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ELECTRONICALLY FILED
Merced Superior Court
5/19/2022 9:33 AM
Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED

KAYLYN BUSH, on behalf of herself, and all aggrieved employees,	)	Case No: 22CV-01415
	)	
Plaintiff,	)	<u>REPRESENTATIVE ACTION</u>
	)	
v.	)	REPRESENTATIVE ACTION
	)	COMPLAINT FOR:
	)	
DUTCH BROS., LLC; and DOES 1 through	)	1. VIOLATIONS OF THE LABOR CODE;
100, inclusive,	)	2. PENALTIES; and
	)	3. ATTORNEYS' FEES.
Defendants.	)	
	)	
	)	
	)	
	)	
	)	

1 Plaintiff KAYLYN BUSH, on behalf of herself and all aggrieved employees, complains
2 against Defendants DUTCH BROS., LLC and Does 1 through 100 (all referred to collectively as
3 “Defendants” or “DUTCH BROS”) as follows:

4 **I. JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
6 other statutes, California Labor Code §§ §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 512, 1198,
7 and 1199. In particular, Plaintiff has complied with all California Labor Code § 2699.3
8 requirements for commencing a civil action under the California Private Attorneys General Act of
9 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

10 2. This Court has personal jurisdiction over the parties because, at all relevant times,
11 Plaintiff was a California resident who worked in California for Defendants and Defendants
12 systematically and continuously have conducted business in the State of California.

13 3. Venue in a representative action is proper in any county that aggrieved employees
14 performed work. *Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal. App. 5th
15 1049. Defendant operates one or more retail locations in Merced, California. Venue is further
16 proper in this Court under California Code of Civil Procedure § 395.5 because (a) the aggrieved
17 employees performed part of their duties in Merced County, (b) part of the of the obligations of
18 the parties arises in Merced County, (c) part of Defendants’ liability arises in Merced County, and
19 (d) breaches by Defendants occurred in connection with work performed partly in Merced
20 County. Venue is further proper in this Court because California Code of Civil Procedure
21 sections 395 and 395.5, and case law interpreting those sections, provide that if a foreign business
22 entity fails to designate with the office of the California Secretary of State a principal place of
23 business in California, it is subject to being sued in any county in the state that plaintiff desires.
24 On information and belief, as of the date this Complaint is filed, Defendant DUTCH BROS.,
25 LLC, is a foreign business entity and has failed to designate a principal place of business in
26 California with the office of the Secretary of State.

27 **II. PARTIES AND BACKGROUND**

28 4. Plaintiff KAYLYN BUSH is an adult who worked for Defendants from
approximately July 9, 2021 through February 1, 2022 as an hourly barista at a DUTCH BROS’

1 coffee shop in Stockton, California.

2 5. Defendant DUTCH BROS., LLC is an Oregon limited liability company doing
3 business throughout California and is a “person” as defined by California Labor Code § 18 and
4 California Business and Professions Code § 17201. In addition, it is an “employer” as that term
5 is used in the California Labor Code and in the California Industrial Welfare Commission’s
6 Orders regulating wages, hours, and working conditions.

7 6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
8 through 100, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff
9 will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
10 informed and believes and on that ground alleges that each of the fictitiously-named Defendants
11 is responsible in some manner for the occurrences alleged and that Plaintiff’s damages and other
12 losses as alleged are proximately caused by those occurrences.

13 7. On behalf of the State of California and all aggrieved employees who worked as
14 hourly non-exempt employees in California at any time or times during the applicable statute of
15 limitations, Plaintiff seeks all applicable penalties, interest, attorneys’ fees, costs and other sums
16 for each violation of: (a) California Labor Code §§ 226.7, 512, 1198 and 1999 and the IWC Wage
17 Order No. 5 (failure to provide meal periods); (b) California Labor Code § 226.7, 1198 and 1199
18 and IWC Wage Order No. 5 (failure to authorize and permit rest breaks); (c) policy and practice
19 of violating California Labor Code §§ 226 and 226.3 (failure to provide accurate itemized wage
20 statements); and (d) California Labor Code §§ 201-203 (failure to pay former aggrieved
21 employees all wages due and owing at the time of discharge or voluntary quit).

22 **III. FACTUAL ALLEGATIONS**

23 8. This is a representative action under California Labor Code §§ 2698, *et seq.*,
24 seeking PAGA penalties interest, attorneys’ fees, costs and other sums for violations of the Labor
25 Code.

26 9. DUTCH BROS operates retail coffee shops throughout California.

27 10. At all relevant times to this action, Plaintiff performed work for DUTCH BROS as
28 an hourly barista. During her employment with DUTCH BROS as a barista, Plaintiff generally

1 worked part time, however she worked numerous shifts over five hours.

