

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

**ROBERT ATKINS**

Plaintiff,

-against-

**METRONOME EVENTS, INC. d/b/a  
PROVIDENCE NYC, CLUB CRIMSON NYC,  
ROSSCOMMON AND 226 EAST 54<sup>TH</sup> STREET  
RESTAURANT, INC., d/b/a LEXICON**

Defendants.

INDEX NO:

SUMMONS AND  
VERIFIED COMPLAINT

SUMMONS, VERIFIED COMPLAINT AND JURY TRIAL DEMANDED

BOIES & BOIES, LLP  
Jerry Boies, Esq.  
ATTORNEYS FOR PLAINTIFF  
OFFICE AND POST OFFICE ADDRESS, TELEPHONE  
740 East 32<sup>nd</sup> Street, Suite E7  
Brooklyn, NY 11210  
(646) 706-2482  
File No: 4Q135

Signature (Rule §130-1.1a)

Jerry Boies, Esq.

Please Take Notice

NOTICE OF ENTRY

that the within is a (*certified*) true of  
duly entered in the office of the clerk of the within name court on \_\_\_\_ / \_\_\_\_ / \_\_\_\_

NOTICE OF SETTLEMENT

that an order \_\_\_\_\_ of which the within is a true copy will be presented for settlement to the HON.  
\_\_\_\_\_ one of the judges of the within named court, at \_\_\_\_\_

on \_\_\_\_ / \_\_\_\_ / \_\_\_\_ at \_\_\_\_ :  AM  PM

Dated: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Yours, etc.

BOIES & BOIES, LLP  
Jerry Boies, Esq.  
Attorneys for Plaintiff  
Office and Post Office Address, Telephone  
740 East 32<sup>nd</sup> Street, Suite E7  
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jboies@boieslaw.com

To: attorneys, agents, directors, and/or officers for Metronome Events, Inc. and 226 East 54<sup>th</sup> Street Restaurant, Inc.

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

**ROBERT ATKINS**

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-against-

**METRONOME EVENTS, INC.** d/b/a  
**PROVIDENCE NYC, CLUB CRIMSON NYC,**  
**ROSSCOMMON AND 226 EAST 54<sup>TH</sup> STREET**  
**RESTAURANT, INC.,** d/b/a **LEXICON**

Defendants.

INDEX NO.

**SUMMONS**

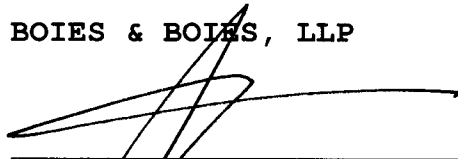
To above named Defendants:

**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 this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within twenty (20) days after the service of this Summons, exclusive of the date of service (or within 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.

Venue is proper in this Court because Defendants reside or do business in New York County and the events giving rise to this action occurred in New York County.

Dated: Brooklyn, New York  
January 21, 2014

**BOIES & BOIES, LLP**



**Jerry Boies, Esq.**

ATTORNEYS FOR PLAINTIFF  
OFFICE & POST OFFICE ADDRESS  
740 East 32<sup>nd</sup> Street, Suite E7  
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SUPREME COURT OF THE STATE OF NEW YORK  
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**ROBERT ATKINS**

Plaintiff,

-against-

**METRONOME EVENTS, INC.** d/b/a  
**PROVIDENCE NYC, CLUB CRIMSON NYC,**  
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Defendants.

INDEX NO.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff, Robert Atkins ("Plaintiff"), by and through his attorneys, BOIES & BOIES, LLP, as and for a verified complaint, bring this action for unlawful retention of service charges/automatic gratuities by METRONOME EVENTS, INC., d/b/a PROVIDENCE NYC, CLUB CRIMSON NYC, and/or ROSSCOMMON and 226 EAST 54<sup>TH</sup> STREET RESTAURANT, INC., d/b/a LEXICON ("Defendants"), while Plaintiff was employed as a bartender for Defendants' various venues and/or night clubs from 2009 to 2013. Plaintiff respectfully alleges as follows:

**INTRODUCTION**

1. New York Labor Law § 196-d (McKinney's Cons Laws of New York, Book 30) is a substantive provision of New York Labor Law Article 6, which provides, in pertinent part:

No employer . . . or any other person shall demand or accept, directly or indirectly, any part of the gratuities, received by an employee, or retain any part of a gratuity or of any charge purported to be a gratuity for an employee. . . . Nothing in this subdivision shall be construed as affecting . . . practices in connection with banquets and other special functions where a fixed percentage of the patron's bill is added for gratuities which are distributed to employees, nor to the sharing of tips by a waiter with a busboy or similar employee.

