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Clerk of the Napa Superior Court
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HOWARD GLOVER on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NAPA

HOWARD GLOVER, an individual, on behalf) Case No.: 24CV002180
of himself, all aggrieved employees, and the)
State of California as a Private Attorneys)
General,)

Plaintiff,

REPRESENTATIVE ACTION

vs.

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

FAR NIENTE WINE ESTATES LLC, a)
Delaware limited liability company, FAR)
NIENTE WINE ESTATES MANAGEMENT)
LLC, a Delaware limited liability company, FN)
CELLARS, LLC, a Delaware limited liability)
company, and DOES 1-50, inclusive,)

Defendant.

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

4 NATURE OF THE ACTION

5 1. Plaintiff HOWARD GLOVER worked as an hourly, nonexempt employee for
6 Defendant FAR NIENTE WINE ESTATES LLC, FAR NIENTE WINE ESTATES
7 MANAGEMENT LLC, FN CELLARS, LLC, and Does 1-50 (collectively “Defendant”) until May
8 2024. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”),
9 Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly, nonexempt
10 employees of Defendant within one year of serving notice on the LWDA to the present are
11 aggrieved employees.

12 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
13 willful and intentional employment practices and policies. Plaintiff brings this representative
14 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
15 California, based upon the claims articulated below.

16 3. Plaintiff provided notice of his claims pursuant to §2698 *et. seq.*, to the Labor and
17 Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content
18 of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff
19 following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly,
20 Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act
21 (“PAGA”), Labor Code §2698 *et seq.*

22 4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
23 worked, including overtime hours worked; (2) improper calculation of overtime rate – failure to
24 pay overtime wages; (3) failing to properly calculate and pay sick leave wages – regular rate; (4)
25 failing to pay all wages owed twice per month; (5) failing to pay minimum wage; (6) failing to pay
26 wages due upon termination; (7) failing to permit compliant meal periods; (8) failing to provide
27 rest breaks; (9) failing to reimburse for required business expenses; and (10) failing to provide
28 accurate itemized wage statements. Defendant is therefore liable for civil penalties under the Cal.

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

3 THE PARTIES

4 5. Plaintiff HOWARD GLOVER is a resident of the State of California and worked for
5 Defendant from February 14, 2023, until May 31, 2024, as a wine educator at Defendant’s
6 Oakville, California, facility.

7 6. Defendant FAR NIENTE WINE ESTATES LLC, is a Delaware limited liability
8 company with a principal place of business in California and authorized to do business and doing
9 business in California with the capacity to sue and to be sued, and doing business, in the county of
10 NAPA, State of California.

11 7. Defendant FAR NIENTE WINE ESTATES MANAGEMENT LLC, is a Delaware
12 limited liability company with a principal place of business in California and authorized to do
13 business and doing business in California with the capacity to sue and to be sued, and doing
14 business, in the county of NAPA, State of California.

15 8. Defendant FN CELLARS LLC, is a Delaware limited liability company with a principal
16 place of business in California and authorized to do business and doing business in California with
17 the capacity to sue and to be sued, and doing business, in the county of NAPA, State of California.

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

23 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
24 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
25 of the representative class, and exercised control over their wages, hours, and working conditions.
26 Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects
27 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
28

1 plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable
2 to the other Defendants.

3 JURISDICTION AND VENUE

4 11. Venue is proper in this judicial district because Defendant conducts business in this
5 county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees
6 in this case that arose in this county.

7 12. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of
8 the Superior Court and will be established according to proof at trial. Based on information,
9 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for
10 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars
11 (\$25,000).

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

16 PAGA REPRESENTATIVE ACTION ALLEGATIONS

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

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

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

26 17. Defendant, and each of them, have committed the following violations of the California
27 Labor Code:
28

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

2 (Cal. Labor Code §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558,
3 1194, 1197, 1197.1, 1198, 2698 et seq., Wage Orders.)

