

1 Rana Nader (SBN 247182)  
nader@proxylawfirm.com  
2 Hengameh S. Safaei (SBN 248048)  
safaei@proxylawfirm.com  
3 **PROXY LAW FIRM LLP**  
4 10880 Wilshire Boulevard, Suite 1101  
Los Angeles, California 90024  
5 Telephone: (310) 853-8333  
6 Facsimile: (310) 861-5931

7 Attorneys for PLAINTIFF BRHOYNE MONTERROSO-GAMBOA,  
on behalf of himself and all other aggrieved employees  
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 MONTEREY COUNTY – MONTEREY COURTHOUSE  
11

12 BRHOYNE MONTERROSO-GAMBOA, on  
behalf of himself and all other aggrieved  
13 employees,

14  
15 PLAINTIFF,

16 vs.

17 R.C. FARMS, LLC, a California limited liability  
company; DENNIS CAPRARA, an individual;  
18 JANICE CAPRARA, an individual; BRIAN  
CAPRARA, an individual; and DOES 1 through  
19 100, inclusive,

20 DEFENDANTS.  
21

CASE NO.: 21CV002145

**REPRESENTATIVE ACTION**

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

1 PLAINTIFF BRHOYNE MONTERROSO-GAMBOA ("PLAINTIFF"), on behalf of himself  
2 and all other aggrieved employees alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of  
5 Defendants R.C. FARMS, LLC, DENNIS CAPRARA, JANICE CAPRARA, BRIAN CAPRARA, and  
6 DOES 1 through 100, inclusive (collectively, "DEFENDANTS") to recover civil penalties arising from  
7 unpaid wages earned and due, including but not limited to unpaid and unlawfully calculated overtime  
8 compensation, unlawful meal and rest break policies and practices, failure to pay all wages due to  
9 discharged or quitting employees, failure to maintain required records, failure to provide accurate  
10 itemized wage statements, and failure to timely pay wages during employment.

11 **THE PARTIES**

12 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,  
13 PLAINTIFF was employed by DEFENDANTS in the County of Monterey, State of California as an  
14 hourly, non-exempt employee.

15 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant R.C. FARMS,  
16 LLC ("R.C. FARMS") is, and all times relevant to this action was, a limited liability company organized  
17 and existing under the laws of the State of California. PLAINTIFF is further informed and believes,  
18 and based thereon alleges, that Defendant R.C. FARMS is authorized to transact and conduct business  
19 in the State of California and does transact and conduct business in the County of Monterey, State of  
20 California. Further, R.C. FARMS maintains grounds, facilities, and offices in the County of Monterey,  
21 State of California. R.C. FARMS employed PLAINTIFF and similarly aggrieved persons within the  
22 State of California.

23 4. PLAINTIFF is informed and believes, and thereon alleges, that Defendant DENNIS  
24 CAPRARA, an individual, is an owner and member of Defendant R.C. FARMS.

25 5. PLAINTIFF is informed and believes, and thereon alleges, that Defendant JANICE  
26 CAPRARA, an individual, is an owner and member of Defendant R.C. FARMS.

1           6.       PLAINTIFF is informed and believes, and thereon alleges, that Defendant BRIAN  
2 CAPRARA, an individual, is an owner and member of Defendant R.C. FARMS.

3           7.       At this time, the true names and capacities of DOES 1 through 100, inclusive, are  
4 unknown to PLAINTIFF, and PLAINTIFF therefore sues such DEFENDANTS under fictitious names.  
5 PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated as a DOE is  
6 in some manner responsible for the occurrences alleged herein, and that PLAINTIFF and other aggrieved  
7 employees' injuries and damages were proximately caused by the conduct of said DOE defendants.  
8 PLAINTIFF will seek leave of the court to amend this Complaint to allege the true names and capacities  
9 of said DOE defendants when such information is ascertained.

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

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

26          10.       PLAINTIFF is informed and believes, and thereon alleges, that each and every one of  
27 the acts and omissions alleged herein were performed by, and/or attributable to, all DEFENDANTS,

1 each acting as agents and/or employees, and/or under the direction and control of, each of the other  
2 DEFENDANTS, and that said acts and failures to act were within the course and scope of said agency,  
3 employment, and/or direction and control.

4 11. PLAINTIFF is informed and believes, and based thereon alleges, that in accordance with  
5 Labor Code Section 558.1, DEFENDANTS and any person acting on behalf of DEFENDANTS are  
6 liable for violating, or causing to violate, any provision regulating minimum wages or hours and days  
7 of work in any order of the Industrial Welfare Commission, or Labor Code Sections 203, 226, 226.7,  
8 1193.6, or 1194.

