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County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

KEVIN DOUGAN, individually and on behalf of
all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

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

Defendants.

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

Hon. Carolyn Caietti
Dept. 70

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Unfair Competition
9. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff KEVIN DOUGAN, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 CENTERPLATE, INC.; SODEXO, INC.; CENTERPLATE OF DELAWARE, INC.; and DOES 1
5 through 50, inclusive (collectively “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class and representative action brought under the California Code of Civil
8 Procedure § 382 for Defendants’ violations of the California Labor Code and the Business and
9 Professions Code.

10 2. Plaintiff worked as a bartender handling events and concerts at the Rady’s Shell in
11 Downtown San Diego. Defendants employed the Class Members and did not provide sufficient
12 staffing so that employees could take their statutory breaks during the many busy concerts and events
13 held at the venue, as a result of Defendants’ policies and practices.

14 3. Defendants additionally failed to pay Plaintiff and the Class Members all minimum and
15 overtime wages due to off-the-clock work before their shifts and during their unpaid meal periods.

16 4. In connection with Plaintiff’s employment and with the employment of others within
17 the State of California, Defendants committed numerous systemic Labor Code violations for which
18 Plaintiff now seeks to receive civil penalties against Defendants for violations of the California Labor
19 Code on behalf of other aggrieved employees and the State of California, pursuant to the Private
20 Attorneys General Act.

21 **JURISDICTION & VENUE**

22 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
23 California Constitution as the causes of action are premised upon violations of California law.

24 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
25 the Superior Court.

26 7. This Court has jurisdiction over Defendants because, upon information and belief,
27 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
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1 themselves to the California economy so as to render the exercise of jurisdiction over them by the
2 California courts consistent with traditional notions of fair play and substantial justice.

3 8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
4 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
5 of the alleged violations in this county.

6 **PARTIES**

7 **A. Plaintiff Kevin Dougan**

8 9. Plaintiff Dougan is an individual over 18 years of age who worked for Defendants in
9 California as a non-exempt employee from about August 2021 to May 2022. Plaintiff worked as a
10 Bartender.

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

15 **B. Defendants**

16 11. Defendant Centerplate, Inc. is a Delaware corporation that maintains operations and
17 conducts business throughout the State of California, including in this county.

18 12. Defendant Sodexo, Inc. is a Delaware corporation that maintains operations and
19 conducts business throughout the State of California, including in this county.

20 13. Defendant Centerplate of Delaware, Inc. is a Delaware corporation that maintains
21 operations and conducts business throughout the State of California, including in this county.

22 14. The true names and capacities, whether individual, corporate, or otherwise, of the
23 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
24 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
25 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
26 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
27 true names and capacities once ascertained.
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15. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

16. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

17. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

18. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

19. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

20. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.
- d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.
- e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

21. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

22. Due to understaffing issues and the steady flow of business, Defendants failed to provide timely, off-duty 30-minute meal periods to Plaintiff and Class Members within the first five

1 hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of
2 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC
3 Wage Orders.

4 23. “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of
5 meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC*
6 (2021) 11 Cal. 5th 58, 61.

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

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

10 26. Defendants also maintained unlawful policies with respect to meal periods.

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

15 28. Plaintiff and, on information and belief, other employees were not instructed when to
16 take their meal breaks, not provided the opportunity to do so, and were instead informed that meal
17 periods were prohibited, resulting in facial violations of meal periods illustrated in the time records
18 for Plaintiff.

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

25 30. For some Class Members and for part of the statutory period, Defendants’ local
26 management personnel would often require Class Members to write WAIVED or DECLINED on
27 some timecards to avoid payment of a meal period premium, in violation of California law. This was
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1 a directive from management to impose what amounts to a non-compliant meal period waiver policy
2 for shifts of less than 6 hours.

3 31. To the extent Defendants claim that the Class Members waived these meal periods,
4 Plaintiff contends such waivers were invalid as the alleged waiver was not voluntarily, occurred after
5 the employees already missed a meal period, and was not revocable, in violation of Labor Code section
6 512 and Section 11 of the applicable IWC Wage Order.

7 32. When Defendants did not provide fully compliant meal periods, Defendants failed to
8 pay Plaintiff and Class Members a meal period premium at the regular rate of compensation in
9 violation of Labor Code section 226.7. *See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th
10 858, 863 (“We hold that the terms are synonymous: “regular rate of compensation” under section
11 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments,
12 not just hourly wages”).

13 33. Defendants additionally failed to pay Plaintiff and the Class for all hours worked. Each
14 time Plaintiff and the Class Members worked through their unpaid meal period or completed work
15 before the start of their shift this resulted in off-the-clock work and unpaid minimum wages.

16 34. To the extent that this off-the-clock work resulted in work over 8 hours in a day, this
17 resulted in unpaid overtime.

18 35. For the same reasons Plaintiff and the Class Members were unable to take compliant
19 meal periods, Defendants additionally failed to authorize or permit ten-minute rest periods for every
20 four hours of work or major fraction thereof as required by Labor Code section 226.7 and 516 and
21 section 12 of the applicable IWC Wage Order.

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

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

38. Because Defendants did not pay Plaintiff and the Class 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).

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

40. 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 Class Members 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.

