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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

FRANK B. HINE, an individual, on his own
behalf, and in his representative capacity on
behalf of all other similarly situated
Aggrieved Employees,

Plaintiffs,

v.

XPONENTIAL FITNESS, INC., a Delaware
corporation; XPONENTIAL FITNESS, LLC,
a Delaware limited liability company; and
DOES 1 through 25, inclusive,

Defendants.

Case No.: 30-2020-01176106-CU-OE-CXC

*Assigned for all purposes to the Honorable
Judge William Claster in Dept. CX104*

**FIRST AMENDED COMPLAINT FOR
DAMAGES FOR VIOLATION OF LABOR
CODE §2698 Et Seq. (Private Attorneys
General Act of 2004)**

Action Filed: December 23, 2020

1 Plaintiff, FRANK B. HINE (“Plaintiff”), by and through their attorneys, allege upon
2 information and belief, except for his own acts which are alleged on knowledge, as follows:

3 **INTRODUCTION**

4 1. This is a Labor Code Private Attorneys General Act (“PAGA”) enforcement action
5 against Defendants Xponential Fitness, Inc., Xponential Fitness, LLC, Cyclebar Franchising, LLC,
6 AKT Franchise, LLC, Club Pilates Franchise, LLC, Row House Franchise, LLC, YogaSix
7 Franchise, LLC, Stride Franchise, LLC, Pure Barre Franchising, LLC, Stretch Lab Franchise, LLC,
8 BFT Franchise Holdings, LLC, and Rumble Franchise, LLC (“Defendants”). Plaintiff brings his
9 PAGA claims on behalf of the State of California.

10 2. Defendants operate a global network of boutique fitness brands. Plaintiff is a former
11 employee and worked as a financial analyst based in Irvine, California.

12 3. During the relevant period, Defendants maintained and engaged in unlawful policies
13 and practices in violation of the California Labor Code. Defendants failed to provide
14 reimbursements for work-related expenses to Aggrieved Employees.¹

15 4. Plaintiffs seek civil penalties under the PAGA for the State of California and Aggrieved
16 Employees and other relief described below.

17 **THE PARTIES**

18 5. Plaintiff Frank B. Hine is an individual over the age of eighteen, and at all times relevant
19 to this Complaint has been a resident of the State of California, County of Orange. Plaintiff was
20 employed as a Financial Analyst from approximately April 29, 2019 to November 22, 2019.

21 6. Plaintiff is informed, believes, and thereon alleges that Defendants Xponential Fitness,
22 LLC, Xponential Fitness, LLC, Cyclebar Franchising, LLC, AKT Franchise, LLC, Club Pilates
23 Franchise, LLC, Row House Franchise, LLC, YogaSix Franchise, LLC, Stride Franchise, LLC,
24 Stretch Lab Franchise, LLC, BFT Franchise Holdings, LLC, and Rumble Franchise, LLC are
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27
28 ¹ Aggrieved Employees” are all current and former hourly or non-exempt workers employed by any of the
Defendants in California at any time during the period from October 19, 2019 to the resolution of this action
(“PAGA Period”).

1 Delaware limited liability companies, registered to do business in California and doing business
2 and employing persons throughout California. Defendant AKT Franchise, LLC is an Ohio limited
3 liability company registered to do business in California and doing business and employing
4 persons throughout California. Defendant Pure Barre Franchising, LLC is a California limited
5 liability company registered to do business in California and doing business and employing
6 persons throughout California.

7 7. At all times relevant to this complaint, Defendants are jointly engaged with Xponential
8 Fitness, LLC, in the business operations, development and franchising of boutique fitness
9 concepts, categories and brands across the United States and Canada, including the State of
10 California.

11 8. Plaintiff is unaware of the true names or capacities of Defendants sued herein under the
12 fictitious names DOES 1–25, inclusive, but prays for leave to amend and serve such fictitiously-
13 named Defendants pursuant to California Code of Civil Procedure section 474 once their names
14 and capacities become known.

