

COHELAN KHOURY & SINGER

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

Counsel for Plaintiff Emily Ferrer

[Additional Counsel listed on following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

EMILY FERRER, ELIJAH WESTCOTT,
and MANUEL BANUELOS MACIAS, on
behalf of themselves and other aggrieved
employees,

Plaintiffs,

vs.

FITNESS INTERNATIONAL, LLC, a
California Limited Liability Company;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO. 37-2020-00044088-CU-OE-CTL

REPRESENTATIVE ACTION

**FIRST AMENDED COMPLAINT FOR
RECOVERY OF CIVIL PENALTIES
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
AND RESTITUTION**

- 1. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM, SPLIT SHIFT, AND OVERTIME WAGES**
- 2. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE MEAL PERIODS**
- 3. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE REST PERIODS**
- 4. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
- 5. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO RECORD HOURS WORKED**
- 6. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Cheyenne Preston, Deputy Clerk

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- 7. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO REIMBURSE
- 8. CIVIL PENALTIES UNDER THE
PAGA FOR FAILURE TO PROVIDE
WRITTEN NOTICE

HAIG B. KAZANDJIAN LAWYERS, APC

Haig B. Kazandjian (SBN 278622)
haig@hbklawyers.com
Cathy Gonzalez (SBN 310625)
cathy@hbklawyers.com
Melissa Robinson (SBN 336951)
melissa@hbklawyers.com
801 North Brand Boulevard, Suite 970
Glendale, CA 91203
Telephone: (818) 696-2306/Facsimile: (818) 696-2307

Counsel for Plaintiff Elijah Westcott

CAPSTONE LAW APC

Mark A. Ozzello (SBN 116595)
Mark.Ozzello@capstonelawyers.com
Brandon K. Brouillette (SBN 273156)
Brandon.Brouillette@capstonelawyers.com
Joseph Hakakian (SBN 323011)
Joseph.Hakakian@capstonelawyers.com
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
Telephone: (310) 556-4811/Facsimile: (310) 943-0396

Counsel for Plaintiff Manuel Banuelos Macias

1 Plaintiffs EMILY FERRER, ELIJAH WESTCOTT, and MANUEL BANUELOS
2 MACIAS (“Plaintiffs”), on behalf of others aggrieved and as a Representatives of the State of
3 California’s Labor and Workforce Development Agency (“LWDA”), hereby allege as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiffs bring this proposed PAGA Representative Action against her former
7 employer and Defendants FITNESS INTERNATIONAL, a California Limited Liability
8 Company, and DOES 1-100 (collectively referred to as “Defendants”) under the California
9 Labor Code to recover civil penalties arising out of Defendants’ multiple labor code violations
10 as described herein.

11 2. Specifically, during all or a significant part of the applicable limitations period
12 for the time period covered by the Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code sections 2698, *et seq.*, Plaintiffs allege Defendants did not pay them or other hourly
14 employees all wages for all hours worked at the applicable minimum and/or overtime rates of
15 pay. Defendants also failed to provide compliant meal and rest periods, failed to provide
16 compliant wage statements, and failed to provide all wages due during and upon termination of
17 employment.

18 3. Plaintiffs bring this lawsuit as a PAGA Representative Action behalf of the state
19 of California, and aggrieved current and former non-exempt employees. Pursuant to Labor
20 Code sections 2698, *et seq.*, Plaintiffs seek to recover civil penalties and reasonable attorney’s
21 fees and costs. Plaintiffs, by operation of law, have standing and capacity to sue as a
22 representative of the State of California. Each Plaintiff submitted written notice of the specific
23 provisions of the Labor Code that Defendants violated, as alleged herein, including the facts and
24 theories to support the alleged violations by mailing the notice to Defendant Fitness
25 International, LLC and submitting the notice online to the LWDA pursuant to Labor Code
26 section 2699.3. Defendants did not provide notice of cure and the LWDA did not provide notice
27 of investigation in the 65 days after the mailing of each of the PAGA notices.

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II.

JURISDICTION AND VENUE

4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants conduct business in the city and county of San Diego in the state of California and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiffs and other employees within the State of California and San Diego County. Defendants employ numerous employees in San Diego County and in California generally. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, and Code of Civil Procedure.