2. In the hospitality industry, which includes banquets, it is common knowledge that when a large party is seated for a banquet event, service charges/automatic gratuities are added to the total bill. The said service charges/automatic gratuities are generally between 15% and 20% of the total bill charged to the patrons (the parties hosting the banquets).

3. Plaintiff was a bartender at Defendants' various night clubs in New York City from 2009 to 2013. During that period,

Defendants regularly held banquet events for many high profile celebrities. Further. Defendants regularly held corporate galas, red carpet galas, fundraisers, spectacular weddings, and private parties. Plaintiff bartended for approximately 140 of those events.

4. Upon information and belief, Defendants normally charged each patron service charges/automatic gratuities. However, although the service charges/automatic gratuities were purported to be distributed among the waitstaff, which includes Plaintiff, Defendants withheld the service charges/automatic gratuities.

5. Therefore, Plaintiff brings this action against Defendants for their unlawful retention of service charges/automatic gratuities added to banquet bills and contracts in place of patrons' direct payments to Plaintiff of traditional tips and gratuities.

#### **JURISDICTION AND VENUE**

6. Jurisdiction is proper pursuant to, *inter alia*, New York CPLR §§ 301, *et seq.*, New York Labor Law §§ 196-d, and New York General Business Law § 349(h). Additionally, at all times hereinafter mentioned, Plaintiff was and still a resident of the City and State of New York, County of New York. Lastly, at all times herein, the Defendants were and till are domestic

businesses corporations, or other entities, authorized to transact business in the City and State of New York, County of New York.

7. Venue is proper pursuant to New York CPLR §§ 503 and 509. Further, the events giving rise to this action occurred in the City, State and County of New York.

#### **THE PARTIES**

8. At all times herein, Plaintiff domiciles and resides in the City, State and County of New York, at 839 Riverside Dr., Apt. 3H, New York, NY 10032.

9. Plaintiff was employed as a bartender by Defendants from 2009 to 2013. Consistent with the aforesaid employer-employee relationship, Plaintiff was issued weekly paychecks and yearly W-2s from Defendants.

10. Upon information and belief, each Defendant mentioned herein was, in relation to Plaintiff, an (A) "employer" as that term is defined in New York Labor Law § 190(3); (B) a joint, dual or special employer; (C) an "agent," as that term is used in New York Labor Law §196-d, of Plaintiff's employer(s); and/or (D) an agent for one or more partially disclosed, improperly disclosed or undisclosed principals who served as Plaintiff's employer(s).

11. Upon information and belief, METRONOME EVENTS, INC., d/b/a PROVIDENCE NYC, CLUB CRIMSON NYC, and/or ROSSCOMMON and 226 EAST 54<sup>TH</sup> STREET RESTAURANT, INC., d/b/a LEXICON, are, and at all times mentioned herein were, corporations duly organized under and existing by virtue of the law of the State of New York, with their principal place of business in the State, City and County of New York.

12. Upon information and belief, METRONOME EVENTS, INC., d/b/a PROVIDENCE NYC, CLUB CRIMSON NYC, and/or ROSSCOMMON and 226 EAST 54<sup>TH</sup> STREET RESTAURANT, INC., d/b/a LEXICON, as Plaintiff's former employers, directed, controlled, ratified, participated in, condoned and/or was a moving force behind acts complained herein.

13. Upon information and belief, METRONOME EVENTS, INC., d/b/a PROVIDENCE NYC, CLUB CRIMSON NYC, and/or ROSSCOMMON and 226 EAST 54<sup>TH</sup> STREET RESTAURANT, INC., d/b/a LEXICON are, at all times mentioned herein were, respectively partially disclosed or undisclosed principals of METRONOME EVENTS, INC and 226 EAST 54<sup>TH</sup> STREET RESTAURANT, INC.

