

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**GRACIELA ROMAN, on behalf of herself and all others
similarly situated,**

Plaintiff,

-against-

THE DINEX GROUP, LLC and DANIEL BOULUD,

Defendants.

Civil Action No.:
12 CIV6156 (AKH)

COURT-AUTHORIZED NOTICE

If you have been employed as a captain, assistant captain, sommelier, server, busser, runner, bartender, barista, host, and/or other tipped employee at BAR BOULUD, DANIEL, BOULUD SUD, and/or DBGB KITCHEN AND BAR between November 1, 2009 and the present, please read this notice.

- Graciela Roman (“Plaintiff”) is a former Dinex employee who worked as a busser at Bar Boulud. Ms. Roman, on behalf of herself and all others similarly situated, filed a lawsuit on August 10, 2012.
- The lawsuit claims that The Dinex Group, LLC and Daniel Boulud (collectively, “Defendants”) failed to pay captains, assistant captains, sommeliers, servers, bussers, runners, bartenders, baristas, and hosts, the proper minimum wage and overtime pay, as well as other wages required by law. The lawsuit seeks to recover money owed in back wages and additional damages known as “liquidated damages,” along with interest, attorneys’ fees, and costs.
- Dinex and Mr. Boulud deny any violation of the Fair Labor Standards Act or any other law. Dinex maintains that its tip pools have always been lawful, and that tipped employees were properly paid the tip credit minimum wage. Dinex maintains that it paid tipped employees appropriately for all hours they worked.

The Court has authorized the parties to send out this notice of the lawsuit. The Court has not decided who is right and who is wrong. This lawsuit is currently in the early pretrial stage. The Court has made no finding on the merits of the claims raised by Ms. Roman, or Dinex and Mr. Boulud’s various defenses thereto.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
ASK TO BE INCLUDED	<u>If you wish to be included, you must complete the form at the end of this Notice.</u>
DO NOTHING	By doing nothing, you will not be included in the portion of the lawsuit relating to claims under the Fair Labor Standards Act.

- Your options are explained in this notice. To ask to be included in the lawsuit, you must act before February 26, 2013.

This notice contains information that affects your rights. Please read it carefully.

Questions?
Contact Brian Schaffer at Fitapelli & Schaffer LLP
475 Park Avenue South New York, NY 10016
bschaffer@fslawfirm.com
(212) 300-0375

1. Why did I get this notice?

As above, you are getting this notice because the Dinex Group's records show that you work or worked at Bar Boulud, Daniel, Boulud Sud, and/or DBGB Kitchen and Bar as a captain, assistant captain, sommelier, server, busser, runner, bartender, barista, or host since November 1, 2009 and Plaintiff alleges you are similarly situated to her.

2. What is this lawsuit about?

This lawsuit is about whether Bar Boulud, Daniel, Boulud Sud, and DBGB Kitchen and Bar properly paid tipped employees in accordance with federal and New York State labor law. In the portion of the lawsuit brought under the FLSA, the Lawsuit alleges that Dinex was not entitled to pay Ms. Roman and other tipped employees, the tip credit minimum wage because Dinex required service employees to share tips with the maitre d', polisher, expeditor and chef's sommelier or head sommelier, who Ms. Roman claims were not entitled to receive tips. Ms. Roman also alleges that she and other employees were required to spend more than 20% of their time performing non-tipped duties.

3. What damages is the lawsuit seeking?

The lawsuit is seeking to recover unpaid minimum wages, overtime pay, misappropriated tips, and "liquidated damages," which doubles the amount of wages owed. The lawsuit is also seeking recovery of costs and attorneys' fees.

4. What happens if I join the 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.

By joining this lawsuit, you designate Plaintiff, Graciela Roman, as your representative, and to the fullest extent possible, you designate Plaintiff and her counsel to make decisions on your behalf concerning the case, the method and manner of conducting the case, and all other matters pertaining to this lawsuit. Decisions made and agreements entered into by Ms. Roman relating to the lawsuit will be binding on you if you join the lawsuit.

While this suit is pending, as part of the discovery process you will be asked to provide documents or information relating to your employment at Dinex, which may include responding to written questions and requests for documents. For this reason, if you join the lawsuit you should preserve all documents relating to your employment currently in your possession. You also may be asked to sit for a deposition scheduled at your convenience and/or asked to testify at a trial at the Southern District of New York Courthouse located in Manhattan, New York.

5. Can the Dinex Group and/or my current employer retaliate or fire me if I join the lawsuit?

No. It is a violation of Federal law for the Dinex Group to fire, discipline, or in any manner discriminate or retaliate against you for taking part in this case.

6. Can I participate in this lawsuit even though, due to my immigration status, I did not work or am not working at Bar Boulud, Daniel, Boulud Sud, and DBGB Kitchen and Bar legally?

Yes. Your immigration status does not affect your entitlement to recover back wages or to participate in this lawsuit.

7. How do I ask the Court to include me in the case?

Enclosed is a form called "Plaintiff Consent Form." **If you choose to join this lawsuit, it is extremely important that you read, sign, and promptly return the Plaintiff Consent Form.** An addressed and postage paid envelope is enclosed for your convenience. Should the enclosed envelope be lost or misplaced, the Plaintiff Consent Form must be sent to the following address:

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bschaffer@fslawfirm.com
(212) 300-0375

Fitapelli & Schaffer, LLP
475 Park Avenue South, 12th Floor
New York, New York 10016

You can also fax the Consent to (212) 481-1333 or e-mail the consent to Info@Fslawfirm.com. The signed Plaintiff Consent Form must be postmarked by **February 26, 2013**. **If your signed Plaintiff Consent Form is not postmarked by February 26, 2013, you may not be able to participate in the federal law portion of this lawsuit or share in a monetary recovery.**

8. Do I have a lawyer in this case?

If you choose to join this lawsuit you will be represented by Plaintiff's Counsel: Fitapelli & Schaffer, LLP, 475 Park Avenue South, 12th Floor, New York, New York 10016, (212) 300-0375, www.fslawfirm.com.

9. Should I get my own lawyer?

You do not need to hire your own lawyer because Plaintiff's Counsel will be working on your behalf. However, you are allowed to hire your own lawyer at your own expense.

10. How will the lawyers be paid?

The named Plaintiff has entered into a contingency fee agreement with Plaintiff's counsel. Under this agreement, you are not responsible for paying any of the attorneys' fees or costs expended in the lawsuit. Plaintiff's counsel will be paid as follows: if there is a settlement, Plaintiff's counsel may ask the Court to award it up to 1/3 of any recovery obtained or may attempt to negotiate payment of attorneys' fees separate from and in addition to the Collective's recovery. If there is no recovery, you pay nothing.

11. What happens if I do nothing at all?

If you choose to not join this lawsuit, you will not be affected by any settlement or judgment rendered in this case, whether favorable or unfavorable.

12. This notice has been authorized by the Court.

This notice and its contents have been authorized by District Court Judge Alvin K. Hellerstein of the U.S. District Court, Southern District of New York. The Court has not yet ruled on whether Plaintiff's claims or Defendants' defenses have any merit.

Please do not write or call the Court about this notice.

Although the Court has approved the sending of this notice, the Court expresses no opinion on the merits of this lawsuit.

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