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11 persons similarly situated and similarly aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

14 LUIS GUTIERREZ, individually and on behalf
15 of other persons similarly situated and
16 similarly aggrieved employees,

17 Plaintiffs,

18 v.

19 FM RESTAURANTS HQ, LLC, an active
20 Delaware Limited Liability Company; FM
21 RESTAURANTS HOLDCO, LLC, an active
22 Delaware Limited Liability Company; FM
23 RESTAURANTS SIGNATURE OPCO, LLC,
24 an active Delaware Limited Liability
25 Company; FM RESTAURANTS ACAPULCO
26 OPCO, LLC, an active Delaware Limited
27 Liability Company; FM RESTAURANTS
28 CHEVYS OPCO, LLC, an active Delaware
Limited Liability Company; FM
RESTAURANTS EL TORITO OPCO, LLC, an
active Delaware Limited Liability Company;
FM RESTAURANTS LAS BRISAS OPCO,
LLC, an active Delaware Limited Liability

Case No.: 30-2023-01368014-CU-OE-
CXC

Assigned to: Hon. Melissa R.
McCormick
Department: CX-104

**FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION
JURY TRIAL DEMANDED**

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Reimburse Business

Company; and DOES 1 through 50,
Defendants.

- Expenses;
8. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Penalties Pursuant to Private Attorneys General Act (“PAGA”)

Plaintiff LUIS GUTIERREZ (“Plaintiff”), on behalf of himself and all others similarly situated, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant FM RESTAURANTS HQ, LLC, Defendant FM RESTAURANTS HOLDCO, LLC, Defendant FM RESTAURANTS SIGNATURE OPCO, LLC, Defendant FM RESTAURANTS ACAPULCO OPCO, LLC, Defendant FM RESTAURANTS CHEVYS OPCO, LLC, Defendant FM RESTAURANTS EL TORITO OPCO, LLC, and Defendant FM RESTAURANTS LAS BRISAS OPCO, LLC (referred here as “FM” or “Defendant”) to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.
2. Defendant employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendant is engaged in the business of restaurant ownership and operation. Plaintiff was hired on or about September 2015. At all times during said

1 employment, Plaintiff had a non-exempt classification. Plaintiff is employed by
2 Defendant at the "El Torito" Mexican restaurant located at 15042 Goldenwest
3 Street in Westminster, CA 92683.

- 4 4. Plaintiff was not paid all his wages he was entitled to.
- 5 5. Plaintiff was also deprived of lawful meal and rest periods and failed to receive
6 accurate and compliant itemized wage statements.
- 7 6. Defendant had a consistent policy of not paying wages for all hours worked,
8 including overtime and double time wages to the extent applicable, including
9 due to work off-the-clock and failing to calculate overtime and double time
10 with respect to an employee's regular rate of compensation.
- 11 7. Defendant had a consistent policy of requiring its employees, including
12 Plaintiff, to work through meal periods or work without a meal period for at
13 least five (5) hours of a shift and failing to pay such employees one (1) hour of
14 pay at the employees' regular rate of compensation for each workday that the
15 meal period was not provided or as required by California state wage and hour
16 laws.
- 17 8. Defendant had a consistent policy of failing to allow its employees, including
18 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
19 fraction worked, and failing to pay such employees one (1) hour of pay at their
20 regular rate of compensation for each workday that the rest period was not
21 provided, or other compensation, as required by California state and wage and
22 hour laws.
- 23 9. Defendant knowingly provided inaccurate wage statements to its
24 employees, including Plaintiff, that did not correctly include the correct wages,
25 including compensation for meal periods not provided and rest period not
26 authorized or permitted as required by California state wage and hour laws.
- 27 10. Defendant had a consistent policy of failing to pay its employees all wages
28 including unpaid premium wages and accrued and vested vacation pay, due at

1 the termination or separation, in violation of California state wage and hour
2 laws.

3 11. Defendant had a consistent policy of failing to reimburse its employees,
4 including Plaintiff, for all business expenses incurred in the discharge of their
5 duties.

6 12. Plaintiff, on behalf of himself and all Class Members, brings this action
7 pursuant to Lab. Code §§ 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 1194,
8 1194.2, 2800, and 2802 seeking unpaid wages, statutory penalties, expense
9 reimbursement, equitable relief, and reasonable attorneys' fees and costs.

10 13. Plaintiff, on behalf of himself and the putative class members, also brings
11 this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive
12 relief, restitution, and disgorgement of all benefits obtained by Defendant as a
13 result of Labor Code and applicable Wage Order violations.

