

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TETSUO AKAOSUGI, HIEU NGUYEN, and
RINKO DONAHUE, on behalf of themselves
and all others similarly situated,

Case No. 11-cv-01272 WHA

Plaintiffs,

**NOTICE OF PROPOSED
CLASS ACTION SETTLEMENT,
CLASS CERTIFICATION, &
FINAL FAIRNESS HEARING**

vs.

BENIHANA NATIONAL CORPORATION,

Defendant.

**If you worked in a Benihana-branded, teppanyaki-style restaurant
in California after February 14, 2007, you could receive a payment
from a class action settlement.**

A court authorized this notice. This is not a solicitation from a lawyer. You have not been sued.

On February 14, 2011, the Plaintiffs sued Benihana National Corp. (“Benihana”), alleging that it requires employees at the fourteen Benihana-branded teppanyaki-style restaurants owned by Benihana or its subsidiaries in California to forfeit accrued, unused vacation pay, fails to provide accurate itemized wage statements, and engages in unfair business practices in violation of California law.

The United States District Court for the Northern District of California (the “Court”) has allowed the lawsuit to proceed as a class action on behalf of two Classes (described below). The Parties have reached a proposed settlement (the “Settlement”) in this case on behalf of the Classes. The proposed settlement will provide for a total payment of \$460,000 to resolve the Classes’ vacation pay claims. The Settlement also allows Class Counsel to ask the Court for up to \$200,000 in attorneys’ fees and costs to be paid separately (not from the Class fund) for investigating and litigating the case, and negotiating the Settlement. Benihana does not admit any of the allegations in the case, that it has done anything wrong, or that any class member has suffered any damage. On [Date], 2012, the Court authorized the issuance of this Notice.

This notice is intended to tell you about the Settlement so that you can make an informed decision as to whether you will participate in the Settlement, object to the Settlement, or elect not to participate in the Settlement. Either way, your legal rights will be affected.

Based on the information provided by Benihana, you potentially lost ## vacation hours, and your estimated Settlement Award is \$XX.XX. Please be advised that this amount is ONLY an estimate. The ultimate amount you receive may differ from the estimate for various reasons, including costs of settlement administration and corrections to your or other Class Members’ Settlement Awards.

PLEASE READ THIS NOTICE CAREFULLY.

**THIS SETTLEMENT WILL AFFECT YOUR LEGAL RIGHTS TO VACATION PAY
EARNED WHILE EMPLOYED BY BENIHANA, AND RELATED DAMAGES &
PENALTIES.**

日本語にてのお手伝いは集団訴訟担当弁護士までご連絡下さい。電話番号(415) 788-9000
Para obtener ayuda en español, puede llamar a los Abogados de la Clase al (510) 839-6824.

THE SETTLEMENT CLASSES ARE AS FOLLOWS:

- All persons who were employed by defendant at any Benihana branded, teppanyaki-style restaurant in California between February 14, 2007, and [Date of Preliminary Approval] for more than one year, and terminated after November 1, 2009 (“Terminated Employee Class”);

OR

- All persons currently employed by Defendant at any Benihana-branded, teppanyaki-style restaurant in California whose rights to vacation benefits are determined according to the terms of the Vacation Benefit Plan and Summary Plan Description Prepared for Full-Time Restaurant Team Members of the Benihana Companies (as amended and restated effective as of September 12, 2011); excluding Benihana officers, directors, Regional Managers, and any person hired after September 11, 2011, who has not been made a full-time employee and thus eligible for vacation pay (“Current Employee Class”).
- The Terminated Employee Class and the Current Employee Class are together referred to as the “Settlement Class.” The Settlement Class does not include Benihana officers, directors, or Regional Managers (including Regional Chefs).

