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County of San Diego

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Clerk of the Superior Court
By C. Tachon ,Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN DIEGO**

12 MATT HAUSER, individually and on behalf of
13 all other aggrieved employees and the State of
14 California,

15 Plaintiff,

16 v.

17 GRAIN TO GREEN, INC.; and DOES 1 through
18 10, inclusive,

19 Defendants.
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Case No. 24CU013913C

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
(LABOR CODE § 2698 *et seq.*)**

**REQUEST FOR PUBLIC INJUNCTIVE
RELIEF**

1 Plaintiff Matt Hauser (“Plaintiff”), individually and on behalf of all other aggrieved employees
2 and the State of California, hereby brings this Representative Action Complaint against Grain to
3 Green, Inc. and DOES 1 through 10 inclusive (collectively, “Defendants”), and hereby alleges with
4 knowledge with respect to his own acts and on information and belief as to other matters as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of himself and all other current and former
7 employees of Defendants employed in California during the PAGA Period, including exempt, non-
8 exempt, and/or misclassified employees (collectively, “Aggrieved Employees”). The term “PAGA
9 Period” is defined as commencing from one year prior to the submission of Plaintiff’s notice of Labor
10 Code violations to the Labor and Workforce Development Agency (“LWDA”) and Defendants
11 through the date of final judgment.

12 2. This representative action is brought under, *inter alia*, the California Industrial Welfare
13 Commission (“IWC”) Wage Orders and applicable provisions of the California Code of Regulations,
14 Code of Civil Procedure § 1021.5, and Labor Code §§ 201, 202, 203, 204, 206, 210, 221, 223, 224,
15 226, 226.3, 351, 353, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802,
16 and 2804.

17 3. Defendants have engaged in a systematic pattern of wage and hour violations under the
18 Labor Code. During the PAGA Period, Defendants maintained a consistent practice and policy of
19 violating state wage and hour laws by, among other things, failing to timely pay all wages, making
20 unlawful deductions to gratuities, failing to reimburse necessary business expenditures, failing to
21 provide accurate itemized wage statements, and failing to maintain accurate records.

22 4. Accordingly, Plaintiff brings this representative action for recovery of civil penalties
23 and injunctive relief under Labor Code §§ 2698 *et seq.*

24 **JURISDICTION AND VENUE**

25 5. This Court has jurisdiction over Defendants because, upon information and belief,
26 Defendants are citizens of California, Defendants have sufficient minimum contacts in California, or
27 otherwise intentionally avail themselves to the California market so as to render the exercise of
28 jurisdiction over them by the California courts consistent with the traditional notions of fair play and

1 substantial justice.

2 6. Venue in this County is proper under Business & Professions Code § 17203 and Code
3 of Civil Procedure § 395.5 because a substantial part of Defendants' unlawful conduct, acts, and
4 omissions alleged in this Complaint occurred in this County, Defendants conduct substantial business
5 in this County, and/or Defendants' liability arose in this County.

6 **PARTIES**

7 7. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
8 Plaintiff was, and currently is, a California resident.

9 8. Defendant Grain to Green, Inc. is a California corporation, with its principal place of
10 business located at 2730 Gateway Road, Carlsbad, California 92009. Grain to Green, Inc. is, and at all
11 relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed,
12 believes, and based thereon alleges that the practices and policies of Grain to Green, Inc. that are
13 complained of in this Complaint were implemented during the PAGA Period.

14 9. Plaintiff does not know the true names or capacities, whether individual, partner, or
15 corporate, of the defendants sued herein as DOES 1 to 10, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further
17 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
18 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
19 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and
20 proximately caused Plaintiff and other Aggrieved Employees to be subject to the unlawful
21 employment practices, wrongs, injuries and damages complained of in this Complaint.

22 10. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
23 herein, Defendants were and are the employers of Plaintiff and other Aggrieved Employees.

24 11. At all relevant times, each of said Defendants participated in the doing of the acts
25 hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and
26 each of them, were the agents, servants, and employees of each and every one of the other Defendants,
27 as well as the agents of all Defendants, and at all times herein mentioned were acting within the course
28 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,

1 and/or otherwise ratified each and every one of the acts or omissions complained of in this Complaint.

2 12. At all times mentioned herein, Defendants, and each of them, were members of and
3 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
4 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges
5 that all Defendants were joint employers for all purposes of Plaintiff and other Aggrieved Employees.