14 14. Plaintiff, on behalf of the State of California, herself, and other similarly
15 aggrieved employees, also brings this action pursuant to California Private
16 Attorney General Act ("PAGA"), Cal. Lab. Code §2698, *et seq.* seeking unpaid
17 wages and other compensation, penalties, and reasonable attorneys' fees and
18 costs.

19 II.

20 JURISDICTION AND VENUE

21 15. Venue as to each defendant is proper in this judicial district, pursuant to
22 Code of Civil Procedure § 395. The County of Orange is the proper venue,
23 because work for Defendant was performed by Plaintiff and other class
24 members in the County of Orange and the legal obligations owed by Defendant
25 to Plaintiff and other class members were breached in the County of Orange.

26 16. The California Superior Court has jurisdiction in this matter, because Plaintiff is
27 a resident of California, Defendant is qualified to do business in California and
28 regularly conducts business in California.

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III.

THE PARTIES

17. Plaintiff LUIS GUTIERREZ is a resident of the State of California, and was employed by Defendant in Orange County from on or about September 2015.
18. Defendant FM RESTAURANTS HQ, LLC, Defendant FM RESTAURANTS HOLDCO, LLC, Defendant FM RESTAURANTS SIGNATURE OPCO, LLC, Defendant FM RESTAURANTS ACAPULCO OPCO, LLC, Defendant FM RESTAURANTS CHEVYS OPCO, LLC, Defendant FM RESTAURANTS EL TORITO OPCO, LLC, and Defendant FM RESTAURANTS LAS BRISAS OPCO, LLC were active Delaware Limited Liability Companies at all times during the claims of Plaintiff and the putative class, were headquartered in California, and were doing business in California.
19. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the defendants sued herein as Does 1 through 50, but he is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will amend this First Amended Complaint to allege their true names and capacities when ascertained.
20. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

IV.

GENERAL ALLEGATIONS

21. At all times relevant here and as set forth in the following paragraphs of this First Amended Complaint, Defendant employed more than 100 people; and

1 Plaintiff and each member of the putative class was employed by Defendant,
2 and each of them, in the State of California.

- 3 22. The employees of Defendant have not been provided: uninterrupted thirty-
4 minute meal periods for work periods of more than five (5) hours per day;
5 second uninterrupted thirty-minute meal periods for work periods of more
6 than ten (10) hours per day; and have not been permitted to take ten-minute
7 (10) rest periods for work periods of four (4) hours or major fractions, pursuant
8 to the Labor Code, and applicable IWC Wage Orders.
- 9 23. Defendant failed to pay employees wages owed for all hours worked, including
10 overtime and double time hours as applicable, as well as failing to calculate any
11 overtime wages with respect to an employee's regular rate of compensation.
- 12 24. Defendant failed to pay the members of Plaintiff's putative class upon
13 separation the wages earned and unpaid at the time of discharge, including
14 unpaid premium wages and accrued and vested vacation pay or "PTO."
- 15 25. Defendant failed to provide Plaintiff and the putative members of his class, at
16 the time of each payment of wages, an accurate itemized statement in writing,
17 showing the gross wages earned and/or paid, including premium wages owed
18 for failing to provide meal and/or rest periods at the proper intervals.
- 19 26. Defendants failed to fully reimburse Plaintiff and putative members of his class
20 for all their business-related expenditures. In violation of the Labor Code,
21 Plaintiff and putative members of his class did not receive indemnification for
22 all business-related expenditures.
- 23 27. Plaintiff asserts claims for relief on behalf of himself and other similarly
24 situated persons as a class action pursuant to Code of Civil Procedure § 382.
25 Plaintiff and all members of his putative class are described below with
26 specificity and fall in several categories of subclasses whose rights have been
27 violated under the law. Defendant has made no effort as of the filing of this
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1 First Amended Complaint to correct or remedy the violations of law specified
2 here.

3 V.

4 **CLASS ACTION ALLEGATIONS**

5 28. Plaintiff brings this action on behalf of himself and all other employees of FM
6 who are similarly-situated persons as a class action pursuant to California Code
7 of Civil Procedure § 382. There is a well-defined common interest by and
8 among Plaintiff and the putative class members, and it is impractical to bring all
9 those individuals before the court under separate, different and repetitive
10 actions. Plaintiff also reserves the right to amend or modify the class
11 descriptions set forth below in greater specificity or clarity if required in the
12 future in accordance with Rule 3.765 (b), California Rules of Court. The class
13 which Plaintiff seeks to represent is composed of and defined as follows:

14 “Plaintiff Class” – All of Defendant’s current and former non-exempt
15 employees who worked for Defendant in California, during the four
16 years before the filing of the Complaint through the time of class
17 certification.

