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Attorneys for Plaintiff

JATIN DHARIA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

JATIN DHARIA,

Plaintiff,

vs.

CIVIL ACTION NO. _____

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
DECLARATORY AND
OTHER RELIEF; JURY TRIAL
DEMANDED; EXHIBITS A-C**

MARRIOTT HOTEL SERVICES,
INC. d/b/a/ WAIKIKI BEACH
MARRIOTT RESORT & SPA

Defendant.

**JATIN DHARIA’S COMPLAINT AGAINST
MARRIOTT HOTEL SERVICES, INC.**

1. Plaintiff Jatin Dharia (“*Dharia*”) is a current employee of the defendant Marriott Hotel Services, Inc., doing business as Waikiki Beach Marriott Resort & Spa. He brings this action to remedy defendant’s violation of federal and state law as set forth herein. Plaintiff Dharia brings this action as a result of defendant’s unlawful failure to accommodate and discrimination under the Americans with Disabilities Act (“*ADA*”), 42 U.S.C. § 12101, *et. seq.*, for which Dharia seeks injunctive and declaratory relief, compensatory and punitive damages, and other relief pursuant to 42 U.S.C. § 12117. Dharia also brings this action on behalf of himself and other employees similarly situated as a collective action in accordance with 29 U.S.C. § 216(b) of the Fair Labor Standards Act (“*FLSA*”) and the Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-3, and as a class action in accordance with Fed. R. Civ. P. 23 and the Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-112(c), because of defendant’s unlawful deprivation of plaintiff’s right to overtime compensation. Dharia seeks a declaratory judgment under 28 U.S.C. § 2201 and compensation, damages, equitable and other relief available under the

FLSA, as amended, 29 U.S.C. § 201 *et seq.* and the Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-1 *et. seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this action is conferred on this Court by 29 U.S.C. § 216(b), 28 U.S.C. § 1331, 28 U.S.C. § 1337, 28 U.S.C. § 1343(3) and (4), and 28 U.S.C. § 367. With respect to his claims of discrimination under the ADA, Dharia exhausted his administrative remedies and received a Notice of Right to Sue within the ninety (90) day period preceding the filing of this complaint in federal court. Attached as Exhibit A is the Notice of Right to Sue issued by the U.S. Equal Employment Opportunity Commission (“EEOC”). Attached as Exhibit B is Dharia’s Charge of Discrimination Questionnaire.

3. Venue lies within this district pursuant to 28 U.S.C. § 1391.

PARTIES

4. Plaintiff Jatin Dharia is a resident of Honolulu, Hawaii and is employed by the defendant Waikiki Beach Marriott Resort & Spa as a Guest Services Agent Task. The plaintiff has given his written consent to be a party plaintiff in this action pursuant to 29 U.S.C. §216(b) which is attached hereto as Exhibit C.

5. Defendant Marriott Hotel Services, Inc., doing business as Waikiki Beach Marriott Resort & Spa, is a corporation headquartered at 10400 Fernwood Road, Bethesda, MD 20817. Defendant’s registered agent for service of process in

Hawaii is Corporate Creations Network, Inc., 1136 Union Mall #310, Honolulu, HI 96813.

6. Defendant is a “covered entity” within the meaning of 42 U.S.C. § 12111(2) and an “employer” within the meaning of 29 U.S.C. §203(d) and Haw. Rev. Stat. § 387-1. Defendant is also a “person” within the meaning of 29 U.S.C. § 203(a).

7. At all times material to this action, defendant has been an enterprise engaged in commerce as defined by 29 U.S.C. § 203(r)(1), and its annual dollar business volume has exceeded \$500,000.

8. At all times material herein, defendant has been actively conducting business in Hawaii.

FACTS

Violations of the ADA

9. Dharia has been employed as a “Guest Services Agent” and “Guest Services Agent Task” at defendant Waikiki Beach Marriott Resort & Spa in Honolulu, Hawaii since July 2003.

10. As part of the job, Dharia interacted with hotel guests, including checking them in and out of the hotel at the hotel’s front desk.

11. Dharia suffers from spinal stenosis, which causes him pain in his back and legs.

12. Due to his spinal stenosis, in late 2014 Dharia began to have problems standing for prolonged periods of time.

13. Guest Services Agents employed by defendant stand behind a high desk in front of a computer when interacting with guests.

14. In late 2014, Dharia asked defendant for a chair to allow him to sit at the front desk.

15. The hotel gave Dharia a high chair to sit on while working with a box for him to put his feet on. Because there were drawers on the desk in front of the chair, Dharia could not rest his legs under the desk and had to lean forward on the edge of the chair to read the computer keyboard. This exacerbated the pain in his back and legs.

16. Although he asked for and received a lower chair, the chair remained behind a high desk, requiring Dharia to reach and look up in order to use the computer, speak with hotel guests, and hand items to hotel guests.

17. On or about May 20, 2015, Dharia became injured while at work because he was required to repeatedly reach and look up while seated in the low chair behind the high desk.

18. On June 10, 2015, Dharia filed a workers' compensation claim due to the work-related injury.

19. After multiple physicians examined Dharia, defendant accepted compensability for the injury.

20. On October 30, 2015, independent medical examiner John S. Endicott, MD, issued a report finding that Dharia was able to perform the functions of his job as long as defendant provided an accommodation that Dharia be able to work at a desk with a chair and be able to have a good ergonomic set up for his computer, keyboard, mouse, and monitor.

