

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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JANINE MENDEZ, WALTER SANCHEZ, MARIA DE :
LA CRUZ, DANNIELLE NIBLACK, JILL BELLO,
LASHAWN JONES, MELISSA ALVIAR, CORINN : **Index No.:**
KUHN, KAREN ROGERS, ANTHONY PUJIA, MIGUEL
LOPEZ, CLAIRE KERRIGAN, YAHINA MENA, : **SUMMONS**
CHANTAL LAMOUR, LUBI RUIZ, GIOVANNA
BROWN, MITCHELL BECKER, STEVEN DEL ORBE, : Date Filed:
JESSICA BURGOS, PATRICIA MARINELLO, DEON
BRITTON, ANTHONY MASTROGIOVANNI, JENNIFER : Plaintiffs designate
COTTER, THYAIS FERNANDEZ, LEA ZATZ- : Bronx County as the
GILMAN, SILVIA MEDFORD, KEVIN MCSHANE, : Place of trial.
DAWN MARIE NOLAN, SHAMIR ARZENO, EVELYN
RYAN, DANIEL CARR, and TUJUAN GARNER, : Basis of venue is Defendants'
: Place of Business

Plaintiffs, :

-against- :

LEGENDS HOSPITALITY, LLC and NEW YORK :
YANKEES PARTNERSHIP, :

Defendants. :

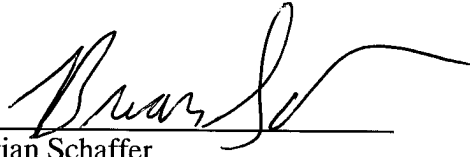
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To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to answer the Complaint in this action and to serve a copy of your Answer, or, if the Complaint is not served with this Summons, to serve a Notice of Appearance, on Plaintiffs' attorney within twenty (20) days after the service of this Summons, exclusive of the day of service (or within thirty [30] days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of failure to appear or answer, judgment will be taken against you by default of the relief demanded in the Complaint.

Dated: New York, New York
September 20, 2012

Yours, etc.,



Brian Schaffer

FITAPELLI & SCHAFFER, LLP

Attorneys for Plaintiffs

475 Park Avenue South, 12th Floor

New York, New York 10016

Telephone: (212) 300-0375

Defendants' Addresses:

Legends Hospitality, LLC
634 Frelinghuysen Avenue
Newark, New Jersey 07114

New York Yankees Partnership
Yankee Stadium
One East 161st Street
Bronx, New York 10451

NATURE OF THE ACTION

1. This lawsuit seeks to recover misappropriated mandatory charges for Plaintiffs, “In-Seat Servers” who have been employed at Yankee Stadium in New York.

2. Yankee Stadium is one of the most iconic venues in sports history, playing host to the New York Yankees, who have captured 27 World Series titles, tops of any professional sports franchise. The New York Yankees were recently named the most valuable franchise in all of sports by Forbes Magazine, with a total enterprise value of \$5.1 billion. In 2009, the Yankees opened the New Yankee Stadium. The Yankees are owned by New York Yankees Partnership (“Yankees Partnership”).

3. To coincide with the opening of the New Yankee Stadium, two of the most powerful brands in American sports – the New York Yankees and the Dallas Cowboys – came together alongside Goldman Sachs to form Legends Hospitality, LLC (“Legends”). Since that time, the stadium hospitality company has grown to become the exclusive premium service provider of concessions, catering, and merchandising services at Yankee Stadium. In 2009, Legends helped the Yankees bring in record breaking revenue for the new stadium, and also received the Five Star Diamond Award from the American Academy of Hospitality Services. Currently, Legends generates approximately \$25 million in annual operating income.

4. At all times relevant, Defendants have provided in-seat service at Yankee Stadium to patrons with field level seating. The service has been offered from one hour prior to the start of the scheduled first pitch until the bottom of the seventh inning, and permits guests to order and receive food and beverages at their seats.

5. At all relevant times, when field level patrons arrive at their seats, menus have been located in the cup-holder directly in front of their seat. The menus offer food and beverages, such as beer and hot dogs.

6. In-Seat Servers are responsible for facilitating customer orders and providing customer service.

7. In-Seat Servers are paid a shift-rate plus a 4% or 6% commission on their sales. This commission was exclusive of the additional mandatory charges paid by a customer.

8. From the start of the 2009 season until on or about June 7, 2011, the menu stated that a 20% service charge would be added to the listed prices, and that “Additional gratuity is at your discretion.”

