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situated***FILED**
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

SEP 13 2021

BY


GLORIA MARIN, DEPUTY**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**LUZ PADILLA, individually, and on behalf of
all others similarly situated,

Plaintiff,

v.

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

Defendants.

CASE NUMBER: CIVSB 2117165

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Required Meal Periods
2. Failure to Provide Required Rest Breaks
3. Failure to Pay Overtime Wages
4. Failure to Pay Minimum Wages
5. Failure to Pay All Wages Due to Discharged and Quitting Employees
6. Failure to Maintain Required Records
7. Failure to Furnish Accurate Itemized Statements
8. Unfair and Unlawful Business Practices

REPRESENTATIVE ACTION

9. Penalties Under the Labor Code Private Attorneys General Act

DEMAND FOR JURY TRIAL**By Fax**

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SEP 13 2021

SUPERIOR COURT OF CALIFORNIA
SAN BERNARDINO COUNTY

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

12
13 LUZ PADILLA, individually, and on behalf of
14 all others similarly situated,

15 Plaintiff,

16 v.

17 SHOGUN RESTAURANT, INC., a California
18 corporation; SHOGUN LA VERNE, LLC., a
19 California limited liability company;
20 SHOGUN CORONA, LLC., a California
21 limited liability company; SHOGUN
22 MURRIETA, LLC., a California limited
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DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. This is a class and representative action brought by Luz Padilla (“Plaintiff”), on behalf
3 of herself and all other similarly situated individuals, against Shogun Restaurant, Inc. (“Shogun”),
4 Shogun Corona LLC (“Shogun Corona”), Shogun La Verne LLC (“Shogun La Verne”), and Shogun
5 Murrieta LLC (“Shogun Murrieta LLC”) (hereinafter referred to as collectively as “Defendants”), in
6 order to hold Defendants accountable for wage theft and other violations of California wage and hour
7 laws. Plaintiff makes the following allegations on information and belief, except as to allegations
8 pertaining to Plaintiff individually, which are based on her respective personal knowledge.

9 2. Defendants operate private, for-profit Japanese Teppan steak and sushi restaurants
10 in Rancho Cucamonga, California and other locations throughout Southern California, including
11 but not limited to, Corona, La Verne, Temecula, Palm Desert, Pasadena, San Diego and San
12 Marcos.

13 3. At all relevant times herein, Defendants have implemented common policies and
14 practices designed to maximize profits at the expense of its non-exempt employees. These policies
15 and practices have resulted in systematic violations of California’s wage and hour laws.

16 4. Defendants maximize profits by cutting labor costs through understaffing, denying
17 meal and rest breaks, cheating its non-exempt employees out of wages and premiums, failing to
18 provide accurate and itemized wage statements, failing to provide sick leave, COVID-19 sick leave
19 and supplemental leave under pursuant to the California Labor Code and related violations of
20 California wage and hour laws. For instance, in order to minimize labor costs, Defendants have
21 implemented unlawful policies with respect to meal and rest breaks. Defendants require its non-
22 exempt employees to work through meal and rest breaks, take their meal periods and breaks at times
23 after the start of the fifth hour from the beginning of their shifts, and/or their meal and rest periods are
24 cut short due to staffing shortages and the needs of Defendants in assisting customers. As a result,
25 Plaintiff and other non-exempt employees have been denied the ability to take the legally-compliant
26 meal and rest breaks that they were and are entitled to take.

27 5. Defendants also fail to compensate non-exempt employees at their regular rate of pay
28 for meal and rest period premium payments, to the extent any are paid, and non-discretionary bonus

1 payments are not calculated into the regular rate of pay for non-exempt employees which results in
2 the systematic underpayment of wages to Plaintiff and other non-exempt employees. Defendants also
3 willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt employees
4 perform as a direct consequence of Defendants inadequate staffing and imposition of an unreasonable
5 workload. Moreover, Defendants uniformly failed to pay Plaintiff and other aggrieved employees
6 proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock work that
7 Plaintiff and other non-exempt employees perform as a direct consequence of Defendants
8 understaffing and imposition of an unreasonable workload. Finally, Defendants have failed to pay
9 final wages to Plaintiff and other aggrieved employees who were employed by Defendants.

