

Request for Judicial Notice Exhibit C

ORIGINAL

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 14 2007

at 3 o'clock and 00 min. PM
SUE J. DIA, CLERK

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Attorneys for Plaintiff
PHOTO RESOURCE HAWAII INC.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

PHOTO RESOURCE HAWAII INC.,) CIVIL NO. **CV 07-00134** **DAE LEK**
) (Copyright Infringement; Removal or
) Alteration of Copyright Management
Plaintiff,) Information)
vs.)
) COMPLAINT FOR COPYRIGHT
AMERICAN HAWAII TRAVEL) INFRINGEMENT AND REMOVAL
INCORPORATED, a Hawaii) OR ALTERATION OF COPYRIGHT
corporation; KEVIN C.F. CHEN,) MANAGEMENT INFORMATION;
individually,) EXHIBITS "A"-"C"; SUMMONS
)
Defendants.)
)

**COMPLAINT FOR COPYRIGHT INFRINGEMENT AND REMOVAL
OR ALTERATION OF COPYRIGHT MANAGEMENT INFORMATION**

COMES NOW Plaintiff PHOTO RESOURCE HAWAII INC.

("Plaintiff"), by its attorneys Rush Moore LLP A Limited Liability Law

ORIGINAL

Partnership, and for its complaint alleges as follows:

THE PARTIES

1. Plaintiff PHOTO RESOURCE HAWAII INC. is a Hawaii corporation with its principal place of business at 111 Hekili Street, Suite 241, Kailua, Hawaii 96734.

2. Upon information and belief, AMERICAN HAWAII TRAVEL INC. (“American Hawaii Travel”) is a Hawaii corporation doing business in Hawaii at 2029 Ala Wai Boulevard, Suite 304, Honolulu, Hawaii 96815.

3. Upon information and belief, Defendant KEVIN C.F. CHEN (“Chen”) is a natural person residing in the State of Hawaii.

JURISDICTION AND VENUE

4. This is an action for preliminary and permanent injunctive relief and damages arising from Defendants American Hawaii Travel and Chen’s (collectively “Defendants”) copyright infringements in violation of the United States Copyright Act, 17 U.S.C. §§ 101-803.

5. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a).

6. Venue is proper in this district under 28 U.S.C. § 1400(a) and 28 U.S.C. § 1391(b), and § 1391(c).

FACTUAL ALLEGATIONS

7. The eight (8) photographic works at issue in this case are works created by several photographers, each of whom is represented by Plaintiff, and each photographic work at issue was registered by Plaintiff with the United States Copyright Office either as agent for the respective photographer or in Plaintiff's own name. Plaintiff has the right and contractual obligation to protect the copyrights on behalf of itself and the photographers it represents. The official registration numbers for the eight (8) photographic works are as follows: VA-939-150, VA-671-532. A true and correct copy of each of the Certificates of Registration is attached hereto as Exhibit "A."

8. The said photographic works were not "works for hire."

9. On or about January 2007, Plaintiff learned that Defendants used 8 images on American Hawaii Travel's website www.hawaiipackage.com, without obtaining license or consent from Plaintiff, violating Plaintiff's exclusive rights to reproduce, adapt, display, distribute, and/or create derivative works under 17 U.S.C. § 100 et al. The images known to Plaintiff that are being used without license or consent by Defendants are the images numbered as follows: SP131a, KA003, AN049, LF056, BI047, HC028, BI027, BI002. A true and correct copy of each of the snapshots of Defendants' webpages containing Plaintiff's images is attached hereto as Exhibit "B."

10. Plaintiff learned that Defendants intentionally removed or altered copyright management information on each of the images it used without the authority of Plaintiff or the law because each of these images were taken from a digital catalog CD entitled Tropical Mix Plate. A true and correct copy of each of Plaintiff's images with each image's copyright management information are attached hereto as Exhibit "C."

11. Starting on January 17, 2007, Plaintiff attempted to reconcile with Defendants their continued use of these images in violation of Plaintiff's copyright, requesting that Defendants pay a retroactive licensing fee for all images used by Defendants on American Hawaii Travel's website and that Defendants cease and desist from using any of Plaintiff's copyrighted images.

