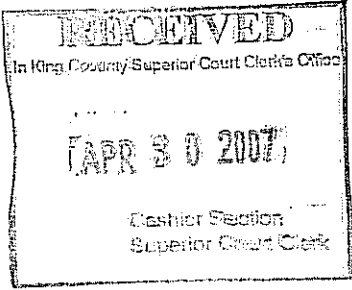


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45



SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

JAMES SHULEVITZ, individually, and on
behalf of a class of persons similarly situated,

Plaintiff,

v.

STARWOOD HOTELS & RESORTS
WORLDWIDE, INC., a Maryland corporation,

Defendant.

NO 07-2-13965-6 SEA

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiff, James Shulevitz, individually and on behalf of a class of persons similarly situated, brings this action for damages and such other relief as may be available against Defendant, Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"), demanding a trial by jury for all claims for which the right to a jury trial is authorized.

2. Plaintiff's claims arise out of Starwood's policy and practice of charging and collecting from Plaintiff and other customers of Starwood hotels a mandatory "Bell Gratuity" and a mandatory "Housekeeping Gratuity" in addition to the quoted rate for a room.

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
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

II. PARTIES

3. Plaintiff, James Shulevitz, is a resident of the State of Oregon.

4. Defendant, Starwood Hotels & Resorts Worldwide, Inc., is a Maryland corporation with its principal place of business in New York.

III. JURISDICTION AND VENUE

5. Starwood is subject to the exercise of general jurisdiction by the Superior Courts of the State of Washington pursuant to RCW 4.28.080, by virtue of Starwood's continuous and systematic conducting of business in this State.

6. Venue is proper in this Court pursuant to RCW 4.12.025 for the reason that Starwood transacts business in King County, Washington and has an agent in King County authorized to accept service of process on Starwood's behalf.

IV. BUSINESS PRACTICES COMPLAINED OF

7. Starwood owns, operates and/or manages hotels located throughout the United States and around the world, including without limitation The Phoenician Hotel in Scottsdale, Arizona and The W Hotel in Seattle, Washington. Starwood directly or indirectly controls the room rates and other charges assessed at all Starwood-affiliated hotels (hereinafter "Starwood hotels").

8. When prospective customers make a reservation at a Starwood hotel, they are quoted a per-night room rate, plus taxes. They are not informed that, in addition to the quoted per-night room rate, Starwood will assess certain other mandatory charges, specifically, a mandatory "Bell Gratuity" and a mandatory "Housekeeping Gratuity."

1 9. In fact, however, Starwood has a policy and practice of assessing
2
3 mandatory "Bell Gratuities" and mandatory "Housekeeping Gratuities" in addition to the quoted
4
5 per-night room rate. Customers of Starwood hotels are only advised of these mandatory charges
6
7 after they physically arrive at the Starwood hotel at which they have made a reservation.
8

9 10. The mandatory "Bell Gratuity" and "Housekeeping Gratuity" constitute
10
11 hidden charges that effectively increase the per-night cost of a Starwood hotel room above the
12
13 rate quoted to customers at the time a reservation is made.
14

15 11. Starwood's policy and practice of assessing and collecting a mandatory
16
17 "Bell Gratuity" and a mandatory "Housekeeping Gratuity" not disclosed to customers until after
18
19 they arrive at the hotel is a breach of the lodging contract established at the time of a customer's
20
21 reservation, is unfair and deceptive, and has the effect of unjustly enriching Starwood.
22

23 **V. FACTUAL ALLEGATIONS AS TO THE REPRESENTATIVE PLAINTIFF**
24

25 12. On or about March 29, 2006, Plaintiff made a reservation over the
26
27 telephone with The Phoenician Hotel in Scottsdale, Arizona. The reservation agent quoted
28
29 Plaintiff a room rate of \$325.00 per night, plus tax, for a two-night stay with check-in on April
30
31 30, 2006 and check-out on May 2, 2006. The reservation agent did not disclose that any
32
33 mandatory gratuities or other mandatory charges would be assessed in addition to the quoted per-
34
35 night room rate.
36

37 13. Shortly after making his reservation at The Phoenician over the telephone,
38
39 Plaintiff received a reservation confirmation by email, a true and correct copy of which is
40
41 attached to this Complaint as **Exhibit A**. The confirmation confirmed the quoted per-night room
42
43
44
45

1 rate of \$325.00, plus tax. The confirmation did not disclose that any mandatory gratuities or
2
3 other mandatory charges would be assessed in addition to the quoted per-night room rate.
4

