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Superior Court of California,
County of Monterey
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY**

KAREN LARA, an individual;

Plaintiff,

v.

SHAOGUO BUFFET INC, a California
corporation doing business as Sakura Buffet;
SHAOGUO FENG, an individual; VIVIAN
XIE (DOE 1); LINDA CHEN (DOE 2); and
DOES 3 through 25, inclusive,

Defendants.

Case No.: 22CV001390

Unlimited Jurisdiction

FIRST AMENDED COMPLAINT FOR:

1. Race Discrimination
2. Harassment Based on Gender
3. Retaliation
4. Failure to Take All Reasonable Steps to Prevent Discrimination and Retaliation
5. Wrongful Termination in Violation of Public Policy
6. Failure to Provide Meal and Rest Periods
7. Failure to Maintain Accurate Time Records
8. Failure to Provide Accurate Itemized Wage Statement
9. Waiting Time Penalties
10. Violation of Labor Code Sect. 351
11. Unfair Competition
12. Civil Penalties Under PAGA Violations

DEMAND FOR JURY TRIAL

Plaintiff KAREN LARA is informed and believes and thereon alleges:

PARTIES

1. Plaintiff KAREN LARA ("Plaintiff"), an individual, is a competent female adult.

2. Plaintiff, at all times relevant as alleged herein, was a resident of the County of Monterey and employee of SHAOGUO BUFFET INC, a California corporation and SHAOGUO FENG, inclusive, (collectively “Defendants”).

3. Plaintiff is informed and believes and on that basis alleges that Defendant SHAOGUO BUFFET INC., is and at all relevant times hereto was, a California corporation doing business as “Sakura Buffet” with its principal place of business located in the County of Monterey, California, and is authorized to engage in business in the State of California. Defendant operates its business at 1433 N Main St, Salinas, California.

4. Plaintiff is informed and believes and on that basis alleges that Defendant SHAOGUO FENG, is an individual who resides in in the County of Monterey, California. According to the California Secretary of State records, Defendant SHAOGUO FENG is an officer, director, and the agent for service of process of Defendant SHAOGUO BUFFET INC.

5. Plaintiff is informed and believes and on that basis alleges that Defendant VIVIAN XIE is an individual who resides in in the County of Monterey, California. Defendant VIVIAN XIE was at all times herein mentioned, a “manager” within the meaning of Government Code section 12926(t), related regulations, and case law, because of which SHAOGUO BUFFET INC., are vicariously and strictly liable for wrongful conduct towards Plaintiff.

6. Plaintiff is informed and believes and on that basis alleges that Defendant LINDA CHEN sued as DOE 2 is an individual who resides in in the County of Monterey, California. On information and belief, Plaintiff alleges that Defendant LINDA CHEN is an individual who owns and operates SHAOGUO BUFFET INC which does business as Sakura Buffet and at all times mentioned herein operated and managed the Sakura Buffet restaurant owned by SHAOGUO BUEFFT INC. within the jurisdiction of this Court. Defendant LINDA CHEN was at all times herein mentioned, a “manager” within the meaning of Government Code section 12926(t), related regulations, and case law, because of which SHAOGUO BUFFET INC., are vicariously and strictly liable for wrongful conduct towards Plaintiff.

7. Plaintiff is informed and believes and on that basis alleges that Defendant

LINDA CHEN sued as DOE 2 is an owner, director, officer, or managing agent of SHAOGUO BUFFET INC.

8. Plaintiff is ignorant of the true names and/or capacities of the persons named as DOES 3 through 25, inclusive, and therefore sues them by such fictitious names. Plaintiff will amend this Complaint to assert the true names and capacities when ascertained. Except as otherwise alleged herein, Plaintiff is informed and believes, and thereon alleges, each of the defendants sued as DOES 3 through 25, inclusive, is legally responsible for the damages caused to Plaintiff as alleged herein.

9. Whenever in this Complaint reference is made to any act or omission of Defendants, such act or omission shall be deemed the act or omission of each Defendant, acting individually, jointly, and severally.

10. Whenever in this Complaint reference is made to any act or omission of a corporate Defendant, such allegation shall be deemed to mean that corporate Defendant, its officers, directors, agents, employees, and representatives did or authorized such act or omission while actively engaged in the management, direction and control of the affairs of that corporate defendant, and while acting within the course and scope of their agency and employment.

JURISDICTION AND VENUE

11. The monetary value of Plaintiff's claims exceeds \$25,000.00. The amount in controversy herein is within the jurisdiction of this Court.

12. The Court has jurisdiction over this action under FEHA, the UCL, and the Labor Code.

13. Plaintiff alleges on information and belief that Defendants were and are companies, entities, and individuals authorized to conduct and are conducting substantial, systematic, and continuous business transactions in the County of Monterey.

