

Fill in this information to identify the case:

Debtor 1 Fresh Acquisitions, LLC
Debtor 2 _____
(Spouse, if filing)
United States Bankruptcy Court for the: Northern District of Texas, Dallas Division
Case number 21-30721-11

E-Filed on 08/30/2021
Claim # 381

Official Form 410
Proof of Claim

04/19

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

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

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

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

Part 1: Identify the Claim

1. Who is the current creditor? LAURA ALVERSON
Name of the current creditor (the person or entity to be paid for this claim)
Other names the creditor used with the debtor LAURA FISH-ALVERSON

2. Has this claim been acquired from someone else? No
 Yes. From whom? _____

3. Where should notices and payments to the creditor be sent?
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
<u>Christopher D. Minix</u> Name	_____ Name
<u>1011 Lehman Avenue Suite 101</u> Number Street	_____ Number Street
<u>Bowling Green KY 42103</u> City State ZIP Code	_____ City State ZIP Code
Contact phone _____	Contact phone _____
Contact email <u>cminix75@gmail.com</u>	Contact email _____
Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	

4. Does this claim amend one already filed? No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. Do you know if anyone else has filed a proof of claim for this claim? No
 Yes. Who made the earlier filing? _____

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

6. Do you have any number you use to identify the debtor? No Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: 0 3 7 4

7. How much is the claim? \$ 250,000.00. Does this amount include interest or other charges? No Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

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

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

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

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

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

No

Yes. Check one:

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

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

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

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

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

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

Amount entitled to priority

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

\$ 0.00

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

Part 3: Sign Below

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

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

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

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

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

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

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

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

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

Executed on date 08/30/2021
MM / DD / YYYY

C. Daniel Herrin

Signature

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

Name Cyrus Daniel Herrin
First name Middle name Last name

Title Attorney

Company Herrin Law, PLLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 4925 Greenville Ave., Suite 455
Number Street

dallas TX 75206
City State ZIP Code

Contact phone (469) 607-8551 Email dherrin@herrinlaw.com

Attachment 1 - Alverson, Laura - Amended Complaint.pdf

Description -

COMMONWEALTH OF KENTUCKY
WARREN COUNTY CIRCUIT COURT
CASE NO. 19-CI-00374

LAURA ALVERSON)
)
 Plaintiff,)
)
 v.)
)
 FMP-OVATION PAYROLL, LLC, et al.)
)
 Defendants.)

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Laura Alverson (hereinafter "Plaintiff"), by and through her attorneys of record, The Cagle Law Firm, and First Amended Complaint against Defendant FMP-Ovation Payroll, LLC (hereinafter "Defendant FMP-Ovation"), Defendant Food Management Partners, Inc. (hereinafter "Defendant Food Management Partners"), Defendant Spirit Master Funding VII, LLC (hereinafter "Defendant Spirit Master"), Defendant Fire Mountain Restaurants, LLC (hereinafter "Defendant Fire Mountain"), and Defendant Joyce Luke (hereinafter "Defendant Luke"), and states to this Honorable Court as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Laura Alverson is an individual, resident, and citizen of the State of Tennessee, residing at 1311 Clark Mountain Road, Byrdstown, Tennessee, 38549.
2. Defendant FMP-Ovation Payroll, LLC, is an unregistered foreign limited liability company with its principal place of business located at 120 Chula Vista, Hollywood Park, Texas 78232. Defendant FMP-Ovation transacts business in the Commonwealth of Kentucky; contracts to supply goods and/or services in this Commonwealth; has an interest in, using, or possessing real property in this Commonwealth; engages in other persistent courses of conduct in

this Commonwealth; and derives substantial revenue from the goods used and/or consumed, and services rendered in this Commonwealth. As such, Defendant FMP-Ovation is subject to the personal jurisdiction of this Court pursuant to KRS § 454.210(2)(a), and is amenable to service of process by and through its statutory agent, the Office of the Secretary of State for the Commonwealth of Kentucky, Summons Branch, 700 Capital Avenue, Suite 86, Frankfort, Kentucky 40601, pursuant to KRS § 454.210(3)(a).

