38 Corporate Park
Irvine, CA 92606-5105
Telephone (949) 393-1400
Facsimile (949) 393-1430
www.kringandassociates.com

March 10, 2025

VIA ONLINE SUBMISSION ONLY

Attn.: PAGA Administrator
Department of Industrial Relations
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: **Aaron Windham adv. GrowGeneration Pueblo Corporation, et al.**
K&C Client: Aaron Windham
K&C File No.: 9501.0011
Subject: **Notice of Representative Action Pursuant to the Private Attorneys General Act of 2004**

Dear PAGA Administrator:

Claimant Aaron Windham ("Claimant") has retained our firm and the Beligan Law Group, LLP to represent him and other similarly situated current and former aggrieved employees of Defendant GrowGeneration Pueblo Corporation ("GrowGeneration" or "Defendant") for alleged violations of California's Labor Codes. A copy of the Class Action Complaint ("Complaint"), which was concurrently filed with the Superior Court of Riverside County, is attached hereto as **Exhibit A**. GrowGeneration employed Claimant and other similarly situated aggrieved employees as nonexempt sales associates or comparable positions but different titles throughout California (collectively, the "Aggrieved Employees"). As will be explained in detail below, Claimant alleges that GrowGeneration violated and continues to violate numerous California Labor Codes; thus, entitling Claimant and the Aggrieved Employees to penalties under the PAGA.

This letter serves to inform GrowGeneration of Claimant's intent to amend the Class Action Complaint to add a cause of action for violations of the PAGA for GrowGeneration's failure to comply with California's mandatory minimum wage, overtime, meal-and-rest period, wage statement, and expense reimbursement requirements. During the relevant time period, GrowGeneration failed to pay regular and overtime wages, provide compliant meal-and-rest periods, provide accurate wage statements, failed to reimburse Aggrieved Employees for reasonably and necessary business expenses, and failed to pay Claimant and the Aggrieved Employees additional wages and penalties for said violations. As a result, GrowGeneration violated, among other statutes and regulations, Labor Code §§ 201-202, 204, 210, 218, 226, 226.7, 510, 512, 558, 558.1, 1174(d), 1194, 1198, 2802, and provisions of the applicable Industrial Welfare Commission Wage.

Claimant is informed and believes that said violations are ongoing, systematic, and uniform. If GrowGeneration fails to cure these alleged violations on a representative basis, as stated above, Claimant will file amend the Complaint and bring an action against GrowGeneration under the PAGA to recover penalties as provided by California law.

FACTUAL ALLEGATIONS

The Aggrieved Employees are neither managerial, administrative, nor professional employees and therefore entitled to an hourly wage for each hour worked, overtime pay, mandatory meal-and-rest breaks, and accurate itemized wage statements. Despite being non-exempt employees, GrowGeneration uniformly, and as a matter of corporate policy, did not pay the Aggrieved Employees for all regular and overtime hours worked. Specifically, the Aggrieved Employees were often required to work before clocking in for the start of their scheduled shifts. The Aggrieved Employees were not paid for time worked and therefore not paid not paid an hourly rate for all non-overtime hours worked, or if they worked more than 8 hours in a day or more than 40 hours in a week, they were not paid overtime.

GrowGeneration also required the Aggrieved Employees to work through their meal periods, take late lunches, short lunches, and automatically deducted 30-minute meal periods from their hours, regardless of whether those meal periods were actually taken, interrupted, or duty free. This time was not counted as hours worked; therefore, the Aggrieved Employees were not paid an hourly wage – whether at the regular rate or overtime rate – for these hours worked.

In addition, the Aggrieved Employees were not provided duty-free, uninterrupted meal periods because they were required to continue working in GrowGeneration's retail stores due to shortstaffing. As a result, Aggrieved Employees worked through their meal periods, the meal periods were interrupted, or were late. The hours that the Aggrieved Employees worked through their lunches were not counted as hours worked. As a result, the Aggrieved Employees were not being paid a separate hourly wage for all regular hours worked, or if they worked more than 8 hours in a day or more than 40 hours in a week, they were not properly compensated for all overtime hours worked.

Pursuant to uniform corporate policy and practice, GrowGeneration also did not provide Aggrieved Employees with duty-free, uninterrupted rest periods of at least 10 minutes for every four hours worked or major fraction thereof. In addition, GrowGeneration automatically deducted from hours worked rest breaks that were longer than 10 minutes.

Furthermore, GrowGeneration did not provide the Aggrieved Employees with accurate wage statements showing, among other things, total hours worked, gross and net wages earned, premium wages for meal-and-rest period violations, and the correct applicable rate of pay for each regular and overtime hour worked.

