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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

LUZ PADILLA, individually, and on behalf of
all other aggrieved employees,

Plaintiff,

v.

SHOGUN RESTAURANT, INC., a California
corporation; SHOGUN LA VERNE, LLC., a
California limited liability company;
SHOGUN CORONA, LLC., a California
limited liability company; SHOGUN
MURRIETA, LLC., a California limited
liability company; and DOES 1 through 50,
inclusive,

Defendants.

CASE NUMBER.

CIV SB 2117165

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Luz Padilla ("Plaintiff"), on behalf of all other
2 aggrieved employees and the State of California, relating to systemic violations of California wage
3 and hour laws by her former employers Shogun Restaurant, Inc. ("Shogun"), Shogun Corona LLC
4 ("Shogun Corona"), Shogun La Verne LLC ("Shogun La Verne"), and Shogun Murrieta LLC
5 ("Shogun Murrieta LLC") (hereinafter referred to as collectively as "Defendants"). Plaintiff makes
6 the following allegations on information and belief, except as to allegations pertaining to Plaintiff
7 individually, which are based on her personal knowledge.

8 INTRODUCTION

9 1. Defendants operate a restaurant in Rancho Cucamonga, California and other
10 locations throughout Southern California, including Corona, La Verne, Temecula, Palm Desert,
11 Pasadena, San Diego and San Marcos.

12 2. In an effort to conserve labor costs, and thereby maximize profits, Defendants have
13 implemented policies and practices that have resulted in systematic violations of California's wage
14 and hour laws.

15 3. For example, Defendants have implemented unlawful policies with respect to meal
16 and rest breaks. Defendants require its non-exempt employees, who are informed that the needs of the
17 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
18 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
19 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

20 4. Moreover, Defendants uniformly failed to pay Plaintiff and other aggrieved employees
21 proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock work that
22 Plaintiff and other non-exempt employees perform as a direct consequence of Defendants
23 understaffing and imposition of an unreasonable workload. Finally, Defendants have failed to pay
24 final wages to Plaintiff and other aggrieved employees who were employed by Defendants.

25 JURISDICTION AND VENUE

26 5. The Superior Court of the State of California has jurisdiction in this matter because
27 Plaintiff is a resident of the State of California, and Defendants are licensed to do business under the
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1 laws of the State of California. No federal question is at issue because Plaintiff's claims are based
2 solely on California law.

3 6. Venue is proper in this judicial district and the County of San Bernardino because
4 Defendants business is maintained in the County of San Bernardino and Plaintiff worked for
5 Defendants at a located in the City of Rancho Cucamonga, located in the County of San Bernardino.
6 Many other aggrieved employees also work or worked at Defendants restaurant located in the County
7 of San Bernardino.

8 **THE PARTIES**

9 7. During the statute of limitations period, Plaintiff was employed by Defendants as a
10 Server, a non-exempt position, at the restaurant owned and operated by Defendants in Rancho
11 Cucamonga, California.

12 8. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun
13 Restaurant, Inc., is and at all times relevant hereto was, a corporation organized and existing under
14 the laws of the State of California.

15 9. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun La
16 Verne, LLC, is and at all times relevant hereto was, a company organized and existing under the laws
17 of the State of California.

18 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun
19 Corona, LLC, is and at all times relevant hereto was, a company organized and existing under the
20 laws of the State of California.

21 11. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun
22 Murrieta, LLC, is and at all times relevant hereto was, a company organized and existing under the
23 laws of the State of California.

24 12. At all relevant times herein, Defendants were the joint employers of Plaintiff and
25 aggrieved employees. Defendants were the alter egos, divisions, affiliates, integrated enterprises,
26 joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
27 partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was
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1 completely dominated by his, her or its co-Defendants, and each was the alter ego of the other.
2 Moreover, at all material times there has been extensive interrelation of operations, common
3 management, centralized control of labor relations with respect to Plaintiff and Class members, and
4 common ownership or financial control between all Defendants.

