

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

Michelle Filar-Collins, Jackson Walker,
and Richard Wykes, all individually and
on behalf of all other similarly situated
individuals,

Case No. **2016-CP-23-00949**

Plaintiffs,

COMPLAINT
(ERISA)
(jury trial demanded)

vs.

Buffets, LLC, d/b/a Ovation Brands and
Food Management Partners, Inc.,

Defendants.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENHUISER
2016 FEB 16 PM 12 48

Plaintiffs, Michelle Filar-Collins, Jackson Walker, and Richard Wykes, all individually and on behalf of all other similarly situated individuals, by way of their Complaint in the above-captioned matter, would allege and show unto this Honorable Court the following:

I. Parties, Jurisdiction, and Venue

1. Plaintiff Michelle Filar-Collins is a citizen and resident of Cecil County, Maryland.
2. Plaintiff Jackson Walker is a citizen and resident of Greenville County, South Carolina.
3. Plaintiff Richard Wykes is a citizen and resident of Greenville County, South Carolina.
4. Defendant Buffets, LLC, d/b/a Ovation Brands (hereinafter "Defendant Ovation") is a limited liability company organized and existing pursuant to the laws of the State of Minnesota, with its principal place of business in a state other than South Carolina. Defendant Ovation owns property and conducts business within Greenville County, South Carolina.

5. Defendant Ovation is a wholly owned subsidiary of Defendant Food Management Partners, Inc. (hereinafter "Defendant FMP"), a company organized and existing pursuant to the laws of the State of Texas, with its principal place of business in Texas. Defendant FMP owns property and conducts business within Greenville County, South Carolina. Defendant FMP acquired Defendant Ovation and its assets in a transaction completed on or around August 19, 2015.

6. Plaintiffs bring this action individually and as an opt-out class action under Rule 23 of the South Carolina Rules of Civil Procedure, on behalf of a class of all individuals who were separated from employment with Defendant Ovation on or around August 19, 2015 as part of a layoff coinciding with Defendant FMP's purchase of Defendant Ovation and who did not receive a severance payment upon that separation. This proposed class is composed of all individuals who: were employed in Greer, South Carolina, Eagan, Minnesota, or as field-based corporate employees; who were involuntarily separated from employment without cause as part of the aforementioned layoff; and who were not offered other employment with Defendant Ovation.

7. Upon information and belief, this action satisfies the requirements of Rule 23(a), S.C. R. Civ. P., as alleged in the following particulars:

- a. The proposed Plaintiff class is so numerous that joinder of all individual members in this action is impracticable;
- b. There are questions of law and/or fact common to the members of the proposed Plaintiff class;
- c. The claims of Plaintiffs, the representatives of the proposed Plaintiff class, are typical of the claims of the proposed Plaintiff class;
- d. Plaintiffs, the representatives of the proposed Plaintiff class, will fairly and

adequately protect the interests of the class; and

- e. The amount in controversy exceeds \$100 for each member of the proposed Plaintiff class.

8. This Court has jurisdiction over the subject matter of this action and has in personam jurisdiction over Defendant Ovation and Defendant FMP. This Court has concurrent jurisdiction over this action pursuant to 29 U.S.C. § 1132 (e)(1), because this action is based, in part, on the Employee Retirement Income Security Act 29 U.S.C. § 1001 et seq. (“ERISA”).

9. Venue is proper in this Court, because Defendant Ovation and Defendant FMP are foreign corporations or companies that have done business in Greenville County, and the wrongful conduct at issue occurred, at least in part, within Greenville County. At the time of the wrongful conduct alleged herein, Defendant Ovation was headquartered in Greenville County. The amount in controversy exceeds Twenty-five Thousand and 00/100ths Dollars (\$25,000.00).

10. Further, venue over Plaintiffs’ ERISA claim is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2), because this judicial circuit is where Defendant’s employee benefit plan was administered and where the breach took place.

II. Facts

11. Plaintiff Filar-Collins was employed as Vice President of Human Resources by Defendant Ovation from on or around December 10, 2010 until she was laid off on or around August 19, 2015.

12. Plaintiff Walker was employed as General Counsel by Defendant Ovation from on or around September 2, 2014 until he was laid off on or around August 19, 2015.

13. Plaintiff Wykes was employed by Defendant Ovation for approximately twenty-

one years until he was laid off on or around August 19, 2015. Plaintiff Wykes most recently served as Defendant Ovation's Chief Operating Officer.

