

FILED
San Diego Superior Court

MAR 22 2024

Clerk of the Superior Court
By: K. Mulligan, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

KIMBERLY LAMBERTINIS, an individual,
for the real party in interest, the State of
California,

Plaintiff,

v.

SODEXO, INC.; and DOES 1 through 50,

Defendants.

Case No. 37-2023-00018293-CU-OE-CTL

Judge: Hon. ~~Keri Katz~~

Department: C-74

BLAINE K. BOWMAN

~~[PROPOSED]~~ JUDGMENT AND ORDER
GRANTING PLAINTIFF'S NOTICE OF
~~MOTION AND~~ UNOPPOSED MOTION
FOR APPROVAL OF PAGA
SETTLEMENT

BLAINE K. BOWMAN

Judge: Hon. ~~Keri Katz~~

Department: C-74

Date: March 22, 2024

Time: 8:30 a.m.

1 Plaintiff Kimberly Lambertinis' Unopposed Motion for Approval of PAGA Settlement
2 pursuant to the Private Attorneys General Act of 2004, encoded in Cal. Labor Code section 2698
3 et. seq. (hereinafter "PAGA") was heard in Department C-74 of the above entitled Court on **March**
4 **22, 2024, at 8:30 a.m.** The Court has considered the Parties' Settlement Agreement and
5 supporting Exhibits, the Motion for Approval of PAGA Settlement, as well as the Memorandum of
6 Points and Authorities, Declarations of Alex Mashiri and Tamim Jami filed in support thereof. ~~On~~

7 ~~good cause shown, this Court rules as follows.~~

8 WHEREAS on February 17, 2023, counsel for Plaintiff sent a PAGA Notice to the
9 California Labor and Workforce Development Agency ("LWDA") and Defendant, declaring
10 Plaintiff's intent to proceed with a representative action under the PAGA against Defendant
11 Sodexo, Inc. ("Defendant") for violations of the Labor Code;

12 WHEREAS Plaintiff filed the instant Lawsuit against Defendant on behalf of the State of
13 California, pursuant to the PAGA, subsequent to giving written notice to the LWDA and Defendant
14 as required by California Labor Code section 2699.3;

15 WHEREAS the Parties desire to settle the Lawsuit solely for the purpose of avoiding the
16 burden, time, expense and uncertainty of continuing litigation, and for the purpose of putting to rest
17 the controversies that are the subject of the Lawsuit;

18 WHEREAS California Labor Code section 2699(l)(2) states that "[t]he superior court shall
19 review and approve any settlement of any civil action filed pursuant to [PAGA]";

20 WHEREAS, pursuant to California Labor Code section 2699(l)(2), Plaintiff provided notice
21 of the proposed settlement to the LWDA; and

22 WHEREAS the Court has reviewed and considered (1) the proposed Settlement Agreement,
23 which is attached hereto as Exhibit 1, (2) the notice and motion, (3) the declarations submitted in
24 support thereof, and (4) the exhibit(s) attached to the declarations submitted therewith.

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1 **GOOD CAUSE APPEARING, it is HEREBY ORDERED THAT:**

2 1. The Court grants Plaintiff's Motion for Approval of PAGA Settlement.

3 2. Pursuant to Labor Code section 2699, subdivision (1)(2), the Court approves this
4 Settlement Agreement under the PAGA. The Court also hereby approves, as to form and content,
5 the notice to be distributed to the PAGA Settlement Members, attached hereto as Exhibit 2.

6 3. The Court finds that the Gross Settlement Amount of \$385,000 is fair, reasonable, and
7 adequate. The Court further finds that the Settlement has been reached through informed and arm's
8 length, non-collusive bargaining. The settlement recovery provides monetary value consistent with
9 the underlying purpose of PAGA. The Court also finds that the Settlement now will avoid delay
10 and risks if the Parties were to continue to litigate the case. The Court approves, adopts, and
11 incorporates by reference the terms and conditions of the Settlement Agreement, together with the
12 definitions used and contained therein. Of the \$385,000.00 Gross Settlement Amount, the judgment
13 is awarded and allocated as follows:

14 (a) The Court finds that the requested fees of Plaintiff's Counsel, Mashiri Law Firm APC
15 and The Jami Law Firm P.C., of \$128,333.33 are reasonable and this amount is therefore awarded;

16 (b) The Court finds that Plaintiff Counsel's costs in the amount of \$14,331.31 are
17 reasonable and this amount is therefore awarded;

18 (c) Administrative expenses of no more than \$7,000 are to be paid to the settlement
19 administrator, Phoenix Class Action Administration Solutions;

20 (d) Of the remaining \$235,335.36 awarded for civil penalties, 75%, or \$176,501.52, shall
21 be paid to the Labor and Workforce Development Agency ("LWDA") as required by Labor Code
22 Section 2699(i) "for enforcement of labor laws, including the administration of this part, and for
23 education of employers and employees about their rights and responsibilities under this code"; and
24 the remaining 25%, or \$58,833.84, will be distributed among the PAGA Settlement Members
25 according to the Parties' Settlement Agreement. PAGA Settlement Members is defined as all
26 current and former employees who held non-exempt positions at California SodexoMagic, LLC
27 units from February 17, 2022, through December 31, 2023.

28 4. The Court hereby enters Final Judgment in accordance with the terms of the Settlement

1 Agreement and this Order and Judgment. Accordingly, upon entry of this Order and Judgment, the
2 Parties shall effectuate and carry out the terms of the Settlement Agreement. This Judgment is
3 intended to be a final disposition in its entirety of the above captioned action. Plaintiff, the LWDA,
4 the PAGA Settlement Members and the State of California shall take nothing from Defendant
5 except as set forth in the Settlement Agreement and this Order and Judgment.

6 5. Upon complete funding of the Gross Settlement Amount, Plaintiff, the LWDA, all
7 PAGA Settlement Members and the State of California shall be deemed and hereby are deemed to
8 have conclusively released and forever discharged the Released Parties from the Released Claims,
9 as defined in the Settlement Agreement, and are hereby permanently barred and enjoined from the
10 institution or prosecution of any and all Released Claims against the Released Parties.

11 6. Without affecting the finality of the Judgment or the Settlement, the Court shall retain
12 jurisdiction over the above-captioned action and the Parties solely for purposes of implementing
13 and enforcing the terms of the Settlement and Judgment entered herein.

14 7. The Settlement Agreement is not an admission of fault or any liability whatsoever by
15 Defendant, nor is this Order and Judgment a finding on the merits related to any allegations of
16 wrongdoing by Defendant. This Order and Judgment, the Settlement Agreement, any other
17 documents referred to herein, and any action taken to carry out the Settlement Agreement, may not
18 be construed as, or used as, an admission of any fault, wrongdoing, omission, or liability
19 whatsoever by or against Defendant or other Released Parties.

20 8. Within ten (10) days of entry of this Order, Plaintiff shall provide to the LWDA a copy
21 of this Order pursuant to Labor Code section 2699, subdivision (l)(3).

22 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

23
24 DATED: 3-22-24

25 
26 Honorable ~~Keri Katz~~
27 Judge of the Superior Court
28 **BLAINE K. BOWMAN**

EXHIBIT 1

PAGA SETTLEMENT AGREEMENT

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Kimberly Lambertinis ("Plaintiff"), for herself and on behalf of the State of California and all Private Attorneys General Act ("PAGA") Settlement Members, on the one hand, and Defendant Sodexo, Inc. ("Defendant") on the other (collectively, the "Parties"), subject to the approval of the Court in accordance with California Labor Code Section 2699(1)(2), that the Settlement of this Action shall be effectuated upon and subject to the following terms and conditions.

