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April 24, 2025

VIA PAGA ONLINE FILING ONLY:
California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102
PAGAfilings@dir.ca.gov

VIA U.S. CERTIFIED MAIL:

National Registered Agents, Inc.
Agent for Service of Process for:
Dutch Bros., LLC and Dutch Mafia, LLC
Attn: CA Registered Agent Authorized Employees:
Amanda Garcia, Gabriela Sanchez, Daisy Montenegro, Beatrice Casarez-Barrientez, Jessie Gastelum, John Montijo, Diana Ruiz, Sarai Marin, Emanuel Jacobo, Gladys Aguilera, Vivian Imperial, Carlos Paz, Alberto Damonte, Peter Cayetano, Elsa Montanez, Xenia Perez, Yesenia Carpenter, and Jaqueline Mejia
330 N Brand Blvd #700
Glendale, CA 91203

Dutch Bros., LLC
Attn: Human Resources / Legal Department
PO Box 1929
Grants Pass, OR 97528

Dutch Bros., LLC
Attn: Human Resources / Legal Department
300 N Valley Dr
Grants Pass, OR 97526

Dutch Mafia LLC
Attn: Human Resource / Legal Department
110 SW 4th Street
Grants Pass, OR 97526

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To:	California Labor and Workforce Development Agency; Dutch Bros., LLC and Dutch Mafia, LLC
Date:	April 24, 2025
Subject:	*Adolfo Jesus Otanez v. Dutch Bros., LLC, et al.*

Introduction

This office represents PLAINTIFF, Adolfo Jesus Otanez (hereinafter "PLAINTIFF") in connection with PLAINTIFF's claims under the California Labor Code. PLAINTIFF was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entities: Dutch Bros., LLC and/or Dutch Mafia, LLC, Inc. (hereinafter, these entities and their managing agents are collectively referred to as "DEFENDANTS"). DEFENDANTS may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, PLAINTIFF, on behalf of PLAINTIFF, and on behalf of all current and former non-exempt employees employed directly and/or via a staffing agency by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice ("NON-EXEMPT AGGRIEVED EMPLOYEES") and on behalf of all current and former exempt employees employed directly and/or via a staffing agency by any one or more of the DEFENDANTS at any location in California within one year of the date of this notice ("EXEMPT AGGRIEVED EMPLOYEES"), hereby gives written notice ("NOTICE") of PLAINTIFF's claims against DEFENDANTS.

This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency ("LWDA") and DEFENDANTS via certified mail to their Agent(s) for Service of Process and/or entity mailing address as provided to the California Secretary of State and/or the address of the Secretary of State of the State of incorporation and/or the entity address as provided on wage statements issued by DEFENDANTS to NON-EXEMPT AGGRIEVED EMPLOYEES.

This NOTICE also serves to demonstrate PLAINTIFF's reasonable attempt at settlement with DEFENDANTS. If DEFENDANTS are interested in settling this matter before a lawsuit is filed, DEFENDANTS may contact Crosner Legal, P.C., at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This NOTICE further reserves any and all rights by PLAINTIFF to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—PLAINTIFF reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, DEFENDANTS are on notice that PLAINTIFF continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that DEFENDANTS intend to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the DEFENDANTS shall provide notice including a description of the actions taken to cure. If the alleged violation is not cured within the statutory time period, PLAINTIFF will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to section 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of facts and theories upon which PLAINTIFF will base PLAINTIFF's claims, PLAINTIFF requests that the LWDA regard this NOTICE as written notice of PLAINTIFF's intent to seek civil penalties against DEFENDANTS.

PLAINTIFF, on behalf of PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES, alleges that the specific provisions of California law that DEFENDANTS have violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 210, 226, 226.7, 432.5, 512, 558, 558.1, 1194, 1197, 1197.1, 2802, and all applicable Wage Orders.