5 14. Plaintiff arrived at The Phoenician in the afternoon of April 30, 2006 for a
6
7 two-night stay, pursuant to his confirmed reservation. Plaintiff checked out of The Phoenician
8
9 on May 2, 2006. Upon check-out, Plaintiff was assessed and paid a "Bell Gratuity" in the
10
11 amount of \$28.00 and two "Housekeeping Gratuities" in the amount of \$4.00 each. Plaintiff also
12
13 was assessed and paid sales tax on the two "Housekeeping Gratuities" in the amount of \$0.32
14
15 each. Attached hereto as Exhibit B is a true and correct copy of Plaintiff's bill for his stay at
16
17 The Phoenician reflecting the above-referenced charges.
18

19 VI. CLASS ALLEGATIONS

20
21 15. Plaintiff brings this action on behalf of a class of all other persons or
22
23 business entities similarly situated ("Plaintiff Class") defined as follows:
24

25 All persons who: (a) stayed for one or more nights lodging at a hotel
26 owned, operated or managed by Defendant, Starwood Hotels &
27 Resorts Worldwide, Inc., pursuant to a reservation made prior to
28 check-in; (b) were charged a "Bell Gratuity" or a "Housekeeping
29 Gratuity" in addition to the quoted per-night room rate; and (c) paid a
30 "Bell Gratuity" or a "Housekeeping Gratuity."
31

32 Specifically excluded from the Plaintiff Class are: (a) all Washington
33 state appellate and trial court judges and their immediate families; (b)
34 Starwood and any parent, subsidiary, and affiliate thereof; (c) any
35 business entity in which Starwood owns a controlling interest; (d)
36 Starwood's respective officers, directors, and employees, and their
37 immediate family members.
38

39 16. As with Plaintiff, members of the Plaintiff Class were damaged by the
40
41 conduct of Starwood in that each member of the Plaintiff Class paid monies to Starwood as a
42
43
44
45

1 result of Starwood's policy and practice of assessing and collecting from its customers a "Bell
2
3 Gratuity" or a "Housekeeping Gratuity" in addition to the quoted per-night room rate.
4

5 17. The Plaintiff Class is so numerous as to make joinder of all members
6
7 impracticable.
8

9 18. There are questions of law and fact which are common to all members of
10
11 the Plaintiff Class and which predominate over any question affecting only individual class
12
13 members.
14

15 19. The principal common issues include: (a) whether Starwood, pursuant to
16
17 a common practice or policy, has wrongfully assessed upon and collected from the Plaintiff
18
19 Class monies denominated as a mandatory "Bell Gratuity" or a mandatory "Housekeeping
20
21 Gratuity" in addition to the quoted per-night hotel room rate; (b) whether Starwood's practice of
22
23 assessing and collecting a mandatory "Bell Gratuity" or "Housekeeping Gratuity" constitutes a
24
25 breach of the lodging contract established by the customer's reservation; (c) whether Starwood's
26
27 acts and practices in assessing and collecting a "Bell Gratuity" or a "Housekeeping Gratuity"
28
29 were unfair and/or deceptive within the meaning of the Washington Consumer Protection Act,
30
31 chapter 19.86 RCW ("CPA") and/or the analogous and applicable consumer protection statutes
32
33 of other states; (d) whether Starwood's assessment and collection of a "Bell Gratuity" or a
34
35 "Housekeeping Gratuity" unjustly enriched Starwood or its affiliates; (e) whether Starwood's
36
37 acts and practices with respect to the assessment and collection of a "Bell Gratuity" or a
38
39 "Housekeeping Gratuity" caused members of the Plaintiff Class injury; and (f) whether members
40
41 of the Plaintiff Class are entitled to damages and/or other relief against Starwood for breach of
42
43 contract, violation of the CPA, or unjust enrichment.
44
45

1 20. Plaintiff's claims are typical of the claims of the Plaintiff Class, in that all
2
3 such claims are based on the same legal and remedial theories.
4

5 21. Plaintiff will fairly and adequately represent the interests of all class
6
7 members in the prosecution of this action and in the administration of all matters relating to the
8
9 claims stated herein. Plaintiff is similarly situated with, and has suffered similar injury as have
10
11 the members of the class that Plaintiff seeks to represent.
12

13 22. Plaintiff feels that he has been wronged, wishes to obtain redress of the
14
15 wrong, and desires that Starwood cease inflicting similar wrongs upon other customers. To that
16
17 end, Plaintiff has retained counsel experienced in consumer class action cases. Neither Plaintiff
18
19 nor its undersigned counsel has any interest that may inhibit or obstruct the vigorous pursuit of
20
21 this action.
22

