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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

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MARRIOTT HOTEL SERVICES, INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MARRIOTT HOTEL SERVICES,
INC.,

Plaintiff,

vs.

AQUA HOTELS AND RESORTS,
INC., AQUA HOTELS &
RESORTS, LLC, MODERN
MANAGEMENT SERVICES, LLC,
W. CHRISTIAN OLES, and DOE
DEFENDANTS 1-10,

Defendants.

CV11 00754 SOM BMK
Case No.

**COMPLAINT; DEMAND FOR
JURY TRIAL; SUMMONS**

COMPLAINT

Plaintiff Marriott Hotel Services, Inc. ("Marriott" or "Plaintiff"),
by its undersigned counsel, as and for its Complaint against

Defendants Aqua Hotels and Resorts, Inc. (Aqua Inc.), Aqua Hotels & Resorts, LLC (Aqua LLC) (collectively, "Aqua"), Modern Management Services, LLC ("Modern"), Mr. W. Christian Oles ("Oles"), and Doe Defendants 1-10 alleges as follows:

NATURE OF LAWSUIT

1. In the middle of the night on August 28, 2011, Aqua initiated a forceful and hostile takeover of The Waikiki EDITION hotel in Honolulu, Hawai'i. The Waikiki EDITION, a hotel being managed by Marriott pursuant to a long-term contract, opened in September 2010 to rave reviews and international acclaim. Designed by famed hotelier Ian Schrager in partnership with Marriott, the hotel was the first of Marriott's new EDITION brand to open. Yet while Marriott was winning awards for the hotel and investing hundreds of millions of dollars to develop the EDITION brand, its competitor Aqua was secretly planning a coup.

2. It had been publicly reported that Marriott was at odds with the hotel's owner and that their disputes would be decided by a New York court. It was also public knowledge that Marriott's contract with the owner was for an initial term of thirty years, with less than one year completed. That management agreement was

estimated to bring Marriott management fees of over \$65 million dollars over thirty years. Marriott also had the unilateral right to two ten-year extensions, worth millions of dollars of additional management fees. After learning of the dispute between Marriott and the owner, Aqua saw a multi-million dollar opportunity.

3. Like Marriott, Aqua is a hotel management company. Aqua manages approximately seventeen hotels across five islands in Hawai`i, largely consisting of midlevel properties and Waikiki “condotels” that appeal to the budget traveler. Named to Pacific Business News’ fastest 50 growing companies in Hawai`i for three consecutive years, Aqua has embarked on a strategy of fast growth in recent years in attempt to stake a claim as one of Hawai`i’s major hotel operators. Its new CEO, Benjamin Rafter, announced in 2008 his intention to “double in size within the next couple of years,” and to “capitalize on the current downturn as hotel owners seek more effective options to current management.”

4. In The Waikiki EDITION, Aqua saw the luxury hotel its portfolio lacked. If it could persuade the owner to sign up with Aqua, it could capitalize on the dispute with Marriott and instantly compete in the luxury market without ever having to develop or

build a luxury hotel itself. Accordingly, Aqua secretly met with the hotel's owner, enticing the owner with promises of reduced costs. It negotiated a rival management agreement aimed at inducing the owner to breach the long-term deal it had signed with Marriott. Because Aqua planned to usurp Marriott's customers and business, Aqua offered terms well below market norms. Aqua could afford such a deal only because it was misappropriating Marriott's hotel rather than building a brand of its own. Its offer purposefully enticed the owner to break off its contract with Marriott. It was a deal the owner could not refuse.

5. Aqua commenced a takeover plan. It covertly enlisted the aid of Marriott's head of security at The Waikiki EDITION, Christian Oles, to assist with the takeover. And it engaged a computer consultant to crack Marriott's passwords and access the hotel's computers once on property. The takeover was planned and executed by Aqua's senior management, led by Aqua's Founder and Chairman, Michael V. Paulin, Aqua's CEO and President, Benjamin Rafter, and Aqua's Vice President of Finance, William R. Farnsworth, Jr.

6. With Oles acting as Aqua's "inside man," the takeover was initially planned for August 27, 2011. Plans changed when Oles advised Aqua's takeover team that Marriott's lawyers were at the hotel that day in connection with litigation concerning The Waikiki EDITION that was pending in New York. Apparently afraid that the lawyers would interfere with the takeover, they waited for Marriott's lawyers to leave, and then proceeded. Aqua planted senior executives as fake guests of the hotel on the evening of August 27, 2011, and waited for nightfall.

7. At approximately 2:30 a.m. on August 28, 2011, Aqua's management team entered the hotel, flanked by dozens of hired security guards. Although Oles was not ordinarily scheduled to work that night, he had traded shifts with another employee in order to facilitate and assist with the takeover. His first step was to hand over to Aqua the keys to the offices of Marriott's managers.

8. The Aqua team immediately began cracking into the hotel's computers and printing Marriott's proprietary information. They also ransacked Marriott's paper files, seeking competitively sensitive information about Marriott guests and potential sales leads that they wished to exploit and convert to Aqua.

9. At the same time, the Aqua team assembled all of Marriott's employees present at the hotel in the hotel lobby and told them that the hotel was under new management. It was now to be called the "Modern Honolulu" and to be managed by Aqua. The Aqua security guards escorted Marriott's top managers, with the exception of Christian Oles, off of the property and told them not to return. They advised the remaining employees that they would have to sign on with Aqua or face termination.

10. Three days later Marriott obtained a temporary restraining order ("TRO") from a New York court requiring Marriott's return to management. Aqua refused to comply. Even after the court-imposed deadline requiring Marriott's return, Aqua instructed its security guards to block Marriott and its attorneys from entering the hotel. This action afforded the owner time to file for bankruptcy, staying the TRO and allowing Aqua additional days with unfettered access to Marriott's proprietary and confidential files until a Hawai'i federal bankruptcy judge stepped in a week later.

11. As a result of Aqua's actions, Marriott has suffered significant harm. Its hotel management agreement, worth more

than \$65 million dollars, has been effectively stolen by a direct competitor; its sensitive proprietary information has been ransacked; and its guests, group customers, and employees have been poached. The takeover has created a cloud of controversy around Marriott's nascent EDITION brand, severely damaging both that brand and Marriott's reputation and goodwill, which it has painstakingly developed and cultivated through decades of expert hotel management and superior customer service. Defendants' actions constitute clear violations of federal and state law, and Marriott prays this Court for relief.

THE PARTIES

12. Plaintiff Marriott Hotel Services, Inc. is organized under the laws of the State of Delaware, with its principal place of business located in Bethesda, Maryland.

13. Defendant Aqua is a full-service hotel management company founded in 2002 by Hawai'i hotelier Michael Paulin. Aqua is a direct competitor of Marriott in the hospitality management industry. Aqua operates its business both directly and through subsidiaries and affiliates. There are presently 17 hotels managed by Aqua or Aqua affiliates, all located in Hawai'i.

14. Aqua Hotels and Resorts, Inc. (“Aqua Inc.”) was incorporated in Delaware in 2008, with its principal place of business in Honolulu, Hawai`i.

