

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Arcelia Martinez, Debora Alvarez,	)	
Rafael Alvarez, and Sara Saenz	)	
	)	
Plaintiffs,	)	Case No. 16-cv-4529
v.	)	
	)	
Food Management Partners, Inc.,	)	
	)	
Defendants.	)	
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**COMPLAINT**

1. Plaintiffs seek to certify a nationwide class consisting of all employees of Food Management Partners, Inc. ("FMP") who worked at sites with fifty or more employees as defined in the WARN Act, 29 U.S.C. §2101, *et seq.*, and who suffered from a permanent shut down of such sites by FMP in or around February or March 2016, without the required 60 days notice required under the WARN Act, 29 U.S.C. §2101, *et seq.* All the plaintiffs and class members worked at restaurants that operated as part of Buffets LLC – also known as Ovation Brands – but that FMP as owner controlled and directed. On March 7, 2016, FMP permanently shut down the Old Country Buffet ("OCB") restaurant located at 6125 N Lincoln Ave, Chicago, IL 60659, where all plaintiffs worked. FMP did so without any prior notice to plaintiffs and other employees at the OCB located at 6125 N Lincoln Ave, Chicago, IL 60659. Since that site had more than 50 employees, FMP violated the rights of plaintiffs and other employees at the site to 60 days of WARN Act notice. On information and belief, plaintiffs allege that FMP violated the rights of employees at other sites it shut down on a permanent basis during the same period of time, i.e., early 2016. Plaintiffs and other employees in the proposed nationwide class are entitled to 60 days of pay, plus penalties, and legal fees.

**Parties**

2. Arcelia Martinez is a resident of Illinois and until March 7, 2016, was working more than 20 hours a week as an employee of FMP at the OCB located at 6125 N Lincoln Ave, Chicago, IL 60659.

3. Debora Alvarez is a resident of Illinois and until March 7, 2016, was working more than 20 hours a week as an employee of FMP at the OCB located at 6125 N Lincoln Ave, Chicago, IL 60659.

4. Rafael Alvarez is a resident of Illinois and until March 7, 2016, was working more than 20 hours a week as an employee of FMP at the OCB located at 6125 N Lincoln Ave, Chicago, IL 60659.

5. Sara Saenz is a resident of Illinois and until March 7, 2016, was working more than 20 hours a week as an employee of FMP at the OCB located at 6125 N Lincoln Ave, Chicago, IL 60659.

6. Food Management Partners Inc. is a Texas Corporation with its principal place of business in Texas, and doing business in Illinois and elsewhere.

**Jurisdiction and Venue**

7. Plaintiffs invoke the jurisdiction of this Court pursuant 28 U.S.C. §1331, 29 U.S.C. §§2102, and 2104(a)(5) of the Worker Adjustment and Retraining Notification Act ("WARN Act").

8. Venue in this district is proper under 28 U.S.C. § 1391(b) and (c), and 29 U.S.C §2104(a)(5) because FMP does business in this district and employed plaintiffs and many other individuals in this district, and the acts underlying the claims occurred within this judicial district.

**Facts**

9. FMP owns and operates Ovation Brands, also known as Buffets LLC, which FMP purchased in or around August 2015.

10. Under the direction, control, and ownership of FMP, Buffets LLC is an entity consisting of various restaurant brands, including Old Country Buffet, Home Town Buffet, Ryan's and various steak house chains.

11. FMP caused Buffets LLC to file for bankruptcy on or around March 7, 2016.

12. On that same date – March 7, 2016 – FMP closed 92 outlets of Buffets LLC restaurants.

13. Previously in February 2016, FMP closed 74 outlets of Buffets LLC restaurants.

14. Until March 7, 2016, all the named plaintiffs were working more than 20 hours a week at the OCB restaurant on Lincoln Avenue in Chicago.

15. On March 7, 2016 plaintiffs learned that the OCB they worked at was closed.

16. FMP directed the closing of the Lincoln Avenue OCB restaurant as part of the 92 closings of restaurants that were part of Buffets LLC.

17. FMP gave no notice to plaintiffs prior to the actual closing on March 7, 2016, that the Lincoln Avenue OCB restaurant would be closed.

18. The closing of the Lincoln Avenue OCB restaurant is permanent.

19. On or just prior to March 7, 2016, the Lincoln Avenue OCB restaurant had more than 50 employees who were working more than 20 hours a week.

20. On or just prior to March 7, 2016, the Lincoln Avenue OCB restaurant had 57 employees who worked more than 20 hours a week.

