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FILED
APR 30 2020

K. BAKER, CLERK OF COURT
SUPERIOR COURT OF
COUNTY OF CONTRA COSTA
BY: _____

Attorneys for Plaintiff Rosa Beltran, on behalf of herself
and all others similarly situated

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

ROSA BELTRAN, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

TOWNSHIP RETAIL SERVICES,
INCORPORATED, a California
corporation; and DOES 1 through 10,
Inclusive,

Defendants.

Case No. MSC20-00363

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT**

1. Rest Period Violations
2. Meal Period Violations
3. Failure to Pay Overtime Wages
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Business Practices
7. PAGA Penalties for Rest Period Violations
8. PAGA Penalties for Meal Period Violations
9. PAGA Penalties for Failure to Pay Overtime Wages
10. PAGA Penalties for Wage Statement Violations
11. PAGA Penalties for Failure to Pay Wages Due at Termination

DEMAND FOR JURY TRIAL

1 Plaintiff ROSA BELTRAN, on behalf of herself, and all others similarly situated,
2 alleges:

3 **INTRODUCTION**

4 1. This action arises from TOWNSHIP RETAIL SERVICES, INCORPORATED,
5 a California Corporation (“TOWNSHIP”), and Does 1-10 (“Defendants”) failure to provide all
6 overtime wages, rest periods, meal periods or premium wages for meal periods not provided,
7 accurate wage statements, and timely final wages, all of which are unfair business practices, for
8 four years before this action was filed (“Class Period”).

9 2. Plaintiff notified the California Labor and Workforce Development Agency
10 (“LWDA”) of these claims. The LWDA did not intervene, and Defendants did not attempt to
11 cure within the time required. Plaintiff seeks civil penalties as a representative of the State of
12 California, as provided by the Private Attorneys General Act (“PAGA”), on behalf of the
13 aggrieved employees who held the positions identified and suffered one or more of the
14 violations alleged for the period one year and 65 days from the date of filing for PAGA
15 penalties (“PAGA Period”). A true and correct copy of the February 24, 2020 Notice showing
16 compliance with Labor Code section 2699.3 is attached as **Exhibit 1**.

17 **JURISDICTION AND VENUE**

18 3. Venue as to each Defendant is proper in this judicial district. Code of Civil
19 Procedure, section 395. Defendants conduct business in Contra Costa County, and are within
20 the Court’s jurisdiction for service of process. The unlawful acts alleged have a direct effect on
21 Plaintiff and those similarly situated within Contra Costa County. Individual class member
22 claims are under the \$75,000 jurisdictional threshold for federal jurisdiction.

23 4. There is no federal question, the issues are based solely on California law,
24 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and
25 Professions Code.

26 5. There is no federal question, the issues are based solely on California law,
27 including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Business and
28 Professions Code. PAGA actions are not subject to removal.

THE PARTIES

6. ROSA BELTRAN is a California resident and was a Janitor with Defendants in Richmond, California, from June 2010 through October 2019.

7. Township Industries Retail Services, Incorporated is a California Corporation, which conducted business in, and employed Plaintiff and Plaintiff Class Members during the Class Period, in the County of Contra Costa.

8. True names and capacities of DOES 1 through 10 are unknown to Plaintiff, who sues them by fictitious names. Code of Civil Procedure § 474. Plaintiff is informed, believes, and alleges, each DOE Defendant is legally responsible in some manner for unlawful acts alleged. Plaintiff will amend to add names and capacities of DOE Defendants when they become known.

9. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, plan, or policy, and the acts of each Defendant are legally attributable to the other Defendants.

GENERAL ALLEGATIONS

10. Plaintiff re-alleges all preceding paragraphs.

11. During the Class Period, Defendants provided janitorial services, and conducted business and employed Plaintiff and Plaintiff Class members, in Contra Costa County and throughout California.

12. During the Class Period, Plaintiff and members of the Plaintiff Class worked eight hours or more per day and were paid as hourly, non-exempt employees.

