

S.F. Marriott Hotel illegally kept \$9 million in workers' tips, judge says



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Superior Court Judge Ethan Schulman ordered San Francisco's Marriott Hotel to pay \$9 million in withheld fees to hundreds of workers who served food and drink at banquets from 2012 through April 2017.

Justin Sullivan/TNS

A judge says San Francisco's Marriott Hotel illegally kept about \$9 million in more than five years of banquet "service charges" that its customers reasonably understood to be tips for food servers.

San Francisco Superior Court Judge Ethan Schulman ordered the hotel to pay the withheld fees to hundreds of workers who served food and drink at banquets from 2012 through April 2017 and said he would decide later whether to add interest charges and attorneys' fees. The workers' lawyer, Shannon Liss-Riordan, said this was the first case to go to trial since a state appeals court ruled in 2019, in another San Francisco case, that service

charges belonged to the employees under California law if they were reasonably viewed as tips by the customers who paid them.

“Customers pay service charges — on top of hefty food and beverage bills — because they think they are tips for the waitstaff,” Liss-Riordan said Monday, reporting a decision that had not drawn public attention since it was issued April 19 after a nonjury trial before Schulman. She said she has won similar cases in Massachusetts and Hawaii and has suits pending against other hotels in San Francisco and elsewhere in California.

A spokesperson for Marriott declined to comment. The hotel could appeal the ruling.

During the period covered by the case, the Marriott Marquis hotel, at 780 Mission St. near Union Square, hosted about 1,000 banquets per year, including some that lasted several days and were attended by as many as 4,000 people. The hotel added 23% to 24% to banquet customers’ bills for what their contracts described as a service charge.

Food servers, whose wages were then between \$11 and \$13.50 an hour, were paid an additional \$70 million from those fees over five years, while management kept the remaining \$9 million, Schulman said.

Starting in April 2017, Marriott added language to its contracts specifying that part of the fee was a “house charge” that covered expenses and should not be considered a “gratuity,” or tip. The judge said the hotel was entitled to keep that portion of the fee because it had clearly notified its customers.

But until then, Schulman wrote, “a reasonable customer would understand and intend the service charges to be a gratuity for service staff.”

“It was common practice for employees, including banquet servers and their managers, to refer to service charges as gratuities or tip pay,” Schulman said. And even some of the contracts drawn up by hotel managers for banquet customers described the entire charge as a gratuity, he said.

The judge said seven customers, most of them experienced event planners, testified that they had understood the food and beverage charges in the contracts they signed to refer to tips. And there was also testimony that the “vast majority” of Marriott banquet customers during the five-year period did not leave a tip on the table, Schulman said, because they “believed that the gratuity was already included in the service charge.”

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