12. On or about February 2007, Plaintiff was informed and on the basis of such information and belief alleges, that Defendants and/or agents of Defendants are continuing to use Plaintiff's photographic images on Defendant American Hawaii Travel's website while knowing that they have not obtained Plaintiff's license or consent to continue to use those photographic images.

13. Plaintiff is informed and believes, and on the basis of such belief, alleges that Defendants knew that they were violating the copyrights of Plaintiff in using said photographic works.

14. Upon information and belief, Defendant Chen is the owner of Defendant American Hawaii Travel who made decisions concerning the infringing use of Plaintiff's photographers' works, the removal or alteration of copyright management information, and who derived direct and/or indirect benefits from the infringing use of Plaintiff's photographic works.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT

15. Plaintiff restates and realleges each of the allegations contained in paragraphs 1-14 as if fully stated herein.

16. Plaintiff has all rights, title and interest in the copyrights to the 8 images either as holder of the copyright or as agent for the respective photographer, the use of which have not been licensed to Defendants.

17. Defendants have misappropriated Plaintiff's copyrighted photographic works and engaged in unauthorized use and copying of Plaintiff's copyrights by using Plaintiff's photographs. Defendants' acts constitute unprivileged copyright infringement under the United States Copyright Act, 17 U.S.C. §§ 101-803.

18. Defendants may continue, unless restrained, to use Plaintiff's copyrighted photographs, causing irreparable damage to Plaintiff, for which Plaintiff has no adequate remedy of law.

19. Defendants' unlawful use of copies of Plaintiff's original photographic works will severely diminish the value of the original photographic works by diluting the market and destroying the distinctiveness of the photographic works and their identity as being the exclusive property of Plaintiff.

20. Defendants' unlawful acts have been and are interfering with and undermining Plaintiff's ability to market Plaintiff's own original photographic works, thereby impairing the value and prejudicing the sale by Plaintiff of its own photographic works.

21. Plaintiff is entitled to a temporary and permanent injunction restraining Defendants from engaging in further acts of copyright infringement.

22. Defendants, by their unauthorized appropriation and use of Plaintiff's original photographic works, have been and are engaging in acts of unfair competition, unlawful appropriation, unjust enrichment, wrongful deception of the purchasing public, and unlawful trading on Plaintiff's goodwill and the public acceptance of Plaintiff's original photographic works.

23. Because Defendants used Plaintiff's copyrighted photographs without license, infringing the exclusive rights of the Plaintiff as the copyright owner or the agent of copyright owners, Plaintiff is entitled to have the infringing publications and any improperly acquired likenesses or images (however stored or recorded) impounded while this action is pending.

24. As a direct and proximate result of Defendants' wrongful acts, Plaintiff has suffered and continues to suffer lost profits and damages.

25. Plaintiff is entitled to recover from Defendants the damages it has sustained as a result of these wrongful acts. Plaintiff is presently unable to ascertain the full extent of the monetary damages it has suffered by reason of Defendants' acts of copyright infringement.

26. Plaintiff is also entitled to recover from Defendants any gains, profits, or advantages Defendants have obtained as a result of their wrongful acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits, and advantages Defendants have realized by their acts of copyright infringement.

27. Plaintiff is entitled to elect to recover from Defendants statutory damages for each of their past and/or continuing willful violations of its copyrights.

28. Plaintiff is further entitled to costs and reasonable attorneys' fees.

SECOND CAUSE OF ACTION
REMOVAL OR ALTERATION OF COPYRIGHT MANAGEMENT
INFORMATION

29. Plaintiff restates and realleges each of the allegations contained in paragraphs 1-28 as if fully stated herein.

30. Defendants have intentionally removed copyright identification

information from the eight images used on Defendant American Hawaii Travel's website without the authority of the copyright owner or the law and knowing, or having reasonable grounds to know, that the removal would induce, enable, facilitate, or conceal an infringement of copyright.

31. Defendants' acts constitute a violation under the Digital Millennium Copyright Act, 17 U.S.C. § 1202.

32. Plaintiff is entitled to a temporary and permanent injunction to prevent Defendants from engaging in further violations of 17 U.S.C. § 1202.

33. Because Defendants removed or altered Plaintiff's copyright management information without authority, Plaintiff is entitled to have any device or product involved in the violation that is in the custody or control of Defendant impounded while this action is pending.

