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Employees*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE 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,

Plaintiff,

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. CX101*

**DECLARATION OF CAROLYN H.
COTTRELL IN SUPPORT OF
PLAINTIFF'S MOTION FOR
APPROVAL OF PAGA SETTLEMENT**

Date: March 7, 2025

Time: 9:00 a.m.

Dept.: CX101

Action Filed: December 23, 2020

Trial Date: None

Reservation No.: 74479414

1 **DECLARATION**

2 I, Carolyn Hunt Cottrell, hereby declare as follows:

3 1. I am an attorney at law duly licensed and in good standing to practice law in the State of
4 California. I am a member in good standing of the State Bar of California, I am admitted to the United
5 States District Courts for the Northern, Eastern, Central, and Southern Districts of California. I am
6 admitted to the Ninth Circuit Court of Appeals, and I am a member of the Bar of the United States
7 Supreme Court.

8 2. I am a partner at the law firm of Schneider Wallace Cottrell Konecky LLP ("SWCK").
9 SWCK specializes in class, collective, and representative litigation in state and federal courts.

10 3. SWCK is counsel of record for Plaintiff Frank B. Hine ("Plaintiff") in the above-
11 captioned case. I submit this declaration in support of Plaintiff's Motion for Approval of PAGA
12 Settlement ("Motion"). I am familiar with the file, the documents, and the history related to this case.
13 The following statements are based on my personal knowledge and review of the files. If called to do
14 so, I could and would testify competently thereto.

15 4. The "Settlement" refers to the PAGA Settlement and Release Agreement executed by
16 the parties on September 27, 2024, a true and correct copy of which is attached hereto as **Exhibit A**.¹

17 **I. PLAINTIFF'S COUNSEL'S QUALIFICATIONS, SKILL, AND EXPERIENCE**

18 5. Plaintiff, the Covered Employees, and the State have been represented by highly
19 experienced counsel who focus on wage-and-hour representative actions.

20 6. SWCK is regarded as one of the leading private plaintiff's firms in wage and hour class
21 actions and employment class actions. In November 2012, the Recorder listed the firm as one of the
22 "top 10 go-to plaintiffs' employment firms in Northern California." The partners and attorneys have
23 litigated major wage and hour class actions, have won several prestigious awards, and sit on important
24 boards and committees in the legal community. SWCK was founded by Todd Schneider in 1993, and
25 I have been a member of the firm since 1995.

26
27
28 ¹ Unless otherwise indicated, all capitalized terms have the same meaning as defined in the Settlement.

7. SWCK has acted or is acting as class counsel in numerous cases. A partial list of cases which have been certified and/or settled as class actions includes: *Salonga, et al. v. Aegis Senior Communities, LLC, et al.* (Case No. 22CV007450) (Alameda Superior Court, August 30, 2024) (final approval of FLSA collective, California class, and PAGA representative action); *Chavez v. Teasdale Foods, Inc.* (Case No. 21CV-03035) (Merced Superior Court, August 28, 2024) (class certification of a California class and subclasses); *Walker v. Nursefinders, LLC, et al.* (Case No. 3:22-CV-04084-AGT) (Northern District of California, August 27, 2024) (final approval of California class and PAGA representative action settlement); *Magana v. Goya Foods of California, Inc., et al.* (Case No. 20STCV43233) (Los Angeles Superior Court, July 10, 2024) (class certification of California rounding, meal, and wage statement subclasses); *Bonner v. Providence Health System-Southern California* (Case No. 21STCV09585) (Los Angeles Superior Court, July 16, 2024) (class certification of a California rounding subclass and derivative subclasses); *Miles v. Kirkland* (Case No. 5:18-cv-01559-JWH) (Central District of California, June 7, 2024) (class certification of a California rest break subclass); *Clavel v. San Diego Sunrise Management Company* (Case No. 37-2020-00028205-CU-OE-CTL) (San Diego Superior Court, May 29, 2024) (final approval of California class action settlement); *Randall, et al. v. Integrated Communication Service Inc., et al.* (Case No. 3:20-cv-05438-DGE) (Western District of Washington, March 29, 2024) (final approval of three-state class and FLSA collective action settlement); *Wright, et al. v. Frontier Mgmt. LLC, et al.* (Case No. 2:19-cv-01767-JAM-CKD) (Eastern District of California, March 13, 2023) (final approval of California, Illinois, Oregon, and Washington class and FLSA collective action settlement); *Campos v. Extra Express (Cerritos) Inc.* (Case No. BC715057) (Los Angeles Superior Court, Jan. 18, 2023) (final approval of California law wage and hour class action settlement alleging misclassification of short haul delivery drivers); *Huddleston v. John Christner Trucking, LLC*, (Case No. 4:17-cv-00549-GKF-CDL) (Northern District of Oklahoma, October 31, 2022) (final approval of California and Oklahoma class and FLSA collective action settlement where Plaintiff obtained class certification on behalf of misclassified truck drivers); *Tinaco v. Quik Stop Markets, Inc.* (Case No. RG20061119) (Alameda County Superior Court, June 23, 2022) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and

1 failure to provide itemized wage statements, under California law); *Ramirez, et al. v. Rite Aid Corp., et*
2 *al.* (Case No. CV 20-3531-GW-SKx) (Central District of California, May 19, 2022) (final approval of
3 California class action and PAGA representative action settlement); *Madrigal v. Mission Lakes*
4 *Country Club, Inc.* (Case No. RIC2003428) (Riverside County Superior Court, May 18, 2022) (final
5 approval of California class action and PAGA representative action); *Hazel v. Himage Sols., Inc.*
6 (Case No. RG20068159) (Alameda County Superior Court, Nov. 2, 2021) (final approval of a
7 California class action settlement for failure to pay for all hours worked, failure to pay minimum and
8 overtime wages, failure to provide meal and rest breaks, failure to reimburse necessary business
9 expenditures, waiting time penalties, and failure to provide itemized wage statements); *Pine Manor*
10 *Investors, LLC v. FPI Mgmt., Inc.* (Case No. 34-2018-00237315) (Sacramento County Superior Court,
11 October 20, 2021) (final approval of a California class action settlement in action that alleged improper
12 billing for workers compensation charges by an apartment complex management company); *Etcheverry*
13 *v. Franciscan Health Sys., et al.* (Case No. 3:19-cv-05261-RJB-MAT) (Western District of
14 Washington, October 19, 2021) (final approval of hybrid Fair Labor Standards Act and Washington
15 class action); *Jean-Pierre, et al. v. J&L Cable TV Servs., Inc.* (Case No. 1:18-cv-11499-MLW) (District
16 of Massachusetts, August 31, 2021) (final approval of hybrid Fair Labor Standards Act and
17 Massachusetts, New Hampshire, Maine, and Pennsylvania class action); *Amaraut, et al. v.*
18 *Sprint/United Mgmt. Co.* (Case No. 19-cv-411-WQH-AHG) (Southern District of California, August
19 5, 2021) (final approval of hybrid Fair Labor Standards Act and Class Action); *Diaz, et al. v. TAK*
20 *Commc'ns CA, Inc., et al.* (Case No. RG20064706) (Alameda Superior Court, July 27, 2021) (final
21 approval of hybrid Fair Labor Standards Act and California Labor Code class action); *Villafan v.*
22 *Broadspectrum Downstream Servs., Inc., et al.* (Case No. 3:18-cv-06741-LB) (Northern District of
23 California, April 8, 2021) (final approval of hybrid Fair Labor Standards Act and California law class
24 action settlement for failure to pay for all hours worked, failure to provide meal and rest breaks,
25 unreimbursed business expenses, waiting time penalties, and failure to provide itemized wage
26 statements); *Jones, et al. v. CertifiedSafety, Inc., et al.* (lead Case No. 3:17-cv-02229-EMC) (Northern
27 District of California, June 1, 2020) (final approval of hybrid Fair Labor Standards Act and California,
28 Washington, Illinois, Minnesota, Alaska, and Ohio class action settlement for failure to pay for all

1 hours worked, failure to provide meal and rest breaks, unreimbursed business expenses, waiting time
2 penalties, and failure to provide itemized wage statements); *El Pollo Loco Wage and Hour Cases* (Case
3 No. JCCP 4957) (Orange County Superior Court, January 31, 2020) (final approval of a class action
4 settlement for failure to pay for all hours worked, failure to provide meal and rest breaks, unreimbursed
5 business expenses, waiting time penalties, and failure to provide itemized wage statements, under
6 California law); *Soto, et al. v. O.C. Commc'ns, Inc., et al.* (Case No. 3:17-cv-00251-VC) (Northern
7 District of California, Oct. 23, 2019) (final approval of a hybrid Fair Labor Standards Act and
8 California and Washington law Rule 23 action with joint employer allegations); *Manni v. Eugene N.*
9 *Gordon, Inc. d/b/a La-Z-Boy Furniture Galleries* (Case No. 34-2017-00223592) (Sacramento Superior
10 Court) (final approval of a class action settlement for failure to pay for all hours worked, failure to pay
11 minimum and overtime wages, failure to provide meal and rest breaks, waiting time penalties, and
12 failure to provide itemized wage statements, under California law); *Van Liew v. North Star Emergency*
13 *Servs., Inc., et al.* (Case No. RG17876878) (Alameda County Superior Court) (final approval of a class
14 action settlement for failure to pay for all hours worked, failure to pay minimum and overtime wages,
15 failure to provide meal and rest breaks, failure to reimburse for necessary business expenditures,
16 waiting time penalties, and failure to provide itemized wage statements, under federal law); *Asalati v.*
17 *Intel Corp.* (Case No. 16cv302615) (Santa Clara Superior Court) (final approval of a class and
18 collective action settlement for failure to pay for all hours worked, failure to pay overtime, failure to
19 provide meal and rest breaks, failure to reimburse for necessary business expenditures, failure to adhere
20 to California record keeping requirements, waiting time penalties, and failure to provide itemized wage
21 statements, under federal and California law); *Harmon, et al. v. Diamond Wireless, LLC* (Case No. 34-
22 2012-00118898) (Sacramento Superior Court) (final approval of a class action settlement for failure to
23 pay wages free and clear, failure to pay overtime and minimum wages, failure to provide meal and rest
24 breaks, failure to pay full wages when due, failure to adhere to California record keeping requirements,
25 and failure to provide adequate seating, under California law); *Aguilar v. Hall AG Enters., Inc., et al.*
26 (Case No. BCV-16-10994-DRL) (Kern County Superior Court) (final approval of a class action
27 settlement for failure to provide meal and rest periods, failure to compensate for all hours worked,
28 failure to pay minimum and overtime wages, waiting time penalties, failure to provide itemized wage