14. Defendant Ovation is a company that owns several chains of restaurants across the United States. In addition to employees actually working at the restaurants, Defendant Ovation employed corporate and administrative personnel at facilities in Greer, South Carolina and Eagan, Minnesota, as well as field-based corporate personnel throughout its territory.

15. Defendant Ovation has continuously maintained a written severance policy since at least 2008. The severance policy has been considered in relation to every employee separation during that time. In accordance with the terms of the policy, individuals who have been separated from employment without cause—that is, due to layoff, realignment, restaurant closing, corporate restructuring, absorbed responsibilities and the like—have received a severance payment.

16. Each of the named Plaintiffs had experience with, and detailed knowledge of, the severance policy and, at all times during employment with Defendant Ovation, understood that the severance policy would be applied to them, should separation from employment occur.

17. Defendant Ovation provided the severance policy to Plaintiff Filar-Collins for consideration at the time it offered her employment in 2010. As Vice President of Human Resources, Plaintiff Filar-Collins frequently participated in administration of the severance policy to separated employees. During her employment with Defendant Ovation, Plaintiff Filar-Collins observed that every individual who qualified under the severance policy received a severance payment. Plaintiff Filar-Collins maintained a spreadsheet that shows application of the severance policy and distribution of severance payments since 2008.

18. Plaintiff Filar-Collins was frequently involved in extending employment offers on behalf of Defendant Ovation. Whenever she offered employment to someone who would be covered by the severance policy, she informed that person of the policy.

19. Defendant Ovation, through Plaintiff Filar-Collins, informed Plaintiff Walker of the severance policy and explained that policy to him at the time it offered him employment in 2014. Plaintiff Walker was involved in administering the severance policy on his first day of employment, when he was asked to help settle a dispute on the applicability of the severance policy to a separating employee. Plaintiff Walker was thereafter consistently called upon to participate in administering the severance policy.

20. Plaintiff Wykes was aware of the severance policy and had a copy of that policy by at least 2008. In 2012, Defendant Ovation underwent a major reorganization, and Plaintiff Wykes oversaw the closing of a number of restaurants and the payment of severance to all individuals qualified under the severance policy. In his role as Chief Operating Officer, Plaintiff Wykes observed and participated in consistent application of the severance policy subsequent to the 2012 reorganization.

21. Defendant Ovation universally applied the severance policy up through its acquisition by Defendant FMP. Defendant Ovation made severance payments to separating employees as late as June 2015.

22. During the summer of 2015, Defendant FMP began the process of purchasing Defendant Ovation. The Plaintiffs were personally involved in compiling documents for Defendant FMP's review in relation to the acquisition, and the severance policy was one of the documents transmitted to Defendant FMP.

23. Defendant FMP's purchase of Defendant Ovation closed the morning of Wednesday, August 19, 2015, and the Plaintiffs were laid off that same afternoon. Upon information and belief, approximately forty individuals in the Greer office, twenty individuals in the Eagan office, and fifteen field-based corporate employees were similarly laid off.

24. Plaintiffs and the members of the Plaintiff class are entitled to a severance payment under the terms of the severance policy. Upon information and belief, all individuals who were laid off as part of Defendant FMP's purchase of Defendant Ovation are entitled to a severance payment under the terms of the severance policy.

25. Defendant Ovation did not make severance payments to any of the individuals subject to the aforementioned layoff, including the Plaintiffs.

26. At all times relevant to this Complaint, Defendants have treated Plaintiffs and the members of the Plaintiff class in a substantially similar manner in relation to the severance policy.

27. Defendant Ovation's severance policy was not revoked or modified prior to the separation of Plaintiffs or Plaintiff class.

FOR A FIRST CAUSE OF ACTION
(Wrongful Denial of Benefits Pursuant to ERISA)
(29 U.S.C. § 1132(a)(1)(B))
(individual and class action)

28. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs as if restated herein verbatim.

29. Plaintiffs bring this claim individually and as an opt-out class action under Rule 23 of the South Carolina Rules of Civil Procedure, on behalf of a class of all individuals who

were separated from employment as part of the layoff coinciding with Defendant FMP's purchase of Defendant Ovation.

30. Defendant Ovation's severance policy constitutes an employee benefit plan as that term is defined in ERISA, 29 U.S.C. § 1132(d)(1), et seq.

31. Application of the severance policy required Defendant Ovation to have an ongoing administrative program, including in that: the severance payment could be made in varying intervals; the severance payment calculation was dependent on a determination of the type of employee involved; the severance payment amount depended upon alternative calculations; the severance policy was applied each time an employee was discharged; and the discharged employee was disqualified from receiving the severance payment if terminated for cause or offered another position.

