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ELECTRONICALLY FILED
 Superior Court of California,
 County of San Diego
01/23/2020 at 04:44:40 PM
 Clerk of the Superior Court
 By Linda Sheffa, Deputy Clerk

37-2020-00003942-CU-OE-CTL

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 14 **FOR THE COUNTY OF SAN DIEGO**

15 ALAN RAMIREZ, individually and on
 16 behalf of all others similarly situated,

17 Plaintiffs,

18 vs.

19 TOWNE PARK, LLC, a Maryland limited
 20 liability company; and DOES 1 through 10,
 21 inclusive,

22 Defendants.

Case No. _____

CLASS ACTION AND REPRESENTATIVE
ACTION COMPLAINT
FOR DAMAGES AND PENALTIES

1. Failure to Pay All Wages
2. Failure to Pay Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Violations
6. Waiting Time Penalties
7. Failure to Reimburse Business Expenses
8. Failure to Produce Employment Records
9. Unfair Business Practices
10. PAGA - Failure to Pay All Wages
11. PAGA - Meal Period Violations
12. PAGA - Rest Period Violations
13. PAGA - Wage Statement Violations
14. PAGA - Waiting Time Penalties
15. PAGA - Expense Reimbursement
16. PAGA - Employment Records
17. PAGA - Employment Records (§1174)

DEMAND FOR JURY TRIAL

1 Plaintiff ALAN RAMIREZ (“Plaintiff”), individually and on behalf of all others similarly
2 situated, and as a representative of the State of California, alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff Alan Ramirez brings this representative and proposed class action against
5 TOWNE PARK, LLC, and DOES 1 through 10, inclusive, (“Defendants”) for unpaid wages,
6 overtime wages at the regular rate, meal and rest period violations, wage statement violations,
7 waiting time penalties, unreimbursed business expenses, and unfair business practices, for four
8 years before filing this action. (“Class Period”).

9 2. Plaintiff gave notice of these claims to Defendants and the California Labor and
10 Workforce Development Agency (“LWDA”). There has been no notice of LWDA intervention,
11 nor cure by Defendants. Plaintiff asserts claims for civil penalties as a representative of the State of
12 California, and to the extent permitted by law, on behalf of the all aggrieved current and former
13 employees of Defendants. Private Attorneys General Act (“PAGA”) Labor Code §§ 2698 *et seq*
14 2699.3(a)(2)(C). A true and correct copy of the November 18, 2019 notice is attached and
15 demonstrates Plaintiff is an aggrieved employee with standing to bring representative claims on
16 behalf of the State, LWDA, other aggrieved employees. **Exhibit 1**

17 3. Plaintiff seeks to represent all current and former non-exempt employees of
18 Defendants who suffered one or more of the alleged violations (“aggrieved employees”) during the
19 PAGA limitations period (one year and 65 days prior to the commencement of this action until the
20 commencement of trial in this matter). Labor Code section 2698, *et seq.*

21 **I. JURISDICTION AND VENUE**

22 4. Venue as to each Defendant is proper in this judicial district. Code of Civil
23 Procedure, § 395. Defendants conduct business in San Diego County, and all are within the
24 jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct
25 effect on Plaintiff and those similarly situated within California and San Diego County. The San
26 Diego County also has jurisdiction because individual class member claims are under the \$75,000
27 jurisdictional threshold for federal jurisdiction and the aggregate claim is under \$5,000,000
28 threshold of the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §1332.

1 15. Plaintiff worked more than 40 hours per workweek and 8 hours per workday during
2 the Class Period.

3 16. Defendants failed to include all forms of remuneration (including but not limited to
4 Holiday Premiums, multiple hourly rates, and Shift Differentials) in the regular rate of pay for
5 purposes of calculating and paying the correct overtime rate and, as a result, underpaid overtime
6 wages for Plaintiff and other similarly-situated employees.

7 17. Defendants maintained a policy and practice requiring Plaintiff and putative class
8 members to serve clients at all times, by parking or retrieving cars or meeting other demands. As a
9 result, Plaintiff and the putative class remained subject to Defendants' control during meal and rest
10 periods, and, if begun, these periods were often late, interrupted, or cut short. Defendants
11 maintained a policy requiring employees to clock out for meal periods, whether taken or not,
12 which forced Plaintiff and the putative class to work off the clock to complete necessary work.

13 18. Plaintiff and the putative class were not paid all premium wages for non-compliant
14 meal or rest periods. Plaintiff received only one rest period premium during his employment.

15 19. During Plaintiff's employment, he and other similarly-situated employees used
16 personal cell phones to maintain necessary communications with coworkers and serve customers.
17 Defendants did not reimburse Plaintiff or putative class members for work-related cell phone use.

