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**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 VINCENT
GRANBERRY IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
APPROVING SETTLEMENT OF PAGA
ACTION**

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9 KAYLYN BUSH and MADELEINE GUEVARA
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DECLARATION OF VINCENT C. GRANBERRY

I, Vincent C. Granberry, declare:

1. I am an attorney licensed to practice law in the state of California and have been admitted to practice before this Court. I am an attorney with the law firm Lavi & Ebrahimian, LLP, Counsel for Plaintiffs Kaylyn Bush and Madeleine Guevara (“Plaintiffs”) in this action, and I am an attorney assigned to work on this case. Based on my assignment to this case and familiarity with the file in this matter; I have personal knowledge of the matters stated herein and if called and sworn as a witness, I would and could competently testify under oath thereto. I am a member in good standing of the bar of the State of California and all state and federal Courts in California.

2. This Declaration is submitted in support of Plaintiffs’ Motion for an Order Approving Settlement of PAGA Settlement.

3. Plaintiffs worked as hourly-paid, non-exempt employees of Defendant Dutch Bros., LLC and seek to represent approximately 6,600 former hourly-paid, non-exempt employees employed by Defendant.

4. Plaintiff Guevara was employed by Defendant from approximately June 10, 2021 through August 24, 2022.

5. On March 7, 2023, Plaintiff Guevara, represented by Lavi & Ebrahimian, LLP, filed notice with the LWDA of her intention to file PAGA claims against Defendant (Exhibit 1), and on May 16, 2023, Plaintiff Guevara filed a PAGA action in the Stanislaus County Superior Court, Case No. CV-23-002754 (Exhibit 2), alleging Civil Penalties Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Sections 2698, et seq., for (1) failure to pay wages for all hours worked at the legal minimum wage; (2) failure to pay wages for overtime hours worked at the overtime rate of pay; (3) failure to pay wages to hourly non-exempt employees for workdays that Defendant failed to provide legally required and compliant meal periods; (4) failure to pay wages to hourly non-exempt employees for workdays that Defendant failed to provide legally required and compliant rest periods; (5) failure to timely pay earned wages during employment; (6) failure to provide complete and accurate wage statements; and (7) failure to pay employees all wages due at time of termination/resignation (the “Guevara Action”).

1 6. Separately, on March 14, 2022, Plaintiff Bush, represented by Keller Grover LLP,
2 filed notice with the LWDA of her intention to file PAGA claims against Defendant, and on May 19,
3 2022, Plaintiff Bush filed a PAGA action in the Merced County Superior Court, Case No. 22CV-
4 01415, alleging Civil Penalties Pursuant to the Private Attorneys General Act of 2004 (“PAGA”),
5 Labor Code Sections 2698, et seq., for (1) failure to provide meal periods; (2) failure to authorize and
6 permit rest periods; and (3) failure to provide accurate itemized wage statements (the “Bush Action”).

7 7. On July 31, 2023, after formal and informal discovery and data exchange, attorneys
8 from Keller Grover LLP attended a mediation session along with Tripper Ortman, Esq., a well-
9 respected mediator experienced in mediating wage and hour class and representative actions. After a
10 day of arm’s-length negotiations, the Parties reached a resolution. The Parties considered the sharply
11 disputed factual and legal issues involved on the PAGA claims, the risks attending further
12 prosecution, delay if the Court required arbitration of the individual PAGA claims prior to proceeding
13 on the non-individual PAGA claims, and the benefits to be received pursuant to the compromise and
14 settlement of the action as set forth in the agreement. Lavi & Ebrahimian, LLP agrees that settlement
15 is in the best interest of the representative Plaintiffs, the LWDA, and the aggrieved employees, and is
16 fair and reasonable, and furthers the purpose of the PAGA to enforce the Labor Code.

17 8. On August 4, 2023, a joint prosecution agreement was entered into between Keller
18 Grover LLP and Lavi & Ebrahimian, LLP, seeking to unify the prosecution of the separate Bush and
19 Guevara Actions.

20 9. Subsequently, on October 9, 2023, the Guevara Action and Bush Action were unified
21 under the Bush Action in a first amended complaint (the “Operative Complaint”), and on October 11,
22 2023, Lavi & Ebrahimian, LLP filed to dismiss the separate Guevara Action.