1 statements, and failure to pay undiscounted wages, under California law); *Viceral and Krueger v.*
2 *Mistras Grp., Inc.* (Case No. 3:15-cv-02198-EMC) (Chen, J.) (Northern District of California) (final
3 approval of a class and collective action settlement for failure to compensate for all hours worked,
4 including overtime, under federal and California law); *Jeter-Polk, et al. v. Casual Male Store, LLC, et*
5 *al.* (Case No. 5:14-CV-00891) (Central District of California) (final approval of a class action
6 settlement for failure to provide meal and rest periods, failure to compensate for all hours worked,
7 failure to pay overtime wages, unpaid wages and waiting time penalties, and failure to provide itemized
8 wage statements); *Meza, et al. v. S.S. Skikos, Inc., et al.* (Case No. 15-cv-01889-TEH) (Northern
9 District of California) (final approval of class and collective action settlement for failure to compensate
10 for all hours worked, including overtime, under federal and California law, failure to provide meal and
11 rest breaks, failure to reimburse for necessary business uniforms, failure to pay full wages upon
12 termination to, and failure to provide accurate itemized wage statements); *Holmes, et al. v. Xpress*
13 *Global Sys., Inc.* (Case No. 34-2015-00180822) (Sacramento Superior Court) (final approval of a class
14 action settlement for failure to provide meal and rest breaks and failure to provide accurate itemized
15 wage statements); *Guilbaud, et al. v. Sprint Nextel Corp. et al.* (Case No. 3:13-cv-04357-VC) (Northern
16 District of California) (final approval of a class and collective action settlement for failure to
17 compensate for all hours worked, including overtime, failure to provide meal and rest breaks, failure
18 to reimburse for necessary business uniforms, failure to pay full wages upon termination to, and failure
19 to provide accurate itemized wage statements); *Molina, et al. v. Railworks Track Sys., Inc.* (Case No.
20 BCV-15-10135) (Kern County Superior Court) (final approval of a class action settlement for failure
21 to provide meal and rest breaks, unpaid wages, unpaid overtime, off-the-clock work, failure to pay full
22 wages upon termination to, and failure to provide accurate itemized wage statements); *Allen, et al. v.*
23 *County of Monterey, et al.* (Case No. 5:13-cv-01659) (Northern District of California) (settlement
24 between FLSA Plaintiffs and Defendant to provide relief to affected employees); *Barrera v. Radix*
25 *Cable Holdings, Inc., et al.,* (Case No. CIV 1100505) (Marin County Superior Court) (final approval
26 of class action settlement for failure to provide meal and rest breaks to, off-the-clock work by, failure
27 to provide overtime compensation to, failure to reimburse business expenditures to, failure to pay full
28 wages upon termination to, and failure to provide accurate itemized wage statements to retention

specialists working for cable companies); *Glass Dimensions, Inc., et al. v. State Street Corp. et al.*, (Case No. 1:10-cv-10588) (District of Massachusetts) (final approval of class action settlement for claims of breach of fiduciary duty and self-dealing in violation of ERISA); *Friend, et al. v. The Hertz Corp.*, (Case No. 3:07-052222) (Northern District of California) (settlement of claims that rental car company misclassified non-exempt employees, failed to pay wages, failed to pay premium pay, and failed to provide meal periods and rest periods); *Hollands v. Lincare, Inc., et al.*, (Case No. CGC-07-465052) (San Francisco County Superior Court) (final approval of class action settlement for overtime pay, off-the-clock work, unreimbursed expenses, and other wage and hour claims on behalf of a class of center managers); *Jantz, et al. v. Colvin*, (Case No. 531-2006-00276X) (In the Equal Employment Opportunity Commission Baltimore Field Office) (final approval of class action settlement for the denial of promotions based on targeted disabilities); *Shemaria v. County of Marin*, (Case No. CV 082718) (Marin County Superior Court) (final approval of class action settlement on behalf of a class of individuals with mobility disabilities denied access to various facilities owned, operated, and/or maintained by the County of Marin); *Perez, et al. v. First Am. Title Ins. Co.*, (Case No. 2:08-cv-01184) (District of Arizona) (final approval of class action settlement in action challenging unfair discrimination by title insurance company); *Perez v. Rue21, Inc., et al.*, (Case No. CISCV167815) (Santa Cruz County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of retail employees); *Sosa, et al. v. Dreyer's Grand Ice Cream, Inc., et al.*, (Case No. RG 08424366) (Alameda County Superior Court) (final approval of class action settlement for failure to provide meal and rest breaks to, and for off-the-clock work performed by, a class of ice cream manufacturing employees); *Villalpando v. Exel Direct Inc., et al.* (Case Nos. 3:12-cv-04137 and 4:13-cv-03091) (Northern District of California) (certified class action on behalf of delivery drivers allegedly misclassified as independent contractors); *Choul, et al. v. Nebraska Beef, Ltd.* (Case Nos. 8:08-cv-90, 8:08-cv-99) (District of Nebraska) (final approval of class action settlement for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant); *Morales v. Farmland Foods, Inc.* (Case No. 8:08-cv-504) (District of Nebraska) (FLSA certification for off-the-clock work by, and failure to provide overtime compensation to, production-line employees of meat-packing plant);

1 *Barlow, et al. v. PRN Ambulance Inc.* (Case No. BC396728) (Los Angeles County Superior Court)
2 (final approval of class action settlement for failure to provide meal and rest breaks to and for off-the-
3 clock work by certified emergency medical technicians); *Espinosa, et al. v. Nat'l Beef, et al.* (Case No.
4 ECU0467) (Imperial Superior Court) (final approval of class action settlement for off-the-clock work
5 by, and failure to provide overtime compensation to, production-line employees of meat-packing
6 plant); *Wolfe, et al. v. California Check Cashing Stores, LLC, et al.* (Case Nos. CGC-08-479518 and
7 CGC-09-489635) (San Francisco Superior Court) (final approval of class action settlement for failure
8 to provide meal and rest breaks to, and for off-the-clock work by, employees at check cashing stores);
9 *Carlson v. eHarmony* (Case No. BC371958) (Los Angeles County Superior Court) (final approval of
10 class action settlement on behalf of gays and lesbians who were denied use of eHarmony); *Salcido v.*
11 *Cargill* (Case Nos. 1:07-CV-01347-LJO-GSA, 1:08-CV-00605-LJO-GSA) (Eastern District of
12 California) (final approval of class action settlement for off-the-clock work by production-line
13 employees of meat-packing plant); *Elkin v. Six Flags* (Case No. BC342633) (Los Angeles County
14 Superior Court) (final approval of class action settlement for missed meal and rest periods on behalf of
15 hourly workers at Six Flags amusement parks); *Jimenez v. Perot Sys. Corp.* (Case No. RG07335321)
16 (Alameda County Superior Court) (final approval of class action settlement for misclassification of
17 hospital clerical workers); *Chau v. CVS RX Servs., Inc.* (Case No. BC349224) (Los Angeles County
18 Superior Court) (final approval of class action settlement for failure to pay overtime to CVS
19 pharmacists); *Reed v. CALSTAR* (Case No. RG04155105) (Alameda County Superior Court) (certified
20 class action on behalf of flight nurses); *Nat'l Fed'n of the Blind v. Target* (Case No. C 06-01802 MHP)
21 (N.D. Cal.) (certified class action on behalf of all legally blind individuals in the United States who
22 have tried to access Target.com); *Bates v. United Parcel Serv., Inc.* (2004 WL 2370633) (N.D. Cal.)
23 (certified national class action on behalf of deaf employees of UPS); *Satchell v. FedEx Express, Inc.*
24 (Case No. 03-02659 SI) (N.D. Cal.) (certified regional class action alleging widespread discrimination
25 within FedEx); *Siddiqi v. Regents of the Univ. of California* (Case No. C-99-0790 SI) (N.D. Cal.)
26 (certified class action in favor of deaf plaintiffs alleging disability access violations at the University
27 of California); *Lopez v. San Francisco Unified School Dist.* (Case No. C-99-03260 SI) (N.D. Cal.)
28 (certified class action in favor of plaintiffs in class action against school district for widespread

1 disability access violations); *Campos v. San Francisco State Univ.* (Case No. C-97-02326 MCC) (N.D.
2 Cal.) (certified class action in favor of disabled plaintiffs for widespread disability access violations);
3 *Singleton v. Regents of the Univ. of California* (Case No. 807233-1) (Alameda County Superior Court)
4 (class settlement for women alleging gender discrimination at Lawrence Livermore National
5 Laboratory); *McMaster v. BCI Coca-Cola Bottling Co.* (Case No. RG04173735) (Alameda County
6 Superior Court) (final approval of class action settlement for drive-time required of Coca-Cola account
7 managers); *Portugal v. Macy's West, Inc.* (Case No. BC324247) (Los Angeles County Superior Court)
8 (California statewide wage and hour "misclassification" class action resulting in a class-wide \$3.25
9 million settlement); *Taormina v. Siebel Sys., Inc.* (Case No. RG05219031) (Alameda County Superior
10 Court) (final approval of class action settlement for misclassification of Siebel's inside sales
11 employees); *Joseph v. The Limited, Inc.* (Case No. CGC-04-437118) (San Francisco County Superior
12 Court) (final approval of class action settlement for failure to provide meal and rest periods to
13 employees of The Limited stores); *Rios v. Siemens Corp.* (Case No. C05-04697 PJH) (N.D. Cal.) (final
14 approval of class action settlement for failure to pay accrued vacation pay upon end of employment);
15 *DeSoto v. Sears, Roebuck & Co.* (Case No. RG0309669) (Alameda County Superior Court) and
16 *Lenahan v. Sears, Roebuck & Co.* (Case No. 3-02-CV-000045 (SRC) (TJB)) (final approval of class
17 action settlement for failure to pay Sears drivers for all hours worked); among many others.

18 Further, Judge Gregory K. Frizzell of the United States District Court for the Northern District
19 of Oklahoma has praised the skill of this litigation team as class action litigators in *Huddleston v. John*
20 *Christner Trucking, LLC* (N.D. Okla., No. 4:17-cv-00549-GKF-CDL, October 31, 2022, ECF 285). At
21 final approval, Judge Frizzell found that "Class Counsel have extensive experience, reputation, and
22 ability that propelled the excellent result obtained for the Class Members" and that, prior to settlement,
23 "Class Counsel successfully certified three groups of class members on distinct theories of liability,
24 representing significant novelty and difficulty and requiring substantial skill." Judge William Q.
25 Hayes of the United States District Court for the Southern District of California also praised this team
26 in *Amaraut v. Sprint/United Mgmt. Co.*, 2021 WL 3419232, 2021 U.S. Dist. LEXIS 147176, at *18
27 (S.D. Cal. Aug. 5, 2021). Judge Hayes found that "Class Counsel has significant experience in class
28 action and wage and hour litigation and has demonstrated significant skill during this contentious

litigation.” In awarding a one-third fee award, Judge Hayes held that was justified by, inter alia, “the excellent results obtained, the substantial risk borne by Class Counsel in litigating this matter, [and] the high degree of skill and quality of work performed.”

8. Nearly my entire legal career has been devoted to advocating for the rights of individuals who have been subjected to illegal pay policies, discrimination, harassment, or retaliation and representing employees in wage and hour and discrimination class actions. I have litigated hundreds of wage and hour, employment discrimination and civil rights actions, and I manage many of the firm’s current cases in these areas. I am a member of the State Bar of California, and have had memberships with Public Justice, the National Employment Lawyers Association, the California Employment Lawyers Association, and the Consumer Attorneys of California. I served on the Board of Directors for the San Francisco Trial Lawyers Association and co-chaired its Women’s Caucus. I was named one of the “Top Women Litigators for 2010” by the Daily Journal. In 2012, I was nominated for Woman Trial Lawyer of the Year by the Consumer Attorneys of California. I have been selected as a Super Lawyer every year since 2014. I earned my bachelor’s degree from the University of California, and I am a graduate of the University of the Pacific, McGeorge School of Law.

II. PLAINTIFF’S CLAIMS

A. Factual Summary

9. Defendants Xponential Fitness, Inc. (“XFI”), Xponential Fitness, LLC (“XFL”) and their subsidiaries (collectively, “Defendants”) own, operate and manage global group of boutique fitness brands. Plaintiff is a former employee.

10. Plaintiff alleges a single cause of action under the Labor Code Private Attorneys General Act (“PAGA”) for failure to provide reimbursements for work-related expenses.

