

Fill in this information to identify the case:

Debtor 1 Hometown Buffet, Inc.  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division  
Case number 21-30724-11

E-Filed on 07/29/2021  
Claim # 261

Official Form 410  
Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>JAVAHERI &amp; YAHOUDAI - Maximina Maldonado</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? <small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	<b>Where should notices to the creditor be sent?</b> <u>Yosef Yahoudai, Esq.</u> Name <u>1880 Century Park E., Suite 717</u> Number Street <u>Los Angeles CA 90067</u> City State ZIP Code Contact phone <u>(310) 407-0766</u> Contact email <u>yosi@jnylaw.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b> _____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____
	4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?  No  
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: \_\_\_\_\_

7. How much is the claim? \$ 46,500.00. Does this amount include interest or other charges?  
 No  
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  
Personal Injury/Wrongful Death

9. Is all or part of the claim secured?  No  
 Yes. The claim is secured by a lien on property.  
**Nature of property:**  
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.  
 Motor vehicle  
 Other. Describe: \_\_\_\_\_  
**Basis for perfection:** \_\_\_\_\_  
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  
**Value of property:** \$ \_\_\_\_\_  
**Amount of the claim that is secured:** \$ \_\_\_\_\_  
**Amount of the claim that is unsecured:** \$ \_\_\_\_\_ (The sum of the secured and unsecured amounts should match the amount in line 7.)  
**Amount necessary to cure any default as of the date of the petition:** \$ \_\_\_\_\_  
**Annual Interest Rate** (when case was filed) \_\_\_\_\_ %  
 Fixed  
 Variable

10. Is this claim based on a lease?  No  
 Yes. Amount necessary to cure any default as of the date of the petition. \$ 0.00

11. Is this claim subject to a right of setoff?  No  
 Yes. Identify the property: \_\_\_\_\_

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,025\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$13,650\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)(    ) that applies.

**Amount entitled to priority**

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\$                      0.00

\* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

**Part 3: Sign Below**

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/29/2021  
MM / DD / YYYY

Yosi Yahoudai

Signature

**Print the name of the person who is completing and signing this claim:**

Name Joe R Hernandez  
First name Middle name Last name

Title Litigation Paralegal

Company JVAHERI & YAHOUDAI  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address \_\_\_\_\_  
Number Street

City State ZIP Code

Contact phone \_\_\_\_\_ Email \_\_\_\_\_

Attachment 1 - Demand 01-18-21 Maldonado-Ltr.pdf

Description -



January 18, 2021

**SENT VIA ELECTRONIC MAIL**

*eggonzalez@cktfmlaw.com*

*bcramer@cktfmlaw.com*

N. Ben Cramer, Esq.  
Eduardo G. Gonzalez, Esq.  
CARROLL, KELLY, TROTTER  
FRANZEN & MCBRIDE  
225 Broadway, Suite 1500  
San Diego, CA 92101

**RE: Our Client(s) : Maximina Maldonado**  
**Your Insured : Hometown Buffet**  
**Date of Loss : 05/08/2016**

Dear Counsel:

Thank you for speaking with me earlier this month concerning this matter. The purpose of this letter is to provide sufficient information, along with everything previously provided, for all parties to reasonably assess and attempt to settle all claims related to this matter, within the policy limits of the insurance policy. This is a confidential compromise negotiation made as an attempt at mediation and should be treated as such. It is offered with the understanding that this communication, including all subsequent correspondence or communication concerning settlement, is inadmissible for any purpose. *See California Evidence Code §§1120, 1154 and C&K Engineering Contractors v. Amber Steel Co., (1978) 23 Cal. 3d 1, 13.*

Some time ago, a demand was sent to the Hometown Buffet Risk Management division along with records and billing for Ms. Maldonado's treatment following a slip and fall at a Hometown Buffet restaurant. There was no response, and it is uncertain whether this demand has been forwarded to your office or whether it was reviewed by appropriate decision-makers at Hometown Buffet or its insurer.

Consequently, I am sending along all the information that was included in that demand and revising it somewhat based upon all the information available to date. That initial demand set forth the general law regarding premises liability, which I am sure you are all familiar with. Ms. Maldonado has been deposed and provided her account of the incident.

## **INCIDENT**

On May 8, 2016 Ms. Maldonado attended a Mother's Day brunch with her family at the Hometown Buffet, located on West Valley Boulevard in Rialto, California. She slipped and fell on her way to the buffet on a wet and slippery floor. It is Plaintiff's position and that of her experts that this was the type of condition that Hometown Buffet needed to be on the alert for, given their business model as a buffet restaurant, which required patrons to traverse through the restaurant with food and other items that could spill and particularly on a busy day like Mother's Day, when the restaurant should have been extra cautious, knowing it would be a very busy with older women being celebrated by their families. As a consequence, the incident is foreseeable and required vigilance by the restaurant that failed on this day with resulting damages to Ms. Maldonado.