21. On information and belief, and based on their own situation, plaintiffs allege that one or more other restaurants shut down on a permanent basis in proximity to March 7, 2016, at the direction of FMP had more than 50 employees who were working more than 20 hours a week.

22. On information and belief, and based on their own situation, as well as news accounts of the closings, plaintiffs allege that employees who worked at such other sites with 50 or more employees and shut down permanently in proximity to March 7, 2016, failed to receive any advance notice of the permanent closings of their respective sites.

23. On information and belief, and based on news accounts of the closings, plaintiffs allege that employees who worked at restaurants employing more than 50 employees and shut down permanently in proximity to February 2016, at the direction of FMP also failed to receive any advance notice of the permanent closings of their respective sites.

24. The closing of the Lincoln Avenue OCB restaurant resulted in the loss of employment of 50 or more employees, excluding "part time employees" as that term is defined or interpreted under the WARN Act.

25. In or around February and March 2016, FMP closed roughly 74 and 92 restaurants, respectively, for a rough total of 166 sites of employment closed nationwide, at least some of which employed more than 50 employees working more than 20 hours a week on the dates they were closed.

26. On information and belief, plaintiffs allege that many or all of the employees at employment sites – other than their own on Lincoln Avenue in Chicago – employing more than 50 persons working more than 20 hours a week were denied the 60 days of notice that FMP was required to give them under the WARN Act.

**Class Allegations**

27. Plaintiffs seek to certify a class consisting of all employees who: worked at outlets which were part of Buffets LLC; which were closed by the decision of FMP; which employed more than 50 employees, either at one site or restaurant or at sites or restaurants operated in some integrated manner as a single site; which gave no WARN Act notice prior to closing, or which failed to give the required 60 days of notice under the WARN Act.

28. Accordingly, plaintiffs and class members are "affected employee(s)" subject to an "employment loss" as those terms are defined in the WARN Act, 29 U.S.C. §2101(a)(5).

29. Plaintiffs meet all the requirements for class certification: numerosity, commonality, typicality, adequacy, and superiority.

30. The class is too numerous to join individually, as even at just the Lincoln Avenue OCB there are 57 or more employees.

31. The issues of fact and law will be common across the class as they relate to centrally planned restaurant closings, and uniform questions regarding the applicability of the WARN Act.

32. These common issues will predominate over any non-common issues.

33. Likewise, the claims of the plaintiffs are typical of the claims of the class as the only claim is for a statutory violation based on a common predicate fact.

34. Plaintiffs will adequately represent the interests of the class and have retained counsel experienced in WARN Act litigation.

35. This is a prototypical class action, and superior to other methods of litigation. The defendant has acted or refused to act on grounds that are generally applicable to the entire class and the presentation of separate claims could risk the creation of incompatible standards of

conduct for the defendant, or undesirable variance in remedy for class members related to forum rather than facts and law.

**Count I**

36. In violation of 29 U.S.C. §2101, *et seq.*, and by the acts set forth above, defendant FMP unlawfully shut down the Lincoln Avenue OCB restaurant on a permanent basis, without giving plaintiffs any notice of any kind.

37. Accordingly, plaintiffs and other employees of the Lincoln Avenue OCB restaurant are entitled to the full 60 days of pay plus penalties as required by the WARN Act in the absence of such notice.

38. Likewise, in violation of 29 U.S.C. §2201, *et seq.*, and by the acts set forth above on information and belief, and at various times from February 2016, up to and including roughly March 7, 2016, defendant FMP unlawfully shut down other sites of employment that had fifty or more employees who worked more than 20 hours a week, without giving employees at those stores or at stores operated as a single unit any notice of any kind.

39. Accordingly, class members at these other sites are entitled to the full 60 days of pay plus penalties as required by the WARN Act in the absence of any notice.

WHEREFORE, plaintiffs pray this Court to:

A. Certify the proposed class under Rule 23(b)(3) of the Federal Rules of Civil Procedure and designate plaintiffs as class representatives;

B. Declare that by the acts set forth above, FMP has violated the rights of plaintiffs and other class members to the 60 days of notice required by the WARN Act, in violation of 29 U.S.C. § 2101, *et seq.*

C. Award plaintiffs and other class members compensatory damages equal to the full 60 days of pay plus penalties required by the WARN Act in the absence of such notice; and

D. Grant plaintiffs their legal fees and such other relief as may be appropriate.

Date: April 21, 2016

By: s/ Michael P. Persoon

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