18 29. Plaintiff seeks to certify the following subclasses of employees:

- 19 a) “Meal Period Subclass” – All members of Plaintiff Class who worked
20 each period exceeding five (5) hours without an uninterrupted, off
21 duty, thirty (30) minute meal period and/or periods in excess of ten (10)
22 hours without a second uninterrupted, off duty, thirty (30) minute
23 meal periods; and were not provided compensation of one hour’s pay
24 at the employee’s regular rate for each day that a meal period was not
25 provided.
- 26 b) “Rest Period Subclass” – All members of Plaintiff Class who worked
27 periods of four (4) hours or major fraction thereof without a duty free
28 rest period of at least 10-minutes and who were not compensated one

hour's pay at the employee's regular rate for each day that a rest period was not permitted.

- c) "Unpaid Wage Subclass" – All members of Plaintiff Class who were not paid their minimum/actual wages, including any time that was unlawfully rounded by Defendant or otherwise considered as off-the-clock, as well as overtime wages for hours worked in excess of eight hours per day at the one and a half rate (of an employee's regular rate of pay) or at a double time rate (of an employee's regular rate of pay) as applicable.
- d) "Waiting Time Subclass" – All members of Plaintiff Class to whom Defendant failed to pay all wages due to them upon termination or resignation under Labor Code §§ 201-203.
- e) "Vacation Pay Subclass" – All members of Plaintiff Class to whom Defendant failed to pay all vacation wages owed, vested or agreed to upon termination or resignation as required by Labor Code §227.3.
- f) "Wage Statement Subclass" – All members of Plaintiff Class to whom Defendant improperly failed to provide accurate itemized wage statements under Labor Code §§ 226.
- g) "Expense Reimbursement Subclass" – All members of Plaintiff Class to whom Defendants failed to fully reimburse employee business expenses as required by Labor Code §2802.
- h) "UCL Subclass" – All members of the Meal Period, Rest Period, Unpaid Wage, Waiting Time, Vacation Pay, Wage Statement, and Expense Reimbursement Subclasses who were subject to unlawful, illegal, unfair and/or deceptive business acts and practices by Defendant and are entitled to disgorgement and restitution of unpaid wages.

1 30. There is a well-defined community of interest among many persons who
2 comprise a readily ascertainable class:

- 3 a) Numerosity -The potential members of the Class and Subclasses as
4 defined here are so numerous that the individual joinder of all of them as
5 named plaintiffs is impracticable. The number of members of the Class
6 and Subclasses is unknown to Plaintiff. It is however estimated that the
7 members are more than 100 individuals, and their identities may readily
8 be ascertained from Defendant's records.
- 9 b) Typicality – The claims of Plaintiff are typical of the claims of all
10 members of the Class and Subclasses, who sustained similar damages
11 arising out of Defendant's common course of conduct in violation of law
12 as alleged.
- 13 c) Ascertainable Class – The proposed Class and Subclasses are
14 ascertainable as the members can readily be identified and located based
15 on the Defendant's payroll and personnel records.
- 16 d) Adequacy – Plaintiff is an adequate representative of the Class and
17 Subclasses: Plaintiff will fairly protect the interests of the members, he
18 has no interest adverse to the members, and he will vigorously pursue
19 this lawsuit on behalf of all the members of the Class and Subclasses.
20 Plaintiff's attorneys are competent, skilled and experienced in litigating
21 large employment law class actions.
- 22 e) Superiority - Class action treatment will allow a large number of
23 similarly situated persons to prosecute their common claims in a single
24 forum simultaneously, efficiently, and without the unnecessary
25 duplication of effort and expense that numerous individual actions
26 would require. Further, the monetary amounts due to many individual
27 members of the Class and Subclasses are likely to be relatively small, and
28 the burden and expense of individual litigation would make it difficult

1 or impossible for the members to seek and obtain relief. A class action
2 will serve an important public interest by permitting employees harmed
3 by Defendant's unlawful practices to effectively pursue recovery of the
4 sums owed to them.