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

6 19. The Wage Orders define “hours worked” as “the time during which an employee is
7 subject to the control of an employer, and includes all the time the employee is suffered or
8 permitted to work, whether or not required to do so.”

9 20. When employees like Plaintiff and his coworkers earning at or near minimum wage do
10 not receive payment for all hours worked as a result of unlawful employment practices, the result
11 is that they are earning less than the statutory minimum wages for all hours worked. Defendant
12 has been engaged in many unlawful employment practices which resulted in underpayment for
13 hours worked each pay period, including overtime hours worked, as more fully set forth below.
14 Defendant has also failed to pay the required minimum wage for all hours worked and has failed
15 to pay all wages owed twice per month.

16 21. Unpaid Wages - Rounding. Defendant rounds Plaintiff’s and aggrieved employees’
17 timecards in a manner that favors Defendant. Indeed, with Defendant’s strict policies against
18 arriving to work late, as well as returning from meal periods late, Plaintiff and aggrieved
19 employees clock in before their start time and this consistently benefited Defendant. However,
20 Plaintiff’s wage statements consistently show hours rounded down.

21 22. A review of Plaintiff’s wage statements reveals that Defendant rounds employee time
22 to the nearest quarter-hour. Plaintiff and his coworkers clock in and out using an app on their
23 personal mobile devices which is capable of capturing the exact time they clock in and out.
24 Nonetheless, Defendant rounds their entries substantially to the quarter-hour.

25 23. Worked Performed During Unpaid Meal Periods. As more fully set forth below,
26 Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not less
27 than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and
28 512.

1 24. Plaintiff and aggrieved employees often had meal breaks interrupted with work and
2 sometimes were not able to clock in prior to performing the task for which their meal period
3 interrupted.

4 **Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages**

5 (Cal Lab. Code §§218, 510 et. seq., 1194)

6 25. Plaintiff incorporates by reference in this cause of action each allegation of the
7 preceding paragraphs as though fully set forth herein.

8 26. Defendant pays nondiscretionary bonuses to its hourly, non-exempt employees. It is
9 well established that nondiscretionary bonuses, such as the bonuses at issue, retroactively increase
10 the employee's "regular rate" of pay for purposes of calculating overtime. (Labor Code §207) The
11 "regular rate" is calculated by dividing the hours worked in a week by all the compensation earned
12 for that week. When an employee is later paid a bonus that is partly due to work performed in that
13 week, this additional pay must be added into the total compensation for the week, increasing the
14 employee's regular rate of pay. (Marin v. Costco Wholesale Corp. (2008) 169 CA4th 804, 807.)

15 27. Defendant paid bonuses, including nondiscretionary bonuses which increase the
16 employee's regular rate of pay calculation. Defendant failed to include this, or any other additional
17 income, into the regular rate calculation resulting in underpaid overtime.

18 28. Defendant has failed to consistently properly calculate and pay overtime compensation.
19 Plaintiff and other employees have been denied "the unpaid balance of the full amount of this...
20 overtime compensation" as required by Cal. Labor Code. §1194. Additionally, Defendant has
21 violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage
22 Orders at sections (3)(A)(1) for failure to pay overtime.

23 29. As a result of these ongoing violations, Plaintiff and aggrieved employees have been
24 deprived of compensation in amounts to be determined, and are entitled to recover said amounts
25 according to proof, interest thereon, injunctive relief, attorneys' fees and costs.

26 ///

27 ///

28 ///

1 **Failure to Properly Calculate and Pay Sick Leave Wages – Regular Rate**

2 (Cal. Lab. Code §§246, 2698 *et seq.*)

3 30. Plaintiff incorporates by reference in this cause of action each allegation of the
4 preceding paragraphs as though fully set forth herein.

