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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 LAYONEL DEL PRADO, AMMON
12 MENDES, and KEVIN GONZALEZ,
13 individually and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 vs.

17 TOCAYA MANAGEMENT LLC, a California
18 limited liability company; TOCAYA
19 ORGANICA LLC, a California limited liability
20 company; TOCA MADERA WEHO LLC, a
21 California limited liability company; THE
22 MADERA GROUP LLC, a California limited
23 liability company; TOCAYA PALISADES
24 LLC, a California limited liability company;
25 TOCAYA SANTA MONICA LLC, a
26 California limited liability company; TOCAYA
27 SD LLC, a California limited liability
28 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.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUN 16 2020

Sherri R. Carter, Executive Officer/Clerk of Court

By: Kristina Vargas, Deputy

Case No. _____

20STCV23013

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

JURY TRIAL DEMANDED

COPY

1 Plaintiffs Layonel Del Prado, Ammon Mendes and Kevin Gonzalez, 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 and similarly situated current and
8 former hourly, non-exempt employees and exempt employees who worked for Defendants at their
9 Tocaya Organica and Toca Madera restaurants in California at any time from four years prior to the
10 commencement of this action until judgment is rendered. Plaintiffs and similarly situated current
11 and former hourly, non-exempt and exempt employees are referred to herein as "class members."

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

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

20 4. Plaintiffs have also given notice of the violations of the Labor Code alleged in this
21 Complaint, including the facts and theories to support the alleged violations, to the California
22 Labor and Workforce Development Agency ("LWDA"). When appropriate, Plaintiffs will amend
23 this Complaint, consistent with Labor Code Section 2699.3(a)(2)(C), to incorporate a cause of
24 action under the Private Attorney General Act of 2004 ("PAGA"), Labor Code § 2698, *et seq.*, to
25 recover civil penalties against Defendants, in addition to other remedies, for violations of Labor
26 Code Sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1182.12, 1194, 1197, 1198
27 and 2802.

28 //

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 Ammon Mendes is and at all times relevant to this Complaint was an individual residing in Los Angeles County, California.

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

8. 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.

9. 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.

10. 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 located at 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County, California. Upon information and belief, Toca Madera is operating, and at all times relevant to this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly

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

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

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

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

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

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

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

25 17. Defendant Tocaya Sunset LLC (“Tocaya Sunset”) is and at all times relevant to this
26 Complaint was a California limited liability company with its principal place of business located at
27 8720 W. Sunset Boulevard, West Hollywood, California 90069, in Los Angeles County,
28 California. Upon information and belief, Tocaya Sunset is operating, and at all times relevant to

1 this Complaint has operated, as an integrated enterprise with all other Entity Defendants and jointly
2 employed Plaintiffs and other class members, suffered and permitted Plaintiffs and other class
3 members to work, and exercised control over the wages, hours and working conditions of
4 employment of Plaintiffs and other class members.

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

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

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

1 in his individual capacity as an employer pursuant to Labor Code Section 558.1.¹

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

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

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

21 24. Except as otherwise noted, a reference to “Defendants” in this Complaint shall
22 include the named Defendants and the Doe defendants. Defendants Tocaya Management, Tocaya
23 Organica, Toca Madera, Madera Group, Tocaya Palisades, Tocaya Santa Monica, Tocaya SD,
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).

1 Tocaya South Bay, Tocaya Sportsman, Tocaya Sunset, and Tocaya Venice are sometimes referred
2 to collectively in this Complaint as the “Entity Defendants.” Mr. Berman, Mr. Almanaseer and Mr.
3 Tanha are sometimes referred to collectively in this Complaint as the “Individual Defendants.”

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

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

16 **Integrated Enterprise and Single Employer Allegations**

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

21 28. The Tocaya/Toca Integrated Enterprise owns and operates approximately fourteen
22 (14) restaurants in California.² Although the Tocaya Organica and Toca Madera locations are
23 generally registered as separate legal entities, the entities have chosen to handle their employer-
24 employee relationships jointly and have chosen to operate as a single integrated enterprise. Mr.