21. Despite a recommendation from an independent medical professional that plaintiff could return to work with a reasonable accommodation, defendant refused to return Dharia to work and refused to provide him with a reasonable accommodation for nearly a year.

22. On February 23, 2016, defendant wrote to Dharia's physician asking if the plaintiff was physically able to perform a Guest Services Agent Task position, which is a position performed at a seated desk, and which requires the employee to speak on the phone for extended periods of time. Dharia's physician, Luca Vassalli, MD, responded on March 11, 2016, that Dharia could perform the job "without problem." Despite this, defendant did not place Dharia in the Guest Service Agent Task position for more than six months.

23. On March 28, 2016, Dharia stopped receiving workers' compensation payments; defendant did not schedule him to work and did not pay him.

24. Starting on March 28, 2016, defendant listed Dharia as on unpaid sick leave even though he was able to work with a reasonable accommodation.

25. On April 19, 2016, Dharia attended a meeting with defendant to discuss a reasonable accommodation that would allow him to return to work. Dharia's first requested accommodation was for a lower desk that would allow him to perform his job while seated and without constantly looking and reaching upward. Defendant refused to provide that accommodation.

26. Dharia then asked defendant to provide him with a low chair that he could sit in while there were no guests at the front desk. Dharia's doctor had told Dharia that he could perform the job if he was permitted to sit during slow periods. This accommodation would have allowed the plaintiff to stand at the high desk and help guests when the desk is busy and to sit when the area is not busy. Defendant refused to provide Dharia with a chair so that he could sit during slower periods at the desk. Defendant did not tell Dharia why they could not provide him with that accommodation.

27. During the April 19, 2016, meeting, defendant did not make any suggestions of other reasonable accommodations.

28. On April 20, 2016, Dharia received a letter from defendant's Director of Human Resources, Yvette Santiago, stating that defendant had determined that he could not perform the essential functions of either the Guest Services Agent or

Guest Services Agent Task positions, with or without a reasonable accommodation.

29. Dharia was and is able to perform the job of Guest Services Agent with a reasonable accommodation and is able to perform the job of Guest Services Agent Task without a reasonable accommodation.

30. Dharia informed the defendant that he could perform the Guest Services Agent job if it provided him with a lower desk or if it simply provided him with a chair that he could sit in during slow periods at the desk. Further, Dharia's physician informed defendant that Dharia could perform a Guest Services Agent Task position without any accommodations.

31. On May 31, 2016, Dharia filed a charge of discrimination on the basis of disability with the EEOC (Charge No. 486-2016-00274).

32. In August 2016, four months after defendant had stated that Dharia was not able to physically perform his job and after Dharia had filed the discrimination charge with the EEOC, defendant again met with Dharia to discuss a reasonable accommodation.

33. In September 2016, defendant gave Dharia a reasonable accommodation, moving him to a Guest Services Agent Task position and returned him to work. Since September 2016, Dharia has worked in the Guest Services Agent Task position and has received pay from defendant.

34. There was no difference between Dharia's ability to perform the Guest Services Agent Task position in February 2016, when his physician told defendant that he could perform the job without problem, and in September 2016, when defendant placed Dharia in the position following his filing of an EEOC charge.

35. On October 13, 2017, the EEOC issued Dharia a right-to-sue letter with regard to his charge of discrimination on the basis of disability.

Wage and Hour Violations

36. At all times material herein, Dharia has been entitled to the rights, protections, and benefits provided under the FLSA, 29 U.S.C. § 201 *et seq.*, and Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-1 *et. seq.*

37. At all times material herein, Dharia has been entitled to overtime compensation at a rate of not less than one and one-half times his regular rate of pay for the hours of overtime he has worked.

38. While working for defendant, Dharia has been entitled to receive payments from defendant in addition to his base hourly wage. Those payments include, but are not limited to, incentive payments for meeting certain work-based metrics set by defendant, shift differentials for working certain shifts, relief supervisor payments, language specialist payments, special training pay, and awards for upselling hotel guests. All other hourly employees of defendant are eligible to receive and do in fact receive these payments.

39. Dharia is regularly scheduled by the defendant to work 40 hours per week. However, defendant regularly requires that plaintiff perform additional work beyond the 40 hours per week he regularly performs. As such Dharia frequently works more than 40 hours per week.

40. In every instance where plaintiff performs work in excess of 40 hours per week, defendant fails to include the additional payments referenced in paragraph 38 when calculating the employee's regular rate of pay. Thus, Dharia does not receive overtime compensation at the rate of one and one-half times his regular rate of pay for all hours worked in excess of 40 in a week.

CLASS ALLEGATIONS

41. As set forth above, defendant has violated the provisions of the Hawaii Wage and Hour Law, resulting in damages to the Plaintiff as well as the members of the Proposed Class in the form of unpaid wages, liquidated damages, incurred and incurring costs, and reasonable attorneys' fees.

42. The Hawaii Wage and Hour Law permits class actions. Haw. Rev. Stat. § 387-12(c).

43. The Proposed Class is defined as follows: From January 2, 2011 to the present, all individuals employed by defendant who were eligible to receive incentive payments including, but not limited to, night differential, relief

supervisor payments, language specialist payments, special training pay, and awards.

44. Upon information and belief, there are in excess of 1,000 members of the Proposed Class. Thus, the Proposed Class is so numerous that joinder of all members is impracticable. Although the precise number of such persons is unknown, these similarly-situated members of the Proposed Class are known to defendant, are readily identifiable, and can be located through defendant's work and payroll records.