34. Plaintiff is also entitled to remedial modification or destruction of any device or product involved in the violation that is in Defendants' custody or control or has been impounded during the pending action.

35. Plaintiff is entitled to recover from Defendant the actual damages suffered by Plaintiff and any profits Defendants have obtained as a result of their wrongful acts that are not taken into account in computing the actual damages. Plaintiff is presently unable to ascertain the full extent of the profits Defendants have realized by their violation of 17 U.S.C. § 1202.

36. Plaintiff is entitled to elect to recover from Defendants statutory damages for each of their past and/or continuing violations of 17 U.S.C. § 1202.

37. Plaintiff is further entitled to costs and reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PHOTO RESOURCE HAWAII INC. prays:

A. That this Court enter an injunction temporarily and permanently enjoining and restraining Defendant American Hawaii Travel, Defendant Chen and Defendant American Hawaii Travel's directors, officers, agents, servants, employees, attorneys, and all persons in active concert or participation with Defendants from infringing Plaintiff's copyrighted photographs and from violating 17 U.S.C. § 1202;

B. That Defendants be required to return any copyrighted original images, photographs, prints, publications, products, material, or items of clothing bearing any of the images, copies, digital data and/or likenesses immediately to Plaintiff, or in the alternative, that the Court order any original transparencies and infringing photographs, prints, separations, publications, copies, products, materials, items of clothing bearing any of the images, digital data in any form

and/or likenesses impounded and/or destroyed or disposed of in other reasonable fashion;

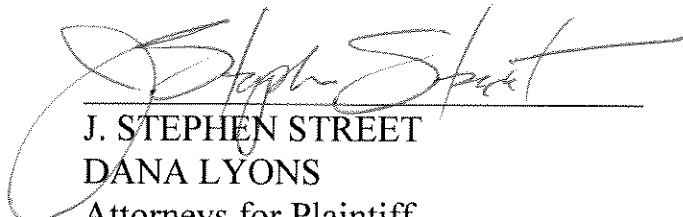
C. That the Court order any device or product involved in a violation of 17 U.S.C. § 1202 impounded and/or destroyed or disposed of in other reasonable fashion;

D. That Defendants be required to pay such damages as Plaintiff has sustained and any profits Defendants have gained in consequence of Defendants' unlawful acts, or in the alternative to pay statutory damages pursuant to 17 U.S.C. § 504(c) and 17 U.S.C. § 1203(c);

D. That Defendants be required to pay costs, including reasonable attorneys' fees to Plaintiff pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203(b);

E. That Plaintiff be granted such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawaii, March 14, 2007.



J. STEPHEN STREET
DANA LYONS
Attorneys for Plaintiff
PHOTO RESOURCE HAWAII INC.

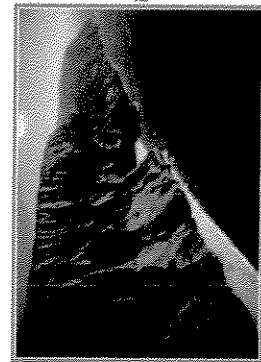
American Hawaii Online



Airfare to/from Lihue (Kauai)

Low Season - 1/8 - 3/10
4/11 - 6/9
8/22 - 12/15

| | One Way | Round Trip |
|---------------|---------|------------|
| Los Angeles | 299.00+ | 399.00+ |
| San Francisco | 319.00+ | 429.00+ |
| Sacramento | 329.00+ | 499.00+ |
| San Diego | 329.00+ | 429.00+ |
| Seattle | 349.00+ | 489.00+ |
| Portland | 349.00+ | 499.00+ |
| Phoenix | 369.00+ | 499.00+ |
| Las Vegas | 369.00+ | 499.00+ |
| Mid West | Call | Call |
| East Coast | Call | Call |



First Class Airfare to/from Lihue (Kauai)

| | One Way | Round Trip |
|-------------|---------|------------|
| Los Angeles | 799.00+ | 1299.00+ |

Inter Island airfare

Lihue to Honolulu only

| | One Way | Round Trip |
|-----------------------------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 79.00+ | 159.00+ |
| Hawaiian Air | 89.00+ | 159.00+ |
| Lihue to / from all other Islands | | |
| | One Way | Round Trip |
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 109.00+ | 209.00+ |
| Hawaiian Air | 109.00+ | 209.00+ |



