

PERKIN & FARIA

JOHN F. PERKIN #1673
BRANDEE J.K. FARIA #6970
Topa Financial Center, Bishop Street Tower
700 Bishop Street, Suite 1111
Honolulu, Hawaii 96813
Telephone : (808) 523-2300

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2011 OCT 26 PM 4:10

F. OTAKE
CLERK

and

BICKERTON LEE DANG & SULLIVAN

JAMES J. BICKERTON #3085-0
Bickerton Lee Dang & Sullivan
745 Fort Street, Suite 801
Honolulu, Hawaii 96813
Telephone: (808) 599-3811

Attorneys for Plaintiff
DARREN MIYASATO,
individually and on behalf of
All others similarly situated,

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DARREN MIYASATO, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

vs.)

HYATT CORPORATION, d.b.a. HYATT)
REGENCY WAIKIKI; GOLDMAN SACHS)
& CO.; and DOE DEFENDANTS 1-50,)

Defendants.)

CIVIL NO. 11-1-2596-10 R A N
(Class Action)

COMPLAINT; SUMMONS

**SUMMONS
DENIED**
APPROX. DOCUMENTS BY

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

COMPLAINT

Plaintiff DARREN MIYASATO, individually and on behalf of all persons similarly situated, for complaint against Defendants HYATT CORPORATION, dba, HYATT REGENCY WAIKIKI ; GOLDMAN SACHS & CO.; and DOE DEFENDANTS 1-50, alleges as follows:

Parties

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

2. At all material times, Defendant GOLDMAN SACHS & CO., is a corporation with its headquarters in New York, New York. On information and belief, Defendant GOLDMAN SACHS & CO. is the current owner of the HYATT REGENCY WAIKIKI.

3. The HYATT CORPORATION is a corporation with its headquarters in Chicago, Illinois. The HYATT CORPORATION operates and manages the HYATT REGENCY WAIKIKI. Hereafter GOLDMAN SACHS & CO. and HYATT CORPORATION, are sometimes collectively referred to as "Defendants".

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 his attorney, 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 DARREN MIYASATO, or his attorney engaged, or involved in the activities alleged herein or responsible for the activities of which Plaintiff complain, or should be subject to the relief Plaintiff seeks.

Plaintiff DARREN MIYASATO, pray 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

5. Plaintiff brings 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 Hotel who, on and after 2002, provided services in connection with the sales of food and/or beverage at the Hotel for which a service charge or gratuity charge was: (a) imposed by the Hotel and (b) not distributed 100% to said non-management employees.

The period on and after 2002 is hereafter referred to as "the Class period."

6. On information and belief, since 2002, over 100 servers, porters, bartenders and other employees of Defendants have worked on banquets and other food service events at the Hotel in connection with which the Hotel' 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. The members of the Class resided in the state of Hawaii during their employment, and on information and belief, the vast majority, if not all members, continue to reside in the state of Hawaii presently.

7. 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 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.

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.

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 Defendants have imposed service charges on the Hotel's customers for food and beverage and retained portions of such charges instead of distributing it to the employees who provided the service; in violation of HRS §481B-14;
- b) Whether Defendants' above-described conduct violates HRS §388-6;

- c) Whether Defendants' above described conduct is an unfair method of competition in violation of HRS Chapter 480; and
- d) 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, Defendants will likely retain the benefit of their wrongdoing and may continue the course of their actions, which could result in further damages.

10. A database of employees past and present is maintained by Defendants which includes 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 all members of the Class 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 DARREN MIYASATO will fairly and adequately represent the interests of the class. Plaintiff knows 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 DARREN MIYASATO is an employee of the Hyatt Regency Waikiki and has worked there from 1995 to the present. Plaintiff DARREN MIYASATO works primarily as a banquet porter, but has also worked as a server in the banquet department of the Hyatt Regency Waikiki and has worked at numerous banquet and other functions during this period.

14. At the vast majority of the aforesaid functions, Defendants charged the customers of the Hotel a "service charge" or "gratuity" that was calculated as percentage of the total cost of food and beverage, typically ranging between 20% and 22%, of which 15% to 16% (i.e. approximately $\frac{3}{4}$ of the service charge) went to staff. 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 DARREN MIYASATO, and all other members of the proposed Class, retaining 5% of the 15% or 6% of the 22% (i.e. approximately $\frac{1}{4}$ of the service charge). Although in most or all instances a portion of the service charge was paid to Plaintiff DARREN MIYASATO, and the other employees who rendered the service, in each instance at least a portion of the service charge was retained by the Hotel. Until recently, 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 Hotel.

