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County of Monterey
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

MARIA BARBOZA, an individual, on behalf of
herself and all members of the putative class,

Plaintiff,

v.

BUD ANTLE, INC., a California Corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 20CV001666

CLASS ACTION

FIRST AMENDED COMPLAINT

- (1) Violation of California Labor Code § 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code § 226.7 (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Business & Professions Code §§ 17200, et seq.; and
- (8) Violation of California Labor Code § 2698 et seq. (California Labor Code Private Attorney General Act of 2004)

DEMAND FOR JURY TRIAL

1 Plaintiff MARIA BARBOZA (“Plaintiff”) on behalf of herself, all other members of the general
2 public similarly situated, files this first amended complaint against Defendants BUD ANTLE, INC.,
3 DOLE FRESH VEGETABLES, INC., DOLE FOOD COMPANY, INC., and DOES 1 through 100,
4 inclusive (collectively “Defendants”). Plaintiff’s allegations are based upon information and belief and
5 upon investigation of Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which
6 are based upon Plaintiff’s personal knowledge.

7 **JURISDICTION AND VENUE**

8 1. This class action is brought pursuant to California Code of Civil Procedure section 382.
9 The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
10 Superior Court and will be established according to proof at trial. The amount in controversy for each
11 class representative or putative class member, including claims for compensatory damages, interest,
12 penalties, and attorneys’ fees, is less than \$75,000.

13 2. This Court has jurisdiction over this action pursuant to the California Constitution, Article
14 VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by
15 statute to other courts.” The statutes under which this action is brought do not specify any other basis for
16 jurisdiction.

17 3. This Court has jurisdiction over all Defendants because each defendant is either a citizen
18 of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the
19 California market so as to render the exercise of jurisdiction over it by the California courts consistent
20 with traditional notions of fair play and substantial justice.

21 4. Venue is proper in this Court because, upon information and belief, the named Defendants
22 reside, transact business, or have offices in this county and the acts and omissions alleged herein took
23 place in this county.

24 **PARTIES**

25 5. Plaintiff MARIA BARBOZA is a citizen of the State of California.

26 6. Defendant BUD ANTLE, INC. is a corporation organized and existing under the laws of
27 the State of California, and transacts business throughout the State of California, including the County of
28 Monterey. At all relevant times, Defendant BUD ANTLE, INC. was the “employer” of Plaintiff within

1 the meaning of all applicable state laws and statutes.

2 7. Defendant DOLE FRESH VEGETABLES, INC. is a corporation organized and existing
3 under the laws of the State of California, and transacts business throughout the State of California,
4 including the County of Monterey. At all relevant times, Defendant DOLE FRESH VEGETABLES,
5 INC. was the “employer” of Plaintiff within the meaning of all applicable state laws and statutes.

6 8. Defendant DOLE FOOD COMPANY, INC. is a corporation organized and existing under
7 the laws of the State of North Carolina, and transacts business throughout the State of California, including
8 the County of Monterey. At all relevant times, Defendant DOLE FOOD COMPANY, INC. was the
9 “employer” of Plaintiff within the meaning of all applicable state laws and statutes.

10 9. At all times herein relevant, Defendants BUD ANTLE, INC., DOLE FRESH
11 VEGETABLES, INC., DOLE FOOD COMPANY, INC., and DOES 1 through 100, and each of them,
12 were the agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
13 conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course
14 and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees,
15 successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed
16 with the ratification, knowledge, permission, encouragement, authorization and consent of each defendant
17 designated herein.

18 10. The true names and capacities, whether corporate, associate, individual or otherwise, of
19 defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said defendants by such
20 fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that
21 each of the defendants designated as a Doe is legally responsible for the events and happenings referred
22 to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff alleged in this Complaint.
23 Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the
24 same have been ascertained.

25 11. Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD
26 COMPANY, INC., and DOES 1 through 100 will hereinafter collectively be referred to as “Defendants.”

27 **FACTUAL ALLEGATIONS**

28 12. Defendants employ Plaintiff as a non-exempt or hourly-paid employee.

1 13. Defendants have the authority to hire and terminate Plaintiff and the other class members;
2 to set work rules and conditions governing Plaintiff and the other class members; and to supervise their
3 daily employment activities.

4 14. Defendants directly hired and paid wages and benefits to Plaintiff and the other class
5 members.

6 15. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
7 relevant, Defendants were advised by skilled lawyers and other professionals, employees, advisors, and
8 consultants highly knowledgeable about California wage law, employment and personnel practices.