3. Defendant Food Management Partners, Inc., is an unregistered corporation with its principal place of business located at 120 Chula Vista, Hollywood Park, Texas, 78232. Defendant Food Management Partners transacts business in the Commonwealth of Kentucky; contracts to supply goods and/or services in this Commonwealth; has an interest in, using, or possessing real property in this Commonwealth; engages in other persistent courses of conduct in this Commonwealth; and derives substantial revenue from the goods used and/or consumed, and services rendered in this Commonwealth. As such, Defendant Food Management Partners is subject to the personal jurisdiction of this Court pursuant to KRS § 454.210(2)(a), and is amenable to service of process by and through its statutory agent, the Office of the Secretary of State for the Commonwealth of Kentucky, Summons Branch, 700 Capital Avenue, Suite 86, Frankfort, Kentucky 40601, pursuant to KRS § 454.210(3)(a).

4. Defendant Spirit Master Funding VII, LLC, is a foreign limited liability company with its principal place of business located at 2727 N. Harwood Street, Suite 300, Dallas, Texas 75201. Defendant Spirit Master Partners transacts business in the Commonwealth of Kentucky; engages in other persistent courses of conduct in this Commonwealth; and ; has an interest in, using, or possessing real property in this Commonwealth. As such, Defendant Spirit Master is subject to the personal liability of this Court pursuant to KRS § 454.210(2)(a), and is

amenable to service of process by and through its registered agent in the Commonwealth of Kentucky, CT Corporation System, 306 W. Main Street, Frankfort, Kentucky 40601, pursuant to KRS § 454.210(3)(a).

5. Defendant Fire Mountain Restaurants, LLC, is a foreign limited liability company with its principal place of business located at 120 Chula Vista, Hollywood Park, Texas 78232. Defendant Fire Mountain transacts business in the Commonwealth of Kentucky; contracts to supply goods and/or services in this Commonwealth; has an interest in, using, or possessing real property in this Commonwealth; engages in other persistent courses of conduct in this Commonwealth; and derives substantial revenue from the goods used and/or consumed, and services rendered in this Commonwealth. As such, Defendant FMP-Ovation is subject to the personal jurisdiction of this Court pursuant to KRS § 454.210(2)(a), and is amenable to service of process by and through its registered agent, Capitol Corporation Services, Inc., 828 Lane Allen Road, Lexington, Kentucky 40504, pursuant to KRS § 545.210(3)(a).

6. The Defendant, Joyce Luke, is an individual, resident, and citizen of the Commonwealth of Kentucky. As such, Defendant Luke is subject to the personal jurisdiction of this Court and is amenable to service of process at her residence located at 1280 Halifax Bailey Road, Apartment R, Scottsville, Kentucky 42164.

7. Venue is proper in Warren County Circuit Court pursuant to KRS § 452.450 because Plaintiff's personal injury claims against the Defendants arise out of a trip and fall which occurred on or about November 2, 2018 at 1920 Mei Browning Street, Bowling Green, Warren County, Kentucky 42102.

8. Plaintiff's claims against Defendants are in excess of the minimum jurisdictional requirements of the Warren County Circuit Court.

9. This Court has subject matter jurisdiction over these claims pursuant to KRS § 23A.010(1), as jurisdiction over the subject matter of these claims is not vested in some other court.

CAUSE OF ACTION

10. On November 2, 2018, and at all times relevant herein, Defendant FMP-Ovation, Defendant Food Management Partners, Defendant Spirit Master, and/or Defendant Fire Mountain owned, operated, managed, and/or controlled Ryan's Family Steakhouse (hereinafter "Ryan's") located at 1920 Mel Browning Street, Bowling Green, Kentucky 42102.

11. On November 2, 2018, and at all times relevant herein, Defendant FMP-Ovation, Defendant Food Management Partners, Defendant Spirit Master, and/or Defendant Fire Mountain owned, operated, managed, and/or controlled the property and building (hereinafter "the Premises") located at 1920 Mel Browning Street, Bowling Green, Kentucky 42102.

12. On November 2, 2018, and at all times relevant herein, Defendant Luke was the general manager on duty at Ryan's and/or on the Premises.

13. On November 2, 2018, Plaintiff was a business invitee at Ryan's and/or on the Premises owned, operated, managed, and/or controlled by Defendants.

14. On November 2, 2018, Plaintiff was lawfully at Ryan's and/or on the Premises owned, operated, managed, and/or controlled by Defendants.

15. While dining at Ryan's and/or the Premises, Plaintiff approached the salad bar and/or buffet whereupon she tripped and fell over a raised portion of defective metal floor trimming in the floor.

16. As she approached the salad bar and/or buffet, Plaintiff exercised due care and caution for her safety as a business invitee at Ryan's and/or the Premises.