5 31. Defendant must calculate paid sick leave for non-exempt employees in one of two
6 ways:

7 A. Paid sick time for nonexempt employees shall be calculated in the same manner
8 as the regular rate of pay for the workweek in which the employee uses paid
9 sick time, whether or not the employee actually works overtime in that
10 workweek; [or]

11 B. Paid sick time for nonexempt employees shall be calculated by dividing the
12 employee's total wages, not including overtime premium pay, by the
13 employee's total hours worked in the full pay periods of the prior 90 days of
14 employment.

15 Labor Code § 246 (l)

16 32. Defendant paid bonuses, including nondiscretionary bonuses. Defendant failed to
17 include this, or any other additional income, into the regular rate calculation resulting in underpaid
18 sick pay. Plaintiff and aggrieved employees were paid sick leave wages at their base hourly rates
19 of pay, which is less than required under either of the two alternative methods of calculation
20 provided by Labor Code section 246(l).

21 **Failure to Pay All Wages Owed Twice Per Month**

22 (Cal. Lab. Code §§204, 210)

23 33. Plaintiff incorporates by reference in this cause of action each allegation of the
24 preceding paragraphs as though fully set forth herein.

25 34. Defendant's conduct described in this complaint violates the provisions of Labor Code
26 §§ 204, 210.

27 35. Defendant failed to pay all wages earned to employees as a result of the unlawful
28 employment policies and practices discussed herein. As a result of these practices, employees were

1 underpaid for hours worked, including overtime and penalty wages, and this underpayment
2 resulted in a failure to pay all wages owed twice per month.

3 36. Due to this failure, Defendant is liable under Labor Code §210 for failure to pay wages
4 as required by law.

5 **Failure to Pay Minimum Wage**

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

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

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

12 39. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
13 result of Defendant's practices described above. Based on Defendant's unlawful conduct described
14 above, and because Plaintiff and the aggrieved employees were paid at or near minimum wage,
15 employer's failure to pay for all hours worked, including overtime, resulted in a payment of less
16 than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and
17 the Wage Order. Defendant is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et*
18 *seq.*

19 **Failure to Pay All Wages Due Upon Termination**

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

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

23 41. An employee who is discharged must be paid all of his or her wages, including accrued
24 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
25 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
26 Plaintiff at the time employment terminated.

27 42. Upon termination, Plaintiff did not receive all of his wages. Some payments remained
28 due and owing approximately a week following his termination.

1 43. Defendant willfully failed to pay employees who are no longer employed by it all
2 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
3 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days pay as
4 waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to
5 Cal. Lab. Code § 2698 *et. seq.*

6 **Failure to Provide Compliant Meal Breaks**

7 (Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)

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

10 45. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
11 period of more than five hours per day without providing the employee with a meal period of not
12 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee
13 to work during any meal... period mandated by an applicable order of the Industrial Welfare
14 Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee
15 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
16 duty’ meal period and counted as time worked.”

17 46. Plaintiff and aggrieved employees often missed meal periods, and meal periods that
18 were permitted were often short or interrupted. Employees were unable to leave the premises
19 during meal periods and when they worked over 10 hours, employees never received second meal
20 periods. Plaintiff’s meal periods were over only between 20-30 minutes, and late due to staffing
21 and the press of work. These conditions applied to all aggrieved employees. Plaintiff also recalls
22 being called back to work early from meal periods due to inadequate staffing practices. Plaintiff
23 observed his coworkers missing meal breaks, as well as having meal breaks interrupted or cut
24 short.

25 47. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
26 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;
27 (2) did not adequately inform and train employees about their rights to meal periods and premium
28 payments for non-compliant meal periods; (3) did not adequately inform and train employees about

1 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
2 Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
3 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
4 refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because
5 Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods.
6 Employees were not paid a premium payment, paid as an hour's wage when meal periods were
7 not given to them in compliance with California law.