## **LEGAL STANDARDS**

In *Alcaraz v. Vece* (1997) 14 Cal.4<sup>th</sup> 1149, the court held a possessor of land has a duty to maintain land in their possession and control in a reasonably safe condition even where the dangerous condition on the land is caused by an instrumentality that the landowner does not own or control. The court also went on to say that one who invites another to do business with him owes to the invitee the duty to exercise reasonable care to prevent his being injured on 'the premises.' *Id.* at 1156, 1245. California courts have ruled that owners of premises open to public are under an even greater duty to others by virtue of that possession or ownership to act reasonably to keep the premises safe and prevent persons from being injured. "The fact that the attention of persons who visit public places of business is attracted by the display of the wares offered for sale and are more or less absorbed by the transactions which they have in mind, would seem to increase the necessity of exercising care to floor spaces, and aisles allotted to the use of the customers should be made safe and kept fit for that purpose." *Louie v. Hagstrom's Food Stores* (1947) 81 Cal.App.2d 601, 608. In fact, a customer could not be expected to look at the goods on the counters and at the same time keep his eyes on the floor when it is the intention of the store that its customers view the goods displayed without having to observe the ground. *Louie*, 81 Cal.App.2d at 610.

In *Hatfield v. Levy Brothers* (1941) 18 Cal.2d 798, 806, the Supreme Court defined the standard of care for property owners: "Where the dangerous or defective condition of the property which causes the injury has been created by reason of the negligence of the owner of the property or his employee acting within the scope of the employment, the owner of the property cannot be permitted to assert that he had no notice or knowledge of the defective or dangerous condition in an action by an invitee for injuries suffered by reason of the dangerous condition. Under such circumstances, knowledge thereof is imputed to him." *Saunders v. A.M. Williams & Co.* 155 Or. 1, 62 P.2d 260." *See also Henderson v. Progressive Optical System* (1943) 57 Cal.App.2d 180, 183-184, wherein it was held that under similar circumstances, such notice is imputed. *See also Gilbert v. Pessin Grocery Co.* (2d Dist. 1955) 132 Cal.App.2d 212, which holds that such knowledge is conclusively presumed from the time of its creation.

According to Judicial Council of California Civil Jury Instructions, CACI 1001, a jury may consider the following pertinent factors in determining the negligence of the owner/operator of a property:

- (b) The likelihood that someone would come on to the property in the same manner as Ms. Maldonado did;
- (c) The likelihood of harm;
- (d) The probable seriousness of such harm;
- (e) Whether Hometown Buffet knew or should have known of the condition that created the risk of harm;
- (f) The difficulty of protecting against the risk of such harm; [and]
- (g) The extent of Hometown Buffet's control over the condition that created the risk of harm;

Furthermore, and more importantly, California courts have held that each accident must be viewed in light of its own unique circumstances. *Louie, supra*, 81 Cal.App.2d at p. 608, 184 P.2d 708. Accordingly, the owner must inspect the premises or take other proper action to ascertain its condition, and if, by the exercise of reasonable care, the owner would have discovered the condition, he is liable for failing to correct it.” *Id.*, at pps. 1207-1208.

Given the circumstances of this incident, we believe that liability can be established given the business model Hometown Buffet employs and the specifics of the busy day in question.

### **INJURIES AND MEDICAL TREATMENT**

In her deposition, Ms. Maldonado described a complex fall in which she fell first to her knees, tried to stand, and then slipped again – this time falling into a seated position and injuring her shoulders and upper back as she tried to brace herself. She was taken by ambulance to Arrowhead Regional Medical Center. It appears the primary center of pain at that time was in her knees and right shoulder. She later had treatment to her left knee and ankle as well as her wrist – all of which were injured in the fall.

To facilitate your review of this settlement demand, we are sending medical and billing records that were originally sent to your insured and have been produced in discovery. These are as follows:

Exhibit 1:	Arrowhead Regional Medical Center	Medi-Cal
Exhibit 2:	CEP America CA	Medi-Cal
Exhibit 3:	Arrowhead Medical Radiology	Medi-Cal
Exhibit 4:	Pirritano Chiropractic Corp.	\$3,180.00
Exhibit 5:	HMA	\$232.44
Exhibit 6:	Healthpointe	\$12,383.99
Exhibit 7:	ProCare	\$4,500.00
Exhibit 8:	Medi-Cal	\$1,185.65
<b>TOTAL PRESENT MEDICAL EXPENSES</b>		<b>\$21,482.08</b>

There was an initial estimate of approximately \$5,000.00 in future medical bills provided. This may be a high estimate but we believe there should be some allowance for the likelihood that Ms. Maldonado would benefit from some physical therapy in the future. That said, an allowance of perhaps **\$2,000.00** seems far more realistic.

Additionally, I recognize that Ms. Maldonado may have had preexisting conditions that make it somewhat difficult to discern the origin of some of her complaints. That said, I believe this places her into an “eggshell skull” category as a plaintiff and simply made her more vulnerable to lasting symptoms from her fall.

### **SETTLEMENT OFFER**

I have looked into burn verdict and settlement information available for the Southern California region. Based upon that, the circumstances of the case and the medical expenses as set forth above, I have been authorized by my client to make an offer to settle this matter and release all claims against your client and its insurer, in exchange for payment of the **\$46,500.00**.

This reasonable settlement permits all parties a reasonable opportunity to resolve all claims and avoid further costly litigation. Please note this offer expires in fourteen(14) days and I would be grateful for a response before such expiration. I am happy to discuss this matter further and negotiate with you to find a resolution that will satisfy all parties.

Sincerely yours,

JAVAHERI & YAHOUDAI  
A Professional Law Corporation



KATHERINE HARVEY-LEE, Esq.

Encl(s): As stated