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\$435 PAID

7 Attorneys for PLAINTIFF BONIFACIO ARZATE,
on behalf of himself and all other aggrieved employees

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF STANISLAUS-MODESTO COURTHOUSE
11

12 BONIFACIO ARZATE, on behalf of himself
and all other aggrieved employees,

CASE NO.: CV-21-002057

13
14 PLAINTIFF,

REPRESENTATIVE ACTION

15 vs.

COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 *et seq.*

16 STEPHEN H. SMITH FARMS, INC., a
17 California corporation; STEPHEN H. SMITH,
an individual; and DOES 1 through 100,
18 inclusive,

DEMAND FOR JURY TRIAL

19 DEFENDANTS.
20
21

This case has been assigned to Judge Sandhu, Sonny S.
Dept. 24
Department _____, for all purposes including Trial.

22
23 PLAINTIFF BONIFACIO ARZATE ("PLAINTIFF"), on behalf of himself and all other
24 aggrieved employees, hereby demands a jury trial, and alleges as follows:

25 **INTRODUCTION**

26 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of
27 Defendants STEPHEN H. SMITH FARMS, INC., STEPHEN H. SMITH, and DOES 1 through 100,
28

1 inclusive (collectively, “DEFENDANTS”) to recover civil penalties arising from unpaid wages earned
2 and due, including but not limited to unpaid and unlawfully calculated overtime compensation, unlawful
3 meal and rest break policies and practices, failure to pay all wages due to discharged or quitting
4 employees, failure to maintain required records, failure to provide accurate itemized wage statements,
5 and failure to timely pay wages during employment.

6 **THE PARTIES**

7 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
8 PLAINTIFF was employed by DEFENDANTS in the County of Stanislaus, State of California as an
9 hourly, non-exempt employee.

10 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant STEPHEN H.
11 SMITH FARMS, INC. (“STEPHEN H. SMITH FARMS”) is, and all times relevant to this action was,
12 a corporation organized and existing under the laws of the State of California. PLAINTIFF is further
13 informed and believes, and based thereon alleges, that Defendant STEPHEN H. SMITH FARMS is
14 authorized to transact and conduct business in the State of California and does transact and conduct
15 business in the County of Stanislaus, State of California. Further, STEPHEN H. SMITH FARMS
16 maintains grounds, facilities, and offices in the County of Stanislaus, State of California. STEPHEN H.
17 SMITH FARMS employed PLAINTIFF and similarly aggrieved persons within the State of California.

18 4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant STEPHEN H.
19 SMITH, an individual, is an owner and Chief Executive Officer of Defendant STEPHEN H. SMITH
20 FARMS.

21 5. At this time, the true names and capacities of DOES 1 through 50, inclusive, are unknown
22 to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.
23 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is
24 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved
25 employees’ injuries and damages were proximately caused by the conduct of said DOE defendants.
26 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities
27 of said DOE defendants when such information is ascertained.

6. PLAINTIFF is informed and believes, and based thereon alleges, that at all relevant times, DEFENDANTS were joint employers of PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon alleges, that at all times relevant to this action, DEFENDANTS were the alter egos, predecessors, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was dominated by his, her, or its codefendants, and each was the alter ego of the other.

7. PLAINTIFF is informed and believes, and based thereon alleges, that in perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all wages earned and due, through methods and schemes which include, but are not limited to: failing to pay overtime premiums; failing to provide rest and meal periods; failing to properly maintain records; failing to provide accurate itemized statements for each pay period; failing to timely pay wages during employment; and requiring, permitting, or suffering the employees to work off the clock, in violation of the California Labor Code (“Labor Code”) and applicable Industrial Welfare Commission (“IWC”) Wage Order(s).

8. PLAINTIFF is informed and believes, and thereon alleges, that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control of, each of the other DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

9. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are liable for violating, or causing to violate, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7, 1193.6, or 1194.

