

01/03/2024

**FIANL RULINGS/ORDERS Re: Motion for Preliminary Approval of**  
**Class Action Settlement**

David W. Slayton, Executive Officer / Clerk of Court

By: E. Muñoz Deputy

Dimalanta et al. v. North Plaza Restaurant Partners, Case No.:  
BC695657

The Parties' Motion for Preliminary Approval of class action settlement is **GRANTED** as the settlement is fair, adequate, and reasonable, **on the condition** that counsel show that the sample was statistically significant. (Counsel represents that a sample of data was used prior to mediation.)

The Parties' supplemental paperwork must be filed by **January 17, 2024.**

Nonappearance case management review is set for January 24, 2024, 8:30 a.m., Dept. 9.

The essential terms are:

- A. The Gross Settlement Amount ("GSA") is \$645,000.
- B. The Net Settlement Amount is the GSA minus the following:
  - Up to \$215,000 (33%) for attorney fees (§3.2.2);
  - Up to \$70,000 for litigation costs (Ibid.);
  - Up to \$15,000 for Service Payments to the Named Plaintiffs (\$7,5000 each) (§3.2.1);
  - Up to \$11,500 for settlement administration costs (§3.2.3);
  - Employer-Side Taxes. (§1.21)
- C. Plaintiffs release of Defendants from claims described herein.

The Parties' Motion for Final Approval of Class Action Settlement must be filed by **July 3, 2024.** Please call Department 9 to get a hearing date and briefing schedule.

The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

**Nonappearance case management review is set for July 10, 2024, 8:30 a.m., Dept. 9.**

I.  
BACKGROUND

This is a wage and hour class action. On February 28, 2018, Plaintiff DiMalanta and Shavai Owens filed a putative class action Complaint against 16 defendant entities, including Centro and Bakery alleging the following causes of action: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay all wages due to discharged and quitting employees; (6) failure to maintain required records; (7) failure to furnish accurate itemized wage statements; (8) failure to indemnify employees for necessary expenditures incurred in discharge of duties; and (9) unfair and unlawful business practices.

On August 6, 2020, the Court granted Plaintiffs' requests to dismiss 13 of the named defendant entities, leaving Centro, Bakery, and 4 Fratelli, Inc. dba Panzanella Restaurant as the only defendants remaining in the case.

On August 28, 2020, Plaintiff DiMalanta and Shavai Owens filed a Motion for leave to file a First Amended Complaint ("FAC") adding Rafael Rebolledo and Plaintiff Cruz as named plaintiffs. The FAC was subsequently deemed filed on December 28, 2020.

On February 23, 2021, Plaintiffs filed eight Amendment to Complaint forms to substitute in individuals - including defendant Celestino Drago - who were designated as DOE defendants in the FAC.

On September 27, 2021, the Court removed Rafael Rebolledo as a named plaintiff and class representative after Rafael Rebolledo's claims were compelled to arbitration on March 29, 2021 and failed to find new representation following the Court's granting of Class Counsel's motion to be relieved as his counsel on September 7, 2021.

On October 27, 2021, the Court dismissed Shavai Owens' claims in their entirety given her inclusion in the class action settlement of the consolidated Jose De La Cruz v. Drago Air

Catering, Inc. (LASC Case No. BC593218) and Cecilia Camargo v. Drago Air Catering, Inc. (LASC Case No. BC593218) actions, which was granted final approval on January 23, 2020.

On December 7, 2021, the Court granted Plaintiffs' request to dismiss defendant 4 Fratelli, Inc. dba Panzanella Restaurant.

On April 4, 2022, Plaintiffs filed the operative Second Amended Complaint alleging the following causes of action: (1) Failure to Provide Required Meal Periods; (2) Failure to Provide Required Rest Periods; (3) Failure to Pay Overtime Wages; (4) Failure to Pay Minimum Wages; (5) Failure to Pay All Wages Due to Discharged and Quitting Employees; (6) Failure to Maintain Required Records; (7) Failure to Furnish Accurate Itemized Wage Statements; (8) Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties; and (9) Unfair and Unlawful Business Practices.

