

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

SECOND ORIGINAL
COUNTY

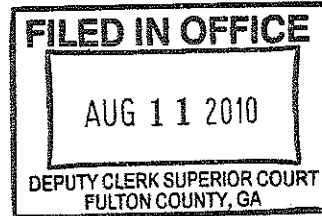
HUBERT HOLLAND, JR.,
ANNIE GLORIA MORRIS,
LA MAR SMITH,
DEMETRIUS B. WILLIAMS,
ANTHONY NELSON,
RONNEL FINLEY, and
TIFFANY HOLLIS, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

LEVY PREMIUM FOODSERVICE
LIMITED PARTNERSHIP d/b/a
ATLANTA SPORTS CATERING, and
COMPASS GROUP NORTH
AMERICA d/b/a LEVY
RESTAURANTS,

Defendants.



CASE NO: 2010CV189548

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

COME NOW, Plaintiffs Hubert Holland, Jr., Annie Gloria Morris, La Mar Smith, Demetrius B. Williams, Anthony Nelson, Ronnel Finley, and Tiffany Hollis ("Plaintiffs"), individually and on behalf of all others similarly situated, by and through their attorneys, allege the following upon information and belief except as to those allegations concerning Plaintiffs, which are alleged upon personal knowledge. Plaintiffs, individually and on behalf of all others similarly situated, through their attorneys, hereby file and serve this class action Complaint against Levy Premium Foodservice Limited Partnership d/b/a Atlanta Sports Catering ("Levy

Premium”) and Compass Group North America (“Compass”) d/b/a Levy Restaurants in Atlanta, Georgia (collectively, “Defendants” or “Levy”) and show this Court as follows:

NATURE AND PURPOSE

1.

This is a class action brought on behalf of a class of persons currently and formerly employed as Suite Attendants (defined below) at Philips Arena (“Philips Arena” or the “Arena”), and The Georgia Dome (the “Georgia Dome” or the “Dome”) in Atlanta, Georgia, and at the Atlanta Motor Speedway (the “Speedway”) in Hampton, Georgia (collectively the “Venues”). Since at least January 2006, Levy has been the exclusive provider of food and beverages for the suites at the Venues. This action arises out of Levy’s wrongful failure to pay Plaintiffs and the Class (defined below) the 20% service charge (the “Service Charge”) Levy automatically adds to each bill for food and beverages purchased by suite owners and patrons at the hundreds of events held each year from 2006 to present at these Venues.

The Service Charge is applicable to the cost of all food and beverages, including alcoholic beverages. Levy has publicly represented to the Suite Attendants, and to suite owners and patrons that the Service Charge is paid to the “suite employees” in the form of compensation. Levy has failed to pay the Service Charge to the Suite Attendants and instead retains this money for its own benefit.

THE PARTIES

2.

Plaintiff Hubert Holland, Jr., is an individual residing in Fayetteville, Georgia. Mr. Holland worked as a suite attendant from at least January, 2006 to December 2009 at Philips

Arena, the Georgia Dome and the Speedway. Mr. Holland worked for Levy from at least January, 2006 to December 2009 at Philips Arena, the Georgia Dome and the Speedway

3.

Plaintiff Annie Gloria Morris is an individual residing in College Park, Georgia. Ms. Morris worked as a suite attendant (formerly called a captain) from at least January, 2000 to February, 2010 at Philips Arena and the Georgia Dome. Ms. Morris worked for Levy from January 2006 to February, 2010 at Philips Arena and the Georgia Dome.

4.

Plaintiff La Mar Smith is an individual residing in Fulton County, Georgia. Mr. Smith worked as a suite attendant from June, 2001 to August, 2009 at the Georgia Dome. Mr. Smith worked for Levy from June, 2001 to August, 2009 at the Georgia Dome.

5.