14. The acts, omissions, damages, and injury that form the basis of this lawsuit were sustained in the County of Monterey.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

15. Plaintiff has exhausted all administrative remedies by the timely filing of her DFEH complaint on January 5, 2022.

16. On January 5, 2022, Plaintiff received her right-to-sue letter from the Fair Employment and Housing Act ("FEHA"). The exhaustion of her administrative remedies were performed within three years of the events alleged herein.

17. Pursuant to Cal. Gov't Code § 12965(d)(2), Plaintiff's time to commence a civil action under the FEHA expires "one year from the date of the right-to-sue notice by the Department of Fair Employment and Housing."

FACTUAL ALLEGATIONS

18. Plaintiff was employed by Defendants in approximately July 2021 until approximately October 9, 2021 as a server. Plaintiff's hourly wage at the time of her separation was \$15.00. Plaintiff's daily duties included greeting customers, bussing tables, cleaning tables, serving drinks to customers, and cleaning the restaurant. At all times, Plaintiff was a devoted and loyal employee who performed her duties to Defendants' satisfaction.

19. Plaintiff's manager Vivian Xie and Plaintiff's supervisors uttered racial slurs at Plaintiff. Instead of calling Plaintiff by her name or simply saying "come here" Defendants, including Vivian DOE, would tell Plaintiff "Hey Mexican come here" or sometimes refer to Plaintiff as "dirty Mexican". At one point, Plaintiff overheard her supervisor refer to one of her co-worker Jose as "Basura", which translates to "trash" in Spanish. Plaintiff stood up and opposed the discrimination and harassment she experienced.

20. Defendants permitted non-Hispanic employees to arrive to work early and they were permitted to eat at the tables inside the restaurant. Plaintiff was forced to eat outside in the back of the store right next to the trash bins.

21. Defendants constantly berated Plaintiff, criticizing Plaintiff's appearance by accusing her and other female Hispanic co-workers that they looked like prostitutes or strippers.

22. Defendants retaliated against Plaintiff and demanded that she turnover all tips

1 she received from customers. Defendants embarrassed Plaintiff when they inspected her apron
2 and pockets on the floor in front of customers. Plaintiff opposed this theft.

3 23. Thereafter, Defendants implemented an unlawful tip pooling policy in which
4 Defendant's managers and supervisors, including Vivian DOE, were compensated. The policy
5 was unfair and unreasonable in that Defendants set up arbitrary rules to deduct tips from
6 employees who are in the chain of service penalized Plaintiff and her coworkers by docking
7 the gratuity they earn.

8 24. Plaintiff complained to Defendants about health and safety violations she
9 observed at the restaurant or those that customers informed Plaintiff about. Plaintiff told
10 Defendants that a customer had found a roach in the food. Plaintiff also reported unclean
11 silverware placed for use by customers. These concerns were ignored by Defendants.

12 25. After Plaintiff complained about the unlawful taking of her tips by Defendants,
13 raised objections to the unlawful tip pooling policy, and after she raised concerns over the
14 health and safety issues, Plaintiff was disciplined.

15 26. Defendants further retaliated against her by cutting her hours.

16 27. On or around October 9, 2021, Defendants retaliated against Plaintiff by
17 unlawfully terminating her in front of all its customers. Plaintiff was required to turn in her
18 uniform shirt off in front of the customers, causing Plaintiff further embarrassment.

19 28. Plaintiff is Hispanic/Latino. Plaintiff is a woman. Plaintiff complained of
20 unlawful actions by Defendants.

21 29. Defendants did not permit Plaintiff to take the 30 minute lunch break, nor did
22 she waive her breaks.

23 30. Defendants did not permit Plaintiff to take 10-minute rest breaks timely, or at
24 all.

25 31. Defendant Linda Chen suffered and permitted Plaintiff and aggrieved
26 employees to work at the Sakura Buffet restaurant. Defendant Linda Chen exercised control
27 over the wages, hours, and working conditions of Plaintiff and aggrieved employees. Linda
28 Chen set Plaintiff's and aggrieved employees' schedule, Chen determined Plaintiff's and
aggrieved employees' wages, Chen issued paychecks to Plaintiff and aggrieved employees,

1 Chen directed that Plaintiff be disciplined, Chen was a decisionmaker into the decision to
2 terminate Plaintiff from the restaurant, Chen corrected Plaintiff's time on the terminal, Chen
3 determined the amount of tips Plaintiff would earn after some shifts, Chen implemented
4 enforced company policies, Chen told Plaintiff and aggrieved employees about the policies
5 and practices at the restaurant.

6 32. Plaintiff is informed and believes and on such information alleges that
7 SHAOGUO FENG, LINDA CHEN, and VIVIEN XIE used assets of Shaoguo Buffet, Inc. for
8 their own personal uses, caused assets of the corporation or of their co-defendants to be
9 transferred to another without adequate consideration, and withdraw funds from one, some, or
10 the company's bank accounts for their own personal use. Plaintiff is informed and believes
11 these alleged facts are likely to have evidentiary support after a reasonable opportunity for
12 further investigation and discovery.