23 EXPERIENCE OF CLASS COUNSEL

24 10. Lavi & Ebrahimian, LLP is experienced and qualified to act as Class Counsel, to
25 evaluate the class claims, to evaluate settlement versus trial on a fully informed basis, and to evaluate
26 the viability of the defenses.

27 11. I, and the law firm of Lavi & Ebrahimian, LLP, have almost exclusively practiced in
28 the area of labor and employment law.

1 12. I graduated from Sandra Day O'Connor College of Law at Arizona State University
2 in 2010. I have been in practice since 2011 and have been an attorney with the law firm of Lavi &
3 Ebrahimiian, LLP since April 2014, focusing exclusively in the area of employment law. Over the last
4 nine years, my practice has focused nearly exclusively on wage and hour class action litigation with
5 a handful of consumer class actions. Super Lawyers Magazine has selected me as a Southern
6 California Rising Star in 2016 through 2023 and as a Super Lawyers Rising Star Up-And-Coming
7 100 in my field in 2018, 2020, 2021, 2022, and 2023.

8 13. I am also familiar with the practice of Lead Counsel Joseph Lavi having worked as an
9 associate with Lavi & Ebrahimiian, LLP since April 2014, which has often included reviewing Mr.
10 Lavi's declarations in support of motions for attorneys' fees and/or to seek appointment as Class
11 Counsel. Mr. Lavi graduated from law school in 2000 and has handled numerous cases in all aspects
12 of employment and labor law, including state and federal class actions, wrongful termination,
13 discrimination, harassment and retaliation cases. Mr. Lavi has tried employment cases in State and
14 Federal court, and has argued before various Courts of Appeals, on employment issues such as
15 validity of Arbitration Agreements, Application of Res Judicata in class action cases, and other
16 employment issues. Mr. Lavi has been a panelist and/or speaker for various Employment Law
17 Continuing Legal Education Panels on issues of employment law trials, how to proceed and conduct
18 trials, and proving and winning punitive damages. Mr. Lavi has been named a Southern California
19 Super Lawyer in the area of Plaintiff's employment litigation for Class Actions from 2011-2022. Mr.
20 Lavi has settled dozens of wage and hour class actions and is currently Plaintiff's counsel in many
21 others. Some of the class actions that Mr. Lavi has handled against employers on wage and hour
22 issues and have been approved as class counsel include cases against the following: Kaiser
23 Permanente which settled for \$6,510,000.00; Hustler Casino which settled for \$980,000.00; Chevron
24 Stations Inc. which settled for \$4,500,000.00; Commerce Casino which settled for \$1,575,000.00; BP
25 West Cost Products which settled for \$4,000,000.00; Kaiser Permanente which settled for
26 \$3,600,000.00; Fuddruckers (as lead counsel) which settled for \$900,000.00; Movado Retail Group,
27 Inc. (as lead counsel) which settled for \$728,000.00; Chuck-E-Cheese's (as lead counsel) which
28 settled for \$1,900,000.00; Aero-Electric Connector, Inc. (as lead counsel) which settled for

1 \$1,500,000.00; Clougherty Packing, LLC (as lead counsel) which settled for \$4,250,000.00; and
2 Gruma Corporation (as lead counsel) which Defendants' petition to the United States Supreme Court
3 in the matter was denied and the matter settled for \$2,300,000.00. Mr. Lavi has been approved as
4 class counsel by both Federal and California Courts. Mr. Lavi and the other attorneys at Lavi &
5 Ebrahimian who are available to assist me in this case if needed are fully capable of adequately and
6 fairly representing Plaintiff and the proposed class in this matter.

