

Fill in this information to identify the case:

Debtor 1 FMP-Ovation Payroll, LLC

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Northern District of Texas, Dallas Division

Case number 21-30733-11

E-Filed on 08/30/2021
Claim # 372

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>Maria Aguilar; Schneider Wallace Cottrell Konecky</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? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?
	Where should payments to the creditor be sent? (if different)
<u>Carolyn H. Cottrell</u> Name	_____ Name
<u>2000 Powell Street Suite 1400</u> Number Street	_____ Number Street
<u>Emeryville CA 94608</u> City State ZIP Code	_____ City State ZIP Code
Contact phone <u>(415) 421-7100</u>	Contact phone _____
Contact email <u>ccottrell@schneiderwallace.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?	
<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? \$ 325,504.00. 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.
Unpaid wages

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 08/30/2021
MM / DD / YYYY

Carolyn H. Cottrell

Signature

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

Name Carolyn H. Cottrell
First name Middle name Last name

Title Attorney

Company Schneider Wallace Cottrell Konecky LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____
Number Street

City State ZIP Code

Contact phone _____ Email _____

Attachment 1 - Aguilar v FMP-Ovation Payroll, LLC Proof of Claim FINAL.pdf
Description -



August 29, 2021

VIA ELECTRONIC FILING

BMC Group
Attention: Claims Processing
3732 W. 120th St.
Hawthorne, CA 90250

Re: Proof of Claim of Maria Aguilar in Chapter 11 Bankruptcy Matter of FMP-Ovation Payroll, LLC, United States Bankruptcy Court – Northern District of Texas, Case No. 3:2021-bk-30733-11

To Whom It May Concern:

We represent Maria Aguilar for the wages and penalties she is owed by FMP-Ovation Payroll, LLC under the Fair Labor Standards Act, the California Labor Code, California Unfair Competition Law, and California Private Attorneys General Act of 2004.

Ms. Aguilar has asserted claims against FMP-Ovation Payroll, LLC in civil actions filed in the United States District Court for the Central District of California¹ and California Superior Court for the County of Santa Clara.² Both actions are stayed.

Ms. Aguilar worked for FMP-Ovation Payroll, LLC as a non-exempt, hourly employee at HomeTown Buffet restaurant located in Palmdale, California from approximately February 2004 until approximately December 28, 2018.³ Ms. Aguilar worked at least five days per week and at various times as a dishwasher, cook, and waitress. At the time of her termination, her regular hourly rate of pay was approximately \$11.00 per hour.⁴

¹ See **Exhibit A**, Complaint, *Gonzalez et al. v. Food Management Partners, Inc. et al.* (Case No. 2:19-cv-08496-ODW-AS) (filed October 1, 2019) asserts claims on behalf of Ms. Aguilar, a putative collective under the Fair Labor Standards Act, and a putative class under Fed. R. Civ. P. 23.

² See **Exhibit B**, Complaint, *Gonzalez et al. v. Food Management Partners, Inc. et al.* (Case No. 19CV357419) (filed October 25, 2019) asserts claims on behalf of the State of California and similarly situated Aggrieved Employees under the California Private Attorneys General Act of 2004 (PAGA).

³ See **Exhibit C**, Exemplar Pay Stub dated December 19, 2018 (confirming Ms. Aguilar's employment with FMP-Ovation Payroll, LLC).

⁴ FMP-Ovation Payroll, LLC and Buffets, LLC appear directly on Ms. Aguilar's pay stubs. Food Management Partners, Inc. is a restaurant investment and management company that manages, or managed, all store-level and corporate operations for nine restaurant-chains in thirty-six states, including HomeTown Buffet. Accordingly, all three entities jointly exercised control over Ms. Aguilar and thus jointly employed her. Each are solely or jointly and severally liable for damages and penalties owed to Ms. Aguilar for unpaid wages.

Each day, management instructed and required Ms. Aguilar to continue working for up to an additional 3-4 hours off-the-clock after her shift ended. Ms. Aguilar regularly worked 11 hours or more in a day but was paid as if she had worked only 7.5 hours. Ms. Aguilar was not compensated for this off-the-clock work and as a result, denied both minimum wages, regular wages, and overtime premiums for this work in violation of the Fair Labor Standards Act and California Labor Code.

In addition, because Ms. Aguilar regularly worked shifts lasting at least 10 hours, she was entitled to two meal periods of not less than 30 minutes. Ms. Aguilar was also entitled to take ten minutes of net rest time per four hours or major fraction thereof of work. However, Ms. Aguilar was not permitted to take 10-minute rest breaks or 30-minute meal periods as required by California law. Furthermore, Ms. Aguilar was not paid any premiums for her missed breaks, as also required by California law. Instead, FMP-Ovation Payroll, LLC instructed Ms. Aguilar to clock out for a meal period even though she did not take a break. As a result, FMP-Ovation Payroll, LLC excluded 30 minutes from Ms. Aguilar's hours worked each day, as if Ms. Aguilar had been provided a meal period.

The net effect of these practices is that (1) Ms. Aguilar was denied compensation for work performed off the clock, much of which should have been compensated at her overtime rate; (2) Ms. Aguilar was denied meal and rest period premiums to which she is entitled; (3) Ms. Aguilar's pay stubs did not accurately reflect the hours she worked or the compensation due to her; and (4) FMP-Ovation Payroll, LLC willfully withheld Ms. Aguilar's wages when her employment ended.

Ms. Aguilar is entitled to \$28,957.50 in unpaid overtime premiums and an equal amount in liquidated damages under the Fair Labor Standards Act. **This amounts to \$57,915.**⁵

Ms. Aguilar is entitled to 2 hours of premium pay at her regular hourly rate each day for being denied meal and rest periods.⁶ **This amounts to \$18,590.**⁷

Ms. Aguilar is entitled to compensation for all hours worked at the appropriate regular or overtime rate under the California Labor Code.⁸ **This amounts to \$46,475** in unpaid wages.⁹

⁵ Ms. Aguilar worked roughly 15 hours of overtime off-the-clock per workweek at a rate of \$11.00 per hour. The total amount assumes a recovery period dating back to October 1, 2016, three years before the filing of the FLSA claims in the United States District Court for the Central District of California. 29 U.S.C. §255.

⁶ Cal. Lab. Code §§ 226.7, 512.

⁷ Ms. Aguilar worked at least 5 days per week at a rate of \$11.00 per hour. The total amount assumes a recovery period dating back to October 1, 2015, four years before the filing of the California Labor Code and Unfair Competition Law claims in the United States District Court for the Central District of California. Cal. Bus. & Prof. Code § 17208.

⁸ Cal. Lab. Code § 1194.

⁹ FMP-Ovation Payroll, LLC failed to compensate Ms. Aguilar for 2.5 hours of work at her regular rate of \$11.00 per hour and 15 hours of work at her overtime rate of \$16.50 per hour for

Moreover, Ms. Aguilar is entitled to liquidated damages **in the amount of \$46,475**.¹⁰

Because FMP-Ovation Payroll, LLC provided Ms. Aguilar with wage statements that did not accurately reflect her hours worked or wages owed, **Ms. Aguilar is entitled to \$550 in wage statement penalties**.¹¹

In addition, because FMP-Ovation Payroll, LLC willfully failed to pay Ms. Aguilar all wages owing to her at the end of her employment, and still has failed to pay such wages, **Ms. Aguilar is entitled to \$2,640 in waiting time penalties**.¹²

Ms. Aguilar is also entitled to collect penalties from FMP-Ovation Payroll, LLC pursuant to the California Private Attorneys General Act (“PAGA”).¹³ Specifically, FMP-Ovation Payroll, LLC is liable for \$100 for each violation of Ms. Aguilar’s rights per pay period. Therefore, **Ms. Aguilar is entitled to collect \$4,000 in PAGA penalties**.¹⁴ **Ms. Aguilar is also entitled to collect an additional \$2,500 in civil penalties** for inaccurate wage statements.¹⁵

Lastly, Ms. Aguilar is entitled to recovery of her attorneys’ fees and costs under the FLSA and California law. To date, Ms. Aguilar’s attorneys’ fees total \$575,299 and costs total \$10,138.

each workweek dating back to October 1, 2015, four years before the filing of the California Labor Code and Unfair Competition Law claims in the United States District Court for the Central District of California. Cal. Bus. & Prof. Code § 17208.

¹⁰ Cal. Lab. Code § 1194.2. Ms. Aguilar was not paid the minimum wage for her off-the-clock work. Moreover, Ms. Aguilar’s work on-the-clock was compensated at the minimum wage. *See* Industrial Welfare Commission Minimum Wage Order.

¹¹ Cal. Lab. Code § 226(e). Ms. Aguilar received wage statements approximately every two weeks. The total amount assumes a recovery period dating back to October 1, 2018, one year before the filing of the California Labor Code claims in the United States District Court for the Central District of California. Therefore, Ms. Aguilar received at least 6 inaccurate wage statements.

¹² Cal. Lab. Code § 203. This figure assumes 8-hour shifts over 30 days at a rate of \$11.00 per hour.

¹³ Cal. Labor Code §§ 2698, *et seq.*

¹⁴ FMP-Ovation Payroll, LLC and the California Labor and Workforce Development Agency received notice of the PAGA violations on August 8, 2019. Ms. Aguilar received wage statements approximately every two weeks. Assuming a one-year penalty period, Ms. Aguilar worked for approximately 10 pay periods within the penalty period. Ms. Aguilar is entitled to penalties for FMP-Ovation Payroll, LLC’s failure to pay all hours worked, failure to pay OT, failure to provide meal breaks, and failure to provide rest breaks. Pursuant to Cal. Labor Code § 2699(i), Ms. Aguilar is entitled to 25 percent of the civil penalties recovered under the PAGA with the remainder distributed to the California Labor and Workforce Development Agency.

¹⁵ Cal. Lab. Code §§ 226(a), 226.3. Ms. Aguilar received wage statements approximately every two weeks. This figure assumes 10 pay periods within the PAGA penalty period dating back to August 8, 2018.

Accordingly, FMP-Ovation Payroll, LLC owes Ms. Aguilar **\$179,145** in damages and penalties plus attorneys' fees and costs in the amount of **\$146,359**.¹⁶ Consequently, Ms. Aguilar submits a **total claim of \$325,504** to the Bankruptcy Court and Claims Agent.

Sincerely,

SCHNEIDER WALLACE
COTTRELL KONECKY LLP



CAROLYN H. COTTRELL
Attorney at Law

Enclosures (3)

-Exhibit A: Complaint, Gonzalez et al. v. Food Management Partners, Inc. et al. (Case No. 2:19-cv-08496-ODW-AS)

-Exhibit B: Complaint, Gonzalez et al. v. Food Management Partners, Inc. et al. (Case No. 19CV357419)

-Exhibit C: Ms. Aguilar's Paystub dated December 19, 2018

cc:

Maria Aguilar, via U.S. Mail

¹⁶ This figure represents one-fourth of the total attorneys' fees and costs incurred to date in prosecuting these claims. The total amount of attorneys' fees and costs has been divided evenly among the four creditors (Reina Gonzalez, Maria Aguilar, Rosario Felix, and Esperanza Jimenez) to file a proof of claim, all represented by the same attorneys.

