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5 Attorney for Plaintiffs,  
 TRACY LEANN MCKEON, on behalf  
 6 of all others similarly situated, and also on behalf of all aggrieved employees

**FILED**  
 Superior Court of California  
 County of Los Angeles

02/21/2025

David W. Stryker, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

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 9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
 10 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 TRACY LEANN MCKEON, an individual, on  
 12 behalf of all others similarly situated, and also  
 on behalf of all aggrieved employees

13 Plaintiffs,

14 v.

15 FM RESTAURANTS HQ, LLC, a Delaware  
 16 limited liability company; FM  
 17 RESTAURANTS EL TORITO OPCO, LLC; a  
 Delaware limited liability company; and DOES  
 1 through 20, inclusive,

18 Defendants.

Case No. 24STCV32433

*Assigned for all purposes to Honorable Judge  
 Lawrence P. Riff, Dept. 7*

**FIRST AMENDED CLASS ACTION  
 COMPLAINT**

1. **FAILURE TO PAY WAGES (CAL. LABOR CODE §§201, 1194);**
2. **FAILURE TO PAY MINIMUM WAGES (CAL. LABOR CODE §§1182.12, 1194, 1194.2, 1197);**
3. **FAILURE TO PAY OVERTIME COMPENSATION (CAL. LABOR CODE §§510, 1194);**
4. **FAILURE TO PROVIDE REST PERIODS (CAL. LABOR CODE §§226.7);**
5. **FAILURE TO PROVIDE MEAL PERIODS (CAL. LABOR CODE § 512);**
6. **FAILURE TO PROVIDE ITEMIZED WAGE AND HOUR STATEMENTS (CAL. LABOR CODE §§226, ET SEQ.);**
7. **WAITING TIME PENALTIES (CAL. LABOR CODE §§201-203);**
8. **UNFAIR COMPETITION (BUS. & PROF. CODE §17200 ET SEQ.);**

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**9. PRIVATE ATTORNEY GENERAL ACT  
(LABOR CODE §2699, ET SEQ).**

**DEMAND OVER \$35,000**

**DEMAND FOR JURY TRIAL**

PLAINTIFF, TRACY LEANN MCKEON, an individual on behalf of herself and all other similarly situated employees and also on behalf of all aggrieved employees (hereinafter collectively referred to as "Class Plaintiffs"), hereby files this Complaint against Defendants FM RESTAURANTS HQ, LLC, a Delaware limited liability company, FM RESTAURANTS EL TORITO OPCO, LLC, a Delaware limited liability company, and DOES 1 through 20 (hereinafter collectively referred to as "Defendants"). Plaintiffs are informed and believe, and thereon allege as follows:

**INTRODUCTION**

1. This is a civil action seeking recovery for Defendants' violations of the California Labor Code, California Business and Professions Code ("B&PC"), the applicable Wage Orders issued by the California Industrial Welfare Commission (hereinafter, the "IWC Wage Orders") and related common law principles.

2. Plaintiffs' action seeks monetary damages and injunctive relief, including full restitution from Defendants as a result of Defendants' unlawful, fraudulent and/or unfair business practices.

3. Class Plaintiffs have also filed a Private Attorney General Act ("PAGA") notice with the Labor and Workforce Development Agency and the Complaint will be later amended to include a PAGA cause of action, seeking recovery of civil penalties under the PAGA General Act of 2004, Cal. Labor Code §2699 et seq.

4. The acts complained of herein occurred, occur and will occur, at least in part, within the time period from December 9, 2020 up to and through the time of trial for this matter. This is hereinafter the "Class Period."

5. The "Class Plaintiffs" are all current and former employees misclassified as exempt and paid on salary basis where they should have been paid on an hourly basis, whom were employed by Defendants from on or about December 9, 2020, up to and through the time of trial in this matter.

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2 **JURISDICTION AND VENUE**

3 6. This Court is the proper court pursuant to CCP §295(a) and CCP §395.5, and this action  
4 is properly filed in Los Angeles County, because Defendants' obligations and liability arise therein,  
5 because Defendants maintain offices and transact business within Los Angeles County, and because the  
6 work that is the subject of this action was performed by Class Plaintiffs in Los Angeles County.

7 7. The California Superior Court has jurisdiction in this matter because both the individual  
8 and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits  
9 of the Superior Court and will be established at trial, according to proof.

10 8. The California Superior Court also has jurisdiction in this matter because during their  
11 employment with Defendants, Class Plaintiffs, were all California citizens and Defendants FM  
12 RESTAURANTS HQ, LLC and FM RESTAURANTS EL TORITO OPCO, LLC conducted and  
13 transacted business throughout Los Angeles County. Further there is no federal question at issue, as the  
14 issues herein are based solely on California statutes and law.

15  
16 **THE PARTIES**

17 **PLAINTIFF TRACY LEANN MCKEON**

18 9. Plaintiff TRACY LEANN MCKEON ("MCKEON") is an individual over the age of  
19 eighteen (18) and is now and at all times mentioned in this Complaint was a citizen of the State of  
20 California.

21 10. Plaintiff MCKEON worked for Defendants as a "manager" from on or about March 30,  
22 2012 to June 2, 2024, within the County of Los Angeles, California.

23  
24 **DEFENDANT FM RESTAURANTS HQ, LLC**

25 11. Defendant FM RESTAURANTS HQ, LLC (hereinafter "FM RESTAURANTS") was  
26 and is a Delaware limited liability company doing business at 1161 West Avenue P, Palmdale, in the  
27 County of Los Angeles, State of California. At all relevant times, Defendant FM RESTAURANTS  
28 employed 26 or more employees.

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2                   **DEFENDANT FM RESTAURANTS EL TORITO OPCO, LLC**

3           12.     Defendant FM RESTAURANTS EL TORITO OPCO, LLC (hereinafter "EL TORITO")  
4 was and is a Delaware limited liability company doing business at 1161 West Avenue P, Palmdale, in the  
5 County of Los Angeles, State of California. At all relevant times, Defendant EL TORITO employed 26  
6 or more employees.  
7

8                   **DOES 1 – 20, INCLUSIVE**

9           13.     DOES 1 to 20, inclusive are now, and/or at all times mentioned in this Complaint were  
10 licensed to do business and/or actually doing business in California.

11           14.     Class Plaintiffs do not know the true names or capacities, whether individual, partner or  
12 corporate, of DOES 1 to 20, inclusive and for that reason, DOES 1 to 20 are sued under such fictitious  
13 names pursuant to CCP §474.

