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LUIS AGUILAR ROSAS on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CRUZ

LUIS AGUILAR ROSAS, individuals, on
behalf of himself, all aggrieved employees, and
the State of California as a Private Attorneys
General,

Plaintiff,

vs.

PLANT SCIENCES, INC., a California
corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 24CV01577

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

1 Plaintiff LUIS AGUILAR ROSAS brings this PAGA representative action complaint on
2 behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys
3 General, and alleges as follows:

4 NATURE OF THE ACTION

5 1. Plaintiff LUIS AGUILAR ROSAS worked as an employee for Defendant PLANT
6 SCIENCES, INC. and Does 1-50 (collectively “Defendant”). Defendant is an “agricultural
7 research company with emphasis on plant breeding and propagation of berry crops for the global
8 marketplace.” (www.plantsciences.com). Plaintiff LUIS AGUILAR ROSAS worked for
9 Defendant at its Manteca, CA, facility where he was employed as a farm laborer/irrigator for ten
10 years, until February 2, 2024. Plaintiff brings this action pursuant to the Private Attorneys General
11 Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and
12 former hourly, nonexempt employees of Defendant within one year of serving notice on the
13 LWDA to the present are aggrieved employees.

14 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
15 willful and intentional employment practices and policies. Plaintiff brings this representative
16 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
17 California, based upon the claims articulated below. Plaintiff provided notice of the claims
18 pursuant to §2698 *et seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
19 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
20 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
21 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
22 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

23 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
24 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to provide
25 rest breaks and cool-down rest periods; (4) failing to provide uninterrupted meal breaks; (5) failing
26 to provide place of employment that is safe and healthful; (6) failing to pay wages due upon
27 termination; (7) failing to provide accurate itemized wage statements. Defendant is therefore liable
28

1 for civil penalties under the Cal. Labor Code, including the Private Attorney General Act
2 (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

3 **THE PARTIES**

4 4. Plaintiff LUIS AGUILAR ROSAS is a resident of the State of California and worked
5 for Defendant at its Manteca, CA, facility where he was employed as a farm laborer/irrigator for
6 ten years, until February 2, 2024.

7 5. Defendant PLANT SCIENCES, INC. is a California corporation authorized to do
8 business and doing business in California with the capacity to sue and to be sued, and doing
9 business, in the county of Santa Cruz, State of California.

10 6. Plaintiff is unaware of the true names, capacities, relationships, and extent of
11 participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is
12 informed and believes and thereon alleges that said Defendant is legally responsible for the
13 wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff
14 will amend this complaint when their true names and capabilities are ascertained.

15 7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
16 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
17 of the representative class, and exercised control over their wages, hours, and working conditions.
18 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
19 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
20 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
21 to the other Defendants.

22 **JURISDICTION AND VENUE**

23 8. Venue is proper in this judicial district because Defendant conducts business in this
24 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
25 in this case that arose in this county.

26 9. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
27 the Superior Court and will be established according to proof at trial. Based on information,
28 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for

monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,000).

10. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California and Defendant is qualified to do business in California and regularly conduct business in California. Further, there is no federal question at issue as the claims herein are based solely on California law.

PAGA REPRESENTATIVE ACTION ALLEGATIONS

11. During the relevant time period, Defendant committed various violations of the California Labor Code as alleged below in more detail. Defendant enforces multiple policies that violate state law, which are intended to increase profits to the detriment of aggrieved employees.

12. This representative action represents over one hundred current and former aggrieved employees.

13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing to the present, Defendant engaged in unlawful employment practices that resulted in violations of numerous Labor Code sections, as set forth more fully below.

14. Plaintiff and all current and former hourly, nonexempt employees within one year of filing this action to the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor code §2699(c).)

15. Defendant, and each of them, have committed the following violations of the California Labor Code:

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 203, 204, 206, 206.5, 210, 216, 218, 218.5, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, Wage Order 13 & 14)

16. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

17. The Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Defendant has been engaged in many unlawful employment

practices which resulted in underpayment for hours worked each pay period, including suffering or permitting employees to work while off the clock and clocked out for lunch, and rounding clock in and clock out times to the half hour which has the effect of shaving time from their timecards.

18. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Defendant's control but not compensated for their time. For example, Plaintiff's scheduled shift started at 6 am and ended at 2:30 pm. The employees do not clock in and out for work. Rather, a foreman enters the time for them and writes the shift start and end times instead of the actual start and end times. When employees are assigned tasks outside the main facility, they are required to arrive 10-15 minutes prior to the scheduled start time, which they are not compensated for. If employees do not arrive 10-15 minutes early, they are considered late and are penalized and written up. At the end of the day, employees often work 5-10 minutes after the shift end time to wrap up the day's activities and this time is off the clock and uncompensated.

19. Rounding. As explained above, Defendant rounds Plaintiff and aggrieved employee timecards in a manner that favors Defendant. Indeed, with Defendant's strict policies against arriving to work late, as well as returning from meal periods late, Plaintiff and aggrieved employees consistently arrived prior to their shift start time, but the foreman did not record when these hours worked. Plaintiff's and aggrieved employees' wage statements consistently show hours rounded down.

20. The rounding policy utilized by Defendant is neither fair nor neutral, as it consistently shaved time from Plaintiff and aggrieved employees' hours worked, resulting in a failure to compensate Plaintiff and aggrieved employees for all hours worked.

21. Defendant's conduct described herein violates the above-cited Labor Code sections, therefore, Plaintiff and other Aggrieved Employees are entitled to recover penalties for the nonpayment of wages of all their worked hours in addition to penalties, attorneys' fees, expenses, and costs of suit. As a result of these ongoing violations, Defendant is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 et seq.

1 22. Failure to Pay All Wages Owed Twice Per Month. Defendant was required to pay
2 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
3 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
4 unlawful employment policies and practices discussed herein. As a result of these practices,
5 Plaintiff and Aggrieved Employees were underpaid for hours worked, including overtime and
6 penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.
7 Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages as required
8 by law

9 **Failure to Pay Minimum Wage**

10 (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

11 23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 24. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer
14 to suffer or permit a California employee to work without paying wages at the proper minimum
15 wage for all time worked as required by the applicable IWC Wage Order.

16 25. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
17 result of Defendant's practices described above, in addition to failure to pay meal and rest period
18 penalty wages discussed below. Based on Defendant's unlawful conduct described above, and
19 because Plaintiff and the aggrieved employees were paid at or near minimum wage, Defendant's
20 failure to pay for all hours worked, including overtime, resulted in a payment of less than the
21 minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage
22 Order 1-2001 4(B). Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699
23 *et seq.*

24 **Failure to Provide Rest Breaks and Cool-Down Rest Periods**

25 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*, CCR 3395)

26 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.
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1 27. Defendant failed to maintain a compliant rest period policy and practice that provides
2 its employees with off-duty rest periods as required by California law. Plaintiff reports that there
3 were many occasions wherein he and aggrieved employees did not receive required rest breaks.
4 They also were not permitted to take required cool-down breaks as discussed below.

5 28. Plaintiff explains that employees often do not receive rest breaks. If they do receive
6 breaks, they receive one 15 minute break per day instead of the required two breaks, and even this
7 one break is non-compliant and short due to the long distances employees have to walk to the
8 restroom (5-7 minute walk) and the lack of shade and adequate break facilities.

9 29. Rest periods were often either less than ten minutes, not provided, interrupted or late,
10 “on duty,” or not scheduled before and after a meal period for shifts greater than six hours, as
11 prescribed by California law because Defendant: (1) did not account for all hours worked that were
12 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
13 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
14 inform and train employees about when, where and how to take timely and uninterrupted ten-
15 minute rest breaks; and/or (4) because management at various levels, affecting all hourly, non-
16 exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

17 30. Additionally, employees were required to be relieved for breaks by the
18 foreman/supervisor before taking a break. During times when the foreman would leave the
19 premises, employees would not receive a break.

