

**PERKIN & FARIA**

JOHN F. PERKIN #1673  
BRANDEE J.K. FARIA #6970  
SOFIA M. HIROSANE #9929  
Topa Financial Center, Bishop Street Tower  
700 Bishop Street, Suite 1111  
Honolulu, Hawaii 96813  
Telephone: (808) 523-2300/Facsimile: (808) 531-8898

AND

**BICKERTON LEE DANG & SULLIVAN**

JAMES J. BICKERTON 3085  
Topa Financial Center, Fort Street Tower  
745 Fort Street, Suite 801  
Honolulu, HI 96813  
Telephone: (808) 599-3811/Facsimile: (808) 533.2467

Attorneys for Plaintiff ARYN NAKAOKA,  
individually and on behalf of a class of similarly  
situated persons.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ARYN NAKAOKA, individually and on  
behalf of a class of similarly situated persons,

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 RAN (Class Action)

ORDER GRANTING PLAINTIFFS'  
SECOND MOTION FOR CLASS  
CERTIFICATION AND FOR APPROVAL  
OF CLASS NOTICE AND  
DISSEMINATION PLAN; EXHIBIT "1"

Hearing:

Date: September 29, 2010

Time: 10:30 a.m.

Judge: Hon. Rhonda A. Nishimura

Trial Date: January 24, 2011

ORDER GRANTING PLAINTIFFS' SECOND MOTION FOR CLASS CERTIFICATION  
AND FOR APPROVAL OF CLASS NOTICE AND DISSEMINATION PLAN

Plaintiff ARYN NAKAOKA, individually and on behalf of all others similarly situated (hereinafter referred to collectively as "Plaintiffs") *Second Motion for Class Certification and for Approval of Class Notice and Dissemination Plan* ("Motion"), having come on for hearing before the Honorable Rhonda A. Nishimura on September 29, 2010, with Richard Rand, Esq. appearing on behalf of Defendant Hilton Hawaiian Village, LLC, and Brandee J.K. Faria, Esq., John Perkin, Esq. and James J. Bickerton, Esq. appearing on behalf of Plaintiffs.

The Court having carefully read and considered the file herein, the memoranda, declarations and exhibits submitted and having heard and considered the arguments of counsel, and good cause appearing therefore, it is hereby ordered, adjudged and decreed that *Plaintiffs' Second Motion for Class Certification and for Approval of Class Notice and Dissemination Plan* is GRANTED, and the following is the certified class:


All consumers as defined in HRS Chapter 480 who paid a service charge for food and/or beverage services to the Hilton Hawaiian Village, LLC ("HHV") after April 11, 2000, and who did not receive any of the Banquet Contract & Policies forms attached hereto as *Exhibit "1"*.

Subclass A: All class members who purchased food and/or beverage services from the HHV between April 11, 2000 and December 4, 2004.

DATED: Honolulu, Hawaii \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RHONDA A. NISHIMURA  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
RICHARD RAND  
Attorney for Defendant  
HILTON HAWAIIAN VILLAGE, LLC

\_\_\_\_\_  
*Aryn Nakaoka v. Hilton Hawaiian Village, LLC, Civil No : 08-1-2512-12 (RAN), Order Granting Plaintiffs' Second Motion for Class Certification and for Approval of Class Notice and Dissemination Plan*

**PERKIN & FARIA**

JOHN F. PERKIN #1673  
BRANDEE J.K. FARIA #6970  
SOFIA M. HIROSANE #9929  
Topa Financial Center, Bishop Street Tower  
700 Bishop Street, Suite 1111  
Honolulu, Hawaii 96813  
Telephone: (808) 523-2300/Facsimile: (808) 531-8898

AND

**BICKERTON LEE DANG & SULLIVAN**

JAMES J. BICKERTON 3085  
Topa Financial Center, Fort Street Tower  
745 Fort Street, Suite 801  
Honolulu, HI 96813  
Telephone: (808) 599-3811/Facsimile: (808) 533.2467

Attorneys for Plaintiff ARYN NAKAOKA,  
individually and on behalf of a class of similarly  
situated persons.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ARYN NAKAOKA, individually and on  
behalf of a class of similarly situated persons,

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 RAN (Class Action)

ORDER GRANTING IN PART AND  
DENYING IN PART DEFENDANT HILTON  
HAWAIIAN VILLAGE LLC'S MOTION TO  
COMPEL ARBITRATION, OR IN THE  
ALTERNATIVE, MOTION FOR  
SUMMARY JUDGMENT ON PLAINTIFF'S  
UNFAIR METHOD OF COMPETITION  
CLAIM

Hearing:

Date: September 29, 2010

Time: 10:30 a.m.