14           15.     Class Plaintiffs will seek leave of court to amend this Complaint to allege such names and  
15 capacities as soon as they are ascertained.  
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17                   **ALL DEFENDANTS**

18           16.     Defendants, and each of them, are now and/or at all times mentioned in this Complaint  
19 were in some manner legally responsible for the events, happenings, and circumstances alleged in this  
20 Complaint.

21           17.     Defendants, and each of them, proximately subjected Plaintiffs to the unlawful practices,  
22 wrongs, complaints, injuries and/or damages alleged in this Complaint.

23           18.     Defendants, and each of them, are now and/or at all times mentioned in this Complaint  
24 were the agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing  
25 the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this Complaint  
26 were acting within the course and scope of that agency, servitude and/or employment.

27           19.     Defendants, and each of them, are now and/or at all times mentioned in this Complaint  
28 were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting



1 within the course and scope of, and in pursuance of said joint venture, partnership, and common  
2 enterprise.

3 20. Defendants, and each of them, at all times mentioned in this Complaint, concurred and  
4 contributed to the various acts and omissions of each and every one of the other Defendants in  
5 proximately causing the complaints, injuries and/or damages alleged in this Complaint.

6 21. Defendants, and each of them, at all times mentioned in this Complaint approved of,  
7 condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this  
8 Complaint.

9 22. Defendants, and each of them, at all times mentioned in this Complaint, aided and abetted  
10 the acts and omissions of each and every one of the other Defendants thereby proximately causing the  
11 damages alleged in this Complaint.

12 23. Class Plaintiffs are informed and believe, and based thereupon allege, that Defendants,  
13 and each of them, including those defendants named as DOES 1-20 acted in concert with one another to  
14 commit the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one  
15 another in the wrongful acts alleged herein, and/or attempted to do so. Class Plaintiffs are further  
16 informed and believe, and based thereupon allege, that Defendants, and each of them, including those  
17 defendants named as DOES 1-20, and each of them, formed and executed a conspiracy or common plan  
18 pursuant to which they would commit the unlawful acts alleged herein, with all such acts alleged herein  
19 done as part of and pursuant to said conspiracy, intended to cause and actually causing Plaintiffs harm.

20 24. Whenever and wherever reference is made in this complaint to any act or failure to act  
21 by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts  
22 and/or failures to act by each Defendant acting individually, jointly and severally.

23  
24 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

25 25. Class Plaintiffs are informed and believe, and based thereon allege, that there exists such  
26 a unity of interest and ownership between FM RESTAURANTS, EL TORITO and DOES 1-20  
27 (collectively "Defendants") that the individuality and separateness of defendants have ceased to exist.  
28

1           26.     Class Plaintiffs are informed and believe, and based thereon allege, that despite the  
2 formation of purported corporate existence, FM RESTAURANTS, EL TORITO and DOES 1-20 are, in  
3 reality, one and the same, including, but not limited to because:

4                 a.     FM RESTAURANTS and EL TORITO are completely dominated and controlled  
5 by DOES 1-20, who personally committed the frauds and violated the laws as set forth in this complaint,  
6 and who have hidden and currently hide behind FM RESTAURANTS and EL TORITO to perpetrate  
7 frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

8                 b.     DOES 1-20 derive actual and significant monetary benefits by and through FM  
9 RESTAURANTS and EL TORITO'S unlawful conduct, and by using FM RESTAURANTS and EL  
10 TORITO as the funding source for their own personal expenditures.

11                c.     FM RESTAURANTS, EL TORITO and DOES 1-20, while really one and the  
12 same, were segregated to appear as though separate and distinct for purposes of perpetrating a fraud,  
13 circumventing a statute, or accomplishing some other wrongful or inequitable purpose.

14                d.     FM RESTAURANTS and EL TORITO do not comply with all requisite corporate  
15 formalities to maintain a legal and separate corporate existence.

16                e.     The business affairs of FM RESTAURANTS, EL TORITO and DOES 1-20 are,  
17 and at all times relevant were, so mixed and intermingled that the same cannot reasonably be segregated,  
18 and the same are in inextricable confusion. FM RESTAURANTS and EL TORITO were at all times  
19 relevant hereto used by DOES 1-20 as a mere shell and conduit for the conduct of certain of FM  
20 RESTAURANTS and EL TORITO's affairs, and is, and was, the alter ego of DOES 1-20. The  
21 recognition of the separate existence of FM RESTAURANTS and EL TORITO would not promote  
22 justice, in that it would permit FM RESTAURANTS and EL TORITO to insulate themselves from  
23 liability to Plaintiffs for violations of the Labor Code, Business and Professions Code and other statutory  
24 violations. The corporate existence of FM RESTAURANTS, EL TORITO and DOES 1-20 should be  
25 disregarded in equity and for the ends of justice because such disregard is necessary to avoid fraud and  
26 injustice to Plaintiffs herein.

27           27.     Accordingly, FM RESTAURANTS and EL TORITO constitute the alter ego of DOES  
28 1-20, and the fiction of their separate corporate existence must be disregarded.

1           28. As a result of the aforementioned facts, Class Plaintiffs are informed and believe, and  
2 based thereon allege that FM RESTAURANTS, EL TORITO and DOES 1-20 are Plaintiffs' joint  
3 employers by virtue of a joint enterprise, and that Plaintiffs were employees of FM RESTAURANTS,  
4 EL TORITO, and DOES 1-20. Class Plaintiffs performed services for each and every one of Defendants,  
5 and to the mutual benefit of all Defendants, and all Defendants shared control of the responsibility and  
6 influence of Class Plaintiffs as employees, either directly or indirectly, and the manner in which FM  
7 RESTAURANTS and EL TORITO's business was and is conducted.

8           29. Alternatively, Class Plaintiffs are informed and believe and, based thereupon alleges, that  
9 as and between DOES 1-20 and FM RESTAURANTS and EL TORITO, (1) there is an express or  
10 implied agreement of assumption pursuant to which DOES 1-20 agreed to be liable for the debts of FM  
11 RESTAURANTS and EL TORITO, (2) the transaction between DOES 1-20 and FM RESTAURANTS  
12 and EL TORITO amounts to a consolidation or merger of entities, (3) DOES 1-20 is a mere continuation  
13 of FM RESTAURANTS and EL TORITO, or (4) the transfer of assets to DOES 1-20 is for the fraudulent  
14 purpose of escaping liability for FM RESTAURANTS and EL TORITO's debts. Accordingly, DOES  
15 1-20 are the successors of FM RESTAURANTS and EL TORITO, and are liable on that basis.

