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VIA U.S. CERTIFIED MAIL

October 3, 2023

Grow Smart Labor, Inc.,
Attn: Jorge Arnoldo Esteban Fuentes
Attn: Pedro Ulises Arellano-Moya
2 Suzanne Street
Bakersfield, California 93309

Five Diamond Cold Storage, Inc.
Attn: Frank Keller
22760 Hawthorne Blvd. Suite 103
Torrance, California 90505

Five Diamond Cold Storage, Inc.
25078 RD 196
Exeter, California 93221

Labor and Workforce Development Agency
(via online submission)

RE: California Labor Code section 2699 (Private Attorneys General Act) Notice by Aggrieved Employee

Dear PAGA Administrator:

Our office represents Plaintiffs Mario Bruno, Ulises Calvario, and Victor Calvario (“Aggrieved Employees”). This constitutes statutory notice pursuant to Labor Code section 2699.3(a)(1) for purposes of bringing a claim under the Private Attorneys General Act (“PAGA”), Cal. Labor Code section 2699, et seq. Please consider this a request for the California Labor & Workforce Development Agency (“LWDA” or “Agency”) to take action against Grow Smart Labor, Inc., and Five Diamond Cold Storage, Inc., (“Defendants”) and their agents, managers, supervisors, and/or owners –

including, without limitation, Grow Smart Labor, Inc., Chief Executive Officer Pedro Ulises Arellano-Moya and Chief Financial Officer Jorge Arnoldo Esteban Fuentes – (collectively “Individual Defendants”) for violations of the California Labor Code described below. On information and belief, the Individual Defendants had complete authority to implement and carry out the illegal wage and hour policies at issues herein. As such, the Individual Defendants were on notice, whether actual or constructive, of all of the violations described above, and failed to prevent or address them. Aggrieved Plaintiffs seek to assert a PAGA claim on behalf of the State of California and all other current and/or former non-exempt agricultural workers who have been employed by Defendants in California.

Further, pursuant to, without limitation, California Labor Code sections 210, 558, 558.1, 1197.1, 2699(f) and other provisions of the Labor Code, please consider this a notice to Defendants and all other persons acting on behalf of Defendants and the employer – including, without limitation, Grow Smart Labor, Inc.’s Chief Executive Officer Pedro Ulises Arellano-Moya and Chief Financial Officer Jorge Arnoldo Esteban Fuentes – who controlled and caused to be violated any provision of the California Labor Code or Wage Orders during the relevant time period by making illegal policies, implementing illegal policies, or failing to correct illegal policies.

This investigation request and notice of California Labor Code violations concerns the systematic failure by Grow Smart Labor Inc.’s, failure to pay current and former California non-exempt employees in conformance with provisions set out in the California Labor Code and in Wage Orders promulgated by the Industrial Welfare Commission. At the core of Grow Smart Labor Inc., violations is a policy of: systematically failing to pay piece-rate works for nonproductive time and rest periods separate from piece rate compensation, systematically failing to pay overtime wages for all hours worked by employees in excess of eight hours; systematically refusing to provide rest periods or to provide premium wages in lieu thereof, systematically refusing to provide meal periods or to provide premium wages in lieu thereof; systematically altering employee piece rate units to show less units than actually completed, systematically failing to provide accurate wage statements and systematically failing to pay of all wages owed upon separation from employment. These violations are a uniform policy applied to all non-exempt workers at Grow Smart Labor Inc.

Additional facts and allegations are set forth in Aggrieved Employees’ complaint. Liability under the PAGA may be based on a wide variety of Labor Code predicate provisions, including but not limited to sections 201, 202, 203, 210, 216, 218, 218.6, 223, 225, 226, 226.2, 226.7, 510, 512, 2810.5, 6400, 6401, 6401.7, 6402, 6403, 6404, 1174, 1175, 1194, 1194.2, 1197, 1197.1, 1199, 2673.1(a), and 2802, Industrial Welfare Commission Wage Orders, sections 2699 et seq. and all of the provisions listed in Labor Code section 2699.5 (including the penalty provisions related to these predicate provisions), among others. Any violation of these or any other Labor Code provisions serve as the basis for a PAGA claim by an aggrieved employee on behalf of themselves and other current and former employees.