1 **JURISDICTION AND VENUE**

2 10. The Superior Court of the State of California has jurisdiction in this matter because
3 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do business in
4 California and regularly conduct business in the State of California.

5 11. No federal question is at issue because the claims are based exclusively on California
6 state law.

7 12. Venue is proper in this judicial district and the County of Stanislaus, California because
8 among other things, PLAINTIFF and the other aggrieved employees performed work for
9 DEFENDANTS in the County of Stanislaus; DEFENDANTS maintain grounds, facilities, and offices,
10 and transact business in the County of Stanislaus; DEFENDANTS' unlawful policies, procedures, and
11 practices, which are the subject of this action were applied to PLAINTIFF and other aggrieved
12 employees in the County of Stanislaus; and DEFENDANTS' unlawful acts and omissions occurred in
13 the County of Stanislaus.

14 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

15 13. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code
16 Sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former
17 non-exempt aggrieved employees of DEFENDANTS in the State of California at any time within the
18 period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the
19 time this action settles or proceeds to final judgment (the "PAGA PENALTY PERIOD").

20 14. In accordance with Labor Code Section 2699.3, on January 27, 2021, PLAINTIFF gave
21 written notice to the California Labor and Workforce Development Agency ("LWDA"), by filing a
22 PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of
23 the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated,
24 including the facts and theories to support the alleged violations. PLAINTIFF'S PAGA Notice was sent
25 by certified mail to DEFENDANTS on January 27, 2021 and again on February 16, 2021. A copy of
26 PLAINTIFF'S PAGA Notice is attached as Exhibit "1."

15. The LWDA did not provide notice of its intention to investigate DEFENDANTS' violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice. Since PLAINTIFF has waited more than sixty-five (65) days from both the January 27, 2021 and February 16, 2021 postmark date of PLAINTIFF's PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements set forth in Labor Code Section 2699.3 to commence a representative action under the PAGA.

FACTUAL ALLEGATIONS

Failure to Provide Complaint Meal Periods

(Labor Code §§ 226.7, 512; IWC Wage Order No. 14, § 11)

16. Labor Code Section 512 provides in relevant part, “An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

17. IWC Wage Order 14 § 11 states, “(A) An employer may not employ an employee for a work period of more than five (5) hours without providing the employee with a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of employer and employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12

1 hours, the second meal period may be waived by mutual consent of the employer and the employee only
2 if the first meal period was not waived.”

3 18. Labor Code Section 226.7, subdivision (a) states, “An employer shall not require an
4 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
5 or applicable regulation, standard, or order of the Industrial Welfare Commission”

6 19. During the PAGA PENALTY PERIOD, as part of DEFENDANTS’ illegal policies,
7 procedures, and practices to deprive their current and former non-exempt employees all wages earned
8 and due, DEFENDANTS required, suffered or permitted PLAINTIFF and other aggrieved employees
9 to take less than 30-minute meal periods, or to work through them, and have failed to otherwise provide
10 timely, compliant, off-duty meal periods to PLAINTIFF and other aggrieved employees under Labor
11 Code Sections 226.7 and 512 and IWC Order No. 14-2001, § 11.

12 20. DEFENDANTS further violated Labor Code Sections 226.7 and 512 and IWC Wage
13 Order No. 14-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees who
14 were not provided with a meal period, in accordance with the applicable IWC Wage Order, one (1)
15 additional hour of compensation at each employee’s regular rate of pay for each workday that a
16 complaint meal period was not provided.

17 **Failure to Provide Compliant Rest Periods**

18 **(Labor Code §§ 226.7; IWC Wage Order No. 14-2001, § 12)**

19 21. At all relevant times, as part of DEFENDANTS’ illegal policies, procedures, and
20 practices to deprive their current and former non-exempt employees all wages earned and due,
21 DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees
22 as required pursuant to Labor Code Section 226.7, and IWC Wage Order No. 14-2001, § 12.