### 16 17 **CLASS ACTION ALLEGATIONS**

18           30. The Class Plaintiffs are entitled to the protections of the California Labor Code and the  
19 Wage Order.

20           31. Defendants misclassified Class Plaintiff as exempt, and paid Class Plaintiffs only a  
21 "salary," via payroll check with itemized deductions and taxes withheld.

22           32. At all times relevant hereto, Class Plaintiffs were not exempt pursuant to Labor Code  
23 §515, including because:

24           33. Class Plaintiffs' duties and responsibilities did not involve the management of the  
25 enterprise in which Class Plaintiffs were employed or of a customarily recognized department or  
26 subdivision thereof;

27           34. Class Plaintiffs were not licensed or certified by the State of California nor were Class  
28 Plaintiffs primarily engaged in the practice of one of the following recognized professions: law, medicine,

1 dentistry, optometry, architecture, engineering, teaching, or accounting, nor were Class Plaintiffs  
2 primarily engaged in an occupation commonly recognized as a learned or artistic profession as such term  
3 is defined by Wage Order 5;

4 35. Class Plaintiffs' duties and responsibilities did not involve either the performance of office  
5 or non-manual work directly related to management policies or general business operations of Class  
6 Plaintiffs' employer or Class Plaintiffs' employer's customers, or the performance of functions in the  
7 administration of a school system, or educational establishment or institution, or of a department or  
8 subdivision thereof, in work directly related to the academic instruction or training carried on therein;

9 36. Class Plaintiffs did not have the authority to hire or fire other employees, nor were Class  
10 Plaintiff's suggestions and recommendations as to the advancement and promotion or any other change  
11 of status of other employees given any weight;

12 37. Class Plaintiffs did not customarily and regularly exercise discretion and independent  
13 judgment in performing Class Plaintiffs' work duties;

14 38. Class Plaintiffs did not perform under only general supervision work along specialized or  
15 technical lines requiring special training, experience, or knowledge;

16 39. Class Plaintiffs did not perform under only general supervision special assignments and  
17 tasks;

18 40. Class Plaintiffs did not spend more than one-half of Plaintiff's work time engaged in  
19 exempt work; and

20 41. Class Plaintiffs did not earn a monthly salary equivalent to no less than two times the  
21 statement minimum wage for full-time employment.

22 42. Because Defendants misclassified Class Plaintiffs as exempt, Class Plaintiffs were only  
23 paid a salary, rather than for each hour worked. Pursuant to Labor Code § 515(d)(2), salary is deemed to  
24 provide compensation only for the employee's regular, non-overtime hours, notwithstanding any private  
25 agreement to the contrary. As a result, Class Plaintiffs were not paid any wages at all, for hours beyond  
26 8 in a day, or 40 in a week.

27 43. The Class Plaintiffs were not paid the California statutory minimum wage for all hours  
28 worked.

1           44.     The Class Plaintiffs regularly worked in excess of 8 hours per day or 40 hours per week  
2 and were not paid an overtime premium. Accordingly, the Class Plaintiffs were entitled to be paid  
3 overtime premiums for all hours worked over 8 hours in a single day or over 40 hours in a week.

4           45.     The Class Plaintiffs were not permitted to take duty-free rest periods of at least ten minutes  
5 every four hours worked, as required by California Labor Code §226.7.

6           46.     The Class Plaintiffs were also not provided duty-free meal periods of at least thirty minutes  
7 for every five hours worked, as required by California Labor Code §512.

8           47.     Defendants failed to maintain working conditions that comply with the Wage Order,  
9 failed to timely provide them with accurate written wage statements, and failed to timely pay them  
10 earned wages during employment.

11          48.     CCP §382 provides in pertinent part: "... [W]hen the question is one of a common or  
12 general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them  
13 all before the court, one or more may sue or defend for the benefit of all." Plaintiffs bring this suit as a  
14 class action pursuant to CCP §382.

15          49.     The putative classes that Class Plaintiffs will seek to certify are Defendants' similarly  
16 situated individuals who are presently employed or were formerly employed by Defendants in California  
17 from December 3, 2020 through trial who were: (1) misclassified as exempt employees; (2) were not  
18 paid minimum wage for all hours worked; (3) were not paid overtime compensation for all overtime  
19 hours worked; (4) were not provided legally compliant rest periods; (5) were not provided legally  
20 complaint meal periods; (6) were not provided accurate wage statements, or (7) were not paid all earned  
21 wages timely upon termination of their employment.

22          50.     In addition, Class Plaintiffs will seek to certify a subclass of those similarly situated  
23 individuals who were formerly employed by Defendants in California from December 9, 2020 through  
24 trial whose employment ended or was terminated. Hereinafter, this is referred to as the "Terminated  
25 Employee SubClass."

26          51.     The Class and the Terminated SubClass are herein collectively referred to as the  
27 "Classes."  
28

1           52. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary  
2 to amend the definition of the Classes. Plaintiffs will formally define and designate a class definition at  
3 such time when Class Plaintiffs seek to certify the Classes alleged herein.

4           53. Numerosity (CCP §382):

- 5           a. The potential quantity of members of the Classes as defined is so numerous that  
6 joinder of all members is unfeasible and impractical;  
7           b. The disposition of the claims of the members of the Classes through this class action  
8 will benefit both the parties and this Court;  
9           c. The quantity of members of the Classes is unknown to Class Plaintiffs at this time;  
10 however, it is estimated that the membership of the Classes numbers greater than 100  
11 individuals; and  
12           d. The quantity and identity of such membership is readily ascertainable via inspection  
13 of Defendants' records.