The Parties agree that the Action (as defined in Section I below) shall be, upon approval by the Court, ended, settled, resolved, and concluded without any admission of fault or liability, as set forth in this Agreement and for the consideration set forth herein, including but not limited to a release of claims by Plaintiff, the State of California, and the PAGA Settlement Members as set forth herein.

I. DEFINITIONS

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) "Action" means the civil action, *Kimberly Lambertinis v. Sodexo, Inc.*, pending in the Superior Court of California in and for the County of San Diego, Case No. 37-2023-00018293-CU-OE-CTL.
- (b) "Agreement" means this Settlement Agreement.
- (c) "Approval Date" means the date the Court grants approval of this Agreement by signing and filing the Final Order and Judgment.
- (d) "Complaint" means the operative Complaint, which was filed on or about May 1, 2023, for Violations of The California Labor Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*).
- (e) "Court" means the Superior Court for the State of California, County of San Diego.
- (f) "Defendant" means the Defendant in this Action, Sodexo, Inc.
- (g) "Defense Counsel" or "Counsel for Defendant" means:

KADING BRIGGS LLP
THERESA A. KADING (SBN 211469)
Email: tkading@kadingbriggs.com
MICHAEL E. OLSEN (SBN 307358)
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100 Spectrum Center Dr., Suite 800
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Telephone: (949) 450-8040
Facsimile: (949) 450-8033

- (h) "Effective Date" means the date on which the Court's approval of the settlement can no longer be appealed or subject to any further judicial review, meaning no sooner than 60 days after the order approving the settlement is signed by the Court.
- (i) "Final Order and Judgment" means the final Court order and judgment entered in this Action in accordance with the terms herein, the Court adopting and approving this Agreement (and the terms of Settlement described herein) under the specific terms requested, and the Court retaining jurisdiction over the enforcement, implementation, construction, administration, and interpretation of the Settlement.
- (j) "Gross Settlement Amount" or "GSA" means the total gross settlement amount of Three Hundred Eighty-Five Thousand Dollars and Zero Cents (\$385,000.00), to be paid by Defendant within 30 days of the Effective Date, as provided by this Agreement, to fully and finally settle, resolve, and conclude this Action as provided under this Agreement, without any admission of fault or liability.
- (k) "LWDA" means the State of California Labor and Workforce Development Agency.
- (l) "Named Plaintiff" or "Plaintiff" shall mean and refer to Kimberly Lambertinis.
- (m) "PAGA" means the Private Attorneys General Act of 2004, California Labor Code section 2698 *et seq.*
- (n) "PAGA Period" means the time period from February 17, 2022, through December 31, 2023 or the Approval Date, whichever is earlier, which is also the effective period for the Release of the Released Claims.
- (o) "PAGA Settlement Members" means: All current and former employees who held non-exempt positions at California SodexoMagic, LLC units from February 17, 2022, to the Approval Date or December 31, 2023, whichever date is earlier.
- (p) "PAGA Settlement Member Payment" means the portion of the Gross Settlement Amount that shall be paid to each PAGA Settlement Member per the terms and conditions of this Agreement.
- (q) "Plaintiff's Counsel" means:

MASHIRI LAW FIRM, APC
Alex Asil Mashiri, Esq. (SBN 283798)
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- (r) "Released Claims": Each of the PAGA Settlement Members, including Plaintiff, and the State of California shall fully release and forever discharge the Released Parties, as defined herein, from any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, actions or causes of action, costs, expenses, attorneys' fees, damages, or interest, during the PAGA Period, based on any and all PAGA claims seeking civil penalties under California Labor Code Sections 2698, *et seq.* that were alleged or reasonably could have been alleged based on the facts alleged in the notice of alleged PAGA violations sent by Plaintiff to the LWDA, attached hereto as Exhibit A, and the Complaint, attached hereto as Exhibit B, including PAGA claims for violations of Labor Code Sections 201-204, 210, 226, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 558.1, 1198, and all applicable IWC Wage Orders.
- (s) "Released Parties" means Defendant and its past and present affiliates and related entities, including but not limited to SodexoMagic, LLC, SDH Services West, LLC, and SDH Education West, LLC, and its/their parents, subsidiaries, owners, members, partners, officers, directors, board members, managers, supervisors, employees, co-employers, predecessors, successors, assigns, agents, shareholders, investors, insurers, and legal and other representatives.

II. APPROVAL AND IMPLEMENTATION OF SETTLEMENT

A. Cooperation

The Parties will cooperate in seeking approval of the Settlement described in this Agreement. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed, including responding to challenges by any third parties, and shall take all steps that may be requested by the Court relating to the approval and implementation of the Settlement described in this Agreement.

B. Court Approval

Because this Action includes PAGA claims, this Agreement requires review and approval by the Court. *See* Cal. Lab. Code § 2699(l)(2). This Agreement is expressly contingent upon the Court's approval of this Settlement and the terms and material conditions of this Agreement (including, but not limited to, issuance of the Final Order and Judgment in a form agreed to by the Parties and entry of the Final Order and Judgment in accordance therewith). A failure of the Court to approve any material condition of this Settlement shall render the entire Settlement voidable and unenforceable as to Plaintiff and Defendant, at the option of either party. Should that occur, each party may exercise its option to void this Settlement as provided above by giving notice, in writing, to the other, and to the Court within fifteen (15) days after the Final Order granting approval of the Settlement has been received by the party seeking to void the Settlement. The failure of the Court to approve the amount of attorneys' fees and costs requested by Plaintiff's Counsel shall not be grounds to void the Settlement.

As soon as is practicable after the execution of this Agreement, and by no later than February 28, 2024, Plaintiff will file a Motion for Approval of PAGA Settlement and for an Order approving this Agreement. Plaintiff's Counsel will send a draft of the motion for approval and a draft of the Final Order and Judgment to Defense Counsel for review at least three (3) business days prior to filing. If the Court does not grant the request for approval and issue the Final Order and Judgment, under the specific terms requested, the Parties agree to meet and confer in good faith to address the Court's concerns and determine whether resolution of the Action can be obtained in a manner consistent with the Court's concerns.

Plaintiff shall submit a copy of the Final Order and Judgment in this Action and a copy of any other order providing for or denying an award of civil penalties within ten (10) days after entry of the Final Order and Judgment, in compliance with section 2699(1)(3) of the California Labor Code.