13 33. Plaintiff is informed and believes and on such information and belief alleges, at
14 all times relevant hereto, Shaoguo Buffet, Inc., were mere shells, instrumentalities and
15 conduits through which SHAOGUO FENG, LINDA CHEN, and VIVIEN XIE carried on
16 business, exercising complete control and dominance of such Shaoguo Buffet, Inc. to such an
17 extent any individuality or separateness between Shaoguo Buffet, Inc., SHAOGUO FENG
18 a/k/a Ya S Feng, LINDA CHEN, and VIVIEN XIE does not exist, and at all times herein
19 mentioned did not exist. Plaintiff is informed and believes these alleged facts are likely to
20 have evidentiary support after a reasonable opportunity for further investigation and
21 discovery.

22 34. Plaintiff is informed and believes and on such information and belief alleges,
23 Shaoguo Buffet, Inc. is and at times herein mentioned was controlled, dominated, and
24 operated by SHAOGUO FENG, LINDA CHEN, and VIVIEN XIE as their individual business
25 and alter ego, in that the activities and business of Shaoguo Buffet, Inc. was carried out
26 without the holding of directors and stockholders meetings, no records or minutes of any
27 corporate proceedings were maintained, and SHAOGUO FENG a/k/a Ya S Feng, LINDA
28 CHEN, and VIVIEN XIE entered into personal transactions with Shaoguo Buffet, Inc. without

1 the approval of other directors, shareholders, managers, or members. Plaintiff is informed and
2 believes these alleged facts are likely to have evidentiary support after a reasonable
3 opportunity for further investigation and discovery.

4 35. Plaintiff alleges on information and belief that LINDA CHEN, and VIVIEN
5 XIE are successors in interest to SHAOGUO BUFFET, INC. or are otherwise obligated to pay
6 Plaintiff and the aggrieved employees wages and penalties due and owing to them. Plaintiff
7 reserves the right to augment the foregoing allegations to more clearly set forth these
8 Defendants' liability as discovery progresses and reveals the same.

9 36. Plaintiff alleges on information and belief that Defendants are joint employers
10 of Plaintiff and the aggrieved employees and part of a common integrated enterprise with
11 each other. Plaintiff alleges that Defendants exercise control over the wages, hours, and
12 working conditions of Plaintiff and aggrieved employees. Defendants are responsible for
13 hiring and firing employees, supervising their work, controlling their hours, creating their
14 schedules, determining their rate of pay and method of payment, paying employees, providing
15 housing for employees, maintaining employment records, and otherwise engaging, suffering
16 or permitting to Plaintiff and the aggrieved employees to work.

17 37. Defendants act directly and indirectly in a joint and single interest in relation to
18 their employment and management of Plaintiff and the aggrieved employees. On information
19 and belief, the DEFENDANTS retained a general right of control over the hiring, direction,
20 supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior
21 of the employees who worked at the Sakura Buffet restaurant.

22 38. Defendants SHAOGUO FENG, LINDA CHEN, VIVIEN XIE and Does 3
23 through 25 also worked in the restaurant keeping a hands on approach, piercing the corporate
24 veil.

25 39. Plaintiff further alleges that each Defendants acted in all respects pertinent to
26 this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
27 partner, in a common integrated enterprise, or in some other capacity on behalf of the
28 employers of Plaintiff and the aggrieved employees, such that the acts and omissions of each

defendant are legally attributable to all others rendering each of them liable for the violations and civil penalties plead in this action. Furthermore, each and every defendant herein, while acting as an owner, corporate officer, director, and/or managing agent, principal, and/or employer expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

FIRST CAUSE OF ACTION

RACE DISCRIMINATION

(Violation of FEHA Govt Code Sec. 12900, et. seq.)

(Against SHAOGUO BUFFET and SHAOGUO FENG)

40. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 39 above as though fully set forth below.

41. Defendants' conduct, as alleged, violated FEHA, Government Code section 12900, et seq., and defendants committed unlawful employment practices, including by the following bases for liability:

a. Discharging, refusing to retain, and/or employ, and/or otherwise discriminating against plaintiff, in whole or in part on the basis of plaintiff's race, national origin, and/or color, in violation of Government Code section 12940(a);

b. Harassing plaintiff and/or creating a hostile work environment, in whole or in part on the basis of plaintiff's race, national origin, and/or color, in violation of Government Code section 12940(j);

c. Failing to take all reasonable steps to prevent discrimination and harassment based on race, in violation of Government Code section 12940(k);

d. Retaliating against plaintiff for seeking to exercise rights guaranteed under FEHA and/or opposing defendants' failure to provide such rights, in violation of Government Code section 12940(h).

42. As a proximate result of defendants' willful, knowing, and intentional

1 discrimination against plaintiff, plaintiff has sustained and continues to sustain substantial
2 losses of earnings and other employment benefits.