15 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1–25, inclusive, are
16 the partners, agents, owners, shareholders, managers, principals or employees of Defendants
17 and/or and were acting on behalf of Defendants.

18 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and
19 omissions alleged herein was performed by or is attributable to Defendants, each acting as the
20 agent for the other, with legal authority to act on the other's behalf. The acts of any and all
21 Defendants were in accordance with, and represent the policy of, all Defendants.

22 11. At all times herein mentioned, Defendants, and each of them, ratified each and every act
23 or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
24 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
25 causing the damages herein alleged.

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

2 13. As current and former employers of Plaintiff and Aggrieved Employees throughout the
3 relevant time period, Defendants are liable for penalties for violating the Labor Code with respect
4 to the employment of Plaintiff and Aggrieved Employees.

5 14. Throughout this Complaint, any reference to “Defendants” is intended to refer to
6 Defendants Xponential Fitness, Inc., Xponential Fitness, LLC, Cyclebar Franchising, LLC, AKT
7 Franchise, LLC, Club Pilates Franchise, LLC, Row House Franchise, LLC, YogaSix Franchise,
8 LLC, Stride Franchise, LLC, Pure Barre Franchising, LLC, Stretch Lab Franchise, LLC, BFT
9 Franchise Holdings, LLC, and Rumble Franchise, LLC.

10 15. At all material times, Defendants have done business under the laws of California, have
11 had places of business in California, including in this County, and have employed Employees in
12 this County and elsewhere in California. Each named Defendant is a “person” as defined in Labor
13 Code § 18 and an “employer” as that term is used in the Labor Code and the IWC Wage Orders
14 regulating wages, hours, and working conditions.

15 **JURISDICTION**

16 16. This Court has jurisdiction over the violations of the PAGA and Labor Code section
17 2802 for unreimbursed expenses incurred in the discharge of work-related duties. The Court also
18 has jurisdiction over Defendants because Defendants conduct business in the State of California,
19 are authorized to do business in California, and are registered with the California Secretary of
20 State.

21 17. Defendants develop and operate boutique fitness brands throughout California and
22 employ Aggrieved Employees in California.

23 18. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
24 and/or 395.5. Defendants conduct business, employ employees, and have jobsites in this County.

25 19. The civil penalties sought in this action exceed the minimum jurisdiction limits of this
26 Court and will be established according to proof at trial.
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1 **ALTER EGO, AGENCY AND JOINT EMPLOYERS**

2 20. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
3 unity of interest and ownership between Defendants that the individuality and separateness of
4 Defendants has never existed or has ceased to exist.

5 21. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
6 of purported corporate existence, Defendants are in reality one and the same including, but not
7 limited to, because:

- 8 a. Defendants are completely dominated and controlled by the same company,
9 which committed the violations of laws as set forth in this complaint, and
10 which has hidden and currently hide behind separate company formations to
11 perpetrate frauds, circumvent statutes, or accomplish some other wrongful or
12 inequitable purpose;
- 13 b. DOES 1–25, inclusive, have acted on behalf of the other Defendants, who
14 violate, or cause to be violated, the provisions regulating minimum wages or
15 hours and days of work in any order of the Industrial Welfare Commission, or
16 violates, or causes to be violated, the California Labor Code;
- 17 c. DOES 1–25, inclusive, are owners, managers, officers, or managing agents of
18 the other Defendants, and the term “managing agent” has the same meaning as
19 in subdivision (b) of Section 3294 of the California Civil Code;
- 20 d. DOES 1–25, inclusive, derive actual and significant monetary benefits by and
21 through the other Defendants, and their unlawful conduct, and by using the
22 other Defendants as the funding source for their own personal expenditures;
- 23 e. Plaintiff is informed and believes that Defendants, while really one and the
24 same, were segregated to appear as though separate and distinct for purposes
25 of perpetrating a fraud, circumventing a statute, or accomplishing some other
26 wrongful or inequitable purpose;
- 27 f. Plaintiff is informed and believes that Defendants do not comply with all
28 requisite corporate formalities to maintain a legal and separate corporate