32. At all times relevant to this lawsuit, Defendant Ovation controlled and administered the severance policy. Defendant Ovation did not formally designate a plan administrator for the severance policy under ERISA.

33. Defendant Ovation's decision not to make payment under the severance policy to Plaintiffs and the members of the Plaintiff class was unreasonable under ERISA, 29 U.S.C. § 1132(a)(1)(B).

34. Defendant Ovation's denials of severance benefits were unreasonable in one or more of the following particulars:

- a. Plaintiffs and the members of the Plaintiff class were laid off as a part of corporate restructuring and were not terminated for cause.
- b. Plaintiffs and the members of the Plaintiff class were not offered another

position with Defendant Ovation.

- c. Plaintiffs and the members of the Plaintiff class were in the category of corporate employees to which the severance policy applied.
- d. Since at least 2008, Defendant Ovation had made payment under the severance policy to individuals discharged in the manner of Plaintiffs and the members of the Plaintiff class.

35. Defendant Ovation has provided no stated reason for its denial of severance benefits.

36. Defendant Ovation's severance policy does not provide any appeal rights or plan remedies for challenging Defendant Ovation's denial of severance benefits. Likewise, Defendant Ovation has not established any procedures or protocols for challenging its denial of severance benefits. Nevertheless, Plaintiffs have formally inquired as to the status of their severance benefits and have expressly communicated opposition and disagreement with Defendant Ovation's denial of those benefits. Plaintiffs have received no response to their efforts to engage Defendant Ovation in relation to severance benefits.

37. Plaintiffs and the members of the Plaintiff class have exhausted all available administrative remedies for obtaining severance benefits from Defendants.

38. Defendant FMP knew of the severance policy before it acquired Defendant Ovation. Defendant FMP knew that Plaintiffs and the members of the Plaintiff class would be entitled to payment under the severance policy before it purchased Defendant Ovation. Defendant FMP maintained substantial continuity in Defendant Ovation's operation at all times relevant to this Complaint. Defendant FMP is the successor-in-interest of Defendant Ovation for

purposes of the ERISA severance policy and has successor liability for this cause of action.

39. Subsequent to its purchase of Defendant Ovation, Defendant FMP exercised control over administration of the severance policy through the actions of its agents, officers, and employees. Upon information and belief, Defendant FMP was directly involved in Defendant Ovation's decision not pay benefits under the severance policy. Defendant FMP is a fiduciary under the ERISA severance policy, pursuant to 29 U.S.C. § 1002(21)(A), and has liability for this cause of action as a result of its direct participation and involvement in the denial of benefits.

40. As a result of Defendants' unreasonable denial of severance benefits, Plaintiffs have been forced to incur significant legal fees, costs, and expenses to secure their rightful benefits.

41. Defendants have the ability to satisfy an award of attorney's fees under 29 U.S.C. § 1132(g), and awarding Plaintiffs reasonable attorney's fees would not be a hardship on Defendants.

42. Awarding attorney's fees would likely deter other employers considering implementation of an employee layoff without honoring a written severance policy and benefit plan.

43. Based upon the foregoing, Plaintiffs and the members of the Plaintiff class are entitled to an award of full severance benefits, reasonable attorney's fees, prejudgment interest, costs, expenses incurred in connection with this lawsuit pursuant to ERISA 29 U.S.C. § 1132(g)(1), and for such other equitable relief as this Court deems just and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)
(individual and class action)

44. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs as if restated herein verbatim.

45. This cause of action is pled in the alternative to the first cause of action.

46. Plaintiffs bring this alternative claim individually and as an opt-out class action under Rule 23 of the South Carolina Rules of Civil Procedure, on behalf of a class of all individuals who were separated from employment as part of the layoff coinciding with Defendant FMP's purchase of Defendant Ovation.

47. During their employment with Defendant Ovation, Plaintiffs and the members of the Plaintiff class were informed of Defendant Ovation's severance policy through: receiving a copy of the written severance policy; discussing the severance policy as part of a job offer; participating in administration of the severance policy; observing administration of the severance policy; and/or other related means.

48. Defendant Ovation's severance policy altered the at-will employment status of Plaintiffs and the members of the Plaintiff class because the policy contains promissory and mandatory language and did not contain a conspicuous disclaimer.

