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8 *Attorneys for Plaintiff Juan Antonio Lopez*  
9 *And All Aggrieved Employees*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SONOMA

12 JUAN ANTONIO LOPEZ, in his representative  
capacity, on behalf of the State of California, the  
13 general public and all aggrieved employees,

14 Plaintiff,

15 v.

16 FOLEY FAMILY WINES, INC., a Delaware  
corporation authorized to do business in  
17 California.; and DOES 1 through 50 inclusive,

18 Defendant.  
19  
20

Case No.: SCV-269094

**REPRESENTATIVE ACTION FOR CIVIL  
PENALTIES PURSUANT TO THE  
PRIVATE ATTORNEYS GENERAL ACT OF  
2004 (Labor Code §§ 2698 et seq.)**

21 Plaintiff Juan Antonio Lopez ("Plaintiff") brings this representative enforcement action in his  
22 representative capacity against Defendants Foley Family Wines, Inc., and DOES 1 through 50, inclusive  
23 (collectively, "Foley" or "Defendants"), on the following grounds:

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## INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 *et seq.*, “PAGA”) on behalf of himself and all other current or former non-exempt employees of Foley in California that suffered at least one or more of the Labor Code violations alleged herein within the applicable statute of limitations up to the time this action is brought to trial (referred to herein as “Aggrieved Employees”).

2. Plaintiff alleges that during the relevant time period Foley engaged in wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders by, among other things:

- a. Failing to timely pay all minimum, regular, and/or overtime wages;
- b. Failing to provide legally compliant meal periods and/or pay premium wages for non-compliant meal periods;
- c. Failing to provide legally compliant rest periods and/or pay premium wages for non-compliant rest periods;
- d. Failing to reimburse for necessary business expenses;
- e. Failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties;
- f. Failing to furnish accurate itemized wage statements;
- g. Failing to maintain accurate records; and
- h. Failing to provide employment, time and/or payroll records upon request.

3. By and through this representative action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys’ fees and litigation costs, as provided under California law.

4. All allegations in this Complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon personal knowledge. Each allegation in this Complaint has evidentiary support and/or is likely to have evidentiary support after reasonable opportunity for further investigation and formal discovery.

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**JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure (“Code of Civil Procedure”) § 410.10 and Labor Code §§ 2698 *et seq.* Pursuant to §§ 2698 *et seq.*, Plaintiff brings this action on behalf of himself and all other Aggrieved Employees.

6. This Court has personal jurisdiction over Foley because Foley conducts business in the state of California and has caused injuries in the county of Sonoma, as well as throughout the state of California, through its acts, omissions, and violations of the Labor Code and relevant IWC Wage Order.

7. Venue as to Foley is proper in this judicial district pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Foley transacts business in Sonoma County and is otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff and all other Aggrieved Employees within the county of Sonoma and throughout the state of California.

**THE PARTIES**

**I. PLAINTIFF**

8. Plaintiff Juan Antonio Lopez at all material times mentioned herein:

- a. Was and is a resident of the county of Sonoma, California;
- b. Was employed by and/or has otherwise performed work for Foley as a non-exempt operations worker from July 2019 through October 2020;
- c. Engaged in work for Foley in Sonoma County, California;
- d. Was classified by Foley as a non-exempt employee for purposes of the Labor Code and the IWC Wage Orders;
- e. Earned an hourly wage and was paid on a biweekly basis;
- f. Regularly worked five (5) days per week, usually eight (8) to ten (10) hours per day;
- g. Was not timely compensated the appropriate minimum, regular, and/or overtime wages for all time worked;
- h. Was not provided with the opportunity to take legally compliant meal periods and/or paid premium wages for non-compliant meal periods;

- i. Was not authorized and permitted to take legally compliant rest periods and/or paid premium wages for non-compliant rest periods;
- j. Was not reimbursed for all necessary business expenses;
- k. Contends he and other former Aggrieved Employees have not been timely paid all wages due and payable upon separation of employment, and/or the necessary waiting time penalties;
- l. Was not furnished with itemized wage statements that show all applicable and correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee;
- m. Contends his records were not accurately maintained by Foley;
- n. Is an “aggrieved employee” within the meaning of Labor Code § 2699(c); and
- o. Has complied with all requirements outlined in Labor Code §§ 2698 *et seq.*

## II. DEFENDANTS

9. Defendant Foley Family Wines, Inc. is a Delaware corporation authorized to do business, and actually doing business, in the state of California, that owns, operates and/or manages a portfolio of vineyards, wineries, and factories throughout California. Foley Family Wines, Inc. is organized in the state of Delaware and has its headquarters located in Santa Rosa, CA.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate, or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious defendants have participated in the acts and/or omissions alleged in this Complaint.

11. At all times mentioned herein, the acts alleged to have been done and/or caused by the named defendants are also alleged to have been done and/or caused by each of the fictitiously named defendants, and by each of their agents and/or employees who acted within the scope of their agency and/or employment.

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12. At all times mentioned herein, each named defendant, including each fictitiously named defendant, is believed to have acted individually or as an officer, agent, or employee of the other defendants.

13. At all times mentioned herein, each named defendant, including each fictitiously named defendant, acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venture of the other defendants, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture.

14. At all times mentioned herein, the acts and/or omissions of each of the named defendants, including each fictitiously named defendant, concurrently contributed to the various acts and/or omissions of each and every one of the other defendants, including each fictitiously named defendant, in proximately causing the wrongful conduct, harm, and/or damages alleged herein. Each of the named defendants, including each fictitiously named defendant, approved of, condoned, and/or otherwise ratified each and every one of the acts and/or omissions complained herein. Each named defendant, including each fictitiously named defendant, was and is acting with authority of each and every other defendant and/or are acting as agents of each and every other defendant or Doe defendant.

15. At all times mentioned herein there was a unity of interest and ownership between each named defendant, including each fictitiously named defendant, such that all defendants acted as a single employer of Plaintiff and all other Aggrieved Employees.

16. At all times mentioned herein, each named defendant, including each fictitiously named defendant, exercised supervision and control over the wages, hours, and/or working conditions of Plaintiff and all other Aggrieved Employees, including, but not limited to, implementing standard policies and procedures.

17. At all times mentioned herein, each named defendant, including each fictitiously named defendant, caused Aggrieved Employees, including Plaintiff, to work and/or prevented Plaintiff and other Aggrieved Employees from working.

18. At all times mentioned herein, each named defendant, including each fictitiously named defendant, had control over Aggrieved Employees.

19. Each named defendant, including each fictitiously named defendant, is alleged to have

1 caused each of the violations alleged herein.

2 20. Each named defendant, including each fictitiously named defendant, is jointly and  
3 severally liable for each of the violations alleged herein.