1 existence; and

2 g. Plaintiff is informed and believes, and based thereon alleges, that the business
3 affairs of Defendants are and at all times relevant were so mixed and
4 intermingled that the same cannot reasonably be segregated, and the same are
5 in inextricable confusion. Defendants' purported separateness is and at all
6 times relevant was used as a mere shell and conduit for the conduct of certain
7 of Defendants' affairs and are and were the alter ego of one another. The
8 recognition of the separate existence of Defendants would not promote justice
9 in that it would permit Defendants to insulate themselves from liability to
10 Plaintiff for violations of the Labor Code and other statutory violations. The
11 corporate existence of Defendants should be disregarded in equity and for the
12 ends of justice because such disregard is necessary to avoid fraud and injustice
13 to Plaintiff herein.

14 22. Accordingly, each of Defendants is the alter ego of one another, and the fiction of their
15 separate corporate existence must be disregarded.

16 23. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
17 thereon alleges, that Defendants were Plaintiff and the Aggrieved Employees' joint employers by
18 virtue of a joint enterprise, and that Plaintiff and the Aggrieved Employees were employees of
19 Defendants. Plaintiff and the Aggrieved Employees performed services for each of the
20 Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of
21 Plaintiff and the Aggrieved Employees as employees, either directly or indirectly, and the manner
22 in which Defendants' business was and is conducted.

23 **GENERAL ALLEGATIONS**

24 24. Plaintiff and the Aggrieved Employees currently work or formerly worked for
25 Defendants throughout the State of California during the relevant period. Plaintiff and the
26 Aggrieved Employees worked in either exempt or non-exempt, positions for Defendants.

27 25. Defendants required Plaintiff and the Aggrieved Employees to use their personal cell
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1 phones, laptops, internet and Wi-Fi to perform their job duties each workday throughout the
2 relevant statutory period in order to facilitate work-related phone conversations, and to perform
3 their necessary work duties.

4 26. Despite Defendants' requirement that Plaintiff and the Aggrieved Employees use their
5 personal cell phones and other electronic devices and internet services, to perform their job duties,
6 Defendants never reimbursed them for the expenses they incurred in doing so. Defendants' failure
7 to reimburse Plaintiff and the Aggrieved Employees violated Labor Code section 2802.

8
9 **CAUSE OF ACTION**
10 **VIOLATION OF THE PAGA**
11 **(As to Defendants and Does 1 – 25, inclusive)**

12 27. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully
13 set forth herein.

14 28. PAGA expressly establishes that any provision of the California Labor Code which
15 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
16 Agency (the "LWDA"), or any of its departments, divisions, commissions, boards, agencies or
17 employees for a violation of the California Labor Code, may be recovered through a civil action
18 brought by an aggrieved employee on behalf of himself or herself, and other current or former
19 employees.

20 29. On July 10, 2020, Plaintiff, Frank B. Hine, on behalf of himself and Aggrieved
21 Employees, submitted a written Notice to the LWDA setting forth the alleged facts and
22 identifying the specific provisions of the Labor Code that Plaintiff Hine contended were violated
23 by Defendants. A true and correct copy of the July 10, 2019 PAGA Notice is attached hereto as
24 Exhibit A, along with Plaintiff's First Amended PAGA Notice of the same date, adding as an
25 additional named Defendant, Xponential Fitness, LLC to the notice, a true and correct copy of
26 which First Amended PAGA notice is attached hereto as Exhibit B. On May 4, 2023, Plaintiff
27 submitted a Second Amended PAGA Notice to the LWDA listing additional Defendants. A true
28 and correct copy of the May 4, 2023 Second Amended PAGA Notice is attached hereto as Exhibit

1 C. More than 65 days have passed since Plaintiff submitted his original, First and Second
2 Amended PAGA Notices and to date, Plaintiff Hine has not received a response from the LWDA
3 indicating its intent to investigate his claims.

4 30. Plaintiff was an “aggrieved employee” as defined by California Labor Code section
5 2699(c) in that he was a former employee of Defendants, and one or more of the alleged violations
6 was committed against him.

