

COPY

AEGIS LAW FIRM, PC
KASHIF HAQUE, State Bar No. 218672
khaque@aegislawfirm.com
SAMUEL A. WONG, State Bar No. 217104
swong@aegislawfirm.com
JESSICA L. CAMPBELL, State Bar No. 280626
jcampbell@aegislawfirm.com
JORDAN WYSOCKI, State Bar No. 334671
jwysocki.@aegislawfirm.com
9811 Irvine Center Drive, Suite 100
Irvine, California 92618
Telephone: (949) 379-6250
Facsimile: (949) 379-6251

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.

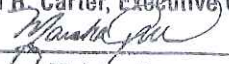
Case No.: 21STCV02192

Assigned for All Purposes to:
Hon. Elihu M. Berle
Dept.: 6

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

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

MAY 27 2021

Sherri B. Carter, Executive Office/Clerk
By: , Deputy
Maisha Pryor

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”) within the State of California.

7 2. Defendants are in the business of food and facilities management.

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

10 (a) Failing to pay minimum wage and overtime wages;

11 (b) Failing to provide meal periods or compensation in lieu thereof;

12 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
13 thereof;

14 (d) Willfully failing to provide accurate, semi-monthly itemized wage
15 statements; and

16 (e) Failing to pay all wages due upon separation of employment.

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

20 **JURISDICTION AND VENUE**

21 6. This is a representative action pursuant to Private Attorneys General Act of 2004
22 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
23 minimal jurisdictional limits of the Superior Court and will be established according to proof at
24 trial.

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

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

THE PARTIES

9. Plaintiff Kathleen Fimbres is a citizen of California. Plaintiff was employed by Defendants during the relevant time period in California.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

GENERAL ALLEGATIONS

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

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

18. Defendants continue to employ non-exempt employees within California.

19. 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.

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive certain wages for overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not properly paid for all of their overtime because Defendants required Plaintiff and other aggrieved employees to work outside of their regularly scheduled alternative workweek schedule and failed to pay them proper overtime compensation. Alternatively, Defendants failed to implement a proper alternative workweek and thus owe Plaintiff and other aggrieved employees' unpaid overtime.

21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive minimum wage and overtime wages for all hours worked at the appropriate rate. In violation of the Labor Code and IWC Wage Orders, Defendants failed to pay for minimum wage and overtime wages to Plaintiff and other aggrieved employees for time spent under Defendants' control while off the clock.

1 22. 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 all meal
3 periods or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
4 regular rate of pay when they did not receive a timely, uninterrupted meal period. In violation of
5 the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all
6 meal periods or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved
7 employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

8 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
10 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
11 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC Wage
12 Orders, Plaintiff and other aggrieved employees did not receive all rest breaks or payment of one
13 (1) additional hour of pay at Plaintiff's and other aggrieved employees' regular rate of pay when a
14 rest break was missed.

15 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other aggrieved employees were entitled to timely payment
17 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and other
18 aggrieved employees did not receive payment of all wages including, but not limited to, unpaid
19 overtime compensation, within permissible time periods.

20 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other aggrieved employees were entitled to receive complete
22 and accurate wage statements in accordance with California law. In violation of the California
23 Labor Code, Plaintiff and other aggrieved employees were not furnished with complete and
24 accurate wage statements showing their accurate gross and net wages, and the number of hours
25 worked at each applicable hourly rate, among other things.

26 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
28

1 Defendants had the financial ability to pay such compensation but willfully, knowingly and
2 intentionally failed to do so all in order to increase Defendants' profits.

3 **FIRST CAUSE OF ACTION**

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

5 27. Plaintiff re-alleges and incorporates by reference the previous paragraphs as though
6 fully set forth herein.

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

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

18 30. Defendants' conduct violates numerous Labor Code sections, including, but not
19 limited to, the following:

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

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

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

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

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

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

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

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

18 34. For bringing this action, Plaintiff is entitled to attorneys’ fees and costs incurred
19 herein.

20 **PRAYER FOR RELIEF**

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

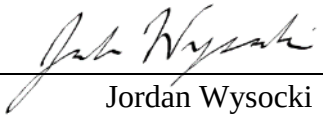
23 1. For civil penalties against Defendants on behalf of all aggrieved employees and the
24 LWDA pursuant to Labor Code § 2698, *et seq.*;

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

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

1 Dated: April 5, 2021

AEGIS LAW FIRM, PC

2
3 By: 
4 Jordan Wysocki
Attorneys for Plaintiff Kathleen Fimbres

CERTIFICATE OF SERVICE

I, the undersigned, am employed in the County of Orange, State of California. I am over 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.

On May 27, 2021, I served the foregoing document entitled:

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

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

Jeffrey D. Wohl
Jana B. Fitzgerald
PAUL HASTINGS LLP
101 California Street, 48th Floor
San Francisco, CA 94111
Telephone: 415.856.7255
Facsimile: 415.856.7355
jeffwohl@paulhastings.com
janafitzgerald@paulhastings.com

Attorneys for Defendant:
SODEXO, INC.

☐ **(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 via CaseAnywhere 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).)

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

///

///

///

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 May 27, 2021, at Irvine, California.

4 
5 Andrea Drocco