

November 1, 2024

VIA ONLINE SUBMISSION

Stewart Knox, Secretary
California Labor & Workforce
Development Agency
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL

Chicken Coup, LLC
Attn: Human Resources
1875 S. Bascom Ave., Ste. 112
Campbell, CA 95008

Chicken Coup, LLC
Attn: Legal Department
75 Oak Grove Street
San Francisco, CA 94107

Chicken Coup, LLC
Attn: Human Resources
1241 W. El Camino Real
Sunnyvale, CA 94087

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO CALIFORNIA LABOR
CODE SECTION 2698, ET SEQ.**

To: The California Labor and Workforce Development Agency; Chicken Coup, LLC dba
Starbird Chicken

From: Scarleth Busto and Rafael Mateo, on behalf of themselves and all other current and former
hourly nonexempt employees for violations of the California Labor Code

To Whom It May Concern:

Abramson Labor Group has been retained by former employees Scarleth Busto (“Ms. Busto”) and Rafael Mateo (“Mr. Mateo”) to seek compensation and all other available relief, including civil penalties on their behalf and on the behalf of all those similarly aggrieved (collectively with Ms. Busto and Mr. Mateo, “Claimants”) who have been injured by Chicken Coup, LLC doing business as Starbird Chicken’s (“Starbird”) violations of the California Labor Code. Ms. Busto and Mr. Mateo, on behalf of themselves and all other similarly aggrieved current and former hourly nonexempt employees of Starbird, intend to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.* of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

Factual Statement:

Starbird operates approximately nine Starbird restaurant locations in California, which offer patrons fast food in a casual dining atmosphere.

Claimant Ms. Busto worked at the Campbell Starbird location from approximately February 6, 2023 to August 26, 2024 as an hourly, nonexempt employee in the position of Kitchen Assistant earning \$17.50 per hour at the time of her separation. Claimant Mr. Mateo worked at two (Campbell and Sunnyvale) Starbird locations, from approximately December 26, 2021 through September 11, 2024 as an hourly, nonexempt employee in the position of Cook earning \$19.00 per hour. Ms. Busto and Mr. Mateo, on behalf of themselves and all other similarly aggrieved current and former employees in California in various positions, are or were generally engaged in preparing food for customers and providing general labor at various Starbird restaurants. As part of their employment with Starbird, Claimant and other hourly, nonexempt employees, collectively, “hourly nonexempt employees,” are or were assigned to and required to suffer and permitted to work without pay, while performing tasks collectively including, but not limited to, washing, preparing, and refilling food and condiments; cooking food and keeping the cooking stations clean; bussing tables; organizing and washing dishes; driving from one Starbird location to another to pick up and/or deliver inventory in their personal vehicles.

Claimants Ms. Busto and Mr. Mateo regularly worked five (5) days per week for 8 hours or more hours per day. During the entire course of their employment, Starbird failed to provide Ms. Busto and Mr. Mateo and continues to fail to provide those similarly aggrieved with some overtime pay and compliant meal periods and rest breaks. Starbird has also failed to pay minimum wages to Mr. Mateo and other hourly, nonexempt employees in violation of Labor Code sections 510, 1194, 1197, and 1182.12, and section 4 of IWC Wage Order No. 5-2001. As a consequence of failing to pay minimum wages, Starbird has failed to comply with Labor Code sections 226.7, 510, and 512, and sections 3, 11, and 12 of all applicable Industrial Welfare Commission (“IWC”) Wage Orders, including but not limited to, IWC Wage Order No. 5-2001. In violation of Labor Code sections 510, 1194, 1197, and 1182.12, Starbird has failed to compensate Claimants at a rate of one and one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek.

Starbird has also failed and continues to fail to pay all wages owed every pay period in violation of Labor Code section 204. Likewise, Starbird has failed and continues to fail to provide timely, accurate wage statements to Ms. Busto and Mr. Mateo and other aggrieved persons in violation of Labor Code section 226(a). With regard to those no longer employed by Starbird, including Ms. Busto and Mr. Mateo, Starbird violated Labor Code section 203 by failing to pay all wages due upon separation. Starbird has failed and continues to fail to fully reimburse Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, all costs for mileage for trips in personal vehicles conducted during shifts from one Starbird location to another on behalf of Starbird, in violation of Labor Code section 2802. Ms. Busto and Mr. Mateo are informed and believe that such violations are ongoing, systematic, and continuous. Ms. Busto and Mr. Mateo intend to bring an action against Starbird under the Private Attorneys General Act (“PAGA”) to recover wages and penalties as provided by California law.¹