13. During the Class Period, Defendants failed to have a compliant rest period policy compliant with the California Labor Code and IWC Wage Orders, and Plaintiff and Plaintiff Class Members were not authorized or permitted a 10-minute rest period for shifts of three and one-half hours, starting in the middle of the shift.

14. During the Class Period, Defendants failed to have a meal period policy compliant with the California Labor Code and IWC Wage Orders, and Plaintiff and Plaintiff Class Members were not provided uninterrupted, 30-minute meal periods, starting no later than

1 the end of the fifth hour of work.

2 15. During the Class Period, Plaintiff and Plaintiff Class Members were not paid all
3 premium wages for non-compliant rest and meal periods.

4 16. As a result of the failure to pay all premium wages during the Class Period,
5 Plaintiff and Plaintiff Class Members were not paid the correct regular rate for all overtime
6 hours worked.

7 17. As a result of Defendants' violations during the Class Period, it issued
8 inaccurate wage statements to Plaintiff and Plaintiff Class members.

9 18. During the Class Period, Defendants had a consistent policy and practice of
10 failing to timely compensate Plaintiff and Plaintiff Class Members for all wages owed during
11 and upon separation of employment, in violation of California state wage and hour laws.

12 **CLASS ACTION ALLEGATIONS**

13 19. Plaintiff re-alleges all preceding paragraphs.

14 20. Plaintiff seeks to represent a Plaintiff Class defined as:

15 All persons employed by Defendants as non-exempt employees, at any
16 time starting four years from the filing of this Complaint.

17 21. Plaintiff seeks to certify a Subclass defined as:

18 **Rest Period Subclass**

19 All Plaintiff Class members who worked shifts of three and one-half hours
20 or more without an uninterrupted, duty-free rest period of at least 10
minutes; and not paid one hour at the regular rate for each shift.

21 22. Plaintiff seeks to certify a Subclass defined as:

22 **Meal Period Subclass**

23 All Plaintiff Class members who worked shifts of five hours or more
24 without an uninterrupted, duty-free meal period of at least 30 minutes,
starting no later than the end of the fifth hour of work, and not paid one
hour at the regular rate for each shift.

25 23. Plaintiff seeks to certify a Subclass defined as:

26 **Overtime Subclass**

27 All Plaintiff Class Members not paid all overtime wages for all hours
28 worked over eight per day or forty per week.

24. Plaintiff seeks to certify a subclass defined as:

Wage Statement Subclass

All Plaintiff Class Members to whom Defendants improperly failed to provide accurate itemized wage statements under Labor Code § 226.

25. Plaintiff seeks to certify a Subclass defined as:

Waiting Time Subclass

All Plaintiff Class Members to whom Defendants failed to pay all wages due to them upon termination or resignation under Labor Code §§ 201-203.

26. Plaintiff seeks to certify a subclass of employees defined as follows:

UCL Subclass

All members of the Overtime Wage, and Rest Period, and Meal Period Subclasses.

27. Plaintiff reserves the right to modify the Class description or further divide it into subclasses or limit it to particular issues. California Rules of Court, Rule 3.765(b).

28. This action may be maintained as a class action because many persons have a well-defined common interest and it is impractical to bring them all before the court. Code of Civil Procedure § 382.

29. **Ascertainable Class**: The proposed Plaintiff Class and Subclasses are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

30. **Numerosity**: While the precise number of Plaintiff Class Members has not yet been determined, Plaintiff is informed and believes there are over 100 putative Plaintiff Class Members in California affected by Defendants' policies. Joinder of all members of the proposed Plaintiff Class is not practicable.

31. **Typicality**: Plaintiff's claims are typical of the claims of the proposed Plaintiff Class. Plaintiff and Plaintiff Class and Subclass Members sustained injuries and damages caused by Defendants' common course of conduct in violation of laws, regulations, and statutes as alleged.

32. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the interests of the members of the Plaintiff Class. Proposed Class Counsel, Cohelan

1 Khoury & Singer and Law Offices of Sahag Majarian II, who represent Plaintiff, are competent
2 and experienced in litigating employment class actions. Plaintiff is aware and understands her
3 obligations to faithfully assist in the preparation of the case and to make decisions in the best
4 interests of the putative class.

5 33. **Superiority of Class Action**: A class action is superior to other available means
6 for the fair and efficient adjudication of this controversy. Each Plaintiff Class Member has been
7 damaged, and is entitled to recovery, by Defendants' illegal policies and practices, and a Class
8 action allows them to litigate their claims in the most efficient and economical manner for the
9 parties and judicial system. There are no likely difficulties managing this action that preclude
10 its maintenance as a class action.

11 34. Predominating common questions of law and fact include:

12 a. Whether Defendants violated California law by failing to provide
13 Plaintiff Class Members with meal periods before the end of the fifth hour of work;

14 b. Whether Defendants violated California law by failing to provide
15 Plaintiff Class Members with rest periods before the end of three and one-half hours of work;

16 c. Whether Defendants compensated Plaintiff Class Members for all
17 overtime wages for all hours worked;

18 d. Whether the Plaintiff Class is entitled to penalties under Section 226;

19 e. Whether the Plaintiff Class is entitled to penalties under Section 203;

20 f. Whether Defendants violated Labor Code sections 203, 226, 510, 1194,
21 or Wage Order 5-2001, and whether a violation of fundamental public policy is established;

22 h. Whether the Plaintiff Class and Subclasses are entitled to equitable relief
23 pursuant to Business and Professions Code, sections 17200, *et seq.*

24 **FIRST CAUSE OF ACTION**

25 **Failure to Provide Rest Periods**

26 **(By Plaintiff and the Rest Period Subclass Against Each Defendant)**

27 35. Plaintiff re-alleges all preceding paragraphs.

28 36. By failing to provide uninterrupted duty-free rest periods of at least ten minutes
for shifts of three and one-half hours or more, and failing to pay Plaintiff and Rest Period

1 Subclass Members one hour of pay at their regular rate for each day a rest period was not
2 provided, Defendants willfully violated Labor Code section 226.7, and Wage Orders, including
3 5-2001.

4 37. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff Class
5 and Subclasses Plaintiff seeks to represent of premium wages in amounts to be determined at
6 trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Provide Meal Periods**

9 **(By Plaintiff and the Meal Period Subclass Against Each Defendant)**

10 38. Plaintiff re-alleges all preceding paragraphs.

11 39. By failing to provide duty-free meal periods of at least thirty (30) minutes for
12 shifts of five hours or more, starting before the end of the fifth hour of work, and failing to pay
13 Plaintiff and Meal Period Subclass Members one hour of pay at their regular rate for each day a
14 meal period was not provided, Defendants willfully violated Labor Code sections 226.7 and
15 512, and IWC Wage Orders, including No. 5-2001.

16 40. Defendants' unlawful acts deprived Plaintiff and members of the Plaintiff Class
17 and Subclasses Plaintiff seeks to represent of premium wages in amounts to be determined at
18 trial, and they are entitled to recover such amounts, plus interest, attorneys' fees, and costs.

19 **THIRD CAUSE OF ACTION**

20 **Failure to Pay All Overtime Wages**

21 **(By Plaintiff and the Overtime Subclass Against Each Defendant)**

22 41. Plaintiff re-alleges all preceding paragraphs.

23 42. By failing to pay all premium wages for non-compliant rest or meal periods to
24 Plaintiff and Plaintiff Class members, Defendants failed to correctly calculate the regular rate
25 of pay and failed to pay overtime wages and violated Labor Code sections 510, and 1194, and
26 IWC Wage Orders, including 5-2001.

27 43. Defendants' unlawful acts deprived Plaintiff and Plaintiff Class Members of
28 overtime wages in amounts to be determined at trial, and they are entitled to recover these
amounts, and interest, attorneys' fees, and costs.

