



October 2, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

Re: *Celia Santacruz and Efren Santacruz v. DTF Prep, LLC*

To Whom It May Concern:

Please be advised that this law firm represents Celia Santacruz (“C. Santacruz”) and Efren Santacruz (“E. Santacruz”) in claims for Labor Code violations arising from their employment with DTF Prep, LLC; and DOES 1 through 100 (collectively “DTF Prep”). C. Santacruz and E. Santacruz are “aggrieved employees” as defined by Labor Code Section 2698 *et seq.*, due to DTF Prep’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code Sections 2699.3, which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

DTF Prep are in the business of food manufacture/preparation of dumplings, noodles and raw dumpling fillings in particular. C. Santacruz worked for DTF Prep as a food preparer and packager between approximately May 2018 and approximately February 5, 2022 when she went on temporary disability. C. Santacruz’s job responsibilities included slicing beef and vegetables, packaging them and freezing them. C. Santacruz was generally scheduled to work five days per week, most recently from Tuesday to Saturday from approximately 5:00 a.m. until approximately 12:30 p.m. or 1:30 p.m. Between approximately 2018 and 2020, C. Santacruz was generally scheduled to work five days per week, Wednesday through Saturday and on Mondays, from approximately 8:00 a.m. to approximately 5:00 p.m.

E. Santacruz worked for DTF Prep as a dishwasher between approximately 2018 and approximately July 2023 when he took disability leave due to a work injury. E. Santacruz was a dishwasher. Prior to his work injury, E. Santacruz was generally scheduled to work five days per week, Tuesday to Saturday, from approximately 6:00 a.m. to 2:00 p.m. Between approximately 2018 and 2020, E. Santacruz was generally scheduled to work six days per week, Friday to Wednesday, 6:00 a.m. to 3:00 p.m. and beyond, from approximately eight (8) to approximately twelve (12) hours per day.

For purposes of this letter, the “aggrieved employees” whom C. Santacruz and E. Santacruz seek to represent are the other aggrieved employees of DTF Prep who performed work for DTF Prep in California at any time during the one year preceding the date of this letter through the present.

C. Santacruz, E. Santacruz and other aggrieved employees were not paid for all hours worked, including overtime hours worked.

C. Santacruz, E. Santacruz and other aggrieved employees had to perform work for approximately ten (10) to fifteen (15) minutes prior to clocking in on each work day. During this time, prior to clocking in, C. Santacruz, E. Santacruz and other aggrieved employees had to put on their work coats, their work hats, their work boots, work gloves, pass through an air curtain, wash their hands and wait in line to clock in. DTF Prep instructed C. Santacruz, E. Santacruz and other aggrieved employees not to clock in before their scheduled start times. C. Santacruz, E. Santacruz and other aggrieved employees had to wait until after clocking out for their meal periods to remove their work hats, work boots work gloves and work coats. C. Santacruz, E. Santacruz and other aggrieved employees also spent approximately 2 to 5 minutes cleaning their work boots every day after the work day and after clocking out.

Furthermore, C. Santacruz, E. Santacruz and other aggrieved employees were not authorized to take their full legally required 10-minute rest periods. During the-10 minute rest periods, C. Santacruz, E. Santacruz and other aggrieved employees were expected to take off their work boots, work hats, work gloves and work coats and to put them back on and wash their hands before the 10 minutes were over. Between 2021 and 2022, C. Santacruz and other aggrieved employees did not receive a second 10-minute rest period. DTF Prep never provided C. Santacruz, E. Santacruz and other aggrieved employees with an hour of pay at their regular rate for each rest period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, DTF Prep maintained no payroll code or another mechanism for the payment of rest period premiums in the event C. Santacruz, E. Santacruz and other aggrieved employees were not authorized to take lawful rest periods.

DTF Prep also did not provide C. Santacruz, E. Santacruz and other aggrieved employees with a legally compliant first meal period when they worked shifts in excess of 5.0 hours or a legally compliant second meal period when they worked shifts longer than 10 hours. For example, during the 30-minute meal period, after clocking out, C. Santacruz, E. Santacruz and other aggrieved employees were expected to wait in line, take off their work boots, work hats, work gloves and work coats, and to put them back on, wash their hands and wait in line prior to clocking in. C. Santacruz and E. Santacruz were almost never permitted to exercise their right to second meal periods on days when they worked longer than ten (10) hours. DTF Prep did not provide C. Santacruz, E. Santacruz and other aggrieved employees with an hour of pay at their regular rate for each meal period violation as required by Labor Code § 226.7. Upon information and belief, during at least a portion of the class period, DTF Prep maintained no payroll code or another mechanism for the

payment of meal period premiums in the event C. Santacruz, E. Santacruz and other aggrieved employees were not authorized to take lawful meal periods.

