

ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiffs
KAYLYN BUSH and MADELEINE GUEVARA

[Additional Counsel on Next Page]

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

KAYLYN BUSH and MADELEINE
GUEVARA, on behalf of themselves, and all
aggrieved employees,

Plaintiffs,

v.

DUTCH BROS., LLC; and DOES 1 through
100, inclusive,

Defendants.

Case No: 22CV-01415

REPRESENTATIVE ACTION

*Assigned for all purposes to the
Hon. Brian McCabe, Dept. 8*

**DECLARATION OF ERIC A. GROVER IN
SUPPORT OF MOTIONS FOR AN
ORDER APPROVING SETTLEMENT OF
PAGA ACTION AND DISMISSING
ACTION WITH PREJUDICE AND FOR
AN ORDER AWARDING ATTORNEYS'
FEES AND COSTS, ENHANCEMENT
PAYMENTS, AND SETTLEMENT
ADMINISTRATION FEES**

Date: December 13, 2023

Time: 8:15 a.m.

Dept. 8

Complaint filed: May 19, 2022

Trial Date: TBD

1 Joseph Lavi (SBN 209776)
2 jlavi@lelawfirm.com
3 Vincent C. Granberry (SBN 276483)
4 vgranberry@lelawfirm.com
5 Courtney M. Miller (SBN 327850)
6 cmiller@lelawfirm.com
7 whts@lelawfirm.com
8 **LAVI & EBRAHIMIAN, LLP**
9 8889 W. Olympic Boulevard, Suite 200
10 Beverly Hills, California 90211
11 Telephone: (310) 432-0000
12 Facsimile: (310) 432-0001
13
14 Attorneys for Plaintiffs
15 KAYLYN BUSH and MADELEINE GUEVARA
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I, ERIC A. GROVER, declare as follows:

1. I am an attorney duly admitted to the practice of law in the State of California and before this Court. I am a partner in the law firm Keller Grover LLP, counsel for Plaintiff Kaylyn Bush in this action. I have personal knowledge of the facts stated herein and, if called as a witness, I could and would testify competently to the facts set forth below.

Plaintiffs' Counsel's Experience:

2. Between September 1988 and October 2005, I was first an associate and then a shareholder in the firm Littler Mendelson, P.C. Littler is the largest law firm in the United States specializing in labor and employment law. During my 17 years at Littler, I practiced extensively in all areas of labor and employment law, including wage and hour law and class action defense. I also have extensive litigation experience, including numerous arbitrations and trying a number of cases to verdict in state and federal courts.

3. In the time I worked at Littler, I worked on many class action matters. The following is a list of various class action matters for which I was the lead or co-lead defense attorney:

- a. *DLSE v. UI Video* (Blockbuster) (Alameda County) (Failure to provide uniforms.);
- b. *Vickery, et al. v. Cinema Seven, Inc.* (San Francisco County) (Independent contractor vs. employee status, overtime, minimum wage and expense reimbursement claims.);
- c. *ILWU, et al. v. DMS Messenger Services, et al.* (San Francisco County) (Overtime, minimum wage, expense reimbursement and waiting time penalties.);
- d. *Shields, et al. v. Lyon's Restaurants* (San Diego County) (Manager misclassification.);
- e. *O'Donnell, et al. v. Starving Students Movers* (Marin County) (Overtime, minimum wage and waiting time penalties.);
- f. *Cross, et al. v. Compass* (Sacramento County) (Overtime and waiting time penalties.);
- g. *Flowers, et al. v. Starving Students Movers* (San Joaquin County) (Overtime, minimum wage and waiting time penalties.);
- h. *Chen v. DMX Music, Inc.* (San Francisco County) (Improper chargebacks on commission payments.);

- i. *Tiffany, et al. v. Hometown Buffet* (San Francisco County) (Manager misclassification.);
- j. *Leoni, et al. v. Jetsetter Express, Inc.* (San Joaquin County) (Manager misclassification.);
- k. *Solano v. Clark Pest Control* (Los Angeles County) (Technician/salesperson misclassification.);
- l. *Guglielmino, et al. v. McKee Foods Corp.* (USDC-ND) (Independent contractor vs. employee status.); and
- m. *Evets v. Guess?, Inc.* (San Francisco County) (Manager misclassification.).

4. Between I have been practicing law at Keller Grover LLP. At Keller Grover, approximately 95% of my time is spent representing plaintiffs in employment, privacy, and data breach class action matters. I am currently lead counsel or co-lead counsel on more than 15 different class actions. I have been named Class Counsel in numerous recent class action matters, including:

- a. *Watson v. Ann Taylor Stores Corp.*, Los Angeles County Superior Court Case No. BC342729
- b. *Novak v. Retail Brand Alliance, Inc., et al.*, Alameda County Superior Court Case No. RG 05-223254;
- c. *Jos. A. Banks Overtime Cases*, Solano County Superior Court Case No. JCCP NO. 4479;
- d. *Diaz v. Best Buy Stores, L.P.*, Alameda County Superior Court Case No. RG 06-264187;
- e. *Lozoya v. PA Acquisition Corp.*, et al, Alameda County Superior Court Case No. RG 06-258395;
- f. *Krispy Kreme Overtime Cases*, Alameda County Superior Court Case No. JCCP No. 4489;
- g. *Walgreens Overtime Cases*, Los Angeles County Superior Court Case No. JCCP 4387;
- h. *Gring v. Claire's Boutique's, Inc.*, Alameda County Superior Court Case No. RG 05-247759;
- i. *Greene v. Federated Retail Holdings, Inc.* San Francisco County Superior Court Case No. CGC 06-449456;
- j. *Stermer v. L'Occitane, Inc.*, San Francisco County Superior Court Case No. CGC 06-456056;

- 1 k. *Wilde v. Catalina Restaurant Group, Inc. et al.*, Los Angeles County Superior
2 Court Case No. BC347513;
- 3 l. *Rogers v. Accentcare, Inc.*, Alameda County Superior Court County Superior
4 Court Case No. RG 05-237683;
- 5 m. *Fleming v. Dollar Tree Stores, Inc.*, United States District Court, Northern District
6 of California, Case No. C 06-cv-03409 MJJ;
- 7 n. *Corrado v. Valero Services, Inc.*, Alameda County Superior Court Case No. RG
8 07-322134;
- 9 o. *Stenroos v. Core-Mark International, Inc.*, San Mateo County Superior Court
10 Case No. CIV 451198;
- 11 p. *Ford v. Pilot Travel Centers LLC*, United States District Court, Northern District
12 of California, Case No. C-07-cv-02715 TEH;
- 13 q. *Elsbury v. Pizza Hut of Southeast Kansas, Inc.*, United States District Court,
14 Eastern District of California Case No. EDCV 07-00695 SGL (JCRx);
- 15 r. *Brior v. AE Retail West LLC*, San Francisco County Superior Court Case No.
16 CGC 06-455422;
- 17 s. *Moore v. Genesco, Inc. et al.*, Alameda County Case No. RG 06-270570;
- 18 t. *Stermer v. Ulta Salon, Cosmetics & Fragrance, Inc.*, San Francisco County
19 Superior Court Case No. CGC 08-427014;
- 20 u. *Lauzon v. Club Monaco U.S., LLC, Polo Retail, LLC, and Polo Ralph Lauren*
21 *Corporation*, San Francisco County Superior Court Case No. CGC 06-449963;
- 22 v. *Davenport v. Union Bank of California, N.A. and Unionbanc Investment Services*
23 *LLC*, United States District Court, Central District of California, Case No. 2:07-
24 cv-00001 FMC (VBKx);
- 25 w. *Jacobs v. Les Schwab Tire Centers of California, Inc., et al.*, San Francisco
26 County Superior Court Case No. CGC 08-478372;
- 27 x. *Daniel Arias v. Praxair Distribution, Inc., et al.*, San Francisco County Case No.
28 CGC 08-474506;
- y. *Flores, et al. v. Zale Delaware, Inc.*, United States District Court, Northern
District of California, Case No. 07-cv-00539 TEH;
- z. *Payan et al. v. MetroPCS, Inc.*, San Francisco County Superior Court Case No.
CGC 08-476703;
- aa. *Njoku v. Ecko Direct, LLC*, San Francisco County Superior Court Case No. CGC
07-469480;
- bb. *Wiggins v. Cingular Wireless Employee Services, LLC*, San Francisco County
Superior Court Case No. CGC 08-477763;

- cc. *Lee v. Marshalls of CA LLC*, Alameda County Superior Court Case No. RG 07-337021;
- dd. *Flores v. Cintas Corporation No. 2, Inc.*, Los Angeles County Superior Court Case No. BC400422;
- ee. *Drew v. HCR Manor Care Medical Services of Florida, LLC, et al.*, San Francisco County Superior Court Case No. CGC 09-490181;
- ff. *Ireland, et al. v. National Distribution Centers, L.P., et al.*, San Francisco County Superior Court Case No. CGC 09-493709;
- gg. *Lim-Hui v. Carter's Retail, Inc.*, San Francisco County Superior Court Case No. CGC 09-484456;
- hh. *Sefton v. OshKosh B'Gosh, Inc.*, San Francisco County Superior Court Case No. CGC 09-484496;
- ii. *Murphy v. Check n' Go of California, Inc.*, San Francisco County Superior Court Case No. CGC 06-449394;
- jj. *Wireless Advocates Wage and Hour Cases*, Los Angeles County Superior Court Case No. JCCP 4600;
- kk. *Matrix Service Wage and Hour Cases*, Alameda County Superior Court Case No. JCCP 4610;
- ll. *Sullivan v. Kelly Services, Inc.*, United States District Court, Northern District of California Case No. 08-cv-3893 CW;
- mm. *Strickland, et al. v. Timec Company, Inc., et al.*, San Francisco County Superior Court Case No. CGC 10-501832;
- nn. *Davis and Duke v. Plant Performance Services LLC, et al.*, Alameda County Case No. RG 10-501301;
- oo. *Jordan v. Directory Distributing Associates, Inc.*, San Francisco County Superior Court Case No. CGC 10-500633;
- pp. *Martin v. Total Safety U.S., Inc.*, Alameda County Case No. RG 10-533750;
- qq. *Placer Title Company Wage and Hour Cases*, Sacramento County Superior Court Case No. JCCP 4567;
- rr. *Martin, et al. v. Starcon International, Inc.*, Contra Costa County Superior Court Case No. MSC10-01071;
- ss. *Meyer v. Irwin Industries, Inc.*, ADRS Case No. 11-3844-RAH;
- tt. *Lazarin, et al. v. Total Western, Inc.*, JAMS Case No. 1100067385;
- uu. *Potter v. Zale Delaware, Inc.*, Alameda County Superior Court Case No. RG 10-548469;

- 1 vv. *Canales, et al. v. Electrical & Instrumentation Unlimited of California, Inc.*,
2 Kern County Superior Court Case No. S-1500-CV-271947 WDP;
- 3 ww. *Schechter and Porter v. ISYS Solutions, Inc.*, Alameda County Superior Court
4 Case No. RG 10-550517;
- 5 xx. *Gomez v. Pizza Hut of Southeast Kansas, Inc.*, San Bernardino County Superior
6 Court Case No. CIVVS900679;
- 7 yy. *Hernandez v. Bodell Construction Company*, Alameda County Superior Court
8 Case No. RG12-624600;
- 9 zz. *Gilliam v. Matrix Energy Services, Inc.*, Alameda County Superior Court Case
10 No. RG11-592345;
- 11 aaa. *Tate v. Wyatt Field Services Co.*, Alameda County Superior Court Case No. RG
12 10-522846;
- 13 bbb. *Becerra, et al. v. RadioShack Corporation*, United States District Court,
14 Northern District of California, Case No. C-11-cv-03586 YGR;
- 15 ccc. *Vasquez, et al. v. Turnaround Welding Services, Inc.*, Contra Costa County
16 Superior Court Case No. MSC12-00340;
- 17 ddd. *Betten and Lafa v. Diamond Wireless, LLC*, United States District Court, Central
18 District of California, Case No. 2:13-cv-02885 CBM;
- 19 eee. *Martin v. AltairStrickland LLC*, Alameda County Superior Court Case No.
20 RG11 575618;
- 21 fff. *Miller v. Southwest Airlines Co.*, United States District Court, Northern District
22 of California, Case No. C-12-cv-5978-CRB;
- 23 ggg. *Nguyen v. Equilon Enterprises LLC*, United States District Court, Northern
24 District of California, Case No. 4:12-cv-04650-YGR;
- 25 hhh. *Saunders v. StubHub Inc.*, San Francisco County Superior Court Case No. CGC-
26 12-517707;
- 27 iii. *Oregel v. PacPizza, LLC*, Contra Costa County Superior Court Case No.
28 MSC12-01454;
- 29 jjj. *Torres, et al. v. San Joaquin Community Hospital*, JAMS Case No. 1220043288;
- 30 kkk. *Hulsey v. San Joaquin Community Hospital*, JAMS Case No. 1210030884;
- 31 ll. *DeLeon, et al. v. NCR Corp.*, San Bernardino County Superior Court Case No.
32 CIVDS1403274;
- 33 mmm. *Springer, et al. v. Stanford Hospital and Clinics, et al.*, Los Angeles County
34 Superior Court Case No. BC470522;