15. Aqua Hotels & Resorts, LLC (“Aqua LLC”) is an affiliate of Aqua Inc. Aqua LLC was incorporated in Hawai`i in 2002 with its principal place of business in Honolulu, Hawai`i. Aqua LLC’s sole member is Defendant Aqua Inc.

16. Modern Management Services LLC (“Modern”) is an affiliate of Aqua. Modern was incorporated in Hawai`i on July 27, 2011, with its principal place of business in Honolulu, Hawai`i. Modern’s sole member and officer is Aqua Inc. Modern’s trade names include Modern Hotel Honolulu and The Modern Honolulu, which names Aqua assigned to Modern on August 18, 2011.

17. W. Christian Oles is an employee of Modern. From February 2010 until August 2011, Mr. Oles was Director of Security for Marriott at The Waikiki EDITION. In August 2011, Oles was terminated by Marriott after he began working as the equivalent of Director of Security for Modern. Oles is a resident of Honolulu, and a citizen of Hawai`i.

18. Doe Defendants 1-10 are persons or entities (other than M Waikiki LLC) whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or its attorneys and who, in some manner presently not clearly known to Plaintiff, are or may be liable to Plaintiff because of their culpable involvement in the actions, omissions and conspiracies described below. Plaintiff has attempted to discover the names and actions of the Doe Defendants by interviewing witnesses and reviewing documents, but it has been unable to determine their identities with the requisite level of specificity and certainty.

JURISDICTION AND VENUE

19. This action arises under the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.* The amount in controversy is well over \$5,000.00. Jurisdiction over this action is conferred upon this Court by 28 U.S.C. § 1331, which provides for jurisdiction in the United States district courts over civil actions arising under the Constitution, laws, or treaties of the United States.

20. Personal jurisdiction over the Defendants is appropriate because all Defendants are domiciled in Hawai`i. In addition, personal jurisdiction is appropriate under Hawai`i's long arm

statute, Hawai'i Rev. Stat. § 634-35 because Defendants transact business within this State and committed a tortious act within this State.

21. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to Plaintiff's claims occurred in this District.

STATEMENT OF FACTS

Marriott's Business

22. Although the Marriott story began with a single root beer stand opened by John Willard Marriott in 1927; Marriott is now one of the world's largest and most successful hotel management companies, with approximately 300,000 associates in over 3,500 managed and franchised hotels. Marriott's brand names include EDITION, Ritz-Carlton, Bulgari, JW Marriott, Marriott, Renaissance, Autograph Collection, Courtyard, and AC Hotels, among others. Marriott's brand value and identification as a leading operator of first-class hotels is created through its reputation and its relationships with guests, owners and potential owners.

23. Marriott's business is hotel management. That is, Marriott is not generally in the business of owning hotels, but

rather manages hotels for owners in exchange for management fees. As such, Marriott's key assets are its brands and its long-term management agreements with hotel owners. Marriott's management fees typically comprise a base management fee, which is a percentage of the revenues of the hotel, and an incentive management fee, which is based on the profits of the hotel. A typical management agreement is generally for an initial period of 20 or 30 years, with options for Marriott to renew for up to 50 or more years.

The History of The Waikiki EDITION

24. Marriott founded the EDITION brand in 2008. The EDITION brand was conceived by Marriott in partnership with Ian Schrager. The brand comprises "lifestyle" hotels, which combine 1) the personal, intimate, individualized and unique lodging experience for which Ian Schrager is known, 2) the exceptional service for which Marriott and Ritz-Carlton are known, and 3) the global reach, operational expertise and scale of Marriott. The brand combines great design and true innovation with personal, friendly, modern service as well as outstanding, one-of-a-kind food, beverage and entertainment offerings, all under one roof. Each highly

stylized hotel functions as a “home away from home” for leisure and business travelers.

25. In or around July 2006, before the current global economic crisis, the hotel was acquired by M Waikiki LLC (“M Waikiki”). The hotel was formerly part of the Ilikai, in Honolulu, Hawai`i, and M Waikiki intended to renovate it and hire a company to operate it as a separate, new luxury hotel. M Waikiki is a limited liability company organized under the laws of Hawai`i. M Waikiki has seventy owners consisting of natural persons, limited liability companies, corporations, and trusts. One of its owners is Paulin Investment Properties LLC, of which Michael Paulin is a Member. Michael Paulin is the Chairman and Founder of Aqua.

26. Shortly after Marriott announced plans for the EDITION brand in 2008, M Waikiki signed a management agreement with Marriott. M Waikiki’s agreement with Marriott allowed the hotel to bear the EDITION name so long as M Waikiki met Marriott’s strict operational, physical, and technical standards for the EDITION brand. The agreement entitled Marriott to manage the hotel for thirty (30) years in exchange for certain management fees, plus two additional ten-year terms extendable in Marriott’s exclusive

discretion. Under the terms of the contract, all employees of the hotel were Marriott employees, and Marriott had discretion and control in all matters relating to management and operation of the hotel. The management agreement could only be terminated for cause if a court determined that Marriott had committed a material event of default. The agreement could not be terminated at will. Under the plain terms of the contract, Marriott was an independent contractor, and M Waikiki was contractually prohibited from even arguing that Marriott was its agent.

27. As Marriott worked with Schragger to develop The Waikiki EDITION, the hotel eventually became the flagship for the nascent EDITION brand. Marriott devoted considerable corporate resources into the development of the hotel because, as the first EDITION to open, its success would help to ensure the success of the brand.

28. The Waikiki EDITION opened for business in September 2010. It immediately received positive media attention and acclaim. Named by the New York Times as the “style-centric” place to stay on a trip to Honolulu, the hotel also was selected for Travel + Leisure magazine’s “It List” of the Best New Hotels in 2011. The hotel was

positively featured in numerous other articles in newspapers and magazines.

29. On November 16, 2010, M Waikiki executed an Estoppel Certificate to Marriott in which M Waikiki certified that there was no continuing material breach of contract by Marriott, and that no event had occurred that, with the passage of time, would become a material breach. M Waikiki acknowledged that it would be bound by its certifications, and that Marriott would be entitled to rely upon them. In reliance on the Estoppel Certificate, the parties executed subsequent amendments to the management agreement and M Waikiki was permitted to obtain additional financing for the hotel.

30. Although the economy had fallen into a tailspin since the management agreement was signed and the hospitality market in Honolulu had been negatively impacted by other events, Marriott worked to ensure the hotel's success, funding millions of dollars of operating losses that were contractually the obligation of M Waikiki but that M Waikiki was unwilling to pay.

The Dispute Between Marriott and M Waikiki

31. On May 26, 2011, M Waikiki filed a lawsuit against Marriott in the New York Supreme Court alleging that Marriott was in breach of the management agreement because the hotel had not made as much money in the midst of a recession as had been predicted during the pre-recession negotiations of early 2008. M Waikiki sought damages as well as a declaration that it was entitled to terminate Marriott's management agreement for cause.

32. In conjunction with its complaint, M Waikiki, through its representatives, issued a press release publicizing its lawsuit against Marriott, and the press picked up the story. The Wall Street Journal covered the story, and the Honolulu Star-Advertiser reported on May 28, 2011 that M Waikiki was seeking "a declaration that gives it impunity to terminate a 30-year management agreement with Marriott without liability."