49. According to Defendant Ovation's severance policy, individuals discharged from employment in the manner of Plaintiffs and the members of the Plaintiff class are to receive a severance payment in an amount determined by that individuals's base pay and length of service.

50. Defendant Ovation's severance policy constitutes an implied employment contract, which altered the at-will employee status of Plaintiffs and the members of the Plaintiff

class.

51. Plaintiffs and the members of the Plaintiff class accepted Defendant Ovations's offer to be bound by the terms of the severance policy, and the severance policy is supported by good and valuable consideration in the form of the employment of Plaintiffs and the members of the Plaintiff class with Defendant Ovation.

52. Plaintiffs and the members of the Plaintiff class performed all material obligations and duties under their employment with Defendant Ovation.

53. Defendant Ovation breached its contract with Plaintiffs and the members of the Plaintiff class by terminating their employment without following its own severance policy. Upon information and belief, all individuals who were laid off as part of Defendant FMP's purchase of Defendant Ovation are entitled to a severance payment under the terms of Defendant Ovation's severance policy.

54. Defendant Ovation's breaches of contract described above also violated the implied covenant of good faith and fair dealing inherent in all contracts under the common law of South Carolina.

55. Plaintiffs and the members of the Plaintiff class suffered and continue to suffer consequential damages because of Defendant Ovation's breach of contract, including lost severance benefits. Plaintiffs and the members of the Plaintiff class are entitled to an award of actual damages to compensate for these damages.

56. Upon information and belief, Defendant FMP is also liable under this cause of action as a successor-in-interest to Defendant Ovation, on the basis that: Defendant FMP agreed to assume the aforementioned contractual obligation from Defendant Ovation; the circumstances

surrounding Defendant FMP's acquisition of Defendant Ovation indicate a consolidation of the two companies; and Defendant FMP's acquisition of Defendant Ovation has amounted to a mere continuation of Defendant Ovation's operation.

FOR A THIRD CAUSE OF ACTION
(Tortious Interference With Contract)
(individual and class action against Defendant FMP)

57. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs as if restated herein verbatim.

58. This cause of action is pled in the alternative to the first cause of action.

59. Plaintiffs bring this alternative claim individually and as an opt-out class action under Rule 23 of the South Carolina Rules of Civil Procedure, on behalf of a class of all individuals who were separated from employment as part of the layoff coinciding with Defendant FMP's purchase of Defendant Ovation.

60. Plaintiffs and the members of the Plaintiff class had a valid contract with Defendant Ovation as set forth above, in the form of the severance policy. Defendant FMP had knowledge of this contractual relationship.

61. Defendant Ovation breached its contract with Plaintiffs and the members of the Plaintiff class as set forth above.

62. Defendant FMP intentionally procured this breach through the direct involvement of its agents, officers, and employees in the decision not to pay severance benefits to Plaintiffs and the members of the Plaintiff class. Subsequent to its purchase of Defendant Ovation, Defendant FMP exercised control over administration of the severance policy. Upon information and belief, agents, officers, and employees of Defendant FMP made the decision that Defendant

Ovation would not follow its contractual severance policy as to Plaintiffs and the members of the Plaintiff class.

63. As a direct and proximate result of Defendant FMP's tortious interference with contract as set forth above, Plaintiffs and the members of the Plaintiff class have suffered actual damages in the form of lost severance benefits. Accordingly, Plaintiffs and the members of the Plaintiff class are entitled to recover in this action actual damages from Defendant FMP sufficient to compensate them for economic and non-economic damages caused by Defendant FMP's tortious interference with contract.

64. Upon further information and belief, Defendant FMP's tortious interference with contract was intentional and in reckless disregard of the rights of Plaintiffs and the members of the Plaintiff class to be free from such unlawful and malicious conduct. Therefore, Plaintiffs and the members of the Plaintiff class are entitled to recover punitive damages against Defendant FMP, in an amount to be determined by the jury, sufficient to deter Defendant FMP and others from engaging in such unlawful actions in the future.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)
(individual action against Defendant Ovation)

65. Plaintiffs repeat and reallege each and every allegation of the preceding paragraphs as if restated herein verbatim.

66. This cause of action is pled in the alternative to the causes of action set forth above.

67. As part of an offer of employment, Defendant Ovation, by and through its officers, employees, or agents, acting within the course and scope of their employment or agency,

promised Plaintiff Filar-Collins and Plaintiff Walker that the severance policy was in place and that they would receive a severance payment under qualifying circumstances.