10 6. Plaintiff seeks declaratory, compensatory and other statutorily available relief for
11 herself and a Class of all current and former non-exempt employees of Defendants during the
12 applicable limitations period to compensate these workers for the wages Defendants has stolen from
13 the Class members and to protect current and future workers from being subjected to similar unlawful
14 working conditions perpetrated by Defendants.

15 **JURISDICTION AND VENUE**

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

20 8. Venue is proper in this judicial district and the County of San Bernardino because
21 Plaintiff, and all other persons similarly situated, performed work for Defendants in San Bernardino
22 County, Defendants have a restaurant located within San Bernardino County, and Defendants illegal
23 payroll policies and practices, which are the subject of this action were applied, at least in part, to
24 Plaintiff, and other persons similarly situated, in the County of San Bernardino.

25 **THE PARTIES**

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

1 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun
2 Restaurant, Inc., is and at all times relevant hereto was, a corporation organized and existing under the
3 laws of the State of California.

4 11. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun La
5 Verne, LLC, is and at all times relevant hereto was, a company organized and existing under the laws
6 of the State of California.

7 12. Plaintiff is informed and believes, and thereon alleges, that Defendant, Shogun Corona,
8 LLC, is and at all times relevant hereto was, a company organized and existing under the laws of the
9 State of California.

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

13 14. At all relevant times herein, Defendants were the joint employers of Plaintiff and the
14 other Class members. Defendants were the alter egos, divisions, affiliates, integrated enterprises,
15 joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
16 partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was
17 completely dominated by his, her or its co-Defendants, and each was the alter ego of the other.
18 Moreover, at all material times there has been extensive interrelation of operations, common
19 management, centralized control of labor relations with respect to Plaintiff and Class members, and
20 common ownership or financial control between all Defendants.

21 15. At all times relevant herein, Defendants have jointly owned and operated Shogun
22 restaurants located at the following addresses:

- 23 a. Pasadena Shogun
24 470 N. Halstead St.
25 Pasadena, CA 91107
26 b. San Diego Shogun
27 5451 Kearny Villa Rd
28 San Diego, CA 92123

- c. La Verne Shogun
2123 Foothill Blvd.
La Verne, CA 91750
- d. Corona Shogun
275 Teller Street. #130
Corona, CA 92879
- e. San Marcos Shogun
695 S. Rancho Santa Fe Road
San Marcos, CA 92078
- f. Temecula – Murrieta Shogun
41501 Margarita Road. #L-101
Temecula, CA 92591
- g. Palm Desert Shogun
74225 HWY 111
Palm Desert, CA 92260
- h. Rancho Cucamonga Shogun
11950 East Foothill Blvd
Rancho Cucamonga, CA 91739

16. Plaintiff is informed and believes, and based thereon alleges, in all respects pertinent to this action, Defendants jointly employed Plaintiff and the other Class members, and as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and as joint employers are jointly liable for the violations as alleged herein.

17. Plaintiff is informed and believe, and based thereon alleges, that each defendant sued in this action, including each defendant sued by the fictitious names DOES 1 through 50, inclusive, is directly or indirectly responsible in some manner for the occurrences, controversies and damages alleged herein, in various capacities, including but not limited to serving as joint employer, joint tortfeasor, single enterprise, alter ego, or agents of the other defendants. Each defendant approved, participated in, controlled, or ratified the acts of all other defendants.

18. As a direct and proximate result of the unlawful actions of Defendants, and each of them, Plaintiff and Class members have suffered, and continue to suffer, from loss of earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction of this Court.

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

8 **CLASS ACTION ALLEGATIONS**

9 20. Pursuant to Cal. Code of Civ. P. § 382, Plaintiff brings this action on behalf of herself
10 and the following Class:

11 All current and former non-exempt employees of Defendants who performed
12 work for Defendants in the State of California during the relevant statute of
 limitations period.

13 21. Plaintiff reserves the right to name additional Class representatives as may be
14 necessary and appropriate. Plaintiff also reserves the right to modify or amend the definition of the
15 proposed Class and/or add subclasses before the Court determines whether certification is
16 appropriate.

17 22. This action is appropriately suited for a class action because:

18 A. The proposed Class is a significant number. Plaintiff is informed and believes
19 that the proposed Class consists of at least three (300) hundred current and former non-exempt
20 employees, rendering joinder impractical.