Plaintiff Demetrius B. Williams is an individual residing in Fulton County, Georgia. Mr. Williams worked as a suite attendant from February 1, 2001 to November 2008 at Philips Arena, the Georgia Dome and the Speedway. Mr. Williams worked for Levy from February 1, 2001 to November 2008 at Philips Arena, the Georgia Dome and the Speedway.

6.

Plaintiff Anthony Nelson is an individual residing in Fulton County, Georgia. Mr. Nelson worked as a suite attendant from August, 2008 to December, 2009 at Philips Arena and the Georgia Dome. Mr. Nelson worked for Levy from August, 2008 to December, 2009 at Philips Arena and the Georgia Dome.

7.

Plaintiff Ronnel Finley is an individual residing in Clayton County, Georgia. Mr. Finley worked as a suite attendant from November, 2007 to January, 2010 at Philips Arena, the Georgia Dome and the Speedway. Mr. Finley worked for Levy from November, 2007 to January, 2010 at Philips Arena, the Georgia Dome and the Speedway.

8.

Plaintiff Tiffany Hollis is an individual residing in Clayton County, Georgia. Ms. Hollis worked as a suite attendant from November, 2007 to January, 2010 at Philips Arena, the Georgia Dome and the Speedway. Ms. Hollis worked for Levy from November, 2007 to January, 2010 at Philips Arena, the Georgia Dome and the Speedway.

9.

Plaintiffs and the members of the class were at all relevant times suite attendants ("Suite Attendants") at Philips Arena, or the Georgia Dome or the Speedway or all three. Plaintiffs and the Class were all employed by Levy.

10.

Defendant Levy Premium is an Illinois limited partnership with its principal place of business as 980 N. Michigan Avenue, #400, Chicago, Illinois 60611. Levy GP Corporation is Levy Premium's general partner and is also located at 980 N. Michigan Avenue, Chicago, Illinois. Levy Premium is a wholly owned subsidiary of Charlotte-based defendant Compass, a food management company with more than \$8.8 billion in revenues. Levy is part of Compass' Sports & Entertainment Group.

11.

Defendant Compass d/b/a Levy Restaurants is the world's leading food management company. Compass Group North America's parent company, UK-based Compass Group PLC, ("Compass PLC") had worldwide revenues of \$20.2 billion in 2007. Compass operates in nine core market sectors: Corporate Dining, Vending, Healthcare, Sports & Entertainment, Education, Restaurants, Remote Sites, Strategic Partners and Cultural & Specialty Dining. In April 2006, Compass PLC purchased the remaining 51% of Levy it did not already own for \$250 million.

Levy Restaurants is the foodservice arm of Compass at sports facilities, entertainment venues and convention centers. Levy Restaurants has the exclusive contract with the Venues for dining concessions and food service in the over 200 suites at these venues. Levy Restaurants or its predecessor company, MGR, LLC, has provided food services at Philips Arena since at least 1999 and at the Georgia Dome since at least 2002. Levy Restaurants is located at Philips Arena, One Philips Drive, Atlanta, GA 30303. Levy Restaurants is also located at The Georgia Dome, at One Georgia Dome, Atlanta, GA 30313. Levy Restaurants is also located at the Speedway at 1500 Highways 19 & 41, Hampton, GA 30228.

12.

Defendants may properly be served with process at Corporation Process Company, through an authorized agent or at their place of business at Philips Arena and the Georgia Dome. At all relevant times, Defendants were the employer of Plaintiffs and the Class.

JURISDICTION AND VENUE

13.

This Court has subject matter jurisdiction over this action.

14.

Venue is proper in this Court. As Defendants maintain offices in Fulton County and Plaintiffs are or were employed at Defendants' Philips Arena and/or the Georgia Dome and/or the Speedway locations, venue is properly laid in this Court.

STATEMENT OF FACTS

15.

Philips Arena

Philips Arena is home to the Atlanta Thrashers of the National Hockey League, the Atlanta Hawks of the National Basketball Association, and the Atlanta Dream of the Women's National Basketball Association. It is owned and operated by Atlanta Spirit, LLC, which entity also owns the Hawks and Thrashers.