68. This promise by Defendant was unambiguous in its terms and was a material factor in inducing Plaintiff Filar-Collins and Plaintiff Walker to accept employment with Defendant Ovation. Plaintiff Filar-Collins and Plaintiff Walker reasonably relied on this promise by giving up other employment opportunities and accepting employment with Defendant Ovation.

69. During their employment, each of the Plaintiffs received a copy of the written severance policy from Defendant Ovation. Plaintiffs were also promised and reassured on a number of occasions during their employment that payment was made under the terms of the severance policy to every qualifying individual.

70. These promises by Defendant were unambiguous in their terms and were a material factor in inducing Plaintiffs to forego other employment opportunities and to continue employment with Defendant Ovation. When it became apparent during their last year of employment that Defendant Ovation would be sold, Plaintiffs felt uncertainty about whether a corporate restructuring was forthcoming. In reliance on the severance policy, Plaintiffs remained employees of Defendant Ovation, assisting in the transition and sale and delaying their search for new employment.

71. Plaintiffs' reliance was expected by Defendant Ovation and was reasonably foreseeable from Defendant Ovation's perspective.

72. Defendant Ovation has breached its promises by not providing Plaintiffs any severance payment.

73. Plaintiffs have sustained injury as a direct and proximate result of this detrimental reliance on the promises by Defendant Ovation, stemming from the fact that their employment with the company was abruptly terminated without payment of severance, leaving Plaintiffs without any immediate job prospects.

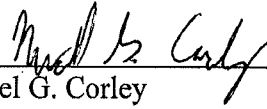
74. Upon information and belief, to the extent that the severance payment is not owed pursuant to a valid contract, Plaintiffs are entitled to recover in this action actual damages sufficient to compensate them for lost wages and benefits they sustained because of this detrimental reliance on the promised severance payment.

WHEREFORE, having fully set forth their allegations against Defendant Ovation, Plaintiffs respectfully request the following relief:

- a. An order certifying a class action under Rule 23 of the Federal Rules of Civil Procedure;
- b. Actual, compensatory damages for economic and non-economic injuries;
- c. Reinstatement of severance benefits;
- d. Pre-judgment interest;
- e. Attorney's fees and costs;
- f. Consequential damages for breach of contract;
- g. Reliance damages;
- h. Such further relief as the Court deems just and appropriate.

PLAINTIFFS HEREBY DEMAND A JURY TRIAL.

Respectfully submitted,



Michael G. Corley
David E. Rothstein
ROTHSTEIN LAW FIRM, PA
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Attorneys for Plaintiffs

February 16, 2016

Greenville, South Carolina.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Michelle Filar-Collins, Jackson Walker, and Richard Wykes, all individually and on behalf of all other similarly situated individuals,

Plaintiff(s)

vs.

Buffets, LLC d/b/a Ovation Brands and Food Management Partners, Inc.,

Defendant(s)

Submitted By: Michael G. Corley
Address: Rothstein Law Firm
1312 Augusta Street, Greenville, SC 29605