5 13. At all times relevant herein, Defendants have jointly owned and operated Shogun
6 restaurants located at the following addresses:

- 7 a. Pasadena location
8 470 N. Halstead St.
9 Pasadena, CA 91107
- 10 b. San Diego location
11 5451 Kearny Villa Rd
12 San Diego, CA 92123
- 13 c. La Verne location
14 2123 Foothill Blvd.
15 La Verne, CA 91750
- 16 d. Corona location
17 275 Teller Street. #130
18 Corona, CA 92879
- 19 e. San Marcos location
20 695 S. Rancho Santa Fe Road
21 San Marcos, CA 92078
- 22 f. Temecula – Murrieta location
23 41501 Margarita Road. #L-101
24 Temecula, CA 92591
- 25 g. Palm Desert location
26 74225 HWY 111
27 Palm Desert, CA 92260
- 28 h. Rancho Cucamonga location
11950 East Foothill Blvd
Rancho Cucamonga, CA 91739

1 14. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
2 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
3 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
4 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
5 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
6 DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
7 names and capacities of such DOE defendants when ascertained.

8 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

9 15. On April 9, 2021, Plaintiff gave written notice by certified mail pursuant to California
10 Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and
11 Defendants, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
12 have been violated, including the facts and theories to support the alleged violations. Plaintiff has not
13 received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from
14 the April 9, 2021 postmark date of her written notice before filing this action, Plaintiff has complied
15 with all of the requirements set forth in California Labor Code § 2699.3 to commence a
16 representative action under the California Private Attorneys General Act of 2004 ("PAGA").

17 16. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
18 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
19 former non-exempt employees of Defendants and performed work for Defendants in the State of
20 California at any time within the period beginning one (1) year prior to the April 9, 2021 notice
21 Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds to final
22 judgment ("statute of limitations period")).

23 **FACTUAL ALLEGATIONS**

24 **Failure to Provide Required Meal Periods**

25 17. During the statute of limitations period, as part of Defendants illegal policies and
26 practices to minimize labor costs and maximize corporate profits, Defendants required, permitted or
27 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
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1 completely skip their meal periods, to take late and short meal periods, and Defendants have
2 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
3 required under California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

4 18. Defendants implemented several practices that have caused Plaintiff and aggrieved
5 employees to systematically miss and otherwise take non-compliant meal periods. Defendants
6 systematically understaff its restaurants such that non-exempt employees are given so much work to
7 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
8 consequence of this understaffing, Plaintiff and aggrieved employees are so busy serving and
9 assisting the needs of customers during their scheduled shifts, they are forced to skip their meal
10 periods altogether, to take them after working longer than five (5) hours, to perform work during their
11 meal periods, or return to work after taking less than a thirty (30) minute meal period.

12 19. There are also frequent occasions when Plaintiff and aggrieved employees need to
13 perform other duties immediately before the time during which they are legally entitled to take a meal
14 period. Pursuant to Defendants policies, Plaintiff and aggrieved employees cannot simply drop their
15 job duties and leave a customer to take a meal period. At other times Plaintiff and the other aggrieved
16 employees were too busy waiting on customers of Defendants to stop their work in middle of a
17 customer order, cooking or servicing a table. Consequently, Plaintiff and aggrieved employees
18 regularly miss meal periods, take late meal periods, return early from meal periods, and even clock
19 out for meal periods but continue working.

20 20. Moreover, Plaintiff and other aggrieved employees need to secure permission before
21 taking a meal period, which is often denied by supervisors. Plaintiff and aggrieved employees often
22 cannot simply stop take an order or servicing a customer to take their meal period, and their inability
23 to secure coverage regularly causes them to regularly miss and otherwise take non-compliant meal
24 periods, in addition to other violations yet to be discovered.

