

Parties

1. Plaintiff LORETTA CHONG (“Plaintiff Chong”) is, and at all times relevant hereto was, a resident of the City and County of Honolulu, County of Hawaii, State of Hawaii.

2. At all times relevant hereto, Defendant HILTON HAWAIIAN VILLAGE, LLC (“Defendant”), a Delaware corporation, owns, operates and does business as HILTON HAWAIIAN VILLAGE BEACH RESORT AND SPA (“the Hotel” or “Hilton”) and has its principal place of business in Honolulu, Hawaii. The Hotel is located at 2005 Kalia Road, Honolulu, Hawaii 96815. In addition to the hotel services provided by the Hotel, it also provides food and beverage service from its banquet department, its restaurants, and through room service.

3. Defendant above-named operates the Hotel, and is 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 hotel and/or are engaged in the practices described herein. Defendant is hereinafter referred to occasionally as “the Hotel”.

4. 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 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 LORETTA CHONG, or their 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 LORETTA

CHONG 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 Circuit Court in *Nakaoka v Hilton*, and documents and records on file with the Department of Commerce and Consumer Affairs.

Class Action Allegations

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

All past and present non-management employees of the Hotel who, on and after April 11, 2002, provided services and received a portion of the service charge as-tip income in connection with sales of food and/or beverage at the Hotel for which (1) a service charge or gratuity charge was imposed by the Hotel and (2) purchasers did not receive a clear disclosure that the non-distributed portion of the service charge was being used by the Hotel for purposes other than payment of tips and/or wages.

The period on and after April 11, 2002 is hereafter referred to as "the Class Period."

6. On information and belief, since April 11, 2002, over 150 servers, porters, bartenders and other employees of Defendant have worked on banquets and other food service events at the Hotel in connection with which the Hotel's customers were charged a fee denominated as a service charge. Thus, the members of the Class are sufficiently numerous that joinder of all members in a single action is impracticable.

7. A class action is appropriate in this case for one or both 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 Defendant.

b. Many members of the class are still employed at the Hotel 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.

8. 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 the Hotel's customers for food and beverage without clearly disclosing to customers that part of the service charge would be retained by Defendant, would not be distributed to the employees who provided the service and/or would be used by the Hotel for purposes other than the payment of wages and/or tips to employees;
- b) Whether such conduct by Defendant violated HRS Section 481B-14;

- c) Whether Defendant's retention of a portion of the service charge under the circumstances of this case supports a claim for payment of compensation due under HRS Section 388-6;
- d) Whether Defendant's above-described conduct constitutes unfair methods of competition within the meaning of HRS Chapter 480; and
- e) The nature and extent of class-wide injuries and the measure of damages for the injuries.

9. 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.

10. A database of employees past and present is maintained by Defendant which included all employees' names and addresses and their dates of employment and the dates on which they worked. Other databases maintained by Defendant 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.

11. Plaintiff LORETTA CHONG will fairly and adequately represent the interests of the class. Plaintiffs know of no conflicts of interest among members of the class.

12. 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

13. Plaintiff LORETTA CHONG is and throughout the Class Period was an employee of Defendant at the Hotel. Plaintiff LORETTA CHONG worked as a food and beverage server in the banquet department of the Hilton 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 Hilton during the Class Period. Plaintiff LORETTA CHONG and the other members of the proposed Class were also in competition with Defendant for the discretionary tip dollars of customers.

14. At the vast majority of the aforesaid functions held during the Class Period under contracts with purchasers entered into before January 1, 2008, Defendant 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 21% and 22%. However, Defendant 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 LORETTA CHONG and all other members of the proposed Class. Although in most or all instances a portion of the service charge was paid to Plaintiff LORETTA CHONG and the other employees who rendered the service, in

each instance at least a portion of the service charge was retained by the Hotel. Defendant failed to clearly disclose to customers that a portion of the service charge was not distributed to the employees as wage or tip income and was in fact retained by the Hotel for other purposes and uses.

