

NOTICE OF CLASS ACTION LAWSUIT

DO NOT BE ALARMED. YOU ARE NOT BEING SUED.

If you purchased food or beverages from the Kahala Hotel and Resort and paid a *service charge* between November 30, 2005 to present, **this Notice may affect your rights. Please read it carefully.**

The Circuit Court of the First Circuit, State of Hawaii ("the Court") has authorized and approved this Notice. It is not a solicitation from a lawyer. This Notice advises you of the status of the lawsuit, and includes a statement of your rights with respect to the lawsuit. This is not a lawsuit against you. Your participation in this Class Action will not cost you anything or expose you to any liability. Notice of this Class Action is being provided by mail to all Class Members for whom we have addresses, pursuant to Court Order.

Your legal rights and options – and the deadlines to exercise them – are explained in this Notice.

What is This Lawsuit About?

- The Court has ordered that this case can proceed or has certified this case as a Class Action. The Honorable Judge Gary W.B. Chang of the First Circuit Court, State of Hawaii, is overseeing this Class Action. The lawsuit is called Jason Kawakami, et. al Kahala Hotel Investors, LLC, D.B.A. Kahala Hotel And Resort, Civ. No. 08-1-2496-12-GWBC. Plaintiff Jason Kawakami brought this action individually and on behalf of all other Class members similarly situated. **Please do not contact the Court about this lawsuit. The Court cannot assist you or answer any questions. If you have questions or need additional assistance, please contact Class counsel, using the contact information at the end of this notice.**
- From November 30, 2005 to the present, in certain instances, Defendant, Kahala Hotel Investors, LLC, D.B.A. Kahala Hotel And Resort (hereafter "Kahala Hotel") applied or charged a *service charge* to its customers who purchased food and beverages at the hotel and its restaurants. The Kahala Hotel also charged general excise tax on top of the *service charge*. The *service charge* ranged from 18% to 20%. There were approximately 4,400 *service charges* applied or paid during this period.
- Hawaii Revised Statutes § 481B-14 is part of Hawaii consumer protection laws and mandates that, "Any hotel or restaurant that applies a *service charge* for the sale of food or beverage services shall distribute the *service charge* directly to its employees as tip income or clearly disclose to the purchaser of the services that the *service charge* is being used to pay for costs or expenses other than wages and tips of employees."
- The Kahala Hotel maintains that it has been and is in full compliance with the statute. The Kahala Hotel asserts that no disclosure to purchasers was required because the *service charge* that the Kahala Hotel applied or charged for the sale of food and beverage was used to pay for the wages and tips of its employees.
- Plaintiffs maintain that the Kahala Hotel kept part of the *service charge* and did not pay it in its entirety to its employees as tip income, in violation of HRS § 481B-14, and that the failure to disclose these facts misled consumers and also violated Section 481B-14, which Plaintiffs maintain requires the Kahala Hotel to either: (1) pay the entire *service charge* to its employees as "tip income" or (2) disclose to the consumer that part of "the *service charge* is being used to pay for costs or expenses other than wages and tips of employees."
- A fact finder will determine whether the Kahala Hotel complies with the law.
- If Plaintiffs are successful in proving that the Kahala Hotel violated Hawaii consumer protection laws: (1) the Kahala Hotel will be required to pay treble (triple) the amount of damages proven to have been incurred by each Class member, (2) fees and costs, and (3) the Court may enter an order prohibiting the Kahala Hotel from continuing this practice.

- The Court has granted *Plaintiffs' Motion for Class Certification* and entered its written order on January 12, 2010. At this time, the attorneys are in the process of gathering all the documents and information necessary to adequately prepare the case for trial. The Court has scheduled the trial of this matter to begin November 22, 2010.

What is a Class Action?

- In a class action, the class representative sues on behalf of others with similar legal claims. All of these people together are called a Class or Class members. One court resolves the issues for all persons in the Class, except for those who ask to be excluded from the Class.

Who is included in the Class?