C. Santacruz's last day worked was on or about February 5, 2022, prior to taking disability leave. E. Santacruz's last day worked was in or around July 2023, prior to taking disability leave. C. Santacruz and E. Santacruz have not received their final paychecks.

Furthermore, DTF Prep failed to adequately reimburse C. Santacruz, E. Santacruz and other aggrieved employees for all reasonable and necessary work expenditures, including but not limited to, requiring C. Santacruz, E. Santacruz and other aggrieved employees to purchase additional work hats beyond the initial work-issued hat.

DTF Prep failed to issue to C. Santacruz, E. Santacruz and other aggrieved employees accurate itemized statements in writing showing (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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.

DTF Prep have maintained inaccurate payroll records, failed to timely pay all wages owed to employees, and failed to timely pay separating employees at the time of their separation, and issued inaccurate wage statements. This is in part a result of DTF Prep's failure to accurately compensate C. Santacruz, E. Santacruz and other aggrieved employees for all minimum and overtime wages, and failure to pay premium pay for failing to provide all required meal periods and authorize all required rest periods.

Finally, DTF Prep failed to conform to the requirements of Labor Code § 2810.5 by failing to provide C. Santacruz, E. Santacruz and other aggrieved employees written notices, in the language normally used to communicate employment related information to the employees, containing information regarding their: i) rate(s) of pay and the basis thereof; ii) allowances claimed as part of the minimum wage; iii) regular payday designated by the employer; iv) the legal name of the employer; v) the address of the legal entity that is the employer; vi) the telephone number of the employer; vii) identifying information for the employer's workers' compensation insurance carrier; and viii) information informing the employee of their right to accrue and use paid sick leave. Despite maintaining an obligation to provide these disclosures to C. Santacruz, E. Santacruz and other aggrieved employees, DTF Prep failed to do so, in violation of Labor Code § 2810.5

DTF Prep failed to meet their obligations to provide paid sick leave to C. Santacruz, E. Santacruz and other aggrieved employees under Labor Code § 245.5(b)

which requires that employers authorize and permit its employees who worked 30 or more days within a year to accrue paid sick leave, and to allow them to exercise paid sick leave on or after their 90th day of employment. Despite meeting all of the statutory requirements for being able to accrue and utilize paid sick leave, C. Santacruz, E. Santacruz and other aggrieved employees were not provided paid sick leave on those occasions where they needed to take a “sick day” in violation of Labor Code § 245.5(b), did not accrue sick leave as required, and were not notified of properly notified of their ability to take sick leave.

As described above, DTF Prep committed the following violations of the Labor Code, and Industrial Welfare Commission Wage Order 1 (“Wage Order 1”):

Minimum Wage Violations

DTF Prep were required to pay C. Santacruz, E. Santacruz and other aggrieved employees an hourly rate at least equal to the minimum wage for each hour actually worked. See Labor Code §§ 1182.12, 1194; 1194.2, 1197; Wage Order 1 § 4. As alleged above, DTF Prep maintained and maintain timekeeping policies/practices that regularly, systematically, and impermissibly underreport the hours worked by C. Santacruz, E. Santacruz and other aggrieved employees. As a result of these policies/practices, which fail to compensate for all hours worked, C. Santacruz, E. Santacruz and other aggrieved employees were deprived of all required minimum wages.

Overtime Wage Violations

DTF Prep were required to pay C. Santacruz, E. Santacruz and other aggrieved employees overtime wages for all overtime hours worked. See Labor Code §§ 1194(a) and 1198; Wage Order 1, § 3. Wage Order 1, § 3 requires an employer to pay overtime wages when an employee’s hours worked cross certain thresholds or meet certain criteria set forth in the Wage Order. At all times relevant herein, DTF Prep caused C. Santacruz, E. Santacruz and other aggrieved employees to work overtime hours but did not compensate C. Santacruz, E. Santacruz and other aggrieved employees at one and one-half times their regular rate of pay for such hours.

Meal Period Violations

As alleged above, DTF Prep failed to provide C. Santacruz, E. Santacruz and other aggrieved employees with all required and compliant meal periods due to DTF Prep’s meal period policies/practices that often fail to provide full, 30 minute off-duty first meal periods before the end of the fifth hour of work or a second meal period for shifts worked in excess of ten (10) hours. See Labor Code §§ 226.7 and 512; Wage Order 1, § 11. As a result, C. Santacruz, E. Santacruz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. See Labor Code § 226.7 (“If an employer fails to provide an employee a

meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”).

Rest Period Violations

As alleged above, DTF Prep also failed to authorize and permit C. Santacruz, E. Santacruz and other aggrieved employees to take all required paid rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 11. As a result, C. Santacruz, E. Santacruz and other aggrieved employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required paid rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.”)