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FOURTH CAUSE OF ACTION

**Failure to Provide Accurate Itemized Wage Statements
(By Plaintiff and the Wage Statement Subclass Against Each Defendant)**

44. Plaintiff re-alleges all preceding paragraphs.

45. Defendants must itemize in wage statements all deductions from payment of wages and to accurately report, among other things, total hours worked, all hourly wage rates earned, and gross and net wages earned. Labor Code section 226(a). Defendants knowingly and intentionally failed to comply with Labor Code section 226(a) on wage statements provided to Plaintiff and members of the Wage Statement Subclass because, among other reasons, the wage statements failed to accurately set forth all hours worked, and all hourly rates earned, and gross and net wages earned.

46. The wage statements issued to Plaintiff and members of the Plaintiff Class were inaccurate and caused confusion and damage to Plaintiff and members of the Plaintiff Class and concealed from them wages they were entitled to receive. As a consequence of Defendants' knowing and intentional failure to comply with section 226(a), Plaintiff and Wage Statement Subclass Members are entitled to actual damages or penalties not to exceed \$4,000 for each employee pursuant to Labor Code section 226(b), with interest and attorneys' fees and costs.

FIFTH CAUSE OF ACTION

**Failure to Pay Wages Due at Termination
(By Plaintiff and the Waiting Time Subclass Against Each Defendant)**

47. Plaintiff re-alleges all preceding paragraphs.

48. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to timely pay former employees all earned wages. Defendants are required to pay their employees all wages due within the time required by law. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

49. Members of the Waiting Time Subclass are no longer employed by Defendants.

50. Defendants willfully failed to pay Waiting Time Subclass Members wages due at termination or within 72 hours of resignation, and for 30 days after that.

1 51. Defendants' willful failure to pay wages violated Labor Code section 203 as
2 Defendants knew wages were due the Waiting Time Subclass Members, but failed to pay them.

3 **SIXTH CAUSE OF ACTION**

4 **Violations of the Unfair Competition Law**

5 **(By Plaintiff and the UCL Subclass Against Each Defendant)**

6 52. Plaintiff re-alleges all preceding paragraphs.

7 53. At all relevant times, Defendants engaged in unlawful and unfair business
8 practices in violation of Business and Professions Code sections 17200, et seq. through
9 common and systemic employment policies and practices by failing to provide the employment
10 protections, wages, premiums, and other funds and property owed to Plaintiff and the UCL
11 Subclass, as alleged in this Complaint, in violation of the Labor Code and IWC Wage Orders.

12 54. Defendants' business practices deprived Plaintiff and the UCL Subclass of
13 compensation and other funds to which they are legally entitled, constitutes unlawful and unfair
14 business practices, provides an unfair advantage to Defendants over their competitors who
15 comply with wage and hour and employment laws, and unjustly enriches them.

16 55. Plaintiff was subjected to Defendants' unfair and unlawful conduct, as alleged in
17 this Complaint, and, as an individual and on behalf of the Plaintiff Class Members, seeks
18 restitution of all monies and property withheld, acquired or converted by Defendants pursuant
19 to Business and Professions Code sections 17202, 17203, 17204, and 17208.

20 56. Plaintiff and members of the Plaintiff Class are entitled to an injunction,
21 restitution, and other equitable relief against such unlawful practices to return all funds over
22 which Plaintiff and members of the Plaintiff Class have an ownership interest and to prevent
23 future damage pursuant to Business and Professions Code sections 17200, et seq.

24 **SEVENTH CAUSE OF ACTION**

25 **PAGA Penalties for Failure to Provide Rest Periods**

26 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

27 57. Plaintiff re-alleges all preceding paragraphs.

28 58. By failing to authorize and permit Plaintiff a rest period of at least 10 minutes
for every four (4) hours or major fraction thereof worked per day, Defendants willfully violated
provisions of Labor Code section 226.7 and Wage Order No. 5-2001.

1 59. By failing to provide one hour of pay at their regular rate of compensation when
2 rest periods were not permitted or authorized, Defendants willfully violated the provisions of
3 Labor Code section 226.7 and Wage Order No. 5-2001.

