



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DAVID M. BRIGGS, Derivatively on)
Behalf of Nominal Defendant DUTCH)
BROS, INC.,)

Plaintiffs,)

v.)

TRAVIS BOERSMA, JONATHAN)
RICCI, SHELLEY BROADER,)
THOMAS DAVIS, CHUCK)
ESSERMAN, KATHRYN GEORGE,)
STEPHEN GILLETT, BLYTHE JACK,)
CHARLES JEMLEY, AND BRIAN)
MAXWELL,)

Defendants,)

And,)

DUTCH BROS, INC.,)

Nominal Defendant.)

Civil Action No. 2023-1120-NAC

PUBLIC VERSION
filed November 8, 2023

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff David M. Briggs, by and through his undersigned counsel, derivatively on behalf of Nominal Defendant Dutch Bros, Inc. (“Dutch Bros” or the “Company”), submits this Verified Shareholder Derivative Complaint (the “Complaint”). Plaintiff’s allegations are based upon his personal knowledge as to himself and his own acts, and upon information and belief, developed from the investigation and analysis by Plaintiff’s counsel, including a review of publicly available information, including filings by Dutch Bros with the U.S. Securities and Exchange Commission (“SEC”), press releases, news reports, analyst reports, investor conference transcripts, publicly available filings in lawsuits, matters of public record, and documents received in a 220 Demand. Plaintiff believes that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE AND SUMMARY OF THE ACTION

1. This is a shareholder derivative action brought on behalf of and for the benefit of the Company, against certain of its officers and/or directors named as defendants herein seeking to remedy Defendants (defined below) violations of their breaches of fiduciary duties and other wrongful conduct as alleged herein and that occurred from March 1, 2022 to the present (the “Relevant Period”). Defendants’ actions have caused, and will continue to cause, substantial financial harm and other damage to the Company, including damages to its reputation and goodwill.

2. Dutch Bros is a Delaware corporation based out of Oregon which,

according to its website, “is a high growth operator and franchisor of drive-thru shops that focus on serving high QUALITY, hand-crafted beverages with unparalleled SPEED and superior SERVICE.” Dutch Bros primary product is coffee and coffee-related products. As of June 30, 2023, the Company has 754 locations across 14 states.

3. On March 1, 2022, the Company issued a press release announcing its fourth quarter and full year financial results for 2021 which touted the delivery of “financial results that exceeded our expectations and kept our brand promise of speed, quality, and service.”

4. Following this, the Company hosted a conference call to discuss its financial results for the fourth quarter and full year 2021. During the conference call, certain of the Defendants represented to the investing public that the first quarter 2022 results would be positive and that its margins were healthy. Moreover, Defendant Jonathan “Joth” Ricci (“Ricci”) stated that he was “feeling good as we enter ’22 with the trajectory of our margins.”

5. However, on May 11, 2022, after the market closed, Dutch Bros issued a press release announcing its disappointing financial results for the first quarter of 2022. The Company reported a net loss of \$16.3 million for the first quarter of 2022, compared to a \$4.8 million loss for the same quarter of 2021.

6. On this news, the Company’s stock price fell by 27% to a close of \$25.11 per share on May 12, 2022.

7. Defendants (defined below) breached their fiduciary duties to Dutch

Bros by making and/or causing the Company to make a series of materially false and misleading statements about the Company's business, operations, and prospects to the investing public.

8. In particular, Defendants failed to disclose to investors that: (i) the Company was experiencing increased costs and expenses, including on dairy; (ii) as a result, the Company was experiencing increased margin pressure and decreased profitability in the first quarter of 2022; and (iii) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

9. Further, Defendants breached their fiduciary duties by causing the Company to fail to maintain adequate internal controls. Defendants also failed to correct and/or caused the Company to fail to correct the false and misleading statements and omissions made. Meanwhile, certain of the Defendants breached their fiduciary duties by selling their Dutch Bros common stock at artificially inflated prices.

10. As a result of Defendants' breaches of fiduciary duties and wrongdoing, as alleged herein, the Company has suffered damage. Plaintiff now seeks to recover, on behalf of the Company, the damages caused to it by Defendants.

JURISDICTION AND VENUE

11. This action arises under the laws of the State of Delaware.

12. This Court is the sole and exclusive forum of choice by the Company, as required in its Amended and Restated Certificate of Incorporation:

Unless the Company consents in writing to the selection of an alternative forum, the *Court of Chancery of the State of Delaware shall be the sole and exclusive forum for the following types of actions or proceedings under Delaware statutory or common law:* (i) any derivative action or proceeding brought on behalf of the Company; (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Company or any stockholder to the Company or the Company's stockholders; (iii) any action or proceeding asserting a claim against the Company or any current or former director, officer or other employee of the Company or any stockholder arising pursuant to any provision of the DGCL, the Certificate of Incorporation or the Bylaws of the Company (as each may be amended from time to time); (iv) any action or proceeding to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the Bylaws of the Company (including any right, obligation or remedy thereunder); (v) any action or proceeding as to which the DGCL confers jurisdiction to the Court of Chancery of the State of Delaware; and (vi) any action asserting a claim against the Company or any director, officer or other employee of the Company or any stockholder, governed by the internal affairs doctrine, in all cases to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants. This Article VI shall not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934 or any other claim for which the federal courts have exclusive jurisdiction. [Emphasis added].

13. Venue is proper in this Court in accordance with 28 U.S.C. § 1391 because the Company is incorporated in Delaware.

PARTIES

Plaintiff

14. *Plaintiff David M. Briggs* ("Briggs") acquired the Company securities on October 6, 2021 and will continue to hold his Dutch Bros shares

throughout the pendency of this action. Plaintiff Briggs will fairly and adequately represent the interests of the shareholders in enforcing the rights of the corporation.

Nominal Defendant

15. Nominal Defendant Dutch Bros is a Delaware Corporation with its principal executive offices located in Grants Pass, Oregon. Dutch Bros common stock trades on the New York Stock Exchange (“NYSE”) under the symbol “BROS.”

Director Defendants

16. *Defendant Travis Boersma* (“Boersma”) is the co-founder of the Company and has served as the Executive Chairman of Dutch Mafia, LLC (“Dutch Bros OpCo”), a direct subsidiary of the Company, since February 2021. Prior to this, Defendant Boersma served as the Chief Executive Officer (“CEO”) from February 2019 until February 2021. According to the Company’s public filings, Defendant Boersma received \$1,508,989 in total compensation from the Company in 2022. According to the Company’s 2023 Proxy Statement, Defendant Boersma and his affiliated entities own 129,423,699 shares of the Company’s common stock, accounting for 75.8% of the Company’s combined voting power.

17. *Defendant Jonathan “Joth” Ricci* (“Ricci”) has served as the Company’s CEO and a member of the Company’s Board of Directors (“Board”) since August 2021. Defendant Ricci also serves as the CEO of Dutch Bros OpCo.

Defendant Ricci also previously served as the Company's President from August 2021 to February 2023 and as the President of Dutch Bros OpCo from January 2019 to February 2023. Since 2020, Defendant Ricci has served as Chairman of the Board of Dutch Bros Foundation, the philanthropic arm of the Company. According to the Company's public filings, Defendant Ricci received \$1,114,060 in total compensation from the Company in 2022. According to the Company's 2023 Proxy Statement, Defendant Ricci owns 2,293,865 shares of the Company's common stock.

18. ***Defendant Shelley Broader*** ("Broader") has served as a Company director since August 2021. Defendant Broader also serves as Chair of the Audit and Risk Committee ("Audit Committee"). According to the Company's public filings, Defendant Broader received \$184,174 in total compensation from the Company in 2022.

19. ***Defendant Thomas Davis*** ("Davis") has served as a Company director since August 2021. Defendant Davis also concurrently serves as a member of the board of managers of Dutch Bros OpCo. Defendant Davis also serves as Chair of the Company's Compensation Committee. According to the Company's public filings, Defendant Davis received \$182,984 in total compensation from the Company in 2022.

20. ***Defendant Charles "Chuck" Esserman*** ("Esserman") has served as a Company director since August 2021. Defendant Esserman also concurrently serves as a member of the board of managers of Dutch Bros OpCo.

21. ***Defendant Kathryn George*** (“George”) has served as a Company director since August 2021. Defendant George also concurrently serves as a member of the board of managers of Dutch Bros OpCo. Defendant George also serves as a member of the Company’s Audit Committee. According to the Company’s public filings, Defendant George received \$171,696 total compensation from the Company in 2022.

22. ***Defendant Stephen Gillett*** (“Gillett”) has served as a Company director since December 2021. Defendant Gillett also serves as a member of the Company’s Audit Committee. According to the Company’s public filings, Defendant Gillett received \$180,794 in total compensation from the Company in 2022.

23. ***Defendant Blythe Jack*** (“Jack”) has served as a Company director since August 2021. Defendant Jack also concurrently serves as a member of the board of managers of Dutch Bros OpCo. Defendant Jack also serves as a member of the Company’s Compensation Committee.