- 1 nnn. *Ginn, et al. v. Certified Safety, Specialists LLC et al.*, Contra Costa County
2 Superior Court Case No. C11-0969;
- 3 ooo. *Clothier v. SPAR Marketing Services, Inc.*, Alameda County Superior Court
4 Case No. RG12-639317;
- 5 ppp. *St. Joseph Health System Medical Information Cases*, Orange County Superior
6 Court JCCP Case No. 4716;
- 7 qqq. *Everhart and Everhart v. Advantage Sales & Marketing, LLC*, Alameda County
8 Superior Court Case No. RG14-712100;
- 9 rrr. *Miller v. Hitachi America, Ltd.*, San Mateo County Superior Court Case No.
10 CIV 526430;
- 11 sss. *Johnson and Storey v. Mobility Plus Transportation LLC, et al.*, San Francisco
12 County Superior Court Case No. CGC-13-532872;
- 13 ttt. *Tripp and Solberg v. Crossmark, Inc., et al.*, United States District Court,
14 Northern District of California, Case No. 3:12-cv-04818-NC.
- 15 uuu. *McCabe, et al. v. Six Continents Hotels, Inc.*, United States District Court,
16 Northern District of California, Case No. 12-cv-04818-NC;
- 17 vvv. *Wheelock v. Hyundai*, Orange County Superior Court, Case No. 30-2011-
18 00522293-CU-BT-CJC;
- 19 www. *Roberts v. Wyndham Hotel and Resorts LLC, et al.*, United States District Court,
20 Northern District of California, Case No. 5:12-cv-05083-PSG;
- 21 xxx. *Castillo, et al. v. Seagate Technology LLC*, United States District Court,
22 Northern District of California Case No. 3:16-cv-01958-RS;
- 23 yyy. *Halkola v. Fisher, Sand & Gravel Co.*, Alameda County Superior Court, Case
24 No. RG17844100;
- 25 zzz. *Ashlock, et al. v. Sunrun, Inc., et al.* San Francisco County Superior Court CGC-
26 17-557027;
- 27 aaaa. *Spitzer v. FRHI Hotels and Resorts (Canada) Inc.*, San Bernardino County
28 Superior Court Case No. CIVDS1712220;
- bbbb. *Matthews v. eHealthinsurance Services, Inc.*, Santa Clara County Superior Court
Case No. 17CV305656;
- cccc. *Crowley, et al. v. Central Transport LLC*, San Bernardino Case No.
CIVDS1604546;
- dddd. *Alfinito v. Loop Transportation*, San Francisco County Superior Court Case No.
CGC-17-556677;

- eeee. *Rabanal v. P.F. Chang's China Bistro, et al*, Alameda County Case No. RG17851208;
- ffff. *Kindt and Pappas v. Aerovias de Mexico, S.A. de C.V., et al*, San Bernardino County Case No. CIVDS1809416;
- gggg. *Duke v. Jacobs Engineering Group Inc., et al.*, San Bernardino Superior Court Case No. CIVDS1703459;
- hhhh. *O'Leary v. Youngevity International, Inc.*, San Diego County Superior Court Case No. 37-2017-00045550-CU-BT-CTL;
- iiii. *Kindt v. Concesionaria Vuela Compañía de Aviación S.A.P.I. de C.V., et al.*, Napa County Superior Court Case No. 19CV000373;
- jjjj. *Docter v. Accor Management US Inc.*, San Joaquin County Superior Court Case No. STK-CV-UBT-2019-0000147;
- kkkk. *Clothier v Spar Group, Inc.*, Alameda County Superior Court Case No. RG18926494;
- llll. *Pennywell-Foster v. IMKO Workforce Solutions, et al.*, Sacramento County Superior Court Case No. 34-2019-00252683;
- mmmm. *Stohs, et al. v. Samsonite Company Stores, LLC*, Alameda County Superior Court Case No. RG19001392;
- nnnn. *Casarez v. Chemtrade West US LLC*, Alameda County Superior Court Case No. RG19008007;
- oooo. *Butler v. Apple Inc.*, Santa Clara County Superior Court Case No. 1-14-cv-262989;
- pppp. *Gomez v. Pinnacle Workforce Logistics*, San Bernardino County Superior Court Case No. CIVDS1804163;
- qqqq. *Vilitchai, et al. v. Ametek Programmable Power, Inc.*, San Diego County Superior Court Case No. 37-2015-00025968-CU-OE-CTL;
- rrrr. *Madrid, et al. v. Golden Valley Health Centers*, Merced County Superior Court Case. No. 20Cv-01484;
- ssss. *Curtis v. Aegis Treatment Centers, LLC*, Shasta County Superior Court Case No. 193712;
- tttt. *Millay v. Napaidence OPCO, LLC*, Napa County Superior Court Case. No. 19CV001903;
- uuuu. *Gutierrez v. Brand Energy of California, Inc.*, Alameda County Superior Court Case No. RG17846239;
- vvvv. *Sica and Ellis v. Construction & Turnaround Services, L.L.C.*, United States District Court, Northern District of California Case No. 4:21-cv-0188-JSW;

- www. *Clark-Alonso v. Southwest Airlines Co.*, Merced County Superior Court Case No. 21 CV-02475
- xxxx. *Zuckerbraun v. Flour Maintenance Serv., Inc.*, Alameda County Superior Court Case No. RG20054385;
- yyyy. *Sica v Madison Industrial Serv. Team, Ltd Partnership*, United States District Court, Northern District of California Case No. 4:20-cv-08347-KAW;
- zzzz. *Harrington v. Forbes Security, Inc.*, San Francisco County Superior Court Case No. CGC-20-584155;
- aaaaa. *Hernandez v. Chino Commercial Bank*, San Bernardino County Superior Court Case No. CIVDS1922849;
- bbbbb. *Ellis v. Harder Mechanical Contractors, Inc.*, United States District Court, Northern District of California Case No. 21-cv-00844-JSW;
- ccccc. *Harrington v. Creative Security Company, Inc.*, Alameda County Superior Court Case No. RG21095377;
- dddd. *Espinoza, et al. v. Dedicated Bldg. Serv. LLC*, Los Angeles County Superior Court Case No. 20STCV03569;
- eeee. *Macomber v. Dermalogica, LLC*, San Diego County Superior Court Case No: 37-2020-00020451- CU-BT-CTL;
- ffff. *Alvarez, et al. v. Autozone, Inc.*, San Bernardino Superior Court Case No. CIVDS1416344;
- ggggg. *Walter v. Farfetch.com US, LLC*, Orange County Superior Court Case No. 30-2020-01139875-CU-BT-CXC;
- hhhhh. *Cascade Drilling Wage and Hour Cases*, Alameda County Superior Court Case No. RG21090743; and
- iiii. *Audycki v. Stanford Healthcare, a Corporation*, Santa Clara County Superior Court Case No. 19CV347173.

Factual and Procedural Background:

5. A true and correct copy of the Parties' Labor Code Private Attorneys General Act Settlement Agreement (the "Settlement Agreement")¹ entered into by Plaintiffs and Dutch Bros.,

¹ Unless noted otherwise, all capitalized terms shall have the same meaning as set forth in the Settlement Agreement.

1 LLC (“Defendant”), is attached hereto as **Exhibit 1**. The Settlement Agreement is discussed
2 below.

3 6. On March 14, 2022, pursuant to Labor Code § 2699.3’s exhaustion requirements,
4 Plaintiff Bush gave written notice of her PAGA claims to the California Labor and Workforce
5 Development Agency (“LWDA”) and Defendant. A true and correct copy of the March 14,
6 2022 exhaustion letter is attached hereto as **Exhibit 2**.

7 7. After satisfying the administrative requirements of Labor Code § 2699.3(a),
8 Plaintiff Bush filed her Complaint on May 19, 2022, in Merced County Superior Court against
9 Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations and penalties
10 under Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 512, 1198, and 1199. After
11 satisfying the administrative requirements of Labor Code § 2699.3(a), On May 16, 2023,
12 Madeleine Guevara filed her Complaint in Stanislaus County Superior Court (Case No. CV-23-
13 002754) against Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations
14 and penalties under Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1197.
15 On October 9, 2023, Plaintiff Bush filed the operative FAC in Merced County Superior Court,
16 which adds Plaintiff Guevara as a plaintiff and adds claims for penalties pursuant to Labor Code
17 § 2699(f) for alleged violations and penalties under Labor Code §§ 512, 1194, and 1197. On
18 October 9, 2023, Plaintiff Guevara dismissed her Stanislaus County Superior Court action
19 without prejudice. A true and correct copy of the First Amended Complaint is attached hereto as
20 **Exhibit 3**.

21 8. Defendant has denied all of the allegations in their entirety. To date, no court has
22 made a finding of any wrongdoing on the part of Defendant or that Defendant otherwise acted
23 improperly or in violation of any state law, rule or regulation, with respect to the issues presented
24 in the litigation.

25 9. Following the filing of the *Bush* action, counsel for the Parties met and conferred
26 with respect to the potential settlement. Pursuant to these discussions, the Parties agreed to
27 exchange informal discovery and engage in private mediation. The Parties subsequently
28 exchanged informal discovery, including: timekeeping and payroll records; information and

1 documentation concerning the claims alleged in the actions; and information regarding the
2 number of PAGA Group members and the total workweeks and pay periods worked by the
3 PAGA Group during the PAGA Release Period. Defendant also provided information from its
4 records supporting there are no more than 6,600 individuals who meet the Settlement
5 Agreement's definition of the PAGA Group.

6 10. Armed with the information obtained from informal discovery, the Parties
7 participated in a formal mediation session with Tripper Ortman, Esq. on July 31, 2023. At the
8 mediation, the Parties were able to reach a tentative settlement and agreed to settle the entire
9 action, subject to approval by the Court. The detailed, formalized Settlement Agreement sets
10 forth all terms of the Parties' settlement. See **Exhibit 1**. The settlement is the result of arm's-
11 length negotiations between the Parties' counsel.

12 **Plaintiffs' Counsel's work litigating and settling this action:**

13 11. Prior to filing this action, Plaintiffs' Counsel expended time and effort in
14 investigating and researching Plaintiffs' potential Labor Code claims, and preparing this case for
15 litigation. Pursuant to Labor Code § 2699.3's exhaustion requirements, Plaintiffs' Counsel at
16 Keller Grover LLP, on behalf of Plaintiff Bush, and Plaintiffs' Counsel at Lavi & Ebrahimian,
17 LLP, on behalf of Plaintiff Guevara, drafted and provided written notice of each Plaintiffs'
18 PAGA claims to the LWDA and Defendant. After receiving no response from the LWDA in the
19 statutory time period, Plaintiffs' Counsel filed each their respective Plaintiff's initial Complaint.

20 12. After the Parties reached a tentative settlement through formal mediation, as
21 discussed below, Plaintiffs' Counsel drafted and filed the operative First Amended Complaint
22 ("FAC") on October 9, 2023, in Merced County Superior Court, which adds Plaintiff Guevara as
23 a plaintiff and adds claims for penalties pursuant to Labor Code § 2699(f) for alleged violations
24 and penalties under Labor Code §§ 512, 1194, and 1197. See **Exhibit 3**.

25 13. After the filing of *Bush* action, I engaged in discussions with Defense Counsel
26 regarding potential settlement and agreed to mediate. In preparation, the Parties agreed to
27 exchange relevant information and documents informally, as noted above. My office drafted and
28 sent a detailed mediation information request to Defense Counsel. My office reviewed and

1 analyzed information and documents that Defendant provided, including documents and
2 information relevant to the claims alleged in the operative complaint, such as timekeeping and
3 payroll records and the number aggrieved employees and total pay periods at issue. The
4 information and documents were sufficient to assess Defendant's meal period, rest break, off-
5 the-clock pay, termination pay, other pay and wage statement practices and to tabulate the total
6 number of pay periods at issue and identify the approximate total number of individuals falling
7 within the definition of the PAGA Group during the PAGA Release Period.

8 14. Armed with the information obtained from informal discovery, the Parties
9 participated in a formal mediation session with Tripper Ortman, Esq. on July 31, 2023, during
10 which we engaged in arm's length negotiations with Defense Counsel. At the mediation, the
11 Parties were able to reach a tentative settlement and agreed to settle the entire action, subject to
12 approval by the Court. Our experience in litigating similar representative PAGA actions based
13 on wage and hour claims, the degree of investigation that we conducted and the amount of data
14 obtained from Defendant made it possible for us to determine the potential value and evaluate
15 the strength of the PAGA claims when negotiating the settlement.

16 15. Following the mediation, working together with co-counsel and Defense Counsel,
17 detailed Settlement Agreement was drafted and finalized. All terms of the Parties' settlement are
18 set forth in the Settlement Agreement, which is **Exhibit 1**.