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

DO NOTHING	<p><i>Stay in the Settlement Class. Receive your share of Settlement. Give up rights.</i></p> <p>If Benihana’s records show that you lost accrued vacation, you will receive a Settlement Award. You will give up any right to sue Benihana for the claims resolved by this Settlement, such as the vacation pay claims at issue. This also includes a release of claims for waiting time and inaccurate wage statement penalties relating to the vacation pay claims, as well as related claims for unfair business practices from February 14, 2007 through [date of preliminary approval].</p>
EXCLUDE YOURSELF by [45 days from mailing of notice]	<p><i>Get out of the Settlement. Get no benefits from it. Keep rights.</i></p> <p>If you ask to be excluded from the Settlement Class, you will not receive a Settlement Award. But you will keep any rights you may have to sue Benihana separately about the same legal claims in this lawsuit.</p>
OBJECT by [45 days from mailing of notice]	<p><i>Tell the Court that you don’t like the Settlement and think it should not proceed.</i></p> <p>You may file an objection with the Clerk of the Court if you do not like this Settlement and think that it should not go forward. You will remain a member of the Settlement Class, unless you exclude yourself.</p>
GO TO A HEARING on [Date], 2012, at [Time]	<p>You may ask to speak in Court about the fairness of the Settlement at the Final Fairness Hearing, scheduled for [Date], 2012, at [Time] in Courtroom 8 on the 19th Floor of the United States District Court for the Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco CA 94102.</p>

These rights and options – **and the deadlines to exercise them** – are explained in this Notice. Payments will be made only if the Court approves the Settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION..... PAGES 4 - 5

1. Why did I get this notice?
2. What is this lawsuit about?
3. What is a class action and who is involved?
4. Why have the Parties agreed to the Settlement?

SUMMARY OF THE SETTLEMNT PAGE 5 - 7

5. Who is included in the Settlement?
6. Who is not included in the Settlement?
7. What does the Settlement Provide? What will I receive from the Settlement?
8. What do I have to do to receive my Settlement Award?
9. When will I receive my Settlement Award?
10. What happens if I do nothing?
11. What am I giving up if I stay in the Settlement Class?

YOUR RIGHTS AND OPTIONS PAGE 7 - 9

12. How do I participate in the Settlement?
13. What if I do not like the Settlement? Can I tell the Court?
14. What if I don't want to participate in the Settlement?
15. What if my name, current address, potential lost vacation hours, or estimated Settlement Award is not correct?

FINAL APPROVAL HEARING..... PAGE 10

16. When is the final approval hearing?

THE LAWYERS REPRESENTING YOU PAGE 10 - 11

17. Do I have a lawyer in this case?
18. Should I get my own lawyer?
19. How will the lawyers be paid?

GETTING MORE INFORMATION PAGE 11

20. How do I get more information?

BASIC INFORMATION ABOUT THE LAWSUIT

1. Why did I get this Notice?

You are receiving this Notice because Benihana records show that you are a member of either the Terminated Employee Class or the Current Employee Class, as described on Page 2.

The Parties are sending you this Notice to tell you about the proposed settlement of a class action lawsuit against Benihana, and about your options, before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and if the Court's approval is upheld following any appeals, a Claims Administrator appointed by the Court will make the payments described in the Settlement. ***Not everyone receiving this Notice will receive a Settlement Award.***

As a member of either the Terminated Employee or Current Employee Class, you have legal rights that will be affected by the Settlement. This Notice explains the lawsuit, the Settlement, your legal rights and options, what benefits are available, who is eligible for them, and how to get them.

2. What is this lawsuit about?

The Honorable William Alsup of the United States District Court for the Northern District of California is overseeing this class action. The lawsuit is known as *Akaosugi, et al. v. Benihana National Corp.*, Case No. 11-cv-01272 WHA.

