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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN BERNARDINO**

23 LUZ PADILLA, individually, and on
24 behalf of all others similarly situated,

25 Plaintiff,

26 v.

27 SHIN NIHON KOSAN, INC., a California
28 Corporation; SHOGUN RESTAURANT,
INC., a California corporation; SHOGUN
LAVERNE, LLC., a California limited
liability company; SHOGUN CORONA,
LLC, a California limited liability
company; SHOGUN MURRIETA, LLC, a
California limited liability company;
SHOGUN TEMECULA, LLC, a California
limited liability company; and DOES 1
through 50, inclusive,

Defendants.

CASE NO.: CIVSB2117165

[Hon. Dave Cohn, Dept. S-26]

**STIPULATION OF SETTLEMENT OF
CLASS ACTION AND PAGA ACTION
CLAIMS AND RELEASE OF CLAIMS**

Action Filed: December 10, 2021
Trial Date: None Set

1 This Stipulation of Settlement of Class Action and PAGA Action Claims and Release of
2 Claims (“Settlement Agreement”) is entered into by and between Plaintiff Luz Padilla (“Plaintiff”),
3 on behalf of herself and the Class, on the one hand, and Defendants Shin Nihon Kosan, Inc., a
4 California corporation; Shogun Restaurant, Inc., a California corporation; Shogun La Verne, LLC, a
5 California limited liability company; Shogun Corona, LLC, a California limited liability company;
6 Shogun Murrieta, LLC, a California limited liability company; Shogun Temecula, LLC, a California
7 limited liability company; and the Released Parties (“Defendants”), on the other hand. Plaintiff and
8 Defendants are collectively referred to herein as “Parties” and individually referred to herein as
9 “Party.”

10 In consideration of the mutual covenants, promises, and agreements set forth herein, the Parties
11 agree that, pursuant to the terms and conditions set forth herein, which are subject to approval of the
12 Court, this Action and the Released Claims shall be settled and compromised as between Plaintiff and
13 the Class on the one hand and Defendants on the other hand.

14 **DEFINITIONS**

15 1. “Action” means *Padilla v. Shogun Restaurant, Inc., et al.*, Superior Court of the State
16 of California for the County of San Bernardino, Case No. CIVSB2117165.

17 2. “Agreement” or “Settlement Agreement” means this Stipulation of Settlement of Class
18 and PAGA Action and Release of Claims.

19 3. “Class” means: All non-exempt employees who were employed by Defendants, in the
20 State of California, at any time from June 15, 2017 through March 1, 2023.

21 4. “Class Counsel” means the Law Office of Scott Ernest Wheeler.

22 5. “Class Counsel Award” means attorneys’ fees for Class Counsel’s litigation and
23 resolution of this Action and Class Counsel’s expenses and costs incurred in connection with this
24 Action.

25 6. “Class Data” means information regarding Class Members that Defendants will in
26 good faith compile from its records and provide to the Settlement Administrator. It shall be formatted
27 as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each Class
28

1 Member's full name; social security number; last known address; last known telephone number; and
2 number of Compensable Work Weeks and Compensable PAGA Work Weeks.

3 7. "Class Member" means each person who is a member of the Class defined above and
4 who is eligible to participate in this Settlement.

5 8. "Class Period" means the time period from June 15, 2017 through March 1, 2023.

6 9. "Class Representative" shall mean plaintiff Luz Padilla.

7 10. "Class Representative Service Award" means the amount that the Court authorizes to
8 be paid to Plaintiff in recognition of, *inter alia*, Plaintiff's efforts and risks in assisting with the
9 prosecution of the Action and in return for executing a general release with Defendants.

10 11. "Compensable Work Week" or "Compensable Work Weeks" means a reasonable
11 estimate of weeks worked by each Class Member as a non-exempt employee in California for
12 Defendants individually and collectively by all Class Members during the Class Period based on
13 Defendants' records and used as a value to calculate Individual Settlement Payments. The number
14 of Compensable Work Weeks for each Class Member will be determined by adding all the calendar
15 days within the inclusive dates of employment for the employee and dividing that number by seven.
16 Any partial workweek will be expressed as a percentage of a full workweek. If it can be readily
17 determined, workweeks where someone was employed but did not record any hours can be excluded
18 from this calculation.

19 12. "Compensable PAGA Work Week" or "Compensable PAGA Work Weeks" means a
20 reasonable estimate of weeks worked by each PAGA Member, as a nonexempt employee in
21 California for Defendants, individually and collectively by all PAGA Members, during the period
22 from April 11, 2020 through March 1, 2023, based on Defendants' records and used as a value to
23 calculate PAGA Payments. The number of Compensable PAGA Work Weeks for each PAGA
24 Member, will be determined by adding all the calendar days within the inclusive dates of
25 employment for the employee and dividing that number by seven. Any partial workweek will be
26 expressed as a percentage of a full workweek. If it can be readily determined, workweeks where
27 someone was employed but did not record any hours can be excluded from this calculation.

28 13. "Court" means the Superior Court for the County of San Bernardino, State of

1 California.

2 14. “Defendants” means Shin Nihon Kosan, Inc., a California corporation; Shogun
3 Restaurant, Inc., a California corporation; Shogun La Verne, LLC., a California limited liability
4 company; Shogun Corona, LLC, a California limited liability company; Shogun Murrieta, LLC, a
5 California limited liability company; Shogun Temecula, LLC, a California limited liability company,
6 and the Released Parties.

7 15. “Effective Date” means the date on which the Superior Court’s Final Approval Order
8 and Judgment becomes final and Defendants fully fund the Gross Settlement Amount. The Superior
9 Court’s Final Approval Order and Judgment “becomes final” upon the latter of: (a) if there is no
10 Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final
11 Approval Order and Judgment is filed by the Court; (b) if there is an Objection to the Settlement that
12 is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following
13 the date that the Final Approval Order and Judgment is filed by the Court; or (c) if there is an Objection
14 to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing
15 the Settlement has been filed within sixty-five (65) calendar days following the date that the Final
16 Approval Order and Judgment is filed by the Court, then, when any such appeal, writ, or other
17 appellate proceeding opposing the validity of the Settlement has been resolved finally and
18 conclusively with no right to pursue further remedies or relief.

19 16. “Final Approval Order and Judgment” means an order and judgment that the Court
20 will file which finally approves this Settlement and enters a judgment in favor of Plaintiff.

21 17. “Funding Date” shall mean December 1, 2024 and is the date Defendants transfer the
22 Gross Settlement Amount into the QSF in accord with the terms of this Agreement.

23 18. “Gross Settlement Amount” means the maximum amount which Defendants are
24 obligated to pay under this Settlement Agreement, which is One Million Dollars and zero cents
25 (\$1,000,000.00). This is an “all in” non-reversionary Settlement in which Defendants are required to
26 pay the entire Gross Settlement Amount. No portion of the Gross Settlement Amount will revert to
27 Defendants under any circumstances. Payments of any appropriate and lawfully-required employer’s
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1 share of the payroll taxes on the taxable portion of the settlement payments shall be paid separately
2 from the Gross Settlement Amount by Defendants at the time the Gross Settlement Amount is funded.

3 19. "Individual Settlement Payment" means the amount payable from the Net Settlement
4 Amount to each Settlement Class Member.

5 20. "LWDA" means the California Labor and Workforce Development Agency, the
6 agency entitled, under Labor Code section 2699, subd. (i).

7 21. "Net Settlement Amount" means the Gross Settlement Amount, less the Class
8 Counsel Award, Class Representative Service Award, payment to the LWDA and PAGA Members
9 for PAGA penalties, and Settlement Administration Costs.

10 22. "Notice of Class and PAGA Settlement" means the notice, substantially in the form
11 attached hereto as **Exhibit 1**, which the Settlement Administrator will mail to each Class and PAGA
12 Member, and which explains, *inter alia*, the terms of this Settlement Agreement, the settlement
13 process, and each Class Member's estimated Individual Settlement Payment. Notice of Class
14 Settlement will be provided to the Class in English and Spanish.

15 23. "Operative Complaint" means the First Amended Class Action Complaint on file in
16 this action.

17 24. "Objection" means a letter or other written communication submitted by a Class
18 Member to the Settlement Administrator that contains a clear statement by the Class Member that he
19 or she is objecting to any of the terms of the Settlement.

20 25. "PAGA" means the California Labor Code Private Attorneys General Act of 2004,
21 Labor Code § 2698 *et seq.*

22 26. "PAGA Member" or "PAGA Members" means any Class Member who was
23 employed or has been employed by Defendants at any time during the time period between April 18,
24 2020 through March 1, 2023.

25 27. "Parties" means Plaintiff and Defendants, collectively, and "Party" means either
26 Plaintiff or Defendant, individually.

27 28. "Payment Ratio" means the respective Compensable Work Weeks for each Settlement
28 Class Member divided by the total Compensable Work Weeks for all Settlement Class Members.

1 29. “PAGA Payment Ratio” means the respective Compensable PAGA Work Weeks for
2 each PAGA Member divided by the total Compensable PAGA Work Weeks for all PAGA Members.

3 30. “PAGA Period” means the time period from April 18, 2020, through March 1, 2023.

4 31. “Plaintiff” refers to Luz Padilla.

5 32. “Preliminary Approval Date” means the date upon which the Court files an order
6 substantially in the form attached hereto as **Exhibit 2**, and which grants preliminary approval of the
7 Settlement.

8 33. “Request for Exclusion” means a letter or other written communication submitted by
9 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
10 that he or she is electing to be excluded from the Settlement.

11 34. “Released Claims by Plaintiff” is set forth in paragraph 56 below. Plaintiff releases
12 the “Released Claims by Plaintiff” as of the date Defendants fully funds this Settlement.