25 _____
26 ² The total number of restaurants is unclear, but can be ascertained through discovery. Defendants
27 are in the process of opening, or have opened, new locations including a Tocaya Organica in Long
28 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 June 16, 2020). Upon
information and belief, all employees of Burritos Locos are employees of Tocaya Management
and, thus, are class members.

1 Berman, the CEO of the Madera Group, refers to the employees of Tocaya Organica and Toca
2 Madera collectively as “team members” and a part of the “Madera Group Family.”

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

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

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

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

25 33. The Tocaya/Toca Integrated Enterprise has a single human resource department. In
26 email correspondence to employees of Tocaya Organica and Toca Madera, the Tocaya/Toca
27 Integrated Enterprise’s human resource department invites employees of both Tocaya Organica and
28 Toca Madera to send questions or concerns to the “Human Resource team by emailing” the team at

1 a single email address: hr@themaderagroup.com.

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

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

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

18 37. The Tocaya/Toca Integrated Enterprise’s operations are also interrelated. The
19 Madera Group’s website boasts that “[t]he Madera Group develops, owns and operates a collection
20 of leading restaurant venues through (sic) Southern California and Arizona including Tocaya
21 Organica and Toca Madera.” The Madera Group management team identified on the Madera
22 Group website manages all of the restaurant venues from its headquarters in West Hollywood,
23 California. *See* <https://www.themaderagroup.com/team> (last visited on June 16, 2020). Further,
24 upon information and belief, revenue generated from the sales at Tocaya Organica and Toca
25 Madera restaurants is deposited into accounts held by Entity Defendants other than Tocaya
26 Management, the direct employer of Plaintiffs and class members. Those Entity Defendants, in
27 turn, transfer only an amount sufficient to cover payroll expenses to Tocaya Management. Upon
28 information and belief, the Tocaya/Toca Integrated Enterprise insufficiently capitalizes Tocaya

1 Management such that it will lack sufficient funds to cover the judgment in this litigation or in any
2 employment-related litigation asserted against Tocaya Management. Additionally, administrative
3 and training functions are interrelated and operate from the Madera Group headquarters located at
4 8720 W. Sunset Boulevard, Suite A, West Hollywood, California 90069.

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

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

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

19 **JURISDICTION AND VENUE**

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

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

27 43. The Court has personal jurisdiction over the Defendants because they are residents
28 of and/or are doing business in the State of California.

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

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

GENERAL ALLEGATIONS

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

47. Defendants employed Plaintiff Layonel Del Prado as a non-exempt employee at the Toca Madera restaurant located in West Hollywood, California. Mr. Del Prado worked for Defendants at Toca Madera from approximately March 2018 until March 2020. Mr. Del Prado worked as a prep cook.

48. Defendants employed Plaintiff Ammon Mendes as a non-exempt employee at the Tocaya Organica restaurant located at the Westfield Century City Mall in Los Angeles, California. Mr. Del Prado worked for Defendants at Tocaya Organica from approximately June 2018 until August 2019. Mr. Mendes worked in the front of the house in various positions including cashier, food runner and bartender.

49. Defendants employed Plaintiff Kevin Gonzalez as a non-exempt employee at the Tocaya Organica restaurant located in Burbank, California. Mr. Gonzales worked for Defendants from approximately May 2019 until May 2020. Mr. Gonzalez worked as a kitchen supervisor.

50. Upon information and belief, Defendants subjected Plaintiffs and other current and former non-exempt and exempt class members to the same policies, practices and procedures governing the control and payment of wages and hours worked, the reimbursement of business

1 expenses and uniformly denied Plaintiffs and other class members the rights afforded to them
2 under the Labor Code, IWC Wage Order No. 5–2001 and the California Business and Professions
3 Code.

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

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

9 53. Plaintiffs worked three (3) to five (5) shifts per week of between five (5) and six (6)
10 hours, as well as shifts of approximately eight (8) hours. On occasion, Plaintiffs worked shifts in
11 excess of eight (8) hours including shifts in excess of ten (10) hours.

