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FIRST CIRCUIT COURT
 STATE OF HAWAII
 FILED

2008 DEC -8 AM 9: 21

H. CHING
 CLERK

Attorneys for Plaintiff
 RAYMOND GURROBAT,
 individually and on behalf
 of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RAYMOND GURROBAT, individually and on behalf of all others similarly situated,)	Civil No. <u>08-1-2528-12 K K S</u>
)	(Class Action)
)	
Plaintiff,)	COMPLAINT; DEMAND FOR JURY
vs.)	TRIAL; SUMMONS
)	
HTH CORPORATION; PACIFIC BEACH CORPORATION; and DOE DEFENDANTS 1-50,)	
)	
Defendants.)	
)	
)	
)	
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)	
)	
)	
)	

COMPLAINT

Plaintiff RAYMOND GURROBAT, individually and on behalf of all persons
 similarly situated, for complaint against Defendants HTH CORPORATION, PACIFIC BEACH
 CORPORATION, and DOE DEFENDANTS 1-50, alleges as follows:

Parties

I do hereby certify that this is a full, true and
 correct copy of the original on file in this office.

H. Ching
 Clerk, Circuit Court, First Circuit

EXHIBIT "C"

1. Plaintiff, RAYMOND GURROBAT (Plaintiff RAYMOND GURROBAT) is, and at all times relevant here to was, a resident of the City and County of Honolulu, State of Hawaii.

2. At all times relevant hereto, Defendant HTH CORPORATION, a Hawaii corporation with its headquarters in Honolulu, Hawaii, has been engaged in the business of, *inter alia*, operating hotels providing food and lodging in Honolulu, Hawaii, on the Island of Oahu, Aand has owned and operated both the Pacific Beach Hotel and the Pagoda Hotel.

3. At all material times, Defendant Pacific Beach Hotel, a Hawaii corporation with its headquarters in Honolulu, Hawaii, operated a hotel providing food and lodging in Honolulu, Hawaii, on the Island of Oahu, herein called the Pacific Beach Hotel.

4. Defendants above-named together operate the Pacific Beach Hotel and Defendant HTH Corporation operates the Pagoda Hotel on Oahu, and all Defendants together are the employer or former employer of each of the members of the proposed class described below consisting of certain past and present employees of said two hotels and/or are engaged in the practices described herein. Collectively these Defendants are hereinafter referred to occasionally as "the Hotels".

5. Doe Defendants 1-50 are persons, partnerships, associations, companies, corporations, or entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or her attorneys, except that Doe Defendants 1-50 were and/or are connected in some manner with the named Defendants and/or were the agents, principals, parents, subsidiaries, servants, employees, representatives, co-venturers, associates, consultants, owners, lessees, lessors, guarantors, assignees, assignors, licensees, and/or licensors of Defendant and were or are in some manner presently unknown to Plaintiff RAYMOND GURROBAT or his attorneys engaged, or involved in the activities alleged herein or responsible

for the activities of which Plaintiff complains, or should be subject to the relief Plaintiff seeks. Plaintiff RAYMOND GURROBAT prays for leave to certify the true names, identities, capacities, activities and/or responsibilities of Doe Defendants 1-50 when, through further discovery in this case, the same are ascertained. Plaintiff has made a good faith effort to identify said Doe Defendants prior to filing the Complaint, including interviewing witnesses and reviewing documents and records on file with the Department of Commerce and Consumer Affairs, the City & County of Honolulu and the Circuit Court of the First Circuit.

Class Action Allegations

6. Plaintiffs bring this case as a class action pursuant to Rule 23 of the Hawai'i Rules of Civil Procedure, on behalf of themselves and all others who are similarly situated consisting of:

All past and present non-management employees of the Hotels who, on and after December 8, 2004, who provided services in connection with the sales of food and/or beverage at the Hotels for which a service charge or gratuity charge was (a) imposed by the Hotels and (b) not distributed 100% to said non-management employees.

The period on and after December 8, 2004 is hereafter referred to as "the Class period."

7. Since December 8, 2004, over 25 servers, porters, bartenders and other employees of Defendants have worked on banquets and other food service events at the Hotels in connection with which the Hotels' customers were charged a fee denominated as a service charge or "gratuity". Thus, the members of the Class are sufficiently numerous that joinder of all members in a single action is impracticable.

8. A class action is appropriate in this case for one or more of the following reasons:

a. The prosecution of separate actions by individual members of the class would create a risk of adjudications with respect to individual members of the class which would, as a practical matter, be dispositive of the interests of the other members not parties to the

adjudications or would substantially impair or impede their ability to protect their interests. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, the amount at stake for many of the Class members, while not insignificant, is not great enough to enable each of them to maintain separate suits against Defendants.

b. Many members of the class are still employed at the Hotels and would be afraid to seek vindication of their rights through an individual action even if such were cost effective because of the fear or jeopardizing or losing their employment and livelihood.

c. The Defendants have acted on grounds generally applicable to the class, making appropriate declaratory relief with respect to the class as a whole as set forth below.