<u>The Named Entities Are Joint Employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES</u>

California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

PLAINTIFF is informed and believes and thereon alleges that at all relevant times DEFENDANTS and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

PLAINTIFF believes and hereon asserts that DEFENDANTS and unknown entities must be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant times herein, so as to be considered the joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES. By reason of their status as joint employers of PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violations of the California Labor Code and applicable Wage Orders as to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

<u>Individual Liability Under Labor Code § 558.1</u>

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. DEFENDANTS, at all relevant times, were an employer or person acting on behalf of employer(s) who violated PLAINTIFF's and other NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' rights by violating various sections of the California Labor Code. The California Legislature defines "other person acting on behalf of an employer" as "*a natural person* who is an owner, director, officer, or managing agent of the employer." The "managing agent" definition mirrors that found in California's punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, "managing agents" are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, any above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code §§ 203, 226, 226.7, and/or 1194 as further described in detail below.

PLAINTIFF intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. PLAINTIFF will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. PLAINTIFF asks and demands that DEFENDANTS put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, PLAINTIFF also offers to DEFENDANTS to place those individuals on notice if DEFENDANTS voluntarily provides their contact information.

General Information

DEFENDANTS own, operate, manage and/or staff its employees to work at the coffee stands, restaurants, stores, facilities and/or other locations in cities throughout California. DEFENDANTS operate a drive through coffee chain with approximately 900 locations across eighteen (18) states in the United States. DEFENDANTS, through its various locations, serve the including but not limited to, fast-food restaurant industry.[1] Although DEFENDANTS may operate a successful business or have a noble mission, DEFENDANTS do not comply with California's labor laws.

PLAINTIFF worked for DEFENDANTS as a non-exempt employee with a job title of store associate and/or a similar job title and/or job position through in or around early January 2025. PLAINTIFF regularly worked shifts lasting at least approximately four and one-half (4 ½) to six and one-half (6 ½) hours. DEFENDANTS assigned PLAINTIFF to work at DEFENDANTS' location in La Quinta, California. DEFENDANTS paid PLAINTIFF an hourly rate for time counted by DEFENDANTS as hours worked. PLAINTIFF was also compensated with tips/gratuities.

During the liability period, PLAINTIFF was forced to work during meal periods, complete off-the-clock work meetings/communications, and work during owed rest periods. DEFENDANTS also failed to reimburse PLAINTIFF for all business expenses, including, for contacting PLAINTIFF about work on PLAINTIFF's personal cell phone/device. As a result of being denied meal and rest period premiums and all owed wages, PLAINTIFF was denied accurate and complete wage statements, in violation of Labor Code section 226. Furthermore, DEFENDANTS

[1] *See* https://www.dutchbros.com/locations Last visited on April 18, 2025.

failed to furnish PLAINTIFF with a final paycheck for at least approximately one week following the separation of PLAINTIFF's employment, and the final paycheck was devoid of all wages owed.

Labor Code Violations

Minimum Wage Violations: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit." Labor Code section 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Pursuant to section 4 of the applicable Wage Order, "Every employer shall pay to each employee …. not less than the applicable minimum wage for all hours worked in the payroll period…" The applicable Wage Order defines "hours worked" as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." *See* §2 of all applicable Wage Orders. Therefore, employers are required to pay employees for all time spent subject to the control of the employer and all time the employee is suffered or permitted to work. An employer's failure to pay for any particular hour worked by an employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon…" *Cal. Lab. Code* § 1194.2.

NON-EXEMPT AGGRIEVED EMPLOYEES were not paid for all hours worked due to DEFENDANTS' mandated off-the clock work policies and/or practices.

For example, at times, PLAINTIFF was required to participate in work-related meetings while off-the-clock, resulting in DEFENDANTS' failure to compensate PLAINTIFF for all hours worked and the underpayment of wages owed to PLAINTIFF.

Based on information and belief, DEFENDANTS further failed to compensate PLAINTIFF for all hours worked by requiring PLAINTIFF to complete work tasks during unpaid meal periods, resulting in off-the-clock work and unpaid minimum wages owed to PLAINTIFF

These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 558.1, 1197.1 and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.[2]

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid*. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid*. Upon information and belief, PLAINTIFF did not sign a valid meal period waiver throughout PLAINTIFF's employment by DEFENDANTS.

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra,* 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra,* 53 Cal.4th 1004.

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[2] See Lab. Code §1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of more than five (5) hours, entitling them to at least one meal period.

