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Electronically Filed by
Superior Court of California,
Contra Costa County
12/8/2025
By: N. McCallister-Villa, Deputy

9 Attorneys for Plaintiff Rainy Day Fisher,
on behalf of herself and all others similarly situated

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF CONTRA COSTA**

13 RAINY DAY FISHER, an individual, on
behalf of herself and others similarly situated,

14 Plaintiff,

15 vs.

16 RLW PROPERTIES, LLC, d/b/a Zephyr Grill
17 & Bar, d/b/a Smith's Landing Seafood
Restaurant, a California limited liability
18 company; RLW PROPERTIES LLC
ZEPHYR'S GRILL/SMITH'S LANDING, a
19 business organization of form unknown;
ZEPHYR GRILL & BAR, a business
20 organization of form unknown; SMITH'S
LANDING, a business organization of a form
21 unknown; and DOES 1 through 50, inclusive,

22 Defendants.

Case No. C24-02017

CLASS ACTION

Assigned for all purposes to:
Hon. Edward G. Weil
Dept.: 39

**ORDER AFTER HEARING GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT
AGREEMENT**

Date: November 20, 2025
Time: 9:00 a.m.
Dept.: 39

Original Complaint filed: March 13, 2024
Venue Transfer: August 02, 2024
First Amended Complaint: December 04, 2024
Trial: none set

1 **ORDER**

2 Plaintiff Rainy Day Fisher (“Plaintiff”), on behalf of herself and other similarly situated
3 employees of Defendants RLW Properties, LLC, d/b/a Zephyr Grill & Bar, d/b/a Smith’s Landing
4 Seafood Restaurant (“Defendants”) (collectively, “the parties”), filed an unopposed Motion for
5 Preliminary Approval of the parties’ Class and PAGA Action Settlement Agreement (“Settlement
6 Agreement”). The Motion was set for hearing on November 20, 2025, at 9:00 a.m. in Department
7 39 of the Contra Costa County Superior Court located at 725 Court Street, Martinez, CA 94553,
8 and Defendant does not oppose it. There being no opposition to the Court’s tentative ruling, the
9 tentative ruling becomes the order of the Court. The Court’s tentative ruling is attached hereto as

10 **Exhibit 1.**

11 The Court having considered the Settlement Agreement and the proposed Notice of Class
12 Action and PAGA Settlement (“Notice”) at Exhibit A to the Settlement Agreement, the
13 submissions of counsel, and all other papers filed in this litigation, and Defendant’s non-
14 opposition to the Motion, hereby ORDERS as follows:

15 1. Plaintiff’s Motion for Preliminary Approval of the parties’ Settlement Agreement,
16 which is attached at Exhibit 1 to the Declaration of Marta Manus, is GRANTED.

17 2. This Order incorporates by reference the definitions in the Settlement Agreement
18 and all terms defined therein will have the same meaning as in this Order.

19 3. The Court conditionally certifies a Class consisting of “all non-exempt, hourly
20 employees that worked for Defendants from March 13, 2020, through the date of the Preliminary
21 Approval Order, or an earlier date as determined in accordance with the Settlement Agreement.”
22 (“Class Period”).” Participating Class Members are defined as all Class Members who do not
23 timely submit a signed and valid Opt-Out Request to the Settlement Administrator. (Manus Decl.,
24 Exhibit 1, Settlement, p. 5). Should the Settlement not be finally approved, this Order will be
25 rendered null and void and will be vacated, and the fact that the parties were willing to stipulate to
26 class certification as part of the settlement will have no bearing on, nor be admissible in
27 connection with, the issue of whether a class should be certified in a non-settlement context.
28 Should the settlement not become final, the parties will revert to their respective positions prior to

1 notifying the Court of the settlement of the action.

2 4. The class action settlement contemplated by the Settlement Agreement is
3 preliminarily approved based upon the terms set forth in the Settlement Agreement. The
4 Settlement appears to be fair, adequate, and reasonable for the Class and falls within the range of
5 reasonableness that could ultimately be granted final approval by the Court. The preliminary
6 approval of the class action settlement includes the approval for purposes of the Settlement of
7 Emil Davtyan, David Yeremian, Alvin B. Lindsay, and the other attorneys of D.Law, Inc. as
8 Class Counsel, Plaintiff Rainy Day Fisher as Class Representative, and Apex Class Action
9 (“Apex”) as the Administrator. Class Counsel is authorized to act on behalf of the Class Members
10 with respect to all acts or consents required by or which may be given pursuant to the Settlement
11 Agreement, and such other acts reasonably necessary to consummate the Settlement. The
12 Administrator is authorized to perform such acts as set forth in this Order and the Settlement
13 Agreement.

14 5. The Court approves the parties’ allocation of \$10,000.00 to settle claims under the
15 Labor Code Private Attorneys General Act of 2004 (“PAGA”). Pursuant to Labor Code § 2699(i),
16 75% of this amount, or \$7,500.00, will be paid to the California Labor & Workforce
17 Development Agency, and the remaining 25%, or \$2,500.00, will remain in the Net Settlement
18 Amount to be distributed to the Settlement Class Members by the Settlement Administrator in
19 connection with the checks for their Individual Settlement Payment. (Manus Decl., Exhibit 1,
20 Settlement, p. 5).