24. The above-named Defendants at ¶¶ 18–23 are referred to herein as the “Director Defendants.”

Officer Defendants

25. ***Defendant Charley Jemley*** (“Jemley”) has served as the Company’s Chief Financial Officer (“CFO”) since 2020. According to the Company’s public filings, Defendant Jemley received \$723,333 in total compensation from the Company in 2022. According to the Company’s 2023 Proxy Statement,

Defendant Jemley owns 1,167,032 shares of the Company's common stock.

26. *Defendant Brian Maxwell* ("Maxwell") has served as the Company's Chief Operating Officer ("COO") since August 2021. Defendant Maxwell also serves as the COO of Dutch Bros OpCo. According to the Company's public filings, Defendant Maxwell received \$626,159 in total compensation from the Company in 2022. According to the Company's 2023 Proxy Statement, Defendant Maxwell owns 1,153,620 shares of the Company's common stock.

27. The above-named Defendants at ¶¶ 25–26 are referred to herein as the "Officer Defendants."

28. The above-named Director Defendants and Officer Defendants are collectively referred to herein as the "Defendants."

BACKGROUND

Dutch Bros

29. Dutch Bros is a drive-thru coffee chain with franchise locations across the western and central states. As of June 30, 2023, the Company had 754 locations across fourteen (14) states.

30. The Company was founded in 1992 by Defendant Boersma and his brother in Grants Pass, Oregon. The Company grew and opened its first franchise store in 2000 and quickly spread across the northwest.

31. Dutch Bros attributes its growth to its "people-pipeline," claiming in its 2022 Proxy Statement that the Company "is in the relationship business" and

that “people are at the heart of everything we do.” Accordingly, Dutch Bros promotes its “community-driven, people first culture” alongside its focus of “serving high quality, hand-crafted beverages” and looks to take “meaningful and measurable action in philanthropy; sustainability; and diversity; equity; and inclusion” through its business operations and through its philanthropic arm – Dutch Bros Foundation.

32. In 2017, the Company stopped franchising its stores, however a majority of the Company’s stores are still owned by franchisees – many of whom have longstanding ties to the Company. It was reported by *Forbes* in 2021 that “[a]ll of the 179 new stores opened since 2018 are operated by shop managers promoted from within.”

33. The Company experienced continued growth and took an outside investment for the first time in September 2018. In 2019, Defendant Boersma stepped down as CEO to serve as executive chairman and was subsequently replaced by Defendant Ricci. The Company subsequently reported that for the six-months ended June 30, 2021, its franchising and other revenue rose 13% to \$47.1 million compared to the same period in 2020.

34. On September 14, 2021, Dutch Bros went public on the NYSE and made Oregon history by having the largest Initial Public Offering of any Oregon-based company. Dutch Bros sold 21.1 million shares during its initial public offering (“IPO”), raising about \$484 million. The IPO was priced above the Company’s earlier targeted price range of \$18 to \$20 per share, and its share price

opened at \$32.50 the day after its IPO.

35. Dutch Bros continued to sustain its growth, as touted by Defendant Ricci in an earnings call for the third quarter of 2021, stating: “[o]ur third quarter financial results demonstrate the underlying strength of this business and reinforce why we have so much conviction around Dutch Bros’ long-term growth prospects.” During the same call, Defendant Jemley further boasted the Company’s growth and future projections, stating:

[A]s of September 30, revenue grew 51% on top of 33% growth we achieved back in 2020 over the same nine months.

Total shop openings are expected to be at least 30 in Quarter 4. Revenue is projected to be in the range of \$125 million to \$128 million. Same-shop sales are estimated in the mid-single digits. Adjusted EBITDA is projected to be in the range of 12.5 million to 13.5 million.

FALSE AND MISLEADING STATEMENTS

March 1, 2022

36. On March 1, 2022, the Company issued a press release reporting its financial results for the fourth quarter and full year 2021. In the press release, Defendant Ricci touted that “2021 was a fantastic year for Dutch Bros” and that the Company “delivered financial results that exceeded our expectations.” Defendant Ricci then looked to 2022, stating:

In 2022, we celebrate Dutch Bros’ milestone 30th anniversary, and begin our expansion east with our entrance into Nashville. While our history shows we’re a well-established and respected brand, we are still in the early stages of our long-term story. Two years ago, we entered 2020 with just 370 shops in 7 states. We finished 2021 with 538 shops in 12 states. Importantly, new shops are opening at

higher average unit volumes than the system average, including in new markets. In 2022, we have committed to opening at least 125 new shops, supported by a robust pipeline and strong consumer acceptance of Dutch Bros. in addition to moving east, we are excited about further expansion in existing markets, including Southern California, a market we believe will be a significant growth driver [...].

37. The press release also contained a financial outlook for 2022, projecting, among other things, its total revenues to be in the range of \$700 million to \$715 million, adjusted EBITDA to be in the range of \$115 million to \$120 million, and capital expenditures to be in the range of \$175 million to \$200 million.

38. That same day, the Company held a conference call to discuss the fourth quarter 2021 financial results. During the call, Defendant Ricci highlighted the Company's planned expansion and growth:

In early 2022, we opened our first shop east of the Mississippi River in Nashville, Tennessee. Throughout 2022, we will continue to expand in Texas, Oklahoma, Tennessee, and Kansas and also ramp up development in Southern California where results are pointing to a significant opportunity. In total, we now expect to open at least 125 shops, above our original guidance of at least 112. Our ability to increase our development goal for 2022 is based upon our incredibly talented pool of operators as well as our confidence in our ability to identify and secure new sites at attractive returns.

39. Defendant Ricci then went onto boast the Company's ability to stay ahead of labor shortages and inflation, stating:

Staffing and labor headwinds within the overall industry are well known. We've read the headlines. While we are neither immune from market forces nor the impact of the omicron variant, our overall labor cost and ability to maintain normal operating hours were stable in the fourth quarter and now into 2022. We had less than 1%

downtime during the fourth quarter.

40. Defendant Ricci continued, with respect to margin pressures:

Our confidence in our people pipeline and development team allowed us to accelerate openings ahead of plan, allowing these shops to sooner contribute to profitability in 2022. While we are not immune to margin pressures but are managing it appropriately, we continue to look for operational improvements and further opportunities in our market-based pricing model.

41. Defendant Ricci further stated: “[m]omentum has continued into the new year. Underlying consumer demand remains very positive as evidenced by our same-shop sales and continued acceptance as we enter new markets and infill our current markets.”

42. Following this, Defendant Jemley made several statements touting the Company’s future financial success. In particular, Defendant Jemley stated:

At the end of the fourth quarter, we had 271 company-operated shops, nearly 50% more than we had at the end of 2020. Our overall system shop count was 538 shops or 22% more than we had at the end of 2020. Ahead of that objective and our guidance is 20-plus percent growth again in 2022.

* * *

We entered 2022 with a strong pipeline of new shops that fit inside our selection criteria and meet our overall growth strategy objectives to expand in existing markets and to open a select set of new markets each year. All this is designed to give our operators growth opportunities and to do so in a financially successful way. You see that optimism in our new unit guidance for 2022, grounded by both volume and profitability results, supporting our decision to quicken the pace in measured ways.

* * *

For 2022 specifically, total system shop openings are expected to be

at least 125, of which at least 105 shops will be company-operated. Total revenues are projected to be in the range of \$700 million to \$715 million.

Same-shop sales growth are estimated in the mid-single digits. Adjusted EBITDA is estimated to be in the range of \$115 million to \$120 million. Capital expenditures are estimated to be in the range of \$175 million to \$200 million. [...].

43. In response to a question from Baird analyst, David Tarantino, about whether the Company would raise prices to offset any potential margin pressure, Defendant Jemley stated:

... I think we've been fortunate to not have a lot of inflation drag, both in '21 and frankly, moving into early '22.

And so we haven't felt compelled. [...]

But we are feeling good as we enter '22 with the trajectory of our margins, given everything going on.

44. Analyst Jeffrey Bernstein from Barclays then asked "I was hoping you can maybe just share what you think, well, COGS [cost of goods and services] and labor inflation might be in '22, and therefore, if you can give any kind of directional color just because you gave so much granularity on the fourth quarter, what guidance might be for the first quarter or the full year '22 on that restaurant operating margin line?" to which Defendant Jemley responded:

Yes. So we're fortunate that the two big costs, cost of good and labor, we don't have any real significant upward momentum in the labor line. So we're starting halfway better than everybody else, to begin with. And then secondly, we have pretty simple pantry of goods.

What we're really dealing with right now is freight and logistics costs going up. But we're able to do, as we've shown in Q4 and the

walk I gave you in COGS, we're really able to handle that pretty effectively, and we'll get a full quarter of the price impact from November in our Q1. In terms of guiding a specific margin for Q1, I'd prefer not to do that. It is a – Q4 is the next lowest seasonality.

And then we kind of get into Q2. But I just think from a – other than the discount rollover from a year-over-year perspective, we're just not feeling compression in margins. And the biggest thing for us is our labor costs are stable.