18 20. Defendants' policy and practice of not paying all wages and premiums owed
19 resulted in Defendants failing to timely pay all final wages owed at termination of employment.
20 Plaintiff alleges Defendants also maintain a policy of underpaying waiting time penalties when due
21 by terminating an employee on one day and then registering the termination through human
22 resources days later and not providing the employee's final paycheck until the later date.

23 21. Defendants' are liable for waiting time penalties to Plaintiff and the putative class
24 for not timely paying all amounts owed to them upon termination of employment.

25 22. As a result of Defendants' violations, not all wage statements accurately state hours
26 worked, gross and net wages earned and paid, all hourly rates in effect, and corresponding number
27 of hours worked at each hourly rate on each wage statement. On many wage statements it could
28 not be determined if rates or amounts earned and paid were correctly calculated by Defendant.

1 30. Plaintiff seeks to certify a subclass defined as:

2 **Rest Period Subclass**

3 All Plaintiff Class members who worked shifts of four hours or a major
4 fraction thereof without being authorized or permitted a rest period of at
5 least 10 minutes and were not paid one hour at the regular rate for each of
6 those days.

6 31. Plaintiff seeks to certify a subclass defined as:

7 **Waiting Time Subclass**

8 All members of the Plaintiff Class to whom Defendants failed to pay all wages due
9 to them upon termination or resignation under Labor Code, §§ 201-203.

9 32. Plaintiff seeks to certify a subclass defined as:

10 **Wage Statement Subclass**

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

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

14 **UCL Subclass**

15 All members of the Unpaid Wage, Overtime, Meal Period, Rest Period and
16 Reimbursement Subclasses.

17 34. Plaintiff seeks to certify a subclass defined as:

18 **Reimbursement Subclass**

19 All members of the Plaintiff Class who used personal cell phones for Defendants'
20 business purposes, but were not reimbursed.

21 35. Plaintiff seeks to certify a subclass defined as:

22 **Records Request Subclass**

23 All members of the Plaintiff Class who made a written request for employment
24 records, signed documents, and payroll records.

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

26 37. This action has been brought and may be maintained as a class action pursuant to
27 Code of Civil Procedure § 382 because there is a well-defined common interest of many persons
28 and it is impractical to bring them all before the court.

1 **A. Ascertainable Class**

2 38. The proposed class and subclasses are ascertainable because they can be identified
3 and located using Defendants' payroll and personnel records.

4 **B. Numerosity**

5 39. While the precise number of Class Members has not yet been determined, Plaintiff
6 is informed and believes there are over 1,000 putative Class members in California affected by
7 Defendants' policies. Joinder of all members of the proposed Class is not practicable.

8 **C. Commonality**

9 40. There are questions of law and fact common to the Class predominate over any
10 questions affecting only individual Class Members. Common questions are set forth in each of the
11 causes of action throughout this Complaint.

12 **D. Typicality**

13 41. The claims of the named Plaintiff are typical of the claims of the proposed Plaintiff
14 Class. Plaintiff and all members of the Class and subclasses sustained injuries and damages arising
15 out of and caused by the Defendants' common course of conduct in violation of laws, regulations
16 that have the force and effect of law, and statutes as alleged.

17 **E. Adequacy of Representation**

18 42. Plaintiff will fairly and adequately represent and protect the interests of the
19 members of the Class. Proposed Class Counsel, Cohelan Khoury & Singer and Ferraro
20 Employment Law, Inc., who represent Plaintiff, are competent and experienced in litigating
21 employment class actions. Plaintiff is aware and understands his obligations to faithfully assist in
22 the preparation of the case and to make decisions in the best interests of the putative class.

23 **F. Superiority of Class Action**

24 43. A class action is superior to other available means for the fair and efficient
25 adjudication of this controversy. Each Class member has been damaged and is entitled to recovery
26 by Defendants' illegal policies and practices, and a Class action allows them to litigate their claims
27 in the most efficient and economical manner for the parties and judicial system. There are no likely
28 difficulties managing this action that preclude its maintenance as a class action.

1 44. The predominating common questions of law and fact include:

2 a. Whether Defendants violated the law by failing to properly calculate Plaintiff Class
3 Members' regular rate of pay;

4 b. Whether Defendants violated California law by failing to properly compensate
5 Plaintiff Class Members for all overtime hours;

6 c. Whether the Plaintiff Class is entitled to penalties under Section 226;

7 d. Whether the Plaintiff Class is entitled to waiting time penalties under Section 203;

8 e. Whether Defendants violated Labor Code sections 203, 226, and 1194; and IWC
9 Wage Orders, and whether that violates fundamental public policy;

10 f. Whether Defendants are liable for equitable relief pursuant to Business and
11 Professions Code, sections 17200, *et seq.*

12 **V. CAUSES OF ACTION**

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY ALL WAGES**

15 **(ALL CLAIMS ARE ALLEGED AGAINST ALL DEFENDANTS)**

16 45. Plaintiff incorporates the preceding paragraphs of this Complaint.