9 16. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
10 relevant, without any justification, Defendants ignored the employment and personnel policy changes
11 proposed by skilled lawyers and other professionals, employees, advisors, and consultants highly
12 knowledgeable about California wage laws, employment, and personnel practice.

13 17. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to receive certain wages for all work
15 performed, including for overtime compensation.

16 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
17 should have known that Plaintiff and the other class members were working over eight (8) hours per day
18 and were entitled to receive certain wages for overtime compensation and that they were not receiving
19 wages for overtime compensation.

20 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a
21 uniform policy and systematic scheme of wage abuse against their hourly paid employees.

22 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to
23 provide Plaintiff and the other class members the required rest and meal periods during the relevant time
24 period as required under the Industrial Welfare Commission Wage Orders and/or applicable Labor Codes,
25 thus are entitled to any and all applicable penalties.

26 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
27 should have known that Plaintiff and the other class members were entitled to receive all meal periods or
28 payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when

1 a meal period was missed.

2 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
3 should have known that Plaintiff and the other class members were entitled to receive all rest periods or
4 payment of one additional hour of pay at Plaintiff's and the other class members' regular rate of pay when
5 a rest period was missed.

6 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
7 should have known that Plaintiff and the other class members were entitled to receive all wages owed to
8 them upon discharge or resignation.

9 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
10 should have known that Plaintiff and the other class members were entitled to receive complete and
11 accurate wage statements in accordance with California law.

12 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
13 should have known that they had a duty to compensate Plaintiff and the other class members pursuant to
14 California law, and that Defendants had the financial ability to pay such compensation, but willfully,
15 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other class
16 members that they were properly denied wages, all in order to increase Defendants' profits.

17 26. At all material times set forth herein, Defendants regularly and consistently failed to
18 compensate Plaintiff and the other class members for all hours worked.

19 27. At all material times set forth herein, Defendants failed to fully comply with the relevant
20 provision of the Labor Code and the IWC orders to pay overtime wages to Plaintiff and the other class
21 members.

22 28. At all material times set forth herein, Defendants failed to fully comply with the relevant
23 provision of the Labor Code and the IWC orders to provide uninterrupted meal and rest periods to Plaintiff
24 and the other class members.

25 29. At all material times set forth herein, Defendants regularly and consistently failed to
26 provide complete and accurate wage statements to Plaintiff and the other class members.

27 30. At all material times set forth herein, Defendants regularly and consistently failed to pay
28 Plaintiff and the other class members all wages owed to them upon discharge or resignation.

CLASS ACTION ALLEGATIONS

31. Plaintiff brings this action on her own behalf and on behalf of all other members of the general public similarly situated, and thus, seeks class certification under Code of Civil Procedure section 382.

32. The proposed class is defined as follows:

All current and former hourly-paid or non-exempt California based employees employed by Defendants within the State of California at any time during the period from June 16, 2016 to final judgment.

33. Plaintiff reserves the right to establish subclasses as appropriate.

34. The class is ascertainable and there is a well-defined community of interest in the litigation:

- a. The class members are so numerous that joinder of all class members is impracticable. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be ninety-nine (99) individuals or less and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- b. Plaintiff's claims are typical of all other class members' as demonstrated herein. Plaintiff will fairly and adequately protect the interests of the other class members with whom they have a well-defined community of interest.
- c. Plaintiff will fairly and adequately protect the interests of each class member, with whom they have a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no interest that is antagonistic to the other class members. Plaintiff's attorneys, the proposed Class Counsel, are versed in the rules governing class action discovery, certification, settlement, and trial. Plaintiff has incurred, and during the pendency of this action will continue to incur, costs and attorneys' fees, that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- d. A class action is superior to other available methods for the fair and efficient

1 adjudication of this litigation because individual joinder of all class members
2 is impractical.

- 3 e. Certification of this lawsuit as a class action will advance public policy
4 objectives. Employers of this great state violate employment and labor laws
5 every day. Current employees are often afraid to assert their rights out of
6 fear of direct or indirect retaliation. However, class actions provide the class
7 members who are not named in the complaint anonymity that allows for the
8 vindication of their rights.

