

**Fill in this information to identify the case:**

Debtor 1 Food Management Partners, Inc.  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division  
Case number 21-30730-11

E-Filed on 08/27/2021  
Claim # 358

# 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>Susie Annette Valenzuela as Class Claimant</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>Bibiyon Law Group, P.C.</u> Name <u>8484 Wilshire Blvd, Ste 500</u> Number Street <u>Beverly Hills CA 90211</u> City State ZIP Code Contact phone <u>(310) 438-5555</u> Contact email <u>david@tomorrowlaw.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? \$ 10,000,000.00. 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.  
Employment Litigation

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 08/27/2021  
MM / DD / YYYY

April Kimm  
Signature

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

Name April Kimm  
First name Middle name Last name

Title Director

Company Dundon Advisers LLC  
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 440 Mamaroneck Ave, Ste 507  
Number Street

Harrison NY 10528  
City State ZIP Code

Contact phone (914) 341-1188 Email ak@dundon.com

Attachment 1 - Valenzuela Complaint.pdf

Description -

1 **BIBIYAN LAW GROUP, P.C.**  
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2 *david@tomorrowlaw.com*  
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5 Tel: (310) 438-5555; Fax: (310) 300-1705

6 Attorneys for Plaintiff, SUSIE ANNETTE VALENZUELA,  
as an aggrieved employee, and on behalf of all other  
7 aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9  
10 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

11 SUSIE ANNETTE VALENZUELA, as an  
aggrieved employee, and on behalf of all other  
12 aggrieved employees under the Labor Code  
Private Attorneys' General Act of 2004,

13  
14 Plaintiff,

15 v.

16 HOMETOWN BUFFET, INC., a Minnesota  
corporation; BUFFETS, LLC, a Minnesota  
17 limited liability company; ALAMO BUFFETS  
PAYROLL, LLC, a Texas limited liability  
18 company; FOOD MANAGEMENT  
PARTNERS, INC., a Texas corporation;  
19 MARTA CARILLO, an individual;  
VERONICA VENCES, an individual; and  
20 DOES 1 through 100, Inclusive,

21 Defendants.  
22  
23

CASE NO.:

**REPRESENTATIVE ACTION**

**COMPLAINT UNDER THE LABOR  
CODE PRIVATE ATTORNEYS'  
GENERAL ACT OF 2004 FOR CIVIL  
PENALTIES UNDER LABOR CODE  
SECTIONS 210, 226.3, 558, 1174.5, 1197.1  
and 2699**

**DEMAND FOR JURY TRIAL**

[Amount in Controversy Greater Than  
\$25,000.00]

24  
25  
26 COMES NOW plaintiff SUSIE ANNETTE VALENZUELA (“Plaintiff”), as an aggrieved  
27 employee, and on behalf of all other aggrieved employees under the Labor Code Private Attorneys’  
General Act of 2004, and alleges as follows:  
28

**JURISDICTION AND VENUE**

1  
2           1.           This is a representative action, pursuant to the Labor Code Private Attorneys General  
3 Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”), against HOMETOWN  
4 BUFFET, INC., a Minnesota corporation, and any of its respective subsidiaries or affiliated  
5 companies within the State of California (“HOMETOWN”), BUFFETS, LLC, a Minnesota limited  
6 liability company, and any of its respective subsidiaries or affiliated companies within the State of  
7 California (“BUFFETS”), ALAMO BUFFETS PAYROLL, LLC, a Texas limited liability  
8 company, and any of its respective subsidiaries or affiliated companies within the State of California  
9 (“ALAMO”), FOOD MANAGEMENT PARTNERS, INC., a Texas corporation, and any of its  
10 respective subsidiaries or affiliated companies within the State of California (“FMP”), MARTA  
11 CARILLO, an individual (“CARILLO”), and VERONICA VENCES, an individual (“VENCES,”  
12 and together with HOMETOWN, BUFFETS, ALAMO, FMP, CARILLO, and DOES 1 through  
13 100, as further defined below, “Defendants”), as a proxy of the Labor and Workforce Development  
14 Agency of the State of California (“LWDA”), on behalf of Plaintiff and all other current and former  
15 non-exempt employees of Defendants working within the Civil Penalty Period, as further defined  
16 herein, and, as it pertains to the alleged claims for failure to comply with Labor Code section 2810.5,  
17 Labor Code section 203, Labor Code section 226, Labor Code section 227.3, Labor Code section  
18 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of  
19 speech on behalf of all employees of Defendants working within the Civil Penalty Period  
20 (collectively, “Aggrieved Employees”).