11. Plaintiff alleges that he and Covered Employees were required to utilize their own cell phones and internet data plans to communicate with supervisors, other employees and clients, and Defendant failed to provide reimbursements for these expenses.

B. Procedural History

12. On July 10, 2020, Plaintiff submitted a PAGA notice and first amended PAGA notice with the Labor and Workforce Development Agency (“LWDA”). These notices are attached as **Exhibit**

1 **D.** On December 23, 2020, Plaintiff filed his initial complaint against Defendants XFI and XFL in this
2 Court, alleging a single cause of action under the PAGA for failure to provide reimbursements for
3 work-related expenses.

4 13. On March 1, 2021, XFI and XFL filed their Answer. On August 5, 2021, the parties
5 agreed to mediate the matter, but, on June 15, 2022, the United States Supreme Court issued an opinion
6 in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), and the parties agreed to cancel the
7 mediation so XFI and XFL could review the decision and plan accordingly.

8 14. The parties then agreed to proceed with mediation and reset a new mediation date for
9 September of 2022. In advance of the mediation, XFI and XFL provided an estimate of the number of
10 aggrieved employees and spreadsheets with information regarding their reimbursements. However,
11 when Plaintiff assessed the spreadsheets with his retained expert, Plaintiff found that the spreadsheets
12 reflected significantly more employees than XFI and XFL's estimate. Because the parties were unable
13 to reach agreement on the fundamental issue of the number and identity of aggrieved employees, they
14 canceled the September 2022 mediation.

15 15. Subsequently, the parties engaged in formal discovery. From June of 2022 to May 2023,
16 the parties met and conferred regarding their respective discovery responses and respective positions
17 regarding the identity and number of aggrieved employees. XFI and XFL had maintained that their
18 subsidiaries' employees were not their employees. To address this issue, Plaintiff filed a second
19 amended PAGA notice with the Labor and Workforce Development Agency ("LWDA") on May 4,
20 2023, explicitly naming XFI's and XFL's subsidiaries as potential defendants to be included in this
21 action.

22 16. On June 6, 2023, the parties attended an informal discovery conference with the Court,
23 during which they continued to discuss their respective positions on the number and identity of
24 aggrieved employees. Around June 26, 2023, Defendants indicated that they were willing to proceed
25 to mediation that included the full scope of employees (*i.e.*, the "additional" employees who worked
26 for XFI's and XFL's subsidiaries). On July 19, 2023, Defendants provided updated data points for the
27 first round of mediation.

1 17. The parties attended a first round of mediation before mediator John Adler on July 31,
2 2023. The case did not resolve, but the parties agreed after the mediation to exchange further informal
3 discovery and conduct depositions in order to increase the likelihood of a resolution in a second round
4 of mediation.

5 18. On February 8, 2024, Plaintiff took the deposition of Defendants through one of their
6 corporate designees, Senior Vice President Theo Apanco. On February 13, 2024, Plaintiff received
7 updated data points from Defendants and further met and conferred with Defendants regarding the data
8 points.

9 19. On February 19, 2024, Defendants took the deposition of Plaintiff Frank Hine.

10 20. On February 20, 2024, the parties participated in a remote mediation before the Hon.
11 Amy Hogue (Ret.), and the parties thereafter agreed on the main terms of the Settlement. The parties
12 then spent several months negotiating and finalizing the Confidential Memorandum of Understanding
13 and the Settlement, which all parties executed on June 14, 2024 and September 27, 2024, respectively.

14 21. As of January 30, 2025, the Parties are unaware of any other existing case (class action,
15 individual, or PAGA) that will be affected by this settlement.

16 **III. SUMMARY OF THE TERMS IN THE SETTLEMENT**

17 22. The key financial terms of the settlement are as follows:

18

Settlement Amount	\$675,000.00
Attorneys' Fees	\$236,250.00
Litigation Costs	\$25,000.00
Settlement Administrator Costs	\$11,750.00
Plaintiff's Service Award	\$15,000.00

19
20
21

22 23. The Settlement provides for a non-reversionary total Settlement Amount of
23 \$675,000.00.²

24 24. Plaintiff's counsel seeks fees of \$236,250.00 (35% of the Settlement Amount) and costs
25 in the amount of \$25,000.00. The Settlement also provides for a \$15,000.00 service award to Plaintiff
26

27 ² If the actual number of Eligible Pay Periods is more than 10% greater than 47,727, Defendants shall
28 have the option of either (a) providing a proportional increase to the PAGA Settlement Amount or (b)
cutting the Covered Period off at a date which limits the group to no more than 52,500 pay periods.

1 for the effort and risk he undertook on behalf of the Covered Employees and as compensation for
2 Plaintiff's general release.

3 25. The parties have agreed to retain Phoenix Class Action Administrators ("Phoenix") as
4 the Settlement Administrator. Plaintiff's counsel has used Phoenix to administer dozens of settlements.
5 The Settlement provides for settlement administration costs to Phoenix in the amount of \$11,750.00.

6 26. Covered Employees are: "all current and former exempt and non-exempt employees who
7 worked for Defendants within the State of California during the Covered Period. Defendants estimate
8 that there are approximately 1,743 Covered Employees who worked approximately 47,727 Eligible
9 Pay Periods in the aggregate during the Covered Period."

10 27. The Released Claims are: "All claims for civil penalties under PAGA that were alleged
11 in the Action, including in the Complaint and Amended Complaint, or that could have been alleged
12 based on the facts in Plaintiff's notices to the LWDA (the "PAGA Notices") and in the Action arising
13 from Plaintiff's and the Covered Employees' employment during the Covered Period, including claims
14 based on alleged violations of Labor Code section 2802 and any applicable Industrial Welfare
15 Commission Order for failure to reimburse work-related expenses."

16 28. The Released Parties are: "all Defendants and all their present and former parent
17 companies, subsidiaries, divisions, related, associated, and/or affiliated companies, shareholders,
18 officers, directors, employees, agents, attorneys, insurers, successor and assigns, and any individual or
19 entity which could be liable for any of the Released Claims, including Defendants' Counsel."

20 **IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

21 29. The Settlement Amount of \$675,000.00 is fair, reasonable and adequate as it is consistent
22 with and furthers the purpose of PAGA. If approved by the Court, the Settlement will achieve PAGA's
23 objectives by: (1) holding Defendants accountable for their alleged violations of the Labor Code; (2)
24 deterring future violations of the Labor Code by Defendants and other employers; (3) collecting
25 penalties from Defendants and recovering 75% of those penalties on behalf of the State of California
26 for purposes of enforcement and education; and (4) distributing 25% of the penalties to the Covered
27 Employees.

1 30. The Net Settlement Amount is \$387,000.00, of which 75% – or, \$290,250.00 – will be
2 distributed to the LWDA. The distribution to the LWDA will help further its mission of protecting
3 workers.

4 31. 25% of the Net Settlement Amount – or, \$96,750.00 – will be distributed to Covered
5 Employees. Covered Employees will receive an estimated average net penalties amount of \$55.51 each
6 (\$96,750.00 divided by 1,743 Covered Employees).

7 32. The Settlement Amount is also fair, reasonable and adequate when considering
8 **Defendants’ estimated exposure** and the risks of continuing litigation, which Counsel carefully
9 assessed. Assuming a full 100% violation rate for each pay period at \$100 per employee for all Covered
10 Employees, the total penalties for failing to pay reimbursements is \$4,772,700.00. This estimate is
11 based on Defendants’ representation that 1,743 Covered Employees worked 47,727 Eligible Pay
12 Periods during the Covered Period.

13 33. This undiscounted exposure number is unrealistic, however, considering Class Counsel’s
14 factual and legal analyses in this case. Throughout this litigation, Defendants have vigorously denied
15 the allegations in Plaintiff’s complaint, and has denied any and all liability. Defendants have asserted
16 numerous legal and factual grounds available to defend this action, all of which present difficult hurdles
17 for Plaintiff.

18 34. For example, Defendants contend that they provided Covered Employees’ resources like
19 laptops and office landline phones that employees could utilize to perform any necessary job tasks.
20 Thus, Defendants assert that Covered Employees’ use of their own cell phones and internet data plans
21 were based on personal preference and therefore, are not “necessary expenditures or losses” as required
22 under Labor Code §2802.³

23 35. Plaintiff is aware that courts have explained that: “Ascertaining what was a necessary
24 expenditure will require an inquiry into what was reasonable under the circumstances....Section 2802
25 focuses not on whether an employee makes a request for reimbursement but rather on whether the

26 ³ Labor Code §2802(a) provides: “An employer shall indemnify his or her employee for **all necessary**
27 **expenditures or losses** incurred by the employee in direct consequence of the discharge of his or her
28 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
employee, at the time of obeying the directions, believed them to be unlawful” (emphasis added).

1 employer knows or has reason to know that the employee has incurred a reimbursable expense.” *Prado*
2 *v. Wal-Mart Stores*, No. CV 17-05630 AB (KKx), 2018 U.S. Dist. LEXIS 244193, at *8-9 (C.D. Cal.
3 Dec. 18, 2018) (internal quotations and citations omitted).

4 36. Under these circumstances, there is a significant risk that a factfinder may agree with
5 Defendant that Covered Employees voluntarily used their own cell phones and internet data plans –
6 resulting in *zero* recovery in this case. *See id.*, at *13 (finding no injury and no violation under §2802:
7 “Accordingly, it is not Wal-Mart’s duty to reimburse employees for the voluntary use of their phones—
8 for convenience, or other reasons—on the sales floor.”)

9 37. Although Plaintiff believes his case is strong, trials are inherently risky, and fees and
10 costs would increase significantly if the Action were to go to trial. Plaintiff’s claims would require
11 substantial additional preparation and discovery. They would require depositions of experts, the
12 presentation of percipient and expert witnesses at trial, as well as the consideration, preparation, and
13 presentation of voluminous documentary evidence and the preparation and analysis of expert reports.

14 38. Plaintiff is aware of the risk that ultimately, the Court may impose limitations on trial
15 that would make it difficult for him to prove his case. Defendants contend that the factual circumstances
16 under which Covered Employees worked for Defendants were varied so that Plaintiff would not be
17 able to overcome manageability issues. Although manageability is not a basis for the Court to dismiss
18 the action, Plaintiff still faces the risk that the Court may limit the evidence in these circumstances. *See*
19 *e.g., Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal. 5th 582, 619 (2024) (“We also emphasize that our
20 holding that trial courts lack inherent authority to strike a PAGA claim on manageability grounds does
21 not preclude trial courts from limiting the types of evidence a plaintiff may present or using other tools
22 to assure that a PAGA claim can be effectively tried.”).

23 39. Moreover, there is a significant risk that even if liability is found, the Court may choose
24 to exercise its discretion to reduce PAGA penalties. *See* Cal. Lab. Code § 2699(e)(2) (“a court may
25 award a lesser amount than the maximum civil penalty amount ...if, based on the facts and
26 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary
27 and oppressive, or confiscatory”). *See also, e.g., Fleming v. Covidien, Inc.*, 2011 U.S. Dist. LEXIS
28

1 154590, *2 (C.D. Cal., Oct. 13, 2011) (reducing penalties by approximately 82% from \$2,800,000 to
2 \$500,000).

3 40. By contrast, resolving this case by means of the Settlement will yield a prompt, certain,
4 and substantial recovery for the Covered Employees and the State. Such a result will benefit the parties
5 and the court system and will bring finality to over four years of litigation.

