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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

FEB 20 2018

DAVID H. YAMASAKI, Clerk of the Court

BY:  DEPUTY

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ORANGE  
11 COMPLEX DIVISION

12 Amanda Quiles, Heather Turman, and  
13 Kimberly Dang, individually, on behalf of  
14 all others similarly situated, and on behalf  
15 of the general public,

16 Plaintiffs,

17 vs.

18 Koji's Japan Incorporated dba Koji's  
19 Shabu Shabu and Koji's Sushi & Shabu  
20 Shabu, Arthur J. Parent, Jr., and DOES 1  
21 through 50 inclusive,

22 Defendants.

**CASE NO.:**

**30-2010-00425532-CU-OE-CXC**

**Hon. William D. Cluster**

**ORDER GRANTING AMENDED MOTION  
FOR CLASS CERTIFICATION, FOR  
APPOINTMENT OF CLASS  
REPRESENTATIVES AND CLASS  
COUNSEL, AND FOR PROVISION OF AN  
UPDATED CLASS LIST IN EXCEL  
FORMAT TO PLAINTIFFS' COUNSEL  
WITHIN 10 DAYS OF THE DATE THIS  
MOTION IS GRANTED  
Dept. CX102**

23 Plaintiffs' Amended Motion for Class Certification came on for hearing February 22,  
24 2012 before the Honorable Nancy Wieben Stock. All parties were represented by counsel. After  
25 taking the matter under submission to resolve a demurrer brought by Arthur J. Parent, Jr., in his  
26 capacity as an alleged joint employer (his prior demurrer as to his alleged status as an alter ego  
27 of Koji's was previously overruled), the Court made the following orders.

**MOTION FOR CLASS CERTIFICATION**

28 The standard for class certification is found at C.C.P. Section 382, which provides, in  
essence, that the class action may be brought when the question is one of a common or general  
interest of many persons or when the parties are numerous and it is impracticable to bring them  
all before the Court. Under 382 of the Code of Civil Procedure, there are two prerequisites to a  
proper class action: one, there must be an ascertainable class; two, there must be a well-defined

1 community of interest in the questions of law and fact involved affecting the parties to be  
2 represented. *Brown v. Regents of University of California* (1984) 151 Cal.App.3d 982, 988;  
3 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021. The two  
4 requirements are substantially intertwined. The existence of an ascertainable class depends in  
5 turn upon a demonstrated community of interest among the purported class members and  
6 common questions of law or fact. In order to establish a class action, it is not necessary to have  
7 a common recovery nor does the fact that separate transactions are involved preclude such an  
8 action. *Id.* The certification question is essentially a procedural one that does not ask whether an  
9 action is legally or factually meritorious. *Linder v. Thrifty Oil* (2000) 23 Cal.4th 429, 439; *Sav-*  
10 *On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. The class certification  
11 motion is not a license to engage in a “free floating inquiry” into the validity of the allegations.  
12 *Brinker*, 53 Cal.4th at 1023.

13 The burden is on the party seeking class certification to establish both; 1) an  
14 ascertainable class; and 2) a well-defined community of interest among the class members.  
15 *Brinker*, 53 Cal.4th at 1021; *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096,  
16 1104. The trial court is afforded great discretion in evaluating the efficiencies and practicalities  
17 of permitting group action and the decision is reviewed for abuse of discretion. *Sav-On*, 34  
18 Cal.4th at 326. Accordingly, a trial court ruling supported by substantial evidence generally will  
19 not be disturbed unless: 1) improper criteria are used; or 2) erroneous legal assumptions are  
20 made. Any valid pertinent reasons stated and supported by substantial legal assumptions are  
21 made. Any valid pertinent reasons stated and supported by substantial evidence will be  
22 sufficient to uphold the order. *Linder*, 23 Cal.4th at 439; *see also Lockheed*, 29 Cal.4th at 1104;  
23 *Sav-On*, 34 Cal.4th at 326. The question then is whether or not there is an ascertainable class,  
24 and the Court determines: 1) what is the class definition; 2) the size of the class; and 3) the  
25 means available for identifying the class members. *Reyes v. San Diego County Board of*  
26 *Supervisors* (1987) 196 Cal.App.3d 1263, 1271. The class definition must be precise, objective  
27 and presently ascertainable to allow proper notice to the class members. *Global Minerals &*  
28 *Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 858. The goal is to use

1 terminology that will convey sufficient meaning to enable persons hearing it to determine  
2 whether they are members of the class plaintiffs wish to represent. Weil & Brown, *Civil*  
3 *Procedure Before Trial*, Section 14:23, 14, 16, 17; see also *Global Minerals & Metals Corp.*,  
4 113 Cal.App.4th at 858. The definition need not include the claims asserted. The relationship  
5 between the class and the legal claims may be explained in the certification order and notice to  
6 the class. *Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 915.