45. Finally, an analyst from Cowen and Company, Andrew Charles, asked “does guidance embed some level of conservatism for the quarter? Or perhaps if you can help us out, just two-thirds of the way through the first quarter, that January maybe was a little bit more soft due to omicron before bounding in February?” Defendant Jemley, in response, assured the Cowen and Company analyst, stating:

Yes. It was softer in January. It was better in February, less outages. We're sitting ahead of the mid-singles right now.

We're – like everybody, don't know where the world is going to go over the next 30 days with all that's going on. And so we're just being a little tepid about how we look at things. It doesn't really move the needle much. The biggest revenue driver is annualization of new stores and new stores getting added.

So it gets a lot of talk track and it is important to the underlying health of the business, but it's really not that financially meaningful right now as fast as we're growing the top line. That's why we don't – we try not to overthink it.

46. However, the statements identified above at ¶¶ 36–45 were materially false and misleading and omitted material adverse facts about the Company's business, operations, and prospects. In particular, Defendants failed to disclose to investors that: (i) the Company was experiencing increased costs

and expenses, including on dairy; (ii) as a result, the Company was experiencing increased margin pressure and decreased profitability in the first quarter of 2022; and (iii) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

47. Defendants had a duty under SEC Regulation S-K Item 303 to disclose any known uncertainty (and the attendant risks) that were reasonably likely to have a material impact on the Company's financial condition. In addition, by choosing to speak about the risks facing the Company and the Company's margins, Defendants had a duty to speak completely and accurately on the topics, which included disclosing any material facts necessary to make the statements not misleading. Accordingly, Defendants' failures outlined at ¶ 46, *supra*, rendered the statements made in the Company's press release and conference call false and misleading.

48. Despite this, and due to the false and misleading statements, the Company's stock price rose following the press release and conference call from a close of \$47.52 on March 1, 2022 to a close of \$52.97 by March 10, 2022.

March 11, 2022

49. On March 11, 2022, the Company filed its annual report with the SEC on Form 10-K for the fiscal year ended December 31, 2021 ("2021 10-K"). The 2021 10-K was signed by Defendants Boersma, Ricci, Broader, Davis, Esserman, George, Gillett, Jack, and Jemley and contained Sarbanes-Oxley Act

of 2002 (“SOX”) certifications signed by Defendants Ricci and Jemley.

50. The 2021 10-K touted the Company’s success in keeping up with supply chain issues, stating:

We have taken several steps to increase our diversity of supply and reduce transportation costs as we expand company-operated shops eastward within the United States. We are finalizing the economics of our plan to build a second roasting facility in the Midwest United States. We anticipate the new roasting facility will be operational in 2023, and will cost approximately \$15 million - \$20 million.

We designed our supply chain to be flexible in order to respond efficiently to changes in the market. On average, we typically have approximately four months of green coffee bean inventory stored at our two ports of entry in the United States or at our roasting plant in Grants Pass, Oregon. In the event of a supply distribution in any one of our production origins, we have identified alternate coffee beans with substantially similar flavor profiles that can be sourced and incorporated to produce our blend ...

51. The statements identified in the 2021 10-K at ¶ 50 were materially false and misleading and omitted material adverse facts about the Company’s business, operations, and prospects. In particular, Defendants failed to disclose to investors that: (i) the Company was experiencing increased costs and expenses, including on dairy; (ii) as a result, the Company was experiencing increased margin pressure and decreased profitability in the first quarter of 2022; and (iii) as a result of the foregoing, Defendants’ positive statements about the Company’s business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

52. Defendants had a duty under SEC Regulation S-K Item 303 to disclose any known uncertainty (and the attendant risks) that were reasonably

likely to have a material impact on the Company's financial condition. In addition, by choosing to speak about the risks facing the Company, the Defendants had a duty to speak completely and accurately on the topic, which included disclosing any material facts necessary to make the statements not misleading. Accordingly, the Defendants' failures outlined at ¶ 51, *supra*, rendered the statements made in the Company's press release and conference call false and misleading.

53. Following the filing of the 2021 10-K, the Company's stock price increased from \$48.80 per share on March 11, 2022 to \$57.26 per share by March 17, 2022 and continued to a Relevant Period high of \$62.77 per share on March 29, 2022.

THE TRUTH EMERGES

54. On May 11, 2022, after the markets closed, the Company issued a press release announcing its financial results for the first quarter of 2022. In doing so, the Company announced a net loss of \$16.3 million, compared to a net loss of \$4.8 million for the same period in 2021. Additionally, Dutch Bros reported an adjusted net loss of \$2.5 million (a loss of \$0.02 per share), falling below the estimated earnings of \$0.01 per share expected by *The Street*.

55. In the press release, Defendant Ricci stated:

The consumer demand for our beverages remains strong. Our substantial top-line revenue growth of 54% was primarily driven by the 107 company-operated shops opened over the past twelve months, a 56% increase, including 34 during the first quarter, and same shop sales of 6.0%. As a people-led growth story, we are

particularly encouraged by our staffing levels and the performance of our newest shops, spread across many markets, including some that generated record initial sales. Our ability to increase revenues while successfully developing new shops reinforces our commitment to offering exceptional drive-thru experiences and confidence in our long-term strategy and growth targets.

Still, *we are not immune to the record inflation that surpassed our expectations and pressured margins in our company-operated shops*. While we believe these margin impacts may be short-term, we have opted to take a more conservative stance regarding adjusted EBITDA for 2022 as we monitor our pricing and the escalating cost environment. [Emphasis added].

56. In addition, the Company provided revised financial outlooks for 2022. While total revenues were expected to remain the same, same shop sales growth was projected to be “approximately flat,” adjusted EBITDA was estimated “to be at least \$90 million, *reflecting near-term margin pressure in our company-operated shops*” (Emphasis added).

57. That same day, the Company held a conference call to discuss the financial results for the first quarter of 2022. In addressing the disappointing financial results, Defendant Ricci stated:

The first quarter represented another building block in our long-term growth and value creation story. We remain focused on our disciplined growth strategy, utilizing strategic sales transfer to create great customer and Broista¹ experiences. Our reception in new markets continues to be outstanding and the strength of the brand across geographies and doors. While we are pleased with the strength of our revenue in shop development in the first quarter, *margin pressure on our company shops led to a lower adjusted EBITDA result than we expected*.

That margin pressure was primarily a result of these factors: our

¹ “Broista” is what Dutch Bros calls their employed baristas.

decision to be disciplined on the price we took, which we believe is less than half as much as many of our peers; faster inflation and cost of goods, especially in dairy; the pull forward of deferred expenses related to the maintenance of shops; and normal new store inefficiency amplified by the volume of new and ramping units in quarter 1. It is important to always recognize that Dutch Bros story is all about long-term sustainable growth. Everything we do inside the company is focused on making the business better and stronger 3, 5 and 10 years from today. *Unfortunately, in this past quarter, a confluence of cost pressures overwhelmed our decisions around price and resulted in near-term margin compression.*

We anticipated higher expenditures. However, we did not perceive the speed and magnitude of cost escalation within the quarter. Dairy, for example, which makes up 28% of our commodity basket, rose almost 25% in Q1. While costs rose throughout the quarter, we experienced a change in sales trajectory from mid-March onward as macroeconomic headwinds accelerated and comps turned negative.

We are monitoring these factors and have chosen to take a more conservative stance on our 2022 outlook given macroeconomic uncertainty. But importantly, as time passes, we have a greater and greater confidence in the growth potential based on the performance of our new units in both established and new markets. *Our labor margin remained elevated in Q1 relative to Q4 but down slightly from the first quarter of last year.* Importantly, as we mentioned in Q4, our operations are not being impacted by staffing shortages. [Emphasis added].

58. Defendant Ricci further stated that “[b]ased upon a revised cost forecast, we a taking a more conservative stance in our 2022 annual outlook and for adjusted EBITDA.”

59. Also, during the call, Defendant Jemley discussed the Company’s reported financial results, stating:

As [Defendant Ricci] noted, *dairy increased by almost 25% toward the end of the first quarter to near historic highs in what is now 28% of our ingredients cost basket.* We did not anticipate this sharp rise. While we do not believe dairy will stay this high indefinitely,

we have to assume it will remain high for most of 2022. Additionally, we encountered 240 basis points of cost pressure on our labor line.

This includes higher training costs, higher overtime to keep stores open, and higher legislated minimum wage advances in California, Arizona and Washinton states. We continue to see stability in our workforce despite a slight uptick in turnover in the first quarter. The good news is that our stores are staffed and operating at full hours. ***The combination of margin pressure from ingredient costs and higher labor costs resulted in margin compression of 720 basis points prior to offsets we achieved through menu price increases.*** [Emphasis added].

60. Commenting on the pricing increases for products and the impact on the Company, Defendant Jemley continued:

Inflation in both ingredient and operating costs has risen rapidly, catching us off guard from the speed and the sharpness of this rise. In the short term, it is unlikely that our new menu price actions will fully offset the extent of these input cost increases. We believe outsized menu price moves in the face of consumer discretionary spending headwinds would not be wise at this stage. For our high-growth brands, the lifetime value of each customer is heightened. It is our desire to keep our menu prices approachable for customers across the income spectrum.