- 5 f) Common Questions of Law and Fact – There are common questions of
6 law and fact as to the members of the Class and Subclasses which are
7 superior to questions affecting only individual members of the Class and
8 Subclasses. The common questions of law and fact may be summarized
9 as follows and if necessary will be refined with the progress of formal
10 discovery in the case:
- 11 g) Whether Defendant failed to provide members of Plaintiff Class who
12 ceased employment with Defendant all wages owed at the time of the
13 cessation of the employee-employer relationship?
- 14 h) Whether Defendant violated California law and applicable Wage Orders
15 by failing to provide Plaintiff Class members with paid ten-minute (10)
16 rest periods for each four hours worked?
- 17 i) Whether the remedy for an employer's failure to provide rest breaks as
18 required by law is a premium wage for hardship of missing a lawful rest
19 break?
- 20 j) Whether Defendant violated California law and applicable Wage Orders
21 by failing to provide Plaintiff Class members with thirty minute (30)
22 meal period for more than five hours of work?
- 23 k) Whether Defendant violated California law and applicable Wage Orders
24 by failing to provide members of Plaintiff Class with a second meal
25 period?
- 26 l) Whether the remedy for an employer's failure to provide meal period as
27 required by law is a premium wage for hardship of missing a lawful
28 meal period?

- 1 m) Whether Defendant violated California law, including the applicable
2 wage orders by failing to properly compensate Plaintiff Class members
3 for all hours worked, including overtime and double time hours as
4 applicable?
- 5 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
6 Code § 203?
- 7 o) Whether Defendant violated Labor Code §227.3 by its failure to provide
8 Plaintiff Class with all vacation wages or PTO owed, vested or agreed to
9 upon termination or separation?
- 10 p) Whether Defendant violated California law by its failure to provide
11 Plaintiff Class with accurate and itemized wage statements?
- 12 q) Whether Defendants have violated Labor Code §2802 by failing to
13 reimburse Plaintiff and the Plaintiff Class for all business expenses
14 incurred by them in direct consequence of the discharge of their duties?
- 15 r) Whether Defendant violated Business and Professions Code §§ 17200 et.
16 seq., Labor Code §§ 201, 202, 203, 204, 226, 226.7, 227.3, 510, 512, 1194,
17 1194.2, 2800, 2802, and applicable Wage Orders which constitute
18 violations of the public policy?
- 19 s) Whether Plaintiff Class is entitled to an equitable relief in accordance
20 with Business and Professions Code §§ 17200 et. seq.
- 21 t) Whether Defendant's affirmative defenses, if any, raise common issues
22 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
23 particular?

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VI.

FIRST CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIOD OR
COMPENSATION IN LIEU THEREOF

(Labor Code §§ 226.7, 512)

(By Plaintiff and Meal Period Subclass against Defendant)

31. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
32. By its failure to provide thirty minute (30) uninterrupted meal period as well as second meal period, if applicable, to Plaintiff and members of Meal Period Subclass, Defendant willfully violated the provisions of Labor Code §§ 226.7, 512 and applicable IWC Wage Orders.
33. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VII.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF

(Labor Code § 226.7)

(By Plaintiff and Rest Period Subclass against Defendant)

34. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
35. By its failure to provide ten-minute (10) rest periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and Rest Period Subclass, Defendant willfully violated Labor Code § 226.7 and applicable Wage Orders.
36. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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VIII.

THIRD CAUSE OF ACTION

FAILURE TO PAY WAGES

(Labor Code §§ 204, 510, 1194, 1194.2)

(By Plaintiff and the Unpaid Wage Subclass against Defendant)

37. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

38. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class were employees of Defendant covered by Labor Code §§ 204, 510, 1194, 1194.2 and applicable Wage Orders, and they were entitled to receive minimum and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.

39. Defendant has violated California law and the specified provisions of the Labor Code and applicable Wage Orders by its failure to pay all wages due in accordance, including minimum wages, wrongfully classified off-the-clock wages, overtime pay and double time pay as based on an employee's regular rate of compensation. Notably, any wages that were paid were not effectively paid within seven (7) days of the close of any applicable payroll period. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

IX.

FOURTH CAUSE OF ACTION

FAILURE TO PAY WAGES DUE AT TERMINATION

(Labor Code §§ 201, 202, 203)

(By Plaintiff and Waiting Time Subclass against Defendant)

40. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

1 41. By its failure to timely pay Plaintiff and Waiting Time Subclass, Defendant
2 willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable
3 Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails
4 to timely pay such wages, the employer must, as penalty, continue to pay the
5 employee's wages until the back wages are paid in full or an action is
6 commenced.

7 42. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
8 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
9 below, and fully incorporated here as applicable.

10 X.

11 **FIFTH CAUSE OF ACTION**
12 **FAILURE TO PAY VACATION WAGES DUE AT TERMINATION**
13 **(Labor Code §227.3)**
14 **(By Plaintiff and Vacation Pay Subclass against Defendant)**

15 43. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
16 as if fully alleged herein.