EXHIBIT A

1 Carolyn H. Cottrell (SBN 166977)
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 2 Ori Edelstein (SBN 268145)
 oedelstein@schneiderwallace.com
 3 Ian W. Forgie (SBN 307721)
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 9 MOORADIAN LAW, APC
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 10 Calabasas, California 91302
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12
 13 Attorneys for Plaintiffs and the Putative Class
 and Collective

14
 15 **UNITED STATES DISTRICT COURT**
 16 **CENTRAL DISTRICT OF CALIFORNIA**

17 REINA GONZALEZ, MARIA AGUILAR,
 ROSARIO FELIX, and ESPERANZA
 18 JIMENEZ on behalf of themselves and all
 others similarly situated,

19 Plaintiffs,

20 vs.

21 FOOD MANAGEMENT PARTNERS, INC.;
 22 BUFFETS, LLC; FMP-OVATION PAYROLL
 LLC and DOES 1-10, inclusive,

23 Defendants.

Case No.: _____

**CLASS AND COLLECTIVE
 ACTION COMPLAINT AND
 DEMAND FOR JURY TRIAL**

1 that they worked, the effective hourly rate of pay often falls below the applicable
2 minimum wage.

3 4. Defendants receive value from the work Plaintiffs and Class and
4 Collective members perform during their meal periods and while “off-the-clock”
5 without compensating them for their services. Defendants willfully, deliberately, and
6 voluntarily refuse to pay Plaintiffs and Class and Collective members for work
7 performed.

8 5. Defendants’ conduct violated and continues to violate the Fair Labor
9 Standards Act, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) because of the mandate that non-
10 exempt employees, such as Plaintiffs and the Collective members, be paid at one and
11 one-half times their regular rate of pay for all hours worked in excess of forty within
12 a single workweek. *See* 29 U.S.C. § 207(a).

13 6. Defendants’ conduct also violated and continues to violate California
14 wage and hour laws, including for: (1) failing to pay Plaintiffs and Class members
15 minimum wage; (2) failing to pay Plaintiffs and Class members overtime wages; (3)
16 failing to compensate Plaintiffs and Class members for all hours worked; (4) failing
17 to authorize and permit Plaintiffs and Class members to take meal and rest breaks to
18 which they are entitled by law and pay premium compensation for missed breaks;
19 (5) failing to provide Plaintiffs and Class members accurate, itemized wage
20 statements; (6) and failing to timely pay Plaintiffs and Class members wages owed
21 upon the termination of employment.

22 7. Plaintiffs file this action to recover on behalf of themselves and Class
23 and Collective members all unpaid wages, compensation, penalties, and other
24 damages owed to them under the FLSA as a 29 U.S.C. § 216(b) collective action,
25 and under state law as a class action under Federal Rule of Civil Procedure 23, in
26 order to remedy the sweeping practices which Defendants have integrated into their
27

1 time tracking and payroll policies and which have deprived Plaintiffs and Class and
2 Collective members of their lawfully-earned wages.

3 **PARTIES**

4 8. Plaintiffs and the Class and Collective members are current or former
5 non-exempt employees employed by Defendants throughout the United States,
6 including in California.

7 9. Plaintiff Reina Gonzalez is an individual over the age of eighteen who at
8 all times relevant to this Complaint was a resident of Los Angeles County. Plaintiff
9 Gonzalez was employed by Defendants from approximately 1994 until September
10 23, 2018. Plaintiff Gonzalez worked for Defendants at their HomeTown Buffet
11 restaurants in Palmdale and Lancaster, California.

12 10. Plaintiff Maria Aguilar is an individual over the age of eighteen who at
13 all times relevant to this Complaint was a resident of Los Angeles County. Plaintiff
14 Aguilar was employed by Defendants from approximately February 2004 until
15 December 28, 2018. Plaintiff Aguilar worked for Defendants at their HomeTown
16 Buffet restaurant in Palmdale, California.

17 11. Plaintiff Rosario Felix is an individual over the age of eighteen who at
18 all times relevant to this Complaint was a resident of Los Angeles County. Plaintiff
19 Felix was employed by Defendants from approximately May 2003 until December
20 28, 2018. Plaintiff Felix worked for Defendants at their HomeTown Buffet
21 restaurants in Palmdale and Lancaster, California.

22 12. Plaintiff Esperanza Jimenez is an individual over the age of eighteen
23 who at all times relevant to this Complaint was a resident of Los Angeles County.
24 Plaintiff Jimenez was employed by Defendants from approximately October 2017 to
25 December 28, 2018. Plaintiff Jimenez worked for Defendants at their HomeTown
26 Buffet restaurant in Palmdale, California.

1 13. The Collective members are people who are, or who have been,
2 employed by Defendants as hourly, non-exempt employees in the United States at
3 any time within the three years preceding the filing of this Complaint.

4 14. The Class members are all people who are, or who have been, employed
5 by Defendants as hourly, non-exempt employees in California within the four years
6 preceding the filing of this Complaint.

7 15. Plaintiffs are informed, believe, and thereon allege that Defendant Food
8 Management Partners, Inc. (“FMP”) is a Texas corporation with its Principal
9 Executive Office in Hollywood Park, Texas. Defendant FMP is not registered as a
10 foreign business entity with the California Secretary of State.

11 16. Plaintiffs are informed, believe, and thereon allege that Defendant FMP
12 is a restaurant investment and management company that operates nine restaurant-
13 chains in thirty-six states. According to its website, FMP “manages all store-level
14 and corporate operations for Furr’s Fresh Buffet, Hometown Buffet, Hops, Old
15 Country Buffet, Ryan’s, Curry House, Sushi Zushi, Tahoe Joe’s and Zio’s Italian
16 Kitchen in 36 states,” including California.

17 17. Plaintiffs are informed, believe, and thereon allege that Defendant FMP
18 owns and operates approximately 120 restaurants nationwide.

19 18. Plaintiffs are informed, believe, and thereon allege that Defendant
20 Buffets, LLC (“Buffets”) is a Minnesota limited liability corporation whose
21 members reside in Hollywood Park, Texas. Defendant Buffets is registered as a
22 foreign business entity with the California Secretary of State. Plaintiffs are
23 informed, believe, and thereon allege that Defendant Buffets is an entity formed,
24 owned, and controlled by Defendant FMP for the purpose of operating its buffet-
25 style restaurant brands nationwide.

26 19. Plaintiffs are informed, believe, and thereon allege that Defendant FMP
27 Ovation Payroll LLC (“FMP-Ovation”) is a Texas limited liability corporation

1 whose members reside in Hollywood Park, Texas. Defendant FMP-Ovation is not
2 registered as a foreign business entity with the California Secretary of State.
3 Plaintiffs are informed, believe, and thereon allege that Defendant FMP-Ovation is
4 an entity formed, owned, and controlled by Defendant FMP for the purpose of,
5 among other things, processing payroll for Defendant FMP's employees. At times
6 relevant to this complaint Plaintiffs' wage statements came from FMP-Ovation.

7 20. Plaintiffs are informed, believe, and allege that Defendants FMP,
8 Buffets, and FMP-Ovation share the same business address in Hollywood Park,
9 Texas, and that they share the same three managers and directors.

10 21. The true names and capacities, whether individual, corporate, associate,
11 or otherwise, of Does 1-10, inclusive, are unknown to Plaintiffs, who therefore sues
12 the Doe Defendants by fictitious names. Plaintiffs are informed, believe, and
13 thereon alleges that each of these fictitiously-named Defendants is responsible in
14 some manner for the occurrences and Plaintiffs' and Class and Collective members'
15 damages as herein alleged. Plaintiffs will amend this Complaint to show their true
16 names and capacities when they have been ascertained. Defendants and Doe
17 Defendants are jointly and severally liable for Plaintiffs and Class and Collective
18 members' damages.

19 22. Plaintiffs are informed, believe, and allege that at all times mentioned in
20 this Complaint, each Defendant was the agent and employee of the other Defendant
21 and in doing the things alleged in this Complaint were acting within the course and
22 scope of such agency and employment. Plaintiffs are further informed, believe, and
23 allege that each of the Defendants gave consent to, ratified, and authorized the acts
24 alleged herein. Defendants are sued both in their own right and on the basis of
25 respondent superior.

26 23. Plaintiffs are informed, believe, and thereon allege that Defendant FMP
27 serves in a capacity of direct control over the operations of its agents, Defendants

1 Buffets and FMP-Ovation. Plaintiffs are informed, believe, and thereon allege that
2 FMP, Buffets, and FMP-Ovation jointly exercised control over Plaintiffs and Class
3 and Collective members with respect to their work for Defendants.

4 24. Plaintiffs are informed, believe, and allege that Defendants are either
5 solely or jointly and severally liable for damages and penalties owed to Plaintiffs
6 under common law and by statute, including attorneys' fees and costs.

7 25. At all relevant times, Defendants have done business under the laws of
8 the United States, including California; have had places of business in California,
9 including in this judicial district; and have employed Class and Collective members
10 in this judicial district.

11 26. At all material times, Plaintiffs and Collective members were and are
12 employees of Defendants within the meaning of 29 U.S.C. § 203(e).

13 27. At all material times, Defendants have been an employer within the
14 meaning of the FLSA under 29 U.S.C. § 203(d).

15 28. At all material times, Defendants have been an enterprise in commerce
16 or in the production of goods for commerce within the meaning of section 3(s)(1) of
17 the FLSA because Defendants have had and continues to have employees engaged in
18 commerce. 29 U.S.C. § 203(s)(1).

19 29. Plaintiffs are informed, believe, and thereon allege that Defendants have
20 had, and continue to have, an annual gross business volume of not less than
21 \$500,000, thereby exceeding the statutory standard. 29 U.S.C. § 203(s)(1)(A)(ii).

22 30. In addition to Plaintiffs, Defendants have employed numerous other
23 employees who, like Plaintiffs, are hourly, non-exempt employees engaged in
24 interstate commerce. Further, Plaintiffs are informed, believe, and thereon allege
25 that Defendants are engaged in interstate commerce since they order supplies across
26 state lines, conduct business deals with merchants across state lines, and process
27 client credit cards with banks in other states.

1 36. Plaintiff Aguilar worked for Defendants as a non-exempt, hourly
2 employee at a HomeTown Buffet restaurant in Palmdale, California from
3 approximately February 2004 to December 28, 2018. Plaintiff Aguilar first worked
4 as a dishwasher, then as a cook, and finally as a waitress. At the time of her
5 termination, her regular hourly rate of pay was approximately \$11.00 per hour.

6 37. Plaintiff Felix worked for Defendants as a non-exempt, hourly employee
7 at a HomeTown Buffet restaurant in Palmdale, California from approximately May
8 2003 to December 28, 2018. At all times during her employment with Defendants,
9 Plaintiff Felix worked as a cook. At the time of her termination, her regular hourly
10 rate of pay was approximately \$11.00 per hour.

11 38. Plaintiff Jimenez worked for Defendants as a non-exempt, hourly
12 employee at a HomeTown Buffet restaurant in Palmdale, California from
13 approximately October 2017 to December 28, 2018. During her employment with
14 Defendants, Plaintiff Jimenez worked at the Palmdale location's bakery and omelet
15 stations. At the time of her termination, her regular hourly rate of pay was
16 approximately \$11.00 per hour.

