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17 *Attorneys for Plaintiff MOISES AUGUSTO GIRON,*

18 *on behalf of himself, the LWDA, and all other aggrieved employees*

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

20 **COUNTY OF SOLANO – OLD SOLANO COURTHOUSE**

21 MOISES AUGUSTO GIRON, on behalf of
22 himself, the LWDA, and all other aggrieved
23 employees,

24 PLAINTIFF,

25 vs.

26 FIOR DI SOLE, LLC, a California limited
27 liability company;

28 DEFENDANTS.

FILED/ENDORSED
Clerk of the Superior Court

NOV 19 2021

By B. VASQUEZ
DEPUTY CLERK

CASE NO.:

FCS057441

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS'
GENERAL ACT OF 2004, CALIFORNIA
LABOR CODE § 2698 et seq.**

**ASSIGNED TO
JUDGE E. Bradley Nelson
FOR ALL PURPOSES**

1 Plaintiff MOISES AUGUSTO GIRON ("PLAINTIFF"), on behalf of himself and all other
2 aggrieved employees, alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved employees of
5 Defendant FIOR DI SOLE, LLC ("DEFENDANT" or "FIOR DI SOLE") to recover civil penalties
6 arising from unpaid wages earned and due, including but not limited to unpaid minimum wages,
7 unlawful rest break policies and practices, failure to pay all wages due to discharged or quitting
8 employees, failure to maintain required records, failure to provide accurate itemized wage statements,
9 failure to reimburse business expenses, and failure to timely pay wages during employment.

10 **THE PARTIES**

11 2. PLAINTIFF is a resident of the State of California. At all times relevant to this action,
12 PLAINTIFF was employed by DEFENDANT in the State of California as an hourly, non-exempt
13 employee.

14 3. PLAINTIFF is informed and believes, and thereon alleges, that Defendant FIOR DI
15 SOLE, LLC is, and all times relevant to this action was, a limited liability company organized and
16 existing under the laws of the State of California. PLAINTIFF is informed and believes, and based
17 thereon alleges, that Defendant FIOR DI SOLE is authorized to transact and conduct business in the
18 State of California and does transact and conduct business in the State of California and the County of
19 Solano.

20 4. PLAINTIFF is informed and believes that FIOR DI SOLE is engaged in the business of
21 brand development, packaging, and wine production for wholesale and retail markets.

22 5. FIOR DI SOLE employed PLAINTIFF and other aggrieved persons in the State of
23 California.

24 **JURISDICTION AND VENUE**

25 6. The Superior Court of the State of California has jurisdiction in this matter because
26 PLAINTIFF is a resident of the State of California, and DEFENDANT is qualified to do business in
27 California and regularly conducts business in the State of California.

28 7. No federal question is at issue because the claims are based exclusively on California

1 state law.

2 8. Venue is proper in this judicial district and the County of Solano, California, because
3 among other things, PLAINTIFF and the other aggrieved employees performed work for DEFENDANT
4 in the County of Solano; DEFENDANT maintains grounds, facilities, and offices, and transacts
5 business, in the County of Solano; DEFENDANT’S unlawful policies, procedures, and practices, which
6 are the subject of this action, were applied, at least in part, to PLAINTIFF and other aggrieved employees
7 in the County of Solano; and DEFENDANT’S unlawful acts and omissions occurred in the County of
8 Solano.

9 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

10 9. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor Code
11 Sections 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and former
12 non-exempt aggrieved employees of DEFENDANT in the State of California at any time within the
13 period beginning one (1) year and sixty-five (65) days prior to the filing of this action and ending at the
14 time this action settles or proceeds to final judgment (the “PAGA PENALTY PERIOD”).

15 10. In accordance with Labor Code Section 2699.3, on or about August 13, 2021,
16 PLAINTIFF gave written notice to the California Labor and Workforce Development Agency
17 (“LWDA”), by filing a PAGA Notice online, a copy of which was sent by certified mail to
18 DEFENDANT notifying it of the specific provisions of the Labor Code and applicable Industrial
19 Welfare Commission (“IWC”) Wage Order(s) alleged to have been violated, including the facts and
20 theories to support the alleged violations. PLAINTIFF’S PAGA Notice was sent by certified mail to
21 DEFENDANT on August 13, 2021.