5. Plaintiffs allege, on information and belief, that no federal question is raised and that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or controversy under the CAFA do apply and prohibit removal of the action the federal court. Plaintiffs are also informed and believe that based on the total number of pay periods they worked, their individual PAGA claims do not arise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

III.

THE PARTIES

6. Plaintiff EMILY FERRER is a former employee of Defendants. At all relevant times, she was employed by Defendants as a non-exempt hourly employee in San Diego County from approximately February 2019 to July 2020.

7. Plaintiff ELIJAH WESTCOTT is a former employee of Defendants. At all relevant times he was employed by Defendants as a non-exempt hourly employee in the position of Sales Agent in California from about December 23, 2019 until March 10, 2020.

1 8. Plaintiff MANUEL BANUELOS MACIAS is a former employee of Defendants.
2 At all relevant times he was employed by Defendants as a non-exempt hourly Janitor/Janitorial
3 Personnel in California from about June 2019 until March 2020

4 9. Plaintiffs allege that all other non-exempt hourly employees in the State of
5 California worked under Defendants' policies and as a result, suffered the same violations
6 alleged herein.

7 10. Plaintiffs are an "aggrieved employee" because they were employed by the
8 alleged violators and had one or more of the alleged violations committed against them and,
9 therefore, are properly suited to represent the interests of all other current and former employees
10 of Defendants.

11 11. Pursuant to Cal. Labor Code sections 2698, *et seq.*, Plaintiffs seek to represent
12 all current and former non-exempt employees who suffered one or more of the alleged
13 violations as described herein ("aggrieved employees") during the applicable limitations period
14 for the time period covered by the PAGA (which is defined as any time from one year and 65
15 days prior to the commencement of this action until the commencement of trial in the matter).
16 The applicable limitations period is referred herein as "the PAGA Period."

17 12. Plaintiffs are informed and believe, and allege Defendant Fitness International,
18 LLC operates sports and fitness gyms throughout the state of California.

19 13. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
20 employers of Plaintiffs, and/or a person acting on behalf of each Plaintiff's employer, who
21 violated, or caused to be violated, any provision regulating minimum wages or hours and days
22 of work in the applicable order of the Industrial Welfare Commission, as well as California
23 Labor Code sections 203, 226, 226.7, 1193.6, 1194, and 2802, and as such, are liable as an
24 employer of Plaintiffs for such violations pursuant to California Labor Code sections 558 and
25 558.1.

26 14. At all times relevant, Defendants did, and do, transact and conduct business in
27 the state of California, including, but not limited to, within the jurisdiction of the Court. At all
28 times relevant, Defendants, and each of them, were Plaintiffs' and aggrieved employees'

1 employer for purposes of the California wage and hour laws at issue in this action.

2 15. Plaintiffs are unaware of the true names, capacities, relationships, and extent of
3 participation in the conduct alleged of Defendants sued as DOES 1 through 100, but are
4 informed and believe, and based on that allege, DOE Defendants are legally responsible for the
5 wrongful conduct alleged and sue these Defendants by such fictitious names. Plaintiffs will
6 amend this complaint when their true names and capabilities are ascertained.

7 16. Plaintiffs are informed and believe and, based thereon allege, that each
8 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and
9 other aggrieved employees, and exercised control over their wages, hours, and working
10 conditions. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
11 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
12 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
13 Defendant is legally attributable to the other Defendants.

14 **IV.**

15 **GENERAL ALLEGATIONS**

16 17. At all times during the liability period, Plaintiffs and aggrieved current and
17 former employees were employed by Defendants and each of them, including Doe Defendants,
18 within the state of California.

19 18. At all relevant times, Plaintiffs and other aggrieved employees of Defendants
20 worked under the same policies, practices, and procedures relating to their employment,
21 including those governing wage statements, recordkeeping, payment of wages, and provision of
22 rest and meal periods applicable to Defendants' facilities.

