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Via Online Submission

California Labor and Workforce Development Agency
800 Capitol Mall, Suite 5000 MIC-55
Sacramento, California 95814

Re: Labor Code Sec. 2699 Notice
Eduardo Martinez, Ramiro Morales and Jamie Rodriguez v. Chutter, Inc.,
and Dan Tana Enterprises

Dear Sir or Madam:

Pursuant to Labor Code Sec. 2699.3(a)(1), Eduardo Martinez, Ramiro Morales and Jamie Rodriguez hereby give written notice of their intent to file a Labor Code Sec. 2699 claim against Chutter, Inc., Dan Tana Enterprises, and Sonja Perencevic (collectively referred to as "the Company") on behalf of themselves and all similarly situated employees. This notice is being provided to both the California Labor & Workforce Development Agency and the Company.

Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez are employed by the Company in Los Angeles, California. Aggrieved Employees include all non-exempt hourly employees (inclusive of all other misclassified independent contractors and "exempt" employees) of the Company within the state of California from one year prior to the date of this letter and continuing through the present. Plaintiffs Eduardo Martinez, Ramiro Morales, Jamie Rodriguez and Aggrieved Employees are collectively referred to as "Aggrieved Employees." Aggrieved Employees consistently worked at the Company's behest and under their control and subject to their policies and practices without being paid all wages due. Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez are also informed and believes that there are other Aggrieved Employees employed by the Company as non-exempt employees within the State of California within the statutory time period who suffer or suffered from the same wage and hour violations outlined below.

The Company had a common policy and/or practice of failing to pay Aggrieved Employees minimum wages for all hours worked. Aggrieved Employees were either not paid by the Company for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez also contend that the Company failed to pay Aggrieved Employees all wages due and owing, including by misclassifying non-exempt employees as independent contractors or exempt employees and therefore not paying employees for all hours worked (for example, regardless of the number of hours actually worked, the Company paid Aggrieved Employees a fixed rate of pay per month), requiring off the clock work, and failing to pay meal period and rest break premiums, all in violation of various provisions of the California Labor Code and applicable Wage Orders.

By implementing policies, programs, practices, procedures and protocols which resulted in unpaid work by Aggrieved Employees, the Company's willful actions resulted in the systematic underpayment of wages and overtime pay to Aggrieved Employees.

As a result of the above described unlawful misclassifications, requirements to work off the clock, and the other wage violations they endured at the Company's hands, Aggrieved Employees were not properly paid all wages earned and all wages owed to them by the Company, including when working more than eight (8) hours in any given day and/or more than forty (40) hours in any given week. Moreover, the uncompensated time, discussed above, was worked by Aggrieved Employees in excess of 8 hours a day and/or 40 hours a week, further entitling Aggrieved Employees overtime wages which they were consistently denied, all in violation of Labor Code and applicable Wage Orders.

Additionally, the Company failed to provide all the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest periods to Aggrieved Employees, as required by the applicable Wage Order and Labor Code. Aggrieved Employees were required to perform work as ordered by the Company for more than five (5) hours during a shift, but were often required to do so without receiving a lawful and timely meal break. In addition to untimely meal periods, the Company also required Aggrieved Employees to respond to work demands. The Company placed their needs over Aggrieved Employees' lawful meal and rest breaks. This resulted in Aggrieved Employees often having to work through their scheduled meal and/or rest breaks, or otherwise taking shortened ones, because the demands of the job would not avail them the opportunity to take a lawfully uninterrupted and off duty meal and/or rest break.

On the occasions when Aggrieved Employees worked over 10 hours in a shift, the Company also failed to provide them with a second, uninterrupted, timely and duty-free meal period. As a result, the Company's failure to provide Aggrieved Employees with all legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest periods is and will be evidenced by the Company's business records, or lack thereof. The Company also failed to pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, for each meal period or rest break that the Company failed to provide or deficiently provided.

Therefore, the Company have regularly required Aggrieved Employees to work shifts in excess of five (5) hours without providing them with uninterrupted meal periods of not less than thirty (30) minutes, and shifts in excess of (10) hours without providing them with second meal periods of not less than thirty minutes; nor did the Company pay Aggrieved Employees "premium pay," i.e. one hour of wages at each Aggrieved Employee's effective hourly rate of pay, including their earned commission, for each meal period that the Company failed to provide or deficiently provided.