22 11. The LWDA did not provide notice of its intention to investigate DEFENDANT’S
23 violations within the sixty-five (65) calendar days of the postmark date of PLAINTIFF’S PAGA Notice.
24 Since PLAINTIFF has waited more than sixty-five (65) days from the postmark date of PLAINTIFF’S
25 PAGA Notice before filing this Civil Action, PLAINTIFF has complied with all of the requirements set
26 forth in Labor Code Section 2699.3 to commence a representative action under the PAGA.

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1 **FACTUAL ALLEGATIONS**

2 **Failure to Pay Minimum Wages**

3 **(Labor Code §§ 1194, 1197; IWC Wage Order No. 8-2001, § 4)**

4 12. Under Labor Code Sections 1194 and 1197 and applicable IWC Wage Orders, including
5 IWC Wage Order No. 8-2001, § 4, payment to an employee of less than the applicable minimum wage
6 for all hours worked in a payroll period is unlawful.

7 13. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
8 PENALTY PERIOD and in violation of Labor Code Sections 1194 and 1197 and the applicable IWC
9 Wage Order(s), DEFENDANT failed to pay PLAINTIFF and other aggrieved employees the applicable
10 minimum wages for all hours worked in a payroll period by, among other things: requiring, suffering,
11 or permitting PLAINTIFF and other aggrieved employees to work off the clock for COVID-19
12 temperature checks before the start of their shifts, and before they “clocked in.”

13 14. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
14 PENALTY PERIOD, DEFENDANT required PLAINTIFF and all aggrieved employees to again wait
15 in line to individually undergo COVID-19 temperature checks in DEFENDANT’S break room area after
16 their shifts ended, and after they “clocked out.”

17 15. Although Defendant maintained a common policy and practice of requiring PLAINTIFF
18 and the aggrieved employees to stand/wait in line pre-shift and post-shift for COVID-19 temperature
19 checks and spreadsheet completion during the PAGA PERIOD, DEFENDANT failed to compensate
20 PLAINTIFF and the other aggrieved employees for such time.

21 16. PLAINTIFF is informed and believes, and based thereon alleges, that beginning around
22 July 2020 and continuing at least until on or about June 15, 2021, PLAINTIFF and aggrieved employees
23 formed a line in or near DEFENDANT’S break room area before and after shifts, were required to
24 individually check their own temperature with a single digital forehead thermometer provided by
25 DEFENDANT, and then were required to complete a spreadsheet with their name, employee number,
26 temperature, date, and time, all while off the clock, before being allowed to clock in for their shifts (as
27 to the pre-shift temperature checks) and after clocking out for their shifts (as to the post-shift temperature
28 checks).

1 17. Through its policy and practice of requiring PLAINTIFF and the aggrieved employees
2 to undergo pre-shift and post-shift COVID-19 temperature checks and spreadsheet completion,
3 DEFENDANT violated Labor Code Section 1194.

4 18. As a result of DEFENDANT’S policy and practices described above, DEFENDANT
5 regularly failed to pay PLAINTIFF and all aggrieved employees for all hours worked in violation of
6 Labor Code Sections 1194 and 1197.

7 **Failure to Provide Complaint Meal Periods and Failure to Pay Premium Wages**

8 **(Labor Code §§ 226.7, 512; IWC Wage Order No. 8, § 11)**

9 19. Labor Code Section 512 provides in relevant part, “An employer shall not employ an
10 employee for a work period of more than five hours per day without providing the employee with a meal
11 period of not less than 30 minutes, except that if the total work period per day of the employee is no
12 more than six hours, the meal period may be waived by mutual consent of both the employer and
13 employee. An employer shall not employ an employee for a work period of more than 10 hours per day
14 without providing the employee with a second meal period of not less than 30 minutes, except that if the
15 total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent
16 of the employer and the employee only if the first meal period was not waived.”

17 20. IWC Wage Order 8, § 11 states, “(A) An employer may not employ an employee for a
18 work period of more than five (5) hours without providing the employee with a meal period of not less
19 than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s
20 work the meal period may be waived by mutual consent of employer and employee. Unless the employee
21 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an “on duty”
22 meal period and counted as time worked. An “on duty” meal period shall be permitted only when the
23 nature of the work prevents an employee from being relieved of all duty and when by written agreement
24 between the parties an on-the-job paid meal period is agreed to. (B) An employer may not employ an
25 employee for a work period of more than ten (10) hours per day without providing the employee with a
26 second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12
27 hours, the second meal period may be waived by mutual consent of the employer and the employee only
28 if the first meal period was not waived.”

