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and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

HENRY NELSON, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

CORT BUSINESS SERVICES
CORPORATION; and DOES 1 through
10, inclusive,

Defendants.

Case No. 20STCV12143

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Overtime Wages;
3. Failure to Provide Meal Periods;
4. Failure to Permit Rest Breaks;
5. Failure to Provide Accurate Itemized Wage Statements;
6. Failure to Pay All Wages Due Upon Separation of Employment;
7. Violation of Business and Professions Code §§ 17200, *et seq.*; and
8. Enforcement of Labor Code §§ 2698, *et seq.* ("PAGA")

1 Plaintiff Henry Nelson, individually and on behalf of others similarly situated, alleges as
2 follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Henry Nelson (“Plaintiff”) brings this putative class and representative action
5 against defendants CORT Business Services Corporation (“CORT”), and DOES 1 through 10,
6 inclusive (collectively, “Defendants”), on behalf of himself individually, other aggrieved employees,
7 and a putative class of non-exempt employees employed by Defendants throughout the State of
8 California, within the applicable class periods.

9 2. Defendants are event planning companies.

10 3. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic
11 pattern of wage and hour violations under the California Labor Code (“Labor Code”) and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate unfair
13 competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have increased
15 their profits by violating state wage and hour laws by, among other things:

- 16 (a) Failing to pay all wages (including minimum wage and overtime wages);
- 17 (b) Failing to provide meal periods or compensation in lieu thereof;
- 18 (c) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;
- 19 (d) Failing to provide accurate itemized wage statements; and
- 20 (e) Failing to pay all wages due upon separation of employment.

21 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
22 himself and all others similarly situated in California to recover, among other things, unpaid wages
23 and benefits, interest, attorneys’ fees, costs and expenses and penalties pursuant to Labor Code §§
24 201-203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197,
25 1197.1, and 1198.

26 **JURISDICTION AND VENUE**

27 6. This Court has subject matter jurisdiction over this case because this is a class action
28 lawsuit under Rule 23 of the Federal Rules of Civil Procedure, Plaintiff and Defendants are citizens

1 of different states, and Defendants contend that the amount in controversy exceeds \$5,000,000,
2 exclusive of interests and costs.

3 7. This Court has personal jurisdiction over Defendants because they conduct or have
4 conducted business in this District and the unlawful conduct alleged in the Complaint occurred in,
5 was directed to, and/or emanated from this District.

6 8. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of
7 the events or omissions giving rise to Plaintiff's claims occurred here.

8 **THE PARTIES**

9 9. Plaintiff Henry Nelson is a resident of California.

10 10. Defendants are in the business of event planning throughout California.

11 11. Plaintiff is informed and believes and thereon alleges, that Defendants at all times
12 hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC
13 Wage Orders, whose employees were and are engaged throughout this county and the State of
14 California.

15 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under
16 the fictitious names DOES 1 through 10, but will seek leave of this Court to amend this Complaint
17 and serve such fictitiously named defendants once their names and capacities become known.

18 13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all
19 respects pertinent to this action as the agent of the other defendant, and carried out a joint scheme,
20 business plan or policy in all respects pertinent hereto. Plaintiff is informed and believes that the acts
21 of each defendant are legally attributable to the other defendant. Defendants in all respects acted as
22 the employer and/or joint employer of Plaintiff and the class members.

23 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
24 omissions alleged herein were performed by, or are attributable to, CORT and/or DOES 1 through
25 10, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The
26 acts of any Defendants were in accordance with, and represent, the official policy of Defendants.

27 15. At all relevant times, Defendants, and each of them acted within the scope of such
28 agency or employ or ratified every act or omission complained of herein. At all relevant times,

1 Defendants, and each of them aided and abetted the acts and omissions of each and all the other
2 Defendants in proximately causing the damages herein alleged.

3 16. Plaintiff is informed and believes, and thereon alleges, that each defendant is in some
4 manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrence, and
5 transactions alleged herein.

6 **CLASS ACTION ALLEGATIONS**

7 17. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself
8 and all others similarly situated who were affected by Defendants' Labor Code, Business and
9 Professions Code § 17200, and IWC Wage Order violations.

10 18. All claims alleged herein arise under California law for which Plaintiff seeks relief
11 authorized by California law.