6 **V. THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE**

7 41. Plaintiff's counsel seeks \$236,250.00 in attorneys' fees (35% of the Settlement Amount),
8 plus litigation costs in the amount of \$25,000.00. Under the relevant factors, Plaintiff contends that
9 these requests are reasonable.

10 42. First, Plaintiffs' counsel's efforts resulted in a total Settlement Amount of \$675,000.00.
11 As discussed above, the recovery of the amount of penalties is a fair and reasonable settlement and an
12 especially favorable result in light of the number of Covered Employees and the challenges Plaintiffs
13 may have faced at trial.

14 43. Second, this **result was achieved by the work and success of Plaintiffs' counsel, who**
15 **negotiated the Settlement after extensive preparation.** Plaintiff's counsel are experienced
16 representative-action litigators (*see* above, ¶¶ 5–8), who have been representing Plaintiff and the State
17 in this matter on strictly contingency-fee basis. Plaintiff's counsel have exposed themselves to the risk
18 of zero recovery after a substantial investment of time, money, and resources, and have done so since
19 the inception of the case without any payment or compensation.

20 44. Third, although courts generally find it reasonable to award fees in contingency cases
21 reflecting a multiplier to lodestar, here, the requested fees are a *negative* multiplier to Plaintiff's
22 counsel's lodestar. The lodestar for SWCK in this Action, as of December 19, 2024, is \$340,589.50,
23 reflecting 481.4 hours of work. A true and correct copy of detailed breakdown of SWCK's lodestar as
24 of that date, is attached here as **Exhibit B**.

25 45. The lodestar for the W Employment Law, APC firm is \$54,960.00, reflecting 123.90
26 hours of work. Declaration of Jacob Whitehead In Support of Motion for Approval of PAGA Settlement
27 ("Whitehead Decl.") Together Plaintiff's counsel's lodestar is \$395,549.50. The requested fees are
28 only 60% of lodestar.

1 46. Fourth, the request for attorneys' fees in the amount of 35% of the Settlement Amount
2 falls within the range found acceptable by state and federal courts in California in comparable wage-
3 and-hour actions.

4 47. Plaintiff's counsel also seeks to recover their expenses incurred in the prosecution of this
5 action, in the amount of \$25,000.00. Reasonable litigation expenses are ordinarily included with an
6 award of attorneys' fees pursuant to California wage-and-hour law. Costs incurred include, for
7 example, costs for filing and service, mediation costs, document retrieval and printing costs, mailing
8 costs, depositions and jury fees. A true and correct copy of detailed breakdown of SWCK's costs as of
9 December 19, 2024 is attached here as **Exhibit C**.

10 48. Here, Plaintiff's counsel's expenses were reasonable, necessary to the prosecution, and
11 of the type customarily billed to fee-paying clients.

12 **VI. THE REQUESTED SERVICE AWARD IS REASONABLE**

13 49. Plaintiff has substantially contributed his time and efforts over a period of nearly four
14 years in pursuing claims on behalf of the Covered Employees and the State, and Plaintiff's role was
15 crucial in this case.

16 50. Plaintiff had discussions with his counsel, worked with his counsel to review facts and
17 answer questions, prepared for a deposition and was deposed, assisted his counsel in their mediation
18 efforts, and has generally remained apprised of the case.

19 51. Further, in agreeing to serve as PAGA representative, Plaintiff formally agreed to accept
20 the responsibilities of representing the interests of all Covered Employees and the risks of having his
21 name associated with a wage-and-hour action.

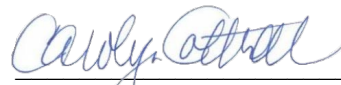
22 52. In addition, as set forth in the Settlement, Plaintiff agreed to an individual release that
23 covers potential claims that exceed the scope of the claims asserted in the operative complaint and
24 released by the Covered Employees.

25 53. Plaintiff's service payment award in the amount of \$15,000.00 is reasonable considering
26 the efforts he made and the risks he took in prosecuting this action to obtain the Settlement.

27 I declare under penalty of perjury under the laws of the United States that the foregoing is true
28 and correct.

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Executed on this 30th day of January in Reno, Nevada.



Carolyn H. Cottrell

EXHIBIT A

PAGA SETTLEMENT AND RELEASE AGREEMENT

This PAGA Settlement and Release Agreement (“Settlement” or “Agreement”) is made and entered into by and between Plaintiff Frank Hine (“Plaintiff”), as a private attorney general acting on behalf of the State of California pursuant to Labor Code section 2698 et seq., the Private Attorneys General Act (“PAGA”) on the one hand, and Defendants Xponential Fitness, Inc., Xponential Fitness, LLC, Cyclebar Franchising, LLC, AKT Franchise, LLC, Club Pilates Franchise, LLC, Row House Franchise, LLC, YogaSix Franchise, LLC, Stride Franchise, LLC, Pure Barre Franchising, LLC, Stretch Lab Franchise, LLC, BFT Franchise Holdings, LLC, and Rumble Franchise, LLC, (collectively “Defendants”), on the other hand, hereinafter collectively referred to as the “Parties.” Subject to the approval of the Court, the Action (defined below) is hereby being compromised and settled pursuant to the terms and conditions set forth in this Agreement.

A. Definitions.

1. “Action” means *Hine v. Xponential Fitness, Inc., et al.*, Superior Court of California, County of Orange, Case No. 30-2020-01176106.

2. “Covered Employees” means all current and former exempt and non-exempt employees who worked for Defendants within the State of California during the Covered Period. Defendants estimate that there are approximately 1,743 Covered Employees who worked approximately 47,727 Eligible Pay Periods in the aggregate during the Covered Period.

3. “Covered Employees’ Settlement Proceeds” means the twenty-five percent (25%) of the Net Settlement Amount that shall be paid to the Covered Employees as payment of civil penalties under the PAGA.

4. “Covered Period” means the period between October 19, 2019 to February 20, 2024.

5. “Court” means the Superior Court of California, County of Orange.

6. “Defendants” means Xponential Fitness, Inc., Xponential Fitness, LLC, Cyclebar Franchising, LLC, AKT Franchise, LLC, Club Pilates Franchise, LLC, Row House Franchise, LLC, YogaSix Franchise, LLC, Stride Franchise, LLC, Pure Barre Franchising, LLC, Stretch Lab Franchise, LLC, BFT Franchise Holdings, LLC, and Rumble Franchise, LLC.

7. “Defendants’ Counsel” means and refers to Jonathan P. Schmidt and Alexis Hishmeh of Jackson Lewis P.C.

8. “Effective Date” means and refers to: (i) the date that the time to appeal the Judgment entered in the Action approving the Settlement has expired; or (2) the date on which any appeal of the Judgment entered in the Action has been fully and finally resolved in a way that approves and does not alter the terms of the Settlement.

9. “Eligible Pay Periods” means and refers to the total number of pay periods during the Covered Period in which a Covered Employee worked for Defendants in California.

10. “Fee and Cost Award” means and refers to an award to Plaintiff’s Counsel of attorneys’ fees and actual costs, to be paid from the Settlement Amount, in amounts approved by the Court and consistent with Paragraph 26(d) below.

11. “Final Order” means and refers to the order of the Court approving the Settlement and Release Agreement.

12. “LWDA Settlement Proceeds” means and refers to the seventy-five percent (75%) of the Net Settlement Amount that shall be paid to the Labor Workforce and Development Agency (“LWDA”).

13. “Net Settlement Amount” means and refers to the Settlement Amount less the Plaintiff’s Counsel’s Fee and Cost Award, Plaintiff’s Service Award, and the Settlement Administrator Costs, as approved by the Court.

14. “Notice” means and refers to the notice that will be sent to the Covered Employees after the Court’s entry of its Final Order approving the Settlement, and shall be similar in form and content to the notice attached hereto as Exhibit A.

15. “Parties” means and refers to Plaintiff and Defendants, collectively.

16. “Plaintiff” means and refers to Frank Hine.

17. “Plaintiff’s Counsel” means and refers to Carolyn H. Cottrell, Esther L. Bylsma and Sandra Acosta Tello of Schneider Wallace Cottrell Konecky LLP and Co-Counsel Jacob Whitehead of W Employment Law.

18. “Released Parties” shall collectively mean all Defendants and all their present and former parent companies, subsidiaries, divisions, related, associated, and/or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successor and assigns, and any individual or entity which could be liable for any of the Released Claims, including Defendants’ Counsel.

19. “Service Award” means and refers to an award to Plaintiff to be paid from the Settlement Amount, in amounts approved by the Court and consistent with Paragraph 26(b) below.

20. “Settlement Administrator” means and refers to Phoenix Class Action Administrators, the third-party administrator that will administer the terms of the Settlement.

21. “Settlement Administrator Costs” means and refers to the fees and costs incurred or charged by the Settlement Administrator in connection with its duties under this Agreement.

22. “Settlement Amount” means and refers to the non-reversionary, settlement amount of Six Hundred and Seventy-Five Thousand Dollars (\$675,000.00) that Defendants will pay under

this Agreement. The Settlement Amount is an all-in and all-inclusive, non-reversionary, “checks mailed”, cash settlement.

B. General.

23. On December 23, 2020, Plaintiff filed his initial PAGA complaint in the Action (“Complaint”), seeking civil penalties for failure to reimburse necessary business expenses (Cal. Lab. Code § 2802). On May 4, 2023, Plaintiff filed his amended PAGA notice (“Second Amended Notice”). On August 13, 2024 Plaintiff filed his first amended PAGA complaint (“Amended Complaint”) in connection with the Settlement, to which Defendants stipulated for the sole purpose of including all Defendants in the Settlement and to obtain Settlement approval, and to which Defendants reserve all rights to challenge the Amended Complaint if the Settlement is not finalized and/or if the Parties cannot obtain Court approval.

24. The Parties have conducted a thorough investigation of the Action and litigated the issues vigorously. Litigation efforts included, without limitation, conducting written discovery; exchanging data and documents relating to the Plaintiff and the Operative Claims for the Covered Period; Plaintiff’s filing, and both Parties briefing pleadings issues; conducting and exchanging sample data related to the Operative Claims; taking and defending the deposition of Defendants’ Person Most Knowledgeable; Plaintiff’s interviewing Covered Employees pursuant to a *Belaire-West* notice; and participating in two full-day mediation sessions before mediator John Adler and Judge Amy Hogue. Settlement was reached only after extensive settlement negotiations with the assistance of Judge Hogue. The Parties and their counsel agree that the settlement set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the LWDA and the Covered Employees.

25. Neither the Parties’ settlement, nor this Agreement, nor the acts to be performed or the orders to be entered pursuant to the terms of this Settlement, shall be construed as an admission by Defendants of any liability or wrongdoing. The Parties further agree that nothing in the Settlement is evidence that the allegations in the Action have any merit. Defendants do not admit to liability or to the suitability of this case for representative litigation other than for purposes of this Settlement. Litigation efforts included, without limitation, conducting written discovery; exchanging data and documents relating to the Plaintiff and the claims in Amended Complaint (“Operative Claims”) for the Covered Period.

C. Terms of Settlement.

26. Subject to the Court’s review and approval, the financial terms of the settlement are as follows:

(a) **Settlement Amount:** Defendants will pay a maximum Settlement Amount of Six Hundred and Seventy-Five Thousand Dollars (\$675,000.00). This Settlement Amount is inclusive of all settlement payments to the State of California and the Covered Employees, the Service Award to Plaintiff, the Fee and Cost Award to Plaintiff’s Counsel, and the Settlement Administrator Costs. Defendants will have no other monetary obligations under this Agreement and no portion of the Settlement Amount will revert to Defendants.