¹ Without limitation, Ms. Busto and Mr. Mateo, if permitted, will seek any and all penalties otherwise capable of being collected by the Commission. This includes each provision as set forth in Labor Code section 2699.5 as follows:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222,

Theories of Labor Code Violations and Remedies:

Claimant Ms. Busto was employed by Starbird from approximately February 6, 2023 to August 26, 2024 as an hourly, nonexempt employee holding the position of Kitchen Assistant at the time of her separation. Claimant Ms. Busto was employed by Starbird from approximately December 6, 2021 to September 11, 2024 as an hourly, nonexempt employee holding the position of Cook at the time of his separation. For a period of at least four (4) years prior to November 2024, but for our purposes here, one (1) year prior, Starbird has violated and continues to violate the California Labor Code sections as detailed below.

Claimants also were at all times entitled to payment of **minimum wages**. Starbird has failed and continues to fail to pay Claimants minimum wages for all hours worked as required by Labor Code sections 510, 1194, and 1194.2 and sections 4 and 5 of IWC Wage Order No. 5-2001. First, Claimants worked a substantial amount of time while off-the-clock—meaning they were not punched in for work—and therefore, those working hours were not recorded and then compensated. This off-the-clock time primarily occurred for one of two reasons: (1) Claimants were required to perform work after clocking out at the end of their shifts to pick up and/or deliver inventory from one Starbird location to another and (2) to return early from lunch while not clocking back in until 30 minutes had elapsed. Accordingly, Claimants were not paid for that time spent working off the clock. That is, Starbird implemented policies and enforced practices requiring Claimants to perform work during their meal periods (while clocked out) and rest breaks, the effects of which Starbird could have mitigated by adjusting expectations and/or by adding more staff to accommodate sudden influxes of patrons. However, Starbird instead chose to instruct Claimants to work during their meal periods on particularly demanding days and to skip rest breaks. Starbird also chose to use a timeclock system that did not permit Claimants from clocking in from their meal periods early at the time time resumed work. In effect, these policies and practices cause Claimants to remain on-duty during meal periods and rest breaks, and therefore, constitute a failure on Starbird's part to provide compliant meal periods and rest breaks. With that, Starbird's corresponding failure to provide premium pay at the correct regular rate, if any premiums were paid at all, in lieu of compliant meal periods and rest breaks constitutes Starbird's failure to pay minimum wages and all hours worked every pay period and upon separation in violation of Labor Code sections 201, 202, 203, 204, 226(a), 510, 1182.12, 1194, and 1197. Second, Starbird's failure to pay Claimants their meal period and rest break premiums for noncompliant meal periods and rest breaks, as explained in further detail below, also constitutes a failure to pay minimum wages to Claimants. For all of the foregoing reasons, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 1197.1 and section 20 of IWC Wage Order No. 5-2001.

Claimants were at all times entitled to unpaid off-duty, uninterrupted **meal periods**. As explained in the preceding paragraph, Starbird failed to authorize and permit timely, full-length meal periods for Ms. Busto and Mr. Mateo and all other similarly aggrieved employees as required by Labor Code sections 226.7 and 512 and section 11 of IWC Wage Order No. 5-2001. Ms. Busto and Mr. Mateo and all similarly aggrieved persons were required to perform work during their meal periods in the form of continuing to

222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230A, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of, and subdivision (e) of, Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651., and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.

perform their assigned services that cut into their 30-minute meal periods or else being interrupted during their meal periods, necessitating that they returned from their meal period early before 30 minutes had elapsed. Per Starbird's policy, Claimants were not able to clock back in from their meal periods until 30 minutes had elapsed, so these noncompliant meal periods also yielded compensable off-the-clock time worked. Claimants also began their meal periods after the end of the fifth hour. Despite that, Starbird did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant meal periods for each workday on which they occurred. Accordingly, since Starbird required Ms. Busto and Mr. Mateo and others similarly situated to work during their meal periods in violation of Labor Code sections 226.7(a) and 512, Claimants seek all available penalties as set forth in Labor Code sections 558, section 20 of IWC Wage Order No. 5-2001, and 2699(f).

Claimants were at all times entitled to take paid, off duty 10-minute **rest breaks**. However, for the same reasons cited in the preceding paragraph regarding meal periods, Starbird likewise failed to authorize and permit Ms. Busto and Mr. Mateo and all other similarly aggrieved employees to take the requisite number of full-length, off-duty rest breaks as required by Labor Code sections 226.7 and section 12 of IWC Wage Order No. 5-2001. Claimants were not able to take their requisite number of 10-minute rest breaks based on their shift duration; Claimants regularly worked through and missed their rest breaks. Starbird maintained a policy that permitted Claimants to take only one 10-minute rest break per 8-hour shift, rather than the two rest breaks required by law. Nonetheless, Starbird did not compensate Claimants with an extra hour of pay at the regular rate for noncompliant rest breaks for each workday on which they occurred. Therefore, Claimants are entitled to recover wages and/or penalties as provided by Labor Code section 558 and section 20 of IWC Wage Order No. 5-2001. Furthermore, since Starbird required their hourly nonexempt employees to perform work during rest periods in violation of Labor Code section 226.7(b), Claimants seek all available penalties set forth in Labor Code sections 558 and 2699.

