

08-5547-CV

IN THE
United States Court of Appeals
FOR THE SECOND CIRCUIT

Roy Den Hollander,

Plaintiff-Appellant,

--against--

Copacabana Nightclub, China Club, Lotus, Sol, Jane Doe Promoters and A.E.R.
Lounge,

Defendants-Appellee,

Guest House and A.E.R. Nightclub,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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Defendants

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APPEAL, CLOSED, ECF

U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:07-cv-05873-MGC

Hollander v. Copacabana Nightclub, et al
Assigned to: Judge Miriam Goldman Cedarbaum
Cause: 42:1983 Civil Rights Act

Date Filed: 06/21/2007
Date Terminated: 09/29/2008
Jury Demand: None
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Roy Den Hollander
on behalf of himself and all others
similarly situated

represented by **Roy Den Hollander**
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V.

Defendant

Copacabana Nightclub
TERMINATED: 11/21/2007

Defendant

China Club

Defendant

Guest House
TERMINATED: 10/04/2007

Defendant

A.E.R. Nightclub
TERMINATED: 11/21/2007

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Defendant**Jane Doe Promoters****Defendant****Copacabana Nightclub****Defendant****A.E.R. Lounge**

represented by **Vanessa Reeve Elliott**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/21/2007	1	COMPLAINT against Jane Doe Promoters, Copacabana Nightclub, China

		Club, Guest House, A.E.R. Nightclub, Lotus, Sol. (Filing Fee \$ 350.00, Receipt Number 618974) Document filed by Roy Den Hollander.(tro) Additional attachment(s) added on 6/26/2007 (Polanco, Juan). (Entered: 06/25/2007)
06/21/2007		SUMMONS ISSUED as to Jane Doe Promoters, Copacabana Nightclub, China Club, Guest House, A.E.R. Nightclub, Lotus, Sol. (tro) (Entered: 06/25/2007)
06/21/2007		Magistrate Judge Kevin N. Fox is so designated. (tro) (Entered: 06/25/2007)
06/21/2007		Case Designated ECF. (tro) (Entered: 06/25/2007)
07/21/2007	<u>2</u>	AFFIDAVIT OF SERVICE. Copacabana Nightclub served on 6/27/2007, answer due 7/17/2007; China Club served on 7/17/2007, answer due 8/6/2007; Guest House served on 6/27/2007, answer due 7/17/2007; A.E.R. Nightclub served on 6/27/2007, answer due 7/17/2007; Lotus served on 7/14/2007, answer due 8/3/2007; Sol served on 6/27/2007, answer due 7/17/2007. Service was accepted by Fecharan Gen Agent. Document filed by Copacabana Nightclub; China Club; Guest House; A.E.R. Nightclub; Lotus; Sol. (Den Hollander, Roy) (Entered: 07/21/2007)
08/03/2007	<u>3</u>	FILING ERROR - DEFICIENT DOCKET ENTRY - (SELECTED THE WRONG PARTIES) NOTICE OF APPEARANCE by Deborah Swindells Donovan on behalf of Jane Doe Promoters, Copacabana Nightclub, China Club, Guest House, A.E.R. Nightclub, Lotus, Sol (Donovan, Deborah) Modified on 8/9/2007 (lb). (Entered: 08/03/2007)
08/09/2007	<u>4</u>	NOTICE OF APPEARANCE by Deborah Swindells Donovan on behalf of Lotus (Donovan, Deborah) (Entered: 08/09/2007)
08/22/2007	<u>5</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT - MOTION for Extension of Time to Answer (STIPULATION EXTENDING TIME REPLY). Document filed by Lotus.(Donovan, Deborah) Modified on 8/23/2007 (KA). (Entered: 08/22/2007)
08/23/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF DOCUMENT ERROR. Note to Attorney Deborah Swindells Donovan to E-MAIL pdf copy to orders_and_judgments@nysd.uscourts.gov Document No. 5 Stipulation extending time to Reply. This document is not filed via ECF. (KA) (Entered: 08/23/2007)
08/29/2007	<u>6</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT - CONSENT MOTION for Extension of Time to File Answer (STIPULATION). Document filed by A.E.R. Nightclub.Return Date set for 9/2/2009 at 09:00 AM. (Elliott, Vanessa) (Entered: 08/29/2007)
09/05/2007	<u>7</u>	STIPULATION AND ORDER, the time for Defendants Lotus to answer or otherwise respond is extended to 10/1/2007. So Ordered. (Signed by Judge Miriam Goldman Cedarbaum on 9/4/07) (jco) (Entered: 09/06/2007)
09/20/2007	<u>8</u>	NOTICE OF APPEARANCE by Robert Scott Grossman on behalf of Sol (Grossman, Robert) (Entered: 09/20/2007)
09/20/2007	<u>9</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT - CONSENT MOTION for Extension of Time to File Answer re: 8 Notice of

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		Appearance (STIPULATION). Document filed by Sol.(Grossman, Robert) Modified on 9/20/2007 (KA). (Entered: 09/20/2007)
09/20/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF DOCUMENT ERROR. Note to Attorney Robert Scott Grossman to E-MAIL pdf copy to orders_and_judgments@nysd.uscourts.gov Document No. 9 Stipulation. This document is not filed via ECF. (KA) (Entered: 09/20/2007)
09/24/2007	10	STIPULATION AND ORDER: the time for defendant AER Lounge, LLC to appear, answer or otherwise respond to the complaint is extended to 10/1/07. A.E.R. Nightclub answer due 10/1/2007. (Signed by Judge Miriam Goldman Cedarbaum on 9/24/07) (db) (nd). (Entered: 09/25/2007)
09/26/2007	11	PRE-CONFERENCE STATEMENT <i>Letter requesting permission to file motion to dismiss</i> . Document filed by A.E.R. Nightclub.(Elliott, Vanessa) (Entered: 09/26/2007)
09/28/2007	12	MOTION to Dismiss <i>for failure to state a claim, pursuant to Rule 12(b)(6)</i> . Document filed by A.E.R. Nightclub.Responses due by 10/17/2007,Return Date set for 10/25/2007 at 09:30 AM.(Elliott, Vanessa) (Entered: 09/28/2007)
09/28/2007	13	MOTION to Dismiss <i>for Failure to State a Claim, Pursuant to Rule 12(b)(6)</i> . Document filed by A.E.R. Nightclub.Responses due by 10/17/2007,Return Date set for 10/25/2007 at 09:30 AM. (Attachments: # 1 Affidavit in Support of Motion to Dismiss# 2 Memorandum of Law in Support of Motion to Dismiss) (Elliott, Vanessa) (Entered: 09/28/2007)
09/29/2007	14	REPORT of Rule 26(f) Planning Meeting. (Attachments: # 1 Supplement Proposed Case Mngmt Plan)(Den Hollander, Roy) (Entered: 09/29/2007)
10/01/2007	15	RULE 26(f) DISCOVERY PLAN REPORT.Document filed by Lotus. (Attachments: # 1 Certificate of Service)(Donovan, Deborah) (Entered: 10/01/2007)
10/02/2007	16	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. no Corporate Parent. Document filed by A.E.R. Nightclub.(Elliott, Vanessa) (Entered: 10/02/2007)
10/03/2007		Minute Entry for proceedings held before Judge Miriam Goldman Cedarbaum : Status Conference held on 10/3/2007 at 10:39am for 16 min. (jmi) (Entered: 10/04/2007)
10/03/2007		Minute Entry for proceedings held before Judge Miriam Goldman Cedarbaum : Status Conference held on 10/3/2007. (jco) (Entered: 10/09/2007)
10/04/2007	17	Voluntary Dismissal Of Defendant Guest Home: Plaintiff in this proposed class action, Roy Den Hollander, voluntarily dismisses under Fed. R. Civ. R. 41(a) (1)(i) and in accordance with Fed. R. Civ. P. 23(e)(1)(A) this action against the named dft Guest House, and the action is dismissed with prejudice. This voluntarily dismissal is limited to dft Guest House. (Signed by Judge Miriam Goldman Cedarbaum on 10/3/07) (Entered: 10/04/2007)
10/08/2007	18	FILING ERROR - DEFICIENT DOCKET ENTRY - MOTION to Disqualify Judge Cedarbaum. Document filed by Roy Den Hollander. Return Date set for 11/1/2007 at 09:30 AM. (Attachments: # 1 Notice Motion# 2 Affidavit # 3

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		Memorandum Law)(Den Hollander, Roy) Modified on 10/9/2007 (KA). (Entered: 10/08/2007)
10/09/2007		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DEFICIENT DOCKET ENTRY ERROR. Note to Attorney Roy Den Hollander to RE-FILE Document 18 MOTION to Disqualify Judge Cedarbaum. ERROR(S): Filing Error of Attachments. Supporting documents must be filed individually. Event codes located under Replies, Opposition and Supporting Documents. (KA) (Entered: 10/09/2007)
10/09/2007	19	MOTION for Recusal <i>Judge Cedarbaum</i> . Document filed by Roy Den Hollander.Return Date set for 11/1/2007 at 09:30 AM.(Den Hollander, Roy) (Entered: 10/09/2007)
10/09/2007	20	AFFIRMATION of Roy Den Hollander in Support re: 19 MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 10/09/2007)
10/09/2007	21	MEMORANDUM OF LAW in Support re: 19 MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 10/09/2007)
10/09/2007	22	CERTIFICATE OF SERVICE of Motion served on Copacabana, China Club, AER, Lotus, Sol on 10/8/07. Service was made by Mail ECF. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 10/09/2007)
10/24/2007	23	FIRST MEMORANDUM OF LAW in Opposition re: 19 MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Lotus. (Donovan, Deborah) (Entered: 10/24/2007)
10/24/2007	24	DECLARATION of Deborah Swindells Donovan in Opposition re: 19 MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Lotus. (Attachments: # 1 Exhibit A)(Donovan, Deborah) (Entered: 10/24/2007)
10/24/2007	25	FILING ERROR - DEFICIENT DOCKET ENTRY - SEE DOCUMENT # 26) - CERTIFICATE OF SERVICE of Memorandum of Law in Opposition to Plaintiff's Motion to Disqualify Judge Cedarbaum, Declaration of Deborah Swindells Donovan in Opposition to Plaintiff's Motion to Dismiss Judge Cedarbaum served on Roy Den Hollander, Esq., Vanessa R. Elliot, Esq., Thomas B. Willinsky, Esq., Adam B. Kaufman, Esq., Charles B. Linn, Esq. on October 24, 2007. Document filed by Lotus. (Donovan, Deborah) Modified on 11/2/2007 (GF). (Entered: 10/24/2007)
10/24/2007	26	CERTIFICATE OF SERVICE of Defendant's Memorandum of Law In Opposition to Plaintiff's Motion to Disqualify Judge Cedarbaum, Declaration of Deborah Swindells Donovan In Opposition to Plaintiff's Motion to Disqualify Judge Cedarbaum with Exhibit served on Thomas B. Wilinsky, Esq., Adam B. Kaufman, Esq.; Charles B. Linn, Esq. on October 24, 2007. Service was made by MAIL. Document filed by Lotus. (Donovan, Deborah) (Entered: 10/24/2007)
10/24/2007	27	DECLARATION of Robert S. Grossman, Esq. in Opposition re: 19 MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Sol. (Grossman, Robert)

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		(Entered: 10/24/2007)
10/29/2007	<u>28</u>	REPLY AFFIRMATION of Roy Den Hollander in Support re: <u>19</u> MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Roy Den Hollander. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit)(Den Hollander, Roy) (Entered: 10/29/2007)
10/29/2007	29	REPLY MEMORANDUM OF LAW in Support re: 19 MOTION for Recusal <i>Judge Cedarbaum</i> .. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 10/29/2007)
10/29/2007	<u>30</u>	CERTIFICATE OF SERVICE of Reply served on Cpoacabana et al. on 10/29/2007. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 10/29/2007)
10/29/2007	31	CERTIFICATE OF SERVICE of declaration in opposition to Plaintiff's motion to disqualify served on Plaintiff, and counsel for co-defendants who have appeared on 10/24/07. Document filed by Sol. (Grossman, Robert) (Entered: 10/29/2007)
11/01/2007	32	MEMORANDUM ENDORSEMENT re: 19 Notice of Motion for Disqualification of Judge Cedarbaum. Endorsement: I am unaware of any conduct of mine that provides a basis for reasonable questioning my impartiality toward men as a class. Motion Denied. SO ORDERED. (Signed by Judge Miriam Goldman Cedarbaum on 11/1/07) (db) (Entered: 11/01/2007)
11/07/2007	33	MOTION to Dismiss <i>Complaint</i> . Document filed by Sol.Responses due by 11/21/2007,Return Date set for 11/29/2007 at 09:30 AM. (Attachments: # <u>1</u> Exhibit Exhibit A - Complaint)(Grossman, Robert) (Entered: 11/07/2007)
11/07/2007	34	MEMORANDUM OF LAW in Support re: 33 MOTION to Dismiss <i>Complaint</i> .. Document filed by Sol. (Grossman, Robert) (Entered: 11/07/2007)
11/07/2007	35	CERTIFICATE OF SERVICE of Motion to Dismiss and Memorandum of Law served on Plaintiff and appearing Defendants on 11/17/2007. Document filed by Sol. (Grossman, Robert) (Entered: 11/07/2007)
11/07/2007	36	MOTION to Dismiss. Document filed by Lotus.(Donovan, Deborah) (Entered: 11/07/2007)
11/07/2007	<u>37</u>	MEMORANDUM OF LAW in Support re: 36 MOTION to Dismiss.. Document filed by Lotus. (Donovan, Deborah) (Entered: 11/07/2007)
11/07/2007	38	DECLARATION of Deborah Swindells Donovan in Support re: 36 MOTION to Dismiss.. Document filed by Lotus. (Donovan, Deborah) (Entered: 11/07/2007)
11/07/2007	39	CERTIFICATE OF SERVICE of Notice of Motion to Dismiss, Memorandum of Law In Support, Declaration of D. Donovan with Exhibits served on All Parties on November 7, 2007. Document filed by Lotus. (Donovan, Deborah) (Entered: 11/07/2007)
11/09/2007	40	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. No publicly held corporate parents Corporate Parent. Document filed by Sol.(Grossman, Robert)