14. Upon information and belief, Defendants, through their respective agents, directors, managers, supervisors, employees, etc, acting within the scope of their employment, accepted, at all times mentioned herein, either directly or indirectly, all

or part of the service charges/gratuities charged to patrons served by Plaintiff for the entire period of time stated above.

**FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

15. Upon information and belief, Defendants are, at all times mentioned herein were, engaging in the business of providing, according to Defendants' consolidated website, "event planning and turn-key part production for Manhattan corporate and private events."<sup>1</sup> In fact, Defendants' website claims that:<sup>2</sup>

We have hosted remarkable events for the biggest and best of business and entertainment, and have created countless weddings, bar mitzvahs and private parties in the heart of NYC and Atlantic City.

Metronome Hospitality Group has played a pivotal role in countless events of all sizes, from gala film premiere parties to intimate weddings. When you work with Metronome for planning and hosting your NYC party or event, our amazing team of industry veterans and party pros put their wealth of experience at your beck and call. We have planned thousands of Manhattan events, and our spectacular NYC event venues have hosted corporate events for some of the world's greatest companies. We've also planned and hosted parties and social functions for the most recognizable celebrities on the planet.

Here are just a few of our favorite clients, and don't forget to take a look at the [film shoots](#) we've hosted.

16. Upon information and belief, Defendants own and operate, at all times mentioned herein owned and operated, METRONOME EVENTS, INC., d/b/a PROVIDENCE NYC, CLUB CRIMSON NYC,

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<sup>1</sup> <http://www.metronomenyc.com/about-us>

<sup>2</sup> <http://www.metronomenyc.com/our-clients>



and/or ROSSCOMMON and 226 EAST 54TH STREET RESTAURANT, INC.,  
d/b/a LEXICON, as the Defendants highlight on their website<sup>3</sup>:

We've got the hottest and most desirable event venues in NYC. Why settle for anything less than astounding?

Metronome owns and operates our exclusive Manhattan locations: Motivo – 915 Broadway at 21st St., Lexicon – 226 East 54th, Providence NY – 311 West 57th, and Triumph Room, the exclusive space below Providence NY

Planning an event in Atlantic City? We've got the hottest spot on the shore: Providence Atlantic City, in The Quarter at the Tropicana Resort/Casino

Want a taste of some of the great events, from film shoots to celebrity appearances, that have called Metronome home? [View our event reel!](#)

17. From 2009 to 2013, Defendants employed Plaintiff as a, *inter alia*, bartender for many of their venues, including, without limitation, Metronome Events, 226 East 53th Street, Providence, Crimson, Lexicon, and/or Roscommon.

18. Plaintiff worked the following events, for which the Defendants unlawfully withheld the service charges/gratuities:

<u>Defendants</u>	<u>Plaintiff's ID</u>	<u>Pay Date</u>	<u>No. of Banquets Worked</u>	<u>Check #</u>
226 E. 54th St.	0233	9/18/09	1	14454
226 E. 54th St.	0233	10/16/09	1	14490
226 E. 54th St.	0233	10/23/09	2	14510
226 E. 54th St.	0233	12/11/09	2	14629
226 E. 54th St.	0233	12/11/09	3	14630
226 E. 54th St.	0233	12/18/09	3	14655
226 E. 54th St.	0233	12/18/09	2	14654
226 E. 54th St.	0233	12/23/09	3	146683
226 E. 54th St.	0233	12/23/09	3	14682