2 11. At all relevant times, California Labor Code §§ 226.7 and 512 and the IWC Wage
 3 Order No. 5 required employers to provide employees with a first meal period of not less than 30
 4 minutes during which they are relieved of all duty (referred to as “duty-free”) before working
 5 more than five hours, and a second duty-free meal period of not less than 30 minutes before
 6 working more than 10 hours in a day. As alleged herein, DUTCH BROS employed a policy and
 7 practice of failing to provide all meal periods to Plaintiff and other aggrieved employees. Plaintiff
 8 worked numerous shifts over five hours but did not receive a meal period. She did not waive her
 9 meal periods and wanted to take them. On information and belief, other aggrieved employees also
 10 missed their meal periods and did not waive them.

11 12. At all relevant times, California Labor Code § 226.7 and IWC Wage Order No. 5
 12 required employers to authorize and permit a paid duty-free rest break of at least 10 minutes for
 13 every four hours of work performed or major fraction thereof. An employee working more than
 14 ten hours in a single workday is entitled to three paid rest breaks, each lasting at least 10 minutes.
 15 As alleged herein, DUTCH BROS employed a policy and practice of failing to permit and
 16 authorize rest periods and/or paying rest period premiums to aggrieved employees for such rest
 17 periods not provided, in violation of the Labor Code and Wage Order 5-2001. Plaintiff did not
 18 receive her rest breaks even though she was entitled to them. On information and belief, other
 19 aggrieved employees also missed their rest breaks.

20 13. California Labor Code § 226 provides that every employer is required,
 21 “semimonthly or at the time of each payment of wages,” to provide each employee with an
 22 itemized wage statement setting forth, *inter alia*, the total hours worked by the employee (except
 23 for salaried employees) “gross wages earned.” Cal. Lab. Code § 226(a). Defendants implemented
 24 a policy and practice of violating California Labor Code § 226 by failing to provide complete and
 25 accurate itemized wage statements to Plaintiff and other aggrieved employees in that the wage
 26 statements provided did not, among other things, display the correct “gross wages earned” in
 27 violation of California Labor Code § 226(a) as they did not include premium payments for missed
 28 meal and rest periods. Through its violation of Labor Code § 226(a), Defendants also violated

Labor Code § 226.3

14. DUTCH BROS employed a policy and practice of failing to pay Plaintiff and other aggrieved employees all wages due and owing in a timely manner as required by California Labor Code § 204.

15. Defendants had a policy and practice of violating California Labor Code §§ 201-203 by failing to pay Plaintiff and other aggrieved employees all wages due and owing at the time of discharge or voluntary quit. DUTCH BROS had a policy and practice of paying Plaintiff and other aggrieved employees their final pay in a timely manner. Plaintiff and other aggrieved employees who no longer are employed by Defendants still are owed premium pay for missed meal periods and rest breaks.

IV. REPRESENTATIVE ACTION ALLEGATIONS

16. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who, within the applicable limitations period, up to the present and until compliance with the law, performed work in California.

17. On behalf of all non-exempt aggrieved employees, Plaintiff seeks PAGA penalties under Labor Code §§ 226.3 and 2699(f), as applicable, for each violation of Labor Code, including:

- (a) §§ 226.7, 512(a), 1198 and 1199 and IWC Wage Order No. 5 (failure to provide meal periods);
- (b) §§ 226.7, 1198 and 1199 and IWC Wage Order No. 5 (failure to provide rest breaks);
- (c) §§ 226(a) and 226.3 (failure to provide itemized wage statements);
- (d) § 204 (failure to pay wages in a timely manner); and
- (e) §§ 201-203 (failure to pay wages upon termination);

18. The State of California has an enforcement interest in the questions of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including but not limited to whether Defendants: (1) violated the Labor Code and IWC Wage Order No. 5 by

1 failing to provide aggrieved employees with all of their required off-duty meal periods and failing
2 to pay the required missed-meal-period premiums for each meal period that was not provided; (2)
3 violated the Labor Code and IWC Wage Order No. 5 by failing to authorize and permit aggrieved
4 employees to take all of their required paid rest breaks and failing to pay the required missed-rest-
5 break premium for each paid rest break not allowed or permitted; (3) violated Labor Code §§ 226
6 and 226.3 by failing to provide aggrieved employees with accurate and itemized wage statements;
7 (4) violated Labor Code § 204 by failing to pay aggrieved employees their wages in a timely
8 manner as required by that section; and (5) violated Labor Code §§ 201-203 by failing to pay
9 departing aggrieved employees all wages due at the time of discharge or voluntary quit.

10 19. Plaintiff’s claims are typical of the claims of the aggrieved employees whom
11 Plaintiff seeks to represent on a representative basis and her interests are consistent with, and not
12 antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately
13 represent the interests of the aggrieved employees whom she seeks to represent because Plaintiff
14 is also an aggrieved employee and her claims are typical of those of the aggrieved employees.
15 Plaintiff has retained attorneys who are experienced in the prosecution of representative actions
16 and Plaintiff intends to prosecute this action vigorously.

17 20. Common questions of law and fact exist as to all aggrieved employees that
18 predominate over any other questions affecting only individual aggrieved employees.

19 21. Plaintiff requests permission to amend the Complaint to include additional
20 representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved
21 employees.