13 35. “Released Claims by Settlement Class Members” means: As of the date Defendants
14 fully fund this Settlement, Settlement Class Members shall fully and finally release and discharge
15 Released Parties, June 15, 2017 through March 1, 2023, from any and all claims, debts, liabilities,
16 demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action
17 contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and
18 claims alleged in the Operative Complaint, including but not limited to any claims for: (a) failure to
19 provide required meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide
20 required rest periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages,
21 California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor
22 Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all
23 wages during employment and to discharged and quitting employees, California Labor Code §§ 201-
24 204, 210; (f) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and
25 226.3; and (g) unlawful business practices under California, Business and Professions Code §17200,
26 et seq.; predicated on any of the violations of the California Labor Code and the applicable IWC Wage
27 Order as alleged in the Operative Complaint including but not limited to, claims for restitution and
28 other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or

1 other amounts claimed on account of the allegations or the primary rights asserted in the Operative
2 Complaint. This release shall apply to any and all claims arising at any point during the Class Period.
3 Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all
4 Participating Class Members will forever completely release and discharge the Released Parties from
5 the Released Claims for the Release Period. Plaintiff and Defendants intend that the Settlement
6 described in this Settlement Agreement will release and preclude any further claim, whether by
7 lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and
8 all of the Participating Class Members to obtain a recovery to any and all of the Released Claims. This
9 release excludes the release of claims not otherwise permitted by law, i.e. Worker's Compensation
10 and unemployment insurance benefits.

11 36. "Released Parties" collectively mean: (i) Defendants; (ii) Defendants' respective past,
12 present and future heirs, executors, administrators, parents, subsidiaries and affiliates, equity sponsors,
13 divisions, joint venturers, predecessors, successors, joint employers, and assigns; and (iii) the past,
14 present and future directors, trustees, stockholders, shareholders, managers, officers, partners,
15 members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the
16 foregoing, and all persons acting under, and all other representatives of Defendants by, through or in
17 concert with any of them, and each of them. Shogun Kobe, Inc. is specifically excluded as a Released
18 Party under the terms of this Settlement Agreement.

19 37. "Response Deadline" means forty-five (45) days after the postmark date of the Notice
20 of Class Settlement that the Settlement Administrator shall mail to Class Members, and the last date
21 on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an Objection to the
22 Settlement.

23 38. "Settled PAGA Claims", means penalties only under the Private Attorneys General
24 Act ("PAGA"), based upon the Released Claims by PAGA Members that serves the basis for
25 penalties only pursuant to Labor Code § 2699 *et seq.*, for : (a) failure to provide required meal
26 periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods,
27 California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code
28 §§510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and

1 1197; (e) failure to timely pay all wages due during employment and to discharged and quitting
2 employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage
3 statements, California Labor Code §§ 226 and 226.3; (g) failure to maintain required records,
4 California Labor Code §§ 226, 1174; (h) and supplemental COVID-19 sick leave pursuant to Labor
5 Code § 248.1, et al., and primary rights alleged in Plaintiff's Operative Complaint and in Plaintiff's
6 PAGA Notice dated April 9, 2021 and amended PAGA Notice dated October 4, 2021.

7 39. "Settlement" means the disposition of the Action pursuant to this Agreement.

8 40. "Settlement Administration Costs" means the amount to be paid to the Settlement
9 Administrator from the Gross Settlement Amount for administration of this Settlement.

10 41. "Settlement Administrator" means ILYM Group, Inc. ("ILYM"), the Settlement
11 Administrator shall be responsible for, *inter alia*: (a) performing Spanish translations of the Notice of
12 Class Settlement; printing and mailing the Notice of Class Settlement to the Class in English and
13 Spanish; (b) receiving and reporting the Requests for Exclusion and Objections submitted by Class
14 Members; (c) providing declaration(s) as necessary in support of preliminary and/or final approval of
15 this Settlement; (d) processing and mailing payments to Plaintiff, Class Counsel, the LWDA, and
16 Settlement Class Members; and (e) any other tasks as the Parties mutually agree or the Court orders
17 the Settlement Administrator to perform. The Settlement Administrator shall keep the Parties timely
18 apprised of the performance of all Settlement Administrator responsibilities. The Parties agree that
19 they have no financial interest or other relationship with ILYM that could create a conflict of interest.
20 Should a conflict of interest or other issue lead to the disqualification of the selected Settlement
21 Administrator, the Parties will meet and confer as to a suitable replacement.

22 42. "Settlement Class" or "Settlement Class Members" means all Class Members who
23 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

24 **RECITALS**

25 43. Procedural History. On June 15, 2021, Plaintiff filed a complaint against Defendants
26 in San Bernardino Superior Court, Case No. CIVSB2133830, alleging a single PAGA cause of action.
27 Plaintiff filed a first amended class action complaint on September 13, 2021. Defendants filed an
28 answer to Plaintiff's complaint.

1 44. Investigation and Discovery. The Parties have conducted significant investigation of
2 the facts and law during the prosecution of this Action and before this Settlement was reached. Such
3 discovery and investigation included, *inter alia*, the exchange of information and extensive documents
4 pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the
5 Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated the
6 law as applied to the facts of Plaintiff's claims and Defendants' potential defenses thereto.

7 45. Mediation. The Parties participated in a private mediation session with the highly
8 experienced mediator, Steven J. Rottman, Esq., on December 1, 2022. After a full day of mediation,
9 the Parties were able to reach a proposed settlement regarding the material terms for a proposed class
10 action and PAGA settlement that would fully resolve this matter.

11 46. The Court has not granted class certification. The Parties agree to certification of the
12 Class for purposes of this Settlement only. If for any reason the settlement does not become
13 effective, Defendants reserve the right to contest certification of any class for any reason and
14 reserves all available defenses to the claims in the Action

15 47. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
16 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial and
17 any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the outcome of
18 further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and Class Counsel
19 are also aware of the burdens of proof necessary to establish liability for the claims asserted in the
20 Action, both generally and in response to Defendants' defenses thereto, and the difficulties in
21 establishing damages for the Class. Plaintiff and Class Counsel have also taken into account
22 Defendants' agreement to enter into a settlement that confers substantial relief upon the members of
23 the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the Settlement
24 set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement, and is in the
25 best interests of the Class.

26 48. Defendants' Reasons for Settlement. Defendants have concluded that any further
27 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
28 Defendants' time, energy, and resources have been and, unless this Settlement is completed, will

1 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendants' have also taken
2 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
3 though Defendants continue to contend that they are not liable for any of the claims alleged by Plaintiff
4 in this Action, Defendants have agreed, nonetheless, to settle in the manner and upon the terms set
5 forth in this Settlement Agreement to put to rest the claims in this Action.

6 49. Defendants deny any liability or wrongdoing of any kind associated with the claims
7 alleged in the Action, disputes any wages, damages and penalties claimed by the Class Representative
8 are owed, and further contend that, for any purpose other than settlement, the Action is not appropriate
9 for class or representative action treatment. Defendants contend, among other things, that at all times
10 they complied with the California Labor Code and the Industrial Wage Commission Orders.

11 50. This Agreement supersedes the Memorandum of Understanding and any other
12 agreements, understandings, or representations between the Parties. This Agreement represents a
13 compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will
14 be construed as an admission by Defendants that the claims in the Action of Plaintiff or the Class
15 Members have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or
16 any other claims, or as an admission by Plaintiff that Defendants' defenses in the Action have merit.

17 51. The Parties believe that the Settlement is fair, reasonable and adequate. The Settlement
18 was arrived at through arm's-length negotiations, taking into account all relevant factors. The Parties
19 recognize the uncertainty, risk, expense and delay attendant to continuing the Action through trial and
20 any appeal. Accordingly, the Parties desire to fully, finally, and forever settle, compromise and
21 discharge all disputes and claims arising from or relating to the Action.

22 52. The Parties, Class Counsel and Defense Counsel represent that they are not aware of
23 any other pending matter or action asserting claims that will be extinguished or affected by the
24 Settlement.

25 Based on these Recitals that are a part of this Agreement, the Parties agree as follows:

26 **TERMS OF AGREEMENT**

27 53. NOW THEREFORE, in consideration of the mutual covenants, promises, and
28 agreements set forth herein, the Parties agree, subject to the Court's approval, as follows:

1 54. It is agreed by and among Plaintiff and Defendants that this Settlement shall bind the
2 Plaintiff, Settlement Class Members, and Defendants, subject to the terms and conditions hereof.

3 55. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
4 the “acknowledging party” and each Party to this Agreement other than the acknowledging party, an
5 “other party”) acknowledges and agrees that (1) no provision of this Agreement, and no written
6 communication or disclosure between or among the Parties or their attorneys and other advisers, is or
7 was intended to be, nor shall any such communication or disclosure constitute or be construed or be
8 relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31
9 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her, or its
10 own, independent legal and tax counsel for advice (including tax advice) in connection with this
11 Agreement, (b) has not entered into this Agreement based upon the recommendation of any other
12 party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
13 communication or disclosure by any attorney or adviser to any other party to avoid any tax penalty
14 that may be imposed on the acknowledging party; and (3) no attorney or adviser to any other party
15 has imposed any limitation that protects the confidentiality of any such attorney’s or adviser’s tax
16 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
17 acknowledging party of the tax treatment or tax structure of any transaction, including any transaction
18 contemplated by this Agreement.