33. Marriott vigorously disputed and continues to dispute the allegations in M Waikiki's complaint, and Marriott's intent to fight the lawsuit was also reported by the press.

34. On August 1, 2011, Marriott filed a motion to dismiss the case in full. Meanwhile, Marriott met with M Waikiki to discuss possible resolutions to their dispute via business arrangements.

Aqua's Secret Negotiations with M Waikiki

35. Having learned that M Waikiki was unhappy with Marriott, Aqua seized the opportunity to steal the hotel from Marriott. Even as Marriott was negotiating with M Waikiki in good faith, M Waikiki was secretly negotiating with Aqua.

36. In late June or early July 2011, Aqua's CEO and President, Benjamin Rafter, along with other senior Aqua executives, met with representatives of M Waikiki in Orange County, California. The purpose of this meeting was for Aqua to pitch its management services to M Waikiki and induce M Waikiki to breach its contract with Marriott and sign a new management agreement with Aqua.

37. Plaintiff is informed and believes that Aqua promised M Waikiki that it could operate the hotel with lower costs than Marriott and promised M Waikiki that it could earn higher returns than Marriott. Aqua also told M Waikiki that it was willing to sign a

shorter-term management agreement with M Waikiki that would provide greater flexibility than the thirty-year Marriott contract.

38. Having successfully enticed M Waikiki to execute a deal, Aqua negotiated a new management agreement with M Waikiki, which was executed on August 26, 2011, but post-dated August 28, 2011 to give the appearance that the agreement was signed after the takeover. Aqua engaged in other actions designed to induce M Waikiki to breach its deal with Marriott. In contrast to M Waikiki's 30-year agreement with Marriott, Aqua offered a dramatically shorter deal that M Waikiki could renegotiate after only five years. In contrast to Marriott's base management fee of 4% of gross revenues, Aqua offered a base management fee of only 2% of gross revenues. Aqua also offered M Waikiki the right to approve all major decisions over hotel operations, a right that M Waikiki lacked in its agreement with Marriott. The terms Aqua offered were not consistent with market norms. Aqua could afford to receive less from M Waikiki only because it was misappropriating customers and operating plans from Marriott for free. Aqua's offer was intentionally and unlawfully designed to entice M Waikiki away from its existing deal with Marriott.

Aqua's Secret Takeover Plan

39. Having agreed to terms, Aqua secretly began the process of planning the takeover. Among Aqua's first actions was to search for a General Manager to help plan the takeover and then to lead the hotel's new management team. On or before July 2011, Edmund Sulzman, a former Starwood employee, was hired to serve as General Manager of the hotel.

40. On July 27, 2011, Aqua incorporated Modern Management Services, LLC as a special-purpose entity to manage the hotel and sign the contract with M Waikiki. Aqua was so confident in the future success of the takeover that Modern applied for a temporary liquor license in Hawai'i that very same day. These preparations took place more than six weeks before the night of the takeover.

41. In late July 2011, over several days, Aqua met with representatives of M Waikiki at another Aqua-managed hotel. The purpose of these meetings was to finalize the details of the takeover plan. Aqua senior executives in attendance included Michael Paulin (Aqua's founder and Chairman), Ben Rafter (Aqua's President and CEO), William Farnsworth (Aqua's Vice President of

Finance), Elizabeth Churchill (Aqua's Vice President of Sales & Marketing), Heidi Kalepa (Aqua's Director of Human Resources), Dennis Tucker (Aqua's Director of Systems), Brian Blanke, Veronica Saba (Aqua's Senior Vice President in charge of Sales & Marketing), and Irving Eastman (Aqua's head of security). Mr. Sulzman attended as well.

42. Although Oles was still working for Marriott as a key member of The Waikiki EDITION's Executive Team, and although Marriott was represented by counsel as the adverse party in pending litigation with M Waikiki, Oles was asked to attend the takeover planning meeting. Oles attended and answered questions about, among other things, Marriott's management of the hotel and Marriott's staffing. Oles's wife, Cori Oles a/k/a Evelyn Oles a/k/a Cori Adams, also attended the meeting with Aqua although she too was a Marriott employee at the time, with access to key accounting records and other confidential and proprietary information. In addition, M Waikiki's litigation counsel (Bickel & Brewer) directed David Mathieson—a consultant whom Bickel & Brewer employs—to participate in the July 2011 takeover planning meeting.

43. As part of Defendants' takeover plan, Aqua set up bank accounts to be used in managing the hotel, created a new website for the hotel using photographs they took from Marriott, and set up a reservations system for the hotel.

44. Although Aqua created checklists for nearly every aspect of the takeover, at no time did Aqua prepare any plan for protecting Marriott's proprietary and confidential information following the takeover or preventing use of that information by Aqua employees.

45. A critical part of Aqua's plan was that Marriott should receive no prior notice of the takeover. Everyone who attended the July 2011 meetings, including Oles, understood that they were not to tell Marriott about the takeover.

46. Furthermore, Aqua and M Waikiki determined that a "sneak attack" under cover of darkness was optimal and planned the takeover accordingly. Aqua contracted with a private security firm for dozens of security guards to secure the hotel for Aqua, eject Marriott's management, and bar their reentry.

47. In the days leading up to the takeover, Oles covertly obtained documents containing information about upcoming hotel guests and events and delivered those documents to Aqua. He later

lied under oath about having done so, even though a representative of M Waikiki had already admitted under oath to having received this information from Oles.

48. Although the takeover was originally planned to take place in the early-morning hours of August 27, 2011, plans changed when Oles informed the takeover team that Marriott's lawyers were at the property. The lawyers had coincidentally chosen that week to conduct witness interviews in connection with M Waikiki's New York lawsuit. Oles was one of the executive team members interviewed by Marriott's lawyers, and he therefore received a copy of the lawyers' itineraries and travel schedules. After Marriott's lawyers interviewed Oles on August 23, 2011, Oles contacted the takeover team and told them about his attorney-client privileged conversations. He also advised them that Marriott's lawyers would not be departing the hotel until the afternoon of August 27. Not wanting the lawyers present to protect Marriott's interests during the takeover, Aqua shifted the takeover date by one day.

The Night of the Takeover

49. After nightfall on August 27, 2011, Aqua gathered its management team and security team outside the hotel. Aqua had previously arranged for Veronica Saba, its Senior Vice President in charge of Sales & Marketing, to stay at the hotel as a guest, so she was already inside. At approximately 2:30 a.m. on August 28, 2011, Aqua made its move. Representatives of M Waikiki and Aqua entered the hotel and asked for the senior manager on duty, who was to be handed a letter from M Waikiki ostensibly terminating the management agreement. Oles had already advised the takeover team that none of Marriott's other executive team members would be working that night. Having previously switched his schedule to be present at the hotel that morning, Oles was the senior manager on duty. He dutifully handed over the keys to Aqua.

50. When Marriott's executive team was awakened and told about the takeover, they called Oles, who misled them by saying that the hotel had been "served" with a "court order." As a former law enforcement officer, Oles knew very well that there was no court order and that Marriott had not been served.