21 6. The Notice, attached as Exhibit A to the Settlement Agreement, which is Exhibit 1
22 to the Manus Declaration, advises the Class of the material terms and provisions of the
23 Settlement, the procedure for approval thereof, and their rights with respect thereto, and is
24 approved as to form and content. The Court approves the procedures set forth in the Settlement
25 Agreement for Class Members to participate in, opt out of, and object to the Settlement as set
26 forth in the Notice.

27 7. The Notice will be sent in a Notice Packet by first-class mail to the Class members
28 in accordance with the schedule set forth in the Settlement Agreement. The dates selected for the

1 mailing and distribution of the Class Notice, and the other dates as set forth below, meet the
2 requirements of due process and provide the best notice practicable under the circumstances, and
3 will constitute due and sufficient notice to all persons entitled thereto:

4 a. Deadline for Defendant to provide the class information lists to Administrator of
5 the Class Data and related information in the form of a Microsoft Excel spreadsheet: no later than
6 thirty (30) calendar days after entry of the Court's Order granting preliminary approval to the
7 Settlement.

8 b. Deadline for the Administrator to mail the Class Notice by first-class regular U.S.
9 mail: no later than fourteen (14) calendar days after receipt of the Class Data from Defendant.

10 c. Deadline for class members to mail objections or requests for exclusion to the
11 Administrator: forty-five (45) days after the mailing of the Class Notice.

12 d. Deadline for Administrator to pay PAGA Settlement Payments from the PAGA
13 Settlement fund: within ten (10) days of the receipt by the Administrator of the Gross Settlement
14 Amount.

15 e. Deadline for Administrator to re-mail Class Notice when any Class Notice is
16 returned as non-delivered on or before the response deadline: within five (5) calendar days of
17 determining that a Notice was undeliverable.

18 f. Deadline for Class Members who receive a re-mailed Class Notice to mail
19 objections or request for exclusions: extended fourteen (14) calendar days from the original
20 Response Deadline.

21 g. Defendant shall fully fund the Gross Settlement Amount and also fund the
22 amounts necessary to fully pay Defendant's share of payroll taxes in two equally-divided
23 payments; (1) by transmitting \$205,000.00 of the funds to the Administrator no later than sixty
24 (60) days after the Effective Date; and (2) by transmitting \$205,000.00 of the funds to the
25 Administrator no later than one hundred and eighty (180) days after the first payment.

26 h. Deadline for Administrator to mail Individual Settlement Payments by regular
27 First-Class U.S. Mail to Settlement Class Members' last known mailing address: within ten (10)
28 days of receipt of the Gross Settlement Amount.

1 i. Deadline for the Administrator to pay class representative service payment to
2 Plaintiff Rainy Day Fisher: no later than ten (10) days following the receipt of the Gross
3 Settlement Amount by the Administrator from Defendant.

4 j. Deadline for Class Counsel to file a Motion for Final Approval of the Settlement
5 Agreement: 16 Court days before the hearing on Plaintiff's Motion for Final Approval and
6 Motion for Attorneys' Fees and Costs and Class Representative Enhancement Award.

7 k. Deadline for Class Counsel to file Motion for Attorneys' Fees and Costs and
8 Representative Service Award within Motion for Final Approval: 16 Court days before Final
9 Settlement Fairness Hearing and hearing on Plaintiff's Motion for Final Approval and Motion for
10 Attorneys' Fees and Costs and Class Representative Enhancement Award.

11 8. A Final Approval and Settlement Fairness Hearing on the question of whether the
12 proposed Settlement, attorneys' fees and costs to Class Counsel, and the Class Representative
13 Enhancement Award and Administration Costs should be approved as fair, reasonable, and
14 adequate as to the Settlement Class and whether the Settlement should be given final approval is
15 scheduled on: **April 16, 2026, at 9:00 a.m.** At the Final Approval Hearing, Participating Class
16 Members may be heard orally in support of the Settlement, or in opposition to the Settlement in
17 the event there are objectors.

18 9. The Court reserves the right to adjourn or continue the date of the Settlement
19 Fairness and Final Approval Hearing and all dates provided for in the Settlement Agreement
20 without further notice to the Class and retains jurisdiction to consider all further applications
21 arising out of or connected with the Settlement Agreement.

22 10. The Settlement Agreement will not be construed as an admission or evidence of
23 either liability or the appropriateness of class certification in the non-settlement context, as more
24 specifically set forth in the Settlement Agreement. Entry of this Order is without prejudice to the
25 rights of Defendant to oppose certification of a class in this action should the proposed Settlement
26 not be granted final approval.

27 11. As of the Effective Date, and in accordance with the Settlement Agreement, all
28 Class Members who do not timely submit a Request for Exclusion from the Settlement will be

1 deemed to have forever released and discharged the Released Class Claims as set forth in the
2 Settlement Agreement. In the event the Effective Date does not occur for any reason, the
3 Settlement Agreement will be deemed null and void and will have no effect whatsoever.