25 21. Despite the foregoing, Defendants have implemented a policy and practice of actively
26 discouraging the issuance of meal period premium payments, and in the process, Defendants have
27 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
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1 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
2 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
3 regular rate of pay for each workday that such a meal period was not authorized or permitted.

4 **Failure to Provide Required Rest Breaks**

5 22. During the statute of limitations period, as part of Defendants illegal policies and
6 practices to minimize labor costs and maximize corporate profits, Defendants have failed to authorize
7 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
8 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

9 23. The same or similar policies and practices that deprive Plaintiff and other aggrieved
10 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
11 take their first and second and third rest breaks. As alleged herein, Defendants understaff its
12 restaurant which creates so much work for Plaintiff and other aggrieved employees that they are
13 frequently unable to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first
14 secure permission before taking a rest break. Plaintiff and aggrieved employees often cannot simply
15 stop assisting a customer to take a rest break, and their inability to secure coverage regularly causes
16 them to regularly miss and otherwise take non-compliant rest breaks.

17 24. Defendants also do not provide adequate training regarding its legal obligations with
18 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
19 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendants
20 essentially have a non-existent rest break policy, as there is no guidance or specification as to when
21 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their
22 shifts.

23 25. Defendants also violated California Labor Code § 226.7, and § 12 of the applicable
24 IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
25 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
26 proper regular rate of pay for each workday that a rest break was not provided.

Failure to Pay Overtime Wages

26. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order, Defendants are required to compensate Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

27. During the statute of limitations period, Defendants failed to compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not compensating them for this time, improperly calculating the regular rate of pay based on bonuses, commissions, and other remuneration, and other methods to be discovered.

28. In a short-sighted attempt to maximize profits, Defendants have understaffed its restaurants. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendants have actual or constructive knowledge of this off-the-clock work and subtly condone it. Plaintiff and other aggrieved employees routinely arrive to work early to check so that they are prepared and ready to begin performing their duties promptly at the start of their shifts, as they must be pursuant to the requirements of Defendants. Defendants know that Plaintiff and other aggrieved employees perform this work off-the-clock.

29. Defendants have knowingly and willfully refused to perform its obligations to compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

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1 34. During the statute of limitations period, Defendants has knowingly and willfully failed
2 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
3 regular payroll period as required by California Labor Code § 204, including but not limited to,
4 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
5 of the regular rate of pay, and for work performed off-the-clock.

6 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

7 35. Pursuant to California Labor Code §§ 201, 202 and 203, Defendants are required to
8 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
9 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
10 the time of discharge are due and payable immediately.

11 36. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
12 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
13 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
14 which case the employee is entitled to his or her wages at the time of quitting.

15 37. California Labor Code § 203 provides that if an employer willfully fails to pay, in
16 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
17 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
18 employee at the same rate for up to 30 workdays.

19 38. During the statute of limitations period, Defendants have willfully failed to pay
20 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with
21 California Labor Code §§ 201 and 202. On information and belief, Defendants do not have a
22 sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks within
23 the timeframes required under California law. Further, Defendants failed and continues to fail to
24 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
25 overtime wages, and compensation for non-compliant meal and rest breaks, Defendants also willfully
26 failed and continue to fail to pay accrued wages and other compensation to Plaintiff and other
27 aggrieved employees in accordance with California Labor Code §§ 201 and 202.

Failure to Furnish Accurate Itemized Wage Statements

39. During the statute of limitations period, Defendants have routinely failed to provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements. Defendant's pay stubs have violated California Labor Code § 226. Defendants were and are not providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but intentionally fails to include in their wage statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant meal period or rest break. Moreover, Defendants have failed to pay proper overtime wages to Plaintiff and other aggrieved employees and its wage statements therefore fail to reflect the correct hourly rates worked by Plaintiff and other aggrieved employees resulting in inaccurate wage statements. Defendants wage statements failed to identify the complete legal address and correct names of the legal entity or entities employing Plaintiff and the other aggrieved employees. Finally, Defendants wage statements failed to provide correct and accurate information regarding the amount of sick leave available to the aggrieved employees and leave available and used under the Families First Corona Virus Response Act ("FFCRA"). Defendants were required to list the amount of sick leave available under the FFCRA and Labor Code §246, the balance of FFCRA sick leave and sick leave pursuant to Labor Code §246 remaining and other sick statutes yet to be discovered.

