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STEVEN VICTOR TALLARICO,  
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WHITFORD, THOMAS HAMILTON  
AND JOSEPH KRAMER

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII

LISA A. SANCHEZ and JERRY D.  
SAVIANO, individually and on behalf of all  
others similarly situated,

Plaintiffs,

vs.

AEROSMITH, STEVEN VICTOR  
TALLARICO, a.k.a. STEVEN TYLER;  
ANTHONY JOSEPH PERRY; BRADLEY  
WHITFORD; THOMAS HAMILTON;  
JOSEPH KRAMER; AERO FORCE ONE;  
HK MANAGEMENT, INC.; MAUI ARTS &  
CULTURAL CENTER; and DOE  
DEFENDANTS 1-50,

Defendants.

CIVIL NO. 07-1-0438-03  
(Class Action)

ANSWER OF DEFENDANTS STEVEN  
VICTOR TALLARICO, ANTHONY  
JOSEPH PERRY, BRAD WHITFORD,  
THOMAS HAMILTON AND JOSEPH  
KRAMER TO FIRST AMENDED  
COMPLAINT FILED ON OCTOBER 26,  
2007; CERTIFICATE OF SERVICE

JUDGE: Honorable Joseph E. Cardoza

No Trial Date Set

FILED

2007 DEC 14 AM 10:44

D. KEYES, CLERK  
SECOND CIRCUIT COURT  
STATE OF HAWAII

**ANSWER OF DEFENDANTS STEVEN VICTOR TALLARICO, ANTHONY JOSEPH PERRY, BRAD WHITFORD, THOMAS HAMILTON AND JOSEPH KRAMER TO FIRST AMENDED COMPLAINT FILED ON OCTOBER 26, 2007**

Defendants Steven Victor Tallarico, Anthony Joseph Perry, Brad Whitford, Thomas Hamilton and Joseph Kramer (collectively, the "Answering Defendants"), by and through their attorneys, Carlsmith Ball LLP, in answer to the First Amended Complaint of Plaintiffs Lisa A. Sanchez and Jerry D. Saviano, individually and purportedly on behalf of all others similarly situated (collectively "Plaintiffs"), filed on October 26, 2007 (the "Amended Complaint"), hereby state as follows:

**FIRST DEFENSE**

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

**SECOND DEFENSE**

2. The Answering Defendants admit the allegations contained in paragraphs 3, 4, 6 and 7 of the Amended Complaint.

3. The Answering Defendants deny the allegations contained in paragraphs 5, 10, 15, 16, 17, 37, 42, 43, 44, 45, 46, 54, 55, 57, 58, 59, 60, 61, 66, 67, 68, 70, 71, 72, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 87, 88, 90, 91 and 93 of the Amended Complaint.

4. The Answering Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraphs 1, 2, 9, 11, 12, 14, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 38, 39, 40, 41, 47, 48, 49, 50, 51, 52, 53, 64 and 65 of the Amended Complaint, and, on that basis, deny such allegations.

5. In response to the allegations contained in paragraphs 56, 62, 69, 73, 82, 86, 89 and 92 of the Amended Complaint, the Answering Defendants repeat, reallege and

incorporate herein by reference their responses to the paragraphs that precede paragraphs 56, 62, 69, 73, 82, 86, 89 and 92, as set forth hereinabove.

6. The Answering Defendants deny the allegations contained in paragraph 8 of the Amended Complaint as phrased. The Answering Defendants admit that "AEROSMITH" is the trade name of a musical band whose members are Steven Victor Tallarico, Anthony Perry, Brad Whitford, Thomas Hamilton and Joseph Kramer. The band's legal existence is through Vindaloo Music, Inc., a Massachusetts corporation. The band has existed since 1970, and, as carried out through Vindaloo Music, Inc., its business includes making music albums and providing live music performances. The Answering Defendants deny any remaining or inconsistent allegations in paragraph 8 of the Amended Complaint.

7. In response to the allegations contained in paragraph 13 of the Amended Complaint, the Answering Defendants admit that Plaintiffs purport to bring this case as a class action pursuant to Rule 23 of the Hawaii Rules of Civil Procedure ("HRCP"). The Answering Defendants are otherwise without sufficient knowledge and information to form a belief as to the truth of any remaining allegations contained in paragraph 13 of the Amended Complaint, and, on that basis, deny such allegations.

8. In response to the allegations in paragraph 36 of the Amended Complaint, the Answering Defendants admit that, as part of its tour, Vindaloo Music, Inc. f/s/o Aerosmith contracted to perform at the Allstate Arena in Chicago, Illinois on September 10, 2007; that on September 10, 2007, that concert was cancelled because of an illness; and that, at the time of cancellation, a rescheduled Chicago concert date was not yet set. The Answering Defendants are without sufficient knowledge and information to form a belief as to the truth of any remaining

allegations contained in paragraph 36 of the Amended Complaint, and, on that basis, deny such allegations.

9. Paragraph 63 of the Amended Complaint contains a statement of law that calls for neither an admission nor a denial, but, to the extent that the allegations in paragraph 63 require a response, the Answering Defendants deny the allegations in paragraph 63.