12 19. Plaintiff's proposed Class consists of and is defined as follows:

13 Class

14 All California citizens currently or formerly employed by Defendants as non-exempt
15 employees in the State of California within four years prior to the filing of this action
16 to the date the class is certified ("Class").

17 20. Plaintiff also seeks to certify the following Subclass of employees:

18 Waiting Time Subclass

19 All Class Members who separated their employment with Defendants at any time
20 within three years prior to the filing of this action to the date the class is certified
21 ("Subclass" or "Waiting Time Subclass").

22 21. Plaintiff reserves the right to establish other or additional Subclasses, or modify any
23 Class or Subclass definition, as appropriate.

24 22. Members of the Class and the Subclass described above will be collectively referred
25 to as "Class Members." Plaintiff reserves the right to re-define the above Class and Subclass and
26 add additional Subclasses as appropriate based on investigation, discovery, and specific theories of
27 liability.
28

1 23. This action has been brought and may properly be maintained as a class action under
2 the Federal Rules of Civil Procedure (“FRCP”) Rule 23 and California Code of Civil Procedure §
3 382 because there are common questions of law and fact as to the Class that predominate over
4 questions affecting only individual members including, but not limited to:

5 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages (including
6 minimum wages and overtime wages) for all hours worked by Plaintiff and Class Members;

7 (b) Whether Defendants required Plaintiff and Class Members to work over eight (8)
8 hours per day, over twelve (12) hours per day, over forty (40) hours per week, and/or seven (7)
9 consecutive days and failed to pay them overtime compensation at the proper rate;

10 (c) Whether Defendants deprived Plaintiff and Class Members of timely meal periods or
11 required Plaintiff and Class Members to work through meal periods without proper compensation;

12 (d) Whether Defendants deprived Plaintiff and Class Members of rest breaks or required
13 Plaintiff and Class Members of rest breaks or required Plaintiff and Class Members to work through
14 rest breaks without proper compensation;

15 (e) Whether Defendants failed to provide Plaintiff and Class Members accurate itemized
16 wage statements;

17 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all wages due
18 upon termination or within seventy-two (72) hours of resignation;

19 (g) Whether Defendants’ conduct was willful or reckless;

20 (h) Whether Defendants engaged in unfair business practices in violating of Business and
21 Professions Code §§ 17200, *et seq.*

22 24. There is a well-defined community of interest in this litigation and the proposed Class
23 and Subclass are readily ascertainable:

24 (a) Numerosity: The members of the Class and Subclass are so numerous that joinder
25 of all members is impractical. Although the members of the entire Class and Subclass are unknown
26 to Plaintiff at this time, on information and belief, the class is estimated to be greater than twenty-
27 five (25) individuals. The identities of the Class Members are readily ascertainable by inspection of
28 Defendants’ employment and payroll records.

1 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the claims
2 (or defenses, if any) of the Class Members because Defendants' failure to comply with the provisions
3 of California's wage and hour laws entitled each class member to similar pay, benefits and other
4 relief. The injuries sustained by Plaintiff are also typical of the injuries sustained by the Class
5 Members because they arise out of and are caused by Defendants' common course of conduct as
6 alleged herein.

7 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the interests
8 of all Class Members because it is in his best interest to prosecute the claims alleged herein to obtain
9 full compensation and penalties due to him and the Class Members. Plaintiff's attorneys, as proposed
10 class counsel, are competent and experienced in litigating large employment class actions and versed
11 in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred
12 and, throughout the duration of this action, will continue to incur attorneys' fees and costs that have
13 been and will necessarily be expended for the prosecution of this action for the substantial benefit
14 of each class member.

15 (d) Superiority: The nature of this action makes use of class action adjudication
16 superior to other methods. A class action will achieve economies of time, effort, and expense as
17 compared with separate lawsuits and will avoid inconsistent outcomes because the same issues can
18 be adjudicated in the same manner and at the same time for the entire Class and Subclass. If
19 appropriate this Court can, and is empowered to, fashion methods to efficiently manage this case as
20 a class action.

21 (e) Public Policy Considerations: Employers in the State of California and other states
22 violate employment and labor laws every day. Current employees are often afraid to assert their
23 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
24 because they believe their former employers might damage their future endeavors through negative
25 references and/or other means. Class actions provide the class members who are not named in the
26 complaint with a type of anonymity that allows for the vindication of their rights at the same time as
27 affording them privacy protections.