20 31. Failure to Provide Recovery Periods. Labor Code section 226.7, subdivision (c)
21 provides that:

22 A. If an employer fails to provide an employee a... recovery period in
23 accordance with a state ., law, including, but not limited to an applicable statute
24 or applicable regulation, standard, or order of the Occupational Safety and
25 Health Standards Board, or the Division of Occupational Safety and Health, the
26 employer shall pay the employee one additional hour of pay at the employee's
27 regular rate of compensation for each workday that the meal or rest or recovery
28 period is not provided.

1 32. Even on summer days when temperatures soared well above ninety (90) degrees
2 Fahrenheit, Defendant discouraged employees from taking cool-down rest breaks. 8 CCR
3 3395(d)(3) provides in part that employees working for employers that maintain “outdoor places
4 of employment” “shall be allowed and encouraged to take a preventative cool-down rest in the
5 shade when they feel the need to do so to protect themselves from overheating.” Employers who
6 fail to provide required recovery periods are liable for damages under Labor Code 226.7.

7 33. Work areas would get unsafely hot and employees were required to wait until their
8 scheduled break or meal period in order to get relief from the sun and heat. Even then, shade was
9 not provided and if employees wanted shelter, they needed to resort to their hot cars. Aggrieved
10 employees were exposed to a high risk of suffering heat illness so that their life, safety, and health
11 were jeopardized by Defendant’s conduct, violating California Code of Regulation, Title, section
12 3395 and Labor Code sections 226.7 and 1198.

13 34. Adequate Shade. Rest breaks did not comply with state laws as required by Labor Code
14 §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires
15 employers to allow access to shade. The regulations define “shade” as “blockage of direct
16 sunlight.” Defendant failed to provide Plaintiff and aggrieved employees, who worked outdoors,
17 with adequate shade.

18 35. As further discussed below, Labor Code sections 6300, 6310 and 6400, *et seq.* requires
19 all employers to provide a safe and secure workplace. Because Defendant did not provide shade
20 required by 8 CCR 3395 at their “outdoor places of employment,” Plaintiff and employees were
21 exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health.
22 Because shade is required, failure to provide adequate shade results in insufficient recovery
23 periods.

24 36. When breaks were missed, late, or noncompliant, Defendant failed to pay the 1-hour
25 penalty, as required. Because Defendant violated the Wage Order, Defendant is liable under Labor
26 Code §1198. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal.
27 Labor Code §2698 *et. seq.*
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1 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
2 Defendant inaccurately recorded meal period times due to rounding to the half hour; and/or (5)
3 because management at various levels, affecting all hourly, non-exempt employees, refused to
4 offer, permit, or enforce a lawfully compliant meal period policy. Plaintiff and Aggrieved
5 Employees were not paid a premium payment, paid as an hour's wage when meal periods were
6 not given to them in compliance with California law. As a result of these violations, Defendant is
7 liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

8 **Failure to Provide Place Of Employment That Is Safe And Healthful**

9 (Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 6409, 2699 et seq., 8 CCR 3202)

10 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
11 incorporate said paragraphs herein by reference.

12 43. Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and
13 a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401
14 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt
15 and use practices, means, methods, operations, and processes which are reasonably adequate to
16 render such employment and place of employment safe and healthful. Pursuant to Cal. Labor Code
17 §6402, no employer shall require, or permit any employee to go or be in any employment or place
18 of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer
19 shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render
20 the employment and place of employment safe, or to adopt and use methods and processes
21 reasonably adequate to render the employment and place of employment safe, or to do every other
22 thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code §
23 6404 provides that no employer shall occupy or maintain any place of employment that is not safe
24 and healthful.

25 44. In this instance, because Defendant did not provide shade or recovery periods required
26 by the Labor Code and 8 CCR 3395 at their “outdoor places of employment,” Plaintiff and
27 employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety,
28 and health, violating the above listed labor code provisions.

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1 by personal check or cash, an accurate itemized statement in writing showing
2 (1) gross wages earned, (2) total hours worked by the employee, except as
3 provided in subdivision (j), (3) the number of piece-rate units earned and any
4 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
5 deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the
7 inclusive dates of the period for which the employee is paid, (7) the name of the
8 employee and only the last four digits of his or her social security number or an
9 employee identification number other than a social security number, (8) the
10 name and address of the legal entity that is the employer and, if the employer is
11 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
12 and address of the legal entity that secured the services of the employer, and (9)
13 all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate by the employee...