17 46. By failing to pay all wages for hours Plaintiff and putative class members were
18 under their control, including when clocked out for meal periods, but continuing to work,
19 Defendants failed to pay minimum, regular, and overtime wages and violated Labor Code section
20 1194 and IWC Wage Orders, including 5-2001.

21 47. Defendants' unlawful acts deprived Plaintiff and putative class members of
22 minimum, regular, and overtime wages in amounts to be determined at trial, and they are entitled
23 to recover these amounts, along with liquidated damages for unpaid minimum wages, and interest,
24 attorneys' fees, and costs.

25 **SECOND CAUSE OF ACTION**

26 **FAILURE TO PAY OVERTIME WAGES**

27 48. Plaintiff incorporates the preceding paragraphs of this Complaint

28 49. By their failure to record all time Plaintiff and putative class members were under
their control, and by their failure to correctly calculate the regular rate of pay, Defendants failed to

1 pay all overtime wages earned, for hours worked over eight (8) hours in one day or forty (40)
2 hours in one week, and violated provisions of Labor Code section 1194 and IWC Wage Orders,
3 including 5-2001.

4 50. Defendants' unlawful acts deprived Plaintiff putative class members of overtime
5 wages in amounts to be determined at trial, and they are entitled to recover these amounts, along
6 with interest, attorneys' fees, and costs.

7 **THIRD CAUSE OF ACTION**
8 **MEAL PERIOD VIOLATIONS**

9 51. Plaintiff incorporates the preceding paragraphs of this Complaint.

10 52. By failing to provide duty-free meal periods of at least thirty (30) minutes for shifts
11 of five hours or more, which began before the end of the fifth hour of work, and failing to pay such
12 employees premium wages of one (1) hour of pay at their regular rate of compensation for each
13 workday the meal period was not provided, Defendants willfully violated the provisions of Labor
14 Code sections 226.7 and IWC Wage Orders, including 5-2001.

15 53. By failing to correctly calculate the regular rate of pay, by failing to include all
16 compensation earned during the pay period, Defendants failed to pay all premium wages owed.

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

21 **FOURTH CAUSE OF ACTION**
22 **REST PERIOD VIOLATIONS**

23 55. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 56. By failing to authorize and permit Plaintiff to receive a rest period of at least 10
25 minutes on for every four (4) hours or major fraction thereof worked per day, and by failing to
26 provide premium wages at the regular rate of pay when these periods were not permitted or
27 authorized, Defendants willfully violated the provisions of Labor Code section 226.7 and IWC
28 Wage Orders, including 5-2001.

1 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
2 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
3 which a civil penalty is not specifically provided.

4 81. For purposes of this action, Plaintiff, as a representative of the State of California,
5 seeks to invoke Labor Code section 1195.5, which states: “The Division of Labor Standards
6 Enforcement shall determine, upon request, whether the wages of employees, which exceed the
7 minimum wages fixed by the commission, have been correctly computed and paid. For this
8 purpose, the division may examine the books, reports, contracts, payrolls, and documents of the
9 employer relative to the employment of employees.”

10 **ELEVENTH CAUSE OF ACTION**
11 **PAGA PENALTIES FOR MEAL PERIOD VIOLATIONS**

12 82. Plaintiff incorporates the preceding paragraphs of this Complaint.

13 83. As set forth in this Complaint, Defendants violated and are liable pursuant to Labor
14 Code sections 226.7 and 512 and the IWC Wage Orders for failure to provide compliant meal
15 periods and for failing to pay all meal period premiums in lieu of providing compliant meal
16 periods owed to Plaintiff and aggrieved employees during the PAGA Period.

17 84. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
18 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
19 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
20 which a civil penalty is not specifically provided.

21 **TWELFTH CAUSE OF ACTION**
22 **PAGA PENALTIES FOR REST PERIOD VIOLATIONS**

23 85. Plaintiff incorporates the preceding paragraphs of this Complaint.

24 86. As set forth in this Complaint, Defendants violated and are liable pursuant to Labor
25 Code sections 226.7 and the IWC Wage Orders for failure to provide compliant rest periods and
26 for failing to pay all rest period premiums in lieu of providing compliant rest periods owed to
27 Plaintiff and aggrieved employees during the PAGA Period.

28 87. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and

1 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
2 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
3 which a civil penalty is not specifically provided.