7 **PROPOSED CLASS**

8 In this case, the proposed class is as follows:

9 All persons who were employed by Defendants as servers, hosts/hostesses, floor  
10 managers, sushi chefs, assistant general managers, bussers, dishwashers,  
11 bartenders, kitchen helpers, and “barbacks,” at any time from November 16,  
12 2006, to the date of the final disposition of this case.

13 The size of the class must be numerous, but manageable for the purpose of notice  
14 requirements, distribution of recovery, et cetera. *Blue Chip Stamps v. Superior Court*, (1976)18  
15 Cal.3d 381, 386. Class certification is particularly appropriate when numerous parties suffer  
16 injuries in relatively small numbers because bringing individual suits would not be economical  
17 and the wrongdoer might escape liability. *Daar v. Yellow Cab*, (1967) 67 Cal.2d 695, 715; see  
18 also Weil & Brown, *Civil Procedure Before Trial*, Section 14:22, 14-15.

19 **PROPOSED CLAIMS**

20 The Court certifies the following class claims as to both Defendants asserted to be joint  
21 employers:

- 22 (1) Violations of Labor Code §§512 and 226.7 and Industrial Welfare Commission  
23 Wage Order 5 (fourth cause of action) (noncompliant meal and rest periods);
- 24 (2) Violations of Labor Code §221, 223, 510, 1194, 1198, and Industrial Welfare  
25 Commission Wage Order 5 ((first and fifth causes of action) (failure to pay for all  
26 time worked and overtime as a result of uncompensated meal periods during  
27 which they remained under the employer’s control);
- 28 (3) Restitution for the meal and rest period, unpaid wages, and overtime violations  
under Business and Professions Code §17200 (ninth cause of action)
- (4) Violations of Labor Code §§201-203 (second cause of action) (waiting time  
penalties);
- (5) Violations of Labor Code §226 (third cause of action) (itemized wage  
statements); and

1 (6) Penalties under the Private Attorney Generals Act, Labor Code §2699 (twelfth  
2 cause of action).

3 The Court believes it appropriate to certify the class sought by Plaintiffs as to all causes of  
4 action stemming from the alleged, denied meal and rest periods.

5 The Court further believes it is appropriate to certify one sub-class as follows, specific to  
6 the tip pooling claim (*i.e.*, restitution for improper tip pooling under Business and Professions  
7 Code §17200 (sixth cause of action) (pooling with agents and those outside the chain of service,  
8 in violation of Labor Code §351)):

9 All persons who were employed by Defendants as servers, hosts/hostesses, bussers,  
10 bartenders, and “barbacks,” at any time from November 16, 2006, through the date of  
11 the final disposition of this action

#### 12 ANALYSIS

##### 13 **1. Class Ascertainable And Numerous**

14 The class is definable and the numbers make the class large enough to make proceeding  
15 by class action appropriate, particularly since the class is not so large as to be unmanageable.  
16 The Court notes two locations over a multi-year period with estimates ranging from 100-200  
17 class members. Membership is easily ascertainable from company records, since the class is  
18 limited to particular position titles and a particular timeframe. In this case, it does not seem to  
19 the Court that there is going to be a difficulty in notifying the class members or in identifying  
20 them in either instance.

##### 21 **2. Common Issues Predominate**

22 The Court finds the second prong, well-defined community of interest, to exist. It  
23 includes three factors: predominant common questions of law or fact, class representatives with  
24 claims or defenses typical of the class, and class representatives who can adequately represent  
25 the class. *Brinker*, 53 Cal.4th at 1021. *Sav-On Drug Stores* addresses the issue regarding  
26 common questions of law or fact and says that the focus in determining a certification dispute  
27 is on the type of questions that are likely to arise, common or individual, not the merits of the  
28 case, and the Court instructed there that in determining whether there is substantial evidence to

1 support a trial court certification order, the Court considers whether or not the theory of  
2 recovery advanced by the proponents of certification is, as an analytical matter, likely to prove  
3 amenable to class treatment. *Sav-On Drug Stores*, 34 Cal.4th at 327. As noted in *Sav-On Drug*  
4 *Stores*, a class action is not inappropriate simply because each member of the class may at some  
5 point be required to make an individual showing as to his or her eligibility for recovery or as to  
6 the amount of damages. *Id.* at 332; *Employment Development Dept. v. Superior Court* (1981) 30  
7 Cal.3d 255, 266.