On August 24, 2022, the Court granted Plaintiffs' requests for dismissal of all individual defendants aside from Celestino Drago, leaving Centro, Bakery, and Celestino Drago as the only three remaining defendants in the Action.

Counsel represents that prior to mediation the parties engaged in informal discovery regarding their respective discovery requests and responses, wherein Defendants have provided Plaintiffs with a sample of time punch and payroll records, and its employee policies and Plaintiffs' expert has conducted an analysis of Defendants' time punch data.

On December 16, 2021, the Parties participated in a full-day mediation before Lisa Klerman, Esq. While a resolution was not reached at the mediation, the Parties, with the assistance of the mediator, continued to engage in negotiations and ultimately reached an agreement in principle on November 4, 2022 to resolve all claims.

On March 22, 2023, the Parties executed the Settlement Agreement, a fully executed copy of which is attached to the Declaration of Mikael H. Stahle ("Stahle Decl.") as Exhibit A.

Now before the Court is Plaintiff's motion for preliminary approval of the settlement agreement.

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II.  
SETTLEMENT AGREEMENT

A. Definitions.

"Class": all current and former non-exempt employees who have worked for Defendants in California at any time during the Class Period. (Settlement Agreement, ¶1.4)

"Class Period": February 28, 2014 to the date of the order granting preliminary approval of the settlement. (¶1.11)

Based on a review of their records to date, Defendants estimate there are approximately 750 Class Members who collectively worked a total of approximately 55,000 Workweeks. (¶4.1)

The parties stipulate to class certification for settlement purposes only. (¶12.1.)

B. Terms of Settlement Agreement

The essential terms are:

- The Gross Settlement Amount ("GSA") is \$645,000, non-reversionary. (¶3.1)
- The Net Settlement Amount ("Net") (\$333,500) is the GSA minus the following:
  - Up to \$215,000 (33%) for attorney fees (¶3.2.2);
  - Up to \$70,000 for litigation costs (Ibid.);
  - Up to \$15,000 for Service Payments to the Named Plaintiffs (\$7,500 each) (¶3.2.1);
  - Up to \$11,500 for settlement administration costs (¶3.2.3);and
- Employer-Side Taxes. (¶1.21)
- Funding of Settlement: Defendants shall fully fund the Gross Settlement Amount by transmitting the funds to the Administrator in 36 separate installments, as follows: (¶4.3)
  - Initial Installment Payment: The initial installment payment, which will equal \$356,250, shall be delivered to the Administrator within 10 calendar days of the Effective Date. (¶4.3.1)
  - Remaining Installment Payments: The remaining installment payments, which shall collectively equal \$288,750, shall be delivered in 35 equal monthly installment payments of \$8,250 each. The first of the 35 equal monthly installment payments

shall be delivered no later than one (1) month after the initial monthly installment payment (as described above in the preceding subsection), with each subsequent monthly installment payment being delivered no later than one (1) month after the preceding monthly installment payment, until the combined amount owed by Defendants for the Gross Settlement Amount has been fully funded by Defendants. (§4.3.2)

- Defendant has provided a declaration evidencing the need for a payment plan. (Declaration of Celestino Drago, passim.)
- Payments from the Gross Settlement Amount. Within 14 days after Defendants fully funds the entire Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payments shall not precede disbursement of Individual Class Payments. (§4.4)

- There is no claim form requirement. (§3.1)

- Individual Settlement Payment Calculation: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (§3.2.4) Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will allocate amounts equal to their Individual Class Payments to the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. (§3.2.4.2)

- o Tax Allocation: 20% as wages and 80% as interest and penalties. (§3.2.4.1)

- "Response Deadline" means 60 days after the Administrator mails Notice to Class Members unless the date falls on a Sunday, state or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired. (§1.33) This deadline applies to workweek challenges as well. (§7.6)