21           2.           Jurisdiction exists in the Superior Court of the State of California pursuant to Code  
22 of Civil Procedure section 410.10.

23           3.           Venue is proper in Los Angeles County, California pursuant to Code of Civil  
24 Procedure sections 392, *et seq.*, because, among other things, Los Angeles County is where the  
25 causes of action complained of herein arose; the county in which the employment relationship  
26 began; the county in which performance of the employment contract, or part of it, between Plaintiff  
27 and Defendants was due to be performed; the county in which the employment contract, or part of  
28 it, between Plaintiff and Defendants was actually performed; and the county in which Defendants,

1 or some of them, reside. Moreover, the unlawful acts alleged herein have a direct effect on Plaintiff  
2 and Aggrieved Employees in Los Angeles County, and because Defendants employ numerous  
3 Aggrieved Employees in Los Angeles County.

4 4. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by  
5 Defendants during the applicable statutory period and suffered one or more of the Labor Code  
6 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil  
7 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code  
8 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus  
9 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former  
10 employees of Defendants during the Civil Penalty Period.

11 5. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative  
12 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*  
13 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the  
14 PAGA allegations described herein is not required.

15 6. During the period beginning one (1) year preceding the provision of notice to the  
16 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),  
17 Defendants violated, *inter alia*, Labor Code sections 96, 98.6, 200, 201, 202, 203, 204, 210, 226,  
18 226.3, 226.7, 227.3, 232, 232.5, 246, *et seq.*, 404, 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194,  
19 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others.

20 7. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees  
21 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within  
22 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures  
23 specified in Labor Code section 2699.3.

24 8. On or around November 4, 2020, Plaintiff provided written notice pursuant to Labor  
25 Code section 2699.3 online, of Defendants’ violation of various, including the herein-described,  
26 provisions of the Labor Code, to the LWDA, as well as by certified mail, with return receipt  
27 requested to Defendants, and each of them.

28 9. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not

1 provide notice of its intention to investigate Defendants' alleged violations within sixty-five (65)  
2 calendar days of the November 4, 2020 postmarked date of the herein-described notice sent by  
3 Plaintiff to the LWDA and Defendants.

4 **PAGA REPRESENTATIVE ALLEGATIONS**

5 10. At all relevant times mentioned herein, Defendants had and have a policy or practice  
6 of failing to pay overtime wages to Plaintiff and other Aggrieved Employees in the State of  
7 California in violation of California state wage and hour laws as a result of, without limitation,  
8 Plaintiff and other Aggrieved Employees working over eight (8) hours per day, forty (40) hours per  
9 week, and/or seven (7) straight workdays in a workweek without paying them proper overtime  
10 wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually  
11 worked; engaging, suffering, or permitting employees to work off the clock, including, without  
12 limitation, by requiring employees: to come early to work and leave late work without being able to  
13 clock in for all that time, to suffer under Defendants' control due to long lines for clocking in, to  
14 complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for  
15 meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or  
16 safety equipment off the clock, to attend company meetings off the clock, to make phone calls or  
17 drive off the clock; failing to include all forms of remuneration, including non-discretionary  
18 bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of  
19 pay for the pay periods where overtime was worked and the additional compensation was earned  
20 for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time  
21 entries, editing and/or manipulation of time entries to show less hours than actually worked, and for  
22 paying straight pay instead of overtime pay, to the detriment of Plaintiff and other Aggrieved  
23 Employees.