23 23. A class action is superior to other available methods for the fair and
24
25 efficient adjudication of the controversy, in that:
26

- 27 a. Many of the individual class members may not be aware that they have
28 been wronged and are thus unable to prosecute individual actions;
29 moreover, the relatively modest monetary damages sustained by each
30 individual plaintiff makes the prosecution of individual lawsuits inefficient
31 and impractical;
32
- 33 b. Concentration of this matter in this Court is efficient and desirable;
34
- 35 c. The claims of Plaintiff are typical of the claims of the Plaintiff Class;
36
- 37 d. A failure of justice will result from the absence of a class action; and
38
- 39 e. The difficulties likely to be encountered in the management of the
40 Plaintiff's claims as a class action are not great.
41
42
43
44
45

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
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

VII. FIRST CLAIM – BREACH OF CONTRACT

24. Plaintiff, on behalf of itself and all others similarly situated, being a member of the Plaintiff Class as defined above, hereby incorporates and realleges all previous paragraphs of this Complaint.

25. Starwood’s practice of assessing and collecting a mandatory “Bell Gratuity” or a mandatory “Housekeeping Gratuity” in addition to the quoted per-night room rate constitutes a breach of the lodging contract between Starwood and its customers established at the time of a customer’s reservation.

26. Starwood’s breach of contract was a proximate cause of injury to Plaintiff and each member of the Plaintiff Class in an amount to be proved at trial.

27. Starwood is liable in damages to Plaintiff and each member of the Plaintiff Class for all injuries and losses suffered by reason of Starwood’s breach of contract.

VIII. SECOND CLAIM – UNFAIR AND DECEPTIVE BUSINESS PRACTICES

28. Plaintiff, on behalf of itself and all others similarly situated, being a member of the Plaintiff Class as defined above, hereby incorporates and realleges all previous paragraphs of this Complaint.

29. Starwood is and was engaged in trade or commerce.

30. Starwood’s actions as detailed above, including its practice of assessing and collecting a mandatory “Bell Gratuity” or a mandatory “Housekeeping Gratuity” in addition to the quoted per-night room rate, constitute unfair and deceptive acts or practices.

31. Starwood’s unfair and deceptive acts or practices impact the public interest.

1 32. Plaintiff and each member of the Plaintiff Class has suffered injury in their
2
3 business or property as a result of Starwood's unfair or deceptive acts and practices as detailed
4
5 above, in that each paid monies for a "Bell Gratuity" or a "Housekeeping Gratuity" in addition to
6
7 the quoted per-night room rate confirmed by their reservation.
8

9 33. Starwood's unfair and deceptive acts and practices were a proximate cause
10
11 of injury to Plaintiff and each member of the Plaintiff Class.
12

13 34. Plaintiff and each member of the Plaintiff Class are entitled to relief
14
15 pursuant to RCW 19.86.090, and/or the analogous and applicable consumer protection statutes of
16
17 other states, including without limitation actual damages, treble damages, injunctive relief, and
18
19 attorneys' fees and costs.
20

21 **IX. THIRD CLAIM – UNJUST ENRICHMENT/RESTITUTION**
22

23 35. Plaintiff, on behalf of itself and all others similarly situated, being a
24
25 member of the Plaintiff Class as defined above, hereby incorporates and realleges all previous
26
27 paragraphs of this Complaint.
28

29 36. Starwood's assessment and collection of a mandatory "Bell Gratuity" or a
30
31 mandatory "Housekeeping Gratuity" in addition to the quoted per-night room rate has
32
33 inequitably and unjustly enriched Starwood.
34

35 37. Plaintiff and each member of the Plaintiff Class are entitled to equitable
36
37 relief from Starwood's unjust enrichment, including without limitation restitution of all monies
38
39 remitted to Starwood or its affiliates in payment of "Bell Gratuities" and "Housekeeping
40
41 Gratuities."
42
43
44
45

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
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

X. REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests relief as follows:

1. That the Court determine that this action may be maintained as a class action;

2. That the Court declare that Starwood's actions as detailed above, including without limitation its assessment and collection of mandatory "Bell Gratuities" or "Housekeeping Gratuities" in addition to the quoted per-night room rate, constitute a breach of Starwood's lodging contracts with its customers, that Starwood's actions are unfair or deceptive acts or practices declared to be unlawful by RCW 19.86.020 and/or the analogous and applicable consumer protection statutes of other states, and (c) that Starwood's actions have unjustly enriched Starwood and/or its affiliates, all to the injury of Plaintiff and the Plaintiff Class;