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

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

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

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

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

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

1 59. First, Defendants had a uniform policy and/or practice that required and incentivized
2 general managers and other managerial staff to edit non-exempt employees' clock-in and clock-out
3 times to eliminate hours worked from the time records of Plaintiffs and other class members.
4 Defendants routinely engaged in time-shaving to eliminate overtime hours worked from the time
5 records of Plaintiffs and other class members. Defendants also routinely edited clock-in and out
6 times to eliminate meal period penalties.

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

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

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

1 minimum wage for reporting time wages to Plaintiffs and other class members when they arrived
2 to work a scheduled shift and were sent home immediately or before the mid-point of their
3 scheduled shift.

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

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

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

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

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

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

28 67. During the relevant time period, the Tocaya/Toca Integrated Enterprise's scheduling

1 and staffing policies and practices, or lack thereof, prevented the Lead Aggrieved Employees and
2 other Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.

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

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

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

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

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

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

27 73. Throughout the relevant period, Plaintiffs and other class members routinely worked
28 shifts of between five (5) and six (6) hours, or more, and were thus entitled to a timely,

uninterrupted thirty (30) minute meal period prior to the end of their fifth hour of work.

74. 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.

75. 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.

76. 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.

77. 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.

78. 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.

79. 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.

80. 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

81. Upon information and belief, Defendants knew or should have known that Plaintiffs

1 and other class members were entitled to receive full reimbursement for all business-related
2 expenses and costs they incurred during the course and scope of their employment, and that they
3 did not receive full reimbursement of applicable business-related expenses and costs incurred.

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

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

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

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

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

28 86. Upon information and belief, Defendants knew or should have known that Plaintiffs

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

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

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

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

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

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

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

91. 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.

92. 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.

93. 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

94. Labor Code Section 2698, *et seq.* ("PAGA") permits Plaintiffs 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, to recover civil penalties for violations of those Labor Code Sections not found in Section 2699.5, including Sections 1182.12.

95. At all relevant times, PAGA has provided that any provision of law under the Labor

1 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
2 by the LWDA for violations of the Labor Code and applicable IWC Wage Order may, as an
3 alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves
4 and other current or former employees pursuant to procedures outlined in Labor Code Section
5 2699.3.

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

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

12 98. Pursuant to Labor Code Sections 2699.3 and 2699.5, an aggrieved employee,
13 including Plaintiffs, may pursue a civil action arising under PAGA after the following requirements
14 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 99. 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.

100. 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).

101. 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.

102. On June 16, 2020, Plaintiffs 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. Plaintiffs' 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 Plaintiffs' written notice to the LWDA and Defendants dated June 16, 2020, is attached hereto as Exhibit 1.

103. Assuming that the LWDA responds by indicating that it "does not intend to investigate" the alleged violations, or does not respond, Plaintiffs shall amend this Complaint pursuant to Labor Code Section 2699.3(a)(2)(C) to include a cause of action asserting a violation of the PAGA to recover civil penalties against Defendants, in addition to attorneys' fees and litigation

costs, for 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.

CLASS ACTION ALLEGATIONS

104. Plaintiffs bring this action on behalf of themselves and the following class and subclass pursuant to Code of Civil Procedure Section 382:

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

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

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

105. Members of the Classes and Subclasses are referred to herein as "class members."

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

107. Ascertainable Class. The proposed Classes and Subclasses may be readily ascertained by a review of Defendants' payroll and personnel records.

108. Numerosity. Both the Classes and Subclass are so numerous that joinder of all members is unfeasible and not practicable. While the precise number of Class and Subclass members has not been determined at this time, Plaintiffs are informed and believe that more than five hundred (500) class members have worked for Defendants as non-exempt employees in California during the relevant time period. The quantity and identity of such membership is readily

ascertainable by a review of Defendants' payroll and personnel records.

109. Commonality and Predominance. There are questions of law and fact common to all class members, which predominate over any questions affecting only individual class members.