24 11. At all relevant times mentioned herein, Defendants had and have a practice or policy  
25 of failing to compensate Plaintiff and other Aggrieved Employees with minimum wages for all hours  
26 worked or otherwise under Defendants' control as a result of, without limitation, failing to  
27 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting  
28 employees to work off the clock, including, without limitation, by requiring employees: to come



1 early to work and leave late work without being able to clock in for all that time, to suffer under  
2 Defendants' control due to long lines for clocking in, to complete pre-shift tasks before clocking in  
3 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock  
4 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend  
5 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding  
6 of employee time entries; editing and/or manipulation of time entries to show less hours than  
7 actually worked; failing to pay reporting time pay; and failing to pay split shift premiums, to the  
8 detriment of Plaintiff and other Aggrieved Employees.

9 12. At all relevant times mentioned herein, Defendants had and have a policy or practice  
10 of failing to provide Plaintiff and other Aggrieved Employees a thirty (30) minute uninterrupted,  
11 timely, and complete meal period for days on which the employee worked in excess of five (5) and  
12 ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal  
13 periods or compensation in lieu thereof including, without limitation, by interrupting meal periods;  
14 not providing timely meal periods; failing to provide first and second meal periods; providing short  
15 meal periods; requiring that employees carry cellular telephones or walkie-talkies during meal  
16 periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal  
17 periods; and auto-deducting meal periods that could not be auto-deducted by law or during which  
18 employees worked, as required by California wage and hour laws

19 13. At all relevant times mentioned herein, Defendants had and have a policy or practice  
20 of failing to provide Plaintiff and other Aggrieved Employees paid, uninterrupted, timely, and  
21 complete rest periods of at least ten (10) minutes per four (4) hours worked or major fractions  
22 thereof, or compensation in lieu thereof, including, without limitation, by failing to provide rest  
23 periods all together; requiring that they be bundled together and/or with meal periods; interrupting  
24 them; requiring that employees carry cellular telephones or walkie-talkies during rest periods not  
25 providing them in a timely fashion; and not permitting employees to leave the premises; and  
26 otherwise requiring on-duty/on-call rest periods, as required by California wage and hour laws.

27 14. At all relevant times mentioned herein, Defendants had and have a policy or practice  
28 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish

1 Plaintiff and other Aggrieved Employees with itemized wage statements that accurately reflect gross  
2 wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable  
3 hourly rates in effect during the pay period and the corresponding number of hours worked at each  
4 hourly rate by the employee; the legal name of the employer; and other such information as required  
5 by Labor Code section 226, subdivision (a).

6 15. At all relevant times mentioned herein, Defendants had and have a policy or practice  
7 of failing to comply with Labor Code section 226, subdivision (a) by intentionally failing to furnish  
8 Plaintiff and other Aggrieved Employees with documents signed to obtain or hold employment  
9 under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records  
10 under Labor Code section 1174, making it difficult for Plaintiff and other Aggrieved Employees to  
11 calculate their unpaid wages and/or premium payments, to the detriment of Plaintiff and other  
12 Aggrieved Employees.

13 16. At all relevant times mentioned herein, Defendants had and have a policy or practice  
14 of failing to timely pay Plaintiff and other Aggrieved Employees, among other wages, all wages  
15 owed as a result of Defendants' practice or policy of failing to pay, among other wages, overtime  
16 wages, minimum wages, premium wages, paid time off and vacation time owed as required by Labor  
17 Code sections 201, 202, and 203.

18 17. At all relevant times herein, Defendants had and have a policy or practice of failing  
19 to pay Aggrieved Employees their paid time off and vacation time owed upon separation of  
20 employment as wages at their final rate of pay in violation of Labor Code section 227.3 and  
21 applicable Wage Orders.

22 18. At all relevant times mentioned herein, Defendants have had a policy or practice of  
23 failing and refusing, and continue to fail and refuse, to reimburse employees, including, without  
24 limitation, Plaintiff and other Aggrieved Employees, with their costs incurred for driving personal  
25 vehicles (*i.e.*, mileage and gas), purchasing uniforms, providing uniform and other deposits,  
26 separately laundering mandatory uniforms, for the purchase of tools and safety equipment, for the  
27 purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the  
28 discharge of their duties, or of their obedience to the directions of Defendants, as required by Labor

1 Code 2802.

2 19. At all relevant times mentioned herein, Defendants have had a policy or practice of  
3 failing to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft  
4 Protection Act of 2011) by, among other things, failing to provide Plaintiff and other Aggrieved  
5 Employees with the rates of pay and overtime rates of pay applicable to their employment;  
6 allowances claimed as part of the minimum wage; the regular payday designated by Defendants; the  
7 name, address, and telephone number of the workers' compensation insurance carrier; information  
8 regarding paid sick leave; and other pertinent information required to be disclosed by Defendants  
9 under Labor Code section 2810.5.