4 **THIRTEENTH CAUSE OF ACTION**
5 **PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE**
6 **ITEMIZED WAGE STATEMENTS**

7 88. Plaintiff incorporates the preceding paragraphs of this Complaint.

8 89. As set forth in this Complaint, Defendants violated and are liable pursuant to Labor
9 Code sections 226 and 226.3 and the IWC Wage Orders for failure to provide accurate itemized
10 wage statements to Plaintiff and aggrieved employees during the PAGA Period.

11 90. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
12 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
13 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
14 which a civil penalty is not specifically provided.

15 **FOURTEENTH CAUSE OF ACTION**
16 **PAGA PENALTIES FOR FAILURE TO TIMELY PAY WAGES AT SEPARATION**

17 91. Plaintiff incorporates the preceding paragraphs of this Complaint.

18 92. As set forth in this Complaint, Defendants violated and are liable pursuant to Labor
19 Code sections 201 through 203 and the IWC Wage Orders for failure to pay all wages owed to
20 Plaintiff and aggrieved employees within the statutorily-proscribed timelines following termination
21 of employment during the PAGA Period.

22 93. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
23 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
24 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
25 which a civil penalty is not specifically provided.

26 **FIFTEENTH CAUSE OF ACTION**
27 **PAGA PENALTIES FOR FAILURE TO REIMBURSE BUSINESS EXPENSES**

28 94. Plaintiff incorporates the preceding paragraphs of this Complaint.

95. As set forth in this Complaint, Defendants violated and are liable pursuant to Labor

1 Code sections 2802 and 2804 and the IWC Wage Orders for failure to reimburse all necessary
2 expenditures or losses incurred by Plaintiff and aggrieved employees in direct discharge of their
3 employment duties during the PAGA Period.

4 96. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
5 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
6 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
7 which a civil penalty is not specifically provided.

8 **SIXTEENTH CAUSE OF ACTION**
9 **PAGA PENALTIES FOR FAILURE TO PRODUCE EMPLOYMENT RECORDS**

10 97. Plaintiff incorporates the preceding paragraphs of this Complaint.

11 98. As set forth in this Complaint, Defendants violated and are liable pursuant to Labor
12 Code sections 226, 432, 1198.5 and the IWC Wage Orders, including IWC Wage Order No. 5, for
13 failure to provide all records upon request, as required by those statutes, to Plaintiff and aggrieved
14 employees during the PAGA Period.

15 99. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
16 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
17 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
18 which a civil penalty is not specifically provided.

19 **SEVENTEENTH CAUSE OF ACTION**
20 **PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**

21 100. Plaintiff incorporates the preceding paragraphs of this Complaint.

22 101. Defendants violated Labor Code section 1174 and 1174.5 and the IWC Wage
23 Orders, for failure to maintain accurate wage statement records, including all hours worked and
24 wages paid at the appropriate rate to Plaintiff and aggrieved employees during the PAGA Period.

25 102. Plaintiff and aggrieved employees seek to recover all recoverable civil penalties and
26 other recoverable amounts under the foregoing sections of the Labor Code, in addition to under
27 Labor Code section 2699(f), which provides a penalty for those provisions of the Labor Code for
28 which a civil penalty is not specifically provided.

1 **VI. PRAYER FOR RELIEF**

2 Plaintiff prays for judgment as follows:

- 3 A. For certification of this action as a class action;
- 4 B. For appointment of Plaintiff as the representative of the Class;
- 5 C. For appointment of counsel for Plaintiff as Class Counsel;
- 6 D. For injunctive relief;
- 7 E. For compensatory damages in an amount according to proof;
- 8 F. For all interest accrued to date;
- 9 G. For disgorgement of all amounts wrongfully obtained;
- 10 H. For this action to be maintained as a representative action under the PAGA and for
- 11 Plaintiff and his counsel to be provided with all enforcement capability as if the action were
- 12 brought by the California Division of Labor Standards Enforcement;
- 13 I. For recovery of civil penalties and other recoverable amounts under the PAGA;
- 14 J. For reasonable attorneys' fees and costs;
- 15 K. For such other relief the Court deems just and proper.

16

17 Dated: January 23, 2020

**COHELAN KHOURY & SINGER
FERRARO EMPLOYMENT LAW, INC.**

18

19 By: Jeff Geraci

Jeff Geraci, Esq.

20 Attorneys for Plaintiff Alan Ramirez, individually and
21 on behalf of others similarly situated

22 **DEMAND FOR JURY TRIAL**

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

24

25 Dated: January 23, 2020

**COHELAN KHOURY & SINGER
FERRARO EMPLOYMENT LAW, INC.**

26

27 By: Jeff Geraci

Jeff Geraci, Esq.

28 Attorneys for Plaintiff Alan Ramirez, individually and
on behalf of others similarly situated