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FIRST CIRCUIT COURT,
STATE OF HAWAII
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CLERK

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JASON KAWAKAMI, individually and
on behalf of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JASON KAWAKAMI, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

KAHALA HOTEL INVESTORS, LLC,
d.b.a. KAHALA HOTEL AND RESORT;
and DOE DEFENDANT 1-50,

Defendant.

) Civil No. 08-1-2496-12 GWBC
) (Class Action)
)
) **STIPULATION REGARDING**
) **ADJUDICATION OF FINAL**
) **DISTRIBUTION OF CLASS ACTION**
) **JUDGMENT PROCEEDS AND**
) **ORDER; EXHIBIT "1"**
)
) Judge: Honorable Gary W.B. Chang
) Trial Date: November 22, 2010

**STIPULATION REGARDING ADJUDICATION OF FINAL DISTRIBUTION OF
CLASS ACTION JUDGMENT PROCEEDS AND ORDER**

WHEREAS, the Complaint in this case was filed on December 3, 2008,

WHEREAS, Class Certification was granted and the order entered on January 12, 2010,
and thereafter notice was disseminated to the class consistent with *Order Granting Plaintiffs'
Motion for Class Certification and for Approval of the Class Notice and Dissemination Plan* to
the over 1300 members certified pursuant to the class description;

WHEREAS, on January 6, 2011, the Court entered its *Order Granting Plaintiff's Motion*

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

for Summary Judgment Filed on August 19, 2010, granting summary judgment as to liability only, and reserving the issues of remedies and damages, ruling that under HRS §481B-14 the hotel had a duty to disclose to Kawakami that a portion of the service charge would become the property of the hotel rather than paid to its employees as tip income,

WHEREAS, a jury trial commenced on December 14, 2010, and on December 17, 2010, the jury returned the *Special Verdict* in favor of the Plaintiff Class finding that the Defendant was the legal cause of injury to the plaintiff class and awarded \$269,114.73, to the class;

WHEREAS, *Plaintiffs' Motion for Approval of Attorneys' Fees and Costs and the Class Representative Stipend ("Motion for Fees and Costs")* was filed on January 24, 2011,

WHEREAS, after orally moving several times during the trial on February 8, 2011, *Defendant's Renewed Motion for Judgment as a Matter of Law ("Renewed Motion for JMOL")* was filed,

WHEREAS, *Plaintiffs' Motion for Fees and Costs* was argued on February 16, 2011, and on July 15, 2011, the Court entered an *Order Granting in Part and Denying in Part Plaintiffs' Motion for Approval of Attorneys' Fees and Costs and the Class Representative Stipend*, therein the Court granted fees of \$331,250, including an enhancement of 25%, GET of \$15,608.50, costs of \$7,590.28, for a total award of fees, GET and costs of \$354,448.78, but denied the requested class representative stipend due to the verdict reversal,

WHEREAS, *Defendant's Renewed Motion for Judgment as a Matter of Law*, was heard on March 8, 2011, and thereafter, on July 15, 2011, the Court entered an *Order Granting Defendant's Renewed Motion for Judgment as a Matter of Law*,

WHEREAS, *Final Judgment* was also entered on July 15, 2011, in favor of Defendant and against the Plaintiff class,

WHEREAS, Plaintiffs filed their *Notice of Appeal* on August 5, 2011,

WHEREAS, on appeal on March 25, 2014, the Intermediate Court of Appeals (“ICA”) vacated the circuit court’s order granting Plaintiffs’ motion for summary judgment and held instead that summary judgment should have been granted in favor of the hotel;

WHEREAS, on *certiorari* in *Kawakami I*, the Hawai’i Supreme Court (“HSC”) December 22, 2014, vacated the ICA’s judgment on appeal and remanded the case to the ICA;

WHEREAS, on remand from the HSC’s decision in *Kawakami I*, on December 23, 2015, the ICA affirmed the circuit court’s grant of JMOL for the Defendant;

WHEREAS, on June 28, 2018, the HSC vacated the ICA’s affirmance of the circuit court’s grant of JMOL and reinstated that circuit court’s earlier grant of partial summary judgment to the Class as to the defendant KHI’s liability under HRS §481B-14. The HSC also reinstated the jury’s special verdict in favor of Plaintiffs on legal causation and the amount of damages awarded by the jury on the trial that followed the grant of partial summary judgment in favor of Plaintiffs, and remanded the case to the circuit court for a determination of additional damages and fees under HRS Chapter 480.