Judge: Hon. Rhonda A. Nishimura

Trial Date: January 24, 2011

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT HILTON HAWAIIAN VILLAGE LLC'S MOTION TO COMPEL ARBITRATION, OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT ON PLAINTIFF'S UNFAIR METHOD OF COMPETITION CLAIM

Defendant HILTON HAWAIIAN VILLAGE, LLC's ("Defendant") *Motion to Compel Arbitration, or in the Alternative, Motion for Summary Judgment on Plaintiff's Unfair Method of Competition Claim* ("Motion"), having come on for hearing before the Honorable Rhonda A. Nishimura on September 29, 2010, with Richard Rand, Esq. appearing on behalf of Defendant Hilton Hawaiian Village, LLC, and Brandee J.K. Faria, Esq., John Perkin, Esq. and James J. Bickerton, Esq. appearing on behalf of Plaintiffs.

The Court having carefully read and considered the file herein, the memoranda, declarations and exhibits submitted and having heard and considered the arguments of counsel, and good cause appearing therefore, it is hereby ordered, adjudged and decreed that Defendant's *Motion to Compel Arbitration, or in the Alternative, Motion for Summary Judgment on Plaintiff's Unfair Method of Competition Claim* is GRANTED in part and DENIED in part, as follows:

- (1) *Defendant's Motion for Summary Judgment on Plaintiff's Unfair Method of competition Claim* is GRANTED, and,
- (2) *Defendant's Motion to Compel Arbitration* is DENIED.

DATED: Honolulu, Hawaii \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE RHONDA A. NISHIMURA  
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



\_\_\_\_\_  
RICHARD RAND  
Attorney for Defendant  
HILTON HAWAIIAN VILLAGE, LLC

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

**NOTICE OF CLASS ACTION LAWSUIT**

***DO NOT BE ALARMED. YOU ARE NOT BEING SUED.***

If you purchased food or beverages from the Hilton Hawaiian Village and paid a "service charge" between April 11, 2000 to present, **this Notice may affect your rights. Please read it carefully.**

The Circuit Court of the First Circuit, State of Hawaii ("the Court") has authorized and approved this Notice. It is not a solicitation from a lawyer. This Notice advises you of the status of the lawsuit, and includes a statement of your rights with respect to the lawsuit. This is not a lawsuit against you. Your participation in this Class Action will not cost you anything or expose you to any liability. Notice of this Class Action is being provided by mail to all Class Members for whom we have addresses, pursuant to Court Order.

*Your legal rights and options – and the deadlines to exercise them – are explained in this Notice.*

**What is This Lawsuit About?**

- The Court has ordered that this case can proceed or certified this case as a Class Action. The Honorable Judge Rhonda A. Nishimura of the First Circuit Court, State of Hawaii, is overseeing this Class Action. The lawsuit is called ARYN NAKAOKA, et al. v. HILTON HAWAIIAN VILLAGE, LLC, d.b.a. HILTON HAWAIIAN VILLAGE BEACH RESORT AND SPA, et al, CIVIL NO. 08-1-2512-120 RAN. Plaintiff Aryn Nakaoka brought this action individually and on behalf of all other Class members similarly situated. **Please do not contact the Court about this lawsuit. The Court cannot assist you or answer any questions. If you have questions or need additional assistance, please contact Class counsel, using the contact information at the end of this notice.**
- From April 11, 2000 to the present, in many instances, Defendant, Hilton Hawaiian Village, LLC, D.B.A. Hilton Hawaiian Village Beach Resort and Spa (hereafter "Hilton Hawaiian Village") charged a "service charge" to its customers who purchased food and beverages at the hotel and its restaurants. The Hilton Hawaiian Village also charged general excise tax on top of the "service charge". The "service charge" was typically 20%.
- Hawaii Revised Statutes §481B-14 is part of Hawaii consumer protection laws and mandates that, "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."
- Plaintiffs maintain that the Hilton Hawaiian Village kept part of the "service charge" and did not pay it to its employees as tip income in violation of HRS § 481B-14. Plaintiffs further assert that as a consequence of the Hilton Hawaiian Village's acts, statements and omissions, many, if not all customers who paid this "service charge" were misled into believing that the entire "service charge" was being distributed to the employees who serve the food or beverages when, in fact, only a portion was given to those employees.
- The Hilton Hawaiian Village has admitted that it does not distribute all of "the service charge directly to its employees as tip income," instead it retains part of the "service charge" and uses it to defray the hotel's operational costs, such as "energy, soap, china, glass, silverware". The Hilton Hawaiian Village nonetheless takes the position that this retention is in compliance with HRS § 481B-14.
- Plaintiffs assert that HRS § 481B-14 requires the hotel to either: (1) pay the entire service charge to its employees as "tip income" or (2) disclose to the consumer that part of "the service charge is being used to pay for costs or expenses other than wages and tips of employees." A fact finder will determine whether or not the Hilton Hawaiian Village is in compliance with the law.

- If Plaintiffs are successful in proving that the Hilton Hawaiian Village violated Hawaii consumer protection laws, the Hilton Hawaiian Village will be required to pay treble (triple) the amount of damages proven to have been incurred by each Class member, as well as fees and costs. Plaintiffs also seek an order prohibiting the Hilton Hawaiian Village from continuing this practice.
- The Court has granted *Plaintiffs' Motion for Class Certification* on September 29, 2010. At this time, the attorneys are in the process of gathering all the documents and information necessary to adequately prepare the case for trial. The Court has scheduled the trial of this matter to begin January 24, 2011.