1 21. Under California law, when an employee works for a work period of more than five (5)
2 hours, a meal period must be provided no later than the end of the employee's fifth hour of work, *i.e.*,
3 no later than the start of the employee's sixth hour of work. When an employee works for a period of
4 more than 10 hours, a second meal period must be provided no later than the end of the employee's tenth
5 hour of work, *i.e.*, no later than the start of the employee's eleventh hour of work. *See Brinker*
6 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012).

7 22. Labor Code Section 226.7, subdivision (a) states, "An employer shall not require an
8 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
9 or applicable regulation, standard, or order of the Industrial Welfare Commission"

10 23. During the PAGA PENALTY PERIOD, as part of DEFENDANT'S policies, procedures,
11 and practices, DEFENDANT failed to provide timely, compliant, off-duty meal periods to PLAINTIFF
12 and other aggrieved employees under Labor Code Sections 226.7 and 512 and IWC Order No. 8-2001,
13 § 11 and otherwise required, suffered or permitted PLAINTIFF and other aggrieved employees to take
14 less than 30-minute meal periods, or to work through them.

15 24. DEFENDANT further violated Labor Code Sections 226.7 and 512 and IWC Wage
16 Order No. 8-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees who were
17 not provided with a meal period, in accordance with the applicable IWC Wage Order, one (1) additional
18 hour of compensation at each employee's regular rate of pay for each workday that a complaint meal
19 period was not provided.

20 **Failure to Provide Compliant Rest Periods and Failure to Pay Premium Wages**

21 **(Labor Code §§ 226.7; IWC Wage Order No. 8-2001, § 12)**

22 25. At all relevant times, as part of DEFENDANT'S illegal policies, procedures, and
23 practices to deprive their current and former non-exempt employees all wages earned and due,
24 DEFENDANT failed to provide compliant rest periods to PLAINTIFF and other aggrieved employees
25 as required pursuant to Labor Code Section 226.7, and IWC Wage Order No. 8-2001, § 12.

26 26. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
27 PENALTY PERIOD, DEFENDANT did not have any policy or practice pertaining to rest break
28 violations.

1 27. DEFENDANT further violated Labor Code Section 226.7 and IWC Wage Order No. 8-
2 2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not provided with a
3 compliant rest period, in accordance with the applicable IWC Wage Order, one (1) additional hour of
4 compensation at each employee's regular rate of pay for each workday that a compliant rest period was
5 not provided.

6 **Failure to Timely Pay Wages During Employment**
7 **(Labor Code § 204)**

8 28. Under Labor Code Section 204, for all labor performed between the 1st and 15th days of
9 any calendar month, DEFENDANT is required to pay its nonexempt employees between the 16th and
10 26th day of the month during which the labor was performed. Labor Code Section 204 provides that for
11 all labor performed between the 16th and 26th days of any calendar month, DEFENDANT is required
12 to pay its nonexempt employees between the 1st and 10th day of the following calendar month.

13 29. Labor Code Section 204 further provides that all wages earned for labor in excess of the
14 normal work period shall be paid no later than the payday of the next regular payroll period.

15 30. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
16 PENALTY PERIOD, DEFENDANT knowingly and willfully failed to timely pay PLAINTIFF and
17 other aggrieved employees all the wages for labor performed by the next regular payroll period as
18 required by Labor Code Section 204.

19 **Failure to Pay All Wages Due Upon Separation of Employment**
20 **(Labor Code §§ 201, 202, 203)**

21 31. Under Labor Code Sections 201, 202 and 203, DEFENDANT is required to pay all
22 earned and unpaid wages to an employee who is discharged. Labor Code Section 201 provides that if
23 an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge
24 are due and payable immediately.

25 32. Under Labor Code Section 202, DEFENDANT is required to pay all accrued wages due
26 to an employee no later than 72 hours after the employee quits, unless the employee provided 72 hours
27 previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at
28 the time of quitting.

1 33. Labor Code Section 203 provides that if an employer willfully fails to pay, in accordance
2 with Labor Code sections 201 and 202, any wages of an employee who is discharged or who quits, the
3 employer is liable for waiting time penalties in the form of continued wages to the employee for up to
4 thirty (30) days.

5 34. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
6 PENALTY PERIOD and in violation of Labor Code Sections 201 and 202, DEFENDANT willfully
7 failed to timely pay accrued wages and other compensation to PLAINTIFF and other aggrieved
8 employees who were discharged or who quit.