21 B. This action involves common questions of law and fact to the proposed Class
22 because the action focuses on Defendants systematic course of illegal payroll practices and policies,
23 which was applied to all non-exempt employees in uniform violation of the California Labor Code,
24 IWC Wage Orders, and the California Business and Professions Code, which prohibits unfair
25 business practices arising from such violations. Here are a few common questions of law and fact
26 that will drive resolution of this action:

27 1. Whether Defendants failed to provide non-exempt employees with
28

legally compliant meal periods and rest breaks, and whether Defendants properly paid premium pay as a result of missed and non-compliant meal periods and rest breaks;

2. Whether Defendants failed to pay overtime and minimum wages non-exempt employees in compliance with California law;
3. Whether Defendants miscalculated the regular rate of pay for all non-exempt employees in compliance with California law;
4. Whether Defendants failed to maintain required records and accurate wage statements for non-exempt employees;
5. Whether Defendants paid all wages due at the time of separation to the non-exempt employees;
6. Whether Defendants paid sick leave, COVID-19 sick leave and supplemental sick leave; and
7. Whether Defendant's engaged in unfair and/or unlawful business practices.

C. Plaintiff's claims are typical of the proposed Class because Defendants subjected all of its non-exempt employees to the similar and overlapping violations of the California Labor Code, the applicable IWC wage order, and the California Business and Professions Code.

D. Plaintiff is able to fairly and adequately protect the interests of all members of the proposed Class because it is in her best interests to prosecute the claims alleged herein to obtain full compensation due to the proposed Class for all services rendered and hours worked. Plaintiff has also retained counsel that is experienced in wage and hour class action litigation.

FIRST CAUSE OF ACTION

Failure to Provide Required Meal Periods

**[Cal. Lab. Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 5-2001, § 11
And All Other Applicable Wage Orders and Applicable Sections]
(On Behalf of Plaintiff and the Class against all Defendants)**

23. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 22 (A-D).

1 24. During the statute of limitations period, as part of Defendants unlawful policies and
2 practices to deprive its non-exempt employees of all wages earned and due, Defendants required,
3 permitted or otherwise suffered Plaintiff and Class members to perform work during their meal
4 periods, to completely skip their meal periods, to take late and short meal periods, and Defendants
5 have otherwise failed to provide the required meal periods to Plaintiff and Class members as required
6 under California Labor Code §§ 226.7, 512, and §§10-11 of all applicable IWC Orders.

7 25. Defendants have implemented several common policies and practices that have caused
8 Plaintiff and Class members to systematically miss and otherwise take non-compliant meal periods.
9 For example, Defendants have failed to adequately inform Plaintiff and Class members of their rights
10 to take meal periods under California law. Defendants also understaffed their restaurants such that
11 Plaintiff and Class members are given so much work to complete that they regularly miss or take
12 non-compliant meal periods. Plaintiff and Class members are so busy with their assigned duties and
13 responsibilities cooking, preparing food, waiting on customers, etc., which must be completed within
14 their scheduled shifts they are forced to skip their meal periods altogether, to take them after working
15 longer than five (5) hours, to perform work during their meal periods, or return to work after taking
16 less than a thirty (30) minute meal period.

17 26. Further, Defendants systemically deprived Plaintiff and Class members of the
18 opportunity to take second meal periods even though they regularly work shifts in excess of ten (10)
19 hours.

20 27. Despite work conditions that systematically result in missed and non-compliant meal
21 periods, and in order to keep labor costs down, Defendants have implemented a policy and practice of
22 discouraging payment of meal period premium payments. Moreover, Defendants, to the extent any
23 meal period premiums are paid, fail to pay such premiums at the regular rate of pay of the Class
24 members. In short, Defendants have violated California Labor Code §§ 226.7, §§ 10 and 11 of all
25 applicable IWC Wage Orders, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§
26 17200 *et. seq.*, by failing to compensate Plaintiff and Class members who were not authorized and
27 permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation
28 at the proper regular rate of pay for each workday that such a meal period was not authorized or

1 permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194, 1197, and §§
2 10 and 11 of all applicable IWC Wage Orders by failing to compensate Plaintiff and Class members
3 for all hours worked during their meal periods.

