

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

SCOTT LEVY, and CHRISTOPHER	:	
KLUCSARITS, individually and on behalf of	:	
all other similarly situated individuals,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	NO. 3:08CV1289(PCD)
	:	
WORLD WRESTLING ENTERTAINMENT,	:	
INC. and WORLD WRESTLING	:	
ENTERTAINMENT INC., in its capacity as	:	
Plan Administrator of the WORLD WRESTLING	:	
ENTERTAINMENT, INC. 401(K) PLAN AND	:	
THE WORLD WRESTLING	:	
ENTERTAINMENT, INC. GROUP INSURANCE	:	
PLAN	:	
Defendant.	:	MARCH 10, 2009

**PROPOSED  
AMENDED COMPLAINT**

**INTRODUCTION**

Plaintiffs Scott Levy and Christopher Klucsarits, bring this action, individually and on behalf of all other persons similarly situated, pursuant to the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, and state law, to recover unpaid compensation and employment benefits due them under ERISA and non-ERISA benefit and compensation plans and programs maintained by defendant World Wrestling Entertainment, Inc. for the benefit of its employees.

## **I. JURISDICTION**

1. The jurisdiction of this Court is invoked pursuant to 29 U.S.C. § 1132(e)(1) (“ERISA”) and this Court’s supplemental jurisdiction over plaintiff’s state court claims pursuant to 28 U.S.C. § 1367. Venue is proper in this District pursuant to 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b) in that the relevant employee benefit plans were administered in this District.

## **II. THE PARTIES**

2. Plaintiff Scott Levy is a resident of the State of Georgia.

3. Plaintiff Christopher is a resident of the State of New York.

4. Defendant World Wrestling Entertainment, Inc. [“WWE”] is a corporation organized pursuant to the laws of the State of Delaware with its principal place of business in Stamford, Connecticut, and, on information and belief, is a successor corporation to World Wrestling Federation Entertainment, Inc. Defendant WWE is, further, the Plan Administrator of the following ERISA plans maintained by defendant WWE for the benefit of its employees:

a. 04-2693383-002 (401(k) Plan)

b. 04-2693383-501 (Group Insurance Plan)

## **III. STATEMENT OF FACTS**

5. At all times relevant herein, defendant WWE was an integrated media and entertainment company engaged in the recruitment, training and development of wrestlers to perform in organized, staged, and broadcasted wrestling events. Defendant WWE is the world’s dominant promoter of professional wrestling in which matches between wrestlers are organized

in accordance with scripted storylines, and the outcomes of these matches are predetermined to enhance the attendant drama of the storylines.

6. Plaintiffs Scott Levy and Christopher Klucsarits were employed by defendant WWE as wrestlers.

7. Defendant WWE employs and has employed plaintiffs and hundreds of other wrestlers to assume character identities and perform stories involving dynamic physical and emotional elements at staged wrestling events worldwide.

8. As a condition of employment, plaintiffs (and each other WWE wrestler) were required to sign a form “Booking Contract” which purported to characterize their employment relationship with WWE as that of independent contractors.

9. Although plaintiffs had no basis to be aware, and did not realize at the time they signed their Booking Contracts, defendant WWE intended to treat plaintiffs as employees, not independent contractors, and improperly utilized the independent contractor designation for the purpose of denying plaintiffs (and other wrestlers) the compensation and benefits that they would have been entitled to receive if properly characterized as employees of defendant.

10. Thus, as plaintiffs subsequently realized, WWE exercised total control over all aspects of the wrestlers’ employment, including as follows:

- defendant determines the wrestlers’ physical training regimen;
- defendant determines the wrestlers’ skill training regimen;
- defendant determines the location where the wrestlers perform;
- defendant determines the time the wrestlers perform;

- defendant determines who the wrestlers compete with and against, the duration of each match, and the outcome of each match;
- defendant has the right to require that the wrestlers wrestle in a team and has the right to choose the co-workers for such a team;
- defendant determines the costumes and hairstyles that the wrestlers' wear and has the right to require the use of company costumes and performance props;
- defendant determines the wrestlers' stage persona and the specific traits of that persona, and further determines the mannerisms that the wrestlers use while performing and what signature moves and props the wrestlers use and when they may use them;
- defendant requires the wrestlers to adhere to certain story lines, including the specific dialogue of the requisite pre- and post-match boasting and badmouthing of the wrestlers' opponent(s);
- defendant has the right to use the wrestlers' likeness or image in perpetuity;
- defendant has the right to negotiate and enter into any agreements for the exploitation of intellectual property based on the wrestlers' personae for merchandising, commercial tie-ins, publishing, personal appearances, performances in non-wrestling events, and endorsements;
- defendant has the right to require the wrestlers to submit to drug screening;
- defendant unilaterally determines how the wrestlers are compensated.