C. Gross Settlement Amount Payment Procedures

(a) Gross Settlement Amount

In exchange for the releases, obligations, and promises set forth in this Agreement (and subject to the terms and conditions contained in this Agreement), Defendant agrees to pay the Gross Settlement Amount, which is the total and all-inclusive amount Defendant will be obligated to pay under the Settlement embodied by this Agreement. The Gross Settlement Amount shall be allocated as follows:

- (1) **Attorneys' Fees and Costs:** Plaintiff's Counsel may apply to the Court for up to one-third of the total Gross Settlement Amount ("Fee Amount") as attorneys' fees and will request up to \$20,000 in actual costs ("Actual Costs") pursuant to PAGA, which provides for the recovery of attorneys' fees and costs. The fees and costs awarded by the Court will be paid out of the Gross Settlement Amount. The fees awarded by the Court will cover all work performed to date and all work to be performed in connection with the approval by the Court of this Agreement and the final conclusion of this Action. The Actual Costs sought will cover all costs and expenses incurred to date or to be incurred. Any modification of such application by the Court shall not (i) affect the enforceability of the Agreement, (ii) provide any of the Parties with the right to terminate the Agreement, or (iii) impose any obligation on Defendant to increase the consideration paid in connection with the Settlement. Plaintiff's Counsel's entitlement to fees and costs is a material condition of this Settlement, but the Fee Amount awarded is not. Any amount sought by Plaintiff's Counsel and not approved by the Court will be distributed among the LWDA and PAGA Settlement Members pursuant to the allocation formula set forth in Section II(C)(a)(3). Plaintiff's Counsel assumes full responsibility and liability for taxes owed on the Fee Amount and Actual Costs and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these payments.
- (2) **Settlement Administration Fees:** All Settlement Administration expenses shall be paid from the Gross Settlement Amount and shall not exceed Fifteen Thousand Dollars (\$15,000.00). The Parties agree to retain Phoenix Class Action

Administration Solutions ("Settlement Administrator") to serve as the Settlement Administrator in this matter. If the Settlement Administration Fees are less than the estimated amount of \$15,000.00, the remainder will be distributed amongst the LWDA and PAGA Settlement Members pursuant to the allocation formula set forth in Section II(C)(a)(3).

- (3) Payment of PAGA Penalties: The total sum available for payment of PAGA penalties shall be calculated by deducting the amount of fees awarded to Plaintiff's Counsel, the amount of Actual Costs awarded to Plaintiff's Counsel, and Settlement Administration Fees incurred from the \$385,000.00 Gross Settlement Amount (this will yield the "Net Settlement Amount"). Thereafter, of the remaining Net Settlement Amount, for each PAGA Settlement Member, seventy-five percent (75%) of his or her allocated share of the Net Settlement Amount shall be distributed to the LWDA ("LWDA Payment"), and the remaining twenty-five percent (25%) shall be distributed to the PAGA Settlement Members.

Each PAGA Settlement Member's *pro rata* share of the Net Settlement Amount ("PAGA Settlement Member Payment") will be determined by the Settlement Administrator, by converting the Net Settlement Amount into a pay period value. The pay period value will be established by dividing the Net Settlement Amount by the number of pay periods worked by all PAGA Settlement Members in a non-exempt position at a SodexoMagic unit in California during the PAGA Period. The pay periods worked by PAGA Settlement Members during the PAGA Period in a relevant position in California will be derived by analysis of the time and payroll data in Defendant's records and extrapolation as needed, including estimates based on PAGA Settlement Members' hire and termination dates, for any periods of time in which such data is not immediately available. The PAGA Settlement Member Payment for each PAGA Settlement Member will be determined by multiplying the pay period value by each PAGA Settlement Member's individual pay periods and then multiplying that amount by 25% (the other 75% is the LWDA Payment). Former employees will have two pay periods added to their total pay periods worked. All payments are for penalties and will be reported on IRS 1099 forms, if required. There will be no reversion to Defendant and no claims process for PAGA Settlement Members to receive payment.

The PAGA Settlement Member Payments paid to Plaintiff and PAGA Settlement Members shall not be deemed to be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (*e.g.*, vacation, holiday pay, retirement plans, etc.) of Plaintiff or the PAGA Settlement Members. The Parties agree that any PAGA Settlement Member Payment to Plaintiff or other PAGA Settlement Members under the terms of this Agreement does not represent any modification of Plaintiff's or PAGA Settlement Members' previously credited hours of service or other eligibility criteria under any employee pension benefit plan or employee welfare benefit plan sponsored by Defendant and/or its related entities, subsidiaries, parents, or affiliates. Further, any PAGA Settlement Member Payment shall not be considered "compensation" in any year for purposes of determining eligibility for, or benefit accrual within, an employee

pension benefit plan or employee welfare benefit plan sponsored by Defendant and/or its related entities, subsidiaries, parents, or affiliates.

(b) Funding and Distribution Process

Within thirty (30) days after the Effective Date, provided that the Settlement Administrator has provided Defendant with wiring instructions no later than fifteen (15) calendar days after the Effective Date, Defendant will transmit to the Settlement Administrator the entirety of the Gross Settlement Amount. The Parties agree that the Gross Settlement Amount is intended to be a "Qualified Settlement Fund" ("QSF") under Section 468B of the Code and Treasury Regulations Section 1.468B-1 *et seq.* and will be administered by the Settlement Administrator as such. The Parties and Settlement Administrator shall treat the QSF as coming into existence as a Qualified Settlement Fund on the earliest date permitted as set forth in 26 C.F.R. Section 1.468B-1, and such election statement shall be attached to the appropriate returns as required by law.

Within fifteen (15) business days after the Effective Date, Defendant shall provide the Settlement Administrator with a list of all PAGA Settlement Members, including: (1) names, (2) employee IDs, (3) Social Security Numbers, (4) last known addresses, (5) the number of pay periods worked by each PAGA Settlement Member in a relevant position in a California SodexoMagic unit during the PAGA Period, and (6) an indication of whether the PAGA Settlement Member is a current or former employee. The contact and other information is being provided confidentially to the Settlement Administrator only, and the Settlement Administrator shall treat the information as private and confidential and take all necessary precautions to maintain the confidentiality of contact information of the PAGA Settlement Members. This information is to be used only to carry out the Settlement Administrator's duties as specified in this Settlement. It shall not be shared by the Settlement Administrator with Plaintiff, her counsel, or any third party without the express written consent of Defense Counsel of record and/or court order.

Within ten (10) business days of receipt of the Gross Settlement Amount, the Settlement Administrator will disburse PAGA Settlement Member Payments to each PAGA Settlement Member to the last known physical address on file with Defendant in its regularly maintained records. Prior to this disbursement, the Settlement Administrator shall run a skip trace for every PAGA Settlement Member identified as a former employee. PAGA Settlement Members will receive a letter along with their PAGA Settlement Member Payment explaining the reason for the payment, the content of which will be submitted to the Court for approval. Such mailing, as described in this paragraph, shall be conclusive evidence of payment of the PAGA Settlement Member Payments and shall satisfy any and all due process requirements. All funds not claimed within 180 calendar days of mailing of payment shall be sent to the California State Controller's Office Unclaimed Property Fund with an identification of the amount of unclaimed funds attributable to each PAGA Settlement Member.

Within twenty (20) business days of receipt of the Gross Settlement Amount, the Settlement Administrator shall send a check to the LWDA for the LWDA Payment, in the amount calculated pursuant to the terms of this Settlement.

Within twenty (20) business days of receipt of the Gross Settlement Amount, the Settlement Administrator will disburse from the Gross Settlement Amount an amount sufficient to pay the

Attorneys' Fees and Costs described in II(C)(a), in the form of a check or wire for the amount of fees and costs awarded by the Court to "Mashiri Law Firm, APC" and "The Jami Law Firm, P.C." delivered to Plaintiff's Counsel.

(c) No Additional Contribution by Defendant

Defendant's monetary obligation under this Agreement is limited to the Gross Settlement Amount. Defendant shall not be required to pay more than the Gross Settlement Amount to obtain the relief (including, but not limited to, the Settlement, releases of claims, and issuance of the Final Order and Judgment) provided in this Agreement or to fully and finally settle and resolve the Released Claims.