4 **FACTUAL ALLEGATIONS**

5 21. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
6 paragraphs of this Complaint.

7 22. Plaintiff was employed by, or otherwise performed work for, Foley from July 2019 to  
8 October 2020, at one of Foley's warehouses and/or factories in Sonoma, California.

9 23. Plaintiff performed work for Foley as a non-exempt operations worker. As an operations  
10 worker, Plaintiff's job duties included, but were not limited to, distilling wine, adding CO2 to the wine,  
11 and cleaning and maintaining the facilities. At all times during his employment, Plaintiff was classified  
12 by Foley as a non-exempt employee, earned an hourly wage, and was paid on a biweekly basis. Plaintiff  
13 typically worked five (5) days per week, usually eight (8) to ten (10) hours per day.

14 24. Plaintiff asserts that Foley has employed, and will continue to employ, several individuals  
15 in various non-exempt positions, in Sonoma County and throughout the state of California. Plaintiff  
16 further asserts that throughout the relevant time period all Aggrieved Employees earned an hourly wage,  
17 were paid on a bi-weekly basis, and worked at least eight (8) hours a day and/or forty (40) hours per week.

18 25. Plaintiff contends that he and all other Aggrieved Employees were subject to, and continue  
19 to be subject to, the same and/or similar policies, practices, procedures, guidelines, and/or culture  
20 described herein.

21 26. Plaintiff further alleges that he and all other Aggrieved Employees have suffered, and will  
22 continue to suffer, the same and/or similar violations of law described herein.

23 27. Plaintiff contends that Foley had, and continues to have, a policy, practice, procedure,  
24 guideline, and/or culture of not timely compensating him and all other Aggrieved Employees minimum,  
25 regular, and/or overtime wages for all time engaged in work on behalf of Foley and/or time spent under  
26 the control of Foley.

27 28. Plaintiff asserts that Foley had, and continues to have, an improper policy, practice and/or  
28 procedure where Foley's time clock system did not allow Plaintiff and other Aggrieved Employees to

1 remain on-the-clock past their scheduled shift end times. For example, Foley's time clock system  
2 automatically and improperly clocked Plaintiff and other Aggrieved Employees out of work at their  
3 scheduled shift end times, even though Plaintiff and other Aggrieved Employees were still on duty and  
4 working past that time, thereby not compensating them for all hours worked. Foley has a policy and/or  
5 practice of not allowing Plaintiff and other Aggrieved Employees to clock out at the actual time they finish  
6 work and does not allow them to record the actual time they ended their shifts.

7 29. Plaintiff further contends that management frequently and consistently instructed him and,  
8 on information and belief, other Aggrieved Employees to continue working after their scheduled shift end  
9 times, usually two hours per shift, three times per week.

10 30. Plaintiff and, on information and belief, other Aggrieved Employees were not paid for these  
11 hours worked. Instead, as a result of Foley's improper time clock system, Plaintiff and other Aggrieved  
12 Employees were automatically clocked out at the time their scheduled shift was supposed to end and/or  
13 Foley clocked them out and they were not compensated for this time worked and on-the-clock. As a result,  
14 Plaintiff contends that Foley has yet to pay him and, on information and belief, other Aggrieved  
15 Employees at least minimum wages and/or overtime wages for these hours worked and under the control  
16 of Defendants. Therefore, Foley has failed to timely pay Aggrieved Employees, such as Plaintiff, at least  
17 minimum wages and all overtime wages no later than the payday for the next regular payroll period.

18 31. In addition, Plaintiff and, on information and belief, other Aggrieved Employees earned a  
19 night shift differential when working overnight shifts, however, Foley failed, and continues to fail, to  
20 include the differential pay into Plaintiff's and other Aggrieved Employee's regular rate for purposes of  
21 computing overtime pay. Based on the foregoing, Plaintiff contends that he, and on information and belief,  
22 other Aggrieved employees were not timely paid all minimum, regular, and/or overtime wages for all  
23 hours worked on the days designated in advance by the employer and/or no later than the payday for the  
24 next regular pay period.

25 32. Further, Plaintiff contends that Foley had, and continues to have, a policy, practice,  
26 procedure, guideline and/or culture of directing and/or otherwise compelling Aggrieved Employees to  
27 engage in work during their meal periods for which they were provided no compensation. Foley  
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1 improperly considered this time as non-compensable time and thus failed to timely pay Plaintiff and, on  
2 information and belief, other Aggrieved Employees.

3 33. Plaintiff alleges that Foley did not, and does not, have a policy, practice, procedure,  
4 guideline, and/or culture of providing all Aggrieved Employees with the opportunity to take an  
5 uninterrupted, thirty (30) minute off-duty meal period before the end of their fifth (5<sup>th</sup>) hour of work when  
6 they work five (5) or more hours in a day. Similarly, Plaintiff contends that Foley did not, and does not,  
7 have a policy, practice, procedure, guideline and/or culture of providing all Aggrieved Employees with  
8 the opportunity to take a second uninterrupted, thirty (30) minute off-duty meal period when they work  
9 more than ten (10) hours in a day.

10 34. Plaintiff contends that he and, on information and belief, other Aggrieved Employees, often  
11 did not receive a full 30-minute meal period because Foley expected them to complete all of their assigned  
12 production duties including, but not limited to, distilling the wine, adding CO<sub>2</sub> to the wine, and cleaning  
13 the facilities, all before the next scheduled crew shift arrived at the facilities. Therefore, Plaintiff and, on  
14 information and belief, other Aggrieved Employees are pressured to work through their meal periods to  
15 ensure that all of their job duties were complete. Thus, Aggrieved Employees, including Plaintiff, were  
16 not free from Foley's control over how they spent their meal periods. As a result, Plaintiff and other  
17 Aggrieved Employees received meal periods that were not free from Foley's control, late, on-duty,  
18 interrupted by work duties, and/or less than thirty (30) minutes in length.

19 35. Despite not being provided with legally compliant meal periods, Plaintiff alleges that Foley  
20 did not, and does not, have a policy, practice, procedure, guideline and/or culture of paying meal period  
21 premiums to Plaintiff and other Aggrieved Employees for all meal periods that do not comply with  
22 California law on the days designated in advance by Foley as the regular payday. Moreover, if a meal  
23 period premium was ever paid, the premium was not paid at the correct rate of pay.

24 36. Plaintiff further alleges that Foley did not, and does not, have a policy, practice, procedure,  
25 guideline, and/or culture of authorizing and permitting Plaintiff and other Aggrieved Employees to take  
26 uninterrupted off-duty rest periods of at least ten (10) minutes for every four (4) hours worked or major  
27 fraction thereof.