14           54. Superiority (CCP §382): The nature of this action and the nature of the laws available to  
15 Class Plaintiffs make the use of the class action format particularly efficient and the appropriate  
16 procedure to afford relief to Class Plaintiffs for the wrongs alleged herein, as follows:

- 17           a. California has a public policy which encourages the use of the class action device;  
18           b. By establishing a technique whereby the claims of many individuals can be resolved  
19 at the same time, the class suit both eliminates the possibility of repetitious litigation  
20 and provides small claimants with a method of obtaining redress for claims which  
21 would otherwise be too small to warrant individual litigation;  
22           c. This case involves large corporate Defendants and a large number of individual Class  
23 members with many relatively small claims and common issues of law and fact;  
24           d. If each individual member of the Classes were required to file an individual lawsuit,  
25 the large corporate Defendants would necessarily gain an unconscionable advantage  
26 because Defendants would be able to exploit and overwhelm the limited resources of  
27 each individual member of the Classes with Defendants' vastly superior financial and  
28 legal resources;

- 1 e. Requiring each individual member of the Classes to pursue an individual remedy  
2 would also discourage the assertion of lawful claims by the members of the Classes  
3 who would be disinclined to pursue an action against Defendants because of an  
4 appreciable and justifiable fear of retaliation and permanent damage to their lives,  
5 careers, and well-being;
- 6 f. Proof of a common business practice or factual pattern, of which the members of the  
7 Classes experienced, is representative of the Classes herein and will establish the right  
8 of each of the members of the Classes to recover on the causes of action alleged  
9 herein;
- 10 g. Absent class treatment, the prosecution of separate actions by the individual members  
11 of the Classes, even if possible, would likely create:
- 12 i) a substantial risk of each individual Plaintiff presenting in separate,  
13 duplicative proceedings the same or essentially similar arguments and  
14 evidence, including expert testimony;
  - 15 ii) a multiplicity of trials conducted at enormous expense to both the judicial  
16 system and the litigants;
  - 17 iii) inconsistent or varying verdicts or adjudications with respect to the  
18 individual members of the Classes against Defendants;
  - 19 iv) potentially incompatible standards of conduct for Defendants; and
  - 20 v) potentially incompatible legal determinations with respect to individual  
21 members of the Classes which would, as a practical matter, be dispositive  
22 of the interest of the other members of the Classes who are not parties to  
23 the adjudications or which would substantially impair or impede the  
24 ability of the members of the Classes to protect their interests.
- 25 h. The claims of the individual members of the Classes are not sufficiently large to  
26 warrant vigorous individual prosecution considering all of the concomitant costs and  
27 expenses attendant thereto;
- 28



- i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions; and
- j. The Supreme Court of California urges trial courts, which have an obligation to consider the use of innovative procedural tools to certify a manageable class, to be procedurally innovative in managing class actions.

55. Well-defined Community of Interest: Plaintiffs also meet the established standards for class certification (see, e.g. *Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096), as follows:

- a. Typicality: The claims of Plaintiff MCKEON are typical of the claims of all members of the Classes she seeks to represent because she has been subject to all the violations described herein, as have all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.
- b. Adequacy: Plaintiff MCKEON:
  - i) is an adequate representative of the Classes she seeks to represent;
  - ii) will fairly protect the interests of the members of the Classes;
  - iii) has no interests antagonistic to the member of the Classes; and
  - iv) will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.
- c. Predominant Common Questions of Law or Fact: There are common questions of law and/or fact as to the members of the Classes which predominate over questions affecting only individual members of the Classes, including, without limitation:
  - i) Whether Defendants misclassified the Class Plaintiffs as exempt employees in violation of the Labor Code;
  - ii) Whether Defendants failed to pay Class Plaintiffs the California statutory minimum wage for all hours worked in violation of the Labor Code and Section 1 of the IWC Wage Orders;



- 1                   iii)     Whether Defendants failed to pay Class Plaintiffs an overtime premium
- 2                             for all hours over 8 in a day or 40 in a week in violation of the Labor Code
- 3                             and Section 1 of the IWC Wage Orders;
- 4                   iv)     Whether Defendants failed and continue to fail to authorize and permit
- 5                             legally-requisite rest breaks to Class Plaintiffs in violation of the Labor
- 6                             code and Section 1 of the IWC Wage Orders;
- 7                   v)     Whether Defendants failed and continue to fail to authorize and permit
- 8                             legally-requisite meal periods to Class Plaintiffs in violation of the Labor
- 9                             Code and Section 1 of the IWC Wage Orders;
- 10                  vi)     Whether Defendants failed to timely furnish accurate, itemized and legal
- 11                             wage statements to Class Plaintiffs;
- 12                  vii)    Whether Defendants are derivatively liable pursuant to Labor Code §203
- 13                             to the Terminated Employee SubClass;
- 14                  viii)   Whether Defendants' conduct constitutes unfair, illegal, or fraudulent
- 15                             competition within the meaning of B&PC §17200, et seq.;
- 16                  ix)     Whether Defendants' conduct constitutes unfair, illegal, or fraudulent
- 17                             business practices within the meaning of B&PC § 17200, et seq.;
- 18                  x)     Whether the members of the Classes are entitled to compensatory
- 19                             damages, and if so, the means of measuring such damages;
- 20                  xi)     Whether the members of the Classes are entitled to injunctive relief;
- 21                  xii)    Whether the members of the Classes are entitled to restitution; and
- 22                  xiii)   Whether Defendants are liable for attorneys' fees and costs.

23           56.     Whether each member of the Classes might be required to ultimately justify an individual  
24     claim does not preclude maintenance of a class action (see, e.g. *Collins v. Rocha* (1972) 7 Cal.3d 232,  
25     238).

**FIRST CAUSE OF ACTION**  
**FOR FAILURE TO PAY WAGES DUE**  
**LABOR CODE §§201, 226.7, 512, 1194**  
**(ON BEHALF OF THE CLASS PLAINTIFFS)**  
**AGAINST ALL DEFENDANTS**

57. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

58. At all relevant times, Defendants failed and refused to pay Class Plaintiffs wages earned and required by 8 Code of Regulations §11050, as set forth hereinabove. As alleged herein, Defendants routinely failed to pay Class Plaintiffs minimum wage, overtime compensation and failed to compensate them for missed rest and meal breaks.

59. As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

60. Class Plaintiffs have been deprived of their rightfully earned compensation as a direct and proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

**SECOND CAUSE OF ACTION**  
**FOR FAILURE TO PAY MINIMUM WAGES**  
**LABOR CODE §§1182.12, 1194, 1194.2, 1197**  
**AGAINST ALL DEFENDANTS**

61. Class Plaintiffs re-allege and incorporates by reference each of the foregoing paragraphs as though set forth in full herein.

62. Pursuant to Labor Code §1197, payment of less than the minimum wage fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate for paid and unpaid hours exceeded the minimum wage. Under California law, Class Plaintiffs are entitled to at least the minimum wage for every hour worked.

1           63.    In the four years immediately preceding the filing of this complaint, Defendants failed and  
2 refused to pay Class Plaintiffs the legal minimum wage in the State of California, as set forth in Labor  
3 Code §1182.12.

