.00 |
| Subtotal: | | | 594.50 |
| Service Charge %: 20.00 | | | 118.90 |
| Tax %: 4.712 | | | 33.62 |
| Total: | | | 747.02 |
| 275 | ~Adult's Served Dinner Menu~ | 53.95 Per person | 14,836.25 |
| 19 | ~Children's Served Dinner Menu~ | 25.00 Per person | 475.00 |
| 1 | -(3 Tier Round cake is complimentary.) Fee for SQUARE Design | 35.00 | 35.00 |
| 1 1/2 | Platters (150 Servings) Domestic and Imported Cheeses Fruit Garnish, Crackers, Lavosh and French Bread | 748.50 Each | 1,122.75 |
| 1 1/2 | Platters (150 Servings) Garden Vegetables with Ranch Dip | 512.25 Each | 768.38 |
| Subtotal: | | | 17,237.38 |
| Service Charge %: 20.00 | | | 3,447.48 |
| Tax %: 4.712 | | | 974.67 |
| Total: | | | 21,659.53 |

| Quantity | Miscellaneous | Price | Amount |
|-------------------------------|--|-----------------|--------|
| 2 | -Bartenders' Fees (8pm-10pm) | 150.00 Per Hour | 300.00 |
| Subtotal: | | | 300.00 |
| Service Charge %: 0.00 | | | 0.00 |
| Tax %: 4.712 | | | 14.14 |
| Total: | | | 314.14 |
| 2 | -Laptop Audio & MP3 Player Support Package -4 Channel Mixer -Direct Input Box -All Cables/Cords -House Patch | 90.00 | 180.00 |

Client Signature _____

Date _____

EXHIBIT 1

| | |
|---|---|
| Account: HHV-2008 Weddings | Event Date: Saturday, June 7, 2008 |
| Post As: Aryn Nakaoka and Darcie Shiinoki's Wedding Receptio | Contact: Ms. Darcie Shiinoki |
| BEO Name: Cocktails/Pupus/Served Dinner | Phone: (808) 258-8034 |
| Address: 1200 Queen Emma Street, #904 Honolulu, HI USA 96813-6303 | Fax: |
| | On-Site: Ms. Dee Takeno |

| | | | |
|---|--|------------|---------|
| 2 | -LCD Support Package for Ballroom Breakout -(150 to 300 pax) -10' or 12' Roll Screen -Projector Cart/Stand -All Cables/Cords -Client to provide LCD Projector | 225.00 | 450.00 |
| 2 | -Podium Microphone | 40.00 Each | 80.00 |
| 1 | -AV Charges Waived, per Caly, PSAV | -710.00 | -710.00 |

Subtotal: 0.00

Service Charge %: 20.00 0.00

Tax %: 4.712 0.00

Total: 0.00

| | |
|---------------------|------------------|
| Grand Total: | 22,720.69 |
| Deposit: | 800.00 |
| Balance Due: | 21,920.69 |

Client Signature _____

Date _____

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

| | | |
|--|---|-----------------|
| ARYN NAKAOKA, individually and on |) | Civil No. _____ |
| behalf of all others similarly situated, |) | (Class Action) |
| |) | |
| Plaintiff, |) | SUMMONS |
| vs. |) | |
| |) | |
| HILTON HAWAIIAN VILLAGE, LLC, |) | |
| d.b.a. HILTON HAWAIIAN VILLAGE |) | |
| BEACH RESORT AND SPA; and DOE |) | |
| DEFENDANT 1-50, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| |) | |
| |) | |
| |) | |

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

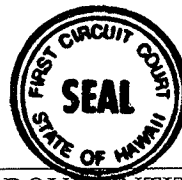
You are hereby summoned and required to serve upon PERKIN & FARIA, LLLC, attorneys for Plaintiff, whose address is Davies Pacific Center, 841 Bishop Street, Suite 2000, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:30 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, DEC - 5 2008.

H. CHING



CLERK OF THE ABOVE-ENTITLED COURT