In the lawsuit, Plaintiffs claim that Benihana's vacation policy has violated California law since approximately November 1, 2009, by requiring employees to forfeit accrued, unused vacation time when their employment ends. In addition, Plaintiffs claim that Benihana's policy requiring current employees to forfeit accrued, unused vacation at the end of each fiscal year, beginning on April 1, 2012, is unlawful. Plaintiffs claim that vacation forfeitures lead to inaccurate wage statements. Finally, Plaintiffs allege that these actions are unfair business practices. In the lawsuit, Plaintiffs seek lost vacation wages, statutory interest, and related damages and penalties.

Benihana contends that at all times it has had a lawful Voluntary Employee Beneficiary Association ("VEBA") Trust under the Employee Retirement Income Security Act ("ERISA"), which preempts all California wage laws and does not prohibit forfeiture of accrued, unused vacation. Benihana denies that it has violated any laws, and states that it has conducted itself in accordance with the law. Benihana contends:

- employees were subject to a valid VEBA Plan under the Employee Retirement Income Security Act ("ERISA"), which precludes application of California's law against forfeiture of accrued vacation;
- terminated employees were provided with wage statements that complied with California law;
- employees who were terminated were properly paid all wages due and therefore employees should not be entitled to 30 days of wages as a penalty;
- that the Court improperly certified a Class; and
- that it is entitled to an award of attorneys' fees and costs from Plaintiffs.

This Notice is not an expression of any opinion by the Court as to the merits of any of the claims or defenses asserted by either side in this lawsuit.

3. What is a class action and who is involved?

In a class action lawsuit, one or more people called “Class Representatives” (in this case, Plaintiffs Tetsuo Akaosugi and Rinko Donahue) sue on behalf of a group of people who have similar claims. The people together are called a “Class” or “Class Members.” The individuals who sued are called the Plaintiffs. The company they sued (in this case, Benihana National Corp.) is called the Defendant. One court will resolve the issues for everyone in the Class, except for those people who exclude themselves from the Class.

The Court certified two classes in this action, the Terminated Employee Class and the Current Employee Class. Plaintiff Akaosugi is the Class Representative for the Terminated Employee Class, and Plaintiff Donahue is the Class Representative for the Current Employee Class.

4. Why have the Parties agreed to the Settlement?

The Settlement represents a compromise of disputed claims. The parties believe that Settlement is the best option for both sides, considering the risks and uncertainties to each side of continued litigation. The Class Representatives and their attorneys think that the Settlement is fair and is in the best interests of the members of the Classes.

Benihana has denied, and continues to deny, the factual and legal allegations in the lawsuit and believes that it has multiple valid defenses to Plaintiffs’ claims. By agreeing to this Settlement, Benihana is not admitting that it has any liability on any of the factual allegations or claims in the lawsuit or that the lawsuit can or should proceed as a class action. Benihana has agreed to settle the lawsuit as part of a compromise with Plaintiffs. Benihana reserves the right, if for any reason the Settlement fails, to contest any factual or legal allegations in the lawsuit and whether this lawsuit should proceed as a class action. The Court file contains the Settlement documents that provide more information about the lawsuit and the Settlement.

SUMMARY OF THE SETTLEMENT

5. Who is included in the Settlement?

All members of the Terminated Employee and Current Employee Classes (described on Page 2) are included in the Settlement, even those members who will not receive a Settlement Award.

If you are not sure whether you are included in the Settlement, you can get more information by calling or writing Class Counsel in this case at the phone numbers, addresses, and email addresses listed in the response to Question 17 below, or you can call the Claims Administrator at (888) 369-3780.

6. Who is not included in the Settlement?

You are not a member of the Settlement Class and will not participate in the Settlement: (1) if you are a Benihana officer, director, or Regional Manager; or (2) if you were hired after September 11, 2011, as a part-time employee and have not held a full-time position between your date of hire and [Date of Preliminary Approval].

If, during your employment with Benihana, you worked in one of these unqualified categories, you may still receive a Settlement Award based on the vacation hours forfeited while you worked in a position covered by the Settlement.