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29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Class Members were entitled to receive certain wages for overtime compensation. In violation of the Labor Code and applicable IWC Wage Order, Plaintiff and Class Members were not properly paid for all of their overtime work. Specifically, Defendants' policy and practice required Plaintiff and Class Members to work through their meal periods, and otherwise required Plaintiff and Class Members to work off-the-clock. When the time worked through meal periods and off-the-clock work entitled Plaintiff and Class Members to overtime compensation, Defendants failed to pay Plaintiff and Class Members for such time.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
2 have known that Plaintiff and Class Members were entitled to receive all required meal periods or
3 payment of one (1) additional hour of pay at Plaintiff and Class Members' regular rate of pay when
4 they did not receive a timely, uninterrupted meal period. In violation of the Labor Code and IWC
5 Wage Orders, Plaintiff and Class Members did not receive all meal periods or payment of one (1)
6 additional hour of pay at Plaintiff and Class Members' regular rate of pay when they did not receive
7 a timely, uninterrupted meal period. Specifically, Plaintiff and Class Members frequently worked
8 shifts over five hours and did not receive lawful meal periods because Defendants required Plaintiff
9 and Class Members to work through their meal periods, or failed to provide coverage for meal
10 periods, and as a result, the meal periods were missed, late, short, and/or interrupted. Further, when
11 Plaintiff and Class Members worked over ten (10) hours in some instances and were entitled to a
12 second meal period, Defendants did not provide a second meal period for the same reasons stated
13 herein.

14 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
15 have known that Plaintiff and Class Members were entitled to receive all rest breaks or payment of
16 one (1) additional hour of pay at Plaintiff and Class Members' regular rate of pay when a rest break
17 was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class Members
18 did not receive all rest breaks or payment of one (1) additional hour of pay at Plaintiff and Class
19 Members' regular rate of pay when a rest break was missed. Plaintiff often missed rest periods, or
20 was not provided rest periods at the appropriate interval due to the requirements of the job in needing
21 to drive to various locations. Further, when working in Defendants' warehouse, Defendants only
22 occasionally provided rest periods at the appropriate interval.

23 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
24 have known that Plaintiff and Class Members were entitled to receive itemized wage statements that
25 accurately showed their gross and net wages earned, total hours worked, all applicable hourly rates
26 in effect and the number of hours worked at each hourly rate. Defendants violated the Labor Code
27 by failing to provide Plaintiff and Class Members with accurate itemized wage statements. For
28 example, the wage statements Defendants issued to Plaintiff and Class Members inaccurately stated:

1 (a) the gross and net wages that Plaintiff and Class Members earned and thus, were to be paid; and
2 (b) the number of hours Plaintiff and Class Members worked.

3 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
4 have known that Plaintiff and the Waiting Time Subclass were entitled to timely payment of wages
5 due upon separation of employment. In violation of the Labor Code, Plaintiff and the Waiting Time
6 Subclass did not receive payment of all wages within permissible time periods.

7 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
8 have known they had a duty to compensate Plaintiff and Class Members, and Defendants had the
9 financial ability to pay such compensation but willfully, knowingly, and intentionally failed to do so
10 all in order to increase Defendants' profits.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PAY MINIMUM WAGES**

13 (Violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197; Violation of IWC Wage Order § 4)

14 35. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
15 though fully set forth herein.

16 36. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees fixed
17 by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than
18 the minimum so fixed is unlawful.

19 37. During the relevant time period, Defendants paid Plaintiff and Class Members less
20 than minimum wages. To the extent these hours do not qualify for the payment of overtime, Plaintiff
21 and Class Members were not being paid at least minimum wages for their work.

22 38. During the relevant time period, Defendants paid Plaintiff and Class Members less
23 than minimum wages when they failed to pay for time worked through meal periods and off-the-
24 clock work, among other reasons. To the extent these hours do not qualify for the payment of
25 overtime, Plaintiff and Class Members were not being paid at least minimum wages for their work.

26 39. During the relevant time period, Defendants regularly failed to pay at least minimum
27 wages to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§ 1194 and
28 1197.

40. Defendants' failure to pay Plaintiff and Class Members the required minimum wages violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum wage compensation as well as interest, costs and attorneys' fees.

41. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES

(Violation of Labor Code §§ 510, 1194 and 1198; Violation of IWC Wage Order § 3)

42. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

43. Labor Code § 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either one and one-half (1½) or two (2) times the person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

44. Specifically, the applicable IWC Wage Orders provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at the rate of one and one-half (1½) times their regular rate of pay when working and for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek and for the first eight (8) hours of work on the seventh day of work in a workweek.

45. The applicable IWC Wage Orders further provide that Defendants are and were required to pay overtime compensation to Plaintiff and Class Members at a rate of two times their regular rate of pay when working and for all hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours on the seventh day of work in a workweek.

46. California Labor Code § 510 codifies the right to overtime compensation at one and one-half (1½) times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week and for the first eight (8) hours worked on the seventh consecutive day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of

1 twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a
2 workweek.

3 47. Labor Code § 510 and the applicable IWC Wage Orders provide that
4 employment of more than six days in a workweek is only permissible if the employer pays proper
5 overtime compensation as set forth herein.

6 48. Plaintiff and Class Members were non-exempt employees entitled to the protections
7 of California Labor Code §§ 510 and 1194.

8 49. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
9 all overtime and double time wages.

10 50. During the relevant time period, Defendants failed to pay Plaintiff and Class Members
11 all overtime wages owed when they failed to pay for time worked through meal periods and off-the-
12 clock work, among other reasons. To the extent these hours qualify for the payment of overtime,
13 Plaintiff and Class Members were not being paid overtime wages for their work.

14 51. In violation of state law, Defendants have knowingly and willfully refused to perform
15 their obligations and compensate Plaintiff and Class Members for all wages earned and all hours
16 worked, including work performed off the clock as alleged above.

17 52. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of overtime
18 and double time compensation, as required by California law, violates the provisions of Labor Code
19 §§ 510 and 1198, and is therefore unlawful.

20 53. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover
21 their unpaid overtime and double time compensation as well as interest, costs and attorneys' fees.

22 **THIRD CAUSE OF ACTION**

23 **FAILURE TO PROVIDE MEAL PERIODS**

24 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

25 54. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
26 though fully set forth herein.

27 55. Labor Code § 226.7 provides that no employer shall require an employee to work
28 during any meal period mandated by the IWC Wage Orders.

1 56. Section 11 of the applicable IWC Wage Order states, “no employer shall employ any
2 person for a work period of more than five (5) hours without a meal period of not less than 30
3 minutes, except that when a work period of not more than six (6) hours will complete the day’s work
4 the meal period may be waived by mutual consent of the employer and the employee.”

5 57. Labor Code § 512(a) provides that an employer may not require, cause, or permit an
6 employee to work for a period of more than five (5) hours per day without providing the employee
7 with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work
8 period per day of the employee is not more than six (6) hours, the meal period may be waived by
9 mutual consent of both the employer and the employee.

10 58. Labor Code § 512(a) also provides that an employer may not employ an employee for
11 a work period of more than ten (10) hours per day without providing the employee with a second
12 meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than
13 twelve (12) hours, the second meal period may be waived by mutual consent of the employer and
14 the employee only if the first meal period was not waived.

15 59. During the relevant time period, Plaintiff and Class Members did not receive
16 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
17 Defendants required Plaintiff and Class Members to work through meal periods, or failed to provide
18 coverage for meal periods, and as a result, the meal periods were missed, late, short, interrupted
19 and/or they were not provided a second meal period.

20 60. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require an
21 employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
22 compensation for each work day that a meal period is not provided.

23 61. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
24 period premium for missed, late, short, and/or interrupted meal periods pursuant to Labor Code §
25 226.7(b) and section 11 of the applicable IWC Wage Order.

26 62. As a result of Defendants’ failure to pay Plaintiff and Class Members an additional
27 hour of pay for each day a meal period was not provided, Plaintiff and Class Members suffered and
28 continue to suffer a loss of wages and compensation.

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO PERMIT REST BREAKS**

3 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

4 63. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 64. Labor Code § 226.7(a) provides that no employer shall require an employee to work
7 during any rest period mandated by the IWC Wage Orders.

8 65. Section 12 of the applicable IWC Wage Order states “[e]very employer shall authorize
9 and permit all employees to take rest periods, which insofar as practicable shall be in the middle of
10 each work period” and the “authorized rest period time shall be based on the total hours worked
11 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless
12 the total daily work time is less than three and one-half (3½) hours.