- This Class Action was filed on December 3, 2008. As certified by the Court, the class includes: **All consumers who paid a service charge to the Kahala Hotel and Resort in connection with the purchase of food or beverages which the Hotel and Resort did not distribute in its entirety to its employees during the period that the Kahala Hotel Investors, LLC has owned and operated the Resort.**
- **You do not need to do anything at this point in time to remain in the Class.** If you remain in the Class, you will be notified as the case progresses. You will not be required to pay anything if you remain in the Class. You will be represented by the named Plaintiff Jason Kawakami, and his attorneys for purposes of the Class Action. The Court has deemed this Plaintiff and his attorneys to be adequate to protect the interests of the Class. If Plaintiffs obtain a recovery either by settlement or judgment in this Class Action, only those who remain in the Class will receive any portion of that recovery.

Do I Have Other Options?

- If you don't want to participate in this litigation, you may exclude yourself (opt-out) from this Class action lawsuit. If you request exclusion, you will **NOT** receive any portion of any judgment or settlement proceeds that may be obtained, and you will **NOT** be bound by any judgment that may be entered dismissing the lawsuit. If you exclude yourself, you are free to pursue whatever legal rights you may have by filing your own lawsuit against the Defendant at your own risk and expense. It is important to note that any individual lawsuit must be filed within a fixed time period and you should consult with an attorney to determine when this time period expires.
- To be excluded, you must send a letter stating that you request to be excluded from this lawsuit. The request must include your full name and address, the name and number of this lawsuit as stated at the top of the first page of this Notice, and your signature. To be effective, **the letter must be postmarked by April 5, 2010** and addressed to: Perkin & Faria, LLLC, 841 Bishop St., Suite. 2000, Honolulu, HI 96813.

You may also choose to remain in the Class and enter an individual appearance at your own expense. If you do so, you must file an appropriate motion with the Circuit Court for the Second Circuit before the Honorable Gary W.B. Chang, Circuit Court of the First Circuit, 777 Punchbowl, Honolulu, Hawaii 96813. A copy of your motion must also be served on: (1) Plaintiffs' counsel at the address set forth below and (2) counsel for the Kahala Hotel, through its lawyer Lisa Cataldo, Esq., McCorrison Miller Mukai Mackinnon LLP, Five Waterfront Plaza, 4th Floor, 500 Ala Moana Boulevard, Honolulu, Hawaii 96813.

Who Represents My Interests in this Lawsuit?

The Court has approved as the Class representative Jason Kawakami. The Court has also approved as Class counsel the law firm of Perkin & Faria, LLLC. These lawyers have handled these types of cases previously. The Class representative and Class counsel will act on your behalf in this lawsuit. Counsel for Plaintiffs can be contacted at the addresses or electronically as provided below. Given the potential volume of inquiries and to ensure a more expedited response, it may be best to contact Plaintiffs' counsel via e-mail, mail or facsimile.

You do not need to pay any attorneys' fees, costs, or expenses incurred in this lawsuit. If a judgment or settlement favorable to Plaintiffs is reached, Class Counsel will ask the Court to approve Defendants' payment of their fees and costs. Only those fees and costs which the Court approves as fair and reasonable will be paid.

You do not need to hire your own lawyer for this case because Class Counsel is already working on your behalf. If you want your own lawyer, you will have to retain that lawyer separately.

How Can I Get Additional Information?

Additional information about the lawsuit and key pleadings may be reviewed at the website of Perkin & Faria, www.perkinlaw.com. You can also send your email address to bjkfaria@perkinlaw.com in order to be added to our Class member email list for periodic updates as to the progress of the lawsuit. You may also contact your attorneys directly for more information or if you have questions. If your address changes at any time before this lawsuit is resolved, please be sure to provide us updated information so that we can contact you.

John Francis Perkin & Brandee J. K. Faria
Perkin & Faria, LLLC
841 Bishop St., Ste. 2000
Honolulu, HI 96813
bjkfaria@perkinlaw.com

Please do not call the Court or the Court Clerk's Office to inquire about this case. They will be unable to help you.

Dated: March 3, 2010

BY ORDER OF: CIRCUIT COURT
OF THE FIRST CIRCUIT
STATE OF HAWAII
HONORABLE GARY W.B. CHANG