1           37. Plaintiff alleges that Aggrieved Employees, such as himself, were not authorized and  
2 permitted to take lawful rest periods because of Foley's policy, practice, procedure, guideline, and/or  
3 culture of requiring Plaintiff and other Aggrieved Employees to work through their rest periods. More  
4 often than not, Plaintiff just worked through his rest periods in order to have enough time to finish all of  
5 his assigned duties before the next scheduled crew shift came in. In fact, Plaintiff contends that he was  
6 required to eat his lunch during his rest period, if he received one at all. As a result, Plaintiff and other  
7 Aggrieved Employees received rest periods that were not free from Foley's control, interrupted by work  
8 duties, and/or less than ten (10) minutes in length.

9           38. Despite not being provided with legally compliant rest periods, Plaintiff alleges that Foley  
10 did not, and does not, have a policy, practice, procedure, guideline, and/or culture of compensating  
11 Plaintiff and other Aggrieved Employees for all unlawful rest periods on the days designated in advance  
12 by Foley as the regular payday. Moreover, if a rest period premium was ever paid, it was not paid at the  
13 correct rate of pay.

14           39. Plaintiff alleges that Foley had, and continues to have, a policy, practice, procedure,  
15 guideline, and/or culture of failing to reimburse Plaintiff and other Aggrieved Employees for all necessary  
16 business expenses that were incurred in the discharge of their job duties. Plaintiff contends that he and  
17 other Aggrieved Employees were not reimbursed the cost of the work-related communications from Foley  
18 and management to their personal cell phones. Plaintiff contends that Aggrieved Employees were required  
19 to download the Dayforce scheduling and timecard app onto their phones. Although the application was  
20 free, Aggrieved Employees were not reimbursed for any cellular data used when downloading or using  
21 the app. Foley also did not reimburse Aggrieved Employees for the space the applications took up on their  
22 cell phones.

23           40. Plaintiff alleges that Foley had, and continues to have, a policy, practice, procedure,  
24 guideline, and/or culture of willfully failing to timely pay former Aggrieved Employees with all wages  
25 due and owing upon separation of employment and/or the mandated waiting time penalties for the late  
26 payment of such wages. Plaintiff alleges, based on information and belief, that former Aggrieved  
27 Employees were not timely paid all wages due and owed upon separation of employment and/or paid the  
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1 required waiting time penalties, in large part due to Foley’s policy, practice, procedure, guideline, and/or  
2 culture of failing to properly pay all minimum, regular, overtime, and/or premium wages.

3 41. Plaintiff asserts that Foley had, and continues to have, a policy, practice, procedure,  
4 guideline and/or culture of furnishing Aggrieved Employees, including Plaintiff, with wage statements  
5 that do not comply with California law. Plaintiff contends that the wage statements furnished to him and  
6 other Aggrieved Employees do not include, for instance, the total hours worked by the employee, all  
7 applicable hourly rates in effect during the pay period, including the proper overtime rate, and the  
8 corresponding number of hours worked at each hourly rate by the employee, and the actual gross and net  
9 wages earned.

10 42. Due to the lack of information on the furnished wage statements, Aggrieved Employees,  
11 such as Plaintiff, were unable to promptly and easily determine the total number of hours worked, the  
12 applicable hourly rates in effect during the pay period and/or the corresponding number of hours worked  
13 at each hourly rate, among other things.

14 43. Plaintiff contends that Foley has, and continues to have, a policy, practice, procedure,  
15 guideline, and/or culture of failing to keep and maintain accurate records reflecting, for example, all of  
16 Plaintiff’s and other Aggrieved Employees’ actual hours worked, meal periods taken, and wages earned  
17 and paid. For instance, Foley had, and continues to have, a policy, practice, procedure, and/or guideline  
18 of failing to record the actual hours worked by Aggrieved Employees, including all meal periods, resulting  
19 in non-payment of earned wages and inaccurate wage statements.

20 44. Plaintiff alleges that Foley has, and continues to have, a policy, practice, procedure,  
21 guideline, and/or culture of failing to provide employment, time and/or payroll records upon request. For  
22 instance, despite Plaintiff requesting a copy of his personnel, time and/or payroll records in writing on  
23 October 19, 2020, on December 12, 2020, and again on June 30, 2021, as permitted by law, Plaintiff has  
24 yet to receive a copy of his personnel, time and/or payroll records. Foley has violated California law by  
25 failing to provide a copy of payroll records in the 21-day time frame proscribed by Labor Code § 226(c)  
26 and a copy of all other records within 30 days as mandated by Labor Code § 1198.5.

27 45. On April 8, 2021, Plaintiff submitted written notice to the California Labor and Workforce  
28 Development Agency (“LWDA”), and Foley as required by the PAGA informing them of Foley’s alleged

1 violations of the Labor Code. A true and correct copy of the April 8, 2021 written notice is attached hereto  
2 as **Exhibit 1** and is incorporated herein by reference.

3 46. To date, the LWDA has not provided notice of whether it intends to investigate Plaintiff's  
4 alleged violations of the Labor Code.

5 47. Plaintiff further believes that additional violations may be discovered and therefore  
6 reserves his right to allege additional violations of the law as investigation and discovery warrants. In the  
7 event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint as  
8 necessary.

9 **PAGA DESIGNATION**

10 48. By and through this representative action, Plaintiff intends to represent the following  
11 Aggrieved Employees:

12 All current or former non-exempt employees who work or worked for  
13 Defendants in California and who suffered at least one of the Labor Code  
14 violations alleged herein at any time during the period commencing on the  
15 date that is within one year and sixty-five days prior to the filing of this  
16 Complaint through and including the last date of trial (hereinafter the  
"PAGA Period"). To the extent that California Rules of Court, Appendix  
I, Emergency Rule 9 and/or equitable tolling operates to toll the claims by  
the PAGA class against Defendants, the PAGA Period should be adjusted  
accordingly.

17 49. Members of the PAGA class are all "employees" as the term is used in the Labor Code and  
18 the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

19 50. A more precise definition of the aggrieved employees may be determined after further  
20 investigation and discovery. Plaintiff reserves his right to redefine the group of aggrieved employees as  
21 permitted by California law.

22 51. Pursuant to Labor Code §§ 2698 *et seq.*, any provision of the Labor Code that provides for  
23 a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,  
24 commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered  
25 through a civil action brought by an aggrieved employee on behalf of himself or herself and other current  
26 or former employees pursuant to the procedures specified in Labor Code § 2699.3.

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52. Pursuant to the PAGA all civil penalties recovered must be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the aggrieved employees, pursuant to Labor Code § 2699(i).

53. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of his claims with the LWDA, Foley was Plaintiff's and all other Aggrieved Employees' employer or person acting on behalf of Aggrieved Employees' employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code §§ 558(a) and 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, is subject to civil penalties for each underpaid employee.

