

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ALEJANDRO CONTRERAS, individually and on behalf
of others similarly situated,

Plaintiffs,

- against -

YONKERS RACING CORPORATION; BRIAN BORU
OF WESTCHESTER, INC.; TIMOTHY ROONEY; and
any other related entities,

Defendants.

Index No.: 67170/2018

**NOTICE OF
PROPOSED CLASS ACTION
SETTLEMENT**

TO: All individuals who performed food and beverage service work at catered events sponsored, operated, managed, or catered by either Defendants Yonkers Racing Corporation, Brian Boru of Westchester, Inc., Westchester Hospitality Management Company, LLC or Timothy Rooney, held on or off premises either as direct employees of Defendants or through a third-party staffing agency from October 15, 2012 through January 28, 2019, in such trades, classifications and professions that customarily receive gratuities, including but not limited to wait staff, waiters, servers, captains, bussers, and bartenders.

DATED: **FEBRUARY 25, 2021**

PLEASE READ THIS NOTICE CAREFULLY

This Notice relates to a proposed settlement of this class action litigation. It has been authorized by a New York State Court. It contains important information as to your right to participate in the settlement, make a claim for payment, or elect not to be included in the class. The following pages detail your options, your rights, and common questions or issues that Class Members ask about class action settlements.

INTRODUCTION

Alejandro Contreras filed a lawsuit against Defendants seeking alleged unpaid tips that he earned during his employment for Defendants. The Court in charge of this case is the New York Supreme Court, Westchester County. The lawsuit is known as *Contreras v. Yonkers Racing Corporation, et al.* Alejandro Contreras is the Named Plaintiff, and Yonkers Racing Corporation, Brian Boru of Westchester, Timothy Rooney, and “any other related entities” sued in the action to the extent the same relate in any way to Yonkers Racing Corporation, are Defendants. Named Plaintiff Contreras alleges in the lawsuit that, among other things, Defendants unlawfully withheld gratuities owed to him and other similarly situated workers in violation of the New York State Labor Law.

Defendants have defended and vigorously contested the claims in the Action. Defendants deny all material allegations in the Action, have asserted numerous defenses, and deny any and all liability. Defendants have decided to settle the Action, without admitting any liability or wrongdoing, to avoid the expense, burden, and distraction of litigation. The Court has not decided who is right and who is wrong or whether this case could, in the absence of settlement, proceed as a class action.

Plaintiff and Defendants have agreed to settle the action subject to the approval of the Court. Defendants have agreed to pay a maximum of Six Hundred Thousand Dollars (\$600,000.00) for the purposes of allocation and distribution amongst the Class Members, subject to their right to proportionately reduce the settlement amount down. The parties have reached this Agreement through negotiations and mediation and then presented it to the Court. As determined through that process, you are entitled to participate, and your legal rights may be affected. These rights and options are summarized below and explained in detail throughout this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

PARTICIPATE	As described more fully below, to participate in the settlement you must send a properly completed Claim Form and Release to the Settlement Claims Administrator that must be postmarked by <u>April 26, 2021</u> . If you fail to submit a timely Claim Form and Release, you will receive no monetary distribution from the settlement and your claims will be released.
EXCLUDE YOURSELF	If you wish to exclude yourself (“opt-out”) from the lawsuit you must follow the directions outlined in response to Question 7 below.
OBJECT	You may write to the Court about why you believe the settlement is unfair or unreasonable. If the Court rejects your objection, you will still be bound by the terms of the settlement for claims under New York law unless you validly and timely exclude yourself. You will not be bound by the settlement if you opt-out of this action as described herein. If you object you may request to speak to the Court about the fairness of the settlement and the Court will set a schedule for such a hearing.
DO NOTHING	If you fail to submit a timely Claim Form and Release, you will receive no monetary distribution from the settlement. Additionally, you will not be allowed to pursue claims (as described herein) against Defendants, separately or as part of this lawsuit.

FREQUENTLY ASKED QUESTIONS

Question 1. Why did I receive this notice?

You received this notice because relevant pay and event records show that you were employed at Defendants' catered events during September 6, 2012 through December 7, 2020. Records indicate that you were employed at their catered events and were subject to the issues raised in this lawsuit.

Question 2. What is a class action?

A class action is a lawsuit where one or more persons sue not only for themselves, but also for other people who have similar claims. These other people are known as Class Members. In a class action, one court resolves the issues for all Class Members, except for those who exclude themselves from the Class. The Honorable Charles D. Wood, J.S.C., New York State Supreme Court, Westchester County, is presiding over this class action.

Question 3. Why is there a settlement?