In particular, the policies described above, and the violations set forth below relate to all the non-exempt workers employed by Grow Smart Labor Inc., in California:

1. Grow Smart Labor Inc., failed to record and compensate piece-rate employees nonproductive time, failed to compensate rest breaks separate from piece-rate compensation, failed to properly calculate and compensate for rest and recovery periods, and altered employees piece rate units in violation of Cal. Labor Code section 226.2 and Minimum Wage violations.

2. Grow Smart Labor Inc. did not schedule or provide meal or rest periods for non-exempt employees, which resulted in failure to provide or authorize and permit proper thirty-minute meal periods and proper 10-minute rest breaks to which non-exempt employees are entitled, and failure to pay premium meal and rest period wages in lieu of meal and rest periods, in violation of Cal. Labor Code sections 226.7 and 512, Wage Orders and California case law.
3. Grow Smart Labor Inc., subjected employees to employer control, or knowingly suffering or permitting them to work off the clock without compensating for all hours worked at Minimum Wage in violation of Labor Code section 1191 and when unpaid time exceeded the statute overtime thresholds, failed to pay the applicable premium rate in violation of Labor Code section 510, 1194, and applicable Wage Orders.
4. Grow Smart Labor Inc. failed to reimburse employees for equipment necessary for work in violation of Labor Code § 2802.
5. Grow Smart Labor Inc., failed to provide accurate wage statements that reflect actual hours worked and amounts earned as employees' wage statements failed to include the actual piece rate units completed and compensation for nonproductive time and failed to properly calculate compensation for rest and recovery periods in violation of Labor Code §§ 226, 226.2, 1174, and applicable Wage Orders.
6. Grow Smart Labor Inc., failed to pay all wages earned (as described above) including unpaid minimum and overtime wages and failed to pay all additional wages in lieu of providing all meal and rest periods immediately or within 72 hours upon separation from employment.

The above provisions do not include all of the derivative penalties associated with the above provisions, which are listed throughout the Labor Code and are PAGA penalties.

Aggrieved Employees Mario Bruno, Ulises Calvario, and Victor Calvario may be contacted through our office: Mallison & Martinez, Attorneys at Law, 1939 Harrison Street, Suite 730, Oakland, California 94612.

If no action is taken by the Agency within 65 days, we will assume that we may pursue this action under the theories described above against Grow Smart Labor Inc., and the Individual Defendants described above and their managers, agents, owners, and other liable persons and entities (pursuant to, without limitation, Labor Code sections 210, 558, 1197.1, 2699(f) (and other provisions)).

PLEASE TAKE NOTICE THAT THIS IS ALSO A GENERAL LITIGATION PRESERVATION NOTICE to preserve all documents relating to all employees, including but not limited to all timekeeping and payroll records in paper form, native electronic form and any other format in which they are generated and maintained in the regular course of business; all databases and computer or electronic systems that are used for timekeeping and payroll; all records and evidence in any way related to the facts and claims asserted in this letter; all records and evidence in any way related to claims of Aggrieved Plaintiffs, the state, and other current or former employees under the California

Labor Code Private Attorney General (including underlying Labor Code and IWC orders), the California Government Code, and the Equal Employment Opportunity Act. These documents include but are not limited to all schedules (both current and former employees), all timekeeping records, all rest and meal period records, all duty and responsibility records, all records which include employee signatures or initials, all payroll records, all state or federal withholding records, all personnel files and other employment records, all records concerning the payment or non-payment of wages, or provision or non-provision of state mandated labor code protections, as well as all documents pertaining to harassment or discrimination against employees, all communications relating to these records and documents, and all emails relating to these records and documents.

Sincerely,

MALLISON & MARTINEZ

A handwritten signature in black ink, appearing to read 'Gonzalo Quezada', written in a cursive style.

Gonzalo Quezada, Esq.