3 43. As a proximate result of defendants' willful, knowing, and intentional
4 discrimination against plaintiff, plaintiff has suffered humiliation, emotional distress, and
5 physical and mental pain and anguish, all to his damage in a sum according to proof.

6 44. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
7 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reasonable
8 attorneys' fees and costs (including expert costs) in an amount according to proof.

9 45. Defendants' misconduct was committed intentionally, in a malicious,
10 despicable, oppressive, fraudulent manner, entitling plaintiff to punitive damages against
11 defendants.

12 **SECOND CAUSE OF ACTION**

13 **HARASSMENT BASED ON GENDER**

14 **(Violation of Gov't Code § 12955(a), (d))**

15 **(Against SHAOGUO BUFFET AND VIVIEN XIE)**

16 44. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through
17 46 above as though fully set forth below.

18 45. At all times relevant herein, the actions of Defendants, as described in this
19 Complaint, constitute unlawful harassment on the basis of Plaintiff's sex and/or gender, sexual
20 in violation of Government Code § 12955. Such harassment by Defendants created a hostile,
21 intimidating, and oppressive work environment for Plaintiff, whereby the conditions of her
22 employment were adversely altered. Moreover, the harassment impeded Plaintiff's progress
23 and the enjoyment of her employment.

24 46. Defendants knew, or should have known, of the harassing work environment
25 and conduct Plaintiff was subjected to by Defendants, and/or their owners, employees,
26 managers, officers and/or agents, but did nothing to prevent, remedy or stop the harassment.

27 47. As a proximate result of defendants' willful, knowing, and intentional
28 harassment of plaintiff, plaintiff has sustained and continues to sustain damages, including

1 losses of earnings and benefits, according to proof.

2 48. As a proximate result of defendants' willful, knowing, and intentional sexual
3 harassment of plaintiff, plaintiff has suffered humiliation, emotional distress, and mental and
4 physical pain and anguish, all to her damage in a sum according to proof.

5 49. Defendants' harassment was done intentionally, in a malicious, oppressive,
6 fraudulent manner, entitling plaintiff to punitive damages.

7 50. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
8 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will seek
9 leave of court to amend this Complaint when the amounts are known

10 **THIRD CAUSE OF ACTION**

11 **RETALIATION**

12 **(Violation of Labor Code Sec. 1102.5)**

13 **(Against SHAOGUO BUFFET and SHAOGUO FENG)**

14 51. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through
15 50 above as though fully set forth below.

16 52. At all relevant times, Labor Code section 1102.5 was in effect and was binding
17 on defendants. This statute prohibits defendants from retaliating against any employee,
18 including plaintiff, for raising complaints of illegality.

19 53. Plaintiff raised complaints of illegality while she worked for defendants, and
20 defendants retaliated against her by discriminating against her, harassing her, and taking
21 adverse employment actions, including employment termination, against her.

22 54. As a proximate result of defendants' willful, knowing, and intentional
23 violations of Labor Code section 1102.5, plaintiff has suffered humiliation, emotional
24 distress, and mental and physical pain and anguish, all to her damage in a sum according to
25 proof.

26 55. As a result of defendants' adverse employment actions against plaintiff,
27 plaintiff has suffered general and special damages in sums according to proof.

28 56. Defendants' misconduct was committed intentionally, in a malicious,

1 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

2 57. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
3 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will seek
4 leave of court to amend this Complaint when the amounts are known.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO TAKE ALL REASONABLE STEPS TO PREVENT HARASSMENT,**

7 **DISCRIMINATION AND RETALIATION**

8 **(Violation of Cal. Gov't Code § 12940(k))**

9 **(Against SHAOGUO BUFFET and SHAOGUO FENG)**

10 58. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through
11 57 above as though fully set forth below.

12 59. Defendants failed to take immediate and appropriate corrective action in
13 response to the harassment, discrimination and/or retaliation to which Plaintiff was subjected
14 to. Specifically, by harassing Plaintiff, terminating her and/or retaliating against her based on
15 her race and/or complaints of harassment, discrimination, and/or retaliation, Defendants failed
16 to prevent and/or remedy the harassment, discrimination and retaliation to which Plaintiff was
17 subjected to. At all times, Defendants had a legal obligation to take prompt corrective action
18 in response to Plaintiff's complaints of discrimination, harassment and/or retaliation, but
19 disregarded their duties.

20 60. As a direct, legal and/or proximate result of the aforesaid acts of Defendants,
21 Plaintiff has suffered actual, consequential and incidental financial losses, including without
22 limitation, loss of income, earnings, salary and benefits, and the intangible loss of
23 employment related opportunities in her field and damage to her professional reputation, all in
24 an amount subject to proof at the time of trial. Plaintiff also claims such amounts as damages
25 pursuant to Civil Code §§ 3287, 3288 and/or any other provisions of law providing for
26 prejudgment interest.