The principal common issues include:

- a. Whether Defendants required, suffered or permitted class members to perform certain work-related duties without compensation equal to at least the applicable California minimum wage;
- b. Whether Defendants required class members to work over eight (8) hours per day, or over forty (40) hours per week, without paying class members all legally required overtime compensation;
- c. Whether Defendants required, suffered or permitted class members to work while clocked out for their meal periods;
- d. Whether Defendants required, suffered or permitted class members to work during rest periods;
- e. Whether Defendants violated Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 5-2001, Section 4 by failing to pay class members the applicable minimum wage for all hours worked;
- f. Whether Defendants violated Labor Code Sections 510 and IWC Wage Order 5-2001, Section 3 by failing to pay class members the applicable overtime wage for all overtime hours worked;
- g. Whether Defendants failed to provide class members with compliant, off-duty meal periods and meal period premium wages in violation of Labor Code Sections 226.7, 512 and IWC Wage Order 5-2001, Section 11;
- h. Whether Defendants failed to provide class members with rest periods and rest period premium wages in violation of Labor Code Sections 226.7 and IWC Wage Order 5-2001, Section 12;
- i. Whether Defendants knowingly and intentionally failed to provide class members with accurate wage statements, as required by Labor Code Section 226 and IWC

Wage Order 5-2001, Section 7;

- j. Whether Defendants violated Labor Code Section 1174 and IWC Wage Order No. 5-2001, Section 7 by failing to maintain documentation of the actual hours worked each day by Plaintiffs and other class members;
- k. Whether Defendants failed to reimburse class members for all business-related expenditures and/or losses incurred by class members at Defendants' direction for work purposes;
- l. Whether Defendants violated Labor Code Section 204 by failing timely to pay all earned wages due to class members during their employment;
- m. Whether Defendants violated Labor Code Sections 201 and 202 by failing timely to pay all earned wages due to class members upon their termination or resignation;
- n. Whether Defendants engaged in unlawful and unfair business practices in violation 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.

110. Typicality. Plaintiffs' claims are typical of the claims of the Classes and Subclass that they seek to represent. 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.

111. Adequacy of Representation. Plaintiffs will fairly and adequately represent and protect the interests of all class members, and have no interests antagonistic to the other class

1 members. There are no material conflicts between Plaintiffs' claims and the claims of the other
2 class members that would make class certification inappropriate. Plaintiffs have retained counsel
3 experienced in handling complex class actions and wage and hour claims.

4 112. Superiority of Class Action. A class action is superior to other available means for
5 fair and efficient adjudication of class members' claims, and offers significant benefits to the
6 parties and the Court. A class action will allow a large number of similarly situated persons to
7 simultaneously and efficiently prosecute their common claims in a single forum without the
8 unnecessary duplication of effort and expense that numerous individual actions would entail.
9 Additionally, because the monetary amounts due to many individual class members are likely to be
10 relatively small, it would make it difficult, if not impossible, for individual class members to both
11 seek and obtain relief. Moreover, a class action will serve important public interests by enabling
12 the statutory rights of class members to be effectively asserted and fundamental public policies to
13 be vindicated in one proceeding. A class action will also provide a means for vindicating the rights
14 of current employees who are less likely to come forward to assert those rights based on fears of
15 employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory
16 judgments inherent in individual litigation.

17 **FIRST CAUSE OF ACTION**

18 **Failure to Pay Minimum Wages**

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

20 **(Against all Defendants)**

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

22 114. Labor Code Sections 1182.12, 1194, 1197 and 1198 provide that the minimum wage
23 for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of
24 a wage less than the minimum so fixed is unlawful.

25 115. Compensable work time is defined in IWC Wage Order No. 5–2001 as “the time
26 during which an employee is subject to the control of an employer, and includes all the time the
27 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit.
28 8, § 11050(2)(H) (defining “Hours Worked”).

