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on behalf of himself and all other aggrieved employees

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Kern County Superior Court
By Sophia Munoz Alvarez, Deputy

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **KERN COUNTY - METROPOLITAN DIVISION**

11
12 ARMANDO BARRAGAN DIAZ, on behalf of
himself and all other aggrieved employees,

CASE NO.: BCV-21-100836

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 A & W FARMS LLC, a California limited
17 liability company; WILLEM VEENHOVEN, an
18 individual; and DOES 1 through 100,
inclusive,

DEMAND FOR JURY TRIAL

19 **DEFENDANTS.**
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22
23 PLAINTIFF ARMANDO BARRAGAN DIAZ ("PLAINTIFF"), on behalf of himself and all
24 other 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 A & W FARMS LLC, WILLEM VEENHOVEN, and DOES 1 through 100, inclusive

1 (collectively, “DEFENDANTS”) to recover civil penalties arising from unpaid wages earned and due,
2 including but not limited to unpaid and unlawfully calculated overtime compensation, unlawful meal
3 and rest break policies and practices, failure to pay all wages due to discharged or quitting employees,
4 failure to maintain required records, failure to provide accurate itemized wage statements, and failure to
5 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 Kern, State of California as an hourly,
9 non-exempt employee.

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

18 4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant WILLEM
19 VEENHOVEN, an individual, is an owner and Chief Executive Officer of A & W FARMS.

20 5. At this time, the true names and capacities of DOES 1 through 50, inclusive, are unknown
21 to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.
22 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is
23 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved
24 employees’ injuries and damages were proximately caused by the conduct of said DOE defendants.
25 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities
26 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 Kern, California because among
8 other things, PLAINTIFF and the other aggrieved employees performed work for DEFENDANTS in
9 the County of Kern; DEFENDANTS maintain grounds, facilities, and offices, and transact business in
10 the County of Kern; DEFENDANTS' unlawful policies, procedures, and practices, which are the subject
11 of this action were applied to PLAINTIFF and other aggrieved employees in the County of Kern; and
12 DEFENDANTS' unlawful acts and omissions occurred in the County of Kern.

13 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

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

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

26 15. The LWDA did not provide notice of its intention to investigate DEFENDANTS'
27 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF'S PAGA Notice.

1 Since PLAINTIFF has waited more than sixty-five (65) days from both the January 25, 2021 postmark
2 date of PLAINTIFF's PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all
3 of the requirements set forth in Labor Code Section 2699.3 to commence a representative action under
4 the PAGA.

5 **FACTUAL ALLEGATIONS**

6 **Failure to Provide Complaint Meal Periods**

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

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

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

18. Under California law, when an employee works for a work period of more than five (5) 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).

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

20. During the PAGA PENALTY PERIOD, as part of DEFENDANTS' illegal policies, procedures, and practices, DEFENDANTS failed to provide timely, compliant, off-duty meal periods to PLAINTIFF and other aggrieved employees under Labor Code Sections 226.7 and 512 and IWC Order No. 14-2001, § 11 and otherwise required, suffered or permitted PLAINTIFF and other aggrieved employees to take less than 30-minute meal periods, or to work through them.

21. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to meal period violations.

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

Failure to Provide Compliant Rest Periods

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

23. At all relevant times, as part of DEFENDANTS' illegal policies, procedures, and practices to deprive their current and former non-exempt employees all wages earned and due,

1 DEFENDANTS failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees
2 as required pursuant to Labor Code Section 226.7, and IWC Wage Order No. 14-2001, § 12.

3 24. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
4 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break
5 violations.

6 25. DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No.
7 14-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with
8 a compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of
9 compensation at each employee's regular rate of pay for each workday that a compliant rest period was
10 not provided.

11 **Failure to Pay Overtime Wages**

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

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

19 27. Further, all persons employed in agricultural occupations are entitled to overtime pay as
20 set forth in IWC Wage Order No. 14, § 3 which provides the following overtime schedule for employers
21 of more than 25 employees: (a) Starting January 1, 2019, an employee shall not be employed more than
22 nine and one-half (9 1/2) hours per workday or fifty-five (55) hours per workweek unless the employee
23 receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over
24 nine and one-half (9 1/2) hours in any one workday or more than fifty-five (55) hours in any one
25 workweek. (b) Starting January 1, 2020, an employee shall not be employed more than nine (9) hours
26 per workday or fifty (50) hours per workweek unless the employee receives one and one-half (1 1/2)
27 times such employee's regular rate of pay for all hours worked over nine (9) hours in any one workday

1 or more than fifty (50) hours in any one workweek. (c) Starting January 1, 2021, an employee shall not
2 be employed more than eight and one-half (8 1/2) hours per workday or forty-five (45) hours per
3 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular rate of
4 pay for all hours worked over eight and one-half (8 1/2) hours in any one workday or more than forty-
5 five (45) hours in any one workweek. d) Starting January 1, 2022, an employee shall not be employed
6 more than eight (8) hours per workday or work in excess of forty (40) hours per workweek unless the
7 employee receives one and one-half (1 1/2) times such employee's regular rate of pay for all hours
8 worked over eight (8) hours in any workday or more than forty (40) hours in any workweek and double
9 the employee's regular rate of pay for all hours worked over twelve (12) hours in any one workday.