10 20. At all relevant times mentioned herein, Defendants failed to provide Plaintiff and  
11 other Aggrieved Employees with the amount of paid sick leave required to be provided pursuant to  
12 California law (including, without limitation Labor Code section 246, *et seq.*), and also did not  
13 permit its use upon request as contemplated under California laws, to the detriment of Plaintiff and  
14 all other Aggrieved Employees.

15 21. At all relevant times mentioned herein, Defendants have had a policy or practice of  
16 failing to pay Aggrieved Employees their wages in accordance with Labor Code Section 204, which  
17 requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month  
18 shall be paid for between the 16th and 26th day of the month during which the labor was performed,  
19 and labor performed between the 16th and the last day, inclusive of any calendar month, shall be  
20 paid for between the 1st and 10th day of the following month.”

21 22. At all relevant times mentioned herein, Defendants had and have a policy or practice  
22 of preventing Plaintiff and/or Aggrieved Employees from using or disclosing the skills, knowledge  
23 and experience they obtained at Defendants for purposes of competing with Defendants, including,  
24 without limitation, preventing Employees from disclosing their wages in negotiating a new job with  
25 a prospective employer, and from disclosing who else works at Defendants and under what  
26 circumstances that they might be receptive to an offer from a rival employer. Plaintiff is informed  
27 and believes that this policy and/or practice violates Business and Professions Code sections 17200,  
28 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor

1 Code sections 232, 232.5, and 1197.5, subdivision (k).

2 23. Defendants had and have a policy or practice of preventing Plaintiff and/or other  
3 Aggrieved Employees from disclosing violations of state and federal law, either within Defendants  
4 to their managers or outside to private attorneys or government officials, among others, in violation  
5 of Business and Professions Code section 17200, and, thus, in violation of Labor Code section  
6 1102.5. In addition, Plaintiff is informed and believes that Defendants' herein-described policies  
7 and/or practices prevent Plaintiff and/or other Aggrieved Employees from disclosing information  
8 about unsafe or discriminatory working conditions, or about wage and hour violations in violation  
9 of Labor Code section 232 and 232.5.

10 24. Defendants had and have a policy or practice of preventing Plaintiff and/or other  
11 Aggrieved Employees from engaging in lawful conduct during non-work hours, thus violating state  
12 statutes entitling employees to disclose wages, working conditions, and illegal conduct, including,  
13 without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5,  
14 subdivision (k). Plaintiff is informed and believes that this lawful conduct includes the exercise of  
15 Plaintiff's and/or other Aggrieved Employee's constitutional rights of freedom of speech and  
16 economic liberty.

17 25. Plaintiff, in Plaintiff's representative capacity, seeks civil penalties under Labor  
18 Code sections 210, 226.3, 558, 1174.5, 1197.1, and 2699 for the herein-described acts, which violate  
19 the California Labor Code as described above, including on behalf of Plaintiff and other Aggrieved  
20 Employees pursuant to PAGA.

21 **PARTIES**

22 **A. Plaintiff**

23 26. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff  
24 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-  
25 exempt employee, with duties that included, but were not limited to, bussing tables, stocking items,  
26 washing dishes, taking in customer complaints, cashing out cashiers, and working a register.  
27 Plaintiff is informed and believes that Plaintiff worked for Defendants from approximately June of  
28 2005 through approximately September of 2019.

1           **B.     Defendants**

2           27.       Plaintiff is informed and believes and based thereon alleges that defendant  
3 HOMETOWN is, and at all times relevant hereto was, a corporation organized and existing under  
4 and by virtue of the laws of the State of Minnesota and doing business in the County of Los Angeles,  
5 State of California.

6           28.       Plaintiff is informed and believes and based thereon alleges that defendant  
7 BUFFETS is, and at all times relevant hereto was, a limited liability company organized and existing  
8 under and by virtue of the laws of the State of Minnesota and doing business in the County of Los  
9 Angeles, State of California.

