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1ST CIRCUIT COURT
 STATE OF HAWAII
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S. TAMANAHA
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Attorneys for Defendant ALOHA BED & BREAKFAST

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
 STATE OF HAWAII

DIANE CERVELLI and TAEKO BUFFORD,)	
Plaintiffs,)	CIVIL NO. 11-1-3103-12 ECN
)	(<u>Other Civil Action</u>)
)	
WILLIAM D. HOSHIJO, as Executive Director of the Hawai'i Civil Rights Commission,)	FIRST AMENDED ANSWER AND
Plaintiff-Intervenor,)	AFFIRMATIVE DEFENSES TO
)	COMPLAINT FILED DECEMBER 19, 2011;
)	DEMAND FOR JURY TRIAL;
)	CERTIFICATE OF SERVICE
v.)	
)	Trial Date: None Scheduled
ALOHA BED & BREAKFAST, a Hawai'i sole proprietorship,)	
)	
Defendant.)	
)	

**FIRST AMENDED ANSWER AND AFFIRMATIVE DEFENSES
TO COMPLAINT FILED DECEMBER 19, 2011**

Defendant Aloha Bed & Breakfast (hereinafter, "Aloha") by and through its undersigned counsel, hereby files its First Amended Answer and Affirmative Defenses to Plaintiffs' Complaint filed December 19, 2011, as follows:

I. INTRODUCTION

1. Aloha admits that it rents three rooms within the home of Ms. Young, the owner of Aloha, and that it declined to rent a room to Plaintiffs based on Plaintiffs' representations that they intended share the room, which has only one bed, as a lesbian couple. Aloha admits that Plaintiffs identified themselves to Aloha as a lesbian couple. Aloha does not respond to the conclusions of law stated in this paragraph as they do not require a response. To the extent they require a response, they are denied. Aloha denies the allegations regarding Plaintiffs' characterization of Aloha's position in connection with the application of the law to Aloha.

2. Aloha has insufficient knowledge to admit or deny the allegations and characterizations set out in this paragraph, and on that basis denies the same. Moreover, to the extent Plaintiffs are alleging harm to non-parties, such alleged harms are not properly before this Court.

II. PARTIES

1. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

2. Aloha admits the allegations contained in this paragraph.

III. JURISDICTION AND VENUE

1. Aloha denies the allegations contained in this paragraph.
2. Aloha admits that the conduct described in the Complaint occurred in this Circuit. Aloha denies that it is domiciled in this Circuit, as the law does not provide for the domicile of a trade name such as Aloha.

IV. FACTS

1. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph and on that basis denies the same.
2. Aloha admits that it enters into real estate transactions with renters of one or more of its three rooms and that it receives income from renting three or fewer rooms within Ms. Young's home and does business as a sole proprietorship under the name Aloha Bed and Breakfast.
3. Aloha has insufficient knowledge to admit or deny allegations regarding the home's value, and on that basis denies the same, but admits that it rents three or fewer rooms to overnight guests in Ms. Young's home.
4. Aloha denies that it advertises "through a wide range of outlets," but it admits the existence of a website as alleged in this paragraph. Aloha admits that the utilities, facilities, and other aspects of the property that is Ms. Young's home are made available to those who stay there as guests, with the exception of areas that are reserved for Ms. Young's private use.
5. Aloha admits that it advertises through bnbHawaii.com and Pamela Lanier's Bed and Breakfasts, Inns and Guesthouses International, denies that it currently advertises through the International Bed and Breakfast Pages, and has insufficient knowledge to admit or deny the remaining allegations contained in this paragraph regarding where it is listed or advertised, and on that basis denies the same. Aloha admits that it has been open to the public since at least

2003 but Aloha has insufficient knowledge to admit or deny the number of guests that have stayed there, and on that basis denies the same.

6. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

7. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

8. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

9. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

10. Aloha admits the allegations contained in this paragraph regarding Plaintiff's communications with Ms. Young, but has insufficient knowledge to admit or deny the remaining allegations in this paragraph concerning Plaintiffs' confirmation with a non-party, and on that basis denies the same.

11. Aloha denies the allegations in this paragraph regarding the alleged statements made in that conversation and has insufficient knowledge to admit or deny the remaining allegations contained in this paragraph regarding Plaintiff's feelings, and on that basis denies the same.

12. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph regarding Plaintiff's feelings and discussions between Plaintiffs, and on that basis denies the same. Aloha admits the allegation in this paragraph regarding the initial discussion between Ms. Young and Plaintiff Bufford.