4 28. As a proximate result of the aforementioned violations, Plaintiff and Class members
5 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
6 interest, penalties, expenses, and costs of suit.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Provide Required Rest Breaks**

9 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12 And**
10 **All Other Applicable Wage Orders and Applicable Sections]**
11 ***(On Behalf of Plaintiff and the Class against all Defendants)***

12 29. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 28.

14 30. At all times relevant herein, as part of Defendants illegal policies and practices to
15 deprive its non-exempt employees of all wages earned and due, Defendants failed to permit Plaintiff
16 and Class members to take rest breaks as required under California Labor Code §§ 226.7 and 512,
17 and §§ 11-12 of all applicable IWC Wage Orders.

18 31. As with meal periods, Defendants' policies and practices caused Plaintiff and Class
19 members to miss or otherwise take non-compliant rest periods by, among other things, giving them
20 unreasonable mounts of work that had to be completed within their shift such that rest periods simply
21 could not be taken. This was the result of systematic understaffing at each of the restaurants.
22 Further, as set forth above, Defendants implemented skeletal staffing policies, which resulted in the
23 inability of Plaintiff and Class members to take compliant rest periods. In addition, Defendants did
24 not adequately notify Plaintiff and Class members of their rights to take rest periods, and
25 systematically denied them the opportunity to take rest periods.

26 32. Defendants further violated California Labor Code § 226.7, IWC Wage Order No. 5-
27 2001, § 12, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
28 failing to pay Plaintiff and Class members who were not provided with a rest break, in accordance

1 with the applicable wage order, one additional hour of compensation at the proper regular rate of pay
2 for each workday that a rest break was not provided.

3 33. As a proximate result of the aforementioned violations, Plaintiff and Class members
4 have been damaged in an amount according to proof at trial, and seek all wages earned and due,
5 interest, penalties, expenses, and costs of suit.

6 **THIRD CAUSE OF ACTION**
7 **Failure to Pay Overtime Wages**
8 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3**
9 **And All Other Applicable Wages Orders And Sections]**
10 ***(On Behalf of Plaintiffs and the Class against all Defendants)***

11 34. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 33.

13 35. Pursuant to California Labor Code §§ 510, 1194, and § 3 of all applicable wage
14 orders, Defendants are required to compensate Plaintiff and Class members for all overtime, which is
15 calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
16 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
17 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
18 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
19 work in any workweek.

20 36. During the statute of limitations period, Defendants failed to compensate Plaintiff and
21 Class members for all overtime hours worked as required under the foregoing provisions of the
22 California Labor Code and IWC Wage Orders by, among other methods, failing to pay overtime at
23 one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
24 510, 1194 and IWC Wage Order No. 4-2001, § 3 and all other applicable wage orders, requiring,
25 permitting or suffering Plaintiff and Class members to work off-the-clock, and to work through meal
26 and rest breaks, but not compensating them for this time, illegally and inaccurately recording time in
27 which Plaintiff and Class members worked, failing to pay the regular overtime rate of pay based upon
28 Plaintiff and Class members earned non-discretionary bonuses, and other methods to be discovered.

37. In violation of California law, Defendants have knowingly and willfully refused to perform its obligations to compensate Plaintiff and Class members for all wages earned and all hours worked at the legally required rates of pay. As a proximate result, Plaintiff and Class members have suffered, and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under state law, all to their respective damages in amounts according to proof at time of trial, and within the jurisdiction of this Court.

38. Defendants' conduct described herein violates California Labor Code §§ 510, 1194, 1198 and § 3 of all applicable IWC Wage Orders. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1, and other applicable provisions under the California Labor Code and IWC Wage Orders, Plaintiff and Class members are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

FOURTH CAUSE OF ACTION

Failure to Pay Minimum Wages

**[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001,
And § 4 And All Other Applicable Wages Orders And Sections]
(On Behalf of Plaintiffs and the Class against all Defendants)**

39. Plaintiffs incorporate herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 38.

40. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of IWC Wage Order No. 5-2001 and all applicable wage orders and sections, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

41. During the statute of limitations period, the hourly rates for Plaintiffs and Class members were at or slightly above minimum wage. Based on this common practice, Defendants failed to actually pay Plaintiffs and Class members minimum wages for all hours worked by requiring, permitting or suffering Plaintiffs and Class members to work off-the-clock, such as requiring them to work through meal and rest breaks, but not compensating them for this time as Plaintiff and the Class members were required to write down the time of their work shifts on their

1 time cards which did not accurately reflect their actual hours worked, and failing to include this time
2 in all hours worked, unlawfully rounding their time, failing to pay the accurate rate of pay based upon
3 earned non-discretionary bonus payments and other methods to be discovered.