At all times relevant herein, Claimants were entitled to the payment of **overtime**. That is, pursuant to Labor Code sections 510, 1194, 1197, and 1182.12, Starbird was required to compensate Claimants at a rate of one-and-one-half (1.5) times their regular rate for all hours worked over eight (8) hours per workday and the first eight (8) hours worked on the seventh day of a workweek and at two (2) times their regular rate for hours worked over twelve (12) hours per workday and eight (8) hours on the seventh day of a workweek. Ms. Busto and Mr. Mateo and Claimants regularly worked overtime hours. Starbird has failed to and continues to fail to pay Claimants overtime wages owed for off-the-clock time worked that should have been compensated as overtime, yet regularly required them to work these overtime hours without premium pay under Labor Code section 1194. In short, during the entire course of their employment, Starbird failed to provide Ms. Busto and Mr. Mateo and continues to fail to provide all others similarly situated with all overtime pay in violation of 226.7, 510, and 512 and all applicable IWC Wage Orders, including but not limited to IWC Wage Order 5-2001, section 3.

Pursuant to Labor Code sections 201–203, Claimants who have since separated from Starbird, including Ms. Busto and Mr. Mateo, were entitled to be paid all **wages owed upon separation** within the statutorily allotted time—immediately (resignation with notice and termination) or within seventy-two (72) hours (resignation without notice). Claimants, including Ms. Busto and Mr. Mateo, did not receive all wages owed upon separation based on Starbird's prior failings to pay all wages owed every pay period, including but not limited to meal and rest premiums owed and for all hours worked, as explained above.

Claimants were at all times entitled to be provided timely and accurate **wage statements** from Starbird pursuant to Labor Code section 226. Because Starbird failed to pay Claimants all of their meal period and rest break premiums for noncompliant meal periods and rest breaks and failed to pay Claimants minimum wages for all hours worked before, during, and after their shifts and for all overtime wages due, Claimants' wage statements were inaccurate in reflecting meal period and rest break premiums owed, overtime and minimum wages, and all hours worked every pay period. As a consequence, Claimants' wage

statements also do not reflect the accurate amount of net and gross wages owed. Accordingly, Claimants seek all available penalties as set forth in Labor Code sections 226(e) and 2699.

Finally, Claimants were entitled to be reimbursed by Starbird for all necessary, **business-related expenses** they incurred in executing their duties for Starbird. California Labor Code section 2802 provides that “An employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” Ms. Busto and Mr. Mateo and Claimants drove their personal vehicles from their Starbird location to other Starbird locations to deliver or pick up inventory on Starbird’s behalf. Starbird, however, failed to reimburse Ms. Busto and Mr. Mateo and Claimants for all necessary, business-related expenses and losses they incurred, including, but not limited to, these mileage costs incurred for the use of their personal vehicles to travel to other Starbird locations for Starbird during their shifts. Accordingly, Claimants are entitled to recover their unreimbursed expenditures and losses pursuant to Labor Code section 2802.

Starbird’s uniform failure to pay overtime and minimum wages, failure to authorize and permit full-length, off-duty rest breaks and meal periods or pay Claimants adequate premium compensation in lieu thereof, failure to furnish timely and accurate wage statements, and failure to reimburse all necessary, business-related expenses violate Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512, 1182.12, 1194, 1197, and 2802, and as such, penalties are recoverable as set forth in Labor Code sections 210, 1194, *et seq.*, and 2699.

Claimants are entitled to recover unpaid wages, with interest, and are entitled to an award of attorneys’ fees as permitted by Labor Code section 1194, other penalties as permitted by Labor Code sections 210 and 2699, and waiting time penalties for former employees pursuant to Labor Code section 203.

Accordingly, Claimants seek the remedies set forth in the above-referenced Labor Code sections for themselves, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Mr. Mateo, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for themselves, all other aggrieved employees, and the State of California against Starbird for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Should you require any additional information, please feel free to contact me.

Sincerely,

ABRAMSON LABOR GROUP

A handwritten signature in black ink that reads "Cheryl Kenner". The signature is written in a cursive, flowing style.

Cheryl A. Kenner