Inter Island Air with One Day Car

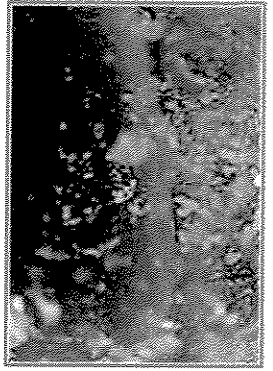
Lihue to Honolulu Only

| # of Pax | Air + car |
|-----------------------------------|-----------|
| 1 | 169.00+ |
| 2 | 338.00+ |
| 3 | 489.00+ |
| 4 | 636.00+ |
| 5 | 805.00+ |
| 6 | 972.00+ |
| 7 | 1120.00+ |
| Lihue to / from all other Islands | |

Hotel + Car PKG in Lihue (Hawaii)

| | 1 night |
|--------------------------------------|---------|
| Standard Room | 120.00 |
| Kauai Sand | 125.00 |
| Aloha Beach Resort | 140.00 |
| Best Western Plantation | 165.00 |
| Kauai Coconut Beach | 185.00 |
| Radisson Kauai Beach | 215.00 |
| Pono Kai Resort | 230.00 |
| Sheraton Kauai Resort | 245.00 |
| Kiahuna Plantation & Beach Bungalows | 255.00 |
| Waianea Plantation Cottages | 315.00 |
| Kauai Marriott Resort | 350.00 |
| Poipu Kai | 360.00 |
| Princeville Resort | |

- Hotel tax not included
- Include 1 night hotel
- 1 day economic
- car Upgrade available



American Hawaii Online

Kahului
Maui
Kailua
Hilo

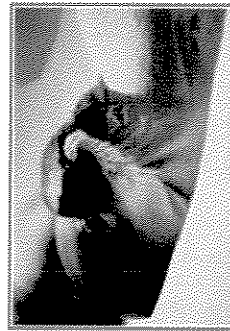


Low Fares Available Online Only
Have Agent Book Fee
Click here to book online

Airfare to/from Kahului (Maui)

Low Season-1/8-3/10
4/11-6/9
8/22-12/15

| | One Way | Round Trip |
|---------------|---------|------------|
| Los Angeles | 229.00+ | 369.00+ |
| San Francisco | 249.00+ | 349.00+ |
| Sacramento | 329.00+ | 499.00+ |
| San Diego | 329.00+ | 399.00+ |
| Seattle | 329.00+ | 449.00+ |
| Portland | 329.00+ | 499.00+ |
| Phoenix | 369.00+ | 469.00+ |
| Las Vegas | 369.00+ | |
| Mid West | Call | |
| East Coast | Call | |



First Class Airfare to/from Kahului (Maui)

| | One Way | Round Trip |
|---------------|---------|------------|
| Los Angeles | 799.00+ | 1299.00+ |
| San Francisco | 799.00+ | 1299.00+ |
| Sacramento | 809.00+ | 1329.00+ |
| San Diego | 809.00+ | 1329.00+ |
| Seattle | 819.00+ | 1349.00+ |
| Portland | 819.00+ | 1349.00+ |
| Phoenix | 859.00+ | 1399.00+ |

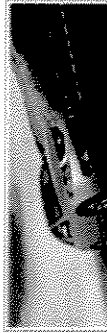
Inter Island Airfare

Kahului to /from Honolulu only

| | One Way | Round Trip |
|--------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 79.00+ | 159.00+ |
| Hawaiian Air | 89.00+ | 159.00+ |

Kahului to / from all other Islands

| | One Way | Round Trip |
|--------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 109.00+ | 209.00+ |
| Hawaiian Air | 109.00+ | 209.00+ |



Inter Island Air with One Day Car

Kahului to Honolulu Only

| # of Pax | Air + car |
|----------|-----------|
| 1 | 169.00+ |
| 2 | 339.00+ |
| 3 | 489.00+ |
| 4 | 639.00+ |
| 5 | 805.00+ |
| 6 | 972.00+ |
| 7 | 1129.00+ |