13 66. During the relevant time period, Plaintiff and Class Members did not receive a ten (10)
14 minute rest period for every four (4) hours or major fraction thereof worked because they were
15 required to work through their daily rest periods, were not permitted to take timely rest periods,
16 and/or were not authorized to take their rest periods.

17 67. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order requires an
18 employer to pay an employee one (1) additional hour of pay at the employee’s regular rate of
19 compensation for each work day that a compliant rest period is not provided.

20 68. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest period
21 premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code § 226.7(b) and
22 section 12 of the applicable IWC Wage Order.

23 69. As a result of Defendants’ failure to pay Plaintiff and Class Members an additional
24 hour of pay for each day a compliant rest period was not provided, Plaintiff and Class Members
25 suffered and continue to suffer a loss of wages and compensation.

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1 **FIFTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 (Violation of Labor Code § 226)

4 70. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 71. Labor Code § 226(a) requires Defendants to provide each employee with an accurate
7 wage statement in writing showing nine pieces of information, including: (1) gross wages earned,
8 (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable
9 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions
10 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and the last four digits of his or her social security number or an employee identification
13 number other than a social security number, (8) the name and address of the legal entity that is the
14 employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
15 number of hours worked at each hourly rate by the employee.

16 72. During the relevant time period, Defendants have knowingly and intentionally failed
17 to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff and Class
18 Members. The deficiencies include, among other things, the failure to correctly state the gross and
19 net wages earned, the total hours worked, and all applicable hourly rates in effect and the number of
20 hours worked at each hourly rate of Plaintiff and Class Members.

21 73. As a result of Defendants' knowing and intentional failure to comply with Labor Code
22 § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-protected
23 rights. Specifically, Plaintiff and Class Members are deemed to suffer an injury pursuant to Labor
24 Code § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). Plaintiff and
25 Class Members were denied both their legal right to receive, and their protected interest in receiving,
26 accurate itemized wage statements under Labor Code § 226(a). In addition, because Defendants
27 failed to provide the accurate rates of pay on wage statements, Defendants have prevented Plaintiff
28 and Class Members from determining if all hours worked were paid at the appropriate rate and the

1 extent of the underpayment. Plaintiff has had to file this lawsuit in order to analyze the extent of the
2 underpayment, thereby causing Plaintiff to incur expenses and lost time. Plaintiff would not have
3 had to engage in these efforts and incur these costs had Defendants provided the accurate hours
4 worked, wages earned, and rates of pay. This has also delayed Plaintiff's ability to demand and
5 recover the underpayment of wages from Defendants.

6 74. Plaintiff and Class Members are entitled to recover from Defendants the greater of all
7 actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or fifty dollars
8 (\$50.00) for the initial pay period in which a violation occurred, and one hundred dollars (\$100.00)
9 per employee for each violation in subsequent pay periods in an amount not exceeding four thousand
10 dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

11 75. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff and
12 Class Members from knowing, understanding, and disputing the wages paid to them, and resulted in
13 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
14 intentional failure to comply with California Labor Code § 226(a), Plaintiff and Class Members have
15 suffered an injury, the exact amount of damages and/or penalties is all in an amount to be shown
16 according to proof at trial.

17 76. Plaintiff and Class Members are also entitled to injunctive relief under California
18 Labor Code § 226(h), compelling Defendants to comply with California Labor Code § 226, and seek
19 the recovery of attorneys' fees and costs incurred in obtaining this injunctive relief.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

22 (Violation of Labor Code §§ 201, 202 and 203)

23 77. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
24 though fully set forth herein.

25 78. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the
26 wages earned and unpaid at the time of discharge are due and payable immediately, and that if an
27 employee voluntarily leaves his employment, his wages shall become due and payable not later than
28 seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous

1 notice of his intention to quit, in which case the employee is entitled to his wages at the time of
2 quitting.

3 79. During the relevant time period, Defendants willfully failed to pay Plaintiff and the
4 Waiting Time Subclass all their earned wages upon termination including, but not limited to, proper
5 minimum wages and overtime compensation, meal period premiums, and rest period premiums
6 either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

7 80. Defendants' failure to pay Plaintiff and the Waiting Time Subclass all their earned
8 wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ
9 is in violation of Labor Code §§ 201 and 202.