22 **V. FIRST CAUSE OF ACTION**
23 **(FAILURE TO PROVIDE MEAL PERIODS –**
24 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

25 22. Plaintiff repeats and realleges each and every paragraph above as though fully set
26 forth herein.

27 23. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain
28 penalties on their own behalf and on behalf of other current and former employees.

1 24. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
2 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
3 violators and against whom one or more of the alleged violations was committed.

4 25. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
5 action against Defendants for violations of Labor Code §§ 226.7, 512, 1198 and 1199 and IWC
6 Wage Order No. 5.

7 26. By the actions alleged herein, Defendants failed to provide Plaintiff and other
8 aggrieved employees to take their required meal periods in violation of Labor Code §§ 226.7,
9 512, 1198 and 1199 and IWC Wage Order No. 5.

10 27. Therefore, Plaintiff and all current and former aggrieved employees demand the
11 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 1198 and
12 1199 and IWC Wage Order No. 5.

13 28. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §
14 2699(g)(1).

15 Wherefore, Plaintiff prays for relief as set forth below.

16 **VI. SECOND CAUSE OF ACTION**

17 **(FAILURE TO AUTHORIZE AND PERMIT REST PERIODS –**

18 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

19 29. Plaintiff repeats and realleges each and every paragraph above as though fully set
20 forth herein.

21 30. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain
22 penalties on their own behalf and on behalf of other current and former employees.

23 31. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
24 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
25 violators and against whom one or more of the alleged violations was committed.

26 32. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
27 action against Defendants for violations of Labor Code §§ 226.7, 1198 and 1199 and IWC Wage
28 Order No. 5.

1 behalf of the State of California, demands the Labor Code § 226.3 penalties provided for
2 violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants'
3 violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f)
4 penalties.)

5 42. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §
6 2699(g)(1).

7 Wherefore, Plaintiff prays for relief as set forth below.

8 **XVI. FOURTH CAUSE OF ACTION**

9 **(LABOR CODE § 204 –**

10 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

11 43. Plaintiff repeats and realleges each and every paragraph above as though fully set
12 forth herein.

13 44. California Labor Code § 2699(f) permits "aggrieved employees" to recover certain
14 penalties on their own behalf and on behalf of other current and former employees.

15 45. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
16 Private Attorneys General Act of 2004 because she is a person who was employed by the alleged
17 violators and against whom one or more of the alleged violations was committed.

18 46. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
19 action against Defendants for violations of Labor Code § 204.

20 47. By the actions alleged herein, Defendants have failed to comply with Labor Code
21 § 204 as it relates to Plaintiff and the other aggrieved employees.

22 48. Therefore, Plaintiff, for herself and all current and former aggrieved employees,
23 demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

24 49. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §
25 2699(g)(1).

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VIII. FIFTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

50. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

51. California Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

52. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violators and against whom one or more of the alleged violations was committed.

53. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

54. By the actions alleged herein, Defendants failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

55. Therefore, Plaintiff, for herself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

56. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVII. PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 512(a), 1198 and 1199 (missed meal periods) during the applicable limitations period preceding the filing of the Complaint and up to and including the present and until the date of compliance with the law;

- 1 ii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or
- 2 former aggrieved employee for each violation of Labor Code §§ 226.7, 1198 and 1199
- 3 (missed rest periods) during the applicable limitations period preceding the filing of the
- 4 Complaint and up to and including the present and until the date of compliance with the
- 5 law;
- 6 iii. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or
- 7 former aggrieved employee and on behalf of the State of California for each violation of
- 8 Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable
- 9 limitations period preceding the original filing of the Complaint. (Should Labor Code §
- 10 226.3 be found not to apply to Defendants’ violations of Labor Code § 226(a), Plaintiff
- 11 alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and
- 12 each current or former aggrieved employee and on behalf of the State of California for
- 13 each violation of Labor Code § 226(a) (failure to provide itemized wage statements)
- 14 during the applicable limitations period preceding the original filing of the Complaint.)
- 15 iv. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or
- 16 former aggrieved employee for each violation of Labor Code § 204 (failure to pay
- 17 wages in a timely manner) during the applicable limitations period preceding the filing
- 18 of the Complaint and up to and including the present and until the date of compliance
- 19 with the law;
- 20 v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each former
- 21 aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay
- 22 departing employees all wages due and owing) during the applicable limitations period
- 23 preceding the filing of the Complaint and up to and including the present and until the
- 24 date of compliance with the law;
- 25 vi. For reasonable attorneys’ fees and costs as allowed by law, including Labor Code §
- 26 2699(g)(1) and Code of Civil Procedure § 1021.5
- 27 vii. For all interest as required by Labor Code § 218.6 or any other applicable law;
- 28 viii. For such other and further relief as the Court should deem proper.

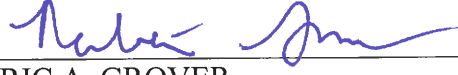
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Dated: May 19, 2022

Respectfully submitted,

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Aggrieved Employees