4 60. During the applicable statutory period, Defendants failed to provide rest periods.
5 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
6 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

7 **EIGHTH CAUSE OF ACTION**

8 **PAGA Penalties for Failure to Provide Meal Periods**
9 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

10 61. Plaintiff re-alleges all preceding paragraphs.

11 62. By failing to provide duty-free meal periods of at least 30 minutes for shifts of
12 five hours or more, which began before the end of the fifth hour of work, and a second meal
13 period at least 30 minutes for shifts of ten hours or more, which began before the end of the
14 tenth hour of work, Defendants willfully violated Labor Code sections 226.7 and 512, and
15 Wage Order 5-2001.

16 63. By failing to pay employees one hour of pay at their regular rate of
17 compensation for each workday a meal period was not provided, Defendants willfully violated
18 Labor Code sections 226.7 and 512, and Wage Order 5-2001.

19 64. During the PAGA Period, Defendants failed to provide compliant meal periods.
20 Plaintiff will seek penalties of \$100 for the initial pay period an employee was underpaid, and
21 \$200 for each subsequent violation. Labor Code § 2699(f)(2).

22 **NINTH CAUSE OF ACTION**

23 **PAGA Penalties for Failure to Pay All Overtime Wages**
24 **(By Plaintiff and Aggrieved Employees Against Each Defendant)**

25 65. Plaintiff re-alleges all preceding paragraphs.

26 66. “Notwithstanding any agreement to work for a lesser wage, any employee
27 receiving less than the legal minimum wage or the legal overtime compensation applicable to
28 the employee is entitled to recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon, reasonable attorney’s
fees, and costs of suit.” Labor Code § 1194(a).

67. “[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

68. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

69. Section 2699.3(a) applies to any alleged violation of Labor Code sections 510, 1194, and 1194.1, and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

70. By failing to pay all premium wages for non-compliant rest or meal periods to Plaintiff and aggrieved employees, Defendants failed to correctly calculate the regular rate of pay and failed to pay overtime wages during the PAGA Period. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation.

TENTH CAUSE OF ACTION

PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements (By Plaintiff and Aggrieved Employees Against Each Defendant)

71. Plaintiff re-alleges all preceding paragraphs.

72. Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized statement in writing showing, among other things, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee. Labor Code § 226(a).

73. Defendants intentionally and willfully violated Section 226 by failing to provide wage statements which included information called for in Section 226(a)(1) (2), (5) and (9).

74. Aggrieved employees are entitled to pursue civil penalties under the PAGA for violations of Labor Code section 226. Labor Code § 2699.5.

75. Labor Code section 226.3 provides for civil penalties for violations of Section 226. Plaintiff seeks civil penalties of \$250 for the initial violation and \$1,000 for each subsequent violation.

ELEVENTH CAUSE OF ACTION

**PAGA Penalties for Failure to Pay Wages Due at Termination
(By Plaintiff and Aggrieved Employees Against Each Defendant)**

76. Plaintiff re-alleges all preceding paragraphs.

77. Labor Code sections 201-202 require employers to pay wages earned by employees within certain times. Defendants had a consistent and uniform policy, practice, and procedure of willfully failing to pay the earned wages of Defendants' former employees. An employer that willfully fails to timely pay all final wages must, as a statutory penalty, pay an employee's wages for 30 days, or until back wages are paid in full. Labor Code section 203.

78. Defendants failed to pay Plaintiff and other aggrieved employees all final wages due at termination, as required by Labor Code sections 201-202.

79. Defendants failed to pay Plaintiff and other aggrieved employees penalties due them based on Defendants' failure to pay all final wages in a timely manner as required by Labor Code section 203. Plaintiff will seek penalties of \$100 for the initial pay period an employee was not reimbursed, and \$200 for each subsequent violation.

