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FIRST CIRCUIT COURT
STATE OF HAWAII
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HITOSHI YOSHIKAWA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS
OF KALELE KAI,

Plaintiff,

vs.

HITOSHI YOSHIKAWA;
DOE DEFENDANTS 1-10,

Defendants.

) Civil No. 15-1-0102-01 KTN
)
) DEFENDANT HITOSHI YOSHIKAWA'S
) MEMORANDUM IN OPPOSITION TO
) ASSOCIATION OF OWNERS OF KALELE
) KAI'S MOTION FOR PROTECTIVE
) ORDER RE: HITOSHI YOSHIKAWA'S
) "NOTICE OF TAKING DEPOSITION UPON
) ORAL EXAMINATION [COLIN KURATA
) AND JIM PROPOTNICK]" FILED 5/5/15;
) DECLARATION OF COUNSEL; EXHIBITS
) 1 & 2; CERTIFICATE OF SERVICE
)
) HEARING:
)
) DATE: June 17, 2015
) TIME: 11:00 a.m.
) JUDGE: The Honorable Karen T. Nakasone
)
) No Trial Date

DEFENDANT HITOSHI YOSHIKAWA'S MEMORANDUM IN OPPOSITION TO
ASSOCIATION OF OWNERS OF KALELE KAI'S MOTION FOR PROTECTIVE ORDER
RE: HITOSHI YOSHIKAWA'S "NOTICE OF TAKING DEPOSITION UPON ORAL
EXAMINATION [COLIN KURATA AND JIM PROPOTNICK]" FILED 5/5/15

EXHIBIT A

Defendant HITOSHI YOSHIKAWA (“Yoshikawa”), by and through his undersigned counsel, Revere & Associates, LLLC, respectfully submits his Memorandum in Opposition to The Association of Owners of Kalele Kai’s (“Association”) Motion for Protective Order Re: Hitoshi Yoshikawa’s “Notice of Deposition Upon Oral Examination [Colin Kurata and Jim Propotnick]” filed 5/5/15 (“Motion”). For the reasons set forth below, this Court should deny the Association’s request for a protective order and fees and costs.

I. INTRODUCTION

The Association’s Motion should be denied for the following reasons:

- A. There is no good cause to support the granting of the Association’s Motion.
- B. The Association complains about the timing of the filing of Yoshikawa’s responsive pleading. This argument is disingenuous because in order to allow for an extension of time for the Association to consider a settlement offer made by Yoshikawa, counsel for the Association suggested that the deadline for Yoshikawa to file his responsive pleading to the Association’s First Amended Complaint be extended for two weeks. Exhibit 1; Decl. of Counsel at ¶ 4-5. The parties agreed and Yoshikawa’s deadline was extended from April 27, 2015 to May 11, 2015. *Id.* At the April 28, 2015 hearing on the Association’s Motion for Summary Judgment, despite the agreement, counsel for the Association then used the fact that Yoshikawa’s responsive pleading had not yet been filed to argue that summary judgment should be granted the Association’s favor. Decl. of Counsel at ¶ 6. In order to rebut these arguments, Yoshikawa was forced to file his responsive pleading the very next day. *Id.*

- C. Counsel for Yoshikawa previously informed counsel for the Association that Yoshikawa planned to name former Association Board President Mr. Oakes and Association Board Member Mrs. Sabry, as Cross-Claimants in this action. Decl. of Counsel. at ¶ 7. Mr.

