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Waiters At Maui Westin Sue Over Tips

By Ryan Davis

Law360, New York (January 12, 2009) -- Two waiters at the Westin Maui Resort & Spa in Hawaii have filed a putative class action against the hotel's owner, Starwood Hotels & Resorts Worldwide Inc., alleging that the company imposes a 20 percent "service charge" on food purchases but does not distribute the proceeds of the charge to employees.

The suit, filed Friday in the U.S. District Court for the District of Hawaii, is the second such suit filed against Starwood in recent months, following one filed in Massachusetts last fall.

The Hawaii suit states that Westin Maui adds a preset service charge to customers' bills for food and beverages at the hotel. The company does not distribute the proceeds of that charge to employees, the suit claims, instead keeping the money for itself or using it to pay managers and other nontipped employees.

This policy is not disclosed to customers, who believe that the entire service charge goes to employees and thus do not leave additional tips that would go to employees, the suit claims.

The suit alleges that the policy violates Hawaii laws regarding unfair methods of competition and deceptive practices.

In addition, the suit claims violations of state laws regarding intentional interference with contractual relations, unjust enrichment and unpaid wages.

The suit was filed on behalf of Westin Maui waiters Reneldo Rodriguez and JohnShawn Basler and seeks to represent a class of all those who worked as waiters at the hotel while the service charge policy was in effect.

According to the complaint, there are more than 100 class members and the amount in controversy exceeds \$5 million.

A representative of Starwood could not immediately be reached for comment on the suit.

Pyle Rome Lichten Ehrenberg & Liss-Riordan PC, one of the firms representing the plaintiffs, also filed suit against Starwood and another hotel chain in Massachusetts state court in October.

That suit made substantially similar allegations that service charges were not distributed to employees at about 25 hotels and facilities in the state, in violation of Massachusetts law.

As in the Hawaii case, it seeks to represent a class of at least 100 employees with an amount in controversy exceeding \$5 million. The second defendant in that case, Pyramid Advisors LLC, removed the case to federal court in November.

The Boston-based firm has also represented employees in several other tips cases involving major companies in recent months, including those filed on behalf of Starbucks baristas and skycaps at several airlines.

Last year, a Massachusetts jury awarded more than \$325,000 to nine American Airlines Inc. employees represented by the firm who said they were denied tips after the airline began charging customers \$2 for curbside check-in help.

Starwood Hotels, which is traded on the New York Stock Exchange, owns brands including Sheraton, Westin and St. Regis.

Weinberg Roger & Rosenfeld and Pyle Rome Lichten Ehrenberg & Liss-Riordan PC are representing the plaintiffs in this matter.

The case is Rodriguez et al. v. Starwood Hotels & Resorts Worldwide Inc., case number 09-cv-00016, in the U.S. District Court for the District of Hawaii.