45. There are questions of law and fact common to the members of the Proposed Class, including but not limited to, whether the defendant violated the Hawaii Wage and Hour Law by failing to pay the members of the Proposed Class for all hours worked in excess of 40 in a workweek at the rate of one and one-half times the employees' regular rate of pay by failing to include the payments identified in paragraph 38 in the members of the Proposed Class's regular rates of pay.

46. Other common questions of law and fact include, but are not limited to:

- a. Whether as a result of the overtime pay violations of the Hawaii Wage and Hour Law, the named plaintiff, as well as all members of the Proposed Class, have suffered damages by failing to receive their lawful wages during their tenure of employment

with defendant and are entitled to an additional amount equal to the amount of unpaid wages pursuant to Haw. Rev. Stat. § 387-3.

- b. Whether as a result of the overtime pay violations of the Hawaii Wage and Hour Law, the named plaintiff and the members of the Proposed Class are also entitled to an award of attorneys' fees;
- c. Whether defendant's actions in failing to compensate the named plaintiff and other members of the Proposed Class in accordance with the provisions of the Hawaii Wage and Hour Law were willful.

47. The claims of Dharia are typical of all members of the Proposed Class. Dharia has the same interests in this matter as all members of the Proposed Class.

48. Dharia is an adequate class representative, is committed to pursuing this action, and in the undersigned attorneys, has retained competent counsel experienced in wage and hour law and class action litigation.

COUNT I

UNLAWFUL FAILURE TO ACCOMMODATE IN VIOLATION OF THE ADA, 42 U.S.C. § 12112 (By Plaintiff Against Defendant)

49. Plaintiff adopts, and incorporates by reference herein, paragraphs 1

through 48 of this Complaint.

50. The acts, policies, and practices of defendant as alleged herein violate the Americans with Disabilities Act (“*ADA*”), 42 U.S.C. § 12112(b)(5)(a).

51. Dharia timely filed a charge of disability discrimination and thereafter received a “Notice of Right to Sue” from the EEOC.

52. Dharia has spinal stenosis and is disabled within the meaning of the ADA, 42 U.S.C. § 12102. He is a qualified individual under the ADA, 42 U.S.C. § 12111(8), and is otherwise qualified for the jobs of Guest Services Agent and Guest Services Agent Task.

53. On multiple occasions, Dharia informed defendant of his disability and requested a reasonable accommodation.

54. At all relevant times, there was an accommodation available to him that would have been effective and would not have posed an undue hardship.

55. Defendant failed to participate in good faith in the interactive process, failed to provide Dharia with a reasonable accommodation, and failed to demonstrate that to provide the accommodation requested would result in an undue hardship as defined in 42 U.S.C. § 12111(10).

56. Defendant’s reasons for failing to provide a reasonable accommodation were pretextual.

57. Dharia is damaged by defendant's violations of the ADA as hereinabove alleged or as proven at trial.

COUNT II

UNLAWFUL DISCRIMINATION IN VIOLATION OF THE ADA, 42 U.S.C. § 12112 (By Plaintiff Against Defendant)

58. Plaintiff adopts, and incorporates by reference herein, paragraphs 1 through 57 of this Complaint.

59. The acts, policies, and practices of defendants as alleged herein violate the ADA, 42 U.S.C. § 12112(a).

60. Dharia timely filed a charge of disability discrimination and thereafter received a "Notice of Right to Sue" from the EEOC.

61. Dharia has spinal stenosis and is a disabled person within the meaning of the ADA. He is otherwise qualified for the job of Guest Services Agent.

62. Defendant discriminated against Dharia based on his disability when defendant failed to provide Dharia a reasonable accommodation, preventing him from performing work or earning pay.

63. Defendant's conduct was willful, knowing and intentional.

64. Defendant's purported reasons for not providing Dharia a reasonable accommodation were false and pretextual.

COUNT III

**VIOLATION OF § 7(a) OF THE FAIR LABOR
STANDARDS ACT, 29 U.S.C. § 207(a)
(By Plaintiff and All Others Similarly Situated Against Defendant)**

65. Plaintiff adopts, and incorporates by reference herein, paragraphs 1 through 64 of this Complaint. Plaintiff brings this count on behalf of himself and other employees similarly situated.

66. Section 7(a) of the Fair Labor Standards Act ("*FLSA*"), 29 U.S.C. § 207(a)(1), provides that employees shall be paid overtime compensation at a rate of not less than one and one-half times their regular rate of pay for all hours worked in excess of forty (40) hours per work week.

67. Defendant has violated, and continues to violate, 29 U.S.C. § 207(a)(1) by failing and refusing to compensate Dharia and other similarly situated employees at a rate of not less than one and one-half times the regular rate at which the plaintiff and those similarly situated are employed in workweeks in which Dharia and those similarly situated work forty (40) or more hours per week by failing to include all payments made to plaintiff and others similarly situated when calculating their regular rates of pay and paying overtime to them.

68. Defendant has deprived the plaintiff and other similarly situated employees of overtime compensation mandated under the FLSA by miscalculating the regular rate of pay at which overtime is paid. Defendant has failed to include

various types of compensation paid in addition to the hourly pay in the regular rates of pay for purposes of calculating FLSA overtime compensation. These types of payments include, but are not limited to, incentive payments for meeting certain work-based metrics set by defendant, shift differentials for working certain shifts, relief supervisor payments, language specialist payments, special training pay, and awards. These forms of compensation and similar types of payments made to plaintiff and similarly situated employees are forms of compensation that must be included in the regular rate of pay at which overtime is paid under section 207(a) of the FLSA, 29 U.S.C. § 207(a). Defendant's failure to include these payments in plaintiff's regular rates of pay violates section 207(a) of the FLSA, 29 U.S.C. § 207(a).