Notwithstanding the above, in the event that this Agreement is voided or nullified, in whole or in part, however that may occur, or the Settlement of the Action is barred by operation of law, or invalidated, or ordered not to be carried out by a Court of competent jurisdiction, Defendant will cease to have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

(d) Estimated Covered Pay Periods

Plaintiff relies on Defendant's October 3, 2023 letter, where Defendant represented that (1) the number of individuals who held a non-exempt position at a California SodexoMagic unit from February 17, 2022, to June 29, 2023 is 1,022 individuals and (2) the number of pay periods worked in a non-exempt position at a California SodexoMagic unit from February 17, 2022, to June 29, 2023 is 24,080 pay periods. Based on this data, Defendant estimates that the number of pay periods worked by PAGA Settlement Members in a non-exempt position at a California SodexoMagic unit during the PAGA Period will be 32,934 pay periods.

Upon Court approval of the Settlement, if the number of pay periods worked by PAGA Settlement Members in a non-exempt position at a California SodexoMagic unit during the PAGA Period exceeds 32,934 pay periods by more than 10% (rounded to the nearest whole percent), Defendant shall have the option to: (a) increase the Gross Settlement Amount in proportion to the increase in pay periods above 10% (36,228 pay periods) (e.g., if there is a 12.2% increase in pay periods, Defendant would need to increase the Gross Settlement Amount by 2%) or (b) limit the end date of the release period appropriately so that the release period does not cover more than 36,228 pay periods.

(e) Tax Indemnity

The PAGA Settlement Member Payments are penalties, shall be reported on an IRS Form 1099 (to the extent required by law), and will not be subject to local, state, or federal tax withholdings. Each PAGA Settlement Member, including Plaintiff, will be responsible for paying all applicable state, local and federal income taxes on all amounts received pursuant to this Settlement, and they shall not seek any indemnification from the Released Parties in this regard. Plaintiff and Plaintiff's Counsel shall cooperate with Defendant and provide documentation to the extent possible and as reasonably requested to demonstrate any payment of taxes made by Plaintiff and/or any PAGA

Settlement Member should any taxing authority challenge the allocation of the payments made pursuant to this Agreement.

III. LIMITATIONS ON USE OF THIS SETTLEMENT

A. No Admission

The Released Parties deny any liability or wrongdoing of any kind and further deny that, for any purpose other than settling this matter, this matter is appropriate for class or representative treatment. The Released Parties maintain, among other things, that they have complied with federal and California law in all aspects. Nothing in these settlement negotiations, approval of the Settlement, orders related to Settlement, or any other aspect of the Settlement will be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of the Released Parties.

B. Non-Evidentiary Use

Except for purposes of effectuating the Settlement pursuant to this Agreement and/or for a Released Party to establish that a PAGA Settlement Member has resolved any of his/her claims released through this Agreement, and regardless of whether the Final Order and Judgment occurs, neither this Agreement nor any of its terms (including, but not limited to, the payment of the Gross Settlement Amount) nor the Settlement itself will be construed as, offered, or admitted in evidence as, received as, or deemed to be evidence, in any further proceeding in the Action, or any other civil, criminal, and/or administrative action or proceeding, for any purpose adverse to Defendant or any of the Released Parties, including but not limited to, evidence of a presumption, concession, indication, or admission by Defendant or any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage.

C. No Press Release or Publicity Regarding the Terms of Settlement

Neither Plaintiff nor her counsel will, unless required by law, issue any press releases, or have any communications to the press concerning this litigation, the terms of the Settlement, and/or the business practices of Defendant. Plaintiff's Counsel shall not include in any mass mailing, website, or other public communication a reference to this litigation, the Settlement, or the business practices of Defendant. Nothing in this paragraph shall affect the ability of Plaintiff's Counsel to carry out their duties consistent with and as required by any other provision herein. Additionally, nothing in this paragraph shall prevent Plaintiff's Counsel's ability to cite to this matter to establish qualifications as class and/or representative counsel in other cases.

D. Effect of Non-Approval by Court and Nullification

Should the Court not approve the Settlement, the Parties shall request leave and work jointly to make reasonable efforts to remedy the Settlement in order to obtain the Court's approval. If the Parties cannot resolve the issues identified by the Court in denying approval, the Parties shall be restored to their litigation positions status quo ante. In order for the Parties to be restored to their litigation positions status quo ante, either party shall file a written notice with the Court detailing the reasons why any Court-identified issues cannot be resolved by reasonable efforts. The written

notice shall be filed no earlier than twenty-one (21) days after the Court enters an order denying approval. If the Court ultimately fails to grant approval after the Parties' joint attempt to remedy the issues in good faith, or if the Court's approval is reversed or materially modified on appellate review, the Parties' Settlement and this Agreement shall be deemed null and void, shall be of no force or effect whatsoever, and shall not be referred to or used for any purpose whatsoever.

In the event that this Agreement does become null and void under the circumstances described in the preceding paragraph: (i) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (ii) all Parties to this Agreement and the pleadings in this Action shall stand in the same position they were the day prior to the October 18, 2023, mediation in this Action, without prejudice to either Party; and (iii) Defendant will not have any obligation to pay any portion of the Gross Settlement Amount to anyone under the terms of this Agreement.

IV. RELEASE AND WAIVER OF CLAIMS

A. General Release by Named Plaintiff

Separate from Plaintiff's agreement to release all PAGA wage and hour claims alleged in the Action as outlined in Paragraph IV.B., Plaintiff has also entered into a confidential standalone agreement to release her individually alleged claims against the Released Parties, including non-PAGA wage and hour claims and all other claims arising out of her employment ("Plaintiff's Individual Settlement Agreement."). Plaintiff's Individual Settlement Agreement includes a general release of all known and unknown claims of any type whatsoever Plaintiff may have against the Released Parties, including a waiver of California Civil Code Section 1542, but excluding her PAGA wage and hour claims, which she is releasing in this Agreement. Payment of the amount agreed to in Plaintiff's Individual Settlement Agreement shall be made by Defendant separate from and in addition to the Gross Settlement Amount.

B. Claims Released By Plaintiff, the State of California, the LWDA, and All PAGA Settlement Members

Upon complete funding of the Gross Settlement Amount, Plaintiff, the LWDA, all PAGA Settlement Members, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any and all of the Released Claims, as defined in paragraph I, subsection (r) of this Agreement. The express purpose of this Settlement is to forever bar Plaintiff, the LWDA, and any PAGA Settlement Member acting on behalf of or purporting to act on behalf of the LWDA, from asserting any of the Released Claims against the Released Parties in any future litigation. Any party to this Agreement may use the Agreement to assert that this Settlement and the judgment entered by the Court following approval bars any later-filed action asserting the Released Claims against any of the Released Parties during the PAGA Period. PAGA Settlement Members will be bound by all terms of this Agreement, including the Release, regardless of whether that PAGA Settlement Member receives and cashes his or her PAGA Settlement Member Payment.

C. No Additional Attorneys' Fees or Costs

Except as provided for herein, the Parties agree to bear her/its own attorneys' fees and costs related to this Action.

V. MISCELLANEOUS PROVISIONS

A. LWDA Notice

The LWDA will be given notice of this Settlement pursuant to the 2016 amendments to PAGA. Cal. Lab. Code § 2699(1)(2). Plaintiff will serve a copy of the Settlement to the LWDA before or on the same day the Settlement is filed with the Court.