WHEREAS, on September 6, 2018, the *Opinion of the Court* and the *Judgment on Appeal* from the Supreme Court were filed in Circuit Court;

WHEREAS, upon remand from the HSC the parties met and conferred on multiple occasions and discussed potential alternatives for the full and final resolution of the case consistent with the HSC’s directives and the rules and laws governing the claims asserted herein;

WHEREAS under Hawaii Rules of Civil Procedure, Rule 23(f), it is the obligation of the Court, with the cooperation of the parties, to supervise the distribution of any judgment and ensure that the Judgment Proceeds are properly distributed among class members;

NOW THEREFORE, the parties stipulate as follows:

1. A *First Amended Final Judgment* will be entered in the form attached hereto as

Exhibit "1" which is consistent with the HSC's June 20, 2018 *Opinion* and the *Judgment on Appeal* entered in favor of Plaintiffs and against Defendants. As set forth therein, this judgment includes the original jury verdict of \$269,114.73, trebled to \$807,344.19, the original award of fees, taxes and costs of \$354,448.78, and an additional \$200,000.00 in appellate fees, taxes and costs for a total of \$1,361,792.97;

2. Defendants will pay the sum of \$1,361,792.97 ("the Judgment Proceeds") to Plaintiffs' counsel pursuant to the *First Amended Final Judgment* within ten (10) business days from entry. Upon payment of the Judgment Proceeds, all claims against the Defendant in this action including claims for attorneys fees, taxes, costs, and interest (except for those asserted by Class Members who have opted out of the Class), shall be dismissed, on the merits, with prejudice. The Court shall retain jurisdiction over this matter until the completion of the distribution process of the Judgment Proceeds and the items set forth in paragraph 6 of this Stipulation. Claims made by Class Members who have opted out of the class, and any counterclaims, cross-claims and third party claims relating to the claims made by Class Members who have opted out of the class, if any, are preserved. These Judgment Proceeds will be held in the Client Trust Account of Perkin & Faria during the pendency of the distribution process of the Judgment Proceeds;
3. From the \$807,344.19 trebled verdict for the class, the parties agree that the following expenditures are appropriate, reasonable, fair and warranted: (a) a class representative stipend to the class representative of \$25,000, reflecting the ten years of time and involvement on his part, actively participating in the litigation and ultimate jury trial

of this matter, and the protracted appellate briefing and arguments¹, (b) class administration of the settlement proceeds utilizing third party vendors Aloha Data and Hagadone which includes final calculation and cross referencing of the class member data, National Change of Address database reconciliation, preparation, postage, mailing and remailing of any returned settlement payments, with expenditures not to exceed \$20,000.00, and (c) Plaintiffs' counsels continued direct involvement and oversight of the distribution proceedings to be handled with no additional fees to be charged, which is anticipated to take at least five to six additional months;

4. Following entry of the *First Amended Final Judgment* and the instant *Stipulation and Order*, Plaintiff's counsel shall distribute the Judgment Proceeds, net of the Court-approved fees, costs and class representative stipend ("the Net Judgment Proceeds") to the Class. Each class member's share of the Net Judgment Proceeds shall be proportionate to his or her share of the service charges that was paid by the Class Members to the Defendant during the Class Period. Plaintiffs will prepare and submit to the Court in advance of any distribution a true and correct list of class members and their pro-rata percentage of the Net Judgment Proceeds.;
5. Upon entry of the instant *Stipulation and Order* and *First Amended Final Judgment*, Plaintiffs' counsel is authorized to distribute to class counsel \$554,448.78, finding these fees, taxes and costs as fair, adequate and reasonable in this case, as set forth both by way of the prior *Order Granting in Part and Denying in Part Plaintiffs' Motion for Approval of Attorneys' Fees and Costs and the Class Representative Stipend* and the Court taking judicial notice of the time and briefing expended by

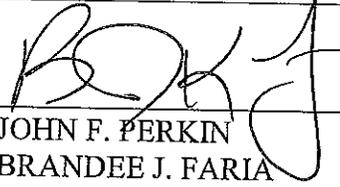
¹ This figure is also procedurally supported both by way of the foundation set forth in *Plaintiffs' Motion for Approval of Attorneys' Fees and Costs and the Class Representative Stipend* and in *Plaintiffs' Non-Hearing Motion for Approval of a Stipend for the Class Representative*, filed February 22, 2011.

Plaintiffs' counsel at both the ICA and HSC;

6. Upon completion of the distribution of the Judgment Proceeds, Plaintiffs' counsel shall file a report with the Court and certify that the distribution has been completed. If any funds remain unclaimed because checks are returned as undeliverable or remain uncashed after 120 days from mailing, such remaining funds shall be distributed to the *cy pres* recipient(s) designated by Plaintiffs' counsel.