Failure to Reimburse Necessary Business Expense

DTF Prep were subject to Labor Code § 2802, which states that “an employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” DTF Prep were subject to Labor Code § 2804, which states that “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 under the laws of this State.” As alleged herein, due to DTF Prep's unlawful reimbursement practices, DTF Prep failed to indemnify C. Santacruz, E. Santacruz and other aggrieved employees for all necessary business expenses incurred, including, among other things, work shoes, pants, shirts of a specific color such as yellow or orange for his work uniform and his own tools such as hammers, measuring tape and pliers. Nor were C. Santacruz, E. Santacruz or other aggrieved employees ever reimbursed for mileage expenses on the days that they had to drive to different work locations during the workday. C. Santacruz, E. Santacruz and other aggrieved employees were not ever provided any reimbursement for these necessary business expenses.

Wage Statement Violations

As described above, DTF Prep were required to furnish C. Santacruz, E. Santacruz and other aggrieved employees with complete and accurate itemized wage statements that showed, among other things, their rates of pay, corresponding number of hours worked at each rate of pay, total gross wages earned, and total net wages earned. *See* Labor Code §§ 226(a) and 1174(d); Wage Order 1, § 7. As a result of DTF Prep's failure to pay all overtime wages, minimum wages, and failure to pay all required meal and rest period

premium wages, DTF Prep maintained inaccurate payroll records and issued inaccurate wage statements to C. Santacruz, E. Santacruz and other aggrieved employees in violation of Labor Code § 226.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. DTF Prep failed to timely pay C. Santacruz, E. Santacruz and other aggrieved employees all of their final wages at the time of separation, which included all overtime and minimum wages, and all meal and rest period premium wages at the time of aggrieved employees' separation of employment. Pursuant to Labor Code § 203, DTF Prep's failure to pay all final wages due to C. Santacruz, E. Santacruz and other aggrieved employees was willful and, consequently, entitles C. Santacruz, E. Santacruz and other aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day DTF Prep failed to pay their final wages after their separation from employment, up to a maximum of thirty days.

As "aggrieved employees," C. Santacruz and E. Santacruz will initiate a civil action on behalf of themselves and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on the investigations by C. Santacruz and E. Santacruz, and on information and belief, DTF Prep committed and continue to commit the following Labor Code violations:

- a. DTF Prep violated Labor Code §§ 551-552, 558, 1182.12, 1194, 1194.2, 1197, and 1198 by failing to pay C. Santacruz, E. Santacruz and other aggrieved employees the statutory minimum wage for all hours worked;
- b. DTF Prep violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay C. Santacruz, E. Santacruz and other aggrieved employees all overtime compensation earned;
- c. DTF Prep violated Labor Code §§ 226.7, 512, and 1198 by failing to provide meal periods as required by law and failing to pay meal period premiums to C. Santacruz, E. Santacruz and other aggrieved employees at these employees' respective regular rates of compensation for meal period violations;
- d. DTF Prep violated Labor Code §§ 226.7, 516, and 558 by failing to authorize and permit C. Santacruz, E. Santacruz and other aggrieved employees to take all required paid rest periods, and/or failing to pay all rest period premiums to C. Santacruz, E. Santacruz and other aggrieved employees at their respective regular rates of compensation;
- e. DTF Prep violated Labor Code §§ 2802 and 2804 by failing to reimburse C. Santacruz, E. Santacruz and other aggrieved employees for all work-related expenses incurred;

- f. DTF Prep violated Labor Code § 226 by failing to furnish C. Santacruz, E. Santacruz and other aggrieved employees with accurate and compliant itemized wage statements;
- g. DTF Prep violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due upon separation of employment to C. Santacruz, E. Santacruz and other aggrieved employees;
- h. DTF Prep violated Labor Code § 204 by failing to pay C. Santacruz, E. Santacruz and other aggrieved employees all wages earned at least twice during each calendar month;
- i. DTF Prep violated Labor Code § 205 by failing to pay C. Santacruz, E. Santacruz and other aggrieved employees all wages earned up to and including the fourth day before the scheduled payday
- j. DTF Prep violated Labor Code § 245.5 by failing to permit and authorize C. Santacruz, E. Santacruz and other aggrieved employees to exercise the use of their accrued paid sick leave days;
- k. DTF Prep violated Labor Code §§ 1174 and 1198 by failing to maintain accurate records on behalf of C. Santacruz, E. Santacruz and other aggrieved employees; and
- l. DTF Prep violated Labor Code § 2810.5 by failing to provide legally mandated disclosures and/or written notices regarding the terms of employment of C. Santacruz, E. Santacruz and other aggrieved employees.

Pursuant to Labor Code Section § 2699.3(a)(2)(A), please notify us and DTF Prep if the LWDA intends to investigate the alleged violations of the Labor Code stated herein. Please contact me should you require additional information.

Very truly yours,
STANSBURY BROWN LAW, PC


Jessica Flores

cc: DTF Prep, LLC (via certified mail)