9 35. There are common questions of law and fact as to the class members that predominate over
10 questions affecting only individual members. The following common questions of law or fact, among
11 others, exist as to the members of the class:

- 12 a. Whether Defendants required Plaintiff and the other class members to work
13 over eight (8) hours per day and failed to pay the legally required overtime
14 compensation to Plaintiff and the other class members;
- 15 b. Whether Plaintiff and the other class members did not receive wages for all
16 time worked;
- 17 c. Whether Defendants deprived Plaintiff and the other class members of meal
18 periods or required Plaintiff and the other class members to work during meal
19 periods without compensation;
- 20 d. Whether Defendants deprived Plaintiff and the other class members of rest
21 periods or required Plaintiff and the other class members to work during rest
22 periods without compensation;
- 23 e. Whether Defendants failed to pay all wages due to Plaintiff and the other
24 class members within the required time upon their discharge or resignation;
- 25 f. Whether Defendants complied with wage reporting as required by the
26 California Labor Code; including, but not limited to, section 226;
- 27 g. Whether Defendants' conduct was willful or reckless;
- 28 h. Whether Defendants engaged in unfair business practices in violation of

California Business & Professions Code sections 17200 et seq.;

i. The appropriate amount of damages, restitution, and/or monetary penalties resulting from Defendants' violation of California law; and

j. Whether Plaintiff and the other class members are entitled to compensatory damages pursuant to the California Labor Code.

FIRST CAUSE OF ACTION

(Violation of California Labor Code section 1198)

(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD COMPANY, INC., and DOES 1 through 100)

36. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

37. Pursuant to California Labor Code section 1198 and the applicable IWC Wage Order, it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

38. Pursuant to California Labor Code section 1198, the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

39. Pursuant to the applicable IWC Wage Order, Plaintiff and the other class members are not to be employed more than eight (8) hours in any one workday or more than six (6) days in any workweek unless they receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight (8) hours in any workday and for the first eight (8) hours on the seventh (7th) day of work and double the employee's regular rate of pay for all hours worked over eight (8) on the seventh (7th) day of work in the workweek.

40. During the relevant time period, Plaintiff and the other class members worked in excess of eight (8) hours in a day and more than six (6) days in a workweek, but did not receive overtime pay.

41. During the relevant time period, Defendants intentionally and willfully failed to pay overtime wages owed to Plaintiff and the other class members.

42. Defendants' failure to pay Plaintiff and the other class members overtime compensation, as required by California laws, violates the provisions of California Labor Code section 1198, and is therefore unlawful.

44. Pursuant to California Labor Code section 1194, Plaintiff and the other class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

45. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

47. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any meal or rest period mandated by an applicable order of the California IWC.

49. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time no longer than six (6) hours, and who did not waive their legally-mandated meal periods by mutual consent, were required to work for periods longer than five (5) hours without an

uninterrupted meal period of not less than thirty (30) minutes.

50. During the relevant time period, Plaintiff and the other class members who were scheduled to work for a period of time in excess of six (6) hours were required to work for periods longer than five (5) hours without an uninterrupted meal period of not less than thirty (30) minutes.

51. During the relevant time period, Defendants intentionally and willfully required Plaintiff and the other class members to work during meal periods and failed to compensate Plaintiff and the other class members the full meal period premium for work performed during meal periods.

52. During the relevant time period, Defendants failed to pay Plaintiff and the other class members the full meal period premium due pursuant to California Labor Code section 226.7.

53. Defendants' conduct violates applicable IWC Wage Order and California Labor Code section 226.7.

54. Pursuant to applicable IWC Wage Order and California Labor Code section 226.7 subdivision (b), Plaintiff and the other class members are entitled to recover from Defendants one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

THIRD CAUSE OF ACTION

(Violation of California Labor Code section 226.7)

(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD COMPANY, INC., and DOES 1 through 100)

55. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

56. At all times herein set forth, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

57. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

58. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily

1 at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total
2 daily work time is less than three and one-half (3 1/2) hours.

3 59. During the relevant time period, Defendants required Plaintiff and other class members to
4 work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four
5 (4) hour period worked.

6 60. During the relevant time period, Defendants willfully required Plaintiff and the other class
7 members to work during rest periods and failed to pay Plaintiff and the other class members the full rest
8 period premium for work performed during rest periods.

9 61. During the relevant time period, Defendants failed to pay Plaintiff and the other class
10 members the full rest period premium due pursuant to California Labor Code section 226.7.

11 62. Defendants’ conduct violates applicable IWC Wage Orders and California Labor Code
12 section 226.7.