69. Defendants' violations of the FLSA were willful and in bad faith.

70. As a result of the aforesaid willful violations of the FLSA, overtime compensation has been unlawfully withheld by defendant from Dharía and similarly situated persons for which the defendant is liable pursuant to 29 U.S.C. § 216(b), together with an additional equal amount as liquidated damages, as well as interest, reasonable attorneys' fees, and the costs of this action.

71. The employment and work records for the plaintiff are in the exclusive possession, custody, and control of defendant, and Dharía is unable to state at this time the exact amount owing to him. Defendant is under a duty imposed by 29

U.S.C. § 211(c) and the regulations of the U.S. Department of Labor to maintain and preserve plaintiff's payroll and other employment records from which the amounts of the defendants' liability can be ascertained.

COUNT IV

UNPAID OVERTIME WAGES, Haw. Rev. Stat. § 387-3 (By Plaintiff, All Others Similarly Situated, and Class Representative on Behalf of the Proposed Class Against Defendant)

72. Plaintiff adopts, and incorporates by reference herein, paragraphs 1 through 71 of this Complaint.

73. Dharia, similarly situated employees, and the members of the Proposed Class are and have been governed by the wage and overtime requirements of Chapter 387 of the Hawaii Revised Statutes. Section 387-3 of the Hawaii Revised Statutes requires employees be paid at least one and one-half the regular rate of pay for all hours in excess of forty (40) in one work week.

74. During the last six (6) years, defendant has systemically denied Dharia, those similarly situated, and the members of the Proposed Class overtime compensation for hours worked in excess of forty (40) in a work week.

75. Defendant has violated, and continues to violate, Haw. Rev. Stat. § 387-3 by failing and refusing to compensate Dharia, other similarly situated employees, and members of the Proposed Class for their hours of work in excess of forty (40) hours per work week at a rate of not less than one and one-half times the regular

rate at which the plaintiff and those similarly situated are employed by failing to include payments made to Dharia, those similarly situated, and members of the Proposed Class in addition to their hourly pay in defendant's calculation of their regular rate of pay used for the payment of overtime.

76. Defendant has failed to include various types of compensation paid to Dharia and those similarly situated in addition to their hourly pay in plaintiff and those similarly situated's regular rates of pay for purposes of calculating overtime compensation. These types of payments include, but are not limited to, incentive payments for meeting certain work-based metrics set by defendant, shift differentials for working certain shifts, relief supervisor payments, language specialist payments, special training pay, and awards. These forms of compensation and similar types of payments made to plaintiff, similarly situated employees, and members of the Proposed Class are forms of compensation that must be included in the regular rate of pay at which overtime is paid under section 387-3 of the Hawaii Wage and Hour Law, Haw. Rev. Stat. § 387-3.

77. Dharia, similarly situated employees, and the members of the Proposed Class are entitled to recover the unpaid balance of the full amount of the overtime wages, including interest thereon, and reasonable attorneys' fees and costs, under Section 387-12(c) of the Hawaii Revised Statutes.

78. Dharia, similarly situated employees, and the members of the Proposed Class are entitled to recover an additional equal amount as liquidated damages pursuant to Section 387-12(b) of the Hawaii Revised Statutes as defendant's conduct was willful.

79. As a proximate result of the aforementioned violations, Dharia, similarly situated employees, and the members of the Proposed Class have incurred damages in an amount according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction of this Court.

COUNT V

FAILURE TO TIMELY PAY WAGES DUE, Haw. Rev. Stat. §§ 388-2, 388-5 (By Plaintiff Against Defendant)

80. Plaintiff adopts, and incorporates by reference herein, paragraphs 1 through 79 of this Complaint.

81. At all times relevant herein, defendant violated Sections 388-2 and/or 388-5 of the Hawaii Revised Statutes and continues to violate those provisions by willfully and systemically failing to timely pay Dharia wages due by failing to properly calculate Dharia's regular rate of pay for purposes of paying overtime wages for hours worked in excess of forty (40) in a work week.

82. Dharia is entitled to recover the unpaid balance of the full amount of the unpaid wages, a penalty of a sum equal to the amount of unpaid wages, interest at a rate of six per cent per year from the date that the wages were due, and reasonable

attorneys' fees and costs under Sections 388-10 and 388-11 of the Hawaii Revised Statutes.

83. As a proximate cause of the aforementioned violations, Dharia has incurred damages in an amount according to proof at the time of trial, but in an amount in excess of the minimum jurisdiction of this Court.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court grant relief against the defendant as follows:

- A. Enter a declaratory judgment that defendant has willfully and wrongfully violated its statutory, constitutional, and legal obligations to Dharia under the ADA, FLSA, and Hawaii Wage and Hour Law and deprived Dharia of his rights, privileges, protections, compensation, benefits, and entitlements under law, as alleged herein;
- B. Order a complete and accurate accounting of all the compensation, benefits, and relief to which Dharia, those similarly situated, and members of the Proposed Class are entitled;
- C. Award monetary damages to Dharia, those similarly situated, and members of the Proposed Class in the form of back pay, compensation, and other financial benefits of employment, plus interest;

- D. Award compensatory and punitive damages for the harm to Dharia's reputation, humiliation, emotional and mental suffering, and for other financial and consequential harm and injuries he has suffered;
- E. Award reasonable attorneys' fees and the costs and disbursements of this action; and
- F. Grant other legal and equitable relief as may be just and proper.