Based on information and belief, at times, PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES would not receive legally compliant thirty (30) minute first meal breaks.

For example, PLAINTIFF was oftentimes required to work during PLAINTIFF's owed meal periods due to the need to complete assigned job duties. DEFENDANTS did not pay PLAINTIFF a meal period premium for each missed and/or otherwise legally noncompliant meal period, in violation of California meal period law.

Based on information and belief, at times, DEFENDANTS performed an automatic meal period deduction of exactly thirty (30) minutes during shifts when PLAINTIFF did not receive a legally compliant meal period. For example, DEFENDANTS' time records for PLAINTIFF for including but not limited to the following dates show a clock out for precisely (30) minutes for a purported meal period even though PLAINTIFF was not afforded a legally compliant meal period on all of the dates showing entries with a precisely thirty-minute meal period: 7/6/14, 7/10/24, 7/11/24, and 7/14/24, 7/15/24, 7/18/24, 7/19/24, and 7/20/24.

Also, DEFENDANTS' time records for PLAINTIFF show that PLAINTIFF worked 5.85 hours on 6/13/24 without clocking out for any meal period, in violation of California meal period law.

Adi O (Adi Otanez) (1032581)		Items	Total Hours	Total Cost
		120	596.50 hrs	$11,930.00
Wed, 6/12 | **[CA3703]** Training | 5:55 am - 10:15 am | 0:00			4.33 hrs	$86.60
	FLSA Daily Base Rate - $20.00	REG	4.33 hrs	$86.60
Thu, 6/13 | **[CA3703]** Training | 5:56 am - 11:47 am | 0:00			5.85 hrs	$117.00
	FLSA Daily Base Rate - $20.00	REG	5.85 hrs	$117.00

As described herein, DEFENDANTS implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during unpaid meal periods as PLAINTIFF was often required to complete work tasks during meal periods.

Based on information and belief, DEFENDANTS had actual and/or constructive knowledge that their policies and practices resulted in the denial of uninterrupted meal periods which were free of DEFENDANTS' control owed to PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of compensation for each workday a lawful meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for each workday a lawful meal period was not provided and/or failed to pay the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium.

For example, DEFENDANTS pay records for PLAINTIFF for including but not limited to, June 2024 through January 2025 do not show the payment of a single meal period premium even though PLAINTIFF was often required to work during meal periods.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and all applicable IWC Wage Orders, section 11(A) and (C) along with all applicable IWC Wage Orders. These violations subject DEFENDANTS to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.[3] DEFENDANTS' failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

<u>Rest Period Violations</u>: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, §12(A). In *Brinker v Restaurant Corp. v. Superior Court,* 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.,* (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

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[3] See Lab. Code §2699(f); Lab. Code §558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); All applicable IWC Wage Orders, §20 (establishing that "<u>[i]n addition to any other civil penalties provided by law</u>, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty…for each underpaid employee for each pay period during which the employee was underpaid").

Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. Id. at 268 (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what "net" ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). Id.; see also, *Bufil v. Dollar Fin. Grp.*, Inc., (2008) 162 Cal. App. 4th 1193, 1199 (the "onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.").

DEFENDANTS did not properly authorize and provide PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES with legally compliant rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

For example, PLAINTIFF was oftentimes required to work during PLAINTIFF's owed rest periods due to the need to complete assigned job duties. DEFENDANTS did not pay PLAINTIFF a rest period premium for each missed and/or otherwise legally noncompliant rest period as evidenced by DEFENDANTS' pay records for PLAINTIFF, which are devoid of any rest period premiums.

As described herein, DEFENDANTS implemented policies and/or practices that failed to relieve PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and DEFENDANTS' control during rest periods. For example, as described herein, PLAINTIFF was often required to complete work tasks during owed rest periods.

Furthermore, DEFENDANTS failed to pay a rest period premium for each day in which NON-EXEMPT AGGRIEVED EMPLOYEES experienced a missed or otherwise unlawful rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. DEFENDANTS failed to pay PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. DEFENDANTS either failed to pay a rest period premium at all for each workday a lawful rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

For example, DEFENDANTS pay records for PLAINTIFF for including but not limited to, June 2024 through January 2025 do not show the payment of a single rest period premium even though PLAINTIFF was often required to work through PLAINTIFF's owed rest periods.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and all applicable IWC Wage Orders, §12(A). These violations subject DEFENDANTS to civil penalties under Labor Code sections 558, 2699, and all applicable IWC Wage Orders, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226(a).

