DISSENTING OPINION BY ACOBA, J.

I respectfully dissent.

The certified question presented is whether

> [w]here plaintiff banquet server employees allege that their employer violated the notice provisions of [Hawaiʻi Revised Statutes (HRS)] § 481B-14 by not clearly disclosing to purchasers that a portion of a service charge was used to pay expenses other than wages and tips of employees, and where the plaintiff banquet server employees do not plead the existence of competition or an effect thereon, do the plaintiff banquet server employees have standing under [HRS] § 480-2(e) to bring a claim for damages against their employer?

(Emphasis added.)

As noted by Plaintiffs-Appellants,[1] the certified question arose as a result of a motion to dismiss filed by Defendants-Appellees Four Seasons Hotel Limited, dba Four Seasons Resort, Maui and Four Seasons Resort, Hualalai, and MSD Capital, Inc. [collectively, Defendants]. Hence, the standard pertaining to such motions applies. In this jurisdiction, a circuit court's ruling on a motion to dismiss is reviewed de novo. Wright v. Home Depot U.S.A., Inc., 111 Hawaiʻi 401, 406-07, 142 P.3d 265, 270-71 (2006). In that review,

> [a] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief. [This court] must therefore view a plaintiff's complaint in a light most favorable to him or her in order to determine whether the allegations contained therein could warrant relief under any alternative theory. For this reason, in reviewing a circuit court's order dismissing a complaint[, this court's] consideration is strictly limited to the allegations of the

[1] Plaintiffs-Appellants are Daryl Dean Davis, Mark Apana, Elizabeth Valdez Kyne, Earl Tanaka, Thomas Perryman, and Deborah Scarfone, on behalf of themselves and all others similarly situated, and are hereinafter referred to collectively, as "Plaintiffs."

> complaint, and [this court] must deem those allegations to be true.

In re Estate of Rogers, 103 Hawaiʻi 275, 280-81, 81 P.3d 1190, 1195-96 (2003) (citations, brackets, and ellipsis omitted) (emphasis in original).[2] In my view, it is not beyond doubt that Plaintiffs can establish no set of facts under which relief could be granted. Accordingly, Plaintiffs' amended complaint should not be dismissed.

I.

HRS § 481B-14 (2008 Repl.) states:

> **Hotel or restaurant service charge; disposition.** Any hotel or restaurant that applies a service charge for the sale of food or beverage services shall distribute the service charge directly to its employees as tip income or clearly disclose to the purchaser of the services that the service charge is being used to pay for costs or expenses other than wage and tips of employees.

(Boldfaced font in original.) (Emphasis added.) In conjunction with HRS § 481B-14, HRS § 481B-4 (2008 Repl.), entitled "Remedies," states that "[a]ny person who violates this chapter [(HRS 481B)] shall be deemed to have engaged in an unfair method of competition and unfair or deceptive act or practice in the

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[2] The federal standard of review is the same.

> We review de novo the district court's decision to grant a motion to dismiss pursuant to [Federal Rules of Civil Procedure Rule] 12(b)(6). ASW v. Oregon, 424 F.3d 970, 974 (9th Cir. 2005). We accept as true all well-pleaded facts in the complaint and construe them in the light most favorable to the nonmoving party. Id. A claim should be dismissed only if it appears beyond doubt that the plaintiff can establish no set of facts under which relief could be granted. Pacheco v. United States, 220 F.3d 1126, 1129 (9th Cir. 2000).

Watson v. Weeks, 436 F.3d 1152, 1157 (9th Cir. 2006).

conduct of any trade or commerce within the meaning of section 480-2." (Emphases added.) In that regard, HRS § 480-2(a) (2008 Repl.) states that "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful." Further, HRS § 480-2(e) (2008 Repl.) provides that "[a]ny person may bring an action based on unfair methods of competition declared unlawful by this section." HRS § 480-1 (2008 Repl.) provides in part that "'[p]erson' or 'persons' includes individuals[.]"

The amended complaint states in relevant part that:

> 4. For banquets, events, meetings and in other instances, the defendants add a preset charge to customers' bills for food and beverage provided at the hotels.
> 5. However, the defendants do not remit the total proceeds of the service charge as tips income to the employees who serve the food and beverages.
> 6. Instead, the defendants have a policy and practice of retaining for themselves a portion of these service charges (or using it to pay managers or other non-tipped employees who do not serve food and beverages).
> 7. The defendants do not disclose to the hotel's customers that the service charges are not remitted in full to the employees who serve the food and beverages.
> 8. For this reason, customers are misled into believing that the entire service charge imposed by the defendants is being distributed to the employees who served them food or beverage when, in fact, a smaller percentage is being remitted to the servers. . . .
> . . . .
> 9. . . . The class to be certified includes all food and beverage servers who . . . have served food or beverage at meetings, events, banquets, room service or other such instances where the defendants have added a service charge to the bill for food and beverage service, but have not remitted the entire amount of this service charge to the employees serving the food and beverage. . . .
> . . . .
> The action of the defendants as set forth above are in violation of [HRS §] 481B-14. Pursuant to Section 481B-4, such violation constitutes an unfair method of competition or unfair and deceptive act or practice within the meaning of Section 480-2. . . .
> . . . .
> WHEREFORE, the plaintiffs request this Honorable Court to . . . (2) grant the plaintiffs make whole damage compensating them for the loss of service charge income

> which they are entitled to receive; . . . and (4) award the plaintiffs any other relief to which they are entitled.

(Emphases added.)

II.

HRS § 481B-4 is clear and unambiguous. "Under the canons of statutory construction, 'where the language of the law in question is plain and unambiguous courts must give effect to the law according to its plain and obvious meaning.'" County of Hawaiʻi v. C & J Coupe Family Ltd. P'ship, 119 Hawaiʻi 352, 362, 198 P.3d 615, 625 (2008) (quoting Mikelson v. United Servs. Auto. Ass'n, 108 Hawaiʻi 358, 360, 120 P.3d 257, 259 (2005)). Thus, "[i]t is well-settled in this jurisdiction that courts turn to legislative history as an interpretive tool only where a statute is unclear or ambiguous." T-Mobile USA, Inc. v. County of Hawaii Planning Comm'n, 106 Hawaiʻi 343, 352, 104 P.3d 930, 939 (2005) (citing State v. Mueller, 102 Hawaiʻi 391, 394, 76 P.3d 943, 946 (2003)).