13 63. Pursuant to the applicable IWC Wage Orders and California Labor Code section 226.7,
14 subdivision (b), Plaintiff and the other class members are entitled to recover from Defendants one
15 additional hour of pay at the employees’ regular hourly rate of compensation for each work day that the
16 rest period was not provided.

17 **FOURTH CAUSE OF ACTION**

18 **(Violation of California Labor Code sections 1194, 1197, and 1197.1)**

19 **(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD**
20 **COMPANY, INC., and DOES 1 through 100)**

21 64. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

22 65. At all relevant times, California Labor Code sections 1194, 1197, and 1197.1 provide that
23 the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed
24 is unlawful.

25 66. During the relevant time period, Defendants regularly failed to pay minimum wage to
26 Plaintiff and the other class members as required, pursuant to California Labor Code sections 1194, 1197,
27 and 1197.1.

28 67. Defendants’ failure to pay Plaintiff and the other class members the minimum wage as

1 required violates California Labor Code sections 1194, 1197, and 1197.1. Pursuant to those sections
2 Plaintiff and the other class members are entitled to recover the unpaid balance of their minimum wage
3 compensation as well as interest, costs, and attorney's fees, and liquidated damages in an amount equal to
4 the wages unlawfully unpaid and interest thereon.

5 68. Pursuant to California Labor Code section 1197.1, Plaintiff and the other class members
6 are entitled to recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum
7 wages, and \$250.00 for each subsequent failure to pay each employee minimum wages.

8 69. Pursuant to California Labor Code section 1194.2, Plaintiff and the other class members
9 are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest
10 thereon.

11 **FIFTH CAUSE OF ACTION**

12 **(Violation of California Labor Code sections 201 and 202)**

13 **(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD** 14 **COMPANY, INC., and DOES 1 through 100)**

15 70. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

16 71. Pursuant to California Labor Code sections 201 and 202, if an employer discharges an
17 employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if
18 an employee quits his or her employment, his or her wages shall become due and payable not later than
19 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or
20 her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

21 72. During the relevant time period, Defendants intentionally and willfully failed to pay
22 Plaintiff and the other class members their wages, earned and unpaid, within seventy-two (72) hours of
23 Plaintiff and the other class members leaving Defendants' employ.

24 73. Defendants' failure to pay Plaintiff and the other class members their wages, earned and
25 unpaid, within seventy-two (72) hours of them leaving Defendants' employ, is in violation of California
26 Labor Code sections 201 and 202.

27 74. Pursuant to California Labor Code section 203, if an employer willfully fails to pay,
28 without abatement or reduction, in accordance with sections 201 and 202, any wages of an employee who

1 is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof
2 at the same rate until paid or until an action is commenced; but the wages shall not continue for more than
3 thirty (30) days.

4 75. Plaintiff and the other class members are entitled to recover the statutory penalty for each
5 day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to
6 California Labor Code section 203.

7 **SIXTH CAUSE OF ACTION**

8 **(Violation of California Labor Code section 226, subdivision (a))**

9 **(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD**
10 **COMPANY, INC., and DOES 1 through 100)**

11 76. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

12 77. Pursuant to California Labor Code section 226, subdivision (a), every employer shall
13 furnish each of his or her employees an accurate itemized statement in writing showing: (1) gross wages
14 earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any
15 applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all
16 deductions made on written orders of the employee may be aggregated and shown as one item; (5) net
17 wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the
18 employee and his or her social security number; (8) the name and address of the legal entity that is the
19 employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number
20 of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall
21 be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy
22 of the statement or a record of the deductions shall be kept on file by the employer for at least three years
23 at the place of employment or at a central location within the State of California.

24 78. Defendants intentionally and willfully failed to provide Plaintiff and the other class
25 members with complete and accurate wage statements. The deficiencies included one or more of the
26 following: the failure to include the correct total number of hours worked by Plaintiff and the other class
27 members and the failure to include the correct hourly rate.

28 79. As a result of Defendants' violation of California Labor Code section 226, subdivision (a),

1 Plaintiff and the other class members experienced actual injury because it: (1) resulted in the non-payment
2 of wages; (2) deprived Plaintiff and the other class members of the information necessary to identify
3 discrepancies in Defendant's reported data; (3) created confusion over whether they received all wages
4 owed to them; (4) created difficulty and expense involved in reconstructing pay records; and (5) forced
5 Plaintiff and the other class member to make mathematical computations to analyze whether the wages
6 paid in fact properly compensated them.

