

1 **FARUQI & FARUQI, LLP**
David E. Bower SBN 119546
2 10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
3 Telephone: 424-256-2884
Facsimile: 424-256-2885
4 Email: dbower@faruqilaw.com

F I L E D
Clerk of the Superior Court

DEC 20 2012

5 **FARUQI & FARUQI, LLP**
Adam R. Gonnelli (to be admitted *pro hac vice*)
6 369 Lexington Avenue, 10th Floor
New York, NY 10017
7 Telephone: 212-983-9330
Facsimile: 212-983-9331
8 Email: agonnelli@faruqilaw.com

9 *Attorneys for Plaintiff*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 **LEONARDO ACOSTA, On Behalf of Himself**
and All Others Similarly Situated,

Case No. 37-2012-00088307-CU-OE-CTL

13 **Plaintiff,**

**CLASS ACTION COMPLAINT FOR
COMPENSATORY AND
EXEMPLARY DAMAGES**

14 **v.**

- 15
16 1) UNFAIR COMPETITION
2) CONVERSION
3) MONEY HAD AND RECEIVED

17 **HOST HOTELS AND RESORTS, INC.,**
HOST HOTELS AND RESORTS, L.P.,
MANCHESTER FINANCIAL GROUP,
HYATT HOTELS CORPORATION, AND
18 **DOES 1 THROUGH 10,**

19 **Defendants.**

20 **INTRODUCTION**

21 1. Defendants own and/or operate hotels in California. The action concerns
22 gratuities paid by hotel guests intended for the hotels' room service delivery workers.
23 Defendants have been unlawfully deducting and retaining a portion of those gratuities.

24 2. Plaintiff brings this class action on behalf of himself and his fellow room
25 service delivery workers at hotels owned and/or operated hotels by Hyatt in California to
26 recover monies wrongfully withheld by defendants, penalties, attorneys' fees and expenses.
27

28 **CLASS ACTION COMPLAINT FOR
COMPENSATORY AND EXEMPLARY DAMAGES**

VIA FAX

1 **PARTIES**

2 3. Plaintiff Leonardo Acosta is a resident of Chula Vista, California. At all
3 relevant times until January 2012, Mr. Acosta was employed as a room service delivery
4 worker at the Manchester Grand Hyatt San Diego, in San Diego California.

5 4. Host Hotels & Resorts, Inc., is a Maryland real estate investment trust with its
6 headquarters in Bethesda, Maryland.

7 5. Host Hotels & Resorts, L.P. is a Delaware limited partnership with its
8 headquarters in Bethesda, Maryland.

9 6. Host Hotels & Resorts, Inc. is the sole general partner of Host Hotels &
10 Resorts, L.P. and holds over 98% of the partnership interests of Host Hotels & Resorts, L.P.

11 7. The operations of Host Hotels & Resorts, Inc. are conducted through Host
12 Hotels & Resorts, L.P.

13 8. Upon information and belief, Host Hotels and Resorts, L.P. and Host Hotels &
14 Resorts, Inc. share common management and have common ownership.

15 9. Host Hotels & Resorts, L.P. and Host Hotels & Resorts, Inc. are hereinafter
16 collectively referred to as "Host Hotels."

17 10. Host Hotels has owned the Manchester Grand Hyatt since May 2011.

18 11. Manchester Financial Group ("Manchester") is headquartered in San Diego,
19 California. Manchester was owned the Manchester Grand Hyatt at all relevant times prior to
20 May 2011.

21 12. Hyatt Hotels Corporation ("Hyatt") is a Delaware corporation and maintains
22 its headquarters in Chicago, Illinois. Hyatt owns and manages hundreds of hotels throughout
23 the United States, including dozens of hotels in California.

24 13. At all relevant times prior to May 2011, Hyatt managed the Manchester Grand
25 Hyatt under a contract with Manchester. Since that time Hyatt has managed the Manchester
26 Grand Hyatt under a contract with Host Hotels.

- 1 (a) Whether defendants violated California's Unfair Competition Law by
2 withholding gratuities for purported "glass breakage;"
- 3 (b) Whether defendants wrongfully converted Plaintiff's and the class members'
4 money;
- 5 (c) Whether defendants were unjustly enriched by their conduct;
- 6 (d) The amount of damages and/or penalties owed by defendants for their
7 wrongful conduct; and
- 8 (e) The appropriate nature and scope equitable relief to prevent such conduct in
9 the future.