15 50. Such failures caused injury to Plaintiff and others, by, among other things, impeding
16 them from knowing the total hours worked and the amount of wages, including penalty wage and
17 overtime, to which they are and were entitled. Defendant is liable for civil penalties pursuant to
18 Labor Code § 2698 *et seq.*

19 **FIRST CAUSE OF ACTION**

20 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

21 **(California Labor Code §2698 *et seq.*)**

22 51. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
23 incorporate said paragraphs herein by reference.

24 52. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
25 during the applicable statutory period and suffered one or more of the Labor Code violations set
26 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
27 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
28 attorneys’ fees and costs.

1 53. Plaintiff seeks to recover the PAGA civil penalties through a representative action
2 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
3 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

4 54. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
5 Code provisions:

- 6 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
7 Labor Code §§200, 203, 204, 206, 206.5, 210, 216, 218, 218.5, 218.6, 221, 223,
8 510, 511, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, Wage Order 13 & 14);
- 9 b. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194,
10 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- 11 c. Failure to Provide Rest Breaks and Cool-Down Rest Periods (Cal. Labor Code
12 §§226, 226.7, 512, 558, 1198, 2698 *et seq.*, CCR 3395)
- 13 d. Failure to Provide Uninterrupted Meal Breaks (Cal. Labor Code §§226, 226.7, 512,
14 558, 1198, 2699 *et seq.*)
- 15 e. Failure to Provide Place of Employment That Is Safe and Healthful (Cal. Lab. Code
16 §§6400, 6401, 6402, 6403, 6404, 6407, 6409, 2699 *et seq.*, 8 CCR 3202)
- 17 f. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256
18 and 2698 *et seq.*)
- 19 g. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
20 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq.*).

21 55. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
22 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
23 aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
24 employee for each subsequent violation of Labor Code §226(a).

25 56. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil
26 penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations
27 for each underpaid employee for each pay period for which the employee was underpaid, and one
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1 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
2 for which the employee was underpaid.

3 57. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
4 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
5 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
6 a civil penalty is not specifically provided.

7 58. Plaintiff and the other current and former employees of Defendant are aggrieved
8 employees. They were or are employed by Defendant, and each of them, and the violations alleged
9 herein were committed against them. Plaintiff brings this action on behalf of himself and all other
10 current and former aggrieved employees.

11 59. At the time of each violation, Defendant employed one or more employees.

12 60. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
13 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
14 determined at trial, pre-judgment interest, costs and attorneys' fees.

15 61. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
16 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
17 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
18 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
19 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
20 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
21 §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved
22 employees and the State of California.

23 **PRAYER FOR RELIEF**

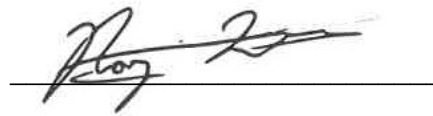
24 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
25 judgement against Defendant as follows:

26 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
27 determined at trial, but at least the jurisdictional amount of this Court;

2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;
4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: May 28, 2024

KOUL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', is written over a horizontal line.

BY: Nazo Koulloukian, Esq.

Attorneys for Plaintiff LUIS AGUILAR ROSAS,
and all aggrieved employees

EXHIBIT 1



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

March 21, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Steven D. Nelson
Plant Sciences, Inc.
342 Green Valley Road
Watsonville, CA 95076

Michael Tunink
Tunink Law Firm
820 Bay Area Avenue, Suite 120
Capitola, CA 95010

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Luis Aguilar Rosas
Employer: Plant Sciences, Inc.