9. Common questions of law and fact exist as to all members of the class and predominate over any questions solely affecting individual members of the class, and a class action is superior to other available methods for the fair and efficient adjudication of the controversy. Among the questions of law and fact common to the named Plaintiff and the Class are, *inter alia*:

- a) Whether Defendants have imposed service charges on the Hotels' customers for food and beverage without disclosing to customers that part of the service charge would be retained by one or more of the Defendants and would not be distributed to the employees who provided the service;
- b) Whether such conduct by Defendants violated HRS Section 481B-14;

- c) Whether Defendants' above-described conduct constitutes unfair methods of competition within the meaning of HRS Chapter 480; and
- d) The nature and extent of class-wide injuries and the measure of damages for the injuries.

10. Class action treatment is superior to the alternatives for the fair and efficient adjunction of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single action simultaneously, efficiently, and without duplication of the expenses that numerous individual actions would entail. No difficulties are likely to arise in the management of this class action that will preclude its purpose as a class action, and no superior alternatives exist for the fair and efficient adjunction of this controversy. Without a class action, Defendants will likely retain the benefit of their wrongdoing and may continue the course of their actions, which could result in further damages.

11. A database of employees past and present is maintained Defendants which included all employees' names and addresses and their dates of employment and the dates on which they worked. Other databases maintained by Defendants reflect the food and beverage sales for which service charges were imposed, the dollar amounts of those charges, the amounts that were distributed to employees and the amounts that were not so distributed, and the dates of the events associated with those charges. Thus, records are readily available for purposes of identifying and providing notice of the instant class action to all class members and determining the nature and size of each member's claim.

12. Plaintiff RAYMOND GURROBAT will fairly and adequately represent the interests of the class. Plaintiff knows of no conflicts of interest among members of the class.

13. The Plaintiff Class is represented by counsel who have experience litigating class action litigation in this jurisdiction and who will adequately represent the interests of the entire class.

Allegations of Wrongdoing and Damage

14. Plaintiff RAYMOND GURROBAT was an employee at the Pacific Beach Hotel from February 1990 until December 2007. Between December 8, 2004 and December 2007 (and at other times prior to that period) Plaintiff RAYMOND GURROBAT worked as a food server or waiter in the banquet department of the Pacific Beach Hotel and served food and beverages at numerous banquet and other functions during that period. Similar functions, served by other members of the Class, took place at the Pagoda Hotel during the Class Period.

15. At the vast majority of the aforesaid functions, Defendants charged the customers of the Hotels a "service charge" or "gratuity" that was calculated as percentage of the total cost of food and beverage, typically ranging between 17% and 20%. However, defendants failed to distribute all of the service charge to the non-managerial employees who provided the service of the food and beverage to the customers, including Plaintiff RAYMOND GURROBAT and all other members of the proposed Class. Although in most or all instances a portion of the service charge was paid to Plaintiff RAYMOND GURROBAT and the other employees who rendered the service, in each instance at least a portion of the service charge was retained by the Hotels. Defendants failed to clearly disclose to customers that a portion of the service charge was not distributed to the employees and was in fact retained by the Hotels.

16. The foregoing conduct by the Defendants occurred on multiple occasions after December 8, 2004 and has continued up to the present. Each instance of said conduct – charging a service charge and retaining a portion thereof without clearly disclosing such retention to the customer – was and is a violation of HRS Section 481B-14.

17. By virtue of their aforesaid violations of Section 481B-14, Defendants were also engaged in unfair methods of competition in violation of HRS Section 480-2, inasmuch as violations of any provision of Chapter 481B are deemed to be unfair methods of competition prohibited by HRS Section 480-2.

18. In the absence of the required disclosure to customers, all such service charges were payable in full to the employees who rendered the services, including Plaintiff RAYMOND GURROBAT and the other members of the proposed class.

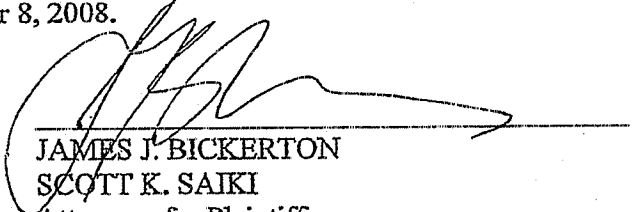
19. Defendants have failed to pay the entire service charge to said employees, as a result of which Plaintiff RAYMOND GURROBAT and the other members of the proposed class have been injured in their business or property within the meaning of HRS Section 480-13(a), each in amounts that shall be proved at trial but in excess of any minimum jurisdictional amount of this Court. By virtue of the foregoing, Plaintiff RAYMOND GURROBAT and other members of the proposed class are entitled to treble damages in accordance with HRS Section 480-13(a).

20. Plaintiff RAYMOND GURROBAT and the other members of the proposed class are also entitled to (a) a declaratory judgment that Defendants' practice of retaining a portion of the service charge without clearly disclosing such retention to customers is an unfair method of competition and (b) an injunction prohibiting Defendants from further engaging in the practice.