Given the unexpected speed and magnitude of these costs and consumer demand events, we are taking a more conservative view of 2022 adjusted EBITDA and same shop sales. However, given the strength of our openings and their attractive returns, we are modestly accelerating new shop development to that end for full year 2022.

61. Defendant Jemley also discussed the sales for the first quarter of 2022, stating “[s]ame shop sales are estimated to be flat to slightly negative as we face macroeconomic headwinds impacting consumer discretionary income. April same shop sales were negative 3.7% in 2022 compared to plus 22.6% in 2021, our largest rollover of the year.”

62. In the question-and-answer portion of the call, Defendant Ricci made clear that the Company's plan was to improve its dairy purchasing and labor management practices in order to decrease costs, stating in relevant part:

So I think on the commodity costs in the place that we're at right now to see short-term effective improvement is limited in how we buy and kind of where we're at. We're out long on coffee. Dairy, obviously, you don't have a lot of control over. And then really, we're kind of beholden to some freight impact and some other small basket of goods because we just don't have that much in our basket. It just so happens that dairy makes up such a large percentage of that basket.

Previously, we have been talking coffee a lot and had said it makes up just a small percentage. We're OK on coffee, which continues to be the case. ***But dairy certainly caught us off guard. I do think we have some opportunity to improve internally on our purchasing and our purchasing capabilities and how we look at that long term. And as we grow, that is an arena of emphasis for [Defendant Jemley] and myself, as we kind of, I'd say build that muscle here at Dutch Bros.***

Two is related to how we manage shops. And I will tell you that our retail ops team is looking hard right now at labor. ***I think we all need to be looking at labor, and we all need to be thinking about how we manage labor, especially related to overtime and things of that nature and may be related some daypart flexibility.*** Just because of the nature of the business is changing a little bit and the nature of the market is changing a little bit, we need to be flexible on how we do that. [Emphasis added].

63. On this news, Dutch Bros' stock price plummeted \$9.26 per share, or approximately 27%, from a close of \$34.37 per share on May 11, 2022, to a close of \$25.11 per share on May 12, 2022 on high trading volume.

KNOWLEDGE OF THE DEFENDANTS

64. Throughout the Relevant Period, each of the Defendants knew of the

true condition of the Company yet permitted the false and misleading statements to be made and failed to correct, or cause the Company to correct, the false and misleading statements.

April 18, 2022

65. On April 18, 2022, just over a month after the first false and misleading statements were made, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

66. In addition, a slideshow deck was provided for the Audit Committee meeting which contained the following information, in relevant part:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

67. The presentation deck also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. Additionally, [REDACTED]

[REDACTED]

[REDACTED]

69. Accordingly, Defendants Broader, George, Gillett, Jack, Jemley Ricci, and Boersma were each aware of the true condition of the Company, including the impact of rising dairy costs, downward margins, and the plan to increase menu prices, yet failed to cause the Company to correct the false and misleading statements issued the month prior.

April 19, 2022

70. The following day, the Board held a meeting which was attended by

[REDACTED]

[REDACTED]

71. During the meeting, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

72. A slideshow deck was also provided for the Board meeting which contained the same information as described at ¶¶ 66–68, *supra*.

73. Accordingly, Defendants Boersma, Broader, Esserman, David, George, Jack, Ricci, Gillett, Jemley, and Maxwell were each aware of the true condition of the Company, including the impact of rising dairy costs, downward margins, and the plan to increase menu prices, yet failed to cause the Company to correct the false and misleading statements issued the month prior.

May 3, 2022

74. On May 3, 2022, over a week before the truth emerged, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75. The minutes of this meeting contained the following information, in relevant part:

[REDACTED]

[REDACTED]

[REDACTED]

* * *

[REDACTED]

[REDACTED]

[REDACTED]

76. A slideshow deck was also provided for this Special Meeting which contained the following information:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. The slideshow deck also [REDACTED]

[REDACTED] which contained the same information as described at ¶ 66, *supra*.

78. As a result, Boersma, Broader, Esserman, David, George, Jack, Ricci, Gillett, Jemley, and Maxwell each were each aware of the true condition of the Company, including the impact of rising dairy costs and other cost of goods, downward margins, and the plan to increase menu prices, yet failed to cause the Company to correct the false and misleading statements issued two months prior.

May 9, 2022

79. Finally, on May 9, 2022, two days before the truth was revealed to the public, an Audit Committee held a meeting which was attended by [REDACTED]

80. The meeting minutes contained the following information, in relevant part:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

81. In addition, a slideshow deck was provided for the Audit Committee meeting. While the majority of the slides provided to Plaintiff's counsel were redacted, [REDACTED]

[REDACTED]

82. As such, Defendants Broader, George, Gillett, Jack, Jemley, Ricci, and Boersma were each aware of the true condition of the Company, including the impact of rising dairy costs and other cost of goods, downward margins, and the plan to increase menu prices, yet failed to cause the Company to correct the false and misleading statements issued two months prior and instead waited for the Company's financial performance to reveal itself.

83. Each of the Defendants knew of the true condition of the Company from at least April 18, 2022 but nevertheless failed to correct, or cause the Company to correct, the false and misleading statements regarding the fact that the Company was experiencing increased costs and expenses, including on dairy, and, as a result, the Company was experiencing increased margin pressure and decreased profitability in the first quarter of 2022.

DAMAGE TO THE COMPANY

84. As a direct and proximate result of the Defendants' conduct, Dutch Bros has lost and will continue to lose and expend many millions of dollars. In addition to the plummeting stock price, the Company has presently sustained the following damages:

Securities Class Action

85. On March 1, 2023, a securities class action complaint was filed in the United States District Court for the Southern District of New York against the Company, Defendant Ricci and Defendant Jemley. The complaint alleges

violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder and Section 20(a) of the Exchange Act arising from the wrongdoing as alleged herein. The case is captioned *Peacock v. Dutch Bros, Inc., et al.*, Case No. 1:23-cv-01794 (S.D.N.Y.) (“Securities Class Action”).

86. The Company has had to expend significant sums in defending itself and the other named defendants against the claims and will continue to expend significant sums on defending against the Securities Class Action and any judgment or settlement that may result.

Unjust Compensation

87. At all relevant times, the Company paid lucrative compensation to certain of the Defendants. The compensation paid to certain of the Defendants during the Relevant Period totals over \$4.6 million, and is as follows:

Defendant	Salary or Fees (\$)	Stock Awards (\$)	Bonus (\$)	Other Compensation (\$)	Total (\$)
Boersma	1,500,000	-	-	9,989	1,508,989
Ricci	550,000	-	500,000	64,060	1,114,060
Broader	84,190	99,984	-	-	184,174
Davis	83,000	99,984	-	-	182,984
George	71,712	99,984	-	-	171,696
Gillett	80,810	99,984	-	-	180,794
Jemley	472,500	-	225,000	25,833	723,333
Maxwell	593,183	-	-	32,976	626,159
TOTAL	3,435,395	399,936	725,000	132,858	4,692,189

88. The Company paid the Defendants in connection with their respective roles as officers and/or directors of the Company. Accordingly, as part

of their respective roles, Defendants were required to, among other things, exercise due care and diligence in the management and administration of the affairs of the Company, act ethically and in compliance with all laws and regulations, maintain adequate internal controls, and conduct business in a fair and transparent manner. Further, each of the Defendants had additional duties and responsibilities owed to the Company by virtue of their executive, directorial and/or committee roles, as detailed at ¶¶ 94–109, *infra*, for which they were compensated for.

89. However, Defendants failed to carry out their duties adequately or at all, causing harm to the Company, as alleged herein. Because Defendants failed to carry out their respective duties, the compensation they received during the Relevant Period was excessive and undeserved. As such, certain of the Defendants were unjustly enriched by over \$4.6 million to the detriment of the Company.

Insider Selling

90. While in possession of material, non-public information, that is the true business, financial, and operational prospects of the business, certain of the Defendants’ decided to take advantage of the Company’s artificially inflated stock price to garner substantial proceeds. The stock sold and proceeds gained are as follows:

Defendant	Date	Number of Shares	Average Price Per Share	Proceeds
Ricci	03/07/2022	71,125	\$48.06	\$3,277,440

	05/09/2022	71,125	\$42.47	\$3,020,678.75
Maxwell	03/15/2022	12,000	\$48.75	\$585,000
	03/29/2022	12,000	\$60.44	\$725,280
	04/12/2022	12,000	\$52.57	\$630,840
	04/26/2022	12,000	\$48.06	\$576,720
	05/10/2022	12,000	\$40.63	\$487,560
Jemley	03/15/2022	15,000	\$48.77	\$731,550
	04/05/2022	5,000	\$54.08	\$270,400
			TOTAL	\$10,305,468.75

Additional Damage to the Company

91. As a direct and proximate result of the wrongs alleged herein, the Company may be subject to regulatory investigation and action by the SEC for the false and misleading statements made in the Company’s public filings. The Company may thus be required to expend on defending itself against such investigation, action, and any potential settlement thereof.