7 **SEVENTH CAUSE OF ACTION**

8 **(Violation of California Business & Professions Code sections 17200 et seq.)**

9 **(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD**
10 **COMPANY, INC., and DOES 1 through 100)**

11 80. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

12 81. Defendants' conduct, as alleged in this Complaint, has been, and continues to be, unfair,
13 unlawful and harmful to Plaintiff and the other class members, and Defendants' competitors. Accordingly,
14 Plaintiff and the other class members seek to enforce important rights affecting the public interest within
15 the meaning of Code of Civil Procedure section 1021.5.

16 82. Defendants' activities as alleged herein are violations of California law, and constitute
17 unlawful business acts and practices in violation of California Business & Professions Code sections
18 17200, et seq.

19 83. A violation of California Business & Professions Code sections 17200, et seq. may be
20 predicated on the violation of any state or federal law.

21 **Failure to Pay Overtime**

22 84. Defendants' failure to pay overtime in violation of the Wage Orders and California Labor
23 Code section 1198, as alleged above, constitutes unlawful and/or unfair activity prohibited by California
24 Business & Professions Code section 17200, et seq.

25 **Failing to Provide Meal Periods**

26 85. Defendants' failure to provide legally required meal periods in violation of the Wage
27 Orders and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair
28 activity prohibited by California Business & Professions Code sections 17200, et seq.

1 **Failure to Provide Rest Periods**

2 86. Defendants' failure to provide legally required rest periods in violation of the Wage Orders
3 and California Labor Code section 226.7, as alleged above, constitutes unlawful and/or unfair activity
4 prohibited by California Business & Professions Code section 17200, et seq.

5 **Failure to Pay Minimum Wages**

6 87. Defendants' failure to pay minimum wages in violation of the Wage Orders and California
7 Labor Code sections 1194, 1197 and 1197.1, as alleged above, constitutes unlawful and/or unfair activity
8 prohibited by California Business & Professions Code sections 17200, et seq.

9 **Failure to Timely Pay Wages Upon Termination**

10 88. Defendants' failure to timely pay wages upon termination in violation of California Labor
11 Code sections 201 and 202, as alleged above, constitutes unlawful and/or unfair activity prohibited by
12 California Business & Professions Code sections 17200, et seq.

13 **Failure to Timely Pay Wages During Employment**

14 89. Defendants' failure to timely pay wages during employment in violation of California
15 Labor Code section 204, as alleged above, constitutes unlawful and/or unfair activity prohibited by
16 California Business & Professions Code sections 17200, et seq.

17 **Failure to Provide Compliant Wage Statements**

18 90. Defendants' failure to provide compliant wage statements in violation of California Labor
19 Code section 226, subdivision (a), as alleged above, constitutes unlawful and/or unfair activity prohibited
20 by California Business & Professions Code sections 17200, et seq.

21 **Failure to Keep Complete and Accurate Payroll Records**

22 91. Defendants' failure to keep complete and accurate payroll records in violation of California
23 Labor Code section 1174, subdivision (d), as alleged above, constitutes unlawful and/or unfair activity
24 prohibited by California Business & Professions Code sections 17200, et seq.

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EIGHTH CAUSE OF ACTION

(Violation of California Labor Code sections 2698 et seq.)

(Against Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., DOLE FOOD COMPANY, INC., and DOES 1 through 100)

92. Plaintiff incorporates and re-alleges each paragraph above as though set forth herein.

93. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

94. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

95. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

96. Plaintiff was employed by Defendants and the alleged violations were committed against him during his time of employment and he is therefore, an aggrieved employee. Plaintiff is an "aggrieved employee" as defined by California Labor Code section 2699, subdivision (c).

97. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail (hereinafter "Employee's Notice") to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate

1 the alleged violation within sixty (60) calendar days of the postmark date of the
2 Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is
3 not provided within thirty-three (65) calendar days of the postmark date of the
4 Employee's Notice, the aggrieved employee may commence a civil action
5 pursuant to California Labor Code section 2699 to recover civil penalties in
6 addition to any other penalties to which the employee may be entitled.

