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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By J. Covarrubias, Deputy Clerk

Attorneys for Plaintiff Roberto Armenta

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ROBERTO ARMENTA, an aggrieved
employee, on behalf of himself and other
current and former employees,

Plaintiff,

v.

FM Restaurants HQ, LLC, an entity
unknown;
FM Restaurants HoldCo, LLC dba
Xperience Restaurant Group, an entity
unknown;
FM Restaurants Chevy's Opco, LLC, an
entity unknown;
FM Restaurants Signature Opco, LLC, an
entity unknown;
FM Restaurants Acapulco Opco, LLC, an
entity unknown;
FM Restaurants Las Brisas Opco, LLC, an
entity unknown;
FM Restaurants El Torito Opco, LLC, an
entity unknown; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **23STCV25827**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES FOR
VIOLATION OF LABOR CODE
SECTION 2698 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff Roberto Armenta (“Plaintiff”) hereby submits his Representative Action
2 Complaint for Penalties against Defendants FM Restaurants HQ, LLC, FM Restaurants
3 HoldCo, LLC dba Xperience Restaurant Group, FM Restaurants Chevy’s Opco, LLC, FM
4 Restaurants Signature Opco, LLC, FM Restaurants Acupulco Opco, LLC, FM Restaurants Las
5 Brisas Opco, LLC, and FM Restaurants El Torito Opco, LLC), and DOES 1 through 50,
6 inclusive (collectively, “Defendants”), on behalf of himself and other current and former
7 employees of Defendants for civil penalties, as follows:

8 **INTRODUCTION**

9 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the
10 Private Attorneys General Act of 2004 (“PAGA”)) for Defendant’s violations of California
11 Labor Code §§ 201, 202, 203, 204, 216, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d),
12 1194, 1197, 1197.1, 1198, 1198.5, 2802, and Industrial Welfare Commission (“IWC”) Wage
13 Order No. 5-2001 (codified as California Code of Regulations, title 8, § 11050).

14 2. This Complaint challenges Defendants’ systemic illegal employment practices
15 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
16 Wage Order against the group of aggrieved employees.

17 3. Plaintiff is informed and believes and thereon alleges Defendants joint and
18 severally acted intentionally and with deliberate indifference and conscious disregard to the
19 rights of all employees in (1) failing to provide all meal periods and rest breaks, (2) failing to
20 pay all minimum and overtime wages, (3) failing to reimburse for all necessary business-
21 related costs and expenses, (4) failing to provide paid sick leave, (5) failing to pay reporting
22 time pay, (6) failing to provide accurate wage statements, and (7) failing to pay all wages due
23 and owing upon termination of employment.

24 4. This Complaint is timely filed, in accordance with the limitations period
25 provided by Code of Civ. Pro. section 340(a). On August 11, 2023, Plaintiff provided written
26 notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends
27 were violated, and the theories supporting his contentions. To date, he has not received a
28 response.

JURISDICTION AND VENUE

5. This representative action is brought pursuant to PAGA. The monetary damages sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201, 202, 203, 204, 216, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2802, and IWC Wage Order No. 5-2001.

9. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county.

10. Plaintiff Roberto Armenta is an individual residing in the State of California. Plaintiff was formerly employed by Defendants in a non-exempt, hourly-paid position during the relevant time period.

12. Defendant FM Restaurants HoldCo, LLC dba Xperience Restaurant Group, is an unknown business entity organized and existing under the laws of California, licensed to do business and actually doing business in the State of California, including the County of Los

Angeles.

13. Defendant FM Restaurants Chevy's Opco, LLC, is an unknown business entity organized and existing under the laws of California, licensed to do business and actually doing business in the State of California, including the County of Los Angeles.

14. Defendant FM Restaurants Signature Opco, LLC, FM Restaurants Acupulco Opco, LLC, is an unknown business entity organized and existing under the laws of California, licensed to do business and actually doing business in the State of California, including the County of Los Angeles.

15. Defendant FM Restaurants Las Brisas Opco, LLC, and is an unknown business entity organized and existing under the laws of California, licensed to do business and actually doing business in the State of California, including the County of Los Angeles.

16. Defendant FM Restaurants El Torito Opco, LLC is an unknown business entity organized and existing under the laws of California, licensed to do business and actually doing business in the State of California, including the County of Los Angeles.

17. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and the group of aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

18. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement,

authorization and consent of each Defendant designated herein.

19. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to Labor Code §§ 201, 202, 203, 204, 216, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2802, and IWC Wage Order No. 5-2001.

CAUSE OF ACTION

FOR VIOLATION OF PAGA

**(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF ALL AGGRIEVED
EMPLOYEES)**

20. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 19 as though fully set forth herein.

21. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

22. On August 11, 2023, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. To date, he has not received a response.

23. Plaintiff and the other non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

24. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198.

25. During the relevant time period, Plaintiff and other aggrieved employees

1 routinely worked in excess of 8 hours in a day and 40 hours in a week. Defendants failed to
2 compensate Plaintiff and other aggrieved employees for work performed off-the-clock,
3 including time Defendants “shaved” time off of the recorded hours worked, time Defendants
4 required to be worked off-the-clock and time records Defendants refused to correct after
5 employees forgot to clock in.

