

Keith A. Custis (SBN 218818)
kcustis@custislawpc.com
Simona Danesh (SBN 304117)
sdanesh@custislawpc.com
CUSTIS LAW, P.C.
1999 Avenue of the Stars, Suite 1100
Los Angeles, California 90067
Telephone: (213) 863-4276
Facsimile: (213) 863-4277

Counsel for Plaintiffs and the Proposed Classes

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

LAYONEL DEL PRADO, AMMON MENDES,
KEVIN GONZALEZ, MACKENZIE
HERNANDEZ and ELORA DORN, individually
and on behalf of all others similarly situated,

Plaintiffs,

vs.

TOCAYA MANAGEMENT LLC, a California
limited liability company; TOCAYA ORGANICA
LLC, a California limited liability company; TOCA
MADERA WEHO LLC, a California limited
liability company; THE MADERA GROUP LLC, a
California limited liability company; TOCAYA
PALISADES LLC, a California limited liability
company; TOCAYA SANTA MONICA LLC, a
California limited liability company; TOCAYA SD
LLC, a California limited liability company;
TOCAYA SOUTH BAY LLC, a California limited
liability company; TOCAYA SPORTSMAN LLC,
a California limited liability company; TOCAYA
SUNSET LLC; a California limited liability
company; TOCAYA TOLUCA LLC; a California
limited liability company; TOCAYA VENICE
LLC; a California limited liability company; TOSH
BERMAN, an individual; AMROU
ALMANASEER, an individual; MICHAEL
TANHA, an individual; and DOES 1 through 40,
inclusive,

Defendants.

Case No. 20STCV23013

**FIRST AMENDED CLASS ACTION
COMPLAINT**

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Rest Periods;
- (4) Failure to Provide Meal Periods;
- (5) Failure to Reimburse Business Expenses;
- (6) Failure to Provide Accurate Wage Statements;
- (7) Failure to Pay Wages Timely at Termination;
- (8) Violations of the Unfair Competition Law; and
- (9) Civil Penalties Pursuant to California's Private Attorneys General Act of 2004 (Labor Code § 2698, et seq.)

JURY TRIAL DEMANDED

1 Plaintiffs Layonel Del Prado, Mackenzie Hernandez and Elora Dorn, on behalf of
2 themselves and on behalf of a class of similarly situated individuals, allege upon personal
3 knowledge as to their own actions and their counsel's investigations, and upon information and
4 belief as to all other matters, as follows:

5 **INTRODUCTION**

6 1. This is a class action brought pursuant to Code of Civil Procedure Section 382 to
7 recover wages and all other available relief on behalf of Plaintiffs Mackenzie Hernandez and Elora
8 Dorn (the "Class Plaintiffs") and similarly situated current and former hourly, non-exempt
9 employees and exempt employees who worked for Defendants at their Tocaya Organica and Toca
10 Madera restaurants in California at any time from four years prior to the commencement of this
11 action until judgment is rendered. The Class Plaintiffs and similarly situated current and former
12 hourly, non-exempt and exempt employees are referred to herein as "class members."

13 2. On behalf of themselves and other class members, the Class Plaintiffs seek relief for
14 Defendants' systematic and uniform violations of the California Labor Code, California Business
15 and Professions Code, the applicable Wage Order issued by the California Industrial Welfare
16 Commission ("IWC"), IWC Wage Order No. 5-2001, Cal. Code Regs., tit. 8, § 11050, and related
17 common law principles.

18 3. The acts complained of in this Complaint have occurred, are presently occurring and
19 are expected to continue occurring within the time period from four 4 years prior to the
20 commencement of this action until judgment is rendered.

21 4. This is also a non-class representative action under the Labor Code Private
22 Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* to recover civil penalties and any
23 other available relief on behalf of the State of California, Plaintiffs Del Prado and Dorn (the
24 "PAGA Plaintiffs"), and other current and former employees who worked for Defendants as non-
25 exempt, hourly-paid and exempt employees in California, who received at least one wage
26 statement, and against whom one or more violations of any provision of the Labor Code or any
27 provision regulating hours and days of work, or establishing working conditions, in IWC Wage
28 Order No. 2-2001 were committed, as set forth in this Complaint.

PARTIES

5. Plaintiff Layonel Del Prado is and at all times relevant to this Complaint was an individual residing in Los Angeles County, California.

6. Plaintiff Mackenzie Hernandez is and at all times relevant to this Complaint was an individual residing in Los Angeles County, California.

7. Plaintiff Elora Dorn is and at all times relevant to this Complaint was an individual residing in Los Angeles County, California.

8. Except as otherwise indicated, a reference in this Complaint to “Plaintiffs” refers to all named Plaintiffs, a reference to the “Class Plaintiffs” refers to Plaintiffs Hernandez and Dorn, and a reference to the “PAGA Plaintiffs” refers to Plaintiffs Del Prado and Dorn.

9. Defendant Tocaya Management LLC (“Tocaya Management”) is and at all times relevant to this Complaint was a Nevada limited liability company that does business in Los Angeles County, California, at 8720 W. Sunset Boulevard, West Hollywood, California 90069. Upon information and belief, Tocaya Management is operating, and at all times relevant to this Complaint has operated, as an integrated enterprise with all other Entity Defendants and directly employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class members to work, and exercised control over the wages, hours and working conditions of employment of Plaintiffs and other class members.

10. Defendant Tocaya Organica LLC (“Tocaya Organica”) is and at all times relevant to this Complaint was a California limited liability company with its principal place of business located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County, California. Upon information and belief, Tocaya Organica is operating, and at all times relevant to this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class members to work, and exercised control over the wages, hours and working conditions of employment of Plaintiffs and other class members.

11. Defendant Toca Madera Weho LLC (“Toca Madera”) is and at all times relevant to this Complaint was a California limited liability company with its principal place of business

1 located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
2 California. Upon information and belief, Toca Madera is operating, and at all times relevant to this
3 Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
4 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
5 members to work, and exercised control over the wages, hours and working conditions of
6 employment of Plaintiffs and other class members.

7 12. Defendant The Madera Group LLC (“Madera Group”) is and at all times relevant to
8 this Complaint was a California limited liability company with its principal place of business
9 located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
10 California; and, as of April 27, 2018, a Nevada limited liability company with its principal place
11 business located in Incline Village, Nevada. Upon information and belief, the Madera Group is
12 operating, and at all times relevant to this Complaint has operated, as an integrated enterprise with
13 all other Entity Defendants and jointly employed Plaintiffs and other class members, suffered and
14 permitted Plaintiffs and other class members to work, and exercised control over the wages, hours
15 and working conditions of employment of Plaintiffs and other class members.

16 13. Defendant Tocaya Palisades LLC (“Tocaya Palisades”) is and at all times relevant
17 to this Complaint was a California limited liability company with its principal place of business
18 located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
19 California. Upon information and belief, Tocaya Palisades is operating, and at all times relevant to
20 this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
21 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
22 members to work, and exercised control over the wages, hours and working conditions of
23 employment of Plaintiffs and other class members.

24 14. Defendant Tocaya Santa Monica LLC (“Tocaya Santa Monica”) is and at all times
25 relevant to this Complaint was a California limited liability company with its principal place of
26 business located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles
27 County, California. Upon information and belief, Tocaya Santa Monica is operating, and at all
28 times relevant to this Complaint has operated, as an integrated enterprise with all other Entity

1 Defendants and jointly employed Plaintiffs and other class members, suffered and permitted
2 Plaintiffs and other class members to work, and exercised control over the wages, hours and
3 working conditions of employment of Plaintiffs and other class members.

4 15. Defendant Tocaya SD LLC (“Tocaya SD”) is and at all times relevant to this
5 Complaint was a California limited liability company with its principal place of business located at
6 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
7 California. Upon information and belief, Tocaya SD is operating, and at all times relevant to this
8 Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
9 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
10 members to work, and exercised control over the wages, hours and working conditions of
11 employment of Plaintiffs and other class members.

12 16. Defendant Tocaya South Bay LLC (“Tocaya South Bay”) is and at all times relevant
13 to this Complaint was a California limited liability company with its principal place of business
14 located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
15 California. Upon information and belief, Tocaya South Bay is operating, and at all times relevant to
16 this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
17 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
18 members to work, and exercised control over the wages, hours and working conditions of
19 employment of Plaintiffs and other class members.

20 17. Defendant Tocaya Sportsman LLC (“Tocaya Sportsman”) is and at all times
21 relevant to this Complaint was a California limited liability company with its principal place of
22 business located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles
23 County, California. Upon information and belief, Tocaya Sportsman is operating, and at all times
24 relevant to this Complaint has operated, as an integrated enterprise with all other Entity Defendants
25 and jointly employed Plaintiffs and other class members, suffered and permitted Plaintiffs and
26 other class members to work, and exercised control over the wages, hours and working conditions
27 of employment of Plaintiffs and other class members.

28 18. Defendant Tocaya Sunset LLC (“Tocaya Sunset”) is and at all times relevant to this

1 Complaint was a California limited liability company with its principal place of business located at
2 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
3 California. Upon information and belief, Tocaya Sunset is operating, and at all times relevant to
4 this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
5 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
6 members to work, and exercised control over the wages, hours and working conditions of
7 employment of Plaintiffs and other class members.

8 19. Defendant Tocaya Toluca LLC (“Tocaya Toluca”) is and at all times relevant to this
9 Complaint was a California limited liability company with its principal place of business located at
10 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
11 California. Upon information and belief, Tocaya Toluca is operating, and at all times relevant to
12 this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
13 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
14 members to work, and exercised control over the wages, hours and working conditions of
15 employment of Plaintiffs and other class members.

16 20. Defendant Tocaya Venice LLC (“Tocaya Venice”) is and at all times relevant to this
17 Complaint was a California limited liability company with its principal place of business located at
18 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
19 California. Upon information and belief, Tocaya Venice is operating, and at all times relevant to
20 this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
21 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
22 members to work, and exercised control over the wages, hours and working conditions of
23 employment of Plaintiffs and other class members.

24 21. Upon information and belief, defendant Tosh Berman (“Mr. Berman”) is and at all
25 time relevant to this Complaint was an individual residing in Los Angeles County, California.
26 Upon information and belief, Mr. Berman is and at all time relevant to this Complaint was an
27 owner, director, officer and/or managing agent of Defendants Tocaya Management, Tocaya
28 Organica, Toca Madera, Madera Group, Tocaya Palisades, Tocaya Santa Monica, Tocaya SD,

1 Tocaya South Bay, Tocaya Sportsman, Tocaya Sunset, and Tocaya Venice, and, therefore, is liable
2 in his individual capacity as an employer pursuant to Labor Code Section 558.1.¹

3 22. Upon information and belief, defendant Amrou Almanaseer (“Mr. Almanaseer”) is
4 and at all time relevant to this Complaint was an individual residing in both Los Angeles County,
5 California and Incline Village, Nevada. Upon information and belief, Mr. Almanaseer is and at all
6 time relevant to this Complaint was an owner, director, officer and/or managing agent of
7 Defendants Tocaya Management, Tocaya Organica, Toca Madera, Madera Group, Tocaya
8 Palisades, Tocaya Santa Monica, Tocaya SD, Tocaya South Bay, Tocaya Sportsman, Tocaya
9 Sunset, and Tocaya Venice, and, therefore, is liable in his individual capacity as an employer
10 pursuant to Labor Code Section 558.1.

11 23. Upon information and belief, defendant Michael Tanha (“Mr. Tanha”) is and at all
12 time relevant to this Complaint was an individual residing in Los Angeles County, California.
13 Upon information and belief, Mr. Tanha is and at all time relevant to this Complaint was an owner,
14 director, officer and/or managing agent of Defendants Tocaya Management, Tocaya Organica,
15 Toca Madera, Madera Group, Tocaya Palisades, Tocaya Santa Monica, Tocaya SD, Tocaya South
16 Bay, Tocaya Sportsman, Tocaya Sunset, and Tocaya Venice, and, therefore, is liable in his
17 individual capacity as an employer pursuant to Labor Code Section 558.1.

18 24. Plaintiffs are unaware of the true names and capacities, whether individual,
19 corporate, associate, or otherwise of the defendants sued herein as Doe 1 through 40. Plaintiffs
20 therefore sue those defendants by fictitious names. Plaintiffs will amend this Complaint to show
21 the true names and capacities of each Doe defendant when such information has been ascertained.

22 25. Except as otherwise noted, a reference to “Defendants” in this Complaint shall
23 include the named Defendants and the Doe defendants. Defendants Tocaya Management, Tocaya
24

25 ¹ Mr. Berman, Mr. Almanaseer and Mr. Tanha are also liable in their individual capacities for the
26 civil penalties, attorneys’ fees and litigation costs available pursuant to the Labor Code Private
27 Attorneys General Act of 2004, Labor Code Section 2698, *et seq.* See, e.g., *Atempa v. Pedrazzani*
28 (2018) 27 Cal. App. 5th 809, 824 (holding that “the language in both section 558(a) and section
1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant
employer] as a person *other than the corporate employer* subject to the civil penalties awarded by
the trial court under those two statutes”) (emphasis in original).

Organica, Toca Madera, Madera Group, Tocaya Palisades, Tocaya Santa Monica, Tocaya SD, Tocaya South Bay, Tocaya Sportsman, Tocaya Sunset, and Tocaya Venice are sometimes referred to collectively in this Complaint as the “Entity Defendants.” Mr. Berman, Mr. Almanaseer and Mr. Tanha are sometimes referred to collectively in this Complaint as the “Individual Defendants.”

26. Upon information and belief, Defendants acted as the employers and/or joint employers of Plaintiffs, and directly or indirectly, or through actual agents, ostensible agents and/or other persons, employed Plaintiffs, and exercised control over their wages, hours, and working conditions. Defendants’ control included, but was not limited to, the authority to hire and fire, assign work tasks, engage in day-to-day supervision, and control of Plaintiffs’ employee records.

27. Upon information and belief, at all relevant times, each of the Defendants is and was the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or abettor of each of the other Defendants, and in doing the things alleged was acting within the course and scope of their agency or employment and with the knowledge and consent of each of the other Defendants. Upon information and belief, the acts and conduct of each of the Defendants was known to, and authorized and ratified by, the remaining Defendants, and each of the Defendants is jointly and severally responsible and liable for the damages alleged herein.

Integrated Enterprise and Single Employer Allegations

28. Defendants constitute an “integrated enterprise” with interrelated operations, common management, centralized control of labor relations, and common ownership and/or financial controls (the “Tocaya/Toca Integrated Enterprise”)—and are thus properly viewed as a single employer in the context of this action.

29. The Tocaya/Toca Integrated Enterprise owns and operates approximately fourteen (14) restaurants in California.² Although the Tocaya Organica and Toca Madera locations are generally registered as separate legal entities, the entities have chosen to handle their employer-

² The total number of restaurants is unclear, but can be ascertained through discovery. Defendants are in the process of opening, or have opened, new locations including a Tocaya Organica in Long Beach, California; and/or new ventures including but not limited to a delivery-only restaurant named Burritos Locos. See <https://www.burritoslocosla.com/> (last visited Oct. 30, 2020). Upon information and belief, all employees of Burritos Locos are employees of Tocaya Management and, thus, are class members.

1 employee relationships jointly and have chosen to operate as a single integrated enterprise. Mr.
2 Berman, the CEO of the Madera Group, refers to the employees of Tocaya Organica and Toca
3 Madera collectively as “team members” and a part of the “Madera Group Family.”

4 30. California courts as well as federal courts in the Ninth Circuit apply the “integrated
5 enterprise” test to claims arising from alleged violations of the California Labor Code. *See, e.g.,*
6 *Laird v. Capital Cities/ABC, Inc.* (1998) 69 Cal. App. 4th 727, 737; *Kenny v. Regis Corp.* (N.D.
7 Cal. Mar. 10, 2008) No. 06–07521, 2008 WL 686710, at *3; *Huse v. Auburn Honda* (E.D. Cal.
8 June 10, 2005) No. 04–0227, 2005 WL 1398521, at *3 (employing the integrated enterprise test to
9 determine whether a defendant was an employer within the meaning of the California Labor Code);
10 *Serrano v. 180 Connect, Inc.* (N.D. Cal., Aug. 11, 2006, No. C 06-1363 TEH) 2006 WL 2348888,
11 at *2, *rev'd on other grounds* (9th Cir. 2007) 478 F.3d 1018. Courts have also applied the
12 integrated enterprise test in the context of addressing UCL claims predicated upon California Labor
13 Code violations. *See Maddock v. KB Homes, Inc.* (C.D. Cal. 2007) 631 F. Supp. 2d 1226, 1238.

14 31. Under *Laird*, in determining whether two entities are liable as a single employer or
15 an “integrated enterprise,” courts consider four factors: (1) centralized control of labor relations;
16 (2) interrelation of operations; (3) common management; and (4) common ownership or financial
17 control. *Laird*, 68 Cal. App. 4th at 737. All of these factors are satisfied here.

18 32. The Tocaya/Toca Integrated Enterprise has centralized the control of labor relations
19 and set up common management through Tocaya Management, the Madera Group and potentially
20 other entities that may be discovered through investigation and discovery.

21 33. Tocaya Management directly employs all employees of the Tocaya Organica and
22 Toca Madera restaurants. Upon information and belief, Defendants formed Tocaya Management to
23 serve as a payroll processor for the Tocaya/Toca Integrated Enterprise. Upon information and
24 belief, Tocaya Management does not generate any revenue itself from Tocaya/Toca Integrated
25 Enterprise’s restaurant business.

