

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

Plaintiffs,

Index No.: 54536/2018

- against -

DANIA MARINA, INC. D/B/A MARINA DEL REY CATERERS; CARL
 A. RANDAZZO; PARADISE CATERING CORP.; ELM ENTERPRISES,
 INC; MURRAY PLAUT; and any other related entities,

Defendants.

**NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT**

TO: All individuals who performed service work at Marina Del Rey’s or Paradise Caterer’s/Elm Enterprise’s catered events held on or off premises, in such trades, classifications and professions that customarily receive gratuities, including but not limited to wait staff, waiters, servers, captains, bussers, and bartenders from March 2012 through June 10, 2019 (“Settlement Period”).

DATED: **JULY 1, 2019**

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 alleged employment for the Defendants. The Court in charge of this case is the New York Supreme Court, Westchester County. The lawsuit is known as *Contreras v. Dania Marina, Inc., et al.* Alejandro Contreras is the Named Plaintiff and Dania Marina, Inc. d/b/a Marina Del Rey Caterers, Carl A. Randazzo, Paradise Catering Corp., Elm Enterprises, Inc, and Murray Plaut are the Defendants. Plaintiff 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 to avoid the expense, inconvenience, 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 One Million Two Hundred Thousand Dollars (\$1,200,000.00) for the purposes of allocation and distribution amongst the Class Members, as well as costs and attorney fees, subject to their right to reallocate or reduce the proceeds as detailed and described below. The parties have reached this Agreement through negotiations and mediation sessions 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 Claims Administrator that must be postmarked by AUGUST 30, 2019 . If you fail to submit a timely Claim Form and Release, you will receive no monetary distribution from the settlement.
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 appear at the Fairness Hearing to speak to the Court about the fairness of the settlement.
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 records show that you performed services for Marina Del Rey or Paradise Catering during March 2012 through June 10, 2019 Defendants records indicate that you performed work at their catered events and were subject to the issues raised in this lawsuit.

According to those records, you were either a direct employee at Marina Del Rey or Paradise Catering, or you were assigned to work events at Marina Del Rey through a third-party staffing company.

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 Gretchen Walsh, J.S.C., New York State Supreme Court, Westchester County, is presiding over this class action. Because it is a class action, you cannot obtain liquidated damages, unless you file an individual 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, Plaintiff, 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.

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

Based on the records that do exist, and the information that is available, the parties have reached an agreement as to an allocation formula for all Class Members. The chart below provides a point system for all Class Members:

<u>Tier</u>	<u>Direct Workers Wage Totals*</u>	<u>Paradise Workers Wage Totals</u>	<u>Temp. Workers Event Totals</u>	<u>Points</u>
Tier 1	Less than \$601	Less than \$101	Less than 5 events	1 point
Tier 2	\$601 to \$2,000	\$101 to \$180	6-15 events	2 pts
Tier 3	\$2,001 to \$3,000	\$181 to \$710	16-30 events	3 pts
Tier 4	\$3,001 to \$6,000	\$711 to \$4,000	31-50 events	6 pts
Tier 5	\$6,001 to \$10,000	\$4,001 to \$10,000	50-100 events	9 pts
Tier 6	\$10,001 to \$20,000	\$10,001 to \$20,000	101-175 events	10 pts
Tier 7	\$20,001 to \$30,000	\$20,001 to \$30,000	176-250 events	15 pts
Tier 8	Greater than \$30,000	Greater than \$30,000	251 or more events	20 pts

*Class Members who are Direct Workers that are also coded as “Captains” or “Lobby/Hostesses” will require a reduction of 40% of their wage totals based on the nature of their interactions with guests, including the likelihood that Captains received additional gratuities and Lobby/Hostesses less frequently interacted with customers, as well as the fact that they were traditionally paid at a higher rate.

As detailed in the Claim Form, if you believe that the points allocated to you are not accurate, then you have the ability to challenge those points, but you may be required to submit additional documents and provide a sworn statement to the attorneys and/or the Court. If you believe you have records that could clear up any information, it is recommended that you supply those with any challenge.