Additionally, a copy of the Court's Final Order and Judgment will be submitted to the LWDA within ten (10) days after entry of the Final Order and Judgment, pursuant to California Labor Code § 2699(1)(3).

B. Voluntariness

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm, or other entity.

C. Amendments

The terms and provisions of this Agreement may be amended or modified only by an express written agreement that is signed by the Plaintiff and an authorized representative of Defendant.

D. Assignment

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, PAGA Settlement Member, the State of California, LWDA, Plaintiff's Counsel, or Defense Counsel without the express written consent of each Party. Plaintiff individually and expressly warrants that she has not transferred to any person or entity, any right or cause of action, or claim released by this Agreement.

E. Governing Law

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

F. Entire Agreement

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings governing the subject matter of this Agreement other than those expressly set forth or referred to herein. This Agreement, once fully executed by the Parties, supersedes all prior agreements and understandings among the Parties hereto with respect to the subject matter hereof.

G. Waiver of Compliance

A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

H. Counterparts

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or her/its respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A fax or PDF signature on this Agreement shall be as valid as an original signature.

I. Meet and Confer Regarding Dispute(s)

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's Counsel and Defense Counsel shall meet and confer in an attempt to resolve such disputes prior to submitting such disputes to the Court.

J. Agreement Binding on Successors

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

K. Cooperation in Drafting

The Parties have cooperated in the negotiation and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party, or the Party's counsel, was the drafter or participated in the drafting of this Agreement.

L. Fair Settlement

Plaintiff, Defendant, Plaintiff's Counsel, and Defense Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms' length negotiation, considering all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

M. Enforcement of Agreement

If either Party prevails in an action to enforce any provision of this Agreement, then, in addition to any other relief to which the Party may be entitled, the breaching Party shall reimburse the non-breaching Party for the costs and reasonable attorney's fees incurred in any such action.

N. Headings

The descriptive heading of any section or paragraph of this Agreement is inserted for convenience

of reference only and does not constitute a part of this Agreement and shall not be considered in interpreting this Agreement.

O. Continuing Jurisdiction

The Parties agree that upon the occurrence of the Final Order and Judgment pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and the Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and the PAGA Settlement Members to the fullest extent to interpret, enforce and effectuate the terms, conditions, intents, and obligations of the Agreement.

P. No Reliance on Representations

The Parties have made such investigation of the facts and the law pertaining to the matters described herein and to this Agreement as they deem necessary, and have not relied, and do not rely, on any statement, promise, or representation of fact or law, made by any of the other Parties, or any of their agents, employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or with regard to the advisability of making and executing this Agreement, or with respect to any such matters. No representations, warranties, or inducements have been made to any Party concerning this Agreement.

Q. Interim Stay

The Parties agree to stay and hold all proceedings in the Action in abeyance, except such proceedings necessary to implement and complete the Settlement, pending the settlement approval hearing to be conducted by the Court.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

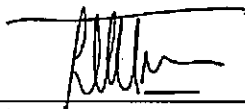
APPROVED AND ACCEPTED.

Dated: 12-11, 2023



KIMBERLY LAMBERTINIS, Plaintiff and PAGA
Representative

Dated: December 13, 2023



SODEXO, INC.

By: Sebastien De Tramasure, Chief Financial Officer

Dated: December 11, 2023

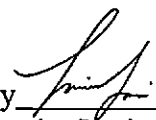
MASHIRI LAW FIRM, APC

By 

Alex Asil Mashiri
Attorney for Plaintiff

Dated: December 11, 2023

THE JAMI LAW FIRM P.C.

By 

Tamim Jami
Attorney for Plaintiff

Dated: December 13, 2023

KADING BRIGGS' LLP

By 

THERESA A. KADING
MICHAEL E. OLSEN
Attorneys for Defendant

EXHIBIT A



MASHIRI LAW FIRM, APC

11251 RANCHO CARMEL DRIVE # 500694, SAN DIEGO, CA 92150

■ TEL: (858) 348-4938 ■ FAX: (858) 348-4939 ■ EMAIL: Alex@mashirilawfirm.com

February 17, 2023

Via Electronic Submission

Labor and Work Force Development Agency

Attn: PAGA Administrator

455 Golden Gate Ave., 9th Floor

San Francisco, CA 94102

Via Certified Mail

Sedexo, Inc. and Affiliated

Companies Sodexomagic

9801 Washingtonian Blvd

Gaithersburg, MD 20878

Re: Kimberly P. Lambertinis v. Sodexo, Inc. et al.

Dear Labor Commissioner:

This office, in association with The Jami Law Firm P.C., represents Ms. Kimberly P. Lambertinis ("Plaintiff"). Accordingly, we are informing you of our representation and ask that all further communication regarding this matter be directed to my attention at the address located on this letterhead and that no contact be made directly with our client. This letter is sent pursuant to the Private Attorneys General Act ("PAGA"), incorporated in Labor Code sections 2698, 2699 *et seq.*

I. FACTS & NATURE OF THE DISPUTE

This is a wage and hour labor dispute. Plaintiff's intent is to pursue a representative action against Sedexo, Inc. and Affiliated Companies Sodexomagic (collectively "Defendant") on behalf of the state of California for violations committed against Plaintiff and all current and former aggrieved employees (Plaintiff and all current and former aggrieved employees are hereinafter collectively referred to as "Aggrieved Employees") pursuant to the PAGA.

II. NATURE OF DISPUTE

The Aggrieved Employees have several legal claims against Defendant for violations of Labor Code sections 201, 202, 203, 204, 226, 226(a), 226(b), 226.7, 226.7(b), 226.7(c), 227.3, 246, 246(l), 510, 512, 2698, and 2699 *et seq.*

Defendant violated Labor Code sections 246 and 246(l). Upon information and belief, Defendant failed to pay the Aggrieved Employees all wages and entitlements due under the Labor Code, including but not limited to compensating its employees for use of their sick leave pursuant to the correct rate mandated in Labor Code section 246 and 246(l). In particular, Defendant failed to appropriately factor in additional nondiscretionary payments and compensation—including but not limited to, incentives, shift premiums, shift differentials, and bonuses earned by Aggrieved Employees—for purposes of computing the appropriate rate of pay for sick leave wages. This violation resulted in an underpayment of sick pay wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226(a)(1), 226(a)(5), and 226(a)(9).

Defendant violated Labor Code section 510. Defendant failed to pay Aggrieved Employees all wages and entitlements due under Labor Code section 510, including but not limited to compensating such employees at the appropriate regular rate of pay where necessary for all overtime hours worked. This resulted from Defendant's failure to appropriately factor in any additional nondiscretionary payments and compensation, including but not limited to, incentives, shift premiums, shift differentials, and bonuses earned by Aggrieved Employees for the purpose of computing the employees' regular rate of pay. In turn, this resulted in an underpayment of wages for all those hours that required Defendant to issue payment at the regular rate of pay or a multiple thereof, including but not limited to overtime hours worked as mandated in Labor Code section 510. This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Defendant violated Labor Code sections 512, 226.7, and 226.7(b). Defendant failed to provide Aggrieved Employees with meal and rest periods in violation of Labor Code sections 512, 226.7(b), 226.7, and the applicable Wage Order. By way of example, Aggrieved Employees regularly worked shifts beyond five hours yet were not relieved for compliant meal and rest periods under California law.