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

117. As set forth above, in violation of Labor Code Sections 1182.12, 1194, 1197 and 1198 and IWC Wage Order 5-2001, Defendants failed to pay Plaintiffs and other class members the applicable minimum wage for all hours worked because Defendants routinely edited clock-in and out times to eliminate hours worked. Additionally, Defendants failed to pay Plaintiffs and other class members the applicable minimum wages for all hours worked by requiring, permitting or suffering 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) reviewing, analyzing and responding to multiple business-related emails and text messages sent from Defendants' management while working off-the-clock; and (c) continuing to work off-the-clock after clocking out for meal periods and/or after clocking out at the end of a scheduled shift.

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

SECOND CAUSE OF ACTION

Failure to Pay Overtime Wages

(Labor Code §§ 510, 1194, 1198)

(Against all Defendants)

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

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

121. An employee's regular rate of pay includes all remuneration for employment paid

1 to, or on behalf of, the employee, including non-discretionary bonuses and incentive pay.

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

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

6 [E]mployees shall not be employed more than eight (8) hours in any
7 workday or more than 40 hours in any workweek unless the
8 employee receives one and one-half (1½) times such employee's
9 regular rate of pay for all hours worked over 40 hours in the
10 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:

11 (a) One and one-half (1½) times the employee's regular rate of pay
12 for all hours worked in excess of eight (8) hours up to and including
13 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

14 (b) Double the employee's regular rate of pay for all hours worked in
15 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.

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

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

25 126. Defendants employed Plaintiffs and other class members as non-exempt employees
26 who were entitled to the protections of Labor Code Sections 510, 1194, 1198 and IWC Wage Order
27 5-2001.
28

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

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

8 129. Additionally, in violation of Labor Code Sections 510, 1194, 1198 and IWC Wage
9 Order 5-2001, Defendants failed to pay Plaintiffs and other class members for all overtime hours
10 worked because Defendants required, permitted or suffered Plaintiffs and other class members to
11 work off-the-clock in at least three respects: (a) accessing the HotSchedules, Homebase, Radar
12 Schedules and/or other mobile applications for business purposes while working off-the-clock; (b)
13 reviewing, analyzing and responding to multiple business-related emails and text messages sent
14 from Defendants' management while working off-the-clock; and (c) continuing to work off-the-
15 clock after clocking out for meal periods and/or after clocking out at the end of a scheduled shift.

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

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

27 //

28 //

THIRD CAUSE OF ACTION

Failure to Provide Rest Periods

(Labor Code §§ 226.7 and 1198)

(Against all Defendants)

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

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

134. IWC Wage Order No. 5–2001 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 often (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 (3½) hours.

135. 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, et al. v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269-270.

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

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

138. 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

1 rest periods when required. Because Defendants required that Plaintiffs and other class members
2 remain on-duty at all times, and/or because they did not provide them with rest period coverage,
3 Plaintiffs and other class members were subject to Defendants' control and required, permitted and
4 suffered to work during rest periods.

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

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

15 **FOURTH CAUSE OF ACTION**

16 **Failure to Provide Meal Periods**

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

18 **(Against all Defendants)**

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

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

21 An employer shall not employ an employee for a work period of
22 more than five hours per day without providing the employee with a
23 meal period of not less than 30 minutes, except that if the total work
24 period per day of the employee is no more than six hours, the meal
25 period may be waived by mutual consent of both the employer and
26 employee. An employer shall not employ an employee for a work
27 period of more than 10 hours per day without providing the
28 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.

1 143. Under California law, first meal periods must start after no more than five hours.
2 *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1041-1042.

3 144. Labor Code Section 226.7 provides in pertinent part that:

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

8 (c) If an employer fails to provide an employee a meal or rest or
9 recovery period in accordance with a state law, including, but not
10 limited to, an applicable statute or applicable regulation, standard, or
11 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.

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

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

16 (A) No employer shall employ any person for a work period of more
17 than five (5) hours without a meal period of not less than 30 minutes,
18 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.