23 19. The California Labor Code and applicable IWC Wage Order and portions of the
24 California Code of Regulations provide that all persons employed in the State of California
25 shall be (1) presumed to be an hourly or non-exempt employee, and (2) that all "hours worked"
26 and subject to the control of the employer, whether exercised or not, are to be paid at least the
27 minimum wage as determined by the State of California, and for overtime wages at either 1.5x
28 the regular rate of pay or 2.0x the regular rate of pay when "hours worked" exceeds 8 hours in a

1 single day or shift, or over 40 hours in a 168-total hour workweek.

2 20. Plaintiffs and each aggrieved employee were non-exempt employees covered
3 under one or more IWC Wage Orders (“Wage Orders”), and Labor Code section 510, and/or
4 other applicable wage orders, regulations and statutes, and each aggrieved employee was not
5 subject to an exemption for executive, administrative, professional employees, or any other
6 exemption, which imposed an obligation on the part of the Defendants to pay Plaintiffs and
7 each aggrieved employee lawful minimum and overtime compensation, as well as to provide
8 statutory meal periods.

9 21. Plaintiffs and each aggrieved employee worked in excess of the maximum
10 regular rate hours set by the IWC in the above Wage Orders, regulations, or statutes, and are
11 therefore entitled to appropriate overtime compensation at time and a half (1½) rate of their
12 regular pay, and when applicable, double-time rates as set forth by the above Wage Orders,
13 regulations, and/or statutes.

14 22. During the PAGA Period, Defendants maintained common policies and practices
15 of failing to pay all required wages for all hours worked.

16 23. Defendants failed to pay Plaintiffs and aggrieved employees all minimum,
17 regular, and overtime wages for all applicable hours of work, including the time spent
18 performing work before and after clocking in and time spent working outside of the pre-
19 scheduled shifts.

20 24. Plaintiffs and other aggrieved employees were often required to work off-the-
21 clock before their shifts started, after their shifts were completed, and during meal and rest
22 periods.

23 25. Prior to clocking in, Plaintiffs and other aggrieved employees were required to
24 open up the club, turn on the lights, and boot up the computers. Similarly, Plaintiffs and other
25 employees were required to clock out, and then close up the fitness club while off the clock.
26 The time spent opening up and closing the fitness club was compensable time, but Defendants
27 failed to pay any wages for this time spent working and under the direction and control of the
28 Defendants. During this off-the-clock time and these so called “working lunches,” employees

1 were required by Defendants to finish work tasks that they did not have time to finish during
2 their shift due to understaffing, inadequate coverage, unreasonably high workload and
3 expectations, and/or other actions, inactions, or decisions made by and within the sole control
4 and discretion of Defendants.

5 26. Defendants, being aware of these occurrences, still deducted 30 minutes from
6 aggrieved employees pay on these days that they were required to continue working without a
7 legal meal period. Defendants altered and adjusted time-sheets and time-cards in order to
8 obfuscate this fact.

9 27. Additionally, Defendants paid employees based on pre-scheduled hours. If
10 employees worked outside these pre-scheduled hours or during pre-scheduled meal periods,
11 they were not paid for this time worked.

12 28. As a result, the Defendants failed to pay at least minimum wage for all hours
13 worked. To the extent this time should have been compensated at overtime rates, the
14 Defendants failed to pay all applicable overtime wages.

15 29. Plaintiffs and each PAGA represented employee regularly worked overtime
16 hours exceeding eight hours per day but were not paid at the correct overtime rate of pay
17 because not all remuneration was included in their regular rate of pay, as required by Labor
18 Code sections 510 and 1194, and section 3 of the applicable IWC wage order. Plaintiffs and
19 other aggrieved employees earned incentive pay, including commissions and bonuses. The
20 additional compensation was not included in the employees' regular rate of pay for purposes of
21 calculating the proper overtime payment.

22 30. Defendants regularly scheduled and required Plaintiffs and the other aggrieved
23 employees to work "split shifts." California Code of Regulations 11050(4)(C) requires
24 employer to furnish to employees one (1) hour's pay at the minimum wage in addition to the
25 wages for that work day for any day in which an employee works a "split shift." However,
26 despite regularly scheduling Plaintiffs and the other aggrieved employees for "split shifts,"
27 Defendants failed to pay Plaintiffs and the other aggrieved employees one (1) hour's pay at the
28 minimum wage in addition to the wages for that work day as required by law.

