

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: John Doyle

1 ANTHONY J. ORSHANSKY, Cal. Bar No. 199364
2 anthony@counselonegroup.com
3 JUSTIN KACHADOORIAN, Cal. Bar No. 260356
4 justin@counselonegroup.com
5 **COUNSELONE, P.C.**
6 9301 Wilshire Boulevard Suite 650
7 Beverly Hills, California 90210
8 Telephone: (310) 277-9945
9 Facsimile: (424) 277-3727

10 Attorneys for Plaintiff GIOVANNI MITCHELL,
11 on behalf of himself and all others similarly situated
12

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF LOS ANGELES**
15

16 GIOVANNI MITCHELL, as an individual
17 and on behalf of all other aggrieved
18 employees,

19 Plaintiff,

20 vs.

21 THE MADERA GROUP LLC, a Nevada
22 limited liability company; TOCAYA
23 ORGANICA, LLC, a California limited
24 liability company; TOCAYA
25 MANAGEMENT LLC, a Nevada limited
26 liability company; TOCA MADERA WEHO
27 LLC, a California limited liability company;
28 and DOES 1 through 100, inclusive

Defendants.

Case No.: **20STCV24075**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 et seq.)**

UNLIMITED CIVIL CASE

DEMAND FOR JURY TRIAL

1 Plaintiff GIOVANNI MITCHELL (“Plaintiff”), on behalf of himself and all other
2 aggrieved employees, hereby brings this Representative Action Complaint (“Complaint”)
3 against defendants THE MADERA GROUP LLC, a Nevada limited liability company;
4 TOCAYA ORGANICA, LLC, a California limited liability company; TOCAYA
5 MANAGEMENT LLC, a Nevada limited liability company; TOCA MADERA WEHO LLC, a
6 California limited liability company; and DOES 1 through 100, inclusive (collectively
7 “Defendants”), and on information and belief alleges as follows:

8 **JURISDICTION**

9 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
10 this representative action for recovery of civil penalties under Labor Code section 2698 *et seq.*
11 This Court has jurisdiction over Defendants’ violations of the California Labor Code because
12 the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue as to each Defendant is proper in this judicial district pursuant to
15 California Code of Civil Procedure sections 395(a) and 395.5, as at least some of the acts and
16 omissions complained of herein occurred in the County of Los Angeles. Further, at all times
17 relevant herein Defendants maintained offices and conducted business within the County of
18 Los Angeles.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times
21 herein, Plaintiff was, and currently is, a California resident. Plaintiff was employed by
22 Defendants as an hourly employee.

23 4. Plaintiff is informed and believes, and based thereon alleges, that going back to
24 the beginning of the statute of limitations period and continuing to the present, Defendants did
25 (and do) business by operating some of their restaurants in Los Angeles County, California,
26 where Plaintiff was employed by Defendants.

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1 5. Plaintiff is informed and believes, and thereon alleges, that at all times
2 mentioned herein, Defendants were licensed to do business in California and the County of Los
3 Angeles and were the employers of Plaintiff and the aggrieved employees (as defined herein).

4 6. Plaintiff does not know the true names, capacities, relationships and/or the
5 extent of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in
6 this lawsuit. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such
7 fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and
8 capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each
9 fictitiously named defendant is and was responsible in some way for the alleged wage and hour
10 violations and other wrongful conduct which subjected Plaintiff and other aggrieved
11 employees, as defined below, to the illegal employment practices, wrongs and injuries
12 complained of herein. All references in this Complaint to “Defendants” shall be deemed to
13 include all DOE Defendants.

14 7. At all times herein mentioned, each of said Defendants participated in the doing
15 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore,
16 the Defendants, and each of them, were the agents, servants, and employees of each and every
17 one of the other Defendants, as well as the agents of all Defendants, and at all times herein
18 mentioned were acting within the course and scope of said agency and employment.
19 Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every
20 one of the acts or omissions complained of herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the
23 course and scope of and in pursuance of said joint venture, partnership, and common
24 enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of
25 Plaintiff and all aggrieved employees (as defined herein).

26 **REPRESENTATIVE ACTION ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as an hourly employee from June 2018 to
28 May 2019.

1 10. Plaintiff was not provided all legally required meal periods due to Defendants'
2 meal period policies/practices, which routinely failed to provide Plaintiff and other aggrieved
3 employees with legally compliant meal periods. Plaintiff asserts that there are compliance
4 issues *vis-à-vis* meal breaks - some are late, missed, short, or interrupted. Labor Code sections
5 226.7 and 512, as well as Section 11 of California Wage Order No. 5-2001, mandates the
6 following for meal breaks: (1) No employer shall employ any person for a work period of more
7 than five (5) hours without a meal break of not less than 30 minutes (Wage Order No. 5-2001,
8 Section 11), and (2) An employer may not employ an employee for a work period of more than
9 ten (10) hours per day without providing a second meal break of not less than 30 minutes.
10 Although Plaintiff and other aggrieved employees were not provided with all legally compliant
11 meal periods to which they were entitled, Defendants failed to pay Plaintiff and other
12 aggrieved employees the required meal period premiums for each workday in which a meal
13 period violation occurred, as required by Labor Code section 226.7.