7. What does the Settlement Provide? What will I receive from the Settlement?

Benihana has agreed to pay a total of up to \$460,000.00 (“Settlement Fund”) to settle this Action. The Settlement Fund includes: (a) Settlement Awards to Terminated Employee Class Members; (b) Settlement Awards to Current Employee Class Members; (c) Benihana’s share of State and Federal payroll taxes; and (d) costs of settlement administration. The Settlement Award to each participating Class Member is required by law to be reduced by applicable payroll tax deductions and withholdings.

The Terminated Employee class was certified pursuant to Rule 23(b)(3) to pursue claims for unlawful forfeiture of accrued vacation pay, failure to pay wages on termination, failure to provide accurate itemized wage statements, and unfair business practices against defendant BNC. The Current Employee class was certified, for settlement purposes only, pursuant to Rule 23(b)(3) to pursue claims for unlawful forfeiture of accrued vacation pay, failure to provide accurate itemized wage statements, and unfair business practices.

According to the parties’ calculations, a full recovery (meaning, if the case went to trial and the class prevailed on all claims) for the Current Employee class would be: \$350,180.96 (vacation wages). A full recovery for the Terminated Employee class would be: \$504,763.29. This breaks down as follows: \$64,899.95 (vacation wages); \$8,123.16 (statutory interest on said wages); \$418,390.18 (waiting time penalties), and \$13,350 (inaccurate wage statement penalties). Thus, the proposed settlement of \$460,000 covers the amount of forfeited vacation pay but does not provide for damages in an amount that covers the other claims.

Settlement Class Members who forfeited vacation (according to Benihana’s records) will receive a Settlement Award from the Net Settlement Fund (the Settlement Fund reduced by the costs of settlement administration and Benihana’s employer share of State and Federal payroll taxes). Your Settlement Award is calculated based on the number of your potentially forfeited vacation hours as a percentage of the total potentially forfeited vacation hours for the Settlement Class. Your Settlement Award will be an equal percentage of the Net Settlement Fund.

Your individual Settlement Award is described above on Page 1. ***Not everyone receiving this Notice will receive a Settlement Award.*** If the Company’s records show you were overpaid vacation or did not forfeit any accrued, unused vacation, your lost hours will be shown as -0- on Page 1, and you will receive no payment, unless you successfully dispute this calculation by writing to the Claims Administrator (described further in response to Question 15 below). In addition, please note that your Settlement Award is an estimate. The actual amount that you receive may be different, based on the actual costs of settlement administration and corrections made to the Settlement Awards of other Class members.

In addition to the Settlement Fund, Benihana has agreed to pay up to \$200,000.00 for Class Counsel’s fees and litigation costs (explained in response to Question 19 below). This amount is separate from the \$460,000.00 designated for the payment of Settlement Awards to Terminated and Current Employee Class Members.

8. What do I have to do to receive my Settlement Award?

In order to receive a Settlement Award, you do not need to do anything. Please note that, by participating in the Settlement, you will have been deemed to have given Benihana permission to provide your Social Security number to the Claims Administrator in order to facilitate distribution of the Settlement Award. Benihana will not disclose your Social Security number to Plaintiffs, Class Counsel, or the Court.

Benihana will not retaliate against you for participating in the lawsuit or in this Settlement.

9. When will I receive my Settlement Award?

The Court will hold a hearing on [Date], 2012, at [Time] to decide whether to approve the Settlement. If Judge Alsup approves the Settlement, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Class Members will be paid their Settlement Awards after final Court approval of the Settlement and after all rights to appeal or review are exhausted or any appeal or review has been resolved in favor of the Settlement.

10. What happens if I do nothing?

If you do nothing, you will receive any Settlement Award to which you become entitled. You will be included in the Settlement for purposes of releasing the claims at issue in this lawsuit (described below in response to Question 11), unless you elect not to participate by submitting an Election Not to Participate in Settlement in accordance with the conditions for submitting that Election (described below in response to Question 14).