92. The Company will also have to expend on the implementation and maintenance of improved internal controls to prevent similar misconduct in the future.

93. In addition to the above-specified damages, the Company has also suffered, and will continue to suffer, a loss of reputation and goodwill. The Company will also suffer a “liar’s discount” which will plague the Company’s stock price in the future.

DUTIES OF THE DEFENDANTS

94. By reason of their positions as officers and/or directors of the Company, and because of their ability to control the business and corporate affairs of the Company, Defendants owed the Company and its investors the fiduciary

obligations of trust, loyalty, and good faith. The obligations required the Defendants to use their utmost abilities to control and manage the Company in an honest and lawful manner. Defendants were and are required to act in furtherance of the best interests of the Company and its investors.

95. Each director of the Company owes to the Company and its investors the fiduciary duty to exercise loyalty, good faith, and diligence in the administration of the affairs of the Company and in the use and preservation of its property and assets. In addition, as officers and/or directors of a publicly held company, Defendants had a duty to promptly disseminate accurate and truthful information regarding the Company's operations, finances, and financial condition, as well as present and future business prospects, so that the market price of the Company's stock would be based on truthful and accurate information.

96. To discharge their duties, the officers and directors of the Company were required to exercise reasonable and prudent supervision over the management, policies, practices, and controls of the affairs of the Company. By virtue of such duties, the officers and directors of the Company were required to, among other things:

- (a) ensure that the Company complied with its legal obligations and requirements, including acting only within the scope of its legal authority and disseminating truthful and accurate statements to the SEC and the investing public;

(b) conduct the affairs of the Company in an efficient, businesslike manner so as to make it possible to provide the highest quality performance of its business, to avoid wasting the Company's assets, and to maximize the value of the Company's stock;

(c) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time, including making accurate statements about the Company's business prospects, and ensuring that the Company maintained an adequate system of financial controls such that the Company's financial reporting would be true and accurate at all times;

(d) remain informed as to how the Company conducted its operations, and, upon receipt of notice or information of imprudent or unsound conditions or practices, make reasonable inquiries in connection therewith, take steps to correct such conditions or practices, and make such disclosures as necessary to comply with federal and state securities laws;

(e) ensure that the Company was operated in a diligent, honest, and prudent manner in compliance with all applicable federal, state and local laws, and rules and regulations; and

(f) ensure that all decisions were the product of independent business judgment and not the result of outside influences or entrenchment motives.

97. Each Defendant, by virtue of his or her position as a director and/or officer, owed to the Company and to its shareholders the fiduciary duties of loyalty, good faith, and the exercise of due care and diligence in the management and administration of the affairs of the Company, as well as in the use and preservation of its property and assets.

98. The conduct of the Defendants complained of herein involves a knowing and culpable violation of their obligations as directors and officers of the Company, the absence of good faith on their part, and a reckless disregard for their duties to the Company and its shareholders that the Defendants were aware, or should have been aware, posed a risk of serious injury to the Company.

99. Defendants breached their duties of loyalty and good faith by causing the Company to issue false and misleading statements concerning the business results and prospects of the Company. As a result, the Company has expended, and will continue to expend, significant sums of money related to investigations and lawsuits.

Corporate Governance Guidelines

100. The Company's Corporate Governance Guidelines provide rules for the conduct and operation of the Board. The Corporate Governance Guidelines set out the following responsibilities for the Director Defendants:

A director should discharge his or her duties, including duties as a member of any committee on which he or she serves, in good faith and in a manner the director reasonably believes to be in the best interests of the Company and its stockholders. Board members will comply with the laws and requirements of the Exchange and other

applicable regulatory agencies and with all policies and guidelines of the Company, including without limitation, the Company's Code of Business Conduct and Ethics.

[...]

Directors have an obligation to protect and keep confidential all of the Company's non-public information unless the Company has authorized public disclosure or unless otherwise required by applicable law. Confidential information includes all non-public information entrusted to or obtained by a director by reason of his or her position on the Board. This includes information regarding the Company's strategy, business, finances, and operations, and will include minutes, reports, and materials of the Board and committees, and other documents identified as confidential by the Company. The obligations described above continue even after service on the Board has ended.

Directors may not use such confidential information for personal benefit or to benefit other persons or entities other than the Company. Unless authorized by the Company or applicable law, directors will refrain from disclosing confidential information to anyone outside the Company, especially anyone affiliated with any entity or person that employs the director or has sponsored the director's election to the Board. These obligations continue even after service on the Board has ended.

Any questions or concerns about potential disclosures should be directed to the head of the Company's legal department, who then may communicate with the Chief Executive Officer or the Nominating and Corporate Governance Committee, when established, regarding the potential disclosures.

101. Accordingly, each of the Director Defendants were required to abide by the Corporate Governance Guidelines at all relevant times.

Code of Business Ethics

102. As detailed in the 2022 Proxy Statement, Dutch Bros Code of Conduct applies to all employees, officers, and directors of the Company.

103. The Code of Conduct states that Dutch Bros and Dutch Bros OpCo and its direct and indirect subsidiaries are “committed to maintaining the highest standards of business conduct and ethics.” The Code of Conduct further states: “Dutch Bros integrity and reputation depends on the honesty, fairness, and integrity brought to the job by each person associated with us. Unyielding personal integrity and sound judgment is the foundation of corporate integrity.”

104. In a section entitled “Legal Compliance,” the Code of Conduct states:

Obeying the law is the foundation of this code. Our success depends upon each employee operating within legal guidelines and cooperating with local, national, and international authorities. We expect employees to understand the legal and regulatory requirements applicable to their business units and areas of responsibility. Violation of domestic or foreign laws, rules, and regulations may subject an individual, as well as Dutch Bros, to civil and/or criminal penalties.

105. In a section entitled “Financial Integrity,” the Code of Conduct states:

The integrity of our records and public disclosures depends on the validity, accuracy, and completeness of the information supporting the entries to our books of account. Therefore, our corporate and business records should be completed accurately and honestly. The making of false or misleading entries is strictly prohibited. Our records serve as a basis for managing our business and are important in meeting our obligations to customers, suppliers, creditors, employees, and others. We also rely upon our accounting and other business and corporate records in preparing publicly-filed reports. ***Securities laws require that these reports provide full, fair, accurate, timely, and understandable disclosure and fairly represent our financial condition and results of operations. Employees who contribute in any way in preparing or verifying these reports should strive to ensure that our financial disclosure***

is complete, accurate, and transparent. [Emphasis added].

106. At all material times hereto, Defendants were each required to abide by the Code of Conduct and report any violations.

Audit Committee Charter

107. The Audit Committee Charter provides that the Audit Committee's purpose is to, among other things: (i) oversee the Company's accounting and financial reporting processes, systems of internal control, and the integrity of the Company's financial statements; (ii) review any reports or disclosure required by applicable law and NYSE listing requirements; (iii) oversee the design, implementation, organization, and performance of the Company's internal audit function; and (iv) help the Board oversee the Company's legal and regulatory compliance, including risk assessment.

108. In a section entitled "Responsibilities," the Audit Committee Charter states that the Audit Committee is responsible for:

Financial Review and Disclosure:

5. Annual Audit Results. The Committee will review with management and the Auditors the results of the Company's annual financial statement audit, including:

- the Auditors' assessment of the quality of the Company's accounting principles and practices;
- the Auditors' views about qualitative aspects of the Company's significant accounting practices and the reasonableness of significant judgments and estimates (including material changes in estimates and analyses of the effects of alternative GAAP methods on the financial statements);

- all known and likely misstatements identified during the audit (other than those the Auditors believe to be trivial);
- the adequacy of the disclosures in the financial statements; and
- any other matters that the Auditors must communicate to the Committee under applicable accounting or auditing standards.

6. Audited Financial Statement Review; Quarterly and Annual Reports. The Committee will review the annual audited financial statements, the quarterly financial statements, and the Company's 4 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Risk Factors," as appropriate, with management and the Auditors. The Committee will be responsible for recommending to the Board whether the proposed annual audited financial statements should be included in the Company's Annual Report on Form 10-K.

7. Earnings Announcements. The Committee will review and discuss with management and the Auditors any proposed earnings press releases and other financial information and guidance regarding the Company's results of operations provided publicly or to ratings agencies.

8. Proxy Report. the Committee will oversee the preparation of any report of the Committee required by applicable law or the listing requirements to be included in the Company's annual proxy statement. **9. Accounting Principles and Policies.** The Committee will review and discuss with management and the Auditors significant issues regarding accounting principles and financial-statement presentation, including:

- critical accounting policies and practices;
- alternative accounting policies available under GAAP;
- the potential impact on the Company's financial statements of alternative treatments and any off-balance sheet structures; and

- any other significant reporting issues and judgments, significant regulatory, legal, and accounting initiatives, or developments that may have a material impact on the Company's financial statements, compliance programs, and policies.

The Committee will review with the Auditors and management, if appropriate, any written communication, such as any management letter or internal-control letter, and monitor management's response to such communications. At least annually, the Committee will discuss with the Auditors the matters required to be discussed by Auditing Standard No. 1301, Communications with Audit Committees, as adopted by the PCAOB (including any successor rule adopted by the PCAOB).