9. From on or about June 8, 2011 to the end of the 2011 baseball season, the menu stated that a 20% Supplemental Charge will be added to the total bill. The menu explained the Supplemental Charge as follows:

- The 20% Supplemental Charge appears as one amount on your bill, but represents both an Administrative Fee and a Gratuity. The amount of the Supplemental Charge is determined pre-tax, however, the Administrative Fee is taxable, while the Gratuity is not.
- 4-6% of your total bill before tax will be added as a Gratuity, depending on your server’s seniority. This amount will be distributed directly to your server. You are welcome to leave an additional gratuity for your server at your discretion. Any amounts added on the “tip” line of your guest check will be distributed directly to your server as an additional gratuity.
- 14-16% of your total bill before tax will be added as an Administrative Fee. This amount is **not a gratuity**. Rather, it is retained by Legends to help defray administrative costs.

10. Beginning in the 2012 baseball season, Defendants removed the mandatory 20% charge from the menu.

11. From the start of the 2009 season to the end of the 2011 baseball season, Defendants misappropriated gratuities from Plaintiffs by retaining the 20% mandatory charges paid by patrons in addition to the cost of food and beverages. In fact, prior to the end of the 2011 baseball season, Plaintiffs had not received **any** of the 20% mandatory charges.

12. This practice of retaining mandatory charges intended for employees was held by the New York Court of Appeals in *Samiento v. World Yacht Inc.*, 10 N.Y.3d 70 (2008), to be unlawful. The Court of Appeals in *Samiento v. World Yacht Inc.* stated: “We conclude that a charge that is not a voluntary payment may be a ‘charge purported to be a gratuity’ within the meaning of the statute. *Id.* at 74. This ruling applies retroactively. *Ramirez v. Mansions Catering, Inc.*, 905 N.Y.S.2d 148 (1st Dep’t 2010).

13. The *Samiento v. World Yacht Inc.* case relied on New York Labor Law (“NYLL”), Article 6, § 196-d, which requires that:

No employer or his agent or an officer or agent of any corporation, or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee.

14. New York’s law further explains that “A charge purported to be a gratuity must be distributed in full as gratuities to the service employees or food service workers who provided the service.” 12 N.Y.C.R.R. § 146-2.18(a). Moreover, “[t]here shall be a rebuttable presumption that any charge in addition to charges for food, beverage ...including but not limited to any charge for “service” or “food service” is a charge purported to be a gratuity.” 12 N.Y.C.R.R. § 146-2.18(b). Additionally, “The employer has the burden of demonstrating, by clear and convincing evidence, that the notification was sufficient to ensure that a reasonable customer would understand that such charge was not purported to be a gratuity.” 12 N.Y.C.R.R. § 146-2.19(b). Here, since the service and supplemental charges were added automatically and were not voluntary payments, they are purported gratuities that should have been distributed in full to Plaintiffs.

JURISDICTION AND VENUE

15. The Court has jurisdiction over this matter pursuant to NYLL, Article 6, §§ 190 *et seq.* This Court has jurisdiction over the parties pursuant to C.P.L.R. § 503(c) because Bronx County is where Defendants' place of business is located.

THE PARTIES

Plaintiffs

16. Plaintiff Janine Mendez has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

17. Plaintiff Walter Sanchez has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

18. Plaintiff Maria De La Cruz has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

19. Plaintiff Dannielle Niblack has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

20. Plaintiff Jill Bello has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

21. Plaintiff Lashawn Jones has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

22. Plaintiff Melissa Alviar has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

23. Plaintiff Corinn Kuhn has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2010 to the present.

24. Plaintiff Karen Rogers has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

25. Plaintiff Anthony Pujia has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

26. Plaintiff Miguel Lopez has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

27. Plaintiff Claire Kerrigan has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

28. Plaintiff Yahina Mena has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

29. Plaintiff Chantal Lamour has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

30. Plaintiff Lubi Ruiz has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

31. Plaintiff Giovanna Brown has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2010 to the present.

32. Plaintiff Mitchell Becker has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2010 to the present.

33. Plaintiff Steven Del Orbe has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

34. Plaintiff Jessica Burgos has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

35. Plaintiff Patricia Marinello has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

36. Plaintiff Deon Britton has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

37. Plaintiff Anthony Mastrogiovanni has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

38. Plaintiff Jennifer Cotter has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

39. Plaintiff Thyais Fernandez has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2010 to the present.

40. Plaintiff Lea Zatz-Gilman has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

41. Plaintiff Silvia Medford has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

42. Plaintiff Kevin McShane has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

43. Plaintiff Dawn Marie Nolan was employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to 2011.

44. Plaintiff Shamir Arzeno was employed by Defendants as an In-Seat Server at Yankee Stadium in or around 2009.

45. Plaintiff Evelyn Ryan has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

46. Plaintiff Daniel Carr has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

47. Plaintiff Tujan Garner has been employed by Defendants as an In-Seat Server at Yankee Stadium from in or around 2009 to the present.