51. At approximately 3:30 a.m., Marriott's in-house counsel, then unaware of Christian Oles' disloyalty, called Oles' cell phone seeking a copy of the "court order" he had mentioned earlier. Oles told Marriott's lawyer that Aqua would not allow him access to a scanner.

52. Although Aqua was not authorized to access Marriott's proprietary reservations system, it did so immediately and began printing reservations reports containing sensitive guest information, including contact and credit card information, as well as Marriott's proprietary processes for tracking guest preferences.

53. Simultaneous with its raiding of Marriott's files, Aqua and Modern gathered all employees on duty in the hotel lobby, where they announced that the hotel was under new management. They purported to fire many of Marriott's managerial employees, escorting them off of the property. They advised Marriott's other employees that they would have to sign on with Aqua or face termination.

54. Aided by Christian Oles, Aqua methodically began accessing all of the hotel offices. For those offices for which Oles had keys, he handed them over to Aqua. For other locked offices,

Oles and his security team removed the existing locks and replaced them with new ones. Once the offices were open, Aqua employees accessed Marriott's sales and marketing offices and began assembling information about upcoming reservations and sales leads that Marriott had been pursuing. They removed information about sales leads and brought it to a secured conference room on a separate floor of the hotel accessible only by members of the Aqua transition team.

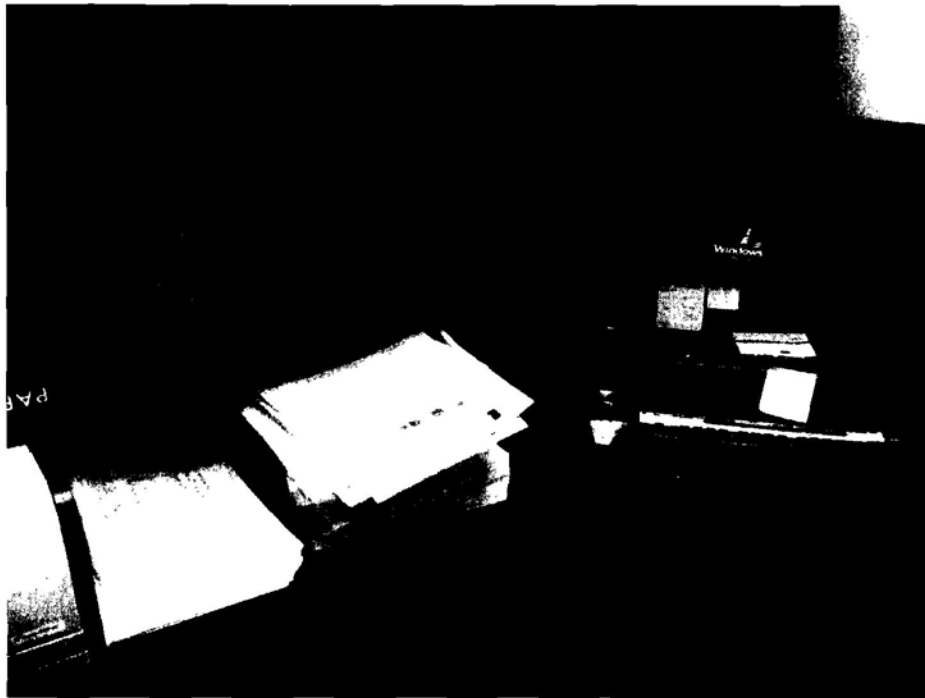
55. Aqua IT employees and the IT consultant whom Aqua brought along immediately began cracking into Marriott's computers, hacking into the password-protected systems, resetting the passwords, and allowing Aqua employees to access all of Marriott's proprietary information stored thereon. The takeover team also began rummaging through Marriott's paper files at the Hotel, and making copies of what they found. Marriott later documented some of these actions:



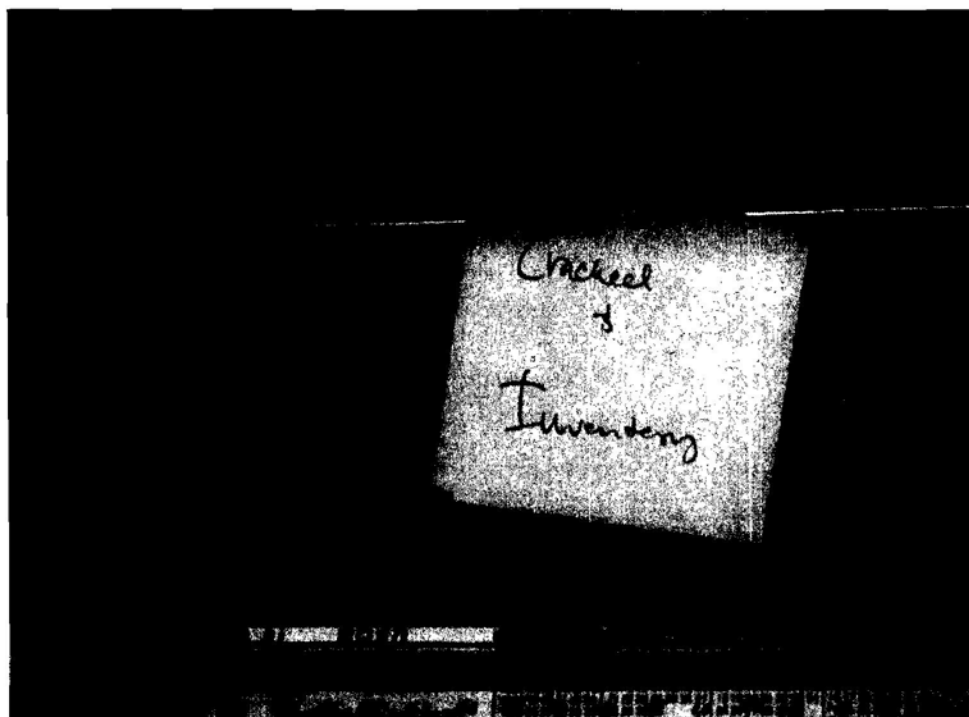
**Defendants emptied out filing cabinets and left behind a note
reading "To Be Copied"**



Close-up of the note



**The computer in the Hotel's Payroll Office was labeled
"Cracked & Inventory"**



Close-up of the note left on the Payroll computer

56. After its raid was under way, Aqua and Modern ordered that the hotel's new website be placed online. The website contained false and misleading information implying that Marriott employees, such as its Executive Chef, would be signing on with Aqua.

57. In the middle of the night, guests who had booked their stay with Marriott received a letter under the door of each guestroom which stated, "We have recently marked a historic day at our hotel, and are proud to welcome you to The MODERN Honolulu (formerly the Edition Waikiki). The hotel is under new management by Aqua Hotels and Resorts, a full-service Hawaii hotel management company." The letter was also posted on Aqua's new website for the hotel.

58. Aqua's and Modern's conduct was distressing to employees and guests alike. Amidst the confusion and uncertainty, luxury travel groups stopped making reservations for the EDITION. Guests that were staying at the hotel reported terrible customer service experiences. Guests that had booked reservations at the EDITION suddenly found themselves wondering

if they still had valid reservations. Marriott customers that had booked the EDITION with the expectation that they could pay for their stay by redeeming Marriott Rewards points or earn Marriott points through their stay were deprived of expectations. Loyal Marriott customers were forced to re-book hotel reservations at the last minute.