7 14. Lavi & Ebrahimian, LLP has been appointed Class Counsel in over fifty contested
8 proceedings including the following:

9 a. *Ischak v. Kaiser Foundation Hospitals, Inc.*, Los Angeles Superior Court Case
10 No. BC343535;

11 b. *Santana v. El Pollo Loco, Inc.*, Los Angeles Superior Court Case No.
12 BC369846;

13 c. *Edlin, et al. v. Fuddruckers, Inc.*, United States District Court, Central District
14 of California, Case No. CV-07-3678-ABC;

15 d. *Chavez, et al. vs. CEC Entertainment, Inc. d/b/a Chukee-Cheeses*, Los Angeles
16 Superior Court Case No. BC380996;

17 e. *Bustamante, et al. v. Teamone Employment Specialists*, Los Angeles Superior
18 Court Case No. BC383266;

19 f. *Cervantes, et al. v. Kaiser Foundation Hospitals, Inc.*, Alameda Superior Court
20 Case No. RG 0265835;

21 g. *Seng Savang v. Club One Casino*, Fresno Superior Court Case No.
22 05CECG02189;

23 h. *Norman, et al. v. Movado Retail Group, Inc.*, United States District Court,
24 Central District of California, Case No. CV08-06691 SVW (PLA);

25 i. *Shand v. G.A.L.A., Inc. dba Giorgio Armani*, Los Angeles Superior Court Case
26 No. BC342588;

27 g. *Solis v. Plycraft Industries, Inc.*, Los Angeles Superior Court Case No.
28 BC374816;

1 h. *Campos v. HWB Carwash, Inc.*, Los Angeles Superior Court Case No.
2 BC378990;
3 i. *Acosta, et al. v. Texwood Industries*, United States District Court, Central
4 District of California, Case No. CV07-3237-DDP (PLAX);
5 h. *Arevalo v. Gruma Corporation*, Los Angeles Superior Court Case No.
6 BC410322;
7 j. *Burrola v. American Promotional Events*, Los Angeles Superior Court Case
8 No. BC412315;
9 k. *Cortez v. Trader Distribution Services*, Los Angeles Superior Court Case No.
10 BC397208;
11 l. *Cueva v. Allied Industries, Inc.*, Los Angeles Superior Court Case No.
12 BC399431;
13 m. *Del Toro v. Petco Animal Supplies, Inc.*, San Diego Superior Court Case No.
14 37-2009-00103626-CU-OE-CTL;
15 n. *Garcia v. Home Cooking, Inc.*, Los Angeles Superior Court Case No.
16 BC451148;
17 o. *Alcantar v. Amerimax Building Products, Inc.*, United States District Court,
18 Central District of California, Case No. CV 10-8916 DDP (CWx);
19 p. *Arancivias v. Clougherty Packaging, LLC dba Farmer John*, Los Angeles
20 Superior Court Case No. BC432406;
21 q. *Barajas v. Menzies Aviation, Inc.*, United States District Court, Central District
22 of California, Case No CV-10-02315-JEM;
23 r. *Barrera v. BHFC Operating, LLC dba Bottega Louie*, Los Angeles Superior
24 Court Case No. BC462603;
25 s. *Camacho v. American Textile Maintenance Co.*, Los Angeles Superior
26 Court Case No. BC452570;
27 t. *Cortes v. Monsanto Company*, Ventura Superior Court Case No. 56-2010-
28 00366952-CU-OE-VTA;

1 u. *Escobar v. Aero-Electric Connector, Inc.*, Los Angeles Superior Court Case
2 No. BC421009;
3 v. *Gomez v. Bacara Resort & Spa*, Santa Barbara Superior Court Case No.
4 1341987;
5 w. *Gonzalez v. Ashley Furniture Industries, Inc.*, Los Angeles Superior Court
6 Case No. BC425708;
7 x. *Gonzalez v. Burrtec Waste Industries, Inc.*, Los Angeles Superior Court Case
8 No. BC436879;
9 y. *Gutierrez v. Visterra Credit Union*, Riverside Superior Court Case No.
10 RIC10020183;
11 z. *Hernandez v. Kruse & Son, Inc.*, Los Angeles Superior Court Case No.
12 BC411849;
13 aa. *Lopez v. Tecno Industrial Engineering*, Los Angeles Superior Court Case No.
14 BC411134;
15 bb. *Lowanga v. Continental Currency Services, Inc.*, Orange County Superior
16 Court Case No. 30-2011-0044011-CU-OE-CXC;
17 cc. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central
18 District of California, Case No. CV 10-0415 ODW (FMOx);
19 dd. *Lozada v. Classic Party Rentals, Inc.*, Los Angeles Superior Court Case No.
20 BC443792;
21 ee. *Madrid v. OPI Products, Inc.*, Los Angeles Superior Court Case No.
22 BC451489;
23 ff. *Martinez v. J. Fletcher Creamer & Son, Inc.*, United States District Court Case
24 No. CV 10-0968-PSG-FMOX;
25 gg. *Martinez v. Administaff Companies II, L.P.*, Los Angeles Superior Court Case
26 No. BC425799;
27 hh. *Martinez v. Morgans Hotel Group Management, LLC*, Los Angeles Superior
28 Court Case No. BC446744;