26 34. The Tocaya/Toca Integrated Enterprise has a single human resource department. In
27 email correspondence to employees of Tocaya Organica and Toca Madera, the Tocaya/Toca
28 Integrated Enterprise’s human resource department invites employees of both Tocaya Organica and

1 Toca Madera to send questions or concerns to the “Human Resource team by emailing” the team at
2 a single email address: hr@themaderagroup.com.

3 35. Kristi Thompson served as the Human Resource director for the Tocaya/Toca
4 Integrated Enterprise from October 2015 to October 2019. Melinda Barrow succeeded Ms.
5 Thompson and currently serves as the Human Resource director for the Tocaya/Toca Integrated
6 Enterprise. Angelica Barker currently serves as the Human Resource Coordinator for the
7 Tocaya/Toca Integrated Enterprise. Ms. Thompson, Ms. Barrow and Ms. Barker all identify The
8 Madera Group as their employer. However, during their respective tenures working for the
9 Tocaya/Toca Integrated Enterprise, Ms. Thompson, Ms. Barrow and Ms. Barker have provided
10 human resource services to all employees of all Tocaya Organica and Toca Madera locations.

11 36. Additionally, upon information and belief, the Tocaya/Toca Integrated Enterprise
12 has used a single employee handbook for all employees, regardless of whether the employees
13 provide services to the Tocaya/Toca Integrated Enterprise through Tocaya Organica or Toca
14 Madera.

15 37. The Madera Group website also allows prospective employees to apply for work at
16 any of the Tocaya Organica or Toca Madera locations in California or Arizona through the
17 “Careers” page of its website. *See* <https://www.themaderagroup.com/careers> (last visited on Oct.
18 30, 2020).

19 38. The Tocaya/Toca Integrated Enterprise’s operations are also interrelated. The
20 Madera Group’s website boasts that “[t]he Madera Group develops, owns and operates a collection
21 of leading restaurant venues through (sic) Southern California and Arizona including Tocaya
22 Organica and Toca Madera.” The Madera Group management team identified on the Madera
23 Group website manages all of the restaurant venues from its headquarters in West Hollywood,
24 California. *See* <https://www.themaderagroup.com/team> (last visited on Oct. 30, 2020). Further,
25 upon information and belief, revenue generated from the sales at Tocaya Organica and Toca
26 Madera restaurants is deposited into accounts held by Entity Defendants other than Tocaya
27 Management, the direct employer of Plaintiffs and class members. Those Entity Defendants, in
28 turn, transfer only an amount sufficient to cover payroll expenses to Tocaya Management. Upon

information and belief, the Tocaya/Toca Integrated Enterprise insufficiently capitalizes Tocaya Management such that it will lack sufficient funds to cover the judgment in this litigation or in any employment-related litigation asserted against Tocaya Management. Additionally, administrative and training functions are interrelated and operate from the Madera Group headquarters located at 8720 W. Sunset Boulevard, Suite A, West Hollywood, California 90069.

39. The Tocaya/Toca Integrated Enterprise's operations are also interrelated because various Entity Defendants and Individual Defendants serve as the managers of the other Entity Defendants. For example, Tocaya Organica serves as the manager of Tocaya Palisades, Tocaya Santa Monica, Tocaya South Bay, Tocaya Toluca and Tocaya Venice. Tocaya Holdings LLC serves as the manager of Tocaya Organica and Tocaya Management. The Madera Group, in turn, serves as the manager of Tocaya Holdings LLC. The Madera Group is also managed by Individual Defendants Tosh Berman and Amrou Almanaseer.

40. Each of the Tocaya Organica and Toca Madera locations in California, as well as the Madera Group, list their business address with the California Secretary of State as 8720 W. Sunset Boulevard, West Hollywood, California 90069.

41. Upon information and belief, each of the Entity Defendants share a degree of common ownership and financial control by Tosh Berman, Amrou Almanaseer and Michael Tanha who are members of the entities operating as limited liability companies and/or officers in the entities operating as limited liability companies.

JURISDICTION AND VENUE

42. The California Superior Court has subject matter jurisdiction over all causes of action alleged in this Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other courts." Plaintiffs' claims arise under the laws of the State of California, and are not statutorily assigned to any other trial court.

43. The amount in controversy under this Complaint exceeds the minimal jurisdictional limit of the Superior Court and will be established according to proof at trial.

44. The Court has personal jurisdiction over the Defendants because they are residents

1 of and/or are doing business in the State of California.

2 45. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and
3 395.5 because the principal place of business of Defendants is located in Los Angeles County,
4 Defendants operate extensively in Los Angeles County, Plaintiffs reside in Los Angeles County
5 and the liability for the alleged wrongs described herein arose in Los Angeles County.

6 46. Upon information and belief, this action may not be removed to the United States
7 District Court pursuant to the Class Action Fairness Act, 28 U.S.C. Section 1332(d) (“CAFA”),
8 because the local controversy exception applies. *See* 28 U.S.C. § 1332(d)(4). Additionally, because
9 this action is based exclusively on California statutes and law, including the California Labor Code,
10 IWC Wage Order No. 5–2001, Cal. Code Regs., tit. 8, § 11050 and California Business and
11 Professions Code, no federal question exists on which to base removal.

12 **GENERAL ALLEGATIONS**

13 47. Defendants operate a chain of restaurants in California called Tocaya Organica and
14 a related upscale restaurant named Toca Madera that is located in Los Angeles, California.

15 48. Defendants employed Plaintiff Layonel Del Prado as a non-exempt, hourly paid
16 employee at the Toca Madera restaurant located in West Hollywood, California. Mr. Del Prado
17 worked for Defendants at Toca Madera from approximately July 2018 until February 2020.

18 49. Defendants employed Plaintiff Mackenzie Hernandez as a non-exempt, hourly-paid
19 employee at multiple Tocaya Organica restaurants in Los Angeles County, California. Ms.
20 Hernandez worked for Defendants at Tocaya Organica from approximately November 2017 until
21 April 2019.

22 50. Defendants employed Plaintiff Elora Dorn as a non-exempt, hourly-paid employee
23 at multiple Tocaya Organica restaurants located in Los Angeles County, California. Ms. Dorn
24 worked for Defendants at Tocaya Organica from approximately March 2018 until January 2020.

25 51. Upon information and belief, Defendants subjected Plaintiffs and other current and
26 former non-exempt and exempt class members to the same policies, practices and procedures
27 governing the control and payment of wages and hours worked, the reimbursement of business
28 expenses and uniformly denied Plaintiffs and other class members the rights afforded to them

1 under the Labor Code, IWC Wage Order No. 5–2001 and the California Business and Professions
2 Code.

3 52. Upon information and belief, Defendants issued the same formatted wage
4 statements to Plaintiffs and other class members.

5 53. Upon information and belief, Defendants process payroll for all departing class
6 members in the same manner, regardless of the manner in which each employee’s employment
7 ends.

8 54. Plaintiffs generally worked three (3) to five (5) shifts per week of between five (5)
9 and six (6) hours, shifts of approximately eight (8) hours and shifts in excess of eight (8) hours
10 including shifts in excess of ten (10) hours.

11 55. On information and belief, other class members worked, and continue to work,
12 shifts of between five (5) and six (6) hours, shifts of approximately eight (8) hours and shifts in
13 excess of eight (8) hours including shifts in excess of ten (10) hours.

14 **A. Defendants’ Failure to Pay Minimum Wage For All Hours Worked**

15 56. Compensable work time is defined by the applicable IWC Wage Order No. 5 as “the
16 time during which an employee is subject to the control of an employer, and includes all the time
17 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs.
18 tit. 8, § 11050(2)(G) (defining “Hours Worked”).

19 57. In 2018, the California Supreme Court held that “The relevant statutes and wage
20 order do not allow employers to require employees to routinely work for minutes off-the-clock
21 without compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829, 848.

22 58. Upon information and belief, Defendants knew or should have known that Plaintiffs
23 and other class members were entitled to receive at least minimum wages for all hours worked, and
24 that they were not receiving at least minimum wages for all hours worked.

25 59. Upon information and belief, Defendants’ compensation practices and policies
26 systematically failed to pay Plaintiffs and other class members the applicable minimum wage for
27 all hours worked for several reasons.

28 60. First, Defendants had a uniform policy and/or practice that required and incentivized

1 general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out
2 times to eliminate hours worked from the time records of Plaintiffs and other class members.
3 Defendants routinely engaged in time-shaving to eliminate overtime hours worked from the time
4 records of Plaintiffs and other class members. Defendants also routinely edited clock-in and out
5 times to eliminate meal period penalties.

6 61. Second, Defendants had a uniform policy and/or practice that required Plaintiffs and
7 other class members to download various mobile applications to their personal cell phones and to
8 access them frequently for business purposes while they were off the clock. Defendants required
9 Plaintiffs and class members to download the HotSchedules, Homebase and/or Radar Schedules
10 (formerly Ctuit Schedules) apps onto their personal cell phones and to access them frequently
11 while they were off-the-clock for scheduling and communication purposes. Plaintiff Gonzalez and
12 class members working as non-exempt supervisors and/or in other non-exempt managerial
13 positions were also required to download additional applications to their personal cell phones
14 including but not limited to Slack, Freshpoint, Sysco, and Paycom, and to access them frequently
15 while they were off the clock. Defendants also required Plaintiffs and other class members to
16 review and respond to business-related messages they received on their personal cell phones while
17 they were off-the-clock.

18 62. Third, Defendants routinely required Plaintiffs and other class members to clock out
19 for a meal period but to continue working while they were off-the-clock during their meal period.
20 Defendants failed to pay the applicable minimum wage for any of those off-the-clock hours
21 worked.

22 63. Fourth, IWC Wage Order 5-2001, Section 5(A) provides that "Each workday an
23 employee is required to report for work and does report, but is not put to work or is furnished less
24 than half said employee's usual or scheduled day's work, the employee shall be paid for half the
25 usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4)
26 hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." In
27 violation of IWC Wage Order 5-2001, Section 5(A), Defendants failed to pay the applicable
28 minimum wage for reporting time wages to Plaintiffs and other class members when they arrived

1 to work a scheduled shift and were sent home immediately or before the mid-point of their
2 scheduled shift.

3 **B. Defendants' Failure to Pay Overtime Compensation**

4 64. Upon information and belief, Defendants knew or should have known that Plaintiffs
5 and other class members were entitled to receive overtime compensation for hours worked in
6 excess of eight (8) hours in a day and forty (40) hours in a week, and that they were not receiving
7 required overtime compensation.

8 65. As detailed above, Defendants had a uniform policy and/or practice that required
9 and incentivized general managers and other managerial staff to edit non-exempt employees'
10 clock-in and clock-out times to reduce and/or eliminate hours worked from the time records of
11 Plaintiffs and other class members, including overtime hours.

12 66. Defendants also knowingly required, suffered and permitted Plaintiffs and other
13 class members to perform duties off-the-clock and failed to compensate them for all hours worked,
14 including all overtime hours worked. Because Plaintiffs and other class members occasionally
15 worked close to eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or
16 in close to and/or in excess of forty (40) hours in week, some of the off-the-clock work performed
17 by Plaintiffs and other class members qualified as overtime, and should have been paid at the
18 applicable overtime rate.

19 **C. Defendants' Failure to Provide Off-Duty Rest Periods**

20 67. Upon information and belief, Defendants knew or should have known that Plaintiffs
21 and other class members were entitled to receive all 10-minute rest periods in accordance with the
22 Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at
23 Plaintiffs' and other class members' regular rates of pay when a compliant rest period was missed,
24 and that Plaintiffs and other class members did not receive all rest periods or payment of one (1)
25 additional hour of pay at Plaintiffs' and other class members' regular rates of pay when a compliant
26 rest period was missed.

27 68. During the relevant time period, the Tocaya/Toca Integrated Enterprise's scheduling
28 and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and

1 other Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

2 69. Notwithstanding any formal written policy to the contrary, Defendants' actual
3 custom and business practice was to undermine any formal policy of providing legally required rest
4 periods by pressuring employees to perform their duties in ways that omitted breaks, including, but
5 not limited to, scheduling a heavy workload that made taking rest periods extremely difficult,
6 maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest
7 periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking
8 legally protected rest periods. Plaintiffs and other class members routinely worked through their
9 shifts without being able to take a legally complaint rest period.

10 70. Additionally, Defendants systematically failed to provide Plaintiffs and other class
11 members one additional hour of compensation at their regular rate of pay for each workday that an
12 off-duty, uninterrupted 10-minute rest period was not provided.

13 71. Upon information and belief, Defendants failed to implement any practice or
14 procedure to pay rest period premiums when Plaintiffs and other class members missed a required
15 rest period.

16 72. Defendants also failed to compensate Plaintiffs and other class members for the time
17 they spent working instead of taking legally compliant rest periods.

18 **D. Defendants' Failure to Provide Compliant Off-Duty Meal Periods**

19 73. Upon information and belief, Defendants knew or should have known that Plaintiffs
20 and other class members were entitled to meal periods in accordance with the Labor Code or
21 payment of one (1) additional hour of pay at their regular rates of pay when they were not provided
22 with timely, uninterrupted, thirty (30) minute meal periods, and that Plaintiffs and other class
23 members were not provided with all required meal periods or payment of one (1) additional hour of
24 pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30)
25 minute meal period.

26 74. Throughout the relevant period, Plaintiffs and other class members routinely worked
27 shifts of between five (5) and six (6) hours, or more, and were thus entitled to a timely,
28 uninterrupted thirty (30) minute meal period prior to the end of their fifth hour of work.

75. During the relevant time period, the Tocaya/Toca Integrated Enterprise's scheduling and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and other Aggrieved Employees from being relieved of all duty in order to take compliant meal periods.

76. Notwithstanding any formal written policy to the contrary, Defendants' actual custom and business practice was to undermine any formal policy of providing legally required meal periods by pressuring employees to perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking legally protected meal periods.

77. Additionally, Defendants had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to eliminate evidence of untimely or missed meal periods.

78. Further, Defendants also required Plaintiffs and other class members to clock out for a meal period, but to continue working while they were off the clock.

79. Upon information and belief, Plaintiffs and other class members did not validly or legally waive their meal periods by mutual consent with Defendants or otherwise.

80. Throughout the relevant time period, Defendants also systematically failed to provide Plaintiffs and other class members with one additional hour of compensation at their regular rate of pay for each work day that Defendants deprived Plaintiffs and other class members of an off-duty, uninterrupted 30-minute meal period.

81. Upon information and belief, Defendants failed to implement any practice or procedure to pay meal period premiums when Plaintiffs and other class members missed a required meal period.

E. Defendants' Failure To Reimburse Necessary Business Expenses

82. Upon information and belief, Defendants knew or should have known that Plaintiffs and other class members were entitled to receive full reimbursement for all business-related

1 expenses and costs they incurred during the course and scope of their employment, and that they
2 did not receive full reimbursement of applicable business-related expenses and costs incurred.

3 83. Defendants systematically failed to reimburse Plaintiffs and other class members for
4 necessary business expenses incurred at the direction of Defendants in at least three respects.

5 84. First, during the relevant time period, Defendants had a uniform policy and/or
6 practice that required Plaintiffs and other class members to use their personal cell phone and cell
7 phone data plan to carry out their job duties. For example, Plaintiffs and other class members were
8 required to download the HotSchedules, Homebase and Radar Schedules (formerly Ctu
9 Schedules) mobile applications, among others, to their personal cell phones and to access them
10 frequently for scheduling and communication purposes. As detailed above, Plaintiffs and other
11 class members were also required to respond to Defendants' work-related messages; and Plaintiffs
12 and other class members used their personal cell phones to respond to such messages. Although
13 Defendants required Plaintiffs and other class members to regularly use their personal cell phones
14 and cell phone data to carry out work-related responsibilities, Defendants failed to reimburse
15 Plaintiffs and other class members for the reasonable costs of their personal cell phones and cell
16 phone data plans.

17 85. Second, during the relevant time period, Defendants also had a consistent policy
18 and/or practice that required Plaintiffs and other class members to purchase certain mobile
19 applications for the benefit of Defendants.

20 86. Third, during the relevant time period, Defendants also had a consistent policy
21 and/or practice that required Plaintiffs and other class members who worked as supervisors and/or
22 in other managerial positions to use their personal vehicle, gas and auto insurance to carry out
23 work-related duties for the benefit of Defendants, but Defendants failed to reimburse Plaintiffs and
24 other class members for the reasonable costs of the use of their personal vehicle, fuel, auto
25 insurance, vehicle maintenance costs and other vehicle-related expenses.

26 **F. Inaccurate Wage Statements and Failure To Maintain Accurate Payroll Records**

27 87. Upon information and belief, Defendants knew or should have known that Plaintiffs
28 and other class members were entitled to receive complete and accurate wage statements in

1 accordance with California law, and that Defendants were not providing Plaintiffs and other class
2 members with complete and accurate wage statements.

3 88. Throughout the relevant time period, Defendants had a consistent policy and/or
4 practice of not providing accurate wage statements to Plaintiffs and other class members. The wage
5 statement deficiencies include the following:

- 6 a. failing to include the accurate amount of “gross wages,” “net wages” and “total
7 hours worked by the employee” because Defendants intentionally edited Plaintiffs’
8 and other class members’ clock-in and clock-out times to reduce and/or eliminate
9 hours worked from their time records;
- 10 b. failing to include the accurate amount of “gross wages,” “net wages” and “total
11 hours worked by the employee” because Defendants failed to record all hours
12 worked by Plaintiffs and other class members when they worked off-the-clock;
- 13 c. failing to include meal and rest period penalty wages when Defendants failed to
14 provide lawful meal and rest periods; and
- 15 d. failing to include the names and addresses of the legal entities that employed
16 Plaintiffs and class members.