Based on the plain language of HRS § 481B-4, any violation of 481B-14 is a violation of section 480-2(a). The term "deemed" is not defined in HRS chapter 481B. Accordingly, "[t]his court has said that we may resort to legal or other well accepted dictionaries as one way to determine the ordinary meaning of certain terms not statutorily defined." Rapozo v. Better Hearing of Hawaii, LLC, 119 Hawaiʻi 483, 493, 199 P.3d 72, 82 (2008) (quoting Leslie v. Bd. of Appeals of County of Hawaii,

109 Hawaiʻi 384, 393, 126 P.3d 1071, 1080 (2006)) (brackets omitted).

Applying that principle, the term "deem" means

> 1. To treat (something) as if (1) it were really something else, or (2) it has qualities that it does not have <although the document was not in fact signed until April 21, it explicitly states that it must be deemed to have been signed on April 14>. 2. To consider, think, or judge <she deemed it necessary>.
>
> "Deem" has been traditionally considered to be a useful word when it is necessary to establish a legal fiction either positively by 'deeming' something to be what it is not or negatively by 'deeming' something not to be what it is[.]

Black's Law Dictionary 477-78 (8th ed. 2004) (emphasis added). Because it is "deemed," i.e., established, that a violation of HRS chapter 481B and, hence, of HRS § 481B-14, is an "unfair method of competition [(UMOC)] and unfair or deceptive act or practice [(UDAP)]," HRS § 481B-4 renders a violation of HRS § 481B-14, in and of itself, both a UDAP and UMOC. To construe the statute as requiring further allegations or proof of a UDAP or UMOC in addition to the violation would render the term "deemed" superfluous. "It is a cardinal rule of statutory construction that courts are bound, if rational and practicable, to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all the words of the statute." Camara v. Agsalud, 67 Haw. 212, 215-16, 685 P.2d 794, 797 (1984) (citing In re Ainoa, 60 Haw. 487, 490, 591 P.2d 607, 609 (1979)); Lopez v. Bd. of Trustees, 66 Haw. 127, 657 P.2d 1040 (1983)). In

order to give full effect to HRS § 481B-4, the phrase "shall be deemed" must be construed as establishing a UMOC violation. The drafters of HRS § 481B-4 did not insert conditional language or provide any additional limitations on access to the remedies in HRS § 480-13 (2008 Repl.) after a "deemed" UMOC violation has been established. Rather, the plain language of the statute demonstrates an intent to allow those who have suffered a violation under HRS § 481B-14 to bring an action to enforce their rights under HRS § 480-13. The majority's construction of HRS § 481B-4 deprives the statute of its force and undermines the legislature's manifest intent in enacting the law.

Consequently, based on the plain language of HRS § 481B-4, the amended complaint need not allege any fact to establish Defendants' liability under HRS § 481B-14, other than a violation. In the amended complaint, Plaintiffs have alleged that Defendants have collected service charges relating to the sale of food or beverages but did not distribute the entire service charges directly to their employees and did not disclose this fact to the purchasers. Taking the allegations in the amended complaint as true, as this court is required to do, Plaintiffs have alleged a manifest violation of HRS § 481B-14.[3]

[3] It should be noted that, at oral argument, Defendants conceded that portions of the service charge were not distributed to the servers as tip income and that notice of this practice was not given to the customers to whom the service charge was applied. Defendants also asserted that this practice has since been changed, and the required HRS § 481B-14 notice given.

III.

A.

As to other matters raised by the parties, HRS § 480-2 explains who may bring an action for engaging in an unfair or deceptive act or practice or unfair method of competition. In relevant part HRS § 480-2 states:

> (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.
>
> . . . .
>
> (d) No person other than a consumer, the attorney general or the director of the office of consumer protection may bring an action based upon unfair or deceptive acts or practices declared unlawful by this section.
>
> (e) Any person may bring an action based on unfair methods of competition declared unlawful by this section.

(Emphases added.) HRS § 481B-4 allows a violation of HRS § 481B-14 to be brought as a UMOC action and a UDAP action. As a result, under HRS 480-2(d), a suit for the failure to remit tips may be brought by a consumer, the attorney general, or the director of the Office of Consumer Affairs as a UDAP. In contrast, any "person" is entitled to bring a UMOC action. As noted before, "person," as defined in HRS § 480-1 includes "individuals[.]" Plaintiffs concede that they cannot bring a UDAP action because they are not "consumers" under HRS 480-2(d). However, Plaintiffs may bring an action against Defendants claiming UMOC inasmuch as employees individually do qualify as "any person" under HRS § 480-2. Thus, Plaintiffs' suit is correctly premised on their status as "individuals" allowed to bring suit as "persons" for a UMOC. HRS § 480-1.

B.

HRS § 480-13, which applies to HRS chapter 480, allows those harmed by either a UDAP or a UMOC to bring an action for damages and to enjoin the illegal practice. HRS 480-13 states in relevant part:

> (a) Except as provided in subsections (b) and (c), any person who is injured in the person's business or property by reason of anything forbidden or declared unlawful by this chapter:
>
> (1) May sue for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorney's fees together with the costs of suit . . . and
>
> (2) May bring proceedings to enjoin the unlawful practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorney's fees together with the costs of suit.

(Emphasis added.) In the amended complaint, Plaintiffs have alleged that Defendants have collected service charges relating to the sale of food or beverages but did not distribute the entire service charges directly to its employees and did not disclose this fact to the purchasers. Plaintiffs' "Wherefore" clause in the amended complaint alleges that they did not receive the full amount of the service charge levied on purchasers. Taking the allegations as true, the language in HRS § 480-13 permitting a suit based on injuries to "business or property" manifestly includes the economic loss of withheld tip income. Because the disclosure was not made, the tip income did not belong to Defendants. If Plaintiffs are not recompensed as

indicated under the statute, a windfall would accrue to Defendants by virtue of a violation of HRS § 481B-14.[4]

C.

The statutes also mandate that the courts look to federal case law when interpreting HRS chapter 480. HRS § 480-3 (2008 Repl.), entitled "Interpretation," provides that "[t]his chapter shall be construed in accordance with judicial interpretations of similar federal antitrust statutes, except that lawsuits by indirect purchasers may be brought as provided in this chapter." HRS § 480-2(b) states that

> [i]n construing this section, the courts and the office of consumer protection shall give due consideration to the rules, regulations, and decisions of the Federal Trade Commission [(FTC)] and the federal courts interpreting section 5(a)(1) of the Federal Trade Commission Act [(FTCA)] (15 U.S.C. 45(a)(1)), as from time to time amended.

Moreover, HRS § 480-13 was modeled after section 4 of the Clayton Act, 15 U.S.C. § 15(a), and, pursuant to HRS § 480-3, must be construed in light of federal decisions. However, HRS § 481B-14 contains no federal analogue and, as the statutory language indicates, was not enacted simply to prevent anti-competitive conduct that affects consumers and businesses, but was specifically intended to address the direct injuries to the "business and property" of employees such as Plaintiffs, caused by withholding service charges. See discussion infra. The

[4] As noted at oral argument, "consumers" and other "persons" may also sue, and an equitable apportionment of damages may be required in any particular case.

enforcement provisions in HRS § 480-13 must also be construed in light of the purpose of HRS § 481B-14. Thus, federal law is not a bar to Plaintiffs' action and a plain language construction of HRS § 481B-14 does not contravene HRS § 480-2(b) or HRS § 480-3.