11. What am I giving up if I stay in the Settlement Class?

Class Members who do not exclude themselves from the Settlement will be required to release all known and unknown claims for vacation pay of any description, all claims for related damages and penalties, all claims for related unfair business practices, and related claims for interest, attorneys' fees, and costs.

The Settlement defines the Released Claims as follows:

Upon final approval by the Court of this Settlement, Plaintiffs, on their own behalf and as Class Representatives, all Class Members, and all persons purporting to act on their behalf or purporting to assert a claim under or through any of them, including, but not limited to, their dependents, heirs and assigns, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, personal representatives, and successors in interest, whether individual, class, representative, legal, equitable, direct or indirect, or any other type or in any other capacity (collectively, the "Releasing Parties") hereby forever completely and irrevocably release and discharge the Released Parties from any claims, causes of action, damages, benefits, expenses, penalties, liabilities, demands, obligations, attorneys' fees, costs, and any other form of relief or remedy in law, equity, or whatever kind or nature, whether known or unknown, suspected or unsuspected, arising from claims for vacation pay of any description, including all claims for related damages and penalties, including damages and penalties for inaccurate wage statements relating to the vacation pay claims, related waiting time penalties, all claims for related unfair business practices, and related claims for interest, attorneys' fees and costs, including related claims for restitution and other injunctive and/or equitable relief, from February 14, 2007, through the date of Preliminary Approval (collectively, the "Released Claims"). The Released Claims do not include any claims for or related to vacation pay that may arise after the date of Preliminary Approval. All Released Claims are released for all Class Members who do not exclude themselves (opt-out) of the Settlement. The Released Claims do not include claims other than those described above, claims for workers' compensation benefits, or any claims that may not be released by law. The named Plaintiffs' (Akaosugi, Nguyen, Donahue) individual releases will be co-extensive with the Class and will extinguish their current individual claims for vacation pay, related damages, penalties, interest, attorneys' fees and costs. The named Plaintiffs' and Class Members' release will not affect any claims, including those for damages, penalties, interest or attorneys' fees and costs, arising out of non-vacation pay related matters. Waiting time penalties unrelated to vacation pay are not released.

YOUR RIGHTS AND OPTIONS

As a Class Member, you can participate in the Settlement or request exclusion from the Settlement. If you choose to participate in the Settlement, you also can tell the Court what you do not like about the Settlement.

12. How do I participate in the Settlement?

In order to receive a Settlement Award, you do not need to do anything. The Class Representatives and Class Counsel represent your interests as a Class Member. Unless you elect not to participate in the Settlement, you will remain part of the Settlement Class, will receive a Settlement Award if you have lost vacation wages, and will be bound by the terms of the Settlement and any final judgment that may be entered by the Court. In addition, you will be deemed to have released the claims against Benihana and the other released parties, as described above in response to Question 11.

13. What if I do not like the Settlement? Can I tell the Court?

If you do not like something about the Settlement, you may object. Objecting is simply telling the Court what you do not like about the Settlement. You can object only if you stay in the Settlement. You may tell the Court you do not like the Settlement or some aspect of it before the final fairness hearing, either by filing a written objection or by filing a notice of your intent to appear and object at the final fairness hearing. However, if the Court rejects your objection, you will still be bound by the terms of the Settlement.

To object, you must mail a written notice of objection or a written notice of your intent to appear and object at the final fairness hearing, postmarked by [Date], 2012, to the following addresses:

Court	Class Counsel	Defense Counsel
Honorable William Alsup U.S. District Court for the Northern District of California <i>Akaosugi v. BNC</i> , 11-1272 (WHA) Attn: Dawn Toland, Courtroom Deputy Clerk 450 Golden Gate Avenue San Francisco, CA 94102-3489	Brad Yamauchi Kevin R. Allen Minami Tamaki LLP 360 Post Street, 8th Floor San Francisco, CA 94108 Lindsay Nako Lewis, Feinberg, Lee, Renaker & Jackson, PC 476 9th Street Oakland, CA 94607	Margaret Hart Edwards Robert L. Zaletel Littler Mendelson 650 California Street, 20th Floor San Francisco, CA 94108