4 42. Defendants' conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
5 of IWC Wage Order No. 5, and any other applicable IWC Wage Order. As a proximate result of the
6 aforementioned violations, Plaintiff and Class members have been damaged in an amount according
7 to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 558, 1194, 1197.1,
8 and any other applicable wage orders and law, Plaintiffs and Class members are entitled to recover
9 the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees,
10 expenses, and costs of suit.

11 **FIFTH CAUSE OF ACTION**
12 **Failure to Pay All Wages Due to Discharged and Quitting Employees**
13 **[Cal. Lab. Code §§ 201-203]**
14 ***(On Behalf of Plaintiff and the Class against all Defendants)***

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

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

21 45. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
22 all accrued wages due to an employee no later than seventy-two (72) hours after the employee quits
23 his or her employment, unless the employee provided seventy-two (72) hours previous notice of his
24 or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

25 46. As a result, Plaintiff and Class members are entitled to all available statutory penalties,
26 including the waiting time penalties provided in California Labor Code § 203, together with interest
27 thereon, as well as other available remedies.
28

SIXTH CAUSE OF ACTION
Failure to Maintain Required Records
[Cal. Lab. Code §§ 226, 1174; IWC Wage Order No. 5-2001, § 6 And
All Applicable Wage Orders And Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

47. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 46.

48. During the statute of limitations period, as part of Defendants' illegal payroll policies and practices to deprive Plaintiff and Class members of all wages earned and due, Defendants' knowingly and intentionally failed to maintain records as required under California Labor Code §§ 226, 1174, and §§ 6 and 7 of the applicable IWC Wage Orders, including but not limited to, the following records: total daily hours worked by each non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing when each non-exempt employee begins and ends each workday; hours available and taken of supplemental COVID-19 sick leave and accurate itemized wage statements, and other missing records yet to be discovered.

49. As a proximate result of Defendants unlawful actions and omissions, Plaintiff and Class members have been damaged in an amount according to proof at trial, and are entitled to all wages earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all available penalties, including but not limited to, penalties pursuant to California Labor Code §§ 226(a) and (e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including but not limited to those provided in California Labor Code § 226(e), as well as other available remedies.

SEVENTH CAUSE OF ACTION
Failure to Furnish Accurate Itemized Wage Statements
[Cal. Lab. Code §§ 226; IWC Wage Order No. 5-2001, § 6 And
All Applicable Wage Orders And Sections]
(On Behalf of Plaintiff and the Class against all Defendants)

50. Plaintiff incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 49.

51. During the statute of limitations period, Defendants routinely failed to provide Plaintiff and Class members with timely, accurate, and itemized wage statements in writing showing

1 each employee's gross wages earned, total hours worked, overtime hours worked and paid, all
2 deductions made, net wages earned, and all applicable and accurate hourly rates in effect during each
3 pay period and the corresponding number of hours worked at each hourly rate, the full legal name
4 and address of the employer on the wage statements, available sick leave and supplemental COVID-
5 19 sick leave, all in violation of California Labor Code § 226 and §§ 6 and 7 of the applicable IWC
6 Wage Orders.

7 52. Defendants' pay stubs violate Labor Code § 226 because Defendants routinely and
8 intentionally fails to provide Plaintiff and Class members with proper meal and rest breaks but fails to
9 include in their wage statements one (1) additional hour of compensation at their regular rates of pay
10 for each non-compliant meal or rest break. Defendants wage statements also fail to include the legal
11 address of employer of Plaintiff and Class members. In addition, Defendants failed to provide the
12 accurate rate of pay for regular and overtime rates of pay of Plaintiff and Class members for earned
13 non-discretionary bonus payments and illegally rounded the time that they worked, rendering the pay
14 stubs incorrect as to time worked, rates of pay and remuneration. Further, Defendants wage
15 statements fail to provide correct and accurate information regarding the amount of sick leave
16 available to the aggrieved employees and leave available and used pursuant to Labor Code §246 and
17 supplemental COVID-19 sick leave pursuant to Labor Code §248.2, et. seq., the balance of sick leave
18 pursuant to Labor Code §246 and supplemental COVID-19 sick leave under Labor Code §248.2, et.
19 seq., remaining and other violations yet to be discovered.