17 89. Because Defendants failed to provide Plaintiffs and other class members with
18 accurate, itemized wage statements, Plaintiffs and other class members were never aware of what
19 their true wages should have been, and how they should have been calculated.

20 90. Upon information and belief, Defendants also knew or should have known that they
21 had a duty to maintain accurate and complete payroll records in accordance with the Labor Code
22 and applicable IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

23 91. Throughout the relevant time period, Defendants also failed to maintain accurate
24 payroll records showing the total hours worked daily by, and the wages paid to, Plaintiffs and other
25 class members. Because Defendants failed to record all hours worked and unlawfully edited the
26 clock-in and clock-out times of Plaintiffs and other class members to eliminate and/or reduce hours
27 worked, including the elimination of overtime hours worked, none of the Defendants’ payroll
28 records pertaining to Plaintiffs and other class members accurately reflect all regular hours worked,

overtime hours worked, actual gross wages and net wages earned, and premium wages owed for denied lawful meal and rest periods. As a result of Defendants' failure to maintain accurate payroll records, Defendants prohibited Plaintiffs and other class members from monitoring whether Defendants compensated them correctly and lawfully.

G. Failure To Timely Pay Wages During Employment And At Separation

92. Upon information and belief, Defendants knew or should have known that Plaintiffs and other class members were entitled to timely payment of wages during their employment. Nevertheless, in violation of the Labor Code, Defendants failed to timely pay Plaintiffs and other class members all earned wages during their employment, including but not limited to minimum wages, overtime wages, and meal and rest period premium wages.

93. Upon information and belief, Defendants knew or should have known that Plaintiffs and other class members were entitled to timely payment of all wages earned when they resigned or were terminated from employment. Nevertheless, in violation of the Labor Code, Defendants failed to timely pay Plaintiffs and other class members all their earned wages when they resigned or were terminated from employment, including, but not limited to, minimum wages, overtime wages, and meal and rest period premium wages.

94. Plaintiffs resigned and/or were terminated in 2019 and 2020. Defendants did not pay all wages owed to Plaintiffs within the time required by the Labor Code, including all minimum wages, overtime wages, and meal and rest period premium wages.

H. Exhaustion Of PAGA Administrative Remedies

95. Labor Code Section 2698, *et seq.* ("PAGA") permits Plaintiffs Del Prado and Dorn to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5 enumerates Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198 and 2802. Labor Code Section 2699.3(c) permits aggrieved employees, including Plaintiffs Del Prado and Dorn, to recover civil penalties for violations of those Labor Code Sections not found in Section 2699.5, including Sections 1182.12.

96. At all relevant times, PAGA has provided that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected

1 by the LWDA for violations of the Labor Code and applicable IWC Wage Order may, as an
2 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves
3 and other current or former employees pursuant to procedures outlined in Labor Code Section
4 2699.3.

5 97. PAGA defines an “aggrieved employee” in Labor Code Section 2699(c) as “any
6 person who was employed by the alleged violator and against whom one or more of the alleged
7 violations was committed.”

8 98. Plaintiffs Del Prado and Dorn and other current and former employees of
9 Defendants are “aggrieved employees” as defined by Labor Code Section 2699(c) in that they are
10 all Defendants’ current or former employees and one or more of the alleged violations were
11 committed against them.

12 99. Pursuant to Labor Code Sections 2699.3 and 2699.5, an aggrieved employee,
13 including Plaintiffs Del Prado and Dorn, may pursue a civil action arising under PAGA after the
14 following requirements have been met:

15 a. The aggrieved employee shall give written notice by online filing (“Employee’s
16 Notice”) to the LWDA and by certified mail to the employer of the specific
17 provisions of the Labor Code alleged to have been violated, including the facts and
18 theories to support the alleged violations.

19 b. An aggrieved employee’s notice filed with the LWDA pursuant to Section 2699.3(a)
20 and any employer response to that notice shall be accompanied by a filing fee of
21 seventy-five dollars (\$75).

22 100. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
23 aggrieved employee by certified mail that it does not intend to investigate the alleged violation
24 within sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the
25 LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the
26 postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action
27 pursuant to Labor Code Section 2699 to recover civil penalties in addition to any other penalties to
28 which the employee may be entitled.

101. Pursuant to Labor Code Sections 2699.3(c), aggrieved employees, through Plaintiffs, may pursue a civil action arising under PAGA for violations of any provision other than those listed in Section 2699.5 after the following requirements have been met:

a. The aggrieved employee or representative shall give written notice by online filing to the LWDA and by certified mail to the employer of the specific provisions of the Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

b. An aggrieved employee's notice filed with the LWDA pursuant to Section 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

102. The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

103. On June 16, 2020, Plaintiff Del Prado provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with Labor Code Section 2699.3. Plaintiff Del Prado's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiffs' written notice and assigned Plaintiffs PAGA Case Number LWDA-CM-793583-20. A true and correct copy of Plaintiff Del Prado's written notice to the LWDA and Defendants dated June 16, 2020, is attached hereto as Exhibit 1.

104. On August 24, 2020, Plaintiffs Del Prado and Dorn sent an amended written notice by online filing to the LWDA and by certified mail to Defendants, which supplemented and clarified the facts and theories to support the alleged Labor Code violations set forth in the original LWDA notice and added Plaintiff Dorn as an aggrieved employee, in accordance with Labor Code

1 Section 2699.3. A true and correct copy of Plaintiffs Del Prado's and Dorn's amended written
2 notice to the LWDA and Defendants dated August 24, 2020, is attached hereto as Exhibit 2.

3 105. As of the filing date of this Complaint, over 65 days have passed since Plaintiffs Del
4 Prado and Dorn sent their initial and amended notices to the LWDA, described above, and the
5 LWDA has not responded that it intends to investigate the PAGA Plaintiffs' claims, and
6 Defendants have not cured the violations.

7 106. Thus, Plaintiffs Del Prado and Dorn have satisfied the administrative prerequisites
8 under Labor Code Sections 2699.3 to recover civil penalties against Defendants, in addition to
9 other remedies, for violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510,
10 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802.

11 **CLASS ACTION ALLEGATIONS**

12 107. The Class Plaintiffs bring this action on behalf of themselves and the following
13 class and subclass pursuant to Code of Civil Procedure Section 382:

14 Class: All persons who worked for Defendants as hourly, non-
15 exempt employees in California at any time from four (4) years prior
16 to the commencement of this action until judgment is entered (the
"Class").

17 Unreimbursed Business Expense Class: All persons who worked for
18 Defendants as hourly, non-exempt employees and/or exempt
19 employees in California at any time from four (4) years prior to the
20 commencement of this action until judgment is entered (the
"Unreimbursed Business Expense Class").

21 Former Employee Subclass: All persons who worked for Defendants
22 as hourly, non-exempt employees in California, and who resigned or
23 were terminated at any time from three (3) years prior to the
commencement of this action until judgment is entered (the "Former
Employee Subclass").

24 108. Excluded from the Classes are all persons who began working for Defendants on or
25 after June 1, 2018 and who entered into an arbitration agreement with Defendants; Defendants'
26 legal representatives, officers, directors, assigns, and successors, or any individual who has, or who
27 at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to
28 whom this case is assigned and any member of the Judge(s)' immediate family; and all persons

1 who will submit timely and otherwise proper requests for exclusion from the Classes.

2 109. Members of the Classes and Subclasses are referred to herein as “class members.”

3 110. Reservation of Rights. The Class Plaintiffs reserve the right to amend or modify the
4 Classes and Subclass definitions with greater specificity and to add additional subclasses as
5 appropriate based on further investigation and discovery. The PAGA Plaintiffs also reserve the
6 right to pursue the cause of action for civil penalties under the Labor Code Private Attorneys
7 General Act of 2004 in a representative capacity without complying with Code of Civil Procedure
8 Section 382.

9 111. Ascertainable Class. The proposed Classes and Subclasses may be readily
10 ascertained by a review of Defendants’ payroll and personnel records.

11 112. Numerosity. Both the Classes and Subclass are so numerous that joinder of all
12 members is unfeasible and not practicable. While the precise number of Class and Subclass
13 members has not been determined at this time, Plaintiffs are informed and believe that more than
14 five hundred (500) class members have worked for Defendants as non-exempt employees in
15 California during the relevant time period. The quantity and identity of such membership is readily
16 ascertainable by a review of Defendants’ payroll and personnel records.

17 113. Commonality and Predominance. There are questions of law and fact common to all
18 class members, which predominate over any questions affecting only individual class members.
19 The principal common issues include:

- 20 a. Whether Defendants required, suffered or permitted class members to perform
21 certain work-related duties without compensation equal to at least the applicable
22 California minimum wage;
- 23 b. Whether Defendants required class members to work over eight (8) hours per day,
24 or over forty (40) hours per week, without paying class members all legally required
25 overtime compensation;
- 26 c. Whether Defendants required, suffered or permitted class members to work while
27 clocked out for their meal periods;
- 28 d. Whether Defendants required, suffered or permitted class members to work during

- 1 rest periods;
- 2 e. Whether Defendants violated Labor Code Sections 1182.12, 1194, 1197 and 1198
- 3 and IWC Wage Order 5-2001, Section 4 by failing to pay class members the
- 4 applicable minimum wage for all hours worked;
- 5 f. Whether Defendants violated Labor Code Sections 510 and IWC Wage Order 5-
- 6 2001, Section 3 by failing to pay class members the applicable overtime wage for all
- 7 overtime hours worked;
- 8 g. Whether Defendants failed to provide class members with compliant, off-duty meal
- 9 periods and meal period premium wages in violation of Labor Code Sections 226.7,
- 10 512 and IWC Wage Order 5-2001, Section 11;
- 11 h. Whether Defendants failed to provide class members with rest periods and rest
- 12 period premium wages in violation of Labor Code Sections 226.7 and IWC Wage
- 13 Order 5-2001, Section 12;
- 14 i. Whether Defendants knowingly and intentionally failed to provide class members
- 15 with accurate wage statements, as required by Labor Code Section 226 and IWC
- 16 Wage Order 5-2001, Section 7;
- 17 j. Whether Defendants violated Labor Code Section 1174 and IWC Wage Order No.
- 18 5-2001, Section 7 by failing to maintain documentation of the actual hours worked
- 19 each day by Plaintiffs and other class members;
- 20 k. Whether Defendants failed to reimburse class members for all business-related
- 21 expenditures and/or losses incurred by class members at Defendants' direction for
- 22 work purposes;
- 23 l. Whether Defendants violated Labor Code Section 204 by failing timely to pay all
- 24 earned wages due to class members during their employment;
- 25 m. Whether Defendants violated Labor Code Sections 201 and 202 by failing timely to
- 26 pay all earned wages due to class members upon their termination or resignation;
- 27 n. Whether Defendants engaged in unlawful and unfair business practices in violation
- 28 of California Business & Professions Code sections 17200, *et seq.*; and

- o. Whether class members are entitled to liquidated damages from Defendants for unpaid minimum wages under Labor Code Section 1194.2;
- p. Whether class members are entitled to injunctive relief;
- q. Whether class members are entitled to restitution;
- r. Whether class members are entitled to prejudgment interest;
- s. Whether class members are entitled to attorneys' fees and costs;
- t. Whether class members and the State of California are entitled to civil penalties pursuant to Labor Code Section 2968, *et seq.*;
- u. The appropriate amount of damages, restitution, and monetary penalties resulting from Defendants' violations of California law.

114. Typicality. The Class Plaintiffs' claims are typical of the claims of the Classes and Subclass that they seek to represent. The Class Plaintiffs and other class members sustained the same types of injuries and damages arising out of and caused by Defendants' common course of unlawful conduct.

115. Adequacy of Representation. The Class Plaintiffs will fairly and adequately represent and protect the interests of all class members, and have no interests antagonistic to the other class members. There are no material conflicts between the Class Plaintiffs' claims and the claims of the other class members that would make class certification inappropriate. Plaintiffs have retained counsel experienced in handling complex class actions and wage and hour claims.

116. Superiority of Class Action. A class action is superior to other available means for fair and efficient adjudication of class members' claims, and offers significant benefits to the parties and the Court. A class action will allow a large number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. Additionally, because the monetary amounts due to many individual class members are likely to be relatively small, it would make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve important public interests by enabling the statutory rights of class members to be effectively asserted and fundamental public policies to

1 be vindicated in one proceeding. A class action will also provide a means for vindicating the rights
2 of current employees who are less likely to come forward to assert those rights based on fears of
3 employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory
4 judgments inherent in individual litigation.

5 **FIRST CAUSE OF ACTION**

6 **Failure to Pay Minimum Wages**

7 **(Labor Code §§ 1182.12, 1194, 1197 and 1198)**

8 **(Against all Defendants)**

9 117. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

10 118. Labor Code Sections 1182.12, 1194, 1197 and 1198 provide that the minimum wage
11 for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of
12 a wage less than the minimum so fixed is unlawful.

13 119. Compensable work time is defined in IWC Wage Order No. 5–2001 as “the time
14 during which an employee is subject to the control of an employer, and includes all the time the
15 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit.
16 8, § 11050(2)(H) (defining “Hours Worked”).

17 120. Defendants employed Plaintiffs and other class members as non-exempt employees
18 who were entitled to the protections of Labor Code Sections 1182.12, 1194, 1197 and 1198 and
19 IWC Wage Order 5-2001.

20 121. As set forth above, in violation of Labor Code Sections 1182.12, 1194, 1197 and
21 1198 and IWC Wage Order 5-2001, Defendants failed to pay Plaintiffs and other class members
22 the applicable minimum wage for all hours worked because Defendants routinely edited clock-in
23 and out times to eliminate hours worked. Additionally, Defendants failed to pay Plaintiffs and other
24 class members the applicable minimum wages for all hours worked by requiring, permitting or
25 suffering Plaintiffs and other class members to work off-the-clock in at least three respects: (a)
26 accessing the HotSchedules, Homebase, Radar Schedules and/or other mobile applications for
27 business purposes while working off-the-clock; (b) reviewing, analyzing and responding to
28 multiple business-related emails and text messages sent from Defendants’ management while

1 working off-the-clock; and (c) continuing to work off-the-clock after clocking out for meal periods
2 and/or after clocking out at the end of a scheduled shift.

3 122. As a direct and proximate result of Defendants' conduct, Plaintiffs and other class
4 members have suffered damages in amounts to be proven at trial and are entitled to recover and
5 hereby seek all appropriate remedies provided by the Labor Code and IWC Wage Orders,
6 including unpaid wages in an amount to be determined at trial, pre-judgment interest, liquidated
7 damages, attorneys' fees and costs of suit.

8 **SECOND CAUSE OF ACTION**

9 **Failure to Pay Overtime Wages**

10 **(Labor Code §§ 510, 1194, 1198)**

11 **(Against all Defendants)**

12 123. Plaintiffs incorporates all preceding allegations as if fully set forth herein.

13 124. Labor Code Section 510 provides that "Any work in excess of eight hours in one
14 workday and any work in excess of 40 hours in any one workweek . . . shall be compensated at the
15 rate of no less than one and one-half times the regular rate of pay for an employee."

16 125. An employee's regular rate of pay includes all remuneration for employment paid
17 to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

18 126. Labor Code Section 1198 provides that it is unlawful to employ persons for longer
19 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
20 applicable IWC Wage Order.

21 127. Section 3 of IWC Wage Order No. 5-2001 provides in pertinent part that:

22 [E]mployees shall not be employed more than eight (8) hours in any
23 workday or more than 40 hours in any workweek unless the
24 employee receives one and one-half (1½) times such employee's
25 regular rate of pay for all hours worked over 40 hours in the
26 workweek. Eight (8) hours of labor constitutes a day's work.
Employment beyond eight (8) hours in any workday or more than six
(6) days in any workweek is permissible provided the employee is
compensated for such overtime at not less than:

27 (a) One and one-half (1½) times the employee's regular rate of pay
28 for all hours worked in excess of eight (8) hours up to and including

12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

128. Labor Code Section 1194(a) provides that "Notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

129. Labor Code Section 218.5(a) provides that "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."

130. Defendants employed Plaintiffs and other class members as non-exempt employees who were entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 5-2001.

131. As noted above, Defendants failed to compensate Plaintiffs and other class members for all overtime hours worked pursuant to Labor Code Sections 510, 1194, 1198 and IWC Wage Order 5-2001.

132. As set forth above, in violation of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 5-2001, Defendants failed to pay Plaintiffs and other class members overtime wages for all overtime hours worked because Defendants routinely and unlawfully edited clock-in and out times to eliminate overtime hours worked.

133. Additionally, in violation of Labor Code Sections 510, 1194, 1198 and IWC Wage Order 5-2001, Defendants failed to pay Plaintiffs and other class members for all overtime hours worked because Defendants required, permitted or suffered Plaintiffs and other class members to work off-the-clock in at least three respects: (a) accessing the HotSchedules, Homebase, Radar Schedules and/or other mobile applications for business purposes while working off-the-clock; (b)

1 reviewing, analyzing and responding to multiple business-related emails and text messages sent
2 from Defendants' management while working off-the-clock; and (c) continuing to work off-the-
3 clock after clocking out for meal periods and/or after clocking out at the end of a scheduled shift.