27 61. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained
28 emotional distress, including, but not limited to, emotional trauma, physical manifestations of

1 emotional distress, personal injuries, pain and suffering, personal inconvenience, all to
2 Plaintiff's damages in an amount to be shown according to proof.

3 62. The conduct of Defendants in failing to prevent and/or remedy the harassment,
4 discrimination and/or retaliation Plaintiff was subjected to, as described above, subjected
5 Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights, as it was
6 anticipated by Defendants that Plaintiff would suffer damages in the foreseeable future.
7 Plaintiff is informed and believes, and based thereon alleges, that Defendants' conduct against
8 Plaintiff was done with an intent to cause injury to the Plaintiff. As a consequence of the
9 aforesaid oppressive, malicious, and despicable conduct, Plaintiff is entitled to an award of
10 punitive damages in a sum to be shown according to proof pursuant to California Government
11 Code §§ 12965 & 12970.

12 63. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees
13 which he is entitled to recover pursuant to California Government Code § 12965.

14 **FIFTH CAUSE OF ACTION**

15 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

16 **(Against SHAOGUO BUFFET and SHAOGUO FENG)**

17 64. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through
18 63 above as though fully set forth below.

19 65. California law prohibits the termination or other adverse employment actions
20 against employees for reasons that violate public policy. Plaintiff is informed and believes
21 and thereon alleges that Defendants violated public policy by terminating her employment for
22 reasons that violate public policy of the State of California.

23 66. Defendants' termination of Plaintiff's employment violated California statutes
24 and/or common law that inure to the benefit of the public at large and are a statement of
25 California public policy, including, but not limited to, the FEHA, Government Code § 12940
26 et seq., California Labor Code, and other related statutes and common law. These laws,
27 statutes and their interpretative regulations inure to the benefit of the public at large, and
28 embody fundamental public policy of the State of California and/or the United States.

1 67. Defendants' termination of Plaintiff's employment was in direct violation of
2 common law, federal laws and California laws that inure to the benefit of the public at large
3 and are a statement of California and Federal public policy, including, but not limited to, laws
4 prohibiting discrimination, harassment and/or retaliation in the workplace. These laws,
5 statutes and their interpretative regulations ensure to the benefit of the public at large, and
6 embody fundamental public policy of the State of California and/or the United States. In
7 terminating Plaintiff based on her race, based on her complaint of Defendants' unlawful
8 gratuity policy, and her refusal to comply with Defendants' unlawful gratuity policy,
9 Defendants violated said public policies.

10 68. As a direct, legal and/or proximate result of the aforesaid acts of Defendants,
11 Plaintiff has suffered actual, consequential and incidental financial losses, including without
12 limitation, loss of income, earnings, salary and benefits, and the intangible loss of
13 employment related opportunities in her field and damage to her professional reputation, all in
14 an amount subject to proof at the time of trial. Plaintiff also claims such amounts as damages
15 pursuant to Civil Code §§ 3287, 3288 and/or any other provisions of law providing for
16 prejudgment interest.

17 69. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained
18 serious emotional distress, including, but not limited to, emotional trauma, physical
19 manifestations of emotional distress, personal injuries, pain and suffering, personal
20 inconvenience, sickness and illness, all to Plaintiff's damages in an amount to be shown
21 according to proof.

22 70. The conduct of Defendants in retaliating against and/or wrongfully terminating
23 Plaintiff subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
24 rights, as it was anticipated by Defendants that Plaintiff would suffer damages in the
25 foreseeable future. Plaintiff is informed and believes, and based thereon alleges, that
26 Defendants' conduct against Plaintiff was done with an intent to cause injury to the Plaintiff.
27 Moreover, the malicious, fraudulent and/or oppressive conduct was engaged in, authorized or
28 ratified by officers, directors or managing agents of the corporation and/or was the result of

1 the application of unlawful, malicious or oppressive policies and procedures. As a
2 consequence of the aforesaid oppressive, malicious, and despicable conduct, Plaintiff is
3 entitled to an award of punitive damages in a sum to be shown according to proof at trial.

4 **SIXTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE MEAL AND REST PERIODS**

6 **(Violation of Labor Code Secs. 218.5, 218.6, 226.7, 512, 1198; IWC Wage Orders)**

7 **(Against SHAOGUO BUFFET, SHAOGUO FENG, and LINDA CHEN)**

8 71. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through -
9 70 above as though fully set forth below.

10 72. Plaintiff regularly worked six (6) hours or more in a workday without being
11 provided a meal period of at least thirty (30) minutes which Plaintiff did not waive. When an
12 employer fails to provide such a meal period, the employer is required to pay the employee as
13 wages one additional hour of pay at the employee's regular rate of compensation.

14 73. Defendants required Plaintiff to work without receiving timely meal periods to
15 which she was entitled. Defendants regularly required Plaintiff to work shifts of six (6) hours
16 or more without an opportunity for Plaintiff to take a meal break.