13. Aloha admits that the description of the initial discussion with Plaintiff Bufford in this paragraph is substantively accurate. Aloha has insufficient knowledge to admit or deny the

allegations contained in this paragraph regarding Plaintiff's feelings or efforts to call again, and on that basis denies the same. Aloha also admits that Plaintiff Bufford spoke with Ms. Young again when Plaintiff Bufford returned Ms. Young's call, but Aloha denies the description of that conversation in this paragraph.

14. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

15. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same.

16. Aloha admits that it continues to rent rooms in Ms. Young's home but denies that it has refused to provide accommodations to any same-sex couple since the events that gave rise to this lawsuit. Aloha denies the allegations in this paragraph regarding its position in connection with the application of the law to Aloha.

17. The allegations set out in this paragraph are conclusions of law that do not require a response. To the extent they require a response, they are denied.

18. Aloha admits the allegation in the first sentence of this paragraph. Aloha denies the remaining allegations stated in this paragraph. Moreover, it is Aloha's position that to the extent that any statements attributed to Aloha were made during the HCRC conciliation process, those statements are confidential and not to be used as evidence in any subsequent proceedings.

19. Aloha has insufficient knowledge to admit or deny the allegations contained in this paragraph, and on that basis denies the same. Moreover, it is Aloha's position that to the extent that any statements attributed to Aloha were made during the HCRC conciliation process, those statements are confidential and not to be used as evidence in any subsequent proceedings.

20. Aloha denies the allegations in this paragraph that it does not allow rooms to be rented on a month-to-month basis or offer cooking privileges. Aloha admits the remaining allegations in this paragraph. Moreover, it is Aloha's position that to the extent that any statements attributed to Aloha were made during the HCRC conciliation process, those statements are confidential and not to be used as evidence in any subsequent proceedings.

21. Aloha admits that the HCRC issued a Notice as alleged in this paragraph, but lacks knowledge sufficient to admit or deny the allegations regarding the work of the HCRC, and on that basis denies the same.

22. Aloha has insufficient knowledge to admit or deny the allegation contained in this paragraph concerning Plaintiffs' receipt of notices, and on that basis denies the same. Aloha denies that this action was filed timely as a matter of law.

CLAIM FOR RELIEF

29. Aloha reasserts and incorporates by reference all the preceding paragraphs of the answer as if fully set forth herein.¹

30. The allegations set out in this paragraph are conclusions of law that do not require a response. To the extent they require a response, they are denied.

31. The allegations set out in this paragraph are conclusions of law that do not require a response. To the extent they require a response, they are denied.

32. Aloha denies the classifications and legal conclusions contained in this paragraph but admits the physical description of Ms. Young's residence as set out in this paragraph.

33. Aloha denies the allegation stated in this paragraph.

34. Aloha denies the allegation stated in this paragraph.

35. Aloha denies the allegations stated in this paragraph.

¹ The Complaint is missing paragraphs 23 through 28.

36. Aloha denies the allegations stated in this paragraph.

37. The allegations set out in this paragraph are conclusions of law that do not require a response. To the extent they require a response, they are denied.

DECLARATORY AND INJUNCTIVE RELIEF

38. Aloha denies that Plaintiffs are entitled to any of the relief set forth in this paragraph.

39. Aloha denies that Plaintiffs are entitled to any of the relief set forth in this paragraph.

FIRST AFFIRMATIVE DEFENSE

Aloha is not a place of “public accommodation” for purposes of Hawai‘i Revised Statutes chapter 489, but instead is the rental of an interest in real estate that is used as a residence in which Ms. Young resides, where three or fewer rooms are made available to others for a fee.

SECOND AFFIRMATIVE DEFENSE

Application of Hawai‘i Revised Statutes chapter 489 to Aloha violates its owner’s rights under the Free Exercise Clause of the First Amendment of the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

Application of Hawai‘i Revised Statutes chapter 489 to Aloha violates its owner’s rights under Article I, Section 4 of the Hawai‘i Constitution.

FOURTH AFFIRMATIVE DEFENSE

Application of Hawai‘i Revised Statutes chapter 489 to Aloha violates its owner’s Free Speech rights under the First Amendment of the United States Constitution.

FIFTH AFFIRMATIVE DEFENSE

Application of Hawai‘i Revised Statutes chapter 489 to Aloha violates its owner’s Free Speech rights under Article I, Section 4 of the Hawai‘i Constitution.