6 **Failure to Provide Meal Periods and Rest Breaks**

7 **26.** In accordance with the mandates of the California Labor Code and the
8 applicable IWC Wage Order, Plaintiff and other aggrieved employees had the right to take a
9 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-
10 minute meal period for every five (5) hours worked.

11 **27.** As a pattern and practice, Defendants failed to provide all required off-duty
12 meal periods, and failed to authorize and permit Plaintiff and other aggrieved employees all
13 required off-duty, net-10-minute rest breaks, during which the employees were free to leave
14 Defendants’ premises. Despite this fact, Defendants never compensated premium wages to
15 Plaintiff and other aggrieved employees.

16 **28.** Additionally, during the relevant time period, Defendants routinely required
17 Plaintiff and other aggrieved employees to work through, interrupt, cut short, and/or delay their
18 meal periods and rest breaks.

19 **Failure to Reimburse Necessary Work-Related Expenses**

20 **29.** At all times relevant herein, Defendants were required to reimburse their
21 employees for necessary work-related expenses pursuant to the mandate of Labor Code §§
22 2800 and 2802.

23 **30.** As a pattern and practice, Defendants failed in their obligation to reimburse its
24 employees for business expenses incurred. For example, Defendants failed to reimburse their
25 employees for phone application software costs, despite the required use of the application for
26 work-related purposes.

27 **Failure to Provide Sick Leave**

28 **31.** At all times relevant herein, Defendants were required to provide employees

1 with 24 hours or three days of sick time per year pursuant to the mandate of Labor Code
2 section 246.

3 **32.** During the relevant time period, Defendants failed to provide any sick leave to
4 its employees, resulting in failure to comply with the sick leave requirements of Labor Code
5 section 246.

6 **Failure to Timely Pay Wages Upon Termination**

7 **33.** At all times relevant herein, Defendants were required to pay their employees
8 all wages owed in a timely fashion at the end of employment pursuant to California Labor
9 Code §§ 201 to 204.

10 **34.** As a result of Defendants' Labor Code violations alleged above, Defendants
11 failed to pay Plaintiff and the other similarly-situated former employees their final wages
12 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
13 Labor Code § 203.

14 **Failure to Pay Reporting Time Pay**

15 **35.** California Wage Order 5-2001, section 5, requires employers to compensate
16 their employees for half the usual or scheduled day's work in the event the employee reports
17 for work but is not put to work or is furnished less than half the day's work.

18 **36.** As a pattern and practice, Defendants would send employees home at the start
19 of the shift when business was slow, or would remove them from the schedule immediately
20 before the start of the shift, but would fail to pay employees for half the day's work. This
21 resulted in a failure to pay reporting time pay.

22 **Failure to Timely Pay Wages Upon Termination**

23 **37.** At all times relevant herein, Defendants were required to pay all wages earned
24 by any person in any employment between the 1st and the 15th days, inclusive, of any calendar
25 month, other than those wages due upon termination of an employee, are due and payable
26 between the 16th and the 26th day of the month during which the labor was performed, and
27 that all wages earned by any person in any employment between the 16th and the last day,
28 inclusive, of any calendar month, other than those wages due upon termination of an employee,

are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.

38. During the relevant time period, Defendants failed to pay Plaintiff and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including as outlined above.

Failure to Provide Complete and Accurate Wage Statements

39. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174(d).

40. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiff and other similarly-situated current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiff and other similarly-situated current and former employees' gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Damages

41. Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

42. Penalties under California Labor Code § 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

43. Penalties under California Labor Code § 210 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred

dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus 25% of the amount unlawfully withheld;

44. Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation;

45. Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

46. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

47. An amount sufficient to recover unreimbursed business expenses pursuant to Labor Code section 2802(d);

48. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes; and

49. Attorneys' fees and costs as permitted by law.

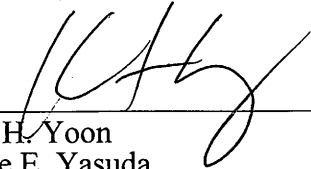
PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 216, 225.5, 226(a), 226.3, 226.7, 510, 512, 558, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 2802, and IWC Wage Order No. 5-2001;
2. On all causes of action for attorneys' fees, interest, and costs as provided by California Labor Code §§ 210, 218.6, 226, 1194, 2699, 2802, and Code of Civil Procedure § 1021.5, and for such other and further relief the Court may deem just and proper.

1 DATED: October 20, 2023

YOON LAW, APC

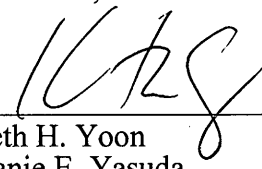
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4 Kenneth H. Yoon
Stephanie E. Yasuda
Attorneys for Plaintiff Roberto Armenta

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6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, for himself and the aggrieved employees, hereby demands a jury trial as
8 provided by California law.

9 DATED: October 20, 2023

YOON LAW, APC

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11 
12 Kenneth H. Yoon
Stephanie E. Yasuda
Attorneys for Plaintiff Roberto Armenta