Oakes was previously deposed in this matter and testified at length during the arbitration. *Id.* at ¶ 8. Mrs. Sabry's husband, Dan Sabry, was called as a witness by the AOA during the arbitration and Mrs. Sabry herself was the subject of much testimony during the arbitration. *Id.* The naming of these two individuals as Cross-Claimants by Yoshikawa is no surprise to the AOA. *Id.*

D. Counsel for the AOA has refused to accept service on behalf of Mr. Oakes or Mrs. Sabry. Decl. of Counsel at ¶ 9. Since the arbitration occurred, Mr. Oakes moved to Scottsdale, Arizona. As soon as Yoshikawa was able to confirm Mr. Oakes' new address an ex parte motion to serve Mr. Oakes via certified mail was submitted to the Court. *Id.* at ¶ 10. Mrs. Sabry lives at the Association, a gated community with strict service rules that Yoshikawa's process server has abided by. Exhibit 2; Decl. of Counsel at ¶ 11. Yoshikawa's process server has attempted to serve Mrs. Sabry on six (6) occasions at her home. *Id.* The most recent service attempt was last night at which time the process server observed the lights to be on in the home but no one came to answer the door. *Id.* Yoshikawa has thus far refrained from serving Mrs. Sabry at her workplace due to the fact that she works as a nurse at Straub hospital. *Id.* However, serving Mrs. Sabry at work may be the only option in light of what appears to be an attempt on her part to avoid service. *Id.*

E. The scope of issues involved in this matter was determined during arbitration and there is no remaining determination to be conducted by either party.

F. Board Members Mr. Kurata and Mr. Propotnick (jointly "the Deponents") are essential witnesses for Yoshikawa to both defend against the Association's Complaint and to prosecute his own Counterclaims and Cross-Claims. The most pressing need for the depositions includes obtaining information to defend against the Association's upcoming Motion to Dismiss

Yoshikawa's Counterclaims and Cross-Claims for failure to state a claim for which relief can be granted which is currently scheduled for hearing on July 30, 2015.

G. During counsel's meet and confer conference on May 1, 2015 counsel for Yoshikawa inquired as to agreeable dates for the depositions. Decl. of Counsel at ¶ 13. Counsel for the Association indicated that they were unwilling to schedule dates for the depositions so Yoshikawa had no choice but to select arbitrary dates for the Notice. *Id.* The Association's argument that the Notice's 7-day period is improper is moot in light of the fact that the Association was well aware of Yoshikawa's willingness to compromise on the dates on which the depositions were to be held.

H. There is no compelling justification that "disclosure or discovery not be had" at this stage of the case pursuant to HRCF Rules 26(c)(1). In fact, just the opposite is true and the noticed depositions are reasonable and necessary at this juncture.

I. There is no justification for the Association's request for reimbursement of attorneys' fees and costs. Yoshikawa attempted to resolve this issue via the meet and confer conference but the parties were unable to reach an agreement. It is Yoshikawa who should be awarded the attorneys' fees and costs incurred in opposing this motion.

II. ARGUMENTS

A. Legal Standards

This Court has wide discretion with respect to matters relating to discovery. Protective orders pursuant to HRCF Rule 26(c) are subject to this same abuse of discretion standard. *Doe v. Doe*, 120 Hawai'i 149, 165, 202 P.3d 610, 626 (App.2009) citing *Kukui Nuts of Hawaii Inc. v. R. Baird & Co., Inc.*, 7 Haw.App. 598, 620-21, 789 P.2d 501, 515 (1990).

Rule 26, HRCP, generally governs discovery. This rule, in relevant part, provides:

(a) Discovery methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; . . .

(b) Discovery scope and limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) IN GENERAL.

(A) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, . . . It is not ground for objection that the information sought will be inadmissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. . . .

(2) LIMITATIONS. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or the length of depositions under Rule 30. . . . The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. . . .

(c) Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the disclosure or discovery not be had; . . . A party has standing to move for a protective order with respect to discovery directed at a non-party on the basis of annoyance, embarrassment, oppression, or undue burden or expense that the moving party will bear. . . . If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. . . .

(d) Sequence and timing of discovery. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence . . .

Id.

The general provisions of Rule 26, HRCPP, are more specifically addressed in Rule 30, HRCPP, as it relates to oral depositions. The relevant parts of Rule 30 provide:

- (a) When depositions may be taken; when leave required.
 - (1) After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. . . .
- (b) Notice of examination: General requirements; method of recording; production of documents and things; deposition of organization; deposition by telephone.
 - (1) A party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known. . . .
 - (2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded. . . .