9 **Failure to Furnish Accurate Itemized Wage Statements**
10 **(Labor Code § 226(a); IWC Wage Order No. 8-2001, § 7)**

11 35. During the PAGA PENALTY PERIOD, DEFENDANT failed and continues to fail to
12 provide PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements
13 in writing showing each employee's gross wages earned, total hours worked, the number of piece-rate
14 units earned and any applicable piece rate if the employee is paid on a piece-rate basis, all deductions
15 made, net wages earned, the inclusive dates of the period for which the employee is paid, the name of
16 the employee and only the last four digits of his or her social security number or employee identification
17 number, the name and address of the legal entity or entities employing PLAINTIFF and other aggrieved
18 employees, and all applicable hourly rates in effect during each pay period and the corresponding
19 number of hours worked at each hourly rate, in violation of Labor Code Section 226, subdivision (a)
20 and IWC Wage Order No. 8-2001, § 7.

21 36. As alleged above, PLAINTIFF is informed and believes, and based thereon alleges, that
22 during the PAGA PENALTY PERIOD, DEFENDANT knowingly and intentionally failed to pay
23 PLAINTIFF and all aggrieved employees all minimum wages associated with off-the-clock COVID-19
24 temperature checks and corresponding spreadsheet completion. Accordingly, all wage statements
25 contained inaccurate information as to hours worked and wages earned (since time spent on pre-shift
26 and post-shift COVID temperature checks and spreadsheet completion were never included).

27 37. As a result of DEFENDANT'S unlawful policies and practices and failure to pay all
28 earned wages, including minimum wages, DEFENDANT knowingly and intentionally failed to provide

1 PLAINTIFF and other aggrieved employees with timely and accurate itemized wage statements in
2 accordance with Labor Code Section 226, subdivision (a).

3 38. During the PAGA PENALTY PERIOD, PLAINTIFF and other aggrieved employees
4 suffered injury as a result of DEFENDANT’S failure to provide timely and accurate itemized wage
5 statements as PLAINTIFF and other aggrieved employees could not timely and easily determine from
6 the wage statements the actual and accurate total hours worked by the employees, the gross wages
7 earned, the net wages earned, since time spent on COVID-19 temperature checks, spreadsheet
8 completion, and waiting in line was always done off the clock and pre/post-shift.

9 **Failure to Reimburse Business Expenses**

10 **(Labor Code § 2802; IWC Wage Order No. 8-2001, § 9)**

11 39. Labor Code Section 2802 requires an employer to indemnify an employee for all
12 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
13 or her duties, or of his or her obedience to the directions of the employer.

14 40. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
15 PENALTY PERIOD, DEFENDANT required PLAINTIFF and aggrieved employees to purchase their
16 own facemasks during the COVID-19 pandemic, as such masks were required to be worn by the Centers
17 for Disease Control and Prevention (“CDC”). DEFENDANT did not affirmatively reimburse
18 PLAINTIFF and the aggrieved employees in any amount for any such work-related expenses incurred
19 throughout the PAGA PERIOD even though the CDC required PLAINTIFF and aggrieved employees
20 to wear facemasks as a precondition of work.

21 41. PLAINTIFF is informed and believes, and based thereon alleges, that during the PAGA
22 PENALTY PERIOD, DEFENDANT knowingly and willfully failed to indemnify PLAINTIFF and all
23 other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the
24 discharge of their duties while working under the direction of DEFENDANT including, but not limited
25 to, by failing to reimburse PLAINTIFF and aggrieved employees for face coverings.

26 42. PLAINTIFF is informed and believes, and based thereon alleges, that DEFENDANT’S
27 failure is a violation of Labor Code Section 2802 IWC Wage Order No. 8-2001, § 9(A).

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **(Labor Code §§ 2698 *et seq.*)**

4 **(AGAINST DEFENDANT)**

5 43. PLAINTIFF hereby incorporates by reference, as though fully set forth herein, each of
6 the allegations in paragraphs 1 through 47, above.

7 44. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code Section
8 2699, subdivision (c), and a proper representative to bring a civil action on behalf of himself and other
9 current and former non-exempt employees of DEFENDANT under the procedures specified in Labor
10 Code sections 2699.3, because PLAINTIFF was employed by DEFENDANT and one or more of the
11 alleged Labor Code violations was committed against PLAINTIFF during the PAGA PENALTY
12 PERIOD.

13 45. PLAINTIFF seeks to recover civil penalties through a representative action permitted by
14 PAGA.