19 16. Concurrently with the submission of the Settlement Agreement to the Court,
20 Plaintiffs are submitting the settlement to the LWDA as required by Labor Code § 2699(l)(2).
21 Robert Spencer, an attorney at Keller Grover LLP, has submitted a declaration addressing the
22 submission to the LWDA.

23 17. Subsequent to the mediation, Plaintiffs' Counsel have spent time negotiating and
24 drafting the Settlement Agreement, drafting the motion for approval of the PAGA settlement,
25 and drafting the motion seeking an award of attorneys' fees and costs, settlement administration
26 fees and Plaintiffs' enhancement awards. I have also spent time communicating with Defense
27 Counsel and the Parties' selected Settlement Administrator regarding settlement administration
28 issues. Further, I expect to spend additional time working with the Settlement Administrator,

1 speaking with PAGA Group members, finalizing and filing this motion, and preparing for and
2 attending the hearing.

3 **Plaintiffs' Counsel's Assessment of the Settlement's Fairness:**

4 18. Based on my years of experience and my own independent investigation and
5 evaluation, I am of the opinion that settlement for the consideration and on the terms set forth in
6 the Settlement Agreement is fair, reasonable, and adequate and it is in the best interests of the
7 LWDA and the PAGA Group in light of all known facts and circumstances, controlling case law,
8 and the expenses and risks inherent in litigation.

9 19. The Settlement Agreement defines the PAGA Group as "All persons within the
10 State of California who are or were employed by Defendant in the State of California as an
11 hourly, non-exempt employee at any time within the PAGA Release Period." The "PAGA
12 Release Period" is from March 14, 2021 through August 7, 2023, inclusive. Defendant has
13 identified approximately 6,600 PAGA Group members.

14 20. The Parties have selected Simpluris, Inc. to serve as Settlement Administrator and
15 expect the settlement administration to cost no more than \$17,500.

16 21. The Settlement Agreement achieves a substantial benefit for the LWDA and the
17 PAGA Group members. The Settlement Agreement provides that, to settle this matter,
18 Defendant will pay a total of \$1,950,000 (the "Settlement Amount"). The estimated total sum
19 available for payment of PAGA penalties is calculated by deducting up to \$667,574.99 for the
20 payment of Plaintiffs' Counsel's fees and costs, \$20,000 in total enhancement payments to the
21 named Plaintiffs, and administration costs of \$17,500 from the \$1,950,000 Settlement Amount,
22 leaving \$1,244,925.01 (the "Net Settlement Amount") to be distributed to the LWDA and the
23 PAGA Group members. As required by Labor Code § 2699(i), the Settlement Agreement
24 provides that 75% of the Net Settlement Amount (\$933,694) will be paid to the LWDA and 25%
25 (\$311,231) will be paid to the PAGA Group (*i.e.*, the aggrieved employees).

26 22. Pursuant Labor Code § 2699(i), the approximately \$933,694 to be paid to the
27 LWDA will be used for education and enforcement purposes.
28

23. PAGA Group members do not need to submit a claim to receive a settlement payment. The PAGA Group members will divide their portion based on the formula set forth in the Settlement Agreement, which, in summary, provides that the portion of the Net Settlement Amount to be distributed to the PAGA Group shall be divided by the total number of full pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant's records, for all times during the PAGA Release Period which the PAGA Group worked for Defendant. This amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be paid an amount equal to the number of individual pay periods he or she worked for Defendant during the PAGA Release Period multiplied by the Pay Period Value. On average, each PAGA Group member is expected to receive approximately \$47.15. ($\$311,231/6,600 = \47.15).

24. The settlement provides that Simpluris will send notice of the settlement to the PAGA Group (see **Exhibit 1**, Settlement Agreement exhibit A), even though notice is not required in settlements of PAGA actions and aggrieved employees are not entitled to opt out of the settlement.² The settlement requires Defendant to provide Simpluris with the following information for each PAGA Group member: name, last known home address, number of pay periods that the PAGA Group member worked, and social security number (collectively referred to as the "PAGA List") no later than 30 calendar days after the Court approves the settlement. After updating the PAGA List, the Settlement Administrator will mail the Notice and the Individual Settlement Payment check to each member of the PAGA Group no later than 60 calendar days after the Court approves the settlement.

25. Under the settlement terms, for any Individual Settlement Payment check that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the PAGA Group member by performing an additional skip-trace and shall remail the Individual Settlement Payment check no later than 10 calendar days following the receipt of the undelivered

² See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 ("PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same).

1 Notice and check.

2 26. I am of the opinion that the Settlement and its distribution of approximately
3 \$928,125 to the LWDA and \$311,231 to the PAGA Group is fair, reasonable, and adequate,
4 given the inherent risk of continued litigation and the costs of pursuing such litigation.

5 27. The fairness, reasonableness and adequacy of the settlement is demonstrated by
6 the significant uncertainty and risks that Plaintiffs will be unable to prevail on the merits.
7 Defendant adamantly disputes that any of its practices regarding meal period, rest break, off-the-
8 clock pay, wage statement issuance, termination pay and timely pay practices violated any Labor
9 Code provisions. If Defendant succeed in any or all of its defenses, recovery for the LWDA,
10 Plaintiffs and the PAGA Group will be significantly reduced or even eliminated.

11 28. Defendant has argued that, even if Plaintiffs succeeded on the merits, it will be
12 able to convince the Court to reduce the amount of PAGA penalties awarded, which Plaintiffs
13 recognize is a substantial risk as courts have authority to set PAGA penalty amounts under Labor
14 Code § 2699(e)(2). Labor Code § 2699(e)(2) provides that the court sets the amount of PAGA
15 penalties after trial. In setting the penalties to be assessed, court have wide latitude.³ The
16 following are examples of cases where courts awarded substantially reduced PAGA penalties:

- 17
- 18 · *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist.
19 LEXIS 154590, at *8-9 (C.D. Cal. Aug. 12, 2011) (of \$2,800,000 PAGA
20 penalties requested, the court awarded \$500,000);
 - 21 · *Elder v Schwan Food Co.*, No. B238876, 2013 Cal. App. Unpub. LEXIS
22 1472, at *7, 11, 19 (Feb. 27, 2013) (the court affirmed a reduced award of
23 \$2,500 individual PAGA civil penalty);
 - 24 · *Aquirre v Genesis Logistics*, No. SACV 12-00687-JVS (ANx), 2013 U.S.
25 Dist. LEXIS 189820, at *6-7 (C.D. Cal. Dec. 30, 2013) (of \$1,800,000 PAGA
26 penalties requested, the court awarded \$500,000);
 - 27 · *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No.

28 ³ See e.g., *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1100, 1104,
vacated in part, reversed in part on other grounds and remanded by (9th Cir. 2021) 999 F.3d
668, (finding that, under Labor Code § 2699(e)(2), “the Court has broad discretion to award
PAGA penalties as the Court sees fit” and reducing the PAGA penalty award significantly from
the maximum penalties possible).

468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on basis that action was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, because corporate defendants corrected violations and were no longer in business, inequity would result from awarding penalties only to employees who opted out of class, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory);

- *Makabi v Gedalia*, No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at *6-7 (Mar. 2, 2016) (noting that the trial court found in favor of plaintiffs on Labor Code violation claims, but declined to award any PAGA penalties);
- *Arnold v San Diego Second Chance Program*, San Diego County Superior Court No. 37-2016-00018375 (Dec. 18, 2017) (no PAGA penalties awarded);
- *Felczer v Apple Inc.*, San Diego County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) (no PAGA penalties awarded);
- *Morales v Peck Jeep Eagle, Inc.* (San Diego County Superior Court No. 37-2012-00103823, Oct. 24, 2016) (PAGA penalties of \$80,400.00 awarded);
- *Allen v American Multi-Cinema*, Alameda County Superior Court No. RG11585502 (July 24, 2016) (no PAGA penalties awarded);
- *Atempa v Pama*, San Diego County Superior Court (July 31, 2015) (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00);
- *Banford v American Gen. Life*, Santa Barbara County Superior Court No. CIV-DS1017566 (Feb. 24, 2015) (PAGA penalties of \$99,000.00 assessed);
- *Parr v GoldenState*, Alameda County Superior Court No. RG12-618103 (July 10, 2014) (PAGA penalties of \$325,835.00 assessed);
- *Driscoll v Granite Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) (the court declined to award PAGA penalties);
- *In re Taco Bell Wage and Hour Actions*, (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (the court declined to award PAGA penalties after trial);
- *Morales v Bridgestone Retail Operations LLC*, Orange County Superior Court No. 30-2017-00900244 (Aug. 2, 2018) (of \$7 million PAGA penalties requested, the court awarded \$425,000);
- *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); and
- *Magadia v Wal-Mart Assocs.*, *supra*, 384 F. Supp. 3d at 1073, 1080, 1101, 1103-04, 1111, (the district court awarded \$53,901,700 in total PAGA penalties, including \$48,046,000 of \$131,427,750 penalties sought for Labor Code §226(a)(9) wage statement violations; \$5,785,700 of \$28,928,500 sought for Labor Code § 226(a)(6) final pay statement violations; and \$70,000

of requested \$821,400 for Labor Code § 226.7 missed meal period violations; also decertifying meal period regular rate claim class).

Plaintiffs' Enhancement Awards:

29. It is appropriate to recognize the contributions of the representative Plaintiffs in prosecuting this litigation. I am of the opinion that it is fair and reasonable that Plaintiffs Bush and Guevara each receive a \$10,000 service award. Plaintiffs Bush and Guevara were essential elements in the successful prosecution and ultimate settlement of this case and were always available to provide their input on the litigation, provide evidence and other information important to the prosecution.

30. The proposed enhancement awards are fair given the amount of time and effort the representative Plaintiffs spent assisting in the prosecution of this case and the personal hardship and pressure faced as a result of filing this lawsuit against their former employer. If the Court approves the settlement, Plaintiffs' work bringing this representative PAGA action will result in substantial monetary benefits for the LWDA and the PAGA Group. The representative Plaintiffs have provided declarations outlining their efforts on behalf of the LWDA and the PAGA Group.

Plaintiffs' Counsel's Fee and Costs Request:

31. Labor Code § 2699(g)(1) provides for reasonable attorneys' fees and costs in a PAGA action. Plaintiffs' Counsel is seeking a total award of \$650,000 in fees and \$17,574.99 in out-of-pocket costs from the Settlement Amount that Defendant is required to pay to settle this action. The amount sought is reasonable because it is within the range for fee awards in similar wage and hour-related settlements and in light of the risks Plaintiffs' Counsel undertook in accepting this case given its contingent nature, the quality of the representation we provided to the LWDA and PAGA Group, the results achieved, and the preclusion of other employment, as discussed below.

32. All of the attorneys at Keller Grover, LLP who worked on this action are highly experienced in representing employees in wage-and-hour and other employment related class actions and PAGA representative actions.

1 33. I have 35 years of experience and substantial involvement in class actions,
2 including serving as lead or co-lead counsel in scores of employment, consumer, data breach,
3 and privacy class and representative actions. *See also*, ¶¶ 2-4.

4 34. Elizabeth A. Acevedo, Esq. is a 2003 graduate of the University of Southern
5 California Gould School of Law and, throughout her career, has represented plaintiffs in
6 employment, consumer, privacy and securities class actions. Ms. Acevedo has for Keller Grover
7 since 2007.

8 35. Robert Spencer is a 2005 graduate of the Loyola Law School of Los Angeles. Mr.
9 Spencer has spent his entire career at Keller Grover LLP and specializes in representing
10 plaintiffs in consumer, privacy, and employment class and representative actions.

11 36. Co-Plaintiffs' Counsel Vincent Granberry of Lavi & Ebrahimian, LLP is
12 submitting a declaration outlining his firm's experience.

13 37. Plaintiffs' Counsel's expertise representing California employees in representative
14 and class actions was crucial to negotiating a settlement with Defendant and obtaining a good
15 monetary result for the PAGA Group and the State. Also, Plaintiffs' Counsel undertook the risk
16 of litigating this case on a contingency basis. If this case had proceeded toward trial, it would
17 have required discovery regarding Defendant's meal period, rest break, off-the-clock pay, wage
18 statement issuance, termination pay and timely pay practices and substantive motion practice,
19 which would be followed by trial and any subsequent appeals. Plaintiffs' Counsel was prepared
20 to finance the litigation through all of that, which likely would have taken years. Also, because
21 of the resources that this action would require, Plaintiffs' Counsel was precluded from taking
22 other cases in order to represent Plaintiffs in their PAGA action brought on behalf of the
23 aggrieved employees and the State.

24 38. Contingent Nature of Case and Risk to Counsel: This case was taken on a
25 contingency basis and is not a case undertaken lightly. The risk of advancing costs in this type
26 of litigation can be quite a burden.

27 39. Even with Plaintiffs' Counsel's extensive experience litigating wage and hour
28 cases, prosecuting these cases still carries a considerable amount of risk. This case involved

1 significant uncertainty and risk in not prevailing on the merits. Defendant disputes Plaintiffs'
2 ability to prove that it violated the Labor Code provisions underlying their PAGA claims and
3 raised what it considers to be substantial defenses to Plaintiffs' claims. Also, even if Plaintiffs
4 prevailed on the merits, Labor Code § 2699(e)(2) allows the Court to award penalties of less than
5 the maximum set forth in the statute. Continued litigation of this action presents significant risks
6 that this action could result in a lower recovery or no recovery at all.