GrowGeneration also required Aggrieved Employees to incur necessary business expenses, such as cell phone usage, but failed to reimburse them for said necessary business expenses. As a result of its uniform treatment of the Aggrieved Employees, GrowGeneration has committed numerous violations of California's Labor Codes including, but not limited to: (1) failing to pay the Aggrieved Employees an hourly wage for each and every hour worked; (2) failing to pay the Aggrieved Employees for all overtime hours worked at the correct overtime rate; (3) failing to provide the Aggrieved Employees compliant meal-and-rest periods; and (4) failing to provide the Aggrieved Employees accurate wage statements; and (5) failing to reimburse Aggrieved Employees for necessary business expenses.

A. GrowGeneration Failed to Pay the Aggrieved Employees an Hourly Wage for Each and Every Hour Worked and Failed to Pay Them Overtime Wages for All Overtime Hours Worked.

At all times relevant, pursuant to Labor Code §§ 1197 and 1198, it is unlawful for an employer to pay less than the wage established by law or to employ persons in excess of the hours fixed by the IWC or under conditions prohibited by the applicable Wage Order.

At all times relevant, Labor Code § 1194(a) provides that "any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

At all times relevant, Labor Code § 510 provides for payment of a minimum wage regardless of the number of hours worked, and one and one half times each employee's regular rate of pay for all work over eight hours in a day, 40 hours in any workweek, or the first eight hours of the seventh consecutive day of work. In addition, Labor Code § 510 provides for payment of double the employee's regular rate of pay for work in excess of 12 hours per day or in excess of eight hours on the seventh consecutive day of any work week.

At all times relevant, Labor Code § 558 provides, in pertinent part, "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the [IWC] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee."

Labor Code § 204 provides, in pertinent part, that "[a]ll wages … earned by any person in any employment, are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." It further provides that "[l]abor performed between the 1st and 15th days … of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day … of any calendar month, shall be paid for between the 1st and 10th day of the following month." Labor Code § 210, which became effective on January 1, 2020, provides, in pertinent part, that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section[] … 204 … shall be subject to a penalty …" That statute further states that "[a]n employee is … entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation." At all times relevant, Labor Code § 210 provides, in pertinent part, that "every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

At all times relevant, Labor Code § 218 provides in pertinent part, "…Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article."

Here, GrowGeneration violated Labor Code §§ 204, 210, 218, 510, 558, 1182.12, 1194, 1197 and 1198. As a result of its failure to pay the Aggrieved Employees for all pre-shift work, including occasions they had to miss or work through their meal periods and occasions rest breaks of longer than 10 minutes were deducted from their time, GrowGeneration failed to properly compensate the Aggrieved Employees. Specifically, GrowGeneration did not pay the Aggrieved Employees an hourly wage for each and every hour worked, nor did it pay the Aggrieved Employees overtime for all work performed in excess of 8 hours per workday or 40 hours in a given workweek. GrowGeneration had a policy and practice to violate said Labor Code provisions by, inter alia, failing to include all pre-shift work, including missed meal periods and rest breaks of longer than 10 minutes, into the Aggrieved Employees total hours worked.

GrowGeneration also failed to tender to the Aggrieved Employees all of their earned regular and overtime wages in accordance with California law, including, but not limited to, Labor Code § 204, such that labor performed between the 1st and 15th days, inclusive, of any calendar month was not paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, was not paid for between the 1st and 10th day of the following month. Because the Aggrieved Employees were not paid for all labor performed during the correct pay periods, GrowGeneration also violated Labor Code §§ 204 and 210.

B. GrowGeneration Failed to Provide the Aggrieved Employees with Uninterrupted, Off-duty Meal Periods.

At all times relevant, Labor Code § 512 requires that each employee working at least 5 hours must be given a paid or unpaid meal period of not less than 30-minutes, uninterrupted, where the employee is relieved of all job duties and is free to leave the work premises; and that a second meal period of not less than 30-minutes, uninterrupted, be given to each employee working at least 10 hours in any given workday.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who is not permitted to take a valid meal period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid meal period is not provided.

Here, GrowGeneration did not provide the Aggrieved Employees with compliant meal periods. Specifically, the Aggrieved Employees worked through their meal periods, were interrupted, and routinely late (after the end of the fifth or tenth hour of work), and automatically deducted, regardless of whether those meal periods were actually taken, interrupted, or duty free. GrowGeneration also did not provide Aggrieved Employees a second meal period when they worked more than 10 hours in a shift. Moreover, GrowGeneration did not pay the Aggrieved Employees one hour of pay for instances where GrowGeneration failed to provide the Aggrieved Employees the opportunity to take a 30-minute meal break, relieved of all duties, for shifts of 5 hours or greater, or a second meal period for shifts in excess of 10 hours. As a result, GrowGeneration violated Labor Code §§ 226.7, 512, 558, 1197, and 1198.

C. GrowGeneration Failed to Provide the Aggrieved Employees with Uninterrupted, Off-duty Rest Periods for Every Four Hours Worked or Major Fraction Thereof.

