

Litigation Trend: Hyatt Hit With Automatic-Gratuuity Class Action in Miami Federal Court

The multimillion-dollar suit against Hyatt Corp. and its subsidiaries is part of a larger trend of hotels facing litigation over gratuity or service charges in violation of deceptive trade practice statutes.

*By Michael A. Mora
October 22, 2020*

An American multinational hospitality company was slapped with a class-action lawsuit on Wednesday evening in federal court in Miami.

And the multimillion-dollar suit against Hyatt Corp. and its subsidiaries, HT-Miami Beach and The Confidante Miami Beach, is part of a larger trend of hotels facing litigation over gratuity or service charges that allegedly violate deceptive trade practice statutes, after a recent Eleventh Circuit Court of Appeal ruling.

Harley S. Tropin, a partner at Kozyak Tropin & Throckmorton in Coral Gables who is not involved in the litigation, said the putative class action has larger implications, because many states have unfair trade practice statutes similar to Florida's.

"These class actions are going to do exactly as the class action device was designed to do, which is to prevent deceptive practices," Tropin said. "And without somebody filing a class action and addressing this, Hyatt would be able to do it with impunity."

The case stemmed from a hotel guest named Laura Germak, who is represented by attorney David M. Marco of Chicago according to court filings. Germak ordered multiple meals at restaurants in the Confidante through a QR

code, which brought an electronic version of the restaurant's menu on her smartphone by using the device's camera.

Germak ordered food and drinks from the menu on her smartphone, according to the complaint. While her check had "20% SVC CHG," Germak said she did not see any notice on the restaurant's menu she reviewed that an automatic gratuity or service charge of any amount would be added to her check.

Germak claimed she was unlawfully charged an automatic, mandatory gratuity of around 20%. Her lawsuit seeks class-action status to represent the interests of other class members who purchased food or drinks within the last four years at one of Hyatt's 60 hotel properties in the sunshine state.

Now, the proposed class action lawsuit will go before U.S. District Judge Cecilia M. Altonaga.

In the lawsuit, Germak cited the Florida statute concerning "notification of automatic gratuity charge," which stated that all public food service establishments that apply automatic gratuity "shall include on the food menu and on the face of the bill provided to the customer notice" that it is included.

Margaret C. Egan, general counsel for Hyatt, did not respond to a request for comment.

Tropin said the litigation against Hyatt goes back to a recent Eleventh Circuit Court of Appeals decision in *Fox v. Ritz-Carlton Hotel Co.*, which is the "father of the complaint."

There, the Eleventh Circuit reversed a U.S. District Court ruling that the class action involving automatic gratuity should not be brought because the plaintiff did not have the standing to sue the restaurant or the hotel. Instead, the Eleventh Circuit ruled that, if the practice and the injuries are the same across all the Ritz-Carlton hotels, then the plaintiff could sue the multinational luxury hotel chain.

"The same thing is being applied here in Hyatt because the plaintiff who ate at one or two or three of the restaurants, shouldn't need to get 49 plaintiffs eating at each individual Hyatt restaurant in order to get a class action," Tropin said. "That's one of the key things from the Eleventh Circuit in the Ritz-Carlton case."