17 74. Defendants have failed to pay the additional meal period compensation to
18 Plaintiff.

19 75. Defendants have failed to provide a suitable resting as required by Wage Order
20 5-2001, and instead forced her to take unpaid rest breaks in the back room where the trash
21 was placed.

22 76. Defendants refused to provide all rest periods, failed to provide proper rest
23 periods, failed to schedule rest periods for Plaintiff, failed to provide an adequate space for
24 Plaintiff's break time, failed and refused to compensate Plaintiff when Plaintiff worked during
25 rest periods, interrupted Plaintiff's rest periods, or required Plaintiff to take late rest periods,
26 and are liable to Plaintiff for one hour of additional pay at the regular rate of compensation
27 for each workday that the proper rest periods were not provided, pursuant to Labor Code
28 Section 226.7 and Wage Order 1-2001, 5-2001, as well as interest thereon, plus reasonable

attorney's fees and costs of suit pursuant to California Code of Civil Procedure 1021.5.

77. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained damages according to proof, in an amount to be established at trial, and is entitled to recover interest, attorneys' fees and costs of suit.

SEVENTH CAUSE OF ACTION

FAILURE TO MAINTAIN ACCURATE RECORDS

(Violation of Labor Code Sec. 353, 2052; 1198; IWC Wage Orders)

(Against SHAOGUO BUFFET and SHAOGUO FENG)

78. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 77 above as though fully set forth below.

79. Defendants have at all relevant times been required to keep accurate information with respect to each employee including time records showing when the employee begins and ends each work period, meal periods, total hours worked, and total wages paid each payroll period.

80. Defendants failed to maintain accurate time records of all hours worked by Plaintiff, including total hours worked and meal periods.

81. Plaintiff suffered injury from Defendants' failure to maintain accurate time records.

82. Plaintiff could not determine the amount of wages earned or whether all wages due had been paid. Plaintiff must therefore go through the difficulty and bear the expense of reconstructing all time and pay records to make computations to analyze the amounts of wages due.

83. As a direct and proximate result of Defendants' conduct, Plaintiff has sustained damages according to proof, in an amount to be established at trial, and is entitled to recover interest, attorneys' fees and costs of suit.

EIGHTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Violation of Labor Code Sec. 226)

(Against SHAOGUO BUFFET and SHAOGUO FENG)

84. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 83 above as though fully set forth below.

85. Under Labor Code Section 226(a), Defendants have at all relevant times been required to provide Plaintiff with regular itemized written statements showing, among other things, total hours worked, all applicable hourly rates during the pay period, and the corresponding number of hours worked at each rate by the employee.

86. Defendants failed to pay Plaintiff for all hours worked, meal and rest break premiums, and overtime.

87. Under Labor Code Section 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

88. Defendants knew they were required by law to furnish accurate itemized statements in writing and intentionally failed to furnish them to Plaintiff on the regular paydays.

89. Defendants have failed to provide timely, accurate itemized wage statements to Plaintiffs in accordance with Labor Code Section 226. Plaintiff is informed and believes and, on that basis, alleges the statements provided by Defendants failed to accurately reflect the lawful hourly rates applicable to, inter alia, overtime hours for work in excess of eight (8) hours in a work-day and/or 40 hours in a work-week, meal and rest break premiums, and sick leave.

90. As a direct and proximate result of Defendants' conduct, Plaintiff has been injured by, among other things, not being paid all wages due, not knowing how many hours he worked and at what rate(s), and being required to file this action to recover wages, penalties, and to determine the amount of hours worked and wages due. Plaintiff is entitled to

1 recover the damages or penalties provided by Labor Code Section 226(e), including interest
2 thereon, and reasonable attorney's fees and costs.

3 **NINTH CAUSE OF ACTION**

4 **WAITING TIME PENTALIES**

5 **(Violation of Labor Code Sect. 203)**

6 **(Against SHAOGUO BUFFET SHAOGUO FENG, and LINDA CHEN)**

7 91. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through
8 90 above as though fully set forth below.

9 92. California Labor Code sections 201-203 require an employer to pay all wages
10 immediately at the time of separation of employment in the event the employer discharges the
11 employee or the employee provides at least 72 hours of notice of their intent to quit.

12 93. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 failed to timely pay Plaintiff all final wages due to her at her termination from employment,
14 including unpaid overtime wages as well as unpaid meal and rest period premium wages.

15 94. Defendants' failure to pay all final wages was willful within the meaning of
16 Cal. Labor Code section 203. Defendants' willful failure to timely pay Plaintiff his earned
17 wages upon termination from employment results in a continued payment of daily wages up
18 to thirty days from the time the wages were due.

19 95. Plaintiff is entitled to compensation pursuant to Cal. Labor Code section 203,
20 plus reasonable attorneys' fees and costs of suit.