6 **GENERAL ALLEGATIONS**

7 13. Defendants employ Plaintiff as a non-exempt hourly employee. Plaintiff is a bartender
8 at one of Defendants' "Pizza Port Brewing Company" locations in Carlsbad, California.

9 14. Defendants have consistently maintained and enforced unlawful employment practices
10 and policies against Plaintiff and other Aggrieved Employees which violate the Labor Code and IWC
11 Wage Orders.

12 15. **Unpaid Wages:** Plaintiff is informed, believes, and thereon alleges that during the
13 PAGA Period, Defendants failed to pay Plaintiff and other Aggrieved Employees minimum and
14 straight time wages for all hours worked at the legally mandated rates. Defendants required Plaintiff
15 and other Aggrieved Employees to complete work-related tasks off the clock, such as communicating
16 with Defendants' supervisors and management via the cellphone application "Social Schedules."
17 Specifically, Defendants required Plaintiff and other Aggrieved Employees to respond to inquiries on
18 Social Schedules while they were off the clock. Accordingly, Defendants failed to pay Plaintiff and
19 other Aggrieved Employees the proper minimum and straight time wages for all hours worked in
20 violation of Labor Code §§ 204, 206, 210, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198, and the
21 applicable IWC Wage Orders and California Code of Regulations.

22 16. **Unlawful Deductions to Gratuities:** During the PAGA Period, Defendants made
23 unlawful deductions to gratuities left for Plaintiff and other Aggrieved Employees. Specifically,
24 Defendants included managers and supervisors in their mandatory "tip-pool," including general
25 managers with authority to hire and fire Plaintiff and other Aggrieved Employees. Furthermore, as
26 alleged above, Defendants bartenders, including Plaintiff and other Aggrieved Employees, were
27 required to "tip out" a set percentage of food sales to kitchen staff, regardless of whether the patron(s)
28 left a sufficient tip to cover Defendants' required tip out. Thus, where a patron's tip was less than

1 Defendants' required tip out, Plaintiff and other Aggrieved Employees were required to incur out of
2 pocket expenses to pay the required tip out to the kitchen staff. Accordingly, Defendants violated
3 Labor Code § 351.

4 17. **Failure to Keep Accurate Records of Gratuities:** During the PAGA Period,
5 Defendants failed to keep accurate records of all gratuities left for Plaintiff and other Aggrieved
6 Employees. Accordingly, Defendants violated Labor Code § 353.

7 18. **Unreimbursed Business Expenditures:** Plaintiff is informed, believes, and thereon
8 alleges that during the PAGA Period, Defendants failed to reimburse Plaintiff and other Aggrieved
9 Employees for necessary business expenses incurred in the performance of their duties in violation of
10 the Labor Code and IWC Wage Orders. During the PAGA Period, Defendants failed to reimburse
11 Plaintiff and other Aggrieved Employees for all business expenses incurred for Defendants' benefit.
12 For example, Defendants required Plaintiff and other Aggrieved Employees to use their personal cell
13 phones to discuss work-related matters with Defendants' representatives and for other work purposes
14 without any reimbursement. Specifically, Defendants required Plaintiff and other Aggrieved
15 Employees to download the cellphone application "Social Schedules" and to respond to Defendants'
16 inquiries on Social Schedules while they were off the clock. In addition, Defendants' bartenders,
17 including Plaintiff and other Aggrieved Employees, were required to "tip out" a set percentage of food
18 sales to kitchen staff, regardless of whether the patron(s) left a sufficient tip to cover Defendants'
19 required tip out. Thus, where a patron's tip was less than Defendants' required tip out, Plaintiff and
20 other Aggrieved Employees were required to incur out of pocket expenses to pay the required tip out
21 to the kitchen staff. Accordingly, Defendants violated Labor Code §§ 2800, 2802, and 2804.

22 19. **Waiting Time Penalties:** Defendants knew or should have known that Plaintiff and
23 other Aggrieved Employees who separated from their employment with Defendants during the
24 statutory period were entitled to timely payment of all wages due. In violation of the Labor Code,
25 Plaintiff and other Aggrieved Employees did not receive payment of all wages owed upon separation
26 within the permissible time period due to, *inter alia*, Defendants' failure to pay all wages.