1 jj. *Sanchez v. La Brea Bakery, Inc.*, Los Angeles Superior Court Case No.
2 BC456420;
3 ii. *Montenegro v. Ruggeri Marble and Granite, Inc.*, United States District Court,
4 Central District of California, Case No. CV-10-00711 JFW (PLAx);
5 kk. *Reed v. 99 Cents Only Stores*, Los Angeles Superior Court Case No.
6 BC436793;
7 ll. *Santos v. Noble Management Group-California, LLC*, United States District
8 Court, Central District of California, Case No. CV 10-2594 DSF (VBKx);
9 mm. *Taylor v. U.S. Healthworks Holding Company, Inc.*, Orange County Superior
10 Court Case No. 30-2011-00473505;
11 nn. *Valencia Diaz v. Gene Wheeler Farms, Inc.*, Los Angeles Superior Court Case
12 No. BC436235;
13 oo. *Zad-Behtooie v. Valley Village*, Los Angeles Superior Court Case No.
14 BC451490;
15 pp. *Bell v. Aidells Sausage Company, Inc.*, Alameda Superior Court Case No.
16 RG10523946;
17 qq. *Negrete v. Cenveo, Inc.*, United States District Court, Central District of
18 California, Case No. CV 11-09543 DSF (MRWx);
19 rr. *Bejar v. Exopack-Ontario, Inc.*, Orange County Superior Court Case No. 30-
20 2011-00518396-CU-OE-CXC;
21 ss. *Aguilar v. PLS Financial Services, Inc.*, United States District Court, Central
22 District of California, Case No. CV 10-0415 ODW (FMOx);
23 tt. *Sparks v. Larry Flynt dba Hustler Casino*, Los Angeles Superior Court Case
24 No. BC320172;
25 uu. *Morris v. Chevron Stations, Inc.*, Los Angeles Superior Court Case No.
26 BC361380;
27 vv. *Marino v. BP West Coast Products, LLC*, Los Angeles Superior Court Case
28 No. BC357987

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“EXHIBIT 1”

PAGA NOTICE PUBLIC SEARCH

LWDA #	Plaintiff for PAGA Case	Employer Name	Employer City	Employer Postal Code	Filer/Attorney for PAGA Case	Law Firm for PAGA Plaintiff	Employer Filer	Employer Filer Firm	Court Case #	Submission Date
LWDA-CM-940461-23	Madeleine Gievara	Dutch Bros, LLC			Yolanda Ramirez	Lavi and Ebrahimian, LLP				03/07/23

“Exhibit 2”

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5/16/2023 1:20 PM
Superior Court of California
County of Stanislaus
Clerk of the Court
By: Sandy Lemus, Deputy

\$435.00 PAID

Attorneys for Plaintiff MADELEINE GUEVARA,
on behalf of herself and current and former aggrieved employees

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

MADELEINE GUEVARA, on behalf of herself
and current and former aggrieved employees
Plaintiff,

vs.

DUTCH BROS, LLC; and DOES 1 to 100,
inclusive,
Defendants.

Case No.: CV-23-002754

PAGA ACTION

**PLAINTIFF MADELEINE
GUEVARA'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff MADELEINE GUEVARA ("Plaintiff"), who alleges and
complains against Defendants DUTCH BROS, LLC; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

1 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
2 required and legally compliant meal and rest periods, failure to timely pay earned wages during
3 employment, failure to provide complete and accurate wage statements, failure to timely pay all
4 unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
5 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
6 attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
7 the State of California, and others aggrieved.