Philips Arena seats over 18,729 for sports, concerts and other events. The Arena includes 102 luxury suites and 2,893 club seats. The luxury suites can accommodate 20 to 100 people. Companies such as Home Depot, Turner Broadcasting, Delta Airlines, Inc., UPS, BellSouth Corp., and Ticketmaster utilize the 102 luxury suites at the Arena. Philips Arena has been recently ranked as a top venue in Pollstar magazine's Top 100 Worldwide Arena Venues, and, for the first half of the 2009 calendar year, was named as the No. 1 concert and events venue in the United States, based on attendance figures.

The Georgia Dome

The Georgia Dome is home to the Atlanta Falcons football team. The Georgia Dome also hosts Monster Jam and Supercross events. The Georgia Dome has super suites and luxury suites. There are eight super suites, which can each host up to 100 guests and there are 164 luxury suites.

The Speedway

The Speedway hosts two NASCAR Sprint Cup race weekends annually and other racing events. It has 120 Luxury Suites, in which suite holders can pre-order from an extensive restaurant-style menu.

16.

Plaintiffs and the Class are persons currently and formerly employed by Levy as Suite Attendants at Philips Arena and/or the Georgia Dome and/or the Speedway. The Suite Attendants are the only suite employees who work in the suites at these venues.

17.

The Suite Attendants perform all tasks necessary to make experience in the suites at these venues the best it can be. Levy describes the role of the Suite Attendant as "our liaison to the suite holders."

18.

Levy further describes the role of the Suite Attendant as follows:

Your goal is to make every single one of our guest's experiences wonderful. You are here to provide our guests with the finest quality service, food and beverage and to create a fun and friendly atmosphere for them. It is essential to smile and go out of your way to help our guests. **KILL THEM WITH KINDNESS!!!!!!**

19.

The Suite Attendants take care of all of the food and beverage needs of suites guest before and during an event. During an event, the Suite Attendants have direct and personal contact with suite owners and guests. The Suite Attendants perform all tasks necessary to set up food and drinks before an event, serve during the event and clean up suites after an event.

20.

Prior to an event, each Suite Attendant is responsible for checking all food and beverage orders for each of his/her assigned suites, setting up all chafers, setting out food, condiments and snacks, stocking the refrigerators with beverages and checking all supplies in the suites. A single suite attendant may be responsible for as many as ten suites during a single event.

21.

After an event, the Suite Attendant is responsible for cleaning the suites, removing all food, returning items to pantry, restocking the refrigerators and wiping down all counters and sinks. The Suite Attendants are the only "suite employees" employed by Levy.

22.

When Levy contracts with suite owners and/or suite patrons to provide food and beverages at the Arena or the Georgia Dome or the Speedway, it charges them the Service Charge. Defendants have led their customers to believe that the Service Charge is paid to the suite employees.

23.

Plaintiffs and the Class were aware of the terms of Levy's contract with suite owners and patrons and, in particular of the Service Charge.

24.

Plaintiffs and the Class were aware that Levy represented to the suite owners and patrons that the Service Charge was to be paid to suite employees.

25.

In its 2009 Luxury Suite Menu for Philips Arena, Levy states that "a 20% service charge ...will be added to all orders." The 2009 Suite Menu for the Georgia Dome similarly states that

“a 20% service charge ...will be added to all orders.” Receipts provided to the suite patrons lists an amount equal to the Service Charge for all food and drink.

26.

When the Service Charge was questioned by a patron, Plaintiffs and the Class were instructed by Levy to tell patrons that the Service Charge enabled Levy to hire experienced personnel and pay them higher wages. Levy directed the Suite Attendants to advise patrons that the Service Charge was given to suite employees in the form of compensation.

27.

Levy strictly forbid Suite Attendants from soliciting tips. Suite Attendants could be fired if they solicited tips.