19 56. Released Claims by Plaintiff. Upon the date of Effective Date, for the consideration
20 set forth in this Agreement, Plaintiff, and her respective former and present spouses, representatives,
21 agents, attorneys, heirs, administrators, successors, and assigns agree to waive, release, acquit, and
22 forever discharge the Released Parties from any and all claims, whether known or unknown, which
23 exist or may exist on his behalf as of the date of this Agreement, including but not limited to any and
24 all tort claims, contract claims, wage claims, wrongful termination claims, disability claims, benefit
25 claims, public policy claims, retaliation claims, statutory claims, personal injury claims, emotional
26 distress claims, invasion of privacy claims, defamation claims, fraud claims, quantum meruit claims,
27 and any and all claims arising under any federal, state or other governmental statute, law, regulation
28 or ordinance, including, but not limited to claims for violation of the Fair Labor Standards Act, the

1 California Labor Code, the Wage Orders of California's Industrial Welfare Commission, other state
2 wage and hour laws, the Americans with Disabilities Act, the Age Discrimination in Employment Act
3 (ADEA), the Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964,
4 the California Fair Employment and Housing Act, the California Family Rights Act, the Family
5 Medical Leave Act, California's Whistleblower Protection Act, California Business & Professions
6 Code Section 17200 et seq., and any and all claims arising under any federal, state or other
7 governmental statute, law, regulation or ordinance. Plaintiff also waives and relinquishes any and all
8 claims, rights or benefits that she may have under California Civil Code § 1542, which provides as
9 follows:

10 **A general release does not extend to claims that the creditor or releasing party does**
11 **not know or suspect to exist in his or her favor at the time of executing the release**
12 **and that, if known by him or her, would have materially affected his or her**
13 **settlement with the debtor or releasing party.**

14 Thus, notwithstanding the provisions of Section 1542, and for the purpose of implementing a
15 full and complete release and discharge of the Released Parties, Plaintiff and Class Counsel expressly
16 acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all
17 claims that Plaintiff knew of, as well as all claims that they do not know or suspect to exist in their
18 favor against the Released Parties, or any of them, for the time period from the beginning of time to
19 the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the
20 extinguishment of any such claims. Plaintiff and Plaintiff's Counsel do not currently intend to
21 pursue any claims against Defendants, including, but not limited to, any and all claims relating to
22 or arising from Plaintiff's employment with Defendants, and that Plaintiff's Counsel is not
23 currently aware of any facts or legal theories upon which any claims or causes of action could be
24 brought against Defendants, excepting those facts or legal theories alleged in the Operative
25 Complaint in this Action. This release does not include claims which cannot be released such as
26 unemployment or Worker's Compensation benefits. Plaintiff further acknowledges that Plaintiff later
27 may discover facts different from or in addition to those Plaintiff now knows or believes to be true
28 regarding the matters released or described in this Settlement Agreement, and even so Plaintiff agrees
that the releases and agreements contained in this Settlement Agreement shall remain effective in all

1 respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly
2 assumes any and all risk of any mistake in connection with the true facts involved in the matters,
3 disputes, or controversies released or described in this Settlement Agreement or with regard to any facts
4 now unknown to Plaintiff relating thereto.

5 57. Class Certification. For settlement purposes only, Defendants will stipulate that the
6 Settlement Class Members described herein who do not request exclusion from the Settlement Class
7 may be conditionally certified as a settlement class. This stipulation to certification is in no way an
8 admission that class action certification is proper and shall not be admissible in this or in any other
9 action except for the sole purposes of enforcing this Agreement. Should the Court fail to issue Final
10 Approval for any reason, the Parties' stipulation to class certification as part of the Settlement
11 Agreement shall become null and void *ab initio* and shall have no bearing on but remains protected
12 by California Evidence Code Section 1152 and shall not be admissible in connection with, the issue
13 of whether or not certification would be appropriate in a non-settlement context. Defendants expressly
14 reserve their rights and declare that Defendants will continue to oppose class certification and contest
15 the substantive merits of the case should the Court fail to issue Final Approval. Plaintiff expressly
16 reserves his rights and declares that he will continue to pursue class certification and a trial should the
17 Court fail to grant Final Approval.

18 58. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
19 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
20 have this matter presented to the Court for preliminary and final approval.

21 59. Release of Claims by Settlement Class Members. Settlement Class Members release
22 the "Released Claims by Settlement Class Members," as defined, as of the date Defendants fully fund
23 the Settlement.

24 60. Release of Settled PAGA Claims. PAGA Members release the "Settled PAGA
25 Claims," as defined, as of the date Defendants fully fund the Settlement.

26 61. Settlement Administration. Within thirty (30) calendar days after the Preliminary
27 Approval Date, Defendants shall provide the Settlement Administrator with the Class Data.

1 62. Notice to the Class. Upon receipt of the Class Data, the Settlement Administrator will
2 perform a search based on the National Change of Address Database to update and correct any known
3 or identifiable address changes. Within thirty (30) calendar days after receiving the Class Data, the
4 Settlement Administrator shall mail copies of the Notice of Class Settlement to all Class Members via
5 regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to
6 determine the current mailing address for each Class Member. The address identified by the
7 Settlement Administrator as the current mailing address shall be presumed to be the best mailing
8 address for each Class Member.

9 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
10 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to
11 the forwarding address affixed thereto within ten (10) calendar days. For any undeliverable Notice of
12 Class Settlement returned for which no forwarding address is affixed, the Settlement Administrator
13 will conduct its investigation for an updated address of the Class Member and re-mail the Notice of
14 Class Action Settlement. If an updated address is found, the Settlement Administrator shall have
15 seven (7) days to re-mail the Notice of Class Action Settlement from receipt of the undelivered
16 envelope. The Settlement Administrator will provide a cover letter notifying the Class Member of the
17 extended Response Deadline. Any Class Member who receives a re-mailed Notice of Class Settlement
18 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement to:
19 (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

20 (1) Verification of Class Member Employment Status. If Notice of Class
21 Action Settlement sent to a Class Member is determined to be
22 undeliverable, the Settlement Administrator shall verify the
23 employment status of the Class Member with Defendants within five
24 (5) days of receipt of the undeliverable Notice of Class Action
25 Settlement. If the Class Member is a current employee of Defendants,
26 Defendants shall take all reasonable efforts to obtain the current
27 address from the Class Member and shall provide the same with seven
28 (7) days of notice from the Settlement Administrator.

1 b. Disputes Regarding Individual Settlement Payments. Class Members will have
2 the opportunity, should they disagree with Defendants' records regarding the dates of employment
3 stated in the Notice of Class Settlement, to provide documentation and/or an explanation to show
4 contrary information by the Response Deadline. The dispute form must: (a) contain the full name,
5 address, and telephone number of the Class Member, and the last four digits of the Class Member's
6 social security number or full employee ID number; (b) contain the case name and case number; (c) a
7 clear statement by the Class Member that he or she is disputing the number of Compensable
8 Workweeks and the basis for the dispute; (d) any documentation demonstrating that the number of
9 Compensable Workweeks listed in the Notice of Class Settlement is incorrect; (e) be signed by the
10 Class Member; and (f) be postmarked by the Response Deadline. The date of the postmark on the
11 return mailing envelope on the dispute form shall be the exclusive means used to determine whether
12 it has been timely submitted. If there is a dispute, the Settlement Administrator will consult with the
13 Parties to determine whether an adjustment is warranted. In addition to U.S. Mail, a Class Member
14 may also submit a dispute form by facsimile or email to the Settlement Administrator within the
15 Response Deadline. The Settlement Administrator shall then determine the eligibility for, and the
16 amounts of, any Individual Settlement Payments under the terms of this Agreement. In the absence of
17 circumstances indicating fraud, manipulation or destruction, Defendants' records shall be given a
18 rebuttable presumption of accuracy.

19 c. Request for Exclusion. Class Members who wish to exclude themselves from
20 the Settlement must submit to the Settlement Administrator a Request for Exclusion by the Response
21 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
22 of the Class Member, and the last four digits of the Class Member's social security number or full
23 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
24 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
25 Member; and (e) be postmarked by the Response Deadline if submitted by U.S. Mail. The date of the
26 postmark on the return mailing envelope on the Request for Exclusion submitted by U.S. Mail shall
27 be the exclusive means used to determine whether it has been timely submitted. In addition to U.S.
28 Mail, a Class Member may also submit a Request for Exclusion by facsimile or email to the Settlement

1 Administrator within the Response Deadline. A Request for Exclusion shall not be presumptively
2 invalid if it does not contain the requirements of (a) through (d) if the Settlement Administrator can
3 ascertain the identity of the Class Member who wants to exclude themselves from the Settlement. Any
4 Class Member who requests to be excluded from the Settlement Class shall not be entitled to any
5 recovery under the Settlement and shall not be bound by the terms of the Settlement or have any right
6 to object, appeal or comment thereon except as to any distribution based upon PAGA penalties.
7 PAGA Members will receive their share of the PAGA Payment and the Settled PAGA Claims will be
8 released even if the Class Member submits a timely Request for Exclusion. Class Members who fail
9 to submit a valid and timely Request for Exclusion on or before the Response Deadline shall be bound
10 by all terms of the Settlement and any Final Approval Order and Judgment entered in this Action.

11 d. Objections. Class Members who wish to object to the Settlement can either
12 mail or send by facsimile or email to the Settlement Administrator a written Objection by the
13 Response Deadline. The Objection should: (a) contain the full name, address, and telephone number
14 of the Class Member, and the last four digits of the Class Member's social security number; (b)
15 contain the case name and case number; (c) the dates of employment of the Class Member; (d) be
16 signed by the Class Member; (e) state the basis for the Objection, including any legal briefs, papers
17 or memoranda in support of the Objection; and (f) be postmarked by the Response Deadline. The
18 date of the postmark on the return mailing envelope on the Objection shall be the exclusive means
19 used to determine whether the Objection has been timely submitted. Class Members who submit a
20 timely Objection will have a right to appear at the final approval hearing in order to have their
21 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
22 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
23 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect to
24 any such Objections. The Settlement Administrator will provide the Parties with any Objection
25 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
26 with the Court in advance of the Final Approval Hearing. Oral or written Objections may also be
27 made at the Final Approval hearing without a written objection being submitted, but only with the
28

1 Court's express permission. If the Court rejects the objection, the individual will be bound by the
2 terms of the Settlement.