1 31. Defendants did not maintain a compliant meal and rest period policy applicable
2 to Plaintiffs and other aggrieved employees, nor did they inform their employees, including
3 Plaintiffs, that they were permitted to take meal and rest periods as provided under the
4 California Labor Code.

5 32. Often times, Plaintiffs and other aggrieved employees were scheduled to be the
6 sole employee working. Plaintiffs and other aggrieved employees were not permitted to take a
7 rest or meal period without having another employee relieve them. When they were the sole
8 person working, they were therefore unable to authorized to take off-duty, timely and
9 uninterrupted meal and rest periods.

10 33. At times, Plaintiffs and other aggrieved employees were pre-scheduled to take a
11 meal period even if they were ultimately unauthorized or unable to take a meal period at the
12 pre-scheduled time. The timeclock mechanisms nevertheless forced Plaintiffs and other
13 aggrieved employees to clock out even though he or she continued to remain on duty and
14 continued working. As a result, Defendant failed to pay Plaintiffs and aggrieved employees for
15 this compensable time worked at the applicable minimum and overtime rates of pay.

16 34. During the PAGA Period, Plaintiffs and other aggrieved employees were
17 regularly prevented from taking timely, off-duty meal periods and/or were required to miss their
18 meal periods completely due to the working conditions imposed by Defendants. Plaintiffs and
19 other aggrieved employees were also not provided an opportunity to take a second meal period
20 when they worked shifts greater than 10 hours. Accordingly, Defendants failed to provide
21 Plaintiffs and other aggrieved employees an opportunity to take 30-minute, uninterrupted off-
22 duty meal periods for days in which they worked more than 5 hours.

23 35. Additionally, Defendants failed to provide all required rest periods. Defendants
24 did not relieve employees of all work in order to take off-duty rest period and instead required
25 him or her to continue to work throughout his or her shift. As a result, Plaintiffs and other
26 aggrieved employees were not authorized and permitted to take compliant off-duty rest periods.

27 36. During the PAGA Period, the Defendants, and each of them, required the
28 Plaintiffs and aggrieved employees to work without taking statutory meal and rest periods and

1 failed to pay putative aggrieved employees an hour's pay in lieu thereof.

2 37. As a result of the failures to pay all minimum, regular, and overtime wages and
3 meal and rest periods premium wages, as described herein, Defendants further failed to pay
4 Plaintiffs and all other aggrieved employees timely during employment as required by Cal.
5 Labor Code sections 204(a) and (d).

6 38. Furthermore, Defendants failed to record (and maintain records reflecting) the
7 total daily hours worked, and when the employees begin and end each work period, including
8 meal periods.

9 39. During the PAGA Period, the Defendants, and each of them, failed to provide
10 accurate, itemized wage statements to Plaintiffs and other aggrieved employees.

11 40. During the PAGA period, the Defendants, by virtue of centralized and uniform
12 pay policies, failed to provide accurate, itemized wage statements to Plaintiffs, and aggrieved
13 employees, as required by Labor Code section 226. As a result of the failures to pay all
14 minimum, regular, and overtime wages, and meal and rest periods premium wages, and the
15 failure to record all hours worked, as described herein, the wage statements did not accurately
16 state the total number of hours worked, the gross and net wages earned, and all applicable
17 hourly rates and the corresponding number of hours worked at each rate.

18 41. Defendants failed to provide to Plaintiffs and other aggrieved employees who
19 worked for them for more than 30 days with written notice setting the amount of sick leave
20 available, or paid time off in lieu thereof, on either their itemized wage statements or in a
21 separate writing accompanying such statements.

22 42. Defendants failed to provide employees with basic information at the time of
23 hiring and when changes occurred to their employment, including, rate of pay (including
24 overtime), whether employee would be paid hourly, salary, piece rate, or by shift, day, week,
25 commission, or otherwise, and information regarding allowances, such as for as meals and
26 lodging, and information regarding the right to accrue and use paid sick leave and the legal
27 protections for employees when so doing.