23 22. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No.
24 14-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with
25 a compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of
26 compensation at each employee’s regular rate of pay for each workday that a compliant rest period was
27 not provided.

1 **Failure to Pay Overtime Wages**

2 **(Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 14-2001, § 3)**

3 23. Under Labor Code Sections 510 and 1194 and IWC Wage Order No. 14-2001, § 3,
4 DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all
5 overtime which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked
6 in excess of ten (10) hours per day and for the first eight (8) hours on the seventh consecutive workday,
7 with double time for all hours worked in excess of eight (8) on the seventh (7th) day of work in the
8 workweek.

9 24. Further, all persons employed in agricultural occupations are entitled to overtime pay as
10 set forth in IWC Wage Order No. 14, § 3 which provides the following overtime schedule for employers
11 of more than 25 employees: (a) Starting January 1, 2019, an employee shall not be employed more than
12 nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
13 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over
14 nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one
15 workweek. (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours
16 per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2)
17 times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday
18 or more than fifty (50) hours in any one workweek. (c) Starting January 1, 2021, an employee shall not
19 be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per
20 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of
21 pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-
22 five (45) hours in any one workweek. d) Starting January 1, 2022, an employee shall not be employed
23 more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the
24 employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
25 worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double
26 the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

25. PLAINTIFF and other aggrieved employees are current and former non-exempt employees of DEFENDANTS entitled to the protections of Labor Code Sections 510 and 1194 and IWC Wage Order No. 14-2001.

26. During the PAGA PENALTY PERIOD, DEFENDANTS failed to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by Labor Code Sections 510, 1194, and IWC Wage Order No. 14-2001, § 3; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, permitting, or suffering PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved employees' records; failing to provide accurate itemized wage statements to PLAINTIFF for each pay period; and other methods to be discovered.

27. DEFENDANTS have knowingly and willfully refused to perform their obligations to compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours worked in violation of Labor Code Sections 510, 1194 and 1198 and IWC Wage Order No. 14-2001, § 3.

Failure to Pay Minimum Wages

(Labor Code §§ 1194, 1197; IWC Wage Order No. 14-2001, § 4)

28. Under Labor Code Sections 1194 and 1197 and IWC Wage Order No. 14-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

29. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 1194 and 1197 and IWC Wage Order No. 14-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off the clock; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other

1 aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved
2 employees' records; failing to provide accurate itemized wage statements to PLAINTIFF and other
3 aggrieved employees for each pay period; and other methods to be discovered.

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

5 **(Labor Code § 204)**

6 30. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of
7 any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th
8 and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that
9 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are
10 required to pay their nonexempt employees between the 1st and 10th day of the following calendar
11 month.

12 31. Labor Code Section 204 further provides that all wages earned for labor in excess of the
13 normal work period shall be paid no later than the payday of the next regular payroll period.

14 32. During the PAGA PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
15 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the next
16 regular payroll period as required by Labor Code Section 204.

17 **Failure to Pay All Wages Due Upon Separation of Employment**

18 **(Labor Code §§ 201, 202, 203)**

19 33. Under Labor Code Sections 201, 202 and 203, DEFENDANTS are required to pay all
20 earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if
21 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge
22 are due and payable immediately.

23 34. Under Labor Code Section 202, DEFENDANTS are required to pay all accrued wages
24 due to an employee no later than 72 hours after the employee quits, unless the employee provided 72
25 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
26 wages at the time of quitting.

1 35. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance
2 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the
3 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
4 thirty (30) days.

5 36. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and
6 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation to
7 PLAINTIFF and other aggrieved employees who were discharged or who quit.