40. In order to conceal its wage theft, Defendants knowingly and intentionally failed to provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

41. Plaintiff and other aggrieved employees suffered injury as a result of the failure of Defendants to provide timely and accurate itemized wage statements because it prevented them from discovering the scope and extent of Defendants violations of California wage and hour laws, prevented them from being able to accurately determine the gross wages earned, the total hours worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each pay period, the corresponding number of hours worked at each hourly rate, identify the correct name and address of the employer and amount of COVID sick leave available on the wage statements.

1 **Failure to Maintain Required Records**

2 42. During the statute of limitations period, as part of Defendants illegal payroll policies
3 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
4 Defendants knowingly and intentionally failed to maintain records as required under California Labor
5 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
6 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;
7 meal periods; time records showing when each employee begins and ends each work period; and
8 accurate itemized statements. Defendants had knowledge that non-exempt employees were not
9 provided with proper meal and rest periods, but knowingly failed to include in the wage statements
10 one (1) extra hour of compensation for each missed meal and rest period. Defendants also illegally
11 and inaccurately recorded the time in which Plaintiff and other aggrieved employees worked.
12 Further, Plaintiff requested her wage records from Defendants on April 9, 2021 pursuant to Labor
13 Code §226 and records have not been received.

14 **FIRST CAUSE OF ACTION**

15 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

16 **[Cal. Lab. Code § 2698 *et seq.*]**

17 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

18 43. Plaintiff incorporates herein by specific reference, as though fully set forth, the
19 allegations in paragraphs 1 through 42 above.

20 44. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
21 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved
22 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
23 was employed by Defendant and one or more of the alleged California Labor Code violations was
24 committed against Plaintiff during the statute of limitations period.

25 45. A plaintiff has standing to represent all aggrieved employees for all of her
26 asserted violations of the California Labor Code under PAGA. See *Huff v. Securitas Security*
27 *Services USA, Inc.* (2018) 23 Cal.App.5th 745, 757

1 46. Plaintiff seeks to recover civil penalties through a representative action permitted by
2 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
3 class certification is not required.

4 47. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
5 penalties from Defendant in a representative action for the violations set forth above, including but
6 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174,
7 1194 and for the violations of the applicable IWC Wage Order alleged above.

8 48. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
9 against Defendant for violations of California Labor Code provisions for which a civil penalty is
10 specifically provided, including but not limited to, the following:

- 11 a. Pursuant to California Labor Code § 210, for violations of California Labor
12 Code § 204, Defendant is subject to a civil penalty in the amount of one
13 hundred dollars (\$100) for the initial violation for each failure to pay each
14 employee, and two hundred dollars (\$200) per employee for violations in
15 subsequent pay periods.
- 16 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
17 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
18 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
19 period where a violation occurs and one thousand dollars (\$1,000) per
20 aggrieved employee for violations in subsequent pay periods.
- 21 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
22 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
23 (\$500).

24 49. California Labor Code § 2699(f) provides that for all California Labor Code violations
25 for which a civil penalty is not specifically provided, the following civil penalties are established: one
26 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
27 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

50. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendants violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

51. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

52. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendants, as follows:

1. For civil penalties according to proof;

2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g), California Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

3. For such further relief that the Court may deem just and proper.

DATED: June 11, 2021

THE LAW OFFICE OF SCOTT E. WHEELER



President

SCOTT ERNEST WHEELER

Attorney for Plaintiff and the Aggrieved Employees