Kahului to / from all other Islands

| # of Pax | Air + car |
|----------|-----------|
| 1 | 209.00+ |
| 2 | 388.00+ |

Hotel + Car PKG in Kahului (Maui)

| Standard Room | 1 night |
|-------------------------|---------|
| Maui Beach Hotel | 130.00 |
| Maui Lu-Aston | 155.00 |
| Ohana Maui Islander | 180.00 |
| Royal Lahaina | 185.00 |
| Paki Maui Aston | 205.00 |
| Outrigger Napili Shores | 205.00 |
| Maui Kaanapali Aston | 230.00 |
| Kaanapali beach Hotel | 250.00 |
| Papakea Resort | 250.00 |
| Sheraton Maui | 285.00 |
| Maui Hill | 295.00 |
| Kapalua Bay Renaissance | 315.00 |
| Renaissance Wailea | 355.00 |
| Beach Resort | |
| Wailea Marriott Resort | 375.00 |

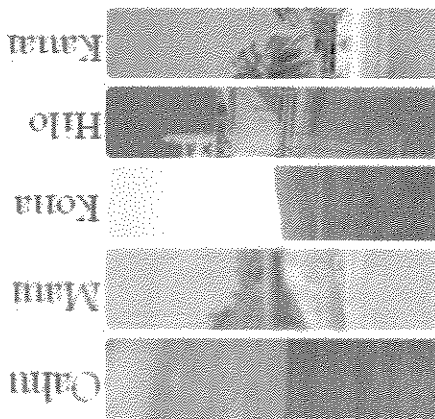
- Hotel tax not included
- Include 1 night hotel
- and 1 day economic car
- Upgrade available



Car Rental in Kahului (Maui)



American Hawaii Online



Low Fare Available Online Only
Save Agent Book Fee
Click here to book online

Airfare to/from Kona (Hawaii)

Low Season - 1/8 - 3/10
4/11 - 6/9
8/22/- 12/15

| | One Way | Round Trip |
|---------------|---------|------------|
| Los Angeles | 299.00+ | 399.00+ |
| San Francisco | 319.00+ | 429.00+ |
| Sacramento | 329.00+ | 499.00+ |
| San Diego | 329.00+ | 429.00+ |
| Seattle | 349.00+ | 489.00+ |
| Portland | 349.00+ | 499.00+ |
| Phoenix | 369.00+ | 499.00+ |
| Las Vegas | 369.00+ | 499.00+ |
| Mid West | Call | Call |
| East Coast | Call | Call |



First Class Airfare to/from Kona (Hawaii)

| | One Way | Round Trip |
|-------------|---------|------------|
| Los Angeles | 799.00+ | 1299.00+ |

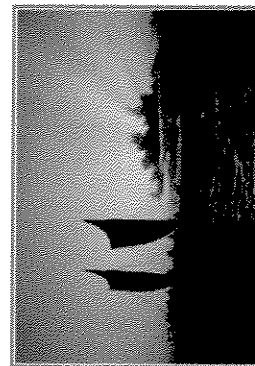
Inter Island airfare

Kona to Honolulu only

| | One Way | Round Trip |
|----------------------------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 79.00+ | 159.00+ |
| Hawaiian Air | 89.00+ | 159.00+ |
| Kona to / from all other Islands | | |

One Way Round Trip

| | One Way | Round Trip |
|--------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 109.00+ | 209.00+ |
| Hawaiian Air | 109.00+ | 209.00+ |



Inter Island Air with One Day Car

| | # of Pax | Air + car |
|-----------------------|----------|-----------|
| Kona to Honolulu Only | 1 | 169.00+ |

Hotel + Car PKG in Kona (Hawaii)

| Hotel in Hilo | 1 night |
|-----------------------------------|---------|
| Hawaii Nanihoa | 89.00 |
| Uncle Billy's Hilo Bay | 89.00 |
| Hilo Seaside | 99.00 |
| Hilo Hawaiian | 125.00 |
| Hotel in Kona | |
| Uncle Billy's Kona Bay | 95.00 |
| Royal Kona Resort | 110.00 |
| Outrigger Keauhou Beach | 140.00 |
| Kona Bali Kai | 160.00 |
| Waimea Country Lodge | 165.00 |
| Kona Reef | 195.00 |
| Sheraton Keauhou Bay Resort & Spa | 196.00 |
| Kona Coast Resort | 247.00 |
| Paniolo Green Resort | 251.00 |
| Outrigger Royal Cliff | 255.00 |
| Waikoloa Beach Marriott | 280.00 |
| Fairmont Orchid Hawaii | 335.00 |
| Hapuna Beach Prince Hotel | 395.00 |
| Mauna Lani Resort | 425.00 |