- o If the number of valid Requests for Exclusion exceeds 10% of the total of all Class Members and/or if the combined

Workweeks worked by Class Members identified in the Exclusion List exceeds 10% or more of the total Workweeks worked by all Class Members, Defendants may elect to withdraw from the Settlement. (¶9)

- **Uncashed Settlement Checks:** For any Class Member whose Individual Class Payment check is uncashed and cancelled after the void date (not less than 180 days after the date of mailing), the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b ). (¶¶4.4.1, 4.4.3)
- The settlement administrator will be CPT Group, Inc. (¶1.2) Participating class members and the named Plaintiff will release certain claims against Defendants. (See further discussion below)

### III. DISCUSSION

#### A. Does a Presumption of Fairness Exist?

1. Was the settlement reached through arm's-length bargaining? Yes. On December 16, 2021, the Parties participated in a full-day mediation before Lisa Klerman, Esq. (Stahle Decl., ¶15.) While a resolution was not reached at the mediation, the Parties, with the assistance of the mediator, continued to engage in negotiations and ultimately reached an agreement in principle on November 4, 2022 to resolve all claims. (Ibid.)

2. Were investigation and discovery sufficient to allow counsel and the court to act intelligently? Yes. Counsel represents that prior to mediation the parties engaged in informal discovery regarding their respective discovery requests and responses, wherein Defendants have provided Plaintiffs with **a sample of time punch and payroll records**, and its employee policies and Plaintiffs' expert has conducted an analysis of Defendants' time punch data. (Id. at ¶¶11-12.)

3. Is counsel experienced in similar litigation? Yes. Class Counsel is experienced in class action litigation, including wage and hour class actions. (Id. at ¶¶36-45).

4. What percentage of the class has objected? This cannot be determined until the fairness hearing. (Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter

Group 2014) ¶ 14:139.18, ["Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing."].)

The Court concludes that the settlement is entitled to a presumption of fairness.

B. Is the Settlement Fair, Adequate, and Reasonable?

1. Strength of Plaintiff's case. "The most important factor is the strength of the case for plaintiff on the merits, balanced against the amount offered in settlement." (Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.)

Class Counsel has provided information, summarized below, regarding the estimated exposure for each of the claims alleged:

<b>CLAIM</b>	<b>MAXIMUM RECOVERY</b>
Meal Periods	\$1,408,611.00
Rest Periods	\$3,242,370.00
Unpaid Wages	\$1,967,302.00
Wage Statement Violations	\$1,432,300.00
Waiting Time Penalties	\$1,403,315.00
TOTAL	\$9,453,898.00

(Stahle Decl., ¶24.)

2. Risk, expense, complexity and likely duration of further litigation. Given the nature of the class claims, the case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any recovery by the class members.

3. Risk of maintaining class action status through trial. Even if a class is certified, there is always a risk of decertification. (Weinstat v. Dentsply Intern., Inc. (2010) 180 Cal.App.4th 1213, 1226 ("Our Supreme Court has recognized that trial courts should retain some flexibility in conducting class actions, which means, under suitable circumstances, entertaining successive motions on certification if the court subsequently discovers that the propriety of a class action is not appropriate.")).)

4. Amount offered in settlement. Plaintiff's counsel obtained a \$645,000 non-reversionary settlement. This is approximately 7% of Plaintiff's estimated recovery, which is within the "ballpark" of reasonableness.

The \$645,000 settlement amount, after reduced by the requested deductions, leaves approximately \$333,500 to be divided among approximately 750 class members. Assuming full participation, the resulting payments will average approximately \$444.67 per class member. ( $\$333,500/750 = \$444.67$ )

5. Extent of discovery completed and stage of the proceedings. As indicated above, at the time of the settlement, Class Counsel had conducted sufficient discovery.

6. Experience and views of counsel. The settlement was negotiated and endorsed by Class Counsel who, as indicated above, is experienced in class action litigation, including wage and hour class actions.

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object, opt-out and/or submit claim forms. This factor becomes relevant during the fairness hearing.