54. Plaintiff is an "aggrieved employee" under the PAGA because he was employed by the alleged violators, Foley, and had one or more of the alleged violations committed against him, and therefore is properly suited to represent the interests of other Aggrieved Employees. (See *Huff v. Securitas Security Services, USA, Inc.* (2018) 23 Cal.App.5th 745, 751, 761; *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 519.)

55. Plaintiff alleges that all other Aggrieved Employees are also "aggrieved employees" under the PAGA as Foley employed them and all Aggrieved Employees experienced one or more of the alleged violations outlined herein.

56. Pursuant to Labor Code §§ 2698 *et seq.*, Plaintiff has exhausted his administrative remedies because he complied with the notice requirements outlined in Labor Code § 2699.3. On April 8, 2021, Plaintiff submitted notice to the LWDA and Foley informing them of the Foley's alleged Labor Code violations pursuant to the PAGA. (See Ex. 1.) Pursuant to the PAGA, the LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. To date, the LWDA has not provided notice of whether it intends to investigate the alleged violations. Plaintiff thus has the right to pursue, and does pursue, the asserted claims under PAGA in a representative capacity pursuant to Labor Code §§ 2698 *et seq.*

57. As set forth herein, Foley has committed, and continues to commit, numerous violations for which the Labor Code and applicable IWC Wage Order entitles Plaintiff, in his representative capacity, to recover, on behalf of himself, all other Aggrieved Employees, the state of California, and the general

1 public, civil penalties as well as attorneys' fees and costs from Foley for the alleged violations, described  
2 herein.

3 58. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
4 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
5 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
6 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5 and 2802. Plaintiff  
7 and other Aggrieved Employees are entitled to, and therefore seek, the civil penalties described in Labor  
8 Code § 2699(f) for the violations of law described herein.

9 59. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought  
10 pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such,  
11 Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled  
12 to, and therefore seeks, attorneys' fees and costs.

13 60. Plaintiff expressly disclaims the recovery of any "amount sufficient to recover underpaid  
14 wages" on behalf of himself and all other Aggrieved Employees.

### 15 **CAUSES OF ACTION**

#### 16 **FIRST CAUSE OF ACTION**

17 **(By Plaintiff in his Representative Capacity against Defendant and Does 1-50)**

#### 18 **PRIVATE ATTORNEYS GENERAL ACT OF 2004**

19 [Labor Code §§ 2698 *et seq.*]

20 61. Plaintiff realleges and incorporates by reference, as though fully set forth herein, all  
21 paragraphs of this Complaint.

22 62. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved  
23 Employees, is entitled to and thus seeks to recover civil penalties through a representative action based on  
24 violations of the following Labor Code and/or IWC Wage Order provisions:

- 25 a. Failure to timely pay all minimum, regular, and/or overtime wages in violation of  
26 Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198, and the "Minimum  
27 Wages" and "Hours and Days of Work" sections of the IWC Wage Order No. 8-  
28 2001;

- b. Failure to provide legally compliant meal periods and/or pay premium wages for non-compliant meal periods in violation of Labor Code §§ 204, 226.7, 512, and the “Meal Periods” section of the IWC Wage Order No. 8-2001;
- c. Failure to provide legally compliant rest periods and/or pay premium wages for non-compliant rest periods in violation of Labor Code §§ 204, 226.7, and the “Rest Periods” section of the IWC Wage Order No. 8-2001;
- d. Failure to reimburse all necessary business expenses in violation of Labor Code § 2802;
- e. Failure to timely pay all wages due and owing upon separation of employment and/or the necessary waiting time penalties in violation of Labor Code §§ 201-203 and 210;
- f. Failure to furnish accurate itemized wage statements in violation of Labor Code §§ 226, 226.3, and the “Records” section of the IWC Wage Order No. 8-2001;
- g. Failure to maintain accurate records in violation of Labor Code §§ 226, 1174, 1174.5, and the “Records” section of the IWC Wage Order No. 8-2001; and
- h. Failure to timely provide employment, time and/or payroll records upon request in violation of Labor Code §§ 226, 1198 and 1198.5.

63. Labor Code § 210 provides that any person who fails to pay wages as provided in Labor Code §§ 201.3, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 210.

64. Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation for an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in § 226(a), this civil penalty in addition to any other penalty provided by law. Plaintiff, in his representative capacity

1 on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil  
2 penalty imposed by Labor Code § 226.3.

3 65. For violations of Labor Code §§ 510 and 512, in addition to any other recovery provided  
4 by law, Labor Code § 558 imposes a civil penalty of \$50 per pay period for each underpaid employee for  
5 the initial violation and \$100 per pay period for each underpaid employee for each subsequent violation  
6 of any section of Labor Code Division 2, Part 2, Chapter 1, or any provision regulating hours and days of  
7 work in any order of the IWC.<sup>1</sup> Plaintiff, in his representative capacity on behalf of himself and all other  
8 Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor Code § 558.

9 66. Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain  
10 accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period,  
11 per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor  
12 Code § 1174(d). Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved  
13 Employees, is entitled to, and therefore seeks, the civil penalty imposed by § 1174.5.

14 67. Labor Code § 1197.1 imposes a civil penalty of \$100 for each underpaid employee for each  
15 pay period for which the employee is underpaid and a subsequent civil penalty of \$250 for each underpaid  
16 employee for each pay period for which the employee is underpaid for paying or causing an employee to  
17 be paid a wage less than the minimum wage. Plaintiff, in his representative capacity on behalf of himself  
18 and all other Aggrieved Employees, is entitled to, and therefore seeks, the civil penalty imposed by Labor  
19 Code § 1197.1.

20 68. Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the  
21 initial violation, and \$200 per pay period, per employee for each subsequent violation for all Labor Code  
22 provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code  
23 §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Plaintiff, in  
24 his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and  
25 therefore seeks, the civil penalty imposed by Labor Code § 2699(f).

26 ///

27 \_\_\_\_\_  
28 <sup>1</sup> Plaintiff expressly disclaims the recovery of underpaid wages on behalf of himself and all other  
Aggrieved Employees.

69. Labor Code § 2699(g)(1) provides that an employee who prevails in a civil action brought pursuant to PAGA shall be entitled to an award of reasonable attorneys' fees and costs. As such, Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to, and therefore seeks, attorneys' fees and costs.

70. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

71. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, requests further relief as described in the below prayer for relief.