3 e. If greater than seven (7) percent of the Class Members opt out or object to this
4 Settlement Agreement or a number of Class Members whose share of the Net Settlement Amount is
5 7% or more, Defendants will have the right to rescind and terminate the Settlement without prejudice
6 to its pre-settlement positions and defenses in the litigation. In such a case, the Parties and any funds
7 to be awarded shall be returned to their respective statuses as of the date and time immediately prior
8 to the execution of this Agreement.

9 f. Except for those Settlement Class Members who exclude themselves in
10 compliance with the Request for Exclusion procedures set forth above, all Settlement Class Members
11 will: (i) be deemed to be Participating Class Members for all purposes under this Settlement
12 Agreement; (ii) will be bound by the terms and conditions of this Settlement Agreement, the
13 Judgment, and the releases set forth herein; and (iii) except as otherwise provided herein, will be
14 deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy
15 of the Settlement.

16 63. Funding Gross Settlement Amount. Within seven hundred and thirty (730) days from
17 December 1, 2022, or no later than December 1, 2024, Defendants shall wire transfer the full Gross
18 Settlement Amount along with Defendants' share of the payroll taxes to the Settlement Administrator.

19 64. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
20 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
21 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
22 last known mailing address.

23 a. The Settlement Administrator shall calculate the total Compensable Work
24 Weeks and Compensable PAGA Work Weeks for all Settlement Class Members based on the Class
25 Data provided by Defendants. The respective Compensable Work Weeks for each Settlement Class
26 Member will be divided by the total Compensable Work Weeks for all Settlement Class Members,
27 resulting in the Payment Ratio for each Settlement Class Member; a similar calculation will apply to
28 determining the Payment Ratio for Compensable PAGA Work Weeks. Each Settlement Class

1 Member's Payment Ratio will then be multiplied by the Net Settlement Amount to determine his or
2 her Individual Settlement Payment.

3 b. Individual Settlement Payments due to each Settlement Class Member shall be
4 designated as follows:

5 1. Ten percent (10%) of the Individual Settlement Payment shall
6 represent payment for alleged unpaid wages. This payment shall be subject to the withholding of all
7 applicable local, state, and federal taxes. Applicable payroll taxes and/or contributions will be
8 deducted from the amount paid to Settlement Class Members. The Settlement Administrator will
9 issue a W-2 Form to each Settlement Class Member in relation to this payment.

10 2. Seventy percent (70%) of the Individual Settlement Payment shall
11 represent payment of all penalties. These payments will not be subject to withholding of local, state,
12 and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement
13 Class Member in relation to these payments.

14 3. Twenty percent (20%) of the Individual Settlement Payment shall
15 represent payment of all interest. These payments will not be subject to withholding of local, state,
16 and federal taxes. The Settlement Administrator will issue an IRS Form 1099 to each Settlement
17 Class Member in relation to these payments.

18 (a). Class Members With Missing/Unverifiable Social Security
19 Numbers and Withholdings of Taxes and Applicable Penalties. In the event that an Individual
20 Settlement Payment exceeds the threshold amount that must be reported to the Internal Revenue
21 Service by means of a Form 1099, Class Counsel, and the Settlement Administrator, will take all
22 necessary and reasonable steps to obtain W-9's from Class Members and to comply with applicable
23 IRS regulations on issuing 1099's without a social security number or tax entity identification number,
24 and shall take all reasonable and necessary steps to avoid imposition of IRS penalties against the Gross
25 Settlement Amount, including, but not limited to limiting payments below the reportable threshold
26 and/or withholding of taxes and any applicable penalties. The Settlement Administrator will contact
27 Class Members who are entitled to payments that exceed the taxable income threshold twice, with at
28 least 30 days between the two contacts.

1 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
2 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
3 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
4 check will be voided, and the funds associated with any such voided checks shall be distributed to the
5 State of California Controller's Office, Unclaimed Property Division, in the name of the affected Class
6 Member. The Release will be binding upon all Participating Class Members, including those who do
7 not cash their checks within the 180-day period. The Parties agree that this disposition results in no
8 "unpaid cash residue," or "unclaimed or abandoned funds" as the entire Net Settlement Amount will
9 be paid out to the Participating Class Members, whether or not they all cash their payment checks.

10 d. Certification By Settlement Administrator. The Parties have the right to
11 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
12 Administrator concerning the administration of the Settlement will be resolved by the Court, under
13 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
14 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
15 completion of administration of the Settlement, the Settlement Administrator shall provide written
16 certification of such completion to counsel for the Parties, and which shall be filed with the Court as
17 necessary.

18 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
19 by Settlement Class Members shall be deemed to be income to such Settlement Class Members solely
20 in the year in which such awards actually are received by the Settlement Class Members. It is expressly
21 understood and agreed that the receipt of such Individual Settlement Payments will not entitle any
22 Settlement Class Member to additional compensation or benefits under any company compensation
23 or benefit plan or agreement in place during the period covered by the Settlement, nor will it entitle
24 any Settlement Class Member to any increased pension and/or retirement, or other deferred
25 compensation benefits. It is the intent of this Settlement that any Individual Settlement Payments
26 provided for in this Agreement are the sole payments to be made by Defendants to the Settlement
27 Class Members in connection with this Settlement, and that the Settlement Class Members are not
28 entitled to any new or additional compensation or benefits as a result of having received the Individual

1 Settlement Payments (notwithstanding any contrary language or agreement in any benefit or
2 compensation plan document that might have been in effect during the period covered by this
3 Settlement).

4 f. Class Representative Service Award. Defendants agrees not to oppose or
5 object to a Class Representative Service Award to Plaintiff of up to Six Thousand Dollars (\$6,000.00),
6 subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099 – MISC to
7 Plaintiff in connection with the Class Representative Service Award payment. Plaintiff shall be solely
8 and legally responsible to pay any and all applicable taxes on his Class Representative Service Award
9 and shall hold harmless Defendants and Class Counsel from any claim or liability for taxes, penalties,
10 or interest arising as a result of the Class Representative Service Award payment. The Class
11 Representative Service Award shall be in addition to Plaintiff's Individual Settlement Payment. This
12 Settlement is not contingent upon the Court awarding Plaintiff a Class Representative Service Award
13 in any amount, and any amount requested by Plaintiff for the Class Representative Service Award that
14 is not granted by the Court shall return to the Net Settlement Amount and be distributed to Settlement
15 Class Members as provided in this Amended Agreement.

16 g. Class Counsel Award. Defendants agrees not to oppose or object to any
17 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
18 Settlement Amount, or Three Hundred and Thirty-Three Thousand Dollars (\$333,000.00). Defendants
19 further agree not to oppose any application or motion by Class Counsel for the reimbursement of any
20 costs or expenses associated with Class Counsel's prosecution of this matter from the Gross
21 Settlement Amount not to exceed Twenty Thousand Dollars (\$25,000.00). Class Counsel shall be
22 solely and legally responsible to pay all applicable taxes on the payment made pursuant to this
23 paragraph. The Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for
24 the payments made pursuant to this paragraph. This Settlement is not contingent upon the Court
25 awarding Class Counsel any particular amount in attorneys' fees and costs. Any amount requested by
26 Class Counsel for the Class Counsel Award and costs that is not granted by the Court shall return to
27 the Net Settlement Amount and be distributed to Settlement Class Members as provided in this
28 Agreement.

1 h. Settlement Administration Costs. The Settlement Administrator shall be paid
2 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
3 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
4 Twenty Thousand Dollars (\$25,000.00). Prior to the filing of a motion for final approval of this
5 Settlement, the Settlement Administrator shall provide the Parties with a statement detailing the
6 costs of administration. Any amount requested by the Settlement Administrator for administration
7 costs that is not granted by the Court shall return to the Net Settlement Amount and be distributed to
8 Settlement Class members as provided in this Amended Agreement. Defendants will pay any fees
9 incurred by the Settlement Administrator if the settlement is not approved.

10 i. PAGA Payment. One Hundred Thousand dollars (\$100,000) from the Gross
11 Settlement Amount will be allocated to penalties under the Private Attorneys General Act of 2004.
12 Seventy-five percent (75%) of that amount, or \$75,000, will be paid to the LWDA and twenty-five
13 (25%) of that amount, or \$25,000, will be paid to the PAGA Members based upon Compensable
14 PAGA Work Weeks as determined by the PAGA Payment Ratio as set forth in Paragraph 29. This
15 PAGA Payment is made pursuant to California Labor Code § 2699(i).

16 j. Use and Return of Class Data. Information provided to Class Counsel
17 pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to
18 Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
19 connection with the Settlement, may be used only with respect to this Settlement, and no other
20 purpose, and may not be used in any way that violates any existing contractual agreement, statute, or
21 rule of court. Not later than 90 days after the date when the Court discharges the Administrator's
22 obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff
23 shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior
24 to the Court's discharge of the Administrator's obligation, Defendants make a written request to
25 Class Counsel for the return, rather than the destructions, of Class Data.

26 65. Tax Liability: The Parties make no representations as to the tax treatment or legal
27 effect of the payments called for, and Class Members and/or PAGA Class Members are not relying
28 on any statement or representation by the Parties in this regard. Class Members and/or PAGA Class

Members understand and agree that they will be responsible for the payment of any taxes and penalties assessed on the Individual Settlement Payments and/or PAGA Class Members' individual shares of the PAGA Settlement described and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual Settlement Payments and/or PAGA Class Members' individual shares of the PAGA Settlement.