8 **Failure to Furnish Accurate Itemized Wage Statements**
9 **(Labor Code § 226(a); IWC Wage Order No. 14-2001, § 7)**

10 37. During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue
11 to fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage
12 statements in writing showing each employee's gross wages earned, total hours worked, the number of
13 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all
14 deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the
15 name of the employee and only the last four digits of his or her social security number or employee
16 identification number, the name and address of the legal entity or entities employing PLAINTIFF and
17 other aggrieved employees, and all applicable hourly rates in effect during each pay period and the
18 corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226,
19 subdivision (a) and IWC Wage Order No. 14-2001 § 7.

20 38. During the PAGA PENALTY PERIOD, DEFENDANTS knowingly and intentionally
21 failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage
22 statements in accordance with Labor Code Section 226, subdivision (a).

23 39. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees
24 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage
25 statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from
26 the wage statement alone any of the following: gross wages earned, total hours worked by the employee,
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-

1 rate basis, all deductions, provided that all deductions made on written orders of the employee may be
2 aggregated and shown as one item, net wages earned, the inclusive dates of the period for which the
3 employee is paid, the name of the employee and the last four digits of his or her social security number
4 or an employee identification number other than a social security number, the name and address of the
5 legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee.

7 **Failure to Maintain Accurate Records**

8 **(Labor Code §§ 226(a), 1174(d); IWC Wage Order No. 14-2001, § 7)**

9 40. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
10 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned and
11 due, DEFENDANTS knowingly and intentionally failed to maintain records as required under Labor
12 Code Sections 226, subdivision (a) and 1174, subdivision (d) and IWC Wage Order No. 14-2001, § 7,
13 including but not limited to the following records: total daily hours worked by each employee; applicable
14 rates of pay; all deductions; meal periods; time records showing when each employee begins and ends
15 each work period; and accurate itemized statements.

16 **Failure to Provide Day of Rest**

17 **(Labor Code §§ 551, 552, *et seq.*)**

18 41. California Labor Code Section 551 provides that "[e]very person employed in any
19 occupation of labor is entitled to one day's rest therefrom in seven." Labor Code Section 552 further
20 provides, "[n]o employer of labor shall cause his employees to work more than six days in seven."

21 42. During the PAGA PENALTY PERIOD, DEFENDANTS deprived PLAINTIFF and
22 other aggrieved employees a day of rest as required pursuant to Labor Code Sections 551 and 552.

23 43. PLAINTIFF and aggrieved employees had been available and ready to receive days of
24 rests owed.

25 44. DEFENDANTS' failure to provide days of rest was willful because they had knowledge
26 of the illegality of failing to provide days of rest and intentionally failed to do as required by law.

FIRST CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS' GENERAL ACT
(Labor Code §§ 2698 et seq.)
(AGAINST ALL DEFENDANTS)

45. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of the allegations in paragraphs 1 through 45, above.

46. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code Section 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY PERIOD.

47. PLAINTIFF seeks to recover civil penalties through a representative action permitted by PAGA.

48. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in a representative action for the violations set forth above which include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 226, subdivision (a), 226.7, 510, 512, 551, 552, 1174, subdivision (d), 1194, 1194.2, 1197, and 1198.

49. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based on DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically provided which include, but are not limited to, the following:

- a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00) per employee for violations in subsequent pay periods for violations of Labor Code Section 204;
- b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial pay period

1 where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved employee for
2 violations in subsequent pay periods for violations of Labor Code Section 226, subdivision
3 (a);

4 c. Under Labor Code Section 558, subdivision (a), “[a]ny employer or other person acting on
5 behalf of an employer who violates, or causes to be violated, a Section of this chapter or any
6 provision regulating hours and days of work in any order of the Industrial Welfare
7 Commission,” including Labor Code Sections 510 and 512, shall be subject to a civil penalty,
8 in addition to any other penalty provided by law, of fifty dollars (\$50.00) for initial violations
9 for each employee for each pay period for which the employee was underpaid and one
10 hundred dollars (\$100.00) for each subsequent violation for each employee for each pay
11 period for which the employee was underpaid.