Internal Control and Procedures

11. Risk Assessment and Management. The Committee will review and discuss with management and the Auditors the Company's processes and policies on enterprise risk identification, management, and assessment in all areas of the Company's business, but the Board shall continue to have overall responsibility for evaluating key business risks faced by the Company, including but not limited to data privacy, technology, information security (including data-security and back-up of information systems), competition, and regulation. Areas of focus for the Committee shall include the Company's policies and other matters relating to the Company's investments, cash management and foreign exchange management, major financial risk exposures, the adequacy and effectiveness of the Company's information security policies and practices and the internal controls regarding information security, and the steps taken by management to monitor and mitigate or otherwise control these exposures and to identify future risks.

12. Internal Auditors. The Committee will review the development and implementation of an internal audit function and activities of the Company's internal audit team and discuss with that team the adequacy and effectiveness of the Company's scope, staffing, and general audit approach. The Committee will review any significant reports prepared by the Company's internal auditors, as well as management's response. The head of the internal audit function will also report to and be evaluated by the Committee.

13. Internal Control over Financial Reporting; Disclosure Controls. The Committee will confer with management and the Auditors concerning the scope, design, adequacy, and effectiveness of internal control over financial reporting, including the adequacy and effectiveness of the Company's information and cyber security policies, the internal controls regarding information security, and any significant deficiencies and significant changes in internal controls, and the Company's disclosure controls and procedures. The Committee will review reports on significant findings and recommendations with respect to internal controls over financial reporting, together with management responses and any special audit steps adopted in light of any material control deficiencies.

14. Correspondence with Regulators. The Committee will consider and review with management, the Auditors, and outside advisors or accountants any correspondence with regulators or governmental agencies and any published reports that raise material issues regarding the Company's financial statements or accounting policies.

[...]

17. Ethical Compliance. The Committee will review the results of management's efforts to monitor compliance with the Company's programs and policies designed to ensure compliance with applicable laws and the listing requirements, including the Company's Code of Business Conduct and Ethics.

[...]

21. Other Legal and Finance Matters. The Committee will review with management legal and regulatory compliance, as well as any actual, pending or threatened legal or financial matters that could significantly affect the Company's business or financial statements or as otherwise deemed appropriate by the Committee. The head of the Company's legal department has the authority to communicate directly with the Committee with respect to legal matters that could impact the Company's financial statements or internal controls.

109. Defendants Broader and Gillet, as members of the Audit Committee at all relevant times, were required to abide by the Audit Committee Charter and

carry out the foregoing duties and responsibilities.

DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS

110. Plaintiff brings this action derivatively in the right and for the benefit of the Company to redress injuries suffered and to be suffered as a direct and proximate result of the breaches of fiduciary duties by Defendants.

111. Plaintiff will adequately and fairly represent the interests of the Company in enforcing and prosecuting its rights and retained counsel competent and experienced in derivative litigation.

112. Because of the facts set forth herein, Plaintiff has not made a demand on the Board of the Company to institute this action against the Defendants. Such demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

113. At the time this suit was filed, the Board was comprised of nine (9) members – Defendants Boersma, Ricci, Broader, Davis, Esserman, George, Gillett, Jack, and Non-Party Ann Miller (“Miller”) (collectively, the “Current Directors”). Thus, Plaintiff is required to show that a majority of Defendants, *i.e.*, five (5), could not exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action. The Company, in its 2023 Proxy Statement, admitted that Defendants Boersma, Ricci, Davis, and George “do not meet the independence requirements set forth in the NYSE listing standards.” Thus, with four of the Director Defendants deemed non-

independent, Plaintiff must show that just one (1) additional director lacks the ability to exercise independent objective judgment about whether to bring this action.

114. The Director Defendants face a substantial likelihood of liability in this action because they caused the Company to issue false and misleading statements concerning the information described herein. Because of their advisory, executive, managerial, and directional positions with the Company, the Director Defendants had knowledge of material non-public information regarding the Company and were directly involved in the operations of the Company at the highest levels.

115. The Director Defendants either knew or should have known of the false and misleading statements that were issued on the Company's behalf and took no steps in a good faith effort to prevent or remedy that situation.

116. The Director Defendants (or at the very least a majority of them) cannot exercise independent objective judgment about whether to bring this action or whether to vigorously prosecute this action. For the reasons that follow, and for reasons detailed elsewhere in this complaint, Plaintiffs have not made (and should be excused from making) a pre-filing demand on the Board to initiate this action because making a demand would be a futile and useless act.

117. Each of the Director Defendants approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts to conceal or disguise those wrongs from the Company's stockholders or recklessly and/or with

gross negligence disregarded the wrongs complained of herein and are therefore not disinterested parties.

118. Each of the Director Defendants authorized and/or permitted the false statements to be disseminated directly to the public and made available and distributed to shareholders, authorized and/or permitted the issuance of various false and misleading statements, and are principal beneficiaries of the wrongdoing alleged herein, and thus, could not fairly and fully prosecute such a suit even if they instituted it.

119. Additionally, each of the Director Defendants received payments, benefits, stock options, and other emoluments by virtue of their membership on the Board and their control of the Company.

Defendant Boersma

120. Defendant Boersma is the co-founder of the Company and served as the Company's CEO until 2019. Defendant Boersma now serves as Executive Chairman of the Company and derives substantial compensation from his relationship with the Company. Indeed, Defendant Boersma became a billionaire as a result of Dutch Bros going public and, in 2022, Defendant Boersma received a total compensation package of \$1,508,989, which consisted of \$1,500,000 in salary and \$8,989 in all other compensation. As a result, Defendant Boersma is neither independent nor disinterested and cannot be reasonably expected to prosecute this action.

121. Further, the Company's 2023 Proxy Statement states that "our Board

has determined that [Defendant] Boersma [...] [does] not meet the independence requirements set forth in the NYSE listing standards due to [Defendant Boersma's] employment at Dutch Bros. Thus, Defendant Boersma, by the Company's own admission, is not independent.

122. As a director, Defendant Boersma was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant Boersma failed to fulfil these duties by permitting the false and misleading statements and not later correcting those statements.

123. Defendant Boersma is not independent from Defendants Davis and Jack as they comprise the Compensation Committee and are responsible for evaluating and determining the compensation of the CEO and Executive Officers, including Defendant Boersma in his previous and existing roles. The purpose of the Compensation Committee is to assist the Board in discharge of its responsibilities related to the compensation and benefits provided by the Company to its CEO and Executive Officers. Because of his status as an inside director, and the concomitant substantial compensation he receives, Defendant

Boersma could not consider a demand adverse to the other Director Defendants serving on the Compensation Committee who are responsible for his financial future. *See, e.g., Rales v. Blasband*, 634 A.2d 927, 937 (Del. 1993); *Steiner v. Meyerson*, 1995 WL 441999, at *10 (Del. Ch. July 19, 1995); *In re The Student Loan Corp. Derivative Litig.*, 2002 WL 75479, at *3 (Del. Ch. Jan. 8, 2002); *In re Veeco Instruments, Inc. Sec. Litig.*, 434 F. Supp. 2d 267, 275 (S.D.N.Y. 2006) (applying Delaware law) (fact of director's deriving his principal income from employment by the corporation makes it improbable that he could perform his fiduciary duties without being influenced by his overriding personal interest) (citing *In re General Motors (Hughes) S'holder Litig.*, 2005 WL 1089021, at *8 (Del. Ch. May 4, 2005)).

124. Defendant Boersma was also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Defendant Boersma failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Boersma clearly cannot exercise independent and objective judgment.

125. In addition, Defendant Boersma signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant Boersma breached his fiduciary duties and faces a substantial likelihood of liability.

126. Defendant Boersma is neither independent nor disinterested. Any demand upon Defendant Boersma is futile and, thus, excused.

Defendant Ricci

127. Defendant Ricci serves as the Company's CEO and director. He previously served as President of the Company. As such, Defendant Ricci derives his primary source of income from the Company. Indeed, Defendant Ricci received a total compensation package of \$1,114,060 in 2020, consisting of \$550,000 in salary, \$500,000 in bonus, and \$64,060 in all other compensation. As a result, Defendant Ricci is neither independent nor disinterested and cannot be reasonably expected to prosecute this action.

128. Further, the Company's 2023 Proxy Statement states that "our Board has determined that [... Defendant] Ricci [...] [does] not meet the independence requirements set forth in the NYSE listing standards due to [Defendant Ricci's] employment at Dutch Bros." Thus, Defendant Ricci, by the Company's own admission, is not independent.

129. During the Relevant Period, Defendant Ricci sold Dutch Bros stock at artificially inflated prices while in possession of material, non-public information for approximately \$6.3 million in proceeds.

130. Defendant Ricci, because of his misconduct as alleged herein, is named as a defendant in the Securities Class Action and faces a substantial likelihood of liability.

131. As a director, Defendant Ricci was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant Ricci failed to fulfil these duties by making the false and misleading statements and not later correcting those statements.