28.

Levy retained for itself the Service Charge paid and given directly to Levy for the benefit of Plaintiffs and the Class.

29.

Defendants' statements regarding the Service Charge are designed to create the impression that the entire Service Charge is being paid to the suite employees. Levy has also posted signs in suites at Philips Arena advising suite patrons that the Service Charge is paid to the suite employees. These signs advise patrons that there is no need to tip unless they want to “extend a personal gratuity.”

30.

When suite owners and patrons call Levy to reserve suites and/or place food and drink orders, customers were told that the Service Charge would be paid to the suite employees. Suite owners were also told this at the pre-season food tasting event at the Georgia Dome.

31.

During the Class Period (defined below) Levy posted in the Arena and/or disseminated to customers a document entitled "Service Charge/Tipping Policy" which stated:

As a convenience to our guests, we have included this policy to clarify any confusion regarding the service charge and tipping policy in The Suites at Philips Arena:

The service charge, which is on your bill, is shared in the form of higher wages for all Suite employees. It helps our company attract a high quality employee from the set up crew to the clean up crew and everyone in between. All these employees are critical to making your experience memorable.

If you feel that you (sic) Suite Attendant has provided a service that is of the highest quality then please feel free to extend a personal gratuity.

Tip solicitation is a violation of our policies.

32.

At the end of an event, Suite Attendants presented credit card bills to the appropriate suite owners/patrons for signature. Pursuant to its Service Charge/Tipping Policy, any discussion by the Suite Attendants with the owners/patrons regarding tips was strictly forbidden. The policy was designed to create the impression in the minds of suite owners/patrons that the Suite Attendants were receiving the Service Charge and therefore there was no need to add a gratuity to the bill. This conclusion was reinforced by Levy's own words: a patron can "extend a personal gratuity" if the service provided was "of the highest quality" but there was no need to do so because the Service Charge was the compensation for service provided by the Suite Attendants.

33.

The written policy disseminated by Levy to Suite Attendants constituted a contractual promise. The Suite Attendants were aware of the policy. The only performance required from

the Suite Attendants was to work as a Suite Attendant for Levy at one of the Venues. By working and continuing to work as a Suite Attendant at the Venues, the Suite Attendants accepted Levy's promise to pay them the Service Charge. The Suite Attendants had a reasonable expectation that they would receive the Service Charge.

34.

Levy's customers were aware of the Service Charge and paid it. The Suite Attendants were the only suite employees and performed all work in the suites from set up, to service and clean up. The Suite Attendants were entitled to receive the Service Charge. The suite owners/patrons believed that the Suite Attendants were receiving the Service Charge.

35.

The policy drafted by or on behalf of Levy, failed to disclose that the Service Charge, or any part of it, was being paid to Levy. Nevertheless, Levy unilaterally retained all or virtually all of the Service Charge and shared none or virtually none of it with Suite Attendants.

36.

During the Class Period (defined below) the Service Charge amounted to millions of dollars of compensation.

37.

Despite the policy, the compensation received by Plaintiffs and the Class did not include the Service Charges collected by Levy.

38.

For the 2007/2008 season at the Georgia Dome, Levy hired non-profit groups whose members worked as Suite Attendants at the Venues, among other jobs.

39.

In May 2009, Levy terminated approximately 70 employees, including many if not all of the Suite Attendants, and replaced them with members of non-profit groups who performed the job of the terminated employees. The non-profit group members were given little or minimal training to work as suite attendants.

40.

Levy paid non-profit groups between \$300 and \$1,500 per event based on the number of group members who worked a particular event. Levy also paid the non-profit group a commission on all the food and drinks ordered and sold on event day but not for anything pre-ordered by the customer.

41.

Though Levy has replaced most of its Suite Attendants with non-profit groups, it continues to charge its suite owners and guests the Service Charge and represents that this charge helps Levy retain experienced Suite Attendants and pay them higher wages. As it always did, Levy pockets the Service Charge in its entirety.