4           64.    Defendants' failure to pay the legal minimum wage to Class Plaintiff as alleged herein is  
5 unlawful and creates entitlement, pursuant to Labor Code §1197, to recovery by Class Plaintiffs in a civil  
6 action for the unpaid balance of the full amount of the unpaid wages owed.

7           65.    Pursuant to Labor Code §1194, Class Plaintiffs request that the court award reasonable  
8 attorneys' fees and costs incurred by Class Plaintiffs in this action.

9           66.    In addition, pursuant to Labor Code §1194.2, Class Plaintiffs are entitled to recover  
10 liquidated damages in an amount equal to the minimum wages unlawfully unpaid, plus interest thereon.

11  
12                               **THIRD CAUSE OF ACTION**  
13                               **FOR FAILURE TO PAY OVERTIME COMPENSATION**  
14                               **LABOR CODE §§510, 1194**  
15                               **(ON BEHALF OF THE CLASS PLAINTIFFS)**  
16                               **AGAINST ALL DEFENDANTS**

17           67.    Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set  
18 forth in full herein.

19           68.    Labor Code §510 requires employers to pay their non-exempt employees one and one-half  
20 times their regular hourly rate (overtime) for time worked in excess of eight hours in a single day, or 40  
21 hours per week, and double their regular hourly rate (double-time) for all hours worked in excess of 12  
22 hours in a single day. It also requires employers to pay their non-exempt employees overtime  
23 compensation for the first eight hours of work done on the seventh consecutive day of work done in any  
24 work week and double-time compensation for any work done beyond the first eight hours on the seventh  
25 consecutive day of work.

26           69.    As alleged herein, Class Plaintiffs were not exempt from the requirements of Labor Code  
27 §510, 8 Code of Regulations §11050, and Industrial Welfare Commission Order No. 5-2001.

1           70.     At all relevant times, Class Plaintiffs were required to work more than eight hours per  
2 day and/or more than 40 hours per workweek.

3           71.     At all relevant times, Defendants failed and refused to pay Class Plaintiffs all the overtime  
4 compensation required by Labor Code §510, 8 Code of Regulations §11050, and Industrial Welfare  
5 Commission Order No. 5-2001.

6           72.     From December 3, 2020, through trial, Class Plaintiffs worked overtime hours each  
7 week, all of which should have been paid at 1.5 times their regular hourly wage rate at that time.  
8 Defendants failed to pay Class Plaintiffs the requisite overtime wages in the four years immediately  
9 preceding the filing of this complaint.

10          73.     Class Plaintiffs have been deprived of their rightfully earned compensation as a direct and  
11 proximate result of Defendants' failure and refusal to pay said compensation. Class Plaintiffs are entitled  
12 to recover such amounts, plus interest thereon, attorneys' fees and costs.

13  
14                   **FOURTH CAUSE OF ACTION**  
15                   **FOR FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**  
16                   **LABOR CODE §§226.7, 516**  
17                   **(ON BEHALF OF THE CLASS PLAINTIFFS)**  
18                   **AGAINST ALL DEFENDANTS**

19          74.     Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set  
20 forth in full herein.

21          75.     Labor Code §226.7 requires an employer to provide every employee with an  
22 uninterrupted rest period of not less than 10 minutes, for every period worked of four hours, or  
23 substantial portion thereof, and further prohibits an employer from requiring "an employee to work  
24 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable  
25 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health  
26 Standards Board, or the Division of Occupational Safety and Health."

1           76. Labor Code §516 provides that the Industrial Welfare Commission “may adopt or amend  
2 working condition orders with respect to break periods, meal periods, and days of rest for any workers  
3 in California consistent with the health and welfare of those workers.”

4           77. Section 12(A) of the IWC Wage Order(s) states: “Every employer shall authorize and  
5 permit all employees to take rest periods, which insofar as practicable shall be in the middle of each  
6 work period. The authorized rest period time shall be based on the total hours worked daily at a rate of  
7 ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need  
8 not be authorized for employees whose total daily work time is less than three and one-half (3½) hours.  
9 Authorized rest period time shall be counted as hours worked for which there shall be no deduction from  
10 wages.”

11           78. Section 12(B) of the IWC Wage Order(s) states: “If an employer fails to provide an  
12 employee a rest period in accordance with the applicable provisions of this order, the employer shall pay  
13 the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that  
14 the rest period is not provided.”

15           79. The Class Plaintiffs sometimes worked over 4 hours per shift.

16           80. The Class Plaintiffs were entitled to a rest period of not less than 10 minutes prior to  
17 exceeding 4 hours of employment.

18           81. As a matter of Defendants’ established company policy, Defendants failed to always  
19 authorize and permit all required rest periods established by Labor Code §226.7 and Labor Code §516  
20 and Section 12 of the IWC Wage Order(s).

21           82. Pursuant to Section 12 of the IWC Wage Order(s) and Labor Code §226.7(b) which states  
22 “if an employer fails to provide an employee a meal or rest period in accordance with an applicable order  
23 of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay  
24 at the employee’s regular rate of compensation for each work day that the meal or rest period is not  
25 provided,” the Class Plaintiffs are entitled to damages in an amount equal to 1 additional hour of pay at  
26 each employee’s regular rate of compensation for each work day that the rest period was not provided.

27           83. Pursuant to Labor Code §218.6 and Civil Code § 3287, the Class Plaintiffs seek recovery  
28 for prejudgment interest on all amounts recovered herein.

**FIFTH CAUSE OF ACTION**  
**FOR FAILURE TO AUTHORIZE AND PERMIT MEAL BREAKS**  
**LABOR CODE §§226.7, 512**  
**(ON BEHALF OF THE CLASS PLAINTIFFS)**  
**AGAINST ALL DEFENDANTS**

84. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

85. Labor Code §512 requires employers to provide every employee with an uninterrupted meal period of not less than 30 consecutive minutes, for every period of work exceeding five hours.

86. Class Plaintiffs regularly worked in excess of five hours per day and were thereby entitled to take uninterrupted 30-minute meal periods on each day of work.

87. Defendants failed and refused to provide the Class Plaintiffs with uninterrupted meal and rest periods, and failed to compensate Class Plaintiffs, and other similarly situated employees, for missed meal and rest periods, as required by Labor Code §§226.7 and the applicable sections of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001, as follows.