8 **II. JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
10 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
11 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
12 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
13 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
14 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
15 aggrieved California-based hourly non-exempt employees occurred in locations throughout
16 California, including but not limited to Stanislaus at 1201 W. monte Vista Ave, Turlock, CA
17 95382.

18 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
19 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
20 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
21 tolled from April 6, 2020, until October 1, 2020.

22 **III. PARTIES**

23 4. Plaintiff brings this action as a representative of the Labor and Workforce
24 Development Agency on behalf of herself and other current and former employees subject to
25 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
26 filed include current, former and/or future employees of Defendants who work, worked, or will
27 work for Defendants as direct employees as well as temporary employees employed through temp
28 agencies as hourly non-exempt employees in California. At all times mentioned herein, the

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in Stanislaus from in or
3 around June 10, 2021, until on or about August 24, 2022.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant DUTCH
5 BROS, LLC is authorized to do business within the State of California and is doing business in the
6 State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were
7 persons acting on behalf of Defendant DUTCH BROS, LLC in the establishment of, or ratification
8 of, the aforementioned illegal wage and hour practices or policies. Defendant DUTCH BROS,
9 LLC in Stanislaus County and employed Plaintiff and aggrieved employees in Stanislaus County,
10 including but not limited to, at 1201 W. monte Vista Ave, Turlock, CA 95382.

11 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
12 through 50 are corporations, or are other business entities or organizations of a nature unknown to
13 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
14 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
15 working conditions of employment of Plaintiff and aggrieved employees.

16 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
17 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
18 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
19 supervisor, independent contractor and/or employee of each defendant who violated or caused to
20 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
21 the Industrial Welfare Commission's wage orders regulating hours and days of work.

22 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
23 sues said defendants by said fictitious names, and will amend this complaint when the true names
24 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
25 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
26 named defendants is in some manner responsible for the events and allegations set forth in this
27 complaint.

28 9. Plaintiff makes the allegations in this complaint without any admission that, as to

any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

(Against all Defendants by Plaintiff)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and the applicable Wage Orders.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

14. Labor Code sections 1194 and 1197 require an employer to compensate employees for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

15. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly

1 non-exempt employees to participate in off-the-clock trainings without being paid for this time;

2 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
3 non-exempt employees to undergo off-the-clock identity verification checks, including but not
4 limited to:

- 5 i. Using a personal identification number to access computer system;
- 6 ii. Sign-in to timekeeping account
- 7 iii. Undergo facial recognition verification; and
- 8 iv. Then clock-in for their start shift.

9 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees to go through off-the-clock pre and post shift meetings often referred as
11 POW's. Plaintiff and other current and former aggrieved California-based hourly non-exempt
12 employees would be required to come in prior to their start shift time to discuss shift flows,
13 expected customer volume and expectations. After Plaintiff and other current and former
14 aggrieved California-based hourly non-exempt employees ended their shift, they had to go through
15 an off-the-clock recap of the day's shift.

16 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
17 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
18 control without paying wages for that time. This resulted in Plaintiff and other current and former
19 aggrieved California-based hourly non-exempt employees working time for which they were not
20 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
21 Wage Order.

22 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
23 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
24 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
25 which includes all time that an employee is under control of the employer and all time the
26 employee is suffered and permitted to work. This includes the time an employee spends, either
27 directly or indirectly, performing services that inure to the benefit of the employer.'

28 18. Labor Code sections 510 and 1194 require an employer to compensate employees a

1 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
2 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

3 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
4 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
5 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
6 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
7 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
8 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
9 seventh day of a workweek shall be compensated at the rate of no less than twice the
10 regular rate of pay of an employee.

11 Labor Code section 510.

12 19. In this case, Defendants failed to pay Plaintiff and other current and former
13 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
14 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

15 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
16 non-exempt employees to participate in off-the-clock trainings without being paid for this time;

17 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
18 non-exempt employees to undergo off-the-clock identity verification checks, including but not
19 limited to:

- 20 i. Using a personal identification number to access computer system;
- 21 ii. Sign-in to timekeeping account
- 22 iii. Undergo facial recognition verification; and
- 23 iv. Then clock-in for their start shift.