Id. In addition, Rule 32, HRCPP, governs the use of depositions in court proceedings. This rule, again in relevant parts, provides:

- (a) Use of depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:
 - (1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Hawai'i Rules of Evidence. . . .
 - (3) . . . A deposition taken without leave of court pursuant to a notice under Rule 30(a)(2)(C) shall not be used against a party who . . . received less than 11 days notice of a deposition, has promptly upon receiving such notice filed a motion for a protective order under Rule 26(c)(2) requesting that the deposition not be held or be held at a different time or place and such motion is pending at the time the deposition is held.

Id.

B. Good Cause Does Not Exist to Grant a Protective Order

The instant motion for protective order is not supported by good cause. Therefore, the Motion should be denied and the depositions permitted.

The foregoing rules make it very clear that grounds for a protective order relating to conducting a deposition are limited to “annoyance, embarrassment, oppression, or undue

burden.” Rule 26(c), HRCF. The Association has not made any showing with respect to these grounds. In fact, in the discussion section of the Memorandum in Support of the Association’s Motion, Subsection “A” entitled “Good Cause Supports the Granting of this Motion,” the Association does not even argue “annoyance, embarrassment, oppression, or undue burden.” Therefore, the Association has waived those arguments in support of their Motion.

Assuming waiver is not applied, the Notice of Deposition does not meet the applicable standards of annoyance, embarrassment, oppression, or undue burden. Both these terms and “good cause” are not defined by HRCF Rule 26(c) and have not been construed by the Hawai’i appellate courts. However, HRCF Rule 26(c) is patterned after Federal Rules of Civil Procedure (FRCP) Rule 26(c). “[I]n instances where Hawai’i case law and statutes are silent, this court can look to parallel federal law for guidance.” *Trivectra v. Ushijima*, 112 Hawaii 90, 102, 144 P.3d 1, 13 (2006) (citations omitted).

Good cause is established with “specific facts showing ‘clearly defined and serious injury’ resulting from the discovery sought and [the moving party] cannot rely on mere conclusory statements.” *Nix v. Sword*, 11 Fed. App’x 498, 500 (6th Cir. 2001) (quoting *Avirgan v. Hull*, 118 F.R.D. 252, 254 (D.D.C. 1987)); *Underwood v. Riverview of Ann Arbor*, 2008 WL 5235992, slip op. at *2 (E.D.Mich. Dec. 15, 2008). The Association has neither established a clearly defined nor serious injury. Simply put, the Association has wholly failed to establish any injury.

The words “annoyance” and “embarrassment” must be interpreted according to their plain and ordinary meaning. See e.g. *State ex rel. Bronster v. Yoshina*, 84 Hawai’i 179, 186, 932 P.2d 316, 323 (1997); *Miller v. Tanaka*, 80 Haw. 358, 363, 910 P.2d 129, 135 (App. 1995); *Estate of Doe v. Paul Revere Ins. Group*, 86 Haw. 262, 948 P.2d 1103 (1997). “Annoyance” is

defined as “Discomfort; vexation. Not generally synonymous with anguish, inconvenience, or harassment. Such may result from either physical or mental conditions. It includes feeling of imposition and oppression.” *See Black’s Law Dictionary*. The Association has not established “annoyance.”

Websters NewRiverside University Dictionary defines “embarrassment” as “an act or instance of embarrassing” then defining “embarrass” as meaning “to cause to fee self-consciously distressed: Disconcert.” Again, the Association has not established “embarrassment.”

The relevant definition of “oppression” is “an act of cruelty, severity, unlawful exaction or excessive authority. *See Black’s Law Dictionary*. Again, the Association has failed to establish the deposition in any way constitute “oppression.”

