

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

Debtor 1 Food Management Partners, Inc.

Debtor 2 \_\_\_\_\_  
(Spouse, if filing)

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

Case number 21-30730-11

E-Filed on 08/30/2021  
Claim # 373

## 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**

<b>1. Who is the current creditor?</b>	
<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 _____	
<b>2. Has this claim been acquired from someone else?</b>	
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b>
	<b>Where should payments to the creditor be sent? (if different)</b>
	<u>Carolyn H. Cottrell</u> Name
	<u>2000 Powell Street Suite 1400</u> Number Street
	<u>Emeryville</u> <u>CA</u> <u>94608</u> City State ZIP Code
	Contact phone <u>(415) 421-7100</u>
	Contact email <u>ccottrell@schneiderwallace.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____
<b>4. Does this claim amend one already filed?</b>	
<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____	
Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	
<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)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ 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 Food Management Partners, Inc. 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 Food Management Partners, Inc., United States Bankruptcy Court – Northern District of Texas, Case No. 3:2021-bk-30730-11***

To Whom It May Concern:

We represent Maria Aguilar for the wages and penalties she is owed by Food Management Partners, Inc. 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 Food Management Partners, Inc. in civil actions filed in the United States District Court for the Central District of California<sup>1</sup> and California Superior Court for the County of Santa Clara.<sup>2</sup> Both actions are stayed.

Ms. Aguilar worked for Food Management Partners, Inc. as a non-exempt, hourly employee at HomeTown Buffet restaurant located in Palmdale, California from approximately February 2004 until approximately December 28, 2018.<sup>3</sup> 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.<sup>4</sup>

---

<sup>1</sup> 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.

<sup>2</sup> 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).

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

<sup>4</sup> 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, Food Management Partners, Inc. instructed Ms. Aguilar to clock out for a meal period even though she did not take a break. As a result, Food Management Partners, Inc. 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) Food Management Partners, Inc. 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.**<sup>5</sup>

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

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

---

<sup>5</sup> 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.

<sup>6</sup> Cal. Lab. Code §§ 226.7, 512.

<sup>7</sup> 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.

<sup>8</sup> Cal. Lab. Code § 1194.

<sup>9</sup> Food Management Partners, Inc. 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.**<sup>10</sup>

Because Food Management Partners, Inc. 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.**<sup>11</sup>

In addition, because Food Management Partners, Inc. 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.**<sup>12</sup>

Ms. Aguilar is also entitled to collect penalties from Food Management Partners, Inc. pursuant to the California Private Attorneys General Act (“PAGA”).<sup>13</sup> Specifically, Food Management Partners, Inc. 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.**<sup>14</sup> **Ms. Aguilar is also entitled to collect an additional \$2,500 in civil penalties** for inaccurate wage statements.<sup>15</sup>

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

---

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.

<sup>10</sup> 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.

<sup>11</sup> 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.

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

<sup>13</sup> Cal. Labor Code §§ 2698, *et seq.*

<sup>14</sup> Food Management Partners, Inc. 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 Food Management Partners, Inc.’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.

<sup>15</sup> 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.



\$10,138.

Accordingly, Food Management Partners, Inc. owes Ms. Aguilar **\$179,145** in damages and penalties plus attorneys' fees and costs in the amount of **\$146,359**.<sup>16</sup> 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

---

<sup>16</sup> 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)  
ccottrell@schneiderwallace.com  
2 Ori Edelstein (SBN 268145)  
oedelstein@schneiderwallace.com  
3 Ian W. Forgie (SBN 307721)  
iforgie@schneiderwallace.com  
4 SCHNEIDER WALLACE  
COTTRELL KONECKY  
5 WOTKYNS LLP  
2000 Powell Street, Suite 1400  
6 Emeryville, California 94608  
Tel: (415) 421-7100  
7 Fax: (415) 421-7105

8 Zorik Mooradian (SBN 136636)  
zorik@mooradianlaw.com  
9 MOORADIAN LAW, APC  
24007 Ventura Boulevard, Suite 210  
10 Calabasas, California 91302  
Telephone: (818) 487-1998  
11 Facsimile: (888) 783-1030

12  
13 Attorneys for Plaintiffs and the Putative Class  
14 and Collective

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.  
24  
25  
26  
27

Case No.: \_\_\_\_\_

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

1                                    **CLASS AND COLLECTIVE ACTION COMPLAINT**

2            Plaintiffs Reina Gonzalez, Maria Aguilar, Rosario Felix, and Esperanza  
3 Jimenez (“Plaintiffs”), on behalf of themselves and all others similarly situated,  
4 complain and allege as follows:

5                                    **INTRODUCTION**

6            1.        Plaintiffs bring this class and collective action on behalf of themselves  
7 and all other similarly situated individuals who have worked for Food Management  
8 Partners, Inc. (“FMP”); Buffets, LLC (“Buffets”); and FMP-Ovation Payroll LLC  
9 (“FMP-Ovation”) (collectively “Defendants”) as hourly non-exempt employees in  
10 California and throughout the United States.<sup>1</sup> These employees prepare and cook  
11 food, greet and serve customers, clean Defendants’ restaurants, and perform various  
12 other tasks central to Defendants’ operations.

13            2.        Defendants maintain a longstanding policy and practice of failing to  
14 properly compensate non-exempt hourly employees for work performed during meal  
15 periods, for work performed while “off-the-clock,” and for missed rest and meal  
16 periods. These policies deny Plaintiffs and Class and Collective members payment  
17 for all hours worked, including overtime, and deny Plaintiffs and Class members  
18 meal and rest periods that comply with California law.

19            3.        Defendants fail to pay Plaintiffs and Class and Collective members  
20 minimum and overtime wages required under applicable state and federal law.  
21 When uncompensated time is factored in, Plaintiffs and Class and Collective  
22 members regularly work over eight hours per day, necessitating the payment of  
23 overtime compensation for some of the time that they work. Moreover, Plaintiffs  
24 and Class and Collective members are paid rates at or just above the applicable  
25 minimum wage. When the daily pay for these workers is divided by the actual hours

---

26  
27        <sup>1</sup> Although Plaintiffs are former employees, the putative Class and Collective include current and former employees. For ease of discussion, the allegations are made in the present tense.

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           31. At all material times, Plaintiffs and Collective members were employees  
2 who engaged in commerce or in the production of goods for commerce as required  
3 by 29 U.S.C. § 207.

4           32. At all material times, Defendants have done business under the laws of  
5 California, have had places of business in California, including in this judicial  
6 district, and have employed Plaintiffs and Class and Collective members in this  
7 judicial district. Defendants are a “person” as defined in Labor Code § 18 and  
8 Business and Professions Code § 17201. Defendants are also an “employer” as that  
9 term is used in the Labor Code and the IWC Wage Orders regulating wages, hours,  
10 and working conditions.

### 11                                   **JURISDICTION AND VENUE**

12           33. This Court has federal question jurisdiction over this action pursuant to  
13 28 U.S.C. § 1331 and Section 16(b) of the FLSA, 29 U.S.C. § 216(b). This Court  
14 has supplemental jurisdiction over Plaintiffs’ state law claims pursuant to 28 U.S.C.  
15 § 1367.

16           34. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.  
17 Defendants conduct business in this district, employ numerous hourly, non-exempt  
18 employees who reside in this district, and a substantial part of the events or  
19 omissions giving rise to Plaintiffs’ claims occurred in this judicial district.

### 20                                   **FACTUAL ALLEGATIONS**

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

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.

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;

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

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

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

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

c. **Typicality:** Plaintiffs' claims are typical of the claims of the Class.

Defendants' common course of conduct in violation of law as alleged herein caused Plaintiffs and Class members to sustain the same or similar injuries and damages. Plaintiffs' claims are thereby representative of and co-extensive with the claims of the Class.

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

e. **Superiority of Class Action:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class member has been damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices. Class action 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.

25 ///

26 ///

27 ///

**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)**

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

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

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

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

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

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

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

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

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

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

26 92. During the applicable statutory period, Labor Code §§ 1182.11, 1182.12,  
27 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**  
**(On Behalf of the Class)**

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

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

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

23 Eight hours of labor constitutes a day's work. Any work in  
24 excess of eight hours in one workday and any work in excess of  
25 40 hours in any one workweek and the first eight hours worked  
26 on the seventh day of work in any one workweek shall be  
27 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.

26 ///

27 ///

**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)**

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

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

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

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

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

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

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

117. Labor Code § 1198 makes it unlawful for employers to employ 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**  
**(On Behalf of the Class)**

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

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

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

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

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

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

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

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

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

1           160. As a direct and proximate result of the aforementioned acts and  
2 practices, Plaintiffs and Class members have suffered a loss of money and property,  
3 in the form of unpaid wages which are due and payable to them.