66. Additional Class Members. Defendants represent that there are no more than 2,138 Settlement Class members who worked a total of no more than 450,000 total shifts and 100,000 work weeks during the Class Period. Should the total number workweeks in the Class Period increase by more than ten percent of the workweeks reflected in the data previously provided by Defendants in this case, Plaintiff may exercise the option to withdraw from the settlement and this MOU is entirely void. However, the parties may also agree to modify the terms of the settlement, based on the changed facts.

67. Distribution of Settlement Payments. Individual Settlement Payments to Settlement Class Members, the Class Representative Service Awards, the Class Counsel Award, Settlement Administration Costs, Defendants' share of employer payroll taxes and PAGA Payment, shall all be distributed by the Settlement Administrator within ten (10) calendar days of receipt of the full Gross Settlement Amount from Defendants. Prior to distribution of Individual Settlement Payments to the Settlement Class Members and PAGA Members, the Settlement Administrator shall update the Class and PAGA Members addresses using the National Change of Address Database.

68. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration of the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments; (b) the Class Counsel Award; (c) the Class Representative Service Awards; (d) PAGA Payment; and (e) the Settlement Administration Costs.

69. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the Order for preliminary approval of the Settlement; (b) the Court does not finally approve the Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein; (d) the Settlement does not become final for any other reason; or (e) the Court fails or refuses to

1 approve any material condition of this Settlement Agreement which effects a fundamental change of
2 the Settlement Agreement, this entire Settlement Agreement shall be null and void and
3 unenforceable as to all Parties herein at the option of any Party but remains protected by California
4 Evidence Code Section 1152, and any order or judgment entered by the Court in furtherance of this
5 Settlement shall be treated as void from the beginning. In such cases, the Parties and any funds to be
6 awarded under this Settlement shall be returned to their respective statuses as of the date and time
7 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects as
8 if this Agreement had not been executed, except that any fees already incurred by the Settlement
9 Administrator shall be paid by Defendants. Further, if the Settlement Agreement is voided or fails
10 for any reason, Plaintiff and Defendants will have no further obligations under the Settlement
11 Agreement, including any obligation by Defendants to pay the Settlement Amount, or any amounts
12 that otherwise would have been owed under this Settlement Agreement. In the event an appeal is
13 filed from the Court's Final Approval Order and Judgment, or any other appellate review is sought,
14 administration of the Settlement shall be stayed pending final resolution of the appeal or other
15 appellate review, and any fees incurred by the Settlement Administrator prior to it being notified of
16 the filing of an appeal from the Court's Final Approval Order and Judgment, or any other appellate
17 review, shall be paid to the Settlement Administrator by the party or person that filed the appeal,
18 within thirty (30) calendar days of said notification.

19 70. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
20 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
21 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
22 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

23 71. No Admission by Defendants. This Agreement represents a compromise and
24 settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as
25 an admission by Defendants that any of the allegations in the Operative Complaint have merit or that
26 Defendants has any liability for any claims asserted; nor should it be intended or construed as an
27 admission by Plaintiff that Defendants' defenses in the Action have merit. Defendants deny any and
28 all claims alleged in this Action and denies all wrongdoing whatsoever. Nonetheless, Defendants

1 desire to settle and compromise the matters at issue in the Action to avoid further substantial expense
2 and the inconvenience and distraction of protracted and burdensome litigation. Defendants also have
3 taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity
4 in the defenses that it has asserted or could assert against Plaintiff and/or any Settlement Class
5 Member, has determined that it is desirable and beneficial that the claims of Plaintiff and the
6 Settlement Class be settled in the manner and upon the terms and conditions set forth in this Settlement
7 Agreement.

8 72. No Publicity. This settlement shall remain confidential until a motion for approval is
9 filed with the Court. The Parties and their counsel agree that they will not issue any press releases,
10 initiate any contact with the press, respond to any press inquiry, or have any communication with
11 the press about the fact, amount or terms of the Settlement Agreement. Class Counsel further agrees
12 not to use the Settlement Agreement or any of its terms for any marketing or promotional purposes.
13 Nothing herein will restrict Class Counsel from including publicly available information regarding
14 this settlement in future judicial submissions regarding Class Counsel's qualifications and
15 experience. Further, Class Counsel will not include, reference or use the Settlement Agreement for
16 any marketing or promotional purposes, either before or after the Motion for Preliminary Approval
17 is filed.

18 73. No Solicitation. The Parties separately agree that they and their respective counsel
19 and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal
20 from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to
21 communicate with Class Members in accordance with Class Counsel's ethical obligations owed to
22 Class Members.

23 74. Exhibits and Headings. The terms of this Settlement Agreement include the terms set
24 forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein.
25 Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive headings of any
26 paragraphs or sections of this Agreement are inserted for convenience of reference only and do not
27 constitute a part of this Agreement.

1 75. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
2 except such proceedings necessary to implement and complete the Settlement, holding the Action in
3 abeyance pending the final approval hearing to be conducted by the Court.

4 76. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
5 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
6 with this Agreement shall be resolved as follows:

7 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
8 Member, or Defendant's Counsel, on behalf of Defendants, at any time believe that the other Party
9 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
10 the alleged violation.

11 b. Upon receiving notice of the alleged violation or dispute, the responding Party
12 shall have ten (10) calendar days to correct the alleged violation and/or respond to the initiating Party
13 with the reasons why the Party disputes all or part of the allegation.

14 c. If the response does not address the alleged violation to the initiating Party's
15 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
16 differences.

17 d. If Class Counsel and Defendants' Counsel are unable to resolve their
18 differences after twenty (20) calendar days, either Party shall first contact the mediator (Steven J.
19 Rottman) to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate
20 motion for enforcement with the Court. The briefing of such motion should be in letter brief form and
21 shall not exceed five (5) single-spaced pages (excluding exhibits).

22 e. Reasonable attorneys' fees and costs for work done in resolving a dispute under
23 this Section may be recovered by any Party that prevails under the standards set forth within the
24 meaning of applicable law.

25 77. Notice. Unless otherwise specifically provided herein, all notices, demands or other
26 communications given hereunder shall be in writing and shall be deemed to have been duly given as
27 of the third business day after (i) emailing and (ii) mailing by United States registered or certified
28 mail, return receipt requested, addressed:

1 To the Settlement Class:

2 LAW OFFICE OF SCOTT ERNEST WHEELER
3 Scott Ernest Wheeler
4 Justin A. Wheeler
5 250 West First Street, Suite 216
6 Claremont, California 91711
7 Telephone: (909) 621-4988
8 Facsimile: (909) 621-4622
9 Email: sew@scottwheelerlawoffice.com
10 jaw@scottwheelerlawoffice.com

11 To Defendants:

12 GORDON REES SCULLY MANSUKHANI
13 Mark Posard
14 Tatiana Dupuy
15 101 W. Broadway, Suite 2000
16 San Diego, California 92101
17 Telephone: (619) 230-7415
18 Facsimile: (619) 696-7124
19 Email: mposard@grsm.com
20 tdupuy@grsn.com

21 78. Amendment or Modification. This Agreement may be amended or modified only by
22 a written instrument signed by counsel for all Parties and approved by the Court.

23 79. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
24 the entire Agreement among these Parties, and no oral or written representations, warranties, or
25 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
26 representations, warranties, and covenants contained and memorialized in the Agreement and its
27 Exhibits.

28 80. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
represent they are expressly authorized by the Parties whom they represent to negotiate this
Agreement and to take all appropriate actions required or permitted to be taken by such Parties
pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
and use their best efforts to affect the implementation of the Settlement. In the event the Parties are
unable to reach agreement on the form or content of any document needed to implement the
Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of

1 this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
2 disagreement. The persons signing this Agreement on behalf of Defendants represent and warrant that
3 they are authorized to sign this Agreement on behalf of Defendants. Plaintiff represents and warrants
4 that he is authorized to sign this Agreement and that he has not assigned any claim, or part of a claim,
5 covered by this Settlement to a third-party.

6 81. Binding on Successors and Assigns. This Agreement shall be binding upon, and inure
7 to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

8 82. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they
9 have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
10 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action
11 or rights released and discharged by this Settlement Agreement.

12 83. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
13 Order and Judgment, nothing contained herein, nor the consummation of this Settlement Agreement,
14 is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the
15 part of Defendants or any of the other Released Parties. Each of the Parties hereto has entered into
16 this Settlement Agreement with the intention of avoiding further disputes and litigation with the
17 attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it,
18 along with all related documents such as the notices, and motions for preliminary and final approval,
19 shall, pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
20 inadmissible as evidence in any proceeding, except an action or proceeding to approve the Settlement,
21 and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part
22 of this Settlement Agreement is for settlement purposes only and if for any reason the Settlement is
23 not approved, the stipulation will be of no force or effect.

24 84. California Law Governs. All terms of this Settlement Agreement and the Exhibits
25 hereto shall be governed by and interpreted according to the laws of the State of California.

26 85. Counterparts. This Settlement Agreement may be executed in one or more
27 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
28 instrument.

1 86. This Settlement is Fair, Adequate and Reasonable. The Parties believe this Settlement
2 is a fair, adequate, and reasonable settlement of this Action and have arrived at this Settlement after
3 extensive arms-length negotiations, taking into account all relevant factors, present and potential.

4 87. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section 664.6,
5 the Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement
6 of the terms of this Settlement Agreement and all orders and judgments entered in connection
7 therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court for purposes
8 of interpreting, implementing, and enforcing the settlement embodied in this Agreement and all orders
9 and judgments entered in connection therewith. All terms of this Settlement Agreement are subject to
10 approval by the Court.

11 88. Construction. The Parties hereto agree that the terms and conditions of this Settlement
12 Agreement are the result of lengthy, intensive arms'-length negotiations among the Parties and that
13 this Settlement Agreement shall not be construed in favor of or against any Party based on the extent
14 to which any Party or their counsel participated in the drafting of this Settlement Agreement. Plaintiff
15 and Defendants expressly waive the common-law and statutory rule of construction that ambiguities
16 should be construed against the drafter of an agreement and further agree, covenant, and represent that
17 the language in all parts of this Settlement Agreement shall be in all cases construed as a whole,
18 according to its fair meaning.

