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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | [customerservice@law360.com](mailto:customerservice@law360.com)

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## Wage Claims Proceed In Four Seasons Tip Action

By Joseph Marks

Law360, New York (October 01, 2010) -- A judge has substantially trimmed the antitrust portion of a putative class action lodged against two Four Seasons Hotels and Resorts locations in Hawaii by waitstaff who accuse the hotels of stealing some of their tips from weddings and banquets.

The workers claim the hotels acted unlawfully by not giving them the entire proceeds of a standard "service fee" tacked on to the bills of weddings, convention dinners and other large events, according to an order issued Thursday by Judge Helen Gillmor of the U.S. District Court for the District of Hawaii.

Judge Gillmor's order tossed one antitrust claim — that the hotel had unfairly competed with its own workers over tip money by garnishing the service fee — and heightened the burden of proof for another — that garnishing the service fee allowed the hotel to lower its food and drink prices and gain an unfair advantage over competitor hotels.

Though she approved the second antitrust claim, Judge Gillmor said it hovered on the "borderline of plausibility," reasoning that the tactic could just as easily improve competition by inspiring other hotels to similarly dip into service fees.

But the judge retained the plaintiffs' argument that by taking a portion of the service fee, the hotel had illegally garnished the servers' wages under Hawaiian law.

She also allowed claims that the hotel had breached an implied contract and unjustly enriched itself by taking money that customers expected to go to their servers.

Plaintiffs' attorney Harold Lichten of Lichten & Liss-Riordan PC called the decision a "90 percent win" for his clients.

The wage contention is the servers' best argument and the one they're most likely to prevail

on, he said.

Lichten called the tossed antitrust claim a “novel argument” that attorneys hadn’t really expected to survive review and said the heightened barrier for the other antitrust claim was only a minor setback considering the approval of the wage claims.

Calls to Four Seasons attorneys were not immediately returned Friday.

Lichten’s firm has filed similar class actions against numerous other resorts on Maui, he said, including the Fairmont Kea Lani Maui, the Ritz Carlton Kapalua, the Westin Maui Resort and Spa and the Wailea Beach Marriott Resort & Spa.

Each of those hotels typically charged a 20 to 21 percent service fee on large banquets but only turned over 15 to 16 percent of the bill to waitstaff, he said.

“If you’ve ever seen big conventions and weddings in Hawaii, that’s a lot of money,” Lichten said.

Plaintiffs are represented by Lichten & Liss-Riordan PC and Weinberg Roger & Rosenfeld. The Four Seasons is represented by Shea Stokes Roberts & Wagner.

The case is Davis et al. v. Four Seasons Hotel Ltd., case number 08-00525, in the U.S. District Court for the District of Hawaii.