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Attorneys for Plaintiff Kathleen Fimbres, individually,
 and on behalf of all others similarly situated.

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

KATHLEEN FIMBRES, individually and
 on behalf of all others similarly situated,

Plaintiff,

vs.

SODEXO, INC.; and DOES 1 through 20,
 inclusive,

Defendants.

Case No.: 21STCV02192

Assigned for All Purposes to:
 Hon. William F. Fahey
 Dept.: 69

**SECOND AMENDED COMPLAINT FOR
 VIOLATION OF THE CALIFORNIA
 LABOR CODE PRIVATE ATTORNEYS
 GENERAL ACT OF 2004 (CAL. LAB. CODE
 §§ 2698, *ET SEQ.*)**

FILED
 Superior Court of California
 County of Los Angeles

09/10/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: V. Solis Deputy

1 Plaintiff Kathleen Fimbres, individually and on behalf of others aggrieved employees,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Kathleen Fimbres (“Plaintiff”) brings this representative action, on behalf
5 of Plaintiff and all non-exempt employees currently or formerly employed by Sodexo, Inc.; and
6 DOES 1 through 20, inclusive (collectively, “Defendants”), who provided similar services in the
7 same or similar industries as Plaintiff within the State of California, or who provided services in
8 the same county as Plaintiff.

9 2. Defendants are in the business of providing outsourced services to clients in a
10 variety of industries throughout the State of California and across the globe, including Concierge
11 Services, Construction & Technical Services, Employee Benefits & Rewards Services, Facilities
12 management Services, Food Services, Home Services, SodexoMAGIC, and Vending Services.
13 Sodexo, <https://us.sodexo.com/services.html> (last visited September 8, 2021).

14 3. Plaintiff is informed and believes, and thereon alleges that during the relevant time
15 period, beginning on January 18, 2020 and continuing through the present, Defendants have
16 increased their profits by maintaining consistent state-wide policies and practices in violation of
17 state wage and hour laws by, among other things:

- 18 (a) Failing to pay minimum wage and overtime wages;
- 19 (b) Failing to provide meal periods or compensation in lieu thereof;
- 20 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
21 thereof;
- 22 (d) Willfully failing to provide accurate, semi-monthly itemized wage
23 statements; and
- 24 (e) Failing to pay all wages due upon separation of employment.

25 4. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf
26 of herself and all other aggrieved employees in California to recover, among other things, civil
27 penalties pursuant to Labor Code §§ 2698 *et seq.*, interest, attorneys’ fees, costs and expenses.
28

1 5. Plaintiff's lawsuit does not overlap with *Francisco Nodal v. Sodexo Inc.*, Superior
2 Court of California, Los Angeles County, Case No. 20STCV40601 (filed on Oct. 22, 2020), in
3 which Plaintiff Nodal was employed by Defendants to provide facilities management services to
4 Defendants' "Healthcare" industry clients in the County of San Diego.

5 6. Plaintiff's lawsuit does not overlap with *Jessica Alcantara v. Sodexo Inc.*, Superior
6 Court of California, Los Angeles County, Case No. 20STCV48700 (filed on Dec. 21, 2020), in
7 which Plaintiff Alcantara was employed by Defendants to provide housekeeping services to
8 Defendants' clients in the County of Los Angeles.

9 7. On information and belief, subsequently filed cases by Michelle Arias, Maria Ayala
10 and Rosa Hands, Brandon Meza and Jennifer Haag, and Chanel Gordon and Mathew Sanchez are
11 encompassed by this action or the previously filed actions.

12 **JURISDICTION AND VENUE**

13 8. This is a representative action pursuant to Private Attorneys General Act of 2004
14 (Cal. Lab. Code §§ 2698, *et seq.*) ("PAGA"). The civil penalties sought by Plaintiff exceeds the
15 minimal jurisdictional limits of the Superior Court and will be established according to proof at
16 trial.

17 9. This Court has jurisdiction over this action pursuant to the California Constitution,
18 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
19 given by statutes to other courts. The statutes under which this action is brought do not specify
20 any other basis for jurisdiction.

21 10. This Court has jurisdiction over all Defendants because, upon information and
22 belief, they are citizens of California, have sufficient minimum contacts in California or otherwise
23 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
24 over them by the California courts consistent with traditional notions of fair play and substantial
25 justice.

26 ///

27 ///

28 ///

THE PARTIES

11. Plaintiff Kathleen Fimbres is a citizen of California. Plaintiff was employed by Defendants during the relevant time period in California, in or around June, 2020 through February, 2021.

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

13. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named Defendants once their names and capacities become known.

14. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are the partners, agents, owners, shareholders, managers or employees of Defendants, at all relevant times.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

17. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

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GENERAL ALLEGATIONS

18. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as non-exempt employees.

19. Defendants employed Plaintiff in a non-exempt position at Defendants' California business location(s) during the relevant time period.

