

WHITEHEAD EMPLOYMENT LAW

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Attorneys for Plaintiff, Frank B. Hine, on his own behalf and in his representative capacity for all similarly situated Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

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

Plaintiffs,

v.

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

Defendants.

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

30-2020-01176106-CU-OE-CXC

Assigned for All Purposes
Judge William Claster

CX-104

Plaintiff, FRANK B. HINE (“Plaintiff”) on his own behalf, and in his representative capacity on behalf of all other similarly situated employees (“Aggrieved Employees”), hereby brings this Complaint (“Complaint”) against XPONENTIAL FITNESS, INC., a Delaware corporation; XPONENTIAL FITNESS, LLC, a Delaware limited liability company; and DOES 1 through 25, inclusive, (“Defendants”) and states and alleges as follows:

INTRODUCTION

1. This action is brought pursuant to Labor Code section 2698 *et seq.* (Private Attorneys General Act of 2004) (the “PAGA”) for Defendants’ violation of Labor Code 2802 for unreimbursed expenses incurred in the discharge of work-related duties.

2. This complaint challenges Defendants' systemic illegal employment practices resulting in violations of the Labor Code against Plaintiff and the Aggrieved Employees.

3. Plaintiff is informed and believes and based thereon alleges that Defendants and DOES 1 through 25, jointly and severally acted intentionally and with deliberate indifference and conscious disregard to Plaintiff's rights by failing to reimburse business-related expenses.

THE PARTIES

4. Plaintiff, Frank B. Hine is and was, at all times relevant to this Complaint, an adult individual working for Defendant as a financial analyst in Irvine, California. 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.

5. At all times relevant to this Complaint, Defendant Xponential Fitness, LLC was a Delaware limited liability company, doing business and employing persons throughout California, where it employed Plaintiff and the Aggrieved Employees. Defendant is engaged in the business of development and franchising of boutique fitness concepts, categories and brands across the United States and Canada, including the State of California.

6. At all times relevant to this complaint, Defendant, Xponential Fitness, Inc. was a Delaware corporation doing business and employing persons throughout California, where it employed Plaintiff and the Aggrieved Employees. Defendant is jointly engaged with Xponential Fitness, LLC, in the business operations, development and franchising of boutique fitness concepts, categories and brands across the United States and Canada, including the State of California.

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

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1–25, inclusive, are the partners, agents, owners, shareholders, managers, principals or employees of Defendants and/or

1 and were acting on behalf of Defendants.

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

6 10. At all times herein mentioned, Defendants, and each of them, ratified each and every act
7 or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
8 aided and abetted the acts and omissions of each and all of the other Defendants in proximately
9 causing the damages herein alleged.

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

13 **JURISDICTION**

14 12. This Court has jurisdiction over the violations of the PAGA and Labor Code section 2802
15 for unreimbursed expenses incurred in the discharge of work-related duties.

16 13. This Court has jurisdiction over all Defendants, because upon information and belief, each
17 party has sufficient minimum contacts in California or otherwise intentionally avails itself of
18 California law so as to render the exercise of jurisdiction over it by the California courts consistent
19 with traditional notions of fair play and substantial justice.

20 14. Venue is proper in this Court because, upon information and belief, the named Defendants
21 transact business and/or have office in Orange County and the acts and omissions alleged herein
22 took place in this county.

23 15. The civil penalties sought in this action exceed the minimum jurisdiction limits of this
24 Court and will be established according to proof at trial.

25 **ALTER EGO, AGENCY AND JOINT EMPLOYERS**

26 16. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
27 of interest and ownership between Defendants that the individuality and separateness of
28

1 Defendants has never existed or has ceased to exist.

2 17. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
3 purported corporate existence, Defendants are in reality one and the same including, but not
4 limited to, because:

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

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

11 18. Accordingly, each of Defendants is the alter ego of one another, and the fiction of their
12 separate corporate existence must be disregarded.

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

20 **GENERAL ALLEGATIONS**

21 20. Plaintiff and the Aggrieved Employees currently work or formerly worked for Defendants
22 throughout the State of California during the relevant period. Plaintiff and the Aggrieved
23 Employees worked in either exempt or non-exempt, positions for Defendants (the "Covered
24 Positions").

25 21. Defendants required Plaintiff and the Aggrieved Employees to use their personal cell
26 phones, laptops, internet and wifi to perform their job duties each workday throughout the relevant
27 statutory period in order to facilitate work-related phone conversations, and to perform their
28

1 necessary work duties.

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

6
7 **CAUSE OF ACTION**
8 **VIOLATION OF THE PAGA**
9 **(As to Defendants and Does 1 – 25, inclusive)**

10 23. Plaintiff realleges and incorporates by reference all preceding paragraphs as though fully
11 set forth herein.

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

18 25. On July 10, 2020, Plaintiff, Frank B. Hine, on behalf of himself and all similarly situated
19 Aggrieved Employees, submitted a written Notice to the LWDA setting forth the alleged facts
20 and identifying the specific provisions of the Labor Code that Plaintiff Hine contended were
21 violated by Defendant. A true and correct copy of the July 10, 2019 PAGA Notice is attached
22 hereto as **Exhibit A**, along with Plaintiff's First Amended PAGA Notice of the same date, adding
23 as an additional named Defendant, Xponential Fitness, LLC to the notice, a true and correct copy
24 of which First Amended PAGA notice is attached hereto as **Exhibit B**. More than 65 days have
25 passed since Plaintiff submitted his original and First Amended PAGA Notices and to date,
26 Plaintiff Hine has not received a response from the LWDA indicating its intent to investigate his
27 claims.

28 26. Plaintiff was an "aggrieved employee" as defined by California Labor Code section

2699(c) in that he was a former employee of Defendants, and one or more of the alleged violations was committed against him.

Failure to Reimburse for Work-Related Expenses

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

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

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

Damages

30. Pursuant to California Labor Code Defendants' actions constitute continuing and ongoing unlawful activity prohibited by the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

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

1 32. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and any other applicable
2 statute.

3 33. As alleged supra, notice of these violations were provided pursuant to Labor Code
4 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
5 have passed since notice was provided and Plaintiffs have not received any notification from
6 the LWDA that it intends to investigate the alleged violations. Therefore, the representative
7 Plaintiff is entitled to prosecute their PAGA claims under Labor Code §2699, et seq.

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

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

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

22 37. Pursuant to sections 2699 and 2802, Plaintiff requests and is entitled to recover from
23 Defendants damages, civil penalties, interest, attorneys' fees and costs, as well as all statutory
24 penalties against Defendants, and each of them.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff on his own behalf and on behalf of the Aggrieved Employees,
27 prays for judgment as follows:
28

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

DATED: December 23, 2020

WHITEHEAD EMPLOYMENT LAW

By: _____


Jacob N. Whitehead, Esq.
Attorney for Plaintiff
and the Aggrieved Employees

EXHIBIT A



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

A handwritten signature in dark ink, appearing to read 'J. Whitehead', is written over the printed name.

Jacob N. Whitehead

JNW/dlp

EXHIBIT B



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