Any written objection and/or notice of your intent to appear at the hearing must state each specific reason in support of your objection and any support for each objection. Your written objection and/or notice of your intent to appear at the final fairness hearing must also state your full name, address, date of birth, and the dates of your employment at a California Benihana restaurant. ***Any objections and/or notices of intent to appear at the hearing must be submitted in writing and postmarked no later than [Date], 2012.*** A Class Member who fails to mail a written statement of objection by the deadline will be not be able to object to the Settlement at the final fairness hearing.

14. What if I don't want to participate in the Settlement?

If you want to keep the right to file an individual wage claim with the California Labor Commissioner, or sue or continue to sue Benihana on your own about vacation pay issues, or if you do not wish to participate in the lawsuit and Settlement for other reasons, then you must take steps to get out of the Settlement and the Class. This is called "excluding yourself," or sometimes referred to as "opting out" of the Class. If you exclude yourself from the Class, you will not participate in the Settlement, you will not receive a Settlement Award, and you will not release any claims that you may have against Benihana. If you exclude yourself, you cannot object to the Settlement because the case will no longer affect your legal rights.

To exclude yourself from the Class, please notify the Claims Administrator and all counsel that you elect not to participate by submitting a letter titled "Election Not to Participate." The Election Not to Participate must include your name, address, the last four digits of your Social Security Number, your telephone number, and a statement that you want to be excluded from *Akaosugi v. Benihana National Corp.*, Case No 3:11-cv-01272 WHA. The Election Not to Participate must be signed by you, dated, and sent by U.S. Mail to:

Benihana Vacation Pay Settlement Claims Administrator
c/o Simpluris, Inc.
P.O. Box 26170
Santa Ana, CA 92799

The Election Not to Participate must be postmarked no later than [Date], 2012. An incomplete or unsigned Election Not to Participate will be deemed invalid. Class Members who do not mail an Election Not to Participate by the deadline specified above will be bound by all terms and conditions of the Settlement, if the Settlement is approved by the Court, regardless of whether they have objected to the Settlement.

Any person who files a complete and timely Election Not to Participate will, upon receipt, no longer be a member of either of the Classes, will not receive a Settlement Award, and will keep the right to pursue all claims released in this Settlement. If you have a pending lawsuit, speak to your lawyer in that case immediately.

15. What if my name, current address, potential lost vacation hours, or estimated Settlement Award is not correct?

If your name and/or current address are not correctly stated on this Notice, please notify the Claims Administrator at the address provided above in response to Question 14, and submit corrections in writing.

If you wish to dispute the number of potential lost vacation hours and/or estimated Settlement Award stated above on Page 1, you must do so in writing to the Claims Administrator and include any supporting documentation that you have. ***Written corrections or challenges and any supporting documentation must be mailed to the Claims Administrator, postmarked no later than [Date], 2012.*** The Claims Administrator shall receive, review, and resolve any challenges and associated documentation provided by the Class Members, regarding the amount of the Settlement Award. The Claims Administrator's determination of eligibility for, and the amounts of, any Settlement Awards shall be conclusive, final, and binding on all Parties and all Class Members.

FINAL FAIRNESS HEARING

16. When is the final fairness hearing?

The Court will hold a final fairness hearing on [Date], 2012, in Courtroom 8 on the 19th Floor of the U.S. District Court, Northern District of California, San Francisco Division, 450 Golden Gate Avenue, San Francisco, California, 94102, at [Time], to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The hearing may be postponed without further notice to the Classes.

At this hearing, the Court will review the Settlement and consider objections to the Settlement. Judge Alsup will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take.