20 53. Defendants knowingly and intentionally failed to provide Plaintiff and Class members
21 with timely, accurate, and itemized wage statements in accordance with California Labor Code §
22 226(a) so as to prevent Plaintiff and Class members from being able to determine whether they were
23 being paid for, among other things, all of the hours they worked and at the proper rates of pay.

24 54. As a proximate result of Defendants unlawful actions and omissions, Plaintiff and
25 Class members have been damaged in an amount according to proof at trial, and seek all wages
26 earned and due, plus interest thereon. Additionally, Plaintiff and Class members are entitled to all
27 available penalties, including but not limited to penalties pursuant to California Labor Code §§
28 226(e), 226.3, and 1174.5, and an award of costs, expenses, and reasonable attorneys' fees, including

1 but not limited to those provided in California Labor Code § 226(e), as well as other available
2 remedies.

3 **EIGHTH CAUSE OF ACTION**
4 **Unfair and Unlawful Business Practices**
5 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**
6 ***(On Behalf of Plaintiff and the Class against all Defendants)***

7 55. Plaintiff incorporates herein by specific reference, as though fully set forth, the
8 allegations in paragraphs 1 through 54.

9 56. Each and every one of Defendants acts and omissions in violation of the California
10 Labor Code and/or the applicable IWC Wage Orders as alleged herein, including but not limited to,
11 Defendants failure to provide required meal and rest breaks, unlawful rounding and requiring off-the-
12 clock work, failure to pay all wages due to discharged or quitting employees or to pay timely wages,
13 failure pay the accurate rate of pay, failure to provide sick leave pursuant to Labor Code §246, failure
14 to provide supplemental COVID-19 sick leave pursuant to Labor Code §248, et seq., and failure to
15 furnish accurate itemized wage statements or to maintain required records, constitute an unfair and
16 unlawful business practice under California Business and Professions Code § 17200 *et seq.*

17 57. Defendants' violations of California wage and hour laws constitute a business practice
18 because the aforementioned acts and omissions were done repeatedly over a significant period of
19 time, and in a systematic manner, to the detriment of Plaintiff and Class members.

20 58. Defendants have avoided payment of wages, the provision of meal and rest breaks,
21 and other benefits as required by the California Labor Code, the California Code of Regulations, and
22 the applicable IWC Wage Orders. Further, Defendants have failed to record, report, and pay the
23 correct sums of assessment to the state authorities under the California Labor Code and other
24 applicable regulations.

25 59. As a result of these unfair and unlawful business practices, Defendants have reaped
26 unfair and illegal profits during the Class period at the expense of Plaintiff and Class members, and
27 members of the public. Defendants should be made to disgorge their ill-gotten gains and to restore
28 them to Plaintiff and Class members.

1 60. Defendants' unfair and unlawful business practices entitle Plaintiff and Class members
2 to seek preliminary and permanent injunctive relief, including but not limited to orders that
3 Defendants accounts for, disgorge, and restore to Plaintiff and Class members the wages and other
4 compensation unlawfully withheld from them. Plaintiff and Class members are entitled to restitution
5 of all monies to be disgorged from Defendants in an amount according to proof at the time of trial.

6 **NINTH CAUSE OF ACTION**
7 **Representative Action for Civil Penalties**
8 **[Cal. Lab. Code §§ 2698- 2699.5]**
9 ***(On Behalf of Plaintiff and Other Aggrieved Employees against all Defendants)***

10 61. Plaintiff incorporates herein by specific reference as though fully set forth the
11 allegations in paragraphs 1 through 60, with exception of the allegations in Paragraphs 20 through 22
12 (A-D).

13 62. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
14 2699(c), and is a proper representative to bring a civil action on behalf of herself, and other non-
15 exempt employees of Defendants who are California citizens, pursuant to the procedures specified in
16 California Labor Code § 2699.3, because Plaintiff was employed by Defendants and the alleged
17 violations of the California Labor Code were committed against Plaintiff.