21 **TENTH CAUSE OF ACTION**

22 **(Violation of Labor Code Sect. 351)**

23 **(Against SHAOGUO BUFFET and SHAOGUO FENG)**

24 96. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through
25 95 above as though fully set forth below.

26 97. Pursuant to California law, as set forth in Labor Code section 350 et seq.,

27 "No employer or agent shall collect, take, or receive any
28 gratuity or a part thereof, paid, given to or left for an
employee by a patron, or deduct any amount from wages due

an employee on account of such gratuity, or require an employee to credit the amount, or any part thereof, of such gratuity against and as a part of the wages due the employee from the employer. Every such gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for...."

98. By collecting, taking, and receiving monies solely on account of gratuities intended by patrons for and given to Plaintiff, Defendants violated Labor Code Sec. 351.

99. As a direct and proximate result of Defendants' wrongful collecting, taking and receiving of part of the gratuities paid and given to Plaintiff by patrons, Plaintiff has been damaged in the amount of such monies wrongfully appropriated subject to proof at time of trial.

ELEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Business and Professions Code Sec. 17200 et seq.)

(Against SHAOGUO BUFFET SHAOGUO FENG, and LINDA CHEN)

100. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 89 above as though fully set forth below.

101. Business and Professions Code Section 17200, et. seq. prohibits unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business practices.

102. Beginning at an exact date unknown to Plaintiff, but continuing through her separation of employment, Defendants committed unlawful acts as defined by Business and Professions Code Section 17200. Defendants' unlawful and unfair business practices include, but are not necessarily limited to, violations of the requirements of Labor Code sections 201-204, 226, 226.7, 246, 350-356, 510, 512, 1194, 1197, 1198, et seq. and the applicable Wage Order.

103. The knowing conduct of Defendants, as alleged herein, constitutes an unlawful business practice, as set forth in Business and Professions Code Sections 17200-17208. Specifically, Defendants conducted business activities while failing to comply with the legal

mandates herein.

104. Defendants' knowing failure to adopt policies in accordance with, and/or to adhere to these laws, all of which are binding upon and burdensome on its competitors, engenders and unfair competitive advantage for Defendants, thereby constituting and unfair business practice, as set forth in Business and Professions Code Section 17208.

105. Business and Professions Code Section 17203 provides the Court may restore to any person in interest any money or property which may have been acquired by means of such unfair competition. As a direct and proximate result of the aforementioned acts, Plaintiff was injured and suffered the loss of money in the amount of, inter alia, unpaid wages, penalties, and gratuities she was otherwise entitled to receive. Plaintiff is entitled to restitution pursuant to Business and Professions Code sections 17203 and 17208 for all wages and gratuities unlawfully withheld as a result of Defendants' unlawful and unfair conduct.

106. Plaintiff's success in this action will enforce important rights affecting the public interest. Plaintiff seeks, and is entitled to, injunctive relief as well as all other appropriate equitable remedies. Injunctive relief is necessary and appropriate to prevent Defendants from repeating the wrongful business practices alleged herein.

107. Plaintiff seeks restitution under these provisions according to proof, plus attorneys' fees and costs, and any expert witness costs, under this section.

TWELFTH CAUSE OF ACTION

CIVIL PENALTIES UNDER PAGA VIOLATIONS

(California Private Attorneys General Act, Labor Code §§ 2698)

(Against SHAOGUO BUFFET and SHAOGUO FENG)

108. Plaintiff repeats and realleges the allegations set forth in Paragraphs 1 through 107 above as though fully set forth below.

109. Defendants paid wages to employees on bi-weekly intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked.

110. At all relevant times, Defendants were under a duty to comply with the provisions of the Labor Code. During the applicable time period, Defendants violated

California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 350-356, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2052 and 2802.

111. California Labor Code §§2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

112. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff is entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 350-356, 510, 512, 1102.5, 1174, 1174.5, 1194, 1197, 1198, 2052 and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each initial violation and two hundred dollars (\$200.00) for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) for each initial violation and one thousand dollars (\$1,000.00) for each subsequent violation (penalty amounts established by California Labor Code § 226.3)

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each initial violation and one hundred dollars (\$100.00) for each subsequent violation per pay period (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1102.5, ten thousand dollars (\$10,000.00) for each violation (penalty amounts established by California Labor Code § 1102.5(f).).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each violation (penalty amounts established by California Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each initial violation and two hundred fifty dollars (\$250.00) for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

1 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 351,
2 353, 1194, 1198, 2052 and 2802, one hundred dollars (\$100.00) for each of Plaintiff's pay
3 period for each initial violation and two hundred dollars (\$200.00) for each of Plaintiff's pay
4 period for each subsequent violation (penalty amounts established by California Labor Code §
5 2699(f)(2)).

6 G. For violations of California Labor Code § 221, one hundred dollars
7 (\$100.00) for each initial violation of California Labor Code § 221 (if found to be neither
8 willful nor intentional) and two hundred dollars (\$200.00) (if found to be either willful or
9 intentional) and for each subsequent violation of California Labor Code § 221 (regardless of
10 whether they are found to be willful or intentional) (penalties set by California Labor Code §
11 225.5).