**PRAYER FOR RELIEF**

Plaintiff, in his representative capacity, prays for judgment against Defendants and in favor of the state of California, Plaintiff, and all other Aggrieved Employees as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code §§ 210, 226.3, 226(f), 558, 1174.5, 1197.1, 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);
- c. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 210, 218.5, 218.6, 226(e), 226(h), 558, 1194, 1194.2, 1197.1, 2699(g)(1), Code of Civil Procedure § 1021.5, and the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory, and/or other applicable law; and

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d. For any and all other relief as this Court deems proper and just and is available  
under Labor Code §§ 2698 *et seq.*

Dated: August 18, 2021

GRAHAMHOLLIS APC

By: 

Graham S.P. Hollis  
Vilmarie Cordero  
Hali M. Anderson  
Oswaldo X. Calvachi  
*Attorneys for Plaintiff Juan Antonio Lopez*

# **EXHIBIT 1**

April 8, 2021

**Attorneys at Law**

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619.906-4025 direct

**VIA ONLINE ELECTRONIC FILING**

California Labor and Workforce Development Agency  
Attn: PAGA Administrator  
1515 Clay Street, Suite 801  
Oakland, CA 94612

**CERTIFIED MAIL (RETURN RECEIPT)**

Foley Family Wines, Inc.  
200 Concourse Blvd.  
Santa Rosa, CA 92602

Foley Family Wines, Inc.  
c/o Madeline Lovejoy, Agent for Service of Process  
3210 El Camino Real Suite 200  
Irvine, CA 92602

**Re:           Juan Antonio Lopez' Wage and Hour Claims Against Foley Family Wines, Inc.**

Dear California Labor and Workforce Development Agency and Foley Family Wines, Inc.:

Please be advised that Juan Antonio Lopez ("Claimant") has retained our firm, **GrahamHollis APC**, to represent him for various claims against Foley Family Wines, Inc. (the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA"), the California Division of Occupational Health and Safety, and the Company of the alleged California Labor Code ("Labor Code") violations the Company committed against him and all other current or former non-exempt employees who worked for the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support his Labor Code violations alleged herein, in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code §§ 2698 *et seq.*, "PAGA"), Labor Code § 2699.3.

Pursuant to Labor Code § 2699(a), and by way of this letter, Claimant intends to represent all other current or former non-exempt employees who

Graham S.P. Hollis

Vilmarie Cordero

Nathan Reese

Hali Anderson

David Lin

Erik Dos Santos

Alex Kuner

Monique Rodriguez

Ridgeway Woulfe

worked for the Company at any of the Company's California locations, whether hired directly by the Company or hired by the use of an employment agency, during the relevant time period (referred to herein as the "Aggrieved Employees"). All Aggrieved Employees, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein.

### **FACTUAL BACKGROUND**

Foley Family Wines, Inc. is a company that owns, operates and/or manages a portfolio of vineyards, wineries, and factories throughout California. Foley Family Wines, Inc. is organized in the state of Delaware and has its headquarters located in Santa Rosa, CA.

Claimant began working for the Company as an operations worker in July 2019 until he was terminated on or about early October 2020. Claimant's job duties consisted of packaging and processing wine for distribution, among other things. At all relevant times, Claimant had been classified as a non-exempt employee, earned an hourly rate of \$20.33 per hour and was paid on a biweekly basis. Claimant typically worked five (5) days per week, Monday through Friday, from 12:15 a.m. to 9:15 a.m., and occasionally worked overtime.

Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Aggrieved Employees in various non-exempt positions who earned an hourly wage and regularly worked at least eight hours per day and/or forty hours per week. Upon information and belief, all policies, practices, procedures, and/or guidelines of the Company applicable to Claimant were also applicable to all other Aggrieved Employees.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Company failed, and continues to fail, to timely pay all minimum, regular, and/or overtime wages to all Aggrieved Employees, including Claimant; failed, and continues to fail, to provide Claimant and other Aggrieved Employees with legally compliant meal and/or rest periods and/or pay them compensation in lieu thereof; failed, and continues to fail, to reimburse Claimant and other Aggrieved Employees for all business expenses; failed to timely pay Aggrieved Employees all wages due and owing upon separation of employment and/or pay the required waiting time penalties; failed, and continues to fail, to furnish all Aggrieved Employees, including Claimant, with accurate itemized wage statements; and failed, and continues to fail, to maintain accurate employment records.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not timely paying Aggrieved Employees all minimum, regular, and/or overtime wages for all time actually worked. For instance, the Company had, and continues to have, an improper policy, practice and/or procedure where the Company's time clock system did not allow Claimant

and other Aggrieved Employees to remain on-the-clock past their scheduled shift end times and/or the Company's time clock system automatically and improperly clocked them out at their scheduled shift end times, even when the Aggrieved Employees were still on duty, thereby not allowing them to clock out and record the actual time they ended their shifts.

Claimant contends that management frequently instructed him and, on information and belief, other Aggrieved Employees to continue working after their scheduled shift end times, usually two hours per shift, three times per week. Claimant and, on information and belief, other Aggrieved Employees were not paid for these hours worked. Instead, as a result of the Company's improper time clock system, Claimant and other Aggrieved Employees were automatically clocked out at the time their scheduled shift was supposed to end and/or the Company clocked them out and they were not compensated for this time worked and on-the-clock. As a result, Claimant contends that the Company has yet to pay him and, on information and belief, other Aggrieved Employees proper overtime wages. Therefore, the Company has failed to timely pay Aggrieved Employees, such as Claimant, all overtime wages no later than the payday for the next regular payroll period.

In addition, Claimant and, on information and belief, other Aggrieved Employees earned a night shift differential when working overnight shifts, however, the Company failed, and continues to fail, to include the differential pay into Claimant's and other Aggrieved Employee's regular rate for purposes of computing overtime pay. Based on the foregoing, Claimant contends that he, and on information and belief, other Aggrieved employees were not timely paid all minimum, regular, and/or overtime wages for all hours worked on the days designated in advance by the employer and/or no later than the payday for the next regular pay period.

Further, Claimant contends that the Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of directing and/or otherwise compelling Aggrieved Employees to engage in work during their meal periods for which they were provided no compensation. The Company improperly considered this time as non-compensable time and thus failed to timely pay Claimant and, on information and belief, other Company Employees.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not providing Aggrieved Employees, including Claimant, with the opportunity to take 30-minute, off-duty, uninterrupted meal periods that are free from the employer's control when they work more than six (6) hours in a day. Claimant also contends that the Company has a policy, practice, procedure, guideline, and/or culture of not providing Claimant and other Aggrieved Employees with the opportunity to take a second 30-minute, off-duty, uninterrupted meal period that is free from the employer's control when they work more than ten (10) hours in a day. Claimant contends that he and, on information and belief, other Aggrieved Employees, often does not receive a full 30 minute meal period because the Company expects them to complete all of their assigned production duties including, but not limited to, distilling the wine, adding CO<sub>2</sub> to

the wine, and cleaning the facilities, all before the next crew shift begins. Therefore, Claimant and, on information and belief, other Aggrieved Employees are pressured to work through their meal periods to ensure all their duties are complete. Thus, Aggrieved Employees, including Claimant, were not free from the Company's control over how they spent their meal periods. As a result, Claimant and other Aggrieved Employees received meal periods that were not free from the Company's control, late, on-duty, interrupted by work duties, and/or less than thirty (30) minutes in length.