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

24 (C) Unless the employee is relieved of all duty during a 30 minute
25 meal period, the meal period shall be considered an "on duty" meal
26 period and counted as time worked. An "on duty" meal period shall
27 be permitted only when the nature of the work prevents an employee
28 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.

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

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

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

13 149. 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 meal periods when required.

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

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

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

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

27 154. As a direct and proximate result of Defendants' conduct, Plaintiffs and other class
28 members have been damaged in an amount to be determined at trial, and hereby seek one
additional hour of pay at their regular rate of compensation for each day that a compliant meal

1 period was not provided in a cumulative amount to be determined at trial, plus pre-judgment
2 interest, penalties and costs of suit.

3 **FIFTH CAUSE OF ACTION**

4 **Failure To Reimburse Business Expenditures**

5 **(Labor Code § 2802)**

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

7 155. Plaintiffs incorporates all preceding factual allegations as if fully set forth herein.

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

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

14 158. Labor Code Section 2802(b) provides that “All awards made by a court . . . for
15 reimbursement of necessary expenditures under this section shall carry interest at the same rate as
16 judgments in civil actions” and that “Interest shall accrue from the date on which the employee
17 incurred the necessary expenditure or loss.”

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

21 160. Labor Code Section 1198 provides that it is unlawful to employ persons under
22 conditions prohibited by the applicable IWC Wage Order.

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

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

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

28 163. As detailed above, Defendants as a matter of practice and/or policy violated Labor

Code Section 2802 by denying Plaintiffs and other class members reimbursement for necessary expenditures that they incurred as a result of discharging their duties and/or obeying the directions of Defendants. Plaintiffs and other class members were required to incur numerous out-of-pocket expenses, including, *inter alia*, (a) expenses to obtain and maintain a personal cell phone and the data usage that were used at Defendants' direction for work purposes; (b) expenses to purchase mobile applications that were used at Defendants' direction for work purposes; and (c) expenses incurred by Plaintiffs and other class members for the use of their personal vehicles, gas and auto insurance that were used at Defendants' direction for work purposes.

164. Defendants could have provided Plaintiffs and other class members with the actual tools required for use on the job, including company phones. Defendants also could have provided Plaintiffs and other class members with a company car to use for business-related purposes. Further, Defendants could have reimbursed Plaintiffs and other class members for the costs they incurred in maintaining a personal cell phone and cellular data plan, by purchasing mobile applications for work-related purposes and by using their personal vehicle, gas and auto insurance instead of a company car. Instead, Defendants passed those operating costs off onto Plaintiffs and other class members in violation Labor Code Section 2802.

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

SIXTH CAUSE OF ACTION

Failure to Provide Accurate Wage Statements

(Labor Code § 226(a))

(Against all Defendants)

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

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

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

118. 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

1 include time spent working during on-duty meal periods for which Plaintiffs and
2 other class members should have been compensated.

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

5 169. Labor Code Section 226(e)(1) provides in pertinent part that “An employee
6 suffering injury as a result of a knowing and intentional failure by an employer to comply with
7 subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the
8 initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
9 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
10 (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.”

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

15 171. As a result of Defendants’ failure to comply with Labor Code Section 226(a),
16 Plaintiffs and other class members suffered injuries because they could not promptly and easily
17 ascertain the information required by Labor Code Section 226(a) without reference to other
18 documents or information. In addition, Plaintiffs and other class members suffered injuries because
19 they were not aware of what their true wages should have been and how they were calculated, and
20 because Plaintiffs and other class members suffered economic loss in the form of lower wages and
21 lost compensation.

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

26 173. Plaintiffs and other class members also seek preliminary and permanent injunctive
27 relief and an award of attorneys’ fees and costs pursuant to Labor Code Section 226(h).

28 //

SEVENTH CAUSE OF ACTION

Failure To Pay Wages Timely at Termination

(Labor Code §§ 201, 202, 203)

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

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

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

176. Labor Code Section 202 provides that if an employee voluntarily leaves his or their employment, the employee's 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 their intention to quit, in which case the employee is entitled to his or their wages at the time of quitting.