8 48. Rounding Meal Period Time Entries. Meal periods were also noncompliant because
9 Defendant rounded and thus altered timeclock entries for meal periods so that they do not show a
10 meal period violation. Our Supreme Court has recently re-emphasized the importance of fully
11 compliant meal periods, holding that employers must record meal period time entries to the exact
12 minute, prohibiting rounding or shaving time for employee meal periods. (*Donohue v. AMN*
13 *Services, LLC* (2021) 11 Cal.5th 58, 67.) Defendant rounded all clock in and out entries, including
14 those for meal periods.

15 49. The Wage Orders require employers to authorize and permit employees to take an
16 uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code
17 §1198, "the employment of any employee... under conditions of labor prohibited by the order is
18 unlawful." Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
19 "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code
20 §§226.7 and 512. Defendant never paid penalty pay to Plaintiff or aggrieved employees for
21 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
22 inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor
23 Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to
24 Cal. Labor Code §558 and §2698 *et. seq.*

25 **Failure to Provide Rest Breaks**

26 (Cal. Lab. Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 *et seq.*, 3457, 6712

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

1 51. Defendant has failed to maintain a policy and practice that provides or permits its
2 employees to take off-duty rest periods as required by California law. Employees are entitled to at
3 least a ten-minute rest period in which they are relieved of all duties, as required by Cal. Lab. Code
4 §226.7, §512 and the Wage Order.

5 52. Plaintiff and aggrieved employees rarely received rest breaks while working for
6 Defendant. Plaintiff and aggrieved employees were expected to work straight through their shifts
7 with the only break in day a meal break, which was often not compliant.

8 53. Rest periods were either less than ten minutes, not provided, interrupted or late, “on
9 duty,” or not scheduled before and after a meal period for shifts greater than six hours, as
10 prescribed by California law because Defendant: (1) did not account for all hours worked that were
11 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
12 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
13 inform and train employees about when, where and how to take timely and uninterrupted ten-
14 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
15 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
16 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
17 break policy.

18 54. The rest period requirement obligates employers to permit and authorize employees to
19 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
20 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
21 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee’s
22 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
23 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
24 Wage Order, §12(B) (“If an employer fails to provide an employee a rest period in accordance
25 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
26 pay at the employee’s regular rate of compensation for each work day that the rest period is not
27 provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable
28 rest area. (Id. at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein

1 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
2 rest area and cannot include time it takes to get to and from the rest area). The employer must show
3 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
4 what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest
5 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v.*
6 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to
7 clearly communicate the authorization and permission [to take rest periods] to their employees.”).

8 55. Defendant failed to pay Plaintiff and similarly situated employees the premium
9 compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest
10 periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. As a result of
11 these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698
12 *et. seq.* As a derivative claim, Plaintiff alleges that his pay statements were inaccurate, failing to
13 include required rest period penalties, thus failing the requirements of Labor Code §226(a),
14 resulting in further liability under Cal. Labor Code §§ 558 and 2698 *et. seq.*

15 **Failure to Reimburse for Required Business Expenses**

16 (Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

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

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

21 58. Plaintiff and aggrieved employees are required to use their personal cell phones to
22 clock in and out using an app. Employees were not compensated for any of these expenses.
23 Accordingly, Defendant is liable for civil penalties under PAGA §2699 *et seq.*

24 **Failure to Provide Accurate Itemized Wage Statements**

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

26 59. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
27 incorporate said paragraphs herein by reference.
28

60. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226(a) and 1174.

61. The statements provided to Plaintiff and aggrieved employees have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay at the correct rate, and pay for meal and rest period premium wages, and reimbursements for the regular use of employee phones. Such failures caused injury to Plaintiff and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Defendant is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

FIRST CAUSE OF ACTION

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

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

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

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

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

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

a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§207, 218, 246, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*);

- b. Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages (Cal Lab. Code §§218, 510 et. seq., 1194)
- c. Failure to Properly Calculate and Pay Sick Leave Wages – Regular Rate (Cal. Labor Code §§246, 2698 et seq)
- d. Failure to Pay All Wages Owed Twice Per Month (Cal. Labor Code
- e. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)
- f. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201-203, 256 and 2698 *et seq.*)
- g. Failure to Provide Compliant Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*)
- h. Failure to Provide Rest Breaks (Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2441, 2698 *et seq.*, 3457, 6712.)
- i. Failure to Reimburse for Required Business Expenses (Cal. Labor Code §§ 1198, 2802 and 2699 *et seq.*)
- j. Failure to Provide Accurate Itemized Wage Statements (Cal. Labor Code §§ 226, 1174, 2699 *et seq.*).