12 d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any
13 employee a wage less than the minimum fixed by an order of the commission, shall be subject
14 to a civil penalty as follows: for any initial violation that is intentionally committed, one
15 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
16 employee is underpaid; and for each subsequent violation of the same offense, two hundred
17 fifty dollars (\$250.00) for each underpaid employee for each pay period for which the
18 employee is underpaid regardless of whether or not the initial violation was intentionally
19 committed; and

20 e. Under Labor Code Section 1174.5, for violations of Labor Code Section 1174, subdivision
21 (d), DEFENDANTS are subject to a civil penalty of five hundred dollars (\$500.00).

22 50. PLAINTIFF further seeks civil penalties based on DEFENDANTS’ violations of Labor
23 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,
24 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically
25 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved
27 employee per pay period for each subsequent violation.

1 51. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,
2 subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty
3 is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7, 551,
4 552, 1194, 1197, and 1198.

5 52. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law
6 including under Labor Code Section 2699, subdivision (g)(1).

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other aggrieved employees,
3 prays for relief against DEFENDANTS, and each of them jointly and severally, as follows:

- 4 1. For civil penalties according to proof and all penalties authorized under the PAGA
5 including under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699,
6 subdivisions (a) and (f);
- 7 2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections
8 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable provision
9 providing for prejudgment interest;
- 10 3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
11 Code Section 2699, subdivision (g) and any other applicable provisions providing for
12 attorneys' fees and costs; and
- 13 4. For such further and additional relief as allowed by law or which the Court deems just
14 and proper.

15 DATED: April 19, 2021

16 Respectfully submitted,

17 **PROXY LAW FIRM LLP**

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21 _____
22 Hengameh S. Safaei
23 Rana Nader
24 Attorneys for Plaintiff BONIFACIO
25 ARZATE on behalf of himself and all other
26 aggrieved employees
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1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF hereby demands a jury trial with respect to all issues triable to a jury.

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4 DATED: April 19, 2021

5 Respectfully submitted,

6 **PROXY LAW FIRM LLP**

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11 _____
12 Hengameh S. Safaei
13 Rana Nader
14 Attorneys for Plaintiff BONIFACIO
15 ARZATE on behalf of himself and all other
16 aggrieved employees
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EXHIBIT 1



PROXY LAW FIRM

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January 27, 2021

VIA CERTIFIED MAIL

Stephen H. Smith
Agent for Service of Process for Stephen H. Smith Farms, Inc.
500 South Tully Road
Turlock, CA 95380

Stephen H. Smith
Chief Executive Officer of Stephen H. Smith Farms, Inc.
P.O. Box 130
Turlock, California 95381

VIA ONLINE FILING SYSTEM

PAGA Administrator
California Labor & Workforce Development Agency (LWDA)
pagafilings@dir.ca.gov

Re: Bonifacio Arzate

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Bonifacio Arzate (“Mr. Arzate”) in connection with claims arising from his employment with Stephen H. Smith Farms, Inc., a California corporation, Stephen H. Smith, and any other employer(s) or person(s) acting on behalf of the company pursuant to Labor Code Sections 558, subdivision (a), and 558.1 (collectively, “Employer”). Mr. Arzate is an “aggrieved employee” as defined by Labor Code Section 2699 *et seq.* due to Employer’s violations of the Labor Code as set forth below. The purpose of this Notice is to comply with Labor Code Section 2699.3 which requires aggrieved employees to notify their employer and the Labor & Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

Employer is an agricultural employer. On information and belief, at all times relevant to this Notice, Employer employed more than 25 employees. Mr. Arzate is a former full-time, hourly, non-exempt employee of Employer. At all times relevant to this Notice, Mr. Arzate has been over the age of eighteen (18) years. Prior to his separation in or around September 2020, Mr. Arzate was employed by Employer from approximately June 2020 to approximately September 2020 as a full-time agricultural employee. During his employment, Mr. Arzate worked a demanding

schedule and typically worked shifts at least ten (10) hours long seven (7) straight days per workweek. Pursuant to the California Private Attorneys' General Act ("PAGA"), Mr. Arzate seeks to represent and recover civil penalties on behalf of himself and other non-exempt "aggrieved employees" who were subject to the Labor Code violations alleged herein. For purposes of this Notice, "aggrieved employees" includes all of Employer's current and former non-exempt employees in California who were subject to the following alleged policies and practices within one-year preceding the date of this Notice.