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		(Entered: 11/09/2007)
11/09/2007	41	RULE 7.1 CORPORATE DISCLOSURE STATEMENT. NO Corporate Parent. Document filed by Lotus.(Donovan, Deborah) (Entered: 11/09/2007)
11/09/2007	42	CERTIFICATE OF SERVICE of Disclosure Statement served on ALL PARTIES on November 9, 2007. Document filed by Lotus. (Donovan, Deborah) (Entered: 11/09/2007)
11/12/2007	43	MEMORANDUM OF LAW in Support re: 13 MOTION to Dismiss <i>for Failure to State a Claim, Pursuant to Rule 12(b)(6)</i> . MOTION to Dismiss <i>for Failure to State a Claim, Pursuant to Rule 12(b)(6)</i> ., 12 MOTION to Dismiss <i>for failure to state a claim, pursuant to Rule 12(b)(6)</i> .. Document filed by Sol. (Grossman, Robert) (Entered: 11/12/2007)
11/20/2007	44	MEMORANDUM OF LAW in Opposition re: 36 MOTION to Dismiss., 33 MOTION to Dismiss <i>Complaint</i> ., 12 MOTION to Dismiss <i>for failure to state a claim, pursuant to Rule 12(b)(6)</i> ., 13 MOTION to Dismiss <i>for Failure to State a Claim, Pursuant to Rule 12(b)(6)</i> . MOTION to Dismiss <i>for Failure to State a Claim, Pursuant to Rule 12(b)(6)</i> .. Document filed by Roy Den Hollander. (Attachments: # 1 Exhibit # 2 Exhibit # 3 Exhibit # 4 Exhibit # 5 Exhibit # 6 Exhibit # 7 Exhibit # 8 Exhibit # 9 Exhibit # 10 Exhibit # 11 Exhibit # 12 Exhibit # 13 Exhibit # 14 Exhibit # 15 Exhibit # 16 Exhibit # 17 Exhibit)(Den Hollander, Roy) (Entered: 11/20/2007)
11/21/2007	45	CERTIFICATE OF SERVICE of Opposition to Motions to Dismiss served on Copacabana et al. on November 20, 2007. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 11/21/2007)
11/21/2007	46	FIRST AMENDED CLASS ACTION COMPLAINT amending 1 Complaint, against A.E.R. Lounge, Copacabana Nightclub, Jane Doe Promoters, China Club, Lotus, Sol.Document filed by Copacabana Nightclub, A.E.R. Lounge, Roy Den Hollander.Related document: 1 Complaint, filed by Roy Den Hollander. (Attachments: # 1 AmdCmpExhibit 1, # 2 AmdCmpExhibit 2, # 3 AmdCmpExhibit 3, # 4 AmdCmpExhibit 4, # 5 AmdCmpExhibit 5, # 6 AmdCmpExhibit 6, # 7 AmdCmpExhibit 7, # 8 AmdCmpExhibit 8, # 9 AmdCmpExhibit 9, # 10 AmdCmpExhibit 10, # 11 AmdCmpExhibit 11, # 12 AmdCmpExhibit 12, # 13 AmdCmpExhibit 13, # 14 AmdCmpExhibit 14, # 15 AmdCmpExhibit 15)(db) (Entered: 11/26/2007)
11/26/2007	47	MEMORANDUM OF LAW in Opposition re: 36 MOTION to Dismiss. <i>Memorandum of Law in Opposition to Plaintiff's Alleged Cross Motions</i> . Document filed by Lotus. (Donovan, Deborah) (Entered: 11/26/2007)
11/26/2007	48	CERTIFICATE OF SERVICE of MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFF'S ALLEGED CROSS MOTIONS served on ALL PARTIES on November 26, 2007. Document filed by Lotus. (Donovan, Deborah) (Entered: 11/26/2007)
11/26/2007	49	DECLARATION of Robert S. Grossman in Support re: 33 MOTION to Dismiss <i>Complaint</i> .. Document filed by Sol. (Grossman, Robert) (Entered: 11/26/2007)

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11/26/2007	50	REPLY MEMORANDUM OF LAW in Support re: 33 MOTION to Dismiss <i>Complaint.</i> . Document filed by Sol. (Grossman, Robert) (Entered: 11/26/2007)
12/14/2007	51	MOTION to Dismiss <i>Amended Complaint.</i> Document filed by Sol. Responses due by 12/28/2007 Return Date set for 1/10/2008 at 09:30 AM. (Attachments: # 1 Exhibit Amended Complaint)(Grossman, Robert) (Entered: 12/14/2007)
12/14/2007	52	MOTION to Dismiss <i>Amended Complaint.</i> Document filed by A.E.R. Lounge, A.E.R. Nightclub. Return Date set for 1/10/2007 at 09:30 AM. Responses due by 12/28/2007 (Attachments: # 1 Affidavit Supplemental Affirmation of Vanessa R. Elliott in Support of Motion to Dismiss Amended Complaint) (Elliott, Vanessa) (Entered: 12/14/2007)
12/14/2007	53	MEMORANDUM OF LAW in Support re: 36 MOTION to Dismiss. <i>Supplemental Memorandum of Law in Support of Motion to Dismiss.</i> Document filed by Lotus. (Donovan, Deborah) (Entered: 12/14/2007)
12/14/2007	54	CERTIFICATE OF SERVICE of Defendant's Supplemental Memorandum of Law In Support of Motion to Dismiss served on All Parties on December 14, 2007. Document filed by Lotus. (Donovan, Deborah) (Entered: 12/14/2007)
12/27/2007	55	DECLARATION of Den Hollander in Opposition re: 52 MOTION to Dismiss <i>Amended Complaint.</i> , 51 MOTION to Dismiss <i>Amended Complaint.</i> . Document filed by Roy Den Hollander. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit)(Den Hollander, Roy) (Entered: 12/27/2007)
12/27/2007	56	MEMORANDUM OF LAW in Opposition re: 52 MOTION to Dismiss <i>Amended Complaint.</i> , 51 MOTION to Dismiss <i>Amended Complaint.</i> . Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 12/27/2007)
12/27/2007	57	CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss., 24 Declaration in Opposition to Motion, 43 Memorandum of Law in Support of Motion, 33 MOTION to Dismiss <i>Complaint.</i> , 51 MOTION to Dismiss <i>Amended Complaint.</i> , 34 Memorandum of Law in Support of Motion. Document filed by Roy Den Hollander. Return Date set for 1/10/2008 at 09:30 AM.(Den Hollander, Roy) (Entered: 12/27/2007)
12/27/2007	58	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss (Amended Complaint), 38 Declaration in Support of Motion, 36 MOTION to Dismiss., 24 Declaration in Opposition to Motion, 43 Memorandum of Law in Support of Motion, 33 MOTION to Dismiss <i>Complaint.</i> , 51 MOTION to Dismiss <i>Amended Complaint.</i> , 34 Memorandum of Law in Support of Motion(DECLARATION IN SUPPORT OF MOTION). Document filed by Roy Den Hollander. Return Date set for 1/10/2008 at 09:30 AM.(Den Hollander, Roy) Modified on 1/2/2008 (KA). (Entered: 12/27/2007)
12/27/2007	59	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - MOTION Strike, deny, disclose information re: 53 Memorandum of Law in

		Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss., 57 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss, 24 Declaration in Opposition to Motion, 43 Memorandum of Law in Support of Motion, 33 MOTION to Dismiss <i>Complaint.</i> , 51 MOTION to Dismiss <i>Amended Complaint.</i> , 34 Memorandum of Law in Support of Motion, 58 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss(MEMORANDUM OF LAW IN SUPPORT OF MOTION). Document filed by Roy Den Hollander. Return Date set for 1/10/2008 at 09:30 AM.(Den Hollander, Roy) Modified on 1/2/2008 (KA). (Entered: 12/27/2007)
12/29/2007	60	CERTIFICATE OF SERVICE of Cross Motions Supp Opposition served on Copacabana et al. on December 28, 2007. Service was made by ECF, mail, email. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 12/29/2007)
01/02/2008		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Roy Den Hollander to RE-FILE Document 58 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss. Use the document type Declaration in Support of Motion found under the document list Replies, Opposition and Supporting Documents. (KA) (Entered: 01/02/2008)

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[illegible]

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		Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 01/02/2008)
01/07/2008	63	AFFIRMATION of Robert S. Grossman, Esq. in Opposition re: 57 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss. Document filed by Sol. (Grossman, Robert) (Entered: 01/07/2008)
01/08/2008	64	CROSS REPLY MEMORANDUM OF LAW in Support re: 57 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to DismissCROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss. Document filed by Roy Den Hollander. (Den Hollander, Roy) (Entered: 01/08/2008)
08/20/2008	65	NOTICE OF APPEARANCE by Christopher Brian Block on behalf of Lotus (Attachments: # 1 Affidavit of Service)(Block, Christopher) (Entered: 08/20/2008)
09/29/2008	66	OPINION #96551: the 36 , 51 , 52 motions to dismiss filed by AER, Lotus, and Sol are granted, and the complaint is dismissed as to all defendants. Den Hollanders 57 motions are denied. The Clerk is directed to close this case. (Signed by Judge Miriam Goldman Cedarbaum on 9/29/2008) Copies Mailed By Chambers. (kkc) (Entered: 09/29/2008)
09/29/2008	67	CLERK'S JUDGMENT That for the reasons stated in the Court's Opinion dated

		September 29, 2008, AER, Lotus, and Sols motion to dismiss are granted; the complaint is dismissed as to all defendants; and Hollanders motions are denied; accordingly, the case is closed. (Signed by J. Michael McMahon, clerk on 9/29/08) (Attachments: # 1 notice of right to appeal)(ml) (Entered: 09/29/2008)
10/10/2008	68	NOTICE OF APPEAL from 66 Memorandum & Opinion, 67 Clerk's Judgment. Document filed by Roy Den Hollander. Filing fee \$ 455.00, receipt number E 665328. Copies mailed to attorney(s) of record: Beattie Padovano, LLC; Gordon & Rees, LLP; and Robert S. Grossman, PC. (tp) (nd). (Entered: 11/12/2008)
11/12/2008		Transmission of Notice of Appeal to the District Judge re: 68 Notice of Appeal. (tp) (Entered: 11/12/2008)
11/12/2008		Transmission of Notice of Appeal to the District Judge re: 68 Notice of Appeal. (tp) (Entered: 11/12/2008)
11/12/2008		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for 48 Certificate of Service Other filed by Lotus, 31 Certificate of Service Other filed by Sol, 39 Certificate of Service Other filed by Lotus, 44 Memorandum of Law in Opposition to Motion,, filed by Roy Den Hollander, 41 Rule 7.1 Corporate Disclosure Statement filed by Lotus, 37 Memorandum of Law in Support of Motion filed by Lotus, 2 Affidavit of Service Complaints,, filed by Guest House, Sol, Lotus, A.E.R. Nightclub, China Club, Copacabana Nightblub, 6 CONSENT MOTION for Extension of Time to File Answer. filed by A.E.R. Nightclub, 7 Stipulation and Order, Set Deadlines/Hearings, 38 Declaration in Support of Motion filed by Lotus, 36 MOTION to Dismiss. filed by Lotus, 26 Certificate of Service Other, filed by Lotus, 16 Rule 7.1 Corporate Disclosure Statement filed by A.E.R. Nightclub, 23 Memorandum of Law in Opposition to Motion filed by Lotus, 22 Certificate of Service Other filed by Roy Den Hollander, 55 Declaration in Opposition to Motion, filed by Roy Den Hollander, 5 MOTION for Extension of Time <i>to Answer.</i> filed by Lotus, 67 Clerk's Judgment, 35 Certificate of Service Other filed by Sol, 20 Affirmation in Support of Motion filed by Roy Den Hollander, 50 Reply Memorandum of Law in Support of Motion filed by Sol, 14 Rule 26 (f) Discovery Plan Report, 65 Notice of Appearance filed by Lotus, 59 MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss <i>Amended Complaint.</i> , 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in

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Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss., MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss., filed by Roy Den Hollander, 43 Memorandum of Law in Support of Motion, filed by Sol, 33 MOTION to Dismiss *Complaint*. filed by Sol, 12 MOTION to Dismiss *for failure to state a claim, pursuant to Rule 12(b)(6)*. filed by A.E.R. Nightclub, 51 MOTION to Dismiss *Amended Complaint*. filed by Sol, 34 Memorandum of Law in Support of Motion filed by Sol, 21 Memorandum of Law in Support of Motion filed by Roy Den Hollander, 60 Certificate of Service Other filed by Roy Den Hollander, 58 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss filed by Roy Den Hollander, 25 Certificate of Service Other., filed by Lotus, 9 CONSENT MOTION for Extension of Time to File Answer re: 8 Notice of Appearance. filed by Sol, 17 Notice of Voluntary Dismissal - Signed, Add and Terminate Parties., 46 Amended Complaint., filed by A.E.R. Lounge, Copacabana Nightclub, Roy Den Hollander, 53 Memorandum of Law in Support of Motion filed by Lotus, 19 MOTION for Recusal *Judge Cedarbaum*. filed by Roy Den Hollander, 63 Affirmation in Opposition to Motion., filed by Sol, 28 Reply Affirmation in Support of Motion filed by Roy Den Hollander, 18 MOTION to Disqualify Judge *Cedarbaum*. filed by Roy Den Hollander, 10 Stipulation and Order, Set Deadlines/Hearings, 32 Order on Motion for Recusal, 56 Memorandum of Law in Opposition to Motion filed by Roy Den Hollander, 11 Pre-Conference Statement filed by A.E.R. Nightclub, 30 Certificate of Service Other filed by Roy Den Hollander, 52 MOTION to Dismiss *Amended Complaint*. filed by A.E.R. Lounge, A.E.R. Nightclub, 8 Notice of Appearance filed by Sol, 3 Notice of Appearance, filed by Jane Doe Promoters, Guest House, Sol, Lotus, A.E.R. Nightclub, China Club, Copacabana Nightclub, 27 Declaration in Opposition to Motion filed by Sol, 62 Memorandum of Law in Support of

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Motion,,, filed by Roy Den Hollander, 49 Declaration in Support of Motion filed by Sol, 66 Memorandum & Opinion, 61 Declaration in Support of Motion,,, filed by Roy Den Hollander, 68 Notice of Appeal, filed by Roy Den Hollander, 15 Rule 26(f) Discovery Plan Report filed by Lotus, 64 Reply Memorandum of Law in Support of Motion,,, filed by Roy Den Hollander, 42 Certificate of Service Other filed by Lotus, 47 Memorandum of Law in Opposition to Motion filed by Lotus, 13 MOTION to Dismiss *for Failure to State a Claim, Pursuant to Rule 12(b)(6)*. MOTION to Dismiss *for Failure to State a Claim, Pursuant to Rule 12(b)(6)*. filed by A.E.R. Nightclub, 1 Complaint, filed by Roy Den Hollander, 40 Rule 7.1 Corporate Disclosure Statement filed by Sol, 54 Certificate of Service Other filed by Lotus, 57 CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss CROSS MOTION Strike, deny, disclose information re: 53 Memorandum of Law in Support of Motion, 37 Memorandum of Law in Support of Motion, 52 MOTION to Dismiss *Amended Complaint*., 38 Declaration in Support of Motion, 36 MOTION to Dismiss filed by Roy Den Hollander, 24 Declaration in Opposition to Motion filed by Lotus, 45 Certificate of Service Other filed by Roy Den Hollander, 29 Reply Memorandum of Law in Support of Motion filed by Roy Den Hollander, 4 Notice of Appearance filed by Lotus were transmitted to the U.S. Court of Appeals. (tp) (Entered: 11/12/2008)

PACER Service Center			
Transaction Receipt			
12/01/2008 13:52:29			
PACER Login:	cp0024	Client Code:	
Description:	Docket Report	Search Criteria:	1:07-cv-05873-MGC
Billable Pages:	10	Cost:	0.80

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Roy Den Hollander,

Plaintiff on behalf of himself
and all others similarly situated,

Docket No. 07 CV 5873 (MGC)
ECF

-against-

**FIRST AMENDED CLASS
ACTION 42 U.S.C. 1983
COMPLAINT**

Copacabana Nightclub,
China Club,
A.E.R. Lounge,
Lotus,
Sol¹, and
Jane Doe Promoters,

Defendants.