17 44. By its failure to timely pay Plaintiff and Vacation Pay Subclass, Defendant
18 willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor
19 Code provides that whenever a contract of employment or employer policy
20 provides for paid vacation, and an employee is terminated without having
21 taken off his or his vested vacation time, all vested vacation shall be paid to him
22 as wages at his or his final rate in accordance with such contract of employment
23 or employer policy respecting eligibility of time served; provided, however,
24 that an employment contract or employer policy shall not provide for forfeiture
25 of vested vacation time upon termination.

26 45. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
27 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
28 below, and fully incorporated here as applicable.

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XI.

SIXTH CAUSE OF ACTION
FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS
(Labor Code §226)
(By Plaintiff and Wage Statement Subclass against Defendant)

46. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
47. By its failure to provide accurate itemized wage statements, semimonthly or at the time of each payment of wages, Defendant willfully violated the provisions of Labor Code §226 and applicable Wage Orders.
48. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

XII.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE ALL BUSINESS EXPENSES
(Labor Code §§2800, 2802)
(By Plaintiff and Expense Reimbursement Subclass against Defendants)

49. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.
50. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care."
51. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties..."
52. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the term 'necessary expenditures or losses' shall include all reasonable costs,

1 including but not limited to, attorney's fees incurred by the employee enforcing
2 the rights granted by this section."

3 53. During the relevant time period, Defendant was required to reimburse Plaintiff
4 and class members for all expenditures or losses caused by the employer's want
5 of ordinary care and/or incurred in direct consequence of the discharge of their
6 duties, but failed to indemnify and reimburse Plaintiff and class members in
7 violation of Labor Codes §§ 2800 and 2802.

8 54. As a direct and proximate result, Plaintiff and class members have suffered, and
9 continue to suffer, substantial losses, related to the use and enjoyment of such
10 monies to be reimbursed, lost interest on such monies, and expenses and
11 attorney's fees in seeking to compel Defendant to fully perform its obligations
12 under California law, all of their damage in amounts according to proof at the
13 time of trial.

14 **XIII.**

15 **EIGHTH CAUSE OF ACTION**

16 **VIOLATION OF UNFAIR BUSINESS PRACTICES ACT**

17 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

18 **(By Plaintiff, Plaintiff Class and All Subclasses against Defendant)**

19 55. Plaintiff incorporates paragraphs 1 through 54 of this First Amended Complaint
20 as if fully alleged herein.

21 56. The alleged unlawful conduct of Defendant constitutes unfair competition
22 pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of
23 action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for
24 the time period starting four (4) years before the filing of the Complaint.

25 57. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have
26 suffered injury in fact and lost money or property. Plaintiff and said members
27 have been deprived of their rights as set forth in this First Amended Complaint,
28 including, but not limited to, payment of minimum and/or actual wages for all
hours worked.

1 58. Pursuant to Business and Professions Code § 17203, Plaintiff and other
2 members of Plaintiff Class and Subclasses are entitled to restitution of all wages
3 owed to them under the Labor Code, and interest thereon, in which they had a
4 property interest, which Defendant failed to pay to them but withheld and
5 retained for itself. Restitution of the money owed to Plaintiff, Plaintiff Class and
6 Subclasses is necessary to prevent Defendant from becoming unjustly enriched
7 by its failure to comply with the Labor Code provisions.

8 59. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover
9 reasonable attorney's fees in connection with their unfair competition claims
10 pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine
11 and/or the common fund doctrine.

12 60. Plaintiff requests the court to issue a preliminary and permanent injunction
13 prohibiting defendants from committing the Labor Code and applicable Wage
14 Order violations set forth in this First Amended Complaint, and Plaintiff and
15 the members of Plaintiff Class and Subclasses have suffered further damages as
16 articulated in the Prayer for Relief, set forth below, also incorporated here fully
17 as applicable.

18 **XIV.**

19 **NINTH CAUSE OF ACTION**

20 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**

21 **(LABOR CODE § 2699 *et seq.*)**

22 **(By Plaintiff and Aggrieved Employees Against Defendants)**

23 61. Plaintiff incorporates paragraphs 1 through 60 of this First Amended Complaint
24 as if fully alleged herein.

25 62. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
26 private parties may recover civil penalties for violations of the California Labor
27 Code. PAGA penalties are in addition to any other relief available under the
28 Labor Code.

1 63. As set forth above, Defendants violated the California Labor Code by
2 consistently failing to employ Plaintiff and other similarly situated employees
3 in compliance with California law.