9 **JURISDICTION AND VENUE**

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

13 13. No federal question is at issue because the claims are based exclusively on California  
14 state law.

15 14. Venue is proper in this judicial district and the County of Monterey, California because  
16 among other things, PLAINTIFF and the other aggrieved employees performed work for  
17 DEFENDANTS in the County of Monterey; DEFENDANTS maintain grounds, facilities, and offices,  
18 and transact business in the County of Monterey; DEFENDANTS' unlawful policies, procedures, and  
19 practices, which are the subject of this action were applied to PLAINTIFF and other aggrieved  
20 employees in the County of Monterey; and DEFENDANTS' unlawful acts and omissions occurred in  
21 the County of Monterey.

22 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 15. At all relevant times, DEFENDANTS owned and operated a farm business and employed  
24 PLAINTIFF in an agricultural position.

25 16. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code  
26 Sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former  
27 non-exempt aggrieved employees of DEFENDANTS in the State of California at any time within the

1 period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the  
2 time this action settles or proceeds to final judgment (the “PAGA PENALTY PERIOD”).

3 17. In accordance with Labor Code Section 2699.3, on or about April 26, 2021, PLAINTIFF  
4 gave written notice to the California Labor and Workforce Development Agency (“LWDA”), by filing  
5 a PAGA Notice online, a copy of which was sent by certified mail to DEFENDANTS notifying them of  
6 the specific provisions of the Labor Code and IWC Wage Order(s) alleged to have been violated,  
7 including the facts and theories to support the alleged violations. PLAINTIFF’S PAGA Notice was sent  
8 by certified mail to DEFENDANTS on or about April 26, 2021. A copy of PLAINTIFF’S PAGA Notice  
9 is attached as Exhibit “1.”

10 18. The LWDA did not provide notice of its intention to investigate DEFENDANTS’  
11 violations within sixty-five (65) calendar days of the postmark date of PLAINTIFF’S PAGA Notice.  
12 Since PLAINTIFF has waited more than sixty-five (65) days from the April 26, 2021 postmark date of  
13 PLAINTIFF’s PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the  
14 requirements set forth in Labor Code Section 2699.3 to commence a representative action under the  
15 PAGA.

### 16 **FACTUAL ALLEGATIONS**

#### 17 **Failure to Provide Complaint Meal Periods**

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

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

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

13           21.     Under California law, when an employee works for a work period of more than five (5)  
14 hours, a meal period must be provided no later than the end of the employee’s fifth hour of work, *i.e.*,  
15 no later than the start of the employee’s sixth hour of work. When an employee works for a period of  
16 more than 10 hours, a second meal period must be provided no later than the end of the employee’s tenth  
17 hour of work, *i.e.*, no later than the start of the employee’s eleventh hour of work. *See Brinker*  
18 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

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

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

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

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

9                           **Failure to Provide Compliant Rest Periods**

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

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

15           27.     PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA  
16 PENALTY PERIOD, DEFENDANTS did not have any policy or practice pertaining to rest break  
17 violations.

18           28.     DEFENDANTS further violated Labor Code Section 226.7 and IWC Wage Order No.  
19 14-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with  
20 a compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of  
21 compensation at each employee's regular rate of pay for each workday that a compliant rest period was  
22 not provided.

23                           **Failure to Pay Overtime Wages**

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

25           29.     Under Labor Code Sections 510 and 1194 and IWC Wage Order No. 14-2001, § 3,  
26 DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all  
27 overtime which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked

1 in excess of ten (10) hours per day and for the first eight (8) hours on the seventh consecutive workday,  
2 with double time for all hours worked in excess of eight (8) on the seventh (7th) day of work in the  
3 workweek.

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

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

25 32. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA  
26 PENALTY PERIOD, DEFENDANTS employed more than 25 employees.

34. 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.

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

35. 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.

36. 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 aggrieved employees worked; failing to properly maintain PLAINTIFF's and other aggrieved

employees' records; failing to provide accurate itemized wage statements to PLAINTIFF and other aggrieved employees for each pay period; and other methods or practices to be discovered.

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

#### **(Labor Code § 204)**

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

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

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

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

#### **(Labor Code §§ 201, 202, 203)**

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

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

42. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the

1 employer is liable for waiting time penalties in the form of continued wages to the employee for up to  
2 thirty (30) days.

3 43. During the PAGA PENALTY PERIOD and in violation of Labor Code Sections 201 and  
4 202, DEFENDANTS willfully failed to timely pay accrued wages and other compensation to  
5 PLAINTIFF and other aggrieved employees who were discharged or who quit.