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

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

68. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay

period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

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

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

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

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

PRAYER FOR RELIEF

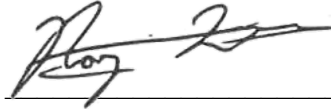
WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for judgement against Defendant as follows:

1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be determined at trial, but at least the jurisdictional amount of this Court;
2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g) and/or other applicable law;
3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable law;

4. Pre-judgement and post-judgement interest as provided by law; and
5. Such other and further relief that the Court may deem just and proper.

DATED: December 9, 2024

KOUL LAW FIRM, APC



Nazo Koulloukian, Esq.
Attorney for Plaintiff HOWARD GLOVER,
and all aggrieved employees

EXHIBIT A – PAGA NOTICE LETTER

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SUITE 1710

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September 30, 2024

Via E-filing:

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

Via Certified U.S. Mail:

Far Niente Wine Estates LLC
1350 Acacia Drive
Oakville, CA 94562

Far Niente Wine Estates Management LLC
1350 Acacia Drive
Oakville, CA 94562

FN Cellars, LLC
1350 Acacia Drive
Oakville, CA 94562

Re: **AMENDED** PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: Howard Glover

Employers: Far Niente Wine Estates LLC; FN Cellars, LLC; and Far Niente
Wine Estates Management LLC

Dear Sir or Madam:

Howard Glover (“Claimant”) has retained Nazo Koulloukian, Esq. of Koul Law Firm, APC, to represent Claimant, and all other aggrieved employees, for conditions of employment and wage and hour claims against former employers, Far Niente Wine Estates LLC, FN Cellars, LLC, and Far Niente Wine Estates Management, LLC (hereafter “Employer”).

Claimant submits this Amended PAGA Notice to add his additional employer, and Far Niente Wine Estates Management, LLC, as a recipient of this letter and employer against whom Claimant brings his claims.

Employer operates a winery. Claimant worked for Employer from February 14, 2023, to May 31, 2024, as a wine educator at Employer’s Oakville, California, facility.

Claimant alleges herein the specific provisions of California law that Employer has violated, requiring this Notice, including but not limited to: California Labor Code sections 201-203, 204, 208, 216, 221-223, 226, 226.2, 226.7, 227.3, 245-248.6, 432, 432.5, 432.6, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders.

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

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

(Cal. Labor Code §§200, 204, 206, 206.5, 207, 210, 216, 218, 218.6, 221, 223, 351, 510, 558, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, IWC Wage Orders)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay the required minimum wage for all hours worked, and has failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Unpaid Wages – Rounding

Employer rounds Claimant and aggrieved employee timecards in a manner that favors Employer. Indeed, with Employer’s strict policies against arriving to work late, as well as returning from meal periods late, Claimant and aggrieved employees clock in before their start time and this consistently benefitted Employer. However, Claimant’s wage statements consistently show hours rounded down.

A review of Claimant’s wage statements reveals that Employer rounds employee time to the nearest quarter-hour. Claimant and his coworkers clock in and out using an app on their personal mobile devices which is capable of capturing the exact time they clock in and out. Nonetheless, Employer rounds their entries substantially to the quarter-hour.

California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours worked.

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512.

Claimant and aggrieved employees often had meal breaks interrupted with work and sometimes were not able to clock in prior to performing the task for which their meal period interrupted.