As DEFENDANTS failed to provide PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES with meal and rest periods that complied with Labor Code section 226.7, the wage statements DEFENDANTS issued to PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES failed and continue to fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

DEFENDANTS' issued wage statements to PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES that also failed to indicate the earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of off-the-clock work policies and practices described above), which results in a violation of Labor Code section 226(a).

Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v. Epsilon Plastics, Inc.,* (2018) 22 Cal.App.5th 1308, 1337).

DEFENDANTS' failure to accurately list all hours worked on all wage statements caused confusion to PLAINTIFF and caused and continue to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. PLAINTIFF and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by DEFENDANTS' failure to provide accurate wage statements.

In addition, because of the violations detailed above, including but not limited to, not paying regular wages for all hours worked and failing to provide meal and rest break premiums, DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

As a result, the wage statements provided to PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information.

These violations subject DEFENDANTS to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.[4]

<u>Business Expense Violations</u>: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, "for purposes of [section 2802], the term 'necessary expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section."

Among other things, under California law, when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft. *See* applicable IWC Wage Order, § 9 (b). Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145

Further, "any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State." *See* Cal. Lab. Code § 2804.

DEFENDANTS shifted the costs of doing business onto NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for their business expenses including the use of NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES' personal cell phones/mobile devices for work-related purposes, including to receive and respond to work-related messages and/or phone calls.

For example, at times, DEFENDANTS contacted PLAINTIFF on PLAINTIFF's personal cell phone to discuss work-related matters, however, DEFENDANTS did not reimburse PLAINTIFF for the use of PLAINTIFF's personal cell phone.

[4] See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

As described herein, DEFENDANTS regularly failed to reimburse and indemnify PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. DEFENDANTS' failure to provide PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, DEFENDANTS failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, DEFENDANTS untimely provide final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES without regard to the timing requirements of Labor Code sections 201-202.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided, were not timely provided with all owed vacation pay and/or paid time off and/or did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, premium wages, vacation pay, and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation).

For example, DEFENDANTS did not furnish PLAINTIFF with any final paycheck for at least approximately one week after PLAINTIFF's date of termination, and PLAINTIFF's late final paycheck was devoid of all wages owed, including without limitation all owed minimum wages, premium wages, reporting time pay wages, vacation pay, and/or paid time off wages at the properly accrued rates (including but not limited to, all owed vacation pay/paid time off paid at the final rate including non-discretionary compensation.

For example, DEFENDANTS' personnel file for PLAINTIFF reflects a termination date of no later than January 9, 2025 (see below from DEFENDANTS' personnel file for PLAINTIFF):

Worker History

Worker History

Business Process	Effective Date	Initiated On	Due Date	Completed On	Status
Terminate: Adolfo Otanez | Adi O (Terminated) (1032581)	01/09/2025	01/06/2025 11:52:37 AM	01/20/2025	01/06/2025 05:30:35 PM	Successfully Completed

However, DEFENDANTS' final paycheck for PLAINTIFF is dated January 16, 2025, *at least seven (7) days after PLAINTIFF's date of termination*:

Name	Company	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number
Adolfo Otanez	Dutch Bros LLC	1032581	01/05/2025	01/18/2025	01/16/2025	

	Hours Worked	Gross Pay	Pre Tax Deductions	Employee Taxes	Post Tax Deductions	Net Pay
Current	[redacted]					
YTD						

Earnings						
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount
Non Worked Regul	01/05/2025 - 01/09/2025	30.25	20	605.00	30.25	605.00
Regular			0		1	20.00
Sick	01/05/2025 - 01/09/2025	6	20	120.00	6	120.00
Earnings				725.00		745.00

Employee Taxes
[redacted]

Taxable Wages		
Description	Amount	YTD
[redacted]		

	Federal	State
[redacted]		

Absence Plans
[redacted]

These violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each EXEMPT AGGRIEVED EMPLOYEE and each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

<u>Unlawful Confidentiality / Non-Disclosure Agreements:</u> Labor Code section 432.5 provides that "no employer…shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer…to be prohibited by law."