D.

Defendants argue that "[i]f [Plaintiffs] are correct that [HRS] § 481B-14 was intended to create a wage claim for employees, it is strikingly - if not unconstitutionally - vague."[5] Defendants assert that the statute "does not specify which employees should be paid the service charge as tip income." In other words, Defendants argue "the plain language of the statute allows the employer to pick any employee to receive the monies [derived from the service charge] in any amount."

However, HRS § 481B-14 is not vague. The text mandates that the hotel or restaurant "shall distribute the service charge directly to its employees as tip income[.]" HRS § 481B-14

[5] The majority states that it declines to address this matter because it "does not relate to the issue of whether or not employees have standing under HRS § 480-2(e) to bring a claim for damages for a violation of HRS § 481B-14, but instead relates to the merits of such a claim." Majority opinion at 11 n.13. However, the certified question states that "[t]he [c]ourt's phrasing of the question should not restrict the [Hawaiʻi Supreme Court's] consideration of the problems and issues involved." Certified question at 5 (citing Allstate Ins. Co. v. Alamo Rent-A-Car, Inc., 137 F.3d 634, 637 (9th Cir. 1998). Moreover, this court is not required to limit itself to the question certified. See Richardson v. City & County of Honolulu, 76 Hawaiʻi 46, 53, 868 P.2d 1193, 1200 (1994) (addressing the issue of whether the City of Honolulu had authority to enact an ordinance despite the fact that the question was "not expressly placed in issue by the federal court's certified question"). Also, whether Plaintiffs have "standing" in this case is substantially related to whether they are included in the category of employees described in HRS § 481B-14, a proposition Defendants argue is constitutionally barred. Finally, the constitutionality of the statute as disputed between the parties is obviously germane to the viability of the proceeding in federal court. Thus, it is addressed.

(emphasis added). Although "tip" or "tip income" is not defined in HRS chapter 481B, the dictionary definition in this context is "a gift or a usu[ally] small sum of money tendered in payment or often in excess of prescribed or suitable payment for a service performed or anticipated." Webster's Third New Int'l Dictionary 2398 (1961).

"[T]o constitute a deprivation of due process, [the civil statute] must be 'so vague and indefinite as really to be no rule or standard at all.'" Paul v. Dep't of Transp., State of Haw., 115 Hawaiʻi 416, 431, 168 P.3d 546, 561 (2007) (quoting A.B. Small v. Am. Sugar Refining, 267 U.S. 233, 239 (1925)). "To paraphrase, uncertainty in this statute is not enough for it to be unconstitutionally vague; rather, it must be substantially incomprehensible." Id. (citation omitted). Inasmuch as the tip is a gratuity given for service to those who perform such service and the service charge is to be distributed as tip income, it is manifest that the "service charge for the sale of food or beverage services," HRS § 481B-14, is to be given to the employees who provided that service. Hence, the term "employee" cannot be reasonably construed as "allow[ing] the employer to pick any employee to receive the monies in any amount," as Defendants argue. Defendants have not demonstrated a sufficient ambiguity or potential for misunderstanding inherent in the term "employee" as it relates to the term "tip income." See also Tauese v. State, Dept. of Labor & Indus. Relations, 113 Hawaiʻi

1, 28 n.27, 147 P.3d 785, 812 n.27 (2006) ("Because this term is easily definable and allows a person of ordinary intelligence to obtain an adequate description of the prohibited conduct, the statute is not unconstitutionally vague."). Consequently, this argument is unpersuasive.

E.

Briefly summarized, Plaintiffs have alleged in their amended complaint that Defendants have violated HRS § 481B-14. HRS § 481B-4 permits all violations in chapter 481B to be brought as a UDAP and a UMOC pursuant to HRS § 480-2(d) and (e). Plaintiffs do not qualify as "consumers" to bring a UDAP action under 480-2(d), but do qualify individually as "any person" under HRS § 480-2(e), permitting them to bring a UMOC action against Defendants, provided they allege an injury to their business or property pursuant to HRS § 480-13. Plaintiffs have satisfied HRS § 480-13, which encompasses HRS chapter 480 and permits suits for money damages resulting from UMOC, by adequately pleading an economic injury.[6]

IV.

However, the majority requires that Plaintiffs allege "the nature of the competition" before they may bring a UMOC action for a violation of HRS § 481B-14 and, therefore, concludes

[6] Plaintiffs argue that they believe if the nature of the competition must be pled, they can amend their complaint. However, that would not resolve the case law in this jurisdiction with respect to the application of the term "deemed" in HRS § 481B-4.

that the amended complaint must be dismissed. The majority bases this additional requirement on four grounds: (1) the application of HRS § 480-13; (2) its interpretation of Hawaii Medical Ass'n v. Hawaii Medical Service Ass'n, 113 Hawaiʻi 77, 148 P.3d 1179 (2006) [hereinafter, "HMA"] and certain other Hawaiʻi cases, (3) the legislative history of HRS § 481B-14, and (4) federal cases addressing federal antitrust law provisions.

A.

With respect to the first ground, the majority contends that "[t]he requirement that the plaintiff allege the 'nature of the competition' in [a UMOC] claim is distinct from the requirement that a defendant's conduct constituted [a UMOC]." Majority opinion at 38. According to the majority, the necessity that Plaintiffs plead a UMOC "stems from HRS § 480-2(a), which provides that" UMOCs are unlawful. Id. The majority maintains that a plaintiff must also demonstrate that harm is "a result of actions of the defendant that negatively affect competition [] derived from HRS § 480-13(a)'s language that 'any person who is injured in the person's business or property by reason of anything forbidden or declared unlawful by this chapter . . . [m]ay sue for damages[.]" Id. at 39 (emphasis in original). The majority asserts that Plaintiffs have not met this burden.

To the contrary, Plaintiffs have met the requirements that they plead both a UMOC and an injury "by reason of anything forbidden or declared unlawful by" HRS chapter 480. Plaintiffs

have pled a UMOC in alleging that Defendants violated HRS § 481B-14 by withholding monies accrued from the service charge without notifying customers of that fact. The failure to distribute the service charge is unlawful inasmuch HRS § 481B-4 "deems" it a UMOC in violation of HRS § 480-2(e). Thus, Plaintiffs have alleged that Defendants' conduct constituted a UMOC.