10 81. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
11 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the
12 wages of the employee shall continue as a penalty from the due date at the same rate until paid or
13 until an action is commenced; but the wages shall not continue for more than thirty (30) days.

14 82. Plaintiff and the Waiting Time Subclass are entitled to recover from Defendants the
15 statutory penalty which is defined as Plaintiff and Waiting Time Subclass members' regular daily
16 wages for each day they were not paid, at their regular hourly rate of pay, up to a thirty (30) day
17 maximum pursuant to Labor Code § 203.

18 SEVENTH CAUSE OF ACTION

19 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.**

20 (Violation of Business and Professions Code §§ 17200, *et seq.*)

21 83. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
22 though fully set forth herein.

23 84. Defendants' conduct, as alleged herein, has been and continues to be unfair, unlawful
24 and harmful to Plaintiff and Class Members. Plaintiff seeks to enforce important rights affecting the
25 public interest within the meaning of Code of Civil Procedure § 1021.5.

26 85. Defendants' activities, as alleged herein, violate California law and constitute
27 unlawful business acts or practices in violation of California Business and Professions Code §§
28 17200, *et seq.*

1 86. A violation of Business and Professions Code §§ 17200, *et seq.* may be predicated on
2 the violation of any state or federal law.

3 87. Defendants' policies and practices have violated state law in at least the following
4 respects:

5 (a) Failing to pay at least minimum wage to Plaintiff and Class Members in violation of
6 Labor Code §§ 1182.12, 1194 and 1197;

7 (b) Failing to compensate Plaintiff and Class Members with all required overtime and
8 double time pay as herein alleged in violation of Labor Code §§ 510, 1194 and 1198;

9 (c) Failing to provide compliant meal periods without paying Plaintiff and Class Members
10 premium wages for every day said meal periods were not provided in violation of Labor Code §§
11 226.7 and 512;

12 (d) Failing to authorize or permit rest breaks without paying Plaintiff and Class Members
13 premium wages for every day said rest breaks were not authorized or permitted in violation of Labor
14 Code § 226.7;

15 (e) Failing to provide Plaintiff and Class Members with accurate itemized wage
16 statements in violation of Labor Code § 226; and

17 (f) Failing to timely pay all earned wages to Plaintiff and Waiting Time Subclass
18 members upon separation of employment in violation of Labor Code §§ 201, 202 and 203.

19 88. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
20 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
21 undercut their competitors and establish and gain a greater foothold in the marketplace.

22 89. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
23 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
24 during a period that commences four years prior to the filing of the Complaint; an award of attorneys'
25 fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 **EIGHTH CAUSE OF ACTION**

2 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. ("PAGA")**

3 90. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
4 though fully set forth herein.

5 91. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
8 violation of the code may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself and other current or former employees pursuant to the
10 procedures specified in Labor Code § 2699.3.

11 92. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 93. Defendants' conduct violates numerous Labor Code sections including, but not
17 limited to, the following:

18 (a) Violation of Labor Code §§ 201, 202, 203, 204, 510, 1182.12, 1194, 1197 and 1198
19 for failure to timely pay all earned wages (including minimum wages and overtime wages) owed to
20 Plaintiffs and other aggrieved employees during employment and upon separation of employment
21 as herein alleged;

22 (b) Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
23 Plaintiffs and other aggrieved employees and failure to pay premium wages for missed meal periods
24 as herein alleged;

25 (c) Violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiffs and
26 other aggrieved employees and failure to pay premium wages for missed rest periods as herein
27 alleged;

1 (d) Violation of Labor Code § 226 for failure to provide accurate itemized wage
2 statements to Plaintiffs and other aggrieved employees as herein alleged; and

3 (e) Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate records.

4 94. As set forth above, Defendants have violated numerous provisions of the Labor Code
5 regulating hours and days of work as well as the IWC Wage Orders. Accordingly, Plaintiffs seek
6 the remedies set forth in Labor Code § 558 for themselves, the underpaid employees, and the State
7 of California.

8 95. Plaintiff is an “aggrieved employee” because he was employed by the alleged
9 violator and had one or more of the alleged violations committed against them, and therefore is
10 properly suited to represent the interests of all other aggrieved employees.