4 134. When Plaintiffs and other class members worked eight or more hours on-the-clock,
5 the off-clock work clearly constituted work in excess of eight hours in workday and should have
6 been paid at the applicable overtime rate. When Plaintiffs' and other class members' time records
7 indicate that they worked close to eight hours in a workday on the clock—e.g., when their time
8 cards reflect that they worked 7.9 or 7.93 total hours—the off-the-clock work also caused
9 Plaintiffs' and class member's total hours worked to exceed eight (8) hours on such a workday and,
10 likewise, should have been paid at the applicable overtime rate.

11 135. As a direct and proximate result of Defendants' conduct, Plaintiffs and other class
12 members have suffered damages in amounts to be proven at trial and are entitled to recover and
13 hereby seek all appropriate remedies provided by the Labor Code and IWC Wage Orders,
14 including unpaid wages, interest, attorneys' fees and costs of suit.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Provide Rest Periods**

17 **(Labor Code §§ 226.7 and 1198)**

18 **(Against all Defendants)**

19 136. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

20 137. At all relevant times, IWC Wage Order No. 5–2001 and Labor Code Sections 226.7
21 and 1198 were applicable to Plaintiffs' and other class members' employment by Defendants.

22 138. IWC Wage Order No. 5–2001 provides that “[e]very employer shall authorize and
23 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
24 each work period” and that the “rest period time shall be based on the total hours worked daily at
25 the rate often (10) minutes net rest time per four (4) hours or major fraction thereof” unless the
26 total daily work time is less than three and one-half (3½) hours.

27 139. Labor Code Section 226.7 provides that no employer shall require an employee to
28 work during any rest period mandated by an applicable order of the California IWC. To comply

1 with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC
2 wage order, an employer must “relinquish any control over how employees spend their break time,
3 and relieve their employees of all duties - including the obligation that an employee remain on call.
4 A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*
5 (2016) 2 Cal. 5th 257, 269-270.

6 140. Upon information and belief, Plaintiffs and other class members were subject to the
7 same policies, practices and procedures governing the provision of rest periods.

8 141. Plaintiffs and other class members regularly worked shifts of more than four (4)
9 hours and were entitled to an uninterrupted, off-duty rest period of not less than ten (10) minutes.
10 Plaintiffs and other class members also regularly worked eight (8) hours per shift, or more, and
11 were entitled to at least a second uninterrupted, off-duty rest period of not less than ten (10)
12 minutes.

13 142. Nevertheless, as detailed above, Defendants engaged in a company-wide practice
14 and/or policy of failing to provide Plaintiffs and other class members with uninterrupted, off-duty
15 rest periods when required. Because Defendants required that Plaintiffs and other class members
16 remain on-duty at all times, and/or because they did not provide them with rest period coverage,
17 Plaintiffs and other class members were subject to Defendants’ control and required, permitted and
18 suffered to work during rest periods.

19 143. Defendants have also engaged in a company-wide practice and/or policy of not
20 paying rest periods premium wages owed when compliant rest periods are not provided. As a
21 result, Plaintiffs and other class members were denied rest periods and Defendants failed to pay
22 Plaintiffs and other class members the full rest period premiums due, in violation of Labor Code
23 Section 226.7 and IWC Wage Order No. 5–2001.

24 144. As a direct and proximate result of Defendants’ conduct, Plaintiffs and other class
25 members have been damaged in an amount to be determined at trial, and hereby seek one
26 additional hour of pay at their regular rate of compensation for each day that a compliant rest
27 period was not provided in a cumulative amount to be determined at trial, plus pre-judgment
28 interest.

FOURTH CAUSE OF ACTION

Failure to Provide Meal Periods

(Labor Code §§ 226.7, 512(a) and 1198)

(Against all Defendants)

145. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

146. Labor Code Section 512(a) provides in pertinent part that:

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

147. Under California law, first meal periods must start after no more than five hours.

Brinker Rest. Corp. v. Superior Court (2012) 53 Cal. 4th 1004, 1041-1042.

148. Labor Code Section 226.7 provides in pertinent part that:

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

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission . . . , the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

149. Labor Code Section 1198 provides that it is unlawful to employ persons for longer than the hours set by the Industrial Welfare Commission or under conditions prohibited by the applicable IWC Wage Order.

150. IWC Wage Order No. 5-2001, Section 11 provides, in pertinent part:

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

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

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

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

151. Upon information and belief, Plaintiffs and other class members were subject to the same policies, practices and procedures governing the provision of meal periods.

152. Plaintiffs and other class members regularly worked more than five (5) hours per shift and were entitled to an uninterrupted, off-duty meal period of not less than thirty (30) minutes. Plaintiffs and other class members also occasionally worked more than ten (10) hours per shift and were entitled to a second uninterrupted, off-duty meal period of not less than thirty (30) minutes.

153. Nevertheless, as detailed above, Defendants engaged in a company-wide practice and/or policy of failing to provide Plaintiffs and other class members with uninterrupted, off-duty meal periods when required.

154. Upon information and belief, Plaintiffs and other class members did not validly or

1 legally waive their first meal periods by mutual consent with Defendants or otherwise.

2 155. Upon information and belief, Plaintiffs and other class members did not enter into
3 any written agreement with Defendants agreeing to an on-the-job paid meal period.

4 156. Thus, Defendants failed to provide Plaintiffs and other class members with meal
5 periods as required by Labor Code Sections 226.7 and 512, and IWC Wage Order No. 5–2001.

6 157. Defendants have also engaged in a company-wide practice and/or policy of not
7 paying rest periods premium wages owed when compliant rest periods are not provided. As a
8 result, Plaintiffs and other class members were denied meal periods and Defendants failed to pay
9 Plaintiffs and other class members the meal period premiums due, in violation of Labor Code
10 Sections 226.7 and 512, and IWC Wage Order No. 5–2001.

11 158. As a direct and proximate result of Defendants’ conduct, Plaintiffs and other class
12 members have been damaged in an amount to be determined at trial, and hereby seek one
13 additional hour of pay at their regular rate of compensation for each day that a compliant meal
14 period was not provided in a cumulative amount to be determined at trial, plus pre-judgment
15 interest, penalties and costs of suit.

16 **FIFTH CAUSE OF ACTION**

17 **Failure To Reimburse Business Expenditures**

18 **(Labor Code § 2802)**

19 **(On behalf of the Unreimbursed Business Expense Class Against all Defendants)**

20 159. Plaintiffs incorporates all preceding factual allegations as if fully set forth herein.

21 160. Labor Code Section 2802(a) provides that an employer “shall indemnify his or her
22 employee for all necessary expenditures or losses incurred by the employee in direct consequence
23 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

24 161. The purpose of Labor Code Section 2802 is to prevent employers from passing off
25 their costs of doing business and operating expenses on to their employees. *Cochran v. Schwan’s*
26 *Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, 1144.

27 162. Labor Code Section 2802(b) provides that “All awards made by a court . . . for
28 reimbursement of necessary expenditures under this section shall carry interest at the same rate as

1 judgments in civil actions” and that “Interest shall accrue from the date on which the employee
2 incurred the necessary expenditure or loss.”

3 163. Labor Code Section 2802(c) provides that, “[f]or the purposes of this section, the
4 term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited
5 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

6 164. Labor Code Section 1198 provides that it is unlawful to employ persons under
7 conditions prohibited by the applicable IWC Wage Order.

8 165. IWC Wage Order No. 5-2001, Section 9 provides in pertinent part:

9 (B) When tools or equipment are required by the employer or are
10 necessary to the performance of a job, such tools and equipment shall
be provided and maintained by the employer...

11 166. Defendants had and, on information and belief, continue to have, a company-wide
12 policy and/or practice of not reimbursing employees for expenses necessarily incurred.

13 167. As detailed above, Defendants as a matter of practice and/or policy violated Labor
14 Code Section 2802 by denying Plaintiffs and other class members reimbursement for necessary
15 expenditures that they incurred as a result of discharging their duties and/or obeying the directions
16 of Defendants. Plaintiffs and other class members were required to incur numerous out-of-pocket
17 expenses, including, *inter alia*, (a) expenses to obtain and maintain a personal cell phone and the
18 data usage that were used at Defendants’ direction for work purposes; (b) expenses to purchase
19 mobile applications that were used at Defendants’ direction for work purposes; and (c) expenses
20 incurred by Plaintiffs and other class members for the use of their personal vehicles, gas and auto
21 insurance that were used at Defendants’ direction for work purposes.

22 168. Defendants could have provided Plaintiffs and other class members with the actual
23 tools required for use on the job, including company phones. Defendants also could have provided
24 Plaintiffs and other class members with a company car to use for business-related purposes.
25 Further, Defendants could have reimbursed Plaintiffs and other class members for the costs they
26 incurred in maintaining a personal cell phone and cellular data plan, by purchasing mobile
27 applications for work-related purposes and by using their personal vehicle, gas and auto insurance
28 instead of a company car. Instead, Defendants passed those operating costs off onto Plaintiffs and

1 other class members in violation Labor Code Section 2802.

2 169. As a direct and proximate result of Defendants' conduct, Plaintiffs and other class
3 members are entitled to recover, and hereby seek, their business-related expenses incurred during
4 the course of their employment in a total, cumulative amount to be determined at trial, plus pre-
5 judgment interest from the dates on which Plaintiffs and other class members incurred the
6 necessary business-related expenses, plus reasonable attorneys' fees and costs.

7 **SIXTH CAUSE OF ACTION**

8 **Failure to Provide Accurate Wage Statements**

9 **(Labor Code § 226(a))**

10 **(Against all Defendants)**

11 170. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

12 171. Labor Code Section 226(a) provides in pertinent part:

13 An employer, semimonthly or at the time of each payment of wages,
14 shall furnish to his or their employee, either as a detachable part of
15 the check, draft, or voucher paying the employee's wages, or
16 separately if wages are paid by personal check or cash, an accurate
17 itemized statement in writing showing (1) gross wages earned, (2)
18 total hours worked by the employee . . . , (3) the number of piece-rate
19 units earned and any applicable piece rate if the employee is paid on
20 a piece-rate basis, (4) all deductions, provided that all deductions
21 made on written orders of the employee may be aggregated and
22 shown as one item, (5) net wages earned, (6) the inclusive dates of
23 the period for which the employee is paid, (7) the name of the
24 employee and only the last four digits of his or their social security
25 number or an employee identification number other than a social
26 security number, (8) the name and address of the legal entity that is
27 the employer . . . , and (9) all applicable hourly rates in effect during
28 the pay period and the corresponding number of hours worked at
each hourly rate by the employee

172. During the relevant time period, Defendants have knowingly and intentionally
provided Plaintiffs and other class members with uniform incomplete and inaccurate wage
statements as follows:

- a. Defendants violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and
226(a)(9) by failing to include the accurate amount of "gross wages," "net wages"

and “total hours worked” because Defendants had a uniform policy and/or practice of editing non-exempt employees’ clock-in and clock-out times to eliminate and/or reduce hours worked from the time records of Plaintiffs and other class members;

b. Defendants also violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because Defendants failed to record and compensate Plaintiffs and other class members for all off-the-clock work;

c. Defendants also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages” and “net wages” because Defendants failed to provide Plaintiffs and other class members with required meal and rest period premium wages; and

d. Defendants violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked by the employee” because Defendants did not include time spent working during on-duty meal periods for which Plaintiffs and other class members should have been compensated.

e. Defendants violated Labor Code Section 226(a)(8) by failing to include each name and address of the legal entities that employed Plaintiffs and class members.

173. Labor Code Section 226(e)(1) provides in pertinent part that “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

174. Labor Code Section 226(e)(2) provides that an employee suffers injury if the employer fails to provide accurate and complete information as required by any one or more items listed in Labor Code Section 226(a) and the employee cannot promptly and easily ascertain requisite information without reference to other documents or information.

175. As a result of Defendants’ failure to comply with Labor Code Section 226(a),

1 Plaintiffs and other class members suffered injuries because they could not promptly and easily
2 ascertain the information required by Labor Code Section 226(a) without reference to other
3 documents or information. In addition, Plaintiffs and other class members suffered injuries because
4 they were not aware of what their true wages should have been and how they were calculated, and
5 because Plaintiffs and other class members suffered economic loss in the form of lower wages and
6 lost compensation.

7 176. As a direct and proximate result of Defendants' conduct, Plaintiffs and other class
8 members are entitled to recover from Defendants, and hereby seek, the greater of their actual
9 damages caused by Defendants' failure to comply with Labor Code Section 226(a), or an aggregate
10 penalty not exceeding four thousand dollars (\$4,000) per employee.

11 177. Plaintiffs and other class members also seek preliminary and permanent injunctive
12 relief and an award of attorneys' fees and costs pursuant to Labor Code Section 226(h).

13 **SEVENTH CAUSE OF ACTION**

14 **Failure To Pay Wages Timely at Termination**

15 **(Labor Code §§ 201, 202, 203)**

16 **(On behalf of the Former Employee Subclass Against all Defendants)**

17 178. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

18 179. Labor Code Section 201 provides that, if an employer discharges an employee, the
19 wages earned and unpaid at the time of discharge are due and payable immediately.

20 180. Labor Code Section 202 provides that if an employee voluntarily leaves his or their
21 employment, the employee's wages shall become due and payable not later than seventy-two (72)
22 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or
23 their intention to quit, in which case the employee is entitled to his or their wages at the time of
24 quitting.

25 181. Labor Code Section 203 provides that if an employer willfully fails to pay
26 compensation as required by Sections 201 and 202, then the employer is liable for waiting time
27 penalties in the form of continued compensation of up to thirty work days.

28 182. As detailed above, during the class period, Defendants willfully failed to pay

1 Plaintiffs and Former Employee Subclass members all their earned wages, including, but not
2 limited to minimum wages, overtime wages, and rest and meal period premium wages, either at the
3 time of their discharge, or within seventy-two (72) hours after their resignation.

4 183. Defendants' failure to pay Plaintiffs and Former Employee Subclass members their
5 earned and unpaid wages at the time of discharge, or within seventy-two (72) hours after their
6 resignation, violates Labor Code Sections 201 and 202.

7 184. As a direct and proximate result of Defendants' conduct, Plaintiffs and Former
8 Employee Subclass members are therefore entitled to recover from Defendants, and hereby seek,
9 waiting time penalties for each day they were not paid, at their regular rate of pay, up to a thirty
10 (30) day maximum pursuant to Labor Code Section 203 in a total, cumulative amount to be
11 determined at trial.

12 **EIGHTH CAUSE OF ACTION**

13 **Violations of Unfair Competition Law**

14 **(Business & Professions Code § 17200, *et seq.*)**

15 **(Against all Defendants)**

16 185. Plaintiffs incorporate all preceding allegations as if fully set forth herein.

17 186. The California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*
18 ("UCL"), prohibits unfair competition. The UCL defines unfair competition to include any
19 "unlawful," "unfair," or "fraudulent" business act or practice. Cal. Bus. & Prof. Code § 17200.

20 187. A business act or practice is "unlawful" under the UCL if it violates any other law
21 or regulation.

22 188. As detailed above, throughout the relevant time period, Defendants as a matter of
23 practice and/or policy violated Labor Code Sections 201, 202, 203, 226, 226.7, 510, 512, 1182.12,
24 1194, 1194.2, 1197, 1197.1, 1198, 2802, and Cal. Code Regs. tit. 8, § 11050. Based on those
25 violations, Defendants engaged in unlawful business practices in violation of the UCL throughout
26 the relevant time period.

27 189. Throughout the relevant time period, Defendants as a matter of practice and/or
28 policy also engaged in unlawful business practices by violating Labor Code Sections 204 and

1 1174(d), as follows:

2 190. Defendants also violated Labor Code Section 204. Labor Code Section provides that
3 all wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
4 days, inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the
6 month during which the labor was performed.

7 191. Labor Code Section 204 also provides that all wages earned by any person in any
8 employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other
9 than those wages due upon termination of an employee, are due and payable between the first (1st)
10 and the tenth (10th) day of the following month.

11 192. In addition, Labor Code Section 204 provides that all wages earned for labor in
12 excess of the normal work period shall be paid no later than the payday for the next regular payroll
13 period. Alternatively, Labor Code Section 204 provides that its requirements are deemed satisfied
14 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
15 more than seven (7) calendar days following the close of the payroll period.

16 193. At all relevant times, Defendants willfully failed to pay Plaintiffs and other class
17 members all wages due including, but not limited to, minimum wages, separate rest period wages,
18 separate non-productive time wages, and meal and rest period premium wages, within the time
19 periods specified by Labor Code Section 204.

20 194. Defendants also violated Labor Code Section 1174(d). Pursuant to Labor Code
21 Section 1174(d), every employer in the state shall: "Keep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants or establishments."
25 These records must be kept in accordance with rules established for this purpose by Labor
26 Commissioner, but in any case shall be kept on file for not less than three years.

27 195. At all relevant times, Defendants violated Labor Code Section 1174 by failing to
28 maintain an accurate record of Plaintiffs' and other class members' total hours worked because,

1 among other reasons, Defendants did not include in total hours worked the time spent by Plaintiffs
2 and other class members during on-duty meal periods.

3 196. A business act or practice is “unfair” under the UCL if the reasons, justifications,
4 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged
5 victims.

6 197. Defendants also committed “unfair” business acts or practices by, among other
7 things: (a) engaging in conduct where the utility of the conduct, if any, is outweighed by the
8 gravity of the consequences to Plaintiffs and other class members; (b) engaging in conduct that is
9 immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and other class
10 members; and (c) engaging in conduct that undermines and violates the stated policies underlying
11 the Labor Code and applicable IWC Wage Order, which seeks to protect employees against unfair
12 and sharp business practices.