10. The Answering Defendants deny each and every allegation of the Amended Complaint not specifically admitted above.

**THIRD DEFENSE**

11. This Court lacks personal jurisdiction over the Answering Defendants.

**FOURTH DEFENSE**

12. Venue is not proper in this District.

**FIFTH DEFENSE**

13. There has been no sufficient service of process on some or all of the Answering Defendants.

**SIXTH DEFENSE**

14. Plaintiffs have failed to join indispensable and/or necessary parties under HRCP 19.

**SEVENTH DEFENSE**

15. Plaintiffs' claims are barred by the equitable doctrines of waiver and estoppel.

**EIGHTH DEFENSE**

16. Plaintiffs' claims for minimum statutory damages are barred by HRS § 480-13.

**NINTH DEFENSE**

17. Plaintiffs' claims for punitive damages are barred by HRS § 480-13.

**TENTH DEFENSE**

18. Plaintiffs have failed to plead a certifiable and identifiable class.

**ELEVENTH DEFENSE**

19. Questions of fact or law affecting only individual members of the purported class predominate over common questions of fact or law.

**TWELFTH DEFENSE**

20. Plaintiffs are not appropriate class representatives.

**THIRTEENTH DEFENSE**

21. Plaintiffs' counsel is not able to represent the claims of both Plaintiffs and the purported class adequately.

**FOURTEENTH DEFENSE**

22. Plaintiffs' claims lack typicality and are subject to defenses based on particular circumstances.

**FIFTEENTH DEFENSE**

23. The Answering Defendants did not engage in conduct which created a likelihood of confusion or misunderstanding.

**SIXTEENTH DEFENSE**

24. Plaintiffs' claims lack a public interest.

**SEVENTEENTH DEFENSE**

25. Plaintiffs fail to allege immoral, unethical, oppressive, unscrupulous, or substantially injurious conduct by the Answering Defendants.

**EIGHTEENTH DEFENSE**

26. Plaintiffs' claims are barred, in whole or in part, by their binding, voluntary agreement to the terms and conditions of licenses and/or contracts.

**NINETEENTH DEFENSE**

27. The Answering Defendants hereby assert all statutory and equitable defenses available to them under HRS § 480-1 *et seq.*

**TWENTIETH DEFENSE**

28. Plaintiffs' allegations of deceptive conduct are not set forth with the particularity required under HRCF 9(b).

**TWENTY-FIRST DEFENSE**

29. Plaintiffs' claims are barred because the Answering Defendants had no contractual relationship with the Plaintiffs.

**TWENTY-SECOND DEFENSE**

30. The Answering Defendants assert that, to the extent any of the purported causes of action are predicated on representations by them or others, any such representations were made in good faith, with an honest purpose, and not maliciously.

**TWENTY-THIRD DEFENSE**

31. The Answering Defendants assert that, to the extent any of the purported causes of action are predicated on representations by them or others, any such representations were true and correct when made.

**TWENTY-FOURTH DEFENSE**

32. Plaintiffs assumed the risk of damages, if any.

**TWENTY-FIFTH DEFENSE**

33. The Answering Defendants owed no cognizable legal duty to Plaintiffs.

**TWENTY-SIXTH DEFENSE**

34. Any potential liability of the Answering Defendants is in their corporate capacity, not in their individual capacities.

**TWENTY-SEVENTH DEFENSE**

35. Liability to Plaintiffs, if any, is that of third parties or persons over which the Answering Defendants had no control.

**TWENTY-EIGHTH DEFENSE**

36. If Plaintiffs were damaged, any such damage was proximately caused by persons or entities over which the Answering Defendants had no control and for whose acts and/or omissions the Answering Defendants are not responsible.

**TWENTY-NINTH DEFENSE**

37. Plaintiffs' damages, if any, were caused by an intervening cause.

**THIRTIETH DEFENSE**

38. All or some of Plaintiffs' claims are barred by the economic loss doctrine.

**THIRTY-FIRST DEFENSE**

39. Plaintiffs have failed to mitigate damages.

**THIRTY-SECOND DEFENSE**

40. The Answering Defendants give notice that they intend to rely upon any other matter constituting an avoidance or affirmative defense as set forth in HRCP 8(c).

WHEREFORE, the Answering Defendants pray as follows:

- a. that the Amended Complaint herein be dismissed with prejudice;
- b. that the Answering Defendants be awarded all of their costs and reasonable attorneys' fees; and
- c. for such other and further relief as the Court may deem just and proper.

DATED: Wailuku, Maui, Hawaii, December 14, 2007.



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CIVIL NO. 07-1-0438-03  
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CERTIFICATE OF SERVICE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the date indicated below, a true and correct copy of the foregoing document was duly served upon the following addresses of record by United States Mail, postage prepaid on December 14, 2007:

JOHN F. PERKIN, ESQ.  
BRANDEE J.K. FARIA, ESQ.  
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Davies Pacific Center  
841 Bishop Street, Suite 2000  
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and

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

Attorneys for Plaintiffs

LISA A. SANCHEZ and JERRY D. SAVIANO,  
individually and purportedly on behalf of all others similarly situated

DATED: Wailuku, Maui, Hawaii, December 14, 2007.



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