Aggrieved Employees were also not authorized and permitted to take lawful rest periods, were systematically required by the Company to work through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. Aggrieved Employees were restricted in their ability to take their full ten (10) minutes net rest time or were otherwise not provided with duty-free rest periods. Therefore, the Company has consistently failed to provide Aggrieved Employees with

paid rest breaks of not less than ten minutes for every work period of four or more consecutive hours, or major fraction thereof, nor did the Company pay Aggrieved Employees premium pay for each day on which requisite rest breaks were not provided or were deficiently provided.

The Company also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). Specifically, the wage statements given to Aggrieved Employees failed to pay overtime compensation. Thus, the wage statements do not provide accurate hourly rates for overtime and the statements do not comply with Labor Code § 226(a)(9). Additionally, the wage statements do not accurately account for unpaid wages and overtime because the Company had unlawfully misclassified employees to the detriment of the Aggrieved Employees and their actual hours worked were under-reported. Additionally, the wage statements given to Aggrieved Employees failed to accurately account for premium pay for deficiently provided meal periods and rest breaks.

Additionally, the Company failed to pay Aggrieved Employees all wages owed, as detailed above, at the time of their termination or within seventy-two (72) hours of their resignation, as required under Labor Code § 203. Specifically, these Aggrieved Employees were not paid all regular and overtime wages because the Company failed to pay for all hours worked or required off the clock work and unlawfully misclassified employees to the detriment of Aggrieved Employees, and failed to pay premium wages owed for not provided meal periods and rest periods. The Company's failure to pay said wages within the required time was willful within the meaning of Labor Code § 203.

The Company also failed to reimburse Aggrieved Employees for necessary business expenses. The Company has regularly required Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez to incur business expenses in the course of performing their required job duties for the Company, including but not limited to the following: kitchen tools, supplies, uniforms, cellular phone services, internet services, miscellaneous purchases for the Company, and mileage in order to execute their duties under the Company's employ. Upon information and belief, Aggrieved Employees incurred similar costs. These expenses incurred by Cross-Complainant and the Aggrieved Employees were necessary and required of them in performing their assigned job duties, but the Company failed to reimburse Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez and the Aggrieved Employees for all such necessary expenditures, thus entitling them to reimbursement according to proof as required under Labor Code § 2802 and the applicable provisions of the IWC Wage Orders.

Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez and Aggrieved Employees allege that the Company failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick days were available, in violation of Labor Code §§ 246, 246(a), 246(b)(1), and 247.5. Aggrieved Employees now seek penalties pursuant to §§ 248.5 and 2699 et seq.

In failing to pay Aggrieved Employees wages, overtime, premium pay, etc., the Company failed to timely pay Aggrieved Employees wages on a semi-monthly basis as required under Labor Code § 204. For example, the Company regularly paid Plaintiffs Eduardo Martinez, Ramiro Morales and Jamie Rodriguez three weeks late. The Company failed to maintain records showing accurate

hours worked daily and the wages paid to Aggrieved Employees, as well as the meal and rest periods taken by Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC wage orders. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 210, 558, and 2699, et seq.

Labor Code § 1174 requires employers to keep records showing payroll data and the hours worked daily by and the wages paid to employees. By failing to pay Aggrieved Employees proper wages, overtime, premium pay, etc., all discussed in this notice, the Company failed to maintain proper employment records in accordance with Section 1174. In light of the forgoing, Aggrieved Employees seek to recover penalties pursuant to Labor Code §§ 1174.5 and 2699, et seq.

The specific provisions of the Labor Code that the Company has violated include, but are not limited to, Labor Code §§ 201-204, 206, 210, 218.6, 221, 223, 225.5, 226, 226.3, 226.7, 226.8, 246, 247.6, 248.5, 351, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1198.5, 2800, 2802, 2699 *et seq.*, and 3700; Industrial Welfare Commission Wage Orders 1-15, Section 4; Industrial Welfare Commission Wage Orders 1-16, Section 5. As a result, the Company has violated the above-referenced provisions, as well as other provisions of California law, and is liable for all applicable premiums and penalties, damages, interest, attorneys' fees and costs.

We look forward to receiving your response to this letter pursuant to Labor Code Sec. 2699.3(a)(2)(A). Thank you and please do not hesitate to call with any questions.

Very truly yours,

KESLUK, SILVERSTEIN, JACOB, & MORRISON, P.C.

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cc: *via Certified Mail*

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