14 11. Additionally, to the extent Defendants interrupted Plaintiff and other aggrieved
15 employees during meal periods by requiring or pressuring them to return to work before
16 completing their thirty (30) minute meal periods, the unpaid meal period time constitutes off-
17 the-clock hours resulting in unpaid minimum wages (along with potentially unpaid overtime
18 wages) owed to Plaintiff and other aggrieved employees.

19 12. Plaintiff was not authorized and permitted to take a rest period for every four (4)
20 hours worked (or major fraction thereof) due to Defendants' rest period policies/practices.
21 Specifically, Plaintiff and other aggrieved employees could only take rest periods when there
22 was no work to be performed. As a result, Defendants rarely authorized and permitted Plaintiff
23 and other aggrieved employees to take any rest periods. Furthermore, even when employees
24 were able to take rest periods, they were not always permitted to leave the premises, in
25 violation of *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257. In the event that a
26 required paid rest period was not authorized and permitted, Defendants did not pay the rest
27 period premium wages required by Labor Code section 226.7.

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1 13. Plaintiff alleges that Defendants did not fully compensate him for all hours
2 worked. Specifically, Plaintiff and other aggrieved employees were required to perform pre-
3 and post- shift activities that were off-the-clock, as well as during meal periods. Due to
4 Defendants' assignment of workloads and their failure to schedule adequate staffing, Plaintiff
5 and other aggrieved employees were compelled to perform work off-the-clock. Defendants
6 also adjusted time records to reflect that Plaintiff and other aggrieved employees (1) had
7 taken 30-minute lunch periods and (2) to minimize the incidence of overtime. Moreover,
8 Plaintiff and other aggrieved employees performed job duties off-the-clock as a result of
9 Defendants' uneven rounding practice that failed to compensate for all hours worked.
10 Through these policies and practices, Defendants thus artificially reduced the actual hours
11 worked and ultimately disadvantaged Plaintiff and other aggrieved employees. As a result,
12 Defendants failed to pay Plaintiff and other aggrieved employees for all hours actually
13 worked, resulting in unpaid minimum and overtime wages.

14 14. Plaintiff alleges that he occasionally worked split shifts. A split shift is a work
15 schedule that is interrupted by non-paid and non-working time periods established by the
16 employer. Employees are entitled to additional pay known as a split shift premium when
17 their schedule includes a split shift. The premium is equal to one hour of pay at the rate of the
18 minimum wage. Plaintiff and other aggrieved employees worked split shifts without
19 receiving split shift premium pay.

20 15. Despite that Plaintiff showed up for work at his regularly schedule times,
21 some days there was insufficient work, and then he was sent home by his supervisors. On
22 such days, employees must be paid for at least half of the hours scheduled to work, but in no
23 case less than two (2) hours nor more than four (4) hours at the employee's regular rate of
24 pay; this is called reporting-time pay. Defendants did not pay Plaintiff and other aggrieved
25 employees sufficient reporting-time pay.

26 16. As a result of Defendants' failure to, *inter alia*, pay all minimum and overtime
27 wages as well as meal and rest period premium wages, Defendants maintained inaccurate
28 payroll records, issued inaccurate wage statements to Plaintiff and other aggrieved employees,

1 and failed to pay Plaintiff and other aggrieved employees all wages within the time permissible
2 under California Labor Code section 204 and due at the time of separation of employment.

3 17. Plaintiff alleges that he incurred necessary business expenses in the scope of
4 his employment. Defendants failed to reimburse Plaintiff and other aggrieved employees for
5 necessary business expenses incurred, in violation of Labor Code section 2802. See Lab.
6 Code § 2802(a) (“An employer shall indemnify his or her employee for all necessary
7 expenditures or losses incurred by the employee in direct consequence of the discharge of his
8 or her duties.”); *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App. 4th 1137.
9 There is a “strong public policy” in favor of indemnifying employees for expenses incurred
10 in the course and scope of their employment. *Edwards v. Arthur Andersen LLP* (2008) 44
11 Cal. 4th 937, 952. To further this public policy, reimbursed amounts must be clearly
12 identifiable on the employee’s pay stub. *Gattuso v. HarteHanks Shoppers, Inc.* (2007) 42
13 Cal. 4th 554, 572.

14 18. Based on the foregoing, Plaintiff seeks to represent himself and all other
15 aggrieved employees, as defined by Labor Code section 2699(c), which includes all non-
16 exempt or hourly employees of Defendants who have worked for Defendants during the time
17 period of March 6, 2019 through the present date.