59. By planning and executing a sneak attack, Aqua and Modern deliberately deceived and misled guests who believed they had reservations with Marriott and arrived to find something quite different. As one guest later wrote of the experience:

Overnight on Saturday, this EDITION Hotel changed management. This change was NOT even hinted at during check-in. But, the deception came clear: a letter introducing the change was LOUDLY slide under my door around 4am, awaking me with "new management" people talking in the CAVERNOUS-sounding hallway. ... When speaking w/ the front desk staff on Sunday morning, "oh yes, we are no longer a Marriott property" as if that was something to be proud of. With the crazy level of Room noises, we decided to change hotels. Trying to check out, the Lobby was a MADHOUSE of people at 11am Sunday morning. SECURITY guards (we counted about 25) were all over, like some third world country coup, surrounding the perimeter of the building and inside the PACKED LOUD lobby. It was evident the "new"

transition and probably concerned about recently sacked Marriott employees. ...Want to have a TERRIBLE experience at a "luxury" hotel that has a new and VERY DISHONEST management? Then you'll stay at whatever the new name is at 1775 Ala Moana Blvd in Honolulu.

60. Another guest wrote:

When I woke up on Sunday morning with a letter under my door, I was in complete shock with the contents which stated that Aqua group had taken over and it would now be the Modern Honolulu.

While I do not know the inside details of what has been going on, I do know that having a switch occur so suddenly and over night is not good for a hotel trying to start over, it seems petty and selfish and does not take guests into consideration.

Over the last few days all evidence of the Edition has been removed; signs covered up, new employees wearing mismatching outfits, Edition tags on the towels cut off, even toiletry bottles covered with The Modern Honolulu stickers. All that now remains is their signature scent.

So far, the 4 nights I have stayed at the Modern Honolulu have led me to believe that I may never again get the level of service I received during my time at the Edition.

61. Marriott employees were similarly distressed and confused by Aqua's actions. One described Aqua's actions on the takeover night as follows:

I was working the night when Aqua decided to come in and take over. It was such a shock to all the employees, and they had no information as to what was going on. All they told us was that it's under new management and if we didn't sign we would not be given our jobs back. So I signed on and was not happy about it, and told new management the guest deserve to have the same great service no matter who is running the hotel now.

62. A popular hotel news source collected accounts of the takeover from distraught employees and their families:

A spouse of an employee at the hotel also wrote into us to talk about some of the specifics of the transition which they called "Invasion Day."

The transition at the Waikiki EDITION is far from "peaceful". I am the spouse an employee at the Waikiki EDITION and due to financial obligations we have decided to continue there employment with Aqua Resorts and Hotels. My spouse recounted to me that Ownership came and basically invaded, they allowed EDITION employees only to enter property if they pledged their allegiance to Ownership and accepted new employment with Aqua Resorts. If they refused, they were banned from property and won't be allowed to remove their personal property.

Employees on medical leave have been told by Aqua Resorts that they cannot reapply until their medical leave is completed as their medical leave was initiated by "Marriott". When their medical leave is completed, they are free to reapply and will be considered "IF" a position exists.

One employee whom intended and was approved to utilize paid maternity leave next week (which was approved by Marriott) was told that Aqua Resorts will not honor the benefit... due to her limited time with the new management, this person quit due to this seemingly illegal Aqua Resort treatment as employees have also been told that they will keep their original date of hire.

The employees who have elected to sign with Aqua Resorts have been left to find their own answers to the chaos which has been initiated and Aqua Resorts management does not seem to have clear, consistent answers.

The new management is directing the housekeeping department to knock on all guest rooms regardless if they are known to be occupied with Do Not Disturb signs. If a departing guest is in their room past the appointed noon check out time, the housekeeper is to ask when the guest is intending to leave. Employees who voiced their objections about the lack of privacy for guests and the potential for guests to pay for a later checkout were met with the response that this is no longer "EDITION."

Aqua's Actions to Block Enforcement of the New York Court Order

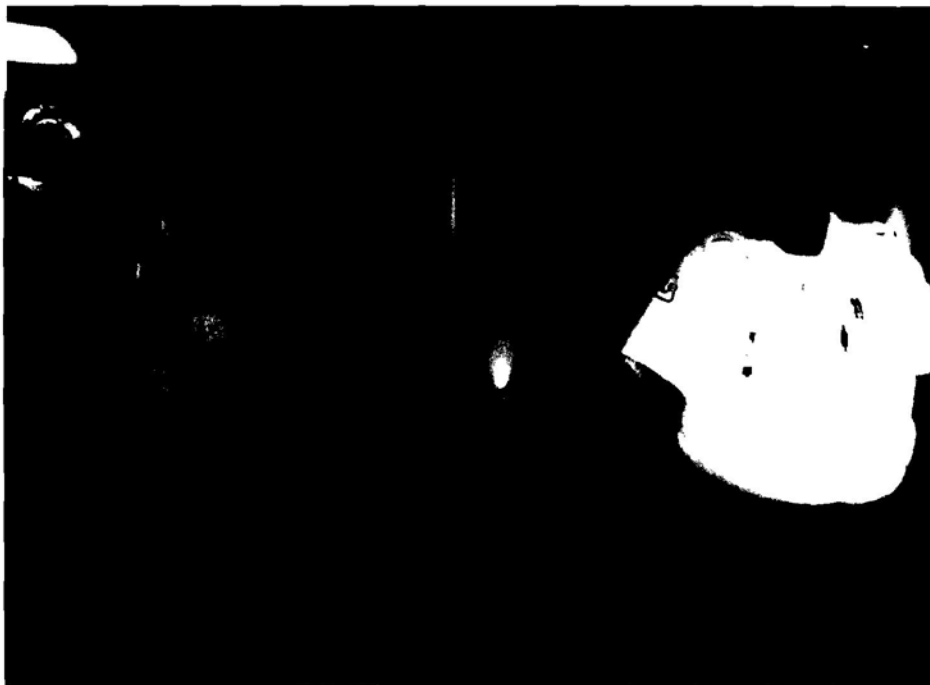
63. In the immediate aftermath of the takeover, Marriott worked with its lawyers to file a motion for emergency injunctive relief in the New York Supreme Court. On the morning of August 31, 2011, the New York court granted Marriott a temporary restraining order. The order "(1) restrained and enjoined [M

Waikiki] from unilaterally declaring and installing as the Hotel's manager a party other than Marriott"; (2) "restrained and enjoined [M Waikiki] from taking any actions that in any way interfere with Marriott's ability to, (a) fully perform its role as the Hotel's Manager in accordance with the Management Agreement, and (b) undo the harm and damage that resulted from [M Waikiki's] purported ouster of Marriott"; and (3) "restrained [M Waikiki] from using" and required M Waikiki to return to Marriott "any and all copies of Marriott proprietary or confidential information or data." The court further ordered that "Marriott shall be allowed to return to its management role at the hotel by 2:30 p.m. on Wednesday, August 31, 2011 (Hawaii Time; 8:30 p.m. EST)."