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

42. Defendants’ wage statement issues described above rendered the wage statements inaccurate and confusing to Plaintiff and Class Members, concealing the underpayments and presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and Class Members as the sole documentary evidence of their respective earnings.

43. Plaintiff and Class Members suffered injury in the form of confusion regarding amounts paid for hours worked, and in the form of concealment of the common payroll practices

causing the violations and underpayment of wages and wage statement deficiencies as addressed in this Complaint.

44. Indeed, Plaintiff and, on information and belief, Class Members were misinformed and misled by the wage statements. As a result of the inaccuracies on the wage statements, Plaintiff and, on information and belief, Class Members were led to believe that the gross wages reflected were a complete and accurate reflection of the wages actually earned under California law.

45. Defendants' wage statement violations were knowing and intentional as a matter of law with respect to Plaintiff and California Class Members given that the legal obligation was not disputed, the wage statement and wage laws are clear and unambiguous as written, and because Defendants nevertheless failed to comply despite the means and ability to do so.

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

FIRST CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

Violation of Labor Code §§ 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

47. All outside paragraphs of this Complaint are incorporated into this section.

48. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages).

49. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections

1 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
2 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
3 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
4 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
5 Code § 1194.2.

6 50. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
7 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
8 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
9 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
10 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **Violation of Labor Code §§ 510 and 1194**

14 51. All outside paragraphs of this Complaint are incorporated into this section.

15 52. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
16 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
17 wages all overtime hours worked, and which further provide a private right of action for an employer’s
18 failure to pay all overtime compensation for overtime hours worked.

19 53. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
20 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess
21 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
22 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
23 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
24 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
25 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

26 54. Plaintiff and class members are entitled to recover the full amount of the unpaid
27 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
28 extent permitted by law.

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1 61. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
2 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
3 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
4 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
5 regular rate of compensation.

6 62. Defendants willfully failed in their affirmative obligation to consistently authorize and
7 permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten
8 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code
9 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the "Rest Periods" sections of the
10 applicable orders).

11 63. Further, Defendants willfully failed in their affirmative obligation to consistently pay
12 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
13 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
14 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

15 **FIFTH CAUSE OF ACTION**

16 **UNTIMELY PAYMENT OF WAGES**

17 **Violation of Labor Code §§ 204, 210, 218**

18 64. All outside paragraphs of this Complaint are incorporated into this section.

19 65. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
20 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
21 period, and which further provide a private right of action for an employer's failure to comply with
22 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
23 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

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

67. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

68. All outside paragraphs of this Complaint are incorporated into this section.

69. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer’s failure to comply with this obligation.

70. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

71. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

72. As a result, Plaintiff and class members are entitled to recover the statutory penalty of \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

1 **SEVENTH CAUSE OF ACTION**

2 **WAITING TIME PENALTIES**

3 **Violation of Labor Code §§ 201 *et seq.***

4 73. All outside paragraphs of this Complaint are incorporated into this section.

5 74. This cause of action is brought by a waiting time subclass pursuant to Labor Code
6 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
7 employment, and which further provide a private right of action to recover statutory waiting time
8 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
9 wages.

10 75. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
11 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
12 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
13 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
14 Code sections 201 through 203 and the IWC Wage Orders.

15 76. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to
16 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

19 **Violation of Labor Code §§ 2698 *et seq.***

20 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

21 77. All outside paragraphs of this Complaint are incorporated into this section.

22 78. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
23 the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"),
24 codified as Labor Code section 2698 *et seq.*:

- 25 a. All current and former non-exempt employees who worked for Defendants in
26 California at any time from one year prior to the postmark date of the initial
27 PAGA notice through date of trial.

1 79. Plaintiff reserves the right to amend, supplement, or add to this description of the
2 aggrieved employees, according to proof.

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

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

13 82. Labor Code section 2699(f) provides: “For all provisions of this code except those for
14 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
15 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
16 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
17 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
18 each subsequent violation.”

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

22 84. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
23 penalties under the PAGA.

24 85. On or about **July 8, 2022**, Plaintiff paid the requisite PAGA filing fee and provided
25 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
26 Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged
27 violations.
28

1 86. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
2 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
3 forth herein (the "PAGA notice").

4 87. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
5 written PAGA notice from the LWDA.

6 88. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
7 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
8 providing a description of any actions taken to cure the alleged violations.

9 89. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
10 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
11 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
12 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

13 90. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
14 Complaint, Defendants committed the following violations and are liable for all corresponding civil
15 penalties:

- 16 a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194,
17 1197, 1198; IWC Wage Orders.
- 18 b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
19 Orders.
- 20 c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
21 1198; IWC Wage Orders.
- 22 d. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
23 1198; IWC Wage Orders.
- 24 e. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
25 §§ 204, 204b, 210.
- 26 f. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
27 Labor Code §§ 201, 202, 203, 256.
- 28 g. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

h. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

91. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;
- m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2699, and Code of Civil Procedure section 1021.5; and
- n. For such other relief the Court deems just and proper.

1 Dated: December 5, 2023

Ferraro Vega Employment Lawyers, Inc.

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3 Nicholas J. Ferraro

4 *Attorneys for Plaintiff Kevin Dougan*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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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.

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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.

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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.

Susana Rodriguez
Human Resources Manager
Centerplate
Susana.rodriguez@visitsandiego.com