17 39. Defendants operate a chain of restaurants throughout the United States
18 and California, including HomeTown Buffet restaurants. Defendants employ
19 hundreds of hourly non-exempt workers similarly situated to Plaintiffs across these
20 restaurants.

21 40. To conduct their operations, Defendants employ hourly, non-exempt
22 employees who are responsible for all aspects of its restaurant operations. Plaintiffs
23 are informed, believe, and thereon allege, that this operational structure is uniform
24 and standardized throughout Defendants' operations. The employment conditions
25 for these hourly, non-exempt employees are substantially similar, if not identical, for
26 Defendants' employees throughout the United States, including in California.

27

1 41. Defendants' waitstaff, such as Plaintiffs Reina Gonzalez and Maria
2 Aguilar, solicit and fulfill Defendants' customers' service requests, clean up after
3 departing customers, and prepare Defendants' restaurants for new customers.
4 Defendants' cashiers, meanwhile, assist Defendants' customers in paying for their
5 food while also handling miscellaneous related responsibilities. Other employees,
6 such as Plaintiffs Esperanza Jimenez and Rosario Felix, prepare food for
7 Defendants' customers.

8 42. Plaintiffs are informed, believe, and thereon allege that Defendants pay
9 all of their hourly, non-exempt staff, regardless of position or location, at or near
10 applicable minimum wages. At the time their employments with Defendants
11 terminated, Plaintiffs were paid \$11.00 per hour, the California minimum wage at
12 the time. When the daily pay for these workers is divided by the actual hours that
13 they work, and required missed break premiums, off-the-clock work, and overtime
14 are factored in, the effective hourly rate of pay often falls below the applicable
15 minimum wage.

16 43. As a matter of policy, Defendants require Plaintiffs and Class and
17 Collective members to perform work off-the-clock after their shift has ended.
18 Defendants neither record nor compensate these employees for the work performed
19 while off-the-clock.

20 44. Specifically, after clocking out, Plaintiffs and Class and Collective
21 members are required to continue working for up to an additional 3-4 hours off-the-
22 clock. Defendants instruct Plaintiffs and Class and Collective members to clock out
23 but continue working in order to complete their assigned responsibilities without
24 accruing additional compensation, including overtime compensation. For example,
25 Plaintiff Gonzalez regularly worked 11 hours or more in a day but was paid as if she
26 had worked only 7.5 hours. Likewise, despite the fact that, at times, Plaintiff
27

1 Jimenez worked 12 or more hours per day, Defendants typically paid her for only
2 7.5 hours of daily work.

3 45. As a result of these policies, Defendants deny Plaintiffs and Class and
4 Collective members the overtime premiums resulting from the additional work
5 performed off-the-clock.

6 46. Defendants also fail to provide Plaintiffs and Class and Collective
7 members with timely, legally compliant meal breaks. Similarly, Defendants instruct
8 Plaintiffs and Class and Collective members to clock out for meal breaks, even when
9 they didn't take them. Defendants also regularly interrupt Plaintiffs and Class and
10 Collective member meal breaks with work requests without providing a substitute
11 meal break and without requiring them to clock back in.

12 47. As a result of these policies, Defendants deny Plaintiffs and Class and
13 Collective members the overtime premiums resulting from the additional off-the-
14 clock work performed during the unpaid meal breaks.

15 48. Defendants also violate California law by regularly failing to provide
16 Plaintiffs and Class members with *any* meal break, and failing to provide timely
17 meal breaks as required by California law. As a result of these policies and
18 practices, Defendants deny Plaintiffs and Class members meal periods to which they
19 are statutorily entitled under California law, as well as the overtime premiums
20 resulting from the additional off-the-clock work performed during meal breaks.
21 Despite these recurring violations, Defendants do not provide Plaintiffs and Class
22 members premium pay for missed breaks and meal periods.

23 49. As a matter of policy and practice, Defendants also fail to provide
24 Plaintiffs and Class members with adequate rest periods as required by California
25 law. Defendants routinely deny Plaintiffs and Class members the opportunity to take
26 any rest breaks at all. Instead, Defendants require Plaintiffs and Class members to
27 continue working throughout the day to meet their customers' demands.

1 50. Despite failing to provide Plaintiffs and Class members the opportunity
2 to take legally compliant rest breaks, Defendants do not provide premium pay in lieu
3 of these missed breaks.

4 51. Defendants also do not provide Plaintiffs and Class members with
5 accurate wage statements. First, Defendants issue wage statements to Plaintiffs and
6 Class members that indicate that their employer is “FMP Ovation Payroll LLC,” an
7 entity that is neither registered to do business in the state of California as an
8 independent entity nor on information and belief is it registered as a fictitious
9 business name pursuant to California Business & Professions Code § 17900. The
10 wage statements issued by Defendants to Plaintiffs and Class members also do not
11 reflect all hours worked, premium pay for missed meal and rest breaks, or applicable
12 overtime premiums.

13 52. Defendants’ common course of wage-and-hour abuses includes routinely
14 failing to maintain true and accurate records of the hours worked by Collective and
15 Class members. In particular, Defendants fail to record hours that Plaintiffs and
16 Collective and Class members worked during missed meal breaks as well as hours
17 worked off-the-clock.

18 53. Defendants’ failure to record all hours worked also results in a failure to
19 provide Class members, including Plaintiff, accurate itemized wage statements as
20 required by California law. The wage statements Defendants provide are not
21 accurate because they do not reflect the actual hours worked by Plaintiffs and Class
22 members. The wage statements do not contain off-the-clock work or time that should
23 be compensable during interruptible meal breaks. Further, the wage statements are
24 inaccurate because they do not include premium pay for missed breaks, overtime,
25 and work that was performed while the timeclock was out of service.

26 54. Further, Defendants did not and do not provide Plaintiffs and Class
27 members with full payment of all wages owed at the end of employment. These

1 workers are owed wages and premium pay for all time worked, overtime, and missed
2 meal and rest breaks when their employment ends. These amounts remain unpaid
3 pursuant to Defendants' policies and practices, even after voluntary or involuntary
4 termination. Defendants therefore fail to pay all wages due upon termination as
5 required by California law. As a consequence, Defendants owe Plaintiffs and Class
6 members waiting time penalties.

7 55. Plaintiffs are informed, believe, and thereon allege that Defendants'
8 unlawful conduct has been widespread, repeated, and consistent as to the Class and
9 Collective members. Defendants know or should know that their policies and
10 practices are unlawful and unfair.

11 56. Defendants' conduct is willful, carried out in bad faith, and has caused
12 significant damages to Plaintiffs and Class and Collective members in an amount to
13 be determined at trial.

14 **COLLECTIVE ALLEGATIONS UNDER THE FLSA**

15 57. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
16 fully set forth herein.

17 58. Plaintiffs brings their FLSA claims as a collective action pursuant to 29
18 U.S.C. § 216(b) as to claims for failing to pay Plaintiffs and Collective members for
19 all hours worked, including minimum wage and overtime compensation for all hours
20 worked over 40 hours per week, liquated damages, and attorneys' fees and costs
21 under the FLSA. The FLSA Collective that Plaintiffs seeks to represent is defined as
22 follows:

23 All current and former hourly, non-exempt employees who
24 worked for Food Management Partners, Inc., Buffets, LLC, or
25 FMP-Ovation Payroll LLC in the United States during the time
26 period three years prior to the filing of this Complaint until the
27 resolution of this action.

1 59. Plaintiffs' claims for violations of the FLSA may be brought and
2 maintained as an "opt-in" collective action pursuant to Section 216(b) of the FLSA
3 because Plaintiffs' FLSA claims are similar to the claims of the Collective members.

4 60. Plaintiffs are informed, believes, and thereon allege that that Collective
5 members have been denied compensation, including overtime compensation for time
6 worked "off-the-clock," and would therefore likely join this collective action if
7 provided a notice of their rights to do so.

8 61. Plaintiffs and the Collective members are similarly situated. Like
9 Plaintiffs, Defendants subjected Collective members to Defendants' common
10 practices, policies, or plans of refusing to pay overtime for all work performed in
11 clear violation of the FLSA. Other hourly, non-exempt employees work, or have
12 worked, for Defendants but were not paid overtime at the rate of one and one-half
13 times their regular hourly rate when those hours exceeded forty per workweek. Other
14 hourly, non-exempt employees also performed compensable work while "off-the-
15 clock" which, when included with their recorded hours, results in additional
16 overtime hours worked that were not compensated at the rate of one and one-half
17 times their regular hourly in violation of the FLSA.

18 62. Although Defendants permitted and/or required Plaintiffs and Collective
19 members to work in excess of forty hours per workweek, Defendants have denied
20 them full compensation for their hours worked over forty as a result of meal breaks
21 that were interrupted due to work demands and "off-the-clock" work.

22 63. Collective members perform or have performed the same or similar
23 work as Plaintiff.

24 64. Collective members regularly work or have worked in excess of forty
25 hours during a workweek.

26 65. Collective members are not exempt from receiving overtime
27 compensation under the FLSA.

1 66. Defendants' failure to pay overtime compensation as required by the
2 FLSA resulted from generally applicable policies and practices and did not depend
3 on the personal circumstances of the Collective members.

4 67. Plaintiffs are representative of the Collective members and are acting on
5 behalf of their interests, as well as Plaintiffs' own interests, in bringing this action.

6 68. Plaintiffs will fairly and adequately represent and protect the interest of
7 Collective members. Plaintiffs have retained counsel competent and experienced in
8 employment class action and collective action litigation.

9 69. This action may be properly maintained as a collective action on behalf
10 of the defined Collective because, throughout the relevant time period:

- 11 a. Defendants maintained common scheduling systems and policies
12 with respect to Plaintiffs and Collective members, controlled the
13 scheduling systems and policies implemented throughout their
14 facilities and retained authority to review and revise or approve
15 the schedules assigned to Plaintiffs and Collective members;
16 b. Defendants maintained common timekeeping systems and policies
17 with respect to Plaintiffs and Collective members; and
18 c. Defendants maintained common payroll systems and policies with
19 respect to Plaintiffs and Collective members, controlled the
20 payroll systems and policies applied to Plaintiffs and Collective
21 members, and set the pay rates assigned to Plaintiffs and
22 Collective members.

23 70. Collective members, irrespective of their particular job requirements, are
24 entitled to overtime compensation for hours worked in excess of forty during a
25 workweek.

26 71. Plaintiffs' and Collective members' claims arise from a common nucleus
27 of operative facts; namely, the continued and willful failure of Defendants to comply

1 with their obligation to legally compensate their employees. Liability is based on a
2 systematic course of wrongful conduct by Defendants that caused harm to all
3 Collective members. Defendants had a plan, policy or practice of not recording or
4 paying Plaintiffs and Collective members for interrupted, interruptible, or missed
5 meal and rest breaks, as well as work performed “off-the-clock.” These unpaid hours
6 are typically worked in excess of 40 hours per week, and therefore the failure to
7 track these hours results in a violation of the FLSA.

8 72. Collective members, irrespective of their particular job requirements, are
9 entitled to overtime compensation for hours worked in excess of forty during a
10 workweek.