- Hotel tax not included
- Include 1 night hotel
- 1 day economic
- Car Upgrade available

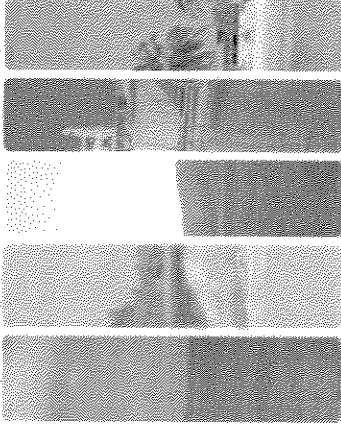
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Getting Started Latest Headlines Bank of Hawaii PRH Home Stock photography fr... Login>Your Pay Adm

American Hawaii Online



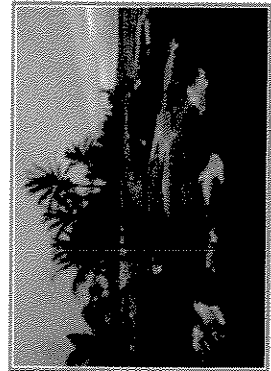
Oahu Maui Kona Hilo Kauai



Airfare to/from Hilo (Hawaii)

 Low Season - 1/8 - 3/10
 4/11 - 6/9
 8/22 - 12/15

| | One Way | Round Trip |
|---------------|---------|------------|
| Los Angeles | 299.00+ | 399.00+ |
| San Francisco | 319.00+ | 429.00+ |
| Sacramento | 329.00+ | 499.00+ |
| San Diego | 329.00+ | 429.00+ |
| Seattle | 349.00+ | 499.00+ |
| Portland | 349.00+ | 499.00+ |
| Phoenix | 369.00+ | 499.00+ |
| Las Vegas | 369.00+ | 499.00+ |
| Mid West | Call | Call |
| East Coast | Call | Call |



First Class Airfare to/from Hilo (Hawaii)

| | One Way | Round Trip |
|-------------|---------|------------|
| Los Angeles | 799.00+ | 1,199.00+ |

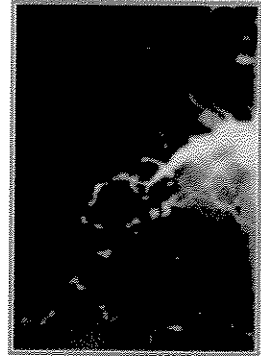
Inter Island airfare

Hilo to Honolulu only

| | One Way | Round Trip |
|--------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 79.00+ | 159.00+ |
| Hawaiian Air | 89.00+ | 159.00+ |

Hilo to / from all other Islands

| | One Way | Round Trip |
|--------------|---------|------------|
| Island Air | 79.00+ | 159.00+ |
| Aloha Air | 109.00+ | 209.00+ |
| Hawaiian Air | 109.00+ | 209.00+ |



Interisland Air with One Day Car

Hilo to Honolulu Only

| # of Pax | Air + car |
|----------|-----------|
| 1 | 169.00+ |

Hotel + Car PKG in Hilo (Hawaii)