Finally, the Association also fails to establish the depositions constitute an “undue burden.” In order to establish an undue burden, Defendant must show a "clearly defined and serious injury." *See Transcor, Inc. v. Furney Charters, Inc.*, 212 F.R.D. 588, 592-93 (D. Kans. 2003)). “A burden is undue when it is not justified by an offsetting benefit to the administration of justice.” *See e.g. Ligas v. Maram*, Case No. 05 C 4331, 7 (N.D.Ill. 11-27-2007). The Association has made no showing that the burden of taking the depositions of former or current members of the Board of Directors of the Association, or persons with specific personal knowledge of the historical and current facts, outweighs the benefits to the administration of justice. Therefore, the Association has failed to establish undue burden.

C. Each Asserted Reason for the Protective Order is Insufficient to Grant the Protective Order

The Association asserts a series of reasons upon which it believes that it has met the standard for this Court to grant the protective order. Each of the asserted argument is insufficient grounds for granting the protective order.

The Association asserts there is uncertainty as to the scope of the claims, issues and defenses. This is wholly incorrect. First, Rule 26(B)(1), HRCF specifically defines the scope of permissible discovery to include “any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party,” *Id.* Further, permissible scope includes matters which may be inadmissible at trial if it is “reasonably calculated to lead to the discovery of admissible evidence. . . .” *Id.* The scope of discovery is clearly defined by rule. Second, it is disingenuous to argue a lack of clarity of the issues. This case has been fully arbitrated. The Association is fully aware of the issues in this case.

Second, the addition of new parties is not a bar to discovery. While the Association is complaining about the lack of service, this is an invited argument created both by its access, service rules, and failure of its counsel to accept service on behalf of Mr. Oakes and Mrs. Sabry. These new parties will be served shortly and will be given notice of any depositions that take place in this matter.

Third, the depositions need to be conducted immediately because of the current posture of this action. The deponents have personal knowledge of both historical and current facts relevant to the claims and defenses asserted in this action. The deponents have served on the Association’s Board of Directors since the time when the Board first approved Richard Rosic’s modification of several moorings to create what is now Yoshikawa’s side-tie slip. In fact, the Deponents themselves approved this modification. The depositions of the deponents are entirely

relevant to the claims and defenses asserted in this action and may well bear on the pending Motion to Dismiss.¹

The pending dispositive motions do not act to stay discovery. “[A] pending Motion to Dismiss is not ordinarily a situation that in and of itself would warrant a stay of discovery.” *Turner Broadcasting Sys. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). *See also, e.g., Long v. Hewlett-Packard*, No. C06-02816 JW (HRL), 2006 U.S. Dist. LEXIS 94013, *5-6, 2006 WL 4877691 (N.D. Cal. Dec. 19, 2006); *Gray v. Winthrop*, 133 F.R.D. 39, 40 (N.D. Cal. 1990) (“Had the Federal Rules contemplated that a motion to dismiss under Fed.R.Civ.Pro. 12(b)(6) would stay discovery, the Rules would contain a provision to that effect.”); *Allstate Ins. Co. v. Levy*, No. CV-10-1652 (FB)(VVP), 2011 U.S. Dist. LEXIS 8330, *2, 2011 WL 288511, at *1 (E.D.N.Y. Jan. 27, 2011) (“The pendency of the motion to dismiss does not provide an automatic basis to stay discovery.”); *DSM Desotech Inc. v. 3D Systems Corp.*, No. 08 CV 1531, 2008 WL 4812440, at *2 (N.D. Ill. Oct. 28, 2008) (“[T]he mere filing of the motion [to dismiss] does not automatically stay discovery.”); *Bocciolone v. Solowsky*, No. 08-20200-CIV, 2008 WL 2906719, at *1 (S.D. Fla. July 24, 2008) (“[C]ourts have consistently rejected any per se requirement to stay discovery pending resolution of a dispositive motion.”). Commentators agree. *See* Arthur R. Miller, *From Conley to Twombly to Iqbal: A Double Play on the Federal Rules of Civil Procedure*, 60 DUKE L.J. 1 (2010) (“Nor is there any mandatory or automatic stay of discovery while a Rule 12(b)(6) motion is pending.”); *see also* Edward A. Hartnett, *Taming Twombly, Even After Iqbal*, 158 U. PA. L. REV. 473, 507 (2010) (“The mere filing of a motion to dismiss does not trigger a stay of discovery.”)