Additionally, the Company also had, and continues to have, a policy, practice, procedure, guideline, and/or culture of not authorizing and permitting Claimant and Aggrieved Employees to take an off-duty, uninterrupted, 10-minute rest period for every four (4) hours worked or major fraction thereof. Claimant alleges that Aggrieved Employees, such as himself, were not authorized and permitted to take lawful rest periods because of the Company's policy, practice, procedure, guideline, and/or culture of requiring Claimant and other Aggrieved Employees to work through their rest periods. More often than not, Claimant just worked through his rest periods in order to have enough time to finish all of his assigned duties before the next crew shift came in. In fact, Claimant contends that he was required to eat his lunch during his rest period, if he received one at all. As a result, Claimant and other Aggrieved Employees received rest periods that were not free from the Company's control, interrupted by work duties, and/or less than ten (10) minutes in length.

The Company had, and continues to have, a policy, practice, procedure, guideline, and/or culture of failing to timely pay premium wages for all non-compliant meal and/or rest periods. For instance, although Claimant and other Aggrieved Employees did not receive legally compliant meal and/or rest periods, the Company did not consistently pay Claimant and, on information and belief, other Aggrieved Employees the additional one hour of pay at the employee's regular rate of pay as required under Labor Code § 226.7 and the applicable IWC Wage Order. Therefore, the Company owes Claimant and, on information and belief, other Aggrieved Employees a meal and/or rest period premium for each workday that Claimant and other Aggrieved Employees were not provided with a legally compliant meal and/or rest period.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties. For instance, Claimant and other Aggrieved Employees were not reimbursed the cost of the work-related communications from the Company and management to their personal cell phones. Claimant contends that Aggrieved Employees were required to download the Dayforce scheduling and timecard app onto their phones. Although the application was free, Aggrieved Employees were not reimbursed for any cellular data used when downloading or using the app. The Company also did not reimburse Aggrieved Employees for the space the applications took up on their cell phones.

The Company had, and continues to have, a policy, practice, procedure, guideline and/or culture of failing to timely pay all wages due and owing upon separation of employment and/or the mandated waiting time penalties for any late payment of final wages. For instance, the Company failed to timely pay former Aggrieved Employees all minimum, regular, and/or overtime wages for all hours worked and meal and/or rest period premium wages, in part due to the aforementioned Labor Code violations. Claimant further contends, on information and belief, that former Aggrieved Employees have not yet received the required waiting time penalties for the Company's failure to immediately pay all wages due and owing upon separation of employment. Claimant and other Aggrieved Employees have not received any waiting time penalties for late payment of all wages due and owing.

The Company had, and continues to have a policy, practice, procedure, guideline and/or culture of failing to furnish Aggrieved Employees with accurate itemized wage statements. Claimant alleges that the wage statements furnished to him and other Aggrieved Employees did not correctly show, and still do not correctly show, the information required by California law including, but not limited to, the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages actually earned, and the net wages actually earned. Due to the missing and/or incorrect information, Claimant and other Aggrieved Employees were unable to promptly and easily determine the total number of hours worked or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate.

Claimant attests that the Company had, and continues to have, a policy, practice, procedure and/or guideline of not maintaining accurate employment records. The Company's illegal policies, practices, procedures, guidelines, and/or culture, such as those described herein, have resulted in the Company's failure to maintain accurate records reflecting Aggrieved Employees' actual time worked, the proper end of each work period, the actual wages earned and paid, and the applicable rates of pay, among other things, in violation of California law. Furthermore, despite requesting a copy of personnel and time records in writing on October 19, 2020 and again on December 12, 2020, as permitted by law, Claimant has yet to receive a copy of his personnel and time records. The Company has violated California law by failing to maintain records and provide a copy of payroll records in the 21-day time frame proscribed by Labor Code § 226(c) and a copy of all other records within 30 days as mandated by Labor Code § 1198.5.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny, Claimant and other Aggrieved Employees certain rights afforded them under the Labor Code and the applicable IWC Wage Order. Claimant makes these claims against the Company on behalf of himself and all other Aggrieved Employees.

All facts, claims and/or legal theories contained within this written notice are alleged and/or asserted on behalf of Claimant and all other Aggrieved Employees. The facts and/or claims contained in this written notice are based on information available at the time of this writing. Since Claimant's investigation is ongoing, Claimant reserves his right to assert any and all related facts, claims, and/or theories discovered after the sending of this letter on behalf of himself and other current or former Aggrieved Employees against the Company and/or other persons that may be discovered after the sending of this letter. Such other persons include, but are not limited to, those persons who have acted as an agent, subsidiary, servant, employee, co-conspirator, alter-ego, and/or joint venture of the Company, as well as those persons who caused and/or concurrently contributed to the various acts and/or admissions of each and every one of the others, including the Company, in proximately causing the Labor Code violations, wrongful conduct, harm, and/or damages alleged herein or otherwise participated in or ratified any or all of the acts and/or omissions complained of herein, and those who were acting within the authority and/or scope of the Company. Claimant reserves the right to revise these facts and/or add any new claims by amending this letter and/or by adding facts and/or claims to his civil complaint.

**FAILURE TO TIMELY PAY ALL MINIMUM, REGULAR, AND/OR OVERTIME  
WAGES**

(Labor Code §§ 204, 210, 510, 1194, 1197, 1197.1, 1198 and 1199, and the "Minimum Wages" and "Hours and Days of Work" sections of the applicable IWC Wage Order)

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Specifically, Labor Code § 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 1197 states, "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." (See *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal. App. 4th 36, 44 [providing that an employer may not pay "less than the applicable minimum wage for all hours worked in the payroll period, whether the remunerations is measured by time, piece, commission, or otherwise"].) The "Minimum Wages" section of the applicable IWC Wage Order further provides that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise."

Labor Code § 1198 states,

[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and

the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Labor Code § 1199 imposes “a fine of not less than one hundred dollars (\$100)” for any employer who violates the provisions set forth in Labor Code § 1198.

Labor Code § 510(a), which codifies an employee’s right to overtime compensation, provides:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

The “Hours and Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Order mandate the same requirements as Labor Code § 510. Under California law, an employee may not waive his or her right to overtime compensation. (*Early v. Superior Court* (2000) 79 Cal. App. 4th 1420, 1430.)