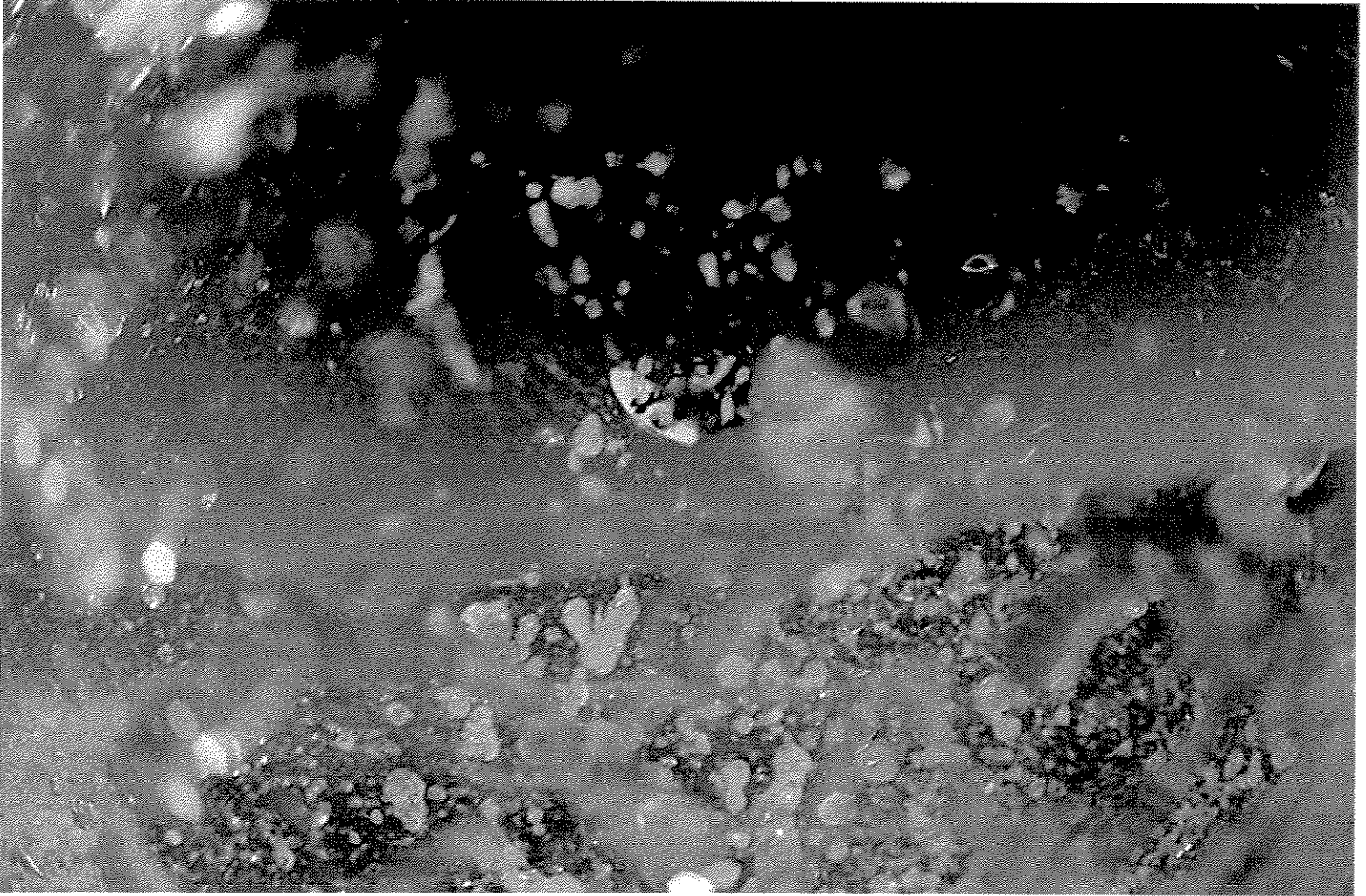
Hotel in Hilo

| | 1 night |
|------------------------|---------|
| Hawaii Nanihoa | 89.00 |
| Uncle Billy's Hilo Bay | 89.00 |
| Hilo Seaside | 99.00 |
| Hilo Hawaiian | 125.00 |

Hotel in Kona

| | 1 night |
|-----------------------------------|---------|
| Uncle Billy's Kona Bay | 95.00 |
| Royal Kona Resort | 110.00 |
| Outrigger Keauhou Beach | 140.00 |
| Kona Bali Kai | 160.00 |
| Waimea Country Lodge | 165.00 |
| Kona Reef | 195.00 |
| Sheraton Keauhou Bay Resort & Spa | 196.00 |
| Kona Coast Resort | 247.00 |
| Paniolo Green Resort | 251.00 |
| Outrigger Royal Cliff | 255.00 |
| Waikoloa Beach Marriott | 280.00 |
| Fairmont Orchid Hawaii | 335.00 |
| Hapuna Beach Prince Hotel | 395.00 |
| Mauna Lani Resort | 425.00 |