-----X

Civil Rights, 14th Amendment - Equal Protection, Class Action.

1. This is an action brought by the plaintiffs as a class for declaratory and injunctive relief and nominal damages against the defendant discos² for the deprivation, under the color of state law, of the plaintiffs' rights as guaranteed by the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.
2. The defendants regularly hold "Ladies Nights" in which they charge males 18 years-old and older more for admission than they charge females or give males less time than females to enter defendant discos for free or at a reduced price.
3. This class action is brought pursuant to 42 U.S.C. § 1983 over which this Court has jurisdiction in accordance with 28 U.S.C. § 1343(3) & (4).

¹ The defendants are listed by their trade names or "doing business as" names. Their legal business names are for the Copacabana Nightclub: River Watch Restaurant, Inc.; for China Club: Nightlife Enterprises L.P.; for A.E.R. Lounge: AER Lounge LLC; for Lotus: Lulu's LLC; and for Sol: Ruby Falls Partners LLC.

² The generic term "disco" is used to refer to the defendants' establishments that sell alcohol for consumption on their premises. All, except for A.E.R. Lounge, have New York State Liquor Authority ("SLA") licenses classified as "on-premises" and A.E.R. has a "cabaret" license from the SLA. Both types of licenses are for public accommodations as opposed to "private clubs" for which the SLA issues a different type of license that exercises less pervasive control. Refer to N.Y. Alcoholic and Beverage Control ("ABC") Law § 3 and SLA Rules at 9 NYCRR Exec., §§ 47.3, 47.7.

4. This class action is maintainable under Fed. R. Civ. P. § 23(b)(2) because the defendants have acted on grounds generally applicable to the class, thereby making declaratory and injunctive relief and nominal damages appropriate to the class as a whole.
5. The defendants are discos located in New York City, the County of New York, open to the public, serve alcoholic and non-alcoholic beverages for consumption on their premises, provide music, and allow dancing. Some also provide food to their customers.
6. The defendant Jane Doe promoters act as agents for the discos.
7. A long history of regulation, control, price fixing, place of time and sale setting, and outright extinction lies behind the liquor business in this country since Colonial times, and the rights of those who choose to engage in it are not on a constitutional or legal parity with the rights of people who trade in bicycles, or cosmetics, or furniture.
8. The defendant discos are considered public accommodations under the New York State Alcoholic and Beverage Control (“ABC”) Law, the State Liquor Authority (“SLA”) Rules, and the State Civil Rights Law § 40.
9. The defendants are pervasively regulated and controlled as public accommodations effected with a public interest in fostering and promoting temperance in New York State.
10. Defendants’ discos differ from “private clubs” serving alcohol in that private clubs do not purport to and are not required to serve the public.
11. New York State regulates private clubs, which it refers to as just “clubs,” more loosely than premises such as the defendants that are open to the public.
12. The discretion of New York State to control the sale of alcoholic beverages by the defendants is an exercise of the ultimate sovereignty of the State.
13. New York State has absolute power to prohibit totally the sale of alcohol, broad power to control the times, places and circumstances under which alcohol is sold by the defendants; and even to arrogate to the State the entire business of distributing and selling alcohol to its citizens.
14. Permission to the defendants to sell alcohol is an exercise of New York State’s police power allowing them to do what would otherwise be unlawful.
15. The defendant discos’ ability to survive and to prosper economically depends on New York State’s police power permitting the discos to retail alcoholic beverages for consumption on their premises.
16. New York State through the SLA controls the number of traffickers in alcohol and the locations for all licenses and permits in New York County, where the defendants are located.

17. The SLA regulates the trade and credit practices of all participants in the alcoholic beverage industry in New York State.
18. In 2006, New York State's revenue from on-premise licensing and renewals totaled \$32 million, and \$6.0 million from civil penalties. These funds are paid into the State Treasury. New York State Liquor Attorney 2006 Annual Report, <http://abc.state.ny.us/forms/2006AnnualReport.pdf>.
19. Defendant discos have benefited New York State by paying their fair share of license, renewal, and civil penalty fees as well as other fees into the State Treasury, part of which are generated by Ladies Nights.
20. Permission from the State allowing the defendants to retail alcohol cannot be transferred or assigned to any other person or premise unless allowed by the SLA.
21. The SLA requires defendants to be of high standing and character, experienced in operating a disco, mature, and financially responsible and can deprive them of the right to operate their businesses if it determines they have demonstrated undesirable propensities.
22. Police officials cannot hold a financial interest in anyone of the defendants.
23. Each principal or partner of the defendants must be a U.S. citizen or permanent resident alien, at least 21 years old, not a convicted felon nor guilty of certain misdemeanors unless she received a pardon or certificate of good conduct.
24. A change in shareholders, stock holdings, officers or directors by the defendants may require SLA approval.
25. The SLA must approve the financial business plan for any premise, the interior floor plan, the exterior blueprint, block plot diagram, the landlord, type of building, history of building's prior use, number of tables and chairs, manager, principals, principals' spouses, before granting permission to sell alcohol.
26. All of the defendants except for A.E.R. Lounge ("AER") must keep food available for customers.
27. New York State's ubiquitous control over the defendants prevents them from having any financial interest in any manufacturers or sellers of alcohol at wholesale.
28. New York State forbids the defendants from making any loans to or holding any liens on property of manufacturers or wholesalers or of any person involved in manufacturing and wholesaling.
29. Defendants, retailers of alcohol for on-premise consumption, cannot hold financial interests in or make loans to retailers of alcohol for off-premise consumption.

30. Defendants cannot receive any loans from alcohol manufacturers, wholesale sellers or retail sellers for off-premise consumption.
31. In contrast, a bicycle shop owner can borrow from or loan to whomever he wishes, can vertically integrate, and can sell his business to whomever he desires.
32. Defendants have no vested right in the SLA's approval permitting them to retail alcoholic beverages or in continuing approval to retail such. Denial of permission to sell alcohol for on-premise consumption is only reviewable at an arbitrary and capricious standard.
33. New York State's permission for the defendants to sell alcohol is a privilege of limited duration and can be canceled, suspended or revoked by the SLA at any time for cause.
34. Defendant discos do not even have a contractual right to continue selling alcohol.
35. The SLA may
 - a. Impose a civil penalty on any of the defendants;
 - b. Hold hearings, require the production of defendants' books, subpoena defendants, examine any person under oath; and
 - c. Inspect the defendants' premises during hours of operation.
36. When the defendants renew their licenses, the SLA considers:
 - a. Number of liquor licenses and types of licenses in proximity to the defendants locations and in New York County;
 - b. Evidence that all necessary licenses from the State and City have been obtained;
 - c. Effect license would have on traffic and parking in the area;
 - d. Existing noise level in area;
 - e. History of violations of the ABC law, SLA Rules, and reported criminal activity (Exhibit A, Lotus violations);
 - f. Financial status of defendants and disclosure of the source of all funds;
 - g. Whether the defendants intend of have waitresses called "bunnies," or some other evolutionarily correct name, dressed in scanty costumes who circulate among the customers to flirt and chat;
 - h. Whether the principals are in contact with a person of "evil reputation," failed to disclose prior arrest records, or there's a pending indictment; and
 - i. Any other factor the SLA considers relevant to the public convenience, advantage and in the interest of the community.
37. Defendants have no right to renew their licenses, which come up every two years.
38. The SLA imposes restrictive physical standards on defendants' premises:
 - a. Limits the number of bars in defendants premises to one, but may allow two additional bars at a fee for each;
 - b. Controls the display of signs within and outside the defendants' premises;
 - c. Forbids any signs inside or outside advertising a particular brand of alcohol unless the SLA approves;

- d. Requires approval and fee payments before the defendants can physically alter or change their premises, such as
 - i. Creating or relocating a window or door,
 - ii. Reducing visibility within the premises,
 - iii. Increasing or decreasing in size the premises or kitchen,
 - iv. Changing the character of the interior,
 - v. Changing the size or location of any bar;
 - e. Even if an alteration of the premises is less than \$10,000, or doesn't effect the physical structure or character, the defendants must still request permission, but in this situation, the SLA has just 20 days to object;
 - f. Require adequate toilet facilities; and
 - g. Prohibit any obstruction that prevents a full view of the entire room by every person present.
39. The defendants must also provide their local Community Planning Board with any application to alter their premises.
- 40. Defendants are required to display in a prominent location their state license to retail alcohol so that all visitors may see, and the license must be displayed in a particular type of frame of metal or wood.
41. The ABC Law and SLA Rules extensively regulate the defendants day-to-day operations:
- a. Prohibit sales to minors, intoxicated persons, and habitual drunkards;
 - b. Prescribe hours for the sale of alcohol;
 - c. Limit the age of persons employed by the defendants;
 - d. Prohibit employment of convicted felons or those guilty of certain misdemeanors without a certificate of good conduct or pardon;
 - e. Set terms and conditions for surety bonds required of defendants;
 - f. Prescribe the form of all reports deemed necessary to be made to the SLA;
 - g. Require defendants to maintain on their premises records of daily purchases, including name, license number and place of business of vendor, and records of individual sales;
 - h. Purchase, sales, and personal records must be available for inspection by the SLA at any time during operating hours (in contrast a bicycle shop owner who has a Fourth Amendment right to privacy);
 - i. Limit purchase of alcohol only from licensed manufacturers and wholesalers;
 - j. Prohibit discrimination on account of race, creed, color or national origin;
 - k. Demand compliance with state law, including Civil Rights Law 40-c that prohibits discrimination on the bases of sex by public accommodations;
 - l. Forbid disorderly premises, lewd or indecent exposure (from 2004 to 2006, disturbances, misconduct or disorder has resulted in Lotus becoming a focal point for police attention, the SLA charged Lotus twice with allowing its premises to become disorderly as the result of an altercation, and once for permitting a robbery to occur within the premises, Exhibit A);
 - m. Dictate the posting of signs that state it is against the law to sell alcohol to persons under 21 (the SLA twice charged Lotus with providing alcohol to a person under 21, Exhibit A);

- n. Compel signs of a specific size, point, and in specific locations stating that alcohol may harm incipient humans in a mother's womb;
 - o. The SLA must be notified of any arrests on the premises, and the county District Attorney must inform SLA of any convictions resulting from those arrests;
 - p. Obligate the defendants to insure that a high degree of supervision is exercised over the establishment at all times to prevent abuses of the privilege to sell alcohol;
 - q. Defendants are strictly accountable for all violations committed, suffered, and permitted by any of defendants' employees;
 - r. Conformity with all applicable building, fire, health, safety and governmental regulations (the SLA charged Lotus twice with operating an unlicensed cabaret, the NYC Department of Health cited Lotus three times for health code violations over which the SLA held a hearing, and the State Department of Taxation and Finance issued three tax warrants for Lotus' failure to pay taxes, Exhibit A);
 - s. Require lighting good enough to permit a person to read nine-point print;
 - t. Compel a valid bond in effect at all times;
 - u. Prohibit refilling or tampering with the contents of any container of alcohol (the SLA charged Lotus with keeping alcohol in containers that were contaminated, and twice charged Lotus with keeping alcohol in containers the contents of which were not as represented on the labels, Exhibit A); and
 - v. Must dispense alcohol from container in which it was received (the SLA once charged Lotus with failing to keep alcohol in its original container, Exhibit A).
42. Violations of most provisions of the ABC Law are a crime for which the police can make an arrest. The SLA works with local law enforcement agencies to assure compliance with the ABC Law.
43. The restrictions with which the retail sale of alcohol is hedged about, and in particular the restrictions imposed upon applications for new licenses, operate to limit competition to a degree sufficient to render the issuance of a license a commercially valuable privilege granted by the state to the licensee.
44. The economic interests of established licensees are protected by the denial of applications to new entrants, at least where existing licensees have made substantial investments and there has been no growth in community population or usage.
45. The State's comprehensive control over the alcohol industry operates to restrict competition between vendors of alcoholic beverages, such as the defendants, thus conferring on license holders a significant state-derived economic benefit approximating state support.
46. The State, not economics, controls the barriers of entry into the alcohol industry
47. The SLA's broad authority to revoke or refuse a license for reasons deemed by it to serve the "public convenience and advantage," includes the prevention of unjustified discrimination in the exercise of the privilege granted the defendants, such as treating females and males differently for admission.