88. Class Plaintiffs have been deprived of wages for missed meal breaks due in amounts to be determined at trial.

89. As alleged herein, Class Plaintiffs are not exempt from the meal break requirements of 8 Code of Regulations §11050 and Industrial Welfare Commission Order No. 5-2001. Consequently, Class Plaintiffs are owed one hour of pay at his or her then regular hourly rate, or the requisite minimum wage, whichever is greater, for each day that he or he was denied such meal periods.

90. Class Plaintiffs have been deprived of his or her rightfully earned compensation for missed meal breaks as a direct and proximate result of Defendants' failure and refusal to pay said compensation.

91. Thus, for the entirety of the time periods set forth above, Class Plaintiffs are entitled to recover such amounts to be determined at trial pursuant to Labor Code §226.7(b), plus interest thereon and costs of suit.

**SIXTH CAUSE OF ACTION**  
**FOR FAILURE TO TIMELY FURNISH ACURATE ITEMIZED WAGE STATEMENTS**  
**LABOR CODE §§226**  
**(ON BEHALF OF THE CLASS PLAINTIFFS)**  
**AGAINST ALL DEFENDANTS**

92. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

93. Labor Code §226(a) states in pertinent part: "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ... (4) all deductions ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid ... (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 ...."

94. Further, the IWC Wage Orders §12(A) states in pertinent part: "(A) Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded ... (5) Total hours worked in the payroll period and applicable rates of pay ...."

95. Therefore, pursuant to Labor Code §226(a) and the IWC Wage Orders §12(A), California employers are required to maintain accurate records pertaining to the total hours worked for Defendants by Class Plaintiffs, including but not limited to, beginning and ending of each work period, meal period and split shift interval, the total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

96. As a pattern and practice, in violation of Labor Code §226(a) and the IWC Wage Orders §12(A), Defendants did not and still do not furnish each of the Class Plaintiffs with an accurate itemized



1 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) all  
2 deductions, (4) net wages earned and/or (5) all applicable hourly rates in effect during each respective  
3 pay period and the corresponding number of hours worked at each hourly rate by each respective  
4 individual and/or pertaining to the total hours worked for Defendants by the Class Plaintiffs, including  
5 but not limited to, beginning and ending of each work period, meal period and split shift interval, the  
6 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

7 97. As of January 1, 2013, SB 1255 amended Labor Code §226 to clarify that an employee  
8 suffers injury if the employer fails to provide accurate and complete information as required by any one  
9 or more items listed in Labor Code §226(a)(1)-(9) and the employee cannot promptly and easily ascertain  
10 requisite information without reference to other documents or information.

11 98. Here, the Class Plaintiffs suffered injury because Defendants failed to provide accurate  
12 and complete information as required by one or more items listed in Labor Code §226(a)(1)-(9) and the  
13 Class Plaintiffs could not and cannot promptly and easily ascertain requisite information without  
14 reference to other documents or information.

15 99. In addition, the Class Plaintiffs have suffered injury as a result of Defendants' failure to  
16 maintain accurate records for the Class Plaintiffs in that the Class Plaintiffs were not timely provided  
17 written accurate itemized statements showing all requisite information, including but not limited to total  
18 hours worked by the employee, net wages earned and all applicable hourly rates in effect during the pay  
19 period and the corresponding number of hours worked at each hourly rate, in violation of Labor Code  
20 §226 and the IWC Wage Orders §12(A), such that the Class Plaintiffs were misled by Defendants as to  
21 the correct information regarding various items, including but not limited to total hours worked by the  
22 employee, net wages earned and all applicable hourly rates in effect during the pay period and the  
23 corresponding number of hours worked at each hourly rate.

24 100. The actual injuries suffered by the Class Plaintiffs as a result of Defendants' knowing  
25 and intentional failure to maintain accurate records for the Class Plaintiffs include but are not limited to:

- 26 a. Confusion over whether they received all wages owed them by Defendants;
- 27 b. The difficulty and expense of attempting to reconstruct time and pay records;

- 1 c. Being forced to engage in mathematical computations to analyze whether  
2 Defendants' wages in fact compensated for all hours worked;  
3 d. The inability to accurately calculate wage rates complicated by the fact that wage  
4 statement information required by Labor Code §226 is missing;  
5 e. That such practice prevents the Class Plaintiffs from being able to effectively  
6 challenge information on their wage statements; and/or  
7 f. The difficulty and expense of filing and maintaining this lawsuit, and the discovery  
8 required to collect and analyze the very information that California law requires.

9 101. Pursuant to Labor Code §226(e), the Class Plaintiffs are entitled to actual damages or  
10 four thousand dollars (\$4,000.00), whichever is greater.

11 102. Pursuant to Labor Code §226(g), the currently-employed members of the Class Plaintiffs  
12 are entitled to injunctive relief to ensure Defendants' compliance with Labor Code §226.

13 103. Pursuant to Labor Code §226(e) and/or §226(g), the Class Plaintiffs are also entitled to  
14 an award of costs and reasonable attorneys' fees.

15  
16 **SEVENTH CAUSE OF ACTION**

17 **FOR WAITING TIME PENALTIES**

18 **LABOR CODE §203**

19 **(ON BEHALF OF THE TERMINATED EMPLOYEE SUBCLASS)**

20 **AGAINST ALL DEFENDANTS**

21 104. The Terminated Employee SubClass re-alleges and incorporates by reference the above  
22 paragraphs as though set forth in full herein.

23 105. Labor Code §203 provides that if an employer willfully fails to pay, without abatement  
24 or reduction, in accordance with Labor Code §§201 and 202, any wages of an employee who is  
25 discharged or who quits, the wages of the employee shall continue at the same rate, for up to thirty (30)  
26 days from the due date thereof, until paid or until an action therefore is commenced.

27 106. The members of the Terminated Employee SubClass are no longer employed by  
28 Defendants as they were either discharged from or quit Defendants' employ.

1 107. Defendants had a consistent and uniform policy, practice and procedure of willfully  
2 failing to pay the earned wages of Defendants' former employees, as set forth above, according to  
3 amendment or proof.

4 108. As set forth above, Defendants willfully failed to pay the members of the Terminated  
5 Employee SubClass their entire wages due and owing at the time of their termination or within seventy-  
6 two (72) hours of their resignation, and failed to pay those sums for up to thirty (30) days thereafter.

7 109. Defendants' willful failure to pay wages to the members of the Terminated Employee  
8 SubClass violates Labor Code §203 because Defendants knew or should have known wages were due  
9 to the members of the Terminated Employee SubClass, as set forth above, but Defendants failed to pay  
10 them.