12 113. Plaintiff has complied with the procedures for bringing suit specified in
13 California Labor Code § 2699.3. By letter dated January 17, 2022, Plaintiff filed written
14 notice online with the Labor and Workforce Development Agency ("LWDA") and gave
15 written notice by certified mail to Defendants of the specific provisions of the California
16 Labor Code alleged to have been violated, including the facts and theories to support the
17 alleged violations. Plaintiff accompanied her LWDA notice with a fee in the amount of
18 \$75.00. The LWDA has failed to take action in response within 65 calendar days of the date
19 of Plaintiff's notice, but Plaintiff anticipates the LWDA will provide written notice to
20 Plaintiff informing her that it does not intend to investigate these allegations.

21 114. Pursuant to California Labor Code § 2699(g), Plaintiff is entitled to an award of
22 civil penalties and reasonable attorneys' fees and costs in connection with their claims for
23 civil penalties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as
26 follows:

- 27 1. For general damages, according to proof;
28 2. For special damages, according to proof;

3. For loss of earnings, according to proof;
4. For economic damages, according to proof;
5. For emotional damages, according to proof;
6. For punitive and exemplary damages, according to proof;
7. Award Plaintiff “waiting time” penalties (pursuant to Labor Code Section 203);
8. Award Plaintiff actual damages or penalties for failure to maintain accurate employee records in an amount to be proven at trial;
9. Award Plaintiff actual damages or penalties for failure to provide accurate wage statements and failure to furnish employment records (pursuant to Labor Code Sections 226, 1198.5 and applicable wage order);
10. Award Plaintiff liquidated damages (pursuant to Labor Code Section 1194.2(a));
11. For damages pursuant to Labor Code sections 200, 201, 203, 226, 226.7, 500, 510, 512, 558, 1194, 1194.2, 1197, 1198, and 2699, et seq.;
12. For penalties pursuant to Labor Code sections 203, 558, 1194.2, 226, 226.7, 512, 1174.5, 1197.1, 2699, et seq., and others;
13. Order Defendants to pay restitution to Plaintiff (pursuant to Business and Professions Code Section 17200, et seq.);
14. For reasonable attorneys’ fees, pursuant to Cal. Gov’t Code Section 12940 et seq., Labor Code sections 218.5, 226, 1102.5, 1194, and/or Code of Civil Procedure Section 1021.5, and for a contingency fee enhancement beyond the lodestar in accordance with Ketchum v. Moses (2001) 24 Cal.4th 1122, and related authorities;
15. For prejudgment interest pursuant to Labor Code section 218.6 and Civil Code sections 3287(b) and 3289, according to proof;
16. For cost of suit incurred herein; and
17. For such other relief the Court may deem just and proper.

1 Dated: July 3, 2024

HANSRA CARDENAS LLP

2 By: Enedina S. Cardenas

3
4 Jagdeep Hansra
5 Enedina S. Cardenas
6 Attorneys for Plaintiff
7 KAREN LARA

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demand a trial by jury on all matters so triable.

10
11 Dated: July 3, 2024

HANSRA CARDENAS LLP

12 By: Enedina S. Cardenas

13
14 Jagdeep Hansra
15 Enedina S. Cardenas
16 Attorneys for Plaintiff
17 KAREN LARA

PROOF OF SERVICE

I declare that I am over the age of eighteen years and not a party to this action. I am employed in the County of Santa Clara and my business address is 10080 N. Wolfe Road Suite SW3-200, Cupertino, California 95014.

On July 3, 2024, at Oakland, California, I served the attached document(s):

FIRST AMENDED COMPLAINT

along with this declaration, on the following parties:

Steven R. Napoles
The Napoles Law Firm
74 Discovery
Irvine, CA 92618
Tel: (949) 655-0110
Facsimile: (949) 423-0143
Email: steven@napoleslaw.com

Attorneys for Defendants
SHAOGUO BUFFET INC.
SHAOGUO FENG
VIVIAN XIE

☐ **BY FIRST CLASS MAIL:** I am readily familiar with my employer's practice for the collection and processing of correspondence for mailing with the U.S. Postal Service. In the ordinary course of business, correspondence would be deposited with the U.S. Postal Service on the day on which it is collected. On the date written above, following ordinary business practices, I placed for collection and mailing a copy of the attached document in a sealed envelope, with postage fully prepaid, addressed as shown on the service list. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing contained in this declaration.

☒ **BY E-MAIL:** On the date written above, I caused a copy of the attached document to be transmitted via e-mail to the person on whom it is served at the e-mail address shown on the service list. That transmission was reported without error.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this document was executed on July 3, 2024, at Oakland, California.

/s/ Enedina Cardenas

Enedina Cardenas