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

- A. For certification of this action as a class action;
- B. For appointment of Plaintiff as the representative of the Plaintiff Class;
- C. For appointment of counsel for Plaintiff as Class Counsel;
- D. For injunctive relief;
- E. For compensatory damages in an amount according to proof;
- F. For all interest accrued to date;
- G. For disgorgement of all amounts wrongfully obtained;

1 H. This action be maintained as a PAGA Representative Action, and Plaintiff and
2 her counsel be provided with enforcement capability as if the action were brought by the DLSE;

3 I. For recovery of civil penalties under Labor Code section 2699 for failure to
4 authorize and permit rest periods pursuant to Labor Code section 226.7(a), according to proof;

5 J. For recovery of civil penalties under Labor Code section 2699 for failure to pay
6 all rest period premiums due pursuant to Labor Code section 226.7(b), according to proof;

7 K. For recovery of civil penalties under Labor Code section 2699 for failure to
8 provide meal periods compliant with Labor Code sections 226.7 and 512, according to proof;

9 L. For recovery of civil penalties under Labor Code section 2699 for failure to pay
10 all meal period premiums due pursuant to Labor Code section 226.7, according to proof;

11 M. For recovery of civil penalties under Labor Code section 2699 for failure to pay
12 all overtime wages owed pursuant to Section 1194, according to proof;

13 N. For recovery of civil penalties under Labor Code sections 558 and 1197.1 for
14 failing to pay overtime wages for all hours worked;

15 O. For recovery of civil penalties under Labor Code section 2699 for failing to
16 provide accurate itemized wage statements pursuant to Labor Code sections 226 and 226.3,
17 according to proof;

18 P. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
19 timely pay all final wages (and waiting time penalties) on time each pay period or upon
20 termination of employment pursuant to Labor Code sections 201-203;

21 Q. For recovery of civil penalties under Labor Code section 2699(f)(2) for failing to
22 pay statutory waiting time penalties due pursuant to Labor Code section 203;

23 R. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to
24 the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i).

25 S. For reasonable attorneys' fees and costs; and

26 ///

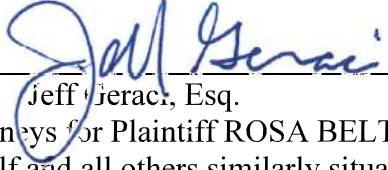
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1 T. For such other relief the Court deems just and proper.

2
3 Dated: April 30, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

4
5 By: 
Jeff Geraci, Esq.

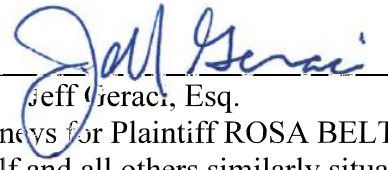
6 Attorneys for Plaintiff ROSA BELTRAN, on behalf of
7 herself and all others similarly situated

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff demands a jury trial of all claims triable as of right by jury.

10 Dated: April 30, 2020

COHELAN KHOURY & SINGER
LAW OFFICES OF SAHAG MAJARIAN II

11
12 By: 
Jeff Geraci, Esq.

13 Attorneys for Plaintiff ROSA BELTRAN, on behalf of
14 herself and all others similarly situated
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EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC•

(*Also admitted in the District of Columbia)
(•Also admitted in Colorado)

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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

February 24, 2020

Notice Via Online Submission

California Labor and Workforce Development Agency

Via Certified U.S. Mail With Return Receipt

Mr. John N. Gill
Township Retail Services, Incorporated
26 Pamaron Way, Suite A
Novato, California 94949

Township Retail Services, Incorporated
c/o Mr. Mark T. Kobata
8730 Wilshire Blvd., Suite 210
Beverly Hills, California 90211

Re: Ms. Rosa Beltran, on behalf of herself and similarly-situated Township Retail Services, Incorporated employees, as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Ms. Rosa Beltran submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by Township Retail Services, Incorporated ("Township" or "Defendant"). Ms. Beltran seeks to represent herself and other aggrieved employees in a Private Attorneys General Act ("PAGA") action. Labor Code §§ 2698, *et seq.* For purposes of this notice, "aggrieved employees" includes Township's non-exempt hourly employees, subject to the policies described below.