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

13 29. During the PAGA PENALTY PERIOD, DEFENDANTS failed to compensate
14 PLAINTIFF and other aggrieved employees for all overtime hours worked as required under the
15 foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay
16 overtime at one and one-half (1 1/2) or double the regular rate of pay as provided by Labor Code Sections
17 510, 1194, and IWC Wage Order No. 14-2001, § 3; requiring, suffering, or permitting PLAINTIFF and
18 other aggrieved employees to work off the clock; requiring, permitting, or suffering PLAINTIFF and
19 other aggrieved employees to work through meal breaks; illegally and inaccurately recording time in
20 which PLAINTIFF and other aggrieved employees worked; failing to properly maintain PLAINTIFF's
21 and other aggrieved employees' records; failing to provide accurate itemized wage statements to
22 PLAINTIFF for each pay period; and other methods to be discovered.

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

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1 **Failure to Pay Minimum Wages**

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

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

6 32. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 1194
7 and 1197 and IWC Wage Order No. 14-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and other
8 aggrieved employees the applicable minimum wages for all hours worked in a payroll period by, among
9 other things: requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work off
10 the clock; requiring, suffering, or permitting PLAINTIFF and other aggrieved employees to work
11 through meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other
12 aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved
13 employees' records; failing to provide accurate itemized wage statements to PLAINTIFF and other
14 aggrieved employees for each pay period; and other methods to be discovered.

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

16 **(Labor Code § 204)**

17 33. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of
18 any calendar month, DEFENDANTS are required to pay their nonexempt employees between the 16th
19 and 26th day of the month during which the labor was performed. Labor Code Section 204 provides that
20 for all labor performed between the 16th and 26th days of any calendar month, DEFENDANTS are
21 required to pay their nonexempt employees between the 1st and 10th day of the following calendar
22 month.

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

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

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

2 **(Labor Code §§ 201, 202, 203)**

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

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

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

15 39. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and
16 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation to
17 PLAINTIFF and other aggrieved employees who were discharged or who quit.

18 **Failure to Furnish Accurate Itemized Wage Statements**

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

20 40. During the PAGA PENALTY PERIOD, DEFENDANTS routinely failed and continue
21 to fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage
22 statements in writing showing each employee's gross wages earned, total hours worked, the number of
23 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all
24 deductions made, net wages earned, the inclusive dates of the period for which the employee is paid, the
25 name of the employee and only the last four digits of his or her social security number or employee
26 identification number, the name and address of the legal entity or entities employing PLAINTIFF and
27 other aggrieved employees, and all applicable hourly rates in effect during each pay period and the

1 corresponding number of hours worked at each hourly rate, in violation of Labor Code Section 226,
2 subdivision (a) and IWC Wage Order No. 14-2001 § 7.

3 41. During the PAGA PENALTY PERIOD, and as a result of DEFENDANTS' unlawful
4 policies and practices and failure to pay all earned wages, including overtime wages, DEFENDANTS
5 knowingly and intentionally failed to provide PLAINTIFF and other aggrieved employees with timely
6 and accurate itemized wage statements in accordance with Labor Code Section 226, subdivision (a).

7 42. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees
8 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized wage
9 statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from
10 the wage statement alone any of the following: gross wages earned, total hours worked by the employee,
11 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
12 rate basis, all deductions, provided that all deductions made on written orders of the employee may be
13 aggregated and shown as one item, net wages earned, the inclusive dates of the period for which the
14 employee is paid, the name of the employee and the last four digits of his or her social security number
15 or an employee identification number other than a social security number, the name and address of the
16 legal entity that is the employer and, all applicable hourly rates in effect during the pay period and the
17 corresponding number of hours worked at each hourly rate by the employee.

18 **Failure to Maintain Accurate Records**

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

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

1 **Failure to Provide Day of Rest**

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

3 44. California Labor Code Section 551 provides that “[e]very person employed in any
4 occupation of labor is entitled to one day’s rest therefrom in seven.” Labor Code Section 552 further
5 provides, “[n]o employer of labor shall cause his employees to work more than six days in seven.”

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

8 46. PLAINTIFF and aggrieved employees had been available and ready to receive days of
9 rests owed.