(b) **Service Award to Plaintiff:** Plaintiff will be paid a maximum of Fifteen Thousand Dollars (\$15,000.00) as a service enhancement award. Defendants agree not to oppose Plaintiff's requests for an award up to this amount. The Service Award is intended to (i) compensate Plaintiff for signing an individual release that covers potential claims that exceed the scope of the Operative Claims; and (ii) cover any request for a service enhancement award for Plaintiff. The Service Award will be paid out of the Settlement Amount. Plaintiff, in exchange for the Service Award, will release the Released Parties from potential claims he may have against them in accordance with Paragraphs 29 and 30 below. Plaintiff will be issued an IRS Form 1099 in connection with the payment of the Service Award. Plaintiff shall be solely responsible for paying any and all applicable taxes on this payment. The Parties agree that Service Award by the Court to Plaintiff of less than the amount requested by Plaintiff shall not be a basis for either of the Parties to revoke or void this Agreement.

(c) **Settlement Administrator Costs:** The Settlement Administrator Costs shall be paid from the Settlement Amount and are estimated to be \$11,750.00.

(d) **Fee and Cost Award:** Plaintiff's Counsel may apply for an award of (i) attorneys' fees, not to exceed 35% of the Total Class Action Settlement Amount, that is, Two Hundred Thirty-Six Thousand Two Hundred Fifty Dollars (\$236,250.00); and (ii) actual costs, not to exceed Twenty-Five Thousand Dollars (\$25,000.00) for costs. Defendants agree not to oppose Plaintiff's Counsel's request for these attorneys' fees and costs. The Fee and Cost Award approved by the Court will be paid out of the Settlement Amount. Plaintiff's Counsel will be issued an IRS Form 1099 in connection with the payment of the Fee and Cost Award. Plaintiff's Counsel shall be solely responsible for paying any and all applicable taxes on this payment.

(e) **Allocation of Net Settlement Amount:** After deducting the amounts specified in Paragraphs 26(b) (Plaintiff's Service Award), 26(c) (Settlement Administrator Costs), and 26(d) (Plaintiff's Counsel's Fee and Cost Award) from the Settlement Amount, the balance remaining will form the Net Settlement Amount and will be paid to the Covered Employees and the LWDA as follows:

(i) **Covered Employees' Settlement Proceeds.** Twenty-five percent (25%) of the Net Settlement Amount will be paid to the Covered Employees.

(ii) Seventy-five percent (75%) of the Net Settlement Amount will fund the LWDA Settlement Proceeds and will be paid by the Settlement Administrator to the LWDA in accordance with Paragraph 37, below.

D. Release by the Covered Employees and the State of California.

27. As of the Effective Date, Plaintiff, the Covered Employees, and the State of California will and hereby do release the Released Parties from the following claims for PAGA penalties, collectively referred to as the "Released Claims" during the Covered Period:

All claims for civil penalties under PAGA that were alleged in the Action, including in the Complaint and Amended Complaint, or that could have been alleged based on the facts in Plaintiff's notices to the LWDA (the "PAGA Notices") and in the Action arising from Plaintiff's and the Covered Employees' employment during

the Covered Period, including claims based on alleged violations of Labor Code section 2802 and any applicable Industrial Welfare Commission Order for failure to reimburse work-related expenses.

28. Covered Employees are not eligible to opt out of the Settlement. As a result, the Parties have agreed to the “one-step” approval process common to PAGA settlements.

E. Release by Plaintiff.

29. In addition to the Released Claims, Plaintiff knowingly and voluntarily release and forever discharge Released Parties, of and from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights, or liabilities of any nature and description whatsoever, known or unknown, that Plaintiff individually may possess against the Released Parties arising from Plaintiff’s employment with Defendants or the renumeration for or termination of such employment, including, but not limited to, any alleged violation of the following, as amended:

- Title VII of the Civil Rights Act of 1964;
- Sections 1981 through 1988 of Title 42 of the United States Code;
- The Employee Retirement Income Security Act of 1974 (“ERISA”);
- The Internal Revenue Code of 1986;
- The Immigration Reform and Control Act;
- The Americans with Disabilities Act of 1990;
- The Worker Adjustment and Retraining Notification Act;
- The Fair Credit Reporting Act;
- The Family and Medical Leave Act;
- The Equal Pay Act;
- The Genetic Information Nondiscrimination Act of 2008;
- The Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”);
- Families First Coronavirus Response Act;
- The Pregnant Worker’s Fairness Act (“PWFA”)
- California Family Rights Act – Cal. Gov’t Code § 12945.2;
- California Fair Employment and Housing Act – Cal. Gov’t Code § 12900 et seq.;
- California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.;
- Statutory Provisions Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775 et seq.;
- California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.;
- California Parental Leave Law – Cal. Lab. Code § 230.7 et seq.;
- California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394;
- The California Occupational Safety and Health Act, as amended, and any applicable regulations thereunder;
- The California Consumer Credit Reporting Agencies Act – Cal. Civ. Code § 1785 et seq.
- California Investigative Consumer Reporting Agencies Act – Cal. Civ. Code § 1786 et seq.;

- Those provisions of the California Labor Code that lawfully may be released;
- any other federal, state or local law, rule, regulation, or ordinance;
- any public policy, contract, tort, or common law; or
- any basis for recovering costs, fees, or other expenses including attorneys' fees incurred in these matters.

30. The Parties agree that on the Effective Date, to effect a full and complete general release as described above, Plaintiff expressly waives and relinquishes all rights and benefits of Section 1542 of the Civil Code of the State of California, and does so understanding and acknowledging the significance and consequence of specifically waiving Section 1542. Section 1542 of the Civil Code of the State of California states as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Thus, notwithstanding the provisions of Section 1542, and to implement a full and complete release and discharge of the Releasees, Plaintiff expressly acknowledges this Agreement is intended to include in its effect, without limitation, all claims Plaintiff does not know or suspect to exist in Plaintiff's favor at the time of signing this Agreement, and that this Agreement contemplates the extinguishment of any such claims. Plaintiff warrants Plaintiff has read this Agreement, including this waiver of California Civil Code Section 1542, and that Plaintiff has consulted with or had the opportunity to consult with counsel of Plaintiff's choosing about this Agreement and specifically about the waiver of Section 1542, and that Plaintiff understands this Agreement and the Section 1542 waiver, and so Plaintiff freely and knowingly enters into this Agreement. Plaintiff further acknowledges that Plaintiff later may discover facts different from or in addition to those Plaintiff now knows or believes to be true regarding the matters released or described in this Agreement, and even so Plaintiff agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Plaintiff expressly assumes any and all risk of any mistake in connection with the true facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now unknown to Plaintiff relating thereto.

31. Nothing in this Agreement or any other agreement Plaintiff may have signed or company policy, prohibits, prevents, or otherwise limits Plaintiff from (1) reporting possible violations of federal or other law or regulations to any governmental agency, regulatory body, or law enforcement authority (*e.g.*, the U.S. Equal Employment Opportunity Commission, National Labor Relations Board, Securities and Exchange Commission, Department of Justice, Commodity Futures Trading Commission, U.S. Congress, or an Inspector General), (2) filing a charge or complaint with any such governmental agency, or (3) initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or participating or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including the U.S. Securities and Exchange Commission, or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation. Plaintiff is also not

required to notify or obtain permission from Defendants to engage in the conduct in the preceding sentence, nor does Plaintiff need to notify Defendants that he has engaged in such conduct. The consideration provided to Plaintiff in this Agreement shall be the sole relief provided to Plaintiff for any claims released by Plaintiff: Plaintiff agrees to waive any monetary benefits or recovery against Defendants in connection with any such claim, charge or proceeding, except nothing in this Agreement shall be interpreted to prohibit or prevent Plaintiff from recovering an award for information provided to any government agencies.

32. Plaintiff is not waiving any rights Plaintiff may have to: (i) Plaintiff's own vested or accrued employee benefits under Defendants' qualified retirement benefit plans as of the Separation Date; (ii) benefits or rights to seek benefits under applicable workers' compensation (except as to claims under Labor Code sections 132a and 4553) or unemployment insurance or indemnification statutes; (iii) pursue claims which by law cannot be waived by signing this Agreement; or (iv) enforce this Agreement.

33. If any claim is not subject to release, to the extent permitted by law, Plaintiff waives any right or ability to be a class or collective action representative based on such a claim in which Defendants or any other Released Party identified in this Agreement is a party. Similarly, as to any such claim against Defendants or any other Released Party that is not otherwise released, Plaintiff waives Plaintiff's right to a jury trial subject to applicable law.

F. Settlement Approval and Implemental Procedures.

34. Plaintiff's Counsel will prepare a motion and proposed order for filing with the Court requesting the Court to approve this Settlement and Release Agreement. The approval order is to be mutually agreed upon by the Parties prior to Plaintiff presenting the order to the Court. At least five (5) business days before filing the motion and proposed order with the Court, Plaintiff's Counsel will provide Defendants' Counsel with a draft of the brief and proposed order for Defendants' Counsel's review and commenting.

35. Plaintiff's Counsel shall thereafter file the motion papers with the Court. In accordance with Labor Code § 2699(1)(2), Plaintiff's Counsel shall also submit the motion papers (including notice of the hearing date) and this Settlement and Release Agreement to the LWDA on the same day it files the motion and proposed order. Defendants will not oppose Plaintiff's motion and proposed order.

36. On the Effective Date, all Covered Employees will: (i) be bound by the terms and conditions of the Settlement; (ii) be deemed to have waived all objections and oppositions to the fairness, reasonableness, and adequacy of this Settlement; and (iii) be entitled to receive a share of the Net Settlement Amount, as set forth herein.

37. Within thirty (30) calendar days after the Effective Date, Defendants will provide the Settlement Administrator a confidential list setting forth the name, last known addresses, Social Security number, and number of Eligible Pay Periods for each Covered Employee. The Settlement Administrator will perform a National Change of Address search on all the Covered Employees to update the addresses of the Covered Employees. The data provided by Defendants will be presumed to be correct. All disputes regarding the Eligible Pay Periods or the Covered Employee

allocation amounts from the Covered Employees' Settlement Proceeds calculated by the Settlement Administrator will be resolved and decided by the Settlement Administrator or the Court.

38. Within twenty (20) calendar days after the Effective Date, Defendants shall wire transfer the Settlement Amount to the Settlement Administrator, who will deposit the funds into the bank account of the Qualified Settlement Fund established by the Settlement Administrator for purposes of this settlement. All amounts to be paid to the Plaintiff, Covered Employees, Plaintiff's Counsel, Settlement Administrator, and LWDA shall be paid from this Qualified Settlement Fund.

39. After the Settlement Administrator deducts the amount of Plaintiff Counsel's approved Fee and Cost Award, Plaintiff's approved Service Award, and the Settlement Administrator Costs from the Settlement Amount, the remaining balance will constitute the Net Settlement Amount, which will be distributed as set forth herein.

40. Within ten (10) calendar days of receiving the wire transfer from Defendants, the Settlement Administrator shall: (i) mail the settlement checks to the Covered Employees; (ii) mail a check for the LWDA Settlement Proceeds to the LWDA; (iii) mail checks for any approved Service Award to the Plaintiff; and (iv) pay Plaintiff's Counsel's approved Fee and Cost Award in accordance with any wire transfer instructions from Plaintiff's Counsel. The settlement checks mailed to each Covered Employee will be accompanied by a Notice (similar in form and content to the sample form set forth in Exhibit A) explaining the Covered Employee's payment and the deadline to cash his/her settlement check.