At all times relevant, the applicable Wage Order which applies to the Aggrieved Employees' employment with GrowGeneration specifically requires each nonexempt employee working at least three and a-half hours to be given a paid rest period of not less than ten consecutive minutes, uninterrupted, where the employee is relieved of all duties. In addition, a second rest period of not less than ten consecutive minutes must be given to each nonexempt employee working at least six hours in any given workday, and a third rest period for shifts in excess of ten hours.

At all times relevant, Labor Code § 226.7 provides that each nonexempt employee who was not permitted to take a valid rest period must be paid one hour of additional pay at the employee's regular rate of pay for each such workday in which a valid rest period was not provided.

Here, GrowGeneration did not have a compliant rest break policy applicable to the Aggrieved Employees. GrowGeneration automatically deducted rest breaks which were longer than 10 minutes from the Aggrieved Employees' time records in violation of California law. The rest breaks were also not free from employer control, and at least 10-minutes of duty-free time. GrowGeneration also failed to pay one hour of pay for the numerous instances where it failed to authorize and permit the Aggrieved Employees the opportunity to take a paid ten-minute rest break, relieved of all duties, for shifts of at least three and a-half hours. GrowGeneration also failed to pay the Aggrieved Employees one hour of pay for the numerous instances where it failed to authorize and permit the Aggrieved Employees the opportunity to take a second rest period for shifts of more than six hours, or a third rest period for shifts in excess of 10 hours. In a nutshell, GrowGeneration failed to make available to the Aggrieved Employees proper rest periods in compliance with California law. As a result, GrowGeneration violated Labor Code §§ 226.7, 558, 1197, and 1198.

D. **<u>GrowGeneration Failed to Furnish Accurate Wage Statements to the Aggrieved Employees.</u>**

At all times relevant, Labor Code § 226 requires GrowGeneration to "furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, … (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid,…(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."

Here, GrowGeneration violated Labor Code § 226. GrowGeneration had a uniform policy and practice to violate said Labor Code by failing to account for all of the hours worked by the Aggrieved Employees, inaccurately setting forth the net and gross wages earned, by failing to show premium wages for meal-and-rest break violations as detailed herein, and by failing to identify the correct rate of pay for each and every hour worked. As a result, GrowGeneration violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Aggrieved Employees' respective (1) gross wages earned, (2) total hours worked, (3) net wages earned, and (4) all applicable hourly rates and the corresponding number of hours worked at each hourly rate.

E. **<u>GrowGeneration Failed to Reimburse Reasonable and Necessary Business Expenses Incurred by Aggrieved Employees as a Result of Performing their Duties.</u>**

California law requires that GrowGeneration indemnify their employees for all necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the obedience of the directions of the employer. Moreover, an employer is prohibited from passing the ordinary business expenses and losses of the employer onto the employee. See Cal. Lab. Code § 2802.

GrowGeneration has violated Labor Code § 2802 by failing to indemnify Claimant and Aggrieved Employees for the necessary expenditures they incurred in the discharge of their duties. Specifically, GrowGeneration employed a policy, practice, and procedure whereby the Aggrieved Employees were required to use their personal cell phones to execute their regular job duties. This practice resulted in the Aggrieved Employees not receiving indemnification for these necessary business expenses in violation of Labor Code § 2802.

F. **<u>GrowGeneration Failed to Maintain Records of All Hours Worked by Aggrieved Employees.</u>**

Labor Code § 1174(d) provides that every person employing labor in this state shall "… [k]eep, at a central location in the state or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to … employees employed at the respective plants or establishments." It further states that "[t]hese records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years."

As alleged above, Claimant and the other Aggrieved Employees routinely worked hours for which they were not paid the appropriate hourly wage. Further, as alleged supra, Claimant and the Aggrieved Employees routinely missed meal periods, or they were cut short or late, but GrowGeneration failed to accurately record the meal periods of Claimant and other Aggrieved Employees in direct violation of California law. Because of GrowGeneration's unlawful policies and practices, they have violated Labor Code § 1174(d).

LABOR CODE VIOLATIONS

GrowGeneration is in violation of the following Labor Code provisions:

1. Labor Code §§ 204 and 210 (Failure to Pay All Wages Earned);
2. Labor Code § 1194 (Failure to Pay Minimum Wage);
3. Labor Code §§ 510, 1194, and 1198 (Failure to Pay Overtime Wages);
4. Labor Code §§ 226.7 and 512 (Failure to Provide Meal and Rest Periods);
5. Labor Code §§ 1174, 1174.5, and 1175 (Failure to Maintain Accurate Records);
6. Labor Code § 2802 (Failure to Reimburse Business Expenses).