WHEREFORE, Plaintiff RAYMOND GURROBAT, individually and on behalf of all those similarly situated, prays for relief as follows:

- (1) For damages against the Defendants in an amount to be determined at trial;
- (2) For treble damages against the Defendants in an amount to be determined at trial;
- (3) For reimbursement of costs and expenses, including reasonable provision for attorneys' fees in accordance with HRS Section 480-13(a);
- (4) For prejudgment interest; and
- (5) For declaratory judgment and a permanent injunction concerning Defendants' actions described above; and
- (6) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, December 8, 2008.



 JAMES J. BICKERTON
 SCOTT K. SAIKI
 Attorneys for Plaintiff
 RAYMOND GURROBAT, individually and on
 behalf of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RAYMOND GURROBAT, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

HTH CORPORATION; PACIFIC BEACH CORPORATION; and DOE DEFENDANTS 1-50,

Defendants.

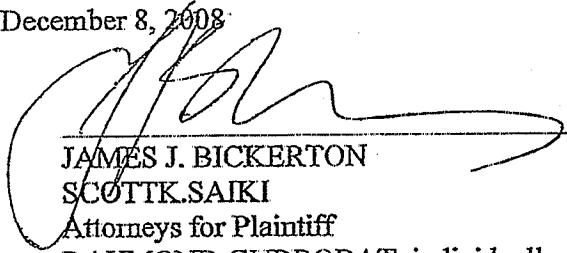
Civil No. _____
(Class Action)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff RAYMOND GURROBAT, individually and on behalf of all others similarly situated, hereby demands a trial by jury as to all issues so triable in the above-entitled cause.

DATED: Honolulu, Hawaii, December 8, 2008



JAMES J. BICKERTON
SCOTT K. SAIKI
Attorneys for Plaintiff
RAYMOND GURROBAT, individually and on behalf of all others similarly situated

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RAYMOND GURROBAT, individually and on behalf of all others similarly situated,)	Civil No. _____
)	(Class Action)
)	
Plaintiff,)	SUMMONS
vs.)	
)	
HTH CORPORATION; PACIFIC BEACH CORPORATION; and DOE DEFENDANTS 1-50,)	
)	
Defendants.)	
)	
)	
)	
)	
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SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

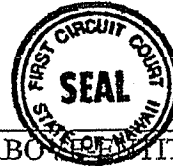
You are hereby summoned and required to serve upon BICKERTON LEE DANG & SULLIVAN, attorneys for Plaintiff, whose address is 745 Fort Street, Suite 801, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This Summons shall not be personally delivered between 10:30 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this Summons, personal delivery during those hours.

A failure to obey this Summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawaii, December 8, 2008.

H. CHING



CLERK OF THE ABOVE TITLED COURT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RAYMOND GURROBAT, individually and)
on behalf of all others similarly situated,)

Plaintiff,)

vs.)

HTH CORPORATION; PACIFIC BEACH)
CORPORATION and DOE DEFENDANTS)
1-50,)

Defendants.)
_____)

CIVIL NO. 08-1-2528-12 KKS
(Contract)

**NOTICE OF HEARING OF MOTION and
CERTIFICATE OF SERVICE**

NOTICE OF HEARING OF MOTION

TO: JAMES J. BICKERTON
Bickerton Lee Dang & Sullivan
745 Fort Street, Suite 801
Honolulu, Hawaii 96813

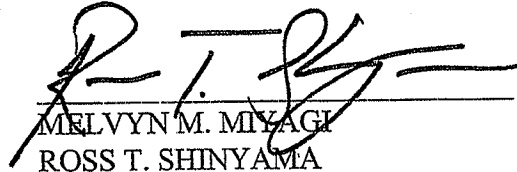
JOHN F. PERKIN
BRANDEE J.K. FARIA
Perkin & Faria
2000 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Attorneys for Plaintiff

NOTICE IS HEREBY GIVEN that the foregoing Motion to Continue the Hearing
Scheduled for March 9, 2010, and to Stay All Civil Proceedings Pending the Decision by The
Hawaii Supreme Court in a Related Matter shall come on for hearing before the Honorable Karl
K. Sakamoto, Judge of the above-entitled Court, in his courtroom, at 777 Punchbowl Street, 4th

Floor, Honolulu, Hawaii 96813, on MONDAY MARCH 1, 2010 at 9:00
o'clock A.m. or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, February 19, 2010 .


MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Defendants
HTH CORPORATION and PACIFIC
BEACH CORPORATION

CERTIFICATE OF SERVICE


I hereby certify that on this date, the foregoing document was duly served via
hand- delivery on the following parties to their last known address on February 19, 2010:

JAMES J. BICKERTON
Bickerton Lee Dang & Sullivan
745 Fort Street, Suite 801
Honolulu, Hawaii 96813

JOHN F. PERKIN
BRANDEE J.K. FARIA
Perkin & Faria
2000 Davies Pacific Center
841 Bishop Street
Honolulu, Hawaii 96813

Attorneys for Plaintiff

DATED: Honolulu, Hawaii, February 19, 2010 .


MELVYN M. MIYAGI
ROSS T. SHINYAMA
Attorneys for Defendants
HTH CORPORATION and PACIFIC
BEACH CORPORATION