Plaintiffs have also pled a resulting injury to "business or property by reason of" actions declared unlawful by HRS chapter 480. As stated previously, HRS 481B-4 specifically "deems" Defendants' alleged conduct "an unfair method of competition . . . in the conduct of any trade or commerce within the meaning of section 480-2." (Emphasis added.) In paragraphs 5, 6, 9 and in the "Wherefore" clause of the amended complaint, Plaintiffs have alleged an injury to their "business or property" in the loss of income stemming directly from Defendants' failure to distribute the entire service charge or to notify customers that they were doing so. HRS § 480-13. According to the plain language of HRS § 480-13(a), a plaintiff who has demonstrated an injury that stems directly from the unlawful UMOC is entitled to sue for money damages and injunctive relief.

Thus, there is a direct causal link between the injury to property and the acts "forbidden or declared unlawful by" HRS chapter 480 on the face of the amended complaint. As noted before, to construe the statute as requiring plaintiffs to allege

the "nature of the competition" in addition to a per se UMOC violation renders the term "deemed" superfluous.

B.

1.

As to the second ground, the majority derives from HMA the requirement that Plaintiffs allege the "nature of the competition" before they may bring a UMOC action. In HMA, a plaintiff medical group consisting of physicians had entered into an agreement with defendant Hawaiʻi Medical Service Association (HMSA), to provide medical care to HMSA plan members at reduced rates. 113 Hawaiʻi at 81, 148 P.3d at 1183. The HMA physicians alleged that HMSA had engaged in unfair methods of competition in violation of HRS § 480-2(e). Id. at 82, 148 P.3d at 1184.

HMA determined that the plaintiffs' allegations against the defendants consisted of UDAP claims, which could only be brought by consumers. However, HMA allowed plaintiffs to bring a UMOC action for claims that would also support a UDAP action, provided the plaintiffs, in addition to identifying a UMOC, also alleged how their injury stemmed from the anti-competitive act, i.e., the "nature of the competition." Id. at 111-13, 148 P.3d 1213-15. The reason for this was to preserve the distinction between unfair methods of competition, on one hand, and unfair or deceptive acts or practices that may also constitute unfair methods of competition, on the other hand. Id. Thus, HMA said that "the existence of the competition is what distinguishes a

claim of unfair or deceptive acts or practices from a claim of unfair methods of competition." Id. at 112, 148 P.3d at 1214.

According to this court,

> notwithstanding . . . our holding that the plaintiffs need not be "competitors" of, or "in competition" with, HMA, the question remains whether the nature of the competition must be sufficiently alleged. Contrary to the dissent, we conclude that it does because, in the absence of such allegations, the distinction between claims of unfair or deceptive *acts or practices* and claims of unfair methods *of competition* that are based upon such acts or practices would be lost where both claims are based on unfair and deceptive acts or practices. In other words, the existence of the competition is what distinguishes a claim of unfair or deceptive acts or practices from a claim of unfair methods of competition.

Id. at 111-12, 148 P.3d at 1213-14 (emphases in original and emphases added). Otherwise, "[t]he distinction between a claim of unfair and deceptive acts or practices and a claim of unfair methods of competition that are based upon such acts or practices would be lost[.]" Id. at 111, 148 P.3d at 1213. This motivated the majority in HMA to require allegations that "sufficiently allege unfair competition claims" based upon "conduct that would also support claims of unfair or deceptive acts or practices[.]" Id. at 111, 148 P.3d at 1213 (emphasis added). But that distinction is not controlling here.

The differentiation in HMA is wholly irrelevant under the plain language and inherent legislative intent of HRS §§ 481B-14 and 481B-4. See State v. Buch, 83 Hawaiʻi 308, 326, 926 P.2d 599, 617 (1996) ("This court derives legislative intent primarily from the language of the statute and follows the general rule that[,] in the absence of clear legislative intent

to the contrary, the plain meaning of the statute will be given effect.") (Citing State v. Akina, 73 Haw. 75, 78, 828 P.2d 269, 271 (1992).)) (Brackets omitted.) HRS § 481B-4 renders the distinction and hence, any allegations of the "nature of the competition" unnecessary inasmuch as a violation of HRS § 481B-14, by virtue of HRS § 481B-4, establishes both a UDAP and UMOC under HRS § 480-2. Hence, no allegations in the amended complaint are necessary to draw the distinction made in HMA. Even if the word "and" in HRS § 481B-4 ("unfair method of competition and unfair or deceptive act or practice" (emphasis added)) is read as "or," the result is the same. In that event the violation would qualify as either a UDAC or a UMOC.[7]

Under the facts of this case, allegations of competition are unnecessary because unlike in HMA, here the violation of HRS § 481B-4 established that the conduct, i.e., non-disclosure, was sufficient itself to constitute, i.e., be deemed, both an unfair and deceptive act or practice and unfair method of competition. In contrast, HMA did not involve conduct that the legislature had by statute deemed a per se UMOC. Rather, HMA allowed the plaintiffs to bring a UMOC action based on UDAP claims to demonstrate that anti-competitive conduct caused their injury. Hence, HMA is not determinative in this situation. Inasmuch as in the instant case a violation is deemed

[7] Obviously, as indicated supra, Plaintiffs may only bring a UMOC claim.

to be an unfair and deceptive act or practice and (or for the sake of argument, "or") an unfair method of competition, there is no requirement or need to distinguish between unfair methods of competition and unfair and deceptive acts that may also constitute unfair methods of competition.

Nevertheless, the majority maintains that the distinction between UDAP and UMOC claims is still relevant to the instant case because HMA stated that "'the existence of the competition is what distinguishes a claim of unfair or deceptive acts or practices from a claim of unfair methods of competition.'" Majority opinion at 36 n.26 (quoting HMA, 113 Hawaiʻi at 112, 148 P.3d at 1214). Thus, according to the majority, the pleading requirement of HMA "is based on the differences in the nature of the underlying causes of action." Id. at 36 n.26. With all due respect, this view is taken wholly out of context.

The circuit court in HMA had concluded that, although plaintiffs had brought their action as a UMOC, the claims were actually UDAP and, consequently, dismissed plaintiffs' action. HMA, 113 Hawaiʻi at 111, 148 P.3d at 1213. However, as noted before, this court vacated the dismissal, holding that "plaintiffs may bring claims of [UMOC] based on conduct that would also support claims of [UDAP]." Id. (emphasis added) (citation omitted). In other words, HMA's holding was that UDAP and UMOC could be treated the same, provided that plaintiffs

bringing UMOC claims also pled the nature of the competition. Thus, contrary to the majority's argument, the pleading requirement interposed between UDAP and UMOC is not "based on differences in the nature of the underlying causes of action[,]" majority opinion at 36 n.26, but is necessitated in situations where they share a commonality.