<sup>3</sup> <http://www.metronomenyc.com/our-venues>

226 E. 54th St.	0233	12/30/09	1	14711
226 E. 54th St.	0233	1/6/10	1	14727
226 E. 54th St.	0233	1/29/10	1	14762
226 E. 54th St.	0233	2/5/10	1	14781
226 E. 54th St.	0233	3/12/10	1	14847
226 E. 54th St.	0233	4/2/10	1	14885
226 E. 54th St.	0233	4/16/10	2	14911
226 E. 54th St.	0233	4/23/10	1	14930
226 E. 54th St.	0233	5/14/10	1	14964
226 E. 54th St.	0233	5/21/10	1	14977
226 E. 54th St.	0233	5/28/10	1	14991
226 E. 54th St.	0233	6/4/10	1	15008
226 E. 54th St.	0233	6/11/10	3	15023
226 E. 54th St.	0233	7/2/10	1	15061
226 E. 54th St.	0233	7/9/10	1	Deposit
226 E. 54th St.	0233	8/13/10	1	15125
226 E. 54th St.	0233	10/1/10	2	Deposit
226 E. 54th St.	0233	11/19/10	2	15286
226 E. 54th St.	0233	11/26/10	1	Deposit
226 E. 54th St.	0233	12/3/10	1	Deposit
226 E. 54th St.	0233	12/10/10	3	Deposit
226 E. 54th St.	0233	12/17/10	3	Deposit
226 E. 54th St.	0233	1/28/11	1	Deposit
226 E. 54th St.	0233	2/4/11	1	Deposit
226 E. 54th St.	0233	2/18/11	1	Deposit
226 E. 54th St.	0233	2/25/11	2	Deposit
226 E. 54th St.	0233	3/25/11	?	Deposit
226 E. 54th St.	0233	4/8/11	1	Deposit
226 E. 54th St.	0233	4/15/11	1	Deposit
226 E. 54th St.	0233	4/29/11	1	Deposit
226 E. 54th St.	0233	5/6/11	1	Deposit
226 E. 54th St.	0233	5/12/11	1	Deposit
226 E. 54th St.	0233	5/20/11	2	Deposit
226 E. 54th St.	0233	5/27/11	2	Deposit
226 E. 54th St.	0233	5/27/11	2	Deposit
226 E. 54th St.	0233	6/17/11	1	Deposit
226 E. 54th St.	0233	6/24/11	2	Deposit
226 E. 54th St.	0233	7/1/11	3	Deposit
226 E. 54th St.	0233	7/15/11	1	Deposit
226 E. 54th St.	0233	7/23/11	1	Deposit
226 E. 54th St.	0233	8/5/11	1	Deposit

226 E. 54th St.	0233	8/26/11	1	Deposit
226 E. 54th St.	0233	9/30/11	2	Deposit
226 E. 54th St.	0233	10/20/11	1	Deposit
226 E. 54th St.	0233	11/4/11	1	Deposit
226 E. 54th St.	0233	11/11/11	1	Deposit
226 E. 54th St.	0233	11/18/11	2	Deposit
226 E. 54th St.	0233	11/25/11	3	Deposit
226 E. 54th St.	0233	12/23/11	2	Deposit
226 E. 54th St.	0233	12/23/11	3	Deposit
226 E. 54th St.	0233	12/23/11	3	Deposit
226 E. 54th St.	0233	12/30/11	2	Deposit
226 E. 54th St.	0233	1/13/12	2	Deposit
226 E. 54th St.	0233	1/26/12	2	Deposit
226 E. 54th St.	0233	1/27/12	1	Deposit
226 E. 54th St.	0233	2/10/12	1	Deposit
226 E. 54th St.	0233	2/17/12	2	Deposit
226 E. 54th St.	0233	3/16/12	1	Deposit
226 E. 54th St.	0233	3/23/12	1	Deposit
226 E. 54th St.	0233	4/6/12	1	Deposit
226 E. 54th St.	0233	4/27/12	2	Deposit
Metronome	2183	5/5/12	2	56956
Metronome	2183	5/19/12	1	2189
Metronome	2183	6/17/12	1	57123
Metronome	2183	6/17/12	1	57245
226 E. 54th St.	0233	6/22/12	2	Deposit
226 E. 54th St.	0233	6/29/12	2	Deposit
226 E. 54th St.	2183	7/1/12	1	57360
226 E. 54th St.	0233	9/14/12	1	Deposit
226 E. 54th St.	0233	9/21/12	1	Deposit
226 E. 54th St.	0233	10/12/12	1	Deposit
226 E. 54th St.	0233	11/16/12	1	Deposit
226 E. 54th St.	0233	12/7/12	1	Deposit
226 E. 54th St.	0233	12/10/12	3	Deposit
226 E. 54th St.	0233	12/14/12	4	Deposit
226 E. 54th St.	0233	12/21/12	3	Deposit
226 E. 54th St.	0233	12/28/12	1	Deposit
226 E. 54th St.	0233	1/11/13	1	Deposit
226 E. 54th St.	0233	1/18/13	1	Deposit
226 E. 54th St.	0233	1/25/13	1	Deposit
226 E. 54th St.	0233	2/22/13	1	Deposit
Metronome	2183	3/2/13	1	21565

19. At all time during his employment, Plaintiff was required to serve, as part of the waitstaff, large parties, which include, without limitation, high profile celebrities, organizations, corporations, weddings, media and fortune 500 companies.