48. The SLA has continued bi-annually to renew defendants' privilege to retail alcohol for on-premise consumption despite the defendants open discrimination against males by charging them more for admission or making it more timely or economically burdensome for males to enter the discos than for females.
49. The SLA has not made any effort through the exercise of the broad authority granted it by the legislature to remedy the discrimination or to suspend or to revoke the licenses that the defendants must have in order to practice their discrimination.
50. Without the privilege to retail alcohol, the defendants would not be in a position to discriminate against men because without alcohol virtually no one, except members of temperance unions, would frequent defendant discos. The defendants would soon be out of business.
51. In order to increase revenues, the defendants operate the discriminatory Ladies Nights, which the SLA permits by failing to put an end to the defendants' disparate treatment of guys and females.
52. Part of the increased revenues from Ladies Nights inure to the benefit of New York State's Treasury by supporting the numerous fees charged the defendants by the SLA for various matters.
53. The defendant discos' promoters are either separate legal entities hired by the defendants, or employees of the same legal entity to which the SLA has granted permission to sell alcohol for on-premise consumption. In either case, the defendants hire and fire the promoters and have the ultimate authority to determine admission practices to their discos.
54. For example, Lotus has one employee who works out the deals with the promoters, such as who is going to pay how much on a particular night to enter, and hires the promoters. This individual man must approve not only the compensation for the promoters but the specific admission practices on a particular night. For all the defendants, it is the defendants who decide on the promoters, and it is the defendants who are the masters over their agent promoters.
55. Roy Den Hollander, counsel for the putative class and named-plaintiff or class representative, individually and on behalf of all the others similarly situated, both past and future, challenges the practice and policy of the defendants that charges guys more for admission than females or gives males less time than females to enter the defendant discos for free or at a reduced price—a form of invidious discrimination against men.
56. As Exhibit B shows, the defendants allow females in free up to a certain time but charge men for admission until that same time, or allow ladies in free or at a reduced price over a longer time span than men. The following are just some examples of the many advertisements by the defendants and their promoter agents illustrating that the defendants' admission practices on Ladies Nights treat females and males differently to

the detriment of males. A large number of the defendants' Ladies Nights advertisements were produced to the defendants as part of the plaintiff class' mandatory disclosure under Fed. R. Civ. P. 26(a):

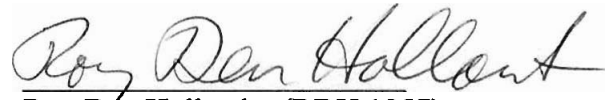
- a. **Copacabana**, 560 West 34 Street, January 26, 2007, ladies free all night, gentlemen reduced admission.
 - b. **China Club**, 268 West 47 Street, November 9, 2007, ladies free until 12 midnight, guys free until 11 PM.
 - c. **A.E.R. Lounge**, 409 West 13 Street, May 3, 2007, ladies free until 12 AM, gents reduced admission.
 - d. **Lotus**, 409 West 14 Street, November 8, 2007, ladies free before 1 AM, guys free before 12 midnight.
 - e. **Sol**, 609 West 29 Street, September 29, 2007, ladies free until 12 midnight, gents free until 11 PM.
57. Any female 21 or older and neither drunk nor disorderly may enter the defendant discos for less money or has more time to enter the defendant discos for free or at a reduced price than any male 21 or older and neither drunk nor disorderly.
58. The putative class represented by the named-plaintiff in this action consists of all men who were admitted to the defendant discos since June 21, 2004 and were charged more than females or their admissions made more burdensome than for females through arbitrarily imposed time restraints.
59. The exact number of members of the class is not known, but it is estimated in the thousands; therefore, the class is so numerous that joinder of all members is impracticable.
60. There are questions of law and fact presented in this action that are common to the entire class and that affect the rights of the class:
- a. Were the members of the class invidiously discriminated against because of their sex by having to pay more money or navigate arbitrarily imposed time restraints in order to gain admission?
 - b. Were the defendants acting under color of state law when they discriminated against the class members?
61. The claims of the named-plaintiff arise out of the same discriminatory practice and course of conduct by the defendants and are based on the same legal theories as for the entire class. The named-plaintiff has attended these discos and was charged more than females or had less time for entering a cabaret free of charge or at a reduced price than females:

- a. **Copacabana**, 560 West 34 Street, Thursday, May 24, 2007, ladies \$5 before midnight; fellas \$25 under 21, \$15 over 21. The named-plaintiff entered for \$15 at 11:50 PM.
- b. **China Club**, 268 West 47 Street, Friday, June 1, 2007, ladies complimentary admission all night, gents complimentary until 11 PM. The named-plaintiff entered at 11:20 PM, paid \$20.
- c. **A.E.R. Lounge**, 409 West 13 Street, Thursday, May 24, 2007, ladies free until 12 midnight, gents reduced at \$10, general admission \$25. The named-plaintiff entered for \$10 at 10:55 PM.
- d. **Lotus**, 409 West 14 Street, Wednesday, May 23, 2007, ladies free before midnight and reduced after, guys reduced all night. The named-plaintiff entered for \$10 at 11 PM.
- e. **Sol**, 609 West 29 Street, Friday, June 1, 2007, ladies free before 1 AM, guys free before 11 PM with dates and \$20 after 11 PM. The named-plaintiff entered at 11:55PM, paid \$20.
- f. **Lotus**, 409 West 14 Street, Sunday, October 7, 2007, ladies free, guys \$20. The named-plaintiff entered at 11:30 PM and paid \$20.

Exhibit C reproduces the Ladies Nights' advertisements for the nights that the named-plaintiff attended as listed in paragraphs (a) to (e) above.

- 62. The named-plaintiff is an attorney admitted to practice in New York State, the U.S. District Courts for the Southern and the Eastern Districts of N.Y., and the Second Circuit, a former litigation associate at Cravath, Swaine & Moore, and is able to conduct this litigation fairly and adequately to protect the interests of the putative class.
- 63. WHEREFORE, the named-plaintiff requests that judgment be entered in this action on behalf of himself and all other class members similarly situated as follows:
- 64. A declaratory judgment that the defendants' Ladies Nights practice of charging men more for admission than females or giving males less time than females to enter defendant discos for free or at a reduced price violates the equal protection clause of the Fourteenth Amendment to the Constitution.
- 65. The defendants be enjoined from continuing their invidiously discriminatory practice against men.
- 66. Nominal damages to be decided by the Court.
- 67. And any other relief that is just and proper.

Dated: New York, NY
November 15, 2007

A handwritten signature in cursive script, reading "Roy Den Hollander".

Roy Den Hollander (RDH 1957)

Attorney for plaintiffs
545 East 14 Street, 10D
New York, NY 10009
(917) 687 0652

STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

84 Holland Avenue
Albany, NY 12208

11 Park Place
New York, NY 10007

125 Main Street
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

3571-2003/Case No. 10761

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, 11 Park Place, Room 5-1B, New York, New York 10007, on **December 10, 2003**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 8/28/03, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes, and/or fire, health, safety and governmental regulations; a summons was issued for unlicensed cabaret; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority (9 NYCRR 53.1(f)).
2. That on 9/4/03, in violation of subdivision 1 of section 65 of the Alcoholic Beverage Control Law, the licensee sold, delivered or gave away, or permitted to be sold, delivered or given away, alcoholic beverages to a person or persons actually under the age of twenty-one years.
3. That on 9/3/03, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes, and/or fire, health, safety and governmental regulations; a summons was issued for unlicensed cabaret; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority (9 NYCRR 53.1(f)).

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Licensee's name and residence address

JEFFREY HACKER

Licensee's Landlord

MOLLY BENDER

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the

Date: 11/10/2003

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
11 Park Place, 5th Floor
New York, New York 10007

Tel: [212] 417-4179

Fax: [212] 417-2056

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

84 Holland Avenue
Albany, NY 12208

11 Park Place
New York, NY 10007

125 Main Street
Buffalo, NY 14203

license, the Authority may impose, as part of the penalty,
a two year prohibition against the issuance of any alcoholic
beverage license at these premises.

Certified Mail # 7001 2510 0002 5248 9886

CC: Warren Pesetsky, Pesetsky & Bookman, 325 Broadway, Suite 501, New York, NY 10007

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

84 Holland Avenue
Albany, NY 12208

11 Park Place
New York, NY 10007

125 Main Street
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

3730-2003/Case No. 11793

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, 11 Park Place, Room 5-1B, New York, New York 10007, on **December 10, 2003**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 9/5/03, in violation of subdivision 2 of section 106 of the Alcoholic Beverage Control Law, the licensee kept alcoholic beverages upon the licensed premises in containers the contents of which were contaminated and not as represented on the labels affixed thereto and/or contained foreign matter.

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Licensee's name and residence address
JEFFREY HACKER

Date: 11/10/2003

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
SCOTT WEINER, ESQ.
11 Park Place, 5th Floor

Licensee's Landlord
MOLLY BENDER

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Tel: [212] 417-4179
Fax: [212] 417-2056

Certified Mail # 7001 2510 0002 5248 9879

CC: WARREN PESETSKY, ESQ., PESETSKY & BOOKMAN, 325 BROADWAY, SUITE 501, NEW YORK, NY 10007

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

84 Holland Avenue
Albany, NY 12208

105 West 125th Street
New York, NY 10027

125 Main Street
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

3970-2003/Case No. 11805

**LULU'S LLC
409 W 14TH STREET
NEW YORK, NY 10014**

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 105 West 125th Street, 4th Floor, New York, New York 10027, on **MARCH 17, 2004, at 11:00 AM**, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 9/7/03, the licensee violated Rule 54.3 of the Rules of the State Liquor Authority [9 NYCRR 48.3], in that it did not conform with all applicable building codes, and/or fire, health, safety and governmental regulations; a summons was issued for unlicensed cabaret; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority (9 NYCRR 53.1(f)).

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Licensee's name and residence address

JEFFREY HACKER

Licensee's Landlord

MOLLY BENDER

Date: 02/10/2004

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.

105 West 125th Street, 4th Floor
New York, New York 10027

Tel: [212] 961-8329

Fax: [212] 961-8316

Certified Mail # 7003 1680 0000 0295 7176

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

CC: Warren Pesetsky, Esq. , Pesetsky & Bookman, 325 Broadway, Suite 501, New York, NY 10007

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

4324-2004/Case No. 21634

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **November 28, 2007**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 11/20/04, the licensee failed to comply with all applicable health, safety and governmental regulations, leading to three citations for health code violations; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(f) of the Rules of the State Liquor Authority (9 NYCRR 53.1(f)).

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Date: 10/25/2007

Licensee's name and residence address

JEFFREY HACKER

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

Licensee's Landlord
WILLIAM GOTTLIEB

New York, New York 10027

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Tel: [212] 961- 8329
Fax: [212] 961-8316

Certified Mail # 7004 0750 0003 5655 4052

STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

867-2005/Case No. 23301

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **November 28, 2007**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 10/7/04, the licensee sold alcoholic beverages not labeled or in conformity with rule 50 of the Rules of the State Liquor Authority [9 NYCRR 84]; all cause for revocation, cancellation or suspension of the license in accordance with subdivision 3 of section 107-a of the Alcoholic Beverage Control Law.
2. That on 10/7/04, in violation of subdivision 2 of section 106 of the Alcoholic Beverage Control Law, the licensee kept alcoholic beverages upon the licensed premises in containers the contents of which were not represented on the labels affixed thereto and/or contained foreign matter.

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Licensee's name and residence address

JEFFREY HACKER

Date: 10/25/2007

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

Licensee's Landlord

WILLIAM GOTTLIEB

New York, New York 10027

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Tel: [212] 961-8329

Fax: [212] 961-8316

Certified Mail # 7004 0750 0003 5655 4076

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

1843-2006/Case No. 31216

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **11/28/2007**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 1/14/06, 1/29/06 and/or 2/5/06, the licensee suffered or permitted the licensed premises to become disorderly by suffering or permitting altercation(s) and/or assault(s) to occur on the licensed premises in violation of subdivision 6 of section 106 of the Alcoholic Beverage Control Law.
2. That on 2/10/07, the licensee suffered or permitted disorder in violation of subdivision 6 of section 106 of the Alcoholic Beverage Control Law by suffering or permitting a robbery to occur inside the premises.

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Licensee's name and residence address

JEFFREY HACKER

123 E. 14TH STREET
NEW YORK, NY 10014

Licensee's Landlord

WILLIAM GOTTLIEB

123 E. 14TH STREET
NEW YORK, NY 10014

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Date: 10/25/2007

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

New York, New York 10027

Tel: [212] 961- 8329
Fax: [212] 961-8316

Certified Mail # 7004 0750 0003 5655 4083

STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

3455-2007/Case No. 34547

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **November 28, 2007**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 4/16/2006, in violation of subdivision 2 of section 106 of the Alcoholic Beverage Control Law, the licensee kept alcoholic beverages upon the licensed premises in containers the contents of which were not as represented on the labels affixed thereto.

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Date: 10/25/2007

Licensee's name and residence address

JEFFREY HACKER

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

Licensee's Landlord

WILLIAM GOTTLIEB

New York, New York 10027

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Tel: [212] 961-8329
Fax: [212] 961-8316

Certified Mail # 7004 0750 0003 5655 4069

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

3458-2007/Case No. 36881

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **November 28, 2007**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That on 4/28/2006, the licensee suffered or permitted the licensed premises to become disorderly by suffering or permitting an altercation and/or assault to occur on the licensed premises in violation of subdivision 6 of section 106 of the Alcoholic Beverage Control Law.

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Date: 10/25/2007

Licensee's name and residence address

JEFFREY HACKER

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

[REDACTED ADDRESS]

Licensee's Landlord

WILLIAM GOTTLIEB

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

New York, New York 10027

Notice to Landlord: As stated above, in the event the disposition of this case results in a Revocation of the license, the Authority may impose, as part of the penalty, a two year prohibition against the issuance of any alcoholic beverage license at these premises.

Tel: [212] 961- 8329
Fax: [212] 961-8316

Certified Mail # 7004 0750 0003 5655 4090

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

IN THE MATTER OF PROCEEDINGS TO CANCEL OR REVOKE

NOTICE OF PLEADING

1100320, NEW YORK OP 1100320

3460-2007/Case No. 37891

LULU'S LLC

409 W 14TH STREET
NEW YORK, NY 10014

PLEASE TAKE NOTICE, that pursuant to Section 118 of the Alcoholic Beverage Control Law you are required to answer by mail as provided below, or in person, at the office of the Division of Alcoholic Beverage Control, Harlem Center, 317 Lenox Avenue, 4th Floor, (between 125th & 126th Streets), New York, New York 10027, on **November 28, 2007**, at 11:00 AM, in connection with proceedings to cancel or revoke the above-referenced license, and to plead to the following charge(s):

1. That, on 7/14/06, in violation of subdivision 1 of section 65 of the Alcoholic Beverage Control Law, the licensee sold, delivered or gave away, or permitted to be sold, delivered or given away, alcoholic beverages to a person or persons actually under the age of twenty-one years.
2. That on 8/16/06, in violation of subdivision 2 of section 106 of the Alcoholic Beverage Control Law, the licensee kept liquors and/or wines upon the licensed premises in any container other than the original sealed package as received from the manufacturer or wholesaler, to wit: .
3. That from 2004 through 2006, the occurrence of noise, disturbance, misconduct or disorder in the licensed premises, in front of or adjacent to the licensed premises, or in the parking lot of the licensed premises has resulted in the licensed premises becoming a focal point for police attention; all cause for revocation, cancellation or suspension of the license in accordance with Rule 36.1(q) of the Rules of the State Liquor Authority [9 NYCRR 53.1(q)] and Section 118(3) of the Alcoholic Beverage Control Law.