Factual Statement

Township Retail Services, Incorporated provides janitorial services at a wide range of businesses, schools, and hospitals, throughout California and ten other western states. Ms. Beltran worked as a janitor at Hilltop Mall in Richmond, California since 2000 for Paragon Services, later FBS, and was hired by Township as a janitor in June 2010. She was laid off October 30, 2019. During her employment, including one year before filing this Notice, Ms. Beltran and other aggrieved employees were subject to policies which violate the California Labor Code.

Township's rest and meal break policies states, "You must take your two uninterrupted 10-minute breaks and a minimum 30-minute lunch break daily." These policies do not comply with the law and are an incomplete statement of Township's obligation to authorize rest periods and provide meal periods.

According to Township records, Ms. Beltran and other aggrieved employees were not provided timely rest periods or meal periods. For example, during the pay period from October 16 to October 31, 2019, while working eight hours in each shift, Ms. Beltran received a first rest break after four and one-half hours of work, and a first meal break after five and one-half hours of work.

As a result of Township's policies, Ms. Beltran and other aggrieved employees did not receive compliant rest or meal breaks, nor premium wages owed for breaks not provided. Because Ms. Beltran and the aggrieved employees were not provided all breaks, or premium wages, the wage statements issued during their employment are inaccurate, and they are not paid all final wages owed to them when their employment terminates.

As a result of the policies described above, Township violates Industrial Welfare Commission Wage Orders, including 5-2001, and the Labor Code provisions described below.

Labor Code §§ 512 and 226.7 (Meal and Rest Periods and Premium Wages)

Township must authorize and permit employees "10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours," and 30 minutes for shifts of 10 hours or more. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1029-30 (2012). "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period." *Id.*, at 28.

Township must provide employees a 30-minute, uninterrupted meal period "after no more than five hours of work," and "a second meal period after no more than 10 hours work." *Id.* at 1049.

If rest or meal breaks are late, missed, or too short, the employer is liable for an hour of pay at the employee's regular rate ("premium wages"). Labor Code § 226.7; Industrial Welfare Commission ("IWC") Wage Order 5-2001.

Because of Township's policies and practices, or the lack of complaint policies, Ms. Beltran and other aggrieved employees did not receive compliant rest and meal periods. Premium wages were not paid for non-compliant breaks.

Labor Code §§ 510 and 1194 (Overtime Wages)

Labor Code sections 510 and 1194 require employers to pay overtime wages for hours worked over eight per day or forty per week, and double time wages for hours over twelve. By failing to pay premium wages, and not adding those wages to other earning, Township failed to correctly calculate the regular rate of pay, and failed to pay Ms. Beltran and the aggrieved employees all overtime wages earned.

Labor Code § 226 (Wage Statements)

California employers are required to provide itemized wage statements showing, among other things, "gross wages earned," and "all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee." Cal. Labor Code § 226(a)(1)(9). Township's wage statements do not show premium wages owed for missed rest and meal periods or the correct rate when overtime was worked.

Labor Code §§ 201-203 (Final Wages)

An employer must pay all wages due to involuntarily terminated employees at the time of termination, or within 72 hours to employees voluntarily terminating. Cal. Labor Code § 201. If an employer willfully fails to timely pay all wages to separated employees, the wages continue at the

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same rate for up to 30 days, until paid. As a result of its failure to pay all wages earned described above, Township failed to pay all final wages due Ms. Beltran and other aggrieved employees, and violated sections 201-203.

Conclusion

Defendant's employment practices, as described in detail above, violate IWC Wage Order 5-2001 and the California Labor Code, including sections 201-204, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197.1, 1198, and 2699.

Our client requests the Labor and Workforce Development Agency ("LWDA") initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Ms. Beltran will pursue claims for statutory penalties and seek all remedies available for violations of the Labor Code and Industrial Welfare Commission Wage Order 5-2001, including all available penalties set forth in Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER


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