11 73. Plaintiffs estimate the Collective, including both current and former
12 employees over the relevant time period, will include upwards of 100 people or
13 more. The similarly situated Collective members are known to Defendants, are
14 readily identifiable, and may be located through Defendants’ records. These
15 similarly situated employees may readily be notified of this action and allowed to
16 “opt-in” to this case pursuant to 29 U.S.C. § 216(b) for the purpose of collectively
17 adjudicating their claims for unpaid wages, liquidated damages (or, alternatively,
18 interest), and attorneys’ fees and costs under the FLSA.

19 **RULE 23 CLASS ALLEGATIONS**

20 74. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
21 fully set forth herein.

22 75. Plaintiffs bring this case as a class action on behalf of themselves and all
23 others similarly situated pursuant to Federal Rule of Civil Procedure 23. The Class
24 that Plaintiffs seek to represent is defined as follows:

25 All current and former non-exempt hourly employees of Food
26 Management Partners, Inc.; Buffets, LLC; or FMP-Ovation
27 Payroll LLC who worked in California during the time period

1 from four years prior to the filing of this Complaint until the
2 resolution of this action (the “Class”).

3 76. This action has been brought and may properly be maintained as a class
4 action under Federal Rule of Civil Procedure 23 because there is a well-defined
5 community of interest in the litigation and the proposed class is easily ascertainable:

6 a. **Numerosity:** The potential members of the Class as defined are so
7 numerous that joinder of all the members of the Class is impracticable. Plaintiffs are
8 informed and believe that the number of Class members exceeds 100. This volume
9 makes bringing the claims of each individual member of the class before this Court
10 impracticable. Likewise, joining each individual member of the Class as a plaintiff
11 in this action is impracticable. Furthermore, the identities of the Class will be
12 determined from Defendants’ records, as will the compensation paid to each of
13 them. As such, a class action is a reasonable and practical means of resolving these
14 claims. To require individual actions would prejudice the Class and Defendants.

15 b. **Commonality:** There are questions of law and fact common to
16 Plaintiffs and the Class that predominate over any questions affecting only
17 individual members of the Class. These common questions of law and fact include,
18 but are not limited to:

19 i. Whether Defendants fail to compensate Class members for all
20 hours worked, including at minimum wage and as overtime wage, in
21 violation of the California Labor Code, and Wage Orders;

22 ii. Whether Defendants have or had a policy and/or practice of
23 requiring Class members to be in the control of, spend time primarily for
24 the benefit of, and work for Defendants off-the-clock and without
25 compensation;

26 iii. Whether Defendants fail to compensate Class members with at
27 least minimum wage for all compensable work time in violation of the

1 California Labor Code, and Wage Orders;

2 iv. Whether Defendants fail to compensate Class members with
3 overtime wages for work performed in excess of eight hours in a day or
4 forty hours in a week in violation of the California Labor Code, and Wage
5 Orders;

6 v. Whether Defendants fail to authorize, permit, make available,
7 and/or provide Class members with compliant meal periods to which they
8 are entitled in violation of the California Labor Code, and Wage Orders;

9 vi. Whether Defendants fail to authorize, permit, make available,
10 and/or provide Class members with compliant rest periods to which they are
11 entitled in violation of the California Labor Code, and Wage Orders;

12 vii. Whether Defendants fail to provide Class members with
13 timely, accurate itemized wage statements in violation of the California
14 Labor Code, and Wage Orders;

15 viii. Whether Defendants fail to timely pay Class members for all
16 wages owing upon termination of employment in violation of the California
17 Labor Code, and Wage Orders;

18 ix. Whether Defendants violate Business and Professions Code §§
19 17200 *et seq.*, by:

20 (a.) failing to compensate Class members for all hours
21 worked, including at minimum wage and as overtime
22 compensation;

23 (b.) failing to pay Class members minimum wage for all
24 hours worked;

25 (c.) failing to properly pay overtime compensation, at either
26 one and one-half times or double the regular rate of pay,
27 to Class members;

1 (d.) failing to authorize and permit, make available, and/or
2 provide Class members with timely meal and rest periods
3 to which they are entitled;

4 (e.) failing to provide Class members with timely, accurate
5 itemized wage; and

6 (f.) failing to timely pay Class members for all wages owed
7 upon termination of employment; and

8 x. The proper formula for calculating restitution, damages, and
9 penalties owed to Plaintiffs and the Class alleged herein.

10 c. **Typicality:** Plaintiffs' claims are typical of the claims of the Class.
11 Defendants' common course of conduct in violation of law as alleged herein caused
12 Plaintiffs and Class members to sustain the same or similar injuries and damages.
13 Plaintiffs' claims are thereby representative of and co-extensive with the claims of
14 the Class.

15 d. **Adequacy of Representation:** Plaintiffs are members of the Class,
16 have no conflicts of interest with other Class members, and will prosecute the case
17 vigorously on behalf of the Class. Counsel representing Plaintiffs is competent and
18 experienced in litigating large employment class actions, including wage and hour
19 class actions. Plaintiffs will fairly and adequately represent and protect the interests
20 of the Class members.

21 e. **Superiority of Class Action:** A class action is superior to other
22 available means for the fair and efficient adjudication of this controversy. Individual
23 joinder of all Class members is not practicable, and questions of law and fact
24 common to the Class predominate over any questions affecting only individual
25 members of the Class. Each Class member has been damaged and is entitled to
26 recovery by reason of Defendants' illegal policies and/or practices. Class action
27 treatment will allow those similarly situated persons to litigate their claims in the

1 manner that is most efficient and economical for the Parties and the judicial system.
2 The injury suffered by each Class member, while meaningful on an individual basis,
3 is not of such magnitude as to make the prosecution of individual actions against
4 Defendants economically feasible. Individualized litigation increases the delay and
5 expense to all Parties and the Court. By contrast, class action treatment will allow
6 these similarly situated persons to litigate their claims in the manner that is most
7 efficient and economical for the Parties and the judicial system. In the alternative,
8 the Class may be certified because the prosecution of separate actions by the
9 individual members of the Class would create a risk of inconsistent or varying
10 adjudication with respect to individual members of the Class, and, in turn, would
11 establish incompatible standards of conduct for Defendant.

12 77. In the alternative, the Class may be certified because the prosecution of
13 separate actions by the individual members of the Class would create a risk of
14 inconsistent or varying adjudication with respect to individual members of the Class,
15 and, in turn, would establish incompatible standards of conduct for Defendant.

16 78. If each individual Class member were required to file an individual
17 lawsuit, Defendants would necessarily gain an unconscionable advantage because
18 Defendants would be able to exploit and overwhelm the limited resources of each
19 member of the Class with Defendants' vastly superior financial legal resources.

20 79. Requiring each individual Class member to pursue an individual remedy
21 would also discourage the assertion of lawful claims by the Class members who
22 would be disinclined to pursue these claims against Defendants because of an
23 appreciable and justifiable fear of retaliation and permanent damage to their lives,
24 careers and well-being.

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FIRST CAUSE OF ACTION

Violation of the Fair Labor Standards Act for Failure to Pay Minimum Wage and Overtime

29 U.S.C. §§ 201, *et seq.*

(On Behalf of the Collective)

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3
4 80. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
5 fully set forth herein.

6 81. The FLSA requires that covered employees receive compensation for all
7 hours worked and overtime compensation not less than one and one-half times the
8 regular rate of pay for all hours worked in excess of forty hours in a work week. 29
9 U.S.C. §§ 206(a)(1), 207(a)(1).

10 82. At all times material herein, Plaintiffs and the Collective were or are
11 covered employees entitled to the rights, protections, and benefits provided under the
12 FLSA. 29 U.S.C. §§ 203(e) and 207(a).

13 83. Defendants are covered employers required to comply with the FLSA's
14 mandates.

15 84. Defendants have violated the FLSA with respect to Plaintiffs and the
16 Collective by, *inter alia*, failing to pay Plaintiffs and the Collective minimum wage
17 and failing to pay the legally mandated overtime premium. Defendants have also
18 violated the FLSA by failing to keep accurate records of all hours worked by
19 Plaintiffs and the Collective. 29 U.S.C. § 211(c).

20 85. Plaintiffs and the Collective are victims of uniform and company-wide
21 compensation policies. These uniform policies, which violate the FLSA, have been
22 applied to Defendants' current and former non-exempt, hourly employees
23 throughout the United States.

24 86. Plaintiffs and the Collective are entitled to damages equal to the
25 mandated pay, including minimum wage, straight time, and overtime premium pay
26 within the three years preceding the filing of the complaint because Defendants have
27

1 acted willfully and knew or showed reckless disregard for whether the alleged
2 conduct was prohibited by the FLSA.

3 87. Defendants have acted neither in good faith nor with reasonable grounds
4 to believe that their actions and omissions did not violate the FLSA and, as a result,
5 Plaintiffs and the Collective are entitled to recover an award of liquidated damages
6 in an amount equal to the amount of unpaid overtime pay and/or prejudgment
7 interest at the applicable rate. 29 U.S.C. § 216(b).

8 88. As a result of the aforesaid violations of the FLSA's provisions,
9 Defendants have withheld pay; including minimum wage, straight time, and
10 overtime compensation; from Plaintiffs and the Collective. Accordingly, Defendants
11 are liable for unpaid wages, together with an equivalent amount of liquidated
12 damages; attorneys' fees; and costs incurred in pursuing this action.

13 89. Wherefore, Plaintiffs and the Collective request relief as hereinafter
14 provided.

15 **SECOND CAUSE OF ACTION**
16 **Failure to Pay Minimum Wage**
17 **Pursuant to California Labor Code § 1194**
18 **(On Behalf of the Class)**

19 90. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
20 fully set forth herein.

21 91. Defendants fail to compensate Plaintiffs and Class members with at least
22 the minimum wage for all hours worked or spent under Defendants' control because
23 Plaintiffs and the Class members are paid at rates at or just above the applicable
24 California minimum, and when the required premium payments for missed breaks,
25 wages for off-the-clock work, and overtime wages are factored in, the actual rate of
26 pay often drops below the applicable California minimum.

27 92. During the applicable statutory period, Labor Code §§ 1182.11, 1182.12,
and 1197, and the Minimum Wage Order were in full force and effect and required

1 that employees receive the minimum wage for all hours worked at the rate of nine
2 dollars (\$9.00) per hour commencing July 1, 2014, and at the rate of ten dollars
3 (\$10.00) per hour commencing January 1, 2016 and ending December 31, 2016. For
4 employers with 26 or more employees, the minimum wage for all hours worked was
5 ten dollars and fifty cents (\$10.50) per hour from January 1, 2017 to December 31,
6 2017, inclusive, eleven dollars (\$11.00) per hour from January 1, 2018 to December
7 31, 2018, inclusive, and twelve dollars (\$12.00) per hour from January 1, 2019 to
8 December 31, 2019, inclusive.

9 93. IWC Wage Order 5-2001(2)(K) defines hours worked as “the time
10 during which an employee is subject to the control of an employer and includes all
11 the time the employee is suffered or permitted to work, whether or not required to do
12 so.”