7 40. Quality of Representation and Results Achieved: The nature of class and
8 representative action work and the expertise of the attorneys at Keller Grover and Lavi &
9 Ebrahimian also justify the fees requested. I and the attorneys who worked on this case have
10 expertise in representing employees in similar representative and class actions based on wage
11 and hour violations and have provided the LWDA and PAGA Group with an exceptional quality
12 of representation.

13 41. Because of that experience, we were able to resolve the action efficiently and
14 fairly and obtain significant monetary benefits to the LWDA and reasonable monetary benefits
15 to the PAGA Group members. The Settlement Agreement benefits the State by providing that
16 approximately \$933,694 will be paid to California's LWDA. PAGA Group members also each
17 will receive, on average, an Individual Settlement Payment of \$47.15. The success achieved by
18 the settlement supports Plaintiffs' Counsel's fee request.

19 42. Preclusion of Other Work: A practice like ours can only properly litigate a limited
20 number of cases at one time. The requirements of this case were significant. Had we not
21 reached a settlement with Defendant, the demands of litigating this case would have required a
22 significant portion of our resources. Thus, we were precluded from taking other cases due to the
23 demands of this case.

24 43. Plaintiffs' Counsel is requesting a fee award under the percentage of the fund
25 method that is supported by applicable case law. My experience in representative and class
26 actions as well as my review of fee awards in similar actions support my conclusion that the fee
27 request is reasonable and in line with the common practice in this type of case.
28

Plaintiffs' Counsel's Costs:

44. Keller Grover LLP's costs to date are \$16,296.41 and include filing fees, legal research fees, mediation fees, damage consultant fees, printing costs, and mailing charges. These costs were reasonably incurred in litigating this matter. Keller Grover LLP expects to incur additional costs of approximately \$300 through the rest of the case, including additional filing fees and federal express costs. A true and correct copy of an itemized list of costs incurred by Keller Grover to date in this action is attached hereto as **Exhibit 4**.

45. Co-counsel at Lavi & Ebrahimian is seeking costs of \$978.58.

46. Plaintiffs' Counsel therefore is seeking the Court's approval of \$17,574.99 in costs.

47. Thus, Plaintiffs' Counsel is seeking \$650,000 in attorneys' fees and \$17,574.99 in costs, a total of \$667,574.99, as set forth in the Settlement Agreement.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that this Declaration was executed on this 25th day of October, 2023 at San Francisco, California.


ERIC A. GROVER

EXHIBIT 1

Eric A. Grover (SBN 136080)
egrover@kellergrover.com
Robert W. Spencer (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1395
Facsimile: (415) 543-7861

Attorneys for Plaintiff
KAYLYN BUSH

Robert J. Wilger (SBN 168402)
rwilger@littler.com
Benjamin A. Emmert (SBN 212157)
bemmert@littler.com
LITTLER MENDELSON, P.C.
50 West San Fernando Street, 7th Floor
San Jose, California 95113
Telephone: (408) 998-4150
Facsimile: (408) 288-5686

Attorneys for Defendant
DUTCH BROS., LLC

[Additional Counsel on Next Page]

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

KAYLYN BUSH and MADELEINE
GUEVARA, on behalf of all aggrieved
employees,

Plaintiffs,

v.

DUTCH BROS., LLC; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 22CV-01415

*Assigned for all purposes to the
Hon. Brian McCabe, Dept. 8*

**LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT
AGREEMENT**

Complaint Filed: May 19, 2022
Trial Date: TBD

1 Joseph Lavi (SBN 209776)

2 jlavi@lelawfirm.com

3 Vincent C. Granberry (SBN 276483)

4 vgranberry@lelawfirm.com

5 Courtney M. Miller (SBN 327850)

6 cmiller@lelawfirm.com

7 whits@lelawfirm.com

8 **LAVI & EBRAHIMIAN, LLP**

9 8889 W. Olympic Boulevard, Suite 200

10 Beverly Hills, California 90211

11 Telephone: (310) 432-0000

12 Facsimile: (310) 432-0001

13 Attorneys for Plaintiff

14 MADELEINE GUEVARA

1 This Labor Code Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) Settlement
2 Agreement (“Settlement Agreement”) is made by and between KAYLYN BUSH and
3 MADELEINE GUEVARA (“Plaintiffs”), on their own behalf and on behalf of all members of
4 the PAGA Group (as defined below) and the State of California, on the one hand, and DUTCH
5 BROS., LLC (“Defendant”) on the other hand (collectively the “Parties”), in the lawsuit entitled
6 *Bush v. Dutch Bros., LLC*, filed in Merced County Superior Court, Case No. 22CV-01415. This
7 Settlement Agreement resolves all claims under the California Labor Code Private Attorneys
8 General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, based on or arising out of alleged
9 violations of the Labor Code, including all claims that could have been alleged based on the
10 factual allegations and identified Labor Code sections in the operative pleading for the Litigation.

11 **I. DEFINITIONS**

12 **A. Administrative Costs.** The term “Administrative Costs” as used herein means
13 all administrative costs of settlement, including cost of notice to the PAGA Group,
14 administration, and any fees and costs incurred or charged by the Settlement Administrator in
15 connection with the execution of its duties under this Settlement Agreement.

16 **B. Agreement or Settlement Agreement.** The terms “Agreement” or “Settlement
17 Agreement” are used synonymously herein to mean this Labor Code Private Attorneys General
18 Act (Labor Code §§ 2698, *et seq.*) Settlement Agreement.

19 **C. Court.** The term “Court” as used herein means the Superior Court of the State
20 of California for the County of Merced.

21 **D. Defendant.** The term “Defendant” as used herein means Dutch Bros., LLC.

22 **E. Defendant’s Counsel.** The term “Defendant’s Counsel” as used herein means
23 Littler Mendelson, P.C.

24 **F. Effective Date.** The term “Effective Date” means the latter of (a) the Court’s
25 approval of the settlement; (b) the time for appeal all appeals relating to objections/challenges to
26 the settlement have expired; or (c) if an appeal, review or writ is sought, the date on which the
27 highest reviewing court renders its decision denying any petition (where the immediately lower
28 court affirmed the final judgment) or affirming the final resolution of any appeal that has been

1 filed. "Final" means that the settlement has been granted.

2 **G. Individual Settlement Payment.** The term "Individual Settlement Payment" as
3 used herein means the payment that each member of the PAGA Group will receive as his or her
4 share of the Net Settlement Amount. The portion of the Net Settlement Amount to be distributed
5 to the PAGA Group shall be divided by the total number of full pay periods, with partial pay
6 periods rounded up to the next whole number, as determined by Defendant's records, for all
7 times during the PAGA Release Period which the PAGA Group worked for Defendant. This
8 amount shall be known as the "Pay Period Value." Each member of the PAGA Group shall be
9 paid an amount equal to the number of individual pay periods he or she worked for Defendant
10 during the PAGA Release Period multiplied by the Pay Period Value. Defendant represents that,
11 based on a reasonable investigation of its records, the total number of full pay periods worked
12 by individuals in the PAGA Group, including Plaintiffs, does not exceed 152,000. In the event
13 that the actual number of pay periods worked by individuals in the PAGA Group during the
14 PAGA Release Period increases by 5% or more than the estimated 152,000, then Defendant shall
15 increase the Settlement Amount on a proportional basis (i.e., if there was a 6% increase in the
16 number of pay periods, Defendant will increase the maximum settlement amount by 6%).

17 **H. Litigation.** The term "Litigation" as used herein means the action entitled *Bush*
18 *v. Dutch Bros., LLC*, filed in Merced County Superior Court, Case No. 22CV-01415.

19 **I. LWDA Payment.** The term "LWDA Payment" as used herein means the
20 seventy-five percent (75%) of the Net Settlement Amount payable to the LWDA.

21 **J. Net Settlement Amount.** The term "Net Settlement Amount" as used herein
22 means the Settlement Amount minus any award of attorneys' fees and litigation costs to
23 Plaintiffs' Counsel, Administrative Costs, and Plaintiffs' enhancement awards. Based on the
24 statutory requirement that seventy-five percent (75%) of PAGA civil penalties be paid to the
25 California Labor and Workforce Development Agency ("LWDA") and twenty-five percent
26 (25%) of PAGA civil penalties be distributed to the aggrieved employees, seventy-five percent
27 (75%) of the Net Settlement Amount will be paid to the LWDA and twenty-five percent (25%)
28 of the Net Settlement Amount will be paid to the PAGA Group based on the distribution formula

1 set forth below.

2 **K. PAGA Group.** The PAGA Group is defined as: All persons within the State of
3 California who are or were employed by Defendant in the State of California as an hourly, non-
4 exempt employee at any time within the PAGA Release Period. Defendant represents that, based
5 on a reasonable investigation of its records, the total number of individuals in the PAGA Group,
6 including Plaintiffs, does not exceed 6,600.

7 **L. PAGA Release Period.** The term "PAGA Release Period" as used herein shall
8 refer to the time period from and including March 14, 2021 through August 7, 2023, inclusive.

9 **M. Plaintiffs.** The term "Plaintiffs" as used herein means Kaylyn Bush and
10 Madeleine Guevara.

11 **N. Plaintiffs' Counsel.** The term "Plaintiffs' Counsel" as used herein means Keller
12 Grover LLP and Lavi & Ebrahimian, LLP.

13 **O. Settlement Administrator.** The term "Settlement Administrator" as used herein
14 means Simpluris, Inc., which will be responsible for the administration of the settlement
15 embodied in this Agreement and all related matters.

16 **P. Settlement Amount.** The term "Settlement Amount" as used herein means a
17 fund in the sum of \$1,950,000.00 which shall be paid by Defendant. The Settlement Amount
18 shall cover, resolve, and fully satisfy the Administrative Costs and any and all amounts owed to
19 Plaintiffs, the PAGA Group, the LWDA, and Plaintiffs' Counsel, including all amounts allocated
20 to attorneys' fees and litigation costs. Except in the event the actual pay periods for the PAGA
21 Release Period exceed the estimated pay periods specified in this Agreement by more than the
22 5% threshold specified in Section II.G., Defendant shall not be required to pay more than the
23 Settlement Amount.

24 **II. BACKGROUND**

25 **A.** On May 19, 2022, Plaintiff Bush filed her Complaint in Merced County Superior
26 court against Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations
27 and penalties under Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 512, 1198, and 1199.
28 On May 16, 2023, Plaintiff Guevara filed her Complaint in Stanislaus County Superior Court

(Case No. CV-23-002754) against Defendant for penalties pursuant to Labor Code § 2699(f) for alleged violations and penalties under Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1197. On October 9, 2023, Plaintiff Bush filed the operative First Amended Complaint in Merced County Superior Court, which adds Plaintiff Guevara as a plaintiff and adds claims for penalties pursuant to Labor Code § 2699(f) for alleged violations and penalties under Labor Code §§ 512, 1194, and 1197. On October 11, 2023, Plaintiff Guevara dismissed her Stanislaus County Superior Court action without prejudice.

Following the filing of the *Bush* action, counsel for the Parties met and conferred with respect to the potential settlement of the Litigation. Pursuant to these discussions, the Parties agreed to exchange informal discovery and engage in private mediation. The Parties subsequently exchanged informal discovery, including: timekeeping and payroll records; information and documentation concerning the claims set forth in the Litigation; and information regarding the number of PAGA Group members and the total workweeks and pay periods worked by the PAGA Group during the PAGA Release Period.

B. Plaintiffs, Defendant, and their respective counsel have engaged in good faith, arms-length negotiations. On July 31, 2023, the Parties participated in a mediation with Tripper Ortman, Esq., which resulted in reaching a resolution of this matter. The Parties have now entered into a more detailed, formalized Settlement Agreement for submission to the Court for approval.

C. Plaintiffs' counsel has conducted an investigation of the law and facts relating to the claims asserted in the Litigation and has concluded, taking into account the sharply contested issues involved, the expense and time necessary to pursue the Litigation through trial and any appeals, the risks and costs of further prosecution of the Litigation, the risk of an adverse outcome, the uncertainties of complex litigation, and the substantial benefits to be received by the Plaintiff, the State of California, and the members of the PAGA Group pursuant to this Agreement, and that a settlement with Defendant on the terms and conditions set forth herein is fair, reasonable, adequate, and in the best interests of the State of California and the PAGA Group. Plaintiffs, on their own behalf and as representatives pursuant to PAGA, have agreed to

1 settle the Litigation with Defendant on the terms set forth herein.

2 **D.** Defendant has concluded that, because of the substantial expense of defending
3 against the Litigation, the length of time necessary to resolve the issues presented herein, the
4 inconvenience involved, and the concomitant disruption to its business operations, it is in its best
5 interests to accept the terms of this Agreement. Defendant denies each of the allegations and
6 claims asserted against it in the Litigation. However, Defendant nevertheless desires to settle
7 the Litigation for the purpose of avoiding the burden, expense, and uncertainty of continuing
8 litigation, and for the purpose of putting to rest the controversies engendered by the Litigation.