CONCLUSION

To prevent the above-described violations from occurring and to remedy past violations, Claimant, on behalf of all other Aggrieved Employees, intends to amend the Complaint to add a cause of action under the PAGA based upon the facts and theories set forth herein. Pursuant to Labor Code section 2699.3(a)(1), Claimant will serve the same written notice to GrowGeneration by certified mail.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

Very truly yours,

Kring & Associates, APC

Jeffrey T. Green

(jgreen@kringandchung.com)
JTG

cc: Via Certified Mail
GrowGeneration Pueblo Corporation,
c/o Agent for Service of Process, Universal Registered Agents, Inc.
1545 River Park Drive,
Sacramento, CA 95815

Via Regular Mail
Jerusalem F. Beligan, Esq.
jbeligan@beliganlawgroup.com
Leah M. Beligan, Esq.
lbeligan@beliganlawgroup.com
BELIGAN LAW GROUP, LLP
19800 MacArthur Blvd., Suite 333
Newport Beach, CA 92612

EXHIBIT A

EXHIBIT A

Jerusalem F. Beligan (SBN 211258)
jbeligan@beliganlawgroup.com
Leah M. Beligan (SBN 250834)
lbeligan@beliganlawgroup.com
BELIGAN LAW GROUP, LLP
19800 MacArthur Blvd., Suite 300
Newport Beach, CA 92612
Telephone: (949) 224-3881

Tyler D. Kring (SBN 325588)
tkring@kringandassociates.com
Jeffrey T. Green (SBN 330065)
jgreen@kringandassociates.com
KRING & ASSOCIATES, APC
38 Corporate Park
Irvine, California 92606-5105
Telephone: (949) 393-1400
Facsimile: (949) 393-1430

Attorneys for Plaintiff and the Putative Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

Aaron Windham, individually, and on behalf of all others similarly situated,

Plaintiff,

v.

GrowGeneration Pueblo Corporation; and Does 1 through 25,

Defendant(s).

Case No.: ____________________

CLASS ACTION COMPLAINT FOR:

1. **Failure To Pay Earned Wages (Cal. Lab. Code §§ 204 and 210);**
2. **Failure To Pay Minimum Wage (Cal. Lab. Code §§ 510, 1182.12, 1194, 1197, 1197.1, and 1198);**
3. **Failure To Pay Overtime Compensation (Cal. Lab. Code §§ 510 and 1198);**
4. **Failure To Provide Meal Breaks (Cal. Lab. Code §§ 226.7, 512(a), and 1198);**
5. **Failure To Provide Rest Breaks (Cal. Lab. Code §§ 226.7 and 1198);**
6. **Failure To Provide Accurate Wage Statements (Cal. Lab. Code § 226(a), 1174(d), and 1198);**
7. **Failure To Timely Pay Final Wages (Cal. Lab. Code §§ 201-203);**
8. **Failure To Reimburse all Reasonable and Necessary Business Expenses (Cal. Lab. Code § 2802); and**
9. **Violation of Business & Professions Code § 17200, *et seq*.**

Jury Trial Demanded

INTRODUCTION AND FACTUAL BACKGROUND

1. Plaintiff Aaron Windham ("Plaintiff"), individually, and on behalf of all others similarly situated (the "Class Members") bring this Class Action Complaint ("Complaint") against Defendant GrowGeneration Pueblo Corporation ("GrowGeneration") and Does 1 through 25 (collectively, "Defendants") pursuant to Code of Civil Procedure § 382.

2. GrowGeneration is a gardening corporation, which provides both retail and warehouse services operating out of its stores in California. GrowGeneration owns and operates several stores in California, including a store in Murrieta, California. To conduct its business, GrowGeneration employs nonexempt employees, including sales associates, warehouse employees, and other similar positions.

3. During the past four years of the filing of this Complaint, Defendants failed to pay Class Members (as defined below) all their earned wages in violation of Labor Code § 204 and applicable Wage Order. Based on information and belief, Defendants: (a) required Plaintiff and Class Members to perform work before their scheduled shifts for which they were not paid at a regular or overtime rate (the "Pre-Shift Work"); (b) required Plaintiff and Class Members to work through their meal periods, take late lunches, short lunches, and automatically deducted 30-minute meal periods from their hours, regardless of whether those meal periods were actually taken, interrupted, or duty free (the "Meal Period Violations"); (c) did not authorize and permit Class Members to take at least 10-minute rest periods for every four hours worked or major fraction thereof and automatically deducted from hours worked rest breaks that were longer than 10 minutes (the "Rest Period Violations"); and (d) required Plaintiff and Class Members to use their personal cellphones for work, but did not reimburse them for the use of their personal cellphones (the "Business Expense Violations").

4. As a result of the Pre-Shift Work, the Meal Period Violations, and the Rest Period Violations, Plaintiff and the Class Members were not paid an hourly wage for each and every hour worked in violation of Labor Code §§ 204, 1194, 1197, 1197.1, 1198, and the

applicable Wage Order (the "Minimum Wage Violations").