20. Defendants employed Plaintiff to provide maintenance, security, and customer services for Defendants' client, P&G Distribution ("P&G"), in the City of Moreno Valley, County of Riverside, California.

21. Plaintiff's duties included, but were not limited to, recording identification numbers for inbound trucks at P&G's warehouse facility, granting permission to trucks to enter or exit the facility, conducting safety inspections, conducting inventory checks, and providing paperwork to truck drivers.

22. Plaintiff is informed and believes, and thereon alleges, that P&G is in the industry of "Business and Industry" based on Defendants' categorizations of its clients.

23. Defendants categorize their clients in the following industries: Airport Lounges, Business & Industry, Defense, Energy & Resources, Government, Healthcare, Schools, Seniors, Sports & Leisure, and Universities. Sodexo <https://us.sodexo.com/industry.html> (last visited September 8, 2021).

24. Plaintiff is informed and believes that Plaintiff was employed to provide "Facilities Management Services" to Defendants' client. Sodexo, <https://us.sodexo.com/services.html> (last visited September 8, 2021).

25. Defendants continue to employ non-exempt employees who provide Facilities Management Services for Defendants' Business and Industry clients within California, including in the County of Riverside.

26. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour laws, employment and personnel practices and the requirements of California law.

1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other aggrieved employees were entitled to receive certain
3 wages for overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiff
4 and other aggrieved employees were not properly paid for all of their overtime because Defendants
5 required Plaintiff and other aggrieved employees to work outside of their regularly scheduled
6 alternative workweek schedule and failed to pay them proper overtime compensation. Plaintiff's
7 alternative workweek schedule provided for three shifts of 12.5 hours in length; however, Plaintiff
8 worked up 15 hour shifts and did not receive proper compensation, including for time spent under
9 Defendants' control while off the clock, as described herein. Alternatively, Defendants failed to
10 implement a proper alternative workweek and thus owe Plaintiff and other aggrieved employees
11 unpaid overtime.

12 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other aggrieved employees were entitled to receive minimum
14 wage and overtime wages for all hours worked at the appropriate rate. In violation of the Labor
15 Code and IWC Wage Orders, Defendants failed to pay for minimum wage and overtime wages to
16 Plaintiff and other aggrieved employees for time spent under Defendants' control while off the
17 clock. Plaintiff and other aggrieved employees were under Defendants' control while waiting in
18 line for temperature checks while off the clock, among other things. Plaintiff and other aggrieved
19 employees would stop at the entrance gates, wait in line, have their temperatures checked by a
20 security guard, answer a questionnaire, and then walked through the facility to clock in, about 5 to
21 10 minutes away from the entrance gates.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other aggrieved employees were entitled to receive all meal
24 periods or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
25 regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of
26 the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive
27 all meal periods or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved
28 employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

1 Defendants understaffed business locations resulting in Plaintiff and other aggrieved employees
2 receiving insufficient coverage, preventing them from receiving timely, uninterrupted meal
3 periods. Plaintiff was the only employee stationed at the inbound trucks area by Defendants
4 beginning in July of 2020 and continuing through February of 2021. Plaintiff did not have time to
5 take a meal break without coverage because inbound trucks were constantly arriving. On several
6 occasions, Plaintiff covered both the inbound trucks area and the outbound trucks area, because
7 Plaintiff was the only employee stationed by Defendants at the client's warehouse, which forced
8 Plaintiff to run back and forth between the two stations without a break. Plaintiff worked shifts up
9 to 15 hours long but did not receive meal breaks.

10 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
12 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
13 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage
14 Orders, Plaintiff and other aggrieved employees did not receive all rest breaks or payment of one
15 (1) additional hour of pay at Plaintiff's and other aggrieved employees' regular rate of pay when
16 a rest break was missed. Defendants understaffed business locations resulting in Plaintiff and other
17 aggrieved employees receiving insufficient coverage, preventing them from receiving timely,
18 uninterrupted rest breaks. Plaintiff was the only employee stationed at the inbound trucks area by
19 Defendants beginning in July of 2020 and continuing through February of 2021. Plaintiff did not
20 have time to take a rest break without coverage because inbound trucks were constantly arriving.
21 Plaintiff received coverage approximately once a month from an employee stationed at the
22 outbound trucks area. On several occasions, Plaintiff covered both the inbound trucks area and the
23 outbound trucks area, because Plaintiff was the only employee stationed by Defendants at the
24 client's warehouse, which forced Plaintiff to run back and forth between the two stations without
25 a break. Plaintiff worked shifts up to 15 hours long but did not receive rest breaks.

26 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other aggrieved employees were entitled to timely payment
28 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and other

1 aggrieved employees did not receive payment of all wages including, but not limited to, unpaid
2 minimum and overtime compensation, within permissible time periods.