13 94. Labor Code § 1194(a) provides as follows:

14 Notwithstanding any agreement to work for a lesser wage, any
15 employee receiving less than the legal minimum wage or the
16 legal overtime compensation applicable to the employee is
17 entitled to recover in a civil action the unpaid balance of the full
18 amount of this minimum wage or overtime compensation,
19 including interest thereon, reasonable attorneys’ fees, and costs
20 of suit.

21 95. Because of Defendants’ policies and practices with regard to
22 compensating Plaintiffs and Class members, Defendants have failed to pay minimum
23 wages as required by law. Plaintiffs and Class members frequently perform work
24 for which they are compensated below the statutory minimum, as determined by the
25 IWC.

26 96. Labor Code § 1194.2 provides that, in any action under § 1194 to
27 recover wages because of the payment of a wage less than minimum wage fixed by

1 an order of the commission, an employer shall be entitled to recover liquidated
2 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

3 97. California law further requires that employers pay their employees for
4 all hours worked at the statutory or agreed upon rate. No part of the rate may be
5 used as a credit against a minimum wage obligation.

6 98. By failing to maintain adequate time records as required by Labor Code
7 §1174(d) and IWC Wage Orders 5-2001(7), Defendants have made it difficult to
8 calculate the minimum wage compensation due to Plaintiffs and Class members.

9 99. Plaintiffs and Class members have been deprived of minimum wages in
10 an amount to be proven at trial, and are entitled to a recovery of such amount, plus
11 liquidated damages, plus interest thereon, attorneys' fees, and costs of suit pursuant
12 to Labor Code §§ 1194, 1194.2, and 1197.1.

13 100. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

14 **THIRD CAUSE OF ACTION**
15 **Failure to Pay Overtime Wages**
16 **Pursuant to California Labor Code § 510**
17 **(On Behalf of the Class)**

18 101. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
19 fully set forth herein.

20 102. Defendants do not properly compensate Plaintiffs and Class members
21 with appropriate overtime premiums, including time-and-a-half premiums based on
22 their regular rate of pay, as required by California law.

23 103. Labor Code § 510(a) provides as follows:

24 Eight hours of labor constitutes a day's work. Any work in
25 excess of eight hours in one workday and any work in excess of
26 40 hours in any one workweek and the first eight hours worked
27 on the seventh day of work in any one workweek shall be
compensated at the rate of no less than one and one-half times

1 the regular rate of pay for an employee. Any work in excess of
2 12 hours in one day shall be compensated at the rate of no less
3 than twice the regular rate of pay for an employee. In addition,
4 any work in excess of eight hours on any seventh day of a
5 workweek shall be compensated at the rate of no less than twice
6 the regular rate of pay of an employee.

7 104. IWC Wage Order 5-2001(3)(A)(1) states:

8 [E]mployees shall not be employed more than eight (8) hours in
9 any workday or more than 40 hours in any workweek unless the
10 employee receives one and one-half (1 ½) times such
11 employee's regular rate of pay for all hours worked over 40
12 hours in the workweek. Eight (8) hours of labor constitutes a
13 day's work. Employment beyond eight (8) hours in any
14 workday or more than six (6) days in any workweek is
15 permissible provided the employee is compensated for such
16 overtime at not less than ... [o]ne and one-half (1½) times the
17 employee's regular rate of pay for all hours worked in excess of
18 eight (8) hours up to and including 12 hours in any workday,
19 and for the first eight (8) hours worked on the seventh (7th)
20 consecutive day of work in a workweek....

21 105. Labor Code § 1194(a) provides as follows:

22 Notwithstanding any agreement to work for a lesser wage, any
23 employee receiving less than the legal minimum wage or the
24 legal overtime compensation applicable to the employee is
25 entitled to recover in a civil action the unpaid balance of the full
26 amount of this minimum wage or overtime compensation,
27

1 including interest thereon, reasonable attorneys’ fees, and costs
2 of suit.

3 106. Labor Code § 200 defines wages as “all amounts of labor performed by
4 employees of every description, whether the amount is fixed or ascertained by the
5 standard of time, task, piece, commission basis or other method of calculation.” All
6 such wages are subject to California’s overtime requirements, including those set
7 forth above.

8 107. Defendants’ policies and practices of requiring Plaintiffs and Class
9 members to perform work off-the-clock is unlawful and results in overtime
10 violations. As a result of this unlawful policy, Plaintiffs and Class members have
11 worked overtime hours for Defendants without being paid overtime premiums in
12 violation of the Labor Code, the applicable IWC Wage Orders, and other applicable
13 law.

14 108. Defendants have knowingly and willfully refused to perform their
15 obligations to compensate Plaintiffs and Class members for all premium wages for
16 overtime work. Defendants are liable to Plaintiffs and Class members alleged herein
17 for the unpaid overtime and civil penalties, with interest thereon. Furthermore,
18 Plaintiffs and Class members are entitled to an award of attorneys’ fees and costs as
19 set forth below.

20 109. As a proximate result of the aforementioned violations, Plaintiffs and the
21 Class have been damaged in an amount according to proof at time of trial.
22 Defendants are liable to Plaintiffs and the Class alleged herein for the unpaid
23 overtime and civil penalties, with interest thereon. Furthermore, Plaintiffs are
24 entitled to an award of attorneys’ fees and costs as set forth below.

25 110. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

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FOURTH CAUSE OF ACTION
Failure to Pay for All Hours Worked

Pursuant to Labor Code §§ 200, 204, 1194, and 1198
(On Behalf of the Class)

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4 111. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
5 fully set forth herein.

6 112. Plaintiffs allege that Defendants willfully engaged and continues to
7 engage in a policy and practice of not compensating Plaintiffs and Class members
8 for all hours worked.

9 113. Defendants regularly require Plaintiffs and Class members to perform
10 uncompensated off-the-clock work. As detailed above, Defendants require Plaintiffs
11 and Class members to clock out at the end of their shifts and then requires, suffers,
12 and/or permits them to continue working for Defendants' benefit.

13 114. Labor Code § 200 defines wages as "all amounts for labor performed by
14 employees of every description, whether the amount is fixed or ascertained by the
15 standard of time, task, piece, commission basis or method of calculation."

16 115. Labor Code § 204(a) provides that "[a]ll wages ... earned by any person
17 in any employment are due and payable twice during each calendar month...."

18 116. Labor Code § 1194(a) provides as follows:

19 Notwithstanding any agreement to work for a lesser wage, any
20 employee receiving less than the legal minimum wage or the
21 legal overtime compensation applicable to the employee is
22 entitled to recover in a civil action the unpaid balance of the full
23 amount of this minimum wage or overtime compensation,
24 including interest thereon, reasonable attorneys' fees, and costs
25 of suit.

26 117. Labor Code § 1198 makes it unlawful for employers to employ
27 employees under conditions that violate the Wage Order.

1 118. IWC Wage Order 5-2001(2)(K) defines hours worked as “the time
2 during which an employee is subject to the control of an employer, and includes all
3 the time the employee is suffered or permitted to work, whether or not required to do
4 so.”

5 119. In violation of California law, Defendants knowingly and willfully
6 refuse to perform their obligation to provide Plaintiffs and Class members with
7 compensation for all time worked. Therefore, Defendants committed, and continue
8 to commit, the acts alleged herein knowingly and willfully, and in conscious
9 disregard of Plaintiffs’ and Class members’ rights. Plaintiffs and Class members are
10 thus entitled to recover nominal, actual, and compensatory damages; plus interest,
11 attorneys’ fees, expenses and costs of suit.

12 120. As a proximate result of the aforementioned violations, Plaintiffs and the
13 Class have been damaged in an amount according to proof at time of trial.

14 121. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

15 **FIFTH CAUSE OF ACTION**

16 **Failure to Authorize and Permit and/or Make Available Meal and Rest Periods**
17 **Pursuant to California Labor Code §§ 226.7 and 512**
18 **(On Behalf of the Class)**

19 122. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
20 fully set forth herein.

21 123. Defendants routinely do not make compliant meal periods available to
22 Plaintiffs and Class members. Instead, Defendants require Plaintiffs and Class
23 members to continue working during these breaks.

24 124. Defendants also fail to pay Plaintiffs and Class members one hour of
25 premium pay for missed breaks.

26 125. Labor Code §§ 226.7 and 512 and the applicable Wage Order require
27 Defendants to authorize and permit meal and rest periods to their employees. Labor
Code §§ 226.7 and 512 and the Wage Order prohibit employers from employing an

1 employee for more than five hours without a meal period of not less than thirty
2 minutes, and from employing an employee more than ten hours per day without
3 providing the employee with a second meal period of not less than thirty minutes.
4 Labor Code § 226.7 and the applicable Wage Order also require employers to
5 authorize and permit employees to take ten minutes of net rest time per four hours or
6 major fraction thereof of work, and to pay employees their full wages during those
7 rest periods. Unless the employee is relieved of all duty and employer control during
8 the thirty-minute meal period and ten-minute rest period, the employee is considered
9 “on duty” and the meal or rest period is counted as time worked under the applicable
10 Wage Order.

11 126. Under Labor Code § 226.7(b) and the applicable Wage Order, an
12 employer who fails to authorize, permit, and/or make available a required meal
13 period must, as compensation, pay the employee one hour of pay at the employee’s
14 regular rate of compensation for each workday that the meal period was not
15 authorized and permitted and/or not made available. Similarly, an employer must
16 pay an employee denied a required rest period one hour of pay at the employee’s
17 regular rate of compensation for each workday that the rest period was not
18 authorized and permitted and/or not made available.

19 127. Despite these requirements, Defendants knowingly and willfully refuse
20 to perform their obligations to authorize and permit and/or make available to
21 Plaintiffs and Class members the ability to take the off-duty meal and rest periods to
22 which they are entitled.

23 128. Defendants also fail to pay Plaintiffs and Class members one hour of pay
24 for each off-duty meal and/or rest period that they are denied.

25 129. Defendants’ conduct described herein violates Labor Code §§ 226.7 and
26 512. Therefore, pursuant to Labor Code § 226.7(b), Plaintiffs and Class members
27 are entitled to compensation for the failure to authorize and permit and/or make

1 available meal and rest periods, plus interest, attorneys' fees, expenses, and costs of
2 suit.

3 130. As a proximate result of the aforementioned violations, Plaintiffs and the
4 Class have been damaged in an amount according to proof at time of trial.

5 131. Wherefore, Plaintiffs and the Class relief as hereinafter provided.

6 **SIXTH CAUSE OF ACTION**
7 **Failure to Provide Accurate Itemized Wage Statements**
8 **Pursuant to Labor Code § 226**
9 **(On Behalf of the Class)**

10 132. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
11 fully set forth herein.

12 133. Defendants do not provide Plaintiffs and Class members with accurate
13 itemized wage statements as required by California law.