132. Defendant Ricci is not independent from Defendants Davis and Jack as they comprise the Compensation Committee and are responsible for evaluating and determining the compensation of the CEO (Defendant Ricci). The purpose of the Compensation Committee is to assist the Board in discharge of its responsibilities related to the compensation and benefits provided by the Company to its CEO and Executive Officers. Because of his status as an inside director, and the concomitant substantial compensation he receives, Defendant Ricci could not consider a demand adverse to the other Director Defendants serving on the Compensation Committee who are responsible for his financial future. *See, e.g., Rales*, 634 A.2d at 937; *Steiner*, 1995 WL 441999, at *10; *In re*

The Student Loan Corp., 2002 WL 75479, at *3; *In re Veeco Instruments, Inc.*, 434 F. Supp. 2d at 275.

133. Defendant Ricci was also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Defendant Ricci failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Ricci clearly cannot exercise independent and objective judgment.

134. In addition, Defendant Ricci signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant Ricci breached his fiduciary duties and faces a substantial likelihood of liability.

135. Defendant Ricci is neither independent nor disinterested. Any demand upon Defendant Ricci is futile and, thus, excused.

Defendant Broader

136. Defendant Broader has served as a Company director since August 2021. As a director, Defendant Broader was required to, among other things: (i)

ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant Broader failed to fulfil these duties by permitting the false and misleading statements to be made and not correcting those statements.

137. Defendant Broader is also the Chair of the Audit Committee and thus had certain additional duties and responsibilities, including: (i) overseeing the Company's accounting and financial reporting processes, systems of internal control, and the integrity of the Company's financial statements; (ii) reviewing any reports or disclosure required by applicable law and NYSE listing requirements; (iii) overseeing the design, implementation, organization, and performance of the Company's internal audit function; and (iv) helping the Board oversee the Company's legal and regulatory compliance, including risk assessment. Despite this, Defendant Broader failed to fulfil her additional duties by permitting the false and misleading statements to be made.

138. Additionally, in connection with her role as a Company director, Defendant Broader receives substantial income. In 2022, Defendant Broader received a total compensation package of \$184,174, consisting of \$84,190 in fees or cash, and \$99,984 in stock awards.

139. Defendant Broader was also [REDACTED]

[REDACTED]

[REDACTED] However, Defendant Broader failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Broader clearly cannot exercise independent and objective judgment.

140. In addition, Defendant Broader signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant Broader breached her fiduciary duties and faces a substantial likelihood of liability.

141. Defendant Broader is neither independent nor disinterested. Any demand upon Defendant Broader is futile and, thus, excused.

Defendant Davis

142. Defendant Davis has served as a Company director since August 2021. As a director, Defendant Davis was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the

true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant Davis failed to fulfil these duties by permitting the false and misleading statements to be made and not correcting those statements.

143. Additionally, in connection with his role as a Company director, Defendant Davis receives substantial income. In 2022, Defendant Davis received a total compensation package of \$182,984, consisting of \$83,000 in fees or cash, and \$99,984 in stock awards.

144. Defendant Davis has served as a Managing Director and Partner of BBH, a privately owned financial services firm which provides banking services to certain officers of Dutch Bros. Accordingly, the Company states in their 2023 Proxy Statement that Defendant Davis does “not meet the independence requirements set forth in the NYSE listing standards.” Thus, Defendant Davis, by the Company’s own admission, is not independent.

145. Moreover, by virtue of his role at BBH, Defendant Davis has a pre-existing business relationship with Defendant George. Defendant Davis was a Managing Director of BBH from October 2012 until January 2023, upon which Defendant Davis became a Partner. At the same time, Defendant George is a Partner at BBH and has been since 2008. As a result, Defendant Davis is not independent from Defendant George and cannot be reasonably expected to

objectively and disinterestedly consider a demand on Defendant George, a colleague of many years.

146. Defendant Davis was also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Defendant Davis failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Davis clearly cannot exercise independent and objective judgment.

147. In addition, Defendant Davis signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant Davis breached his fiduciary duties and faces a substantial likelihood of liability.

148. Defendant Davis is neither independent nor disinterested. Any demand upon Defendant Davis is futile and, thus, excused.

Defendant Esserman

149. Defendant Esserman has served as a Company director since August 2021. As a director, Defendant Esserman was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations

and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant Esserman failed to fulfil these duties by permitting the false and misleading statements to be made and not correcting those statements.

150. Defendant Esserman has a longstanding business relationship with Defendant Jack, stemming from at least 2011. Specifically, Defendant Esserman is presently the CEO and Chair of the Investment Committee of TSG Consumer Partners, having co-founded TSG Consumer Partners in 1986. At the same time, Defendant Jack was a Managing Director and a member of the Investment Committee of TSG Consumer Partners, from 2011 through to January 2023. As a result of this longstanding business relationship, Defendant Esserman is not independent from Defendant Jack and cannot objectively and disinterestedly consider a demand to sue Defendant Jack.

151. Defendant Esserman was also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████ However, Defendant Esserman failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Esserman clearly cannot exercise independent and objective judgment.

152. In addition, Defendant Esserman signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant Esserman breached his fiduciary duties and faces a substantial likelihood of liability.

153. Defendant Esserman is neither independent nor disinterested. Any demand upon Defendant Esserman is futile and, thus, excused.

Defendant George

154. Defendant George has served as a Company director since August 2021. As a director, Defendant George was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant George failed to fulfil these duties by permitting the false and misleading statements to be made and not correcting those statements.

155. Additionally, in connection with her role as a Company director,

Defendant George receives substantial income. In 2022, Defendant George received a total compensation package of \$171,696, consisting of \$71,712 in fees or cash, and \$99,984 in stock awards.

156. Defendant George has also served as a Partner of BBH, a privately owned financial services firm which provides banking services to certain officers of Dutch Bros. Accordingly, the Company states in their 2023 Proxy Statement that Defendant George does “not meet the independence requirements set forth in the NYSE listing standards.” Thus, Defendant George, by the Company’s own admission, is not independent.

157. Moreover, by virtue of her role at BBH, Defendant George has a pre-existing business relationship with Defendant Davis. Defendant George was an employee of BBH for more than 37 years and has served as a Partner since January 2008. At the same time, Defendant Davis served as a Managing Director of BBH from October 2012 to January 2023, upon which he became Partner – a position that he currently holds. As a result, Defendant George is not independent from Defendant Davis and cannot be reasonably expected to objectively and disinterestedly consider a demand on Defendant Davis, a colleague of many years.

158. Defendant George was also [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. However, Defendant George failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant George clearly cannot exercise independent and objective judgment.

159. In addition, Defendant George signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant George breached her fiduciary duties and faces a substantial likelihood of liability.

160. Defendant George is neither independent nor disinterested. Any demand upon Defendant George is futile and, thus, excused.

Defendant Gillett

161. Defendant Gillett has served as a Company director since December 2021. As a director, Defendant Gillett was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this,

Defendant Gillett failed to fulfil these duties by permitting the false and misleading statements to be made and not correcting those statements.

162. Defendant Gillett is also a member of the Audit Committee and thus had certain additional duties and responsibilities, including: (i) overseeing the Company's accounting and financial reporting processes, systems of internal control, and the integrity of the Company's financial statements; (ii) reviewing any reports or disclosure required by applicable law and NYSE listing requirements; (iii) overseeing the design, implementation, organization, and performance of the Company's internal audit function; and (iv) helping the Board oversee the Company's legal and regulatory compliance, including risk assessment. Despite this, Defendant Gillett failed to fulfil his additional duties by permitting the false and misleading statements to be made.

163. Additionally, in connection with his role as a Company director, Defendant Broader receives substantial income. In 2022, Defendant Gillett received a total compensation package of \$180,794, consisting of \$80,810 in fees or cash, and \$99,984 in stock awards.

164. Defendant Gillett was also [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] However, Defendant Gillett failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Gillett clearly cannot exercise independent and objective judgment.

165. In addition, Defendant Gillett signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason, Defendant Gillett breached his fiduciary duties and faces a substantial likelihood of liability.

166. Defendant Gillett is neither independent nor disinterested. Any demand upon Defendant Gillett is futile and, thus, excused.

Defendant Jack

167. Defendant Jack has served as a Company director since August 2021. As a director, Defendant Jack was required to, among other things: (i) ensure that the Company complied with its legal and regulatory obligations and requirements; (ii) properly and accurately guide investors and analysts as to the true financial condition of the Company at any given time; (iii) remain informed as to how the Company conducted its operations, make reasonable inquiries, and take steps to correct any improper conditions or practices; and (iv) ensure the Company was operated in a diligent, honest, and prudent manner. Despite this, Defendant Jack failed to fulfil these duties by permitting the false and misleading statements to be made and not correcting those statements.

168. Defendant Jack has a longstanding business relationship with Defendant Esserman, stemming from at least 2011. Specifically, Defendant Jack was a Managing Director and member of the Investment Committee of TSG Consumer Partners from 2011 through to January 2023. At the same time, Defendant Esserman is the co-founder of TSG Consumer Partners and currently serves as CEO and Chair of the Investment Committee. As a result of this longstanding business relationship, Defendant Jack is not independent from Defendant Esserman and cannot objectively and disinterestedly consider a demand to sue Defendant Esserman.

