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dba Hilton Hawaiian Village Beach Resort & Spa

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 AUG 26 AM 11:45

J. KUBO
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LORETTA CHONG, individually and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HILTON HAWAIIAN VILLAGE, LLC,
D.B.A. HILTON HAWAIIAN VILLAGE
BEACH RESORT & SPA,

Defendant.

CIVIL NO. 11-1-0424-03 RAT
(Other Civil Action)

DEFENDANT HILTON HAWAIIAN
VILLAGE, LLC, DBA HILTON
HAWAIIAN VILLAGE BEACH RESORT
& SPA'S ANSWER TO FIRST
AMENDED COMPLAINT, FILED
MARCH 7, 2011; CERTIFICATE OF
SERVICE

No Trial Date Set.

**DEFENDANT HILTON HAWAIIAN VILLAGE, LLC,
DBA HILTON HAWAIIAN VILLAGE BEACH RESORT & SPA'S
ANSWER TO FIRST AMENDED COMPLAINT, FILED MARCH 7, 2011**

Comes now Defendant Hilton Hawaiian Village, LLC, dba Hilton Hawaiian
Village Beach Resort and Spa ("Hilton") for an answer to Plaintiff Loretta Chong's ("Plaintiff")
First Amended Complaint ("Complaint") filed herein against it on March 7, 2011 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 4, 5, 6, 7, 8, 9, 11, 12, 15,¹ 16, 17, 18, 19, 20, 21, 22 and 23 of the Complaint.
3. In response to paragraph 3 of the Complaint, Hilton admits that Plaintiff is currently employed by Hilton. Hilton denies the remainder of the allegations contained in paragraph 3 in the manner and form alleged, and Plaintiff is left to her strict proofs.
4. In response to the allegations of paragraph 10 of the Complaint, Hilton admits that it maintains in the normal course of business information relating to its employees, service charges imposed and amounts distributed to employees but denies the remaining allegations of paragraph 10 of the Complaint.
5. In response to paragraph 13 of the Complaint, Hilton admits that Plaintiff is currently employed by Hilton as a food and beverage serve in the banquets department, and avers that banquet functions currently occur and have occurred in the past at Hilton. Hilton denies the remainder of the allegations contained in paragraph 13.
6. In response to the allegations of paragraph 14 of the Complaint, Hilton admits that for certain functions as required by its collective bargaining agreement with Unite HERE Local 5, 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 14 of the Complaint.

¹ Hilton notes that the Court, on August 16, 2011, issued its oral ruling dismissing Plaintiff's unfair methods of competition claim in violation of Haw. Rev. Stat. § 481B-13 and § 480-2. Hilton has submitted the proposed Order Granting In Part And Denying In Part Defendant's Motion To Dismiss First Amended Complaint to Plaintiff's counsel and is currently awaiting Plaintiff's counsel's approval as to form.

7. In response to Plaintiff's prayer for relief, Hilton denies that Plaintiff is entitled to any relief whatsoever from Hilton.

8. 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

Plaintiff's claims are barred in whole or in part under the applicable statutes of limitations.

Fourth Affirmative Defense

Plaintiff is required to arbitrate her claims against Defendant, and this Court therefore lack subject matter jurisdiction.

Fifth Affirmative Defense

Plaintiff's claims are barred in whole or in part based upon the doctrines of estoppel, payment, and/or waiver.

Sixth Affirmative Defense

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

Seventh Affirmative Defense

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

Eighth Affirmative Defense

Plaintiff's claims are preempted in whole or in part by federal labor law.

Ninth Affirmative Defense

At all times relevant to this action, Defendant acted with equitable justification.

Tenth Affirmative Defense

Plaintiff has failed to mitigate her damages, if any.

Eleventh Affirmative Defense

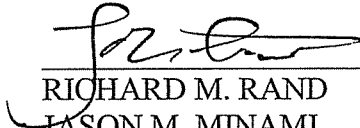
The named Plaintiff does not meet the adequacy or typicality requirements of Rule 23, and cannot fairly and adequately protect the interest of any class of Plaintiffs.

Twelfth Affirmative Defense

Hilton reserves the right to assert additional affirmative defenses as they become apparent as the result of discovery.

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, August 26, 2011.



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CERTIFICATE OF SERVICE


CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 26, 2011, a true and correct copy of the foregoing document was duly served on the following via United States mail, first class postage prepaid, addressed as follows:

James J. Bickerton, Esq.
Bickerton Lee Dang & Sullivan
745 Fort Street, Suite 801
Honolulu, Hawaii 96813

Attorney for Plaintiff
Loretta Chong,
Individually and on behalf
of all others similarly situated

DATED: Honolulu, Hawaii, August 26, 2011.



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