It is not necessary for you to attend the hearing, but you are welcome to do so. Class Counsel will answer any questions the Court may have. If you have submitted an objection, the Court will consider it, even if you do not attend the hearing. If you would like to speak at the final fairness hearing, you must send a letter saying that it is your “Notice of Intention to Appear in *Akaosugi v. Benihana National Corp.*, Case No. 3:11-CV-01272 WHA.” Please include your name, address, telephone number, and your signature. ***Your Notice of Intention to Appear must be postmarked no later than [Date], 2012, and be sent to Judge Alsup, Class Counsel, and Defense Counsel, at the three addresses provided above in response to Question 13.*** You cannot speak at the hearing if you excluded yourself.

THE LAWYERS REPRESENTING YOU

17. Do I have a lawyer in this case?

The Court decided that Daniel M. Feinberg and Lindsay Nako of the law firm of Lewis Feinberg Lee Renaker & Jackson, P.C., and Jack W. Lee, Brad Yamauchi, and Kevin R. Allen of the law firm of Minami Tamaki, LLP, are qualified to represent you and all Class Members. Mr. Feinberg, Ms. Nako, Mr. Lee, Mr. Yamauchi, and Mr. Allen are also called “Class Counsel.” They are experienced in handling similar cases. More information about their law firms, their practices, and their experience is available at www.lewisfeinberg.com and www.minamitamaki.com.

Class Counsel’s contact information is:

Daniel M. Feinberg & Lindsay Nako
Lewis Feinberg Lee Renaker & Jackson, P.C.
476 9th Street, Oakland, CA 94607
Telephone: (510) 839-6824 /Fax: (510) 839-7839
Emails: dfeinberg@lewisfeinberg.com, lnako@lewisfeinberg.com

Jack W. Lee, Brad Yamauchi, & Kevin R. Allen
Minami Tamaki, LLP
360 Post Street, 8th Floor, San Francisco, CA 94108
Telephone: (415) 788-9000 / Fax: (415) 398-3887
Emails: jlee@minamitamaki.com, byamauchi@minamitamaki.com, kallen@minamitamaki.com

18. Should I get my own lawyer?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. But if you want your own lawyer or wish to proceed on your own behalf, you may do so. If you choose to hire your own lawyer, you will be responsible for paying that lawyer. In addition, you or the attorney you hire must file a “Notice of Appearance” with the Court, and send a copy of the Notice to the attorneys in this case.

19. How will the lawyers be paid?

Pursuant to the Settlement, Plaintiffs may request that the Court order payment of attorneys’ fees and costs for work performed on the vacation pay class claims, up to a total of \$200,000.00. Benihana has agreed not to oppose this request.

If the Court approves Plaintiffs’ request for attorneys’ fees and costs, the fees and expenses will be paid separately by Benihana. Class Counsel will not be paid from the \$460,000.00 designated for payment of Settlement Awards and settlement administration costs. You will not have to pay these fees and expenses out of your own pocket.

As a Class Member, you will not be responsible for the payment of attorneys’ fees or reimbursement of litigation expenses, other than what is stated above, unless you retain your own counsel, in which event you will be responsible for your own attorneys’ fees and costs.

GETTING MORE INFORMATION

20. How do I get more information?

You have the right to inspect the complete settlement documents, papers, and pleadings filed in this litigation.

This notice is intended as a summary of the lawsuit and the basic terms of the Settlement. If you want more detailed information about the lawsuit or the Settlement, the Settlement Agreement and other related documents are available at Class Counsel’s websites, www.lewisfeinberg.com and www.minamitamaki.com. If you have additional questions, you may also call, write, or email Class Counsel at the phone numbers, addresses, and email addresses listed in the responses to Question 17 above.

You can also review any documents filed in the case by visiting the Clerk’s Office for the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102-3489. Please direct any questions about this action to Class Counsel.

PLEASE DO NOT CONTACT THE COURT, BENIHANA, OR BENIHANA’S COUNSEL WITH ANY QUESTIONS REGARDING THIS ACTION.