JURY TRIAL DEMANDED

Plaintiff respectfully requests a trial by jury on all claims presented in the Complaint.

DATED: Honolulu, Hawaii, January 5, 2018.

/s/ SHARON V. LOVEJOY

SHARON V. LOVEJOY
CHRISTOPHER R. FORD
GREGORY K. MCGILLIVARY
SARA L. FAULMAN
T. REID COPLOFF
Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
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JATIN DHARIA,

Plaintiff,

vs.

MARRIOTT HOTEL SERVICES,
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MARRIOTT RESORT & SPA

Defendant.

CIVIL ACTION NO. _____

**CLASS ACTION COMPLAINT
FOR DAMAGES AND
DECLARATORY AND
OTHER RELIEF JURY TRIAL
DEMANDED**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Jatin Dharia, by and through his counsel
undersigned, and hereby demands trial by jury on all issues so triable herein:

DATED: Honolulu, Hawaii, January 5, 2018.

/s/ SHARON V. LOVEJOY

SHARON V. LOVEJOY
CHRISTOPHER R. FORD
GREGORY K. MCGILLIVARY
SARA L. FAULMAN
T. REID COPLOFF
Attorneys for Plaintiff

EXHIBIT A

EXHIBIT A

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Jatin Dharia
c/o Reid Coploff, Esq
Woodley & McGillivray, LLP
1101 Vermont Ave., N.W., Ste. 1000
Washington, DC 20005

From: Honolulu Local Office
300 Ala Moana Blvd
Room 4-257
Honolulu, HI 96850

☐

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

486-2016-00274

Rogelio A Colón,
Investigator

(808) 541-3118

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

☒

More than 180 days have passed since the filing of this charge.

☐

Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.

☒

The EEOC is terminating its processing of this charge.

☐

The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

☐

The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.

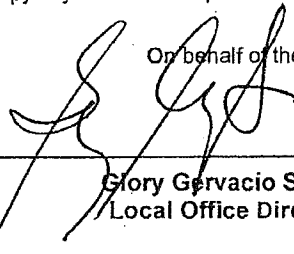
☐

The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission



Glory Gervacio Saure,
Local Office Director

Enclosures(s)

10/13/17

(Date Mailed)

cc: WAIKIKI BEACH MARRIOTT RESORT & SPA
c/o Sarah O. Wang, Esq.
Marr Jones & Wang
Pauahi Tower 1003 Bishop St., Ste. 1500
Honolulu, HI 96813

EXHIBIT B

EXHIBIT B



EQUAL EMPLOYMENT OPPORTUNITY COMMISSION INTAKE QUESTIONNAIRE

Please immediately complete the entire form and return it to the U.S. Equal Employment Opportunity Commission ("EEOC"). **REMEMBER**, a charge of employment discrimination must be filed within the time limits imposed by law, generally within 180 days or in some places 300 days of the alleged discrimination. Upon receipt, this form will be reviewed to determine EEOC coverage. **Answer all questions as completely as possible, and attach additional pages if needed to complete your response(s). If you do not know the answer to a question, answer by stating "not known." If a question is not applicable, write "n/a." Please Print.**

1. Personal Information

Last Name: Dharia First Name: Jatin MI: _____
 Street or Mailing Address: P.O. Box 8722 Apt Or Unit #: _____
 City: Honolulu County: Honolulu State: HI ZIP: 96830-0722
 Phone Numbers: Home: (808) 366-6520 Work: (_____) _____
 Cell: (808) 366-6520 Email Address: jatindharia@hotmail.com
 Date of Birth: November 6, 1951 Sex: Male ☒ Female ☐ Do You Have a Disability? ☒ Yes ☐ No
 Please answer each of the next three questions. i. Are you Hispanic or Latino? ☐ Yes ☒ No
 ii. What is your Race? Please choose all that apply. ☐ American Indian or Alaska Native ☒ Asian ☐ White
☐ Black or African American ☐ Native Hawaiian or Other Pacific Islander
 iii. What is your National Origin (country of origin or ancestry)? India

Please Provide The Name Of A Person We Can Contact If We Are Unable To Reach You:

Name: T. Reid Coploff Relationship: Attorney
 Address: 1101 Vermont Avenue, NW, Suite 1000 City: Washington State: DC Zip Code: 20005
 Home Phone: (202) 360-2569 Other Phone: (202) 833-8855

2. I believe that I was discriminated against by the following organization(s): (Check those that apply)

☒ Employer ☐ Union ☐ Employment Agency ☐ Other (Please Specify) _____

Organization Contact Information (If the organization is an employer, provide the address where you actually worked. If you work from home, check here ☐ and provide the address of the office to which you reported.) **If more than one employer is involved, attach additional sheets.**

Organization Name: Waikiki Beach Marriott Resort and Spa
 Address: 2552 Kalakaua Avenue County: Honolulu
 City: Honolulu State: HI Zip: 96815 Phone: (808) 922-6611
 Type of Business: Hotel Job Location if different from Org. Address: _____
 Human Resources Director or Owner Name: Yvette Z. Santiago Phone: 808-921-5055
 Number of Employees in the Organization at All Locations: Please Check (✓) One
☐ Fewer Than 15 ☐ 15 - 100 ☐ 101 - 200 ☐ 201 - 500 ☒ More than 500