13 198. As a result of Defendants’ unlawful and unfair business practices, Plaintiffs and
14 other class members have suffered injury in fact and lost money or property including but not
15 limited to the loss of earned wages.

16 199. As a result of the violations of California law herein described, Defendants
17 unlawfully gained an unfair advantage over other businesses.

18 200. Pursuant to Business & Professions Code Sections 17200, *et seq.*, Plaintiffs and
19 other class members are entitled to, and hereby seek, (a) restitution of the wages and other monies
20 withheld and retained by Defendants during a period that commences four years prior to the filing
21 of the initial complaint in this action; (b) a permanent injunction requiring Defendants to pay all
22 outstanding wages due to Plaintiffs and other class members; (c) a permanent injunction
23 prohibiting Defendants from engaging in the acts complained of in the operative Complaint; and
24 (d) an award of attorneys’ fees and costs pursuant to Code of Civil Procedure Section 1021.5
25 and/or other applicable laws.

26 //

27 //

28 //

NINTH CAUSE OF ACTION

For Civil Penalties, Pursuant to Labor Code § 2698, *et seq.*

**(By Plaintiffs Del Prado and Dorn on Behalf of the State of California and Aggrieved
Employees Against All Defendants)**

201. Plaintiffs Del Prado and Dorn incorporate all preceding allegations as if fully set forth herein.

202. As detailed above, Defendants violated Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802.

203. Labor Code Section 2698, *et seq.* (“PAGA”) permits Plaintiffs Del Prado and Dorn to recover civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5 enumerates Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198 and 2802. Labor Code Section 2699.3(c) permits aggrieved employees, including Plaintiffs Del Prado and Dorn, to recover civil penalties for violations of those Labor Code Sections not found in Section 2699.5, including Sections 1182.12.

204. As detailed above, Plaintiffs Del Prado and Dorn have complied with the PAGA notice provision set forth in Labor Code Section 2699.3, and have exhausted any administrative remedy required by PAGA.

205. Pursuant to Labor Code Section 2699(a) and (f), Plaintiffs Del Prado and Dorn may recover civil penalties on behalf of themselves and other aggrieved current and former employees for Defendants’ violations of Labor Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802 in the following amounts:

a. For violations of Labor Code Sections 201, 202, 203, 226.7, 1182.82, 1194, 1198 and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by Labor Code Sections 2699(f)(2));

b. For violations of Labor Code Section 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred fifty

dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by Labor Code § 1197.1).

c. For violations of Labor Code Section 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation, and two hundred dollars (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code § 210);

d. For violations of Labor Code Sections 226(a), two hundred fifty dollars (\$250.00) for each aggrieved employee for each initial violation and one thousand dollars (\$1,000.00) for each aggrieved employee for each subsequent violation (penalty amounts established by Labor Code § 226.3);

e. For violations of Labor Code Sections 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for initial violation and one hundred dollars (\$100.00) for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalty amounts established by Labor Code § 558); and

f. For violations of Labor Code Section 1174, a civil penalty of \$500 per employee (penalties set by Labor Code § 1174.5).

206. Pursuant to California Labor Code Section 2699(i), seventy-five percent (75%) of the civil penalties obtained shall be allocated to the LWDA for the enforcement of labor laws and education of employers and employees about their rights and responsibilities, and twenty-five percent (25%) shall be allocated to the aggrieved employees.

207. Plaintiffs Del Prado and Dorn are also entitled to seek and hereby seek reasonable attorneys fees and costs pursuant to Labor Code Section 2699(g)(1) and any other applicable statute.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

Class Certification

1. For an order certifying the class(es) and subclass(es) as a class action;
2. For an order appointing the Class Plaintiffs as class representatives of the class(es) and subclass(es);
3. For an order appointing counsel for Plaintiffs as class counsel;

On the First Cause of Action

(Failure to Pay Minimum Wages)

4. For unpaid minimum wages owed to the Class Plaintiffs and other class members in an amount to be determined at trial;
5. For penalties and liquidated damages in the amount of unpaid minimum wages not paid to the Class Plaintiffs and other class members pursuant to Labor Code Section 1194.2;
6. For reasonable attorneys' fees and costs pursuant to Labor Code Sections 218.5 and 1194, and/or any other basis;
7. For prejudgment interest on any unpaid minimum wage compensation from the date such amounts were due, or as otherwise provided by law; and
8. For such other and further relief as the Court deems just and proper.

On the Second Cause of Action

(Failure To Pay Overtime Wages)

9. For unpaid minimum wages owed to the Class Plaintiffs and other class members in an amount to be determined at trial;
10. For reasonable attorneys' fees and costs pursuant to Labor Code Sections 218.5 and 1194, and/or any other basis;
11. For prejudgment interest on any unpaid minimum wage compensation from the date such amounts were due, or as otherwise provided by law; and
12. For such other and further relief as the Court deems just and proper.

On the Third Cause of Action

(Failure To Provide Rest Periods)

13. For one (1) hour of pay at the regular rate of compensation for the Class Plaintiffs

and each class member for each workday that a required rest period was not provided;

14. For prejudgment interest on any unpaid rest period premium wages from the date such amounts were due, or as otherwise provided by law;

15. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure Section 1021.5, and/or as otherwise provided by law; and

16. For such other and further relief as the Court deems just and proper.

On the Fourth Cause of Action

(Failure To Provide Meal Periods)

17. For one (1) hour of pay at the regular rate of compensation for the Class Plaintiffs and each class member for each workday that a required meal period was not provided;

18. For prejudgment interest on any unpaid meal period premium wages from the date such amounts were due, or as otherwise provided by law;

19. For reasonable attorneys' fees and costs pursuant to California Code of Civil Procedure Section 1021.5, or as otherwise provided by law; and

20. For such other and further relief as the Court deems just and proper.

On the Fifth Cause of Action

(Failure to Reimburse Business Expenses)

21. For an award of unreimbursed business expenses incurred by the Class Plaintiffs and other class members in an amount to be determined at trial;

22. For pre-judgment interest on the unreimbursed business expenses from the date such expenses were incurred by the Class Plaintiffs and other class members pursuant to Labor Code Section 2802(b), or as otherwise provided by law;

23. For reasonable attorneys' fees and costs pursuant to Labor Code Section 2802(c) and/or as otherwise provided by law; and

24. For such other and further relief as the Court deems just and proper.

On the Sixth Cause of Action

(Failure to Provide Accurate Wage Statements)

25. For statutory penalties pursuant to Labor Code Section 226(e);

26. For injunctive relief pursuant to Labor Code Section 226(h);

27. For attorneys' fees and costs pursuant to Labor Code Section 226(e)(1) and (h); or
as otherwise provided by law; and

28. For such other and further relief as the Court deems just and proper.

On the Seventh Cause of Action

(Failure to Timely Pay Wages at Termination)

29. For waiting time penalties pursuant to Labor Code Sections 201, 202 and 203;

30. For prejudgment interest on any unpaid wages from the date such amounts were
due, or as otherwise provided by law;

31. For reasonable attorneys' fees and costs pursuant to California Code of Civil
Procedure Section 1021.5, or as otherwise provided by law; and

32. For such other and further relief as the Court deems just and proper.

On the Eighth Cause of Action

(Violations of Unfair Competition Law)

33. For an order requiring Defendants to provide restitution of all unpaid wages and
other monies wrongfully withheld and retained by Defendants from the Class Plaintiffs and other
class members;

34. For an order entering a permanent injunction prohibiting Defendants from engaging
in the unlawful conduct complained of in this Complaint;

35. For prejudgment interest on all amounts claimed from the day that such amounts
were due;

36. For reasonable attorneys' fees and costs pursuant to Code of Civil Procedure
Section 1021.5; and/or as otherwise provided by law; and

37. For such other and further relief as the Court deems just and proper.

On the Ninth Cause of Action

(For Civil Penalties Pursuant to Labor Code § 2698, et seq.)

38. That the Court declare, adjudge and decree that Defendants violated the following
Labor Code provisions as to the PAGA Plaintiffs and other aggrieved employees: 1182.12, 1194,

1 1197 and 1198 (by failing to pay at least minimum wages for all hours worked); 510 and 1198 (by
2 failing to pay all overtime compensation); 226.7, 512 and 1198 (by failing to provide all meal
3 periods); 226(a) (by failing to provide accurate wage statements); 201, 202, 203 (by failing timely
4 to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during
5 employment); 1197(d) (for failure to maintain accurate payroll records); and 2802 (for failing to
6 reimburse business expenses).

7 39. For civil penalties, pursuant to Labor Code Sections 210, 226.3, 558, 1174.5,
8 1197.1, 2699(a) and/or 2699(f) and (g), for violations of Labor Code Sections 201, 202, 203, 204,
9 226, 226.7, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802;

10 40. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and any
11 and all other relevant statutes, for Defendants' violations of Labor Code Sections 201, 202, 203,
12 204, 226, 226.7, 512(a), 1174(d), 1182.12, 1194, 1197, 1198 and 2802;

13 41. For pre-judgment and post-judgment interest as provided by law; and

14 42. For such other and further relief as the Court deems just and proper.

15 **DEMAND FOR JURY TRIAL**

16 Plaintiffs demand trial by jury of all claims triable by jury.

17 **CUSTIS LAW, P.C.**

18
19 Dated: October 30, 2020

20 By: 

Keith Custis

CUSTIS LAW, P.C.

1999 Avenue of the Stars, Suite 1100

Los Angeles, California 90067

Telephone: (213) 863-4276

Facsimile: (213) 863-4277

24 *Counsel for Plaintiffs and the Proposed Classes*

Exhibit 1



June 16, 2020

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE CLAIM NOTICE

(<https://dir.tfaforms.net/198>)

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

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Tosh Berman
Amrou Almanaseer
Michael Tanha
Tocaya Organica LLC
Toca Madera Weho LLC
The Madera Group LLC
Tocaya Palisades LLC
Tocaya Santa Monica LLC
Tocaya SD LLC
Tocaya South Bay LLC
Tocaya Sportsman LLC
Tocaya Sunset LLC
Tocaya Toluca LLC
Tocaya Venice, LLC
8720 Sunset Blvd, Suite A
Los Angeles, CA 90069

Amrou Almanaseer
Tocaya Management, LLC
489 Fairview Blvd.
Incline Village, NV 89451

Amrou Almanaseer
The Madera Group LLC
8720 Sunset Blvd, Suite A
Los Angeles, CA 90069

Michael Tanha
The Madera Group LLC
8720 Sunset Blvd, Suite A
Los Angeles, CA 90069

Re: *Layonel Del Prado, Ammon Mendes and Kevin Gonzalez v. Tocaya Management LLC, et al.*: Written Notice of Intent to File Civil Action Pursuant to Labor Code § 2699.3

Dear PAGA Administrator and Employer,

This office represents Layonel Del Prado, Ammon Mendes and Kevin Gonzalez with respect to claims arising from their employment by Tocaya Management LLC, Tocaya Organica LLC, Toca Madera Weho LLC, the Madera Group LLC, Tocaya Palisades LLC, Tocaya Santa Monica LLC, Tocaya SD LLC, Tocaya South Bay LLC, Tocaya Sportsman LLC, Tocaya Sunset LLC, and Tocaya Venice LLC (collectively, the “Tocaya/Toca Integrated Enterprise” or “Employer”). Mr. Del Prado was employed as a non-exempt employee by the Tocaya/Toca Integrated Enterprise at Toca Madera from approximately March 2018 until March 2020. Mr.

Gonzalez was employed as a non-exempt employee by the Tocaya/Toca Integrated Enterprise at Tocaya Organica from approximately May 2019 until May 2020. Mr. Del Prado, Mr. Mendes and Mr. Gonzalez are referred to collectively in this correspondence as the “Lead Aggrieved Employees.”

The Lead Aggrieved Employees intend to file a civil action against Employer, seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the Private Attorneys General Act of 2004, Labor Code Section 2698, *et al.* (“PAGA”), for violations of the Labor Code. The Lead Aggrieved Employees shall seek relief on behalf of themselves, the State of California, and other persons who are or were employed by the Tocaya/Toca Integrated Enterprise as non-exempt and/or exempt employees in California (“Aggrieved Employees”).

Pursuant to Labor Code Section 2699.3, this letter serves as the Lead Aggrieved Employees’ written notice to the Labor and Workforce Development Agency (“LWDA”) and Employer regarding the following alleged violations of the Labor Code, and the facts and legal theories that support those violations. This letter is being submitted to the LWDA online pursuant to the process described on the California Department of Industrial Relations’ website.¹ The \$75.00 filing fee required by Labor Code Section 2699.3 is being sent concurrently to the LWDA by separate letter.

A. Integrated Enterprise and Single Employer Allegations

Employer constitutes an “integrated enterprise” with interrelated operations, common management, centralized control of labor relations, and common ownership and/or financial controls (the “Tocaya/Toca Integrated Enterprise”)—and are thus properly viewed as a single employer in the context of this action.

The Tocaya/Toca Integrated Enterprise operates approximately fourteen (14) restaurants in California. Although the Tocaya Organica and Toca Madera locations are generally registered as separate legal entities, the entities have chosen to handle their employer-employee relationships jointly and have chosen to operate as a single integrated enterprise. Mr. Berman, the CEO of the Madera Group, refers to the employees of Tocaya Organica and Toca Madera collectively as “team members” and a part of the “Madera Group Family.”

California courts as well as federal courts in the Ninth Circuit apply the “integrated enterprise” test to claims arising from alleged violations of the California Labor Code. *See, e.g., Laird v. Capital Cities/ABC, Inc.* (1998) 69 Cal. App. 4th 727, 737; *Kenny v. Regis Corp.* (N.D. Cal. Mar. 10, 2008) No. 06–07521, 2008 WL 686710, at *3; *Huse v. Auburn Honda* (E.D. Cal. June 10, 2005) No. 04–0227, 2005 WL 1398521, at *3 (employing the integrated enterprise test to determine whether a defendant was an employer within the meaning of the California Labor Code); *Serrano v. 180 Connect, Inc.* (N.D. Cal., Aug. 11, 2006, No. C 06-1363 TEH) 2006 WL

¹ See <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

2348888, at *2, *rev'd on other grounds* (9th Cir. 2007) 478 F.3d 1018. Courts have also applied the integrated enterprise test in the context of addressing UCL claims predicated upon California Labor Code violations. *See Maddock v. KB Homes, Inc.* (C.D. Cal. 2007) 631 F. Supp. 2d 1226, 1238.

Under *Laird*, in determining whether two entities are liable as a single employer or an “integrated enterprise,” courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird*, 68 Cal. App. 4th at 737. All of these factors are satisfied here.

The Tocaya/Toca Integrated Enterprise has centralized the control of labor relations and set up common management through Tocaya Management, the Madera Group and potentially other entities that may be discovered through investigation and discovery.

Tocaya Management directly employs all employees of the Tocaya Organica and Toca Madera restaurants. Upon information and belief, Defendants formed Tocaya Management to serve as a payroll processor for the Tocaya/Toca Integrated Enterprise. Upon information and belief, Tocaya Management does not generate any revenue itself from Tocaya/Toca Integrated Enterprise’s restaurant business.

The Tocaya/Toca Integrated Enterprise has a single human resource department. In email correspondence to employees of Tocaya Organica and Toca Madera, the Tocaya/Toca Integrated Enterprise’s human resource department invites employees of both Tocaya Organica and Toca Madera to send questions or concerns to the “Human Resource team” by emailing the team at a single email address: hr@themaderagroup.com.

Kristi Thompson served as the Human Resource director for the Tocaya/Toca Integrated Enterprise from October 2015 to October 2019. Melinda Barrow succeeded Ms. Thompson and currently serves as the Human Resource director for the Tocaya/Toca Integrated Enterprise. Angelica Barker currently serves as the Human Resource Coordinator for the Tocaya/Toca Integrated Enterprise. Ms. Thompson, Ms. Barrow and Ms. Barker all identify The Madera Group as their employer. However, during their respective tenures working for the Tocaya/Toca Integrated Enterprise, Ms. Thompson, Ms. Barrow and Ms. Barker have provided human resource services to all employees of all Tocaya Organica and Toca Madera locations.

Additionally, upon information and belief, the Tocaya/Toca Integrated Enterprise has used a single employee handbook for all employees, regardless of whether the employees provide services to the Tocaya/Toca Integrated Enterprise through Tocaya Organica or Toca Madera.

The Madera Group website also allows prospective employees to apply for work at any of the Tocaya Organica or Toca Madera locations in California or Arizona through the “Careers” page of its website. See <https://www.themaderagroup.com/careers> (last visited on June 16, 2020).

The Tocaya/Toca Integrated Enterprise's operations are also interrelated. The Madera Group's website boasts that "[t]he Madera Group develops, owns and operates a collection of leading restaurant venues through (sic) Southern California and Arizona including Tocaya Organica and Toca Madera." The Madera Group management team identified on the Madera Group website manages all of the restaurant venues from its headquarters in West Hollywood, California. See <https://www.themaderagroup.com/team> (last visited on June 16, 2020). Further, upon information and belief, revenue generated from the sales at Tocaya Organica and Toca Madera restaurants is deposited into accounts held by Entity Defendants other than Tocaya Management, the direct employer of Plaintiffs and class members. Those Entity Defendants, in turn, transfer only an amount sufficient to cover payroll expenses to Tocaya Management. Upon information and belief, the Tocaya/Toca Integrated Enterprise insufficiently capitalizes Tocaya Management such that it will lack sufficient funds to cover the judgment in this litigation or in any employment-related litigation asserted against Tocaya Management. Additionally, administrative and training functions are interrelated and operate from the Madera Group headquarters located at 8720 W. Sunset Boulevard, Suite A, West Hollywood, California 90069.