Improper Calculation of Overtime Rate – Failure to Pay Overtime Wages

(Cal. Lab. Code §§218, 510 et. seq., 1194)

Employer pays nondiscretionary bonuses to its hourly, non-exempt employees. It is well established that nondiscretionary bonuses, such as the bonuses at issue, retroactively increase the employee’s “regular rate” of pay for purposes of calculating overtime. (Labor Code §207) The “regular rate” is calculated by dividing the hours worked in a week by all the compensation earned for that week. When an employee is later paid a bonus that is partly due to work performed in that week, this additional pay must be added into the total compensation for the week, increasing the employee’s regular rate of pay. (*Marin v. Costco Wholesale Corp.* (2008) 169 CA4th 804, 807.)

Employer paid bonuses, including nondiscretionary bonuses which increase the employee’s regular rate of pay calculation. Employer failed to include this, or any other additional income, into the regular rate calculation resulting in underpaid overtime.

As a result of these unlawful practices, Claimant and other employees have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194, and Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.* Additionally, Employer has violated Cal. Labor Code §218 and §510 and applicable Industrial Welfare Commission Wage Orders at sections (3)(A)(1) for failure to pay overtime. Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 *et seq.*

Failure to Properly Calculate and Pay Sick Leave Wages- Regular Rate

Cal. Labor Code §§246, 2698 *et seq*

Employers must calculate paid sick leave for non-exempt employees in one of two ways:

- (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; [or]
- (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

Labor Code § 246 (1)

Employer paid bonuses, including nondiscretionary bonuses. Employer failed to include this, or any other additional income, into the regular rate calculation resulting in underpaid sick pay. Claimant and aggrieved employees were paid sick leave wages at their base hourly rates of pay, which is less than required under either of the two alternative methods of calculation provided by Labor Code section 246(l).

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

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

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

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 227.3, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant did not receive all of his wages due on the date of his termination. Some payments remained due and owing until approximately a week following his termination.

Failure to Permit Compliant Meal Periods

(Cal. Labor Code §§226 (a), 226.7, 512, 558, 1198, 2698 *et seq.*, Wage Order)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Claimant and aggrieved employees often missed meal periods, and meal periods that were permitted were often short or interrupted. Employees were unable to leave the premises during meal periods and when they worked over 10 hours, employees never received second meal periods. Claimant’s meal periods were over only between 20-30 minutes, and late due to staffing and the press of work. These conditions applied to all aggrieved employees. Claimant also recalls being called back to work early from meal periods due to inadequate staffing practices. Claimant observed his coworkers missing meal breaks, as well as having meal breaks interrupted or cut short.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because

Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Rounding Meal Period Time Entries

Meal periods were also noncompliant because Employer rounded and thus altered timeclock entries for meal periods so that they do not show a meal period violation. Our Supreme Court has recently re-emphasized the importance of fully compliant meal periods, holding that employers must record meal period time entries to the exact minute, prohibiting rounding or shaving time for employee meal periods. (*Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 67.)

Employer rounded all clock in and out entries, including those for meal periods.

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., Wage Orders)

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that employees frequently missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Claimant explains that he never received a rest break while working for Employer. Claimant and aggrieved employees were expected to work straight through their shifts with the only break in the day a meal break, which was often not compliant.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(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 work day that the rest period is not

provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Claimant and aggrieved employees clocked in and out using an app on their mobile phones, although Employers did not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code.

Failure to Provide Accurate Itemized Wage Statements

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

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimants and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked, and overtime pay, sick pay at the correct rate, and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable

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

Wage statements do not state the total hours worked. Additionally, due to rounding, employees are unable to determine the actual number of hours worked by reviewing wage statements.

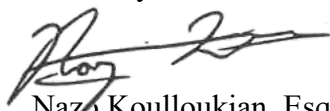
Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

Conclusion

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

Sincerely,

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

Nazo Koulloukian, Esq.
Attorney for Claimant