Plaintiff and Class Counsel analyzed and evaluated the merits of the claims made against Defendants in the litigation. Based upon Class Counsel's due diligence, and the substantial risks of a continued litigation, including the possibility that the litigation, if not settled now, might not result in any recovery whatsoever, or might result in a recovery that is less favorable and that would not occur for several years, Plaintiffs, Class Counsel, and Defendants entered into this proposed settlement. Class Counsel is satisfied that the terms and conditions of this Agreement are fair, reasonable and adequate, and that this Agreement is in the best interest of Plaintiff and Class Members – especially in light of recent economic developments related to the coronavirus pandemic and its economic consequences.

Question 4. How much will I get paid if I join the Settlement?

Collection in the settlement will vary from worker to worker – and will be subject to a number of factors based on your work experience. However, as detailed below, workers will be provided with points based on their events worked in total and the points will be added up for all workers to determine a money value for each point.

First, the Settlement allocations to Class Members are based on total events worked, in accordance with the following schedule:

<u>Tier</u>	<u>Direct Workers Wage Totals</u>	<u>Temp. Workers Event Totals</u>	<u>Points</u>
Tier 1	Less than \$600	Less than 5 events	1 point
Tier 2	\$601 to \$2,000	6-15 events	2 pts
Tier 3	\$2,001 to \$3,000	16-30 events	3 pts
Tier 4	\$3,001 to \$6,000	31-50 events	6 pts
Tier 5	\$6,001 to \$10,000	51-100 events	9 pts
Tier 6	\$10,001 to \$20,000	101-150 events	10 pts
Tier 7	\$20,001 to \$30,000	151-250 events	15 pts
Tier 8	Greater than \$30,000	251 or more events	20 pts

All Class Members will be given such information on their individualized Claim Form to challenge or dispute such figures. Challenges will be processed based on specific facts and supporting evidence that is available.

Second, each Class Member's percentage is calculated by (1) taking the individual Class Member's points as the numerator, and (2) dividing it by the sum of gross points of all Class Members as the denominator. The denominator for each Class Member will be the same number. As a result of this calculation, the total of all Class Members' numerators must equal the denominator. Thus, the Class Member's adjusted individual points divided by the sum of all adjusted points for all Class Members, equals his/her individual percentage allocation.

Third, the Gross Settlement Fund, less Costs and Fees, shall be multiplied by each Authorized Claimant's percentage allocation as calculated in Section 3.5(C) of the Agreement. This represents the individual amount allocated to each Authorized Claimant – or Individual Gross Amount – prior to any taxes being paid.

Question 5. Who brought this lawsuit and are they being compensated?

This lawsuit was brought by Plaintiff Alejandro Contreras. Plaintiff Contreras took a lead role in this litigation and assisted in its resolution. In addition to his allocated share as described in Question 4, he will receive \$5,000.00 for his efforts to reflect the time and energy expounded on behalf of himself and Class Members in reaching this Settlement, and he is receiving a separate amount \$5,000 for an individual general release.

Question 6. What do I have to do to be included in the Settlement?

To receive a distribution from the settlement fund, you must timely complete and return the enclosed Claim Form and Release. The Claim Form and Release must be personally filled out by the Class Member who seeks to participate in the Settlement or someone with a legal right to act on his or her behalf.

The Claim Form and Release must be properly completed, signed, and mailed, emailed, or faxed to the Settlement Claims Administrator by **April 26, 2021** (the “Bar Date”).

Empire City Settlement
c/o Arden Claims Service LLC
PO Box 1015
Port Washington, NY 11050
Tel: 877-623-2703 | Fax: 516-888-3501
Email: info@ardenclaims.com

If you do not properly complete and timely submit the Claim Form and Release, you will not be eligible to receive any monetary distribution.

You should keep in mind that if you do not opt-out, and if you do not properly and timely complete and return the Claim Form and Release by the Bar Date, you will not receive a distribution from the settlement fund, but you will still be bound by the Release of all claims as described below.

If you timely return the enclosed Claim Form and Release to the Settlement Claims Administrator so that it is received by email, fax, or postmarked by **April 26, 2021**, the Settlement Claims Administrator will make your payment after a Fairness Hearing, if one is scheduled, as instructed by the Court.

Additionally, this action will be dismissed with prejudice and Class Members who do not opt-out will fully release and discharge Defendants. This means that you cannot sue, continue to sue, or be party of any other lawsuit against Defendants regarding the claims brought in this case. It also means that all of the Court’s orders will apply to you and legally bind you.

The Release in the Settlement Agreement provides, in summary, that:

Each individual Class Member who does not timely opt-out pursuant to this Agreement and is identified on the Class List and any Authorized Claimant forever and fully releases and discharges Defendants from any and all claims alleged in the Complaint, including those based on or under New York Labor Law § 196-d, the Hospitality Wage Order, and/or common law claims related to unpaid gratuities, arising during the Settlement Period, whether known or unknown, that were asserted in the Action. The Released Class Claims include statutory, constitutional, contractual or common law claims for unpaid gratuities, service charges, administrative fees or charges, tips, interest on such claims, penalties, damages, liquidated damages, attorneys’ fees, expenses, disbursements, litigation costs and fees related to such claims, restitution, or equitable relief related to such claims.