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43. Defendants directed Plaintiffs and other aggrieved employees to incur personal expenses on behalf of Defendants while performing their respective job duties. Such personal expenses include but are not limited to: use of personal cell phone, travel expenses, and parking expenses. Without incurring these expenses, Plaintiffs and other aggrieved employees would not be able to accomplish their job duties. Defendants failed to indemnify Plaintiffs and other aggrieved for all of these necessary expenditures.

44. At the time of each Plaintiffs' separation from employment, they were owed minimum wages, regular wages, and overtime wages from Defendants for all hours worked. Defendants therefore did not timely pay Plaintiffs all wages within the time required by California Labor Code sections 201 and/or 202. Similarly, during the PAGA Period, the Defendants, and each of them, failed to pay all wages owed to aggrieved employees whose employment was terminated in violation of Labor Code sections 201 and 202.

45. Additionally, Defendants failed to pay terminated and aggrieved employees, including Plaintiffs, all applicable waiting time penalties in violation of Labor Code section 203.

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PAGA Penalties for Failure to Pay Minimum, Split Shift, and Overtime Wages in Violation of Labor Code §§ 510, 1194, and 1197, and the applicable IWC Wage Order

(On Behalf of each Plaintiff and each Aggrieved Employee Against All Defendants)

46. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

47. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful."

48. Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and

1 the standard conditions of labor for employees. The employment of any employee for longer
2 hours than those fixed by the order or under conditions of labor prohibited by the order is
3 unlawful.”

4 49. Labor Code section 1194(a) provides: “(a) Notwithstanding any agreement to
5 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to recover in a civil action the
7 unpaid balance of the full amount of this minimum wage or overtime compensation, including
8 interest thereon, reasonable attorney’s fees, and costs of suit.”

9 50. Labor Code section 510, states in pertinent part: “Any work in excess of eight
10 hours in one workday and any work in excess of 40 hours in any one workweek and the first
11 eight hours worked on the seventh day of work in any one workweek shall be compensated at
12 the rate of no less than one and one-half times the regular rate of pay for an employee. Any
13 work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the
14 regular rate of pay for an employee. In addition, any work in excess of eight hours on any
15 seventh day of a workweek shall be compensated at the rate of no less than twice the regular
16 rate of pay of an employee.”

17 51. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
18 law, any provision of this code that provides for a civil penalty to be assessed and collected by
19 the Labor and Workforce Development Agency or any of its departments, divisions,
20 commissions, boards, agencies, or employees, for a violation of this code, may, as an
21 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
22 himself or herself and other current or former employees pursuant to the procedures specified in
23 Section 2699.3.”

24 52. Labor Code section 2699(f)(2) states: “For all provisions of this code except
25 those for which a civil penalty is specifically provided, there is established a civil penalty for a
26 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
27 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
28 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for

1 each aggrieved employee per pay period for each subsequent violation.”

2 53. As described herein, Defendants failed to pay all minimum wages and overtimes
3 wages for all applicable hours worked.

4 54. Defendants further failed to pay all overtime wages when they failed to properly
5 calculate the regular rate of pay by including all remuneration paid thereto. Defendants’ failure
6 to pay Representative Plaintiffs and the other aggrieved employees one (1) hour’s pay at the
7 minimum wage in addition to the wages for that workday for any workday in which
8 Representative Plaintiffs and the other aggrieved employees were scheduled for and required
9 to work a “split shift” constitutes unlawful or unfair activity prohibited by California Labor
10 Code 1198 and California Code of Regulations 11050(4)(C).

11 55. Defendants’ conduct violates Labor Code sections 510, 1194, 1197, and 1198 as
12 well as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable Wage
13 Order.

14 56. As a result, Defendants violated the Labor Code and are liable to Plaintiffs, and
15 other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2),
16 1197.1, and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs
17 all recoverable in an amount according to proof.

18 57. Plaintiffs, as representatives of the general public, will and do seek to recover
19 any and all penalties for each and every violation, in an amount according to proof, as to those
20 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
21 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
22 of California.

23 **SECOND CAUSE OF ACTION**

24 **PAGA Penalties for Failure to Provide Meal Periods in Violation of Labor Code §§**
25 **226.7, 512, and 558, and the applicable IWC Wage Order**
(On Behalf of each Plaintiff and each Aggrieved Employee Against All Defendants)

26 58. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in
27 full herein.

