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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
10/11/2022 at 05:38:03 PM
Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

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

KEVIN DOUGAN, as an individual and on
behalf of aggrieved employees and the State
of California pursuant to the Private Attorneys
General Act,

Plaintiff,

vs.

CENTERPLATE, INC., a corporation;
SODEXO, INC., a corporation;
CENTERPLATE OF DELAWARE, INC., a
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2022-00040792-CU-OE-CTL

Representative Action Complaint

1. Civil Penalties for Meal Period Violations
2. Civil Penalties for Rest Period Violations
3. Civil Penalties for Untimely Payment of Wages
4. Civil Penalties for Failure to Pay All Wages
Upon Separation
5. Civil Penalties for Wage Statement Violations
6. Civil Penalties for Recordkeeping Violations

1 Plaintiff KEVIN DOUGAN (“Plaintiff”), individually as the State of California’s designated
2 proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other current and former
3 aggrieved employees, brings this representative action against Defendants CENTERPLATE, INC., a
4 corporation; SODEXO, INC., a corporation; CENTERPLATE OF DELAWARE, INC., a
5 corporation; and DOES 1 through 50 (collectively, “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. Plaintiff worked as a bartender handling events and concerts at the Rady’s Shell in
8 Downtown San Diego. Defendants employed the staff members and did not provide sufficient
9 staffing so that the employees could take their statutory breaks during the many busy concerts and
10 events held at the venue, as a result of Defendants’ policies and practices.

11 2. In connection with Plaintiff’s employment and the employment of others within the
12 State of California, Defendants committed numerous systemic Labor Code violations for which
13 Plaintiff now seeks to receive civil penalties pursuant to Labor Code § 2698 *et seq.*

14 3. As a result, Plaintiff, an aggrieved employee, seeks civil penalties against Defendants
15 for violations of the California Labor Code on behalf of other aggrieved employees and the State of
16 California, pursuant to the Private Attorneys General Act.

17 **JURISDICTION & VENUE**

18 4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
19 California Constitution.

20 5. Venue as to each defendant is proper in this judicial district because Defendants
21 employed Plaintiff and aggrieved employees in this county, and committed some of the alleged
22 Labor Code violations in this county, including in Downtown San Diego.

23 **PARTIES**

24 6. Plaintiff worked for Defendants in San Diego County from August 2021 through May
25 2022 as an hourly, non-exempt employee. During his employment with Defendants, Plaintiff held
26 the position of Bartender.

27 7. Defendant CENTERPLATE, INC. does business and employs aggrieved employees
28 throughout California, including in San Diego County.

1 8. Defendant CENTERPLATE OF DELAWARE, INC. does business and employs
2 aggrieved employees throughout California, including in San Diego County.

3 9. Defendant SODEXO, INC. does business and employs aggrieved employees
4 throughout California, including in San Diego County.

5 10. The true names and capacities, whether individual, corporate, or otherwise, of the
6 parties sued as DOES 1 through 50, are presently uncertain to Plaintiff, who sues them by such
7 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
8 alleges that each of the fictitiously named defendants is responsible in some manner for the acts and
9 omissions alleged herein.

10 11. Plaintiff is informed, believes, and alleges that all defendants in this action are
11 employers and/or joint employers and part of an integrated employer enterprise, as each defendant
12 exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved
13 employees, suffers and permits them to work, and engages the workforce creating a common law
14 employment relationship. Additionally, all defendants have common ownership, common
15 management, interrelationship of operations, and centralized control over labor relations and are
16 therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
17 omissions alleged herein.

18 12. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
19 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
20 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants,
21 such that the acts and omissions of each defendant are legally attributable to all others.

22 13. Plaintiff is informed, believes, and alleges that the above-mentioned defendants
23 violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating
24 minimum wages and days of work and other provisions of the Labor Code with respect to the
25 aggrieved employees. As a result, they may be held personally liable under Labor Code sections
26 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)
27
28

PAGA ALLEGATIONS

14. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on behalf of the State of California and the “aggrieved employees,” defined as follows:

all current and former non-exempt hourly employees who worked for Defendants in the State of California at any time from July 8, 2021 (plus the additional 178-day statutory tolling period under Emergency Rule 9) through the date of trial (the “PAGA Period”).

15. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

16. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants and personally experienced one or more of the alleged violations. Therefore, Plaintiff is properly suited to act on behalf of the State of California and collect civil penalties for violations committed against all other current and former aggrieved employees of Defendants. (*See, e.g., Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected by one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

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

18. On **July 8, 2022**, Plaintiff gave written notice by online filing with the LWDA and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations (the “PAGA Notice”).

1 Plaintiff paid the requisite filing fee to the LWDA. A copy of the PAGA Notice is attached hereto as
2 **Exhibit 1** and incorporated by reference.

3 19. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
4 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
5 actions taken to cure the alleged violations.

6 20. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
7 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to
8 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
9 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

10 21. Any allegations regarding violations of the IWC Wage Orders are enforceable as
11 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
12 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

13 **GENERAL ALLEGATIONS**

14 22. The facts and theories as set forth in the PAGA Notice (Exhibit 1) are incorporated
15 herein by reference as though fully set forth herein.

16 23. Due to understaffing issues and the steady flow of business, Defendants failed to
17 provide timely, off-duty 30-minute meal periods to Plaintiff and aggrieved employees within the first
18 five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked
19 shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the
20 applicable IWC Wage Orders.

21 24. “[T]ime records showing noncompliant meal periods raise a rebuttable presumption
22 of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services,*
23 *LLC* (2021) 11 Cal. 5th 58, 61.

24 25. Plaintiff’s time records (and those of the aggrieved employees) establish meal period
25 violations by showing missed meal periods when he worked shifts exceeding five hours in length.

26 26. Plaintiff’s personnel file *does not* contain a signed or valid meal period waiver.

27 27. Defendants also maintained unlawful policies with respect to meal periods.
28

1 28. For example, a policy entitled Bartender and Beer/Wine Server Standard Operating
2 Procedure states that meal periods were permitted for 5.5 hour shifts, which is not consistent with
3 California law, and further states that “All bars must be ready to open 30 minutes prior to the start
4 of a function. All meal breaks must be completed by this time.”

5 29. Plaintiff and, on information and belief, other aggrieved employees were not
6 instructed when to take their meal breaks, not provided the opportunity to do so, and were instead
7 informed that meal periods were prohibited, resulting in facial violations of meal periods illustrated
8 in the time records for Plaintiff.

9 30. Indeed, Plaintiff worked busy events with thousands of attendees at The Shell concert
10 venue on the harbor in Downtown San Diego. The bartending position required constant attention
11 and did not afford the ability for compliant meal breaks. Bars and service positions for these high-
12 profile downtown concerts would be left unattended if employees took their breaks and Defendants
13 did not set up rover or relief positions to allow aggrieved employees to take breaks or meals.
14 Plaintiff alleges that these non-compliant, company-wide policies are equally applied throughout
15 California.

16 31. For some aggrieved employees, and for part of the statutory period, Defendants’ local
17 management personnel would often require aggrieved employees to write WAIVED or DECLINED
18 on some timecards to avoid payment of a meal period premium, in violation of California law. This
19 was a directive from management to impose what amounts to a non-compliant meal period waiver
20 policy for shifts of less than 6 hours.

21 32. To the extent Defendants claim that the aggrieved employees waived these meal
22 periods, Plaintiff contends such waivers were invalid as the alleged waiver was not voluntarily,
23 occurred after the employees already missed a meal period, and was not revocable, in violation of
24 Labor Code section 512 and Section 11 of the applicable IWC Wage Order.

25 33. When Defendants did not provide fully compliant meal periods, Defendants failed to
26 pay Plaintiff and aggrieved employees a meal period premium at the regular rate of compensation in
27 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.
28 5th 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under section

226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”).

34. For the same reasons as discussed above, Defendants failed to authorize or permit ten-minute rest periods for every four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and section 12 of the applicable IWC Wage Order.

35. Defendants’ written Meal and Rest Break Rules contains a non-compliant rest period policy in terms of the allotment of 10-minute rest breaks for hours worked. The Rules state: “Management will tell you when you may take a rest break.” However, like with meal periods, management did not tell employees to take rest periods nor did they make that possible, as all positions had to be staffed for the duration of the event or concert, and there were no relief employees to afford the service staff and other employees the ability to take a 10 minute break.

36. When Defendants did not provide a fully compliant rest periods to Plaintiff or other aggrieved employees, Defendants failed to pay them a rest period premium at the lawful “regular rate of compensation” in violation of Labor Code section 226.7.