14 134. Labor Code § 226(a) provides:

15 An employer, semimonthly or at the time of each payment of
16 wages, shall furnish to his or her employee, either as a
17 detachable part of the check, draft, or voucher paying the
18 employee's wages, or separately if wages are paid by personal
19 check or cash, an accurate itemized statement in writing
20 showing (1) gross wages earned, (2) total hours worked by the
21 employee, except as provided in subdivision (j), (3) the number
22 of piece-rate units earned and any applicable piece rate if the
23 employee is paid on a piece-rate basis, (4) all deductions,
24 provided that all deductions made on written orders of the
25 employee may be aggregated and shown as one item, (5) net
26 wages earned, (6) the inclusive dates of the period for which the
27 employee is paid, (7) the name of the employee and only the
last four digits of his or her social security number or an

1 employee identification number other than a social security
2 number, (8) the name and address of the legal entity that is the
3 employer and, if the employer is a farm labor contractor, as
4 defined in subdivision (b) of Section 1682, the name and
5 address of the legal entity that secured the services of the
6 employer, and (9) all applicable hourly rates in effect during the
7 pay period and the corresponding number of hours worked at
8 each hourly rate by the employee...

9 135. The IWC Wage Orders also establish this requirement. (See IWC Wage
10 Order 5-2001(7)).

11 136. Labor Code § 226(e) provides:

12 An employee suffering injury as a result of a knowing and
13 intentional failure by an employer to comply with subdivision
14 (a) is entitled to recover the greater of all actual damages or
15 fifty dollars (\$50) for the initial pay period in which a violation
16 occurs and one hundred dollars (\$100) per employee for each
17 violation in a subsequent pay period, not exceeding an
18 aggregate penalty of four thousand dollars (\$4,000), and is
19 entitled to an award of costs and reasonable attorneys' fees.

20 137. Plaintiffs seek to recover damages, costs, and attorneys' fees under this
21 section.

22 138. Defendants fail to provide timely, accurate itemized wage statements to
23 Plaintiffs and Class members in accordance with Labor Code § 226(a) and the IWC
24 Wage Orders. The wage statements Defendants provide to employees, including
25 Plaintiffs and Class members, do not provide the employing entity's name and do
26 not accurately reflect the premium pay to which they are entitled to for missed meal
27

1 and rest breaks, the actual hours worked, the actual gross wages earned, the actual
2 net wages earned, and the actual hourly rate(s).

3 139. As a proximate result of the aforementioned violations, Defendants are
4 liable to Plaintiffs and Class members alleged herein for the amounts described, with
5 interest thereon, in an amount according to proof at time of trial. Furthermore,
6 Plaintiffs are entitled to an award of attorneys' fees and costs as set forth below,
7 pursuant to Labor Code § 226(e).

8 140. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

9 **SEVENTH CAUSE OF ACTION**

10 **Waiting Time Penalties**

11 **Pursuant to Labor Code §§ 201-203, 225.5, 256**

12 **(On Behalf of the Class)**

13 141. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
14 fully set forth herein.

15 142. Defendants do not provide Class members whose employment with
16 Defendants has ended, including Plaintiffs, with their wages due at the time their
17 employment ends as required under California law.

18 143. Labor Code § 201 provides: "If an employer discharges an employee,
19 the wages earned and unpaid at the time of discharge are due and payable
20 immediately."

21 144. Labor Code § 202(a) provides:

22 If an employee not having a written contract for a definite
23 period quits his or her employment, his or her wages shall
24 become due and payable not later than 72 hours thereafter,
25 unless the employee has given 72 hours previous notice of his
26 or her intention to quit, in which case the employee is entitled
27 to his or her wages at the time of quitting.

145. Labor Code § 203(a) provides:

1 If an employer willfully fails to pay, without abatement or
2 reduction, in accordance with Sections 201, 201.5, 201.9, 202,
3 and 205.5, any wages of an employee who is discharged or who
4 quits, the wages of the employee shall continue as a penalty
5 from the due date thereof at the same rate until paid or until an
6 action therefor is commenced; but the wages shall not continue
7 for more than 30 days.

8 146. Some of the Class members, including Plaintiffs, left their employment
9 with Defendants during the statutory period, at which time Defendants owed them
10 unpaid wages. These earned, but unpaid, wages derive from time spent working for
11 the benefit of Defendants which went unrecorded and/or uncompensated.

12 147. Defendants willfully refused and continue to refuse to pay Plaintiffs and
13 Class members who are former employees all the wages that were due and owed to
14 them upon the end of their employment, in the form of wages owed for
15 uncompensated, off-the-clock work, as well as meal and rest period premium pay
16 and unpaid overtime. As a result of Defendants' actions, Plaintiffs and Class
17 members have suffered and continue to suffer substantial losses, including lost
18 earnings, and interest.

19 148. Defendants' willful failure to pay Plaintiffs and Class members the
20 wages due and owing to them constitutes a violation of Labor Code §§ 201-202. As
21 a result, Defendants are liable to Plaintiffs and Class members for all penalties
22 owing pursuant to Labor Code §§ 201-203.

23 149. Labor Code § 203 provides that an employee's wages will continue as a
24 penalty up to thirty days from the time the wages were due. Therefore, Plaintiffs and
25 Class members are entitled to such penalties pursuant to Labor Code § 203, plus
26 interest.

1 150. As a proximate result of the aforementioned violations, Defendants are
2 liable to Plaintiffs and Class members alleged herein for the amounts described, with
3 interest thereon, in an amount according to proof at time of trial.

4 151. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

5 **NINTH CAUSE OF ACTION**

6 **Unlawful Business Practices**

7 **Pursuant to California Business and Professions Code §§ 17200, *et seq.***

8 **(On Behalf of the Class)**

9 152. Plaintiffs re-allege and incorporate the foregoing paragraphs as though
10 fully set forth herein.

11 153. Business and Professions Code §§ 17200 *et seq.* (the “UCL”) prohibits
12 unfair competition in the form of any unlawful, unfair or fraudulent business acts or
13 practices.

14 154. Business and Professions Code § 17204 allows a person injured by the
15 unfair business acts or practices to prosecute a civil action for violation of the UCL.

16 155. Labor Code § 90.5(a) states it is the public policy of California to
17 vigorously enforce minimum labor standards in order to ensure employees are not
18 required to work under substandard and unlawful conditions, and to protect
19 employers who comply with the law from those who attempt to gain competitive
20 advantage at the expense of their workers by failing to comply with minimum labor
21 standards.

22 156. Beginning at an exact date unknown to Plaintiffs, but at least since the
23 date four years prior to the filing of this suit, Defendants have committed acts of
24 unfair competition as defined by the UCL by engaging in the unlawful, unfair and
25 fraudulent business acts and practices described in this Complaint, including, but not
26 limited to:
27

- 1 a. violations of Labor Code §§ 200, 204, 1194, and 1198 and IWC
- 2 Wage Orders pertaining to the payment of wages for all hours
- 3 worked;
- 4 b. violations of Labor Code §§ 1182.11, 1182.12, 1194.2, and 1197
- 5 and IWC Wage Orders pertaining to minimum wage;
- 6 c. violations of Labor Code § 510 and IWC Wage Orders pertaining
- 7 to overtime;
- 8 d. violations of Labor Code §§ 226.7 and 512 and IWC Wage Orders
- 9 pertaining to meal and rest breaks;
- 10 e. violations of Labor Code § 226 regarding accurate, timely itemized
- 11 wage statements; and
- 12 f. violations of Labor Code §§ 201-203 pertaining to waiting time
- 13 penalties.

14 157. The violations of these laws and regulations, as well as of the
15 fundamental California public policies protecting wages, serve as unlawful predicate
16 acts and practices for purposes of Business and Professions Code §§ 17200 *et seq.*

17 158. The acts and practices described above constitute unfair, unlawful and
18 fraudulent business practices, and unfair competition, within the meaning of
19 Business and Professions Code §§ 17200, *et seq.* Among other things, the acts and
20 practices have taken from Plaintiffs and Class members wages rightfully earned by
21 them, while enabling Defendants to gain an unfair competitive advantage over law-
22 abiding employers and competitors.

23 159. Business and Professions Code § 17203 provides that a court may make
24 such orders or judgments as may be necessary to prevent the use or employment by
25 any person of any practice which constitutes unfair competition. Injunctive relief is
26 necessary and appropriate to prevent Defendants from repeating the unlawful, unfair
27 and fraudulent business acts and practices alleged above.

- 1 their FLSA claims;
- 2 b) For an order equitably tolling the statute of limitations for the potential
- 3 members of the Collective;
- 4 c) Damages and restitution according to proof at trial for all unpaid wages and
- 5 other injuries, as provided by the FLSA, California Labor Code, and
- 6 California Business and Professions Code;
- 7 d) For a declaratory judgment that Defendants have violated the FLSA,
- 8 California Labor Code, and public policy as alleged herein;
- 9 e) For a declaratory judgment that Defendants have violated California
- 10 Business and Professions Code §§ 17200 *et seq.*, as a result of the
- 11 aforementioned violations of the California Labor Code and of California
- 12 public policy protecting wages;
- 13 f) For preliminary, permanent, and mandatory injunctive relief prohibiting
- 14 Defendants, their officers, agents, and all those acting in concert with them
- 15 from committing in the future those violations of law herein alleged;
- 16 g) For an equitable accounting to identify, locate, and restore to all current and
- 17 former employees the wages they are due, with interest thereon;
- 18 h) For an order awarding Plaintiffs and the Class members compensatory
- 19 damages, including lost wages, earnings, liquidated damages, and other
- 20 employee benefits, restitution, recovery of all money, actual damages, and
- 21 all other sums of money owed to Plaintiffs and Class members, together with
- 22 interest on these amounts, according to proof;
- 23 i) For an order awarding Plaintiffs and Class and Collective members civil
- 24 penalties pursuant to the FLSA, California Labor Code, and the laws of the
- 25 State of California, with interest thereon;
- 26 j) For an award of reasonable attorneys' fees as provided by the California
- 27 Labor Code, California Code of Civil Procedure § 1021.5, the laws of the

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- State of California, the FLSA, and/or other applicable law;
- k) For all costs of suit;
- l) For such other and further relief as this Court deems just and proper.

Dated: October 1, 2019

Respectfully submitted,

/s/ Carolyn H. Cottrell

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Ori Edelstein
Ian W. Forgie
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COTTRELL KONECKY
WOTKYNS LLP

Zorik Mooradian
MOORADIAN LAW, APC

Attorneys for Plaintiffs and the Putative Class
and Collective

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims and issues for which
Plaintiffs are entitled to a jury.

Dated: October 1, 2019

/s/ Carolyn H. Cottrell

Carolyn H. Cottrell

Ori Edelstein

Ian W. Forgie

SCHNEIDER WALLACE COTTRELL

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EXHIBIT B

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19CV357419
Reviewed By: M Vu

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10 Attorneys for Plaintiff, on behalf of the
11 State of California and Aggrieved Employees

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF SANTA CLARA**

19CV357419

14 REINA GONZALEZ and ESPERANZA
15 JIMENEZ, on behalf of the
State of California and Aggrieved
Employees,

16 Plaintiffs,

17 vs.

18 FOOD MANAGEMENT PARTNERS,
19 INC.; BUFFETS, LLC; FMP-OVATION
PAYROLL LLC and DOES 1-10, inclusive,

20 Defendants.

Case No: _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

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1 Plaintiffs Reina Gonzalez and Esperanza Jimenez (“Plaintiffs”), on behalf of the State of
2 California and Aggrieved Employees, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this enforcement action on behalf of the State of California against
5 Food Management Partners, Inc. (“FMP”); Buffets, LLC (“Buffets”); and FMP-Ovation Payroll
6 LLC (“FMP-Ovation”) (collectively “Defendants”) for its systemic violations of California labor
7 law with respect to Defendants’ non-exempt, hourly employees in California (the “Aggrieved
8 Employees”).