¹ The Motion to Dismiss may well have to be converted to one for summary judgment if matters outside the pleadings are considered.

The Association argues that the 7-day period contained in the Notice is “improper” asserting that Rule 32(a)(3), HRCF requires an eleven (11) day notice. This is not what Rule 32(a)(3) requires. Instead, this rule contains a prohibition of use of the deposition against a party if the notice is less than eleven (11) days and the same party has filed a motion for protective order. *Id.* It does not contain a prohibition against a shorter notice. Moreover, instead of denying the right to conduct the deposition, the Rule provides if a protective order is filed, this Court may order the deposition held on a different date and time. During counsel’s meet and confer conference on May 1, 2015 counsel for Yoshikawa informed counsel for the AOA that they were happy to accommodate the personal schedules of counsel and the Deponents in scheduling the depositions. Counsel for the AOA indicated that they were unwilling to schedule dates for the depositions so Yoshikawa had no choice but to select arbitrary dates for the Notice. As such, the AOA was well aware of Yoshikawa’s willingness to compromise on the dates on which the depositions were to be held. At this point, far more than eleven (11) days will have lapsed from the date of the notice and the date the depositions will be conducted and counsel for Yoshikawa is still more than willing to accommodate the schedules of everyone involved. Therefore, this argument provides no basis for this Court granting the protective order.

D. Yoshikawa Does Not Have to Provide Justification for the Notice

The Association argues the Defendant has a duty to provide justification for the time set forth in the Notice. This argument is made without any citation to the law. Therefore, this Court should disregard this argument because it has not been adequately briefed.

Moreover, nowhere in the applicable rules does it require the Defendant to provide a justification for the Notice. Nonetheless, the justification for the Notice is the factual knowledge of the deponents is anticipated to bear on the pending Motion to Dismiss. The Association

seems to want to dictate the procedures by which this litigation is conducted in order to tilt the playing field unreasonably in its favor. This Court should not participate in such chicanery. Instead, this Court should protect the interests of both parties to promote the underlying policy of fairly litigating actions on the merits.

E. Yoshikawa Should be Awarded His Attorneys' Fees & Costs

As clearly shown above, the Association has failed to establish any grounds for the protective order. Therefore, its request for attorney's fees should be denied. However, this Court should award Yoshikawa his attorney's fees.

Rule 37(4)(A), HRCF provides for an award of costs and attorneys' fees for having to defend against this Motion for Protective Order. This rule provides:

(A) If the motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court shall, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney's fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified, or that other circumstances make an award of expenses unjust.

Id. Thus, if this Court denies the Motion for Protective Order, it should award Yoshikawa his attorneys' fees and costs for having to defend against this Motion for Protective Order.

III. CONCLUSION

The Association's Motion for Protective Order should be denied. This Court should set the date and time when the depositions may be held. In addition, this Court should award the

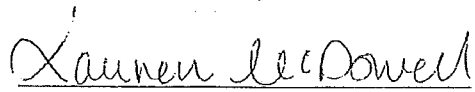
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Defendant his costs and attorney's fees for having to defend against this Motion.

DATED: Honolulu, Hawaii, June 9, 2015.