7 98. On June 16, 2020, Plaintiff provided written notice by certified mail to the LWDA and to
8 Defendant BUD ANTLE, INC. of the specific provisions of the California Labor Code alleged to have
9 been violated, including the facts and theories to support the alleged violations. Plaintiff has not received
10 any response from the LWDA

11 99. On July 2, 2020, Plaintiff provided written notice by certified mail to the LWDA and to
12 Defendants BUD ANTLE, INC., DOLE FRESH VEGETABLES, INC., and DOLE FOOD COMPANY,
13 INC. of the specific provisions of the California Labor Code alleged to have been violated, including the
14 facts and theories to support the alleged violations. Plaintiff has not received any response from the
15 LWDA.
16

17 100. Plaintiff satisfied the administrative prerequisites under California Labor Code section
18 2699.3, subdivision (a), to recover civil penalties against Defendants in addition to other remedies, for
19 violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512(a), 558, 1174(d),
20 1194, 1197, 1197.1, 1198, and all applicable wage orders.

21 101. PAGA expressly establishes that any provision of the California Labor Code which
22 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
23 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
24 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
25 herself, and other current or former employees.

26 102. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
27 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
28 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

1 103. Plaintiff and the other non-exempt or hourly employees are “aggrieved employees” as
2 defined by California Labor Code section 2699, subdivision (c) in that they are all current or former
3 employees of Defendants, and one or more of the alleged violations was committed against them.

4 **Failure to Pay Overtime**

5 104. California Labor Code sections 510 and 1198 and the applicable wage order require
6 employers to pay their employees overtime compensation equal to one and one-half times their regular
7 rate of pay for all hours worked in excess of eight hours in one day and/or over 40 hours in a week.

8 105. Defendants do not pay Plaintiff and the other aggrieved employees overtime
9 compensation when they worked in excess of eight hours in one day and/or over 40 hours in a week as
10 alleged above.

11 **Failing to Provide Meal Periods**

12 106. California Labor Code sections 226.7 and 512 and the applicable wage order require
13 employers to pay their employees one additional hour of pay at the employee’s regular rate of pay for
14 each workday that a meal period is not provided when it should have been.

15 107. Defendants do not provide Plaintiff and the other aggrieved employees with meal periods
16 when it should have, nor does it pay them premium pay as alleged above.

17 **Failure to Provide Rest Periods**

18 108. California Labor Code sections 226.7 and 512 and the applicable wage order require
19 employers to pay their employees one additional hour of pay at the employee’s regular rate of pay for
20 each workday that a rest break is not provided when it should have been.

21 109. Defendants do not provide Plaintiff and the other aggrieved employees with rest breaks
22 when it should have, nor does it pay them premium pay as alleged above.

23 **Failure to Pay Minimum Wages**

24 110. California Labor Code sections 1194, 1197, and 1197.1 and the applicable wage order
25 require employers to pay their employees at least the minimum wage for each hour worked.

26 111. Defendants do not pay Plaintiff and the other aggrieved employees the minimum wage
27 for each hour they worked as alleged above.
28

1 **Failure to Timely Pay Wages Upon Termination**

2 112. California Labor Code sections 201, 202, and 203 and the applicable wage order provide
3 that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
4 due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or
5 her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee
6 has given seventy-two hours previous notice of his or her intention to quit, in which case the employee
7 is entitled to his or her wages at the time of quitting.

8 113. As explained above, Defendants failed to pay Plaintiff and the other aggrieved minimum
9 wage for each hour of work they performed, failed to pay them overtime when they worked in excess
10 of eight hours in one day and/or over 40 hours in a week, and failed to pay them one additional hour of
11 pay at their regular rate of pay when they were not provided meal periods and rest breaks. Accordingly,
12 these wages are not timely paid to Plaintiff and the other aggrieved employees upon their discharge or
13 termination.
14

15 **Failure to Timely Pay Wages During Employment**

16 114. California Labor Code section 204 and the applicable wage order require that all wages
17 earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar
18 month, other than those wages due upon termination of an employee, are due and payable between the
19 16th and the 26th day of the month during which the labor was performed, and that all wages earned by
20 any person in any employment between the 16th and the last day, inclusive, of any calendar month,
21 other than those wages due upon termination of an employee, are due and payable between the 1st and
22 the 10th day of the following month. Labor Code section 204 also requires that all wages earned for
23 labor in excess of the normal work period shall be paid no later than the payday for the next regular
24 payroll period.

25 115. As explained above, Defendants failed to pay Plaintiff and the other aggrieved employees
26 minimum wage for each hour of work they performed, failed to pay them overtime when they worked
27 in excess of eight hours in one day and/or over 40 hours in a week, and failed to pay them one additional
28 hour of pay at their regular rate of pay when they were not provided meal periods and rest breaks.