19 89. Captions and Interpretations. Paragraph titles or captions contained herein are inserted
20 as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope
21 of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is
22 contractual and not merely a recital.

23 90. Binding On Assigns. This Settlement Agreement shall be binding upon and inure to
24 the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
25 successors and assigns.

26 91. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
27 because the members of the Settlement Class are numerous, it is impossible or impractical to have
28 each Settlement Class Member execute this Settlement Agreement. The Notice will advise all

1 Settlement Class Members of the binding nature of the release provided herein and such Release
2 shall have the same force and effect as if this Settlement Agreement were executed by each
3 Settlement Class Member.

4 92. Voluntary Agreement. The Parties acknowledge that they have entered into this
5 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
6 or undue influence of any Party, and not in reliance on any promises, representations, or statements
7 made by the other Parties other than those contained in this Settlement Agreement. Each of the
8 Parties hereto expressly waves any right they might ever have to claim that this Settlement
9 Agreement was in any way induced by fraud.

10 93. Opportunity to Consult with Counsel. Prior to execution of this Settlement
11 Agreement, each Party has read this entire Settlement Agreement and has been given the
12 opportunity to consult with independent counsel of their choosing and to have such independent
13 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

14 94. Counterparts. This Settlement Agreement may be executed in counterparts, and when
15 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
16 an original, and, when taken together with other signed counterparts, shall constitute one fully-signed
17 Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic
18 signatures shall have the same force and effect as an original.

19 95. Invalidity of Any Provision. Before declaring any provision of this Settlement
20 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
21 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
22 and enforceable.

23 96. Cooperation. The Parties and their counsel will cooperate with each other and use their
24 best efforts to implement the Settlement.

25
26 Dated: _____

By: _____
Luz Padilla

1 Settlement Class Members of the binding nature of the release provided herein and such Release
2 shall have the same force and effect as if this Settlement Agreement were executed by each
3 Settlement Class Member.

4 92. Voluntary Agreement. The Parties acknowledge that they have entered into this
5 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion, duress,
6 or undue influence of any Party, and not in reliance on any promises, representations, or statements
7 made by the other Parties other than those contained in this Settlement Agreement. Each of the
8 Parties hereto expressly waves any right they might ever have to claim that this Settlement
9 Agreement was in any way induced by fraud.

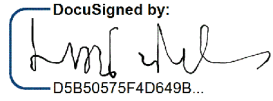
10 93. Opportunity to Consult with Counsel. Prior to execution of this Settlement
11 Agreement, each Party has read this entire Settlement Agreement and has been given the
12 opportunity to consult with independent counsel of their choosing and to have such independent
13 counsel advise as to the meaning of this Settlement Agreement and its legal effect.

14 94. Counterparts. This Settlement Agreement may be executed in counterparts, and when
15 each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed
16 an original, and, when taken together with other signed counterparts, shall constitute one fully-signed
17 Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic
18 signatures shall have the same force and effect as an original.

19 95. Invalidity of Any Provision. Before declaring any provision of this Settlement
20 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent
21 possible consistent with applicable precedents so as to define all provisions of this Agreement valid
22 and enforceable.

23 96. Cooperation. The Parties and their counsel will cooperate with each other and use their
24 best efforts to implement the Settlement.

25
26 Dated: 2/10/2023 _____

By:  _____
Luz Padilla

Shin Nihon Kosan, Inc., a California corporation;
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; Shogun Temecula, LLC, a
California limited liability company

Dated: _____

By: _____

Bruce Kanenobu

Title: President

APPROVED AS TO FORM:

DATED: February 13, 2023

LAW OFFICE OF SCOTT ERNEST WHEELER



By: _____

Scott Ernest Wheeler
Justin A. Wheeler

Attorneys for Plaintiff and all others similarly situated

DATED: February ____, 2023

GORDON REES SCULLY MANSUKHANI

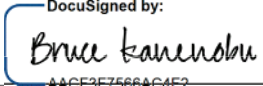
By: _____

Mark Posard
Tatiana Dupuy

Attorneys for Defendants

Shin Nihon Kosan, Inc., a California corporation;
 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; Shogun Temecula, LLC, a
 California limited liability company

Dated: February 11, 2023 | 9:36 PM PST

DocuSigned by:

 AAGF3F7566AC4F2...

Bruce Kanenobu

Title: President

APPROVED AS TO FORM:

DATED: December __, 2022

LAW OFFICE OF SCOTT ERNEST WHEELER

By: _____
 Scott Ernest Wheeler
 Justin A. Wheeler

Attorneys for Plaintiff and all others similarly situated

DATED: ~~December __, 2022~~
 February 13, 2023

GORDON REES SCULLY MANSUKHANI

By: 
 Mark Posard
 Tatiana Dupuy

Attorneys for Defendants

EXHIBIT 1

NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

LUZ PADILLA v. SHOGUN RESTAURANT, INC., ET AL.,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO
CASE NO.: CIVSB2117165**

PLEASE READ THIS NOTICE

A class and representative action under the Private Attorneys General Act, California Labor Code sections 2699-2699.5. (“PAGA”) against Defendants Shin Nihon Kosan, Inc., Shogun Restaurant, Inc., Shogun La Verne, LLC, Shogun Corona, LLC, Shogun Murrieta, LLC, Shogun Temecula, LLC. (“Defendants”) has been preliminarily approved for settlement. In the lawsuit, Plaintiff, Luz Padilla (“Plaintiff”) alleged that Defendants failed to properly compensate Class Members for all hours worked, failed to provide Class Members with compliant meal and/or rest periods or compensation in lieu thereof, failed to pay overtime wages, failed to pay minimum wages, failed to timely pay all wages, failed to pay all wages due to quitting and discharged employees at the time of separation, failed to maintain accurate payroll records, failed to provide accurate wage statements, and penalties predicated on the Labor Code violations pursuant to Labor Code sections 2699-2699.5. Defendants deny Plaintiff’s allegations and contend that they complied with applicable law.

Class Member(s) are defined as: All non-exempt employees who worked for Defendants in the State of California from June 15, 2017 through March 1, 2023 (“Class Period” and collectively, the Class Members are referred to as the “Class”).

The PAGA period is April 11, 2020 to March 1, 2023.

You have been identified by Defendants’ records as a Class Member in the above-entitled action, and as such, you are subject to the terms of the Class Action and PAGA Settlement Agreement And Release (“Settlement”), preliminarily approved by the Court. Please read this notice carefully. It may affect your legal rights. Defendants will not retaliate against you for any actions you take with respect to the settlement.

YOUR LEGAL RIGHTS AND OPTIONS WITH RESPECT TO THE SETTLEMENT	
Participate in the Settlement	If you want to remain in the Class, be bound by the Settlement and receive your Individual Settlement Payment, and if eligible, PAGA Payment , then you need not do anything.
Exclude Yourself From the Settlement	If you do not want to be bound by the Settlement, you must follow the instructions in Section 6 to exclude yourself. If you exclude yourself, you will not receive your Individual Settlement Payment, and you will not release the Settled Claims against Released Parties defined in Section 4 below. If this Settlement is approved by the Court, and you are a PAGA Member, you will receive your PAGA payment and the Settled PAGA Claims will be released even if you exclude yourself from the Settlement.
Object to the Settlement	If you want to object to the Settlement, you must follow the instructions in Section 7. If you object, you will still be bound by the terms of the Settlement, if approved by the Court.

1. WHY DID I GET THIS NOTICE?

You have received this Notice because Defendants’ records reflect that you are a Class Member as defined above. This Notice provides you with information about (1) the terms of the Settlement, including the claims that are being released, (2) the total monetary amount of the Settlement, (3) your estimated Individual Settlement Payment provided you remain a Settlement Class Member, and (4) where to find additional information regarding the case and the Settlement.

NO ACTION NEEDS TO BE TAKEN TO RECEIVE MONEY UNDER THE SETTLEMENT: If you do nothing, then you will be automatically included in the Settlement and do not need to take any further action to receive a payment.

2. WHAT IS THIS CASE ABOUT?

The Class Action Complaint for Damages was filed on June 22, 2021, in the Superior Court of California, County of San Bernardino, commencing the lawsuit entitled *Luz Padilla v. Shogun Restaurant, Inc., et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2117165. Plaintiff alleged on behalf of herself and the Class the following claims against Defendants: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay overtime wages; (4) failure to pay minimum wages; (5) failure to pay timely wages; (6) failure to pay all wages due to discharged and quitting employees; (7) failure to furnish accurate, itemized wage statements; (8) failure to maintain records; (9) unfair business competition; and (10) violation of PAGA, predicated on the violations of the California Labor Code and applicable IWC Wage Order as alleged in the Operative Complaint.

The resolution of the PAGA claim (“PAGA Settlement”) includes any Class Members who are employed or have been employed by Defendants in the State of California during the time period from April 11, 2020 through March 1, 2023 (“PAGA Members”).

Defendants deny any liability or wrongdoing of any kind. Defendants contend, among other things, that they complied at all times with the California Labor Code and the Business and Professions Code, and that employees were correctly and timely paid all wages, and that meal periods and rest breaks are provided as required by applicable law.

The Court has not ruled on the merits of Plaintiff’s claims. By preliminarily approving the Settlement and issuing this Notice, the Court is not suggesting which side would win or lose this case on the merits. Rather, the Court has determined only that there is sufficient evidence to determine on a preliminary basis that the proposed Settlement is fair, adequate, and reasonable and any final determination of those issues will be made at the final approval hearing.