9 **E.** This Agreement is intended to and does effectuate the full, final, and complete
10 resolution of all allegations and claims under the California Labor Code Private Attorneys
11 General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq., based on or arising out of alleged
12 violations of the Labor Code including all claims that could have been alleged based on the
13 factual allegations and identified Labor Code sections in the operative pleading for the Litigation.

14 **III. JURISDICTION**

15 The Court has jurisdiction over the Parties and the subject matter of this Litigation. The
16 Litigation includes claims that, while Defendant denies in their entirety, would, if proven,
17 authorize the Court to grant relief pursuant to the applicable statutes. After the Court has granted
18 approval of this Agreement, pursuant to California Code of Civil Procedure § 664.6 the Court
19 shall retain jurisdiction of this action solely for the purpose of interpreting, implementing, and
20 enforcing this Agreement consistent with the terms set forth herein, and the Parties and their
21 counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and
22 enforcing this Agreement and all orders and judgments entered in connection therewith.

23 **IV. STATEMENT OF NO ADMISSION**

24 **A.** Defendant denies liability to Plaintiffs and to the PAGA Group upon any claim
25 or cause of action. This Agreement does not constitute, and is not intended to constitute, an
26 admission by Defendant as to the merits, validity, or accuracy of any of the allegations or claims
27 made against it in the Litigation.
28

1 **B.** Nothing in this Agreement, nor any action taken in implementation thereof, nor
2 any statements, discussions, or communications, nor any materials prepared, exchanged, issued,
3 or used during the course of the negotiations leading to this Agreement, is intended by the Parties
4 to constitute, nor will any of the foregoing constitute, be introduced, be used, or be admissible
5 in any way in this case or any other judicial, arbitral, administrative, investigative or other forum
6 or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance,
7 regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties
8 themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this
9 case or any other judicial, arbitral, administrative, investigative, or other forum or proceeding,
10 as purported evidence of any violation of any federal, state, or local law, statute, ordinance,
11 regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other
12 purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before
13 the Court that has as its purpose the interpretation, implementation, or enforcement of this
14 Agreement, or any orders or judgments of the Court entered in connection with the settlement.

15 **C.** None of the documents produced or created by Plaintiffs or their counsel in
16 connection with the approval of this settlement or administration of this settlement constitute,
17 and are not intended to constitute, an admission by Defendant of any violation of any federal,
18 state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or
19 duty at law or in equity.

20 **D.** Nothing in this Agreement will be construed as an admission or
21 acknowledgement of any kind that any group should or would be given collective treatment in
22 the Litigation or in any other action or proceeding. Further, neither this Agreement nor the
23 Court's actions with regard to this Agreement will be admissible in any court or other tribunal
24 regarding the propriety of collective treatment. In the event that this Agreement is not approved
25 by the Court or any appellate court, is terminated, or otherwise fails to be enforceable, Plaintiffs
26 will not be deemed to have waived, limited, or affected in any way any claims, rights, or remedies
27 in the Litigation, and Defendant will not be deemed to have waived, limited, or affected in any
28 way any of their objections or defenses in the Litigation.

1 **V. RELEASE, DISMISSAL, AND CONFIDENTIALITY**

2 **A. Scope of PAGA Release.**

3 Upon approval of this settlement by the Court, Plaintiffs, individually and as
4 representatives acting as a proxy or agent of the LWDA, a State of California Executive Branch
5 Agency, in this Litigation, agree to release Defendant and Defendant's partners, parents,
6 subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the "Released Parties"), of
7 and from any and all claims under the California Labor Code Private Attorneys General Act of
8 2004 ("PAGA"), Labor Code §§ 2698, *et seq.*, that were or could have been alleged based on the
9 factual allegations and identified Labor Code sections in the operative pleading for the Litigation,
10 including, but not limited to, California Labor Code sections §§ 201, 202, 203, 204, 226, 226.3,
11 226.7, 510, 512, 1194, 1197, 1198, and 1199, during the time period from and including March
12 14, 2021 through August 7, 2023 (the "Released Claims"). The Parties further agree to release
13 any and all claims for costs, fees, and interest related to the Released Claims. The Parties further
14 agree that this Agreement and judgment to be entered by the Court following approval of this
15 settlement forever bars Plaintiffs and the LWDA, directly or through any other proxy or agent,
16 from any future prosecution of any of the Released Claims against any of the Released Parties.

17 **B. General Release by Plaintiffs Only.**

18 In addition to the release in Section V.A, in exchange for the consideration set forth in
19 this agreement, Plaintiffs make the additional following general release of all claims, known or
20 unknown: Plaintiffs release Defendant and the Released Parties, from all claims, demands, rights,
21 liabilities, and causes of action of every nature and description whatsoever, known or unknown,
22 asserted or that might have been asserted, whether in tort, contract, or for violation of any state
23 or federal statute, rule, regulation, or ordinance arising out of, relating to, or in connection with
24 each Plaintiffs' respective employment with Defendant through the date of this Agreement as
25 well as any and all acts or omissions by or on the part of Defendant through the date of this
26 Agreement. (The release set forth in this Paragraph shall be referred to hereinafter as the
27 "Plaintiffs' General Release.") With respect to the Plaintiffs' General Release, the Plaintiffs
28 stipulate and agree that, upon the Effective Date, Plaintiffs shall be deemed to have expressly

1 waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits
2 of Section 1542 of the California Civil Code, or any other similar provision under federal or state
3 law, which provides:

4 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**
5 **THAT THE CREDITOR OR RELEASING PARTY DOES**
6 **NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
7 **FAVOR AT THE TIME OF EXECUTING THE RELEASE**
8 **AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE**
9 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT**
10 **WITH THE DEBTOR OR RELEASED PARTY.**

11 Cal. Civ. Code § 1542. Accordingly, if the facts relating in any manner to this Settlement are
12 found hereafter to be other than or different from the facts now believed to be true, the release of
13 claims contained in the Plaintiffs' General Release shall be effective as to all unknown claims.

14 However, specifically excluded from this general release of claims by Plaintiffs are any
15 claims for or relating to workers' compensation, unemployment insurance, or any other claims
16 that cannot be waived by law. In addition, the Parties recognize and agree that Plaintiff
17 Guevara's individual release specifically carves out all of her existing non-individual PAGA
18 claims alleged in her demand for arbitration, AAA Case No. 01-23-0001-0387, including
19 violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and Business
20 and Professions Code Sections 17200, et seq.

21 **VI. SETTLEMENT ADMINISTRATOR**

22 Plaintiffs and Defendant, through their respective counsel, have selected Simpluris, Inc.
23 as the Settlement Administrator to administer the settlement, which includes but is not limited
24 to distributing and responding to inquiries about the Notice of Settlement and calculating all
25 amounts to be paid from the Settlement Amount, including the Individual Settlement Payments.
26 The Administrative Costs are estimated to be no more than \$17,500.00 and will be paid from the
27 Settlement Amount. Any charges and expenses of the Settlement Administrator greater than the
28 allocated \$17,500.00 will come from the Settlement Amount. If the actual Administrative Costs
are less than the Parties' estimation, the difference between the actual and estimated
Administrative Costs will be included in the Net Settlement Amount.

1 **VII. NOTICE**

2 Plaintiffs and Defendant, through their respective attorneys, have jointly prepared a
3 Notice of Settlement (the "Notice"), in the form attached hereto as **Exhibit "A"** which in
4 substance will be provided to the members of the PAGA Group as follows:

5 As soon as practicable following approval of the settlement, but no later than 30 calendar
6 days after the Court's approves the settlement, Defendant will provide to the Settlement
7 Administrator the following information about each PAGA Group member: (1) name; (2) last
8 known home address; (3) number of pay periods as a PAGA Group member during the PAGA
9 Release Period; and (4) social security number (collectively referred to as the "PAGA List").

10 The Settlement Administrator shall run all the addresses provided through the United
11 States Postal Service NCOA database, which provides updated addresses for any individual who
12 has moved in the previous four years who has notified the U.S. Postal Service of a forwarding
13 address, to obtain current address information. Within 30 calendar days after the Settlement
14 Administrator's receipt of the PAGA List, the Settlement Administrator will mail the Notice
15 together with the Individual Settlement Payments to all PAGA Group members by first-class
16 United States mail, postage prepaid, with directions to the Postmaster to forward the Notice and
17 return all undeliverable Notices to the Settlement Administrator. For each Notice and Individual
18 Settlement Payment that is returned as undeliverable, the Settlement Administrator shall
19 promptly attempt to locate the PAGA Group member by performing an additional skip trace
20 search and shall re-mail the Notice and Individual Settlement Payment no later than 10 calendar
21 days following receipt of the undeliverable Notice.

22 **VIII. COMPUTATION AND DISTRIBUTION OF PAYMENTS**

23 **A. Distribution Formula.**

24 The portion of the Net Settlement Amount to be distributed to the PAGA Group shall be
25 divided by the total number of full pay periods, with partial pay periods rounded up to the next
26 whole number, as determined by Defendant's records, for all times during the PAGA Release
27 Period which the PAGA Group worked for Defendant. This amount shall be known as the "Pay
28 Period Value." Each member of the PAGA Group shall be paid an amount equal to the number

1 of individual pay periods he or she worked for Defendant during the PAGA Release Period
2 multiplied by the Pay Period Value.

3 **B. Funding of the Settlement Amount.**

4 The funding of the Settlement Amount by Defendant will be completed at one time with
5 funds provided to and escrowed by the Settlement Administrator. The Settlement Amount shall
6 be deposited with the Settlement Administrator by Defendant within 30 calendar days of the date
7 of the Effective Date.

8 If a PAGA Group member is deceased at the time of distribution, the Settlement
9 Administrator shall distribute the deceased PAGA Group member's Individual Settlement
10 Payment to the deceased PAGA Group member's legal heir(s). In the event of a dispute as to
11 the legal heir(s), the Settlement Administrator shall notify the executor of the deceased PAGA
12 Group member's estate and attempt to place the deceased PAGA Group member's payment in
13 escrow or similar disposition such that any competing heirs may take whatever action they wish
14 to resolve ultimate disposition of such money and the Settlement Administrator and the Parties
15 hereto may disclaim any further interest in or obligation in relation to such money.

16 If a check is returned to the Settlement Administrator as undeliverable, the Settlement
17 Administrator shall promptly attempt to obtain a valid mailing address by performing a skip trace
18 search and, if another address is identified, shall mail the check to the newly identified address.
19 If the Settlement Administrator is unable to obtain a valid mailing address through this process,
20 after the check void date, the monies represented by the check shall be sent to the LWDA.

21 Settlement checks will specifically indicate that they are void if not negotiated within
22 180 days of their issuance. Any settlement checks that remain uncashed 180 or more calendar
23 days after issuance by the Settlement Administrator shall be voided and the Settlement
24 Administrator will remit the entire amount of each PAGA Group member's uncashed Individual
25 Settlement Payment to the LWDA.

26 **C. Time for Distribution of the Enhancements to Plaintiff, Attorneys' Fees and**
27 **Litigation Costs to Plaintiffs' Counsel, the LWDA Payment and**
28 **Administrative Costs.**

1 The Settlement Administrator shall cause the Court approved enhancements to Plaintiffs,
2 attorneys' fees and litigation costs awarded to Plaintiffs' Counsel, and the LWDA Payment to
3 be paid within 30 days of the funding of the Settlement Amount. The Settlement Administrator
4 may pay itself the Court-approved administrative costs once the Individual Settlement Payments
5 have been mailed out.

6 **IX. NO CONTRIBUTIONS TO EMPLOYEE BENEFIT PLAN**

7 The amounts paid under this Agreement do not represent a modification of any
8 previously credited hours of service under any employee benefit plan, policy, or bonus program
9 sponsored by Defendant. Such amounts will not form the basis for additional contributions to,
10 benefits under, or any other monetary entitlement under, benefit plans (self-insured or not)
11 sponsored by Defendant, policies or bonus programs. Any payments made under the terms of
12 this Agreement shall not be applied retroactively, currently, or on a going forward basis as salary,
13 earnings, wages, or any other form of compensation for the purposes of Defendant's benefit plan,
14 policy or bonus program. Defendant retains the right to modify the language of its benefit plans,
15 policies, and bonus programs to effect this intent and to make clear that any amounts paid
16 pursuant to this Agreement are not for "hours worked," "hours paid," "hours of service," or any
17 similar measuring term as defined by applicable plans, policies, and bonus programs for purpose
18 of eligibility, vesting, benefit accrual or any other purpose, and that additional contributions or
19 benefits are not required by this Agreement.