The Court concludes that the settlement can be preliminarily deemed fair, adequate, and reasonable.

#### C. Scope of the Release

Effective on the date when Defendants fully funds the entire Gross Settlement Amount, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows: (§5)

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including, but not limited to any claims for: (i) failure to provide meal periods; (ii) failure to provide rest periods; (iii) failure to pay overtime wages; (iv) failure to pay minimum wages; (v) failure to pay all wages due to discharged and quitting employees; (vi) failure to maintain required records; (vii) failure to furnish accurate itemized



wage statements; (viii) failure to indemnify employees for necessary expenditures incurred in discharge of duties; (ix) unfair and unlawful business practices and all other alleged violations of the California Business and Professions Code section 17200, et seq.; (x) injunctive relief; (xi) liquidated damages; (xii) statutory penalties; (xiii) interest; (xiv) fees, including fees under California Code of Civil Procedure section 1021.5; and (xv) costs. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period. (¶5.2)

Named Plaintiff will also provide a general release and CC § 1542 waiver. (¶5.1)

D. May Conditional Class Certification Be Granted?

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified (Amchem Products, Inc. v. Windsor (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (Dunk at 1807, fn 19.) Finally, the Court is under no "ironclad requirement" to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224, 240, disapproved on another ground in Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.)

1. Numerosity. There are approximately 750 class members. (Stahle Decl., ¶17.) This element is met.

2. Ascertainability. The proposed class is defined above. The class definition is "precise, objective and presently ascertainable." (Sevidal v. Target Corp. (2010) 189 Cal.App.4th 905, 919.) All Class Members are identifiable through a review of Defendant's records. (Stahle Decl., ¶17.)

3. Community of interest. "The community of interest requirement involves three factors: '(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives

who can adequately represent the class.'" (Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 435.)

Counsel contends that Plaintiffs assert their claims present sufficient common issues of law and fact that predominate over individual issues and warrant class certification because Plaintiffs allege that: 1) Defendants failed to provide full, uninterrupted meal and rest periods to all Class Members as a regular practice; 2) Defendants failed to properly compensate Class Members for all overtime hours worked and failed to provide accurate itemized wage statements; and 3) Defendants' policies and practices were uniform as to all Class Members. (Motion, 17:3-9.)

Further, counsel contends that as Plaintiff's and Class Members' claims are based on the same legal theories and arise out of the same unlawful policies and practices, the typicality requirement is satisfied. (Motion, 17:18-23.)

Finally, Counsel contends that Plaintiffs are adequate representatives because they do not have any antagonism with the class and is represented by adequate counsel. (Motion, 17:27-18:4; Declaration of Plaintiff Dimalanta, passim; Declaration of Plaintiff Cruz, passim.)

4. Adequacy of class counsel. As indicated above, Class Counsel has shown experience in class action litigation, including wage and hour class actions.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

The Court finds that the class may be conditionally certified because the prerequisites of class certification have been satisfied.

#### E. Is the Notice Proper?

1. Content of class notice. The proposed notice is attached as Exhibit A to the Settlement Agreement. Its content appears to be acceptable. It includes information such as: a summary of the litigation; the nature of the settlement; the terms of the settlement agreement; the proposed deductions from the gross settlement amount (attorney fees and costs, enhancement awards, and claims administration costs); the procedures and deadlines for participating in, opting out of, or

objecting to, the settlement; the consequences of participating in, opting out of, or objecting to, the settlement; and the date, time, and place of the final approval hearing.

2. Method of class notice. Notice will be by direct mail. Not later than thirty (30) days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (¶4.2) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database. (¶7.4.2) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (¶7.4.3) Notice of Final Judgment will be posted on the Settlement Administrator's website. (¶7.8.1)

3. Cost of class notice. As indicated above, claims administration costs are estimated not to exceed \$11,500. Prior to the time of the final fairness hearing, the claims administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

#### F. Attorney Fees and Costs

CRC rule 3.769(b) states: "Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action."