4           161. Business and Professions Code § 17203 provides that the Court may  
5 restore to any person in interest any money or property which may have been  
6 acquired by means of such unfair competition. Plaintiffs and Class members are  
7 entitled to restitution pursuant to Business and Professions Code §17203 for all  
8 wages and payments unlawfully withheld from employees during the four-year  
9 period prior to the filing of this Complaint. Plaintiffs' success in this action will  
10 enforce important rights affecting the public interest and, in that regard, Plaintiffs  
11 sue on behalf of themselves as well as others similarly situated. Plaintiffs and Class  
12 members seek and are entitled to unpaid wages, declaratory and injunctive relief,  
13 and all other equitable remedies owing to them.

14           162. Plaintiffs herein take it upon themselves to enforce these laws and lawful  
15 claims. There is a financial burden involved in pursuing this action, the action is  
16 seeking to vindicate a public right, and it would be against the interests of justice to  
17 penalize Plaintiffs by forcing her to pay attorneys' fees from the recovery in this  
18 action. Attorneys' fees are appropriate pursuant to Code of Civil Procedure §1021.5  
19 and otherwise.

20           163. Wherefore, Plaintiffs and the Class request relief as hereinafter provided.

### 21           **PRAYER FOR RELIEF**

22           WHEREFORE, Plaintiffs, on behalf of themselves and the Class and  
23 Collective she seeks to represent in this action, requests the following relief:

- 24           a) For an order certifying that the First Cause of Action in this Complaint may  
25 be maintained as a collective action pursuant to 29 U.S.C. § 216(b) and that  
26 prompt notice of this action be issued to potential members of the Collective,  
27 apprising them of the pendency of this action, and permitting them to assert

- 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

- 1 State of California, the FLSA, and/or other applicable law;  
2 k) For all costs of suit;  
3 l) For such other and further relief as this Court deems just and proper.  
4

5 Dated: October 1, 2019

Respectfully submitted,

6 /s/ Carolyn H. Cottrell

7 Carolyn H. Cottrell

8 Ori Edelstein

9 Ian W. Forgie

SCHNEIDER WALLACE

COTTRELL KONECKY

10 WOTKYNS LLP

11 Zorik Mooradian

12 MOORADIAN LAW, APC

13 Attorneys for Plaintiffs and the Putative Class  
14 and Collective  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

**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

KONECKY WOTKYNs, LLP

Zorik Mooradian

MOORADIAN LAW, APC

Attorneys for Plaintiffs and the Putative  
Class and Collective



# EXHIBIT B

1 Carolyn Hunt Cottrell (SBN 166977)  
2 Ori Edelstein (SBN 268145)  
3 Ian W. Forgie (SBN 307721)  
4 SCHNEIDER WALLACE  
5 COTTRELL KONECKY  
6 WOTKYNS LLP  
7 2000 Powell Street, Suite 1400  
8 Emeryville, California 94608  
9 Telephone: (415) 421-7100  
10 Facsimile: (415) 421-7105

11 Zorik Mooradian (SBN 136636)  
12 zorik@mooradianlaw.com  
13 MOORADIAN LAW, APC  
14 24007 Ventura Boulevard, Suite 210  
15 Calabasas, California 91302  
16 Telephone: (818) 487-1998  
17 Facsimile: (888) 783-1030

18 Attorneys for Plaintiff, on behalf of the  
19 State of California and Aggrieved Employees

20 **SUPERIOR COURT OF CALIFORNIA**  
21 **COUNTY OF SANTA CLARA**

22 19CV357419

23 REINA GONZALEZ and ESPERANZA  
24 JIMENEZ, on behalf of the  
25 State of California and Aggrieved  
26 Employees,

27 Plaintiffs,

vs.

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

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.<sup>1</sup> 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 <sup>1</sup> 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.

5. Defendants also routinely deny Plaintiffs and Aggrieved Employees legally compliant meal and rest periods. Often, Plaintiffs and Aggrieved Employees cannot take meal and rest breaks at all. Even where Defendants provide some sort of meal break, Plaintiffs and Aggrieved Employees are too busy performing their required duties to have sufficient time to take legally-compliant meal and rest breaks. Defendants do not compensate Plaintiffs and Aggrieved Employees with premium pay for missed meal and rest periods.