169. Defendant Jack was also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, Defendant Jack failed to correct, or cause the Company to correct, the false and misleading statements made regarding these topics, despite being under a duty to do so. Accordingly, Defendant Jack clearly cannot exercise independent and objective judgment.

170. In addition, Defendant Jack signed, and thus personally made the false and misleading statements contained in the 2021 10-K. For this reason,

Defendant Jack breached her fiduciary duties and faces a substantial likelihood of liability therefor.

171. Defendant Jack is neither independent nor disinterested. Any demand upon Defendant Jack is futile and, thus, excused.

Additional Reasons Demand is Excused

172. The Company has been and will continue to be exposed to significant losses due to the wrongdoing complained of herein, yet the Current Directors have not caused the Company to take action to recover for the Company the damages it has suffered and will continue to suffer thereby.

173. In violation of the Code of Conduct, the Director Defendants conducted little, if any, oversight of the Company's engagement in the Defendants' scheme to cause the Company to issue materially false and misleading statements to the public and to facilitate and disguise the Defendants' violations of law, including breaches of fiduciary duty, gross mismanagement, abuse of control, waste of corporate assets, and unjust enrichment. In violation of the Code of Conduct, the Director Defendants failed to comply with laws and regulations, failed to maintain the accuracy of company records, public reports, and communications, and failed to uphold the responsibilities related thereto. Thus, the Director Defendants face a substantial likelihood of liability and demand is futile as to them.

174. The Defendants' conduct described herein could not have been the product of legitimate business judgment as it was based on bad faith and

intentional, reckless, or disloyal misconduct. Thus, none of the Director Defendants can claim exculpation from their violations of duty pursuant to the Company's charter (to the extent such a provision exists). As a majority of the Director Defendants face a substantial likelihood of liability, they are self-interested in the transactions challenged herein and cannot be presumed to be capable of exercising independent and disinterested judgment about whether to pursue this action on behalf of the shareholders of the Company. Accordingly, demand is excused as being futile.

175. The members of the Board received, and continue to receive, substantial salaries, bonuses, payments, benefits, and other emoluments by virtue of their membership on the Board. They have benefitted from the wrongs alleged herein and have engaged therein to preserve their positions of control and the prerequisites thereof and are incapable of exercising independent objective judgment in deciding whether to bring this action.

176. The acts complained of herein constitute violations of fiduciary duties owed by Dutch Bros' officers and directors, and these acts are incapable of ratification.

177. Moreover, publicly traded companies, such as Dutch Bros, typically carry director and officer liability insurance from which the Company could potentially recover some or all of its losses. However, such insurance typically contains an "insured vs. insured" disclaimer that will foreclose a recovery from the insurers if the Defendants sue each other to recover Dutch Bros' damages. If

no such insurance is carried, then the Director Defendants will not cause Dutch Bros to sue the Defendants named herein, since, if they did, they would face a large uninsured individual liability. Accordingly, demand is futile in that event.

178. The Company, at all material times, had its Code of Conduct and related corporate governance policies which required each of the Director Defendants to maintain the highest standards of honesty and integrity, particularly in relation to accurate and truthful public disclosures. Yet, despite this Code of Conduct, and other relevant policies and committee charters, each of the Director Defendants failed to ensure that the Company upheld high standards of integrity, misrepresented facts to the investing public, and failed to report any concerns, or investigate any misconduct, let alone commence litigation against the directors.

179. Accordingly, each of the Current Directors, and at least eight of them, cannot reasonably consider a demand with the requisite disinterestedness and independence. Indeed, any demand upon the Board is futile and, thus, excused.

CLAIMS FOR RELIEF

COUNT I

(Against Defendants For Breach Of Fiduciary Duty)

180. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

181. Defendants owed the Company fiduciary obligations. By reason of their fiduciary relationships, Defendants owed the Company the highest obligation of good faith, fair dealing, loyalty, and due care.

182. Defendants violated and breached their fiduciary duties of care, loyalty, reasonable inquiry, and good faith.

183. Defendants engaged in a sustained and systematic failure to properly exercise their fiduciary duties. Among other things, Defendants breached their fiduciary duties of loyalty and good faith by permitting the use of inadequate practices and procedures to guide the truthful dissemination of Company news to the investing public and to the Company's shareholders, allowing or permitting false and misleading statements to be disseminated in the Company's SEC filings and other public disclosures and, otherwise failing to ensure that adequate internal controls were in place regarding the serious business reporting issues and deficiencies described above. These actions could not have been a good faith exercise of prudent business judgment to protect and promote the Company's corporate interests.

184. As a direct and proximate result of Defendants' failure to perform their fiduciary obligations, the Company has sustained significant damages. As a result of the misconduct alleged herein, Defendants are liable to the Company.

185. As a direct and proximate result of Defendants' breach of their fiduciary duties, the Company has suffered damage, not only monetarily, but also to its corporate image and goodwill. Such damage includes, among other things,

costs associated with defending and/or settling the Securities Class Action and severe damage to the share price of the Company's stock, all resulting in an increased cost of capital, and reputational harm.

COUNT II

(Against Defendants For Waste Of Corporate Assets)

186. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

187. The wrongful conduct alleged regarding the issuance of false and misleading statements was continuous, connected, and on-going throughout the time period in issue. It resulted in continuous, connected, and ongoing harm to the Company.

188. As a result of the misconduct described above, Defendants wasted corporate assets by, *inter alia*: (a) paying excessive compensation, bonuses, and termination payments to certain of its executive officers; (b) awarding self-interested stock options to certain directors; and (c) incurring potentially millions of dollars of legal liability and/or legal costs to defend and/or settle the Securities Class Action.

189. As a result of the waste of corporate assets, Defendants are liable to the Company.

COUNT III

(Against Defendants For Unjust Enrichment)

190. Plaintiff incorporates by reference and realleges each and every allegation set forth above, as though fully set forth herein.

191. By their wrongful acts, violations of law, and false and misleading statements and omissions of material fact that they made and/or caused to be made, Defendants were unjustly enriched at the expense of, and the detriment of, the Company. According to the Company's 2023 Proxy Statement, Defendants were unjustly enriched in 2022 as follows:

Defendant	Salary or Fees (\$)	Stock Awards (\$)	Bonus (\$)	Other Compensation (\$)	Total (\$)
Boersma	1,500,000	-	-	9,989	1,508,989
Ricci	550,000	-	500,000	64,060	1,114,060
Broader	84,190	99,984	-	-	184,174
Davis	83,000	99,984	-	-	182,984
George	71,712	99,984	-	-	171,696
Gillett	80,810	99,984	-	-	180,794
Jemley	472,500	-	225,000	25,833	723,333
Maxwell	593,183	-	-	32,976	626,159
TOTAL	3,435,395	399,936	725,000	132,858	4,692,189

192. Moreover, certain of the Defendants were unjustly enriched through the unlawful insider selling of Company common stock at artificially inflated prices, as follows:

Defendant	Date	Number of Shares	Average Price Per Share	Proceeds
Ricci	03/07/2022	71,125	\$48.06	\$3,277,440
	05/09/2022	71,125	\$42.47	\$3,020,678.75
Maxwell	03/15/2022	12,000	\$48.75	\$585,000
	03/29/2022	12,000	\$60.44	\$725,280
	04/12/2022	12,000	\$52.57	\$630,840
	04/26/2022	12,000	\$48.06	\$576,720
	05/10/2022	12,000	\$40.63	\$487,560

Jemley	03/15/2022	15,000	\$48.77	\$731,550
	04/05/2022	5,000	\$54.08	\$270,400
			TOTAL	\$10,305,468.75

193. Plaintiff, as a stockholder and representative of Dutch Bros, seeks restitution from Defendants and seeks an order from this Court disgorging all profits, including from insider transactions, the redemption of preferred stock, benefits, and other compensation, including any performance-based or valuation-based compensation, obtained by Defendants due to their wrongful conduct and breach of their fiduciary and contractual duties.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

A. Against all Defendants and in favor of the Company for the amount of damages sustained by the Company as a result of Defendants’ breaches of fiduciary duties;

B. Directing the Company to take all necessary actions to reform and improve its corporate governance and internal procedures to comply with applicable laws and to protect the Company and its shareholders from a repeat of the damaging events described herein, including, but not limited to, putting forward for shareholder vote resolutions for amendments to the Company’s By-Laws or Articles of Incorporation and taking such other action as may be necessary to place before shareholders for a vote a proposal to strengthen the Board’s supervision of operations and risk management, and develop and

implement procedures for greater shareholder input into the policies and guidelines of the Board;

C. Awarding to the Company restitution from Defendants, and each of them, and ordering disgorgement of all profits, benefits and other compensation obtained by Defendants;

D. Awarding to Plaintiff the costs and disbursements of the action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

E. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury on all issues so triable. Dated: November 6, 2023

BIELLI & KLAUDER, LLC

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