Defendant violated Labor Code sections 226.7, and 226.7(c). Defendant failed to pay Aggrieved Employees all wages and entitlements due under Labor Code sections 226.7 and 226.7(c), including meal and rest premiums at the appropriate rate of pay, for each workday that meal and/or rest periods were not provided. This violation resulted in an underpayment of wages to the Aggrieved Employees which also resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226(a)(1), 226(a)(5), and 226(a)(9).

Defendant violated Labor Code section 227.3. Aggrieved Employees are entitled to accrue vacation hours at a specified accrual rate ("vacation hours"). Defendant failed to provide the Aggrieved Employees with the appropriate accrual of vacation hours on a per pay period basis. Upon information and belief, Defendant would provide Aggrieved Employees with an accrual of vacation hours that was less than what they were legally entitled to under Defendant's policy. By way of one example, Defendant failed to provide sufficient vacation accrual to Aggrieved Employees based on all hours they were paid during a given pay period, such as, for example, overtime hours and all other hours paid in contravention of the accrual policy. Defendant's failure

to adequately accrue vacation hours resulted in derivative violations of other Labor Code sections including, but not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226(a)(1), 226(a)(5), 226(a)(9).

Defendant failed to provide the Aggrieved Employees with accurate wage statements. By way of example, the wage statements failed, among other things, to accurately state the gross and net wages, and all applicable hourly rates in effect during the pay period and corresponding hours worked in violation of Labor Code section 226 subdivisions (a)(1), (a)(5), and (a)(9).

III. CONCLUSION

Please take notice that this letter is intended to exhaust the pre-litigation requirements set forth under Labor code section 2699, *et seq.* By law, an employee alleging a violation of one of the above-referenced sections must notify his or her employer and the Labor and Workforce Development Agency (LWDA) before he or she can invoke the provisions of section 2699, *et seq.* by seeking redress in court. (Lab. Code, § 2699.3.)

It is Plaintiff's intention to prosecute this matter under Labor Code section 2699 *et seq.* on behalf of the state of California for all alleged Labor Code violations committed by Defendant against the Aggrieved Employees. Plaintiff is seeking the remedies available under the PAGA for the Labor Code violations referenced in this letter; and any others that may be discovered in the course of litigation, should the LWDA not address these matters within the proscribed time period.

We write this letter subject to, and without waiver of, our client's rights and remedies, all of which we expressly reserve. This letter is not an express statement of all facts and circumstances concerning this matter.

Sincerely,



Alex Asil Mashiri, Esq.

EXHIBIT B

1 Alex Asil Mashiri, Esq. (SBN 283798)
alex@mashirilawfirm.com
2 **MASHIRI LAW FIRM, APC**
11251 Rancho Carmel Drive #500694
3 San Diego, CA 92150
Tel: (858) 348-4938
4 Fax: (858) 348-4939

5 Tamim Jami, Esq. (SBN 311351)
tamim@jamilaw.com
6 **THE JAMI LAW FIRM P.C.**
3525 Del Mar Heights Rd #941
7 San Diego, CA 92130
Tel: (858) 284-0248
8 Fax: (858) 284-0977

9 Attorneys for Plaintiff
10 KIMBERLY LAMBERTINIS

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
COUNTY OF SAN DIEGO

13 KIMBERLY LAMBERTINIS, an individual, for
14 the real party in interest, the State of California,

15 Plaintiff,

16 vs.

17 SODEXO, INC.; and DOES 1 through 50,
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19 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

05/01/2023 at 10:35:37 PM

Clerk of the Superior Court
By Marfil Estrada, Deputy Clerk

Case No. 37-2023-00018283-CU-0E-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code Section 2698 et seq.)**

1 Plaintiff KIMBERLY LAMBERTINIS ("Plaintiff"), in her capacity as the State of
2 California's designated agent and/or proxy under the Private Attorneys General Act (PAGA), and on
3 behalf of other current and former California employees ("Represented Employees") alleges the
4 following:

5 **NATURE OF THE ACTION**

6 1. Pursuant to the PAGA, incorporated in Labor Code sections 2698, 2699 *et seq.*,
7 Plaintiff brings this representative action against Defendant SODEXO, INC., ("SODEXO") and
8 DOES 1 through 50 (all defendants are hereinafter collectively referred to as "Defendants") for wage
9 and hour violations of the California Labor Code and the applicable Industrial Welfare Commission
10 Wage Order (the "IWC Wage Order").

11 2. Pursuant to Labor Code section 2699 *et seq.*, any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
13 Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees
14 for violation of the code may, as an alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
16 to the procedures specified in Labor Code section 2699.3.

17 3. Through this representative action, Plaintiff seeks to recover civil penalties under the
18 PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46 Cal.4th 969.)

19 **JURISDICTION AND VENUE**

20 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
21 jurisdiction is proper here because Plaintiff alleges claims arising under California law.

22 5. This Court has jurisdiction over Defendants because each is believed to be an
23 association, corporation, business entity, or individual that conducts substantial business in the State
24 of California, County of San Diego.

25 6. This Court has jurisdiction over Plaintiff's claim for civil penalties under the PAGA.

26 7. Pursuant to California Code of Civil Procedure section 395, venue is proper in the
27 Superior Court of California for the County of San Diego because this is where the alleged wrongful
28 misconduct alleged herein occurred.

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9. Plaintiff is an "aggrieved employee" because she was employed by Defendants and had one or more of the alleged violations committed against her, and therefore is properly suited to act on behalf the state, and collect civil penalties for all violations committed against the Represented Employees, who are also aggrieved employees as defined by Labor Code section 2699(c).

11. Defendants are doing business throughout the state of California, including the County of San Diego.

13. Plaintiff is informed and believes, and based thereon allege, that at all times, each Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of the other defendant and each were co-conspirators with respect to the acts and the wrongful conduct alleged herein so that each is responsible for the acts of the other in connection with the conspiracy and in proximate connection with the other defendant.

///

1 15. At all material times, Defendants were and/or are Represented Employees' employers
2 or persons acting on behalf of Represented Employees' employer, under California law, including the
3 IWC Wage Order and Labor Code sections 558 and 558.1, and thus are jointly and severally liable
4 for the violations alleged herein and any amounts awarded and/or recoverable as a result of this action.

5 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6 16. On February 17, 2023, Plaintiff, via counsel, sent the statutorily required notice to the
7 LWDA ("PAGA Notice"), indicating that Plaintiff intends to pursue claims against Defendants for
8 violations of the Labor Code.

9 17. On February 17, 2023, Plaintiff, via counsel, sent a copy of the PAGA Notice to
10 Defendant SODEXO.

11 18. The statutory period expired since Plaintiff sent the PAGA Notice to the LWDA and
12 LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the applicable
13 penalty claims and did not provide notice as set forth in Labor Code section 2699.3(a)(2)(A). Thus,
14 Plaintiff has exhausted the administrative requirements under the PAGA.

15 **PAGA REPRESENTATIVE ACTION CLAIMS**

16 19. On information and belief, current and former employees of Defendants were subject
17 to wage and hour violations by Defendants, specifically by Defendants' violation of Labor Code
18 sections 201, 202, 203, 204, 226(a)(1), 226(a)(5), 226(a)(9), 226(a), 226.7, 226.7(c), 246, 246(l), 510,
19 512, 1198, 2698, and 2699 et seq.

20 20. California law provides that an aggrieved employee may file a representative action
21 under the PAGA for civil penalties against an employer who violates the Labor Code.