17. Defendant Luke, while serving as general manager on duty at Ryan's and/or the Premises on November 2, 2018, acknowledged that the raised portion of defective metal floor trimming should have been flush with the floor and not raised in a manner so as to pose a danger to business invitees, including Plaintiff.

18. Defendant Luke subsequently informed co-workers and/or employees to repair the raised portion of defective metal floor trimming.

19. It was the duty of Defendants to exercise reasonable care to protect business invitees, including Plaintiff, by way of inspection, maintenance, and other affirmative acts, from the danger of reasonably foreseeable injury occurring at Ryan's and/or the Premises from a reasonably foreseeable use of Ryan's and/or the Premises on November 2, 2018.

20. It was the duty of Defendants to warn business invitees, including Plaintiff, of any dangerous and unsafe conditions existing at Ryan's and/or on the Premises on November 2, 2018.

21. It was the duty of Defendants to protect business invitees, including Plaintiff, from any dangerous, unsafe, and hazardous conditions existing at Ryan's and/or on the Premises on November 2, 2018.

22. Defendants breached their duty to exercise reasonable care to protect business invitees, including Plaintiff, by way of inspection, maintenance, and other affirmative acts, from the danger of reasonably foreseeable injury occurring at Ryan's and/or the Premises from a reasonably foreseeable use of Ryan's and/or the Premises on November 2, 2018.

23. Defendants breached their duty to warn business invitees, including Plaintiff, of any dangerous and unsafe conditions existing at Ryan's and/or on the Premises on November 2, 2018.

24. Defendants breached their duty to protect business invitees, including Plaintiff, from any dangerous, unsafe, and hazardous conditions existing at Ryan's and/or on the Premises on November 2, 2018.

25. Prior to November 2, 2018, Defendants had actual and/or constructive knowledge, or upon reasonable inspection should have had actual and/or constructive knowledge, that Ryan's and/or the Premises was in an unreasonably dangerous condition and/or possessed latent defects that were hazardous to business invitees at Ryan's and/or on the Premises, including Plaintiff, and which were likely to cause harm to business invitees at Ryan's and/or on the Premises, including Plaintiff.

26. Despite such actual and/or constructive knowledge, Defendants failed to adequately warn business invitees, including Plaintiff, of such hazards.

27. Despite such actual and/or constructive knowledge, Defendants failed to protect business invitees, including Plaintiff, from any dangerous, unsafe, and hazardous conditions existing at Ryan's and/or the Premises.

28. Despite such actual and/or constructive knowledge, Defendants failed to adequately remove and/or repair any dangerous, unsafe, and hazardous conditions from Ryan's and/or the Premises.

29. The failure of Defendants to take such reasonable actions constitutes negligence and is a breach of their duty to exercise reasonable care to prevent foreseeable injuries to business invitees, including Plaintiff.

30. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff has sustained serious and permanent injuries.

31. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff will in the future incur serious and permanent injuries.

32. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff has sustained serious impairments to her ability to labor and earn money.

33. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff will in the future incur serious impairments to her ability to labor and earn money.

34. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff has been caused to incur expenses for medical care and treatment.

35. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff will in the future incur expenses for medical care and treatment.

36. As a direct and proximate result of the negligence of Defendants and breaches of duty to exercise reasonable care and prevent foreseeable injuries to business invitees, including Plaintiff, Plaintiff is at an increased risk of future medical complications, all to her detriment.

WHEREFORE, Plaintiff Laura Alverson respectfully demands and prays for relief against Defendant FMP-Ovation Payroll, LLC, Defendant Food Management Partners, Inc., Defendant Spirit Master Funding VII, LLC, Defendant Fire Mountain Restaurants, LLC, and Defendant Joyce Luke, as follows:

- A. For judgment against Defendants, jointly and severally, for compensatory damages in a fair and just amount to be determined at trial, including for medical expenses reasonably and necessarily incurred by Plaintiff, a sum for pain and suffering endured by Plaintiff as a result of her severe and permanent bodily injuries, and a sum for lost ability to labor and earn money;
- B. For Plaintiff's costs incurred herein, including reasonable attorneys' fees;
- C. For post-judgment interests on all amount awarded at the legal rate from the date of judgment until paid in full;
- D. For a JURY TRIAL on all issues so triable; and
- E. For any other relief by this Court to which Plaintiff may be entitled.

Respectfully Submitted,

THE CAGLE LAW FIRM, LLC

BY 

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