3. Your Employment Data (Complete as many items as you can) Are you a Federal Employee? ☐ Yes ☒ No

Date Hired: July 5, 2003 Job Title At Hire: Guest Services Agent
 Pay Rate When Hired: \$14.78/hour Last or Current Pay Rate: \$23.37/hour
 Job Title at Time of Alleged Discrimination: Guest Services Date Quit/Discharged: N/A
 Name and Title of Immediate Supervisor: Front Desk Manager, individual changed depending on the shift

If Job Applicant, Date You Applied for Job _____ Job Title Applied For _____

4. What is the reason (basis) for your claim of employment discrimination?

FOR EXAMPLE, if you feel that you were treated worse than someone else because of race, you should check the box next to Race. If you feel you were treated worse for several reasons, such as your sex, religion and national origin, you should check all that apply. If you complained about discrimination, participated in someone else's complaint, or filed a charge of discrimination, and a negative action was threatened or taken, you should check the box next to Retaliation.

☐ Race ☐ Sex ☐ Age ☒ Disability ☐ National Origin ☐ Religion ☐ Retaliation ☐ Pregnancy ☐ Color (typically a difference in skin shade within the same race) ☐ Genetic Information; choose which type(s) of genetic information is involved:

☐ i. genetic testing ☐ ii. family medical history ☐ iii. genetic services (genetic services means counseling, education or testing)

If you checked color, religion or national origin, please specify: _____

If you checked genetic information, how did the employer obtain the genetic information? _____

Other reason (basis) for discrimination (Explain). _____

5. What happened to you that you believe was discriminatory? Include the date(s) of harm, the action(s), and the name(s) and title(s) of the person(s) who you believe discriminated against you. Please attach additional pages if needed.

(Example: 10/02/06 - Discharged by Mr. John Soto, Production Supervisor)

A) Date: _____ Action: See Attached.

Name and Title of Person(s) Responsible: _____

B) Date: _____ Action: _____

Name and Title of Person(s) Responsible: _____

6. Why do you believe these actions were discriminatory? Please attach additional pages if needed.
See Attached.

7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?
See Attached.

8. Describe who was in the same or similar situation as you and how they were treated. For example, who else applied for the same job you did, who else had the same attendance record, or who else had the same performance? Provide the race, sex, age, national origin, religion, or disability of these individuals, if known, and if it relates to your claim of discrimination. For example, if your complaint alleges race discrimination, provide the race of each person; if it alleges sex discrimination, provide the sex of each person; and so on. Use additional sheets if needed.

Of the persons in the same or similar situation as you, who was treated better than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

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Of the persons in the same or similar situation as you, who was treated *worse* than you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Of the persons in the same or similar situation as you, who was treated the *same* as you?

A. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

B. Full Name	Race, sex, age, national origin, religion or disability	Job Title

Description of Treatment

Answer questions 9-12 only if you are claiming discrimination based on disability. If not, skip to question 13. Please tell us if you have more than one disability. Please add additional pages if needed.

9. Please check all that apply:
- ☒ Yes, I have a disability
- ☐ I do not have a disability now but I did have one
- ☐ No disability but the organization treats me as if I am disabled

10. What is the disability that you believe is the reason for the adverse action taken against you? Does this disability prevent or limit you from doing anything? (e.g., lifting, sleeping, breathing, walking, caring for yourself, working, etc.).

I have spinal stenosis which prevents me from standing for extended periods of time.

11. Do you use medications, medical equipment or anything else to lessen or eliminate the symptoms of your disability?

Yes ☒ No ☐

If "Yes," what medication, medical equipment or other assistance do you use?

I take Gabapentin daily.

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

Yes ☒ No ☐

If "YES", when did you ask? See Attached How did you ask (verbally or in writing)? _____

Who did you ask? (Provide full name and job title of person)

Describe the changes or assistance that you asked for:

How did your employer respond to your request?

4

13. Are there any witnesses to the alleged discriminatory incidents? If yes, please identify them below and tell us what they will say. (Please attach additional pages if needed to complete your response)

A. Full Name	Job Title	Address & Phone Number
Judy Lily	Business Agent	Unite Here Local 5, 1516 South King Street, Honolulu, HI 96826-1912, Phone 808-941-2141

What do you believe this person will tell us?

Ms. Lily attended a meeting with me as my union representative where my employer refused to provide me a reasonable accommodation so that I could continue performing my job as a guest services representative.

B. Full Name	Job Title	Address & Phone Number
Joli Tokusato	Organizer	Unite Here Local 5, 1516 South King Street, Honolulu, HI 96826-1912, Phone 808-941-2141

What do you believe this person will tell us?

Ms. Tokusato attended a meeting with me as my union representative with my employer. At the meeting, my employer refused to provide me with a chair to use during slow periods during my work day.

14. Have you filed a charge previously in this matter with EEOC or another agency? Yes ☐ No ☒

15. If you have filed a complaint with another agency, provide name of agency and date of filing:

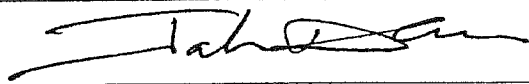
16. Have you sought help about this situation from a union, an attorney, or any other source? Yes ☒ No ☐

Provide name of organization, name of person you spoke with and date of contact. Results, if any?
See Attached.