11 96. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
12 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other
13 aggrieved employees under PAGA.

14 97. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
15 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited
16 above.

17 98. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
18 herein.

19 **PRAYER FOR RELIEF**

20 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief and
21 judgment against Defendants, jointly and severally, as follows:

- 22 1. For certification of this action as a class action, including certifying the proposed Class
23 and Waiting Time Subclass alleged by Plaintiff, under FRCP Rule 23 and/or California Code of
24 Civil Procedure § 382;
- 25 2. For appointment of Henry Nelson as the class representative;
- 26 3. For appointment of Aegis Law Firm, PC as class counsel for all purposes;
- 27 4. For compensatory damages in an amount according to proof with interest thereon;

- 1 5. For economic and/or special damages in an amount according to proof with interest
2 thereon;
- 3 6. For liquidated damages pursuant to Labor Code § 1194.2;
- 4 7. For reasonable attorneys' fees, costs of suit and interest to the extent permitted by law,
5 including pursuant California Code of Civil Procedure § 1021.5, and California Labor Code §§
6 226(e), 1194, and 2698, *et seq.*;
- 7 8. For statutory penalties to the extent permitted by law, including those pursuant to the
8 Labor Code and IWC Wage Orders;
- 9 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;
- 10 10. For an order requiring Defendants to restore and disgorge all funds to each employee
11 acquired by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent
12 and, therefore, constituting unfair competition under Business and Professions Code §§ 17200, *et*
13 *seq.*;
- 14 11. For an award of damages in the amount of unpaid compensation including, but not
15 limited to, unpaid wages, benefits and penalties, including interest thereon;
- 16 12. For penalties pursuant to PAGA;
- 17 13. For pre-judgment interest; and
- 18 14. For such other relief as the Court deems just and proper.
- 19
20

21 Dated: October 8, 2020

AEGIS LAW FIRM, PC

22
23 By: _____


Fawn F. Bekam
Attorneys for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over the age of 18
3 and not a party to the within action; am employed with Aegis Law Firm PC and my business address is
9811 Irvine Center Drive, Suite 100, Irvine, California 92618.

4 On November 2, 2020, I served the foregoing document entitled:

5 • **SECOND AMENDED CLASS ACTION COMPLAINT**

6 on all the appearing and/or interested parties in this action by placing ☐ the original ☒ a true
7 copy thereof enclosed in sealed envelope(s) addressed as follows:

8 Courtney L. Baird
9 **DUANE MORRIS LLP**
10 865 S. Figueroa Street, Suite 3100
11 Los Angeles, California 90017
12 Telephone: 213-689-7400
13 Facsimile: 213-689-7401
14 E-mail: cbaird@duanemorris.com

15 Joseph A. Ciucci
16 Adam C. Keating
17 Christopher D. Kanne
18 **DUANE MORRIS LLP**
19 1075 Peachtree Street NE, Suite 2000
20 Atlanta, GA 30309-3929
21 Telephone: 404-253-6988
22 Facsimile: 404-393-0744
23 E-Mail: ciucci@duanemorris.com
24 akeating@duanemorris.com
25 cdkanne@duanemorris.com

26 *Attorneys for Defendant:*
27 **CORT BUSINESS SERVICES CORPORATION**

28 ☐ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service
on that same day with postage thereon fully prepaid at Irvine, California in the ordinary course of
business. I am aware that on motion of the party served, service is presumed invalid if postage
cancellation date or postage meter date is more than one day after date of deposit for mailing this
affidavit. (*Cal Code Civ. Proc.* § 1013(a); *Fed. R. Civ. Proc.* 5(a); *Fed. R. Civ. Proc.* 5(c).)

☐ **(BY OVERNIGHT MAIL)** I am personally and readily familiar with the business practice of
Aegis Law Firm PC for collection and processing correspondence for overnight delivery, and I
caused such document(s) described herein to be deposited for delivery to a facility regularly
maintained Federal Express for overnight delivery. (*Cal Code Civ. Proc.* § 1013(c); *Fed. R. Civ.*
Proc. 5(c).)

☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via electronic
transmission to the addressee(s) listed above on the date below. (*Cal. Code Civ. Proc.* §
1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

///

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1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct.

3 Executed on November 2, 2020, at Irvine, California.

4 
5 Andrea Drocco
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