10          29.       Plaintiff is informed and believes and based thereon alleges that defendant ALAMO  
11 is, and at all times relevant hereto was, a limited liability company organized and existing under and  
12 by virtue of the laws of the State of Texas and doing business in the County of Los Angeles, State  
13 of California.

14          30.       Plaintiff is informed and believes and based thereon alleges that defendant FMP is,  
15 and at all times relevant hereto was, a corporation organized and existing under and by virtue of the  
16 laws of the State of Texas and doing business in the County of Los Angeles, State of California.

17          31.       Plaintiff is informed and believes and based thereon alleges that defendant  
18 CARILLO is an individual residing in the State of California and at all times relevant hereto, is a  
19 General Manager for HOMETOWN in the State of California. In that role, Plaintiff is informed and  
20 believes that CARILLO exercised control over the wages, hours and/or working conditions of  
21 Plaintiff and other Aggrieved Employees.

22          32.       Plaintiff is informed and believes and based thereon alleges that defendant VENCES  
23 is an individual residing in the State of California and at all times relevant hereto, is a General  
24 Manager for HOMETOWN in the State of California. In that role, Plaintiff is informed and believes  
25 that VENCES exercised control over the wages, hours and/or working conditions of Plaintiff and  
26 other Aggrieved Employees.

27          33.       The true names and capacities, whether individual, corporate, associate, or otherwise,  
28 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,

1 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.  
2 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated  
3 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.  
4 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of  
5 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is  
6 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent  
7 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or  
8 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the  
9 other defendants. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall  
10 include HOMETOWN, BUFFETS, ALAMO, FMP, and any of their parent, subsidiary, or affiliated  
11 companies within the State of California, as well as CARILLO, VENCES, and DOES 1 through  
12 100 identified herein.

### 13 JOINT LIABILITY ALLEGATIONS

14 34. Plaintiff is informed and believes, and based thereon alleges, that at all times  
15 mentioned herein, each of the defendants was the agent, principal, employee, employer,  
16 representative, joint venture or co-conspirator of each of the other defendants, either actually or  
17 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,  
18 employment, joint venture, and conspiracy.

19 35. All of the acts and conduct described herein of each and every corporate defendant  
20 was duly authorized, ordered, and directed by the respective and collective defendant corporate  
21 employers, and the officers and management-level employees of said corporate employers. In  
22 addition thereto, said corporate employers participated in the aforementioned acts and conduct of  
23 their said employees, agents, and representatives, and each of them; and upon completion of the  
24 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant  
25 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,  
26 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the  
27 aforementioned corporate employees, agents and representatives.

28 36. As a result of the aforementioned facts, Plaintiff is informed and believes, and based

1 thereon alleges that Defendants, and each of them, are joint employers.

2 **FIRST CAUSE OF ACTION**

3 **(Civil Penalties Under Labor Code § 210 – Against Defendants HOMETOWN, BUFFETS,**  
4 **ALAMO, and FMP)**

5 37. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
6 and incorporates each by reference as though fully set forth hereat.

7 38. At all relevant times herein, Labor Code section 204, requires and required that:  
8 “[l]abor performed between the 1<sup>st</sup> and 15<sup>th</sup> days, inclusive, of any calendar month shall be paid for  
9 between the 16<sup>th</sup> and 26<sup>th</sup> day of the month during which the labor was performed, and labor  
10 performed between the 16<sup>th</sup> and the last day, inclusive, of any calendar month, shall be paid for  
11 between the 1<sup>st</sup> and 10<sup>th</sup> day of the following month.”

12 39. At all relevant times herein, Labor Code section 210, subdivision (a) states and stated  
13 that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this  
14 article, every person who fails to pay the wages of each employee as provided in Sections 201.3,  
15 204, 204b, 204.1, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any  
16 initial violation, one hundred dollars (\$100) for each failure to pay each employee” and “(2) For  
17 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
18 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

19 40. At all relevant times herein, Defendants have had a consistent policy or practice of  
20 failing to pay Plaintiff and/or Aggrieved Employees during their employment on a timely basis as  
21 per Labor Code section 204. Thus, pursuant to Labor Code section 210, Plaintiff and other  
22 Aggrieved Employees are entitled to recover civil penalties for Defendants’ violations of Labor  
23 Code section 204, in the amount of one hundred dollars (\$100) for each Aggrieved Employee for  
24 each initial violation per employee, and two hundred dollars (\$200) for each Aggrieved Employee  
25 for each subsequent violation in connection with each payment that was made in violation of Labor  
26 Code section 204.