While the parties believe that the allocation formula as presented above is fair and reasonable, the parties may discover other factors or problems with the data that require an adjustment of the calculated amount – subject to the Court’s oversight and approval. The parties have designed several mechanisms for fairness in this regard, including utilizing the services of Mediator Martin F. Scheinman, Esq. and by obtaining ultimate approval from Judge Walsh. Unfortunately, Class Counsel and the Settlement Claims Administrator will not be able to provide an estimate of the total amount that any individual Class Member may receive in the settlement, until at or near the time that Settlement Checks are cut, if the Court approves the settlement.

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 \$10,000.00 for his efforts to reflect the time and energy expounded on behalf of himself and Class Members in reaching this Settlement, if his request is granted by the Court.

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. Sign it, fill in all data, and return it. It is also a good idea to keep a copy of it for your own records and evidence of how you returned it.

The Claim Form and Release must be properly completed, signed, and mailed, emailed, or faxed to the Settlement Claims Administrator by **AUGUST 30, 2019** (the “Bar Date”). 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 New York Labor Law claims as described below.

If you timely return the enclosed claim form to the Settlement Claims Administrator so that it is received by email, fax, or postmarked by **AUGUST 30, 2019**, the Settlement Claims Administrator will make your payment after a Fairness Hearing as instructed by the Court.

Additionally, if the Court grants final approval of the Settlement, 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 that:

Each individual Class Member who does not timely opt-out pursuant to this Agreement and is identified on the Class List 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”). The Released Class Claims include statutory, constitutional, contractual or common law claims for unpaid gratuities, service 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.

Each individual Class Member who participates in the settlement by submitting a Claim Form and Release prior to the Bar Date will also be releasing and discharging Defendants from the Released Class Claims as well as any and all wage and hour claims based on events that took place from the beginning of time through May 2019, including any such claims relating to hours worked or wages received based on or under New York State law, federal law, and/or common law, whether known or unknown, including but not limited to unpaid overtime, off-the-clock work, spread of hours compensation, or minimum wage.

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 Marina Del Rey 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 **AUGUST 30, 2019** and mailed to the Settlement Claims Administrator at:

Marina Del Rey Caterers Settlement Administrator
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 **AUGUST 30, 2019**.

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

No. If you exclude yourself, you will not receive any money from this lawsuit. But, 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. 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 Four Hundred Thousand Dollars (\$400,000.00), for fees, and up to an additional Twenty-Five Thousand Dollars (\$25,000) for costs, expenses, and disbursements incurred in connection with this action, paid from the settlement fund established by Defendants. The fees would pay Class Counsel for all work that they have performed in this action including filing briefs, engaging in discovery, investigating the facts, attending court conferences, participating in private mediation, 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 at the Fairness Hearing described below, 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 at the Fairness Hearing that you did not describe in your written objection. Your objection will not be heard unless it is postmarked by the **AUGUST 30, 2019** Bar Date and mailed to the Settlement Claims Administrator at:

Marina Del Rey Caterers Settlement Administrator
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.

The Court will hold a Fairness Hearing on October 3, 2019 to decide whether to approve the settlement. Class Counsel will answer questions the Judge may have. You do not have to come to the hearing, but you are welcome to do so at your own expense.

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. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Fairness Hearing at 9:30 a.m. on October 3, 2019, at the Westchester County Supreme Court, 111 Dr. Martin Luther King Jr. Blvd., White Plains, NY 10601 before Judge Gretchen Walsh.

At this Fairness Hearing, the Court will consider whether the terms of the settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Judge will listen to people who have asked to speak at the hearing. The Court may also decide how much to award Class Counsel in fees and costs. Typically at the Fairness Hearing, the Court will decide whether to approve the settlement. Other times, the Court may consider the materials separately after the Fairness Hearing. We do not know how long these decisions will take.

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.