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

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

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

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

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

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

6 **Failure to Maintain Accurate Records**

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

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

15 **Failure to Provide Day of Rest**

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

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

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

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

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

26 ///

27 ///

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS' GENERAL ACT**

3 **(Labor Code §§ 2698 *et seq.*)**

4 **(AGAINST ALL DEFENDANTS)**

5 52. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of  
6 the allegations in paragraphs 1 through 51, above.

7 53. PLAINTIFF is an "aggrieved employee" within the meaning of Labor Code Section  
8 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other  
9 current and former non-exempt employees of DEFENDANTS under the procedures specified in Labor  
10 Code sections 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the  
11 alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY  
12 PERIOD.

13 54. PLAINTIFF seeks to recover civil penalties through a representative action permitted by  
14 PAGA.

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

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

- 22 a. Under Labor Code Section 210, DEFENDANTS are subject to a civil penalty in the  
23 amount of one hundred dollars (\$100.00) for the initial violation and two hundred dollars  
24 (\$200.00) per employee for violations in subsequent pay periods for violations of Labor  
25 Code Section 204;
- 26 b. Under Labor Code Section 226.3, DEFENDANTS are subject to a civil penalty in the  
27 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the initial

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

4 c. Under Labor Code Section 558, subdivision (a), “[a]ny employer or other person acting  
5 on behalf of an employer who violates, or causes to be violated, a Section of this chapter  
6 or any 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  
8 penalty, in addition to any other penalty provided by law, of fifty dollars (\$50.00) for  
9 initial violations for each employee for each pay period for which the employee was  
10 underpaid and one hundred dollars (\$100.00) for each subsequent violation for each  
11 employee for each pay 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  
14 subject to a civil penalty as follows: for any initial violation that is intentionally  
15 committed, one hundred dollars (\$100.00) for each underpaid employee for each pay  
16 period for which the employee is underpaid; and for each subsequent violation of the  
17 same offense, two hundred fifty dollars (\$250.00) for each underpaid employee for each  
18 pay period for which the employee is underpaid regardless of whether or not the initial  
19 violation was intentionally committed; and

20 e. Under Labor Code Section 1174.5, for violations of Labor Code Section 1174,  
21 subdivision (d), DEFENDANTS are subject to a civil penalty of five hundred dollars  
22 (\$500.00).

23 57. PLAINTIFF further seeks civil penalties based on DEFENDANTS’ violations of Labor  
24 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,  
25 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically  
26 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved  
27

1 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved  
 2 employee per pay period for each subsequent violation.

3 58. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,  
 4 subdivision (f) based on DEFENDANTS' violations of Labor Code provisions for which a civil penalty  
 5 is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7, 551,  
 6 552, 1194, 1197, and 1198.

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

9 **PRAYER FOR RELIEF**

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

- 12 1. For civil penalties according to proof and all penalties authorized under the PAGA  
 13 including under Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2699,  
 14 subdivisions (a) and (f);
- 15 2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections  
 16 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable provision  
 17 providing for prejudgment interest;
- 18 3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor  
 19 Code Section 2699, subdivision (g) and any other applicable provisions providing for  
 20 attorneys' fees and costs; and

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

# EXHIBIT 1



PROXY LAW FIRM

10880 Wilshire Boulevard, Suite 1101  
Los Angeles, CA 90024  
Telephone: 310-853-8333  
Facsimile: 310-861-5931

Hengameh S. Safaei, Esq.  
Email: safaei@proxylawfirm.com  
Rana Nader, Esq.  
Email: nader@proxylawfirm.com  
www.proxylawfirm.com

April 26, 2021

**VIA CERTIFIED MAIL**

Janice Caprara  
Agent for Service for R.C. Farms LLC  
26769 El Camino Real North  
Gonzales, CA 93926

**VIA ONLINE FILING SYSTEM**

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

Re: Brhoyne Monterroso-Gamboa

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE § 2699.3**

Dear PAGA Administrator at California Labor & Workforce Development Agency:

This firm represents Brhoyne Monterroso-Gamboa (“Mr. Monterroso-Gamboa”) in connection with claims arising from his employment with R.C. Farms, LLC, a California limited liability company (the “Company”), Dennis Caprara, Janice Caprara, Brian Caprara, 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 (all collectively referred to herein as “Employer”). Mr. Monterroso-Gamboa 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. Monterroso-Gamboa is a former full-time, hourly, non-exempt employee of Employer. At all times relevant to this Notice, Mr. Monterroso-Gamboa has been over the age of eighteen (18) years. Prior to his separation in or around April 2021, Mr. Monterroso-Gamboa was employed by Employer from approximately February 2021 to approximately April 2021 as a full-time agricultural employee. During his employment, Mr. Monterroso-Gamboa 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. Monterroso-Gamboa seeks to represent and recover civil penalties on behalf of himself and other non-exempt “aggrieved employees” who were subject to

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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. Monterroso-Gamboa 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. Mr. Monterroso-Gamboa’s shift normally began at 7:00 a.m. and ended between 6:00 p.m. to 7:00 p.m., yet Employer failed to provide him a meal break that occurred no later than the end of his fifth hour of work, and also failed to provide him a meal break when he worked more than ten hours per shift. The nature of the work performed by Mr. Monterroso-Gamboa 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. Monterroso-Gamboa 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. Monterroso-Gamboa 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.”)