Taken at face value, a difference "in nature" between UMOC and UDAP would have prevented this court from regarding the two causes of action under the facts in HMA as interchangeable. HMA expressly focused on whether UDAP claims could also be brought as UMOC claims. Therefore, the "nature of the competition" pleading requirement was to establish that because "a claim of unfair or deceptive acts or practices" could constitute "a claim of unfair methods of competition[,]" majority opinion at 36 n.26 (citing HMA, 113 Hawaiʻi at 112, 148 P.3d at 1214), it was necessary in such circumstances that the nature of the competition be alleged.

As previously discussed, HMA simply did not involve the deeming language in HRS § 481B-4. On its face and without qualification, HRS § 481B-4 states that violations of HRS § 481B-14 can be brought both as a UMOC and a UDAP. Thus, the "distinction" thought necessary in HMA is not presented in this case. As a result, there are no "differences in the underlying causes of action" upon which the majority can premise its "pleading requirement." Because it nevertheless does so, the

majority disregards the straightforward text of HRS § 481B-4 and, consequently, gives no effect to the legislative mandate that a violation of HRS § 481B-14 is already "deemed" a violation of HRS § 480-2.

2.

The majority further relies on this court's decisions in Ai v. Frank Huff Agency, 61 Haw. 607, 607 P.2d 1304 (1980), and Robert's Hawaii School Bus, Inc. v. Laupahoehoe Transportation Co., 91 Hawaiʻi 224, 982 P.2d 853 (1999). The majority states that the "deemed" in § 481B-14 indicates the legislature "'predetermine[d]' that violations of HRS [c]hapter 481B would constitute per se unfair methods of competition for the purposes of § 480-2, and therefore a plaintiff with standing need not prove that conduct which violates HRS [chapter] 481B constitutes an unfair method of competition." Majority opinion at 42-43 (citing Ai, 61 Haw. at 616, 607 P.2d at 1311) (emphasis added). The majority thus excludes from consideration what in fact is a "standing" factor, i.e., that the violation itself establishes the negative impact on competition. HRS § 481B-4. With all due respect, the majority arrives at its position by misconstruing this court's holding in Ai and concluding that "the legislature did not determine that an injury suffered by 'any person' as a result of a violation of chapter 481B necessarily stems from the negative effect on competition caused by the violation." Majority opinion at 43-44 (emphasis in original).

According to the majority, "the legislature was not making a determination that any person injured as a result of a violation of [c]hapter 481B automatically has standing to sue pursuant to HRS §[§] 480-2 and 480-13. Instead, a private person must separately allege the nature of the competition in accordance with this court's holding in HMA." Id. at 44. Contrary to the majority's view, the holding in Ai does indeed support the conclusion of automatic standing and in that situation, HMA does not require a separate allegation regarding the nature of the competition. See discussion supra.

Ai involved the violation of HRS § 443-44(8) which "prohibit[ed] a collection agency from making any representation that an existing obligation of a debtor may be increased by the addition of attorney's fees when in fact such fees may not legally be added to the existing obligation of the debtor." 61 Haw. at 617, 607 P.2d at 1312. Furthermore, according to Ai, HRS § 443-47 established that HRS § 443-44(8) was a "per se" UMOC violation by stating that "[a] violation of this part by a collection agency shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce for the purpose of section 480-2." Id. at 615, 607 P.2d 1310-11 (emphasis added). The debtor plaintiffs in Ai alleged a per se violation of HRS § 443-44(8), claiming that the promissory note plaintiffs executed and delivered to defendant contained an illegal provision that plaintiffs would pay

attorney's fees at the rate of 33-1/3% -- above the 25% chargeable under the law if a collection suit was filed. Id.

Ai stated that HRS "§ 480-13 establishes four essential elements: (1) a violation of chapter 480; (2) injury to plaintiff's business or property resulting from such violation; (3) proof of the amount of damages; and (4) a showing that the action is in the public interest or that the defendant is a merchant." Id. at 617, 607 P.2d at 1311. Ai went on to decide that the plaintiffs had established a per se violation of the statute in that "[t]he representation that the [attorney fees] obligation of the debtor could be so increased was . . . in violation of § 443-44(8)." Id. at 618, 607 P.2d at 1312. However, Ai explained that, "[w]hile proof of a violation of chapter 480 is an essential element of an action under § 480-13, the mere existence of a violation is not sufficient ipso facto to support the action; forbidden acts cannot be relevant unless they cause private damage." Id. (citation omitted).

Ai concluded that injury under HRS § 480-13 required only a showing of economic loss. "[I]t is unnecessary for plaintiffs to allege commercial or competitive injury in order for plaintiffs to have standing under HRS § 480-13; it is sufficient that plaintiffs allege that injury occurred to personal property through a payment of money wrongfully induced." Id. at 614, 607 P.2d 1310 (citation omitted) (emphasis added). Likewise, in the instant case, a similar showing of injury to

personal property is all that is required under the same statute, HRS § 480-13. As noted before, Plaintiffs have sufficiently alleged that injury.

Ai further concluded that the fourth requirement inherent in HRS § 480-13, i.e., "a showing that the action is in the public interest[,]" had been satisfied because the plaintiffs had "supplied allegations adequate to show that such a per se violation of [§] 480-2 ha[d] occurred." Id. at 617, 607 P.2d at 1311. Thus, under Ai, "the public interest ha[d] been sufficiently made out to confer standing to plaintiffs under [HRS §] 480-13." Id. at 617, 607 P.2d at 1311. The public interest requirement is directly analogous to the majority's requirement that Plaintiffs plead the "nature of competition" inasmuch as both are aimed at addressing the anti-competitive effects of such conduct. However, contrary to the majority's position, the fact that Ai concluded that those harmed by per se violations need not show that the action is in the public interest supports the conclusion that plaintiffs harmed by a per se UMOC violation need not allege the "nature of the competition."

The majority's attempt to rebut the analogy between the "public interest" requirement in Ai and the majority's requirement that the "nature of the competition" be pled is unpersuasive. The majority states that the public interest requirement was satisfied if a plaintiff pleads an effect on competition, or the UMOC "is being employed under circumstances

which involve flagrant oppression of the weak by the strong." Majority opinion at 46 (quoting Ai, 61 Haw. at 614, 607 P.2d at 1310). However, the majority maintains that the presence of a second method of satisfying the public interest requirement, i.e., that the unfair methods employed "involve a flagrant oppression of the weak by the strong," id., undermines the analogy. But Ai expressly confirmed that the "public interest" was satisfied by showing a negative effect on competition. Ai, 61 Haw. at 614, 607 P.2d at 1310 ("To justify filing a complaint the public interest must be specific and substantial. Often it is so, because the unfair method employed threatens the existence of present or potential competition."). Indeed, the majority concedes that the "public interest" requirement is satisfied by alleging a negative effect on competition.

