

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
GERARD G. WALL,

Plaintiff,

-against-

12th AVENUE – NEW YORK, LLC
d/b/a LARRY FLYNT'S HUSTLER CLUB,

Defendant
-----X

TO THE ABOVE NAME DEFENDANT:

Index #

Plaintiffs designate **10100283**
New York County as the
place of trial; the basis
of the venue is
Defendant's place of
Business

SUMMONS
Jury Trial Demanded

FILED
JAN 11 2010
COUNTY CLERK'S OFFICE
NEW YORK

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 the summons, to serve a notice of appearance, on the Plaintiff's attorneys 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 your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint. A copy of the Summons and Complaint will be filed with the Supreme Court of the State of New York, County of New York, 100 Centre Street, New York, New York 10007.

Dated: New York, New York
January 7, 2010

Leonard Zack & Associates

By: _____

Leonard Zack Esq.,
Attorneys for Plaintiff
405 Park Avenue
10th Floor
New York, NY 10022
(212) 754-4050

Defendants' addresses:

12th AVENUE – NEW YORK, LLC, 641 West 51st Street, New York, New York
10019.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
GERARD G. WALL,

Plaintiff,

Index #

-against-

VERIFIED COMPLAINT

12TH AVENUE – NEW YORK, LLC
d/b/a LARRY FLYNT'S HUSTLER CLUB,

Defendant.

Jury Trial Demanded

-----X

Plaintiff, GERARD G. WALL by his attorneys, Leonard Zack & Associates respectfully shows to this court and alleges:

1. At all times relevant hereto, Plaintiff GERARD G. WALL was and still is a resident of Wilmington, Delaware.

2. Upon information and belief, at all relevant times, Defendant 12th AVENUE – NEW YORK, LLC is a domestic corporation, authorized to do business in the State of New York and has its principal place of business located at 641 West 51st Street, New York, New York 10019.

3. Upon information and belief, at all relevant times, Defendant 12th AVENUE – NEW YORK, LLC was doing business as LARRY FLYNT'S HUSTLER CLUB.

4. Upon information and belief, at all times hereinafter mentioned, Defendant LARRY FLYNT'S HUSTLER CLUB owns, operates and manages an adult entertainment establishment which sells, serves and provides alcoholic beverages to the general public and is located at 41 West 51st Street, New York, New York 10019 (the "premises").

5. On Friday, December 12, 2008, Plaintiff WALL entered the premises at about 8:30 p.m.

6. When Plaintiff WALL arrived at the premises, he was seated at the bar area within the premises and was sold, served and provided with two alcoholic beverages by Defendant, its agents, servants and/or employees.

7. At the aforementioned time and place, he was approached by a dancer who invited him to have a private lap dance in a separate room from the bar area.

8. After he was brought into the designated room, he was approached by a gentleman who advised him that the private lap dance would cost \$300.

9. At no time did Plaintiff willfully submit his Discover card to the Defendant.

10. Plaintiff submitted his American Express card for a \$300 charge. He did not approve any other charges.

11. Plaintiff was aware that his wallet containing his credit cards at all times relevant hereto was in his pocket; however, when he looked for his wallet the following morning, he found it in his knapsack.

12. Plaintiff has no recollection of what transpired after he was led from the bar area into the private room.

13. At some point while Plaintiff was in the private room, one of the Defendant's employees removed Plaintiff's wallet and took out his Discover and American Express credit cards and proceeded to swipe said cards several times with exceedingly high charges unbeknownst to the Plaintiff.

14. In addition to swiping the Plaintiff's Discovery and American Express cards, an employee of Defendant forcibly took Plaintiff's thumb print multiple times.

15. After the two aforementioned credit cards were swiped multiple times, they were returned to the Plaintiff's wallet and reinserted back into the knapsack.

16. Somewhere in the vicinity of 10:00 p.m., an employee of the Defendant woke up the Plaintiff and told him they had arranged to drive him home.

17. Plaintiff later recalls waking up in a maroon SUV automobile being driven to his home by an unidentified white male.

18. When Plaintiff awoke the next day and checked his wallet, he discovered the remaining \$80.00 in cash he had at the Defendant's premises was gone from the wallet.

19. During the time Plaintiff was on Defendant's premises, he distinctly recalls only consuming two alcoholic beverages; however, he felt his senses became severely impaired which was quite unusual for him. Knowing that the Plaintiff could not comprehend his surroundings, Defendant, its agents, servants and/or employees apparently continued to supply the Plaintiff with alcoholic beverages and/or some other type of drug substance throughout the evening which rendered him unable to sign credit card charges.