20. Regardless of the amount of people who may have attended the events, how long the events lasted, how much the Defendants charged the patrons for the events, how much charges/automatic gratuities are added to the total bill, or how much food and alcohol served, Defendants simply paid Plaintiff \$150 per event.

21. Upon information and belief, in the hospitality industry, which includes banquets, it is common knowledge that when a large party is seated for a banquet event, service charges/automatic gratuities are added to the total bill. The said service charges/automatic gratuities are generally between 15% and 20% of the total bill charged to the Patrons.

22. Upon information and belief, this practice of adding a service charge/automatic gratuity to the bill is a variant of the well-established practice of tipping, and is designed in large part to protect the waitstaff from spending an entire evening, or a large block of hours, working for one set of

common patrons, but not being adequately compensated due to, for example, an oversight of the party paying the bill.

23. Upon information and belief, the risk of a gratuity not being paid is even greater in the banquet setting because the banquet fees are typically paid in advance of the meal. For this reason, as well as the convenience of the patrons, the practice of adding a service charge/automatic gratuity has become routine.

24. Upon information and belief, when such a service charge/automatic gratuity is added to the bill, the patron naturally understands it to be in place of a gratuity that would otherwise customarily be left for the bartender at the end of the banquet event. As a consequence, the patron naturally believes that he or she is not expected to pay a separate gratuity directly to the bartender.

25. Upon information and belief, Defendants routinely added a 20% service charge/automatic gratuity to the bill for the aforementioned 140 banquet events, but remitted none of it to Plaintiff. Accordingly, Plaintiff seeks damages associated with the Defendants' unlawful retention of service charges/automatic gratuities.

**CAUSES OF ACTIONS**

**COUNT I: VIOLATION OF LABOR LAW ARTICLE 6**

26. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

27. Upon information and belief, in addition to the price charged for meals and/or food, drinks and/or alcohols, and other fees, Defendants added, and at all times mentioned herein, automatic gratuities and/or service charges based on and expressly linked to the price for meals and/or food, drinks and/or alcohols on banquets.

28. Upon information and belief, the 20% of automatic gratuities and/or service charges for banquets was, and at all times mentioned herein, described verbally and/or in writing by Defendants to banquet patrons as being separate and apart from other charges added by Defendants for banquets-specific costs.

29. Upon information and belief, Defendants informed, and at all times mentioned herein, inquiring patrons that the 20% service charge is gratuity, or that 20% service charge is paid to the waitstaff, including Plaintiff, as additional compensation in place of a gratuity.

30. Upon information and belief, at all times mentioned herein, banquet patrons naturally understood that the service charges to be in lieu of a gratuity that would otherwise customarily be left for the waitstaff, including Plaintiff, at the end of the banquet events.

31. Upon information and belief, Defendants never informed their banquet patrons that the 20% "service charge" was not an automatic gratuity or payment in lieu thereof.

32. Upon information and belief, Defendants never informed their banquet patrons that the 20% "service charge" was not part of Plaintiff's compensation.

33. Upon information and belief, Defendants never informed their banquet patrons that Plaintiff would receive none of the 20% "service charge."

34. Upon information and belief, Plaintiff was strictly forbidden from answering questions from banquet patrons or their guests about the subject of banquet gratuities.

35. Upon information and belief, at all times mentioned herein, Defendants did not collect sales tax from their patrons on charges denominated as "service charges."

36. Upon information and belief, at all times mentioned herein, Defendants did not pay New York State sales tax on charges denominated as "service charges."

37. Upon information and belief, at all times mentioned herein, Defendants treated the "service charge" monies as non-taxable gratuities for sales tax purposes.