41. The Covered Employees shall have 180 calendar days after mailing to cash their settlement checks. If any Covered Employee's check is not cashed within that period, the check will be void and a stop-payment will be issued. In such event, the Covered Employee will be deemed to have irrevocably waived any right in or claim to his/her share, except that the Covered Employee may seek to claim the funds from the Controller of the State of California to be held pursuant to the Unclaimed Property Law, Civil Code section 1500 et seq., in the name of the Covered Employee to whom the check was issued, until such time that they claim their property. The release of the Released Claims nevertheless will be binding upon all Covered Employees, including those who do not cash their checks within the 180-day period. The Settlement Administrator, Defendants, Defendants' Counsel, Plaintiff, and Plaintiff's Counsel will not have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks, and will not have any duty to seek any funds from the Controller of the State of California.

42. The Covered Employee's share of the Net Settlement Amount from this Settlement will be allocated 100% as alleged penalties and interest. IRS Form 1099 will issue for alleged unpaid civil penalties and interest.

G. Escalator Clause

43. If the actual number of Eligible Pay Periods is more than 10% greater than 47,727, Defendants shall have the option of either (a) providing a proportional increase to the PAGA

Settlement Amount or (b) cutting the Covered Period off at a date which limits the group to no more than 52,500 pay periods.

H. Miscellaneous Provisions.

44. **Voiding the Agreement:** If for any reason the Court does not approve this Settlement and Release Agreement, the parties shall have a period of sixty (60) calendar days (the “Grace Period”) in which to provide any additional briefing or information requested by the Court, and/or to file a new, supplemental, or renewed request for settlement approval with the Court, and/or, in each Party’s sole discretion, to revise this Agreement. If the parties do not file anything with the Court during such a Grace Period, this Settlement shall be considered void *ab initio* and shall be of no force and effect whatsoever, and shall not be referred to or used for any purpose whatsoever. If the Effective Date does not occur, the Parties shall be returned to their respective statuses as of February 19, 2024. If the Settlement is approved by Court, and challenges to the Court’s approval are not withdrawn on the record at the hearing, the Agreement will remain in effect and binding on the Parties, and the Action and all related actions will remain stayed, pending final resolution of any challenges or appeals.

45. **Tolling:** All limitations periods and administrative exhaustion periods, whether statutory, contractual, or equitable, applicable to Plaintiff, as an individual, against Defendants, are hereby tolled. However, any claims and causes of action already barred by any applicable statute of limitations or passage of time shall not be and are not revived by this Agreement. The tolling of any applicable limitations period on such claims shall continue until the Court’s denial of approval of the Settlement (“Termination Date”). The period between February 20, 2024 (the “Effective Date”) and the Termination Date is the “Tolling Period.” On the Termination Date, the Parties shall have the same rights, remedies, and damages, at law, under contract, or in equity, that each of them had on the Effective Date, and the Tolling Period shall be excluded from any time calculation in determining whether any period of limitations has run. This Agreement is permitted under California Code of Civil Procedure section 360.5.

46. **Waiver:** The waiver by one Party of any breach of this Settlement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement.

47. **Parties’ Authority:** The signatories hereto represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof.

48. **Mutual Full Cooperation:** The Parties will fully cooperate with each other to accomplish the terms of this Settlement, including but not limited to executing such documents and taking such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court or otherwise, to effectuate this Settlement and the terms set forth herein.

49. **No Prior Assignments:** The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause of action, or rights released and discharged by this Agreement.

50. **Confidentiality:** Plaintiff and Plaintiff's Counsel will not make any public disclosures of any kind regarding the Settlement including, but not limited to, postings on Plaintiff's Counsel's website and postings on any social media sites or outlets. Plaintiff's Counsel will take all steps necessary to ensure the Plaintiff is aware of, and will encourage him to adhere to, the restriction against any public disclosures regarding the Settlement. Plaintiff's Counsel will not include or use the Settlement for any marketing or promotional purposes, or for attempting to influence Defendants' business relationships, either before or after the motion to approve the PAGA Settlement is filed. Plaintiff and Plaintiff's Counsel will not initiate any communications with the media or third parties. If contacted by the media or third parties, they will only discuss information publicly available. Plaintiff's Counsel will take all steps necessary to ensure Plaintiff is aware of, and will encourage him to adhere to, the restriction against initiating any media comment. Plaintiff's Counsel further agrees not to use the Settlement or any of its terms for any marketing or promotional purposes. Nothing herein will restrict (i) Plaintiff from discussing this settlement with his spouse, attorneys, or tax advisors; (ii) Plaintiff's Counsel from citing the Settlement or including publicly available information regarding this Settlement in future judicial submissions regarding Plaintiff's Counsel's qualifications and experience in public court filings; or (iii) Plaintiff's Counsel from communicating with the Plaintiff in this case, or discussions with the LWDA, or with the court in which this action is pending. Further, the Parties understand and agree that Plaintiff's Counsel may disclose this Settlement if ordered to do so by the Court. Notwithstanding the foregoing, nothing in this Agreement restricts or prohibits Plaintiff or Plaintiff's Counsel from initiating communications directly with, responding to any inquiries from, providing testimony before, providing confidential information to, reporting possible violations of law or regulation to, or from filing a claim or assisting with an investigation directly with a self-regulatory authority or a government agency or entity, including the U.S. Securities and Exchange Commission, or from making other disclosures that are protected under the whistleblower provisions of state or federal law or regulation. Plaintiff and/or Plaintiff's Counsel do not need the prior authorization of Defendants to engage in conduct protected by the preceding sentence, and Plaintiff and/or Plaintiff's Counsel do not need to notify Defendants that Plaintiff or Plaintiff's Counsel have engaged in such conduct.

51. **Attorneys' Fees and Costs:** Defendants shall each bear their own attorneys' fees and costs. Plaintiff shall bear his own attorneys' fees and costs, but is entitled to seek fees and costs as part of the Settlement, as discussed above.

52. **Judgment:** Plaintiff's request to the Court to approve this Settlement will include a proposed order that judgment be entered according to the terms of the Agreement.

53. **Binding Settlement:** This Agreement is a settlement document and shall, pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement and/or interpret or enforce the Agreement.

54. **Enforcement Actions:** Except as otherwise provided in this Settlement and Release Agreement, in the event that a Party to the Agreement institutes any legal action or other proceeding against the other Party to enforce the provisions of this Agreement or to declare rights and/or obligations under this Agreement, the prevailing Party shall be entitled to recover from the

other Party its or his reasonable attorneys' reasonable attorneys' fees and costs incurred in connection with any such action or proceeding.

55. **Notices:** Unless otherwise specifically provided herein, all notices, demands, or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed:

To Plaintiff:

Carolyn H. Cottrell,
Esther L. Bylsma, and
Sandra Acosta Tello
Schneider Wallace Cottrell Konecky LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Email: ccottrell@schneiderwallace.com
ebylsma@schneiderwallace.com
sacostatello@schneiderwallace.com

To Defendants:

Jonathan P. Schmidt
Alexis N. Hishmeh
Jackson Lewis P.C.
200 Spectrum Center Dr #500
Irvine, CA 92618
Email: jonathan.schmidt@jacksonlewis.com
alexis.hishmeh@jacksonlewis.com

56. **Construction:** The terms and conditions of this Agreement are the result of lengthy, intensive arms-length negotiations between the Parties, and this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or her/its counsel participated in the drafting of this Agreement.

57. **Captions and Interpretations:** Paragraph/section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Agreement or any provision thereof. Each term of this Agreement is contractual and not merely a recital.

58. **Modification:** The Agreement may not be changed, altered, or modified, except in writing signed by the Parties or their successors-in-interest or counsel for all Parties, and approved by the Court if necessary. This Agreement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties or their successors-in-interest or counsel for all Parties and approved by the Court if necessary. Notwithstanding the foregoing, administrative changes reasonably necessary to facilitate implementation of the Agreement may be confirmed in a writing approved by counsel for both Parties (including a writing approved

through the exchange of email messages) without the signatures of the Parties themselves or the approval of the Court.

59. **Severability:** If any term or portion of a term of this Agreement is held to be invalid or unenforceable, the remaining provisions and/or remaining portions of provisions will continue to be valid and will be performed, construed, and enforced to the fullest extent permitted by law, and the invalid or unenforceable term or portion of a term will be deemed amended and limited according to the intent of the Parties, as determined from this Agreement to the extent necessary to maximum enforceability or validation

60. **Choice of Law and Venue:** This Agreement shall be governed by and construed, enforced, and administered in accordance with the laws of the State of California, without regard to its conflicts-of-law rules. Any legal action or other proceeding to enforce or interpret the provisions of this Agreement or to declare rights and/or obligations under this Agreement shall be filed in California Superior Court, County of Orange, which shall have the exclusive jurisdiction to hear any such legal action or other proceeding.

61. **Integration Clause:** This Agreement contains the entire agreement between the Parties relating to the settlement and the transactions contemplated herein, and all earlier or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a Party or such Party's counsel, are merged herein. No rights hereunder may be waived except in writing.

62. **Advice of Counsel.** The Parties are represented by competent counsel and they have had an opportunity to consult with counsel. The Parties recognize that this is a good faith compromise of the PAGA claims raised in the Action and the PAGA Notices, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

63. **Binding On Assigns:** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

64. **Counterparts:** The Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully-signed Agreement, which shall be binding upon and effective as to all Parties. Signed copies of this Agreement can be delivered manually, through a third-party delivered company, or electronically.

Dated: September 23, 2024 **PLAINTIFF'S COUNSEL (approved as to form):**
SCHNEIDER WALLACE COTTRELL KONECKY LLP

By: 

CAROLYN H. COTTRELL
ESTHER L. BYLSMA
SANDRA ACOSTA TELLO

Dated: 9/23, 2024

PLAINTIFF (agreed as to form and substance):

Frank Beau Hine

FRANK HINE

Dated: September 27, 2024

DEFENDANTS' COUNSEL (approved as to form):
JACKSON LEWIS P.C.

[Signature]

By: _____

JONATHAN P. SCHMIDT
ALEXIS N. HISHMEH

Dated: September 26, 2024

**DEFENDANTS XPONENTIAL FITNESS, INC.,
XPONENTIAL FITNESS, LLC, CYCLEBAR
FRANCHISING, LLC, AKT FRANCHISE, LLC,
CLUB PILATES FRANCHISE, LLC, ROW HOUSE
FRANCHISE, LLC, YOGASIX FRANCHISE, LLC,
STRIDE FRANCHISE, LLC, PURE BARRE
FRANCHISING, LLC, STRETCH LAB
FRANCHISE, LLC, BFT FRANCHISE HOLDINGS,
LLC, AND RUMBLE FRANCHISE, LLC (agreed as
to form and substance)**

By: *John Meloun*

Title: CFO

EXHIBIT A

Notice of PAGA Settlement and Release of Claims

***Hine v. Xponential Fitness, Inc., et al., Superior Court of California, County of Orange,
Case No. 30-2020-01176106***

<<RecipientName>>

Dear [NAME]:

I. NOTICE OF PAGA SETTLEMENT

The Orange County Superior Court (the “Court”) approved a settlement in the above-captioned action filed by Frank Hine (“Plaintiff”) against Xponential Fitness, Inc.; Xponential Fitness, LLC; Cyclebar Franchising, LLC; AKT Franchise, LLC; Club Pilates Franchise, LLC; Row House Franchise, LLC; YogaSix Franchise, LLC; Stride Franchise, LLC; Pure Barre Franchising, LLC; Stretch Lab Franchise, LLC; BFT Franchise, Holdings, LLC; and Rumble Franchise, LLC (collectively “Defendants”). Enclosed is your payment from the settlement of the case.