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

178. As detailed above, during the class period, Defendants willfully failed to pay Plaintiffs and Former Employee Subclass members all their earned wages, including, but not limited to minimum wages, overtime wages, and rest and meal period premium wages, either at the time of their discharge, or within seventy-two (72) hours after their resignation.

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

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

//

EIGHTH CAUSE OF ACTION

Violations of Unfair Competition Law

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

(Against all Defendants)

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

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

183. A business act or practice is “unlawful” under the UCL if it violates any other law or regulation.

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

185. Throughout the relevant time period, Defendants as a matter of practice and/or policy also engaged in unlawful business practices by violating Labor Code Sections 204 and 1174(d), as follows:

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

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

188. In addition, Labor Code Section 204 provides that all wages earned for labor in

1 excess of the normal work period shall be paid no later than the payday for the next regular payroll
2 period. Alternatively, Labor Code Section 204 provides that its requirements are deemed satisfied
3 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
4 more than seven (7) calendar days following the close of the payroll period.

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

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

15
16 191. At all relevant times, Defendants violated Labor Code Section 1174 by failing to
17 maintain an accurate record of Plaintiffs' and other class members' total hours worked because,
18 among other reasons, Defendants did not include in total hours worked the time spent by Plaintiffs
19 and other class members during on-duty meal periods.

20 192. A business act or practice is "unfair" under the UCL if the reasons, justifications,
21 and motives of the alleged wrongdoer are outweighed by the gravity of the harm to the alleged
22 victims.

23 193. Defendants also committed "unfair" business acts or practices by, among other
24 things: (a) engaging in conduct where the utility of the conduct, if any, is outweighed by the
25 gravity of the consequences to Plaintiffs and other class members; (b) engaging in conduct that is
26 immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and other class
27 members; and (c) engaging in conduct that undermines and violates the stated policies underlying
28 the Labor Code and applicable IWC Wage Order, which seeks to protect employees against unfair

1 and sharp business practices.

2 194. As a result of Defendants' unlawful and unfair business practices, Plaintiffs and
3 other class members have suffered injury in fact and lost money or property including but not
4 limited to the loss of earned wages.

5 195. As a result of the violations of California law herein described, Defendants
6 unlawfully gained an unfair advantage over other businesses.

7 196. Pursuant to Business & Professions Code Sections 17200, *et seq.*, Plaintiffs and
8 other class members are entitled to, and hereby seek, (a) restitution of the wages and other monies
9 withheld and retained by Defendants during a period that commences four years prior to the filing
10 of the initial complaint in this action; (b) a permanent injunction requiring Defendants to pay all
11 outstanding wages due to Plaintiffs and other class members; (c) a permanent injunction
12 prohibiting Defendants from engaging in the acts complained of in the operative Complaint; and
13 (d) an award of attorneys' fees and costs pursuant to Code of Civil Procedure Section 1021.5
14 and/or other applicable laws.

15 **REQUEST FOR RELIEF**

16 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

17 **Class Certification**

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

22 **On the First Cause of Action**

23 (Failure to Pay Minimum Wages)

- 24 4. For unpaid minimum wages owed to Plaintiffs and other class members in an
25 amount to be determined at trial;
26 5. For penalties and liquidated damages in the amount of unpaid minimum wages not
27 paid to Plaintiffs and other class members pursuant to Labor Code Section 1194.2;
28 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 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 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 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 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 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 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.

DEMAND FOR JURY TRIAL

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

CUSTIS LAW, P.C.

Dated: June 16, 2020

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

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.”

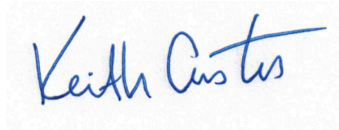
At all relevant times, the Tocaya/Toca Integrated Enterprise was an employer who violated the Lead Aggrieved Employees' and other Aggrieved Employees' rights by violating the various sections of the Labor Code detailed herein. Accordingly, the Lead Aggrieved Employees shall seek all applicable remedies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