

KOJI'S JAPAN INC SETTLEMENT ADMINISTRATOR  
C/O RUST CONSULTING INC-6957  
PO BOX 54  
MINNEAPOLIS MN 55440-0054

**IMPORTANT LEGAL MATERIALS**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE

HEATHER TURMAN; *et al.*

Plaintiffs,

vs.

KOJI'S JAPAN, INC., *et al.*,

Defendants.

Case No. 30-2010-00425532-CU-OE-CXC

ASSIGNED FOR ALL PURPOSES TO  
HON. WILLIAM CLASTER, DEPT. CX104

NOTICE OF PROPOSED CLASS, COLLECTIVE  
AND REPRESENTATIVE ACTION SETTLEMENT  
AND FINAL FAIRNESS HEARING

**YOU ARE NOT BEING SUED. YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE ENTITLED TO BENEFITS FROM THIS SETTLEMENT. YOUR ESTIMATED SETTLEMENT AMOUNT IS AT LEAST \$\_\_\_\_\_. PLEASE CONTINUE READING TO LEARN HOW THIS SETTLEMENT AFFECTS YOUR RIGHTS.**

Notice is hereby given that a proposed class action settlement (the "Class Settlement") has been reached between plaintiffs Heather Turman, Kimberly Dang, *et al.* ("Plaintiffs") and Defendants Koji's Japan Incorporated, dba Koji's Shabu Shabu and Koji's Sushi & Shabu Shabu ("Koji's"), and Arthur J. Parent, Jr. (together, "Defendants").

The lawsuit is a class action lawsuit entitled *Heather Turman, et al. v. Koji's Japan, et al.* (the "Litigation" or "Action"). Plaintiffs and Defendants have reached a settlement of the Litigation, and the Orange County Superior Court (the "Court") has granted preliminary approval of the settlement.

The Class Settlement will resolve all Settled Claims made against Defendants and other Released Parties, as that term is defined in the Settlement Agreement, on behalf of all employees who were employed, directly or indirectly, as non-exempt servers, hosts/hostesses, floor managers, sushi chefs, assistant general managers, bussers, dishwashers, bartenders, kitchen helpers, and "barbacks" at Koji's ("Class Positions") in the State of California during the period between November 16, 2006 and the date of Koji's restaurants' closing (the "Class Period").

**A. PURPOSE OF THIS NOTICE**

The Court has ordered that this Class Notice be sent to you because Defendants' records reflect that you are a member of the Class, as defined above.

The purpose of this Notice is to: (a) provide a brief description of the Litigation; (b) inform you of the proposed Settlement; and (c) discuss your rights and options with respect to the Litigation and the Settlement.

## B. DESCRIPTION OF THE LITIGATION

The Lawsuit was filed in 2010 by Plaintiffs on behalf of all who were employed, directly or indirectly, by Defendants as non-exempt servers, hosts/hostesses, floor managers, sushi chefs, assistant general managers, bussers, dishwashers, bartenders, kitchen helpers, and “barbacks” during the Class Period. As alleged in the Lawsuit, Plaintiffs claim that Class Members were wrongfully denied wages, overtime compensation, and tips, meal and rest breaks, accurate wage statements, and other rights guaranteed under the California Labor Code.

The Lawsuit pleads class, collective, and representative allegations against Defendants for: (1) failure to pay overtime (violation of California Labor Code §§ 510, 1194, 1198 and IWC Wage Orders); (2) failure to pay earned wages upon discharge, waiting time penalties (violation of California Labor Code §§ 200-203); (3) failure to provide timely, accurate, itemized wage statements (violation of California Labor Code § 226); (4) failure to provide and/or authorize meal and rest periods/unpaid wages (violation of California Labor Code §§ 226.7 and 512 and IWC Wage Orders); (5) failure to compensate for all hours worked (violation of California Labor Code §§ 221 and 223 and IWC Wage Orders); (6) misappropriation of tips by employer and employer’s agents (violation of California Business and Professions Code § 17200, *et seq.*); (7) failure to pay the minimum wage (violation of California Labor Code §§ 1182.11, 1182.12, 1182.13, 1194, 1197, and the California Minimum Wage Order, MW-2001); (8) failure to pay overtime and the minimum wage (violation of the Fair Labor Standards Act, 29 U.S.C. §§ 206, 207, and 216); (9) unlawful and/or unfair business practices (violation of California Business and Professions Code §§ 17200, *et seq.*); and (10) civil penalties pursuant to California Labor Code § 2698, *et seq.* (Labor Code Private Attorneys General Act of 2004). Defendants deny each and all of the claims and contentions alleged by the Plaintiffs.