4 64. Plaintiff provided written notice by certified mail to Defendants on December
5 27, 2023, and electronic notice thereafter to the State Labor & Workforce
6 Development Agency ("LWDA"), of the legal claims and theories of this case.
7 To date, and after 65 days from the date of mailing of notice, the LWDA has not
8 notified Plaintiff that the LWDA intends to exercise jurisdiction over the claim
9 for civil penalties under the PAGA. Accordingly, Plaintiff exhausted
10 administrative remedies as required by Labor Code § 2699.3. Plaintiff's PAGA
11 claim was assigned case number LWDA-CM-1001797-23 by the LWDA.
12 Appended hereto is a copy of the notice communicated by Plaintiff.

13 65. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to
14 recover the maximum civil penalties permitted by law from Defendants for the
15 violations of Labor Code alleged in this First Amended Complaint and the
16 notice communicated by Plaintiff.

17 66. Plaintiff and all other aggrieved employees are also entitled to recover their
18 attorneys' fees and costs under Labor Code § 2699.
19

20 **XV.**

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, on behalf of himself and all others similarly situated, Plaintiff
23 prays for relief and judgment against Defendant as follows:

24 A. An order certifying that Plaintiff may pursue his claims as a class action
25 under Section 382 of the Code of Civil Procedure; and it is further requested that
26 Plaintiff Class and each Plaintiff Subclass be certified;

27 B. An order appointing Plaintiff as Class representative;

28 C. An order appointing Plaintiff's counsel as Class counsel;

1 D. Disgorgement of Defendant's wrongfully obtained profits and restitution
2 of unpaid wages under Business and Professions Code §§ 17203, 17204;

3 E. Damages for unpaid additional compensation for failing to provide
4 timely or uninterrupted or lawful meal periods and rest periods;

5 F. Damages for unpaid minimum wages under Labor Code § 1194;

6 G. Liquidated damages under Labor Code § 1194.2;

7 H. Statutory penalties under Labor Code § 226(e);

8 I. Damages for unpaid penalty wages under Labor Code § 203;

9 J. Reimbursement of business expenses under Labor Code § 2802;

10 K. Damages for unpaid vacation wages at the time of discharge under
11 Labor Code § 227.3;

12 L. Reasonable attorney's fees and costs pursuant to statute, including, but
13 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;

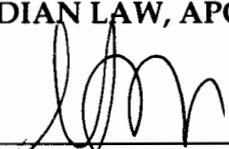
14 M. Enjoinment of Defendant from further acts of unfair competition and
15 continuous violations of the Labor Code and applicable Wage Orders;

16 N. Civil penalties under Labor Code Section 2699 (75% payable to the
17 LWDA and 25% payable to aggrieved employees); and

18 O. For such other relief that the Court may deem just and proper, including
19 prejudgment interest and costs.

20
21
22 DATED: Mar. 11, 2024

MOORADIAN LAW, APC

23
24 By:  _____

25 Zorik Mooradian,

26 Haik Hacopian,

27 Attorneys for Plaintiff and the putative class
28

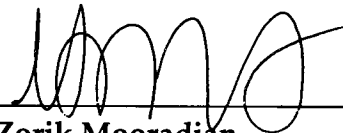
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DEMAND FOR A JURY TRIAL

Plaintiff LUIS GUTIERREZ hereby demands a jury trial in the above case.

DATED: Mar. 11, 2024

MOORADIAN LAW, APC

By: 

Zorik Mooradian,

Haik Hacopian,

Attorneys for Plaintiff and the putative class

MOORADIAN LAW, APC

24007 Ventura Blvd., Suite 210

Calabasas, California 91302

Mooradianlaw.com

Telephone 1-818-487-1998

Facsimile 1-888-783-1030

HAIK HACOPIAN

E-mail: haik@mooradianlaw.com

DECEMBER 27, 2023

VIA USPS CERTIFIED MAIL

FM RESTAURANTS HQ, LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7019 0700 0002 2582 3989

FM RESTAURANTS HOLDCO, LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7014 1820 0000 6212 5005

FM RESTAURANTS SIGNATURE OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3466

FM RESTAURANTS ACAPULCO OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3459

FM RESTAURANTS CHEVYS OPCO, LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3442

FM RESTAURANTS EL TORITO OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3435

FM RESTAURANTS LAS BRISAS OPCO,
LLC
11065 Knott Avenue, Suite A
Cypress, CA 90630
7022 1670 0001 3547 3473