38. Upon information and belief, at all times mentioned herein, Defendants treated the "service charge" monies as non-taxable gratuities for sales tax purposes.

39. Upon information and belief, at all times mentioned herein, Defendants did not add the "service charges" monies to their gross receipts.

40. Upon information and belief, at all times mentioned herein, Defendants treated the "service charges" monies as non-taxable gratuities for income tax purposes.

41. Upon information and belief, by including a separate charge for "service" on banquets which corresponds to the percentage customarily paid as a gratuity for similar events, Defendants caused their patrons to believe that their payment of the "service charge" would go the waitstaff, including Plaintiff, as part of their compensation.

42. Upon information and belief, at all times mentioned herein, Defendants did not remit the "service charge" to the waitstaff, including Plaintiff, as the Defendants made their patrons believe.

43. Therefore, Plaintiff is entitled to his *pro rata* share of the 20% service charge/automatic gratuities collected on approximately 140 banquets, which Plaintiff worked from 2009 to 2013.

**COUNT II: VIOLATION OF GENERAL BUSINESS LAW § 349**

44. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.



45. Defendants are, and at all relevant times herein were, engaged in consumer-related activities that affected consumers at large who regularly hosted celebrations for high profile celebrities, organization, corporations, weddings, media, fortune 500 companies and other special events.

46. Upon information and belief, at all relevant times herein, Defendants utilized tactics that were deceptive and misleading in material respects, exposed the public to sales tactics through various mediums that were false and misleading in relevant respects and led to Plaintiff's injury as a result.

47. Upon information and belief, at all relevant times herein, Defendants, intending to mislead their banquet patrons, impliedly and expressly represented to the patrons that a 20% charge added to the price of meals and drinks on banquets would be remitted to the waitstaff, including Plaintiff.

48. Upon information and belief, by adding a 20% "service charge" to the price of meals and drinks on banquets, treating it separately on the bill as a tax-exempt gratuity for sales tax purposes, excluding it from their gross receipts, and otherwise telling banquet patrons that it was for the waitstaff, and thereafter remitting none of it to the waitstaff, Defendants have essentially deceived and misled banquet patrons and, at the same time, deprived their waitstaff and Plaintiff of the

gratuities they would have invariably received in the absence of Defendants' deceptive and misleading conduct.

49. Upon information and belief, at all relevant times herein, Defendants, intending to mislead their patrons, expressly or impliedly represented that the gratuities or service charges were included in the price, thereby expressly or impliedly representing that the waitstaff, including Plaintiff, would receive the customary gratuity.

50. Upon information and belief, Defendants' misleading and deceptive conduct, as aforesaid, was likely to mislead a reasonable consumer acting reasonably under the circumstances.

51. Upon information and belief, at all relevant times herein, Defendants' ongoing violations of General Business Law § 349 were willful.

52. As a result of Defendants' violations of General Business Law § 349, Plaintiff is entitled under General Business Law § 349(h) to recover damages in an amount to be determined at trial, but which, over the entire course of the four years for which recovery is sought, is believed to be not less than \$375,000.

**COUNT III: UNJUST ENRICHMENT**

53. Plaintiff hereby incorporates by reference all preceding paragraphs as if fully set forth herein.

54. Upon information and belief, at all times mentioned herein, Plaintiff bestowed a benefit in the form of service, which is customarily "tipped" in addition to those wages that are regularly paid to Plaintiff.

55. Upon information and belief, because of Defendants' non-payment of sums denominated as service charges/automatic gratuities, the Level of compensation actually received by Plaintiff was well below that of comparably situated bartenders.

56. Upon information and belief, Defendants knowingly received and retained funds that patrons intended to be paid to the waitstaff, including Plaintiff.

57. In equity and good conscience, said funds belonged to the waitstaff, including Plaintiff, not Defendants.

58. Defendants will obtain such benefit without adequately compensating Plaintiff if they are permitted to retain the unpaid service charges/gratuities collected from their patrons without remitting them to intended beneficiaries, the waitstaff, which includes Plaintiff.