Dear Sir or Madam:

Claimant and aggrieved employee Luis Aguilar Rosas has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, and Sahag Majarian, II, and Garen Majarian of Majarian Law Group, APC, to represent him, and all other aggrieved employees, for wage and hour claims against his former employer, Plant Sciences, Inc. (hereafter referred to as “Employer”). Employer is an “agricultural research company with emphasis on plant breeding and propagation of berry crops for the global marketplace.” (www.plantsciences.com) Employer hired, assigned, and paid Claimant and aggrieved employees to work at their facilities in California. Claimant worked for Employer at its Manteca, CA, facility where he was employed as a farm laborer/irrigator for ten years, until February 2, 2024.

Employer violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Labor Code § 2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Labor Code § 2699.3. Based on information and belief, Employer continues to commit all the violations alleged herein.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 210, 216, 221-223, 226, 226.2, 226.7, 227, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders, including 13 and 14.

As alleged below, Claimant personally suffered some of the Labor Code violations committed by Employer, while other violations, though not personally suffered by him, were suffered by other Aggrieved Employees. As held in *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 758, "[b]y the plain language of the statute, an aggrieved employee need only suffer one of the Labor Code violations alleged against his or her employer to be able to bring a PAGA claim on behalf of himself or herself and current or former employees who suffered any Labor Code violation at the hands of the employer. Plaintiff need not have actually suffered all of the Labor Code violations that he alleges to have taken place for purposes of seeking PAGA penalties." (citation omitted). Accordingly, Claimant plans to pursue penalties for all the violations committed by Employer against the Aggrieved Employees, including those he did not personally suffer.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§200, 203, 204, 206, 206.5, 210, 216, 218, 218.5, 218.6, 221, 223, 510, 511, 558, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, Wage Order 13 & 14)

The Wage Orders define "hours worked" as "the time during which an employee is subject to the control of an including all the time the employee is suffered or permitted to work, whether or not required to do so." Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including suffering or permitting employees to work while off the clock and clocked out for lunch, and rounding clock in and clock out times to the half hour which has the effect of shaving time from their timecards.

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time. For example, Claimant's scheduled shift started at 6 am and ended at 2:30 pm. The employees do not clock in and out for work. Rather, a foreman enters the time for them and writes the shift start and end times instead of the actual start and end times. When employees are assigned tasks outside the main facility, they are required to arrive 10-15 minutes prior to the scheduled start time, which they are not compensated for. If employees do not arrive 10-15 minutes early, they are considered late and are penalized and written up. At the end of the day, employees often work 5-10 minutes after the shift end time to wrap up the day's activities and this time is off the clock and uncompensated.

Rounding

As explained above, Employer rounds Claimant and aggrieved employee timecards in a manner that favors Employer. Indeed, with Employer's strict policies against arriving to work late, as well as returning from meal periods late, Claimant and aggrieved employees consistently arrived prior to their shift start time, but the foreman did not record when these hours worked. Claimant's wage statements consistently show hours rounded down.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See's Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees' hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Employer's conduct described herein violates the above-cited Labor Code sections, therefore, Claimant and other Aggrieved Employees are entitled to recover penalties for the nonpayment of wages of all their worked hours in addition to penalties, attorneys' fees, expenses, and costs of suit. As a result of these ongoing violations, Employer is liable for, among other things, civil penalties pursuant to Labor Code §§ 558 & 2698 et seq.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month. Due to this failure, Employer is liable under Labor Code §210 for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 et seq.)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above, in addition to failure to pay meal and rest period penalty wages discussed below. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Provide Rest Breaks and Cool-Down Rest Periods

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., CCR 3395

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that there were many occasions wherein he and aggrieved employees did not receive required rest breaks. They also were not permitted to take required cool-down breaks as discussed below.

Claimant explains that employees often do not receive rest breaks. If they do receive breaks, they receive one 15 minute break per day instead of the required two breaks, and even this one break is non-compliant and short due to the long distances employees have to walk to the restroom (5-7 minute walk) and the lack of shade and adequate break facilities.

Rest periods were often either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; and/or (4) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

Additionally, employees were required to be relieved for breaks by the foreman/supervisor before taking a break. During times when the foreman would leave the premises, employees would not receive a break.

Failure to Provide Recovery Periods

Labor Code section 226.7, subdivision (c) provides that:

If an employer fails to provide an employee a... recovery period in accordance with a state law, including, but not limited to an applicable statute or applicable regulation, standard, or order of the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, 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 or recovery period is not provided.