1 Accordingly, these wages are not timely paid Plaintiff and the other aggrieved employees during their
2 employment.

3 **Failure to Provide Compliant Wage Statements**

4 116. California Labor Code section 226 and the applicable wage order require employers to
5 make, keep, and provide true, accurate, timely, and complete wage statement.

6 117. Defendants do not provide Plaintiff and the other aggrieved employees with true,
7 accurate, timely, and complete wage statements as alleged above.

8 **Failure to Keep Complete and Accurate Payroll Records**

9 118. California Labor Code section 1174, subdivision (d) requires employers to keep complete
10 and accurate payroll records.

11 119. Defendants do not keep complete and accurate payroll records for Plaintiff and the other
12 aggrieved employees as alleged above.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public
15 similarly situated, jointly and severally, prays for relief as follows:

16 **Class Certification**

- 17
- 18 1. That this action be certified as a class action;
 - 19 2. That Plaintiff be appointed as the representative of the Class;
 - 20 3. That counsel for Plaintiff be appointed as Class Counsel; and
 - 21 4. That Defendants provide to Class Counsel, immediately upon its appointment, the names
22 and most current contact information (address and telephone numbers) of all class members.

23 **As to the First Cause of Action**

24 5. That the court declare, adjudge, and decree that Defendants violated California Labor Code
25 section 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to
26 Plaintiff and the other class members;

27 6. For general unpaid wages at overtime wage rates and such general and special damages as
28 may be appropriate;

1 7. For pre-judgment interest on any unpaid overtime compensation commencing from the
2 date such amounts were due;

3 8. For reasonable attorneys' fees and costs of suit incurred herein; and

4 9. For such other and further relief as the court may deem just and proper.

5 **As to the Second Cause of Action**

6 10. That the court declare, adjudge, and decree that Defendants violated California Labor Code
7 section 226.7 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including
8 second meal periods) to Plaintiff and the other class members;

9 11. That the court make an award to Plaintiff and the other class members of one (1) hour of
10 pay at each employee's regular rate of compensation for each workday that a meal period was not
11 provided;

12 12. For all actual, consequential, and incidental losses and damages, according to proof;

13 13. For premium wages pursuant to California Labor Code section 226.7, subdivision (b);

14 14. For pre-judgment interest on any unpaid wages from the date such amounts were due;

15 15. For reasonable attorneys' fees and costs of suit incurred herein; and

16 16. For such other and further relief as the court may deem just and proper.

17 **As to the Third Cause of Action**

18 17. That the court declare, adjudge, and decree that Defendant violated California Labor Code
19 section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff
20 and the other class members;

21 18. That the court make an award to Plaintiff and the other class members of one (1) hour of
22 pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

23 19. For all actual, consequential, and incidental losses and damages, according to proof;

24 20. For premium wages pursuant to California Labor Code section 226.7, subdivision (b);

25 21. For pre-judgment interest on any unpaid wages from the date such amounts were due;

26 22. For reasonable attorneys' fees and costs of suit incurred herein; and

27 23. For such other and further relief as the court may deem just and proper.

28 ////

As to the Fourth Cause of Action

24. That the court declare, adjudge, and decree that Defendants violated California Labor Code sections 1194, 1197, and 1197.1 by willfully failing to pay minimum wages to Plaintiff and the other class members;

25. For general unpaid wages and such general and special damages as may be appropriate;

26. For statutory wage penalties pursuant to California Labor Code section 1197.1 for Plaintiff and the other class members in the amount as may be established according to proof at trial;

27. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

28. For reasonable attorneys' fees and costs of suit incurred herein; and

29. For liquidated damages pursuant to California Labor Code section 1194.2; and

30. For such other and further relief as the court may deem just and proper.

As to the Fifth Cause of Action

31. That the court declare, adjudge, and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of the other class members no longer employed by Defendants;

32. For all actual, consequential, and incidental losses and damages, according to proof;

33. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

34. For pre-judgment interest on any unpaid compensation from the date such amounts were due;

35. For reasonable attorneys' fees and costs of suit incurred herein; and

36. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

37. That the court declare, adjudge, and decree that Defendants violated the record keeping provisions of California Labor Code section 226, subdivision (a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

- 1 38. For actual, consequential and incidental losses and damages, according to proof;
2 39. For statutory penalties pursuant to California Labor Code section 226, subdivision (e);
3 40. For reasonable attorneys' fees and costs of suit incurred herein; and
4 41. For such other and further relief as the court may deem just and proper.