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
FM RESTAURANTS HQ, LLC; FM RESTAURANTS HOLDCO,

LLC; FM RESTAURANTS SIGNATURE OPCO, LLC; FM RESTAURANTS ACAPULCO OPCO, LLC; FM RESTAURANTS CHEVYS OPCO, LLC; FM RESTAURANTS EL TORITO OPCO, LLC; FM RESTAURANTS LAS BRISAS OPCO, LLC

To Whom It May Concern:

This office represents Luis Gutierrez with respect to Private Attorneys General Act (“PAGA”) claims that he intends to pursue against FM RESTAURANTS HQ, LLC; FM RESTAURANTS HOLDCO, LLC; FM RESTAURANTS SIGNATURE OPCO, LLC; FM RESTAURANTS ACAPULCO OPCO, LLC; FM RESTAURANTS CHEVYS OPCO, LLC; FM RESTAURANTS EL TORITO OPCO, LLC; FM RESTAURANTS LAS BRISAS OPCO, LLC (hereinafter “Employers”) based upon their illegal wage and hour practices in the State of California as to their non-exempt employees. This letter constitutes the notice required by Labor Code Section 2699.3.

Facts

Employers are engaged in the business of owning and operating eateries and restaurants including those branded as “Chevy’s,” “El Torito,” “Acapulco,” and “Las Brisas.” Mr. Gutierrez worked as a non-exempt employee of Employers at the El Torito restaurant located at 15042 Goldenwest Street in Westminster, California 92683 which was owned and operated by Employers, as well as other such restaurants. Employers employ numerous non-exempt, hourly paid employees such as Mr. Gutierrez (“Aggrieved Employees”). Unfortunately, Employers have engaged in the following practices with respect to their Aggrieved Employees:

Identity and Capacity of Employers/Joint Employers

Mr. Gutierrez intends to pursue a PAGA action against Employers and their parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as “Employers” as well). Mr. Gutierrez will seek to hold all owners, directors, officers and managing agents of his Employers personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled, dominated, managed, and operated the business entities and have intermingled the assets of each

to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Mr. Gutierrez will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that Employers and their parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Aggrieved Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Aggrieved Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Aggrieved Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Aggrieved Employees.

Failure to Pay Wages

Employers implemented the policy and practice of failing to pay Aggrieved Employees for all hours worked. This included Aggrieved Employees being forced to work off the clock in order to avoid triggering overtime. Managers directed employees to clock out at the end of their shifts and continue completing their tasks. Each such affected employee worked anywhere from fifteen to thirty minutes without compensation. Additionally, employees continued working despite being clocked out for meal breaks. The foregoing resulted in underpayment of wages, including underpayment of overtime, and double-time to the extent applicable. This is in addition the underpayment of overtime and/or double-time due to misapplication of an Aggrieved Employee's regular rate of compensation.

Meal Breaks

Employers engage in the practice of not allowing mandated meal breaks and not compensating Aggrieved Employees for any missed, late, or short meal breaks. Aggrieved Employees did not receive premium pay for any missed, late, or short meal period. Time punches were regularly adjusted by management to make it appear that a meal break was taken or taken timely. Moreover, Aggrieved Employees are owed wages for off-the-clock work resulting from meal periods being on-duty as described above. To the extent any premium wages were paid, they

were not calculated in accordance with an Aggrieved Employee's correct regular rate of compensation.

Rest Breaks

Employers engage in the practice of not allowing mandated rest breaks and not compensating Aggrieved Employees for any missed, late, or short rest breaks. Specifically, Aggrieved Employees were never afforded an opportunity to take rest breaks every four hours, or major fraction thereof, they worked. Moreover, employees did not receive premium pay for these missed rest breaks. To the extent any premium wages were paid, they were not calculated in accordance with an Aggrieved Employee's correct regular rate of compensation.

Split Shifts

Employers engage in the practice of not paying split shift premiums to employees who worked two shifts (lunch and dinner) which were separated by a non-paid and non-working time period longer than a meal period. (Industrial Welfare Commission Wage Orders 1-15, Section 4).

Waiting Time and Unpaid Vacation

At the time of an Aggrieved Employee's separation (whether it be by termination or resignation) Employers have failed to provide the employee with all monies owed, including meal break premiums, rest break premiums, split shift premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable.

Employers maintained a separate vacation/PTO benefit for Aggrieved Employees and vacation wages would be owed to the extent that the benefit was not properly effectuated and/or any unpaid compensation was not factored into the accrual of the vacation benefit. Correspondingly, a vacation balance would be owed and/or any vacation balance paid to an Aggrieved Employee upon separation would not be full and complete.