37. Because Defendants did not pay Plaintiff and the aggrieved employees for all wages (including meal and rest period premiums) owed each pay period of their employment, Defendants failed to timely pay all wages owed each pay day or upon separation of employment (or within 72 hours thereof), in violation of Labor Code sections 201 through 203 (waiting time) and 204 and 204b (paydays). *See Naranjo v. Spectrum Security Services, Inc.*, S258966 __ Cal. __ (May 23, 2022).

38. Defendants equally failed in their affirmative obligation to provide accurate itemized wage statements each pay period to Plaintiff and aggrieved employees. Defendants issued wage statements to Plaintiff and, on information and belief, other aggrieved employees, which contain at least two distinct types of violations.

39. First, on each wage statement furnished, Defendants failed to accurately state the “gross wages earned” and “net wages earned” in violation of Labor Code § 226(a)(1) and (5), as Plaintiff and aggrieved employees were deprived meal and rest period premiums earned at the lawful rate, resulting in an inaccurate itemization of gross and net wages earned on those wage statements.

1 40. Second, on each wage statement furnished to Plaintiff and, on information and belief,
2 the aggrieved employees, Defendants failed to accurately state “all applicable hourly rates in effect
3 during the pay period and the corresponding number of hours worked at each hourly rate by the
4 employee” in violation of Labor Code § 226(a)(9), as the wage statements issued to Plaintiff and
5 aggrieved employees fail to reflect earned meal or rest period premiums.

6 41. Defendants’ wage statement issues described above rendered the wage statements
7 inaccurate and confusing to Plaintiff and aggrieved employees, concealing the underpayments and
8 presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and
9 aggrieved employees as the sole documentary evidence of their respective earnings.

10 42. Plaintiff and aggrieved employees suffered injury in the form of confusion regarding
11 amounts paid for hours worked, and in the form of concealment of the common payroll practices
12 causing the violations and underpayment of wages and wage statement deficiencies as addressed in
13 this Complaint.

14 43. Indeed, Plaintiff and, on information and belief, aggrieved employees were
15 misinformed and misled by the wage statements. As a result of the inaccuracies on the wage
16 statements, Plaintiff and, on information and belief, aggrieved employees were led to believe that the
17 gross wages reflected were a complete and accurate reflection of the wages actually earned under
18 California law.

19 44. Defendants’ wage statement violations were knowing and intentional as a matter of
20 law with respect to Plaintiff and aggrieved employees given that the legal obligation was not
21 disputed, the wage statement and wage laws are clear and unambiguous as written, and because
22 Defendants nevertheless failed to comply despite the means and ability to do so.

23 45. Because of the violations set forth in this Complaint, including Defendants’ failure to
24 accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay,
25 Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain
26 records showing accurate daily hours worked at the corresponding wage rate, and the wages paid to
27 each employee.

1 46. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
2 knowingly and intentionally caused harm to Plaintiff and aggrieved employees. Plaintiff is
3 informed, believes, and alleges that Defendants have engaged in systemic violations of the Labor
4 Code and IWC Wage Orders by maintaining practices, policies, and customs that are inconsistent
5 with their obligations under California law.

6 **FIRST CAUSE OF ACTION**

7 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS**

8 47. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

9 48. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
11 beginning before the fifth hour of hour for each work period of more than five hours per day and a
12 second duty free meal period of not less than 30 minutes beginning before the tenth hour of hour of
13 work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders (the "Meal
14 Periods" sections of the applicable orders)..

15 49. Further, Defendants willfully failed in their affirmative obligation to consistently pay
16 Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of
17 compensation for each workday that a fully compliant meal period was not provided, in violation of
18 Labor Code sections 226.7 and the IWC Wage Orders.

19 50. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable
20 to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by
21 Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to
22 the extent permitted by law, including under Labor Code section 2699(g).

23 **SECOND CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS**

25 51. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

26 52. Defendants willfully failed in their affirmative obligation to consistently authorize
27 and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less
28 than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor

Code sections 226.7, 516, 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

53. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 1198 and the IWC Wage Orders.

54. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

THIRD CAUSE OF ACTION

CIVIL PENALTIES FOR UNTIMELY PAYMENT OF WAGES

55. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

56. Defendants willfully failed in their affirmative obligation to timely pay all wages and premiums earned by Plaintiff and aggrieved employees twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for any weekly employees, as applicable, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the “Minimum Wages” sections of the applicable orders).

57. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

FOURTH CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO PAY ALL WAGES UPON SEPARATION

Labor Code §§ 201 through 203

58. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

59. Defendants willfully failed in their affirmative obligation to pay all wages (including sick leave and meal and rest premiums) earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

60. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

FIFTH CAUSE OF ACTION

CIVIL PENALTIES FOR WAGE STATEMENT VIOLATIONS

Labor Code §§ 226 and 226.3

61. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

62. Labor Code section 226.3 provides: “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.”

63. Defendants knowingly and intentionally failed in their affirmative obligation provide accurate itemized wage statements to Plaintiff and Aggrieved Employees in violation of Labor Code section 226(a). Specifically, the wage statements issued to Plaintiff and the aggrieved employees did not accurately state each pay period all of the information required by Labor Code section 226(a)-(9).

64. Defendants' unlawful acts and omissions deprived Plaintiff and aggrieved employees of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

65. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees, and the State of California for civil penalties as required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SIXTH CAUSE OF ACTION

CIVIL PENALTIES FOR RECORDKEEPING VIOLATIONS

66. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

67. Labor Code section 1174 provides: “Every person employing labor in this state shall: ... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

68. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five hundred dollars (\$500).”

69. Defendants willfully failed in their affirmative obligation to maintain accurate records showing the hours worked daily and wages paid to the aggrieved employees, in violation of Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the applicable orders).

70. As a result, Defendants violated the Labor Code and is liable to Plaintiff, the aggrieved employees, and the State of California for civil penalties as required by Labor Code section 1174.5, in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

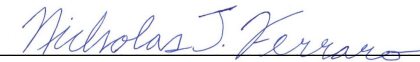
PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

- a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;
- b. For an award of reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including under Labor Code section 2699(g);
- c. For any recoverable pre- and post-judgment interest; and
- d. For such other relief the Court deems just and proper.

Dated: October 11, 2022

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro
Attorney for Plaintiff

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4 **EXHIBIT 1**
5 **PAGA Notice**
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FERRARO VEGA

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July 8, 2022

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Centerplate, Inc.
(a/k/a Sodexo Live! and f/k/a
Volume Services America, Inc.)
1 Independence Pointe
Greenville, SC 29615

Centerplate of Delaware, Inc.
1 Independence Pointe
Greenville, SC 29615

Sodexo, Inc.
9801 Washingtonian Boulevard
Gaithersburg, MD 20878

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **07/08/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of KEVIN DOUGAN (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699 *et seq.* against CENTERPLATE, INC. (a/k/a SODEXO LIVE! and f/k/a VOLUME SERVICES AMERICA, INC.), CENTERPLATE OF DELAWARE, INC., and SODEXO, INC., along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants comprise a food and beverage organization, owned by Sodexo, serving entertainment venues with food and beverage and other hospitality-related matters around the world. Defendants employ aggrieved employees like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

Defendants engaged, suffered and permitted Claimant and the other “aggrieved employees,” to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and the aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendant and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant KEVIN DOUGAN is a 30+ year professional bartender and seasoned veteran of the service industry who seeks to take action as the State of California’s representative aggrieved employee to remedy prior and ongoing Labor Code violations within Defendants’ California operations. Claimant worked for Defendants from about August, 2021 to May 2022. Claimant worked in the position of bartender. Throughout his employment, Claimant worked as an hourly, non-exempt employee.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”).

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action.

/ / /

Underpaid Meal Period Premiums
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendant failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful.

Defendants failed to provide compliant meal periods to Claimant and the aggrieved employees. The aggrieved employees' time records establish meal period liability on their face. Claimant's time records show that he often experienced missed meal periods when he worked shifts exceeding five and six hours in length.