On information and belief, Employer committed the following violations of the Labor Code and the applicable Industrial Welfare Commission Wage Order(s), including Industrial Welfare Commission Wage Order No. 14-2001 ("IWC Wage Order No. 14).

Meal Period Violations

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than thirty minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. A second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. LABOR CODE § 512. In general, when an employee works for a work period of more than five hours, a meal period must be provided no later than the end of the employee's fifth hour of work, i.e., no later than the start of the employee's sixth hour of work). When an employee works for a period of more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth hour of work, i.e., no later than the start of the employee's eleventh hour of work. See *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

Due to Employer's meal period policies and/or practices, Employer failed to provide Mr. Arzate and all other aggrieved employees all required timely, duty-free 30-minute meal periods. See LABOR CODE §§ 226.7 and 512; Wage Order No. 14 § 11. The nature of the work performed by Mr. Arzate and all other aggrieved employees did not prevent them from being relieved of all duties during meal periods and Employer apparently did not have any policy or practice pertaining to meal period violations. Employer also did not maintain a timekeeping system whereby employees could clock in and out for work periods, meal periods, and rest periods. Despite its violations, Employer did not pay an additional hour of premium pay to Mr. Arzate and all other aggrieved employees at their respective regular rates of pay for each meal period violation in accordance with Labor Code § 226.7. As a result, Mr. Arzate and all other aggrieved employees are owed an additional hour of wages at their respective regular rate of compensation for each workday they experienced a meal period violation. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.")

As a result of Employer's unlawful policies and practices requiring Mr. Arzate and all other aggrieved employees to perform work off-the-clock during meal periods, Mr. Arzate and all other

aggrieved employees were underpaid, and are entitled to all minimum and overtime wages that are owed to them. As a further result of Employer's failure to pay all minimum and overtime wages, Employer failed to timely pay Mr. Arzate and all other aggrieved employees all wages owed at the time of their separations from employment.

Rest Period Violations

Wage Order No. 14, § 12 and Labor Code §§ 226.7, 516, and 558 establish the right of employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour period worked, or major fraction thereof. On information and belief, Employer did not authorize and permit Mr. Arzate and all other aggrieved employees to take all paid and duty-free rest periods to which they are legally entitled. Employer also did not maintain a timekeeping system whereby employees could clock in and out for work periods, meal periods, and rest periods. Despite its violations, Employer did not pay an additional hour of premium to Mr. Arzate and all other aggrieved employees at their respective regular rates of pay for each rest period violation in accordance with Labor Code § 226.7. LABOR CODE § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided."). Employer apparently also did not have any policy or practice pertaining to rest period violations. As a result, Mr. Arzate and all other aggrieved employees are owed an additional hour of premium wages at their regular rate of compensation for each workday they experienced a rest period violation.

As a further result of Employer's failure to pay rest period premium wages, Employer failed to timely pay Mr. Arzate and all other aggrieved employees all wages owed at the time of their separations from employment.

Overtime Wage Violations

All persons employed in agricultural occupations are entitled to overtime pay as set forth in IWC Wage Order No. 14, § 3 which provides the following overtime schedule for employers of more than 25 employees:

- (a) Starting January 1, 2019, an employee shall not be employed more than nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one workweek.
- (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday or more than fifty (50) hours in any one workweek.
- (c) Starting January 1, 2021, an employee shall not be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per workweek

unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-five (45) hours in any one workweek.

d) Starting January 1, 2022, an employee shall not be employed more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the employee 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 or more than forty (40) hours in any workweek and double the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

IWC Wage Order No. 14, § 3(A)(2)(a)-(d).