5. As a result of the Pre-Shift Work, the Meal Period Violations, and the Rest Period Violations, the Class Members worked more than 8 hours per day and more than 40 hours per workweek, but were not paid for all overtime hours worked in violation of Labor Code §§ 510 and 1198 and the applicable Wage Order (the "Overtime Violations").

6. As a result of the Pre-Shift Work, the Meal Period Violations, and the Rest Period Violations, the Class Members worked shifts in excess of 5 and 10 hours a day, entitling them to first and second meal periods of at least 30 minutes each. However, because of the Meal Period Violations, Defendants failed to provide Class Members with timely, uninterrupted and adequate number of meal periods per shift in violation of Labor Code §§ 226.7, 512(a), 1198 and the applicable Wage Order. By failing to provide Class Members with timely, off duty, and sufficient number of meal breaks per shift, Defendants owe Class Members an additional hour of pay for each non-compliant meal period.

7. As a result of the Pre-Shift Work, the Meal Period Violations, and the Rest Period Violations, the Class Members worked shifts of 4 hours or major fraction thereof without rest periods of at least 10 minutes' rest time and failed to compensate the Class Members for these missed rest periods in violation of Labor Code §§ 226.7, 1198 and the applicable Wage Order. When Class Members took rest breaks, they were regularly interrupted, less than 10 minutes, and/or on duty.

8. Defendants knowingly and intentionally failed to provide Class Members with timely and accurate wage statements in violation of Labor Code §§ 226, 1174(d), 1198 and the applicable Wage Order.

9. To perform their jobs, Class Members were required to utilize their own personal cellphones. Defendants did not fully reimburse Class Members for these expenses in violation of Labor Code § 2802.

10. On information and belief, Plaintiff allege that Defendants applied the same policies described above to all other members of the proposed Class. As alleged below, these

uniform policies, practices and procedures violate California's labor laws and constitute unfair, fraudulent or illegal business practices under Business & Professions Code § 17200, *et seq*.

PARTIES, JURISDICTION AND VENUE

11. Plaintiff is employed by Defendants as a nonexempt sales associate and has worked for Defendants within the last four years prior to the filing of this Complaint.

12. Defendant GrowGeneration is a corporation and owns and operates several stores in California, including in the City of Murrieta.

13. Plaintiff does not know the true names or capacities of the Defendants sued herein as Does 1 through 25, inclusive, and, for that reason, said Defendants are sued under such fictitious names. Plaintiff is informed and believes, and based thereon, alleges that each of said fictitious Defendants are and were responsible in some manner for the injuries complained of herein. Plaintiff will amend this Complaint to identify such fictitiously-named Defendants pursuant to Code of Civil Procedure § 474 once their identities become known.

14. The relief sought by Plaintiff on behalf of himself and the Class defined below exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court has personal jurisdiction over each of the parties because they are either citizens of this State, doing business in this State or otherwise have minimum contacts with this State.

15. Venue is proper in this County because this Court has jurisdiction over Defendants and, based on information and belief, Defendants have locations in this County.

16. Plaintiff is informed and believes and, based thereon, alleges that Defendants were at all times relevant hereto members of, and engaged in, a joint venture, partnership, association or common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiff is informed and believes and, based thereon, alleges that at all times relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or acted as agents or employees of each other with respect to, the commission of the acts

complained of herein. Defendants are therefore jointly and severally liable for the injuries complained of herein.

CLASS ALLEGATIONS

17. Plaintiff brings this action pursuant to Code of Civil Procedure § 382 on behalf of himself and the Class Members defined below. The Class is comprised of and defined as:

> **All current and former non-exempt employees who worked for Defendants within the State of California at any time during the period from four years preceding the filing of this Complaint until final judgment**.

18. Plaintiff reserves the right to establish subclasses as appropriate.

19. There exists a well-defined community of interest among the Class, and the Class is readily ascertainable.

20. The members of the Class are so numerous that joinder of all members in a single action would not be feasible or practical, and the amount of individual damages is not large enough to make individual lawsuits by each class member practical or feasible. Plaintiff is informed and believes and based upon such information and belief alleges that there are in excess of 100 members of the Class.

21. Plaintiff's claims are typical of the claims of the rest of the Class, and Plaintiff and his counsel will fairly and adequately represent the interests of the Class.