Consequently, that there is an additional means of satisfying the "public interest" in no way affects the analogy. In Ai, this court recognized that either a negative impact on competition or "flagrant oppression of the weak" would satisfy the "public interest" requirement. Id. at 614-15, 607 P.2d at 1310. In other words, the "nature of the competition" prong was encompassed by the "public interest" requirement. Inasmuch as the negative impact on competition described in Ai and encompassed in the public interest requirement is conceptually the same impact that the majority indicates must be pled in the instant case, the requirements are analogous.

However, in Ai, this court concluded that it did not need to determine whether there had been a negative impact on competition or "flagrant oppression of the weak" because there was a per se violation of the statute. Id. at 615, 607 P.2d at 1310-11. As Ai explained, HRS § 443-44(8) established a prohibition against adding interest on attorney's fees in contracts. In that connection, HRS § 443-47 stated that a violation of HRS § 443-44(8) "shall constitute" a UMOC or UDAP. Thus, Ai concluded that an allegation of a violation of HRS § 443-44(8) was sufficient to confer standing upon plaintiffs without any further showing of an effect on the "public interest" by means of a negative impact on competition or oppression of the weak. Id. Moreover, the analysis in Ai made clear that, similar to allegations of an negative impact on competition, a plaintiff need not plead "flagrant oppression of the weak by the strong" to have standing in cases where there was a per se UMOC violation. Id. at 614, 607 P.2d at 1310.

None of the cases the majority cites compels a different conclusion inasmuch as those cases do not involve per se UMOC violations. In T.W. Electrical Service, Inc., v. Pacific Electical Contractors Ass'n, 809 F.2d 626, 636 (1987), the court of appeals for the ninth circuit concluded that plaintiff-contractor's UMOC claim under HRS § 480-2 against a defendant-trade association did not have merit because the defendant was not in competition with the plaintiff. The ninth circuit took

note of the "flagrant oppression" prong as satisfying the "public interest" requirement, but did not apply that standard or in any way contradict this court's holding in Ai. In Ailetcher v. Beneficial Finance Co. of Hawaii, 2 Haw. App. 301, 306, 632 P.2d 1071, 1076 (1981), the ICA overturned the directed verdict against plaintiff-business owner who had alleged an unfair practice in violation of HRS § 480-2 against the defendant. The plaintiff had argued that defendant had ordered a halt on all financing transactions at his car dealership, resulting in harm and loss to plaintiff's business. Id. at 303-04, 632 P.2d at 1974. The ICA applied the "flagrant oppression" standard, concluding that the circuit court erred in granting a directed verdict for defendant because plaintiff had presented facts sufficient to support a jury verdict that defendant's acts amounted to a "flagrant oppression of the weak by the strong." Id. at 304-05, 632 P.2d at 1075. However, the ICA expressly distinguished its holding from Ai inasmuch as there was "no statutory violation involved in [that] case." Id. at 306, 632 P.2d at 1076. In other words, Ailetcher did not involve a per se violation of the statute like that in Ai.

The majority also cites Federal Trade Commission v. Klesner, 280 U.S. 19 (1929), which Ai cited for the proposition that the public interest was satisfied by a showing of a "flagrant oppression of the weak by the strong." Id. at 30. In Klesner, the United States Supreme Court concluded that the

"flagrant oppression" standard did not apply to the facts before it. Klesner involved an action brought by the FTC against a business owner to enjoin him from using the name "shade shop" "as an identification of the business conducted by him" because that trade name belonged to another business. Id. at 22. The Supreme Court dismissed the FTC's action. Inasmuch as the case involved a purely private dispute between individuals with no discernable effect on competition, it did not satisfy the public interest requirement. Id. at 30. Additionally, Klesner did not involve "flagrant oppression of the weak by the strong" or any of the issues presented in the instant case. Thus, Klesner does not contradict Ai's holding that an injury to the public interest need not be alleged in per se violations of HRS § 480-2. As a result, the majority's citation to these cases is inapposite inasmuch as the cases are not inconsistent with the central holding of Ai, i.e., that a per se violation of the statute obviates the need to plead a negative impact on competition or oppressive conduct.

The majority's attempt to draw distinctions between effects on "public interest" and "competition" aside, the majority plainly contravenes this court's decision in Ai regarding per se UDAP and UMOC violations despite the presence of nearly identical provisions. Similar to the "deemed" language in HRS § 481B-4, the language in HRS § 443-47 at issue in Ai stated that "[a] violation of this part by a collection agency shall

constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce for the purpose of section 480-2." Ai, 61 Haw. at 610 n.5, 607 P.2d at 1308 n.5 (emphasis added). In Ai, the plaintiffs thus established a per se violation of § HRS § 443-44(8), which the legislature had commanded "shall constitute" a violation of 480-2. Id. As noted before, a similar mandate for a violation of HRS § 481B-14 appears in the instant case under HRS § 481B-4. Consequently, as Ai concluded, "[s]ince plaintiffs herein have supplied allegations adequate to show that such a per se violation of § 480-2 has occurred, we accordingly find that the public interest has been sufficiently made out to confer standing to plaintiffs under § 480-13." Id. at 617, 607 P.2d at 1311. Likewise, Plaintiffs here have alleged, via HRS §§ 481B-14 and 481B-4, a "per se violation of HRS § 480-2 sufficient[] to confer standing to [P]laintiffs under [HRS] § 480-13." Id.

Based on the foregoing, the rationale in Ai applies to the instant case. Nonetheless, the majority construes the nearly identical language regarding per se violations to mean that a plaintiff does not need to prove that an act is a UMOC, but must still prove that the UMOC causing plaintiff's injury negatively impacts "competition." If Ai had adopted the majority's construction of "shall constitute," then this court in Ai would have had to require that the plaintiffs additionally allege that the UMOC negatively impacted the "public interest." That

obviously was not the case. Rather, Ai unequivocally held that an act that "constitutes" a UMOC violation was "all the law require[d]" to satisfy the "public interest" requirement. Id. at 615, 607 P.2d at 1310-11 (emphasis added). There is no basis for distinguishing the analysis and outcome in Ai from the instant case.

The less stringent requirement for alleging an injury in cases of per se UMOC violations in Ai also distinguishes this court's holding in Robert's Hawaii. Robert's Hawaii stated that the third requirement of HRS § 480-13, i.e., "proof of the amount of damages," Ai, 61 Haw. at 617, 607 P.2d at 1311, sets forth a different requirement than merely injury to "business or property." "Also known as the 'fact of damage' requirement, the antitrust plaintiff need not prove with particularity the full scope of profits that might have been earned. Instead, it requires a showing, with some particularity, of actual damage caused by anticompetitive conduct that the antitrust laws were intended to prevent." Robert's Hawaii, 91 Hawaiʻi at 254 n.31, 982 P.2d at 883 n.31 (citation omitted) (emphasis added). However, as stated previously, the legislature has deemed the violation of HRS chapter 481B in the instant case to constitute a UMOC. Contrastingly, Robert's Hawaii did not involve a per se violation of the statute.