Labor Code § 1197.1 states,

[a]ny employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203...

Labor Code § 1194(a) provides:

Notwithstanding any agreement to work for a lesser wage, 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.

Labor Code § 1194.2 allows for the recovery of liquidated damages in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

Labor Code § 210 states that, "every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As set forth above, the Company has a policy, practice, procedure, guideline, and/or culture of failing to timely pay all minimum, regular, and/or overtime wages to Claimant and, on information and belief, other Aggrieved Employees for all hours actually worked. For example, the Company frequently requires Claimant and other Aggrieved Employees to work past their scheduled shift end times and/or work through their meal periods without any compensation. Therefore, the Company failed to pay at least minimum wages, contractual wages and/or the legal overtime compensation for these hours Claimant and other Aggrieved Employees worked past their scheduled shifts hours.

Moreover, the Company does not include shift differential pay in Aggrieved Employees' regular rate for purposes of calculating their regular rate of pay for overtime compensation. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT MEAL PERIODS  
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204, 226.7 and 512, and the "Meal Periods" section of the applicable IWC Wage Order)

Labor Code § 512(a) provides:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the

employer and the employee only if the first meal period was not waived.

In pertinent part, the “Meal Periods” section of the applicable IWC Wage Order states:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee....

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the 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. An “on duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to....

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

A meal period generally comports with the requirements of California law if the employee has at least 30 minutes uninterrupted and the employee is relieved of any and all duty and is free to leave the premises during such time. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1036.) California law further prohibits employers from “...undermining [its] formal policy of providing meal breaks by pressuring employees to perform their duties in ways that omit breaks.” (*Id.* at 1040 [internal citations omitted].)

Pursuant to Labor Code § 226.7(c),

[i]f an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, 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.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1103-1114.)

As set forth above, the Company failed to provide Claimant and, on information and belief, other Aggrieved Employees with the opportunity to take uninterrupted, off-duty meal periods of at least 30-minutes before the start of their sixth (6<sup>th</sup>) hour of work and/or a second off-duty 30-minute meal period when they worked in excess of ten (10) hours. Consequently, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a compliant meal period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent permitted by law.

**FAILURE TO PROVIDE LEGALLY COMPLIANT REST PERIODS  
AND/OR COMPENSATION IN LIEU THEREOF**

(Labor Code §§ 204 and 226.7, and the "Rest Periods" section of the applicable IWC Wage Order)

The "Rest Periods" section of the applicable IWC Wage Order provides:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

During rest periods, California law requires employers to relinquish all control over their employees and relieve their employees of all duties. (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 273.)

In pertinent part, Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, 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 workday that the meal or rest or recovery period is not provided.

Labor Code § 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code § 226.7 are wages that are due payable in accordance with the Labor Code § 204. (*Murphy, supra*, 40 Cal.4th at 1103-1114.)

As discussed herein, the Company failed to authorize and permit Claimant and, on information and belief, other Aggrieved Employees to take an off-duty, uninterrupted rest period of at least 10-minutes for every four hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one-hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of himself and all Aggrieved Employees to the extent allowed by law.

**FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES**  
(Labor Code § 2802)

Labor Code § 2802(a) provides in pertinent part, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

Labor Code § 2802(b) states,

[a]ll awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.

Accordingly, Claimant will request that she receive interest on the applicable amount.

Furthermore, Labor Code § 2802(c) states, “[f]or purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” Consequently, Claimant will also request reimbursement of the attorney’s fees incurred in pursuing this matter.

As set forth above, the Company has and continues to have a policy, practice, procedure, guideline, and/or culture of failing to reimburse Claimant and other Aggrieved Employees for all necessary expenses that were incurred in the discharge of their job duties. This includes failing to reimburse Aggrieved Employees for usage of their personal cell phones. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and all other Aggrieved Employees to the extent allowed by law.

**FAILURE TO TIMELY PAY ALL WAGES DUE AND OWING UPON SEPARATION  
OF EMPLOYMENT**

(Labor Code §§ 201, 202, 203 and 210)

Labor Code § 201 states, in pertinent part, “[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202 provides, in pertinent part,

[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has

given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Labor Code § 203(a) further states,

[i]f an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Labor Code § 210 provides that, “every person who fails to pay the wages of an employee as provided in Sections 201.3...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.”

As discussed herein, the Company violated these Labor Code sections by not timely paying to former Aggrieved Employees all minimum, regular, and/or overtime wages and/or meal and/or rest period premium wages, within the required time upon separation of their employment. The Company, on information and belief, also did not pay the required waiting time penalties for the late payment of wages. Thus, the Company violated California law. Claimant will pursue all available remedies against the Company for its violations of California law on behalf of himself and all former Aggrieved Employees to the extent allowed by law.

#### **FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226 and 226.3, and the “Records” section of the applicable IWC Wage Order)

Labor Code § 226 states in pertinent part:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as 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 accurate 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... (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number...(8) the name and address of the legal entity that is the

employer, and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee...

Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

Labor Code § 226(h) states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees." Labor Code § 226.3 imposes an additional civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code § 226(a).

As discussed above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements did not, among other things, include the total hours worked by the employee, all applicable hourly rates in effect during the pay period, including the proper overtime rate, and the corresponding number of hours worked at each hourly rate by the employee, the gross wages earned, and the net wages earned. Claimant will pursue all available remedies against the Company for its Labor Code violations on behalf of himself and all Aggrieved Employees to the extent permitted by law.

### **FAILURE TO MAINTAIN ACCURATE RECORDS**

(Labor Code §§ 226, 1174 and 1174.5, and the "Records" section of the applicable IWC Wage Order)

Labor Code § 1174 requires every employer to "keep a recording showing the names and addresses of all employees employed..." Labor Code § 1174 further requires,

[e]very person employing labor in this state [to] keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily [] and the wages paid. Such records are to be kept according

to the rules established by the commission for such purpose and must be kept on file for no less than three years.

An employer is further obliged under Labor Code § 226(b) to keep the information required by Labor Code § 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment. The “Records” section of the applicable IWC Wage Order also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code § 1174.5 imposes a civil penalty of \$500 for an employer’s failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code § 2699 for a violation of Labor Code § 1174(d).

Labor Code § 226(e)(1) provides,

[a]n employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.

As set forth above, the Company violated its record keeping requirements by failing to accurately record employee hours actually worked, including, but not limited to, failing to record the proper end of each work period, the total hours worked during the pay period, the applicable rates of pay, and the actual wages earned and paid. Claimant will pursue all available remedies against the Company for its violations of the law on behalf of himself and all Aggrieved Employees to the extent allowed by law.