42.

CLASS ALLEGATIONS

Plaintiffs bring this action as a class action pursuant to Section 9-11-23 of the Official Code of Georgia on behalf of a class (the "Class"), consisting of:

All persons who work or worked as Suite Attendants at Philips Arena and/or the Georgia Dome and/or the Speedway from January 1, 2006, through the date the Court certifies the class (the "Class Period). Excluded from the Class are members of the non-profit groups who worked at these Venues for the benefit of his/her group.

43.

NUMEROSITY

The Class is so numerous that joinder of all members is impracticable. The exact number of Class members is unknown to Plaintiffs at this time but it is believed to be hundreds of persons. The identity of the Class members is known to Defendants and is contained in the employment records that Levy was required to create and maintain as a matter of state and federal law.

44.

TYPICALITY

Plaintiffs' claims are typical of the claims of the other members of the Class as Plaintiffs and all other members of the Class sustained damages arising out of Defendants' conduct as complained of herein. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in complex class action litigation. The Class members work, or have worked, for Defendants as Suite Attendants at the Venues and have sustained similar types of damages as a result of Defendants' failure to pay the Suite Attendants the Service Charges.

Plaintiffs have no interests that are contrary to or in conflict with those of the other members of the Class.

Plaintiffs know of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

COMMONALITY

Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members. Among the questions of law and fact common to the Class are:

- a. Whether Levy breached its contract with the Plaintiffs and the Class by failing to pay them the Service Charges;
- b. Whether Plaintiffs and the Class are third party beneficiaries of the contract between defendants and the suite owners/patrons and whether defendants breached such contract by failing to pay the Service Charge to Suite Attendants;
- c. Whether Defendants improperly retained the Service Charge paid by suite owners and/or patrons at the Venues; and
- d. Whether the members of the Class have sustained damages and, if so, the proper measure of such damages.

SUPERIORITY

A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for Plaintiffs and Class members to individually seek redress for the wrongful conduct alleged. Individual class members lack the financial resources to conduct a thorough examination of Defendants' practices and to prosecute vigorously a lawsuit against Defendants to recover such damages.

Class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments regarding Defendants' practices.

CLAIMS FOR RELIEF

COUNT ONE: BREACH OF UNILATERAL CONTRACT

47.

Plaintiffs incorporate herein by reference the preceding paragraphs of this Complaint as if fully set forth herein.

48.

The Class and Class Period are defined as all persons who work or worked as Suite Attendants at the Venues from January 1, 2006, through the date the Court certifies the Class. Excluded from the Class are members of the non-profit groups who worked at these Venues for the benefit of his/her group.

49.

Levy entered into a unilateral contract with each of the Plaintiffs and Class members. The terms of the contract, contained in a policy of which all Suite Attendants were aware, constituted a promise by Levy to the Suite Attendants they would receive the Service Charge.

50.

Defendants breached that contract by failing to pay Plaintiffs and the Class the Service Charge.

51.

As a direct and proximate result of defendants' breach of contract, Plaintiffs and the members of the Class have suffered damages, for which defendants are liable. Defendants are

liable to Plaintiffs and members of the Class for the Service Charge collected by Levy during the Class Period, plus prejudgment interest and any other relief ordered by the Court.

COUNT TWO: BREACH OF CONTRACT

52.

Plaintiffs incorporate herein by reference the preceding paragraphs of this Complaint as if fully set forth herein.

53.

The Class and Class Period are defined as all persons who work or worked as Suite Attendants at the Venues from January 1, 2006, through the date the Court certifies the Class. Excluded from the Class are members of the non-profit groups who worked at these Venues for the benefit of his/her group.

54

Defendant entered into contracts with suite owners and patrons. Every such contract required the payment of the Service Charge. Plaintiffs and the Class were the intended third-party beneficiaries of such contracts.

55.

