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FIRST CIRCUIT COURT  
STATE OF HAWAII  
FILED  
2008 DEC -3 PM 12:15  
F. OTAKE  
CLERK

Attorneys for Plaintiff  
JASON KAWAKAMI,  
individually and on behalf  
of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JASON KAWAKAMI, individually and on  
behalf of all others similarly situated,

Plaintiff,

vs.

KAHALA HOTEL INVESTORS, LLC,  
d.b.a. KAHALA HOTEL AND RESORT;  
and DOE DEFENDANT 1-50,

Defendant.

Civil No. 08-1-2496-12 GWBC  
(Class Action)

**COMPLAINT; DEMAND FOR JURY  
TRIAL; SUMMONS**

**COMPLAINT**

Plaintiff JASON KAWAKAMI, individually and on behalf of all persons  
similarly situated, alleges as follows:

**Parties**

1. Plaintiff JASON KAWAKAMI ("KAWAKAMI") is, and at all times relevant  
hereto was a resident of the City and County of Honolulu, State of Hawaii.

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

  
Clerk Circuit Court, First Circuit

2. Defendant KAHALA HOTEL INVESTORS, LLC (“Defendant KHI”) owns, operates and does business as the Kahala Hotel and Resort (“the Resort”) and has its principal place of business in the City & County of Honolulu, State of Hawaii. Defendant KHI has owned and operated the Resort since at least March 1, 2006. The Resort is a hotel and resort, located at 5000 Kahala Avenue, Honolulu, Hawai’i 96818. In addition to the hotel and resort services provided by the Resort, it also provides food and beverage service from its banquet department, its restaurants, and through room service.

3. Doe Defendant 1-50 are persons, partnerships, associations, corporations, governmental agencies or units, or entities whose names, identities, capacities, activities and/or responsibilities are presently unknown to Plaintiff or her attorneys, except that Doe Defendant 1-50 were and/or are connected in some manner with the Defendant 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 or her 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 prays for leave to certify the true names, identities, capacities, activities and/or responsibilities of Doe Defendant 1-50 when, through further discovery in this case, the same are ascertained. Plaintiffs have made a good faith effort to identify said Doe Defendant prior to filing the Complaint, including interviewing witnesses and reviewing documents and records.

#### **Class Action Allegations**

4. Plaintiff brings this case as a class action pursuant to Rule 23 of the Hawai’i Rules of Civil Procedure, on behalf of himself and all others who are similarly situated consisting

of:

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 KHI has owned and operated the Resort (the “Class Period”), which group of consumers is hereafter referred to as “the Class.”

5. Hundreds if not thousands of consumers have paid a “service charge” in connection with their purchase of food and/or beverages from the Defendant during the Class Period. Thus, the members of the Class are so numerous that joinder of all members is impracticable.

6. 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, may not be great enough to enable them to maintain separate suits against Defendant.

b. The Defendant has acted and/or refused to act on grounds generally applicable to the class, making appropriate relief with respect to the class as a whole as set forth below.

7. 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 Defendant has imposed service charges on its customers for food and beverage without disclosing to customers that part of the service charge would be retained by the Defendant and would not be distributed to the employees who provided the service;
- b) Whether such conduct by Defendant violated HRS Section 481B-14;
- c) Whether Defendant's above-described conduct constitutes unfair and deceptive acts or practices and/or 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.

8. 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, Defendant will likely retain the benefit of its wrongdoing and may continue the course of its actions, which could result in further damages.

9. The information relating to these charges is kept in the normal course of business by Defendant, which reflects 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 retained by Defendant KHI, and the dates of the events associated with those charges. Thus, these records are readily available for purposes of identifying and providing notice of the instant class action to all class members.

10. Plaintiff KAWAKAMI will fairly and adequately represent the interests of the class. Plaintiff knows of no conflicts of interest among members of the class.

11. 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.

#### **Factual Allegations**

12. For banquets, events, meetings, room service and in other instances, the defendant adds a preset “service charge” to customers’ bills for food and beverage provided by the hotel and/or its restaurants. At the vast majority of the aforesaid functions, Defendant charged the customer a “service charge” that was calculated as percentage of the total cost of food and beverage, typically ranging between 15% and 23%. Defendant KHI failed to clearly disclose to Plaintiff and its other customers that a portion of the service charge was not distributed to the employees and was in fact retained by Defendant KHI.