Sick Leave

Employers were required to maintain a sick leave benefit with mandated amounts of accrual of sick time but failed to allow Aggrieved Employees to accrue sick time in the amount required by law. As well, the Employers failed to permit Aggrieved Employees from using their accrued sick time for the purposes set forth under California law including requiring the use of unpaid vacation in lieu of accrued sick time.

Noncompliant Wage Statements

Employers have adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not Aggrieved Employees all wages entitled to, including meal and rest break premiums, split shift premiums, and payment of vacation and sick leave benefits.

Additional Penalties

Mr. Gutierrez and all other similarly aggrieved California employees intend to seek all civil penalties for the violations described above.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which Employers have violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: Employers violated, and continue to violate, Labor Code Section 201 or other applicable law, wage order, regulation, by failing to pay the Aggrieved Employees they have discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium wages for missed meal and rest breaks.

Labor Code Section 202: Employers violated, and continue to violate, Labor Code Section 202 or other applicable law, wage order, regulation, by failing to pay Aggrieved Employees who quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: Employers violated, and continue to violate, Labor Code Section 203 or other applicable law, wage order, regulation, by failing to pay 30 days of continuing wages to Aggrieved Employees owed wages (explained above) whose employment ended.

Labor Code Sections 204 and 210: Employers violated, and continue to violate, Labor Code Sections 204 and 210 or other applicable law, wage order, regulation, by failing to pay wages to Aggrieved Employees for all hours worked as explained above including failing timely pay regular wages after the close of applicable payroll periods.

Labor Code Section 226: Employers violated, and continue to violate, Labor Code Section 226(a), or other applicable law, wage order, regulation by failing to provide Aggrieved Employees with accurate and compliant itemized wage statements.

Labor Code Section 226.7: FM violated, and continue to violate, Labor Code Section 226.7 or other applicable law, wage order, regulation, by failing to provide meal periods and/or rest periods to Aggrieved Employees that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: Employers violated, and continue to violate, Labor Code Section 227.3 by failing to promptly pay all vested vacation or PTO benefits to Aggrieved Employees upon their separation.

Labor Code Sections 245.5, 246, and 246.5: Employers have violated and continue to violate Labor Code § 245.5 (definition of employee) and § 246 (mandated amounts of accrual of sick time) by failing to allow Aggrieved Employees to accrue sick time in the amount required by law. As well, the Employers have violated and continue to violate Labor Code § 246.5 by failing to permit Aggrieved Employees from using their accrued sick time for the purposes set forth under California law.

Labor Code Sections 500, 510 and 1198: Employers violated, and continue to violate, Labor Code Sections 500, 510, 1198, or other applicable law, wage order, regulation by failing to pay minimum wage or overtime compensation to Aggrieved Employees required by law.

Labor Code Section 512: Employers violated, and continue to violate, Labor Code Section 512 or other applicable law, wage order, regulation by not providing Aggrieved Employees with legally compliant meal periods.

Labor Code Sections 1182.12, 1194, and 1198: Employers have violated and continue to violate Labor Code §§ 1182.12, 1194, 1198 or other applicable law, wage order, regulation by failing to pay Aggrieved Employees at least the minimum wage required under the law.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of

such action, we intend to file an appropriate action pursuant to Labor Code Section 2698 *et seq.*
Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,
MOORADIAN LAW, APC

A handwritten signature in black ink that reads "/s/ Haik Hacopian". The signature is written in a cursive, flowing style.

HAIK HACOPIAN

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Street and Apt. No., or PO Box No.

11065 KNOTT AVENUE, SUITE A

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FM RESTAURANTS HOLDCO, LLC

Street and Apt. No., or PO Box No.

11065 KNOTT AVENUE, SUITE A

City, State, ZIP+4®

CYPRESS, CA 90630

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Postage \$0.90

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FM RESTAURANTS HQ, LLC

Street and Apt. No., or PO Box No.

11065 KNOTT AVENUE, SUITE A

City, State, ZIP+4®

CYPRESS, CA 90630

PS Form 3800, April 2015 PSN 7530-02-000-9047

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FM RESTAURANTS LA BROSAS OPCO, LLC

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City, State, ZIP+4®

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Total Postage and Fees \$6.05	
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Haik Hacopian <haik.hacopian@gmail.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "haik.hacopian@gmail.com" <haik.hacopian@gmail.com>

Wed, Dec 27, 2023 at 6:16 PM

12/27/2023

LWDA Case No. LWDA-CM-1001797-23
Law Firm : Mooradian Law APC
Plaintiff Name : Luis Gutierrez
Employer: FM Restaurants HQ, LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm