

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LOURDES GARCIA and DIDIER TORO, individually and on behalf of other persons similarly situated who were employed by THE EXECUTIVE CLUB LLC d/b/a PENTHOUSE EXECUTIVE CLUB; THE PENTHOUSE CLUB INC.; and/or any other entities affiliated with or controlled by THE EXECUTIVE CLUB LLC or THE PENTHOUSE CLUB INC,

Plaintiffs,

- against -

THE EXECUTIVE CLUB LLC d/b/a PENTHOUSE EXECUTIVE CLUB; THE PENTHOUSE CLUB INC.; and/or any other entities affiliated with or controlled by THE EXECUTIVE CLUB LLC or THE PENTHOUSE CLUB INC; and ROBERT GANS,

Defendants.

Case No. 10-CV-1545 (SHS)

**NOTICE OF PENDENCY**

**IMPORTANT NOTICE  
ADVISING YOU OF  
YOUR LEGAL RIGHTS**

TO: The Plaintiffs and all current and former employees of The Executive Club LLC d/b/a Penthouse Executive Club, the Penthouse Executive Club Inc., and/or any other entities affiliated with or controlled by the Executive Club LLC or The Penthouse Club Inc, and Robert Gans who performed work as wait staff, bartenders, bar-backs, food runners, stock and inventory clerks, and janitorial/cleaning services from February 2004 through the present. Individuals who performed work as cashiers, coat check personnel, hosts, door men, cab men, house moms or receptionists are not part of the defined class. Additionally, corporate officers, shareholders, directors, administrative employees, and other customarily exempt employees are not part of the defined class.

If you worked for PENTHOUSE EXECUTIVE CLUB at any time since February 24, 2004 the purpose of this Notice is to advise you of this class action lawsuit, and to further advise you of certain rights you may have with respect to this action.

Individuals who performed work in the Penthouse Executive Club's restaurant, and who were included in the prior mailing of notice of this lawsuit are not eligible to receive and respond to this notice. The opt-in period for these individuals closed May 13, 2011.

Plaintiffs LOURDES GARCIA and DIDIER TORO ("Class Representatives") are former employees of PENTHOUSE EXECUTIVE CLUB who have brought this action on behalf of all other current and former PENTHOUSE EXECUTIVE CLUB employees to recover unpaid minimum wages and overtime compensation (for all hours worked in excess of 40 per week) and improperly withheld and/or improperly shared wages and tips, for which they have been incorrectly paid.

Defendants vigorously deny any wrongdoing and/or liability to plaintiffs or any other past or present employee of PENTHOUSE EXECUTIVE CLUB who may allege that he or she was underpaid. PENTHOUSE EXECUTIVE CLUB strongly denies that any employee was underpaid for his or her work at any time.

This lawsuit seeks the payment of minimum wages, overtime wages and improperly withheld and/or improperly shared tips and gratuities pursuant to the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and New York State Labor Law, allegedly owed to current and former employees of the above defendants who performed work as wait staff, bartenders, bar-backs, food runners, stock and inventory clerks, and janitorial/cleaning services.

You may be owed payment if you worked for PENTHOUSE EXECUTIVE CLUB and received less than the minimum wage for all hours worked, even if you are an employee that received tips, if a percentage of your tips were improperly retained by PENTHOUSE EXECUTIVE CLUB. You also may be owed payment if you worked for PENTHOUSE EXECUTIVE CLUB and received less than the minimum wage for all hours worked, even if you are an employee that received tips, if a percentage of your tips was shared with managers or other employees who do not customarily and regularly receive tips. Lastly, you may be owed payment if you worked for PENTHOUSE EXECUTIVE CLUB for more than 40 hours per week and you were not paid overtime at time and one-half (1.5x) your normal hourly rate of pay for all hours actually worked over forty (40) hours each week.

This Notice is meant to advise you of your right to participate in this lawsuit as a claimant and plaintiff under the Fair Labor Standards Act if you believe that you were underpaid by PENTHOUSE EXECUTIVE CLUB.

No determination has been made that you are owed any minimum wages, overtime wages or gratuities, and the Court is not endorsing the merits of this lawsuit or advising you to participate in this lawsuit. You are under no obligation to respond to this notice.

**FEDERAL LAW CLAIMS**

If you worked for PENTHOUSE EXECUTIVE CLUB between 2007 and 2010, you may be entitled to certain protection under the Federal Fair Labor Standards Act for all hours that you received less than the minimum wage for all hours worked. You may be entitled to these protections even if you are an employee that received tips, if a percentage

of your tips were improperly retained by PENTHOUSE EXECUTIVE CLUB. You also may be entitled to these protections even if you are an employee that received tips, if a percentage of your tips were shared with managers or other employees who do not customarily and regularly receive tips. You may also be entitled to certain protection under the Federal Fair Labor Standard Act for all work performed in excess of 40 hours each week when you may not have been paid one and one-half times (1.5x) your regular hourly wage rate.

