

1 **Louie J. Yanza**
2 YANZA • FLYNN • TIMBLIN, LLP
3 **One Agana Bay**
4 **446 East Marine Corps Drive, Suite 201**
5 **Hagåtña, Guam 96910**
6 **Telephone No.: (671) 477-7059**
7 **Facsimile No.: (671) 472-5487**

8 **Attorneys for Defendant**
9 **POLARIS GUAM LLC DBA VERONA RESORT & SPA**

10 **IN THE DISTRICT COURT OF GUAM**

11 **UNITED STATES EQUAL) CIVIL ACTION NO. CV17-00090**
12 **EMPLOYMENT OPPORTUNITY)**
13 **COMMISSION,)**
14 **Plaintiff,)**
15 **vs.) DEFENDANT’S ANSWER TO**
16 **POLARIS GUAM LLC DBA VERONA) COMPLAINT; CERTIFICATE OF**
17 **RESORT & SPA,) SERVICE**
18 **Defendant.)**

19 COMES NOW Defendant **Polaris Guam LLC dba Verona Resort and Spa**
20 (**“VERONA”**) through counsel, YANZA • FLYNN • TIMBLIN, LLP, by Louie J. Yanza,
21 severing itself from all other Defendants named herein, and hereby answers the
22 Complaint filed on August 1, 2017, in the above entitled action, as follows:

23 **JURISDICTION AND VENUE**

- 24 1. Defendant admits the allegations contained in paragraph 1 of the
25 Complaint.
2. Defendant denies, generally and specifically, each and every allegation
contained in paragraphs 2, 3 and 4 of the Complaint.

1 **PARTIES**

2 3. Defendant admits the allegations in Paragraph 2 of the Complaint.

3 4. Defendant states that it is without knowledge or information sufficient to
4 allow it to formulate a belief as to the truth or veracity of the allegations contained in
5 paragraphs 1 and 5 of the Complaint and, based thereon, therefore, denies, generally
6 and specifically, the same.

7 5. Defendant denies, generally and specifically, each and every allegation
8 contained in paragraphs 3 and 4 of the Complaint.

9 **STATEMENT OF CLAIMS**

10 6. Defendant denies, generally and specifically, each and every allegation
11 contained in paragraphs 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,
12 24, and 25 of the Complaint.

13 By way of further answer, Defendant asserts the following affirmative defenses:
14

15 **FIRST AFFIRMATIVE DEFENSE**

16 Plaintiff's Complaint fails to state a claim against the Defendants upon which
17 relief may be granted.

18 **SECOND AFFIRMATIVE DEFENSE**

19 The Charging Party was negligent and careless in and about the matters set
20 forth in the Complaint and her lack of due care and caution caused or contributed to
21 her alleged injuries and damages, and any damages recovered should be reduced
22 accordingly.

23 **THIRD AFFIRMATIVE DEFENSE**

24 Charging Party has have failed to mitigate her damages.
25

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Charging Party's claims are barred or should be reduced due to her
3 comparative negligence.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Charging Party's claims are barred or should be reduced due to her
6 contributory negligence.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Charging Party's claims are barred or should be reduced due to Doctrine of
9 Assumption of Risk.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Charging Party's claims are barred or should be reduced due to the
12 Statute of Limitations.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 The Charging Party's own negligence or that of third parties or other events
15 were the superseding or intervening cause of any damages and injuries Charging
16 Party may have sustained and Charging Party may not recover against the Defendant.
17

18 **NINTH AFFIRMATIVE DEFENSE**

19 Non-discrimination.

20 **TENTH AFFIRMATIVE DEFENSE**

21 Other pregnant employees have worked with the Defendant without
22 discrimination.

23 **ELEVENTH AFFIRMATIVE DEFENSE**

24 Other pregnant employees have not been discriminated against.
25

1 **TWELFTH AFFIRMATIVE DEFENSE**

2 Other pregnant employees have gone on maternity leave, delivered their baby
3 and successfully returned to work.

4 **THIRTEENTH AFFIRMATIVE DEFENSE**

5 Similarly situated employees have been treated equally and fairly.

6 **FOURTEENTH AFFIRMATIVE DEFENSE**

7 The Charging Party voluntarily left employment on her own.

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 The Charging Party is not a member of a protected class.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 The Defendant is not an employer "covered" under the Plaintiff's legal theory.

12 **SEVENTEENTH AFFIRMATIVE DEFENSE**

13 The claims in the complaint exceed the scope of the EEOC charge.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**

15 The Plaintiff failed to set forth a prima facie case of discrimination.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 Bonafide occupational disqualification.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 Business necessity.

20 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21 Job-relatedness.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

23 Same-actor inference.

24 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

25 Avoiding a hazard.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

Business judgment.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Actions taken by the Defendant were not for a discriminatory reason.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

After-acquired evidence.

Defendant reserves the right to assert such further affirmative defenses as may appear as discovery proceeds.

PRAYER

WHEREFORE, Defendant herein pray for relief as follows:

- 1. That Plaintiff takes nothing against Defendant by way of its Complaint;
- 2. That Plaintiff’s Complaint be dismissed with prejudice as to Defendant;
- 3. That Defendant be awarded its costs in defending this action; and
- 4. For such other and further relief as the Court may deem just and proper.

Dated this 10th day of October, 2017.

YANZA • FLYNN • TIMBLIN, LLP
Attorneys for Defendant
**POLARIS GUAM LLC DBA VERONA
RESORT & SPA**

By: /s/Louie J. Yanza
LOUIE J. YANZA

1 CERTIFICATE OF SERVICE

2 I, LOUIE J. YANZA, hereby certify that on the 10th day of October, 2017, I
3 caused the annexed Defendant's Answer to Complaint to be electronically filed with
4 the Clerk of Court, U.S. District Court of Guam, by using the CM/ECF system.

5 The following parties in the case are registered to receive electronic service in
6 Bankruptcy proceedings and will be served by the CM/ECF system:

7 Eric Yau
8 300 Ala Moana Boulevard, Room 7-127
9 Honolulu, Hawaii 96850
10 Attorneys for **United States Equal Employment
Opportunity Commission**

11 Dated this 10th day of October, 2017.

12 **YANZA • FLYNN • TIMBLIN, LLP**
13 Attorneys for Defendant
14 **POLARIS GUAM LLC DBA VERONA
RESORT & SPA**

15
16 By: /s/Louie J. Yanza
17 **LOUIE J. YANZA**