The Tocaya/Toca Integrated Enterprise's operations are also interrelated because various Entity Defendants and Individual Defendants serve as the managers of the other Entity Defendants. For example, Tocaya Organica serves as the manager of Tocaya Palisades, Tocaya Santa Monica, Tocaya South Bay, Tocaya Toluca and Tocaya Venice. Tocaya Holdings LLC serves as the manager of Tocaya Organica and Tocaya Management. The Madera Group, in turn, serves as the manager of Tocaya Holdings LLC. The Madera Group is also managed by Individual Defendants Tosh Berman and Amrou Almanaseer.

Each of the Tocaya Organica and Toca Madera locations in California, as well as the Madera Group, list their business address with the California Secretary of State as 8720 W. Sunset Boulevard, West Hollywood, California 90069.

Upon information and belief, each of the Entity Defendants share a degree of common ownership and financial control by Tosh Berman, Amrou Almanaseer and Michael Tanha who are members of the entities operating as limited liability companies and/or officers in the entities operating as limited liability companies.

As detailed below, the Tocaya/Toca Integrated Enterprise has violated the Labor Code within the last year and beyond as to the Lead Aggrieved Employees and other Aggrieved Employees in the following respects:

B. Failure to Pay Minimum Wages in Violation of Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198

Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198 require an employer to pay employees no less than the established minimum wage. These Labor Code Sections provide that payment of a wage less than the established minimum wage is unlawful. The applicable Industrial Welfare Commission ("IWC") Wage Order defines compensable work time, or "hours

worked,” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining “Hours Worked”). An employee is entitled to be paid no less than the established minimum wage for all hours worked.

Within the previous twelve months and beyond, the Tocaya/Toca Integrated Enterprise maintained a policy and practice of failing to pay the Lead Aggrieved Employees and other Aggrieved Employees the correct minimum wage for all hours worked for several reasons:

First, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees’ clock-in and clock-out times to eliminate hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees. The Tocaya/Toca Integrated Enterprise routinely engaged in time-shaving to eliminate overtime hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees. The Tocaya/Toca Integrated Enterprise also routinely edited clock-in and out times to eliminate meal period penalties.

Second, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees to download various mobile applications to their personal cell phones and to access them frequently for business purposes while they were off the clock. The Tocaya/Toca Integrated Enterprise required Plaintiffs and class members to download the HotSchedules, Homebase and/or Radar Schedules (formerly Ctuit Schedules) apps onto their personal cell phones and to access them frequently while they were off-the-clock for scheduling and communication purposes. Plaintiff Gonzalez and class members working as non-exempt supervisors and/or in other non-exempt managerial positions were also required to download additional applications to their personal cell phones including but not limited to Slack, Freshpoint, Sysco, and Paycom, and to access them frequently while they were off the clock. The Tocaya/Toca Integrated Enterprise also required the Lead Aggrieved Employees and other Aggrieved Employees to review and respond to business-related messages they received on their personal cell phones while they were off-the-clock.

Third, the Tocaya/Toca Integrated Enterprise routinely required the Lead Aggrieved Employees and other Aggrieved Employees to clock out for a meal period but to continue working while they were off-the-clock during their meal period. The Tocaya/Toca Integrated Enterprise failed to pay the applicable minimum wage for any of those off-the-clock hours worked.

Because the Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to work off-the-clock, the Tocaya/Toca Integrated Enterprise failed to compensate the Lead Aggrieved Employees and other Aggrieved Employees for all hours worked, including minimum wages and overtime hours.

Fourth, IWC Wage Order 5-2001, Section 5(A) provides that “Each workday an employee is required to report for work and does report, but is not put to work or is furnished

less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage." In violation of IWC Wage Order 5-2001, Section 5(A), the Tocaya/Toca Integrated Enterprise failed to pay the applicable minimum wage for reporting time wages to the Lead Aggrieved Employees and other Aggrieved Employees when they arrived to work a scheduled shift and were sent home immediately or before the mid-point of their scheduled shift.

The Tocaya/Toca Integrated Enterprise has thus violated Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f) and (g).

C. Failure to Pay Overtime in Violation of Labor Code Sections 510 & 1198

Labor Code Sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay.

Within the previous twelve months and beyond, the Tocaya/Toca Integrated Enterprise maintained a policy and practice of failing to pay the Lead Aggrieved Employees and other Aggrieved Employees the correct amount of overtime wages for all overtime hours worked for several reasons:

As detailed above, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to reduce and/or eliminate hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees, including overtime hours.

The Tocaya/Toca Integrated Enterprise also knowingly required, suffered and permitted the Lead Aggrieved Employees and other Aggrieved Employees to perform duties off-the-clock and failed to compensate them for all hours worked, including all overtime hours worked. Because the Lead Aggrieved Employees and other Aggrieved Employees often worked close to eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or in close to and/or in excess of forty (40) hours in week, some of the off-the-clock work performed by the Lead Aggrieved Employees and other Aggrieved Employees qualified as overtime, and should have been paid at the applicable overtime rate.

Thus, because the Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to work off-the-clock and/or edited their clock-in and out times to eliminate and/or reduce total overtime hours worked, the Tocaya/Toca Integrated Enterprise failed to pay all required overtime wages in violation of Labor Code Sections 510 and 1198 and the applicable IWC Wage Order.

The Tocaya/Toca Integrated Enterprise has thus violated Labor Code Sections 510 and 1198. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558, 1194, and/or 2699(a), (f)-(g).

D. Failure to Provide Rest Periods in Violation of Labor Code Sections 226.7 and 1198

Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3.5) hours. Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.

Within the last twelve months and beyond, the Tocaya/Toca Integrated Enterprise's scheduling and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and other Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

Notwithstanding any formal written policy to the contrary, the Tocaya/Toca Integrated Enterprise's actual custom and business practice was to undermine any formal policy of providing legally required rest periods by pressuring employees to perform their duties in ways that omitted breaks, including, but not limited to, scheduling a heavy workload that made taking rest periods extremely difficult, maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking legally protected rest periods. Within the last twelve months and beyond, the Lead Aggrieved Employees and other Aggrieved Employees worked straight through their shifts without taking any off-duty, uninterrupted ten (10) minute rest periods.

Upon information and belief, the Tocaya/Toca Integrated Enterprise failed to implement any practice or procedure to pay rest period premiums when the Lead Aggrieved Employees and other Aggrieved Employees missed a required rest period.

The Tocaya/Toca Integrated Enterprise also failed to compensate the Lead Aggrieved Employees and other Aggrieved Employees for the time they spent working instead of taking legally compliant rest periods.

The Tocaya/Toca Integrated Enterprise also engaged in a systematic, firm-wide practice and/or policy of not paying rest period premiums owed when rest periods were not provided. Thus, the Tocaya/Toca Integrated Enterprise denied the Lead Aggrieved Employees and other Aggrieved Employees rest periods and failed to pay them rest period premium wages due in violation of Labor Code Section 226.7 and the applicable IWC Wage Order.

Because the Tocaya/Toca Integrated Enterprise failed to provide all rest periods in violation of Labor Code Sections 226.7 and 1198, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

E. Failure to Provide Meal Periods In Violation of Labor Code §§ 226.7, 512(a) & 1198

Labor Code Sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal break is not provided. Pursuant to Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Within the last twelve months and beyond, the Tocaya/Toca Integrated Enterprise's scheduling and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and other Aggrieved Employees from being relieved of all duty in order to take compliant meal periods.

Notwithstanding any formal written policy to the contrary, the Tocaya/Toca Integrated Enterprise's actual custom and business practice was to undermine any formal policy of

providing legally required meal periods by pressuring employees to perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide meal-period coverage, and otherwise discouraging employees from taking legally protected meal periods. Within the last twelve months and beyond, the Lead Aggrieved Employees and other Aggrieved Employees worked straight through their shifts without taking any off-duty, uninterrupted thirty (30) minute meal period.

Additionally, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to eliminate evidence of untimely or missed meal periods.

Further, the Tocaya/Toca Integrated Enterprise also required Plaintiffs and the Lead Aggrieved Employees and other Aggrieved Employees to clock out for a meal period but to continue working while they were off-the-clock.

Due to the workload demands at the Tocaya/Toca Integrated Enterprise and the Tocaya/Toca Integrated Enterprise's failure to staff the workplace adequately, the Lead Aggrieved Employees and other Aggrieved Employees regularly were forced to forego meal periods and/or had their meal periods interrupted or delayed by work, and were not relieved of all duties for unpaid meal periods.

The Tocaya/Toca Integrated Enterprise also has a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, the Lead Aggrieved Employees and other Aggrieved Employees have not received premium pay for all missed meal periods. Labor Code § 226.7(c) ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law . . . , the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

The Tocaya/Toca Integrated Enterprise thus failed to provide all meal periods in violation of Labor Code Sections 226.7, 512(a), and 1198. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to meal period premium wages, civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

F. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802

Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code

Section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, the Tocaya/Toca Integrated Enterprise, on a company-wide basis, systematically failed to reimburse the Lead Aggrieved Employees and other Aggrieved Employees for necessary business expenses incurred at the direction of the Tocaya/Toca Integrated Enterprise in at least three respects.

First, during the relevant time period, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees to use their personal cell phone and cell phone data plan to carry out their job duties. For example, the Lead Aggrieved Employees and other Aggrieved Employees were required to download the HotSchedules, Homebase and Radar Schedules mobile applications, among others, to their personal cell phones and to access them frequently for scheduling and communication purposes. As detailed above, the Lead Aggrieved Employees and other Aggrieved Employees were also required to respond to the Tocaya/Toca Integrated Enterprise’ work-related messages; and the Lead Aggrieved Employees and other Aggrieved Employees used their personal cell phones to respond to such messages. Although the Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to regularly use their personal cell phones and cell phone data to carry out work-related responsibilities, the Tocaya/Toca Integrated Enterprise failed to reimburse the Lead Aggrieved Employees and other Aggrieved Employees for the reasonable costs of their personal cell phones and cell phone data plans.

Second, during the relevant time period, the Tocaya/Toca Integrated Enterprise also had a consistent policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees to purchase certain mobile applications for the benefit of the Tocaya/Toca Integrated Enterprise.

Third, during the relevant time period, the Tocaya/Toca Integrated Enterprise also had a consistent policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees who worked as supervisors and/or in other managerial positions to use their personal vehicle, gas and auto insurance to carry out work-related duties for the benefit of the Tocaya/Toca Integrated Enterprise, but the Tocaya/Toca Integrated Enterprise failed to reimburse the Lead Aggrieved Employees and other Aggrieved Employees for the reasonable costs of the use of their personal vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-related expenses.

The Tocaya/Toca Integrated Enterprise could have provided the Lead Aggrieved Employees and other Aggrieved Employees with the actual tools required for use on the job,

including company phones and company cars, or reimbursed employees for their cell phones and cell phone usage and vehicle usage, but instead, the Tocaya/Toca Integrated Enterprise passed these operating costs off onto the Lead Aggrieved Employees and other Aggrieved Employees. Thus, the Tocaya/Toca Integrated Enterprise violated Labor Code Section 2802 by uniformly failing to reimburse any portion of the Lead Aggrieved Employees' and other Aggrieved Employees' cell phone and data plan expenses, the costs of purchasing mobile applications and the cost of the use of their personal vehicles. *See, e.g., Cochran*, 228 Cal. App. 4th at 1144 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

The Tocaya/Toca Integrated Enterprise's policy and/or practice of passing its operating costs on to the Lead Aggrieved Employees and other Aggrieved Employees violates Labor Code Section 2802. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

G. Failure to Provide Accurate Wage Statements in Violation of Labor Code Sections 226(a), 1174(d) and 1198

Labor Code Section 226(a) requires an employer to provide its employees with "an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (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 . . . , (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." The itemized wage statement must be provided semimonthly or otherwise when wages are paid.

The Tocaya/Toca Integrated Enterprise has not provided the Lead Aggrieved Employees and other Aggrieved Employees with properly itemized wage statements. Labor Code Section 226(e) provides that if an employer fails to provide an employee with properly itemized wages statements as set forth in Section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code Section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, the Tocaya/Toca Integrated Enterprise knowingly and intentionally failed to provide accurate and complete itemized wage statements to the Lead Aggrieved Employees and other Aggrieved Employees in violation of Labor Code Section 226(a) in several ways:

- The Tocaya/Toca Integrated Enterprise violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because the Tocaya/Toca Integrated Enterprise failed to record and compensate the Lead Aggrieved Employees and other Aggrieved Employees for all off-the-clock work.
- The Tocaya/Toca Integrated Enterprise also violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice of editing non-exempt employees’ clock-in and clock-out times to eliminate and/or reduce hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees.
- The Tocaya/Toca Integrated Enterprise also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages” and “net wages” because the Tocaya/Toca Integrated Enterprise failed to provide the Lead Aggrieved Employees and other Aggrieved Employees with required meal and rest period premium wages.
- The Tocaya/Toca Integrated Enterprise violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked by the employee” because the Tocaya/Toca Integrated Enterprise did not include time spent working during on-duty meal and rest periods for which the Lead Aggrieved Employees and other Aggrieved Employees should have been compensated;
- The Tocaya/Toca Integrated Enterprise violated Labor Code Section 226(a)(8) by failing to include the names and addresses of the legal entities that employed Plaintiffs and class members on their wage statements.

Because the Tocaya/Toca Integrated Enterprise violated Labor Code Section 226 in numerous ways, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code Sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

H. Failure to Pay Wages Timely Upon Termination in Violation of Labor Code Sections 201, 202 & 203

Labor Code Section 201 provides that if an employer discharges an employee, the employee’s earned and unpaid wages at the time of discharge are due and payable immediately.

Labor Code Section 202 provides that, if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Failure to pay all wages in compliance with Labor Code Sections 201 and 202 subjects the employer to the penalties outlined in Labor Code Section 203. Section 203, in turn, requires the employer to pay the employee a full day of wages (8 hours) at the employee's last hourly rate for each day that all earned but unpaid wages remain unpaid up to a total of 30 days.

Within the previous twelve months and beyond, and in violation of Labor Code Sections 201 and 202, the Tocaya/Toca Integrated Enterprise willfully failed to pay the Lead Aggrieved Employees and other Aggrieved Employees all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of their separation from employment with the Tocaya/Toca Integrated Enterprise for several reasons:

- The Tocaya/Toca Integrated Enterprise failed to pay the Lead Aggrieved Employees and other Aggrieved Employees for all hours worked because the Lead Aggrieved Employees and other Aggrieved Employees worked off-the-clock, as detailed above, and the Tocaya/Toca Integrated Enterprise failed to compensate the Lead Aggrieved Employees and other Aggrieved Employees for all off-the-clock work.
- The Tocaya/Toca Integrated Enterprise failed to pay the Lead Aggrieved Employees and other Aggrieved Employees for all hours worked because, as detailed above, the Tocaya/Toca Integrated Enterprise systematically edited clock-in and clock-out times to reduce total hours worked and to eliminate overtime hours worked.
- The Tocaya/Toca Integrated Enterprise failed to provide the Lead Aggrieved Employees and other Aggrieved Employees with statutory meal and rest breaks and to pay meal and rest period premium wages for missed meal and rest breaks, as detailed above.

The Lead Aggrieved Employees and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 203 and/or 2699(f)-(g).

I. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204

Labor Code Section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code Section 204 further provides that all wages earned by any person in any employment between the 16th and the last day of any calendar month (other than those wages due upon termination of an employee) are due and payable

between the 1st and the 10th day of the following month. Labor Code Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code Section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, the Tocaya/Toca Integrated Enterprise failed to pay the Lead Aggrieved Employees and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within the time period specified by Labor Code Section 204.

As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 210 and/or 2699(a), (f)-(g).

J. Failure To Maintain Accurate Records In Violation Of Labor Code § 1174(d)

Labor Code Section 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee with respect to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as time records showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours.

The Tocaya/Toca Integrated Enterprise violated Labor Code Section 1174(d) by knowingly, intentionally, and willfully failing to keep required accurate payroll records for the Lead Aggrieved Employees and other Aggrieved Employees. The Tocaya/Toca Integrated Enterprise did not accurately record all hours worked by the Lead Aggrieved Employees and other Aggrieved Employees including the off-the-clock work detailed above, which caused the payroll records of Aggrieved Employees to be inaccurate.

K. Penalties Pursuant to Labor Code Section 558(a)

Labor Code Section 558(a) provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code Section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

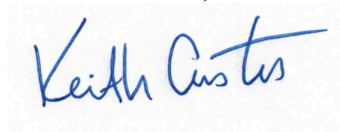
At all relevant times, the Tocaya/Toca Integrated Enterprise was an employer who violated the Lead Aggrieved Employees' and other Aggrieved Employees' rights by violating the various sections of the Labor Code detailed herein. Accordingly, the Lead Aggrieved Employees shall seek all applicable remedies available under Labor Code Section 558 for themselves, the State of California, and all other Aggrieved Employees.