28 59. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection

1 of civil penalties for violations of the labor code, to be recovered through a civil action brought
2 by an aggrieved employee on behalf of himself or herself and other current or former
3 employees pursuant to the procedures specified in Section 2699.3.

4 60. Labor Code section 226.7 provides in pertinent part:

5 (b) An employer shall not require an employee to work during a meal or
6 rest or recovery period mandated pursuant to an applicable statute, or
7 applicable regulation, standard, or order of the Industrial Welfare
8 Commission, the Occupational Safety and Health Standards Board, or
9 the Division of Occupational Safety and Health.

10 (c) If an employer fails to provide an employee a meal or rest or recovery
11 period in accordance with a state law, including, but not limited to, an
12 applicable statute or applicable regulation, standard, or order of the
13 Industrial Welfare Commission, the Occupational Safety and Health
14 Standards Board, or the Division of Occupational Safety and Health, the
15 employer shall pay the employee one additional hour of pay at the
16 employee's regular rate of compensation for each workday that the meal
17 or rest or recovery period is not provided.

18 61. Labor Code section 512(a) provides in pertinent part:

19 An employer may not employ an employee for a work period of more
20 than five hours per day without providing the employee with a meal
21 period of not less than 30 minutes, except that if the total work period
22 per day of the employee is no more than six hours, the meal period may
23 be waived by mutual consent of both the employer and employee. An
24 employer may not employ an employee for a work period of more than
25 10 hours per day without providing the employee with a second meal
26 period of not less than 30 minutes, except that if the total hours worked
27 is no more than 12 hours, the second meal period may be waived by
28 mutual consent of the employer and the employee only if the first meal
period was not waived.

62. As set forth herein, Plaintiffs and other aggrieved employees were not provided
all meal periods as required by law and were never paid a meal period premium for non-
compliance with Labor Code section 226.7.

63. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well
as the "Meal Periods" section of the applicable IWC wage Order. As a result, Plaintiffs are
entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and
2699(a) or, in the alternative, section 2699(f)(2), attorney's fees, expenses, and costs of suit.

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64. Plaintiffs, as representatives of the general public, will and do seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 558, and the Applicable IWC Wage Order
(On Behalf of each Plaintiff and each Aggrieved Employee Against All Defendants)**

65. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

66. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

67. Labor Code section 226.7 provides in pertinent part:

(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

68. Defendants failed to authorize and permit all rest periods as required by law. Plaintiffs and other aggrieved employees were never paid a rest period premium for non-compliance with Labor Code section 226.7 and aggrieved employees were not provided rest period premium for non-compliance with Labor Code section 226.7.

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69. Defendants violated Labor Code sections 226.7 and 1198 as well as the “Rest Periods” section of the applicable Wage Order. As a result, Plaintiffs are entitled to recover, civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a) or, in the alternative, section 2699(f)(2), attorney’s fees, expenses, and costs of suit.

70. Plaintiffs, as representatives of the general public, will and do seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

FOURTH CAUSE OF ACTION

PAGA Penalties for Failure to Provide Accurate Itemized Wages Statements in Violation of Labor Code § 226 and the applicable IWC Wage Order (On Behalf of each Plaintiff and each Aggrieved Employee Against All Defendants)

71. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

72. Section 226(a) of the California Labor Code requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiffs and the other aggrieved employees. Defendants have knowingly and intentionally failed to comply with Labor Code section 226(a) on each and every wage statement provided to Plaintiffs and other aggrieved employees.

73. Labor Code section 226.3 provides for civil penalties for violations of the Labor Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each subsequent violation.

74. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

75. As alleged herein, Defendants failed to provide any all adequate wage statements violated Labor Code section 226(a).

78. Defendants willfully violated the Labor Code and are liable to Plaintiffs, and other aggrieved employees, for civil penalties as required by Labor Code sections 226.3 and 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

79. Plaintiffs, as representatives of the general public, will and do seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

**PAGA Penalties for Failure to Maintain Accurate Records in Violation of Labor Code §§
1174 and 1198
(On Behalf of each Plaintiff and each Aggrieved Employee Against All Defendants)**

80. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

81. Labor Code section 1174(d) requires each employee to “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.”

82. The “Records” section of the applicable IWC wage order requires each employer to maintain “[t]ime records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded.”