20. Pursuant to supplying Mr. Wall with the alcoholic beverages and other alleged services, Defendant, its agents, servants and/or employees further disregarded and took advantage of his intoxicated state, and resulting mental impairment, and continually charged his two credit cards in Plaintiff's possession.

21. Plaintiff has absolutely no recollection of what transpired once he left the bar area and entered the private room.

22. At the conclusion of the Plaintiff's stay on the premises, Defendant 12th AVENUE – NEW YORK LLC d/b/a LARRY FLYNT'S HUSTLER CLUB caused the Plaintiff's Discover and American Express credit cards to be charged an aggregate amount of \$21,620.60.

23. The two credit card (Discover and American Express) statements which Plaintiff received on which these charges appear only reflect a general total amount billed and do not contain an itemization as to what the exact services provided by the Defendant represent.

24. Defendant refused Mr. Wall's repeated requests to provide him with a more detailed statement as to what services he allegedly purchased and Defendant's employees, servants and/or agents did not explain to him what had actually transpired during the night of December 12, 2008.

AS AND FOR A FIRST CAUSE OF ACTION
BY PLAINTIFF GERARD G. WALL AGAINST
DEFENDANT
(Undue Advantage)

25. Plaintiff WALL repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" to "24" inclusive, of this complaint as if more fully set forth and at length therein.

26. Defendant cannot in good conscience retain the payments received pursuant to the charges made to the two credit cards (Discover and American Express) and equity demands that Plaintiff be entitled to recover the full amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) charged to his accounts.

27. By reason of Defendant's wrongful and outrageous conduct, Plaintiff has been damaged in the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) together with legal interest thereon.

AS AND FOR A SECOND CAUSE OF ACTION
BY PLAINTIFF GERARD G. WALL AGAINST
DEFENDANT
(Unjust Enrichment)

28. Plaintiff WALL repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" to "27" inclusive, of this complaint as if more fully set forth and at length therein.

29. The two credit cards (Discovery and American Express) were charged a total of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) allegedly for, among other things, the provision to Plaintiff of

alcoholic beverages and other services throughout the course of the evening of December 12, 2008 by Defendant, its agents, servants and/or employees.

30. Plaintiff did not receive Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) worth of alcoholic beverages and/or other services throughout the course of the evening.

31. Plaintiff was in such a state of intoxication and impairment that he did not possess the requisite mental capacity to approve these charges.

32. By way of the foregoing, Defendant has been and continues to be unjustly enriched.

33. By reason of Defendant's wrongful and outrageous conduct, Plaintiff has been damaged in the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) together with legal interest thereon.

AS AND FOR A THIRD CAUSE OF ACTION
BY PLAINTIFF GERARD G. WALL AGAINST
DEFENDANT
(Conversion)

34. Plaintiff WALL repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" to "33" inclusive, of this complaint as if more fully set forth and at length therein.

35. Defendant 12th AVENUE – NEW YORK LLC d/b/a LARRY FLYNT'S HUSTLER CLUB, its agents, servants and/or employees, without lawfully cognizant authorization from Plaintiff exercised dominion, control and ownership over property rightfully belonging to Plaintiff.

36. By reason of Defendant's wrongful and outrageous conduct, Plaintiff has been damaged in the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) together with legal interest thereon.

AS AND FOR A FOURTH CAUSE OF ACTION
BY PLAINTIFF GERARD G. WALL AGAINST
DEFENDANT
(Fraud)

37. Plaintiff WALL repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" to "36" inclusive, of this complaint as if more fully set forth and at length therein.

38. On or about December 12, 2008, at the Defendant's establishment located at 641 West 51st Street, New York, New York 10019, Defendant's employees, agents and/or servants falsely, fraudulently, actually or implicitly stated and represented to Plaintiff GERARD G. WALL that:

- a. The invoices they presented to him for services rendered by their establishment accurately and truly represented the value of the services actually rendered to Plaintiff.
- b. The invoices they presented to him for alcoholic beverages consumed accurately and truly represented the cost of the beverages actually consumed by Plaintiff.
- c. The invoices they presented to him for services rendered by their establishment completely, totally and accurately accounted for the amounts Plaintiff GERARD G. WALL owed to their establishment.
- d. The two credit cards (Discover and American Express) owned by the Plaintiff would be charged only for the value of the services actually rendered.
- e. The credit cards owned by the Plaintiff would be charged only for the alcoholic beverages actually consumed.

39. The representations and statements made by Defendant, its employees, agents and/or servants were false. The true facts were as follows:

- a. Defendant by its employees and/or servants knew or should have known that the invoices presented to Plaintiff GERARD G. WALL for services rendered to him did not accurately and truly represent the value of the services actually rendered by the Defendant. However, Defendant fraudulently stated that the invoices were true and correct.