Ultimately, the award of attorney fees is made by the court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (PLCM Group, Inc. v. Drexler (2000)

22 Cal.4th 1084, 1095-1096; Ramos v. Countrywide Home Loans, Inc. (2000) 82 Cal.App.4th 615, 625-626; Ketchum III v. Moses (2000) 24 Cal.4th 1122, 1132-1136.) Despite any agreement by the parties to the contrary, "the court ha[s] an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable." (Garabedian v. Los Angeles Cellular Telephone Company (2004) 118 Cal.App.4th 123, 128.)

The question of whether Class Counsel is entitled to \$215,000 in attorney fees will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees. Class counsel must provide the court with billing information so that it can properly apply the lodestar method and must indicate what multiplier (if applicable) is being sought as to each counsel.

Class Counsel should also be prepared to justify the costs sought by detailing how they were incurred.

G. Incentive Award to Class Representative

The Settlement Agreement provides for an enhancement award of up to \$7,500 to each Plaintiff for a total of \$15,000.

In connection with the final fairness hearing, the named Plaintiff must submit a declaration attesting to why he should be entitled to an enhancement award in the proposed amount. The named Plaintiff must explain why he "should be compensated for the expense or risk she has incurred in conferring a benefit on other members of the class." (Clark v. American Residential Services LLC (2009) 175 Cal.App.4th 785, 806.) Trial courts should not sanction enhancement awards of thousands of dollars with "nothing more than pro forma claims as to 'countless' hours expended, 'potential stigma' and 'potential risk.' Significantly more specificity, in the form of quantification of time and effort expended on the litigation, and in the form of reasoned explanation of financial or other risks incurred by the named plaintiffs, is required in order for the trial court to conclude that an enhancement was 'necessary to induce [the named plaintiff] to participate in the suit . . . .'" (Id. at 806-807, italics and ellipsis in original.)

The Court will decide the issue of the enhancement award at the time of final approval.

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IV.  
CONCLUSION

Based upon the foregoing, the Court orders that:

1) The Parties' Motion for Preliminary Approval of class action settlement is GRANTED as the settlement is fair, adequate, and reasonable, on the condition that counsel show that the sample was statistically significant. (Counsel represents that a sample of data was used prior to mediation.)

2) The Parties' supplemental paperwork must be filed by January 17, 2024.

3) Nonappearance case management review is set for January 24, 2024, 8:30 a.m., Dept. 9.

4) The essential terms are:

A. The Gross Settlement Amount ("GSA") is \$645,000.

B. The Net Settlement Amount is the GSA minus the following:

Up to \$215,000 (33%) for attorney fees (¶3.2.2);  
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Up to \$15,000 for Service Payments to the Named  
Plaintiffs (\$7,5000 each) (¶3.2.1);  
Up to \$11,500 for settlement administration costs  
(¶3.2.3);  
Employer-Side Taxes. (¶1.21)

C. Plaintiffs release of Defendants from claims described herein.

5) The Parties' Motion for Final Approval of Class Action Settlement must be filed by July 3, 2024. Please call Department 9 to get a hearing date and briefing schedule.

6) The Parties' Motion for Final Approval of Class Action Settlement must include a concurrently lodged [Proposed] Judgment containing among other things, the class definition, full release language, and names of the any class members who opted out; and email the [Proposed] Judgment in Word format to Dept. 9 staff at [sscdept9@lacourt.org](mailto:sscdept9@lacourt.org).

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7) Nonappearance case management review is set for July 10, 2024, 8:30 a.m., Dept. 9.

CLERK TO GIVE NOTICE TO MOVING PARTY. THE MOVING PARTY TO GIVE NOTICE TO ALL OTHER PARTIES.

IT IS SO ORDERED.

DATED: January 3, 2024



A handwritten signature in black ink that reads "Yvette M. Palazuelos".

YVETTE M. PALAZUELOS  
JUDGE OF THE SUPERIOR COURT  
Yvette M. Palazuelos / Judge