- Hotel tax not included
- Include 1 night hotel
- 1 day economic
- car Upgrade available

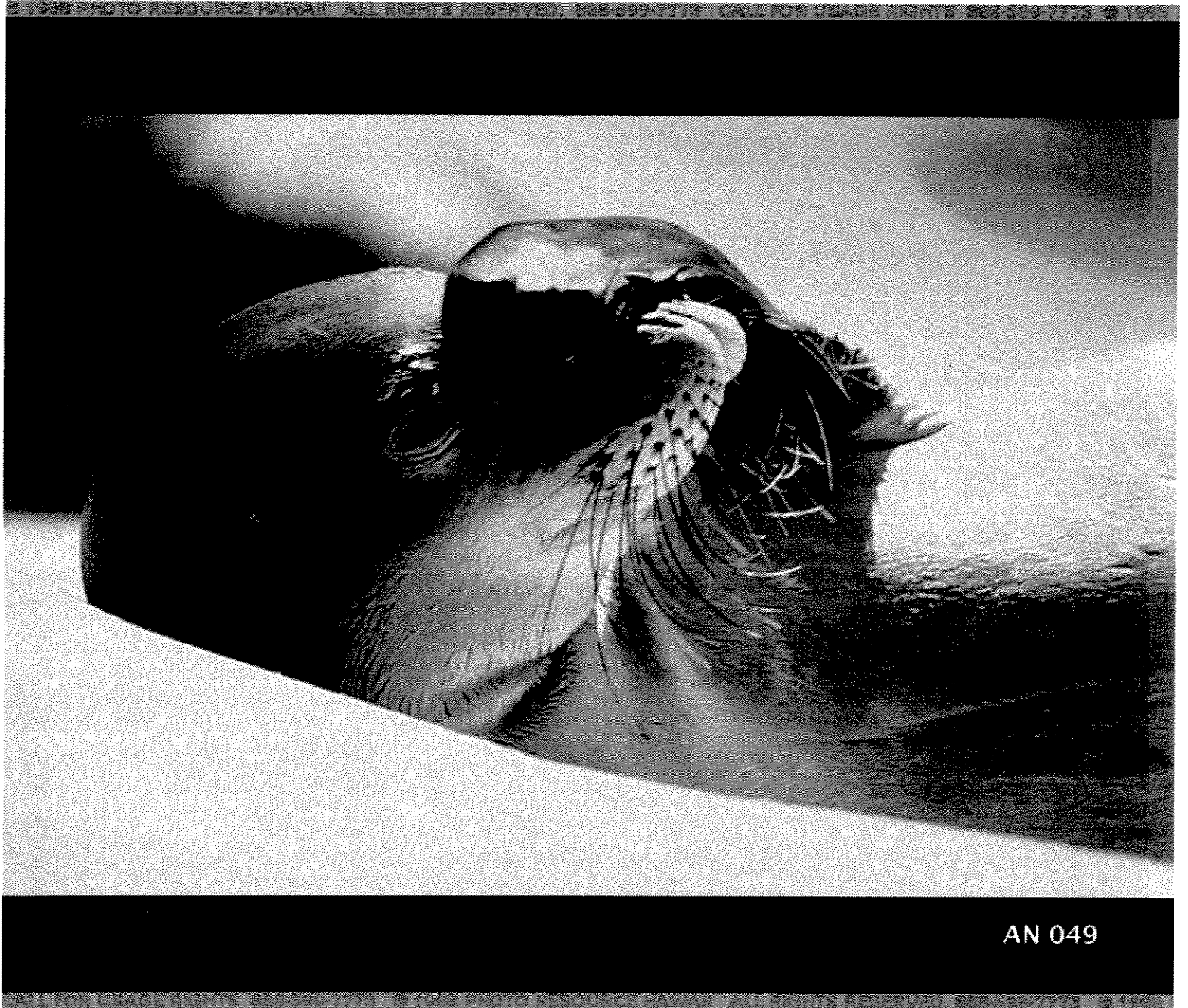


SP131a

EXHIBIT "C"



KA 003



AN 049





BI 047