11 110. Thus, the members of the Terminated Employee SubClass are entitled to recovery  
12 pursuant to Labor Code §203, as well as attorneys' fees and costs.

13  
14 **EIGHTH CAUSE OF ACTION**  
15 **FOR UNFAIR COMPETITION**  
16 **BUSINESS & PROFESSIONS CODE §§17200, ET SEQ.**  
17 **(ON BEHALF OF THE CLASS PLAINTIFFS)**  
18 **AGAINST ALL DEFENDANTS**

19 111. Class Plaintiffs re-allege and incorporate by reference each of the foregoing paragraphs as  
20 though set forth in full herein.

21 112. B&PC §17200 provides in pertinent part "...[U]nfair competition shall mean and include  
22 any unlawful, unfair or fraudulent business act..."

23 113. B&PC §17205 provides that unless otherwise expressly provided, the remedies or  
24 penalties provided for unfair competition "are cumulative to each other and to the remedies or penalties  
25 available under all other laws of this state."

26 114. B&PC §17204 provides that an action for relief from unfair competition may be  
27 prosecuted by any person who has suffered injury in fact and has lost money or property as a result of  
28 such unfair competition.

1           115. Defendants' have engaged in unlawful, unfair and fraudulent business acts or practices  
2 prohibited by B&PC §17200, including those set forth in the preceding and foregoing paragraphs of the  
3 complaint, thereby depriving Plaintiffs of the minimum working standards and conditions due to them  
4 under the Labor Code and/or the IWC Wage Orders, as specifically described herein.

5           116. Defendants have engaged in unfair business practices in California by practicing,  
6 employing, and utilizing the employment practices outlined in the preceding paragraphs, specifically, by  
7 requiring employees to perform the labor services complained of herein without the requisite  
8 compensation.

9           117. Defendants' use of such practices constitutes an unfair business practice, unfair  
10 competition and provides an unfair advantage over Defendants' competitors.

11           118. Plaintiffs have suffered injury in fact and have lost money or property as a result of such  
12 unfair competition.

13           119. Plaintiffs seek full restitution from Defendants, as necessary and according to proof, to  
14 restore any and all monies withheld, acquired and/or converted by Defendants by means of the unfair  
15 practices complained of herein.

16           120. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will  
17 continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

18           121. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction  
19 prohibiting Defendants from engaging in the foregoing conduct.

20           122. Plaintiffs seek the appointment of a receiver, as necessary, to establish the total monetary  
21 relief sought from Defendants.

**NINTH CAUSE OF ACTION**  
**FOR PENALTIES PURSUANT TO THE PRIVATE ATTORNEY GENERAL ACT**  
**LABOR CODE §2699**  
**(ON BEHALF OF THE CLASS PLAINTIFFS)**  
**AGAINST ALL DEFENDANTS**

123. Class Plaintiffs re-allege and incorporate by reference the above paragraphs as though set forth in full herein.

124. Under Labor Code §2699, Class Plaintiffs, as aggrieved employees, may bring an action against Defendants, on behalf of himself and other current or former employees, seeking statutory civil penalties for Defendants' violations of the California Labor Code.

125. Class Plaintiffs were aggrieved employees within the meaning of Labor Code §2699(a) and 2699.3(a), as Defendants have committed multiple California Labor Code violations against them, as previously pleaded in this Complaint.

126. On December 5, 2024, more than 65 calendar days before filing this Complaint, Class Plaintiffs provided written notice by online filing to the Labor and Workforce Development Agency and to Defendant FM RESTAURANTS and EL TORITO of the specific provisions of the California Labor Code that Defendants violated, thereby satisfying the requirements of Labor Code §2699.3(a). These violations included Labor Code §§ 201, 202, 203, 226, 226.7, 226.8, 510, 512, 1174, 1182.12, 1194, 1194.2, 1197, each of which is enumerated among the serious violations set forth in Labor Code §2699.5.

127. Under Labor Code §2699.3(c)(2)(A), Defendants may cure alleged violations within 33 calendar days of the postmarked date of the written notice sent by Class Plaintiffs. As of the filing of this Complaint, Defendants have not cured such violations within the specified time period. Consequently, Class Plaintiffs may now commence a civil action, pursuant to Labor Code §2699.3

128. As of the filing of this Complaint, Class Plaintiffs has not received any response from the Labor and Workforce Development Agency on its intent to pursue an action against Defendants. Consequently, Class Plaintiffs may now commence a civil action, pursuant to Labor Code §2699.3.

129. As a direct and proximate result of Defendants' California Labor Code violations as set forth in this Complaint, Plaintiffs are entitled to civil penalties of \$100 for each aggrieved employee per

1 pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each  
2 subsequent violation, pursuant to Labor Code §2699(f), for those Labor Code sections not expressly  
3 providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly  
4 provide for a penalty, §§201, 226, 226.3, 246.5, and 558.

5 130. Plaintiffs, as a personal representative of the general public, will and does seek to recover  
6 any and all penalties for each and every violation shown to exist or to have occurred during the one year  
7 period before Plaintiffs filed Notice with the LWDA of her intent to bring this action, in an amount  
8 according to proof, as to those penalties that are otherwise only available to public agency enforcement  
9 actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the  
10 penalties recovered being reimbursed to the State of California and the Labor and Workforce  
11 Development Agency. Plaintiffs are also entitled to reasonable attorney's fees and costs, and 25% of the  
12 recovered civil penalties, pursuant to Labor Code §§2699(g)(1)-(i). This claim under Labor Code §2699  
13 and §2699.3 et seq., does not require class certification as it is brought pursuant to the Private Attorneys  
14 General Act.