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As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay Mr. Monterroso-Gamboa and other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay meal period premium wages, Employer failed to timely pay Mr. Monterroso-Gamboa and other aggrieved employees all wages earned at least twice during each calendar month. LAB. CODE § 204.

#### 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. Monterroso-Gamboa 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. Monterroso-Gamboa 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. Monterroso-Gamboa 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 break premium wages, Employer failed to timely pay Mr. Monterroso-Gamboa and all other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay rest break premium wages, Employer failed to timely pay Mr. Monterroso-Gamboa and other aggrieved employees all wages earned at least twice during each calendar month. LAB. CODE § 204.

#### 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

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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.

On information and belief, Employer failed to pay Mr. Monterroso-Gamboa and all other aggrieved employees weekly and daily overtime pay in accordance with Wage Order No. 14, § 3. Employer also failed to pay Mr. Monterroso-Gamboa and all other aggrieved employees double overtime in accordance with Wage Order No. 14, § 3. As a result, Mr. Monterroso-Gamboa and all other aggrieved employees were deprived of all required overtime wages including double overtime. As a further result of Employer's failure to pay all overtime wages, Employer failed to timely pay Mr. Monterroso-Gamboa and all other aggrieved employees all wages owed at the time of their separations from employment. As a further result of Employer's failure to pay rest break premium wages, Employer failed to timely pay Mr. Monterroso-Gamboa and other aggrieved employees all wages earned at least twice during each calendar month. LAB. CODE § 204.

#### 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." *Id.* § 552.

Employer failed to provide Mr. Monterroso-Gamboa 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. Monterroso-Gamboa and other aggrieved employees were deprived of a day to rest in seven in violation of the Labor Code.

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### Wage Statement Violations

Employer was required to furnish Mr. Monterroso-Gamboa 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).

In addition, Labor Code Section 246, subd. (i) requires that an employer include on the paystub or separate written document provided to the employee each pay period, the amount of available paid sick leave (or paid time off an employer provides in lieu of sick leave).

On information and belief, Employer failed to furnish Mr. Monterroso-Gamboa and all other aggrieved employees with timely, complete, and accurate itemized wage statements in violation of California Labor Code Section 226. On information and belief, the wage statements issued by Employer fail to show the total hours worked by the employee or the corporate or mailing address of the Employer as listed on the California Secretary of State. Employer also failed to failed to show available paid sick leave on wage statements issued to employees.

Employer's failure to comply with its wage statement obligations was knowing and intentional, and Mr. Monterroso-Gamboa 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. Monterroso-Gamboa 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. Monterroso-Gamboa 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. Monterroso-Gamboa 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

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result, Employer failed to maintain accurate records on behalf of Mr. Monterroso-Gamboa 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. Monterroso-Gamboa and all other aggrieved employees all overtime compensation;
2. Labor Code §§ 226.7, 512, and 558 by failing to provide Mr. Monterroso-Gamboa and all other aggrieved employees with lawful, timely, and duty-free meal first 30-minute meal period;
3. Labor Code §§ 226.7, 516, and 558 by failing to provide Mr. Monterroso-Gamboa and all other aggrieved employees with all lawful, timely, duty-free rest periods;
4. Labor Code §§ 551 and 552 by failing to provide Mr. Monterroso-Gamboa and other aggrieved employees one day of rest in seven;
5. Labor Code §§ 226, *et seq.*, by failing to furnish Mr. Monterroso-Gamboa and all other aggrieved employees with timely, accurate and compliant itemized wage statements;
6. Labor Code §§ 201-203 by failing to timely pay all final wages due to Mr. Monterroso-Gamboa and all other aggrieved employees upon their separation of employment;
7. Labor Code § 204 by failing to pay Mr. Monterroso-Gamboa and all other aggrieved employees all wages earned at least twice during each calendar month; and
8. Labor Code §§ 558 and 1174 by failing to maintain accurate records on behalf of Mr. Monterroso-Gamboa 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. Monterroso-Gamboa'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, Esq.

cc: Janice Caprara, Agent for Service for R.C. Farms LLC, 26769 El Camino Real North, Gonzales, CA 93926