15. The foregoing conduct by the Defendant occurred on multiple occasions after April 11, 2002. 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.

16. By virtue of their aforesaid violations of Section 481B-14, Defendants have violated of HRS Chapter 388-6 and/or are liable to Plaintiff and the Class for unpaid compensation under HRS Chapter 388.

17. By virtue of their aforesaid violations of Section 481B-14, Defendant was 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. The competition in which Defendant is engaged or participating is both the competition with other providers of hotel, restaurant and banquet services and competition with its own employees for customers' dollars. Defendant derives an unfair advantage over their law-abiding restaurant and banquet service provider competitors by (a) lowering their overall costs through the means of retaining tip income due under law to Plaintiffs and other Class members, (b) attracting customers by being able to offer customers seemingly lower "base" prices than law-compliant competitors through the retention of tip income, and (c) misleading customers into believing that the service charge will be paid as tip income and thereby obtaining the

business of customers through an unfair and illegal business advantage over law-compliant hotels, restaurants and banquet service providers. Defendant derives an unfair advantage over and causes harm and injury to its employees, who the law presumes would receive additional discretionary tip income from customers who were made aware of the lack of full distribution of the service charge to the employees, by misleading customers into believing that all service charge is being distributed and thereby lulling customers into not negotiating a lower base price or service charge that would leave more discretionary dollars available for employees.

19. These unfair competitive advantages were gained by Defendant at the direct expense of Plaintiffs and other members of the Class, and Plaintiffs and the Class members were injured as a result of Defendant's unfair method of competition and the Defendant's unfair competitive behavior in the hotel food and beverage market.

20. 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 LORETTA CHONG, and the other members of the proposed class.

21. Defendant fraudulently concealed its unlawful conduct by providing a "disclosure" of its disposition of service charges which was false and did not disclose its use of part of the service charges to offset expenses.

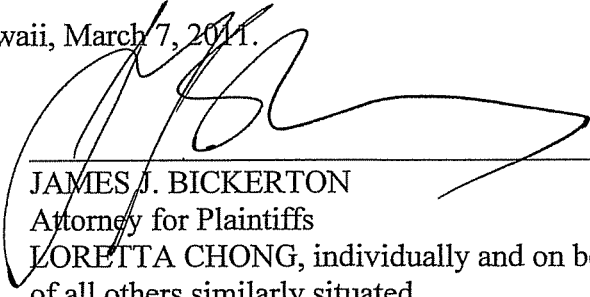
22. Defendant has failed to pay the entire service charge to said employees, as a result of which Plaintiff LORETTA CHONG and the other members of the proposed class have been injured in their business or property within the meaning of HRS Section 480-13(a), each in amounts that shall be proved at trial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

23. By virtue of Section 481B-14, Defendant owes compensation to its employees that has not been paid to date. Under HRS Chapter 388, Defendant may not lawfully withhold this compensation and is liable to pay same to its employees. Plaintiff LORETTA CHONG and the other members of the proposed class are also entitled to double damages plus interest and fees under HRS Chapter 388.

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

- (1) For damages against the Defendant in an amount to be determined at trial;
- (2) For double damages and interest under HRS Chapter 388.
- (3) For treble damages against the Defendant in an amount to be determined at trial;
- (4) For reimbursement of costs and expenses; including reasonable provision for attorneys' fees in accordance with HRS Section 480-13(a);
- (5) For prejudgment interest; and
- (6) For declaratory judgment and a permanent injunction concerning Defendant's actions described above; and
- (7) For such further and additional relief as the Court deems appropriate and just.

DATED: Honolulu, Hawaii, March 7, 2011.



JAMES J. BICKERTON
Attorney for Plaintiffs
LORETTA CHONG, individually and on behalf
of all others similarly situated.

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, March 7, 2011.

S. TAMANAHA 
CLERK OF THE ABOVE-ENTITLED COURT