Please check one of the boxes below to tell us what you would like us to do with the information you are providing on this questionnaire. If you would like to file a charge of job discrimination, you must do so either within 180 days from the day you knew about the discrimination, or within 300 days from the day you knew about the discrimination if the employer is located in a place where a state or local government agency enforces laws similar to the EEOC's laws. If you do not file a charge of discrimination within the time limits, you will lose your rights. If you would like more information before filing a charge or you have concerns about EEOC's notifying the employer, union, or employment agency about your charge, you may wish to check Box 1. If you want to file a charge, you should check Box 2.

Box 1 ☐ I want to talk to an EEOC employee before deciding whether to file a charge. I understand that by checking this box, I have not filed a charge with the EEOC. I also understand that I could lose my rights if I do not file a charge in time.

Box 2 ☒ I want to file a charge of discrimination, and I authorize the EEOC to look into the discrimination I described above. I understand that the EEOC must give the employer, union, or employment agency that I accuse of discrimination information about the charge, including my name. I also understand that the EEOC can only accept charges of job discrimination based on race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for opposing discrimination.



Signature

5-24-16

Today's Date

PRIVACY ACT STATEMENT: This form is covered by the Privacy Act of 1974: Public Law 93-579. Authority for requesting personal data and the uses thereof are:

1. FORM NUMBER/TITLE/DATE. EEOC Intake Questionnaire (9/20/08).
2. AUTHORITY. 42 U.S.C. § 2000e-5(b), 29 U.S.C. § 211, 29 U.S.C. § 626, 42 U.S.C. 12117(a), 42 USC §2000ff-6.
3. PRINCIPAL PURPOSE. The purpose of this questionnaire is to solicit information about claims of employment discrimination, determine whether the EEOC has jurisdiction over those claims, and provide charge filing counseling, as appropriate. Consistent with 29 CFR 1601.12(b) and 29 CFR 1626.8(c), this questionnaire may serve as a charge if it meets the elements of a charge.
4. ROUTINE USES. EEOC may disclose information from this form to other state, local and federal agencies as appropriate or necessary to carry out the Commission's functions, or if EEOC becomes aware of a civil or criminal law violation. EEOC may also disclose information to respondents in litigation, to congressional offices in response to inquiries from parties to the charge, to disciplinary committees investigating complaints against attorneys representing the parties to the charge, or to federal agencies inquiring about hiring or security clearance matters.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION. Providing of this information is voluntary but the failure to do so may hamper the Commission's investigation of a charge. It is not mandatory that this form be used to provide the requested information.

5. What happened to you that you believe was discriminatory?

I suffer from spinal stenosis, which causes me pain in my back and legs. I have been employed as a Guest Services Agent at the Waikiki Beach Marriott Resort and Spa in Honolulu, HI since July 2003. As part of the job, I interact with hotel guests, including checking them in and out of the hotel at the hotel's front desk.

Due to my spinal stenosis, in late 2014 I began to have problems standing for prolonged periods of time. Guest Services Agents at the hotel stand behind a high desk in front of a computer when interacting with guests. I asked my employer for a chair to allow me to sit at the front desk.

The hotel gave me a high chair to sit on while working with a box for me to put my feet on. Because there were drawers on the desk in front of the chair, I could not rest my legs under the desk and had to lean forward on the edge of the chair to reach the computer keyboard. This exacerbated the pain in my back and legs. Although I asked for and received a lower chair, the chair remained behind a high desk, requiring me to reach and look up in order to use the computer, speak with hotel guests, and hand items to hotel guests. On or about May 20, 2015, I became injured while at work because I was required to repeatedly reach and look up while seated in the low chair behind the high desk. On June 10, 2015, I filed a workers' compensation claim due to the injury.

After I was examined by multiple physicians, my employer accepted compensability for the injury. On October 30, 2015, independent medical examiner John S. Endicott, MD, issued a report finding that I was able to perform the functions of my job as long as my employer provided an accommodation that I be able to work at a desk with a chair and be able to have a good ergonomic set up for my computer, keyboard, mouse, and monitor.

Despite this recommendation from an independent medical professional that I could return to work with a reasonable accommodation, my employer has refused to return me to work and has refused to provide with me a reasonable accommodation.

On February 23, 2016, my employer wrote to my physician asking if I was physically able to perform a Guest Service Agent Task position, which is a position performed at a seated desk, and which requires the employee to speak on the phone for extended periods of time. My physician, Luca Vassalli, MD, responded on March 11, 2016, that I could perform the job "without problem." Despite this, my employer never placed me in the Guest Service Agent Task position.

On March 28, 2016, I stopped receiving workers' compensation payments. My employer has not scheduled me to work and has not provided me any pay since March 28, 2016. Since March 28, 2016, my employer has listed me as on unpaid sick leave.

On April 19 2016, I attended a meeting with my employer to discuss a reasonable accommodation that would allow me to return to work. My first requested accommodation was for a lower desk that would allow me to perform my job while seated and without constantly looking and reaching upward. My employer refused to provide that accommodation. Because a

low desk was not available, I then asked the hotel to provide me with a low chair that I could sit in while there were no guests at the front desk. My doctor has told me that I can perform the job if I am permitted to sit during slow periods. This accommodation would allow me to stand at the high desk and help guests when the desk is busy and to sit when the area is not busy. The hotel refused to provide me with a chair so that I could sit during slower periods at the desk. The hotel never told me why they could not provide me with that accommodation. The hotel did not make any suggestions of other reasonable accommodations.

On April 20, 2016, I received a letter from hotel Director of Human Resources Yvette Santiago, stating that the hotel had determined that I could not perform the essential functions of the Guest Services Agent or Guest Services Agent Task positions with or without a reasonable accommodation. To date, although the hotel has not issued me a termination, it has not placed me on a schedule to work since June 2015, and has not paid me since March 28, 2016.