PLEASE TAKE NOTICE THAT YOUR FAILURE TO PLEAD WILL BE DEEMED A "NO CONTEST" PLEA AND NO FURTHER HEARING WILL BE HELD.

PLEASE TAKE FURTHER NOTICE that you may be represented by counsel. If you need a translator, you must bring one with you at your own expense.

PLEASE TAKE FURTHER NOTICE that you may plead to the charge(s) by mail instead of by personal appearance provided that a letter signed by you or your attorney, setting forth your plea of "Not Guilty" or "No Contest" is received by the Office of Counsel of the Division of Alcoholic Beverage Control at the above New York City address on or before the pleading date specified above.

PLEASE TAKE FURTHER NOTICE that the maximum penalty may be a revocation and forfeiture of the Bond filed by you, and or a civil penalty. In addition, if the Authority revokes the license, the Authority may proscribe the issuance of a license at the premises for a period of two years from the date of revocation of the license.

PLEASE TAKE FURTHER NOTICE: If you plead not guilty to the charge(s), a hearing will thereafter be scheduled at which you may appear with counsel, produce witnesses, and introduce evidence in your behalf.

PURSUANT TO SECTION 301 of the State Administrative Procedure Act, interpreter services shall be made available to deaf persons, at no charge, by the Authority.

Licensee's name and residence address

JEFFREY HACKER

Date: 10/25/2007

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Robert F. Buckley, Associate Attorney
Office of Counsel
by: SCOTT WEINER, ESQ.
317 Lenox Avenue

Licensee's Landlord
WILLIAM GOTTLIEB

New York, New York 10027

Notice to Landlord: As stated above, in the event the

Tel: [212] 961- 8329

**STATE OF NEW YORK
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

80 South Swan Street, Suite 900
Albany, NY 12210-8002

317 Lenox Avenue
New York, NY 10027

535 Washington Street, Suite 303
Buffalo, NY 14203

disposition of this case results in a Revocation of the
license, the Authority may impose, as part of the penalty,
a two year prohibition against the issuance of any alcoholic
beverage license at these premises.

Fax: [212] 961-8316

Certified Mail # 7004 0750 0003 5655 4106

A-37
New York State Department of State
State Tax Warrant Notice System
Taxpayer Names

Please note that this record report has been generated by an independent searcher, using the Department of State's, State Tax Warrant Notice On-Line Database. The information contained in this report is NOT an official record of the Department of State.

Taxpayer Name(s) Selected:	City specified in warrant address record of Taxpayer Searched:	County in which warrant is filed of Taxpayer Searched:
LULU'S, LLC	Not Applicable	Not Applicable

Your name selection(s) has returned 3 State Tax Lien Notice histories.

Back Button

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Warrant ID# : E-022837098-W001-4						
Recorded Taxpayer Name(s)				Address		
LULU'S, LLC T/A LOTUS				409 W 14TH ST NEW YORK, NY 10014-1003		
Docket Date	County	Docket Amount	Dos File Date	Satisfied Date	Vacate Date	Amend Date
July 20, 2004	NEW YORK	\$48,613.73	July 20, 2004			

Warrant ID# : E-010958639-W001-5						
Recorded Taxpayer Name(s)				Address		
LULU'S, LLC T/A LOTUS				409 W 14TH ST NEW YORK, NY 10014-1003		
Docket Date	County	Docket Amount	Dos File Date	Satisfied Date	Vacate Date	Amend Date
July 20, 2004	NEW YORK	\$48,613.73	September 19, 2007	September 10, 2007		

Warrant ID# : E-010958639-W001-5						
Recorded Taxpayer Name(s)				Address		
WILL REGAN INDIVIDUALLY AND AS RESPONSIBLE PERSON OF LULU'S, LLC				136 W 16TH ST APT 1RW NEW YORK, NY 10011-6200		
Docket Date	County	Docket Amount	Dos File Date	Satisfied Date	Vacate Date	Amend Date
July 21, 2004	NEW YORK	\$46,590.70	July 21, 2004			

Recorded Taxpayer Name(s)				Address		

A-38

WILL REGAN
INDIVIDUALLY AND AS RESPONSIBLE PERSON OF
LULU'S, LLC136 W 16TH ST APT 1RW
NEW YORK, NY 10011-6200

Docket Date	County	Docket Amount	Dos File Date	Satisfied Date	Vacate Date	Amend Date
July 21, 2004	NEW YORK	\$46,590.70	May 26, 2005		May 19, 2005	

Warrant ID# : E-022837098-W003-3

Recorded Taxpayer Name(s)

Address

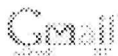
LULU'S, LLC
T/A
LOTUS409 W 14TH ST
NEW YORK, NY 10014-1003

Docket Date	County	Docket Amount	Dos File Date	Satisfied Date	Vacate Date	Amend Date
November 03, 2006	NEW YORK	\$81,817.56	November 03, 2006			

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* Filed with Department of State on or prior to implementation of electronic filing system, January 8, 2004. Dates for filings made prior to January 8, 2004 must be derived from paper filings and should be obtained from the Department of Taxation and Finance.

[Back](#)[\[Division of Corporations, State Records and UCC Home Page \]](#) [\[NYS Department of State Home Page \]](#)



Roy Den Hollander <roy17den@gmail.com>

The grand opening of copacabana with dj capri saturday night @spy

GVEE Ent <gveent@aol.com>
Reply-To: gvee@send104.com
To: rdhkh@yahoo.com

Fri, Jan 26, 2007 at 12:24 PM

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Roy Den Hollander <roy17den@gmail.com>

Nightclubs NYC Party Calendar For November 6th -November 10th

guestlist@nightclubsnyc.com <guestlist@nightclubsnyc.com>
Reply-To: guestlist@nightclubsnyc.com
To: ROY <RDHHH@yahoo.com>

Wed, Nov 7, 2007 at 10:44 AM

<h3>Nightclubs NYC Weekly Party Calendar</h3>	
<p>----- FRIDAY -----</p>	
	<p>GOOD LIFE AFTERWORK @ LQ Hip Hop . Reggae . R&B . Salsa . Merengue</p> <p><i>Tijeras & Jinx Paul On The Main Floor 2 For 1 Drinks & Buffet Till 7pm Ladies Free Till 7pm Guys \$5 Till 6pm, \$10 After</i></p> <p>For More Information & Guestlist</p>
	<p>VIVA FRIDAYS @ CHINA CLUB Hip Hop . Salsa . Merengue . Reggae</p> <p><i>3 Floors of Music Complimentary Drink 10-11pm Ladies Free till Midnight! Guys Free Till 11pm</i></p> <p>For More Information & Guestlist</p>
	<p>ROCK & POP FRIDAYS @ AURA Spanish Rock . Latin Pop . Salsa . Merengue</p> <p><i>2 Floors of The Best In Latin Music Ladies Free till Midnight! Guys Reduced</i></p> <p>For More Information & Guestlist</p>
<p>----- SATURDAY -----</p>	
	<p>THE SPOT SATURDAYS @ SPOTLIGHT LIVE Hip Hop . Rock . House . R&B . Classics . 80's</p> <p><i>NYC's Biggest Party-4 Floors & 2 Rooms of Music Ladies Free Till Midnight Main Floors Hip Hop, R&B, Rock & Classics By By Peter Parker with Special Guest DJ Big Ben House, Dance and Old School In The Penthouse</i></p> <p>For More Information & Guestlist</p>



Roy Den Hollander <roy17den@gmail.com>

Thurs AER|Fri Providence|Cabo San Lucas

1 Luv Ent. <parties@1luventertainment.com>

Wed, May 2, 2007 at 3:00 PM

Reply-To: parties@1luventertainment.com
To: ROY <RDHHH@yahoo.com>

What's up 1 Luv Partygoers & Celebrities,

- Back in December NYC's largest roster of top promoters assembled for a short time to give you a taste of a LARGER THAN LIFE party experience. Actually, it was incredible. No, it was spectacular. It doesn't matter which word or words we use to describe it, the bottom line is, it was truly one of the best parties we've ever promoted. The music, the crowd, the energy, the ambiance.. everything seemed to be just perfect. Afterwards, Thursday nights were never the same. We have reassembled to bring back that phenomenal party!!! This Thursday enjoy the "REMIX".

- Next Saturday May 12 Grand Opening of Superstar Saturdays @ Times Square newest Venue Spotlight!!!

- Don't Forget to book your Cabo Trip!!

This Thursday,

1 Luv Entertainment invites you and your friends to join us for the continuation of our new Thursday Party at one of the Meatpacking District's most exclusive nightclub. "REMIX" Thursdays at AER.

Housed at New York's trendiest address, The Meatpacking District, AER was created to naturally lift the spirit and capture the inhibition and excitement that reflects New York's nightlife.

Not only is it lit like a dark alley, with cool neon and lots of shadowy corners, but there's no embarrassing strobe-lighted floor in the middle of the room. Instead, revelers are encouraged to dance on thickly upholstered ottomans, strong metallic cocktail tables, banquettes, and a carpeted platform that wraps around the room.

Already recognized as one of the most sought after sites for premier events and parties, AER's bi-level dynamic design is the perfect setting whether it's a high profile evening event or a very private celebrity soiree. With celestial references to Greek mythology AER plays light against dark throughout the venue. Sections are seductively veiled with beads and one of a kind lighting that highlights certain aspects of the decor. AER is a venue that is unmatched.

DJ Big Ben will be spinning a mix of Hip-Hop, Reggae, R&B, Rock, & Classics

Know Before You Go:

The door policy will be selective. Come early to avoid the hassle. RSVP's for Table Bottle Service is always recommended. And don't forget... Dress to Kill!!!!!!!!!!!!

- Ladies on the 1 Luv Guest List will receive FREE Admission until 12AM
- Gents on the 1 Luv Guest List will receive Reduced Admission
- Open Bar till 11

Remember to ask for the 1 Luv Guestlist at the entrance!!!

Doors will open at 10pm.

AER
409 W. 13th St.
(& 9th Ave)

This Friday,

There's no better feeling than treating yourself to something good, especially when you think you deserve it. And after a long, hard week at work or at school, what better way to start your weekend, than by releasing the stress and letting loose. 1 Luv Entertainment invites you and your friends to join us for the continuation of "No Pressure Friday's" @ Providence.

- Ladies on the 1 Luv Guestlist will receive Complimentary Admission until 12am!
- Open Bar from 10pm – 11pm!

Providence's cathedral ceiling, beams still intact, bridging old world and new with a fresh American twist on Coastal European fare. A beautiful tri-level venue featuring three distinct spaces that allows you to enjoy the coziness of a lounge with the grandness of a night club: the downstairs Triumph Room, the Main Floor with staircase that leads into the overlooking wraparound VIP balcony or Madeira Suite w/ fireplace . As a destination spot for an evening of dancing and cocktails, Providence's unparalleled atmosphere is truly unforgettable.

A hint of hip hop, a dash of R&B, a splash of Latin downstairs, and whole lot of action is the recipe for one tasty party. This party will be phenomenal, and will always leaves you wanting more. The crowd will be hot, the music will be steady rocking, and the party will not stop until the lights turn on. Need anything else? Oh, did we mention how nice it is inside?

- Main Floor: Hip-Hop, R&B, Reggae, Reggaeton, 80's, Rock and Classics.
- Triumph Room: Latin

Know Before You Go:

- Please dress your best and please try to come early
- Remember to mention the 1 Luv Guestlist at the entrance

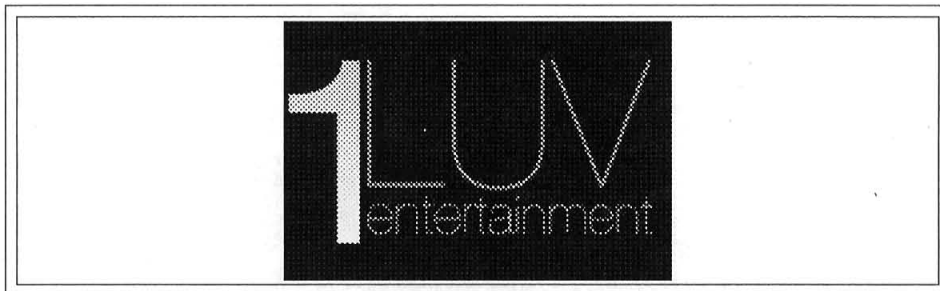


Roy Den Hollander <roy17den@gmail.com>

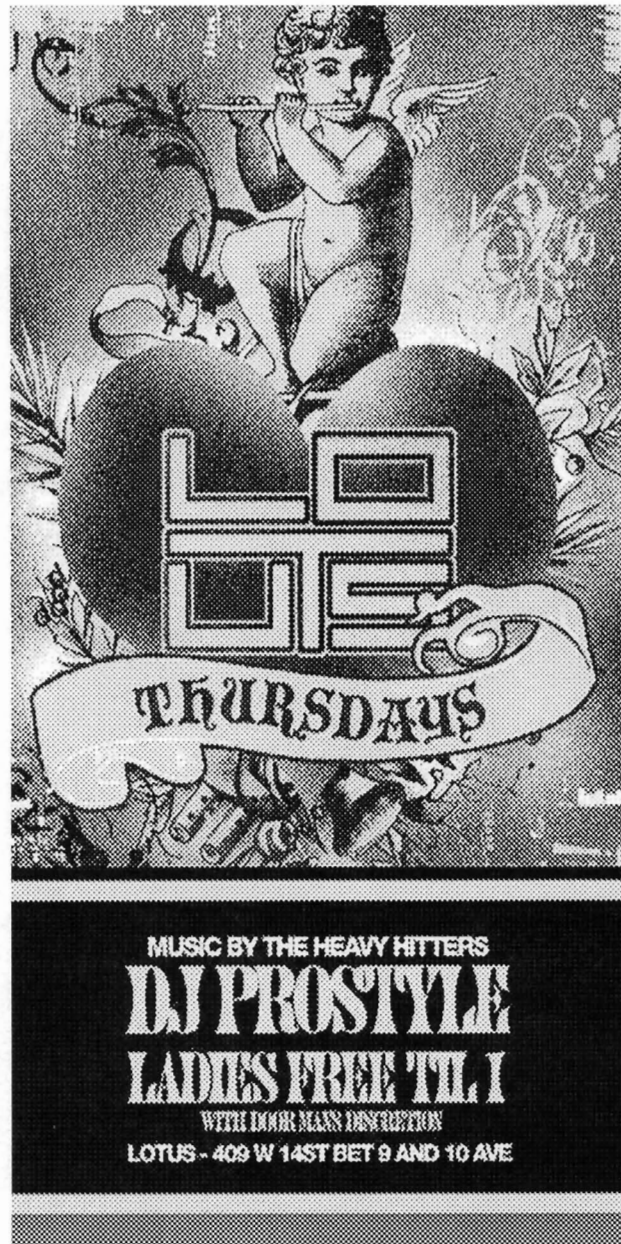
Thursday @ Lotus Gets Better Every Week

1 Luv Ent <parties@1luventertainment.com>
Reply-To: parties@1luventertainment.com
To: ROY <RDHHH@yahoo.com>

Thu, Nov 8, 2007 at 9:00 AM



Grand Opening of Thursdays at Lotus



This Thursday,
Algene & Jeff of 1 Luv Entertainment invites you and your friends to join us for the continuation of
our new Thursday Party at one of the Meatpacking District's most exclusive nightclubs **Lotus**.