20 **X. PLAINTIFFS' COUNSEL ATTORNEYS' FEES AND LITIGATION COSTS**

21 Defendant shall not oppose an application by Plaintiffs' Counsel for, and Plaintiffs'
22 Counsel shall not seek or receive an amount in excess of \$650,000.00, which represents one-
23 third of the Settlement Amount, for all past and future attorneys' fees necessary to prosecute,
24 settle, and administer the Litigation and this Agreement. Additionally, Defendant shall not
25 oppose an application by Plaintiffs' Counsel for reimbursement of all past and future litigation
26 costs and expenses necessary to prosecute, settle, and administer the Litigation and this
27 Agreement, which Plaintiffs' Counsel estimates will not exceed \$25,000.00. Any attorneys' fees
28 or litigation costs awarded to Plaintiffs' Counsel by the Court shall be deducted from the

1 Settlement Amount for the purpose of determining the Net Settlement Amount. This amount
2 shall include all attorneys' fees, litigation costs, and expenses for which Plaintiffs and Plaintiffs'
3 Counsel could claim in this Litigation under any legal theory whatsoever. Should the Court
4 approve a lesser percentage or amount of fees and/or litigation costs than the amount that
5 Plaintiffs' Counsel ultimately seeks, then the unapproved portion or portions shall revert to the
6 Net Settlement Amount.

7 **XI. ENHANCEMENTS TO PLAINTIFFS**

8 Defendant shall not oppose an application by Plaintiffs to seek or receive an amount not
9 to exceed \$10,000.00 per Plaintiff for their respective participation in and assistance with the
10 Litigation. Any enhancement awarded to Plaintiffs by the Court shall be deducted from the
11 Settlement Amount for the purpose of determining the Net Settlement Amount, and shall be
12 reported on IRS Form 1099-misc. If the Court approves enhancements of less than \$10,000.00
13 per Plaintiff, then the unapproved portion or portions shall revert into the Net Settlement
14 Amount.

15 **XII. TAXATION AND ALLOCATION**

16 For withholding tax characterization purposes and payment of taxes, the Net Settlement
17 Amount shall be deemed and is allocated by the Parties as follows ("Net Settlement Allocation"):
18 100% as penalties.

19 PAGA Group members may receive an IRS Form 1099 for their portion of the settlement,
20 if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

21 **XIII. COURT APPROVAL**

22 This Agreement is contingent upon approval by the Court. Plaintiffs and Defendant agree
23 to take all steps as may be reasonably necessary to secure approval of this Agreement, to the
24 extent not inconsistent with the terms of this Agreement, and will not take any action adverse to
25 each other in obtaining Court approval of this Agreement in all respects.

26 **XIV. APPRISAL AND CERTIFICATION BY THE SETTLEMENT ADMINISTRATOR**

27 The Settlement Administrator shall keep Plaintiffs' Counsel and Defendant's Counsel
28 apprised of all distributions from the Settlement Amount. Upon completion of administration of

1 the Settlement, the Settlement Administrator shall provide written certification of such
2 completion to Plaintiffs' Counsel and Defendant's Counsel. The Settlement Administrator shall
3 also provide a final accounting, including the names of payees and the amounts of the Individual
4 Settlement Payments.

5 **XV. MISCELLANEOUS PROVISIONS**

6 **A. Stay of Litigation.**

7 Plaintiffs and Defendant agree to the stay of all discovery in the Litigation, pending
8 approval of this Agreement by the Court.

9 **B. Interpretation of the Agreement.**

10 This Agreement constitutes the entire agreement between Plaintiffs and Defendant.
11 Except as expressly provided herein, this Agreement has not been executed in reliance upon any
12 other written or oral representations or terms, and no such extrinsic oral or written
13 representations or terms shall modify, vary, or contradict its terms. In entering into this
14 Agreement, the Parties agree that this Agreement is to be construed according to its terms and
15 may not be varied or contradicted by extrinsic evidence. This Agreement will be interpreted and
16 enforced under the laws of the State of California, both in its procedural and substantive aspects,
17 without regard to its conflict of law's provisions. Any claim arising out of or relating to this
18 Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior
19 Court of the State of California for the County of Merced, and Plaintiffs and Defendant hereby
20 consent to the personal jurisdiction of the Court over them solely in connection therewith.
21 Plaintiffs, on their own behalf and on behalf of the PAGA Group and the State of California, and
22 Defendant participated in the negotiation and drafting of this Agreement, and had available to
23 them the advice and assistance of independent counsel. As such, neither Plaintiffs nor Defendant
24 may claim that any ambiguity in this Agreement should be construed against the other.

25 The terms and conditions of this Agreement constitute the exclusive and final
26 understanding and expression of all agreements between Plaintiffs and Defendant with respect
27 to the resolution of the Litigation. This Agreement may be modified only by a writing signed
28 by counsel for all Parties or their successors-in-interest.

1 **C. Further Cooperation.**

2 Plaintiffs and Defendant and their respective attorneys shall proceed diligently to prepare
3 and execute all documents, to seek approval of this Agreement from the Court, and to do all
4 things reasonably necessary or convenient to consummate this Agreement as expeditiously as
5 possible.

6 **D. Counterparts.**

7 This Agreement may be executed in one or more actual or non-original counterparts, all
8 of which will be considered one and the same instrument and all of which will be considered
9 duplicate originals.

10 **F. Authority.**

11 Each individual signing below warrants that he or she has the authority to execute this
12 Agreement on behalf of the party for whom or which that individual signs.

13 **G. No Third-Party Beneficiaries.**

14 Plaintiff, members of the PAGA Group, the State of California, Defendant and Released
15 Parties are direct beneficiaries of this Agreement. The Parties are not aware of any third-party
16 beneficiaries.

17 **H. Deadlines Falling on Weekends or Holidays.**

18 To the extent that any deadline set forth in this Agreement falls on a Saturday, Sunday,
19 or legal holiday, that deadline shall be continued until the following business day.

20 **J. Severability.**

21 In the event that any one or more of the provisions contained in this Agreement shall for
22 any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
23 unenforceability shall in no way effect any other provision if Defendant's Counsel and Plaintiffs'
24 Counsel, on behalf of the Parties and the PAGA Group, mutually elect in writing to proceed as
25 if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

26 **K. Defendant's Fees and Costs**

27 All of Defendant's own legal fees, costs and expenses incurred in this Litigation shall be
28 borne by Defendant.

1 **APPROVED AS TO CONTENT:**

2 10/22/2023

3 DATED: October __, 2023

DocuSigned by:

Kaylyn Bush

Kaylyn Bush

5 DATED: October __, 2023

Madeleine Guevara

8 DATED: October __, 2023

DUTCH BROS., LLC

By: _____

12 **APPROVED AS TO FORM:**

13 DATED: October 23, 2023

KELLER GROVER LLP

By: _____

Eric A. Grover

Robert W. Spencer

Attorney for Plaintiff Bush

19 DATED: October __, 2023

LAVI & EBRAHIMIAN, LLP

By: _____

Joseph Lavi

Vincent C. Granberry

Courtney M. Miller

Attorney for Plaintiff Guevara

25 DATE: October __, 2023

LITTLER MENDELSON, P.C.

By: _____

Robert J. Wilger

Benjamin A. Emmert

Attorneys for Defendant

APPROVED AS TO CONTENT:

DATED: October __, 2023

Kaylyn Bush

DATED: October ²³, 2023

DocuSigned by:

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Madeleine Guevara

DATED: October __, 2023

DUTCH BROS., LLC

By:

APPROVED AS TO FORM:

DATED: October __, 2023

KELLER GROVER LLP

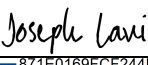
By: _____

Eric A. Grover
Robert W. Spencer
Attorney for Plaintiff Bush

DATED: October ²⁴, 2023

LAVI & EBRAHIMIAN, LLP

By: _____

DocuSigned by:

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Joseph Lavi
Vincent C. Granberry
Courtney M. Miller
Attorney for Plaintiff Guevara

DATE: October __, 2023

LITTLER MENDELSON, P.C.

By: _____

Robert J. Wilger
Benjamin A. Emmert
Attorneys for Defendant

1 **APPROVED AS TO CONTENT:**

2
3 DATED: October ___, 2023

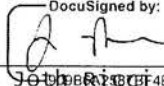
Kaylyn Bush

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5 DATED: October ___, 2023

Madeleine Guevara

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8 DATED: October 23, 2023

DUTCH BROS., LLC

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By: 
DocuSigned by:
Robert W. Spencer
Chief Executive Officer

12 **APPROVED AS TO FORM:**

13 DATED: October ___, 2023

KELLER GROVER LLP

By: _____
Eric A. Grover
Robert W. Spencer
Attorney for Plaintiff Bush

19 DATED: October ___, 2023

LAVI & EBRAHIMIAN, LLP

By: _____
Joseph Lavi
Vincent C. Granberry
Courtney M. Miller
Attorney for Plaintiff Guevara

24
25
26
27
28
DATE: October 23, 2023

LITTLER MENDELSON, P.C.

By: 
Robert J. Wilger
Benjamin A. Emmert
Attorneys for Defendant

EXHIBIT A

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

KAYLYN BUSH and MADELEINE
GUEVARA, on behalf of all aggrieved
employees,

Plaintiffs,

v.

DUTCH BROS., LLC; and DOES 1
through 50, inclusive,

Defendants.

Case No. 22CV-01415

**NOTICE OF SETTLEMENT OF PRIVATE
ATTORNEYS GENERAL ACT CLAIMS
(CAL. LABOR CODE §§ 2698, *ET SEQ.*)**

You have been identified as an hourly, non-exempt employee who worked for Dutch Bros, LLC ("Dutch Bros." or "Defendant") in California between March 14, 2021 and August 7, 2023, inclusive ("Covered Employee").

On May 19, 2022, a complaint was filed in Merced County Superior Court (the "Court") to recover civil penalties pursuant to the California Labor Code Private Attorneys General Act of 2004, codified at Labor Code §§ 2698, *et seq.* ("PAGA"). A First Amended Complaint was filed on October 9, 2023. The lawsuit alleges that Covered Employees were, among other things, were not provided proper meal periods or rest breaks and worked off-the-clock without compensation.

Dutch Bros. denies all of Plaintiffs' allegations and disputes all of Plaintiffs' claims.

Plaintiffs and Defendant reached a settlement of the claims for PAGA civil penalties alleged in the lawsuit. The Court approved the settlement on _____. By law, 75% of the civil penalties are paid to the State of California's Labor and Workforce Development Agency ("LWDA") for the enforcement of the state's labor laws and 25% are paid to the PAGA Group.

Pursuant to the settlement agreement, the amount to be distributed to the PAGA Group shall be divided by the total number of full pay periods, with partial pay periods rounded up to the next whole number, as determined by Defendant's records, worked by all Covered Employees between March 14, 2021 and August 7, 2023, inclusive. This amount shall be known as the "Pay Period Value." Each Covered Employee shall be paid an amount equal to the number of individual pay periods he or she worked for Defendant between March 14, 2021 and August 7, 2023, inclusive. Your Individual Settlement Payment is provided with this Notice.

The Court-approved settlement contains the following release of claims, which is meant to bar any future litigation by Plaintiffs and the California Labor & Workforce Development Agency (“LWDA”), either directly or through any other proxy or agent:

Upon approval of this settlement by the Court, Plaintiff, individually and as a representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, in this Litigation, agree to release Defendant and Defendant’s partners, parents, subsidiaries, affiliates, attorneys, and all agents thereof (collectively, the “Released Parties”), of and from any and all claims under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2698, *et seq.*, that were or could have been alleged based on the factual allegations and identified Labor Code sections in the operative pleading for the Litigation, including, but not limited to, California Labor Code sections §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 512, 1194, 1197, 1198, and 1199, during the time period from and including March 14, 2021 through August 7, 2023 (the “Released Claims”). The Parties further agree to release any and all claims for costs, fees, and interest related to the Released Claims. The Parties further agree that this Agreement and judgment to be entered by the Court following approval of this settlement forever bars Plaintiff and the LWDA, directly or through any other proxy or agent, from any future prosecution of any of the Released Claims against any of the Released Parties.

This release of claims does not cover any other claims you may have against Defendant.

If you have any questions or would like a copy of the settlement agreement approved by the Court, please contact the Settlement Administrator at _____.

EXHIBIT 2

KELLER GROVER LLP

1965 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103
TELEPHONE: (415) 543-1305
FAX: (415) 543-7861

Robert Spencer, Esq.
rspencer@kellergrover.com

March 14, 2022

Via Online Submission Only

California Labor & Workforce
Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

Re: Dutch Bros., LLC

Dear Sir or Madam:

The undersigned represents Kaylyn Bush, a former employees of Dutch Bros., LLC ("Dutch Bros"), on behalf of aggrieved employees currently and formerly employed in the State of California by Dutch Bros. The purpose of this letter is to comply with the statutory exhaustion requirements of Labor Code § 2699.3 before commencing an action under Labor Code §§ 2699, *et seq.* alleging violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 512, 1198, and 1199.

Dutch Bros operates coffee shops throughout California. Ms. Bush worked for Dutch Bros from approximately July 9, 2021 through February 1, 2022 as an hourly barista at a Dutch Bros' coffee shop in Stockton, California.