22. Common issues of fact and/or law predominate in this action over any allegedly individual issues. Specifically, the following common questions of fact or law predominate and make this action superior to individual actions:

(i) whether Defendants violated Labor Code §§ 204, 210, and the applicable Wage Order by failing to pay wages for all hours worked;

(ii) whether Defendants violated Labor Code §§ 510, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Order by failing to pay minimum wage for all hours worked;

(iii) whether Defendants violated Labor Code §§ 510, 1198, and the applicable Wage Order by failing to pay overtime compensation;

(iv) whether Defendants violated Labor Code §§ 226.7, 512(a), 1198, and the applicable Wage Order by failing to provide first and second meal periods of at least 30-minutes when the shifts exceeded 5 and 10 hours of work, and not compensating employees with one hour of pay at the employees' regular rate of compensation for each workday that meal periods were not provided;

(v) whether Defendants violated Labor Code § 226.7 and the applicable Wage Order by failing to provide daily rest periods of ten minutes per four hours or major fraction thereof worked when the shift exceeded three-and-a half hours and by failing to compensate employees one hour's wages in lieu of rest periods;

(vi) whether Defendants violated Labor Code §§ 226(a), 1174(d), 1198, and the applicable Wage Order by failing to provide and maintain timely and accurate itemized wage statements;

(vii) whether Defendants violated Labor Code § 2802 by failing to reimburse Class Members for all reasonable and necessary business expenses; and

(viii) whether Defendants' practices constitute unfair, fraudulent, or illegal business practices under Business and Professions Code § 17200, *et seq*.

23. California labor laws under which Plaintiff asserts the following causes of action on behalf of himself and the rest of the Class are broadly remedial in nature. These labor laws serve an important public interest in establishing minimum working conditions and standards in California. They furthermore protect employees from exploitation by employers who may seek to take advantage of their superior economic and bargaining power in setting onerous terms and conditions of employment. The class action mechanism is a particularly efficient and appropriate procedure to redress the injuries alleged herein. If each

employee in the Class was required to file an individual action, Defendants would be able to use their superior financial and legal resources to gain an unfair advantage over each individual class member. Moreover, requiring each class member to pursue an individual action would also discourage the assertion of meritorious causes of action by employees who would likely be disinclined to file such individual actions due to a justifiable fear of retaliation and damage to their careers at subsequent employment.

24. In addition, even if feasible, individual actions by each Class member would create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims of each Class member against Defendants, that in turn could establish potentially incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect to individual Class Members that would, as a practical matter, be dispositive of the interests of the other Class Members. Furthermore, the claims of each individual Class member are not sufficiently large enough to make it economically feasible to bring each Class member's claims on an individual basis.

FIRST CAUSE OF ACTION

FAILURE TO PAY EARNED WAGES

AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 204 and 210; applicable Wage Order)

25. Plaintiff realleges and incorporates herein by this reference each of the allegations set forth above.

26. Defendants failed to pay Class Members all of their earned wages as required by the Labor Code and applicable Wage Order.

27. Class Members have been deprived of their rightfully earned wages as a direct and proximate result of Defendants' failure to pay said compensation. Class Members are entitled to recover such amounts, plus interest thereon, attorney's fees and costs.

28. In addition, Class Members are entitled to penalties pursuant to Labor Code § 210 as follows: (1) for Defendants' initial violation, $100 for each failure to pay each Class

Member; and (2) for each of Defendants' subsequent violations, or any willful or intentional violation, $200 for each failure to pay each Class Member, plus 33 percent of the amount unlawfully held.

SECOND CAUSE OF ACTION

FAILURE TO PAY AN HOURLY WAGE FOR EACH AND EVERY HOUR WORKED

AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 510, 1182.12, 1194, 1197, 1197.1, and 1198; applicable Wage Order)

29. Plaintiff alleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

30. Under Labor Code § 1194, employees must be separately paid an hourly wage for each and every hour worked. *Balasanyan v. Nordstrom, Inc.,* 913 F.Supp.2d 1001, 1007 (S.D. Cal. 2012). A California employer cannot average an employee's compensation over the total number of hours worked to determine compliance with minimum wage obligations. *Armenta v. Osmose, Inc.,* 135 Cal.App.4th 314, 323-324 (2005) (employees must be compensated the minimum wage for "non-productive time"); *Cardenas v. McLane FoodServices, Inc.,* 796 F.Supp.2d 1246, 1252-1253 (C.D. Cal. 2011) (employees must be paid a separate hourly rate for pre-and-post shift duties not covered by the piece-rate formula); *Balasanyan, supra,* 913 F.Supp.2d at p. 1007; *Gonzalez v. Downtown LA Motors, LP,* 215 Cal.App.4th 36, 48-49 (2013) (employees paid on a piece-rate basis must be paid a separate hourly rate for "non-repair tasks"). "The *Armenta* line of cases is quite clear: employees must be directly compensated at least minimum wage for all time spent on activities that do not allow them to *directly* earn wages." *Balasanyan, supra,* 913 F.Supp.2d at 1007 (emphasis added). And more recently, the California Supreme Court held that commissions earned in one pay period cannot be reassigned to other pay periods to meet California's strict wage and hour requirements. *Peabody v. Time Warner Cable, Inc.,* 174

Cal.Rptr.3d 287 (2014), 328 P.3d 1028 (2014).