11. The extent of control exercised by defendant WWE over the employment relationship was not immediately apparent to plaintiffs, but was gradually realized and became

known to plaintiffs subsequent to July 16, 2002 over the course of their employment relationship with defendant.

12. Plaintiff Levy became aware of that defendant WWE was treating him as an employee rather than an independent contractor in approximately late summer of 2002 after he returned to work from a wrestling injury.

a. In particular, defendant WWE began controlling how plaintiff Levy trained as a wrestler – requiring, for the first time beginning in or about August 2002 – that plaintiff train in the ring on the afternoons of TV tapings, and submit to a training regime dictated by WWE, on penalty, if he refused, of reducing his exposure to the wrestling fan public. At or about the same time, defendant WWE further required plaintiff Levy to come to its arenas to attend events even if plaintiff was not wrestling at, or otherwise had no role at that event.

b. Moreover, in or about the summer of 2002, defendant WWE began to dictate plaintiff Levy's conduct outside of the wrestling arena. Thus, after TNA, a rival wrestling company, began operations in approximately June 2002, defendant WWE told plaintiffs and its other wrestlers that they could not attend TNA events (or independent events) as wrestlers or even as spectators, could not patronize bars that TNA wrestlers attended, and could not associate with TNA wrestlers.

c. During this same period, defendant WWE began to control what plaintiff Levy wore in traveling to and from arena events, including barring plaintiff from wearing anywhere clothing which advertised or promoted third party merchandise or services.

13. Plaintiff Klucsarits likewise became aware that defendant WWE was treating him as an employee rather than as an independent contractor in approximately the fall of 2002, after he

returned to work from an injury.

a. Thus, after he returned to the ring from his injury, defendant WWE required plaintiff Klucsarits to travel to Louisville, Kentucky to submit to a training regime dictated by WWE.

b. Beginning in or about August 2002, defendant WWE also began controlling how plaintiff Klucstartis trained as a wrestler, requiring that plaintiff train in the ring on the afternoons of TV tapings, and submit to a training regime dictated by WWE, on penalty, if he refused, of reducing his exposure to the wrestling fan public. At or about the same time, defendant WWE further required plaintiff Klucstartis to come to its arenas to attend events even if plaintiff was not wrestling at, or otherwise had no role at that event.

c. Thereafter, WWE began controlling any efforts by plaintiff to promote himself, including precluding plaintiff from appearing on radio shows hosted by plaintiff's friends, and, on those radio shows on which plaintiff was permitted to appear, requiring plaintiff to make only approved statements on air.

d. At about this time, defendant WWE also began to dictate plaintiff Klucstartis's conduct outside of the wrestling arena, in particular, precluding plaintiff from attending independent wrestling shows as either a participant or even a spectator.

e. In the summer of 2002 and thereafter, defendant WWE further began to control what plaintiff Klucsarits wore in traveling to and from arena events, literally requiring plaintiff to dress up in his wrestling persona in flying to the cities hosting WWE wrestling events and in traveling to and from the host arenas. Defendant WWE further barred plaintiff from wearing anywhere clothing which advertised or promoted third party merchandise or services.

f. In November 2002, after plaintiff Klucsarits advised WWE that he intended to announce publicly that he was gay, defendant WWE barred plaintiff from making such a public announcement concerning his sexual orientation.

14. Plaintiffs did not reasonably understand until subsequent to July 16, 2002 that defendant WWE did not intend to treat them as independent contractors pursuant to the Booking Contract, but rather was exercising such indicia of control as to give rise to a common law employer-employee relationship.

15. The form “Booking Contract” entered into between defendant and plaintiffs and all other wrestlers employed by defendant WWE was a sham contract that improperly characterized plaintiffs and the other wrestlers employed by defendant WWE as “independent contractors” to enable defendant to avoid paying plaintiffs and other wrestlers the compensation and benefits to which they otherwise would have been entitled, including ERISA plan benefits, non-ERISA benefits, and state unemployment and workers compensation benefits.