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP-23-00949

-CP -

SC Bar #: 76168
Telephone #: 864-232-5870
Fax #: 864-241-1386
E-mail: mcorley@rothsteinlawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
<input type="checkbox"/> Constructions (100)
<input type="checkbox"/> Debt Collection (110)
<input type="checkbox"/> Employment (120)
<input type="checkbox"/> General (130)
<input type="checkbox"/> Breach of Contract (140)
<input type="checkbox"/> Other (199) | Torts - Professional Malpractice
<input type="checkbox"/> Dental Malpractice (200)
<input type="checkbox"/> Legal Malpractice (210)
<input type="checkbox"/> Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
<input type="checkbox"/> Notice/ File Med Mal (230)
<input type="checkbox"/> Other (299) | Torts - Personal Injury
<input type="checkbox"/> Assault/Slander/Libel (300)
<input type="checkbox"/> Conversion (310)
<input type="checkbox"/> Motor Vehicle Accident (320)
<input type="checkbox"/> Premises Liability (330)
<input type="checkbox"/> Products Liability (340)
<input type="checkbox"/> Personal Injury (350)
<input type="checkbox"/> Wrongful Death (360)
<input type="checkbox"/> Other (399) | Real Property
<input type="checkbox"/> Claim & Delivery (400)
<input type="checkbox"/> Condemnation (410)
<input type="checkbox"/> Foreclosure (420)
<input type="checkbox"/> Mechanic's Lien (430)
<input type="checkbox"/> Partition (440)
<input type="checkbox"/> Possession (450)
<input type="checkbox"/> Building Code Violation (460)
<input type="checkbox"/> Other (499) |
| Inmate Petitions
<input type="checkbox"/> PCR (500)
<input type="checkbox"/> Mandamus (520)
<input type="checkbox"/> Habeas Corpus (530)
<input type="checkbox"/> Other (599) | Administrative Law/Relief
<input type="checkbox"/> Reinstate Drv. License (800)
<input type="checkbox"/> Judicial Review (810)
<input type="checkbox"/> Relief (820)
<input type="checkbox"/> Permanent Injunction (830)
<input type="checkbox"/> Forfeiture-Petition (840)
<input type="checkbox"/> Forfeiture—Consent Order (850)
<input type="checkbox"/> Other (899) | Judgments/Settlements
<input type="checkbox"/> Death Settlement (700)
<input type="checkbox"/> Foreign Judgment (710)
<input type="checkbox"/> Magistrate's Judgment (720)
<input type="checkbox"/> Minor Settlement (730)
<input type="checkbox"/> Transcript Judgment (740)
<input type="checkbox"/> Lis Pendens (750)
<input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)
<input type="checkbox"/> Confession of Judgment (770)
<input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)
<input type="checkbox"/> Other (799) | Appeals
<input type="checkbox"/> Arbitration (900)
<input type="checkbox"/> Magistrate-Civil (910)
<input type="checkbox"/> Magistrate-Criminal (920)
<input type="checkbox"/> Municipal (930)
<input type="checkbox"/> Probate Court (940)
<input type="checkbox"/> SCDOT (950)
<input type="checkbox"/> Worker's Comp (960)
<input type="checkbox"/> Zoning Board (970)
<input type="checkbox"/> Public Service Comm. (990)
<input type="checkbox"/> Employment Security Comm (991)
<input type="checkbox"/> Other (999) |
| Special/Complex /Other
<input type="checkbox"/> Environmental (600)
<input type="checkbox"/> Automobile Arb. (610)
<input type="checkbox"/> Medical (620)
<input checked="" type="checkbox"/> Other (699) | <input type="checkbox"/> Pharmaceuticals (630)
<input type="checkbox"/> Unfair Trade Practices (640)
<input type="checkbox"/> Out-of State Depositions (650)
<input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)
<input type="checkbox"/> Sexual Predator (510) | | |

ERISA

Submitting Party Signature: 

Date: 2/16/2016

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNT OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

Michelle Filar-Collins, Jackson Walker,)
and Richard Wykes, all individually and)
on behalf of all other similarly situated)
individuals,)

Plaintiffs,)

vs.)

Case No.: 2016-CP-23-00949

Buffets, LLC, d/b/a Ovation Brands, and)
Food Management Partners, Inc.,)

Defendants.)

FILED-CLERK OF COURT
OFFICE OF THE CLERK
PAUL B. WILKINSON
2016 MAR 18 AM 9 35

SUGGESTION OF BANKRUPTCY

Defendant Buffets, LLC, d/b/a Ovation Brands ("Buffets, LLC"), files this Suggestion of Bankruptcy and shows that Buffets, LLC filed a Voluntary Petition for relief under Chapter 11 of the United States Bankruptcy Code on March 7, 2016, in the United States Bankruptcy Court for the Western District of Texas, Case Number 16-50558-RBK, and suggests that this action against Buffets, LLC has been stayed by operation of 11 U.S.C. § 362.

Dated this 18th day of March, 2016.

Respectfully submitted,

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

By: 

Vance E. Drawdy

Lucas J. Asper

300 North Main Street, Suite 500

Greenville, South Carolina 29601

Phone: (864) 271-1300

Fax: (864) 235-4754

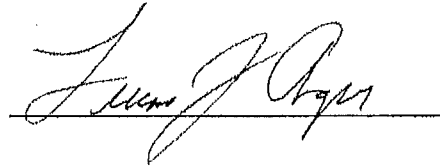
vance.drawdy@odnss.com
lucas.asper@odnss.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **NOTICE OF REMOVAL** has been served upon Plaintiffs on this 18th day of March, 2016, by depositing a copy thereof in the United States Mail, with sufficient postage affixed thereto, addressed to their attorney of record as shown:

Michael G. Corley
David E. Rothstein
Rothstein Law Firm, PA
1312 Augusta Street
Greenville, South Carolina 29605

A handwritten signature in black ink, appearing to read "Lucas J. Asper", is written over a horizontal line.

24173052.1