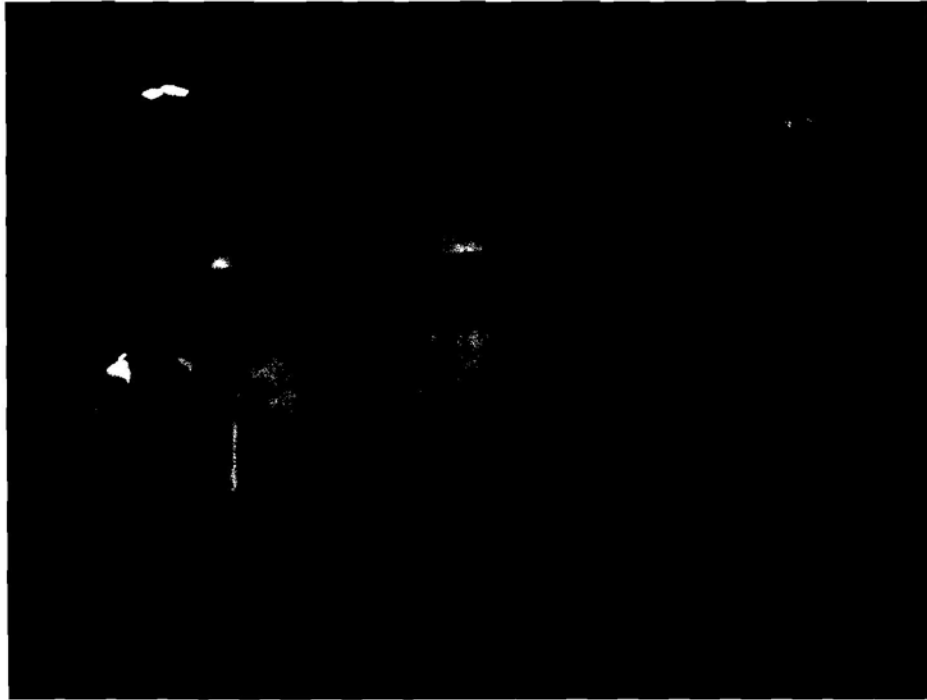
64. When Marriott attempted to enforce the TRO, the Defendants sent their guards to block all of the entrances to the hotel, and they refused to allow Marriott to return to management even after 2:30 p.m. Hawai'i time on August 31, 2011:



Multiple security guards blocking the front entrance to the Hotel



Security guards physically barring entry to the Hotel's front door



Multiple security guards blocking the main lobby elevators



Multiple security guards blocking the rear entrance to the Hotel

65. Marriott soon learned why the Defendants felt free to disregard the court's order with such impunity. With Marriott representatives waiting in the street, at 2:41 p.m., M Waikiki filed for bankruptcy. M Waikiki announced that its bankruptcy petition and the statutory automatic stay effectively stayed the TRO, preventing Marriott from returning to management and effectively making Aqua and Modern the new managers of the hotel.¹

66. Taken individually and as a whole, the actions of Aqua, Modern, Oles and the Doe Defendants are unfair, unscrupulous, and unlawful. By this action, Marriott seeks money damages and equitable relief to compensate and correct the harms caused by the Defendants.

¹ Although Defendants' conduct remained wrongful following the commencement of the bankruptcy, the allegations in this Complaint relate solely to the Defendants' conduct prior to the bankruptcy.

**FIRST CLAIM FOR RELIEF: UNFAIR COMPETITION IN
VIOLATION OF HAWAI`I REV. STAT. § 480-2
(Aqua, Modern, Doe Defendants)**

67. Plaintiff repeats and realleges each and every allegation set forth in Paragraphs one through 66 as though fully set forth herein.

68. Marriott directly competes with Modern and Aqua for, among other things, hotel management agreements (and the resulting management fees), employees, and guests, including transient guests and groups.

69. The conduct of Aqua, Modern and the culpable Doe Defendants is a violation of HRS chapter 480. Aqua and Modern engaged in competitive conduct that significantly threatens competition, offends established public policy and is immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers, including hotel guests and parties with whom Marriott contracted as manager of the hotel. This conduct includes but is not limited to: inducing M Waikiki to terminate its long-term management agreement with Marriott; plotting to take over the hotel in the middle of the night with no advance notice to Marriott; enlisting the aid of a Marriott employee to assist with the takeover

and inducing him to breach his fiduciary duties to Marriott; attempting to poach guests and groups who had already booked with Marriott, who intended to book with Marriott, or to whom Marriott intended to sell and market the hotel.

70. Aqua, Modern and the culpable Doe Defendants unfairly and unethically deprived Marriott of the benefit of its bargain with M Waikiki, including the right to earn management fees under its management agreement with M Waikiki.

71. Aqua, Modern and the culpable Doe Defendants unfairly and unethically deprived Marriott of the ability to honor reservations made by guests who had booked with Marriott and to compete for future guests who desired to book with Marriott. Their conduct further unfairly and unethically deprived Marriott of the ability to communicate with its guests in advance of the takeover, to afford them an opportunity to book at another Marriott hotel, to earn or redeem Marriott Rewards points during their stay.

72. Aqua, Modern and the culpable Doe Defendants unfairly and unethically deprived Marriott of the ability to honor contracts made by Marriott with third-party vendors, damaging Marriott's standing in the local business community.

73. Aqua and Modern benefitted unfairly and unethically from the training and education provided by Marriott to its employees by placing employees in a position of either signing on with Aqua and Modern, or losing their jobs entirely.

74. Furthermore, Marriott was required to divert substantial resources and time to deal with the problems with guests, vendors, and employees created by these Defendants' unfair and unethical conduct—resources that otherwise would go to Marriott's business.

75. As a direct and proximate result of the wrongful conduct of Aqua, Modern, and the culpable Doe Defendants, Marriott's business has suffered and continues to suffer irreparable injury as well as damages, and Defendants Aqua and Modern have been unjustly enriched.

**SECOND CLAIM FOR RELIEF: DECEPTIVE TRADE PRACTICES
CONSTITUTING UNFAIR COMPETITION IN VIOLATION OF
HAWAI'I REV. STAT. § 481A-3
(Aqua, Modern, Doe Defendants)**

76. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, and 68-75 as though fully set forth herein

77. Aqua and Modern engaged in deceptive trade practices

78. Specifically, Aqua and Modern: disseminated misleading and confusing communications to Marriott guests and group customers; used EDITION branded items at the Property after the takeover; and misled and caused confusion and harm to Marriott and EDITION guests who believed they were purchasing and expected to receive Marriott's superior level of service, and other Marriott-specific benefits such as Marriott Rewards points and/or redemptions; and obstructed Marriott from providing services that it had promised to its existing customers.

79. Aqua and Modern willfully engaged in these trade practices knowing them to be deceptive.

80. Marriott has been and will be injured in its business by Aqua and Modern's deceptive trade practices, which constitute unfair competition.

THIRD CLAIM FOR RELIEF: TORTIOUS INTERFERENCE WITH EXISTING CONTRACTUAL RELATIONS (All Defendants)

81. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, and 77 through 80 as though fully set forth herein.

82. All Defendants knew of M Waikiki's contractual

agreement with M Waikiki that entitled Marriott to manage the Hotel for a term of thirty years.