DATED: Honolulu, Hawai'i,

NOV 20 2018



JOHN F. PERKIN

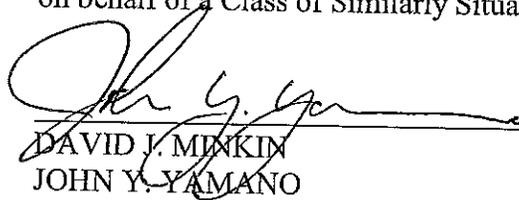
BRANDEE J. FARIA

JAMES J. BICKERTON

Attorneys for Plaintiff

JASON KAWAKAMI, individually and

on behalf of a Class of Similarly Situated Persons



DAVID J. MINKIN

JOHN Y. YAMANO

Attorneys for Defendant KAHALA HOTEL

INVESTORS, LLC, d.b.a. KAHALA HOTEL AND
RESORT

APPROVED AND SO ORDERED

Gary Won Bae Chang



JUDGE OF THE ABOVE ENTITLED COURT

HONORABLE JUDGE GARY W.B. CHANG

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Kawakami v. Kahala Hotel Investors, LLC et al., Civ. No.:08-1-2496-12 (GWBC): First Stipulation Regarding Adjudication Of Final Distribution Of Class Action Judgment Proceeds And Order

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individually and on behalf of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JASON KAWAKAMI, individually and on behalf of all others similarly situated,)	Civil No. 08-1-2496-12 GWBC
)	(Class Action)
)	
Plaintiff,)	FIRST AMENDED FINAL
vs.)	JUDGMENT
)	
KAHALA HOTEL INVESTORS, LLC,)	Judge: Honorable Gary W.B. Chang
d.b.a. KAHALA HOTEL AND RESORT;)	
and DOE DEFENDANT 1-50,)	Trial Date: November 22, 2010
Defendant.)	
)	

FIRST AMENDED FINAL JUDGMENT

On December 3, 2008, JASON KAWAKAMI ("Plaintiff"), individually and on behalf of a class of similarly situated persons ("Plaintiff Class") (collectively, "Plaintiffs"), filed a Complaint against Defendant KAHALA HOTEL INVESTORS, LLC d.b.a KAHALA HOTEL AND RESORT ("KHP").

Pursuant to the Court's *Order Granting Plaintiff Jason Kawakami's Motion for Class Certification and for Approval of Class Notice and Dissemination Plan*, entered on January 12,

EXHIBIT
"1"

On March 25, 2014, the Intermediate Court of Appeals ("ICA") vacated the circuit court's order granting Plaintiffs' motion for summary judgment and held instead that summary judgment should have been granted in favor of the hotel.

The Hawai'i Supreme Court ("HSC") reversed the ICA's holding on December 22, 2014 and vacated the ICA's judgment on appeal and remanded the case to the ICA.

On December 23, 2015, the ICA affirmed the circuit court's grant of JMOL for the Defendant.

On June 28, 2018, the HSC vacated the ICA's affirmance of the circuit court's grant of JMOL and reinstated that circuit court's earlier grant of partial summary judgment to the Class as to the defendant KHI's liability under HRS §481B-14. The HSC also reinstated the jury's special verdict in favor of Plaintiffs on legal causation and the amount of damages awarded by the jury on the trial that followed the grant of partial summary judgment in favor of Plaintiffs, and remanded the case to the circuit court for a determination of additional damages and fees under HRS Chapter 480.

On September 6, 2018, the *Opinion of the Court* and the *Judgment on Appeal* from the Supreme Court were filed in Circuit Court;

Pursuant to Rule 58 of the Hawaii Rules of Civil Procedure, final judgment is hereby entered as follows: against Defendant KAHALA HOTEL INVESTORS, LLC d.b.a KAHALA HOTEL AND RESORT, on Plaintiffs' claims in the amount of \$1,361,792.97, which consists of the original jury verdict of \$269,114.73, trebled to \$807,344.19, the original award of counsels' fees, taxes and costs of \$354,448.78, and an additional \$200,000.00 in appellate fees, taxes and costs for a total of \$1,361,792.97 ("Judgment Proceeds").

Upon payment of the Judgment Proceeds, all claims against the Defendant in this action including claims for attorneys' fees, taxes, costs, and interest (except for those asserted by Class Members who have opted out of the Class), are dismissed, on the merits, with prejudice. Claims made by Class Members who have opted out of the class, and any counterclaims, cross-claims and third party claims relating to the claims made by Class Members who have opted out of the class, if any, are preserved.

This Final Judgment resolves all claims as to all issues between the parties in this action. There is no just reason for delay and, upon filing, this Final Judgment shall be final and appealable.

IT IS SO ORDERED AND ADJUDGED.

JUDGE OF THE ABOVE ENTITLED COURT
HONORABLE JUDGE GARY W.B. CHANG

Kawakami v. Kahala Hotel Investors, LLC et al., Civ. No.:08-1-2496-12 (GWBC): First Amended Final Judgment