Even on summer days when temperatures soared well above ninety (90) degrees Fahrenheit, Employer discouraged employees from taking cool-down rest breaks. 8 CCR 3395(d)(3) provides in part that employees working for employers that maintain “outdoor places of employment” “shall be allowed and encouraged to take a preventative cool-down rest in the shade when they feel the need to do so to protect themselves from overheating.” Employers who fail to provide required recovery periods are liable for damages under Labor Code 226.7.

Work areas would get unsafely hot and employees were required to wait until their scheduled break or meal period in order to get relief from the sun and heat. Even then, shade was not provided and if employees wanted shelter, they needed to resort to their hot cars. Aggrieved employees were exposed to a high risk of suffering heat illness so that their life, safety, and health were jeopardized by Employer’s conduct, violating California Code of Regulation, Title, section 3395 and Labor Code sections 226.7 and 1198.

Adequate Shade

Rest breaks did not comply with state laws as required by Labor Code §226.7 because employees were not provided with sufficient shade. 8 CCR 8, § 3395(d) requires employers to allow access to shade. The regulations define “shade” as “blockage of direct sunlight.” Employer failed to provide Claimant and aggrieved employees, who worked outdoors, with adequate shade.

As further discussed below, Labor Code sections 6300, 6310 and 6400, *et seq.* requires all employers to provide a safe and secure workplace. Because Employer did not provide shade required by 8 CCR 3395 at their “outdoor places of employment,” Claimant and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health. Because shade is required, failure to provide adequate shade results in insufficient recovery periods.

When breaks were missed, late, or noncompliant, Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor

Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n 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 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked." Labor Code 1198 states that any violation of a wage order is a violation of the Labor Code.

Claimant and aggrieved employees often received late meal periods and they were often interrupted. Additionally, meals were short and under 30-minutes because employees had to walk 5-7 minutes to the bathroom facilities, which was the only facility provided in any way related to breaks. No shade or breakroom/break area was provided. Employees frequently resorted to eating in their hot cars.

Meal periods were also noncompliant because Employer rounds timeclock entries for meal periods. Our Supreme Court has recently re-emphasized the importance of fully compliant meal periods, holding that employers must record meal period time entries to the exact minute, prohibiting rounding for employee meal periods. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 67.)

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer inaccurately recorded meal period times due to rounding to the half hour; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Place Of Employment That Is Safe And Healthful

(Cal. Labor Code §§6400, 6401, 6402, 6403, 6404, 6407, 6409, 2699 *et seq.*, 8 CCR 3202)

Cal. Labor Code § 6400(a) provides that every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein. Cal. Labor Code §6401 provides that “every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Pursuant to Cal. Labor Code §6402, no employer shall require, or permit any employee to go or be in any employment or place of employment which is not safe and healthful. Cal. Labor Code §6403 states that no employer shall fail or neglect to provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe, or to adopt and use methods and processes reasonably adequate to render the employment and place of employment safe, or to do every other thing reasonably necessary to protect the life, safety, and health of employees. Cal. Labor Code § 6404 provides that no employer shall occupy or maintain any place of employment that is not safe and healthful.

In this instance, because Employer did not provide shade or recovery periods required by the Labor Code and 8 CCR 3395 at their “outdoor places of employment,” Claimant and employees were exposed to a high risk of suffering heat illness and jeopardizing their life, safety, and health, violating the above listed labor code provisions.

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing, including payment for all hours worked, and penalty pay, to aggrieved employees at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203, separated aggrieved employees are now also entitled to recover up to thirty (30) days of wages due to Employer’s “willful” failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201, 202 and 203, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et seq.*

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 1174, 1174.5, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d). The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual hours worked, gross wages earned, including pay for all hours worked, and overtime pay, and pay for meal and rest period penalty wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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...

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages, including penalty wage and overtime, to which they are and were entitled. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq*.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform him if it does not intend to investigate these violations so that he may pursue his claims as a representative action in civil court.

Respectfully submitted,



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