Defendants

Legends Hospitality, LLC

48. Legends is a Delaware Limited Liability Company registered to do business in New York.

49. Upon information and belief, Legends' headquarters is located at 634 Frelinghuysen Avenue, Newark, New Jersey 07114.

50. Legends is a covered employer within the meaning of the NYLL, and has employed Plaintiffs within the meaning of the NYLL at all times relevant.

51. At all times relevant, Legends has maintained control, oversight, and direction over Plaintiffs, including policies governing the allocation of mandatory charges and other employment practices that applied to them.

52. At all times relevant, Legends has been the entity printed on Plaintiffs' paychecks and Form W-2's.

New York Yankees Partnership

53. Yankees Partnership is an Ohio Limited Partnership registered to do business in New York.

54. Upon information and belief, Yankees Partnership's headquarters is located at Yankee Stadium, One East 161st Street, Bronx, New York 10451.

55. Pursuant to a contract between Yankees Partnership and Legends, Yankees Partnership would have to approve menu items, prices, and mandatory charges. The contract further states that Yankees Partnership would receive a portion of the mandatory charges.

56. Yankees Partnership is also liable for violations of NYLL, Article 6, § 196-d because they demanded or accepted, directly or indirectly, or retained a portion of the mandatory charges paid by customers at Yankee Stadium that were purported to be gratuities for Plaintiffs.

COMMON FACTUAL ALLEGATIONS

57. From the start of the 2009 baseball season to the end of the 2011 season, it was Defendants' policy and pattern or practice to deny Plaintiffs mandatory charges and/or gratuities, in violation of the NYLL.

58. Defendants were aware, or should have been aware, that Plaintiffs were entitled to receive mandatory charges and/or gratuities paid by customers that were intended for Plaintiffs, and which customers reasonably believed to be gratuities for Plaintiffs.

59. Notwithstanding Plaintiffs' entitlement to receive these mandatory charges and/or gratuities, Defendants retained mandatory charges and/or gratuities to avoid paying Plaintiffs their lawfully earned gratuities and/or wages.

60. As part of their regular business practices, Defendants intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the NYLL by willfully retaining portions of the mandatory charges and/or gratuities earned by Plaintiffs, and which Defendants' customers reasonably believed would be gratuities paid to Plaintiffs.

61. Upon information and belief, Defendants' unlawful conduct, as described in this Complaint, has been pursuant to a corporate policy or practice of minimizing labor costs and denying employees compensation by knowingly violating the NYLL.

62. Defendants' unlawful conduct has been widespread, repeated, and consistent.

FIRST CAUSE OF ACTION
New York Labor Law – Unlawful Retention of Mandatory Charges

63. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

64. At all times relevant, Plaintiffs have been employees within the meaning of NYLL, Article 6, §§ 190 *et seq.*, and any supporting New York State Department of Labor regulations.

65. At all times relevant, Legends has been an employer within the meaning of NYLL, Article 6, §§ 190 *et seq.*, and any supporting New York State Department of Labor regulations.

66. At all times relevant, Yankees Partnership demanded or accepted, directly or indirectly, or retained a portion of the mandatory charges paid by customers at Yankee Stadium that were purported to be gratuities for Plaintiffs.

67. At all times relevant, Defendants have been agents, or officers of a corporation within the meaning of NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor regulations.

68. Defendants unlawfully retained mandatory charges earned by Plaintiffs in violation of NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations.

69. By Defendants' knowing or intentional demand for, acceptance of, and/or retention of the mandatory charges paid by customers when ordering food and beverages from Defendants, when such customers were led to believe that such mandatory charges would be paid to Plaintiffs, Defendants have willfully violated NYLL, Article 6, § 196-d and the supporting New York State Department of Labor Regulations.

70. Due to Defendants' violations of the NYLL, Plaintiffs are entitled to recover from Defendants their unpaid wages, liquidated damages as provided for by the NYLL, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in their favor against Defendants and grant the following relief:

- A. Unpaid wages, pursuant to NYLL, Article 6, § 196-d, and the supporting New York State Department of Labor Regulations;
- B. Liquidated damages pursuant to the NYLL;
- C. Pre-judgment and post judgment interest, as provided by law;
- D. Reasonable attorneys' fees and costs of the action, including expert fees; and
- E. Such other relief as the Court may deem just and proper.

Dated: New York, New York
September 20, 2012

Respectfully submitted,



Brian S. Schaffer

FITAPELLI & SCHAFFER, LLP
475 Park Avenue South, 12th Floor
New York, New York 10016
Telephone: (212) 300-0375
Attorneys for Plaintiffs