Lotus is a New York nightlife staple that features a sexy and sophisticated nightclub with a lily pond at the entrance, beautiful stone wall at the back and nothing but luxurious accommodations in between. As a Top Five New York City Hotspot according to the 2006 Zagat Survey, Lotus continues to be the destination for those looking to experience the best the Big Apple has to offer

and has been the anchor for the Meatpacking District's thriving nightlife since its opening. Hipsters, celebrities, designers, fashionable A-Listers, and the best mix New York has to offer can be seen dancing at Lotus.

Know Before You Go:

Gentlemen be pre-warned: If you're not escorted by women then be prepared for Bottle Service. The door policy will be selective. RSVP's for Table Bottle Service is always recommended. And don't forget... Dress to Kill!!!!!!

- Ladies on the 1 Luv Guest List will receive FREE Admission till 1

- Guys on the 1 Luv Guest List will receive FREE Admission till 12

- Lotus will be playing a mix of Hip-Hop, Rock, & 80's

Remember to ask for the **1 Luv** Guestlist at the entrance!!!

Doors will open at 10pm.

Come Early Capacity Crowd Expected!!!



or

Please e-mail: parties@1luventertainment.com

Subject: 1 Luv Guestlist: Thursday @ Lotus

For table reservations, Birthday or Celebrations, or more info, please call or text: (732) 904-4991

Lotus

409 W. 14th St.
(btw 9th & 10th Aves)



*Note: If you use one of the following email service and would like to ensure continued delivery of 1luventertainment.com emails please follow the instructions as follows as it applies:

Hotmail or MSN email users: Place the domain 1luventertainment.com in your safe list. The safe list can be accessed via the "Options" link next to the main menu tabs.

AOL email users: Place the mailfrom address in your address book.

Yahoo! email users: If the ezine is filtered to your 'bulk' folder, open the message and click on the "this is not Spam" link next to the "From" field.

You are currently subscribed to 1luventertainment as: RDHHH@yahoo.com.

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or send a blank email to leave-2101765-47991760@list.1luventertainment.com




Roy Den Hollander <roy17den@gmail.com>

Tonight! Don't miss the Grand Opening of Sexy Saturday's 9/29 at Sol

Upcoming Events <info2@victory2multimedia.com>
Reply-To: info@victory2multimedia.com
To: RDHHH@yahoo.com

Sat, Sep 29, 2007 at 1:21 PM

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VICTORY2
MULTIMEDIA
EXCITEMENT EVERY NIGHT

**MET SOMEONE
AT ONE OF OUR EVENTS?**

Saturday September 29th



**GRAND OPENING OF
SEXY SATURDAYS
@ CLUB SOL**

Sat September 29th

ON THE VICTORY2 GUEST LIST

Ladies Complimentary Admission til Midnight - Reduced After
Gents Complimentary Admission til 11PM - Reduced After

DRESS CODE

Fashionable and Trendy. Jeans OK. But No Sneakers.
Collared shirts a must for Gents.

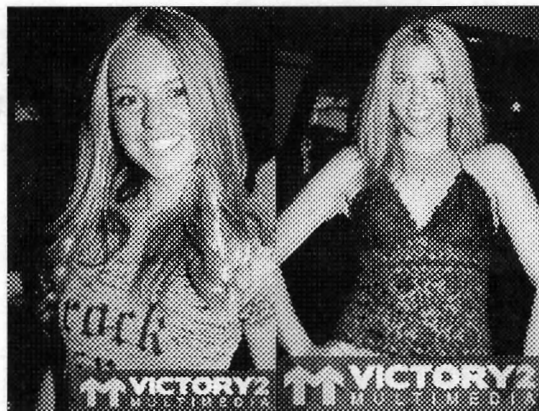
[>TO GET ON THE GUEST LIST OR FOR MORE INFO FOLLOW HERE<](#)

CLUB SOL
609w 29th st. btwn West Side
Highway & 11th Ave

21 & Over / Proper ID Required

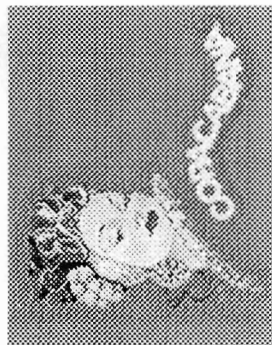
Info & Guest list: 212.779.2222 or
[Follow here for more info](#)

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105.9 COLLEGE PARTY

THURSDAY, MAY 24

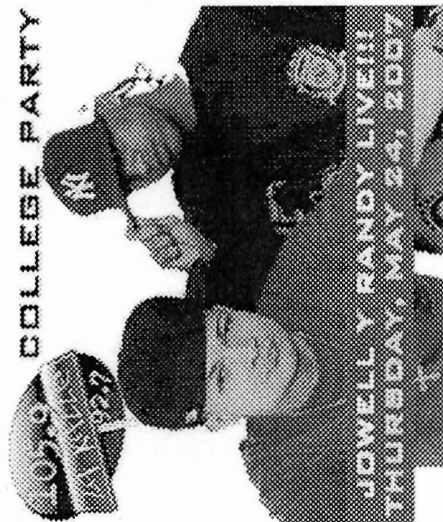
THE COPACABANA PRESENTS:

LA KALLE 105.9 COLLEGE PARTY!!

Performing live: JOWELL Y RANDY singing their smash hits: "Siente El Boom," "Soy Una Gargola," "No Te Veo," "Agressivo," and more!!!

Admission:

Ladies \$5 before midnight
Fellas \$25 under 21 / \$15 over 21



THE COPACABANA
560 West 34th Street
(11th Ave.) NY, NY 10001
Tel: 212.239.2672
Contact Us

[CLICK HERE FOR REDUCED ADMISSION](#)

DJ KAZZANOVA in the disco room spinning the best of Classics, House, R&B, Dance, Hip Hop & Reggaeton.

Call the Copa for advance table reservations of 4 or more. \$20.00 per person includes admission and table with no waiting in line. (212) 239-COPA (2672). Large reservations and birthday parties, call Claudia (212) 239-2672.

Dress to impress! Dress jeans OK, if worn fashionably (no baggies). NO sneakers or boots. Buttoned-down long sleeve collared shirts. No gold chains for gentlemen. Accepted age for admission: 17 and over. Must have official state ID or passport.

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WEEKLY PARTIES

Legendary Mondays
@ China Club

Pay Day Wednesdays
@ Guest House

Fly High Thursdays
@ China Club

Metropolis Fridays
@ China Club

Members Only
Fridays @ Duvet

Sexy Saturdays
@ China Club

Images of Seduction Male
Revue @ Shei Shei Lounge

SPECIAL EVENTS

Fabulous VIP party @ Fly High

Thurs 5/31 @ China Club

Tony touch/ Shop Boyz
Fly High Thurs 6/7

Event Details

Every Friday @ China Club


HOSTED BY
**"NYC'S HOTTEST
 MODELS"**

**2 FLOORS
 OF MUSIC**

**CHINA CLUB
 IN TIMES SQUARE**

EVERY FRIDAY

METROPOLIS FRIDAYS



@ China Club

Funkmaster Flex Car Show
Sat. 6/23 @ New Jersey

DJ CAMILO RADIO
SHOWS ON HOT 97

SPECIAL PROMOS

WANT A FREE
BIRTHDAY PARTY?

FREE BACHELORETTE
PARTIES!!!

WERE LOOKING FOR
NEW TALENT!!!

JOBS AT
VICTORY2

PARTY & EARN
EXTRA INCOME

FREE COLLEGE
NIGHTS!!!

FREE SPECIAL
OFFERS!!!



EVENT: Metropolis Fridays

VENUE: The Legendary China Club [[view venue pictures](#)]

DATE: EVERY FRIDAY

TIME: 10:00pm - 4:00am

COVER: FREE *See Guest List for Details

DJS: Music by Lucho & Mick / Camilo of the Heavy Hitters

AGE: 21 & Over

DRESS CODE: Fashionable & Trendy / Jeans OK but No Sneakers. No Timbs. Collared shirt, sports jacket & dress shoes a MUST for gents.

MUSIC: 80's, Classics, Funk / Soul / R&B, Hip-Hop, House, Pop / Top 40

ADVER



DETAILS:

FREE Drink Ticket for anyone who arrives 10-11pm.

BOTTLE SPECIALS \$125 Alize, Hpnotiq & Moet / \$175 Grey Goose

GUEST LIST:


Ladies Complimentary Admission All Night - Reduced After / Gents
Complimentary Admission till 11pm - Reduced After
Get on the Guest List.

ADDRESS:

China Club is located at 268w 47th st. (Btwn Broadway & 8th Ave.)

DIRECTIONS:

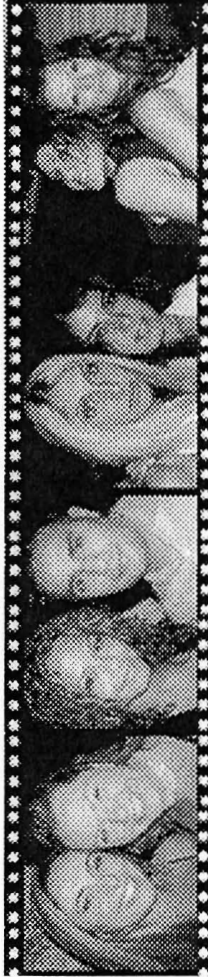
Trains: A, F, D, N, R, Q, W TO 42ND

 Pictures of Metropolis Fridays @ China Club



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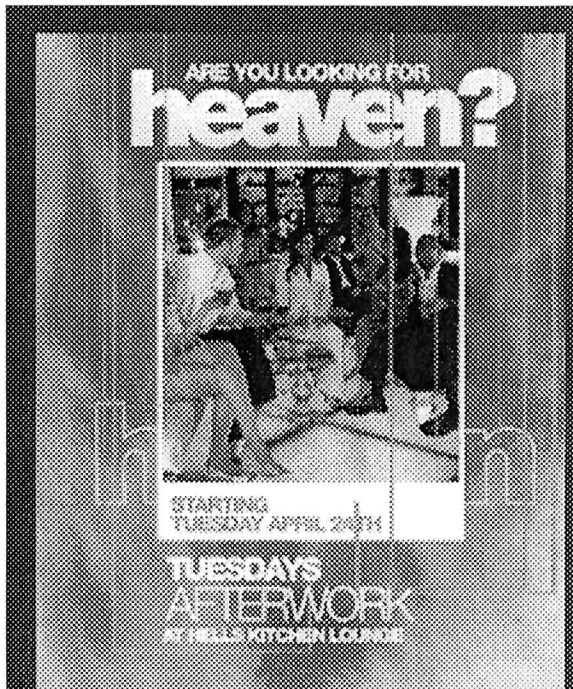




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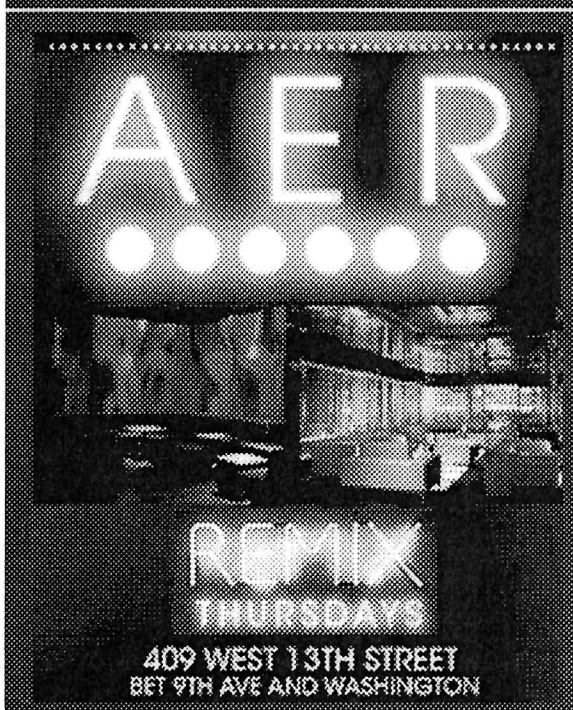
A.E.R

RSVP



21 & Over - ID a Must

REMIX THURSDAYS @ AER



409 W 13th St. Bet 9th Ave & Washington

DJ BIG BEN

Music: Hip Hop, House, Rock

On the LinxList

Ladies free till Midnight
Gents reduced - \$15
General admission - \$25
Doors Open @ 10pm

Open Bar 10-11pm

2 for 1 Martinis Until Midnight

The buzz is fierce! It's the meat packing district's best night of the week.

21 & Over - ID a Must

RSVP

GOOD LIFE FRIDAYS AFTERWORK @ LO



Roy Den Hollander <roy17den@gmail.com>

Confirmation for Aer Thursday - My Birthday!

thursdays <thursdays@robdiesel.net>

Wed, May 23, 2007 at 12:40 PM

Reply-To: thursdays@robdiesel.net

To: roy17den@gmail.com

Confirmation for Aer Thursday - My Birthday!

Hey,

How are you? This is your confirmation for ROB DIESELS VIP list at Aer Thursday. When you arrive, tell my doorman (Chris) that you are on ROB DIESELS VIP list. He will take care you and your guests. Have a good time, call me if you need me.

Please come in rockstar attire.

Rob Diesel

RobDiesel.Net

RockstarReport.Com

917.691.2345

Aer Thursdays : Providence Fridays : BLVD Saturdays

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Roy Den Hollander <roy17den@gmail.com>

Sign Up Confirmation - The Wednesday list for Lotus

Velvet List <info@velvetlist.com>
Reply-To: Velvet List <info@velvetlist.com>
To: rdhhh@yahoo.com

Wed, May 23, 2007 at 10:54 AM



Thank you Roy Hollander for using velvetlist
You have been placed on the Velvet list at Lotus for Wednesday night.

Important: Mention that you are on the Velvet List at the door to get reduced admission, or you will have to pay full price!