- b. Defendant by its employees, agents and/or servants knew or should have known that the invoices presented to Plaintiff for alcoholic beverages consumed by him did not accurately and truly represent the value of the alcoholic beverages consumed by him. However, Defendant fraudulently stated that the invoices were true and correct.

- c. Defendant by its employees, agent and/or servants knew or should have known that Plaintiff's credit cards would be charged for services not rendered to him and for alcoholic beverages not consumed by the Plaintiff and that additional charges would be made to Plaintiff's credit cards without his knowledge or consent. Defendant fraudulently charged Plaintiff's Discover and American Express accounts for an aggregate amount of Twenty One Thousand Six Hundred

Twenty Dollars and Sixty Cents (\$21,620.60) without the benefit of his knowledge or approval.

40. Defendant 12th AVENUE – NEW YORK LLC d/b/a LARRY FLYNT'S HUSTLER CLUB by its employees, agents and/or servants knew that the representations made to Plaintiff were false and fraudulent when they made them and these representations were made with the intent to deceive and defraud Plaintiff GERARD G. WALL.

41. At the time the representations were made, Plaintiff did not know the truth, believed the representations to be true, relied on them and was, as a result of same, induced to sign the various credit card receipts.

42. As a result of the fraudulent representations made by Defendant, its employees, agents and/or servants, Plaintiff GERARD G. WALL'S two credit cards were charged without his knowledge or authorization and was thereby damaged in the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) together with legal interest.

AS AND FOR A FIFTH CAUSE OF ACTION
BY PLAINTIFF GERARD G. WALL AGAINST
DEFENDANT
(Intentional Infliction of Emotional Distress)

43. Plaintiff WALL repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" to "42" inclusive, of this complaint as if more fully set forth and at length therein.

44. On or about December 12, 2008, Defendant by its employees, agents and/or servants intoxicated Plaintiff with the purpose of charging his Discover and American Express credit cards for invoices, allegedly for the provision of alcoholic beverages and other various services with grossly improper and incorrect amounts knowing that Plaintiff GERARD G. WALL would not have the requisite mental capacity to authorize the transactions and dispute them at that time.

45. Said events of December 12, 2008 have caused considerable hardship on the Plaintiff including severe and permanent emotional distress.

46. The Defendant's intentional actions were done in a manner beyond the bounds of decency tolerated by our society.

47. The actions of Defendant have caused continual and prolonged mental and/or emotional distress for the Plaintiff GERARD G. WALL.

48. Such actions have been committed with knowledge of the dangers to the Plaintiff's emotional health.

49. Such actions have been committed with knowledge of the dangers to Plaintiff's distress.

50. Upon information and belief, as a result of Defendant's conduct, the Plaintiff has suffered severe emotional disturbance.

WHEREFORE, Plaintiff GERARD G. WALL demands:

- a) On the First Cause of Action, judgment in favor of the Plaintiff GERARD G. WALL for the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) with legal interest from December 12, 2008.
- b) On the Second Cause of Action, judgment in favor of the Plaintiff GERARD G. WALL for the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) with legal interest from December 12, 2008.
- c) On the Third Cause of Action, judgment in favor of the Plaintiff GERARD G. WALL for the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) with legal interest from December 12, 2008.

- d) On the Fourth Cause of Action, judgment in favor of the Plaintiff GERARD G. WALL for the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) with legal interest from December 12, 2008.

- e) On the Fifth Cause of Action, judgment in favor of the Plaintiff GERARD G. WALL for the amount of Twenty One Thousand Six Hundred Twenty Dollars and Sixty Cents (\$21,620.60) with legal interest from December 12, 2008.

- f) Punitive damages in an amount as this honorable Court may deem just and equitable.

- g) Such further and other relief as this Court may deem just and equitable.

Dated: New York, New York
January 7, 2010

Yours, etc.

LEONARD ZACK & ASSOCIATES

By



Leonard Zack, Esq.
Attorneys for Plaintiff
405 Park Avenue
10th Floor
New York, NY 10022
(212) 754-4050

GERARD G. WALL,

Plaintiff,

-against-

12th AVENUE - NEW YORK, LLC
d/b/a LARRY FLYNT'S HUSTLER CLUB,

Defendant.

SUMMONS AND VERIFIED COMPLAINT

LEONARD ZACK & ASSOCIATES

Attorneys for Plaintiff

405 Park Avenue
10th Floor
New York, New York 10022
(212) 754-4050

COUNTY CLERKS OFFICE
NEW YORK

JAN 11 2010

FILED

16100283

To

Service of a copy of the within is hereby admitted.

Dated: _____

UNITED
JAN 11 2010

Attorney(s) for _____