Dutch Bros violated Labor Code §§ 226.7, 512, 1198, and 1199, and IWC Wage Order 5-2001 by failing to provide Ms. Bush and other aggrieved employees with adequate meal periods due to understaffing. Ms. Bush worked numerous shifts over five hours, entitling her to take a meal period. Ms. Bush desired to take her meal periods and did not waive them, however she was unable to take such meal periods due to understaffing. Dutch Bros did not pay Ms. Bush premium pay for these violations. On information and belief, other aggrieved employees also failed to receive timely meal periods of at least 30 minutes in length and did not receive premium pay for meal period violations.

Dutch Bros violated Labor Code §§ 226.7, 1198, and 1199, and IWC Wage Order 5-2001 by failing to authorize and permit Ms. Bush and other aggrieved employees to take adequate rest breaks. Ms. Bush worked part time, however she still worked numerous shifts entitling her to take rest periods. Ms. Bush was not able to take her rest periods due to understaffing. Ms. Bush did not receive premium pay for any of these rest break violations. Similarly, other aggrieved employees also did not receive their legally required rest breaks and were not paid premium pay for such

violations.

Due to the violations described above, Ms. Bush and other aggrieved employees did not receive all wages in a timely manner as required by Labor Code § 204.

Moreover, those who are no longer employed by Dutch Bros did not receive all wages due at the time of discharge, a violation of Labor Code §§ 201, 202, and 203. These aggrieved employees are owed premium pay for missed/short meal periods and rest breaks. Further, Ms. Bush's final day was February 1, 2022 and she has yet to receive her final check. It is now over one month late. On information and belief, Dutch Bros similarly failed to pay other aggrieved employees their final check on their last day of employment.

Ms. Bush and other aggrieved employees received itemized wage statements that failed to comply with Labor Code § 226(a). The wage statements issued to Ms. Bush and other aggrieved employees did not show the correct gross and net wages earned as they are missing the premium pay for missed meal and rest periods as described above. Through these violations, Dutch Bros has violated Labor Code §§ 226(a) and 226.3.

Notice to Dutch Bros of Attempt to Settle this Dispute:

This notice shall represent Ms. Bush's reasonable attempt to settle this dispute with Dutch Bros prior to litigation. Under *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal. 4th 553, this notice serves to apprise Dutch Bros of Ms. Bush's mentioned grievances and the proposed remedies as detailed below, while affording Dutch Bros a reasonable opportunity to meet Ms. Bush's demands.

Demand is hereby made that Dutch Bros shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Dutch Bros shall comply with all California labor and employment laws and ensure that all non-exempt employees are given required meal periods and rest breaks.
2. Dutch Bros shall pay Ms. Bush and all other hourly employees employed California at any time during the past 48 months back pay and compensation, and out-of-pocket business expenses for all of the above-referenced violations.
3. Dutch Bros shall pay each non-exempt employee one hour of pay for each workday during the liability period on which he or she was not authorized and permitted to take one or more of the meal periods required by Labor Code §§ 226.7, 512, 1198, and 1199 and IWC Wage Order 5-2001, § 11.

4. Dutch Bros shall pay each non-exempt employee one hour of pay for each workday during the liability period on which he or she was not authorized and permitted to take one or more of the paid rest periods required by Labor Code §§ 226.7, 1198, and 1199 and IWC Wage Order 5-2001, § 12.

5. Dutch Bros shall pay waiting time penalties equal to 30 days of pay to each former non-exempt employee who was not paid all wages due as described herein.

6. Dutch Bros shall pay accrued interest to all employees on all sums owed (other than penalties) at the rate of ten percent per annum.

7. Dutch Bros shall pay Labor Code § 226(e) penalties for each violation of Labor Code § 226(a).

8. Dutch Bros shall pay the aggrieved employees all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and under PAGA, Labor Code §§ 2698 *et seq.*, including but not limited to penalties under Labor Code §§ Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 512, 1198, and 1199.

Conclusion:

If you have any questions, please feel free to telephone me at (415) 543-1305. In addition, should Dutch Bros wish to discuss resolution of the issues raised in this letter, they should direct counsel to contact me at the same telephone number.

Thank you for your attention to this matter.

Sincerely,



ROBERT SPENCER

cc: Dutch Bros LLC
Attn: Legal Dept
110 SW 4th Street
Grants Pass, Oregon 97526-8533
Return Receipt No: 7022 0410 0002 3830 9443

California Labor & Workforce Development Agency
March 14, 2022
Page 4

Dutch Bros LLC
Attn: Legal Dept
PO Box 1929
Grants Pass, Oregon 97528
Return Receipt No: 7018 3090 0000 4428 9395

Keller Grover LLP
1965 Market Street
San Francisco, CA 94103

CERTIFIED MAIL®



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Dutch Bros. Legal Dept

Street and Apt. No., or PO Box No.

110 SW 4th Street

City, State, ZIP+4®

Grants Pass, OR 97526

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
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Dutch Bros LLC
Attn: Legal Dept
110 SW 4th Street
Grants Pass, Oregon 97526-8533

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MAR 14 2022

Keller Grover LLP
1965 Market Street
San Francisco, CA 94103

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Domestic Mail Only

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☒ Return Receipt (hardcopy) \$ 3.05

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage

\$ 2.53

Total Postage and Fees

\$ 7.33

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Legal Dept

Street and Apt. No., or PO Box No.

PO Box 1929

City, State, ZIP+4®

Grants Pass, OR 97528

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Dutch Bros LLC
Attn: Legal Dept
PO Box 1929
Grants Pass, Oregon 97528

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dutch Bros LLC
Attn: Legal Dept
110 SW 4th Street
Grants Pass, Oregon 97526-8533

7022 0410 0002 3830 9443

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail
☐ Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
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Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Dutch Bros LLC
Attn: Legal Dept.
PO Box 1929
Grants Pass, Oregon 97528

7018 3090 0000 4428 9395

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☒ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Mail
☐ Mail Restricted Delivery (over \$500)
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☒ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Dutch Bros LLC
Attn: Legal Dept.
PO Box 1929
Grants Pass, Oregon 97528

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent ☐ Addressee
- B. Received by (Printed Name) Daniel Mottman C. Date of Delivery 5/21/22
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type
- ☐ Adult Signature
 - ☐ Adult Signature Restricted Delivery
 - ☒ Certified Mail®
 - ☐ Certified Mail Restricted Delivery
 - ☐ Collect on Delivery
 - ☐ Collect on Delivery Restricted Delivery
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 - ☐ d Mail Restricted Delivery
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 - ☐ Registered Mail™
 - ☐ Registered Mail Restricted Delivery
 - ☒ Return Receipt for Merchandise
 - ☐ Signature Confirmation™
 - ☐ Signature Confirmation Restricted Delivery

7018 3090 0000 4428 9395

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Attn: Legal Department
Dutch Bros LLC
110 SW 4th Street
Grants Pass, Oregon 97526-8533

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C-6 Car-19

C. Date of Delivery

2/11/22

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail™ Restricted Delivery
- ☒ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

ii

Restricted Delivery

(over \$500)

7021 2720 0002 4788 9331

PS Form 3811, July 2020 PSN 7530-02-000-9053

Return Receipt

Robert Spencer

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, March 14, 2022 2:52 PM
To: Robert Spencer
Subject: Thank you for submission of your PAGA Case.

3/14/2022

LWDA Case No. LWDA-CM-873399-22
Law Firm : Keller Grover LLP
Plaintiff Name : Kaylyn Bush
Employer: Dutch Bros., LLC
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT 3

KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiff
KAYLYN BUSH

[Additional Counsel on Next Page]

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

KAYLYN BUSH and MADELEINE
GUEVARA, on behalf of themselves, and all
aggrieved employees,

Plaintiff,

v.

DUTCH BROS., LLC; and DOES 1 through
100, inclusive,

Defendants.

) Case No: 22CV-01415
)
) REPRESENTATIVE ACTION
)
) **REPRESENTATIVE ACTION FIRST**
) **AMENDED COMPLAINT FOR:**
)
) **1. VIOLATIONS OF THE LABOR CODE;**
) **2. PENALTIES; and**
) **3. ATTORNEYS' FEES.**
)
)
)
)
)
)

ELECTRONICALLY FILED
Merced Superior Court
10/9/2023 12:05 PM
Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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Joseph Lavi (SBN 209776)
jlavi@lelawfirm.com
Vincent C. Granberry (SBN 276483)
vgranberry@lelawfirm.com
Courtney M. Miller (SBN 327850)
cmiller@lelawfirm.com
whts@lelawfirm.com
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001

Attorneys for Plaintiff
MADELEINE GUEVARA

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

4 **I. JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over Plaintiffs’ claims, based on, among
6 other statutes, California Labor Code §§ 201, 202, 203, 204, 226(a), 226.3, 226.7, 510, 512,
7 1194, 1197, 1198, and 1199. In particular, Plaintiffs have complied with all California Labor
8 Code § 2699.3 requirements for commencing a civil action under the California Private
9 Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

10 2. This Court has personal jurisdiction over the parties because, at all relevant times,
11 Plaintiffs were California residents 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,
19 and (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
22 business entity fails to designate with the office of the California Secretary of State a principal
23 place of business in California, it is subject to being sued in any county in the state that plaintiff
24 desires. On information and belief, as of the date this Complaint is filed, Defendant DUTCH
25 BROS., LLC, is a foreign business entity and has failed to designate a principal place of business
26 in 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. Plaintiff MADELEINE GUEVARA is an adult who worked for Defendants from
3 approximately June 10, 2021 through August 24, 2022 as an hourly barista at a DUTCH BROS'
4 coffee shop in Turlock, California.

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

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

16 8. On behalf of the State of California and all aggrieved employees who worked as
17 hourly non-exempt employees in California at any time or times during the applicable statute of
18 limitations, Plaintiffs seek all applicable penalties, interest, attorneys' fees, costs and other sums
19 for each violation of: (a) California Labor Code §§ 226.7, 512, 1198 and 1999 and the IWC
20 Wage Order No. 5 (failure to provide meal periods); (b) California Labor Code § 226.7, 1198
21 and 1199 and IWC Wage Order No. 5 (failure to authorize and permit rest breaks); (c) policy and
22 practice of violating California Labor Code §§ 226 and 226.3 (failure to provide accurate
23 itemized wage statements); (d) California Labor Code §§ 510, 1194, and 1197 (failure to
24 compensate employees for all hours worked); (e) California Labor code § 204 (failure to pay
25 wages in a timely manner); and (f) California Labor Code §§ 201-203 (failure to pay former
26 aggrieved employees all wages due and owing at the time of discharge or voluntary quit).

27 **III. FACTUAL ALLEGATIONS**

28 9. This is a representative action under California Labor Code §§ 2698, *et seq.*,

KELLER GROVER LLP

1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

1 seeking PAGA penalties interest, attorneys' fees, costs and other sums for violations of the Labor
2 Code.

3 10. DUTCH BROS operates retail coffee shops throughout California.

4 11. At all relevant times to this action, Plaintiffs performed work for DUTCH BROS
5 as hourly baristas. During their employment with DUTCH BROS as a barista, Plaintiffs
6 generally worked part time, however each worked numerous shifts over five hours.

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

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

25 14. California Labor Code § 226 provides that every employer is required,
26 "semimonthly or at the time of each payment of wages," to provide each employee with an
27 itemized wage statement setting forth, *inter alia*, the total hours worked by the employee (except
28 for salaried employees) "gross wages earned." Cal. Lab. Code § 226(a). Defendants

implemented a policy and practice of violating California Labor Code § 226 by failing to provide complete and accurate itemized wage statements to Plaintiffs and other aggrieved employees in that the wage statements provided did not, among other things, display the correct “gross wages earned” in violation of California Labor Code § 226(a) as they did not include premium payments for missed meal and rest periods. Through its violation of Labor Code § 226(a), Defendants also violated Labor Code § 226.3.

15. DUTCH BROS employed a policy and practice of failing to pay Plaintiffs and other aggrieved employees for all hours worked, including participating in off-the-clock training, participating in pre- and post-shift meetings while not clocked-in, and by requiring off-the-clock identify verification checks, all in violation of Labor Code §§ 510, 1194, and 1197.

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

17. Defendants had a policy and practice of violating California Labor Code §§ 201-203 by failing to pay Plaintiffs 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 Plaintiffs and other aggrieved employees their final pay in a timely manner. Plaintiffs 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

18. Plaintiffs seek 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.

19. On behalf of all non-exempt aggrieved employees, Plaintiffs seek 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) §§ 510, 1194, and 1197 (failure to pay employees for all hours worked);
- (e) § 204 (failure to pay wages in a timely manner); and
- (f) §§ 201-203 (failure to pay wages upon termination);

20. The State of California has an enforcement interest in the questions of law and fact affecting the aggrieved employees whom Plaintiffs seek 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 failing to provide aggrieved employees with all of their required off-duty meal periods and failing to pay the required missed-meal-period premiums for each meal period that was not provided; (2) violated the Labor Code and IWC Wage Order No. 5 by failing to authorize and permit aggrieved employees to take all of their required paid rest breaks and failing to pay the required missed-rest-break premium for each paid rest break not allowed or permitted; (3) violated Labor Code §§ 226 and 226.3 by failing to provide aggrieved employees with accurate and itemized wage statements; (4) violated Labor Code §§ 510, 1194, and 1197 failing aggrieved employees for all hours worked; (5) violated Labor Code § 204 by failing to pay aggrieved employees their wages in a timely manner as required by that section; and (6) violated Labor Code §§ 201-203 by failing to pay departing aggrieved employees all wages due at the time of discharge or voluntary quit.

