

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 # 359

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?** Susie Annette Valenzuela as PAGA
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?** No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<u>Bibiyan Law Group, P.C.</u> Name	_____ Name
	<u>8484 Wilshire Blvd, Ste 500</u> Number Street	_____ Number Street
	<u>Beverly Hills CA 90211</u> City State ZIP Code	_____ City State ZIP Code
	Contact phone <u>(310) 438-5555</u>	Contact phone _____
	Contact email <u>david@tomorrowlaw.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	

4. **Does this claim amend one already filed?** No
 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?** No
 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? \$ 40,000,000.00. 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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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:
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JURISDICTION AND VENUE

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

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

3. Venue is proper in Los Angeles County, California pursuant to Code of Civil Procedure sections 392, *et seq.*, because, among other things, Los Angeles County is where the causes of action complained of herein arose; the county in which the employment relationship began; the county in which performance of the employment contract, or part of it, between Plaintiff and Defendants was due to be performed; the county in which the employment contract, or part of 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 1st and 15th days, inclusive, of any calendar month shall be paid for
9 between the 16th and 26th day of the month during which the labor was performed, and labor
10 performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for
11 between the 1st and 10th 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.

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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