#### What is a Class Action?

- In a class action, the class representative sues on behalf of others with similar legal claims. All of these people together are called a Class or Class members. One court resolves the issues for all persons in the Class, except for those who ask to be excluded from the Class.

#### Who is Included in the Class?

- This Class Action was filed on December 5, 2008. As certified by the Court, the class includes: All consumers as defined in HRS Chapter 480 who paid a service charge for food and/or beverage services to the Hilton Hawaiian Village, LLC ("HHV") after April 11, 2000, and who did not receive any of the Banquet Contract & Policies forms attached to Plaintiff's Second Motion for class Certification and For Approval of Class Notice and Dissemination Plan as *Exhibit "1"*.

Subclass A: All class members who purchased food and/or beverage services from the HHV between April 11, 2000 and December 4, 2004.

- **You do not need to do anything at this point in time to remain in the Class.** If you remain in the Class, you will be notified as the case progresses. You will not be required to pay anything if you remain in the Class. You will be represented by the named Plaintiff Aryn Nakaoka, and his attorneys for purposes of the Class Action. The Court has deemed this Plaintiff and his attorneys to be adequate to protect the interests of the Class. If Plaintiffs obtain a recovery either by settlement or judgment in this Class Action, only those who remain in the Class will receive any portion of that recovery.

#### Do I Have Other Options?

- If you don't want to participate in this litigation, you may exclude yourself (opt-out) from this Class action lawsuit. If you request exclusion, you will **NOT** receive any portion of any judgment or settlement proceeds that may be obtained, and you will **NOT** be bound by any judgment that may be entered dismissing the lawsuit. If you exclude yourself, you are free to pursue whatever legal rights you may have by filing your own lawsuit against the Defendant at your own risk and expense. It is important to note that any individual lawsuit must be filed within a fixed time period and you should consult with an attorney to determine when this time period expires.
- To be excluded, you must send a letter stating that you request to be excluded from this lawsuit. The request must include your full name and address, the name and number of this lawsuit as stated at the top of the first page of this Notice, and your signature. To be effective, the letter must be postmarked by **November 5, 2010** and addressed to: Perkin & Faria, LLC, 700 Bishop St., Suite 1111, Honolulu, HI 96813.

You may also choose to remain in the Class and enter an individual appearance at your own expense. If you do so, you must file an appropriate motion with the Circuit Court for the Second Circuit before the Honorable Rhonda A. Nishimura, Circuit Court of the First Circuit, 777 Punchbowl, Honolulu, Hawaii 96813. A copy of your motion must also be served on: (1) Plaintiffs' counsel at the address set forth below and (2) counsel for the Hilton MARR JONES & WONG, 1003 Bishop Street, Suite 1500, Honolulu, Hawaii 96813.

### **Who Represents My Interests in this Lawsuit?**

The Court has approved as the Class representative Aryn Nakaoka. The Court has also approved as Class counsel the law firms of Perkin & Faria, LLLC and Bickerton Lee Dang & Sullivan. These lawyers are experienced in handling these types of cases. The Class representative and Class counsel will act on your behalf in this lawsuit. Counsel for Plaintiffs can be contacted at the addresses or electronically as provided below. Given the potential volume of inquiries and to ensure a more expedited response, it may be best to contact Plaintiffs' counsel via e-mail, mail or facsimile.

You do not need to pay any attorneys' fees, costs, or expenses incurred in this lawsuit. If a judgment or settlement favorable to Plaintiffs is reached, Class Counsel will ask the Court to approve Defendants' payment of their fees and costs. Only those fees and costs which the Court approves as fair and reasonable will be paid.

You do not need to hire your own lawyer for this case because Class Counsel is already working on your behalf. If you want your own lawyer, you will have to retain and pay that lawyer separately.

### **How Can I Get Additional Information?**

Additional information about the lawsuit and key pleadings may be reviewed at the website of Perkin & Faria, [www.perkinlaw.com](http://www.perkinlaw.com). You can also send your email address to [bjcfaria@perkinlaw.com](mailto:bjcfaria@perkinlaw.com) in order to be added to our Class member email list for periodic updates as to the progress of the lawsuit. You may also contact your attorneys directly for more information or if you have questions.

John Francis Perkin & Brandee J. K. Faria  
Perkin & Faria, LLLC  
700 Bishop St., Ste. 1111  
Honolulu, HI 96813  
[bjcfaria@perkinlaw.com](mailto:bjcfaria@perkinlaw.com)

**Please do not call the Court or the Court Clerk's Office to inquire about this case. They will be unable to help you.**

Dated: October 5, 2010

BY ORDER OF: CIRCUIT COURT  
OF THE FIRST CIRCUIT  
STATE OF HAWAII  
HONORABLE RHONDA A. NISHIMURA