In addition, applicable Wage Order 14 Section 3 states employees "shall not be employed more than . . . six (6) days in any workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of pay 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." *See also*, LABOR CODE § 510.

Employer failed to pay Mr. Arzate and all other aggrieved employees weekly and daily overtime pay in accordance with Wage Order No. 14, § 3. Employer also failed to pay Mr. Arzate and all other aggrieved employees double overtime in accordance with Wage Order No. 14, § 3.

As a result of Employer's unlawful policies and/or practices, Mr. Arzate and all other aggrieved employees were deprived of all required overtime wages including double overtime. Among other things, Mr. Arzate and other aggrieved employees worked in excess of eight hours on the seventh days of work and did not receive pay at one-half (1 1/2) times the employees' regular rate of pay for the first eight (8) hours and double the employees' regular rate of pay for all hours worked over eight (8). As a further result of Employer's failure to pay all overtime wages, Employer failed to timely pay Mr. Arzate and all other aggrieved employees all wages owed at the time of their separations from employment.

Minimum Wage Violations

California law requires employers to compensate employees for all hours worked. Employer was required to pay Mr. Arzate and all other aggrieved employees an hourly rate at least equal to the minimum wage for each hour worked. *See* LABOR CODE §§ 1182.12, 1194, 1194.2, 1197; Wage Order No. 14, § 4. As described above, Employer required Mr. Arzate and all other aggrieved employees to work off-the-clock by performing work during meal breaks. As a result of Employer's unlawful practices and failure to maintain a timekeeping system whereby employees could clock in and out for work periods, meal periods, and rest periods, aggrieved employees were deprived of all required minimum wages.

In addition, Employer did not pay Mr. Arzate and all other aggrieved employees for travel time to and from Employer's farm. When an employee is "subject to the control of an employer," the time is considered compensable "hours worked." *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 582-584 (2000). On information and belief, Employer's ground travel arrangements for Mr. Arzate and other aggrieved employees took two hours round trip. An Employer-operated bus

transported Mr. Arzate and other aggrieved employees to Employer's farm. Employer did not compensate Mr. Arzate and other aggrieved employees for the roundtrip commute to and from Employer's farm.

As a result of Employer's unlawful practices, which failed to compensate for all hours worked, Mr. Arzate and all other aggrieved employees were deprived of all required minimum wages. As a further result of Employer's failure to pay all minimum wages, Employer failed to timely pay Mr. Arzate and all other aggrieved employees all wages owed at the time of their separation from employment.

Day of Rest Violations

A day of rest is guaranteed for each workweek. Labor Code Sections 551 and 552 require employees to receive one day of rest in seven. LABOR CODE §§ 551, 552. Pursuant to Labor Code Section 551 "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Labor Code Section 552 further provides, "[n]o employer of labor shall cause his employees to work more than six days in seven." LABOR CODE § 552.

Employer failed to provide Mr. Arzate and other aggrieved employees one day of rest in seven, and no exception applies. On information and belief, Employer is not exempt from the prohibition against employees working seven days in a workweek. As a result of Employer's unlawful policies and/or practices, Mr. Arzate and other aggrieved employees were deprived of a day to rest in seven in violation of the Labor Code.

Wage Statement Violations

Employer was required to furnish Mr. Arzate and all other aggrieved employees with timely, complete, and accurate itemized wage statements that showed, among other things: (1) gross wages earned, (2) total hours worked by the employee (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Labor Code § 226(a); *see also*, LABOR CODE § 1174, subd. (d).

