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County of Monterey
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Attorneys for Plaintiff YANETTE B ORTIZ CARRILLO,
on behalf of herself and current and former aggrieved employees,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MONTEREY**

YANETTE B ORTIZ CARRILLO, on behalf of
herself and current and former aggrieved
employees,

Plaintiff,

vs.

BUD ANTLE, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 24CV000180

PAGA ACTION

**PLAINTIFF YANETTE B ORTIZ
CARRILLO'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff YANETTE B ORTIZ CARRILLO ("Plaintiff"), who alleges and
complains against Defendants BUD ANTLE, INC.; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for

1 accrued paid sick time at the regular rate of pay; and failure to timely pay earned wages during
2 employment. Plaintiff seeks on a representative basis, following notice to the Labor and
3 Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
4 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
5 others aggrieved.

6 **II. JURISDICTION AND VENUE**

7 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
8 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
9 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
10 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
11 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
12 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
13 aggrieved California-based hourly non-exempt employees occurred in locations throughout
14 California, including but not limited to Monterey County, at 32655 Camphora Gloria Road,
15 Soledad, CA 93960.

16 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
17 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
18 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
19 tolled from April 6, 2020, until October 1, 2020.

20 **III. PARTIES**

21 4. Plaintiff brings this action as a representative of the Labor and Workforce
22 Development Agency on behalf of herself and other current and former employees subject to
23 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
24 filed include current, former and/or future employees of Defendants who work, worked, or will
25 work for Defendants as direct employees as well as temporary employees employed through temp
26 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
27 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
28 employed by Defendants in an hourly position at Defendants' location in Soledad from

1 approximately July 14, 2021, until on or about August 16, 2023.

2 5. Plaintiff is informed and believes and thereon alleges that Defendant BUD
3 ANTLE, INC. is authorized to do business within the State of California and is doing business in
4 the State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto
5 were persons acting on behalf of Defendant BUD ANTLE, INC. in the establishment of, or
6 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant BUD
7 ANTLE, INC. operates in Monterey County and employed Plaintiff and aggrieved employees in
8 Monterey County, including but not limited to, at 32655 Camphora Gloria Road, Soledad, CA
9 93960.

10 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
11 through 50 are corporations, or are other business entities or organizations of a nature unknown to
12 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
13 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
14 working conditions of employment of Plaintiff and aggrieved employees.

15 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
16 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
17 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
18 supervisor, independent contractor and/or employee of each defendant who violated or caused to
19 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
20 the Industrial Welfare Commission's wage orders regulating hours and days of work.

21 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
22 sues said defendants by said fictitious names, and will amend this complaint when the true names
23 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
24 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
25 named defendants is in some manner responsible for the events and allegations set forth in this
26 complaint.

27 9. Plaintiff makes the allegations in this complaint without any admission that, as to
28 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and

1 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

2 **FIRST CAUSE OF ACTION**

3 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
4 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

5 **(Against all Defendants by Plaintiff)**

6 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

7 11. During Plaintiff's employment and continuing through the present, Plaintiff alleges
8 Defendants violated Labor Code sections 204, 246, and the applicable Wage Orders.

9 12. Specifically, Defendants have committed the following violations of California
10 Labor Code:

11 13. **Failure to pay wages for accrued paid sick days at the regular rate of pay:**
12 Defendants had a policy and/or procedure where Plaintiff and other current and former aggrieved
13 California-based hourly non-exempt employees accrued paid sick time.

14 14. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee
15 who...works in California for the same employer for 30 or more days within a year from the
16 commencement of employment is entitled to paid sick days." Additionally, an employee accrues
17 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
18 beginning at the commencement of employment. Labor Code section 246(b).

19 15. Here, Plaintiff and other current and former aggrieved California-based hourly non-
20 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
21 sick days. Also, Plaintiff and other current and former aggrieved California-based hourly non-
22 exempt employees began accruing paid sick days since the beginning of each of their respective
23 employment with Defendants.

24 16. Labor Code section 246, subdivision (l), provides that an employer shall calculate
25 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
26 workweek in which the employee elected to use paid sick time. "The regular rate at which an
27 employee is employed shall be deemed to include all remuneration for employment paid to, or on
28 behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies

1 and Interpretations Manual, Section 49.1.2.

2 17. In this case, Plaintiff alleges that when she and other current and former aggrieved
3 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
4 pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include
5 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
6 policy, practice, and/or procedure of failing to include all remuneration such as "shift premium
7 pay", for example, when calculating Plaintiff's and other current and former aggrieved California-
8 based hourly non-exempt employees' regular rate of pay for the purpose of paying sick time.

9 18. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
10 failing to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
11 employees at their sick time regular rate of pay for all sick time accrued, in violation of Labor
12 Code section 246.

13 19. **Failure to timely pay earned wages during employment:** In California, wages
14 must be paid at least twice during each calendar month on days designated in advance by the
15 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
16 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
17 16th and the 26th day of that month and wages earned between the 16th and the last day,
18 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
19 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
20 paid within seven (7) calendar days following the close of the payroll period in which wages were
21 earned. Labor Code section 204(d).

22 20. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
23 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
24 exempt employees' earned wages (including sick pay at the regular rate of pay), in violation of
25 Labor Code section 204. Defendants' aforementioned policies, practices, and/or procedures
26 resulted in their failure to pay Plaintiff's and other current and former aggrieved California-based
27 hourly non-exempt employees' their earned wages within the applicable time frames outlined in
28 Labor Code section 204.

21. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved employee, on behalf of himself or herself and other current or former employees, to bring a civil action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor Code section 2699.3.

22. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On September 20, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

23. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 60 days of the date of the complainant's written notice. The LWDA failed to provide the parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends to investigate Plaintiff's claims.

24. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 204 and 246, During Plaintiff's employment and continuing through the present, preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

a. For violations of Labor Code sections 204, one 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 [penalty amounts established by Labor Code section 2699(f)(2)].

25. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1 1. That Defendants be found to have violated the provisions of the Labor Code and
2 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

3 2. For any and all legally applicable penalties during the relevant statute of limitations
4 subject to any permissible tolling, including but not limited to those recoverable under the
5 California Labor Code, including but not limited to section 2699(f);

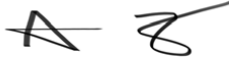
6 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
7 under California Labor Code section 2699(g); and

8 4. For such and other further relief, in law and/or equity, as the Court deems just or
9 appropriate

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11 Dated: January 12, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

12
13 By: _____


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