

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