18 **FIRST CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(AGAINST ALL DEFENDANTS)**

21 19. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
22 fully set forth herein.

23 20. Defendants have committed several Labor Code violations against Plaintiff and
24 other aggrieved employees. Plaintiff, an aggrieved employee, acting on behalf of himself and
25 other aggrieved employees, brings this representative action against Defendants to recover the
26 civil penalties due to Plaintiff, other aggrieved employees, and the State of California
27 according to proof pursuant to Labor Code section 2699 (a) and (f) including, but not limited
28 to: (1) \$100.00 for each initial violation and \$200.00 for each subsequent violation or willful or

1 intentional violation pursuant to Labor Code section 210 for each failure to pay each employee,
2 plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00
3 for each subsequent violation pursuant to Labor Code section 558 per employee per pay
4 period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation
5 pursuant to Labor Code section 1197.1 per employee per pay period; (4) \$250.00 for each
6 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code section
7 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00
8 for each subsequent violation per employee per pay period for those violations of the Labor
9 Code for which no civil penalty is specifically provided, based on the following Labor Code
10 violations:

- 11 a. Defendants violated Labor Code sections 510, 558, 1194 and 1198 by failing to
12 pay Plaintiff and other aggrieved employees all overtime compensation earned;
- 13 b. Defendants violated Labor Code sections 558, 1182.12, 1194, 1194.2, 1197, and
14 1198 by failing to pay Plaintiff and other aggrieved employees the statutory
15 minimum wage for all hours worked;
- 16 c. Defendants violated Labor Code sections 226.7, 512, 558, and 1198 by failing
17 to authorize and permit Plaintiff and other aggrieved employees all required
18 meal periods and failing to pay meal period premiums to Plaintiff and other
19 aggrieved employees at these employees' respective regular rates of
20 compensation for meal period violations;
- 21 d. Defendants violated Labor Code sections 226.7, 516, 558, and 1198 by failing
22 to authorize and permit Plaintiff and other aggrieved employees all required rest
23 periods and failing to pay rest period premiums to Plaintiff and other aggrieved
24 employees at these employees' respective regular rates of compensation for rest
25 period violations;
- 26 e. Defendants violated Labor Code section 226 by failing to furnish Plaintiff and
27 other aggrieved employees with accurate and complete itemized wage
28 statements;

- 1 f. Defendants violated Labor Code sections 201, 202, 203 by failing to timely pay
2 Plaintiff and other aggrieved employees all wages due upon separation of
3 employment;
- 4 g. Defendants violated Labor Code section 204 by failing to pay Plaintiff and other
5 aggrieved employees all wages earned at least twice during each calendar
6 month;
- 7 h. Defendants violated Labor Code sections 2800 and 2802 by failing to reimburse
8 Plaintiff and other aggrieved employees for necessary business-related expenses
9 and costs; and
- 10 i. Defendants violated Labor Code sections 558, 1174, and 1198 by failing to
11 maintain accurate records on behalf of Plaintiff and other aggrieved employees.

12 21. Pursuant to California Labor Code section 2699(i), civil penalties recovered
13 by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the
14 California Labor and Workforce Development Agency (“LWDA”) for the enforcement of
15 labor laws and education of employers and employees about their rights and responsibilities
16 and twenty-five percent (25%) to the aggrieved employees.

17 22. On March 6, 2020, Plaintiff notified Defendants via certified mail, and the
18 LWDA via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s
19 intent to bring a claim for civil penalties under California Labor Code section 2698 *et seq.* with
20 respect to the violations of the California Labor Code identified herein. Now that sixty-five
21 days have passed from Plaintiff notifying Defendants and the LWDA of these violations,
22 Plaintiff has exhausted his administrative requirements for bringing a claim under the Private
23 Attorneys General Act with respect to these violations.

24 23. Plaintiff was compelled to retain the services of counsel to file this court action
25 to protect his interests and the interests of other aggrieved employees, and to assess and collect
26 the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs,
27 which he is entitled to receive under California Labor Code section 2699.

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DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California Private Attorneys General Act, requests a trial by jury.

PRAYER

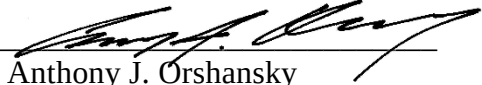
WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code sections 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code section 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each subsequent violation pursuant to Labor Code section 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code section 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code section 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the violations of Labor Code sections cited in Paragraph 20 (a)-(i) above;

2. On all causes of action, for attorneys’ fees and costs as provided by Labor Code sections 218.5, 226, 1194 *et seq.*, and Code of Civil Procedure section 1021.5; and

3. For such other and further relief the Court may deem just and proper.

Respectfully submitted,
Dated: June 25, 2020 CounselOne, PC

By: 
Anthony J. Orshansky
Attorneys for Plaintiff