27 20. **Wage Statement Violations:** Defendants knew or should have known that Plaintiff
28 and other Aggrieved Employees were entitled to receive complete and accurate wage statements. In

1 violation of the Labor Code and IWC Wage Orders, Plaintiff and other Aggrieved Employees were
2 not furnished with complete and accurate wage statements that show all information required by Labor
3 Code Accordingly, Defendants violated Labor Code § 226, including, but not limited to, the gross and
4 net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period,
5 and the corresponding number of hours worked at each hourly rate.

6 21. **Failure to Keep Accurate Records:** Defendants knew or should have known that
7 Defendants were required to keep accurate records of the hours worked by Plaintiff and other
8 Aggrieved Employees. In violation of the Labor Code, Defendants failed to maintain accurate records
9 of hours worked by Plaintiff and other Aggrieved Employees as a result of Defendants' conduct, acts,
10 and/or omissions described throughout this Complaint.

11 22. Defendants' conduct, acts, and/or omissions described throughout this Complaint were
12 willful.

13 **FIRST CAUSE OF ACTION**

14 **Violation of the Private Attorneys General Act**

15 **(Cal. Lab. Code §§ 2698, *et seq.*)**

16 **(Against All Defendants)**

17 23. Plaintiff incorporate by reference all previous paragraphs of this Complaint as though
18 fully set forth herein.

19 24. On July 24, 2024, Plaintiff notified Grain to Green, Inc., via certified mail, and the
20 California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants'
21 violations of the California Labor Code and Plaintiff's intent to bring a claim for injunctive relief and
22 civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California
23 Labor Code identified in this Complaint. Now that sixty-five days have passed from Plaintiff notifying
24 Defendants of these violations, Plaintiff has exhausted the administrative requirements for bringing a
25 claim under the Private Attorneys General Act with respect to the violations alleged in this Complaint.

26 25. Defendants have committed several Labor Code violations against Plaintiff and other
27 Aggrieved Employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698
28 *et seq.*, acting on behalf of himself and other Aggrieved Employees, brings this representative action

1 against Defendants to recover the civil penalties due to Plaintiff, other Aggrieved Employees, and the
2 State of California according to proof, including, but not limited to: (1) \$100.00 for each initial
3 violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful
4 or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25%
5 of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
6 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial
7 violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
8 per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation
9 per employee per pay period for those violations of the Labor Code for which no civil penalty is
10 specifically provided, based on the following Labor Code violations:

- 11 a. Violation of Labor Code §§ 204, 206, 210, 1182.12, 1194, 1194.2, 1197, 1197.1,
12 and 1198 for failure to timely pay all earned wages owed to Plaintiff and other
13 Aggrieved Employees during employment and upon separation of employment;
- 14 b. Violation for Labor Code § 351 for making unlawful deductions to gratuities left
15 for Plaintiff and other Aggrieved Employees;
- 16 c. Violation of Labor Code § 353 for failing to keep accurate records of all gratuities
17 left for Plaintiff and other Aggrieved Employees;
- 18 d. Violation of Labor Code §§ 221, 223, and 224 for secretly paying Plaintiff and
19 other Aggrieved Employees less than the statutory or contractual rate;
- 20 e. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
21 records on behalf of Plaintiff and other Aggrieved Employees;
- 22 f. Violation of Labor Code §§ 2800, 2802, and 2804 for failure to reimburse
23 necessary business expenditures to Plaintiff and other Aggrieved Employees;
- 24 g. Violation of Labor Code § 1199 for each of the foregoing Labor Code violations.

25 26. Plaintiff further seeks injunctive relief under Labor Code § 2698 *et seq.*

26 27. Plaintiff is entitled to attorneys' fees and costs under Labor Code § 2699 and Code of
27 Civil Procedure § 1021.5.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays
3 for judgment against Defendants, jointly and severally, as follows:

4 1. For injunctive relief against Defendants on behalf of all Aggrieved Employees under
5 Labor Code §§ 2698, *et seq.*;

6 2. For civil penalties due to Plaintiff, other Aggrieved Employees, and the State of
7 California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not
8 limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for
9 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
10 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial
11 violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay
12 period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to
13 Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for each initial violation and
14 \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code
15 for which no civil penalty is specifically provided;

16 3. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including
17 under Labor Code § 2699 and Code of Civil Procedure § 1021.5; and

18 4. For such other relief the Court deems just and proper.

19
20 Dated: September 30, 2024

MANAHAN O'DELL LLP

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22 By: Shaheen Anthony Etemadi

23 Shaheen Anthony Etemadi
24 Attorneys for Plaintiff
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