8 As the Supreme Court said in *Sav-On Drug Stores*, “[p]redominance is a comparative  
9 concept and the ‘necessity for class members to individually establish eligibility and damages  
10 does not mean that individual fact questions predominate.’ Individual issues do not render class  
11 certification inappropriate, so long as such issues may be effectively managed.” *Sav-On Drug*  
12 *Stores*, 34 Cal.4th at 334 (citations omitted). In this instance, the Court believes that they may  
13 and that a class proceeding is the appropriate way to accomplish that management.

14 Having reviewed all of the briefing and the arguments of counsel, the Court finds that  
15 the allegations of the Complaint and the un-refuted Declarations of the Plaintiffs that Defendant  
16 had no meal and rest break policy (at least for the majority of the class period) reveal a basis for  
17 class certification under *Bradley v. Networkers International, LLC* (2012) 211  
18 Cal.App.4th 1129, review denied March 20, 2013. Added to that is the fact that Defendant had in  
19 place, again for part of the class period, an auto-deduct system which systematically deducted  
20 wages for breaks that may not have been taken. The Court also holds that Defendant's admission  
21 that it had an informal policy that an employee was permitted to take a break on request violates  
22 the law on its face. These policy challenges predominate over any individual issues.

23 Likewise, Defendant admits that it has such a tip-sharing policy and the question then is  
24 whether it is legal or not. That is a predominant and common question.

25 Accordingly, among the common issues would be, as outlined in Plaintiffs' motion:

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- 27 • whether Defendants lacked any implemented meal period policy (for all but a brief  
28 interval during the statutory period) to provide 30-minute, uninterrupted meal periods to  
non-exempt employees;

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- whether Defendants failed to authorize and permit 10-minute rest breaks when they did not implement any system to make them available to employees;
- whether Defendants' practices (preventing leaving the restaurant or immediate vicinity during meal periods and breaks, requiring employees to remain attentive to customers during supposed breaks, failing to provide break coverage, etc.), and each of them, failed to relinquish control adequately over the putative class members during meal periods, so they were not free to come and go at will, warranting §226.7 premiums;
- whether the restrictions on the class members' meal and rest periods were such that the time became "hours worked," under IWC Wage Order 5, warranting straight time pay, and, on occasion, overtime premiums;
- whether Defendants' limitations on putative class members' movements and activities converted their meal/rest periods into compensable "on-call time" by which Defendants suffered or permitted them to work in, among other ways, remaining attentive to customers' needs;
- whether requirements to receive supervisor permission before acting freely during meal and rest periods tended to discourage or impede unfettered usage of these breaks;
- whether an admitted loss of income if putative class members took rest breaks was tantamount to Defendants creating incentives to forego breaks;
- whether pooling tips with employees outside the chain of direct customer service (such as chefs, kitchen managers, etc.) was permissible under Cal. Lab. §§350 and 351;
- whether employees were adequately trained to know to take (or how to take) meal/rest periods compliant with §226.7;
- whether Defendants adequately instructed supervisory personnel to take steps to provide employees with the opportunity to take the required meal and rest breaks free from all duty;
- whether the lack of accurate and comprehensive time and payroll records must be construed against the employer;
- whether all Defendants were indeed joint employers of the putative class;
- whether Defendants have any valid waiver defense; and

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- whether the failure to pay *any* premiums during years of the statutory period suggests, *per se*, that violations of §226.7 occurred.

3. **Class Certification Is the Superior Method of Adjudication**

The Court believes that the Plaintiffs have adequately shown that common questions of policy and practice with respect to class members arise and exist here, such that class treatment is appropriate. Further, the Court finds that this case could be well-managed at trial. The Court does not believe it would be superior to have numerous separate trials of the same legal and factual issues presented here.

4. **Class Representatives are Adequate and Claims are Typical**

With respect to the class representatives, plaintiff class representatives must show that their claims are typical of the class. *Brinker*, 53 Cal.4th at 1021. They need not be identical. It is sufficient if each class representative has the same interest and is similarly situated with the other class members so that she is motivated to litigate on their behalf. In this case, it appears that the proposed class representatives, Dang and Turman, meet these criteria with respect to typicality of their claims, and their declarations demonstrate that they are ready and willing to perform the duties as associated with their respective responsibilities here. It appears that their duties with respect to their positions and the way they were treated were essentially the same as the co-workers that they seek to represent. Therefore, the Court finds that the class representatives' claims are sufficiently similar to those of the proposed class members, so as to support typicality, and ORDERS they be appointed Class Representatives in this action.

5. **Adequacy of Representation Met**

In terms of counsel's experience, the Declaration of Mr. Schwartz supports the fact that Bryan Schwartz Law is experienced in matters of this nature and that its services should be sufficient to adequately represent the classes in question. Therefore the Court ORDERS the firm be appointed Class Counsel in this action.