Labor Code section 1197.5(k)(1) provides that "[a]n employer shall not prohibit an employee from disclosing the employee's own wages, discussing the wages of others, inquiring about another employee's wages, or aiding or encouraging any other employee to exercise their rights under this section."

DEFENDANTS required PLAINTIFF, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful conditions of employment including unlawful confidentiality and/or nondisclosure agreements as a condition of obtaining and/or continuing employment, in violation of Labor Code section 432.5. For example, DEFENDANTS required PLAINTIFF to agree in writing to a confidentiality / non-disclosure agreement, which prohibited PLAINTIFF from disclosing PLAINTIFF's wages/compensation earned through PLAINTIFF's employment with DEFENDANTS and from discussing the wages of others, in violation of California law, including, Labor Code section 1197.5, and as such, DEFENDANTS required PLAINTIFF to agree in writing to an unlawful confidentiality / non-disclosure as a condition of employment/continuing employment, in violation of Labor Code section 432.5.

By way of illustration, DEFENDANTS' confidentiality/non-disclosure agreement explicitly restricts PLAINTIFF's right to "disclose or reveal confidential information," articulating an expansive, overbroad definition of "confidential information" that encompasses a prohibition on disclosure of/discussion of wages[5] due to including but not limited to, DEFENDANTS' failure to include any specific provision exempting the disclosure of /discussion of wages from the restrictions imposed on PLAINTIFF under the agreement. For example, the agreement fails to state that nothing contained in the agreement prohibits the employee from disclosing the employee's wages/compensation, or words to that effect. As such, DEFENDANTS' confidentiality/non-disclosure agreement is in violation of Labor Code Section 1197.5, and DEFENDANTS have further violated Labor Code section 432.5 by requiring PLAINTIFF to sign the unlawful agreement as a condition of obtaining / maintaining employment. Below is a true and correct screenshot of DEFENDANTS' "Confidential Company Information Policy" in DEFENDANTS' 2025 employee handbook ("2025 Shop Handbook"):

Confidential Company Information Policy

The Company's confidential and proprietary information is vital to its current operations and future success. Each employee should use all reasonable care to protect or otherwise prevent the unauthorized disclosure of such information. In no event should employees disclose or reveal confidential information within or outside Dutch Bros without proper authorization or purpose. Employees who improperly use or disclose the Company's confidential and/or proprietary information may be subject to discipline up to and including termination of employment.

Confidential or proprietary information includes, but is not limited to, nonpublic information regarding the Dutch Bros recipes, business methods and plans, databases, systems, technology, intellectual property, know-how, marketing plans, business development, products, services, research, development, inventions, financial statements, financial projections, financing methods, pricing strategies, customer sources, system designs, customer lists and methods of competing.

This policy in no way prohibits employee communications that are protected under applicable state and federal laws, including but not limited to any activity that is protected under Section 7 of the National Labor Relations Act, which includes the right of employees to speak with others about the terms and conditions of employment, and any activity that is protected under various whistleblower statutes, including but not limited to Securities and Exchange Commission Rule 21F.

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[5] "Confidential information…includes, but it not limited to, nonpublic information regarding the Dutch Bros recipes, business methods and plans, databases, systems, technology, intellectual property, know-how statements, financial projections, financing methods, pricing strategies, customer sources, system designs, customer lists and methods of competing"

Conclusion

DEFENDANTS have violated the above-referenced California Labor Code provisions, the applicable IWC Wage Order, including but not limited to all applicable Wage Orders, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties PLAINTIFF and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirements created by Labor Code §§ 2699, 2699.3(a), 2699.3(b), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, PLAINTIFF will seek these penalties in a civil action, on behalf of PLAINTIFF and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of DEFENDANTS within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of the date of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Kiara Bramasco, Esq.
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 866.276.7637
Fax: 310.510.6429
Email: kiara@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

Kiara Bramasco

Kiara Bramasco, Esq.
CROSNER LEGAL, PC