The Court has made no ruling on the merits of Plaintiffs’ class claims or Defendants’ defenses. The Court has, however, preliminarily approved the Class Settlement between Plaintiffs and Defendants. The Court will decide whether to give final approval to the Class Settlement at a hearing scheduled for February 5, 2021, at 9:00 a.m., in Department CX104 of the Orange County Superior Court, located at Orange County Superior Court, Civil Complex Center, 751 W. Santa Blvd., Santa Ana, California 92701. If Court closures for live hearings remain in effect, the hearing may be conducted remotely – check the Court’s website for updates at [occourts.org](http://occourts.org).

Attorneys for the Class (“Class Counsel”) in the Litigation are:

Bryan Schwartz, Esq.  
BRYAN SCHWARTZ LAW  
180 Grand Ave, Suite 1380  
Oakland, CA 94612  
Tel.: (510) 444-9300  
[bryan@bryanschwartzlaw.com](mailto:bryan@bryanschwartzlaw.com)

Defendants’ counsel in the Litigation are:

Brian C. Sinclair, Esq.  
RUTAN & TUCKER, LLP  
611 Anton Boulevard, Fourteenth Floor  
Costa Mesa, California 92626-1931  
Telephone: (714) 641-5100  
Facsimile: (714) 546-9035

## C. YOUR OPTIONS

If you fit within the above description of the Class, you have several options. Your rights regarding each option, and the procedure you must follow to select each option, are explained below.

1. OPTION 1: Do Nothing and Remain a Member of the Class and Participate in the Settlement.

**If you want to participate in the Class Settlement and receive a Settlement Payment, DO NOT TAKE ANY ACTION. You will automatically be included in the Settlement and will receive the Settlement Payment as detailed below.** If you move, make sure you contact the Settlement Administrator at the following address or phone number:

Koji's Japan, Inc. Settlement Administrator  
C/O Rust Consulting, Inc.—6957  
PO Box 54  
Minneapolis, MN 55440-0054  
Telephone: (877) 552-1276  
Email: [contact@kojisjapansettlement.com](mailto:contact@kojisjapansettlement.com)

**YOUR MINIMUM SETTLEMENT AMOUNT IS \$ \_\_\_\_\_.** This amount is based on the number of shifts you worked in a Class Position during the Class Period, which is \_\_\_\_\_ shifts. The settlement amount is just an estimate of your individual class settlement payment (“Settlement Payment”), because you may receive a higher amount if not everyone cashes her/his settlement check, if individuals opt out of the Settlement, or if the Court does not approve the full requested fees, costs, or enhancements for Class Counsel and the Class Representatives. The exact Settlement Payment allocated to you will not be determined until after the Court grants final approval of the Class Settlement.

If you believe the number of shifts stated above is incorrect and you wish to challenge it, you must send the enclosed dispute form to the Settlement Administrator, stating that you believe the number of shifts is incorrect. This form must be postmarked or emailed no later than **November 17, 2020**. You must include documentary evidence sufficient to prove that Defendants’ calculation of shifts for you is incorrect. You must also provide your name and telephone number. Defendants will have the right to respond to the challenge by any Class Member. The Settlement Administrator will resolve the challenge and make a final and binding determination without hearing or right of appeal. The Settlement Administrator’s determination will be subject to review by the Court at the time of the final approval hearing. If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.

If you choose to participate in the Class Settlement, you will be bound by all the terms set forth in the Class Settlement, including a full release of claims for the matters being settled in this Action.

2. OPTION 2: Opt Out of the Class and Receive Nothing Under the Class Settlement.

If you do not want to remain a member of the Class, you can request exclusion from the Class (i.e., “opt out”). You can opt out of the Class by sending a request to the Settlement Administrator at the above-stated address or email address. The Opt-Out must be **postmarked** or emailed no later than **November 17, 2020**. Your request to Opt-Out must include a statement saying words to the effect that you wish to opt out of the Settlement.