27 ///

28 ///

1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 226.3 – Against Defendants HOMETOWN, BUFFETS,**  
3 **ALAMO, and FMP)**

4 41. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
5 and incorporates each by reference as though fully set forth hereat.

6 42. Defendants had and have a policy or practice of failing to comply with Labor Code  
7 section 226, subdivision (a) by intentionally failing to furnish Plaintiff and Aggrieved Employees  
8 with itemized wage statements that accurately reflect gross wages earned; total hours worked; net  
9 wages earned; the name and address of each employer with whom they have been placed to work;  
10 all applicable hourly rates in effect during the pay period and the corresponding number of hours  
11 worked at each hourly rate; the legal name of the employer; and other such information as required  
12 by Labor Code section 226, subdivision (a).

13 43. Labor Code section 226.3 states that “[a]ny employer who violates subdivision (a)  
14 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)  
15 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for  
16 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
17 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

18 44. Labor Code section 226.3 further provides that “[t]he civil penalties provided for in  
19 this section are in addition to any other penalty provided by law.”

20 45. Plaintiff is informed and believes, and based thereon alleges, that Defendants had  
21 and have a policy or practice of failing to furnish non-exempt employees, including, without  
22 limitation, Plaintiff, with itemized wage statements that accurately reflect gross wages earned; total  
23 hours worked; net wages earned; all deductions; all applicable hourly rates in effect and the  
24 corresponding number of hours worked at each hourly rate in effect during the pay period; the legal  
25 name of the employer; and other such information as required by Labor Code section 226,  
26 subdivision (a).

27 46. Pursuant to Labor Code section 226.3, Plaintiff and other Aggrieved Employees are  
28 entitled to recover civil penalties for Defendants’ violation of Labor Code section 226, subdivision



1 (a) in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee per pay period  
2 for the initial violation, and one thousand dollars (\$1,000) for each Aggrieved Employee per pay  
3 period for each subsequent violation.

4 **THIRD CAUSE OF ACTION**

5 **(Violation of Labor Code § 558 – Against All Defendants)**

6 47. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
7 and incorporates each by reference as though fully set forth hereat.

8 48. Pursuant to Labor Code section 558, subdivision (a): “Any employer or other person  
9 acting on behalf of an employer who violates, or causes to be violated . . . any provision regulating  
10 hours and days of work in any of the Industrial Welfare Commission” shall be subject to a civil  
11 penalty as follows:

- 12 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee and for each  
13 pay period for which the employee was underpaid in addition to an amount sufficient  
14 to recover underpaid wages;
- 15 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid  
16 employee for each pay period for which the employee was underpaid in addition to  
17 an amount sufficient to recover underpaid wages;
- 18 (3) Wages recovered pursuant to this section shall be paid to the affected employee.”

19 49. Plaintiff is informed and believes, and based thereon allege, that Defendants, and  
20 each of them, violated, or caused to be violated, the Labor Code sections described herein, including  
21 causing Plaintiff and other Aggrieved Employees not to: be paid overtime wages and minimum  
22 wages; receive meal and rest periods or compensation in lieu thereof; be paid timely wages during  
23 their employment and after their employment separation; receive accurate, itemized wage  
24 statements; be provided with the opportunity to inspect employment records; be provided with  
25 notice as required under Labor Code section 2810.5; be provided with the proper accrual and use of  
26 paid sick leave; and/or be paid out all paid time off and/or vacation wages owed at the proper rate  
27 of pay.

28 50. As a direct and proximate result of the herein-described Labor Code violations,

1 pursuant to Labor Code section 558, Plaintiff and other Aggrieved Employees are entitled to recover  
2 civil penalties for Defendants' herein-described Labor Code violations in the amount fifty dollars  
3 (\$50) for each Aggrieved Employee per pay period for the initial violation, and one hundred dollars  
4 (\$100) for each Aggrieved Employee per pay period for each subsequent violation.