24 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees to go through off-the-clock pre and post shift meetings often referred as
26 POW's. Plaintiff and other current and former aggrieved California-based hourly non-exempt
27 employees would be required to come in prior to their start shift time to discuss shift flows,
28 expected customer volume and expectations. After Plaintiff and other current and former
aggrieved California-based hourly non-exempt employees ended their shift, they had to go through
an off-the-clock recap of the day's shift.

20. The foregoing policies, practices, and/or procedures resulted in time during each

workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

21. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

22. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

23. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 4 at §11.

24. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-

1 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
2 limited to:

3 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
4 hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at least 30 minutes
5 for every five hours worked.

6 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
7 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
8 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
9 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
10 employees did not receive legally required and compliant meal periods, in violation of Labor Code
11 section 226.7.

12 26. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
13 and other current and former aggrieved California-based hourly non-exempt employees not
14 receiving wages to compensate them for workdays during which Defendants did not provide them
15 with meal periods in compliance with California law.

16 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
17 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
18 current and former aggrieved California-based hourly non-exempt employees regularly worked
19 shifts of more than three-and-a-half (3.5) hours.

20 28. California law requires every employer to authorize and permit an employee a rest
21 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
22 Code section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10
23 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
24 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
25 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
26 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
27 each work period. Wage Order 4 at §12. Additionally, the rest period requirement "obligates
28 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*

1 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
2 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

3 29. If the employer fails to authorize or permit a required rest period, the employer
4 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
5 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
6 Wage Order 4 at § 12.

7 30. In this case, Defendants failed to authorize or permit all legally required and
8 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
9 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
10 limited to:

11 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
12 hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours worked
13 or major fraction thereof.

14 31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
15 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
16 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
17 workday they did not receive legally required and compliant rest periods, in violation of Labor
18 Code section 226.7.

19 32. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
20 and other current and former aggrieved California-based hourly non-exempt employees not
21 receiving wages to compensate them for workdays in which Defendants did not provide them with
22 rest periods in compliance with California law.

23 33. **Failure to timely pay earned wages during employment:** In California, wages
24 must be paid at least twice during each calendar month on days designated in advance by the
25 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
26 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
27 16th and the 26th day of that month and wages earned between the 16th and the last day,
28 inclusive, of any calendar month must be paid between the 1st and 10th day of the following

1 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
2 paid within seven (7) calendar days following the close of the payroll period in which wages were
3 earned. Labor Code section 204(d).

4 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
5 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
6 exempt employees' earned wages (including minimum wages, overtime wages, meal period
7 premium wages, and/or rest period premium wages), in violation of Labor Code section 204.
8 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
9 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
10 their earned wages within the applicable time frames outlined in Labor Code section 204.

11 35. **Failure to provide complete and accurate wage statements:** Labor Code section
12 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
13 employee his or her wages, the employer must "furnish each of his or her employees ... an
14 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
15 employee, except for any employee whose compensation is solely based on a salary and who is
16 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
17 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
18 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
19 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
20 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
21 name of the employee and his or her social security number, (8) the name and address of the legal
22 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee."

24 36. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
25 and other current and former aggrieved California-based hourly non-exempt employees all wages
26 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
27 period premium wages) rendered Plaintiff's and other current and former aggrieved California-
28 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code

1 section 226.

2 37. **Failure to pay employees all wages due at time of termination/resignation:** An
3 employer is required to pay all unpaid wages timely after an employee's employment ends. The
4 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
5 hours of resignation (Labor Code section 202).

6 38. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
7 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
8 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
9 and/or rest period premium wages), Defendants failed to pay those employees timely after each
10 employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

11 39. Defendants' violations of Wage Order 4 constituted violations of Labor Code
12 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

13 40. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
14 employee, on behalf of himself or herself and other current or former employees, to bring a civil
15 action to recover civil penalties against all Defendants pursuant to the procedures specified in
16 Labor Code section 2699.3.

17 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
18 Code section 2699.3. On March 7, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
19 and provided notice to Defendants by certified mail which provided notice of the specific
20 provisions of the Labor Code alleged to have been violated, including the facts and theories to
21 support the violations alleged.