If you wish to participate in this portion of the lawsuit, you must have the enclosed written "Consent to Join Lawsuit" Form filed with the Clerk of the Court. If you do not sign and mail the "Consent to Join Lawsuit" form to the address listed below, you will not be permitted to seek recovery of unpaid wages under the Fair Labor Standards Act in this case.

**NEW YORK LAW CLAIMS**

A class has not yet been certified for claims arising under New York law. Under New York law, you may have claims for improperly withheld tips and gratuities, minimum wages, and overtime compensation (work performed over 40 hours per week) that date back to 2004. You will be advised of any additional rights that you may have to recover under New York law in the event that a class is certified by this Court.

**FILING THE CONSENT TO JOINDER FORM**

If you wish to participate in the portion of this lawsuit that seeks payment of improperly withheld tips and gratuities, minimum wages, and overtime wages under the Fair Labor Standards Act, you must sign and return the enclosed yellow Consent to Joinder as directed below. Your consent to Join Lawsuit Form will be filed with the Clerk of the Court on your behalf. If you fail to mail a signed Consent to Joinder form to the Clerk of the Court you will not be eligible to participate in the FLSA portion of this lawsuit. Consent to Joinder forms filed after September 9, 2011 will be rejected unless good cause is shown for the delay.

**THE LAST DAY TO FILE THE PURPLE CONSENT TO JOIN LAWSUIT FORM IS SEPTEMBER 9, 2011**

**IF YOU WISH TO FILE A CLAIM FOR IMPROPERLY WITHHELD TIPS, UNPAID MINIMUM WAGES, AND UNPAID OVERTIME PAY UNDER THE FEDERAL FAIR LABOR STANDARDS ACT, YOU MUST MAIL THE ENCLOSED CONSENT TO JOINDER FORM POSTMARKED BY SEPTEMBER 9, 2011 TO:**

**CLERK OF THE COURT  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
500 PEARL STREET  
NEW YORK, NEW YORK 10007**

**RE: Garcia, et al. v. The Executive Club, et al., No. 10-CIV-1545(SHS)**

**If you fail to mail a signed Consent to Join Lawsuit form you may not be eligible to participate in the FLSA portion of this lawsuit.**

If you choose to join this lawsuit, you will be bound by any ruling, settlement or judgment, whether favorable or unfavorable. You will also share in any proceeds from a settlement or judgment favorable to the Collective to the extent that you are entitled to such proceeds. By joining this lawsuit, you designate the named Plaintiffs as your representative, and to the fullest extent possible, you designate the named Plaintiffs to make decisions on your behalf concerning the case. Decisions made and agreements entered into by the named Plaintiffs will be binding on you if you join the lawsuit. While this lawsuit is pending, you may be asked to provide documents or information relating to your employment, or otherwise participate in written and/or oral discovery proceedings including testifying at deposition and/or in a trial of this matter.

Lloyd Ambinder, Esq., of Virginia & Ambinder, LLP, located at 111 Broadway, Suite 1403, New York, New York 10006, telephone number (212) 943-9080, facsimile number (212) 943-9082 along with Jeffrey K. Brown, Esq., of Leeds, Morelli & Brown, P.C., located at One Old Country Road, Suite 347, Carle Place, New York 11514, telephone number (516) 873-9550, facsimile number (516) 747-5024 represent the plaintiffs in this case. You will not be required to pay any fee for services provided by plaintiffs' counsel Virginia & Ambinder, LLP and Leeds, Morelli & Brown, P.C. If you are represented by plaintiffs' attorneys, their costs and fees will be paid out of any recovery against PENTHOUSE EXECUTIVE CLUB. You have a right to consult with an attorney about this matter. If you wish to be represented by other counsel, you may retain another attorney, but you will be responsible for paying that attorney. Further information about this Notice, the deadline for joining the lawsuit, the form provided or answers to other questions concerning this lawsuit may be obtained by contacting the plaintiffs' attorney Lloyd Ambinder, Esq., telephone number (212) 943-9080, facsimile number (212) 943-9082, or by email at [execclub@vandallp.com](mailto:execclub@vandallp.com). If you require Spanish translation, please ask for Leonor Coyle or Yeskenia Polanco. You may also obtain information about this suit via the internet at [www.vandallp.com](http://www.vandallp.com) and [www.lmblaw.com](http://www.lmblaw.com).

***You have a right to participate in this action even if you are an undocumented alien  
or if you were paid in cash.***

**PLEASE DO NOT CONTACT THE CLERK OF THE COURT  
WITH QUESTIONS INVOLVING THIS LAWSUIT.**

Dated: New York, New York  
June 20, 2011

SO ORDERED:

Sidney H. Stein, U.S.D.J.