TERRANCE M. REVERE
LAUREN C. McDOWELL

Attorneys for Defendant
HITOSHI YOSHIKAWA

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS OF KALELE KAI,)	Civil No. 15-1-0102-01 KTN
)	
Plaintiff,)	DECLARATION OF COUNSEL
)	
vs.)	
)	
HITOSHI YOSHIKAWA)	
DOE DEFENDANTS 1-10,)	
)	
Defendants.)	
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DECLARATION OF LAUREN C. McDOWELL

I, LAUREN C. McDOWELL, declare under penalty of law that the following is true and correct:

1. I am competent to make this declaration, and do so based upon personal knowledge, except as otherwise stated.
2. I am an associate attorney for Revere and Associates, LLLC, the law firm representing Defendant Hitoshi Yoshikawa ("Yoshikawa").
3. I am executing this Declaration in support of the attached *DEFENDANT HITOSHI YOSHIKAWA'S MEMORANDUM IN OPPOSITION TO ASSOCIATION OF OWNER'S OF KALELE KAI'S MOTION FOR PROTECTIVE ORDER RE: HITOSHI YOSHIKAWA'S "NOTICE OF TAKING DEPOSITION UPON ORAL EXAMINATION [COLIN KURATA AND JIM PROPOTNICK]" FILED 5/5/15.*
4. Attached hereto as "Exhibit 1" is a true and correct copy of email correspondence between counsel for Yoshikawa and counsel for the Association dated April 21, 2015 – April 23, 2015.
5. Counsel for Yoshikawa did not file Yoshikawa's Responsive Pleading on the original deadline of April 27, 2015 due to the agreement reached in "Exhibit 1."
6. At the April 28, 2015 hearing on the AOA's Motion for Summary Judgment, despite the agreement, counsel for the AOA then used the fact that Yoshikawa's responsive

pleading had not yet been filed to argue that summary judgment should be granted the AOA's favor. In order to rebut these arguments, Yoshikawa was forced to file his responsive pleading the very next day.

7. Counsel for Yoshikawa previously informed counsel for the AOA that Yoshikawa planned to name former Association Board President Mr. Oakes and Association Board Member Mrs. Sabry, as Cross-Claimants in this action.

8. Mr. Oakes was previously deposed in this matter and testified at length during the arbitration. Mrs. Sabry's husband, Dan Sabry, was called as a witness by the AOA during the arbitration and Mrs. Sabry herself was the subject of much testimony during the arbitration. The naming of these two individuals as Cross-Claimants by Yoshikawa is no surprise to the AOA.

9. Counsel for Yoshikawa asked Counsel for the Association whether they would accept service of Yoshikawa's Responsive Pleading on Mr. Oakes and/or Mrs. Sabry. As of the date of filing of this Opposition no response was received.

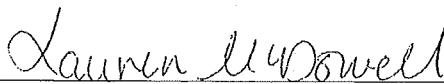
10. Since the arbitration occurred, Mr. Oakes moved to Scottsdale, Arizona. As soon as Yoshikawa was able to confirm Mr. Oakes' new address an ex parte motion to serve Mr. Oakes via certified mail was submitted to the Court.

11. Mrs. Sabry lives at the Association, a gated community with strict service rules that Yoshikawa's process server has abided by. Yoshikawa's process server has attempted to serve Mrs. Sabry on six (6) occasions. The most recent service attempt was last night at which time the process server observed the lights to be on in the home but no one came to answer the door. Yoshikawa has thus far refrained from serving Mrs. Sabry at her workplace due to the fact that she works as a nurse at Straub hospital. However, serving Mrs. Sabry at work may be the only option in light of what appears to be an attempt on her part to avoid service.

12. Attached hereto as "Exhibit 2" is a true and correct copy of an email from process server Jacinto Carrasco confirming the first five service attempts on Darla Sabry. Since sending this email our process server has informed me that an additional attempt was made last night.

13. During counsel's meet and confer conference on May 1, 2015 counsel for Yoshikawa inquired as to agreeable dates for the depositions. Counsel for the AOA indicated that they were unwilling to schedule dates for the depositions so Yoshikawa had no choice but to select arbitrary dates for the Notice.

DATED: Honolulu, Hawaii, June 9, 2015.


LAUREN C. McDOWELL