**FAILURE TO PROVIDE EMPLOYMENT AND PERSONNEL RECORDS UPON  
REQUEST**

(Labor Code §§ 226(b), 226(c), 226(f), 1198.5 and 1198.5(k))

Labor Code § 226(b) mandates that employers, “shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Labor Code § 226(c) further provides,

“[a]n employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

Labor Code §§ 226(f) and 1198.5(k) impose a civil penalty on employers for violations of Labor Code § 226(c). Labor Code § 226(f) states that “[a] failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” Labor Code § 1198.5 further mandates,

“[i]f an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.”

Labor Code § 1198.5 grants every current and former employee the right to receive a copy of the personnel records that the employer maintains. Labor Code § 1198.5 mandates that the contents of the personnel records be available for inspection within, but no later than 30 days from the date the employer receives the written request. An employer who fails to provide a copy of the records requested is subject to a penalty of \$750. Labor Code § 1198.5(k).

As set forth above, the Company violated these requirements by failing to provide Claimant with a copy of his personnel and time records, despite requesting a copy of these personnel and time records in writing on October 19, 2020 and again on December 12, 2020, as permitted by California law. Claimant has yet to receive a copy of his personnel and time records. Thus, the Company has violated Labor Code §§ 226(b) and (c) and Labor Code § 1198.5 by failing to provide Claimant with a copy of his personnel and time records within the prescribed time frame. Claimant will pursue all available remedies for the Company’s violations on behalf of himself and other Aggrieved Employees to the extent allowed by law.

**CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND APPLICABLE  
IWC WAGE ORDER**

(Labor Code §§ 210, 226(f), 226.3, 558, 558.1, 1174.1, 1197.1, 1198.5, 2699(f), 6317 and 6342)

Labor Code § 210 provides that any person who fails to pay wages as provided in sections 201.3 and 204 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation \$200 for each failure to pay each employee, plus 25 % if the amount unlawfully withheld, in addition to any other penalty.

For violations of Labor Code § 226(a), Labor Code § 226.3 imposes a civil penalty of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation.

For violations of Labor Code § 226(c), Labor Code §§ 226(f) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

Labor Code § 558 subjects any employer or any person acting on behalf of an employer who violates Labor Code Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558) or any provision regulating the hours and days of work in any IWC Wage Order to a civil penalty as follows: “[f]or any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

Labor Code § 558.1(a) states that,

“[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wage or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Pursuant to Labor Code § 558.1(b), Labor Code § 558.1(a) is applicable to the owners, officers, directors, or managing agents of the employer.

For violations of Labor Code § 1174 subdivisions (b), (c), and (d), Labor Code § 1174.5 imposes a civil penalty of \$500.

Similarly, Labor Code § 1197.1 subjects any employer or other person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an

order of the commission to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to § 203 as follows:

(1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to § 1194.2, and any applicable penalties imposed pursuant to § 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to § 203, recovered pursuant to this section shall be paid to the affected employee.

For violations of Labor Code § 1198.5, Labor Code § 1198.5(k) permits the current or former employee, or the Labor Commissioner, to recover a \$750 penalty from the employer.

Labor Code § 2699(f) imposes a civil penalty of \$100 per pay period, per employee for the initial violation and \$200 per pay period, per employee for each subsequent violation for all Labor Code provisions for which a civil penalty is not specifically provided, including, but not limited to, Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 1174(c), 1174(d), 1194, 1197, 1197.1, 1198, 6400 *et seq.* and relevant IWC Wage Orders.

For violations of Labor Code §§ 6400 *et seq.*, Labor Code § 6317 permits California Division of Occupational Health and Safety to impose civil penalties against employers as specified in § 6423, which states the following,

[e]very employer and every officer, management official, or supervisor having direction, management, control, or custody of any employment, place of employment, or of any other employee, who . . . (1) [k]nowingly or negligently violates any standard, order, or special order, or any provision of this division, or of any part thereof in. . . [i]s punishable by . . . a fine not to exceed five thousand dollars (\$5,000).

Furthermore, employers that repeatedly violate “any standard, order, or special order, or provision of this division, or any part thereof in, or authorized by, this part, which repeated violation creates a real and apparent hazard to employees” are subject to “a fine not exceeding fifteen thousand dollars (\$15,000). . . . If the defendant is a corporation or a limited liability company, the fine may not exceed one hundred fifty thousand dollars (\$150,000).” Labor Code § 6423(d).

As set forth above, the Company violated the Labor Code and the applicable IWC Wage Order by failing to timely pay Claimant and Aggrieved Employees all regular, minimum, and overtime wages, and meal and rest period premium wages, as required under the Labor Code and the applicable sections of the applicable IWC Wage Order. As a result, the Company is liable for civil penalties under the Labor Code and Claimant will pursue all available remedies, including but not limited to those stated herein, for the Company’s violations on behalf of himself and all Aggrieved Employees to the extent allowed by law.

**ATTORNEY’S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND  
PENALTIES**

(Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*)

Labor Code §§ 210, 218.5, 218.6, 225.5, 226(e), 558, 1194, 1194.2, 1197.1, 1198.5 and 2698 *et seq.*, among others, give employees, such as Claimant, the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney’s fees and costs.

Pursuant to Labor Code § 2699(i) an aggrieved employee, such as Claimant, is entitled to collect 25% of the penalty assessment. Under Labor Code § 2699(g)(1) an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney’s fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney’s fees and he will continue to incur such costs as a result of the Company’s unlawful actions. Claimant will pursue all available remedies against the Company, including those provided under the PAGA, on behalf of himself and other Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

### **CONCLUSION**

Based on the foregoing, the Company has violated the Labor Code and the applicable IWC Wage Order, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within the time prescribed by the PAGA, Claimant may elect to initiate and/or amend a civil action, on behalf of himself and all other Aggrieved Employees, as permitted by the PAGA.

Sincerely,



Vilmarie Cordero

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| Reference       | LOPEZ FOLEY WINES - OXC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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April 13, 2021

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| <b>Status:</b>             | Delivered, Front Desk/Reception/Mail Room     |
| <b>Status Date / Time:</b> | April 13, 2021, 11:58 am                      |
| <b>Location:</b>           | SANTA ROSA, CA 95403                          |
| <b>Postal Product:</b>     | First-Class Mail®                             |
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| <b>Recipient Name:</b>     | Foley Family Wines Inc Foley Family Wines Inc |

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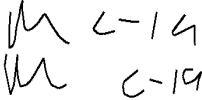
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|----------------------------|----------------------------------------------|
| <b>Status:</b>             | Delivered, Left with Individual              |
| <b>Status Date / Time:</b> | April 12, 2021, 10:24 am                     |
| <b>Location:</b>           | IRVINE, CA 92602                             |
| <b>Postal Product:</b>     | First-Class Mail®                            |
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