If you opt out of the Class, you will no longer be a member of the Class, you will be barred from participating in this Class Settlement, you will receive NO Settlement Payment or other benefit from this Class Settlement (except as described below in the following paragraph regarding PAGA). By opting out of the Class, you will retain whatever individual rights or claims you may have, if any, against Defendants, and you will be free to pursue them on an individual basis, if you choose to do so.

If you opt out of the Class, you will still be considered an Aggrieved Employee (as defined in ¶ 2 of the Settlement: all Class Members who worked for Koji’s at any time from November 16, 2009 through the date the Koji’s restaurants closed) and will still receive your portion of the \$12,500 PAGA payment for Aggrieved Employees. You will also release your PAGA claims.

### 3. OPTION 3: Object to the Settlement.

If you are a Class Member who does not opt out of the Class Settlement, you may object to the Class Settlement, personally or through an attorney, by submitting your objection to the Settlement Administrator (Rust Consulting), at the address set forth above. All written objections must be signed and must contain your address, telephone number and a reference to the case name and number. All objections must be postmarked on or before **November 2, 2020**. Your written objection should clearly explain why you object to the Class Settlement and must state whether you (or someone on your behalf) intend to appear at the final fairness hearing on February 5, 2021. If you object to the Class Settlement and if the Court approves the Class Settlement as set forth in the Settlement Agreement, you will be bound by the terms of the Class Settlement in the same way as a Class Member who does not object.

## **D. SUMMARY OF TERMS OF SETTLEMENT**

The principal terms of the Class Settlement reached between Plaintiffs and Defendants are summarized below.

### 1. Settlement Terms

The Settlement provides that Defendants will pay \$2,200,000 (the "Settlement Amount") to resolve all class claims asserted in the Action, enhancement awards, and Class Counsel's attorneys' fees and costs, as described more fully below.

- Attorneys' Fees and Costs. Class Counsel will apply to the Court for an award of attorneys' fees of no more than \$1,040,000, which is approximately 47% of the Settlement Amount. In addition, Class Counsel will seek reimbursement of costs of no more than \$160,000, as well as settlement administration costs of \$20,000. The attorneys' fees and costs will be paid out of the Settlement Amount.
- Named Plaintiff and Declarant Enhancement Award. Plaintiffs will request enhancement awards of \$100,000 total to be distributed among the named plaintiffs and declarants. The enhancement award will be paid out of the Settlement Amount.
- PAGA Payment. Plaintiffs will request a \$50,000 payment allocation for claims asserted under PAGA. The Parties agree that 75% of the PAGA Payment (\$37,500) will be paid to the Labor & Workforce Development Agency and 25% (\$12,500) will be distributed among the Aggrieved Employees.
- Payments to Participating Class Members. After the deductions from the total Settlement Amount, the remaining amount of approximately \$830,000 will remain to be distributed to Participating Class Members based on each Class Member's shifts worked during the Class Period. The remaining amount of \$830,000 will be distributed to Participating Class Members via U.S Mail in the form of a check. If more than \$10,000 of the initial class payments are uncashed after 90 days, there will be a second, *pro rata* distribution to those Class Members who cashed their checks; if less than \$10,000 of the initial class payments are uncashed, or any of the second checks are uncashed, any checks that remain uncashed after 90 days will be voided and the amount will be allocated to Wage Justice Center in Los Angeles, CA, a suitable *cy pres* recipient following California's standards.

Settlement Payment to You: Section C of this Notice includes the minimum amount that you are entitled to receive under the Class Settlement. The individual settlement payments to Class Members will vary based on a number of factors, including the number of Class Members who participate. The Settlement Payment will be mailed to you within approximately 90 days of the Court's Order granting final approval of the Class Settlement. If you change your address, please notify the Settlement Administrator.