#### 15 PRAYER FOR RELIEF

16 **WHEREFORE**, Plaintiffs pray:

17 1. That the Court issue an Order certifying the Classes herein, appointing the named  
18 Plaintiff MCKEON as representative of all others similarly situated, and appointing the law firm(s)  
19 representing the named Plaintiff MCKEON as counsel for the Class Plaintiffs;  
20

21 As to the First Cause of Action for Failure to Pay Wages:

- 22 a. For recovery of the unpaid balance of the full amount of wages due and owing, according  
23 to proof;  
24 b. For prejudgment interest as allowed by Labor Code §§201, 226.7, 512, 558, 1182.12, 1194,  
25 1194.2;  
26 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or  
27 Labor Code §1194(a);

28 ///

1 As to the Second Cause of Action for Failure to Pay Minimum Wages:

- 2 a. For recovery of the unpaid balance of the full amount of minimum wages due and owing,  
3 according to proof;  
4 b. For liquidated damages pursuant to Labor Code §1194;  
5 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §1194;

6 As to the Third Cause of Action for Failure to Pay Overtime Compensation:

- 7 a. For recovery of the unpaid balance of the full amount of overtime wages due and owing,  
8 according to proof;  
9 b. For prejudgment interest as allowed by Labor Code §510;  
10 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §218.5 and/or  
11 Labor Code §1194(a);

12 As to the Fourth Cause of Action for Failure to Authorize and Permit Rest Periods:

- 13 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid  
14 Rest Period Class for each workday that a paid rest period was not provided;  
15 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287;

16 As to the Fifth Cause of Action for Failure to Authorize and Permit Meal Periods:

- 17 a. For one (1) hour of pay at the regular rate of compensation for each member of the Unpaid  
18 Meal Period Class for each workday that a meal period was not provided;  
19 b. For prejudgment interest as allowed by Labor Code §218.6 and Civil Code §3287

20 As to the Sixth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements:

- 21 a. For damages according to proof;  
22 b. For recovery as authorized by Labor Code §226(e) and 226.3;  
23 c. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §226(e) and/or  
24 §226(g);

25 As to the Seventh Cause of Action for Derivative Violations of Labor Code §203:

- 26 a. For recovery as authorized by Labor Code §203;  
27 b. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §203 and/or  
28 Labor Code §1194(a);



1 As to the Eighth Cause of Action for Unfair Business Practices:

- 2 a. For an accounting, under the administration of Plaintiffs and/or the receiver and subject to  
3 Court review, to determine the amount to be returned by Defendants, and the amounts to be  
4 refunded to members of the Classes who are owed monies by Defendants;
- 5 b. For an Order requiring Defendants to identify each of the members of the Classes by name,  
6 home address, home telephone number and, if available, email address;
- 7 c. For an Order requiring Defendants to make full restitution and payment pursuant to  
8 California law;
- 9 d. For an Order for a preliminary and/or permanent injunction prohibiting Defendants from  
10 engaging in the acts complained of herein;
- 11 e. For all other appropriate injunctive, declaratory and equitable relief;
- 12 f. For interest to the extent permitted by law;
- 13 g. For an award of attorneys' fees and costs incurred in the investigation, filing and  
14 prosecution of this action pursuant to CCP §1021.5, B&PC §17200, et seq., Labor Code  
15 §1194 and/or any other applicable provision of law;

16 As to the Ninth Cause of Action for Derivative Violations of Labor Code §2699:

- 17 a. For civil penalties pursuant to Labor Code §2699(f), in addition to and entirely independent  
18 and apart from other penalties in the Labor Code and for Labor Code violations without a  
19 specific penalty, in the amount of \$100 for each aggrieved employee per pay period for each  
20 violation, and \$200 for each aggrieved employee per pay period for each subsequent  
21 violation;
- 22 b. For civil penalties pursuant to Labor Code §558, in addition to and entirely independent and  
23 apart from other penalties in the Labor code, as follows: (i) For any violation, fifty dollars  
24 (\$50) for each aggrieved underpaid employee for each pay period for the employee was  
25 underpaid, and an additional penalty amount sufficient to recover underpaid wages; (ii) For  
26 each subsequent violation, one hundred dollars (\$100) for each aggrieved underpaid  
27 employee for each pay period for which the employee was underpaid, and an additional  
28

1 penalty amount sufficient to recover the underpaid wages; and (iii) for these amounts to be  
2 paid to the aggrieved employees;

- 3 c. For an award of reasonable attorneys' fees and costs pursuant to Labor Code §2699(g)(1)  
4 and any other applicable statute;

5 As to All Causes of Action:

- 6 a. For such relief as this Court may deem just and proper, including reasonable attorneys' fees  
7 and costs incurred.

9 DATED: February 21, 2025

**LAW OFFICES OF RAMIN R. YOUNESSI  
A PROFESSIONAL LAW CORPORATION**

11 By: \_\_\_\_\_

12 Ramin R. Younessi, Esq.  
13 Attorney for Plaintiffs  
14 TRACY LEANN MCKEON, on behalf of all  
15 others similarly situated and also on behalf of  
16 all aggrieved employees

16 **JURY TRIAL DEMANDED**

17 Plaintiffs demand trial of all issues by jury.

18 DATED: February 21, 2025

**LAW OFFICES OF RAMIN R. YOUNESSI  
A PROFESSIONAL LAW CORPORATION**

21 By: \_\_\_\_\_

22 Ramin R. Younessi, Esq.  
23 Attorney for Plaintiffs  
24 TRACY LEANN MCKEON, on behalf of all  
25 others similarly situated and also on behalf of  
26 all aggrieved employees  
27  
28

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not  
4 a party to the within action. My business address is 3435 Wilshire Boulevard, Suite 2200, Los Angeles,  
California 90010.

5 On February 21, 2025, I served the foregoing document described as **FIRST AMENDED CLASS**  
6 **ACTION COMPLAINT** on the interested parties in this action as follows:

7 ☒ By emailing true copies addressed to each addressee as follows:

8 Kenneth J. Zielinski, Esq. (SBN 258555) *Attorneys for Defendant,*  
kzielinski@rutan.com *FM RESTAURANTS HQ, LLC*  
9 Jonas Trevethan, Esq. (SBN 340465)  
jtrevethan@rutan.com  
10 **RUTAN & TUCKER, LLP**  
18575 Jamboree Road, 9th Floor  
Irvine, CA 92612  
11 Telephone: (714) 641-5100  
12 Facsimile: (714) 546-9035

13 ☒ BY ELECTRONIC MAIL: Pursuant to Code of Civil Procedure §§ 1010.6(a)(2),  
14 1010.6(e), and 1013(g), and/or California Rules of Court 2.251(b)(1)-(2), I transmitted a  
15 copy of the aforementioned document to each addressee above to the email address(es)  
indicated.

16 Executed on February 21, 2025, at Los Angeles, California.

17 ☒ STATE I declare under penalty of perjury under the laws of the State of California  
18 that the foregoing is true and correct.

19 ☐ FEDERAL I declare that I am employed in the office of a member of the bar of this  
20 Court at whose direction the service was made.

21 Christian Ortiz

/s/ Christian Ortiz