

Superior Court of California, Contra Costa County

Department 39  
925-608-1000  
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S. Lind  
Court Executive Officer

<b>MINUTE ORDER</b>	
<b>IVORYA GENEVE VS. MIKUNI RESTAURANT GROUP, INC</b>	<b>C23-02732</b>
<b>HEARING DATE: 11/13/2025</b>	
PROCEEDINGS: *HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT	
DEPARTMENT 39 JUDICIAL OFFICER: EDWARD G WEIL	CLERK: BROOKE POOL COURT REPORTER: NOT REPORTED BAILIFF: KIAN LAVASSANI
<u>JOURNAL ENTRIES:</u>	
<p><b>Appearances:</b> No appearance by or for either party.</p> <p><b>Proceedings:</b> There being no opposition to the tentative ruling, the tentative ruling becomes the order of the court as follows:</p> <p><b><u>*TENTATIVE RULING:*</u></b></p> <p>Plaintiff Ivorya Geneve moves for preliminary approval of her class action and PAGA settlement with defendant Mikuni Restaurant Group, Inc.</p> <p style="padding-left: 40px;"><b>A. Background and Settlement Terms</b></p> <p>The original complaint was filed by Plaintiff on October 26, 2023, raising PAGA claims on behalf of non-exempt employees, alleging that defendant violated the Labor Code in various ways, including failure to pay minimum and overtime wages, failure to provide meal breaks, failure to provide proper wage statements, failure to reimburse necessary business expenses, and failure to pay all wages due on separation. Plaintiff filed a separate complaint alleging class action claims based on similar allegations, on February 16, 2024. Each complaint remains operative, and the settlement would settle each of them.</p> <p>The settlement would create a gross settlement fund of \$2,250,000. The class representative payment to plaintiff would be \$10,000. Attorney’s fees would be \$787,500 (35% of the settlement). Litigation costs would not exceed \$25,000. The settlement administrator’s costs will not exceed \$25,000. PAGA penalties would be \$200,000, resulting in a payment of \$150,000 to the LWDA and \$50,000 to the aggrieved employees. The net amount paid directly to the class members would be about \$1,202,500. The fund is non-reversionary. Based on the estimated class size of 2,914, the average net payment for each class member is approximately \$412.</p> <p>The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendant during the class period.</p> <p>The class members will not be required to file a claim. Class members may object or opt out of the</p>	

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settlement. (Aggrieved employees cannot opt out of the PAGA portion of the settlement.) Funds would be apportioned to class members based on the number of workweeks worked during the class period.

Various prescribed follow-up steps will be taken with respect to mail that is returned as undeliverable.

The proposed settlement provides that checks undelivered or uncashed 180 days after mailing will be voided, and the funds will be provided to the State Controller's Unclaimed Property Fund.

The settlement contains release language covering all "all claims...or causes of action which were alleged or which could have been alleged based on the factual allegations in the Class Action complaint arising during the class period" (Settlement, Par. 9ee.) Under recent appellate authority, the limitation to those claims with the "same factual predicate" as those alleged in the complaint is critical. (*Amaro v. Anaheim Arena Mgmt., LLC* (2021) 69 Cal.App.5th 521, 537 ["A court cannot release claims that are outside the scope of the allegations of the complaint." "Put another way, a release of claims that goes beyond the scope of the allegations in the operative complaint' is impermissible." (*Id.*, quoting *Marshall v. Northrop Grumman Corp.* (C.D. Cal.2020) 469 F.Supp.3d 942, 949.)

Informal written discovery was undertaken. The matter settled after arms-length negotiations, which included a session with an experienced mediator.

Counsel attest that they have analyzed the value of the case, and that the result achieved in this litigation is fair, adequate, and reasonable. The moving papers include an estimate of the potential value of the case, broken down by each type of claim.