Question 7. How do I exclude myself from the Settlement?

If you do not wish to participate in the Settlement, but you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case or which could have been brought in this case, then you must take steps to exclude yourself from this case.

If you intend to exclude yourself, you must mail a written, signed statement (“Opt-out Statement”) to the Settlement Claims Administrator stating “I opt-out of the Empire City wage and hour settlement.” You must include your name, address, and telephone number. To be effective, the Opt-out Statement must be postmarked by the Bar Date of **April 26, 2021** and mailed to the Settlement Claims Administrator at:

Empire City Settlement
c/o Arden Claims Service LLC
PO Box 1015
Port Washington, NY 11050
Tel: 877-623-2703 | Fax: 516-888-3501
Email: info@ardenclaims.com

If you exclude yourself from the lawsuit and the Settlement, you will NOT be allowed to object to the Settlement as described in Question 12.

Question 8. If I don’t exclude myself from the Settlement, can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue Defendants for claims brought in this case or which could have been brought in this case. If you have a pending lawsuit, speak to your lawyer in that case immediately to see if the Settlement will affect your other case. Remember, the exclusion deadline is **April 26, 2021**.

Question 9. If I exclude myself, can I get money from the Settlement?

No. If you exclude yourself, you will not receive any money from this lawsuit. However, you may sue, continue to sue, or be part of a different lawsuit against Defendants regarding these same claims.

Question 10. Do I have a lawyer in this case?

The law firm of Leeds Brown Law, P.C., One Old Country Road, Suite 347, Carle Place, New York 11514, (516) 873-9550 has been designated as legal counsel to represent you and other Class Members. These lawyers are called Class Counsel. You will not be charged separately for these lawyers. You will not be charged for calling, emailing or speaking confidentially to Class Counsel. You are permitted to call Class Counsel with any questions and such communications will be confidential and protected. Class Counsel’s fees are being paid

from the total settlement fund as part of the Settlement and are subject to the approval of the Court. If you want to be represented by your own lawyer, you may hire one at your own expense.

Question 11. How will the lawyers be paid?

Class Counsel will ask the Court to approve payment of up to Two Hundred Fifty Thousand Dollars (\$200,000.00), for fees, costs, and disbursements incurred in connection with this action, of the settlement fund established by Defendants, to them for attorneys' fees including certain litigation expenses and costs to be paid from the settlement fund. The fees would pay Class Counsel for all work that they have performed in this action including filing briefs, investigating the facts, attending court conferences, participating in settlement discussions, and negotiating and overseeing the settlement.

Question 12. How do I tell the Court that I don't like the Settlement?

You can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement under New York Law – unless you submitted a valid and timely request for exclusion. To object, you must send a letter saying that you object to the Settlement. Your statement may include reasons for the objection and any supporting documentation in your possession. Your statement must also include your name, address, and telephone number.

If you wish to present your objection to the Court, you must state your intention to do so in your written objection. Your statement should be as detailed as possible, otherwise the Court may not allow you to present reasons for your objection that you did not describe in your written objection. Your objection will not be heard unless it is postmarked by the **April 26, 2021** Bar Date and mailed to the Settlement Claims Administrator at:

Empire City Settlement
c/o Arden Claims Service LLC
PO Box 1015
Port Washington, NY 11050
Tel: 877-623-2703 | Fax: 516-888-3501
Email: info@ardenclaims.com

The Settlement Claims Administrator will share your objection with Class Counsel and Defendants' counsel and file your objection statement with the Court. You may not object to the Settlement if you submit a letter requesting to exclude yourself or opt-out of the Settlement.

Question 13. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you stay in the Class. Excluding yourself from the settlement ("opting out") is telling the Court that you don't want to be part of the Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

If you send an objection, it is not necessary for you to come to Court to talk about it, but you may do so at your own expense or pay your own lawyer to attend. As long as you mailed your written objection on time, the Court will consider it. If you do attend the hearing, it is possible that you will not be permitted to speak unless you timely object in writing as described above and notify the Court of your intention to appear at the fairness hearing.

Question 14. Has the Court approved the Settlement?

Yes. The Court has already considered whether the terms of the settlement are fair, reasonable, and adequate – after reviewing a detailed submission by the parties that is publicly available via NYSCEF and the electronic filing system in New York State. However, if you wish to raise a valid concern, you should alert the attorneys and they can request a conference with the Court if your issue is not resolved to your satisfaction. If there are objections, the Court will consider them. The Judge will decide whether to listen to any issues that are properly raised.

Question 15. Are there more details about the Settlement?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can review the Settlement Agreement by asking for a copy of the Settlement Agreement by writing or calling Jeffrey K. Brown, Esq., Michael A. Tompkins, Esq., or other attorneys at (516) 873-9550, Leeds Brown Law, P.C., One Old Country Road, Carle Place, New York 11514, www.leedsbrownlaw.com.