4 12. All further proceedings in this action are stayed except such proceedings necessary
5 to review, approve, and implement this Settlement.

6 13. The Court finds that all required notifications and submissions to the California
7 Labor and Workforce Development Agency (“LWDA”) about the Settlement Agreement and
8 Motion have been made by Plaintiff in the time and manner specified under the PAGA.

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10 **IT IS SO ORDERED.**

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12 Dated: 12/5/2025

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Hon. Edward Weil

Hon. Edward G. Weil
Judge of the Superior Court

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, CONTRA COSTA COUNTY
MARTINEZ, CA
DEPARTMENT 39
JUDICIAL OFFICER: EDWARD G WEIL
HEARING DATE: 11/20/2025

The tentative ruling will become the Court's ruling unless by 4:00 p.m. of the court day preceding the hearing, counsel or self-represented parties email or call the department rendering the decision to request argument and to specify the issues to be argued. Calling counsel or self-represented parties requesting argument must advise all other affected counsel and self-represented parties by no later than 4:00 p.m. of their decision to appear and of the issues to be argued. Failure to timely advise the Court and counsel or self-represented parties will preclude any party from arguing the matter. (*Local Rule 3.43(2).*)

Note: In order to minimize the risk of miscommunication, parties are to provide an **EMAIL NOTIFICATION TO THE DEPARTMENT OF THE REQUEST TO ARGUE AND SPECIFICATION OF ISSUES TO BE ARGUED**. Dept. 39's email address is: dept39@contracosta.courts.ca.gov. Warning: this email address is not to be used for any communication with the department except as expressly and specifically authorized by the court. Any emails received in contravention of this order will be disregarded by the court and may subject the offending party to sanctions.

Submission of Orders After Hearing in Department 39 Cases

The prevailing party must prepare an order after hearing in accordance with CRC 3.1312. If the tentative ruling becomes the Court's ruling, a copy of the Court's tentative ruling **must be attached to the proposed order** when submitted to the Court for issuance of the order.

Law & Motion

1. 9:00 AM CASE NUMBER: ~~C23-01818~~
~~CASE NAME: SHYLA THIERRY VS. BAKEMARK USA LLC~~
~~*HEARING ON MOTION IN RE: TO APPROVE SETTLEMENT AGREEMENT~~
~~FILED BY: THIERRY, SHYLA~~
~~*TENTATIVE RULING:*~~

~~Shyla Thierry moves for approval of the settlement of her PAGA suit against defendant BakeMark USA LLC.~~

6. 9:00 AM CASE NUMBER: C24-02017
CASE NAME: RAINY FISHER VS. RLW PROPERTIES, LLC
*HEARING ON MOTION IN RE: PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA
SETTLEMENT

FILED BY: FISHER, RAINY DAY

TENTATIVE RULING:

Plaintiff Rainey Day Fisher moves for preliminary approval of her class action and PAGA settlement with defendant RLW Properties, LLC.

A. Background and Settlement Terms

The original complaint was filed by Plaintiff on March 13, 2024, raising class action 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. A First Amended Complaint adding PAGA claims (based on a notice to the LWDA given March 13, 2024), was filed on December 4, 2024. It remains the operative complaint.

The settlement would create a gross settlement fund of \$410,000, which would be paid in 2 equal installments. The class representative payment to plaintiff would be \$10,000. Attorney's fees would be \$136,666.67 (one-third of the settlement). Litigation costs would not exceed \$28,000. The settlement administrator's costs would be up to \$17,200. PAGA penalties would be \$10,000, resulting in a payment of \$7,500 to the LWDA and \$2,500 to the aggrieved employees. The net amount paid directly to the class members would be about \$208,133.33. The fund is non-reversionary. Based on the estimated class size of 518, the average net payment for each class member is approximately \$402.

The proposed settlement would certify a class of all current and former non-exempt employees employed by Defendant during the class period.

The class members will not be required to file a claim. Class members may object or opt out of the 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 arising out of or related to the allegations set forth in the Operative Complaint[.]" (Settlement, Par. 66.) 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, and a data expert was retained for mediation. 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.)

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 one-third 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 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, and grants the motion.

If approval is ultimately granted, counsel will be directed to prepare an order reflecting this tentative ruling, the other findings in 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.

~~7. 9:00 AM CASE NUMBER: C24 02437~~

~~CASE NAME: OMAR HASHIMI VS. JAMILA KOSHANI~~

~~HEARING ON DEMURRER TO: COMPLAINT~~

~~FILED BY: KOSHANI, JAMILA~~

~~*TENTATIVE RULING:*~~

~~Before the Court is a demurrer by defendants Jamila Koshani and Cyrus Eghbalian to the complaint. For the reasons set forth, the Court rules as follows: (a) special demurrer to complaint in its entirety for uncertainty **sustained, with leave to amend**; and (b) general demurrers to the second through five causes of action **sustained, with leave to amend**. Plaintiff shall file any amended complaint by **December 5, 2025**.~~

~~**Background**~~