C.

With respect to the third ground, the majority's statement that "the legislative history of HRS § 481B-4 does not reflect an intent to eliminate the causation requirement of HRS § 480-13(a)," majority opinion at 40, incorrectly characterizes the importance of the legislature's findings. Similarly, the majority's statement that the legislative history does not reflect an intent "to eliminate the causation requirements of HRS § 480-13," id., misconstrues the issue. As noted previously, the majority's rendering of "the causation requirement of HRS § 480-13" includes proof that the Plaintiffs' injury stems from the anti-competitive effect of the UMOC. However, in enacting HRS § 481B-14, the legislature emphasized the importance of protecting employees, and through HRS § 481B-4, deemed the violation of the statute a UMOC. The plain language of HRS § 481B-14 evinces the legislature's rationale that if the entire service charge is not distributed to employees, customers should be notified that an additional gratuity would be necessary if their intent was to reward the employees serving them.

From its inception, HRS § 481B-14 related to a perceived injury to employees. Act 16, which became HRS § 481B-14, was entitled "A Bill for an Act Relating to Wages and Tips of Employees." 2000 Haw. Sess. Laws Act 16, § 1 at 21 (emphasis added). "In construing an act, the title may be resorted to for the purpose of ascertaining the meaning of the act." Spears v.

Honda, 51 Haw. 1, 16-17, 449 P.2d 130, 139 (1968). This court ay also consider the title of a statute in determining the group of individuals primarily covered by the statute. See Moyle v. Y & Y Hyup Shin, Corp., 118 Hawaiʻi 385, 412, 191 P.3d 1062, 1089 (2008) (Acoba, J., concurring) ("As to the purpose of the [Uniform Contribution Among Tortfeasors Act], which is also pertinent to the construction of its language, the title of the statute--the Uniform Contribution Among Tortfeasors Act--clearly indicates to whom it is applicable.") (Emphasis added.)) (Citation omitted.) In that regard, the legislature stated that its reason for enacting HRS § 481B-14 was "to require hotels and restaurants that apply a service charge for food or beverage services, not distributed to employees as tip income, to advise customers that the service charge is being used to pay for costs or expenses other than wages and tips of employees." 2000 Haw. Sess. Laws Act 16, § 1 at 22 (emphases added).

The majority's own discussion of the Committee on Commerce and Consumer Protection's findings emphasized that "moneys collected as a service charge are not always distributed to the employees as gratuities and are sometimes used to pay the employer's administrative costs." S. Stand. Comm. Rep. No. 3077, in 2000 Senate Journal, at 1287. The majority notes that when employers withhold a portion of the service charge, "the employee does not receive the money intended as a gratuity by the customer, and the customer is misled into believing that the

employee has been rewarded for providing good service." Majority opinion at 26 (citing S. Stand. Comm. Rep. No. 3077, in 2000 Senate Journal, at 1286-87) (emphasis in original). But the result of the customers being misled was that they may "not leave additional tips for service employees." H. Stand. Comm. Rep. No. 479-00, in 2000 House Journal, at 1155 (emphasis added). In other words, the deceptive act practiced on the customer resulted in an injury to the employee because the customer's misapprehension of how the employee was compensated meant that the employee was deprived of an intended gratuity. The legislative history does not evince a concern with an injury to a consumer's personal, family, or household purchases, or investment. See HRS § 480-1.

As the legislature explained, "the problem lies with consumers who may not leave tips for the service employees, mistakenly thinking that the service charges they paid were tips, so they did not leave additional tips for service employees." H. Stand. Comm. Rep. No. 479-00, in 2000 House Journal, at 1155 (emphases added). In light of this history, it would be incongruous to assert, as the majority does, that in addition to alleging injury for an already per se violation of HRS § 480-2(e), Plaintiffs must also allege "actual damage caused by anticompetitive conduct." Majority opinion at 39.

The majority further asserts that the legislature's placement of HRS § 481B-14 "within Hawaii's consumer protection

statutes" does not indicate "that the legislature intended to eliminate the causation requirements," majority opinion at 43, that Plaintiffs "allege how [Defendants'] conduct will negatively affect competition in order to recover an [UMOC] claim[,]" id. at 36. As noted above, the legislature deemed a violation of HRS § 481B-14 a UMOC under HRS § 480-2, actionable under HRS § 480-13. The only "causation" requirement necessary to satisfy HRS § 480-13 is that Plaintiffs' amended complaint allege facts sufficient to establish Defendants' liability under HRS § 481B-14. Plaintiffs have satisfied the necessary causation requirement because they have alleged a causal connection between their injury and the violation of HRS § 481B-14. The majority's additional requirement that Plaintiffs allege that their injury stems from the anti-competitive effect of the UMOC is not present in the plain language of HRS §§ 480-13 or 481B-4 and not expressed in the legislative history.

D.

With respect to the fourth ground, the majority relies on federal court interpretations of federal statutes. The majority notes that, although HRS § 480-2 is based on Section 5 of the FTCA, the difference between the two statutes is that the former contains a private right of action, whereas the latter vests enforcement with the FTC. Majority opinion at 51 (citing HMA, 113 Hawaiʻi at 109, 148 P.3d at 1211). Thus, according to the majority, "federal interpretations of the FTCA, although

helpful in determining whether a defendant's actions constitute [a UDAP] or [a UMOC], are of limited relevance in interpreting the standing requirements applicable to the private right of action provided by HRS § 480-2(e)." Id. at 53. The majority also points out that HRS § 480-13 is derived from section 4 of the Clayton Act, which states that "any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor[.]" 15 U.S.C. § 15(a). The majority argues that, as a result, this court must follow federal case law requiring plaintiffs show "antitrust injury," "which is to say injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." Atlantic Richfield Co. v. USA Petroleum Co., 495 U.S. 328, 334, (1990) (citing Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 429 U.S. 477, 489 (1977)).