9 2. Plaintiffs and Aggrieved Employees bring this action to challenge Defendants’
10 policies and practices of (1) failing to pay Plaintiffs and Aggrieved Employees minimum wage; (2)
11 failing to pay Plaintiffs and Aggrieved Employees overtime wages; (3) failing to compensate
12 Plaintiffs and Aggrieved Employees for all hours worked; (4) failing to authorize and permit
13 Plaintiffs and Aggrieved Employees to take meal and rest breaks to which they are entitled by law
14 and pay premium compensation for missed breaks; (5) failing to provide Plaintiffs and Aggrieved
15 Employees accurate, itemized wage statements; and (6) failing to timely pay Plaintiffs and
16 Aggrieved Employees wages owed upon the termination of employment.

17 3. Plaintiffs and Aggrieved Employees are current and former employees who worked
18 for Defendants as non-exempt hourly employees in California.¹ These employees work in
19 Defendants’ buffet restaurants preparing and serving food, cleaning up and maintaining the
20 restaurant, and attending to Defendants’ customers. Plaintiffs and Aggrieved Employees regularly
21 work over eight hours per day and up to six days per week.

22 4. Defendants fail to pay Plaintiffs and Aggrieved Employees for all hours worked. In
23 particular, Defendants regularly require Plaintiffs and Aggrieved Employees to clock out at the
24 scheduled shift end time but continue working for hours at a time. Defendants do not compensate
25 Plaintiffs or Aggrieved Employees for this “off-the-clock” work.

26 ¹ Although Plaintiffs are former employees, they assert their causes of action on behalf of both
27 current and former employees. For ease of discussion, the allegations are made in the present tense.

1 by Defendants from approximately October 2017 to December 28, 2018. Plaintiff Jimenez worked
2 for Defendants at their HomeTown Buffet restaurant in Palmdale, California.

3 12. Plaintiffs are informed, believe, and thereon allege that Defendant Food Management
4 Partners, Inc. (“FMP”) is a Texas corporation with its Principal Executive Office in Hollywood
5 Park, Texas. Defendant FMP is not registered as a foreign business entity with the California
6 Secretary of State.

7 13. Plaintiffs are informed, believe, and thereon allege that Defendant FMP is a
8 restaurant investment and management company that operates nine restaurant-chains in thirty-six
9 states. According to its website, FMP “manages all store-level and corporate operations for Furr’s
10 Fresh Buffet, Hometown Buffet, Hops, Old Country Buffet, Ryan’s, Curry House, Sushi Zushi,
11 Tahoe Joe’s and Zio’s Italian Kitchen in 36 states,” including California.

12 14. Plaintiffs are informed, believe, and thereon allege that Defendant Buffets, LLC
13 (“Buffets”) is a Minnesota limited liability corporation whose members reside in Hollywood Park,
14 Texas. Defendant Buffets is registered as a foreign business entity with the California Secretary of
15 State. Plaintiffs are informed, believe, and thereon allege that Defendant Buffets is an entity
16 formed, owned, and controlled by Defendant FMP for the purpose of operating its buffet-style
17 restaurant brands nationwide.

18 15. Plaintiffs are informed, believe, and thereon allege that Defendant FMP Ovation
19 Payroll LLC (“FMP-Ovation”) is a Texas limited liability corporation whose members reside in
20 Hollywood Park, Texas. Defendant FMP-Ovation is not registered as a foreign business entity with
21 the California Secretary of State. Plaintiffs are informed, believe, and thereon allege that Defendant
22 FMP-Ovation is an entity formed, owned, and controlled by Defendant FMP for the purpose of,
23 among other things, processing payroll for Defendant FMP’s employees. At times relevant to this
24 complaint, Plaintiffs’ wage statements came from FMP-Ovation.

25 16. Plaintiffs are informed, believe, and allege that Defendants FMP, Buffets, and FMP-
26 Ovation share the same business address in Hollywood Park, Texas, and that they share the same
27 three managers and directors.

1 17. The true names and capacities, whether individual, corporate, associate, or otherwise,
2 of Does 1-10, inclusive, are unknown to Plaintiffs, who therefore sues the Doe Defendants by
3 fictitious names. Plaintiffs are informed, believe, and thereon alleges that each of these fictitiously-
4 named Defendants is responsible in some manner for the occurrences and Plaintiffs' and other
5 Aggrieved Employees' damages as herein alleged. Plaintiffs will amend this Complaint to show
6 their true names and capacities when they have been ascertained. Defendants and Doe Defendants
7 are jointly and severally liable for Plaintiffs and other Aggrieved Employees' damages.

8 18. Plaintiffs are informed, believe, and allege that at all times mentioned in this
9 Complaint, each Defendant was the agent and employee of the other Defendant and, in doing the
10 things alleged in this Complaint, was acting within the course and scope of such agency and
11 employment. Plaintiffs are further informed, believe, and allege that each of the Defendants gave
12 consent to, ratified, and authorized the acts alleged herein. Defendants are sued both in their own
13 right and on the basis of respondent superior.

14 19. Plaintiffs are informed, believe, and thereon allege that Defendant FMP serves in a
15 capacity of direct control over the operations of its agents, Defendants Buffets and FMP-Ovation.
16 Plaintiffs are informed, believe, and thereon allege that FMP, Buffets, and FMP-Ovation jointly
17 exercised control over Plaintiffs and other Aggrieved Employees with respect to their work for
18 Defendants.

19 20. Plaintiffs are informed, believe, and allege that Defendants are either solely or jointly
20 and severally liable for damages and penalties owed to Plaintiffs under common law and by statute,
21 including attorneys' fees and costs.

22 21. At all relevant times, Defendants have done business under the laws of California;
23 have had places of business in California, including in this County; and have employed Aggrieved
24 Employees in this County. Defendants are "persons" as defined in California Labor Code § 18.
25 Defendants are also "employers" as that term is used in the Labor Code and the IWC Wage Orders
26 regulating wages, hours and working conditions.

27 ///

1 **JURISDICTION AND VENUE**

2 22. This Court has jurisdiction over this action pursuant to the California Labor Code
3 Private Attorneys General Act. This Court has jurisdiction over Defendant Buffets, LLC because it
4 does business in California, is authorized to do business in the State of California, and is registered
5 with the California Secretary of State. This Court has jurisdiction over Defendant FMP-Ovation
6 because it does business in the State of California. FMP-Ovation is the entity that issues and is
7 identified on Plaintiff's and Aggrieved employees' wage statements.

8 23. This Court also has jurisdiction over Defendants Food Management Partners, Inc.
9 and FMP-Ovation Payroll LLC because they are principals of Defendant Buffets, LLC, over which
10 they exercise pervasive and continual control; because this lawsuit relates to FMP's and FMP-
11 Ovation's contacts with California; and because they are the alter egos of Defendant Buffets, LLC.

12 24. Venue is proper in this County pursuant to Code of Civil Procedure § 393.
13 Defendants conducts business, employ Aggrieved Employees, and have jobsites in this County.
14 Plaintiffs are informed, believe, and thereon allege that events giving rise to these causes of action
15 occurred in this County, and some part of these causes of action arose in this County.

16 **FACTUAL ALLEGATIONS**

17 25. Plaintiff Gonzalez worked for Defendants as a non-exempt, hourly employee at
18 HomeTown Buffet restaurants located in Palmdale and Lancaster, California from approximately
19 April 4, 1994 until September 23, 2018. During her employment with Defendants, Plaintiff
20 Gonzalez worked at various times as a cashier and waitress. At the time of her termination, her
21 regular hourly rate of pay was approximately \$11.00 per hour.

22 26. Plaintiff Jimenez worked for Defendants as a non-exempt, hourly employee at a
23 HomeTown Buffet restaurant in Palmdale, California from approximately October 2017 to
24 December 28, 2018. During her employment with Defendants, Plaintiff Jimenez worked at the
25 Palmdale location's bakery and omelet stations. At the time of her termination, her regular hourly
26 rate of pay was approximately \$11.00 per hour.

27 27. Defendants operate a chain of restaurants throughout the United States and

1 California, including HomeTown Buffet restaurants. Defendants employ hundreds of hourly non-
2 exempt workers similarly situated to Plaintiffs across these restaurants.

3 28. To conduct their operations, Defendants employ hourly, non-exempt employees who
4 are responsible for all aspects of their restaurant operations. Plaintiffs are informed, believe, and
5 thereon allege that this operational structure is uniform and standardized throughout Defendants'
6 operations. The employment conditions for these hourly, non-exempt employees are substantially
7 similar, if not identical, for Defendants' employees throughout the United States, including in
8 California.

9 29. Defendants' waitstaff, such as Plaintiff Reina Gonzalez, solicit and fulfill
10 Defendants' customers' service requests, clean up after departing customers, and prepare
11 Defendants' restaurants for new customers. Defendants' cashiers, meanwhile, assist Defendants'
12 customers in paying for their food while also handling miscellaneous related responsibilities. Other
13 employees, such as Plaintiff Esperanza Jimenez, prepare food for Defendants' customers.

14 30. Plaintiffs are informed, believe, and thereon allege that Defendants pay all of their
15 hourly, non-exempt staff, regardless of position or location, at or near applicable minimum wages.
16 At the time their employments with Defendants terminated, Plaintiffs were paid \$11.00 per hour,
17 the California minimum wage at the time. When the daily pay for these workers is divided by the
18 actual hours that they work, and required missed break premiums, off-the-clock work, and overtime
19 are factored in, the effective hourly rate of pay often falls below the applicable minimum wage.

20 31. As a matter of policy, Defendants require Plaintiffs and other Aggrieved Employees
21 to perform work off-the-clock after their shift has ended. Defendants neither record nor compensate
22 these employees for the work performed while off-the-clock.

23 32. Specifically, after clocking out, Plaintiffs and other Aggrieved Employees are
24 required to continue working for up to an additional 3-4 hours off-the-clock. Defendants instruct
25 Plaintiffs and other Aggrieved Employees to clock out but continue working in order to complete
26 their assigned responsibilities without accruing additional compensation, including overtime
27 compensation. For example, Plaintiff Gonzalez regularly worked 11 hours or more in a day but was

1 paid as if she had worked only 7.5 hours. Likewise, despite the fact that, at times, Plaintiff Jimenez
2 worked 12 or more hours per day, Defendants typically paid her for only 7.5 hours of daily work.

3 33. As a result of these policies, Defendants deny Plaintiffs and other Aggrieved
4 Employees the overtime premiums resulting from the additional work performed off-the-clock.

5 34. Defendants also fail to provide Plaintiffs and other Aggrieved Employees with
6 timely, legally compliant meal breaks. Instead, Defendants require Plaintiffs and other Aggrieved
7 Employees to continue working through their scheduled lunch breaks. Defendants instruct Plaintiffs
8 and other Aggrieved Employees to clock out for meal breaks, even though they didn't take them.
9 When Defendants do provide Plaintiffs and Aggrieved Employees with meal breaks, Defendants
10 regularly interrupt Plaintiffs' and other Aggrieved Employees' meal breaks with work requests
11 without providing a substitute meal break and without requiring them to clock back in.