10 39. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
11 Class. Plaintiff has worked within the class period as a room service delivery worker at one
12 of defendants' hotel and has been subjected to the same wrongful conduct that defendants
13 perpetrated on all of their room service delivery workers. Plaintiff and all members of the
14 class sustained damages arising out of the same policy in violation of the same laws as
15 complained of herein.

16 40. **Adequacy:** Plaintiff will fairly and adequately protect the interests of the
17 members of the Class.

18 41. Plaintiff has retained counsel which has substantial experience in the
19 prosecution of complex employment class action litigation.

20 42. **Superiority:** A class action is superior to other available means for the fair
21 and efficient adjudication of this controversy, since the individual joinder of all members of
22 the class is impracticable. A class action will permit a large number of similarly situated
23 persons to prosecute their common claims in a single forum simultaneously, efficiently, and
24 without the unnecessary duplication of effort and expense that numerous individual actions
25 would cause. Furthermore, since the damage suffered by each individual member of the
26 class may be relatively small, the expenses and burden of individual litigation would make it

1 difficult or impossible for individual members of the class to redress the wrongs done to
2 them. Also, an important public benefit will be realized by addressing the matter as a class
3 action. The cost to the court system of adjudication of such individualized litigation would
4 be substantial. Individual litigation would also present the potential for inconsistent or
5 contradictory judgments.

6 43. Plaintiff is unaware of any difficulties that are likely to be encountered in the
7 management of this action that would preclude its maintenance as a class proceeding.

8 **COUNT I**

9 **(Unfair Competition Law - Against All Defendants)**

10 44. Plaintiff realleges and incorporates the paragraphs above as if fully set forth
11 herein.

12 45. Defendants are subject to the Unfair Competition Law (“UCL”), *Business &*
13 *Professions Code* §§ 17200, *et seq.* The UCL provides, in pertinent part: “Unfair
14 competition shall mean and include unlawful, unfair or fraudulent business practices ...”

15 46. Defendants violated the “unlawful” prong of the UCL by violating
16 California’s *Labor Code* § 351 which provides that “No employer or agent shall take or
17 receive any gratuity or part thereof that is paid, given to or left for an employee.”

18 47. Defendants also violated the “unlawful” prong of the UCL by violating
19 California Industrial Wage Order No. 2 § 8 which provides that “No employer shall make
20 any deduction from the wage or require reimbursement from any employee for any cash
21 shortage, breakage or loss of equipment, unless it can be shown that the shortage, breakage,
22 or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.”

23 48. Defendants also violated the “unfair prong” of the UCL by unfairly
24 withholding from Plaintiff and the class gratuities that defendants’ hotel guests intended
25 would be received by the room service delivery workers.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT III

(Money Had and Received)

57. In the alternative to Counts I and II above, Plaintiff realleges and incorporates the paragraphs above as if fully set forth herein.

58. Defendants' hotel guests paid gratuities for room service with the intent that they would be received by the room service delivery workers and not be used to pay defendants' expenses.

59. Defendants failed to remit a portion of the gratuities to Plaintiff and the class.

60. By this conduct, defendants were unjustly enriched by the amount of gratuities withheld from the room service delivery workers.

WHEREFORE, Plaintiff prays for relief as follows:

1. For restitution to Plaintiff and the members of the Class of those monies which defendants have wrongfully withheld.

2. For compensatory damages in an amount according to proof of Plaintiffs and the members of the Class.

3. For a temporary restraining order, preliminary injunction and permanent injunction restraining defendants and their agents and employees from continuing to wrongfully withhold gratuities of their room service delivery workers.

4. For an award of exemplary damages for the purpose of punishing defendants and deterring its unlawful conduct in the future.

5. For interest on all sums awarded.

6. For reasonable attorneys' fees incurred.

7. For costs of suit.

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. For such other and further relief as the court finds proper.

Dated: December 19, 2012

FARUQI & FARUQI, LLP



By: David E. Bower SBN 119546
10866 Wilshire Boulevard, Suite 1470
Los Angeles, CA 90024
Telephone: 424-256-2884
Facsimile: 424-256-2885
Email: dbower@faruqilaw.com

FARUQI & FARUQI, LLP

Adam R. Gonnelli (to be admitted *pro hac vice*)
369 Lexington Avenue, 10th Floor
New York, NY 10017
Telephone: 212-983-9330
Facsimile: 212-983-9331
Email: agonnelli@faruqilaw.com

Attorneys for Plaintiff