3. THE SETTLEMENT TERMS AND CALCULATION OF INDIVIDUAL SETTLEMENT PAYMENTS AND PAGA PAYMENTS.

Without admitting any wrongdoing, and to avoid the business disruptions caused by litigating these claims, Defendants have agreed to pay a Gross Settlement Amount of One Million Dollars and zero cents (\$1,000,000.00) to settle the Action if approved by the Court.

The following amounts will be paid from the Gross Settlement Amount:

- Service Payment to Plaintiff for his service as Class Representative in the amount of up to Six Thousand Dollars and Zero Cents (\$6,000.00);
- Attorneys’ Fees not to exceed Three Hundred and Thirty-Three Thousand Dollars (\$333,000.00) (i.e., 1/3 of the Gross Settlement Amount) to Class Counsel and up to Twenty Thousand Dollars and Zero Cents (\$20,000.00) for reimbursement of litigation costs and expenses (“Attorneys’ Costs”);
- The amount of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) allocated to the payment of civil penalties under PAGA (the “PAGA Allocation”);
- The costs associated with administration of the Settlement, estimated to be Twenty Thousand Dollars and Zero Cents (\$23,000.00) (“Settlement Administration Costs”).

Individual Settlement Payment: The amount remaining from the Gross Settlement Amount after the above deductions is called the “Net Settlement Amount”. The Net Settlement Amount will be allocated to all Class Members who do not request to be excluded from the Settlement (“Settlement Class Members”) on a *pro rata* basis, based on their number of Compensable Work Weeks. Each payment is called an “Individual Settlement Payment” and will be calculated as follows:

1. The Settlement Administrator will determine the number of work weeks worked by Class Members in California as a non-exempt employee during the Class Period (“Compensable Work Weeks”);
2. The Settlement Administrator will determine the value of a single Compensable Work Week by dividing the Net Settlement Amount by the total number of Compensable Work Weeks for each Settlement Class Member resulting in a payment ratio; and
3. Each Settlement Class Member shall receive a gross Individual Settlement Payment equal to his or her Compensable Work Week payment ratio multiplied by the Net Settlement Amount.

Based on your Compensable Work Weeks, your individual settlement payment as a Settlement Class Member is estimated to be \$_____.

PAGA Payment: A total of One Hundred Thousand Dollars and Zero Cents (\$100,000.00) of the Gross Settlement Amount has been allocated to PAGA Settlement. Of this amount, 75% or Seventy-Five Thousand Dollars (i.e., \$75,000.00) will be paid to California’s

Labor & Workforce Development Agency, and 25% or Twenty-Five Thousand Dollars (i.e., \$25,000.00) (the “Net PAGA Distribution Amount”) will be paid on a *pro-rata* basis to PAGA Members.

1. The Settlement Administrator will determine the number of weeks worked by PAGA Members as non-exempt employees in California during the period from April 11, 2020 through March 1, 2023 (“Compensable PAGA Work Weeks”);
2. The Settlement Administrator will determine the value of a single Compensable PAGA Work Week by dividing the Net PAGA Distribution Fund by the total number Compensable PAGA Work Weeks by all PAGA Members.
3. Each PAGA Member shall receive a PAGA Payment equal to his or her Compensable PAGA Work Weeks multiplied by the value of a single Compensable PAGA Work Week.

Based on these PAGA Compensable Work Weeks, your PAGA Payment is estimated to be \$ [REDACTED].

If you dispute the above information, you may submit a written dispute to the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks allocated to you (“Dispute”) to the Settlement Administrator. Your Dispute must: (1) contain your name, address, and telephone number and the case name and number of this action, *Luz Padilla v. Shogun Restaurant, Inc., et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2117165; (2) be signed by you; (3) be postmarked, emailed or fax stamped on or before [REDACTED] and returned to the Settlement Administrator at the address, email or fax number listed below; (4) clearly state the number of Compensable Work Weeks and/or Compensable PAGA Work Weeks you believe are correct; and (5) attach any documentary evidence you have to prove the number of contented Compensable Work Weeks and/or Compensable PAGA Work Weeks.

ILYM Group, Inc.
Re: *Luz Padilla v. Shogun Restaurant, Inc., et al.*,
[REDACTED]
Phone: (800) [REDACTED]
Facsimile: (714) [REDACTED]
Email: [REDACTED]

Ten (10%) of each Individual Settlement Payment will be allocated to wages and subject to all applicable employee state and federal tax withholdings; seventy percent (70%) of each Individual Settlement Payment will be considered penalties and any other non-wage related amount; and twenty (20%) of each Individual Settlement Payment will be considered interest. The amount allocated as wages will be reported on an IRS form W-2, and the remaining amount allocated as penalties, liquidated damages, interest and other non-wage payments will be reported on an IRS form 1099. One hundred percent (100%) of each PAGA Payment will be allocated as penalties and be reported on an IRS form 1099.

In addition to the Gross Settlement Amount, Defendants will pay all employer-payroll taxes and contributions in connection with the portion of the Settlement allocated towards wages at the time the Gross Settlement Amount is funded.

Class Members are responsible for paying taxes on any amounts received. This Notice is not tax advice and you should consult your tax advisor. Checks will be valid and negotiable for one-hundred and eighty (180) days; after that checks will become void and a stop payment will be placed on the uncashed checks. Settlement checks that are not cashed within one-hundred and eighty (180) days of mailing, or are returned to the Settlement Administrator, will be cancelled and the Settlement Administrator shall send the funds associated with uncashed checks to the State of California Controller’s Office, Unclaimed Property Division, in the name of the affected Class Member. **Class Members will be bound by the Settlement even if they do not cash their settlement checks.**

4. WHAT AM I RELEASING AS A CLASS MEMBER UNDER THE SETTLEMENT?

If you do nothing, you will receive your Individual Settlement Payment.

If and when the Court grants final approval of the Settlement, as of the date Defendants fully fund the settlement, all Class Members who do not opt out of the Settlement (“Settlement Class Members”), hereby do and shall fully and finally release and discharge Released Parties, from June 15, 2017, through March 1, 2023, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, or causes of action contingent or accrued for, that are pleaded, or that could have been pleaded, based on the facts and claims alleged in the Operative Complaint, including any claims for: (a) failure to provide required meal periods, California Labor Code §§ 226.7, 510 and 512; (b) failure to provide required rest periods, California Labor Code §§ 226.7 and 512; (c) failure to pay overtime wages, California Labor Code §§ 510, 1194 and 1198; (d) failure to pay minimum wages, California Labor Code §§ 1194 and 1197; (e) failure to timely pay wages §§ 204 and 210; (f) failure to timely pay all wages during employment and to discharged and quitting employees, California Labor Code §§ 201-204, 210; (f) failure to furnish accurate, itemized wage statements, California Labor Code §§ 226 and 226.3; and (g) unlawful business practices under California, Business and Professions Code § 17200, et seq.; predicated on any of the violations of the California Labor Code and the applicable IWC Wage Order as alleged in the Operative

Complaint including but not limited to, claims for restitution and other equitable relief, liquidated damages, or penalties; and any other benefit, wages, penalties, or other amounts claimed on account of the allegations or the primary rights asserted in the Operative Complaint. This release shall apply to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all Participating Class Members will forever completely release and discharge the Released Parties from the Released Claims for the Release Period. Plaintiff and Defendants intend that the Settlement described in this Settlement Agreement will release and preclude any further claim, whether by lawsuit, administrative claim or action, arbitration, demand, or other action of any kind, by each and all of the Participating Class Members to obtain a recovery to any and all of the Released Claims. This release excludes the release of claims not otherwise permitted by law, i.e. Worker's Compensation and unemployment insurance benefits. This release shall apply to any and all claims arising at any point during the Class Period. Upon entry of the Final Approval Order and funding of the total Gross Settlement Amount, all Class Members will forever completely release and discharge the Released Parties from the Released Claims for the Release Period.

"Released Parties" collectively mean: (i) Defendants; (ii) Defendants' respective past, present and future heirs, executors, administrators, parents, subsidiaries and affiliates, equity sponsors, divisions, joint venturers, predecessors, successors, joint employers, and assigns; and (iii) the past, present and future directors, trustees, stockholders, shareholders, managers, officers, partners, members, agents, employees, attorneys, insurers, predecessors, successors and assigns of any of the foregoing, and all persons acting under, and all other representatives of Defendants by, through or in concert with any of them, and each of them. Shogun Kobe, Inc. is specifically excluded as a Released Party under the terms of this Settlement Agreement.

5. WHAT AM I RELEASING AS A PAGA MEMBER UNDER THE SETTLEMENT?

As of the date Defendants fully fund the settlement, all PAGA Members, hereby do and shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged any and all of the Released Parties of and from any and all Settled PAGA Claims.

"Settled PAGA Claims" means penalties under PAGA only, and not for underlying wage and hour claims which the claims for penalties are based upon, as alleged in the Operative Complaint and the PAGA Notice filed by Plaintiff, and as described in section 4, above.

Released Parties is defined in section 4 of this Notice above.

PAGA MEMBERS CANNOT OPT-OUT OR EXCLUDE THEMSELVES FROM THE PAGA SETTLEMENT OR RELEASE OF SETTLED PAGA CLAIMS AND WILL RECEIVE A PAGA PAYMENT EVEN IF THEY OPT-OUT OF THE CLASS SETTLEMENT.

6. WHAT IF I DON'T WANT TO PARTICIPATE IN THE CLASS SETTLEMENT?

You have the right to request exclusion from the Settlement as a Class Member and with regards to the settlement of Settled Claims, but you are not able to exclude yourself as a PAGA Member. To exclude yourself as a Settlement Class Member, you must submit a written Request for Exclusion to the Settlement Administrator ("Opt-Out Request") at the address, email or fax number listed in section 3 of this Notice above.