5 **FOURTH CAUSE OF ACTION**

6 **(Violation of Labor Code § 1174.5 – Against Defendants HOMETOWN, BUFFETS,**  
7 **ALAMO, and FMP)**

8 51. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
9 and incorporates each by reference as though fully set forth hereat.

10 52. At all times mentioned herein, Labor Code section 1174, subdivision (b) has required  
11 every person employing labor in California to “[a]llow any member of the commission or the  
12 employees of the Division of Labor Standards Enforcement free access to the place of business or  
13 employment of the person to secure any information or make any investigation that they are  
14 authorized by this chapter to ascertain or make. The commission may inspect or make excerpts,  
15 relating to the employment of employees, from the books, reports, contracts, payrolls, documents,  
16 or papers of the person.”

17 53. At all times mentioned herein, Labor Code section 1174, subdivision (c) has required  
18 every person employing labor in California to “[k]eep a record showing the names and addresses of  
19 all employees employed and the ages of all minors.”

20 54. At all times mentioned herein, Labor Code section 1174, subdivision (d) has required  
21 every person employing labor in California to “[k]eep, at a central location in the state or at the  
22 plants or establishments at which employees are employed, payroll records showing the hours  
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and applicable  
24 piece rate paid to, employees employed at the respective plants or establishments. These records  
25 shall be kept in accordance with rules established for this purpose by the commission, but in any  
26 case, shall be kept on file for not less than three years. An employer shall not prohibit an employee  
27 from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units  
28 earned.”

1 55. Pursuant to Labor Code section 1174.5, “[a]ny person employing labor who willfully  
2 fails to maintain the records required by subdivision (c) of [Labor Code] Section 1174 or accurate  
3 and complete records required by subdivision (d) of [Labor Code] Section 1174, or to allow any  
4 member of the commission or employees of the division to inspect records pursuant to subdivision  
5 (b) of [Labor Code] Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

6 56. Plaintiff is informed and believes, and based thereon alleges, that Defendants have  
7 willfully failed to maintain the records required by Labor Code subdivision (c), failed to maintain  
8 accurate and complete records required by Labor Code subdivision (d), and/or failed to allow  
9 inspection of records as required by Labor Code subdivision (b).

10 57. As a direct and proximate result of the herein-described Labor Code violations,  
11 pursuant to Labor Code section 1174.5, Plaintiff and other Aggrieved Employees are entitled to  
12 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount of five  
13 hundred dollars (\$500) per violation per Aggrieved Employee.

14 **FIFTH CAUSE OF ACTION**

15 **(Violation of Labor Code § 1197.1 – Against All Defendants)**

16 58. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
17 and incorporates each by reference as though fully set forth hereat.

18 59. Pursuant to Labor Code section 1197.1, subdivision (a): “Any employer or other  
19 person acting either individually or as an officer, agent, or employee of another person, who pays  
20 or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or  
21 local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages,  
22 liquidated damages payable to the employee, and any applicable penalties imposed pursuant to  
23 Section 203 as follows:

- 24 (1) For any initial violation that is intentionally committed, one hundred dollars  
25 (\$100) for each underpaid employee for each pay period for which the  
26 employee is underpaid. This amount shall be in addition to an amount  
27 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
28 1194.2, and any applicable penalties imposed pursuant to Section 203.

1 (2) For each subsequent violation for the same specific offense, two hundred fifty  
2 dollars (\$250) for each underpaid employee for each pay period for which the  
3 employee is underpaid regardless of whether the initial violation is  
4 intentionally committed. This amount shall be in addition to an amount  
5 sufficient to recover underpaid wages, liquidated damages pursuant to Section  
6 1194.2, and any applicable penalties imposed pursuant to Section 203.

7 (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to  
8 Section 203, recovered pursuant to this section shall be paid to the affected  
9 employee.”