13. In Plaintiff Kawakami’s case and in the case of all other members of the prospective class described above, a portion of the service charge was paid to employees who rendered the service, however, in each instance at least a portion of the service charge was retained by the Defendant. Defendant KHI has a policy and practice of retaining for itself a

portion of these service charges and/or using some of it to pay manager or other salaried or non-tipped employees who do not serve or assist in serving food and beverages. Defendant KHI did not distribute all of the service charge to the employees who provided the service.

14. Defendant KHI did not disclose to Kawakami and did not and does not disclose to its other customers that the service charges are not distributed in full to the employees who serve the food and beverages.

15. For this reason, Plaintiff Kawakami and other customers have been misled into believing that the entire service charge imposed by Defendant is being distributed to the employees who serve the food or beverages when, in fact, only a portion is being remitted to these employees.

16. In 2006, Plaintiff KAWAKAMI contacted the Defendant seeking their banquet services in connection with his wedding reception planned for July 14, 2007.

17. Arrangements were made for the Defendant to provide the banquet services for the reception for Plaintiff KAWAKAMI.

18. Defendant provided the banquet services for Plaintiff KAWAKAMI'S July 14, 2007 wedding reception. Attached hereto as Exhibit "1" is a true and correct copy of the final bill for the KAWAKAMI reception. As set forth therein, Defendant charged Plaintiff KAWAKAMI a 19% service charge on the food, equaling \$3,106.46, and a 19% service charge on the beverage, equaling \$1,704.49, for a total service charge of \$4,810.95. In addition, Defendant charged Plaintiff KAWAKAMI Hawaii State General Excise Tax on the foregoing service charge equal to approximately \$356.49.

19. There was no disclosure on the final bill or elsewhere, nor was Plaintiff

KAWAKAMI ever advised by Defendant KHI, that the service charge he paid in connection with his wedding reception was not distributed in its entirety to the service employees, and that some or all of it was unlawfully retained by the Defendant.

20. Plaintiff and the members of the Class are "consumers" as that term is defined in Haw. Rev. Stat. § 480-1 and therefore are authorized to bring suit pursuant to Haw. Rev. Stat. § 480-13.

21. The actions of Defendant KHI as set forth above are in direct violation of Hawaii Revised Statutes §481B-14, which provides:

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.

22. Pursuant to HRS §481B-4, "Any person who violates this chapter [HRS 481B] shall be deemed to have engaged in an unfair method of competition or unfair and deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2."

23. Defendant KHI'S conduct complained of herein constitutes unfair or deceptive acts or practices in the conduct of a trade or commerce and/or unfair methods of competition and is therefore unlawful pursuant to Haw. Rev. Stat. § 480-2.

24. As Defendant KHI'S acts violate HRS §481B-14, Defendant KHI is *per se* liable for violations of Haw. Rev. Stat. § 480-2.


25. Plaintiff and the Class are therefore entitled to their damages, trebled.

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

(1) For damages against Defendant KHI and Doe Defendants in an amount to be determined at trial;

- (2) For treble damages against said Defendants;
- (3) For an order of disgorgement and/or restitution against Defendant KHI in an amount to be proven at trial.
- (5) For an order preliminarily and permanently enjoining Defendants from continuing to engage in the practices described above which are in direct violation of HRS §481B-14, and for an order directing Defendants to comply with the requirements of HRS §481B-14, and also for such other injunctive relief as provided by law;
- (6) For reimbursement of costs and expenses, including reasonable provision for attorneys' fees to the full extent permitted by Chapter 480, Hawaii Revised Statutes.
- (7) For prejudgment interest; and
- (8) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, December 3, 2008

  
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BRANDEE J.K. FARIA  
JOHN FRANCIS PERKIN  
Attorneys for Plaintiff  
JASON KAWAKAMI, individually and on  
behalf of all others similarly situated.



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JASON KAWAKAMI, individually and on	)	Civil No. _____
behalf of all others similarly situated,	)	(Class Action)
	)	
Plaintiff,	)	<b>SUMMONS</b>
vs.	)	
	)	
KAHALA HOTEL INVESTORS, LLC,	)	
d.b.a. KAHALA HOTEL AND RESORT;	)	
and DOE DEFENDANT 1-50,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	
	)	

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**SUMMONS**

STATE OF HAWAII

To the above-named Defendant(s):

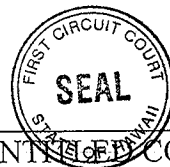
You are hereby summoned and required to serve upon PERKIN & FARIA, LLC, attorneys for Plaintiff, whose address is Davies Pacific Center, 841 Bishop Street, Suite 2000, Honolulu, Hawaii 96813, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons 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, DEC - 3 2008

F. OTAKE



CLERK OF THE ABOVE-ENTITLED COURT