Employer failed to furnish Mr. Arzate and all other aggrieved employees with timely, complete, and accurate itemized wage statements in violation of California Labor Code Section 226. Labor Code Section 226, subdivision a's statutory purpose is to ensure an employer "document[s] the basis of the employee compensation payments" to assist the employee in determining whether he or she has been compensated properly. *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 574 (2007). "The purpose of requiring greater wage stub information is to insure that employees are adequately informed of compensation received and are not shortchanged by their employers." *Soto v. Motel 6 Operating, LP*, 4 Cal.App.5th 385, 392 (2016) (quoting Assem. Com. on Labor and Employment, Analysis of Sen. Bill No. 1255 (2011-2012 Reg. Sess.) as amended May 15, 2012, p. 3).

Employer failed to furnish Mr. Arzate and all other aggrieved employees timely, complete, and accurate itemized wage statements, thus depriving Mr. Arzate and all other aggrieved employees of their rights to determine whether or not they were compensated properly. Employer's failure to comply with its wage statement obligations was knowing and intentional, and Mr. Arzate and all other aggrieved employees have suffered injury as a result.

Waiting Time Penalties

Labor Code Sections 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Employer failed to timely pay Mr. Arzate and aggrieved employees all of their final wages at the time of their separation, which final pay was to include, but did not include, all overtime and minimum wages and meal and rest period premiums. Employer's failure to pay all final wages due to Mr. Arzate and all other aggrieved employees was willful and thus entitles aggrieved employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Employer failed to pay their final wages after separation, up to a maximum of thirty (30) days. As an "aggrieved employee" Mr. Arzate intends to initiate a civil action on behalf of himself and all other aggrieved employees to recover damages, statutory penalties, and civil penalties (including an amount equal to the unpaid wages) resulting from the wage and hour violations described above.

Failure to Maintain Accurate Records

Despite its record-keeping obligations, Employer did not maintain a timekeeping system whereby employees could clock in and out for work periods, meal periods, and rest periods. As a result, Employer failed to maintain accurate records on behalf of Mr. Arzate and all other aggrieved employees. LABOR CODE § 1174.

Based on information and belief and investigation to date, Employer has committed the following alleged Labor Code violations:

1. Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Arzate and all other aggrieved employees all overtime compensation;
2. Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Arzate and all other aggrieved employees the statutory minimum wage for all hours worked;
3. Labor Code §§ 226.7, 512, and 558 by failing to provide Mr. Arzate and all other aggrieved employees with lawful, timely, and duty-free meal first 30-minute meal period;
4. Labor Code §§ 226.7, 516, and 558 by failing to provide Mr. Arzate and all other aggrieved employees with all lawful, timely, duty-free rest periods;
5. Labor Code §§ 551 and 552 by failing to provide Mr. Arzate and other aggrieved employees one day of rest in seven;
6. Labor Code §§ 226, *et seq.*, by failing to furnish Mr. Arzate and all other aggrieved employees with timely, accurate and compliant itemized wage statements;
7. Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Arzate and all other aggrieved employees upon their separation of employment;
8. Labor Code § 204 by failing to pay Mr. Arzate and all other aggrieved employees all wages earned at least twice during each calendar month; and

January 27, 2021

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9. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Arzate and all other aggrieved employees.

Pursuant to Labor Code § 2699.3, subdivision (a)(2)(A), please notify us within 65 calendar days of the postmark date of this Notice whether the LWDA intends to investigate these alleged violations.

This Notice sets forth the basis of Mr. Arzate's grievances, rights, and remedies under the Labor Code and the PAGA. We appreciate your attention to this matter.

Please do not hesitate to contact us if you require any additional information.

Very truly yours,
PROXY LAW FIRM LLP

A handwritten signature in blue ink, appearing to read "Rana Nader", is written over a light blue horizontal line.

Rana Nader, Esq.

cc: Anthony P. Raimondo, Agent for Service of Process for Calzona AG Management, Inc.;
John Mena, Chief Executive Officer for Calzona AG Management, Inc. (via certified mail)