12 35. As a result of these policies, Defendants deny Plaintiffs and other Aggrieved
13 Employees the overtime premiums resulting from the additional off-the-clock work performed
14 during the unpaid meal breaks.

15 36. Defendants also fail to provide Plaintiffs and Class members with adequate rest
16 periods as required by California law. Defendants routinely deny Plaintiffs and Class members the
17 opportunity to take any rest breaks at all. Instead, Defendants require Plaintiffs and Class members
18 to continue working throughout the day to meet their customers' demands.

19 37. Despite failing to provide Plaintiffs and Class members the opportunity to take
20 legally compliant rest breaks, Defendants do not provide premium pay in lieu of these missed
21 breaks.

22 38. Defendants' common course of wage-and-hour abuses includes routinely failing to
23 maintain true and accurate records of the hours worked by Plaintiffs and other Aggrieved
24 Employees. In particular, Defendants fail to record hours that Plaintiffs and other Aggrieved
25 Employees worked during missed meal breaks as well as hours worked off-the-clock. Defendants'
26 failure to record all hours worked also results in a failure to provide Plaintiffs and other Aggrieved
27 Employees accurate itemized wage statements as required by California law. The wage statements

1 Defendants provide do not reflect all hours worked, premium pay for missed meal and rest breaks,
2 or applicable overtime premiums.

3 39. Defendants also do not provide Plaintiffs and Class members with accurate wage
4 statements because Defendants issue wage statements to Plaintiffs and Class members that indicate
5 that their employer is “FMP Ovation Payroll LLC,” an entity that is neither registered to do business
6 in the state of California as an independent entity nor on information and belief is it registered as a
7 fictitious business name pursuant to California Business & Professions Code § 17900.

8 40. Further, Defendants did not and do not provide Plaintiffs and other Aggrieved
9 Employees with full payment of all wages owed at the end of employment. These workers are
10 owed wages and premium pay for all time worked, overtime, and missed meal and rest breaks when
11 their employment ends. These amounts remain unpaid pursuant to Defendants’ policies and
12 practices, even after voluntary or involuntary termination. Defendants therefore fail to pay all
13 wages due upon termination as required by California law. As a consequence, Defendants are
14 subject to waiting time penalties.

15 41. Plaintiffs are informed, believe, and thereon allege that Defendants’ unlawful
16 conduct has been widespread, repeated, and consistent as to the other Aggrieved Employees.
17 Defendants know or should know that their policies and practices are unlawful and unfair.

18 42. Defendants’ conduct is willful, carried out in bad faith, and has caused significant
19 damages to Plaintiffs and other Aggrieved Employees in an amount to be determined at trial.

20 **FIRST CAUSE OF ACTION**
21 **Penalties Pursuant to Labor Code § 2699(a)**
22 **(Against All Defendants)**

23 43. Plaintiffs incorporate the foregoing paragraphs as though fully set forth herein.

24 44. Labor Code § 2699(a) provides:

25 Notwithstanding any other provision of law, any provision of this code
26 that provides for a civil penalty to be assessed and collected by the Labor
and Workforce Development Agency ... for a violation of this code,
may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees.

27 45. Labor Code § 203 provides, in relevant part:

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until paid or
until an action therefore is commenced; but the wages shall not continue for
more than 30 days.

5 46. Labor Code § 226(a) provides:

6 An employer, semimonthly or at the time of each payment of wages, shall
7 furnish to his or her employees, either as a detachable part of the check, draft,
8 or voucher paying the employee's wages, or separately if wages are paid by
9 personal check or cash, an accurate itemized statement in writing showing (1)
10 gross wages earned, (2) total hours worked by the employee, except as
11 provided in subdivision (j), (3) the number of piece-rate units earned and any
12 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
13 deductions, provided that all deductions made on written orders of the
14 employee may be aggregated and shown as one item, (5) net wages earned, (6)
the inclusive dates of the period for which the employee is paid, (7) the name
of the employee and only the last four digits of his or her social security number
or an employee identification number other than a social security number, (8)
the name and address of the legal entity that is the employer, and (9) all
applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate by the employee...

15 47. Labor Code § 558(a) provides:

16 (a) Any employer or other person acting on behalf of an employer who
17 violates, or causes to be violated, a section of this chapter or any provision
18 regulating hours and days of work in any order of the Industrial
Welfare Commission shall be subject to a civil penalty as follows:

19 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
20 for each pay period for which the employee was underpaid in addition to
an amount sufficient to recover underpaid wages.

21 (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was
underpaid in addition to an amount sufficient to recover underpaid wages.

23 48. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(a) for each failure by
24 Defendants, as alleged above, to timely pay all wages owed to Plaintiffs and other Aggrieved
25 Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code
26 § 203. Plaintiffs seek such penalties as an alternative to the penalties available under Labor Code
27 § 203, as prayed for herein.

1 (\$100) for each aggrieved employee per pay period for the initial violation and
2 two hundred dollars (\$200) for each aggrieved employee per pay period for
3 each subsequent violation.

4 58. Labor Code § 510(a) provides:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight
6 hours in one workday and any work in excess of 40 hours in any one workweek
7 and the first eight hours worked on the seventh day of work in any one
8 workweek shall be compensated at the rate of no less than one and one-half
9 times the regular rate of pay for an employee. Any work in excess of 12 hours
10 in one day shall be compensated at the rate of no less than twice the regular
11 rate of pay for an employee.

12 59. Labor Code § 512(a) provides:

13 An employer shall not employ an employee for a work period of more than
14 five hours per day without providing the employee with a meal period of not
15 less than 30 minutes, except that if the total work period per day of the
16 employee is no more than six hours, the meal period may be waived by
17 mutual consent of both the employer and employee. An employer shall not
18 employ an employee for a work period of more than 10 hours per day without
19 providing the employee with a second meal period of not less than 30 minutes,
20 except that if the total hours worked is no more than 12 hours, the second
21 meal period may be waived by mutual consent of the employer and the
22 employee only if the first meal period was not waived.

23 60. Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for each failure by
24 Defendants, alleged above, to provide Plaintiffs and other Aggrieved Employees compliant meal
25 and rest periods in compliance with Labor Code § 512.

26 61. Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(f) for each
27 violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days
of work in any order of the IWC.

62. To the extent than any other violation alleged herein does not carry penalties under
Labor Code § 2699(a), Plaintiffs seek civil penalties pursuant to Labor Code § 2699(f) for
Plaintiffs and other Aggrieved Employees each pay period in which he or she was aggrieved, in
the amounts established by Labor Code § 2699(f).

63. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiffs have provided the LWDA
with notice of their intention to file this claim. Sixty-five calendar days have passed without
notice from the LWDA. Plaintiffs satisfied the administrative prerequisites to commence this

1 civil action in compliance with § 2699.3(a).

2 64. Plaintiffs seek the aforementioned penalties on behalf of the State, other Aggrieved
3 Employees, and themselves as set forth in Labor Code § 2699(g)(i).

4 65. Defendants are liable to Plaintiffs, other Aggrieved Employees, and the State of
5 California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiffs are
6 also entitled to an award of attorneys' fees and costs as set forth below.

7 66. Wherefore, Plaintiffs request relief as hereinafter provided.

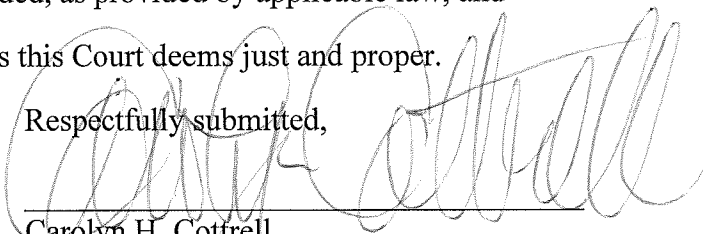
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, on behalf of the State of California and the Aggrieved
10 Employees, request the following relief:

- 11 a) For an order awarding civil penalties to the full extent provided for by the PAGA;
12 b) For an award of reasonable attorneys' fees as provided by the California Labor Code,
13 including Labor Code § 2699(g)(1); California Code of Civil Procedure § 1021.5; and/or
14 any other applicable law;
15 c) For all costs of suit;
16 d) For interest on any penalties awarded, as provided by applicable law; and
17 e) For such other and further relief as this Court deems just and proper.

18 Dated: October 23, 2019

19 Respectfully submitted,

20 

21 Carolyn H. Cottrell
22 Ori Edelstein
23 Ian W. Forgie
24 SCHNEIDER WALLACE
25 COTTRELL KONECKY
26 WOTKYNS LLP

27 Zorik Mooradian
MOORADIAN LAW, APC

Attorneys for Plaintiffs, on behalf of the State of
California and Aggrieved Employees

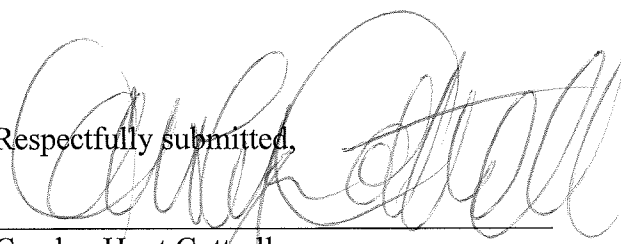
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial on all claims and issues for which Plaintiffs are entitled to a jury.

Dated: October 23, 2019

Respectfully submitted,



Carolyn Hunt Cottrell
Ori Edelstein
Ian W. Forgie
SCHNEIDER WALLACE
COTTRELL KONECKY
WOTKYNS LLP

Zorik Mooradian
MOORADIAN LAW, APC

Attorneys for Plaintiffs, on behalf of the State of California an Aggrieved Employees

EXHIBIT C

MARIA ISABEL AGUILAR		FMP-Ovation Payroll, LLC and Buffets, LLC			
		Statement of Earning For the Pay Date Shown			
Pay Date	12/19/2018	120 Chula Vista Dr.			
Advice #	DD000000000000436682	San Antonio TX 78232			
Pay Period		USA			
Start	11/29/2018				
Pay Period		Earnings Totals		Current	YTD
End	12/12/2018	Gross Pay		\$604.97	\$14,350.21
Department	0157	Net Pay		\$468.92	\$10,636.91
W-4 Fed		Earnings Detail		Rate	Hours
Withholding	S	CASH	\$11.00	15.92	\$175.12
		RPDTIP	\$52.00		\$52.00
		SERVER	\$11.00	34.35	\$377.85
		SICK-H			\$0.00
					\$198.00
Additional Tax Withholding		Deductions Detail		Current	YTD
Fed	\$0.00	Taxes			
		Federal W/H Tax		\$30.30	\$732.18
		Medicare Tax		\$8.76	\$208.07
		Social Sec Tax		\$37.52	\$889.72
		State Tax (CA)		\$1.42	\$41.22
		Local Tax (CASDI)		\$6.05	\$139.11
		Total Taxes		\$84.05	\$2,010.30
Exemptions		Other Information			
Fed	1	Last 4 SSN		[REDACTED]	
		SickTime Avail hours		42.00	
		Vacation Avail hours		0.00	
Employment Information		Distributions		Current	
Job Title	SERVER	xxxxxx5078		\$468.92	