6. **Class Notice**

1 It is Plaintiffs' counsels' obligation to propose the notice in terms of its nature and  
2 content and the mechanism for giving notice to the class members. The Court ORDERS that  
3 Plaintiffs shall propose a class notice and that such proposed notice be filed with the Court and  
4 served upon Defendants' counsel, to be received (via email, facsimile, and U.S. mail) within  
5 two weeks (14 calendar days) of the date of this Order. Thereafter, Defendants shall have two  
6 weeks (14 calendar days) to submit any responses to the Court, *i.e.*, 28 days from the date of  
7 this Order. The Court will rule regarding the language of the Class Notice thereafter, and  
8 Plaintiffs or whatever reputable claims administration firm they deem suitable will provide  
9 notice to the Class within 30 days thereafter.

10 7. **Class List**

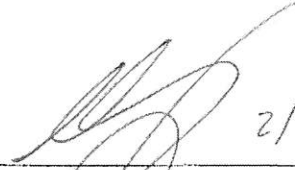
11 Because the Court does not wish to see any delay in these proceedings, which until now  
12 have been contentiously litigated, the Court ORDERS that, within 10 days of the date of this  
13 Order, the Defendants, or any of them, will provide an updated class list in Excel format to  
14 Plaintiffs' counsel, to be received by Plaintiffs' counsel (by email is acceptable) by this 10-day  
15 deadline. The list shall include all persons who were employed by Defendants as servers,  
16 hosts/hostesses, floor managers, sushi chefs, assistant general managers, bussers, dishwashers,  
17 bartenders, kitchen helpers, and "barbacks," at any time from November 16, 2006, to present,  
18 including for each his/her name, address, telephone number,. The Court also ORDERS that  
19 Plaintiffs' counsel is only to use this list in connection with the instant litigation, and for no  
20 other purpose, and to remain the data confidential, to be shared only (if at all) with the reputable  
21 class action administration firm referenced above.

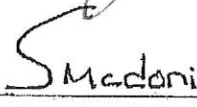
22 **CONCLUSION**

23 The Court grants class certification with the class and subclass as set forth above,  
24 appoints the proposed class representatives to represent the class, and appoints Bryan Schwartz  
25 Law as class counsel in this matter, ordering Defendants to provide a class list forthwith to  
26 Bryan Schwartz Law.

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APPROVED AS TO FORM:

 2/7/18  
Bryan Schwartz  
BRYAN SCHWARTZ LAW  
Attorneys for Plaintiffs

 2/7/18  
Stephen A. Madoni  
LAW OFFICE OF STEPHEN A. MADONI  
Attorneys for Defendants

IT IS SO ORDERED.

Dated: 2-20-19

  
Honorable William D. Cluster  
Judge, Orange County Superior Court

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**PROOF OF SERVICE**

QUILES, et al. v. KOJI'S JAPAN, INC., et al.  
Case No. 30-2010-00425532-CU-OE-CXC

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE

I am over the age of 18 years and not a party to the within entitled action; my business address is 1330 Broadway, Suite 1630, Oakland, California 94612.

On February 7, 2018 I served the foregoing documents described as:

**[proposed] CASE MANAGEMENT ORDER**

**EXHIBITS 1 - 2 to the [proposed] CASE MANAGEMENT ORDER**

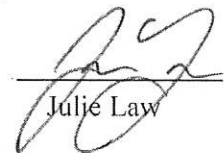
**ORDER GRANTING AMENDED MOTION FOR CLASS CERTIFICATION, FOR APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL, AND FOR PROVISION OF AN UPDATED CLASS LIST IN EXCEL FORMAT TO PLAINTIFFS' COUNSEL WITHIN 10 DAYS OF THE DATE THIS MOTION IS GRANTED**

on the interested parties to said action by the following means:

(By U.S. Mail) By placing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on that date following ordinary business practices, in the United States Mail at the offices of Bryan Schwartz Law, Oakland, California, address as shown above. I am readily familiar with this business's practice for collection and processing of correspondence for mailing with the U.S. Postal Service, and in the ordinary course of business correspondence would be deposited with the U.S. Postal Service the same day it was placed for collection and processing.

(By Electronic Mail) A true copy thereof was transmitted to the parties by electronic mail from the electronic service address of [julie@bryanschwartzlaw.com](mailto:julie@bryanschwartzlaw.com) to the address(es) below. The transmission was completed without error.

I declare under penalty of perjury that the foregoing is true and correct, and that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. Executed on February 7, 2018 at Oakland, California.

  
\_\_\_\_\_  
Julie Law

**NAME AND ADDRESS/FAX NUMBER/EMAIL OF EACH PERSON SERVED:**

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