Taxes: For purposes of this settlement, \$100,000 of the Net Settlement Fund (to be distributed among all class members) will be considered wages and you will receive a W-2 Form for the amount you receive from that portion (roughly 12% of your total allocation). Of the remaining settlement payment, 50% will be considered interest and 50% will be considered penalties. Prior to mailing your Settlement Payment, the Settlement Administrator will calculate and deduct from your Settlement Payment an amount necessary to pay the required withholdings and taxes, including employee payroll taxes. The Settlement Administrator will remit that money to the appropriate governmental agencies. The Settlement Administrator will also issue you appropriate tax forms, including an IRS Form 1099 and W-2 Form. Class Members should consult their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

Employer-side payroll taxes (e.g., FUTA, FICA, FICAMED, and SUTA) will be paid by Defendants separate from and in addition to the Settlement Amount. They will not be paid out of the Settlement Amount.

## 2. Release

The Settlement provides that each Class Member who does not opt out of the Settlement fully releases and discharges Defendants and the Released Parties (as defined in the Settlement Agreement) from any and all wage-and-hour and Labor Code claims, known or unknown, contingent or accrued, against Defendants and the Released Parties that arose during the Class Period and have been, or could have been, asserted against Defendants or any of the other Released Parties and that arise from the facts, matters, transactions or occurrences alleged in the Action. Without limiting the foregoing, and in addition to the foregoing, the Settled Claims include claims for failure to pay overtime; failure to pay earned wages upon discharge, waiting time penalties; failure to provide timely, accurate, itemized wage statements; failure to provide and/or authorize meal and rest periods/unpaid wages; failure to compensate for all hours worked; misappropriation of tips by employer and employer's agents; failure to pay the minimum wage; retaliation for protected activity; violations of California Labor Code §§ 200, 201, 202, 203, 204, 218, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 350, 351, 510, 512, 558, 1174, 1182.11, 1182.12, 1182.13, 1194, 1194.2, 1197, 1197.1, 1198, the applicable California Wage Orders, and all related or corresponding federal laws, including the Fair Labor Standards Act; and violation of California Business and Professions Code Section 17200 *et seq.* In addition, with respect to Aggrieved Employees, as defined in ¶ 2 of the Settlement, the Settled Claims include claims under California Labor Code sections 2698 *et seq.* that arose during the PAGA Period, as defined in ¶ 29(d)-(e) of the Settlement.

A complete statement of the release of claims is contained in the Settlement Agreement and is binding on all Class Members who do not opt out of the Class Settlement. A copy of the Settlement Agreement may be obtained from the Settlement Administrator or viewed on Class Counsel's website, at: [www.bryanschwarzlaw.com/turmansettlement](http://www.bryanschwarzlaw.com/turmansettlement).

## 3. Conditions of The Settlement

The Class Settlement is conditioned upon the Court entering an Order at or following the final fairness hearing approving the Class Settlement as fair, reasonable, and adequate and in the best interests of the Class.

## 4. No Admission of Liability

Defendants do not admit any wrongdoing or liability, and specifically deny any liability or wrongdoing. The Class Settlement reflects a compromise of disputed claims and does not mean that Defendants violated any state wage requirements or are liable for any of the allegations made by Plaintiffs.

## **E. FAIRNESS HEARING ON PROPOSED SETTLEMENT**

You are not required to attend the final fairness hearing or file an objection, although you may do both. The final fairness hearing on the fairness and adequacy of the Class Settlement, the plan of distribution, costs of administration, the enhancement awards to Plaintiffs, and Class Counsel's request for attorneys' fees and costs will be held on **February 5, 2021** at 9:00 a.m., in Department CX-104 of the Orange County Superior Court, Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701. The final fairness hearing may be continued to another date without further notice, or held with only remote access. If you plan to attend the final fairness hearing, you may contact Class Counsel to confirm the date and time, and be sure to check the Court's website, [occourts.org](http://occourts.org), for updates.

Any Class Member who does not object in the manner provided above shall be deemed to have approved the Settlement and to have waived any objections, and shall be forever foreclosed from objecting to the fairness or adequacy of the proposed Settlement, the plan of distribution, the payment of attorneys' fees and costs, the administration process, the enhancement award to Named Plaintiffs, or any other aspect of the Settlement. If the Settlement is not approved, the Action will continue to be prepared for trial, or other judicial resolution.