The potential liability needs to be adjusted for various evidence and risk-based contingencies, including problems of proof. PAGA penalties are difficult to evaluate for a number of reasons: they derive from other violations, they include "stacking" of violations, the law may only allow application of the "initial violation" penalty amount, and the total amount may be reduced in the discretion of the court. (See Labor Code, § 2699(e)(2) [PAGA penalties may be reduced where "based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust arbitrary and oppressive, or confiscatory."])

Counsel attest that notice of the proposed settlement was transmitted to the LWDA concurrently with the filing of the motion.

### **B. Legal Standards**

The primary determination to be made is whether the proposed settlement is "fair, reasonable, and adequate," under *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, including "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the state of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction ... to the proposed settlement." (See also *Amaro v. Anaheim Arena Mgmt., LLC, supra*, 69 Cal.App.5th 521.)

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Because this matter also proposes to settle PAGA claims, the Court also must consider the criteria that apply under that statute. Recently, the Court of Appeal's decision in *Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, provided guidance on this issue. In *Moniz*, the court found that the "fair, reasonable, and adequate" standard applicable to class actions applies to PAGA settlements. (*Id.*, at 64.) The Court also held that the trial court must assess "the fairness of the settlement's allocation of civil penalties between the affected aggrieved employees[.]" (*Id.*, at 64-65.)

California law provides some general guidance concerning judicial approval of any settlement. First, public policy generally favors settlement. (*Neary v. Regents of University of California* (1992) 3 Cal.4th 273.) Nonetheless, the court should not approve an agreement contrary to law or public policy. (*Bechtel Corp. v. Superior Court* (1973) 33 Cal.App.3d 405, 412; *Timney v. Lin* (2003) 106 Cal.App.4th 1121, 1127.) Moreover, "[t]he court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*California State Auto. Assn. Inter-Ins. Bureau v. Superior Court* (1990) 50 Cal.3d 658, 664.) As a result, courts have specifically noted that *Neary* does not always apply, because "[w]here the rights of the public are implicated, the additional safeguard of judicial review, though more cumbersome to the settlement process, serves a salutary purpose." (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 48, 63.)

### C. Attorney fees

Plaintiff seeks 35% of the total settlement amount as fees, relying on the "common fund" theory. Even a proper common fund-based fee award, however, should be reviewed through a lodestar cross-check. In *Lafitte v. Robert Half International* (2016) 1 Cal.5th 480, 503, the Supreme Court endorsed the use of a lodestar cross-check as a way to determine whether the percentage allocated is reasonable. It stated: "If the multiplier calculated by means of a lodestar cross-check is extraordinarily high or low, the trial court should consider whether the percentage used should be adjusted so as to bring the imputed multiplier within a justifiable range, but the court is not necessarily required to make such an adjustment." (*Id.*, at 505.) Following typical practice, however, the fee award will not be considered at this time, but only as part of final approval. Counsel are directed to prepare a lodestar fee estimate for the motion for final approval.

The reasonableness of litigation costs and the settlement administrator's fees will be considered at final approval.

Similarly, the requested representative payment of \$10,000 for each plaintiff will be reviewed at time of final approval. Criteria for evaluation of representative payment requests are discussed in *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804-807.

### D. Conclusion

The Court finds that the agreement is sufficiently fair, reasonable, and adequate, to justify preliminary approval. The motion is granted.

Counsel are directed to prepare an order reflecting this tentative ruling, the other findings in

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the previously submitted proposed order, and to obtain a hearing date for the motion for final approval from the Department clerk. Other dates in the scheduled notice process should track as appropriate to the hearing date. The ultimate judgment must provide for a compliance hearing after the settlement has been completely implemented. Plaintiffs' counsel are to submit a compliance statement one week before the compliance hearing date. 5% of the attorney's fees are to be withheld by the claims administrator pending satisfactory compliance as found by the Court.

DATE: 11/13/2025

BY: /s/B. Pool

B. POOL, DEPUTY CLERK