31. As alleged above, Defendants deprived Class Members of an hourly wage for all non-overtime hours worked. Under Labor Code § 1194, Class Members are entitled to recover such amounts, plus interest thereon, reasonable attorney's fees, and costs.

32. In addition, under Labor Code § 1194.2, Class Members are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon.

THIRD CAUSE OF ACTION

FAILURE TO PAY OVERTIME COMPENSATION

AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 510 and 1198; applicable Wage Order)

33. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

34. Defendants employed Class Members for more than 8 hours per day and more than 40 hours per workweek, but Defendants failed to pay them the overtime compensation required by the Labor Code and applicable Wage Order.

35. Defendants thus required Class Members to work for longer hours than those fixed, or under conditions prohibited, by order of the IWC, in violation of those orders.

36. Defendants deprived Class Members of their rightfully earned overtime compensation as a direct and proximate result of Defendants' failure to pay for all hours Class Members actually worked. Under Code Labor Code § 1194, Class Members are entitled to recover such amounts, plus interest thereon, attorney's fees, and costs.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL BREAKS

AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 226.7, 512(a), and 1198; applicable Wage Order)

37. Plaintiffs reallege and incorporate herein by this reference each and every

allegation set forth in all previous paragraphs of this Complaint.

38. The Labor Code and the Wage Order provide that employees are entitled to uninterrupted, off-the-clock meal periods of not less than 30-minutes for every five hours worked. The Labor Code and applicable Wage Order also require the employer to pay the employee one hour at the employee's regular rate of compensation for each day that the employer does not provide at least one required meal period.

39. Defendants employed Class Members for work periods of more than 5 and 10 hours without legally compliant meal periods of not less than 30-minutes and failed to compensate them for such meal periods, as required by Labor Code § 226.7 and Wage Order 5-2001.

40. Defendants deprived Class Members of their rightfully earned compensation for meal periods as a direct and proximate result of Defendants' failure to pay compensation for said meal period violations.

41. The remedy provided for in Labor Code § 226. 7 constitutes a wage, and Class Members are entitled to interest thereon. *See Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1099-1100 (2007).

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE REST BREAKS

AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 226.7 and 1198; applicable Wage Order)

42. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

43. The Labor Code and the Wage Order provide that employees are entitled to uninterrupted rest period of not less than 10-minutes for every four hours worked or major fraction thereof. The Labor Code and applicable Wage Order require the employer to pay the employee one hour at the employee's regular rate of compensation for each day that the employer does not provide at least one required rest period.

44. Defendants employed Class Members for work periods of four hours or major fraction thereof without rest periods of ten minutes and failed to compensate them for such rest periods as required by Labor Code § 226.7 and applicable Wage Order.

45. Defendants deprived Class Members of their rightfully earned compensation for rest periods as a direct and proximate result of Defendants' failure to pay compensation for said rest period violations.

46. The remedy provided for in Labor Code § 226.7 constitutes a wage, and Class Members are entitled to interest thereon. *See Murphy, supra*, 40 Cal.4th at 1099-1100.

<u>SIXTH CAUSE OF ACTION</u>

FAILURE TO PROVIDE AND MAINTAIN ACCURATE AND ITEMIZED WAGE STATEMENTS

AGAINST ALL DEFENDANTS

(Cal. Labor Code §§ 226, 1174(d), and 1198; applicable Wage Order)

47. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

48. Labor Code § 226(a) required Defendants, "semimonthly or at the time of each payment of wages," to furnish their workers with "an accurate itemized statement in writing" showing gross and net wages earned, total hours worked by the employee, rates of pay, and other information. Defendants knowingly and intentionally failed to provide their workers with such timely and accurate wage and hour statements.

49. Class Members suffered injury as a result of Defendants' knowing and intentional failure to provide their workers with the wage and hour statements required by law.

50. Under Labor Code § 226(e) and (t), and based on Defendants' conduct as alleged herein, Class Members are entitled to (a) $50 for the initial pay period in which a wage and hour statement violation occurred, and $100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars $4,000;

(b) injunctive relief to ensure Defendants' compliance with Labor Code § 226; and (c) an award of costs and reasonable attorney's fees.

51. Moreover, as a result of Defendants' conduct, Class Members have suffered actual damages in that, among other things, the lack of accurate wage statements hindered Class Members from determining the correct amount of wages owed to them. The absence of accurate wage statements has caused Class Members time, money, and energy in attempting to reconstruct time and pay records and resulted in the submission by Defendants of inaccurate information about wages and deductions. As a result of Defendants' failure to provide Class Members with timely and accurate wage statements, Class Members are entitled to recover the aggregate sum according to proof, of all actual damages they suffered.