## F. ADDITIONAL INFORMATION

This Notice only summarizes the Lawsuit and the Class Settlement. For more information, you may inspect the Court files at the Orange County Superior Court, Civil Complex Center, 751 W. Santa Ana Boulevard, Santa Ana, California 92701, from 8:00 a.m. to 4:00 p.m., Monday through Friday (assuming the Court is open to the public – for more information, please visit <http://www.occourts.org/media-relations/CoronaVirusUpdate.html>) or you can view the case records online at the court's website: <https://www.occourts.org/online-services/case-access/>. Click “Civil Case & Document Access”, then click “Accept Terms”. Follow the instructions for submitting the Case Number: 30-2010-00425532-CU-OE-CXC, the Year Filed: 2010. Then click “search” to view the case record. Any questions regarding this Class Notice or the Action may be directed to the Settlement Administrator at the above address and telephone number. Alternatively, you may contact your own attorney, at your own expense, to advise you, or you may contact Class Counsel at the address and telephone number set forth above.

***If your address changes or is different from the address on the envelope enclosing this Notice, please promptly notify the Settlement Administrator.***

**PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.**

**IMPORTANT LEGAL MATERIALS**



**FOR OFFICIAL USE ONLY**  
  
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If the pre-printed information to the left is not correct or if there is no pre-printed information, please check the box and complete the information below:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Email: \_\_\_\_\_

**DISPUTE FORM**

*Heather Turman, et al. v. Koji's Japan, Inc., et al.*  
Orange County Superior Court, Case No. 30-2010-00425532-CU-OE-CXC

*If your name or address is different from those shown above, print corrections on the lines to the right.*

Your estimated settlement amount (shown below) is based on your shifts worked during the Class Period. Your estimated settlement amount is a proportion of the total number of shifts worked by all Class Members.

**Class Period: November 16, 2006 – Covered Period End Date**

**Shifts:** \_\_\_\_\_

**Estimated Settlement Amount: \$** \_\_\_\_\_

Your actual settlement amount may be higher or lower based on the number of Class Members who opt-out, or fail to cash settlement checks, the Court's rulings related to fees, costs, incentive payment, and other factors. Unless you believe that any information above is inaccurate, you do not need to do anything to receive your settlement amount.

**DO NOT fill out the portion below or return this form UNLESS you believe any of the information regarding your shifts worked above is not accurate or your address is incorrect.**

If you would like to dispute the above information, please sign and date the below, and mail it to the Settlement Administrator along with supporting evidence or information on or before **November 17, 2020**.

**OPTION TO DISPUTE**

I wish to dispute the shifts worked data above. I believe that I worked \_\_\_\_\_ shifts for Koji's Japan, Inc. during the Class Period. I have enclosed documentation [such as pay stubs, emails, and/or text messages] substantiating my dispute. **I recognize that my dispute will not be reviewed without evidence to support my dispute.** I understand that by submitting this dispute, the Settlement Administrator will review any relevant records and make a determination based on those records and the evidence that I submit, and that this determination will be final and binding.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Telephone Number: (\_\_\_\_) \_\_\_\_\_-\_\_\_\_

YOU MUST MAIL OR EMAIL THIS DISPUTE FORM BY NOVEMBER 17, 2020 TO THE FOLLOWING ADDRESS:

**Koji's Japan, Inc. Settlement Administrator  
C/O Rust Consulting, Inc. - 6957  
PO Box 54  
Minneapolis, MN 55440-0054  
Email: [contact@kojisjapansettlement.com](mailto:contact@kojisjapansettlement.com)**

If you want confirmation that your correspondence has been received by the Settlement Administrator, you may send your letter by certified U.S. Mail with a return receipt request.



**IMPORTANT LEGAL MATERIALS**



FOR OFFICIAL USE ONLY

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**REQUEST TO OPT OUT OF CLASS ACTION SETTLEMENT**

*Heather Turman, et al. v. Koji's Japan, Inc., et al.*, Case No: 30-2010-00425532-CU-OE-CXC  
Superior Court of the State of California, For the County of Orange

1. I, \_\_\_\_\_, wish to opt out of the *Turman v. Koji's* Class Action Settlement.
2. I understand that by opting out, I will no longer be part of the Settlement Class and will not be able to receive any compensation as a result of this case.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

City/State/Zip Code: \_\_\_\_\_

Telephone Number: (\_\_\_\_-\_\_\_\_) \_\_\_\_\_-\_\_\_\_-\_\_\_\_