You have been identified as one of the Covered Employees covered by the above-captioned case. According to Defendants’ records, you are a current or former employee of one or more of the Defendants who worked within the State of California during the period between October 19, 2019 to February 20, 2024 (the “Covered Period”).

Plaintiff, who is also a Covered Employee, filed the above-captioned lawsuit against Defendants under the Private Attorneys General Act of 2004 (“PAGA,” at California Labor Code § 2699), alleging that Defendants required him and the Covered Employees to use their own cell phone and internet data plans to perform work-related tasks such as communicating with supervisors, fellow employees, and clients, but that Defendants did not reimburse the Covered Employees for this necessary, work-related use of their personal devices and data plans. Plaintiff sought civil penalties on behalf of all individuals who worked for any of the Defendants during the Covered Period.

The Court approved the settlement on [INSERT DATE OF SETTLEMENT APPROVAL].

The Court has not made a determination regarding Plaintiff’s allegations. This Notice is not to be understood as an expression of any opinion by the Court as to the merits of the claim. However, the Court has approved the civil penalties settlement amount to be paid by Defendants.

Defendants maintain that they complied with the California Labor Code at all times and enter into this settlement with no admission of liability and solely for the purposes of compromising and settling the action to avoid the cost and operational burden of continued litigation.

II. CALCULATION OF INDIVIDUAL PAGA PAYMENT

According to Defendants’ records, you worked for Defendants during

<<**EligiblePayPeriods**>> Eligible Pay Periods during the Covered Period. Your individual PAGA payment is <<**CheckAmount**>>.

You should cash your check by **[180 DAYS AFTER ISSUANCE]**, after which the check will be void and you will no longer be able to cash it. Your check is subject to taxation as required by law.

Each individual PAGA payment was calculated on a *pro rata* (i.e., proportional) basis based on the number of Eligible Pay Periods¹ in which each Covered Employee worked for Defendants during the Covered Period divided by the total number of Eligible Pay Periods in which all Covered Employees worked for Defendants during the Covered Period.

III. RELEASE

The Court approved the parties' settlement on **[INSERT DATE OF SETTLEMENT APPROVAL]**. Pursuant to the settlement, in exchange for the individual PAGA payments to Covered Employees and the LWDA Settlement Proceeds Payment to the Labor & Workforce Development Agency ("LWDA"), the State of California and all Covered Employees (including Plaintiff), shall be deemed to have fully and finally released and discharges Defendants and all their present and former parent companies, subsidiaries, divisions, related, associated, and/or affiliated companies, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity which could be liable for any of the Released Claims, including Defendants' Counsel, from the "Released Claims."

For purposes of this settlement, the "Released Claims" are defined as all claims for civil penalties under PAGA that were alleged in the above-captioned action, including in the Complaint and Amended Complaint, or that could have been alleged based on the facts in Plaintiff's notices to the LWDA (the "PAGA Notices") and in the action arising from Plaintiff's and the Covered Employees' employment during the Covered Period, including claims based on alleged violations of Labor Code § 2802 and any applicable Industrial Welfare Commission Order for failure to reimburse work related expenses. The Released Claims do not include any claims or actions to enforce this Settlement, wage claims, claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Covered Period.

Pursuant to the settlement, enclosed is a check for your share of a portion of the civil penalties. You are not a party to this lawsuit, but you and the government are bound by the judgment in this matter as to the civil penalties under PAGA.

IV. SETTLEMENT ADMINISTRATOR

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

You may call the Settlement Administrator, Phoenix Class Action Administrators, toll

¹ "Eligible Pay Periods" means, for each Covered Employee, the total number of pay periods during the Covered Period in which a Covered Employee worked for Defendants in California.

free at [redacted] with any questions. You must inform the Settlement Administrator of any change of address to ensure receipt of your settlement payment.

Settlement checks will be null and void 180 days after issuance if not deposited or cashed. In such event, the Settlement Administrator shall direct all unclaimed funds to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, Civil Code §§ 1500 *et seq.*, in the name of the Covered Employee to whom the check was issued. If your check is lost or misplaced, you should contact the Settlement Administrator immediately to request a replacement.

You will receive a tax form 1099 for the check. You may also contact the Settlement Administrator at [phone number], [mailing address/PO Box] with questions.

To view the entirety of the Settlement Agreement, including its defined terms, you may visit _____, enter the Case No. _____, and review the entire public docket of this Lawsuit. Note that to view the documents you have to purchase them.

EXHIBIT B

Hine, Frank v. Xponential Fitness, Inc., et al., 102825

Billing Summary by Matter

Inception - 12/19/2024, All Timekeepers

TIMEKEEPER	TITLE	LICENSE DATE	HOURLY RATE (\$)	HOURS	AMOUNT (\$)
Clerical Staff					
Caroline Dean (CJD)	Accounting Specialist		250	0.6	150.00
Kamron Batstone (KKB)	Executive Assistant		250	7.9	1,975.00
Subtotal				8.5	\$ 2,125.00
Of Counsel / Associates					
Brian Lee (BGL)	Attorney		825	11.6	9,570.00
Esther Bylsma (ELB)	Senior Counsel	08/06/2009	985	83.2	81,952.00
Frank Perez (FAP)	Associate Attorney		800	0.2	160.00
Justin Quin (JPQ)	Legal Brief Writer	05/01/2017	850	17.5	14,875.00
Moises Jrade (MXJ)	Staff Attorney	05/10/1996	1045	10.0	10,450.00
Rebecca Sheehan (RHS)	Legal Brief Writer	11/13/2018	825	2.3	1,897.50
Ryan Bonner (RAB)	E-Discovery Manager	07/01/2015	900	0.2	180.00
Sandra Acosta Tello (SAT)	Associate	06/07/2017	850	185.6	157,760.00
Subtotal				310.6	\$ 276,844.50
Paralegals / Law Clerks					
Alma Suarez (ARS)	Paralegal		450	0.3	135.00
Benita Harris (BHH)	Docketing Specialist		275	1.3	357.50
Bradley Kopp (BJK)	Paralegal		450	13.8	6,210.00
Brianda Rodriguez (BCR)	Outreach Specialist		350	0.2	70.00
Elisa Guevara (EIG)	Paralegal		450	0.6	270.00
Lonnie Christopher (LRC)	Docketing Specialist		325	0.6	195.00

Lourdes Castro (LEC)	Jr. Paralegal	450	0.2	90.00
Maria Alvarez (MTA)	Legal Assistant	325	1.3	422.50
Melisa Flores (MXF)	Paralegal	375	66.3	24,862.50
Michael Garcia (MEG)	Docketing Specialist	325	44.9	14,592.50
Michaela Stewart (MLS)	Docketing Specialist	325	1.1	357.50
Sarah Price (SQP)	Case Manager	500	0.7	350.00
Silvia Carter (SGC)	Paralegal	450	26.1	11,745.00
Thomas Barnett (TRB)	Outreach Supervisor	350	2.2	770.00
Tracey McClain (TLM)	Intake Manager	425	2.1	892.50
Tyler Smith (TBS)	Office Manager/Paralegal	500	0.6	300.00
Subtotal			162.3	\$ 61,620.00
Total:			481.4	\$ 340,589.50

EXHIBIT C

CASE COSTS

Hine, Frank v. Xponential (PAGA)

Matter No. 102825

Date: 12/19/2024

DATE	VENDOR	DESCRIPTION	AMOUNT
05/31/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 05/01/22 - 05/31/22	\$ 6.99
06/30/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 06/01/22 - 06/30/22	\$ 2.86
07/19/2022	Superior Court of California Orange	Hine, Frank v. Xponential (PAGA)- Document Download	\$ 7.50
07/21/2022	Superior Court of California Orange	Hine, Frank v. Xponential (PAGA)- Document Download	\$ 7.50
07/29/2022	Superior Court of California Sacram	Hine, Frank v. Xponential (PAGA) - document Download	\$ 4.00
07/31/2022	RELX Inc DBA LexisNexis	Document Retrieval - Period: 07/01/22 - 07/31/22	\$ 9.11
08/11/2022	Command Investigations	Investigation - Frank Hine	\$ 482.50
10/20/2022	One Legal LLC (Info Track)	eFiling Fee - Status Conference Statement	\$ 14.75
10/22/2022	Superior Court of California Orange	Hine, Frank v. Xponential (PAGA) - Document Download	\$ 7.50
12/30/2022	One Legal LLC (Info Track)	eFiling Fees - Status Conference Statement	\$ 14.75
03/06/2023	One Legal LLC (Info Track)	Case Management Statement	\$ 12.95
04/28/2023	Superior Court of California Orange	Minute Order download	\$ 7.50
04/30/2023	RELX Inc DBA LexisNexis	Document Retrieval - Period: 04/01/23 - 04/30/23	\$ 73.83
05/24/2023	Superior Court of California Orange	Retrieval of Stipulation	\$ 8.06
05/24/2023	Superior Court of California Orange	Retrieval of ROA Nos 111 and 113	\$ 15.00
05/31/2023	RELX Inc DBA LexisNexis	Document Retrieval - Period: 05/01/23 - 05/31/23	\$ 71.35
06/30/2023	RELX Inc DBA LexisNexis	Lexis Nexis - Document Retrieval - Period: 06/01/23 - 06/30/23	\$ 20.30
07/31/2023	RELX Inc DBA LexisNexis	Lexis-Nexis Document Retrieval - 07/01/23 - 07/31/23	\$ 50.26
08/01/2023	One Legal LLC (Info Track)	eFiling Fees - Joint Statement	\$ 15.20
08/04/2023	Superior Court of California San Die	CMC Statement for P Sanders in Related Case Hine	\$ 5.80
08/31/2023	RELX Inc DBA LexisNexis	Lexis-Nexis - Document Retrieval - Period: 08/01/23 - 08/31/23	\$ 85.62
10/12/2023	Superior Court of California Orange	Order signed re stip for continuance	\$ 7.50
10/31/2023	RELX Inc DBA LexisNexis	Document Retrieval - Period: 10/01/23 - 10/31/23	\$ 6.66
11/30/2023	RELX Inc DBA LexisNexis	Document Retrieval - Period: 11/01/23 - 11/30/23	\$ 169.95
12/08/2023	Signature Resolution	2/1/24 Plaintiff's Mediation Fees	\$ 7,450.00
12/31/2023	RELX Inc DBA LexisNexis	Document Retrieval - Period: 12/01/23 - 12/31/23	\$ 121.60
12/31/2023	SWCK	Copies and Printing from Shared Printing (2021-Present)	\$ 37.75
02/03/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 01/01/24- 01/31/24	\$ 56.81
02/20/2024	One Legal LLC (Info Track)	eFiling Fee - Joint Statement	\$ 17.20
02/28/2024	Steno Agency, Inc	02/08/24 Deposition - Theo Apanco - PMK	\$ 2,768.30
02/29/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 02/01/24- 02/29/24	\$ 248.38
03/05/2024	Steno Agency, Inc	02/08/24 Deposition - Theo Apanco PMK	\$ 2,704.55
03/07/2024	The Sullivan Group Of Court Report	Transcript - 2/19/24 Frank B. Hine	\$ 930.75
03/13/2024	Steno Agency, Inc	02/27/24 Hearing - Hearing	\$ 750.00
03/14/2024	One Legal LLC (Info Track)	eFiling Fee - Joint Statement	\$ 17.20
03/31/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 03/01/24- 03/31/24	\$ 128.79
03/31/2024	West Payment Center (4005)	Thomson Reuters - Research 03/01/24 - 03/31/24	\$ 53.78
04/30/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 04/01/24- 04/30/24	\$ 65.77
05/31/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 05/01/24- 05/31/24	\$ 130.29
06/11/2024	One Legal LLC (Info Track)	eFiling Fee - Joint Statement	\$ 17.20

DATE	VENDOR	DESCRIPTION	AMOUNT
06/30/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 06/01/24- 06/30/24	\$ 79.72
07/31/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 07/01/24- 07/31/24	\$ 89.00
08/09/2024	One Legal LLC (Info Track)	eFiling Fee - Request - Other	\$ 17.20
08/13/2024	One Legal LLC (Info Track)	Court Filing Fees - Proposed Stipulation and Order	\$ 37.20
08/13/2024	One Legal LLC (Info Track)	Court Filing Fees - Stipulation and Order, Proposed Stipulation and Order	\$ 20.00
08/31/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 08/01/24- 08/31/24	\$ 84.67
09/17/2024	One Legal LLC (Info Track)	eFiling Fee - Amended Complaint	\$ 17.20
09/23/2024	One Legal LLC (Info Track)	eFiling Fee - Joint Statement	\$ 17.20
09/30/2024	Superior Court of California Orange	Document Download	\$ 7.50
10/01/2024	RELX Inc DBA LexisNexis	Document Retrieval - Period: 09/01/24- 09/30/24	\$ 65.83
12/04/2024	One Legal LLC (Info Track)	Status Conference Statement - Court Superior Court of California, Orange County	\$ 17.20
Total Costs			\$ 17,058.53

EXHIBIT D



Debi Pugliese <debi@jnwpc.com>

Thank you for submission of your PAGA Case.