3 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other aggrieved employees were entitled to receive complete
5 and accurate wage statements in accordance with California law. In violation of the California
6 Labor Code, Plaintiff and other aggrieved employees were not furnished with complete and
7 accurate wage statements showing their accurate gross and net wages, and the number of hours
8 worked at each applicable hourly rate due to the unpaid wage violations described herein, among
9 other things.

10 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
12 Defendants had the financial ability to pay such compensation but willfully, knowingly and
13 intentionally failed to do so all in order to increase Defendants' profits.

14 **FIRST CAUSE OF ACTION**

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

16 34. Plaintiff re-alleges and incorporates by reference the previous paragraphs as though
17 fully set forth herein.

18 35. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
19 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
20 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
21 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
22 an aggrieved employee on behalf of himself or herself and other current or former employees
23 pursuant to the procedures specified in Labor Code § 2699.3.

24 36. For all provisions of the Labor Code except those for which a civil penalty is
25 specifically provided, Labor Code § 2699(f) imposes upon Defendants a civil penalty of one
26 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
27 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
28 period in which Defendants violated these provisions of the Labor Code.

1 37. Defendants' conduct violates numerous Labor Code sections, including, but not
2 limited to, the following:

3 (a) violation of Labor Code §§ 201, 202, 203, 204, 510, 511, 558, 1194, and 1198 for
4 failure to timely pay all earned wages (including overtime wages) owed to Plaintiff and
5 other aggrieved employees during employment and upon separation of employment as
6 herein alleged;

7 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
8 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
9 meal periods as herein alleged;

10 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
11 other aggrieved employees and failure to pay premium wages for missed rest periods
12 as herein alleged;

13 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
14 statements to Plaintiff and other aggrieved employees as herein alleged; and

15 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
16 complete records showing, among other things, the hours worked daily and the wages
17 paid to aggrieved employees.

18 38. Plaintiff is an "aggrieved employee" because she was employed by the alleged
19 violator and had one or more of the violations committed against her, and therefore is properly
20 suited to represent the interests of all other aggrieved employees.

21 39. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
22 to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other
23 aggrieved employees under PAGA.

24 40. On January 18, 2021, Plaintiff notified the LWDA of her claims pursuant PAGA.

25 41. On January 19, 2021, Plaintiff filed her original complaint in this action.

26 42. On May 27, 2021, more than 65 days after notifying the LWDA of her claims,
27 Plaintiff filed a first amended PAGA-only complaint, pursuant to a stipulation between Plaintiff
28 and Defendants.

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

44. For bringing this action, Plaintiff is entitled to attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

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

1. For civil penalties against Defendants on behalf of all aggrieved employees and the LWDA pursuant to Labor Code § 2698, *et seq.*;

2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698 *et seq.*; and

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

Dated: September 10, 2021

AEGIS LAW FIRM, PC

By:


Jordan Wysocki

Jordan Wysocki

Attorneys for Plaintiff Kathleen Fimbres

1 **CERTIFICATE OF SERVICE**

2 I, the undersigned, am employed in the County of Orange, State of California. I am over
3 the age of 18 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 September 10, 2021, I served the foregoing document entitled:

- 5 • **SECOND AMENDED COMPLAINT FOR VIOLATION OF THE CALIFORNIA**
6 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (CAL. LAB.**
CODE §§ 2698, ET SEQ.)

7 on all the appearing and/or interested parties in this action by delivering ☐ *the original* ☒ *a true*
8 *copy* thereof on the party(ies) addressed below as follows:

9 Jeffrey D. Wohl

10 Jana B. Fitzgerald

11 Alice Brown

12 PAUL HASTINGS LLP

13 101 California Street, 48th Floor

14 San Francisco, CA 94111

15 Telephone: 415.856.7255

16 Facsimile: 415.856.7355

17 jeffwohl@paulhastings.com

18 janafitzgerald@paulhastings.com

19 alicebrown@paulhastings.com

20 *Attorneys for Defendant:*

21 SODEXO, INC.

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

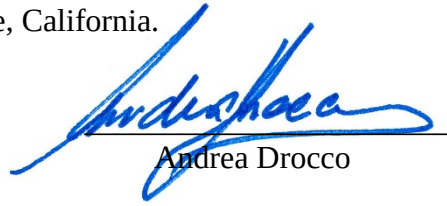
23 ☒ **(BY ELECTRONIC TRANSMISSION)** I caused said document(s) to be served via
24 electronic transmission to the above listed email addresses on the date below. (*Cal. Code*
Civ. Proc. § 1010.6(6); *Fed. R. Civ. Proc.* 5(b)(2)(E); *Fed. R. Civ. Proc.* 5(b)(3).)

25 ☐ **(BY PERSONAL SERVICE)** I delivered the foregoing document by hand delivery to
26 the addressed named above. (*Cal Code Civ. Proc.* § 1011; *Fed. R. Civ. Proc.*
27 5(b)(2)(A).)

28 ///

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

3 Executed on September 10, 2021, at Irvine, California.

4 
5 Andrea Drocco
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