Take this printout to avoid confusion: [http://www.velvetlist.com/printout.php3?club=Lotus
&night=Wednesday&name=Roy Hollander](http://www.velvetlist.com/printout.php3?club=Lotus&night=Wednesday&name=Roy%20Hollander)

Wednesdays at Lotus

Address: 409 W 14th St (bet 9th and 10th)

Ladies are free before midnight on the Velvet List and reduced after. Guy are reduced all night with Velvet List.

Want to get to higher ground? Come to Higher Ground Wednesdays at the legendary Lotus nightclub. This party promises to bring pleasure and intensity to get you ready for our weekend's events. Velvet List grants you access to one of the hottest and longest running Wednesday night events in New York. This impressive venue has been featured everywhere and its celebrity clientele is incomparable, get behind the rope at the top and make a reservation today. Lotus has a very selective door policy, dress trendy to impress on the upscale side please.



Roy Den Hollander <roy17den@gmail.com>

Sign Up Confirmation - The Friday list for Sol

Velvet List <info@velvetlist.com>

Thu, May 31, 2007 at 5:42 PM

Reply-To: Velvet List <info@velvetlist.com>

To: rdhhh@yahoo.com



Thank you Roy Hollander for using velvetlist
You have been placed on the Velvet list at Sol for Friday night.

Important: Mention that you are on the Velvet List at the door to get reduced admission, or you will have to pay full price!

Take this printout to avoid confusion: [http://www.velvetlist.com/printout.php3?club=Sol&night=Friday&name=Roy Hollander](http://www.velvetlist.com/printout.php3?club=Sol&night=Friday&name=Roy%20Hollander)

Models and Bottles Fridays at Sol

Address: 609 West 29th Street (btwn 11th and 12th)

Cover: Ladies are free before 1AM on the Velvet List, and reduced after. Guys are free before 11PM with dates, and reduced afterwards.

Everyone on the Velvet List gets reduced admission of \$20. Regular Admission is \$30.

Open Vodka Bar 10-11 PM!!

Friday Nights are HOTTER then Ever ...and this Friday will be no exception with NYC's Hottest DJs bringin' you a Sexy Blend of Hip-hop.. Latin.. Reggae.. Reggaeton and Old School that'll Burn it Up inside!!! Models & Bottles will definitely get you in the Summer Time Mode!!! Come Party inside this alluring hotspot with 3 bars and tons of VIP sections throughout!! Club Sol is a Must.. to kick your Weekends Off Right!!! Whether it's the captivatin' Party Vibe.. the DJ Rotation thats always Hot.. or the Sexy People inside... Model & Bottle Fridays will keep you comin back!!

As Always, Dress your Sexiest & Be Trendy, as the Door is Selective!!! and... Arrive Early as this Party is NOTORIOUS for being Heavily Attended!!!

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
Roy Den Hollander,

Plaintiff on behalf of himself
and all others similarly situated,

Docket No. 07 CV 5873 (MGC)

-against-

CLASS ACTION
42 U.S.C. 1983 COMPLAINT

Copacabana Nightclub,
China Club,
Guest House,
A.E.R. Nightclub,
Lotus,
Sol,¹ and
Jane Doe Promoters,

Defendants.
-----X

Civil Rights, 14th Amendment - Equal Protection Class Action.

1. This is an action brought by the plaintiffs as a class for declaratory and injunctive relief and nominal damages against the defendant nightclubs for the deprivation, under the color of state law, of the plaintiffs' rights as guaranteed by the equal protection clause of the Fourteenth Amendment of the Constitution of the United States.
2. The class action is brought pursuant to 42 U.S.C. § 1983 over which this Court has jurisdiction in accordance with 28 U.S.C. § 1343(3) & (4).
3. The class action is maintainable under Fed. R. Civ. P. § 23(b)(2) because the defendants have acted on grounds generally applicable to the class, thereby making declaratory and injunctive relief and nominal damages appropriate to the class as a whole.
4. The defendants are nightclubs located in New York City, opened to the public, serve alcoholic and non-alcoholic beverages, their operations are entwined with the New York State Division of Alcoholic and Beverage Control and the New York City Consumer Affairs Department, and the nightclubs, along with New York State and the City, benefit from invidiously discriminating against the plaintiff class. The defendants' promoters act as agents for the nightclubs.

¹ The defendants are listed by their trade names or "doing business as" names. Their legal business names are Copacabana Nightclub: River Watch Restaurant, Inc.; China Club: Nightlife Enterprises L.P.; Guest House: presently unknown; A.E.R. Nightclub: AER Lounge LLC; Lotus: Lulu's LLC,; and Sol: Presently unknown.

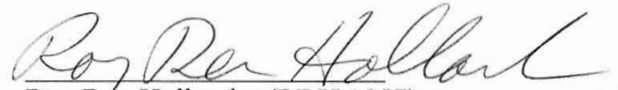
5. The plaintiff, individually and on behalf of all the others similarly situated, both past and future, challenges the practice and policy of the defendants that charges men more for admission than females or makes a man's admission more timely or economically burdensome than for females.
6. As Exhibit A shows, the defendants allow females in free up to a certain time but charge men for admission until that same time, or allow ladies in free over a longer time span than men. Examples of the defendants' commonly practiced form of invidious discrimination against men by New York City nightclubs are: "Ladies free till Midnight, Gents \$10", or "Free for ladies before 12AM, Guys are free before 11PM."
7. The class represented by the named plaintiff in this action consists of all men who were admitted to these nightclubs within the past three years and were charged more than females or their admissions made more burdensome than for females through arbitrarily imposed time restraints.
8. The exact number of members of the class is not known, but it is estimated in the thousands; therefore, the class is so numerous that joinder of all members is impracticable.
9. There are questions of law and fact presented in this action that are common to the entire class and that affect the rights of the class:
 - a. Were the members of the class invidiously discriminated against because of their sex by having to pay more money or navigate arbitrarily imposed time restraints in order to gain admission?
 - b. Were the defendants acting under color of state law when they discriminated against the class members?
10. The claims of the named plaintiff arise out of the same discriminatory practice and course of conduct by the defendants and are based on the same legal theories as for the entire class. The plaintiff has attended these nightclubs and was charged more than females or had less time for entering a nightclub free of charge or at a reduced price.
11. The named plaintiff is an attorney admitted to practice in New York State and the U.S. District Courts for both the Southern and the Eastern Districts of N.Y., a former litigation associate at Cravath, Swaine & Moore, and is able to conduct this litigation fairly and adequately to protect the interests of the class.

WHEREFORE, the named plaintiff requests that judgment be entered in this action on behalf of himself and all other class members similarly situated as follows:

1. A declaratory judgment that the defendants practice of charging men more for admission than females or making it more timely or economically burdensome on men to gain admission violates the equal protection clause of the Fourteenth Amendment to the Constitution.

2. The defendants be enjoined from continuing their invidiously discriminatory practice against men.
3. Nominal damages to be decided by the Court.
4. And any other relief that is just and proper.

Dated: New York, NY
June 12, 2007



Roy Den Hollander (RDH 1957)
Attorney for plaintiffs
545 East 14 Street, 10D
New York, NY 10009
(917) 687 0652

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ROY DEN HOLLANDER, on behalf of
himself and all others similarly
situated,

Plaintiff,

OPINION

-against-

07 Civ. 5873 (MGC)

COPACABANA NIGHTCLUB, et al.

Defendants.

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APPEARANCES:

LAW OFFICE OF ROY DEN HOLLANDER, ESQ.
Plaintiff pro se
545 East 14th Street, 10D
New York, New York 10009

By: Roy Den Hollander, Esq.

LAW OFFICE OF CHARLES B. LINN, ESQ.
Attorney for Defendant Copacabana Nightclub Inc.
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By: Charles B. Linn, Esq.

ADAM B. KAUFMAN & ASSOCIATES, PLLC
Attorneys for Defendant Sol
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By: Robert S. Grossman, Esq.

GORDON & REES, LLP
Attorneys for Defendant Lotus
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New York, New York 10004

By: Deborah S. Donovan, Esq.
Christopher B. Block, Esq.

BEATTIE PADOVANO, LLC
Attorneys for Defendant AER Lounge, LLC
50 Chestnut Ridge Road
Montvale, New Jersey 07645

By: Vanessa R. Elliott, Esq.

Cedarbaum, J.

Roy Den Hollander, individually and on behalf of a putative class of similarly situated men, sues River Watch Restaurant, Inc. d/b/a the Copacabana Nightclub ("Copacabana"), Nightlife Enterprises L.P. d/b/a China Club ("China Club"), AER Lounge LLC d/b/a AER Lounge ("AER"), Lulu's LLC d/b/a Lotus ("Lotus"), Ruby Falls Partners LLC d/b/a Sol ("Sol"), and "Jane Doe promoters"¹ pursuant to 42 U.S.C. § 1983 for sex discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment. Den Hollander, an attorney pro se, alleges that defendant nightclubs regularly hold discriminatory "Ladies' Night" promotions. On certain nights, they charge women less for admission than men and/or give women more time to enter the nightclubs at the discounted admission price than they give to men.

Defendants AER, Lotus, and Sol move to dismiss the First Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6) on the ground that they do not act under color of state law in offering

¹ "Jane Doe promoters" refers to unnamed individuals who act as agents for the defendant nightclubs. Guest House, a defendant named in the original complaint, was voluntarily dismissed from the case on October 3, 2007.

the Ladies' Night promotion. Den Hollander moves to strike defendants' motion papers for various reasons, and moves for an order directing counsel for Lotus to disclose the source of certain essays attached as exhibits to her opposition to Den Hollander's motion for recusal. For the following reasons, defendants' motions are granted, and Den Hollander's motions are denied.

BACKGROUND

According to the Amended Complaint, defendants operate nightclubs in New York and are licensed to sell alcohol on their premises. The Amended Complaint describes a number of provisions of the New York Alcoholic Beverage Control Law (the "ABC Law") that closely regulate the manufacture, sale, and distribution of alcoholic beverages in New York. The New York State Liquor Authority (the "SLA") issues licenses in accordance with and oversees the implementation of the ABC Law. Den Hollander alleges that defendants engage in state action by selling alcohol on their premises under that extensive regulatory system.

On various nights, defendants offer Ladies' Night promotions, under which women receive free or discounted admission or cover charges and/or are allowed more time than men to take advantage of reduced cover charges. Den Hollander claims that this type of promotional offering is a form of "invidious

discrimination against men." He was the victim of this form of discrimination on at least one occasion at each of the defendant nightclubs in 2007. Den Hollander sues under 42 U.S.C. § 1983 for deprivation of his right to equal protection of the law.

DISCUSSION

On a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), factual allegations in the complaint are accepted as true and all reasonable inferences are drawn in the plaintiff's favor.

Ruotolo v. City of New York, 514 F.3d 184, 188 (2d Cir. 2008).

"To survive a motion to dismiss, a complaint must plead 'enough facts to state a claim to relief that is plausible on its face.'"

Id. (quoting Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007)).

I. State Action

Under § 1983, "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ..., subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress" 42 U.S.C. § 1983. Plaintiff must

demonstrate that defendants were acting under color of state law at the time of the alleged discrimination. Washington v. County of Rockland, 373 F.3d 310, 315 (2d Cir. 2004). "If a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action 'under color of state law' for § 1983 purposes." Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 n.2 (2001).

"[S]tate action may be found ... only if[] there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'" Id. at 295 (quoting Jackson v. Metro. Edison Co., 419 U.S. 345, 351 (1974)). "The purpose of this [close nexus] requirement is to assure that constitutional standards are invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains." Blum v. Yaretsky, 457 U.S. 991, 1004 (1982) (emphasis in original).

The state-action inquiry has two parts:

First, the deprivation must be caused by the exercise of some right or privilege created by the State or by a rule of conduct imposed by the State or by a person for whom the State is responsible. ... Second, the party charged with the deprivation must be a person who may fairly be said to be a state actor.

Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982). These two principles are related, but not redundant. Where the defendant's "official character is such as to lend the weight of the State to his decisions," these two principles collapse into a single inquiry. Id. But where, as here, the defendants are "without

such apparent authority, i.e., ... private part[ies]," the principles diverge. Id.

The Supreme Court has identified a number of facts that can bear on the deprivation aspect of state action:

a challenged activity may be state action when it results from the State's exercise of coercive power, ... when the State provides significant encouragement, either overt or covert, ... or when a private actor operates as a willful participant in joint activity with the State or its agents....

Brentwood, 531 U.S. at 296 (internal quotation marks and citations omitted). As to the state-actor portion of the inquiry, the Court has:

treated a nominally private entity as a state actor when it is controlled by an agency of the State, ... when it has been delegated a public function by the State, ... when it is entwined with governmental policies or when government is entwined in [its] management or control....

Id. (internal quotation marks and citations omitted).

A. Deprivation Through Governmental Decision

The specific conduct at issue here is the offer of discounted cover charges to women. To meet this part of the Lugar state-action test, the plaintiff must show that defendants' decisions to discriminate have a close nexus with or can be fairly ascribed to a governmental decision. Lugar, 457 U.S. at 937-38. As noted above, this can be shown when: 1) the deprivation "results from the State's exercise of coercive power," 2) "the State provides significant encouragement, either overt or covert," or 3) "a private actor operates as a willful participant in joint activity with the State." Brentwood, 531 U.S. at 296 (internal quotation marks omitted).

1. The State's Exercise of Coercive Power

Den Hollander argues that his deprivation resulted from New York's regulation of the sale of alcohol because defendants "could not exercise their admission practices without the direct and indispensable participation of the SLA." He speculates that without alcohol licenses from the SLA, customers would not patronize nightclubs or invest in their businesses.

Den Hollander cites Edmonson v. Leesville Concrete Co., 500 U.S. 614 (1991), to support his state action claim. In Edmonson,

Leesville used peremptory challenges to remove black persons from a prospective jury without having to provide a race-neutral explanation when its conduct was challenged for being racially discriminatory. 500 U.S. at 616. The Court held that Leesville's use of the peremptory challenges constituted state action and that exclusion of a prospective juror on account of race in a civil trial violates that prospective juror's equal protection rights. *Id.* at 620-28. The first part of the Lugar state-action inquiry was met because the peremptory challenges were authorized by federal statute, 28 U.S.C. § 1870. *Id.* at 620-21.

Den Hollander argues that the ABC Law and SLA rules form the regulatory framework governing alcohol sale and consumption in New York in the same way that federal statutes and rules govern the jury trial system discussed in Edmonson. Thus, he asserts that he is deprived of equal protection of the law by defendants' exercise of the privilege of serving alcohol as created and enforced by the laws of New York. In fact, his deprivation is the reduction to women of the cover charge for admission on some nights.