3. That Plaintiff and the members of the Plaintiff Class be awarded their actual damages;

4. That Plaintiff and the members of the Plaintiff Class be awarded treble, exemplary, or punitive damages pursuant to RCW 19.86.090 and/or the analogous and applicable consumer protection statutes of other states;

5. That Plaintiff and the members of the Plaintiff Class be awarded prejudgment interest on the damages awarded;

6. That Plaintiff and the members of the Plaintiff Class be awarded reasonable attorneys' fees and costs of suit pursuant to RCW 19.86.090 and/or the analogous and applicable consumer protection statutes of other states, or other applicable law;


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
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

7. That Starwood be enjoined, preliminarily and permanently, from engaging in further assessing or collection of mandatory "Bell Gratuities" or "Housekeeping Gratuities" in addition to the quoted per-night room rate; and


8. That Plaintiff and the members of the Plaintiff Class be granted such other relief as may be deemed just and proper by this Court.

DATED this 30th day of April, 2007.

GORDON MURRAY TILDEN LLP

By 
Jeff Thomas, WSBA No. 21175
Mark A. Wilner, WSBA No. 31550

MUNDT MacGREGOR L.L.P.

By  for:
J. David Stahl, WSBA No. 14113

Attorneys for Plaintiff, James Shulevitz

EXHIBIT A



THE PHOENICIAN

Scottsdale

Jim Shulevitz

Date: 03-28-2006

, OR
United States

Time: 10:37 AM

Facsimile: jim@indoor.com

Reservation Advice

Attention: Jim Shulevitz

Status: MOD

It is a pleasure to confirm your reservation

Reservation Number: 366050

Arrival Date: 04-30-2006

Guest Name(s): Mr. Jim Shulevitz

Arrival Flight:

Arrival Time:

Company Name:

Departure Date: 05-02-2006

Accommodation: Superior Double Beds Non-s
Daily Room Rate: \$325.00
GRP 325

Number of Rooms: 1
Number of Guests: 2

Room Rate Subject to 12.07 % Occupancy Tax.

Remarks

We look forward to welcoming you to Arizona's premier luxury resort
Your deposit is fully refundable should you cancel your
reservation seven days prior to arrival.
Plan the perfect visit before you arrive with advance reservations for golf,
spa, tennis, dining and more. Please call us at 800-955-7352.

6000 E Camelback Road, Scottsdale, AZ 85251
Phone: (480) 941-8200 Fax: (480) 947-4311

EXHIBIT B



THE PHOENICIAN

Scottsdale

Guest

Mr. Jim Shulevitz
 2008 Ne Siskiyou St
 Portland, OR 97212
 United States

ROOM 6152
 RATE 325.00
 NO. PERS. 2
 FOLIO 366050 A
 PAGE 1
 ARRIVE 30-APR-06 14:16
 DEPART 02-MAY-06 06:33
 PAYMENT VI

YPD30A

DATE	REFERENCE	DESCRIPTION	CHARGES • CREDITS
30-APR-06	RT6152	Room Charge	325.00
30-APR-06	RT6152	Accommodation Tax	39.23
30-APR-06	RT6152	Bell Gratuity	28.00
30-APR-06	RT6152	Housekeeping Gratuity	4.00
30-APR-06	RT6152	Housekeeping Sales Tax	0.32
30-APR-06	10837279	Sundries - Pinatas	14.05
30-APR-06	10437297	Tennis Garden	40.00
30-APR-06	18981620	Windows On The Green	548.37
01-MAY-06	RT6152	Room Charge	325.00
01-MAY-06	RT6152	Accommodation Tax	39.23
01-MAY-06	RT6152	Housekeeping Gratuity	4.00
01-MAY-06	RT6152	Housekeeping Sales Tax	0.32
01-MAY-06	43993520	Room Service	25.14
02-MAY-06	VI	Visa	1392.66-
02-MAY-06	JML	Honor Bar	3.95
02-MAY-06	CA	Cash	3.95-
02-MAY-06	331680	Honor Bar	4.98
02-MAY-06	VI	Visa	4.98-
		Total Charges	1401.59
		Total Credits	1401.59-
		Balance Due	0.00

** continued on the next page **

Mr. Jim Shulevitz ROOM DEPART AGENT
 FOLIO 366050 30-APR-06 6152 02-MAY-06 GVSINF