#### **IV. CLASS ACTION ALLEGATIONS**

16. Plaintiffs bring this action on behalf of themselves and all other persons similarly situated. The class consists of all individuals who are employed or have been employed by defendant World Wrestling Entertainment, Inc. and/or its predecessor, World Wrestling Federation, who were improperly classified during their tenure as “independent contractors,” and who reasonably did not realize within six years of the filing of this action that defendant WWE did not intend to treat them as independent contractors pursuant to the Booking Contract, but

rather was exercising such indicia of control as to give rise to a common law employer-employee relationship.

17. The exact number of members of the Class identified and described herein is not known at this time because a precise determination of the number of Class members is possible only through information within the exclusive control of defendant.

18. The Class is so numerous that joinder of the individual members herein is impracticable. Furthermore, on information and belief, the members of the Class are unaware of their rights to prosecute this action and may not have the means or resources to secure legal assistance to do so, except through inclusion in the Class.

19. There are questions of law and fact common to the class, and these common questions of law and fact predominate over any questions affecting only individual members.

20. The claims of the named plaintiffs are typical of the claims of the Class. Defendant has, moreover, acted or refused to act on grounds generally applicable to all members of the proposed class.

21. The named plaintiffs will fairly and adequately represent the interests of the class. There is no conflict between the named plaintiffs and other members of the Class with respect to this lawsuit or with respect to the Claims for Relief set forth herein.

22. The prosecution of separate actions by individual members of the class would create the risk of inconsistent adjudications, which would establish incompatible standards of conduct for defendant. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**V. CLAIMS FOR RELIEF**

**A. FIRST CLAIM FOR RELIEF (ERISA)**

1.-22. Paragraphs 1 through 22 of this Complaint are incorporated herein as paragraphs 1 through 22 of this First Claim for Relief.

23. Plaintiffs have exhausted their administrative remedies with respect to their claims for benefits under each of the Plans identified in Paragraph 5 hereof.

24. Plaintiffs are entitled, pursuant to 29 U.S.C. § 1132 (a)(1)(B) and (g), to a determination that they are participants in defendant WWE's ERISA plans and are entitled to the full benefits of such plans.

**B. SECOND CLAIM FOR RELIEF (Breach of Contract)**

1.-22. Paragraphs 1 through 22 of this Complaint are incorporated herein as paragraphs 1 through 22 of this Second Claim for Relief.

23. At all times relevant herein, defendant WWE maintained numerous forms of non-ERISA compensation, including, but not limited to, vacation pay, sick pay, other forms of paid leave, and reimbursement of travel-related expenses.

24. At all times relevant herein, employees of WWE were entitled to participate in relevant state unemployment compensation and workers' compensation programs.

25. By improperly characterizing plaintiffs as independent contractors in the Booking Contracts, defendant WWE wrongly deprived plaintiffs of the non-ERISA benefits and incidents of employment.

26. Plaintiffs are entitled to the compensation and non-ERISA benefits and incidents of employment they would have received had defendant WWE not wrongly characterized them as independent contractors.

**C. THIRD CLAIM FOR RELIEF (Unjust Enrichment)**

1.-25. Paragraphs 1 through 25 of this Complaint are incorporated herein as paragraphs 1 through 25 of this Third Claim for Relief.

26. As a result of defendant WWE's improper characterization of plaintiffs and the other wrestlers employed by defendant WWE as "independent contractors," defendant WWE has been unjustly enriched to plaintiffs' detriment by its receipt of the benefit of the services rendered by plaintiffs and the other wrestlers employed by defendant WWE without payment of proper non-ERISA benefits and compensation.

**VI. PRAYER FOR RELIEF**

WHEREFORE, plaintiffs pray, on their own behalf and on behalf of all others similarly situated, that the Court grant the following relief:

1. that the Court certify this action as a class action on behalf of plaintiffs and all individuals similarly situated;
2. a declaratory judgment that plaintiffs are participants in defendant WWE's ERISA benefit plans alleged herein and ordering the Plan Administrator to determine the benefits to which plaintiffs are entitled under such ERISA plans;
3. a declaratory judgment that, at all times during their tenure performing services on behalf of defendant CL&P, plaintiffs were employees of CL&P and ordering that plaintiffs

receive the full non-ERISA compensation and benefits provided to full-time employees of the company;

4. compensatory damages;
5. equitable relief;
6. relief pursuant to 29 U.S.C. § 1132(a) and (g), including interest, attorneys' fees

and costs; and

7. such other relief as the Court deems appropriate.

PLAINTIFFS, individually and on behalf of  
all other similarly-situated individuals,

BY: \_\_\_\_\_  
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