83. Defendants Aqua and Modern knew that Oles had a written agreement with Marriott requiring him to protect and safeguard the confidentiality of Marriott's Confidential Information.

84. By their wrongful actions, all of the Defendants intentionally induced M Waikiki to breach its contract with Marriott.

85. By their wrongful actions, Defendants Aqua and Modern tortiously interfered with Marriott's contractual relations with Oles.

86. The Defendants acted without proper justification.

87. As a direct and proximate result of the wrongful conduct of Defendants, Marriott has suffered and continues to suffer irreparable injury and substantial money damages, and Defendants have been unjustly enriched.

FOURTH CLAIM FOR RELIEF: TORTIOUS INTERFERENCE
WITH PROSPECTIVE CONTRACTUAL RELATIONS
(All Defendants)

88. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, and 82 through 87 as though fully set forth herein.

89. Prior to August 28, 2011, prospective contractual relationships existed between Marriott and third parties, including prospective guests (both transient and groups) and third-party vendors.

90. All Defendants knew or should have known that prospective contractual relationships existed between Marriott and third parties, including prospective guests (both transient and groups) and third-party vendors.

91. The Defendants intentionally interfered with Marriott's prospective contracts, acting on improper motives and using improper means.

92. The Defendants acted without proper justification.

93. The Defendants' interference caused third parties to fail to consummate their prospective contracts with Marriott.

94. As a direct and proximate result of the wrongful conduct of Defendants, Marriott has suffered and continues to suffer irreparable injury and substantial money damages, and Defendants have been unjustly enriched.

FIFTH CLAIM FOR RELIEF: CIVIL CONSPIRACY
(All Defendants)

95. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, 82 through 87, and 89 through 94 as though fully set forth herein.

96. The Defendants entered into an agreement under which the Defendants, acting in concert, agreed to conspire for unlawful purpose and through unlawful means to tortiously interfere with Marriott's existing and prospective contracts.

97. Defendants at all times did the acts and things herein alleged pursuant to, and in furtherance of, the conspiracy and agreement alleged above.

98. As a direct and proximate result of the wrongful conduct of Defendants, Marriott has suffered and continues to suffer irreparable injury and substantial money damages, and Defendants have been unjustly enriched.

SIXTH CLAIM FOR RELIEF: COMPUTER FRAUD AND ABUSE
ACT, 18 U.S.C. §§ 1030 et seq. (Aqua, Modern, Doe Defendants)

99. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through

80, 82 through 87, 89 through 94, and 96 through 98 as though fully set forth herein.

100. The computers used by Marriott to operate the hotel, and Marriott's computer systems, are "protected computers" under the federal Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030 *et seq.*

101. By their wrongful actions, Defendants Aqua, Modern, and the culpable Doe Defendants (and others working under their direction and at their express instruction) intentionally accessed Marriott's protected computer systems, without authorization and/or in excess of authorized access, and thereby obtained information from Marriott's protected computer systems.

102. By their wrongful actions, Defendants Aqua, Modern, and the culpable Doe Defendants knowingly and with intent to defraud, accessed Marriott's protected computer systems, without authorization and/or in excess of authorized access.

103. By their wrongful actions, Defendants Aqua, Modern and the culpable Doe Defendants furthered the intended fraud, obtained unauthorized use of Marriott's protected computer systems, and obtained Marriott's proprietary information, the value of such exceeding \$5,000 in value in any one year period.

104. The wrongful actions of Defendants have caused damage and loss to Marriott that exceeds \$5,000 in value during any one year period. Marriott has spent far in excess of \$5,000 in responding to the offense and conducting a damage assessment.

105. The activity of Defendants constitutes a violation of the federal Computer Fraud and Abuse Act, 18 U.S.C.A. §§ 1030(a)(2)(C), (a)(4), (a)(5)(C), and Marriott is entitled to full compensatory damages under that Act.

**SEVENTH CLAIM FOR RELIEF: CONSPIRACY TO VIOLATE THE
COMPUTER FRAUD AND ABUSE ACT., 18 U.S.C. §§ 1030 et seq.
(All Defendants)**

106. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, 82 through 87, 89 through 94, 96 through 98, and 100 through 105 as though fully set forth herein.

107. As set forth above, Aqua, Modern, the culpable Doe Defendants and Oles formed an agreement to take over the hotel and to access Marriott's protected computers and computer systems in order to facilitate Aqua and Modern's operation and management of the hotel.

108. The Defendants' wrongful conduct in furtherance of the conspiracy to take over the hotel and access Marriott's computers has caused Marriott damage and loss.

109. The Defendants' conspiracy to take over the hotel and access Marriott's computers constitute a violation of 18 U.S.C. § 1030(b) and Marriott is entitled to full compensatory damages under the CFAA.

**EIGHTH CLAIM FOR RELIEF: VIOLATION OF THE HAWAII
UNIFORM TRADE SECRETS ACT, HRS §§ 428B et seq.
(Aqua, Modern, Doe Defendants)**

110. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, 82 through 87, 89 through 94, 96 through 98, 100 through 105, and 107 through 109 as though fully set forth herein.

111. Marriott possessed confidential and proprietary information at the hotel and on Marriott's computer server that constitute trade secrets within the meaning of the Hawai'i Uniform Trade Secrets Act. By way of example, Marriott's confidential information accessed by Aqua during and after the takeover includes but is not limited to:

- customer lists

-
- sales and marketing plans
 - vendor contracts containing sensitive, confidential pricing and terms negotiated by Marriott
 - detailed, proprietary training materials and methodological instructions for providing superior guest service developed and refined by Marriott over a number of years and at substantial cost
 - detailed, proprietary training materials and methodological instructions for tracking guest preferences developed and refined by Marriott over a number of years and at substantial cost
 - detailed, proprietary training materials and methodological instructions for operating a hotel developed and refined by Marriott over a number of years and at substantial cost (including standard operating procedures and similar step-by-step operational guidelines)
 - detailed, proprietary revenue management guidelines regarding room rates and market segmentation developed

and refined by Marriott over a number of years and at substantial cost

- detailed financial information, including Marriott's financial critiques of its own performance that reveal proprietary practices for tracking financial performance and other operational metrics
- the EDITION "Look Book" which was developed through painstaking work and at substantial cost to instruct Marriott employees as to how to "stage" the hotel
- research conducted by Marriott and/or commissioned by Marriott from third party professionals and used by Marriott to help develop branding, marketing, development and operational strategy.

112. Marriott's confidential and proprietary information constitute compilations, methods, techniques, and processes that derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use; and are the subject of efforts that are reasonable under the circumstances to maintain their secrecy.

113. Defendants Aqua, Modern and culpable Doe Defendants understood that these documents constituted confidential and proprietary information. Hypocritically, after Aqua assumed management of the hotel, it required all hotel employees to sign a Nondisclosure Agreement with Aqua defining as confidential all of Aqua's Company Information, including:

any confidential information including, without limitation: the Company's trade secrets and proprietary information; all financial and business records of the Company or other parties dealing with the Company, the identity and other information pertaining to the Company's employees, business affiliates, client, vendors and customers; the prices charged or paid by the Company for products and services, including any margins, markups or discounts, and the terms of any agreements relating to those products and services; the terms of any marketing, promotional or development plan, strategy, project or agreement undertaken or under consideration by the Company, any technical information concerning procedures, specifications and equipment used to test, design, market and provide its products and services; and all technical, business or financial information of the Company, its affiliates or third parties compiled, received or accessed by Employee during the term of Employee's employment with the Company, the use or disclosure of which might reasonably be construed in any way to be contrary to the interests of the Company or such third parties.