15 46. Pursuant to Labor Code Sections 2698 through 2699.5, PLAINTIFF seeks to recover
16 civil penalties from DEFENDANT in a representative action for the violations set forth above which
17 include, but are not limited to, violations of Labor Code Sections 201, 202, 203, 204, 210, 226,
18 subdivision (a), 226.7, 1194, 1194.2, 1197, 1197.1, 1198, and 1198.

19 47. Under Labor Code Section 2699, subdivision (a), PLAINTIFF seeks civil penalties based
20 on DEFENDANT’S violations of Labor Code provisions for which a civil penalty is specifically
21 provided which include, but are not limited to, the following:

- 22 a. Under Labor Code Section 210, DEFENDANT is subject to a civil penalty in the
23 amount of one hundred dollars (\$100.00) for the initial violation and two hundred
24 dollars (\$200.00) per employee for violations in subsequent pay periods for violations
25 of Labor Code Section 204;
- 26 b. Under Labor Code Section 226.3, DEFENDANT is subject to a civil penalty in the
27 amount of two hundred and fifty dollars (\$250.00) per aggrieved employee for the
28 initial pay period where a violation occurs and one thousand dollars (\$1,000.00) per

1 aggrieved employee for violations in subsequent pay periods for violations of Labor
2 Code Section 226, subdivision (a);

3 c. Under Labor Code Section 558, subdivision (a), “[a]ny employer or other person
4 acting on behalf of an employer who violates, or causes to be violated, a Section of
5 this chapter or any provision regulating hours and days of work in any order of the
6 Industrial Welfare Commission,” including Labor Code Sections 510 and 512, shall
7 be subject to a civil penalty, in addition to any other penalty provided by law, of fifty
8 dollars (\$50.00) for initial violations for each employee for each pay period for which
9 the employee was underpaid and one hundred dollars (\$100.00) for each subsequent
10 violation for each employee for each pay period for which the employee was
11 underpaid; and

12 d. Under Labor Code Section 1197.1, an employer who pays or causes to be paid to any
13 employee a wage less than the minimum fixed by an order of the commission, shall
14 be subject to a civil penalty as follows: for any initial violation that is intentionally
15 committed, one hundred dollars (\$100.00) for each underpaid employee for each pay
16 period for which the employee is underpaid; and for each subsequent violation of the
17 same offense, two hundred fifty dollars (\$250.00) for each underpaid employee for
18 each pay period for which the employee is underpaid regardless of whether or not the
19 initial violation was intentionally committed.

20 48. PLAINTIFF further seeks civil penalties based on DEFENDANT’S violations of Labor
21 Code provisions for which a civil penalty is not specifically provided. Labor Code Section 2699,
22 subdivision (f) provides that for all Labor Code violations for which a civil penalty is not specifically
23 provided, the following civil penalties apply: one hundred dollars (\$100.00) for each aggrieved
24 employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved
25 employee per pay period for each subsequent violation.

26 49. PLAINTIFF seeks such civil penalties in accordance with Labor Code Section 2699,
27 subdivision (f) based on DEFENDANT’S violations of Labor Code provisions for which a civil penalty
28 is not specifically provided, including but not limited to Labor Code Sections 201, 202, 203, 226.7,

1 1194, 1197, and 1198, and 2802.

2 50. PLAINTIFF further seeks reasonable attorneys' fees and costs as allowed by law
3 including under Labor Code Section 2699, subdivision (g)(1).

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other aggrieved employees,
6 prays for relief against DEFENDANT, as follows:

- 7 1. For civil penalties according to proof and all penalties authorized under the PAGA
8 including under Labor Code Sections 210, 226.3, 558, 1197.1, and 2699, subdivisions
9 (a) and (f);
- 10 2. For interest at the legal rate as allowed by law including pursuant to Labor Code Sections
11 218.6, 1194, Civil Code Sections 3287, 3288, 3289, and any other applicable provision
12 providing for prejudgment interest;
- 13 3. For reasonable attorneys' fees and costs as allowed by law including pursuant to Labor
14 Code Section 2699, subdivision (g) and any other applicable provisions providing for
15 attorneys' fees and costs; and
- 16 4. For such further and additional relief as allowed by law or which the Court deems just
17 and proper.

18 DATED: November 19, 2021

Respectfully submitted,

19 **ACKERMANN & TILAJEF, P.C.**
20 **PROXY LAW FIRM LLP**

21 By: 

22 Craig J. Ackermann, Esq.

23 *Attorneys for Plaintiff MOISES AUGUSTO*

24 *GIRON, on behalf of himself, the LWDA, and all other*
25 *aggrieved employees*
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