59. As a result of the foregoing, Defendants should be required to remit to Plaintiff a *pro rata* share of the service charges/automatic gratuities collected in connection with approximately 140 banquets, which, over the entire course of the four years for which recovery is sought, is believed to be not less than \$375,000.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests judgment as follows:

1. On Plaintiff's first cause of action, in an amount to be determined at trial, but which, over the entire course of the four year period for which recovery is sought, is reasonably believed to be not less than \$375,000, together with reasonable attorney's fees and a 25% statutory penalty;

2. On Plaintiff's second cause of action, in an amount to be determined at trial, but which, over the entire course of the four year period for which recovery is sought, is reasonably believed to be not less than \$375,000, together with reasonable attorney's fees, costs, and other damages the Court deems appropriate;

3. On Plaintiff's second cause of action, in an amount to be determined at trial, but which, over the entire course of the four year period for which recovery is sought, is reasonably believed to be not less than \$375,000, to the extent such an award is not duplicative and an award under Plaintiff's first or second cause of action;

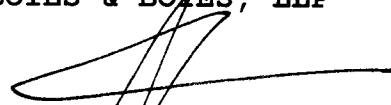
4. For pre- and post-judgment interest, costs and disbursements to the fullest extent assessable at law or in

equity together with such other and further relief as the Court may deem just and proper.

Dated: Brooklyn, New York  
January 21, 2014

Respectfully Submitted,

**BOIES & BOIES, LLP**



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**Jerry Boies, Esq.**

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To and on behalf of Defendants:

Joseph J. Gartner, CEO  
Metronome Events, Inc.  
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Wyckoff, NJ 07481

Robert Pereira, Founder and COO  
Metronome Events, Inc.  
915 Broadway  
New York, NY 10010

Humberto Campoverde, General Manager for Lexicon  
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Mac McClelland, General Manager, Providence NY  
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Deborah Godoy, Manager for Crimson  
915 Broadway  
New York, NY 10010

Emily Gould, Director of Special Events  
915 Broadway  
New York, NY 10010

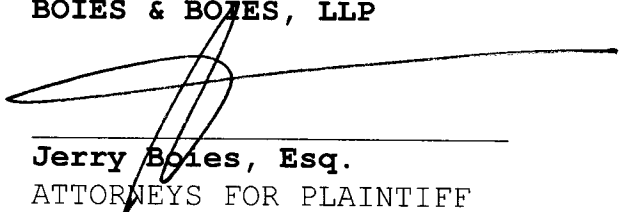
**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: Brooklyn, New York  
January 21, 2014

Respectfully Submitted,

**BOIES & BOIES, LLP**



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**Jerry Boies, Esq.**

ATTORNEYS FOR PLAINTIFF  
OFFICE & POST OFFICE ADDRESS  
740 East 32<sup>nd</sup> Street, Suite E7  
Brooklyn, NY 11210  
(646) 706-2482  
jboies@boieslaw.com

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

**ROBERT ATKINS**

Plaintiff,

-against-

**METRONOME EVENTS, INC. d/b/a  
PROVIDENCE NYC, CLUB CRIMSON NYC,  
ROSSCOMMON AND 226 EAST 54<sup>TH</sup> STREET  
RESTAURANT, INC., d/b/a LEXICON**

Defendants.

INDEX NO.

VERIFICATION

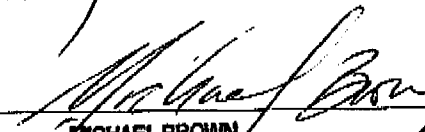
State of New York     )  
  ) ss:  
County of New York    )

**ROBERT ATKINS**, the Plaintiff in the above-captioned, does hereby verify that he has read the annexed Verified Complaint and that the allegations contained therein are true and accurate under the penalty of perjury. As to matters therein stated to be alleged upon information and belief, I believe them to be true. I verify the truthfulness of the allegations based upon my personal knowledge. I understand that if any of the allegations are knowingly false, I may be punished by the Court.

Dated: Brooklyn, New York  
January 6, 2014

  
\_\_\_\_\_  
**ROBERT ATKINS**

SWORN TO BEFORE ME THIS 15 DAY  
OF January 2014.

  
\_\_\_\_\_  
**MICHAEL BROWN**  
Notary Public, State of New York  
No. 018R6176031  
Qualified in New York County  
Commission Expires Nov. 26, 2015