15. The foregoing conduct by the Defendants occurred on multiple occasions after 2002 and continued to occur on information and belief until into 2008. 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 §481B-14 and in turn, Chapter 388-6. By virtue of their aforesaid violations of Section 481B-14, Defendants have violated of HRS Chapter 388-6.

16. 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 DARREN MIYASATO, and the other members of the proposed Class.

17. The competition in which Defendants are and were engaged or participating is the competition with other providers of hotel, restaurant and banquet services, and competition with Plaintiff and the Class for tips and/or the service charge. Defendants derive an unfair advantage over their law-abiding competitors and Plaintiff by (a) lowering their overall costs through the means of retaining tip income due under law to Plaintiff 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 would 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, and thereby obtaining the customers’ monies at the expense of Plaintiff.

18. These unfair competitive advantages were gained by Defendants at the direct expense of Plaintiff and other members of the Class, and Plaintiff and the Class members were injured as a result of Defendants’ unfair method of competition and the Defendants’ unfair competitive behavior in the hotel food and beverage market.

19. 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 DARREN MIYASATO, and the other members of the proposed class.

20. Defendants have failed to pay the entire service charge to said employees, as a result of which Plaintiff DARREN MIYASATO, 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. On information and belief, the wrongfully withheld service charges for DARREN MIYASATO are estimated to be less than \$75,000, however, the aggregate of the claims for all putative class members is as yet unknown. By virtue of the foregoing, Plaintiff DARREN MIYASATO, and other members of the proposed class are entitled to treble damages in accordance with HRS Section 480-13(a).

21. Defendants have failed to pay the entire service charge to said employees, as a result of which Plaintiff DARREN MIYASATO and the other members of the proposed class are entitled to full payment and double damages plus interest under HRS Chapter 388.

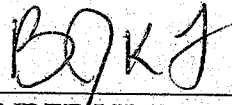
WHEREFORE, Plaintiff DARREN MIYASATO, individually and on behalf of all those similarly situated, prays for relief as follows:

- (1) For damages against the Defendants in an amount to be determined at trial;
- (2) For reimbursement of costs and expenses, including reasonable provision for attorneys' fees in accordance with HRS Chapter 388 and Chapter 480;
- (3) For prejudgment interest;
- (4) For double or treble damages as provided by law;

(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, October 26, 2011.



BRANDEE J.K. FARIA
JAMES J. BICKERTON
JOHN F. PERKIN

Attorneys for Plaintiff

DARREN MIYASATO, individually and on
behalf of all others similarly situated.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

DARREN MIYASATO, individually and on behalf of all others similarly situated,)	Civil No. <u>11-1-2596-10</u>
)	(Class Action)
)	
Plaintiff,)	
)	SUMMONS
vs.)	
)	
HYATT CORPORATION, d.b.a. HYATT REGENCY WAIKIKI; GOLDMAN SACHS & CO.; and DOE DEFENDANTS 1-50,)	
)	
Defendants.)	
)	
)	No trial date set.
)	
)	

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to serve upon PERKIN & FARIA, LLLC, attorneys for Plaintiff, whose address is Topa Financial Center, 700 Bishop Street, Suite 1111, 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, October 26, 2011.

SUMMONS
DENIED
LEGAL DOCUMENTS BX

CLERK OF THE ABOVE-ENTITLED COURT

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2011 OCT 28 PM 3:42

STATE OF HAWAII

DARREN MIYASATO, individually and on)
behalf of all others similarly situated,)

Plaintiff,)

vs.)

HYATT CORPORATION, d.b.a. HYATT)
REGENCY WAIKIKI; GOLDMAN SACHS)
& CO.; and DOE DEFENDANTS 1-50,)

Defendants.)

Civil No. 11-1-2596-10 PAN)
(Class Action))

A. MARPLE
CLERK

SUMMONS

No trial date set.

SUMMONS

STATE OF HAWAII

To the above-named Defendant(s):

You are hereby summoned and required to file with the court and serve upon PERKIN & FARIA, LLLC, attorneys for Plaintiff, whose address is Topa Financial Center, 700 Bishop Street, Suite 1111, 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.

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

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, October 27, 2011.

A. MARPLE

SEAL

CLERK OF THE ABOVE-ENTITLED COURT