* * *

If the LWDA does not provide notice that it will investigate these violations within 65 days of the date of this notice, the Lead Aggrieved Employees, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against the Tocaya/Toca Integrated Enterprise for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1102.5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802, as detailed herein. The Lead Aggrieved Employees shall seek all applicable and available penalties and remedies related to these violations of the Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis

Exhibit 2



August 24, 2020

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE CLAIM NOTICE

(<https://dir.tfaforms.net/198>)

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

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

The Madera Group
8720 Sunset Blvd, Suite A
Los Angeles, CA 90069

Corporation Service Company dba
CSC—Lawyers Incorporation Service
Agent for TOCAYA MANAGEMENT LLC
2710 Gateway Oaks Drive, Suite 150N
Sacramento, CA 95833-3502

All Employers that received this notice are identified on Exhibit A

Re: *Layonel Del Prado, et al. v. Tocaya Management LLC, et al.*:
LWDA Case No. LWDA-CM-793583-20: First Amended Notice of Intent to File Civil
Action Pursuant to Labor Code § 2699.3

Dear PAGA Administrator and Employer,

This office represents Layonel Del Prado, Ammon Mendes, Kevin Gonzalez and Elora Dorn with respect to claims arising from their employment by Tocaya Management LLC, Tocaya Organica LLC, Toca Madera Weho LLC, the Madera Group LLC, Tocaya Palisades LLC, Tocaya Santa Monica LLC, Tocaya SD LLC, Tocaya South Bay LLC, Tocaya Sportsman LLC, Tocaya Sunset LLC, and Tocaya Venice LLC (collectively, the “Tocaya/Toca Integrated Enterprise” or “Employer”).

Mr. Del Prado was employed as a non-exempt employee by the Tocaya/Toca Integrated Enterprise at Toca Madera from approximately July 2018 until February 2020. Mr. Mendes was employed as a non-exempt employee by the Tocaya/Toca Integrated Enterprise at Tocaya Organica from approximately July 2018 until August 2019. Mr. Gonzalez was employed as a non-exempt employee by the Tocaya/Toca Integrated Enterprise at Tocaya Organica from

approximately July 2019 until June 2020. Ms. Dorn was employed as a non-exempt employee by the Tocaya/Toca Integrated Enterprise at Tocaya Organica from approximately September 2017 until January 2020. Mr. Del Prado, Mr. Mendes, Mr. Gonzalez and Ms. Dorn are referred to collectively in this correspondence as the “Lead Aggrieved Employees.”

This office previously provided notice of the claims of Mr. Del Prado, Mr. Mendes and Mr. Gonzalez to the California Labor and Workforce Development Agency (“LWDA”) on June 16, 2020 and submitted the applicable filing fee pursuant to Labor Code Section 2699.3(a)(1)(B). This amended notice supplements the prior LWDA notice by adding Elora Dorn as an aggrieved employee, and is intended to clarify the facts and theories supporting the alleged Labor Code violations.

The Lead Aggrieved Employees intend to file a civil action against Employer, seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the Private Attorneys General Act of 2004, Labor Code Section 2698, *et al.* (“PAGA”), for violations of the Labor Code. The Lead Aggrieved Employees shall seek relief on behalf of themselves, the State of California, and other persons who are or were employed by the Tocaya/Toca Integrated Enterprise as non-exempt and/or exempt employees in California (“Aggrieved Employees”).

Individual defendants Tosh Berman, Amrou Almanaseer and Michael Tanha are officers and owners of the Tocaya/Toca Integrated Enterprise. As owners and officers of the corporate employer, the Individual Defendants are liable in their individual capacity for the civil penalties, attorneys’ fees and litigation costs available to the Lead Aggrieved Employees and other Aggrieved Employees pursuant to California Labor Code Sections 558 and 1197.1. *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809 (holding that “the language in both section 558(a) and section 1197.1(a) is broad enough to *unambiguously* include [the owner and CEO of the defendant employer] as a person *other than the corporate employer* subject to the civil penalties awarded by the trial court under those two statutes.”) (emphasis in original). Importantly, the *Atempa* court held that the alter ego doctrine does not apply in PAGA actions to immunize owners and CEOs from liability because the Labor Code imposed liability directly on owners and CEOs for the corporate employer’s violations of the Labor Code.

Additionally, as owners and officers of the Tocaya/Toca Integrated Enterprise, the Individual Defendants are also liable in their individual capacity as employers pursuant to Labor Code Section 558.1 for the Tocaya/Toca Integrated Enterprise’s (a) failure to pay minimum wages; (b) failure to pay overtime wages; (c) failure to provide meal and rest periods and to pay meal and rest period premium wages in lieu thereof; (d) failure to provide accurate wage statements; (e) failure to reimburse for necessary business expenses incurred; and (f) failure to pay wages timely at time of termination or resignation. Labor Code § 558.1.

Pursuant to Labor Code Section 2699.3, this letter serves as the Lead Aggrieved Employees’ written notice to the Labor and Workforce Development Agency (“LWDA”) and Employer regarding the following alleged violations of the Labor Code, and the facts and legal

theories that support those violations.¹ This letter is being submitted to the LWDA online pursuant to the process described on the California Department of Industrial Relations' website.²

A. Integrated Enterprise and Single Employer Allegations

The Tocaya Organica and Toca Madera locations in California and related entity defendants constitute an “integrated enterprise” with interrelated operations, common management, centralized control of labor relations, and common ownership and/or financial controls (the “Tocaya/Toca Integrated Enterprise”)—and are thus properly viewed as a single employer in the context of this action.

The Tocaya/Toca Integrated Enterprise operates approximately fourteen (14) restaurants in California. Although the Tocaya Organica and Toca Madera locations are generally registered as separate legal entities, the entities have chosen to handle their employer-employee relationships jointly and have chosen to operate as a single integrated enterprise. Mr. Berman, the CEO of the Madera Group, refers to the employees of Tocaya Organica and Toca Madera collectively as “team members” and a part of the “Madera Group Family.”

California courts as well as federal courts in the Ninth Circuit apply the “integrated enterprise” test to claims arising from alleged violations of the California Labor Code. *See, e.g., Laird v. Capital Cities/ABC, Inc.* (1998) 69 Cal. App. 4th 727, 737; *Kenny v. Regis Corp.* (N.D. Cal. Mar. 10, 2008) No. 06–07521, 2008 WL 686710, at *3; *Huse v. Auburn Honda* (E.D. Cal. June 10, 2005) No. 04–0227, 2005 WL 1398521, at *3 (employing the integrated enterprise test to determine whether a defendant was an employer within the meaning of the California Labor Code); *Serrano v. 180 Connect, Inc.* (N.D. Cal., Aug. 11, 2006, No. C 06-1363 TEH) 2006 WL 2348888, at *2, *rev'd on other grounds* (9th Cir. 2007) 478 F.3d 1018. Courts have also applied the integrated enterprise test in the context of addressing UCL claims predicated upon California Labor Code violations. *See Maddock v. KB Homes, Inc.* (C.D. Cal. 2007) 631 F. Supp. 2d 1226, 1238.

Under *Laird*, in determining whether two entities are liable as a single employer or an “integrated enterprise,” courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird*, 68 Cal. App. 4th at 737. All of these factors are satisfied here.

¹ The Labor Code violations, facts and legal theories detailed herein are based on the Lead Aggrieved Employees' experience and his counsel's review of the records currently available relating to the Lead Aggrieved Employees' employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional Labor Code violations as well as additional facts and legal theories supporting the alleged Labor Code violations. Thus, the the Lead Aggrieved Employees reserve the right to supplement this letter with additional Labor Code violations, facts, and legal theories if they becomes aware of them subsequent to the submission of this letter.

² *See* <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

The Tocaya/Toca Integrated Enterprise has centralized the control of labor relations and set up common management through Tocaya Management, the Madera Group and potentially other entities that may be discovered through investigation and discovery.

Tocaya Management directly employs all employees of the Tocaya Organica and Toca Madera restaurants. Upon information and belief, Defendants formed Tocaya Management to serve as a payroll processor for the Tocaya/Toca Integrated Enterprise. Upon information and belief, Tocaya Management does not generate any revenue itself from the Tocaya/Toca Integrated Enterprise's restaurant business.

The Tocaya/Toca Integrated Enterprise has a single human resource department. In email correspondence to employees of Tocaya Organica and Toca Madera, the Tocaya/Toca Integrated Enterprise's human resource department invites employees of both Tocaya Organica and Toca Madera to send questions or concerns to the "Human Resource team" by emailing the team at a single email address: hr@themaderagroup.com.

Kristi Thompson served as the Human Resource director for the Tocaya/Toca Integrated Enterprise from October 2015 to October 2019. Melinda Barrow succeeded Ms. Thompson and currently serves as the Human Resource director for the Tocaya/Toca Integrated Enterprise. Angelica Barker currently serves as the Human Resource Coordinator for the Tocaya/Toca Integrated Enterprise. Ms. Thompson, Ms. Barrow and Ms. Barker all identify The Madera Group as their employer. However, during their respective tenures working for the Tocaya/Toca Integrated Enterprise, Ms. Thompson, Ms. Barrow and Ms. Barker have provided human resource services to all employees of all Tocaya Organica and Toca Madera locations.

Additionally, upon information and belief, the Tocaya/Toca Integrated Enterprise has used a single employee handbook for all employees, regardless of whether the employees provide services to the Tocaya/Toca Integrated Enterprise through Tocaya Organica or Toca Madera.

The Madera Group website also allows prospective employees to apply for work at any of the Tocaya Organica or Toca Madera locations in California or Arizona through the "Careers" page of its website. See <https://www.themaderagroup.com/careers> (last visited on Aug. 24, 2020).

The Tocaya/Toca Integrated Enterprise's operations are also interrelated. The Madera Group's website boasts that "[t]he Madera Group develops, owns and operates a collection of leading restaurant venues through (sic) Southern California and Arizona including Tocaya Organica and Toca Madera." The Madera Group management team identified on the Madera Group website manages all of the restaurant venues from its headquarters in West Hollywood, California. See <https://www.themaderagroup.com/team> (last visited on Aug. 24, 2020). Further, upon information and belief, revenue generated from the sales at Tocaya Organica and Toca Madera restaurants is deposited into accounts held by Entity Defendants other than Tocaya

Management, the direct employer of the Lead Aggrieved Employees and other Aggrieved Employees. Those Entity Defendants, in turn, transfer only an amount sufficient to cover payroll expenses to Tocaya Management. Upon information and belief, the Tocaya/Toca Integrated Enterprise insufficiently capitalizes Tocaya Management such that it will lack sufficient funds to cover the judgment in this litigation or in any employment-related litigation asserted against Tocaya Management. Additionally, administrative and training functions are interrelated and operate from the Madera Group headquarters located at 8720 W. Sunset Boulevard, West Hollywood, California 90069. *See* <https://www.themaderagroup.com/contact-us> (last visited Aug. 24, 2020)

The Tocaya/Toca Integrated Enterprise's operations are also interrelated because various Entity Defendants and Individual Defendants serve as the managers of the other Entity Defendants. For example, Tocaya Organica serves as the manager of Tocaya Palisades, Tocaya Santa Monica, Tocaya South Bay, Tocaya Toluca and Tocaya Venice. Tocaya Holdings LLC serves as the manager of Tocaya Organica and Tocaya Management. The Madera Group, in turn, serves as the manager of Tocaya Holdings LLC. The Madera Group is also managed by Individual Defendants Tosh Berman and Amrou Almanaseer.

Each of the Tocaya Organica and Toca Madera locations in California, as well as the Madera Group, list their business address with the California Secretary of State as 8720 W. Sunset Boulevard, West Hollywood, California 90069.

Upon information and belief, each of the Entity Defendants share a degree of common ownership and financial control by Tosh Berman, Amrou Almanaseer and Michael Tanha who are members of the entities operating as limited liability companies and/or officers in the entities operating as limited liability companies.

As detailed below, the Tocaya/Toca Integrated Enterprise has violated the Labor Code within the last year and beyond as to the Lead Aggrieved Employees and other Aggrieved Employees in the following respects:

B. Failure to Pay Minimum Wages in Violation of Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198

Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198 require an employer to pay employees no less than the established minimum wage. These Labor Code Sections provide that payment of a wage less than the established minimum wage is unlawful. The applicable Industrial Welfare Commission ("IWC") Wage Order defines compensable work time, or "hours worked," as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11050(2)(K) (defining "Hours Worked"). An employee is entitled to be paid no less than the established minimum wage for all hours worked.

Within the previous twelve months and beyond, the Tocaya/Toca Integrated Enterprise maintained a policy and practice of failing to pay the Lead Aggrieved Employees and other Aggrieved Employees the correct minimum wage for all hours worked for several reasons:

First, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to eliminate hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees. The Tocaya/Toca Integrated Enterprise routinely engaged in time-shaving to eliminate overtime hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees. The Tocaya/Toca Integrated Enterprise also routinely edited clock-in and out times to eliminate meal period penalties.

Second, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees to download various mobile applications to their personal cell phones and to access them frequently for business purposes while they were off the clock. The Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to download the HotSchedules, Homebase and/or Radar Schedules (formerly Cduit Schedules) apps onto their personal cell phones and to access them frequently while they were off-the-clock for scheduling and communication purposes. Plaintiff Gonzalez and class members working as non-exempt supervisors and/or in other non-exempt managerial positions were also required to download additional applications to their personal cell phones including but not limited to Slack, Freshpoint, Sysco, and Paycom, and to access them frequently while they were off the clock. The Tocaya/Toca Integrated Enterprise also required the Lead Aggrieved Employees and other Aggrieved Employees to review and respond to business-related messages they received on their personal cell phones while they were off-the-clock.

Third, the Tocaya/Toca Integrated Enterprise routinely required the Lead Aggrieved Employees and other Aggrieved Employees to clock out for a meal period but to continue working while they were off-the-clock during their meal period. The Tocaya/Toca Integrated Enterprise failed to pay the applicable minimum wage for any of those off-the-clock hours worked.

Because the Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to work off-the-clock, the Tocaya/Toca Integrated Enterprise failed to compensate the Lead Aggrieved Employees and other Aggrieved Employees for all hours worked, including minimum wages and overtime hours.

Fourth, IWC Wage Order 5-2001, Section 5(A) provides that "Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage."

In violation of IWC Wage Order 5-2001, Section 5(A), the Tocaya/Toca Integrated Enterprise failed to pay the applicable minimum wage for reporting time wages to the Lead Aggrieved Employees and other Aggrieved Employees when they arrived to work a scheduled shift and were sent home immediately or before the mid-point of their scheduled shift.

The Tocaya/Toca Integrated Enterprise has thus violated Labor Code Sections 1182.12, 1194, 1197, 1197.1 and 1198. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 1197.1 and/or 2699(a), (f) and (g).

C. Failure to Pay Overtime in Violation of Labor Code Sections 510 & 1198

Labor Code Sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay.

Within the previous twelve months and beyond, the Tocaya/Toca Integrated Enterprise maintained a policy and practice of failing to pay the Lead Aggrieved Employees and other Aggrieved Employees the correct amount of overtime wages for all overtime hours worked for several reasons:

As detailed above, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to reduce and/or eliminate hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees, including overtime hours.

The Tocaya/Toca Integrated Enterprise also knowingly required, suffered and permitted the Lead Aggrieved Employees and other Aggrieved Employees to perform duties off-the-clock and failed to compensate them for all hours worked, including all overtime hours worked. Because the Lead Aggrieved Employees and other Aggrieved Employees often worked close to eight (8) hours in a single day, in excess of eight (8) hours in a single day, and/or in close to and/or in excess of forty (40) hours in week, some of the off-the-clock work performed by the Lead Aggrieved Employees and other Aggrieved Employees qualified as overtime, and should have been paid at the applicable overtime rate.

Thus, because the Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to work off-the-clock and/or edited their clock-in and out times to eliminate and/or reduce total overtime hours worked, the Tocaya/Toca

Integrated Enterprise failed to pay all required overtime wages in violation of Labor Code Sections 510 and 1198 and the applicable IWC Wage Order.

The Tocaya/Toca Integrated Enterprise has thus violated Labor Code Sections 510 and 1198. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558, 1194, and/or 2699(a), (f)-(g).

D. Failure to Provide Rest Periods in Violation of Labor Code Sections 226.7 and 1198

Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3.5) hours. Labor Code Section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to provide rest periods under Labor Code Section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.

Within the last twelve months and beyond, the Tocaya/Toca Integrated Enterprise's scheduling and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and other Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

Notwithstanding any formal written policy to the contrary, the Tocaya/Toca Integrated Enterprise's actual custom and business practice was to undermine any formal policy of providing legally required rest periods by pressuring employees to perform their duties in ways that omitted breaks, including, but not limited to, scheduling a heavy workload that made taking rest periods extremely difficult, maintaining an informal anti-rest-period policy enforced through pressure, failing to schedule rest periods, failing to provide rest-period coverage, and otherwise discouraging employees from taking legally protected rest periods. Within the last twelve months and beyond, the Lead Aggrieved Employees and other Aggrieved Employees worked straight through their shifts without taking any off-duty, uninterrupted ten (10) minute rest periods.

Upon information and belief, the Tocaya/Toca Integrated Enterprise failed to implement any practice or procedure to pay rest period premiums when the Lead Aggrieved Employees and other Aggrieved Employees missed a required rest period.

The Tocaya/Toca Integrated Enterprise also failed to compensate the Lead Aggrieved Employees and other Aggrieved Employees for the time they spent working instead of taking legally compliant rest periods.

The Tocaya/Toca Integrated Enterprise also engaged in a systematic, firm-wide practice and/or policy of not paying rest period premiums owed when rest periods were not provided. Thus, the Tocaya/Toca Integrated Enterprise denied the Lead Aggrieved Employees and other Aggrieved Employees rest periods and failed to pay them rest period premium wages due in violation of Labor Code Section 226.7 and the applicable IWC Wage Order.