114. Defendants Aqua, Modern, and culpable Doe Defendants willfully and maliciously acquired Marriott's trade secrets through improper means.

115. Defendants Aqua, Modern and culpable Doe Defendants also acquired Marriott's trade secrets from M Waikiki and its representatives. Aqua and Modern knew or had reason to know that Marriott's trade secrets were acquired by M Waikiki and its representatives through improper means.

116. As a direct and proximate cause of Defendants' actions, Marriott has suffered actual damages.

NINTH CLAIM FOR RELIEF: UNJUST ENRICHMENT
(Aqua, Modern, Doe Defendants)

117. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, 82 through 87, 89 through 94, 96 through 98, 100 through 105, 107 through 109, and 111 through 116 as though fully set forth herein.

118. By their wrongful actions, Defendants Aqua, Modern, and culpable Doe Defendants have been unjustly enriched at Marriott's expense.

119. It is against equity and good conscience to permit Defendants to retain the benefits derived from their wrongful conduct.

120. As a direct and proximate result of the wrongful conduct of Defendants, Marriott has suffered and continues to suffer irreparable injury and money damages.

TENTH CLAIM FOR RELIEF: BREACH OF THE DUTY OF LOYALTY (Oles)

121. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, 82 through 87, 89 through 94, 96 through 98, 100 through 105, 107 through 109, 111 through 116, , and 118 through 120 as though fully set forth herein.

122. As a management-level employee entrusted with confidential and proprietary information and trade secrets, Defendant Oles owed at all relevant times fiduciary duties to Marriott, including the duty of loyalty.

123. Defendant Oles breached that duty by surreptitiously plotting a hostile takeover of the hotel by a competing management company and by taking Marriott's confidential information through

of that information and those secrets for purposes contrary to Marriott's interests.

124. In addition to Oles' fiduciary duties to his employer, Oles signed a written agreement with Marriott on September 24, 2010, in which he agreed to "take reasonable and necessary security precautions to protect company assets, business knowledge, and confidential information." In contravention of this agreement, Oles handed over to Aqua and Modern all of Marriott's assets, knowledge, and confidential information at the Hotel when he provided them free access to the property and assisted in their takeover scheme.

125. As a direct and proximate result of the wrongful conduct of Oles, Marriott has suffered and continues to suffer irreparable injury and money damages.

ELEVENTH CLAIM FOR RELIEF: INDUCING, AIDING & ABETTING BREACH OF THE DUTY OF LOYALTY (Aqua, Modern)

126. Plaintiff repeats and realleges each and every allegation set forth in paragraphs one through 66, 68 through 75, 77 through 80, 82 through 87, 89 through 94, 96 through 98, 100 through 105, 107 through 109, 111 through 116, , and 118 through 120,

127. Defendants Aqua and Modern knew of the fiduciary duties owed to Marriott by Defendant Oles.

128. By their wrongful actions, Defendants Aqua and Modern knowingly induced and participated in Oles' breach of his fiduciary obligations to Marriott.

129. As a direct and proximate result of the wrongful conduct of Defendants Aqua and Modern, Marriott has suffered and continues to suffer irreparable injury and money damages.

THE WANTONNESS OF THE DEFENDANTS' CONDUCT

130. Defendants Modern, Aqua, and culpable Doe Defendants secretly plotted and planned to steal a hotel out from under Marriott. Knowing that Marriott had a long-term management contract and established, successful business practices that the smaller and less successful Aqua envied, Aqua took what it coveted without regard for law and order. These Defendants acted wantonly and with such malice as implies a spirit of mischief or criminal indifference to civil obligations. Their willful misconduct, pursued in secret and then under cover of darkness, was intentional, outrageous, and exhibits a high degree of moral culpability for which very substantial punitive damages are appropriate.

131. For example, in opposing Marriott's motion for injunctive relief in New York court, Aqua's President and CEO, Ben Rafter, submitted an affidavit swearing that Aqua had already obtained "all necessary licensing" to operate the Hotel, although that was false; Aqua had not yet obtained a liquor license, yet continued to serve alcoholic drinks at the hotel in violation of State liquor laws. Aqua also advised employees that it held a liquor license for the hotel and that they should continue to serve drinks, although doing so was unlawful. When the court subsequently ordered that Marriott be given back what was rightfully Marriott's property, Aqua and Modern blocked Marriott's ability to enforce the order, acting in blatant contempt of court.

132. Defendant Oles secretly worked with Defendants Modern and Aqua to plan their takeover of the hotel, even as Oles was under a duty of loyalty to his employer, Marriott. When it was clear that Marriott did not take his conduct lightly, Oles lied under oath in a vain attempt to cover up his participation in the takeover. He has demonstrated such wanton dishonesty as to imply a criminal indifference to civil obligations for which very substantial punitive damages are appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Marriott Hotels & Resorts, Inc. prays
that the Court:

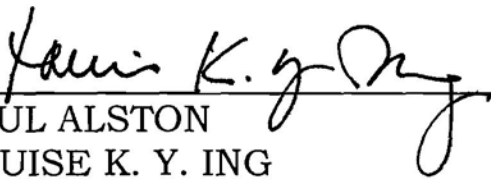
- i. Order Defendants, jointly and severally, to pay Marriott compensatory damages in an amount to be proven at trial;
- ii. Order Defendants each to pay Marriott punitive and double or treble damages in the maximum amount permitted by law;
- iii. Order Defendants to disgorge all unjust enrichment as a result of their taking and use of Marriott's confidential, proprietary and trade secret information;
- iv. Order Defendants to pay Plaintiff's attorney's fees and costs as permitted by law, including losses incurred through having to expend attorneys' fees and expenses to litigate with the Owner to protect its rights, under *Uyemura v. Wick*, which fees and costs Marriott would not have had to incur but for Defendants' wrongful acts;
- v. Grant preliminary and permanent injunctive relief barring Defendants, and their respective officers, agents, servants, employees and attorneys, and all other persons who are in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from
 - (1) using or benefiting, directly or indirectly, from using Marriott's confidential, proprietary and trade secret information;
 - (2) failing immediately to return all of Marriott's confidential, proprietary and

trade secret information in their possession, custody or control, wherever located;

- (3) failing to provide a detailed accounting of and imposing a constructive trust on all revenues derived and expenses saved by Defendants Aqua and Modern from the use of Marriott's confidential, proprietary and trade secret information;
- (4) negotiating with owners, developers, investors or any other persons with whom Marriott has current management agreements; and

vi. Grant such other and further relief as this Court deems just and proper.

DATED: Honolulu, Hawai'i, Dec. 12, 2011.



PAUL ALSTON
LOUISE K. Y. ING

Attorneys for Plaintiff
Marriott Hotel Services, Inc.,