Defendants' decisions to hold Ladies' Nights are not state action. The ABC Law establishes an alcohol licensing system administered by the SLA. When defendants sell alcohol, they are exercising a privilege created by the State. But when they reduce the cover charge to women on certain nights, they are not acting under any right or privilege created by the State because neither the ABC Law nor the SLA regulates the admission prices set by the defendants. In other words, Den Hollander's alleged deprivation was not caused by defendants' sale of alcohol but by their pricing of admission to the entertainment provided by their nightclubs. Thus, it cannot be said that the State is responsible for defendants' Ladies' Nights.

In Edmonson, a federal statute specifically provided for the right to use peremptory challenges to assist the court in selecting a jury, and the exercise of that statutory right constituted state action. In this case, defendants hold Ladies' Night promotions without any specific approval or endorsement from the State. The existence of the ABC Law and SLA rules does not transform all conduct by nightclubs into state action any more than the laws regarding jury trials transform every litigant in a jury trial into a state actor. *See, e.g., Polk County v. Dodson*, 454 U.S. 312, 325 (1981) ("[A] public defender does not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding."); *Jackson*, 419 U.S. at 350 ("The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State for purposes of the Fourteenth Amendment. ... Nor does the fact that the regulation

is extensive and detailed") (citation omitted); Cranley v. Nat'l Life Ins. Co., 318 F.3d 105, 112 (2d Cir. 2003) ("A finding of state action may not be premised solely on the private entity's ... licensing, or regulation by the government.").

The Supreme Court has held that a heavily regulated utility company's decision to terminate services to an individual is not state action because that decision is not "sufficiently connected ... to the State for purposes of the Fourteenth Amendment." Jackson, 419 U.S. at 358-59. It has also held that the acts of physicians and nursing home administrators in discharging or transferring Medicaid patients to lower levels of care is not state action because their decisions were not dictated by the State, despite significant Medicaid regulation. Blum, 457 U.S. at 1008-09.

As in Jackson and Blum, defendants' decisions to hold Ladies' Nights are insufficiently connected to the SLA to constitute state action. The SLA plays no role in establishing or enforcing defendants' Ladies' Night promotions, and defendants do not discriminate against men in their right to purchase and be served liquor. See also Moose Lodge No. 107 v. Irvis, 407 U.S. 163, 175-76 (1972) (private club's discriminatory guest policy not attributable to Pennsylvania or its regulation of alcohol); Hadges v. Yonkers Racing Corp., 918 F.2d 1079, 1083 (2d Cir. 1990) (heavily regulated, state-licensed racetrack's decision to deny plaintiff's application to work at the racetrack lacked close nexus to the State).

2. Encouragement from the State

Den Hollander argues that the SLA encourages defendants' discriminatory practices by renewing their licenses and by benefitting financially from the revenue received from the licenses. Even if the SLA renews defendants' licenses without challenging or questioning their practices, defendants' actions do not amount to state action because the State has not significantly encouraged or endorsed the specific action in question. "State approval of an action by a regulated entity does not constitute state action 'where the initiative comes from [the private entity] and not from the State' and the state 'has not put its own weight on the side of the proposed practice by ordering it.'" Tancredi v. Metro. Life Ins. Co., 316 F.3d 308, 313 (2d Cir. 2003) (quoting Jackson, 419 U.S. at 357) (brackets in Tancredi). Indeed, "[a]ction taken by private entities with the mere approval or acquiescence of the State is not state action." Am. Mfrs. Mutual Ins. Co. v. Sullivan, 526 U.S. 40, 52 (1999).

The SLA collects fees for alcohol licenses, but does not collect any revenue from defendants' cover charges. See ABC Law

§ 17; SLA Schedule of Retail License Fees. The license fee for each license category is uniform across all licensees within those categories, regardless of whether they use the Ladies' Night promotion. Id. Thus, the revenue from the alcohol license does not encourage or discourage the use by nightclubs of Ladies' Nights. See also Yonkers Racing Corp., 918 F.2d at 1082 (no state action found even though defendant received a tax credit from the state and the State benefited from revenue from defendant).

Den Hollander also asserts that "the special interest group called 'Feminism' has succeeded in creating a customary practice in many governmental institutions ... in which the invidious discrimination of men is the accepted and preferred mode of behavior." He lists various examples of such purported discrimination and asserts that the SLA has engaged in this customary practice. These extraneous pronouncements do not demonstrate that the SLA has any relationship with defendants' choices to hold Ladies' Nights.

3. Joint Activity with the State

Den Hollander argues that the State is engaged in joint activity with defendants because the alcohol license gives defendants an economic benefit or franchise. He compares the benefits received by defendants to those present in Burton v. Wilmington Parking Authority, 365 U.S. 715, 724 (1961). In Burton, the Court held that defendant restaurant's refusal to serve plaintiff on account of his race constituted state action because the restaurant leased its space from the government, was operating in a public parking lot on land owned by the government, and benefitted from state funds supporting the parking lot. 365 U.S. at 724-25. The Parking Authority's failure to correct the restaurant's discriminatory policies made the Parking Authority "a party to the refusal of service," thereby placing "its power, property and prestige behind the admitted discrimination." Id. at 725.

The State's involvement in defendants' businesses is not analogous to the facts of Burton. Defendants do not lease their property from the government and are not obtaining any unique benefits from government funds. See Yonkers Racing Corp., 918 F.2d at 1082 ("[T]he State in the instant case does not have a proprietary interest in [defendant's business]."). Burton was limited to cases where "a State leases public property in the manner and for the purpose shown to have been the case here." Id. at 726. The Supreme Court has distanced itself from the "vague 'joint participation' test embodied in [Burton]." Sullivan, 526 U.S. at 57. "[P]rivately owned enterprises providing services that the State would not necessarily provide,

even though they are extensively regulated, do not fall within the ambit of Burton." Blum, 457 U.S. at 1011.

Furthermore, in Moose Lodge No. 107 v. Irvis, the Supreme Court found that the competitive effect of having a set number of alcohol licenses was "limited" and fell "far short of conferring ... a monopoly in the dispensing of liquor." 407 U.S. at 177. In Yonkers Racing Corporation, the Second Circuit did not find state action even though the Yonkers Racing Corporation ("YRC"), which operates a racetrack pursuant to a State license, receives tax credits from the State and "the State gains greater revenues if YRC prospers." 918 F.2d at 1082. Even if defendants did benefit in some way from a franchise or monopoly, there would still be an "insufficient relationship between the challenged actions of the [defendants] and their monopoly status." Jackson, 419 U.S. at 352. The ABC Law and SLA regulations cannot "be said to make the State in any realistic sense a partner or even a joint venturer in the [defendants'] enterprise[s]." Moose Lodge, 407 U.S. at 177.

Den Hollander also argues that the requirement that defendants display their alcohol licenses in their establishments, ABC Law § 114(6), creates the appearance of state authorization of their practices. That display requirement, which relates to the privilege of selling alcohol, has no bearing on defendants' admission policies, the only issue here.

B. State Actor

Den Hollander has failed to show that his deprivation was caused by defendants' "exercise of some right or privilege created by the State or by a rule of conduct imposed by the State." Lugar, 457 U.S. at 937. Nevertheless, he argues that New York's regulatory scheme regarding alcohol "dominates the on-premise[s] consumption of alcohol to such a degree" that defendants' "every move evinces State authority and control" and that the State and defendants "have overlapping identities." As noted above, the two-part Lugar state action test collapses into a single inquiry only when the defendant's "official character is such as to lend the weight of the State to his decisions." Id. Defendants lack such an official character.

Den Hollander's argument that defendants possess the official character of the State is taken primarily from his misreading of Seidenberg v. McSorleys' Old Ale House, Inc., 308 F. Supp. 1253 (S.D.N.Y. 1969) ("McSorleys I") and Seidenberg v. McSorleys' Old Ale House, Inc., 317 F. Supp. 593 (S.D.N.Y. 1970) ("McSorleys II"). McSorleys was a public bar which only served men. Two women sought service in the bar and sued for discrimination when they were refused alcohol. A motion to dismiss was denied in McSorleys I, and summary judgment was

granted in favor of plaintiffs in McSorleys II. The court found state action in both opinions.

Den Hollander argues that McSorleys I & McSorleys II held that New York's regulatory scheme is so pervasive that any entity open to the public with an alcohol license is an agent or instrumentality of the State, such that any and all of its actions can be fairly treated as state actions. Such a reading is erroneous. McSorleys I focused primarily on the question of whether McSorleys was a state actor, but it also answered the first part of the Lugar test by assessing "whether the State has ... significantly involved itself in actions alleged to amount to invidious discrimination." 308 F. Supp. at 1259. The state actor analysis in McSorleys I was undertaken in light of the fact that the discrimination alleged, refusal to serve alcohol, resulted from McSorleys' possession of a license to sell alcohol. The court in McSorleys II understood that the test for state action requires that there exist "some causal relation ... between the state activity and the discrimination alleged." 317 F. Supp. at 597.² That causal relation is missing in this case.

Defendants are private entities that set their own policies for admission. Their compliance with state regulations for alcohol does not convert them into all-purpose state actors. See Tancredi, 316 F.3d at 313 ("[A] regulatory agency's performance of routine oversight functions to ensure that a company's conduct complies with state law does not so entwine the agency in corporate management as to constitute state action."). Furthermore, Den Hollander cannot show state action through entwinement because defendants are not entwined with state officials or state funds. Cf. Brentwood, 531 U.S. at 299-300 (entwinement with state officials); Horvath v. Westport Library Ass'n, 362 F.3d 147, 153 (2d Cir. 2004) (entwinement with state funds).

Den Hollander also argues that the sale of alcohol is a public function that has been delegated by the State to entities possessing alcohol licenses. State action has been found under the public function test in cases challenging discrimination in primary elections, Nixon v. Condon, 286 U.S. 73, 89 (1932), free speech restrictions in a company town, Marsh v. Alabama, 326 U.S. 501, 509 (1946), and segregation in a municipal park, Evans v. Newton, 382 U.S. 296, 302 (1966). The public function relevant here is the regulation of the alcohol industry. New York State's

² Den Hollander makes much of the Supreme Court's citation of McSorleys' II in Craig v. Boren, 429 U.S. 190, 208 (1976). But the Court cited McSorleys II and other similar cases in Craig only to show that the Twenty-first Amendment "does not alter the application of equal protection standards." 429 U.S. at 209.

decision to allow alcohol sales through the provision of licenses is not a delegation of that public function. Defendants do not have the power or authority to alter state regulation in the field, and they must abide by all regulations related to the alcohol license. Accordingly, defendants do not exercise a public function.

C. Remaining Defendants

The motions to dismiss filed by AER, Lotus, and Sol are granted because Den Hollander cannot show that private nightclubs are state actors in setting cover charges for admission to their facilities. Copacabana and China Club have not moved to dismiss, but the claims against them are similarly defective. There are no separate facts alleged against Copacabana and China Club that would alter the state action inquiry, and plaintiff has had an opportunity to be heard on the issues. Accordingly, in the interest of judicial economy, the claims against Copacabana and China Club will be dismissed sua sponte for failure to state a claim. See Perez v. Ortiz, 849 F.2d 793, 797 (2d Cir. 1988); Leonhard v. United States, 633 F.2d 599, 609 n.11 (2d Cir. 1980) ("The district court has the power to dismiss a complaint sua sponte for failure to state a claim.").

II. Plaintiff's Motions

Den Hollander moves to strike certain motion papers filed by defendants for being late; to deny the motions to dismiss filed by Sol and AER for failure to file memoranda of law separate from their supplemental affirmations; to strike certain portions of Lotus' memorandum of law for not providing citations; and to compel counsel for Lotus to disclose the source of certain essays attached to her opposition to Den Hollander's motion for recusal. Any technical defects in defendants' motion papers were insubstantial and did not prejudice Den Hollander. The issues relevant to the motions to dismiss were clear to all parties, and the motions were re-filed in light of the filing of the Amended Complaint, giving all litigants more time to respond. The essays submitted by Lotus as exhibits in opposition to Den Hollander's motion for recusal are irrelevant to this case, and any claim that Den Hollander may seek to pursue in relation to the submission of those essays is beyond the scope of this action.

CONCLUSION

For the foregoing reasons, the motions to dismiss filed by AER, Lotus, and Sol are granted, and the complaint is dismissed as to all defendants. Den Hollander's motions are denied. The Clerk is directed to close this case.

SO ORDERED.

Date: New York, New York
September 29, 2008

S/ _____
MIRIAM GOLDMAN CEDARBAUM
United States District Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
ROY DEN HOLLANDER, on behalf of himself
and all others similarly situated,

Plaintiff,

-against-

COPACABANA NIGHTCLUB, et al.,
Defendants.
-----X

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 9/29/08
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07 CIVIL 5873 (MGC)

JUDGMENT

Defendants AER, Lotus, and Sol having moved to dismiss the first amended complaint pursuant to Fed. R. Civ. P. 12(b)(6), and the matter having come before the Honorable Miriam Goldman Cedarbaum, United States District Judge, and the Court, on September 29, 2008, having rendered its Opinion granting AER, Lotus, and Sol's motions to dismiss, dismissing the complaint as to all defendants, and denying Hollander's motions, it is,

ORDERED, ADJUDGED AND DECREED: That for the reasons stated in the Court's Opinion dated September 29, 2008, AER, Lotus, and Sol's motion to dismiss are granted; the complaint is dismissed as to all defendants; and Hollander's motions are denied; accordingly, the case is closed.

Dated: New York, New York
September 29, 2008

J. MICHAEL McMAHON

BY:

Clerk of Court

Deputy Clerk

**THIS DOCUMENT WAS ENTERED
ON THE DOCKET ON _____**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Roy Den Hollander
(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

07 Civ. 5873 (460)

- against -

Copacabana Nightclub, China Club,
A.F.R. Lounge, Lotus, Sol, and
Jane Doe Promoters

(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

NOTICE OF APPEAL
IN A CIVIL CASE



PRO SE OFFICE

Notice is hereby given that

Roy Den Hollander
(party)

hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment

an order dismissing the first amended complaint under
(describe the judgment)

Fed. R. Civ. P. 12(b)(6).

entered in this action on the 29 day of September, 2008.
(date) (month) (year)

Roy Den Hollander
Signature

545 East 145th, 10D
Address

NY, NY 10009
City, State & Zip Code

DATED: October 9, 2008

(917) 687-0652
Telephone Number

NOTE: To take an appeal, this form must be received by the Pro Se Office of the Southern District of New York within thirty (30) days of the date on which the judgment was entered, or sixty (60) days if the United States or an officer or agency of the United States is a party.

OCT 10 2008

825-500-0547 NA

FILED
U.S. DISTRICT COURT
2008 OCT 10 AM 11:29
S.D. OF N.Y.