6. Why do you believe these actions were discriminatory?

I believe that these actions were discriminatory because I am able to perform the job of Guest Services Agent with a reasonable accommodation and am able to perform the job of Guest Services Agent Task without a reasonable accommodation. I have informed my employer that I could perform the Guest Services Agent job if it provided me with a lower desk or if it simply provided me with a chair that I could sit in during slow periods at the desk. Further, my physician informed the hotel that I could perform a Guest Services Agent Task position that is a seated position requiring up to three hours per day of speaking without any accommodations. Despite me providing multiple ideas for reasonable accommodations that would allow me to continue performing my job, since my injury in June 2015 my employer has refused to implement any of these accommodations and has not scheduled me to work.

7. What reason(s) were given to you for the acts you consider discriminatory? By whom? His or Her Job Title?

I received a letter dated April 20, 2016, from Director of Human Resources Yvette Santiago stating that the hotel had determined that I could not perform the primary functions of my job or the Guest Service Agent Task position with or without a reasonable accommodation. This determination was made even though I, along with my union and my doctor, had informed the hotel that I could perform preform the Guest Services Agent job if I was either provided either a chair with a low desk so that I did not have to repeatedly look and reach up or provided with a low chair that I could sit in during slower periods at the front desk. Furthermore, my physician informed the hotel that I could perform the essential job functions of the Guest Service Agent Task position without any accommodations. Despite this, the hotel steadfastly refused to provide me with a reasonable accommodation so that I could perform my job.

12. Did you ask your employer for any changes or assistance to do your job because of your disability?

Yes. On October 30, 2015, independent medical examiner John S. Endicott, MD, issued a report finding that I was able to perform the functions of my job as a Guest Services Agent as long as my employer provided an accommodation that I be able to work at a desk with a chair and be able to have a good ergonomic set up for my computer, keyboard, mouse, and monitor. On March 11, 2016, my physician, Luca Vassalli, MD, responded to a questionnaire sent by my employer and stated that I was able to perform the primary job functions of an alternative position, Guest Services Agent Task, which involved speaking for up to three hours per shift. At a meeting with hotel Human Resources Director Yvette Santiago in April 2016, in addition to the changes that I requested above, I requested, alternatively, that the hotel provide me with a low chair that I could sit in during slower periods at the front desk.

The hotel refused to implement any of these requested changes. On April 20, 2016, Human Resources Director Yvette Santiago sent me a letter stating that the hotel had determined that I could not perform the essential functions of the Guest Services Agent or Guest Services Agent Task positions with or without a reasonable accommodation. The letter provided no additional explanation for how the hotel reached that conclusion and did not provide any justification for their decision to refuse to provide the reasonable accommodations I had previously requested.

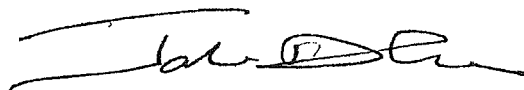
16. Have you sought help about this situation from a union, an attorney, or any other source?

Yes. I am in the bargaining unit of Unite Here Local 5. Two different representatives of Local 5 have worked with me during my communications with the Waikiki Beach Marriott Resort and Spa: Judy Lily and Joli Tokusato. Both attended meetings with me in 2016 with the hotel's representatives. The hotel has refused to provide me with a reasonable accommodation. On April 22, 2016, Ms. Tokusato wrote to Human Resources Director Yvette Santiago requesting documents related to the hotel's decision not to provide me with a reasonable accommodation, documents regarding the job duties of the Guest Services Agent position, and an explanation for why the hotel could not provide me with a chair for occasional rest between guests. The hotel has not responded to the letter.

I have also been in contact with attorneys Gregory K. McGillivray and T. Reid Coploff of Woodley & McGillivray LLP, 1101 Vermont Avenue, N.W, Suite 1000, Washington, DC 20005, regarding my employer's refusal to provide me with a reasonable accommodation in violation of the Americans with Disabilities Act. Along with this questionnaire, I am submitting an Authorization of Representation form stating that I am being represented in this matter by Woodley & McGillivray LLP, along with such other counsel they deem needed as local counsel.

5-24-16

Date

A handwritten signature in black ink, appearing to read 'Jatin Dharia', written over a horizontal line.

Jatin Dharia

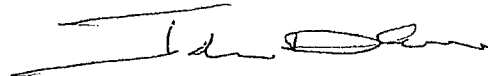
EXHIBIT C

EXHIBIT C

**CONSENT TO BECOME PARTY IN AN ACTION
TO RECOVER UNPAID OVERTIME AND OTHER WAGES**

By my signature below, I represent that I have worked for Waikiki Beach Marriott Resort and Spa, ("the Company"), and that the Company failed to properly compensate me for my work. I authorize the filing and prosecution of an action in my name and on my behalf and on behalf of others similarly situated to recover unpaid wages, liquidated damages and all other relief provided under the Fair Labor Standards Act, the Hawaii Wage and Hour Law, and/or any other applicable laws.

DATE: 9-25-17



SIGNATURE

JATIN DHARIA

PRINT NAME

P.O. Box - 8722

STREET ADDRESS

Honolulu, HI - 96830

CITY, STATE, ZIP CODE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Guest Services Agent Claims Waikiki Beach Marriott Refused to Accommodate ADA-Covered Condition](#)