A valid and complete Opt-Out Request must (1) contain the name, address, and telephone number of the Class Member requesting exclusion and the case name and number of the *Padilla* Action (i.e., *Luz Padilla v. Shogun Restaurant, Inc., et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2117165); (2) be signed by the Class Member; (3) be postmarked, emailed or fax stamped on or before **[INSERT DATE]** and returned to the Settlement Administrator at the specified address, email address or fax number listed in section 3 of this Notice above; and (4) contain a statement something substantially similar to:

"I WISH TO BE EXCLUDED FROM THE SETTLEMENT OF CLASS CLAIMS IN THE LUZ PADILLA V. SHOGUN RESTAURANT, INC., ET AL., LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE AN INDIVIDUAL SETTLEMENT PAYMENT FROM THE SETTLEMENT OF THE LAWSUIT. I UNDERSTAND THAT THE PAGA CLAIM WILL STILL BE RELEASED AND SETTLED."

It is your responsibility to ensure that the Settlement Administrator timely receives your request to be excluded from the Settlement. Unless you timely request to be excluded from the Settlement, you will be bound by the judgment upon final approval of the Settlement.

Class Members who request to be excluded from the Settlement will NOT receive their Individual Settlement Payment and will not release any of the Settled Claims. However, Class Members who are also PAGA Members will receive their PAGA Payment and release the Settled PAGA Claims regardless of whether they submit an Opt-Out Request.

7. WHAT IF I WANT TO OBJECT TO THIS SETTLEMENT?

Any Settlement Class Member may object to the Settlement or to any settlement term. If the Court denies approval, no payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

If you wish to object, you must submit the written objection to the Settlement Administrator (“Objection”) to the following address or fax number listed in section 3 of this Notice above. A valid and timely Objection must (1) contain the name, address, and telephone number of the Settlement Class Member objecting and the case name and number of the *Padilla* Action (i.e., *Luz Padilla v. Shogun Restaurant, Inc., et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2117165 be signed by the Settlement Class Member; (3) give the legal and factual basis for their objection; and (4) be postmarked, emailed or fax stamped on or before **[INSERT DATE]** and returned to the Settlement Administrator at the specified address, email address or fax number in section 3 of the Notice above. Any written objection will not be presumptively invalidated if the objections do not comply with requirements (1), (2) and (3) as long as the written objection is timely received pursuant to requirement (4).

The submission of an objection will **not** exclude you from the Settlement. If the Court grants final approval of the Settlement, you will still receive an Individual Settlement Payment and will be barred from pursuing the Settled Claims. **Do not file both an Objection and Opt-Out Request.** If you file both an Objection and an Opt-Out Request, you will be excluded from the Settlement and the Objection will not be considered.

8. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval Hearing is scheduled to take place on **[INSERT DATE AND TIME]** in Department S-26 of the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415. The final approval hearing may be continued without further notice to Class Members. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

9. WHO ARE THE ATTORNEYS?

Attorneys for Plaintiff and the Class are:

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622

Attorneys for Defendants are:

GORDON REES SCULLY MANSUKHANI

Mark Posard (SBN 208790)
Tatiana Dupuy (SBN 246705)
101 W. Broadway, Suite 2000
San Diego, California 92101
Telephone: (619) 230-7415
Facsimile: (619) 696-7124

The Court has decided that the Attorney for Plaintiff and the Class are qualified to represent the Settlement Class Members. Other than the Attorneys’ Fees and Attorneys’ Costs approved by the Court, which will be paid out of the Gross Settlement Amount, you will not be charged for their services.

10. SHOULD I GET MY OWN LAWYER?

You do not need to get your own lawyer. If you want your own lawyer to speak for you or appear in Court, you have the right to hire one, but you will have to pay for that lawyer yourself.

11. FURTHER INFORMATION.

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Superior Court of the State of California, San Bernardino Superior Court – Civil Justice Center, located at 247 West 3rd Street, San Bernardino, California 92415 or at the Court’s website at: <https://www.SB-court.org>. Documents regarding this Settlement may also be found on the Internet at: <https://www.sb-court.org/divisions/civil-general-information/court-case-information-and-document-sales>.

12. SAN BERNARDINO COUNTY SUPERIOR COURT SOCIAL DISTANCING PROCEDURES

Please go to www.sb-Court.org for all updates regarding the Court’s current social distancing procedures for attendance at hearings and review of court files.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE
ABOUT THIS SETTLEMENT.**

EXHIBIT 2

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)
3 Justin A. Wheeler (SBN 342226)
4 250 West First Street, Suite 216
5 Claremont, California 91711
6 Telephone: (909) 621-4988
7 Facsimile: (909) 621-4622
8 Email: sew@scottwheelerlawoffice.com
9 jaw@scottwheelerlawoffice.com

10 *Attorney for Plaintiff and the Putative Class*

11 **GORDON REES SCULLY MANSUKHANI**

12 Mark Posard (SBN 208790)
13 Tatiana Dupuy (SBN 246705)
14 101 W. Broadway, Suite 2000
15 San Diego, California 92101
16 Telephone: (619) 230-7415
17 Facsimile: (619) 696-7124
18 Email: mposard@grsm.com
19 tdupuy@grsn.com

20 *Attorneys for Defendants*

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **COUNTY OF SAN BERNARDINO**

23 **SAN BERNARDINO JUSTICE CENTER**

24 LUZ PADILLA, individually, and on
25 behalf of all others similarly situated,

26 Plaintiff,

27 v.

28 SHIN NIHON KOSAN, INC., a California
Corporation; SHOGUN RESTAURANT,
INC., a California corporation; SHOGUN
LAVERNE, LLC., a California limited
liability company; SHOGUN CORONA,
LLC, a California limited liability
company; SHOGUN MURRIETA, LLC, a
California limited liability company;
SHOGUN TEMECULA, LLC, a California
limited liability company; and DOES 1
through 50, inclusive
Defendants.

CASE NO.: CIVSB2117165

[Hon. Dave Cohn, Dept. S-26]

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Action Filed: June 22, 2021
Trial Date: None Set

1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 The Court now has before it, Plaintiff's unopposed Motion for Preliminary Approval of Class
3 Action Settlement ("Motion"). After reviewing the Motion, the Class Action and PAGA Settlement
4 Agreement and Release ("Settlement Agreement") and exhibits attached thereto, and good cause
5 appearing therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the
7 Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness,
8 and therefore meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following class (the
10 "Class" or "Settlement Class"):

11 All non-exempt employees who worked for Defendants in the State of California from
12 June 15, 2017 through March 1, 2023.

13 The Class Period is from June 15, 2017, through March 1, 2023.

14 3. The Court conditionally approves for settlement purposes the PAGA allocation of this
15 settlement to the California Labor and Workforce Development Agency ("LWDA") and PAGA
16 Members.

17 The PAGA Period is from April 11, 2020 through March 1, 2023.

18 4. The Court finds, for settlement purposes, that the Class meets the requirements for
19 certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous that
20 joinder is impractical; (2) there are questions of law and fact that are common, or of general interest,
21 to the Class, which predominate over any individual issues; (3) Plaintiff's claims are typical of the
22 claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately protect the interests
23 of the Class; and (5) a class action is superior to other available methods for the fair and efficient
24 adjudication of the controversy.

25 5. The Court appoints, for settlement purposes, Plaintiff Luz Padilla as Representative for
26 the Class.

27 6. The Court appoints, for settlement purposes, the Law Office of Scott E. Wheeler as
28 Counsel for the Class.

1 7. The Parties are ordered to carry out the Settlement according to the terms of the
2 Settlement Agreement.

3 8. The Court appoints ILYM Group, Inc. (“ILYM”) as the Settlement Administrator and
4 is ordered to carry out the administration of the settlement according to the terms of the Settlement
5 Agreement.

6 9. The Court approves as to form and content of the Class Action and PAGA Settlement
7 Notice. The Court finds that the dates selected for the mailing and distribution of the Notice Packet
8 meet the requirements of due process, provide the best notice practicable under the circumstances,
9 and shall constitute due and sufficient notice to all persons entitled thereto.

10 10. If any Class Member objects to the Settlement Agreement, the objecting party is not
11 required, either personally or through counsel: 1) to appear at the hearing on the motion for final
12 approval for that party’s objection to be considered; or 2) to file or serve, or to state in the objection,
13 a notice of intention to appear at the hearing on the motion for Final Approval of the Class Settlement.

14 11. ILYM, the Settlement Administrator, shall provide notice to any objecting party of any
15 continuance of the hearing of Plaintiff’s Motion for Final Approval.

16 12. The Parties are ordered to carry out the Settlement according to the following
17 implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class Information	
Last day for Settlement Administrator, CPT to mail Class Notice	
Last day for Class Members to submit a dispute regarding Workweeks, Request for Exclusion, or written Objection	
Last Day for Plaintiff to file Motion for Final Approval of the Class Settlement, Attorneys’ Fees and Costs and Class Representative Service Award	Per Code.
Final Approval Hearing	

1 13. The Court finds that the method of giving notice to the Class constitutes the best means
2 practicable of providing notice under the circumstances. The Court further finds that the Notice Packet
3 and the method of giving notice to the Class meet the requirements of California Code of Civil
4 Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the
5 California and United States Constitutions, and other applicable law.

6 14. At the Final Approval Hearing, the Court will consider whether the Settlement should
7 be finally approved as fair, reasonable and adequate, whether a final judgment should be entered, and
8 whether the payments provided for under the Settlement, including attorneys' fees and costs and class
9 representative service award, should be finally approved and granted.

10 15. Pending the Final Approval Hearing, all proceedings in this Action, other than
11 proceedings necessary to implement the Settlement and this Order, are stayed.

12 **IT IS SO ORDERED.**

13
14 DATED: _____

HONORABLE DAVE COHN
JUDGE OF THE SUPERIOR COURT