5 **As to the Seventh Cause of Action**

6 42. That the court decree, adjudge and decree that Defendants violated California Business and
7 Professions Code sections 17200, et seq.

8 43. For restitution of unpaid wages to Plaintiff and all the other class members and all pre-
9 judgment interest from the day such amounts were due and payable;

10 44. For the appointment of a receiver to receive, manage and distribute any and all funds
11 disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result
12 of violation of California Business and Professions Code sections 17200, et seq.;

13 45. For injunctive relief to ensure compliance with this section, pursuant to California
14 Business and Professions Code sections 17200, et seq.;

15 46. For reasonable attorneys' fees and costs of suit incurred herein; and

16 47. For such other and further relief as the court may deem just and proper.

17 **As to the Eighth Cause of Action**

18 48. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on behalf of
19 all aggrieved employees, requests and is entitled to recover from Defendants and each of them, unpaid
20 wages and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to
21 California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of
22 them, including but not limited to:

- 23 a. Penalties under California Labor Code section 2699 in the amount of a hundred
24 dollars (\$100) for each aggrieved employee per pay period for the initial violation,
25 and two hundred dollars (\$200) for each aggrieved employee per pay period for
26 each subsequent violation;
- 27 b. Penalties under California Code of Regulations Title 8 section 11070 in the amount
28 of fifty dollars (\$50) for each aggrieved employee per pay period for the initial

violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

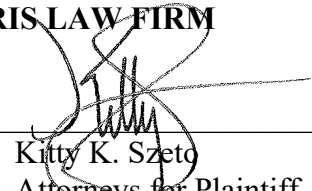
49. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

50. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code sections 2699, 218.5, and 210 and any other applicable statute.

Date: October 5, 2020

PARRIS LAW FIRM

By: _____


Kitty K. Szeto
Attorneys for Plaintiff, the Putative Class
and the Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of other members of the general public similarly situated,
hereby demands a trial by a jury.

Date: October 5, 2020

PARRIS LAW FIRM

By: _____

Kitty K. Szeto

Attorneys for Plaintiff, the Putative Class,
and the Aggrieved Employees

PROOF OF SERVICE
1013A(3) CCP Revised 5/1/88

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 43364 10th Street West, Lancaster, California 93534.

On October 5, 2020, I served the foregoing document described as **FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL**, by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Tracy W. Costantino
GORDON REES SCULLY MANSUKHANI
633 West Fifth Street, 52nd Floor
Los Angeles, California 90071

*Attorneys for Defendants Bud Antle, Inc., Dole
Fresh Vegetables, Inc., and Dole Food
Company, Inc.*

☒ **BY MAIL as follows:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U. S. postal service on that same day with postage thereon fully prepaid at Lancaster, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE as follows:**

☐ I delivered such envelope by hand to the addressees at _____

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is **Team Legal, Inc., 963 West Avenue J, Lancaster, CA 93534.**

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is **First Legal Support Services, 1511 West Beverly Blvd., Los Angeles, CA 90026.**

☐ I caused the foregoing document described hereinabove to be personally delivered by hand by placing it in a sealed envelope or package addressed to the persons at the addresses listed on the attached service list and provided it to a professional messenger service whose name and business address is **Nighthawk Processing, 13009 Providence Place, Bakersfield, CA 93314.**

☐ **BY FACSIMILE as follows:** I served such document(s) by fax at See Service List to the fax number provided by each of the parties in this litigation at Lancaster, California. I received a confirmation sheet indicating said fax was transmitted completely.

1 [] **BY FEDERAL EXPRESS/OVERNIGHT MAIL as follows:** I placed such envelope in a Federal
2 Express Mailer addressed to the above party or parties at the above address(es), with delivery fees
3 fully pre-paid for next-business-day delivery, and delivered it to a Federal Express pick-up driver
4 before 4:00 p.m. on the stated date.

5 [] **BY ELECTRONIC SERVICE as follows:** Based on a court order, or an agreement of the parties
6 to accept service by electronic transmission, I caused the documents to be sent to the persons at the
7 electronic notification addressed listed on the attached Service List.

8 Executed on October 5, 2020, at Lancaster, California.

9 [X] I declare under penalty of perjury under the laws of the State of California that the above is true and
10 correct.

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Monica Alvarez