7 **Failure to Reimburse for Work-Related Expenses**

8 31. Labor Code Section 2802 provides that an employer shall indemnify his or her
9 employees for all necessary expenditures or losses incurred by the employee in direct
10 consequence of the discharge of his or her duties.

11 32. As alleged above, Defendants required Plaintiff and the Aggrieved Employees to use
12 their personal cellphones and other personal electronic devices such as computers and laptops, as
13 well as internet Wi-Fi services to perform their work-related duties. An employer that knows or
14 has reason to know that an employee has incurred work-related expenses must reimburse the
15 employee, even if the employee does not request reimbursement. However, Defendants have not
16 paid Plaintiff or the Aggrieved Employees any reimbursement for the daily imposition and
17 expenses incurred in the use of their personal cellphones in the performance of their job duties,
18 in violation of Labor Code Section 2802.

19 33. As a result of Defendants’ violation of Labor Code section 2802, Plaintiff, on his own
20 behalf and on behalf of the Aggrieved Employees seeks reimbursement for all business-related
21 expenses they incurred working for Defendants during the relevant statutory period and statutory
22 civil penalties under the PAGA.

23 **Damages**

24 34. Pursuant to California Labor Code Defendants’ actions constitute continuing and
25 ongoing unlawful activity prohibited by the California Labor Code, as alleged and therefore these
26 acts constitute violations of the PAGA.

27 35. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
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1 from Defendants civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
2 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
3 aggrieved employee per pay period for each subsequent violation; and

4 36. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
5 statute.

6 37. As alleged supra, notice of these violations were provided pursuant to Labor Code
7 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
8 have passed since notice was provided and Plaintiffs have not received any notification from the
9 LWDA that it intends to investigate the alleged violations. Therefore, the representative Plaintiff
10 is entitled to prosecute their PAGA claims under Labor Code §2699, et seq.

11 38. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
12 Employees, whether a part of this action or not. Further this claim needs no certification to
13 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

14 39. Accordingly, Plaintiffs respectfully request that the Court award judgment and relief in
15 his favor including civil penalties under California Labor Code §2699 in the amount of one
16 hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation, and
17 two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent
18 violation during the relevant period, according to proof.

19 40. Plaintiff as the personal representative of the Aggrieved Employees, seeks to recover
20 any and all penalties for each and every violation shown to exist or to have occurred during the
21 liability period, in an amount according to proof, as to those penalties that are otherwise only
22 available to public agencies. Said penalties recovered will be distributed in accordance with the
23 PAGA, with at least 75% of said PAGA penalty recovery being reimbursed to the State of
24 California and the LWDA.

25 41. Pursuant to sections 2699 and 2802, Plaintiff requests and is entitled to recover from
26 Defendants damages, civil penalties, interest, attorneys' fees and costs, as well as all statutory
27 penalties against Defendants, and each of them.
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PRAYER FOR RELIEF

WHEREFORE, Plaintiff on his own behalf and on behalf of the Aggrieved Employees,
prays for judgment as follows:

1. Upon the PAGA Cause of Action, for penalties and unreimbursed work-related expenses pursuant to statute as set forth in Labor Code section 2698 *et seq.* for Defendants' violations of Labor Code 2802;
2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code sections 2699 and 2802, and any other applicable statute;
3. For injunctive relief; and
4. For such other and further relief the court may deem just and proper.

Date: August 12, 2024



Carolyn H. Cottrell
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PROOF OF SERVICE

I, Melisa Flores, declare the following:

I am over the age of eighteen years and not a party to the within entitled action. I am employed at Schneider Wallace Cottrell Konecky LLP located at 2000 Powell Street, Suite 1400, Emeryville, California 94608.

On September 16 2024, I served the following document(s) described as: **FIRST AMENDED COMPLAINT** on the following interested party(s):

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☒ **BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy in PDF format through SWCKW's electronic mail system to the email address(s) set forth above from my email: mflores@schneiderwallace.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 16, 2024, at Apple Valley, California.



Melisa Flores