Because the Tocaya/Toca Integrated Enterprise failed to provide all rest periods in violation of Labor Code Sections 226.7 and 1198, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

E. Failure to Provide Meal Periods In Violation of Labor Code §§ 226.7, 512(a) & 1198

Labor Code Sections 226.7, 512(a), 1198 and the applicable IWC Wage Order require employers to provide meal breaks and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal break is not provided. Pursuant to Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code Sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal break of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

Within the last twelve months and beyond, the Tocaya/Toca Integrated Enterprise's scheduling and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and other Aggrieved Employees from being relieved of all duty in order to take compliant meal periods.

Notwithstanding any formal written policy to the contrary, the Tocaya/Toca Integrated Enterprise's actual custom and business practice was to undermine any formal policy of providing legally required meal periods by pressuring employees to perform their duties in ways that omitted meal periods, including, but not limited to, scheduling a heavy workload that made taking meal periods extremely difficult, maintaining an informal anti-meal-period policy enforced through pressure, failing to schedule meal periods, failing to provide meal-period

coverage, and otherwise discouraging employees from taking legally protected meal periods. Within the last twelve months and beyond, the Lead Aggrieved Employees and other Aggrieved Employees worked straight through their shifts without taking any off-duty, uninterrupted thirty (30) minute meal period.

Additionally, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required and incentivized general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out times to eliminate evidence of untimely or missed meal periods.

Further, the Tocaya/Toca Integrated Enterprise also required the Lead Aggrieved Employees and other Aggrieved Employees to clock out for a meal period but to continue working while they were off-the-clock.

Due to the workload demands at the Tocaya/Toca Integrated Enterprise and the Tocaya/Toca Integrated Enterprise's failure to staff the workplace adequately, the Lead Aggrieved Employees and other Aggrieved Employees regularly were forced to forego meal periods and/or had their meal periods interrupted or delayed by work, and were not relieved of all duties for unpaid meal periods.

The Tocaya/Toca Integrated Enterprise also has a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, the Lead Aggrieved Employees and other Aggrieved Employees have not received premium pay for all missed meal periods. Labor Code § 226.7(c) ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law . . . , the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.").

The Tocaya/Toca Integrated Enterprise thus failed to provide all meal periods in violation of Labor Code Sections 226.7, 512(a), and 1198. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to meal period premium wages, civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 558 and/or 2699(a), (f)-(g).

F. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802

Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code Section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment

shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, the Tocaya/Toca Integrated Enterprise, on a company-wide basis, systematically failed to reimburse the Lead Aggrieved Employees and other Aggrieved Employees for necessary business expenses incurred at the direction of the Tocaya/Toca Integrated Enterprise in at least three respects.

First, during the relevant time period, the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees to use their personal cell phone and cell phone data plan to carry out their job duties. For example, the Lead Aggrieved Employees and other Aggrieved Employees were required to download the HotSchedules, Homebase and Radar Schedules mobile applications, among others, to their personal cell phones and to access them frequently for scheduling and communication purposes. As detailed above, the Lead Aggrieved Employees and other Aggrieved Employees were also required to respond to the Tocaya/Toca Integrated Enterprise’ work-related messages; and the Lead Aggrieved Employees and other Aggrieved Employees used their personal cell phones to respond to such messages. Although the Tocaya/Toca Integrated Enterprise required the Lead Aggrieved Employees and other Aggrieved Employees to regularly use their personal cell phones and cell phone data to carry out work-related responsibilities, the Tocaya/Toca Integrated Enterprise failed to reimburse the Lead Aggrieved Employees and other Aggrieved Employees for the reasonable costs of their personal cell phones and cell phone data plans.

Second, during the relevant time period, the Tocaya/Toca Integrated Enterprise also had a consistent policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees to purchase certain mobile applications for the benefit of the Tocaya/Toca Integrated Enterprise.

Third, during the relevant time period, the Tocaya/Toca Integrated Enterprise also had a consistent policy and/or practice that required the Lead Aggrieved Employees and other Aggrieved Employees who worked as supervisors and/or in other managerial positions to use their personal vehicle, gas and auto insurance to carry out work-related duties for the benefit of the Tocaya/Toca Integrated Enterprise, but the Tocaya/Toca Integrated Enterprise failed to reimburse the Lead Aggrieved Employees and other Aggrieved Employees for the reasonable costs of the use of their personal vehicle, fuel, auto insurance, vehicle maintenance costs and other vehicle-related expenses.

The Tocaya/Toca Integrated Enterprise could have provided the Lead Aggrieved Employees and other Aggrieved Employees with the actual tools required for use on the job, including company phones and company cars, or reimbursed employees for their cell phones and cell phone usage and vehicle usage, but instead, the Tocaya/Toca Integrated Enterprise passed these operating costs off onto the Lead Aggrieved Employees and other Aggrieved Employees. Thus, the Tocaya/Toca Integrated Enterprise violated Labor Code Section 2802 by uniformly

failing to reimburse any portion of the Lead Aggrieved Employees' and other Aggrieved Employees' cell phone and data plan expenses, the costs of purchasing mobile applications and the cost of the use of their personal vehicles. *See, e.g., Cochran*, 228 Cal. App. 4th at 1144 ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

The Tocaya/Toca Integrated Enterprise's policy and/or practice of passing its operating costs on to the Lead Aggrieved Employees and other Aggrieved Employees violates Labor Code Section 2802. As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

G. Failure to Provide Accurate Wage Statements in Violation of Labor Code Sections 226(a), 1174(d) and 1198

Labor Code Section 226(a) requires an employer to provide its employees with "an accurate itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee . . . , (4) all deductions . . . , (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 . . . , (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." The itemized wage statement must be provided semimonthly or otherwise when wages are paid.

The Tocaya/Toca Integrated Enterprise has not provided the Lead Aggrieved Employees and other Aggrieved Employees with properly itemized wage statements. Labor Code Section 226(e) provides that if an employer fails to provide an employee with properly itemized wages statements as set forth in Section 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code Section 226.3 provides that any employer who violates Section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, the Tocaya/Toca Integrated Enterprise knowingly and intentionally failed to provide accurate and complete itemized wage statements to the Lead Aggrieved Employees and other Aggrieved Employees in violation of Labor Code Section 226(a) in several ways:

- The Tocaya/Toca Integrated Enterprise violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because the Tocaya/Toca Integrated Enterprise failed to record and compensate the Lead Aggrieved Employees and other Aggrieved Employees for all off-the-clock work.
- The Tocaya/Toca Integrated Enterprise also violated Labor Code Sections 226(a)(1), 2267(a)(2) and 226(a)(5) and 226(a)(9) by failing to include the accurate amount of “gross wages,” “net wages” and “total hours worked” because the Tocaya/Toca Integrated Enterprise had a uniform policy and/or practice of editing non-exempt employees’ clock-in and clock-out times to eliminate and/or reduce hours worked from the time records of the Lead Aggrieved Employees and other Aggrieved Employees.
- The Tocaya/Toca Integrated Enterprise also violated Labor Code Sections 226(a)(1) and 226(a)(5) by failing to include the accurate amount of “gross wages” and “net wages” because the Tocaya/Toca Integrated Enterprise failed to provide the Lead Aggrieved Employees and other Aggrieved Employees with required meal and rest period premium wages.
- The Tocaya/Toca Integrated Enterprise violated Labor Code Section 226(a)(2) by failing to include the accurate number of “total hours worked by the employee” because the Tocaya/Toca Integrated Enterprise did not include time spent working during on-duty meal and rest periods for which the Lead Aggrieved Employees and other Aggrieved Employees should have been compensated;
- The Tocaya/Toca Integrated Enterprise violated Labor Code Section 226(a)(8) by failing to include the names and addresses of the legal entities that employed the Lead Aggrieved Employees and other Aggrieved Employees on their wage statements.

Because the Tocaya/Toca Integrated Enterprise violated Labor Code Section 226 in numerous ways, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code Sections 226(e), 226.3, 1174.5, and/or 2699(a), (f)-(g).

H. Failure to Pay Wages Timely Upon Termination in Violation of Labor Code Sections 201, 202 & 203

Labor Code Section 201 provides that if an employer discharges an employee, the employee’s earned and unpaid wages at the time of discharge are due and payable immediately. Labor Code Section 202 provides that, if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Failure to pay all wages in compliance with Labor Code Sections 201 and 202 subjects the employer to the

penalties outlined in Labor Code Section 203. Section 203, in turn, requires the employer to pay the employee a full day of wages (8 hours) at the employee's last hourly rate for each day that all earned but unpaid wages remain unpaid up to a total of 30 days.

Within the previous twelve months and beyond, and in violation of Labor Code Sections 201 and 202, the Tocaya/Toca Integrated Enterprise willfully failed to pay the Lead Aggrieved Employees and other Aggrieved Employees all their earned and unpaid wages either at the time of discharge, or within seventy-two (72) hours of their separation from employment with the Tocaya/Toca Integrated Enterprise for several reasons:

- The Tocaya/Toca Integrated Enterprise failed to pay the Lead Aggrieved Employees and other Aggrieved Employees for all hours worked because the Lead Aggrieved Employees and other Aggrieved Employees worked off-the-clock, as detailed above, and the Tocaya/Toca Integrated Enterprise failed to compensate the Lead Aggrieved Employees and other Aggrieved Employees for all off-the-clock work.
- The Tocaya/Toca Integrated Enterprise failed to pay the Lead Aggrieved Employees and other Aggrieved Employees for all hours worked because, as detailed above, the Tocaya/Toca Integrated Enterprise systematically edited clock-in and clock-out times to reduce total hours worked and to eliminate overtime hours worked.
- The Tocaya/Toca Integrated Enterprise failed to provide the Lead Aggrieved Employees and other Aggrieved Employees with statutory meal and rest breaks and to pay meal and rest period premium wages for missed meal and rest breaks, as detailed above.

The Lead Aggrieved Employees and other Aggrieved Employees are thus entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 203 and/or 2699(f)-(g).

I. Failure to Timely Pay Wages During Employment in Violation of Labor Code Section 204

Labor Code Section 204 provides that all wages earned by any person in any employment between the 1st and the 15th days of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code Section 204 further provides that all wages earned by any person in any employment between the 16th and the last day of any calendar month (other than those wages due upon termination of an employee) are due and payable between the 1st and the 10th day of the following month. Labor Code Section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, Labor Code Section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly,

biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, the Tocaya/Toca Integrated Enterprise failed to pay the Lead Aggrieved Employees and other Aggrieved Employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within the time period specified by Labor Code Section 204.

As a result, the Lead Aggrieved Employees and other Aggrieved Employees are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Sections 210 and/or 2699(a), (f)-(g).

J. Failure To Maintain Accurate Records In Violation Of Labor Code § 1174(d)

Labor Code Section 1174(d) requires employers to keep payroll records showing the hours worked daily by and the wages paid to employees. Likewise, the relevant Wage Orders require employers to keep accurate records for each employee with respect to total wages paid each payroll period, total hours worked in the payroll period and applicable rates of pay, as well as time records showing when employees begin and end each work period, including meal periods, split shift intervals, and total daily hours.

The Tocaya/Toca Integrated Enterprise violated Labor Code Section 1174(d) by knowingly, intentionally, and willfully failing to keep required accurate payroll records for the Lead Aggrieved Employees and other Aggrieved Employees. The Tocaya/Toca Integrated Enterprise did not accurately record all hours worked by the Lead Aggrieved Employees and other Aggrieved Employees including the off-the-clock work detailed above, which caused the payroll records of Aggrieved Employees to be inaccurate.

K. Penalties Pursuant to Labor Code Section 558(a)

Labor Code Section 558(a) provides that “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Labor Code Section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

At all relevant times, the Tocaya/Toca Integrated Enterprise was an employer who violated the Lead Aggrieved Employees' and other Aggrieved Employees' rights by violating the various sections of the Labor Code detailed herein. Accordingly, the Lead Aggrieved Employees

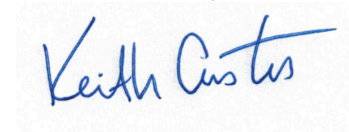
shall seek all applicable remedies available under Labor Code Section 558 for themselves, the State of California, and all other Aggrieved Employees.

* * *

If the LWDA does not provide notice that it will investigate these violations within 65 days of the date of this notice, the Lead Aggrieved Employees, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against the Tocaya/Toca Integrated Enterprise for violations of Labor Code Sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1102.5 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802, as detailed herein. The Lead Aggrieved Employees shall seek all applicable and available penalties and remedies related to these violations of the Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis

cc: Matthew Golper, Esq. (by email and U.S. Certified Mail)
Stephen Mazzara, Esq. (by email and U.S. Certified Mail)

EXHIBIT A

Employer/Recipient's Name	Registered Agent for Service of Process	Address for Mailing PAGA Notice by U.S. Certified Mail
1. THE MADERA GROUP LLC, a Nevada limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for THE MADERA GROUP LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
2. TOCA MADERA WEHO LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCA MADERA WEHO LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
3. TOCAYA MANAGEMENT LLC, a Nevada limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA MANAGEMENT LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
4. TOCAYA ORGANICA LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA ORGANICA LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
5. TOCAYA PALISADES LLC, a California limited liability company	Amrou Almanaseer	Tocaya Palisades LLC 8720 Sunset Blvd. West Hollywood, CA 90069
6. TOCAYA SANTA MONICA LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA SANTA MONICA LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
7. TOCAYA SD LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA SD LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
8. TOCAYA SOUTH BAY LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA SOUTH BAY LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502

Employer/Recipient's Name	Registered Agent for Service of Process	Address for Mailing PAGA Notice by U.S. Certified Mail
9. TOCAYA SPORTSMAN LLC, a California limited liability company;	Matthew Syken, Esq. Tocaya Sportsman LLC 8720 Sunset Blvd., Suite A West Hollywood, CA 90069	Matthew Syken, Esq. Tocaya Sportsman LLC 8720 Sunset Blvd., Suite A West Hollywood, CA 90069
10. TOCAYA SUNSET LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA SUNSET LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
11. TOCAYA TOLUCA LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA TOLUCA LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
12. TOCAYA VENICE LLC, a California limited liability company;	Corporation Service Company Which Will Do Business in California as CSC—Lawyers Incorporation Service, (C1592199)	Corporation Service Company dba CSC—Lawyers Incorporation Service Agent for TOCAYA VENICE LLC 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3502
13. AMROU ALMANASEER, an individual		The Madera Group LLC 8720 Sunset Blvd. West Hollywood, CA 90069
14. TOSH BERMAN, an individual		The Madera Group 8720 Sunset Blvd. West Hollywood, CA 90069
15. MICHAEL TANHA, an individual		The Madera Group 8720 Sunset Blvd. West Hollywood, CA 90069
16. Tocaya Organica in Century City Westfield Mall		General Manager Tocaya Organica 10250 Santa Monica Blvd, Ste 2300 Los Angeles, CA 90067
17. Tocaya Organica in Toluca Lake		General Manager Tocaya Organica 4303 W Riverside Dr.

Employer/Recipient's Name	Registered Agent for Service of Process	Address for Mailing PAGA Notice by U.S. Certified Mail
		Burbank, CA 91505
18. Toca Madera		General Manager Toca Madera 8450 W 3rd St. Los Angeles, CA 90048
19. Employer's Counsel		Matthew B. Golper, Esq. Stephen Mazzara, Esq. Goldberg Segalla 2600 Michelson Dr. Suite 900 Irvine, CA 92612

1 **PROOF OF SERVICE**
2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California; I am over the age of 18
4 years and not a party to the within action; my business address is 1999 Avenue of the Stars, Suite
110, Los Angeles, California 90067.

5 On October 30, 2020, I served the foregoing document(s) described as:

6 **FIRST AMENDED CLASS ACTION COMPLAINT**

7 on the interested parties in this action,

8 Matthew Golper
9 Stephen Gazzara
10 Goldberg Segalla LLP
2600 Michelson Dr. Suite 100
11 Irvine, CA 92612

Email: mgolper@goldbergsegalla.com
smazzara@goldbergsegalla.com

12 by sending a true copy thereof to the other interested parties as follows:

- 13 ☐ **(BY PERSONAL SERVICE)** By causing to be delivered the document(s) listed above to
14 the person(s) at the address(es) set forth above.
- 15 ☒ **(BY ELECTRONIC TRANSMISSION THROUGH CASE ANYWHERE):** I caused the
16 foregoing document(s) to be sent to the parties listed on the Electronic Service List
maintained by Case Anywhere in the manner set forth in the Court's Order Authorizing
Electronic Service dated September 9, 2020.
- 17 ☐ **(BY EMAIL)** By electronically mailing a true and correct copy through Custis Law, P.C.'s
18 electronic mail system from kcustis@custislawpc.com to the email addresses set forth above
19 pursuant to Rule 12 of the Judicial Council Emergency Rules and an agreement reached
between the parties pursuant to Code of Civil Procedure § 1010.6.
- 20 ☐ **BY OVERNIGHT DELIVERY:** I am readily familiar with the practice of Custis Law, P.C.
21 for collection and processing of correspondence for overnight delivery and know that the
document described herein will be deposited in a box or other facility regularly maintained
22 by Federal Express for overnight delivery.

23 I declare under penalty of perjury under the laws of the State of California that the above is
24 true and correct. Executed on October 30, 2020 in Los Angeles, California.

25 
26 _____
Keith Custis