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1 83. California Labor Code section 1174.5 imposes a \$500 civil penalty for any
2 failure to maintain records required by Section 1174(d).

3 84. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
4 of civil penalties for violations of the labor code, to be recovered through a civil action brought
5 by an aggrieved employee on behalf of himself or herself and other current or former employees
6 pursuant to the procedures specified in Section 2699.3.

7 85. Defendants failed to maintain all records as required by law, including but not
8 limited to the beginning and ending time of each work period and meal period.

9 86. As a result, Defendants willfully violated the Labor Code and are liable to
10 Plaintiffs, and other aggrieved employees, for penalties as required by Labor Code sections
11 1174.5 and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
12 according to proof.

13 87. Plaintiffs, as representatives of the general public, will and do seek to recover
14 any and all penalties for each and every violation, in an amount according to proof, as to those
15 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
16 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State
17 of California.

18 **SIXTH CAUSE OF ACTION**

19 **PAGA Penalties for Failure to Pay All Wages Owed During and Upon Termination of**
20 **Employment in Violation of Labor Code §§ 201-203 and 204.**
21 **(On Behalf of each Plaintiff and each Aggrieved Employee Against All Defendants)**

22 88. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full
23 herein.

24 89. Labor Code section 204(a) states in pertinent part: "All wages . . . earned by any
25 person in any employment are due and payable twice during each calendar month, on days
26 designated in advance by the employer as the regular paydays." Section 204(d) states, "The
27 requirements of this section shall be deemed satisfied by the payment of wages for weekly,
28 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days
following the close of the payroll period." The "Minimum Wages" Section of the applicable

1 Wage Order further states “every employer shall pay to each employee, on the established
2 payday for the period involved, not less than the applicable minimum wage for all hours worked
3 in the payroll period.”

4 90. Labor Code section 210(a) provides: “In addition to, *and entirely independent*
5 *and apart from*, any other penalty provided in this article, every person who fails to pay the
6 wages of each employee as provided in Sections 201.3, 204, 204(b), 204.1, 204.2, 204.11, 205,
7 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
8 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent
9 violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to
10 pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

11 91. California Labor Code section 256 states that a civil penalty shall be imposed “in
12 an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

13 92. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
14 of civil penalties for violations of the labor code, to be recovered through a civil action brought
15 by an aggrieved employee on behalf of himself or herself and other current or former employees
16 pursuant to the procedures specified in Section 2699.3.

17 93. As set forth herein, Defendants failed to pay all wages and penalties owed to
18 Plaintiffs and other aggrieved employees within the timeline required by Cal. Labor Code
19 sections 201-203 and 204. Defendants further failed to pay all waiting time penalties as required
20 by Labor Code section 203.

21 94. As a result, Defendants willfully violated the Labor Code and are liable to
22 Plaintiffs, and other aggrieved employees, for penalties as required by Labor Code sections 210,
23 256, and 2699(a) or, in the alternative, section 2699(f)(2), and recoverable in an amount
24 according to proof.

25 95. Plaintiffs, as representatives of the general public, will and do seek to recover
26 any and all penalties for each and every violation, in an amount according to proof, as to those
27 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance
28 with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State

1 of California.

2 **SEVENTH CAUSE OF ACTION**

3 **PAGA Penalties for Failure to Provide Reimbursement in Violation of Labor Code § 2802**
4 **(On Behalf of Plaintiffs and each Aggrieved Employee Against All Defendants)**

5 96. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full
6 herein.

7 97. Labor Code section 2802(a) states: “An employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct
9 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
10 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
11 believed them to be unlawful.”

12 98. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection
13 of civil penalties for violations of the labor code, to be recovered through a civil action brought
14 by an aggrieved employee on behalf of himself or herself and other current or former
15 employees pursuant to the procedures specified in Section 2699.3.

16 99. As set forth herein, Defendants failed to provide Plaintiffs and other aggrieved
17 employees with reimbursements for costs and expenses incurred.