22 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
23 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
24 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
25 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
26 to investigate Plaintiff's claims.

27 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
28 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,

512, 1194, 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

44. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the

1 California Labor Code, including but not limited to section 2699(f);

2 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
3 under California Labor Code section 2699(g); and

4 4. For such and other further relief, in law and/or equity, as the Court deems just or
5 appropriate

6

7 Dated: May 16, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

8

9

By:



10

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Courtney M. Miller, Esq.
Attorneys for Plaintiff
MADELEINE GUEVARA
on behalf of herself and current and former
aggrieved employees

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“Exhibit 3”

October 24, 2023

VIA PERSONAL DELIVERY

Madeleine Sue Guevara
[REDACTED]

RE: Madeleine Sue Guevara vs. Dutch Bros, LLC (PAGA)(ARBITRATION)

Dear Ms. Guevara:

Please find listed below a breakdown of the professional costs and fees associated with your case titled Madeleine Sue Guevara vs. Dutch Bros, LLC (PAGA)(ARBITRATION)

COSTS AND FEES ADVANCED BY LAVI & EBRAHIMIAN, LLP

DATE	ITEM	COST
	SETTLEMENT AMOUNT	\$
N/A	Copying	\$10.25
N/A	Scanning	\$10.25
N/A	Mail	\$39.12
	STANISLAUS SUPERIOR COURT	
05/16/2023	Summons and Complaint Filing Fee (PAGA)	\$435.00
	DDS LEGAL SERVICES	
05/16/2023	Filing of Summons and Complaint (PAGA)	\$46.71
	AMERICAN ARBITRATION ASSOCIATION, INC.	
03/30/2023	Code# 09983G (Arbitration)	\$362.25
	LABOR & WORKFORCE DEVELOPMENT AGENCY	
03/07/2023	LWDA Paga Notice (PAGA)	\$75.00

Madeleine Sue Guevara

Madeleine Sue Guevara vs. Dutch Bros, LLC (PAGA)(ARBITRATION)

October 24, 2023

Page 2 of 2

	Total Costs, fees and expenses	\$978.58
	Attorney's Fees (40%)	\$
	Total Fees and Costs	\$
	Final Net Settlement to Client	\$

Please note that by law I am required to give you the itemization of the above-referenced costs and fees incurred by my office on your behalf. Please review it carefully.

If you have any questions concerning the costs and fees, please do not hesitate to call me. If you agree with the itemization of costs and fees, please kindly initial the bottom right hand side of every page of this letter and sign the last page on your signature box and send it to me.

It was a pleasure representing you in this matter. I wish you success in your future endeavors.

Very truly yours;

LAVI & EBRAHIMIAN, LLP

Joseph Lavi, Esq.

I, Madeleine Sue Guevara, have read the above-stated costs and fees and consent and agree to their accuracy. I acknowledge that I have been given the opportunity to ask any questions concerning the fees and costs concerning my lawsuit. I, Madeleine Sue Guevara agree to the disbursement of my settlement funds in connection with my lawsuit in the manner set forth above. I also understand and agree that Lavi & Ebrahimian, LLP is **NOT** responsible for any liens placed on my file of which Lavi & Ebrahimian, LLP is unaware and that it is NOT aware of any such liens.

I also acknowledge that Lavi & Ebrahimian, LLP has advised me that they are not tax advisers, nor are they qualified to give tax advice concerning what income tax I may owe as a result of this settlement. I acknowledge that Lavi & Ebrahimian, LLP has urged and recommended that I consult a qualified tax adviser regarding the income tax implications of this settlement. I further consent to my attorneys scanning all the documents pertaining to my case in lieu of storing the actual copies.

Dated: _____

Madeleine Sue Guevara

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 *Kaylyn Bush et al. v. Dutch Bros., LLC*, Merced Superior Court Case Number 22CV-01415, I served the foregoing document(s):

DECLARATION OF VINCENT GRANBERRY IN SUPPORT OF PLAINTIFFS' MOTION FOR AN ORDER APPROVING SETTLEMENT OF PAGA ACTION

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

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Benjamin A. Emmert, Esq.
Melinda Ward

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MADELEINE GUEVARA

☒	(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