21. Plaintiffs' claims are typical of the claims of the aggrieved employees whom Plaintiffs seek to represent on a representative basis and their interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiffs will fairly and adequately represent the interests of the aggrieved employees whom they seek to represent because Plaintiffs are also aggrieved employees and their claims are typical of those of the aggrieved employees. Plaintiffs have retained attorneys who are experienced in the prosecution of representative actions and Plaintiffs intend to prosecute this action vigorously.

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

23. Plaintiffs request permission to amend the Complaint to include additional representatives if Plaintiffs are deemed not to be adequate representatives of the aggrieved employees.

V. FIRST CAUSE OF ACTION

(FAILURE TO PROVIDE MEAL PERIODS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

24. Plaintiffs repeat and reallege each and every paragraph above as though fully set forth herein.

25. 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.

26. Plaintiffs are “aggrieved employees” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because they are persons who were employed by the alleged violators and against whom one or more of the alleged violations was committed.

27. Plaintiffs have met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.7, 512, 1198 and 1199 and IWC Wage Order No. 5.

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

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

30. Plaintiffs further seek reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiffs pray for relief as set forth below.

VI. Second CAUSE OF ACTION

(FAILURE TO AUTHORIZE AND PERMIT REST PERIODS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

31. Plaintiffs repeat and reallege each and every paragraph above as though fully set forth herein.

32. 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.

33. Plaintiffs are “aggrieved employees” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because they are persons who were employed by the alleged violators and against whom one or more of the alleged violations was committed.

34. Plaintiffs have met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 226.7, 1198 and 1199 and IWC Wage Order No. 5.

35. By the actions alleged herein, Defendants failed to authorize and permit aggrieved employees to take their required rest periods in violation of Labor Code §§ 226.7, 1198 and 1199 and IWC Wage Order No. 5.

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

37. Plaintiffs further seek reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiffs pray for relief as set forth below.

VII. THIRD CAUSE OF ACTION

(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

38. Plaintiffs repeat and reallege each and every paragraph above as though fully set forth herein.

39. California Labor Code § 2699(f) permits “aggrieved employees” to recover

1 certain penalties on their own behalf and on behalf of other current and former employees.

2 40. Plaintiffs are “aggrieved employees” as that term is defined in the Labor Code
3 Private Attorneys General Act of 2004 because they are persons who were employed by the
4 alleged violators and against whom one or more of the alleged violations was committed.

5 41. Plaintiffs have met all of the Labor Code § 2699.3 requirements to commence a
6 civil action against Defendants for violations of Labor Code §§ 226(a) and 226.3.

7 42. By the actions alleged herein, Defendants have failed to comply with Labor Code
8 § 226(a) as it relates to Plaintiffs and the other aggrieved employees. As alleged above, DUTCH
9 BROS employs a policy and practice of failing to provide complete and accurate itemized wage
10 statements to Plaintiffs and other aggrieved employees as required by Labor Code § 226(a) in
11 that the wage statements provided do not, among other things, display the correct “gross wages
12 earned” as the statements do not include premium pay for missed meal and rest periods.

13 43. Therefore, Plaintiffs, for themselves and all current and former aggrieved
14 employees on behalf of the State of California, demands the Labor Code § 226.3 penalties
15 provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to
16 Defendants’ violations of Labor Code § 226(a), Plaintiffs alternatively will seek Labor Code §
17 2699(f) penalties.)

18 44. Plaintiffs further seek reasonable attorneys’ fees and costs under Labor Code §
19 2699(g)(1).

20 Wherefore, Plaintiffs pray for relief as set forth below.

21 **VIII. FOURTH CAUSE OF ACTION**

22 **(FAILURE TO PAY FOR ALL HOURS WORKED –**

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

24 45. Plaintiffs repeat and reallege each and every paragraph above as though fully set
25 forth herein.

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

28 47. Plaintiffs are “aggrieved employees” as that term is defined in the Labor Code

1 Private Attorneys General Act of 2004 because they are persons who were employed by the
2 alleged violators and against whom one or more of the alleged violations was committed.

3 48. Plaintiff have met all of the Labor Code § 2699.3 requirements to commence a
4 civil action against Defendants for violations of Labor Code §§ 510, 1194 and 1197 and IWC
5 Wage Order No. 5.

6 49. By the actions alleged herein, Defendants failed to pay aggrieved employees for
7 all hours worked in violation of Labor Code §§ 510, 1194 and 1197 and IWC Wage Order No. 5.

8 50. Therefore, Plaintiffs, for themselves and all current and former aggrieved
9 employees, demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code
10 §§ 510, 1194 and 1197 and IWC Wage Order No.5.

11 51. Plaintiffs further seek reasonable attorneys' fees and costs under Labor Code §
12 2699(g)(1).

13 Wherefore, Plaintiffs pray for relief as set forth below.

14 **VIII. FIFTH CAUSE OF ACTION**

15 **(LABOR CODE § 204 –**

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

17 52. Plaintiffs repeat and reallege each and every paragraph above as though fully set
18 forth herein.

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

21 54. Plaintiffs are "aggrieved employees" as that term is defined in the Labor Code
22 Private Attorneys General Act of 2004 because they are persons who were employed by the
23 alleged violators and against whom one or more of the alleged violations was committed.

24 55. Plaintiffs have met all of the Labor Code § 2699.3 requirements to commence a
25 civil action against Defendants for violations of Labor Code § 204.

26 56. By the actions alleged herein, Defendants have failed to comply with Labor Code
27 § 204 as it relates to Plaintiffs and the other aggrieved employees.

28 57. Therefore, Plaintiffs, for themselves and all current and former aggrieved

1 employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor
2 Code § 204.

3 58. Plaintiffs further seek reasonable attorneys' fees and costs under Labor Code §
4 2699(g)(1).

5 Wherefore, Plaintiffs pray for relief as set forth below.

6 **IX. SIXTH CAUSE OF ACTION**

7 **(LABOR CODE §§ 201-203 –**

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

9 59. Plaintiffs repeat and reallege each and every paragraph above as though fully set
10 forth herein.

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

13 61. Plaintiffs are "aggrieved employee" as that term is defined in the Labor Code
14 Private Attorneys General Act of 2004 because they are persons who were employed by the
15 alleged violators and against whom one or more of the alleged violations was committed.

16 62. Plaintiffs have met all of the Labor Code § 2699.3 requirements to commence a
17 civil action against Defendants for violations of Labor Code §§ 201-203.

18 63. By the actions alleged herein, Defendants failed to comply with Labor Code §§
19 201-203 as they relate to Plaintiffs and the other aggrieved employees.

20 64. Therefore, Plaintiffs, for themselves and all current and former aggrieved
21 employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor
22 Code §§ 201-203.

23 65. Plaintiffs further seek reasonable attorneys' fees and costs under Labor Code §
24 2699(g)(1).

25 Wherefore, Plaintiffs pray for relief as set forth below.

26 **XVI. PRAYER FOR RELIEF**

27 Plaintiffs pray for relief as follows:
28

- i. For civil penalties as specified by Labor Code § 2699(f) for Plaintiffs 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;
- ii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiffs and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 1198 and 1199 (missed rest 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;
- iii. For civil penalties as specified by Labor Code § 226.3 for Plaintiffs and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiffs alternatively seek the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)
- iv. For civil penalties as specified by Labor Code § 2699(f) for Plaintiffs and each current or former aggrieved employee for each violation of Labor Code §§ 510, 1194 and 1197 (failure to pay for all hours worked) 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;
- v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiffs and each current or former aggrieved employee for each violation of Labor Code § 204 (failure to pay wages in a timely manner) 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;

vi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiffs and each former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) 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;

vii. For reasonable attorneys' fees and costs as allowed by law, including Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5

viii. For all interest as required by Labor Code § 218.6 or any other applicable law;

ix. For such other and further relief as the Court should deem proper.

Dated: October 9, 2023

Respectfully submitted,

KELLER GROVER LLP

By: 

ERIC A. GROVER
ROBERT SPENCER
Attorneys for Plaintiffs
and the Aggrieved Employees

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PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **October 9, 2023**, in the case of *Kaylyn Bush v. Dutch Bros., LLC*, Merced Superior Court Case Number 22CV-01415, I served the foregoing document(s):

REPRESENTATIVE ACTION FIRST AMENDED COMPLAINT

on the interested party(ies) below, using the following means:

Robert J. Wilger, Esq. *Attorneys for Defendant*
Benjamin A. Emmert, Esq. **DUTCH BROS., LLC**
Melinda Ward
LITTLER MENDELSON, P.C.
50 West San Fernando Street, 7th Floor
San Jose, California 95113
Telephone: (408) 998-4150
Facsimile: (408) 288-5686
RWilger@littler.com
BEmmert@littler.com
MWard@littler.com

Joseph Lavi *Attorneys for Plaintiff*
Vincent C. Granberry **MADELEINE GUEVARA**
Courtney M. Miller
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
jlavi@lelawfirm.com
vgranberry@lelawfirm.com
cmiller@lelawfirm.com
whts@lelawfirm.com

☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per CCP 1010.6.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ

EXHIBIT 4

Keller Grover
Dutch Bros. Transaction Detail by Account
All Dates

Date	Name	Class	Amount
Case Expenses Receivable			
\$Consultant			
08/01/2023	Anna Tom	Dutch Bros	1,581.25
Total for \$Consultant			\$ 1,581.25
\$Contractors			
08/01/2023	Nathan Clark	Dutch Bros	574.00
08/09/2023	Nathan Clark	Dutch Bros	70.00
09/21/2023	Nathan Clark	Dutch Bros	56.00
10/04/2023	Nathan Clark	Dutch Bros	7.00
Total for \$Contractors			\$ 707.00
\$Filing & Court Fees			
03/15/2022	LWDA	Dutch Bros	75.00
05/26/2022	One Legal, Inc.	Dutch Bros	464.56
07/10/2022	One Legal, Inc.	Dutch Bros	16.57
11/22/2022	One Legal, Inc.	Dutch Bros	16.57
12/23/2022	One Legal, Inc.	Dutch Bros	125.08
01/11/2023	COURT CALL LLC	Dutch Bros	94.00
02/13/2023	COURT CALL LLC	Dutch Bros	-20.00
09/01/2023	One Legal, Inc.	Dutch Bros	17.04
09/12/2023	CA EFILE	Dutch Bros	3.60
09/12/2023	COURT CALL LLC	Dutch Bros	72.00
09/19/2023	One Legal, Inc.	Dutch Bros	17.04
10/5/2023	One Legal, Inc.	Dutch Bros	35.78
10/18/2023	One Legal, Inc.	Dutch Bros	17.04
10/18/2023	One Legal, Inc.	Dutch Bros	17.04
Total for \$Filing & Court Fees			\$ 951.32
\$Mediation Fee			
04/12/2023	Ortman Mediation, Inc.	Dutch Bros	13,000.00
Total for \$Mediation Fee			\$ 13,000.00
\$Postage			
06/15/2022		Dutch Bros	14.66
09/09/2022		Dutch Bros	18.05
10/25/2023		Dutch Bros	2.46
Total for \$Postage			\$ 35.17
\$Research			
02/28/2022	LexisNexis, RELX Inc.	Dutch Bros	9.58
03/31/2022	LexisNexis, RELX Inc.	Dutch Bros	1.13
03/24/2023	LexisNexis, RELX Inc.	Dutch Bros	10.32
07/10/2023	LexisNexis, RELX Inc.	Dutch Bros	0.64
Total for \$Research			\$ 21.67
Total for Case Expenses Receivable			\$ 16,296.41

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On October 27, 2023, in the case of *Hernandez v. Automated Harvesting, LLC, et al.*, Monterey County Superior Court Case Number 22CV002717, I served the foregoing document(s):

DECLARATION OF ERIC A. GROVER IN SUPPORT OF MOTIONS FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION AND DISMISSING ACTION WITH PREJUDICE AND FOR AN ORDER AWARDING ATTORNEYS' FEES AND COSTS, SERVICE PAYMENT, AND SETTLEMENT ADMINISTRATION FEES

on the interested party(ies) below, using the following means:

Robert J. Wilger, Esq. *Attorneys for Defendant*
Benjamin A. Emmert, Esq. **DUTCH BROS., LLC**
Melinda Ward
LITTLER MENDELSON, P.C.
50 West San Fernando Street, 7th Floor
San Jose, California 95113
RWilger@littler.com
BEmmert@littler.com
MWard@littler.com

Joseph Lavi, Esq. *Attorneys for Plaintiff*
Vincent C. Granberry **MADELINE GUEVARA**
Courtney M. Miller
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
jlavi@lelawfirm.com
vgranberry@lelawfirm.com
cmiller@lelawfirm.com
whts@lelawfirm.com

☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the Parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


JOEY GONZALEZ