52. Defendants' conduct also entitles Class Members to seek preliminary and permanent injunctive relief including, but not limited to, an order that Defendants issue wage and hour statements to their workers that comply with Labor Code § 226.

SEVENTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL REASONABLE AND NECESSARY BUSINESS EXPENSES

AGAINST ALL DEFENDANTS

(Cal. Lab. Code § 2802)

53. Plaintiff realleges and incorporates herein by this reference each of the allegations set forth above.

54. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

55. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

56. During the relevant time period, Class Members were required to provide and

utilize, among other things, their own personal cellphones.

57. In violation of Labor Code §2802, Defendants failed to indemnify Class Members for these expenses.

58. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Class Members for necessary business-related costs and expenses. As a direct result, Class Members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

EIGHTH CAUSE OF ACTION

UNFAIR COMPETITION

AGAINST ALL DEFENDANTS

(Bus. & Prof. Code § 17200, *et seq*.)

59. Plaintiff realleges and incorporates herein by this reference each and every allegation set forth in all previous paragraphs of this Complaint.

60. Defendants' violations of the Labor Code and applicable Wage Order constitute unfair business practices in violation of Business & Professions Code § 17200, *et seq*.

61. Plaintiff and other Class Members have suffered injury in fact and have lost money or property as a result of Defendants' unfair business practices, and Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and other Class Members.

62. Plaintiff and Class Members are entitled to immediate possession of all amounts owed, with interest.

63. Upon information and belief, Defendants have under-reported to federal and state authorities wages actually earned by Plaintiff and all Class Members and therefore have underpaid state and federal taxes, employer matching funds, unemployment premiums, Medicare and worker's compensation premiums. Such conduct is illegal under Business & Professions Code §§ 17000, *et seq*. and 17200, *et seq*.

64. Defendants' unfair business practices entitle Plaintiff and other Class Members to seek preliminary and permanent injunctive relief including, but not limited to, orders that Defendants account for, disgorge, and restore to their workers the compensation unlawfully withheld.

PRAYER

WHEREFORE, Plaintiff prays for judgment on behalf of himself and the rest of the Class against all Defendants, as follows:

ON THE FIRST CAUSE OF ACTION

1. For all unpaid earned wages;
2. For all actual, consequential, and incidental losses and damages, according to proof;
3. For prejudgment interest; and
4. For reasonable attorneys' fees and costs under Labor Code § 218.5.

ON THE SECOND CAUSE OF ACTION

1. For all underpaid wages;
2. For liquidated damages pursuant to Labor Code § 1194.2;
3. For prejudgment interest; and
4. For attorneys' fee and costs.

ON THE THIRD CAUSE OF ACTION

1. For unpaid overtime wages;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Labor Code § 1194.

ON THE FOURTH CAUSE OF ACTION

1. For unpaid wage premiums for failing to provide compliant meal periods; and
2. For prejudgment interest.

ON THE FIFTH CAUSE OF ACTION

1. For unpaid wage premiums for failing to provide compliant rest periods; and
2. For prejudgment interest.

ON THE SIXTH CAUSE OF ACTION

1. For damages and penalties under Labor Code § 226(e); and
2. For reasonable attorneys' fees and costs under Labor Code § 226(e).

ON THE SEVENTH CAUSE OF ACTION

1. For the unreimbursed expenses incurred by Plaintiff and the Class;
2. For prejudgment interest; and
3. For reasonable attorneys' fees and costs under Labor Code § 2802.

ON THE EIGHTH CAUSE OF ACTION

1. For restitution of all unpaid wages, overtime and other monies withheld from Plaintiff and the rest of the Class as a result of Defendants' unfair, unlawful or fraudulent business practices; and
2. For reasonable attorneys' fees and costs under Code of Civil Procedure § 1021.5.

ON ALL CAUSES OF ACTION

1. For certification of the action as a class action;
2. For attorneys appearing on the above caption to be named class counsel and for named Plaintiff to be appointed class representatives;
3. A declaratory judgment that the practices complained of in this Complaint are unlawful under California Law;
4. For reasonable attorneys' fees under the Labor Code and all related statutes, including Code of Civil Procedure § 1021;
5. For costs of the suit incurred herein; and
6. For such further relief as the Court may deem appropriate.

DATED: March 10, 2025 **BELIGAN LAW GROUP, LLP**

By: ________________________________
Jerusalem F. Beligan
Leah M. Beligan

KRING & ASSOCIATES, APC

By: ________________________________
Tyler D. Kring
Jeffrey T. Green

Attorneys for Plaintiff and the Putative Class

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: March 10, 2025 **BELIGAN LAW GROUP, LLP**

By: ________________________________
Jerusalem F. Beligan
Leah M. Beligan

KRING & ASSOCIATES, APC

By: ________________________________
Tyler D. Kring
Jeffrey T. Green

Attorneys for Plaintiff and the Putative Class