Defendants have also posted signs in suites informing owners/patrons that the Service Charge was “shared” with suite employees only. Neither the contract nor the posting ever stated that Levy would “share” or retain any portion of the Service Charge. The signs stated that there was no need to tip unless a patron wished to “extend a personal gratuity.”

56.

Based on the contracts, suite owners and patrons agreed to and did pay the Service Charge.

57.

Suite owners and patrons reasonably believed that the Service Charge was paid as a gratuity to Plaintiffs and the Class.

58.

Defendants breached the contracts by retaining some or all of the Service Charge collected.

59.

As third party beneficiaries of Levy's contracts with the suite owners and patrons, Plaintiffs on behalf of themselves and the Class assert this breach of contract claim against Defendants for the Service Charge collected by Levy.

60.

Defendants are liable to Plaintiffs and members of the Class for the Service Charge collected by Levy during the Class Period, plus prejudgment interest and any other relief ordered by the Court. All conditions precedent to bringing this Count have been completed, performed and/or waived.

COUNT THREE: UNJUST ENRICHMENT/QUANTUM MERUIT

61.

Plaintiffs incorporate herein by reference the preceding paragraphs of this Complaint as if fully set forth herein.

62.

The Class and Class Period are defined as all persons who work or worked as Suite Attendants at the Venues from January 1, 2006, through the date the Court certifies the Class.

Excluded from the Class are members of the non-profit groups who worked at these Venues for the benefit of his/her group.

63.

Defendant devised and implemented a plan to increase their profits by failing to pay Plaintiffs and the Class the Service Charge.

64.

Defendants retained for their own benefit the Service Charge remitted on every bill for every event during the Class Period contrary to the stated policy that Levy paid the Service Charge to the Suite Attendants and contrary to the fundamental principles of justice, equity and good conscience.

65.

Accordingly, Plaintiffs and the Class are entitled to judgment in an amount equal to the benefits unjustly retained by Defendants during the Class Period, plus prejudgment interest and any other relief ordered by the Court. All conditions precedent to bringing this Count have been completed, performed and/or waived.

COUNT FOUR: CONVERSION

66.

Plaintiffs incorporate herein by reference the preceding paragraphs of this Complaint as if fully set forth herein.

67.

The Class and Class Period are defined as all persons who work or worked as Suite Attendants at the Venues from January 1, 2006, through the date the Court certifies the Class.

Excluded from the Class are members of the non-profit groups who worked at these Venues for the benefit of his/her group.

68.

The Service Charge was intended by suite owners and patrons to be paid to Plaintiffs and Class members as compensation for their services.

69.

Defendants did not pay plaintiffs and the Class the Service Charge and retained the monies in their own accounts. The monies in Defendants' accounts are under the Defendants' dominion and control, to the exclusion of Plaintiffs.

70.

Accordingly, Defendants are liable to Plaintiffs and the Class for the Service Charge it retained during the Class Period, plus prejudgment interest and any other relief ordered by the Court. All conditions precedent to bringing this Count have been completed, performed and/or waived.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs on behalf of themselves and the Class, pray for judgment against Defendants as follows:

- (a) Determining that this action may proceed and be maintained as a class action;
- (b) Certifying Plaintiffs as the class representatives for the Class and designating Plaintiffs' counsel as Class counsel;
- (c) An order imposing a constructive trust upon Defendants to compel them to transfer to Plaintiffs and the class members monies that have been wrongfully withheld by Defendants from Plaintiffs and the Class;

- (d) That this Court enjoin Defendants permanently from withholding the Service Charge from Suite Attendants;
- (e) That Plaintiffs and the Class have judgment against Defendants on all counts, in an amount to be determined at trial;
- (f) That a jury trial be held as to all issues in this Complaint;
- (g) Awarding Plaintiffs and the Class attorneys' fees and costs of suit to the extent permitted by law; and
- (h) For all such other and further relief as is deemed just and proper by this Court.

Respectfully submitted this 11th of August, 2010.

By:



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