10 47. DEFENDANTS’ failure to provide days of rest was willful because they had knowledge
11 of the illegality of failing to provide days of rest and intentionally failed to do as required by law.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF THE PRIVATE ATTORNEYS’ GENERAL ACT**

14 **(Labor Code §§ 2698 *et seq.*)**

15 **(AGAINST ALL DEFENDANTS)**

16 48. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
17 the allegations in paragraphs 1 through 47, above.

18 49. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code Section
19 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other
20 current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor
21 Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the
22 alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY
23 PERIOD.

24 50. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
25 PAGA.

26 51. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
27 civil penalties from DEFENDANTS in a representative action for the violations set forth above which

1 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 226, subdivision
2 (a), 226.7, 510, 512, 551, 552, 1174, subdivision (d), 1194, 1194.2, 1197, and 1198.

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

- 6 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the amount
7 of one hundred dollars (\$100.00) for the initial violation and two hundred dollars (\$200.00)
8 per employee for violations in subsequent pay periods for violations of Labor Code Section
9 204;
- 10 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the amount
11 of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial pay period
12 where a violation occurs and one thousand dollars (\$1,000.00) per aggrieved employee for
13 violations in subsequent pay periods for violations of Labor Code Section 226, subdivision
14 (a);
- 15 c. Under Labor Code Section 558, subdivision (a), "[a]ny employer or other person acting on
16 behalf of an employer who violates, or causes to be violated, a Section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare
18 Commission," including Labor Code Sections 510 and 512, shall be subject to a civil penalty,
19 in addition to any other penalty provided by law, of fifty dollars (\$50.00) for initial violations
20 for each employee for each pay period for which the employee was underpaid and one
21 hundred dollars (\$100.00) for each subsequent violation for each employee for each pay
22 period for which the employee was underpaid.
- 23 d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any
24 employee a wage less than the minimum fixed by an order of the commission, shall be subject
25 to a civil penalty as follows: for any initial violation that is intentionally committed, one
26 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
27 employee is underpaid; and for each subsequent violation of the same offense, two hundred

fifty dollars (\$250.00) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether or not the initial violation was intentionally committed; and

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

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

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

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

PRAYER FOR RELIEF

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

1. For civil penalties according to proof and all penalties authorized under the PAGA including under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699, subdivisions (a) and (f);
2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable provision providing for prejudgment interest;

- 1 3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
2 Code Section 2699, subdivision (g) and any other applicable provisions providing for
3 attorneys' fees and costs; and
4 4. For such further and additional relief as allowed by law or which the Court deems just
5 and proper.

6 DATED: April 14, 2021

7 Respectfully submitted,

8 **PROXY LAW FIRM LLP**

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12 _____
13 Hengameh S. Safaei
14 Rana Nader
15 Attorneys for Plaintiff ARMANDO
16 BARRAGAN DIAZ on behalf of himself
17 and all other aggrieved employees
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DEMAND FOR JURY TRIAL

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

DATED: April 14, 2021

Respectfully submitted,

PROXY LAW FIRM LLP



Hengameh S. Safaei
Rana Nader
Attorneys for Plaintiff ARMANDO
BARRAGAN DIAZ on behalf of himself
and all other aggrieved employees

EXHIBIT 1



PROXY LAW FIRM

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January 25, 2021

VIA CERTIFIED MAIL

Willem Veenhoven
Agent for Service of Process for A & W Farms, LLC
6605 Mayer Avenue
Bakersfield, CA 93314

Willem Veenhoven
Chief Executive Officer
A & W Farms, LLC
6605 Mayer Avenue
Bakersfield, CA 93314

VIA ONLINE FILING SYSTEM

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

Re: Armando Barragan Diaz

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3

Dear William Veenhoven and PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Armando Barragan Diaz (“Mr. Diaz”) in connection with claims arising from his employment with A&W Farms, LLC (“A&W Farms”), a California limited liability company, Willem Veenhoven, any other employer(s) or person(s) acting on behalf of A&W Farms pursuant to Labor Code Sections 558, subdivision (a), and 558.1 (collectively, “Employer”). Mr. Diaz is an “aggrieved employee” as defined by Labor Code § 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 § 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. At all times relevant to this Notice, Employer employed more than 25 employees. Mr. Diaz is a former full-time, hourly, non-exempt employee of Employer. At all times relevant to this Notice, Mr. Diaz has been over eighteen (18) years of age. Prior to his termination in October 2020, Mr. Diaz was employed by Employer from

approximately April 2020 to October 2020 as an agricultural employee. Mr. Diaz worked a demanding schedule, and his shifts were often ten or eleven hours long. Pursuant to the California Private Attorneys' General Act ("PAGA"), Mr. Diaz 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.