SIXTH AFFIRMATIVE DEFENSE

Application of Hawai'i Revised Statutes chapter 489 to Aloha violates its owner's rights of Expressive Association under the First Amendment of the United States Constitution.

SEVENTH AFFIRMATIVE DEFENSE

Application of Hawai'i Revised Statutes chapter 489 to Aloha violates its owner's rights of Expressive Association under Article I, Section 4 of the Hawai'i Constitution.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief can be granted.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations.

TENTH AFFIRMATIVE DEFENSE

The court lacks personal jurisdiction over the named Defendant under Hawai'i Revised Statutes chapter 489.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant Aloha intends to rely on defenses as contained in Chapter 515 of the Hawaii Revised Statutes (Discrimination in Real Estate Transactions).

TWELFTH AFFIRMATIVE DEFENSE

Defendant Aloha gives notice of her intent to rely upon any other applicable affirmative defense or defenses subject to Rule 8(c) of the Hawai'i Rules of Civil Procedure.

THIRTEENTH AFFIRMATIVE DEFENSE

Application of Hawai'i Revised Statutes chapter 489 to Aloha violates its owner's rights of Intimate Association under the Bill of Rights of the United States Constitution and the Bill of Rights of the Hawai'i Constitution.

FOURTEENTH AFFIRMATIVE DEFENSE

Application of Hawai'i Revised Statutes chapter 489 to Aloha violates its owner's rights to Privacy under the Bill of Rights of the United States Constitution and under Article I, Section 6 of the Hawai'i Constitution.

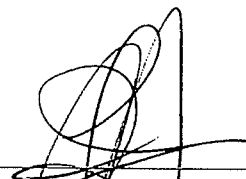
FIFTEENTH AFFIRMATIVE DEFENSE

Application of Hawai'i Revised Statutes chapter 489 to Aloha violates its owner's rights under the Takings Clause and Due Process Clause of the Fifth Amendment to the United States Constitution and under Article I, Section 20 and the Due Process Clause of Article I, Section 5 of the Hawai'i Constitution.

WHEREFORE, Defendant Aloha prays for relief as follows:

1. That the Complaint is dismissed with prejudice and that Defendant Aloha is awarded reasonable attorneys' fees and costs.
2. That this Court awards such other and further relief as it deems just and equitable in the premises

Dated: Honolulu, Hawai'i, July 25, 2012.



JAMES HOCHBERG
Attorney for Defendant
ALOHA BED & BREAKFAST

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DIANE CERVELLI and TAEKO BUFFORD,)
)
 Plaintiffs,)

CIVIL NO. 11-1-3103-12 ECN
(Other Civil Action)

WILLIAM D. HOSHIJO, as Executive Director)
 of the Hawai'i Civil Rights Commission,)
)
 Plaintiff-Intervenor,)

DEMAND FOR JURY TRIAL

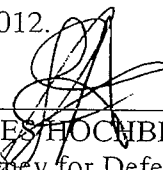
v.)

ALOHA BED & BREAKFAST, a Hawai'i sole)
 proprietorship,)
)
 Defendant.)

DEMAND FOR JURY TRIAL

Defendant ALOHA BED & BREAKFAST, above-named, by its undersigned counsel,
hereby demands trial by jury on all issues so triable herein.

DATED: Honolulu, Hawai'i, July 25, 2012.



JAMES HOCHBERG
Attorney for Defendant
ALOHA BED & BREAKFAST

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAI'I

DIANE CERVELLI and TAEKO BUFFORD,)	
)	
Plaintiffs,)	CIVIL NO. 11-1-3103-12 ECN
)	(Other Civil Action)
WILLIAM D. HOSHIJO, as Executive Director)	
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proprietorship,)	
)	
Defendant.)	

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date of filing, a copy of the *First Amended Answer and Affirmative Defenses to Complaint filed December 19, 2011; Demand for Jury Trial; Certificate of Service* was served upon the following parties, in the manner indicated below:

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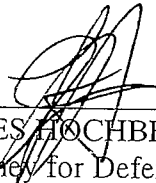
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Attorney for Plaintiff-Intervenor
WILLIAM D. HOSHIJO, Executive Director

Dated: Honolulu, Hawai'i, July 25, 2012.



JAMES HOCHBERG
Attorney for Defendant
ALOHA BED & BREAKFAST