22 **FIRST CAUSE OF ACTION**

23 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
24 **Sections 246 and 246(l) against all Defendants)**

25 21. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
26 set forth herein.

27 22. Under Labor Code sections 246 and 246(l), employers in California must provide
28 employees with paid sick leave to be paid at a specified rate of pay which must factor in additional

1 earnings during the relevant statutory period.

2 23. Upon information and belief, Defendants paid sick leave at the incorrect rate of pay
3 resulting in the underpayment of wages. In particular, Defendants failed to appropriately factor in all
4 wages for purposes of computing the appropriate rate of pay for sick leave usage as required by Labor
5 Code sections 246 and 246(l).

6 24. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
7 Labor Code sections 246 and 246(l).

8 25. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
9 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
10 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
11 all Labor Code provisions for which a civil penalty is not specifically provided.

12 26. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
13 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an
14 amount to be shown according to proof.

15 27. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiff seeks to recover
16 attorneys' fees, costs, and equitable relief in the form of civil penalties, in an amount to be shown
17 according to proof.

18 28. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
19 reasonable attorneys' fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
20 shown according to proof.

21 **SECOND CAUSE OF ACTION**

22 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 23 **Sections 512 and 226.7 against all Defendants)**

24 29. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
25 set forth herein.

26 30. Under Labor Code section 512 and the IWC Wage Order, if an employee works more
27 than five hours in a given day, the employer must provide the employee with the opportunity to take
28 a meal period of at least thirty minutes before the end of the employee's fifth hour. (*Brinker Rest.*

1 *Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

2 31. Labor Code section 226.7 prohibits an employer from requiring an employee to work
3 during a meal period and provides that an employee must be paid a wage for doing so.

4 32. Upon information and belief, Defendants failed to provide Plaintiff and the
5 Represented Employees with the opportunity to take compliant meal periods in violation of Labor
6 Code sections 512 and 226.7.

7 33. The PAGA imposes upon Defendants, civil penalties for violations of Labor Code
8 sections 512 and 226.7.

9 34. Labor Code section 558 imposes upon Defendants, and each of them, civil penalties of
10 fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and one
11 hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

12 35. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
13 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
14 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
15 all Labor Code provisions for which a civil penalty is not specifically provided.

16 36. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
17 2699(f), 558, and/or any other applicable statute allowing recovery of civil penalties under the PAGA
18 as alleged herein in an amount to be shown according to proof.

19 37. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
20 reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown
21 according to proof.

22 **THIRD CAUSE OF ACTION**

23 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
24 **Sections 226.7 and 226.7(c) against all Defendants)**

25 38. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
26 set forth herein.

27 39. Under Labor Code section 226.7(c), if an employer fails to provide an employee with
28 a proper meal/rest period, the employer shall pay the employee one hour of pay at the employee's

1 regular rate of compensation for each workday that the meal/rest period is not provided.

2 40. Plaintiff and the Represented Employees should have been paid a meal/rest break
3 premium for each and every missed, delayed, or shortened meal and rest period in an amount that was
4 equivalent to their regular rate of pay for the pay period.

5 41. Upon information and belief, Defendants failed to issue such meal/rest premiums at
6 the correct regular rate of pay in violation Labor Code section 226.7(c). (*Ferra v. Loews Hollywood*
7 *Hotel, LLC* (2021) 11 Cal. 5th 858.)

8 42. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
9 Labor Code sections 226.7 and 226.7(c).

10 43. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
11 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
12 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
13 all Labor Code provisions for which a civil penalty is not specifically provided.

14 44. Plaintiff is seeking civil penalties against Defendants under Labor Code section
15 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA as
16 alleged herein in an amount to be shown according to proof.

17 45. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover
18 reasonable attorneys' fees, costs, filing fees paid to the LWDA, and civil penalties, in an amount to
19 be shown according to proof.

20 **FOURTH CAUSE OF ACTION**

21 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code** 22 **Sections 510 and 1198 against all Defendants)**

23 46. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set
24 forth herein.

25 47. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in 1
26 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on
27 the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one-
28 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day

1 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. (Labor
2 Code § 510 and IWC Wage Order.)

3 48. Upon information and belief, Defendants failed to properly provide Plaintiff and the
4 Represented Employees with overtime pay for hours worked in excess of eight hours in a workday,
5 and/or hours worked in excess of 40 hours in one workweek.

6 49. Upon information and belief, Represented Employees would receive additional
7 nondiscretionary flat sum payments, including but not limited to, shift differentials and awards.

8 50. Upon information and belief, the Represented Employees were not paid accurate
9 overtime wages because Defendants failed to include all compensation earned during a given period
10 when determining the regular rate of pay, resulting in the underpayment of overtime wages.

11 51. Upon information and belief, during all times relevant to this action, Defendants
12 violated Labor Code sections 510, 1198, and the IWC Wage Order.

13 52. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
14 Labor Code sections 510 and 1198.

15 53. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of
16 one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
17 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
18 Code provisions for which a civil penalty is not specifically provided.

19 54. Pursuant to Labor Code section 558, any employer or other person acting on behalf of
20 an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision
21 regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject
22 to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them,
23 penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations,
24 and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

25 55. Plaintiff is seeking civil penalties against Defendants, including Labor Code sections
26 2699(f), 558, and/or any other applicable statute allowing recovery of civil penalties under the PAGA
27 in an amount to be shown according to proof.

28 ///

1 56. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
2 reasonable attorneys' fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
3 shown according to proof.

4 **FIFTH CAUSE OF ACTION**

5 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
6 **Section 226(a)(1) against all Defendants)**

7 57. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set
8 forth herein.

9 58. Labor Code section 226(a)(1) requires that wage statements that an employer issues to
10 its employees accurately state the gross wages earned.

11 59. Defendants failed to accurately state the proper gross on the wage statements in
12 violation of Labor Code section 226(a)(1). By way of one example, the wage statements issued to
13 Plaintiff and the Represented Employees failed to include the accurate amount of gross wages because
14 they failed to include the proper amount of wages, including, but not limited to, sick pay wages,
15 meal/rest premium wages, and overtime wages.

16 60. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
17 Labor Code section 226(a)(1).

18 61. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
19 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
20 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
21 all Labor Code provisions for which a civil penalty is not specifically provided.

22 62. With respect to violations of Labor Code section 226, Labor Code section 226.3
23 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
24 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
25 employee for each pay period.

26 63. Plaintiff is seeking civil penalties against Defendants, including Labor Code section
27 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
28 PAGA in an amount to be shown according to proof.

64. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a)(5) against all Defendants)**

65. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

66. Labor Code section 226(a)(5) requires that wage statements that an employer issues to its employees accurately state the net wages earned.

67. Defendants failed to accurately state the proper net wages earned on the wage statements in violation of Labor Code section 226(a)(5). By way of one example, the wage statements issued to Plaintiff and the Represented Employees failed to include the accurate amount of net wages earned during a given pay period because they failed to include the proper amount of all wages earned, including, but not limited to, sick pay wages, meal/rest premium wages, and overtime wages.

68. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a)(5).

69. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

70. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

71. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each

1 employee for each pay period.

2 72. Plaintiff is seeking civil penalties against Defendant, including Labor Code section
3 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
4 PAGA in an amount to be shown according to proof.

5 73. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
6 reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown
7 according to proof.

8 **SEVENTH CAUSE OF ACTION**

9 **(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code**
10 **Section 226(a)(9) against all Defendants)**

11 74. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though
12 set forth herein.