According to the majority, "[t]he antitrust requirement ensures that a plaintiff can recover only if the loss stems from a competition-reducing aspect or effect of defendant's behavior." Majority opinion at 56 (citing Atlantic Richfield, 429 U.S. at 344) (emphasis in original). However, as discussed previously, the "deemed" provision of HRS § 481B-14 obviates the need for Plaintiffs to allege a "competition reducing" effect inasmuch as such behavior is deemed to be anti-competitive. When an act is deemed to constitute a UMOC, the plaintiff is left to allege an injury that stems directly from that UMOC and damages. Thus,

requiring that Plaintiffs demonstrate their injury stems from the anti-competitive effect of HRS § 481B-14 renders the term "deemed" in HRS § 481B-4 superfluous. Furthermore, as noted before, the legislative history of 481B-14 demonstrates that the legislature was not simply concerned with the anti-competitive effect of the conduct on consumers and businesses; but, rather, took into account the direct effect of such conduct on employees. See S. Stand. Comm. Rep. No. 3077, in 2000 Senate Journal, at 1286-87. As such, the federal requirement that plaintiffs demonstrate an antitrust injury even in cases of per se violations is not controlling.

Additionally, as the majority recognizes, "Atlantic Richfield involved a judicially recognized per se antitrust violation, whereas the per se violation of Hawaiʻi antitrust law in this case is established by HRS § 481B-14." Majority opinion at 56 n.33. However, the majority is incorrect in asserting that "this distinction has no bearing on the underlying analysis for the antitrust injury requirement in the circumstances here[.]" Id. Inasmuch as the legislative intent evinces concerns for economic injury to employees, this court must give due consideration to those concerns, especially since federal precedent does not contain any analogous provision to HRS §§ 481B-4 and 481B-14 or reflect the same concerns. The absence in federal case law and statutes of the considerations that

motivated the legislature in enacting HRS § 481B-14 is manifest grounds for distinguishing such case law from the instant case.

E.

Finally, under our pleading rules anti-competitive conduct is readily apparent on the face of the amended complaint.[8] As Plaintiffs state:

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[8] Plaintiffs' amended complaint reiterated in pertinent part, states as follows:

> **I. INTRODUCTION**
>
> . . . As set forth below, the [D]efendants have imposed a service charge on the sale of certain food and beverage . . . but have failed to distribute the total proceeds of the service charge to these employees as tip income, as required by Hawaii law. This conduct violates [HRS §] 481B-14 and is actionable under [§§] 481B-4, 480-2, and 480-13. . . .
>
> . . . .
>
> **III. PARTIES**
>
> . . . .
>
> 2. . . . This class is brought pursuant to Rule 23 of the Federal Rules of Civil Procedure and [HRS §] 480-13. . . .
>
> . . . .
>
> **IV. FACTS**
>
> 4. For banquets, events, meetings and in other instances, the [D]efendants add a preset service charge to customers' bills for food and beverage provided at the hotels.
>
> 5. However, the [D]efendants do not remit the total proceeds of the service charge as tip income to the employees who serve the food and beverages.
>
> 6. Instead, the [D]efendants have a policy and practice of retaining for themselves a portion of these service charges (or using it to pay managers or other non-tipped employees who do not serve food and beverages).
>
> 7. The [D]efendants do not disclose to the hotel's customers that the service charges are not remitted in full to the employees who serve the food and beverages.
>
> . . . .
>
> **V. CLASS ACTION ALLEGATIONS**
>
> 9. This section is properly maintainable as a class action pursuant to [HRS §] 480-13 and Rule 23 of the Federal Rules of Civil Procedure. . . .
>
> . . . .
>
> **COUNT I**
> **([HRS §§] 481B-14, 481B-4, and 480-2)**
>
> The action of the [D]efendants as set forth above are in violation of [HRS §] 481B-14. Pursuant to Section

(continued...)

> Indeed, it is obvious that if one hotel obeys the laws and remits the entire service charge to the employees serving at the banquet and another hotel/competitor skims the service charge and keeps 4-5% for itself without disclosure, the hotel acting unlawfully can undercut its stated price for the banquet knowing that it will be receiving improper gains from the misleading description of its service charge. This is clearly a form of unfair competition.

(Emphases added.) Thus, not only is the majority's additional pleading requirement wrong in light of HRS § 481B-4, it contravenes this court's notice pleading case law concerning liberal construction of pleadings. See Henderson v. Prof'l Coatings Corp., 72 Haw. 387, 399, 819 P.2d 84, 92 (1991) ("Pleadings should not be construed technically when determining what the pleader is attempting to set forth but should be construed liberally so as to do substantial justice.") (Citation omitted.); Perry v. Planning Comm'n, 62 Haw. 666, 685, 619 P.2d 95, 108 (1980) ("Modern judicial pleading has been characterized as 'simplified notice pleading.' Its function is to give opposing parties 'fair notice of what the . . . claim is and the grounds upon which it rests.'" (Quoting Conley v. Gibson, 355 U.S. 41, 47 (1957).)).

Furthermore, the majority's suggestion that an effect on competition is not related by the amended complaint is

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[8](...continued)

> 481B-4, such violation constitutes an unfair method of competition or unfair and deceptive act or practice within the meaning of Section 480-2. Section 480-2(e) permits an action based on such unfair methods of competition to be brought in the appropriate court, and a class action for such violation is permitted and authorized by Section 480-13 and Rule 23 of the Federal Rules of Civil Procedure.

(Boldfaced font in original.) (Emphases added.)

incorrect inasmuch as illegal competition may reasonably be inferred from the facts and the claims alleged. See supra note 8. Defendants facing allegations that they have engaged in methods of competition that are unfair, as described in the amended complaint, are, by dint of the allegations, given sufficient notice of the nature of the competition affected. Courts construing such allegations are required to view them in the light most favorable to the plaintiff. See Jou v. Dai-Tokyo Royal State Ins. Co., 116 Hawaiʻi 159, 164, 172 P.3d 471, 476 (2007) ("We must therefore view a plaintiff's complaint in a light most favorable to him or her in order to determine whether the allegations contained therein could warrant relief under any alternative theory." (Quoting In re Estate of Rogers, 103 Hawaiʻi 275, 280-81, 81 P.3d 1190, 1195-96 (2003).)). As noted before, dismissal is appropriate only when it "appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief." Rogers, 103 Hawaiʻi at 280, 81 P.3d at 1195 (citations omitted). Viewing the amended complaint in the light most favorable to the Plaintiffs, it cannot reasonably be concluded that under the amended complaint Plaintiffs will be unable to "prove no set of facts," id. (emphasis added), i.e., a causal connection between the injury plaintiffs suffered and the UMOC, as their case progresses. Hence, requiring Plaintiffs to allege more is also inconsistent with this court's jurisprudence.

V.

Tracing the statutory language relevant to an action based on UMOC, Plaintiffs have set forth facts in their amended complaint sufficient to sustain their action against Defendants and are not required to allege the nature of the competition. Therefore, answering the certified question in the affirmative, I would hold that Plaintiffs' amended complaint should not be dismissed and that Defendants' motion to dismiss should be denied.