1 message

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>

Fri, Jul 10, 2020 at 1:58 PM

To: "debi@jnwpc.com" <debi@jnwpc.com>

7/10/2020

LWDA Case No. LWDA-CM-796547-20
Law Firm : Whitehead Employment Law
Plaintiff Name : FRANK B. HINE
Employer: XPONENTIAL FITNESS, INC.

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



July 10, 2020

Via Online Filing and Mail

California Labor & Workforce
Development Agency
455 Golden Gate Ave., 9th Floor
San Francisco, CA 94102

Via First Class Mail

Mr. Anthony Geisler, CEO
Xponential Fitness, Inc.
17877 Von Karman Ave., Suite 100
Irvine, CA 92614

Via Certified Mail

Registered Agent Solutions, Inc., Registered Agent
Xponential Fitness, Inc.
1220 S. Street, Suite 150
Sacramento, CA 95811

RE: PAGA Notice Pursuant to *California Labor Code* § 2698-2699 et seq.

Dear Sir(s) and/or Madam:

Please be advised that representative, plaintiff, Frank B. Hine (**“Plaintiff”**) has retained Whitehead Employment Law to represent him and other current or former employees (the “Aggrieved Employees”) of Xponential Fitness, Inc., a Delaware corporation (hereinafter “Defendant” or “Xponential Fitness”) regarding claims for violation of the California Labor Code. Upon information and belief, Plaintiff alleges that the Defendant Xponential Fitness is the parent corporation to multiple branded fitness center franchises across the United States, including the State of California.

As further detailed below, Plaintiff Hine alleges that Defendant violated the California Labor Code, thus entitling Plaintiff and similarly situated Aggrieved Employees to penalties under the Private Attorney Generals Act of 2004 (the “PAGA”) and Cal. Lab. Code §2699.3. This notice also formally serves to inform Defendant of Plaintiff’s intent to file a class action complaint, and failing notification from the LWDA of an intent to investigate the claims herein allege, will at the expiration of the applicable statutory waiting period file a complaint against Defendant under the PAGA to recover civil penalties for failing to reimburse expenses incurred in discharge of work related duties pursuant to Labor Code Section 2802.

Plaintiff Hine is informed and believes that said violations are ongoing, systematic and uniform. If Defendant fails to cure these alleged violations, as stated above, Plaintiff will amend the civil complaint

and bring an action against Defendant under the PAGA to recover wages and penalties as provided by California law.¹

Factual Summary:

Plaintiff was a full time salaried employee of Xponential Fitness from approximately April 29, 2019 until approximately November 22, 2019. During his employment, Mr. Hine worked at the Xponential Fitness located at 17877 Von Karman Ave, Irvine, CA 92614 as a financial analyst. Mr. Hine's position was newly created when he was hired. His duties included review, organization and management of Xponential Fitness' CEO's personal account which was used for funding and collection of monies loaned to franchisees that were opening fitness boutiques.

Mr. Hine's routinely worked from home. Of necessity, in order to fulfill the requirements of his job, he daily utilized his own personal laptop, wi-fi connection and cell phone to communicate with his managers and franchisee- clients. Upon information and believe, Plaintiff alleges that many of the other approximately 150 employees of Defendant were also required to utilize their personal cell phones and other electronic devices to perform their work related duties. However, at no time was Plaintiff or the similarly-situated Aggrieved Employees ever reimbursed for the expenses incurred in the use of their own equipment, cell phones and wi-fi.

Failing To Reimburse (Labor Code 2802)

Under Labor Code Section 2802, "*(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*"

As indicated above, the Plaintiff and Aggrieved employees utilized their personal cell phones/data/service/text in the course of discharging their work-related duties with no reimbursement from Xponential Fitness.

¹ Without limitation, Plaintiffs, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

Defendant has clearly violated Labor Code 2802 (a) by failing to reimburse the Plaintiff and the Aggrieved Employees for their work-related expenses. As a consequence, the Plaintiff and the Aggrieved Employees are entitled to recover their expenses plus attorneys' fees, interest, expenses and costs of suit.

Conclusion

To date, the Defendant has failed to reimburse Plaintiff and the Aggrieved Employees reimbursements for expenses they incurred in the discharge of their work related duties. Plaintiff requests the LWDA to investigate the above allegations and provide notice of the allegations under PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may amend his lawsuit to include the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/dlp



Debi Pugliese <debi@jnwpc.com>

Thank you for your Amended PAGA Claim Notice Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
Reply-To: DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: debi@jnwpc.com

Fri, Jul 10, 2020 at 3:37 PM

07/10/2020 03:37:44 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm



July 10, 2020

Via Online Filing and Mail

California Labor & Workforce
Development Agency
455 Golden Gate Ave., 9th Floor
San Francisco, CA 94102

Via First Class Mail

Mr. Anthony Geisler, CEO
Xponential Fitness, Inc.
17877 Von Karman Ave., Suite 100
Irvine, CA 92614

Via Certified Mail

Registered Agent Solutions, Inc., Registered
Agent Xponential Fitness, Inc.
1220 S. Street, Suite 150
Sacramento, CA 95811

Via Certified Mail

Registered Agent Solutions, Inc., Registered
Agent Xponential Fitness, LLC
1220 S. Street, Suite 150
Sacramento, CA 95811

Via First Class Mail

Xponential Intermediate Holdings, LLC
Managing Member,
Xponential Fitness, LLC
17877 Von Karman Ave., Suite 100
Irvine, CA 92614

RE: First Amended PAGA Notice Pursuant to *California Labor Code* § 2698-2699 et
seq. (LWDA-CM-796547-20)

Dear Sir(s) and/or Madam:

Please be advised that representative, plaintiff, Frank B. Hine (“**Plaintiff**”) has retained Whitehead Employment Law to represent him and other current or former employees (the “Aggrieved Employees”) of Xponential Fitness, Inc., a Delaware corporation, and Xponential Fitness, LLC (collectively “Defendants” or “Xponential Fitness”) regarding claims for violation of the California Labor Code. Upon further information and belief, Plaintiff alleges that the Defendants together, jointly engage in the business and management of franchised health and fitness clubs, and collectively set, maintain, and control the material operational employment policies and practices related to Plaintiff’s claims.

As further detailed below, Plaintiff Hine alleges that Defendants violated the California Labor Code, thus entitling Plaintiff and similarly situated Aggrieved Employees to penalties under the Private Attorney Generals Act of 2004 (the “PAGA”) and Cal. Lab. Code §2699.3. This notice also formally serves to inform Defendants of Plaintiff’s intent to file a class action complaint, and failing notification from the LWDA of an intent to investigate the claims herein allege, will at the expiration of the applicable statutory waiting period file a complaint against Defendants under the PAGA to recover civil penalties for failing to reimburse expenses incurred in discharge of work related duties pursuant to Labor Code Section 2802.

Plaintiff Hine is informed and believes that said violations are ongoing, systematic and uniform. If Defendants fails to cure these alleged violations, as stated above, Plaintiff will amend the civil complaint and bring an action against Defendants under the PAGA to recover wages and penalties as provided by California law.¹

Factual Summary:

Plaintiff was a full time salaried employee of Defendants from approximately April 29, 2019 until approximately November 22, 2019. During his employment, Mr. Hine worked at the Defendants' principal business offices located at 17877 Von Karman Ave, Irvine, CA 92614 as a financial analyst. Mr. Hine's position was newly created when he was hired. His duties included review, organization and management of Xponential Fitness' CEO, Anthony Geisler's personal account which was used for funding and collection of monies loaned to borrower-franchisees that were opening fitness boutiques.

During the term of his employment, Mr. Hine's routinely worked from home. Of necessity, in order to fulfill the requirements of his job, he daily utilized his own personal laptop, wi-fi connection and cell phone to communicate with his managers and franchisee- clients. Upon information and believe, Plaintiff alleges that many of the other approximately 150 employees of Defendants were also routinely required to utilize their personal cell phones and other electronic devices to perform their work related duties. However, at no time was Plaintiff or the similarly-situated Aggrieved Employees ever reimbursed for the expenses incurred in the use of their own equipment, cell phones and wi-fi.

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of Section 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, paragraphs (1), (2), and (3) of subdivision (a) of and subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, Sections 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.

Failing To Reimburse (Labor Code 2802)

Under Labor Code Section 2802, *“(a) An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”*

As indicated above, the Plaintiff and Aggrieved employees utilized their personal cell phones/data/service/text in the course of discharging their work-related duties with no reimbursement from Xponential Fitness.

Defendants have clearly violated Labor Code 2802 (a) by failing to reimburse the Plaintiff and the Aggrieved Employees for their work-related expenses. As a consequence, the Plaintiff and the Aggrieved Employees are entitled to recover their expenses plus attorneys’ fees, interest, expenses and costs of suit.

Conclusion

To date, the Defendants have failed to reimburse Plaintiff and the Aggrieved Employees reimbursements for expenses they incurred in the discharge of their work-related duties. Plaintiff requests the LWDA to investigate the above allegations and provide notice of the allegations under PAGA’s provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may amend his lawsuit to include the violations discussed in this letter.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/dlp

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 January 30, 2025, I served the following document(s) described as: **DECLARATION OF CAROLYN H. COTTRELL IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT** on the following interested party(s):

James P. Carter
Jonathan P. Schmidt
JACKSON LEWIS, P.C.
200 Spectrum Center Drive, Suite 500
Irvine, CA 92618
James.carter@jacksonlewis.com
Jonathan.Schmidt@jacksonlewis.com

Jacob N. Whitehead, Esq.
W EMPLOYMENT LAW, APC
7700 Irvine Center Drive, Suite 930
Irvine, CA 92618
Telephone: 949-674-4922
reception@jnwpc.com
dpugliese@swemploymentlaw.com

Attorney for Defendants

Co-Counsel for Plaintiff

☒ **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 January 30, 2025, at Apple Valley, California.



Melisa Flores