13 75. Labor Code section 226(a)(9) requires that the employer's wage statements accurately
14 state all applicable hourly rates in effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee.

16 76. Defendants failed violated Labor Code section 226(a)(9). By way of one example, the
17 rates/hours for sick pay wages, meal/rest premium wages, and overtime wages are inaccurately
18 itemized.

19 77. The PAGA imposes upon Defendants, and each of them, civil penalties for violating
20 Labor Code section 226(a)(9).

21 78. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
22 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
23 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
24 all Labor Code provisions for which a civil penalty is not specifically provided.

25 79. With respect to violations of Labor Code section 226, Labor Code section 226.3
26 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
27 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
28 employee for each pay period.

80. Plaintiff is seeking civil penalties against Defendants, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

81. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

EIGHTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 226(a) against all Defendants)**

82. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

83. Under Labor Code section 226(a) an employer must either keep a duplicate of the wage statement provided to an employee or a computer-generated record that accurately shows all of the information required under 226(a)(1) through (a)(9).

84. Upon information and belief, during all times relevant to this action, Defendants failed to keep records required under Labor Code section 226(a). By way of example, the copies of the wage statements that Defendants kept do not include the accurate gross and net wages and all applicable hourly rates and corresponding hours worked as described herein and in the above paragraphs.

85. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a).

86. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

87. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

88. Plaintiff is seeking civil penalties against Defendant, including Labor Code section 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

89. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

NINTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Section 204 against all Defendants)**

90. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

91. Labor Code section 204 imposes an obligation of timely payment of wages upon California employers.

92. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff and the Represented Employees all earned wages during an applicable pay period.

93. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 204.

94. Labor Code section 204 imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations.

95. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

96. Plaintiff is seeking civil penalties against Defendants under Labor Code section 204, 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

///

97. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown according to proof.

TENTH CAUSE OF ACTION

**(Representative Claim for Civil Penalties Under the PAGA for Violations of Labor Code
Sections 201, 202, and 203 against all Defendants)**

98. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

99. Under Labor Code section 201, if an employee is discharged by his/her employer, the wages earned and unpaid at the time of discharge are due and payable immediately.

100. Under Labor Code section 202, if on the other hand, "an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

101. Labor Code section 203 provides, in pertinent part: "If an employer willfully fails to pay, without abatement or reduction, ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. ..."

102. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of one example, Plaintiff and the Represented Employees were owed sick pay wages, meal/rest premium wages, and overtime wages at the time of separation and/or termination of employment.

103. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 201, 202, and 203.

104. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,

1 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
2 all Labor Code provisions for which a civil penalty is not specifically provided.

3 105. Plaintiff is seeking civil penalties against Defendants under Labor Code section
4 2699(f), and/or any other applicable statute allowing recovery of civil penalties under the PAGA in
5 an amount to be shown according to proof.

6 106. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover
7 reasonable attorneys' fees, costs, and filing fees paid to the LWDA in an amount to be shown
8 according to proof.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

- 11 1. An award of civil penalties pursuant to the PAGA and/or other applicable laws;
- 12 2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant
13 to the PAGA, California Labor Code section 2699(g), and/or other applicable law;
- 14 3. Post-judgment interest as provided by law; and
- 15 4. Such other and further relief that the Court may deem just and proper.

16 Dated: May 1, 2023

MASHIRI LAW FIRM, APC

17
18 By: 

Alex Asil Mashiri
Attorney for Plaintiff
KIMBERLY LAMBERTINIS

EXHIBIT C

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

Lambertinis v. Sodexo, Inc.

Case No. 37-2023-00018293-CU-OE-CTL

NOTICE OF PAGA SETTLEMENT AND RELEASE OF CLAIMS

I. NOTICE OF PAGA SETTLEMENT

The San Diego County Superior Court ("the Court") has approved a settlement in the above-captioned action filed by Kimberly Lambertinis ("Plaintiff") on behalf of herself and all other allegedly aggrieved employees under the Labor Code Private Attorneys General Act of 2004, California Labor Code §§ 2698, et seq. ("PAGA").

You are receiving this Notice because you are in the group of employees referred to as "aggrieved employees," which is defined as all current and former employees who held non-exempt positions at California SodexoMagic, LLC units from February 17, 2022, to December 31, 2023 (the "PAGA Period").

In this lawsuit, Plaintiff alleges that Defendant: (1) failed to pay paid sick leave at the correct rate of pay; (2) failed to pay overtime at the correct rate of pay; (3) failed to provide compliant meal and rest periods; (4) failed to pay meal and rest period premium pay at the correct rate of pay; (5) failed to properly pay accrued vacation upon termination; (6) failed to provide compliant wage statements; and (7) failed to pay all wages timely during employment and upon separation. Plaintiff is seeking civil penalties on behalf of the California Labor and Workforce Development Agency ("LWDA") and other allegedly aggrieved employees under the PAGA.

The Court has not made a determination about who is right. This Notice is not an expression of any opinion by the Court as to the merits of the claims. Defendant has denied and continues to deny all of the allegations made by Plaintiff. Defendant contends that it has complied at all times with the California Labor Code and all other applicable laws.

After arm's-length and good-faith settlement negotiations presided over by an experienced mediator, the parties reached a settlement that resolves this action rather than the parties having to proceed with the uncertainty and protracted expense of further litigation. The Court approved this settlement on _____.

II. YOUR SETTLEMENT PAYMENT

Your portion of the settlement is enclosed herewith. Each individual payment was calculated on a proportional basis based on the number of pay periods you worked in a non-exempt position at a SodexoMagic unit in California during the PAGA Period and whether your employment ended during the PAGA Period.

Settlement checks will be null and void 180 calendar days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the State Controller under the Unclaimed Property Law, California Civil Procedure Code section 1500 et seq.

III. RELEASE

Upon complete funding of the Settlement, Plaintiff, the LWDA, all aggrieved employees, and the State of California shall be deemed to have fully, finally, and forever waived, released, relinquished, and discharged Defendant and each and all of the Released Parties from any and all of the Released Claims.

"Released Claims": Any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, actions or causes of action, costs, expenses, attorneys' fees, damages, or interest, during the PAGA Period, based on any and all PAGA claims seeking civil penalties under California Labor Code Sections 2698, et seq. that were alleged or reasonably could have been alleged based on the facts alleged in the notice of alleged PAGA violations sent by Plaintiff to the LWDA and the Complaint, including PAGA claims for violations of Labor

Code Sections 201-204, 210, 226, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 558.1, 1198, and all applicable IWC Wage Orders.

“Released Parties”: Defendant and its past and present affiliates and related entities, including but not limited to SodexoMagic, LLC, SDH Services West, LLC, and SDH Education West, LLC, and its/their parents, subsidiaries, owners, members, partners, officers, directors, board members, managers, supervisors, employees, co-employers, predecessors, successors, assigns, agents, shareholders, investors, insurers, and legal and other representatives.

You will release these claims regardless of whether you cash the enclosed check.

IV. SETTLEMENT ADMINISTRATOR

You can contact the Settlement Administrator at _____ with any questions. **PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.**

EXHIBIT 2

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

Lambertinis v. Sodexo, Inc.

Case No. 37-2023-00018293-CU-OE-CTL

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Code Sections 201-204, 210, 226, 226.3, 226.7, 227.3, 246 *et seq.*, 510, 512, 558, 558.1, 1198, and all applicable IWC Wage Orders.

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