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

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

24 65. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor
25 Code §§ 2698-2699.5, Plaintiff seeks to recover civil penalties, including but not limited to penalties
26 under California Labor Code §§ 2699, 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1775, 1199, and all
27 applicable IWC wage order penalties, from Defendants in a representative action for the violations set
28 forth above, including but not limited to violations of California Labor Code §§ 201, 202, 203, 226,
226.7, 246, 248, 248.1, 248.2, 351, 510, 512, 1174, 1194, 1197, 1198 and 1774. Plaintiff is also entitled

1 to an award of reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1).

2 66. Pursuant to California Labor Code §§ 2699.3, on April 9, 2021, Plaintiff gave written
3 notice by certified mail to the California Labor and Workforce Development Agency ("LWDA") and
4 Defendants of the specific provisions of the California Labor Code and IWC Wage Orders alleged to
5 have been violated, including the facts and theories to support the alleged violations. Within sixty-
6 five (65) calendar of the postmark date of Plaintiff's notice letter, the LWDA did not provide notice
7 to Plaintiff that it intends to investigate the alleged violations. Therefore, Plaintiff has complied with
8 all of the requirements set forth in California Labor Code § 2699.3 to commence a representative
9 action under PAGA.

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

14 68. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
15 for Defendants violations of California Labor Code provisions for which a civil penalty is not
16 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204,
17 226.7, 246, 248.1, 248.2, 1197, 1024.5, and for the violations of the applicable IWC Wage Order
18 alleged above.

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

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

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly situated,
26 respectfully prays for relief against Defendants and DOES 1 through 50, inclusive, and each of them,
27 as follows:

28 1. For compensatory damages in an amount to be ascertained at trial;

2. For restitution of all monies due to Plaintiff and Class members, as well as disgorged profits from the unfair and unlawful business practices of Defendants;
3. For meal and rest break compensation pursuant to California Labor Code § 226.7 and IWC Wage Order No. 5-2001 and all applicable IWC Wage Orders and pertinent sections;
4. For liquidated damages pursuant to California Labor Code § 1194.2;
5. For preliminary and permanent injunctive relief enjoining Defendants from violating the relevant provisions of the California Labor Code and the IWC Wage Orders, and from engaging in the unlawful business practices complained of herein;
6. For civil penalties under California Labor Code § 2699(f);
7. For waiting time penalties pursuant to California Labor Code § 203;
8. For statutory penalties according to proof, including but not limited to, all penalties authorized by the California Labor Code §§ 210, 225.5, 226(e), 226.3, 354, 1174.5, 1775, 1197.1 and 2699;
9. An award of actual, statutory, and/or punitive damages to Plaintiff and the Class pursuant to California Civil Code §§ 1785.31 and 1786.50, in an amount subject to proof at trial;
10. For interest on the unpaid wages at 10 percent per annum pursuant to California Labor Code §§ 218.6, 1194, 2802 and California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
11. For reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5, 226, 1194, 2802, 2699 and California Code of Civil Procedure § 1021.5, California Civil Code § 1786.50(a)(2), California Civil Code § 1785.31(a), and/or any other applicable provisions providing for attorneys' fees and costs;
12. For declaratory relief;
13. For an order requiring and certifying the First through Eighth Causes of Action as a class action;
14. For an order appointing Plaintiff as Class representative and Plaintiff's counsel as Class counsel; and
15. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all others similarly situated, hereby demands a jury trial with respect to all issues triable of right by jury.

DATED: September 13, 2021 THE LAW OFFICE OF SCOTT E. WHEELER

By: 
SCOTT ERNEST WHEELER

Attorney for Plaintiff and all others similarly situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 250 West First Street, Suite 216, Claremont, California 91711.

On September 13, 2021, I served the foregoing documents, described as

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

C. Keila Nakasaka, Esq.
9350 Wilshire Boulevard, Suite 203
Beverly Hills, California 90212-3204

Attorney for Defendant, SHOGUN
RESTAURANT, INC.

_____ (BY PERSONAL SERVICE) I placed such documents in a sealed envelope and caused such envelope to be personally delivered to the party at the above listed address.

 X (BY U.S. MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Claremont, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation postage meter date is more than one day after date of deposit for mailing in affidavit.

_____ (BY FACSIMILE) I sent such document via facsimile mail to the number(s) noted above.

_____ (BY ELECTRONIC MAIL) I sent such document via electronic mail to the electronic mail address(es) noted above.

 X (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 13, 2021 at Claremont, California.


MINERVA LOPEZ