10 60. Plaintiff is informed and believes, and based thereon alleges, that Defendants caused  
11 Plaintiff and Aggrieved Employees not to be paid minimum wages as a result of Defendants, without  
12 limitation, routinely failing to pay Plaintiff or other Aggrieved Employees’ wages for all hours  
13 worked or otherwise under Defendants’ control due to, without limitation, routinely failing to  
14 accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting  
15 employees to work off the clock, including, without limitation, by requiring employees: to come  
16 early to work and leave late work without being able to clock in for all that time, to suffer under  
17 Defendants’ control due to long lines for clocking in, to complete pre-shift tasks before clocking in  
18 and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock  
19 out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend  
20 company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding  
21 of employee time entries; editing and/or manipulation of time entries to show less hours than  
22 actually worked; failing to pay reporting time pay; and failing to pay split shift premiums.

23 61. As a direct and proximate result of the herein-described Labor Code violations,  
24 pursuant to Labor Code section 1197.1, Plaintiff and other Aggrieved Employees are entitled to  
25 recover civil penalties for Defendants’ herein-described Labor Code violations in the amount one  
26 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and  
27 two hundred and fifty dollars (\$250) for each Aggrieved Employee per pay period for each  
28 subsequent violation.

1 **SIXTH CAUSE OF ACTION**

2 **(Civil Penalties Under Labor Code § 2699 – Against All Defendants)**

3 62. Plaintiff re-alleges each and every allegation set forth in the preceding paragraphs  
4 and incorporates each by reference as though fully set forth hereat.

5 63. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other  
6 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed  
7 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or  
8 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil  
9 action brought by an aggrieved employee on behalf of himself or herself and other current or former  
10 employees pursuant to the procedures specified in Labor Code section 2699.3.

11 64. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor  
12 Code except those for which a civil penalty is specifically provided, the established civil penalty for  
13 a violation of those provisions is as follows: if, at the time of the alleged violation, the person  
14 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved  
15 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved  
16 employee per pay period for each subsequent violation.

17 65. Plaintiff is informed and believes and based thereon alleges that Defendants, and  
18 each of them, violated the Labor Code sections described herein, including, without limitation, for  
19 the failure to: pay overtime wages and minimum wages; provide meal and rest periods or  
20 compensation in lieu thereof; provide accurate, itemized wage statements; pay timely wages during  
21 employment and after employment separation; provide employees the opportunity to inspect  
22 employment records; reimburse Aggrieved Employees for costs incurred in furtherance of their  
23 work duties; provide notice as required under Labor Code section 2810.5; provide the proper accrual  
24 and use of paid sick leave; paying employees all owed paid time off and vacation time owed by  
25 separation at the proper rate of pay; and placing restraints on competition, whistleblowing and  
26 freedom of speech, entitling Plaintiff and other Aggrieved Employees to civil penalties for each of  
27 these Labor Code violations in the amounts set forth in Labor Code section 2699, subdivision (f).

28 66. Moreover, Plaintiff and other Aggrieved Employees within the State of California

1 whom she seeks to represent are entitled to an award of reasonable attorneys' fees and costs in  
2 connection with their herein-described claims for civil penalties.

3 **REQUEST FOR JURY TRIAL**

4 67. Plaintiff hereby requests a trial by jury.

5 **PRAYER**

6 **WHEREFORE**, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for  
7 judgment against Defendants as follows:

- 8 A. An award of civil penalties pursuant to Labor Code sections 210, 226.3, 558,  
9 1174.5, 1197.1, and 2699;
- 10 B. An award of reasonable attorneys' fees and costs pursuant to Labor Code sections  
11 210, 226.3, 558, 1174.5, 1197.1, and 2699;
- 12 C. Pre-judgment and post-judgment interest;
- 13 D. For costs of suit incurred herein; and
- 14 E. Such other and further relief as the Court deems just and proper.

15 Dated: January 8, 2021

BIBIYAN LAW GROUP, P.C.

16  
17 BY: 

18 ANTON SWAIN-GIL  
19 DAVID D. BIBIYAN

20 Attorneys for Plaintiff SUSIE ANNETTE  
21 VALENZUELA, as an aggrieved employee,  
22 and on behalf of all other aggrieved employees  
23 under the Labor Code Private Attorneys'  
24 General Act of 2004  
25  
26  
27  
28