6. Defendants fail to properly pay minimum and overtime wages according to California law. When uncompensated time, such as off-the-clock work is factored in, Plaintiffs and Aggrieved Employees regularly work over eight hours per day, and sometimes over twelve hours per day, necessitating the payment of overtime compensation for some of the time that they work. Moreover, Plaintiffs and Aggrieved Employees are paid rates at or just above the applicable minimum wage. When the daily pay for these workers is divided by the actual hours that they worked, the effective hourly rate of pay often falls below the applicable minimum wage.

7. Plaintiffs and Aggrieved Employees do not receive accurate, itemized wage statements. Plaintiffs and Aggrieved Employees receive wage statements that do not reflect all hours worked, premium pay for missed meal and rest breaks, or applicable overtime premiums.

8. Plaintiffs and Aggrieved Employees are not timely paid all amounts owed following voluntary or involuntary termination of employment.

## PARTIES

9. Plaintiffs and the Aggrieved Employees are current or former non-exempt employees employed by Defendants in California.

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

11. Plaintiff Esperanza Jimenez is an individual over the age of eighteen who at all times relevant to this Complaint was a resident of Los Angeles County. Plaintiff Jimenez was employed

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

2

8

12

## 16

17

22

2'

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

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

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

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

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

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

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

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

44. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code 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.

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           49.     Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for each failure  
2 by Defendants, alleged above, to provide Plaintiffs and other Aggrieved Employees an accurate,  
3 itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by  
4 Labor Code § 226(e). Plaintiffs seek such penalties as an alternative to the penalties available  
5 under Labor Code § 226(e), as prayed for herein.

6           50.     Plaintiffs also seek civil penalties pursuant to Labor Code § 2699(a) for each failure  
7 by Defendants, alleged above, to provide aggrieved employees with compensation for all time  
8 worked in the amounts established by Labor Code § 558.

9           51.     Plaintiffs also seek civil penalties pursuant to Sections 226.3 and 256 of the  
10 California Labor Code.

11          52.     Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiffs provided the Labor and  
12 Workforce Development Agency ("LWDA") with notice of their intentions to file this claim.  
13 Sixty-five calendar days have passed without notice from the LWDA. Plaintiffs satisfied the  
14 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

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

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

20          55.     Wherefore, Plaintiffs request relief as hereinafter provided.

21                   **SECOND CAUSE OF ACTION**  
22                   **Penalties Pursuant to Labor Code § 2699(f)**  
                      **(Against All Defendants)**

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

24          57.     Labor Code § 2699(f) provides:

25                   For all provisions of this code except those for which a civil penalty is  
26 specifically provided, there is established a civil penalty for a violation of these  
27 provisions, as follows: . . . (2) If, at the time of the alleged violation, the person  
employs one or more employees, the civil penalty is one hundred dollars

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  
each subsequent violation.

3 58. Labor Code § 510(a) provides:

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

8 59. Labor Code § 512(a) provides:

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

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

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

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

25 63. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiffs have provided the LWDA  
26 with notice of their intention to file this claim. Sixty-five calendar days have passed without  
27 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

Respectfully submitted,

19  
20 Carolyn H. Cottrell  
21 Ori Edelstein  
22 Ian W. Forgie  
23 SCHNEIDER WALLACE  
COTTRELL KONECKY  
WOTKYNs LLP

24 Zorik Mooradian  
25 MOORADIAN LAW, APC

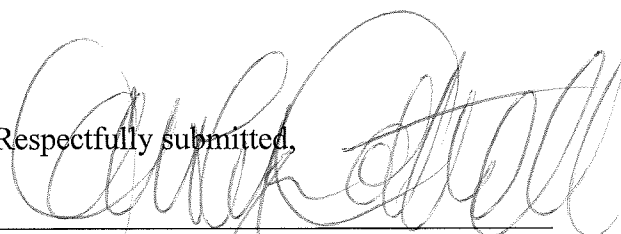
26 Attorneys for Plaintiffs, on behalf of the State of  
27 California and Aggrieved Employees

1 **DEMAND FOR JURY TRIAL**

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

4  
5 Dated: October 23, 2019

6 Respectfully submitted,

7   
Carolyn Hunt Cottrell  
Ori Edelstein  
Ian W. Forgie  
8 SCHNEIDER WALLACE  
9 COTTRELL KONECKY  
10 WOTKYNS LLP

11 Zorik Mooradian  
12 MOORADIAN LAW, APC

13 Attorneys for Plaintiffs, on behalf of the State of  
14 California an Aggrieved Employees  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

# EXHIBIT C



1/1