Aug-29 21	3:30p	9:30p			6.00	Unsch
Aug-29 21					6.00	Regular
Aug-30 21						
Aug-31 21	3:30p	9:30p			6.00	Unsch
Aug-31 21					6.00	Regular
Aug-31 21					44.3500	Gratuity
Aug-31 21					93.2100	TIPS-CC
Sep-01 21						
Sep-02 21						
Sep-03 21	3:30p	9:30p			6.00	Unsch
Sep-03 21					6.00	Regular
Sep-04 21						
Sep-05 21	3:30p	9:30p			6.00	Unsch
Sep-05 21					6.00	Regular
Sep-06 21						
Sep-07 21						
Sep-08 21	3:30p	9:30p			6.00	3:30p/ 9:30p
Sep-08 21					6.00	Regular
Sep-09 21						
Sep-10 21	3:30p	9:30p			6.00	3:30p/ 9:30p
Sep-10 21					6.00	Regular
Sep-11 21	3:30p	9:30p			6.00	3:30p/ 9:30p
Sep-11 21					6.00	Regular
Sep-12 21	3:30p	9:30p			6.00	3:30p/ 9:30p

Extract from Claimant's time records showing that he did not receive meal breaks when he worked 6-hour shifts.

Claimant's personnel file *does not* contain a signed or valid meal period waiver, and Defendants' written Meal and Rest Break Rules require any such waiver to be in writing. The Meal and Rest Break Rules specifically stated that meal periods were required for shifts of more than 5 hours, and that "Management will instruct you when to take your meal period[.]" Furthermore, a 2021 memorandum to "All Centerplate Employees" from Gabriel Ramirez reiterates the lack of meal period waiver and the mandate for employees to take meal periods before their fifth hour of work. Additionally, another policy entitled Bartender and Beer/Wine Server Standard Operating Procedure states that meal periods were permitted for 5.5 hour shifts, which is not consistent with California law, and further states that "All bars must be ready to open 30 minutes prior to the start of a function. All meal breaks must be completed by this time."

However, despite these non-compliant written policies, Claimant and, on information and belief, other employees were not instructed when to take their meal breaks, not provided the opportunity to do so, and were instead informed that meal periods were prohibited, resulting in the facial violations of meal periods indicated on the above illustrative time records for Claimant. Indeed, Claimant worked busy events with thousands of attendees at The Shell concert venue on the harbor in Downtown San Diego. The bartending position required constant attention and did not afford the ability for compliant meal breaks. Bars and service positions for these high-profile downtown concerts would be left unattended if employees took their breaks and Defendants did not set up rover or relief positions to allow aggrieved employees to take breaks or meals. Claimant alleges that these non-compliant, company-wide policies are equally applied throughout California.

For some aggrieved employees and for part of the statutory period, Defendants' local management personnel would often require aggrieved employees to write WAIVED or DECLINED on some timecards to avoid payment of a meal period premium, in violation of California law. This was a directive from management to impose what amounts to a non-compliant meal period waiver policy for shifts of less than 6 hours. To the extent Defendants claim that the aggrieved employees waived these meal periods, Claimant contends such waivers were invalid as the alleged waiver was not voluntarily, occurred after the employees already missed a meal period, and was not revocable, in violation of Labor Code section 512 and Section 11 of the applicable IWC Wage Order.

When Defendants did not provide compliant meal periods, Defendants failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

/ / /

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

Defendants' written Meal and Rest Break Rules contains a non-compliant rest period policy in terms of the allotment of 10-minute rest breaks for hours worked. The Rules state: "Management will tell you when you may take a rest break." However, like with meal periods, management did not tell employees to take rest periods nor did they make that possible, as all positions had to be staffed for the duration of the event or concert, and there were no relief employees to afford the service staff and other employees the ability to take a 10 minute break.

Due to staffing issues, employees' job responsibilities, and the steady flow of business during concerts and events, Claimant and the aggrieved employees were not authorized and permitted to take all of their rest periods. Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for meal and rest period premiums, Defendants violated Labor Code section

204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees’ sick and premium pay. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment **Violation of Labor Code §§ 201, 202, 203**

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours’ notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours’ notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages and premiums owed to the aggrieved employees during their employment, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing showing:” (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid meal and rest premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned premiums that were not paid resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons stated above. Furthermore, by not listing the meal and rest period premiums owed and payable to Claimant and aggrieved employees, Defendants failed to list all hours worked at each hourly rate in violation of Labor Code section 226(a)(9).

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); See also *See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’” (rejecting *Maldonado* defense for class claims).

Thus, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect his interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants
to Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) his lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

Cc Claimant
 Lauren N. Vega, Esq.

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Human Resources Manager
Centerplate
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