Employer failed to timely provide all legally compliant meal breaks to Mr. Diaz and other aggrieved employees. Mr. Diaz and other aggrieved employees often did not get full thirty-minute uninterrupted meal breaks. Employer required Mr. Diaz and other aggrieved employees to work through their meal periods and/or caused them to not be able to take all meal periods at the required intervals by failing to provide coverage for meal periods. Despite failing to provide Mr. Diaz and other aggrieved employees with lawful meal periods, Employer did not provide Mr. Diaz or other aggrieved employees one hour of premium pay for each workday in which a meal period violation occurred as required by Labor Code § 226.7. As such, Employer owes penalties under Labor Code §§ 2699, subdivision (f) and/or 558.

Employer failed to authorize and permit Mr. Diaz and other aggrieved employees with legally compliant paid rest breaks. Mr. Diaz and other aggrieved employees often did not receive ten-minute uninterrupted rest breaks within the first four hours of their shift or major fraction thereof, and each subsequent four hours worked thereafter or major fraction thereof. As such, Mr. Diaz and other aggrieved employees were not provided legally compliant rest breaks. Despite failing to authorize and permit Mr. Diaz and other aggrieved employees with lawful rest periods, Employer did not provide Mr. Diaz or other aggrieved employees one hour of premium pay for each workday in which a rest period violation occurred as required by Labor Code § 226.7. As such, Employer owes penalties under Labor Code §§ 2699, subdivision (f) and/or 558.

As a result of Employer's unlawful policies and practices requiring Mr. Diaz and other aggrieved employees to perform work off-the-clock during meal periods, Mr. Diaz and 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, and failure to pay all meal and rest period premium wages, Employer issued unlawful wage statements to Mr. Diaz and other aggrieved employees and failed to timely pay Mr. Diaz and other aggrieved employees all wages owed at the time of their separations from employment.

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. Employer failed to provide Mr. Diaz and other aggrieved employees with all required and compliant meal periods due to Employer's meal period policies and/or practices failed to provide 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. Diaz and 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. Despite its violations, Employer did not pay an additional hour of premium pay to Mr. Diaz and 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. Diaz and 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 work day that the meal or rest period is not provided.")

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. Employer did not authorize and permit Mr. Diaz and other aggrieved employees to take all paid and duty-free rest periods to which they are legally entitled. Despite its violations, Employer did not pay an additional hour of premium to Mr. Diaz and 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 work day 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. Diaz and 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.

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. Diaz and other aggrieved employees overtime pay in accordance with Wage Order No. 14, § 3. Employer also failed to pay Mr. Diaz and 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. Diaz and other aggrieved employees were deprived of all required overtime wages including double overtime.

Minimum Wage Violations

California law requires employers to compensate employees for all hours worked. Employer was required to pay Mr. Diaz and 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. Diaz and other aggrieved employees to work off-the-clock by performing work during meal breaks.

As a result of Employer's unlawful practices, which failed to compensate for all hours worked, Mr. Diaz and other aggrieved employees were deprived of all required minimum wages.

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. Diaz and other aggrieved employees one day of rest in seven, and no exception applies. On information and believe, Employer is not exempt from the prohibition against employees working seven days in a week.

As a result of Employer's unlawful policies and/or practices, Mr. Diaz 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. Diaz and 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).

As a result of Employer's unlawful policies and practices and its failure to pay all overtime wages, all minimum wages, and all meal premium and rest premium pay, Employer maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Diaz and other aggrieved employees in violation of paragraphs (1) through (5), inclusive, (7) and (9) of subdivision (a) of Labor Code § 226. Employer's failure to comply with its wage statement obligations was knowing and intentional and Mr. Diaz and 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. Diaz 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. Diaz and 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 30 days. As an "aggrieved employee" Mr. Diaz intends to initiate a civil action on behalf of himself and 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.

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. Diaz and other aggrieved employees all overtime compensation;

2. Labor Code §§ 1182.12, 1194, 1194.2, and 1197 by failing to pay Mr. Diaz and other aggrieved employees the statutory minimum wage for all hours worked;
3. Labor Code §§ 226.7, 512, and 558 by failing to provide Mr. Diaz and 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. Diaz and other aggrieved employees with all lawful, duty-free rest periods;
5. Labor Code §§ 551 and 552 by failing to provide Mr. Diaz and other aggrieved employees one day of rest in seven;
6. Labor Code § 226, et seq., by failing to furnish Mr. Diaz and 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. Diaz and other aggrieved employees upon their separation of employment;
8. Labor Code § 204 by failing to pay Mr. Diaz and other aggrieved employees all wages earned at least twice during each calendar month; and
9. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Diaz and 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. Diaz'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



Hengameh S. Safaei

cc: Willem Veenhoven individually and as agent for process for A & W Farms, LLC (via certified mail)