18 100. As a result, Defendants willfully violated the Labor Code section 2802 and are
19 liable to Plaintiff, and other aggrieved employees, for civil penalties as required by Labor Code
20 section 2699(a) and/or 2699(f)(2) as well as attorney’s fees, expenses, and costs of suit, all in an
21 amount according to proof.

22 101. Plaintiffs, as representatives of the general public, will and do seek to recover
23 any and all civil penalties for each and every violation of the California Labor Code, in an
24 amount according to proof, as to those penalties that are otherwise available pursuant to the
25 PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of the
26 penalties recovered being reimbursed to the State of California and the Labor and the LWDA.

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EIGHTH CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Written Notice in Violation of
Labor Code §§ 246 and 2810.5
(On Behalf of Plaintiffs and each Aggrieved Employee Against All Defendants)**

102. Plaintiffs incorporate and re-allege the preceding paragraphs as if set forth in full herein.

103. Labor Code section 2810.5 requires an employer to provide certain information, including the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, as applicable; Allowances, if any, claimed as part of the minimum wage, including meal or lodging allowances; The regular payday designated by the employer; the name of the employer, including any “doing business as” names used by the employer; the physical address of the employer’s main office or principal place of business, and a mailing address, if different; the telephone number of the employer; the name, address, and telephone number of the employer’s workers’ compensation insurance carrier; and an employee’s rights regarding sick pay.

104. California Labor Code section 246(i) further requires an employer to provide employee “with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

105. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

106. Labor Code section 2699(f)(2) provides for civil penalties for violations of the Labor Code, for which there is no corresponding civil penalty. The civil penalty is \$100 for the

1 initial violation and \$200 for each subsequent violation for each underpaid employee in addition
2 to “an amount sufficient to recover underpaid wages.” Labor Code § 2699(f) (2).

3 107. As set forth herein, Defendants failed to provide Plaintiffs and other aggrieved
4 employees the requisite notices as required by law.

5 108. As a result, Defendants willfully violated the Labor Code and are liable to
6 Plaintiff, and other aggrieved employees, for penalties and restitution as required by Labor
7 Code section 2699(f)(2) and recoverable in an amount according to proof.

8 109. As a proximate result of the aforementioned violations, Plaintiffs have been
9 damaged in an amount according to proof at time of trial, but in an amount in excess of the
10 jurisdiction of this Court.

11 110. Plaintiffs, as representatives of the general public, will and do seek to recover
12 any and all penalties under Labor Code section 2699(f)(2) for each and every violation shown
13 to exist or to have occurred under Labor Code section 2810.5 during the one-year period before
14 Plaintiffs filed Notices with the LWDA of their intent to bring this action, in an amount
15 according to proof. Funds recovered will be distributed in accordance with the PAGA, with
16 75% of penalties recovered provided to the LWDA on behalf of the State of California.

17 **VI.**

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs Emily Ferrer, Elijah Westcott, and Manuel Banuelos Macias
20 on behalf of themselves and all other aggrieved employees and as Representatives of the Labor
21 and Workforce Development Agency, pray for judgment as follows:

22 a. For maintenance of this claim as a Representative Action under the PAGA, and
23 providing Plaintiffs and their counsel with all enforcement capability as if this action has been
24 instituted by the Department of Labor Standards enforcement (“DLSE”);

25 b. For recovery of civil penalties as permitted by Labor Code sections 2699.3,
26 1197.1, and 558(a)(1)-(2), in an amount according to proof;

27 c. For recovery of civil penalties as permitted by Labor Code section 226.3 for
28 failing to provide accurate itemized wage statements, in an amount to be assessed and according

1 to proof;

2 d. For recovery of civil penalties as permitted by Labor Code sections 210 for
3 failing to pay wages timely during employment;

4 e. For recovery of civil penalties as permitted by Labor Code section 256 for
5 failing to provide wages timely to terminated employees upon separation of employment;

6 f. For recovery of civil penalties as permitted by Labor Code sections 1174 and
7 1174.5 for failing to maintain records;

8 g. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
9 extent that 2699(a) does not apply and/or where a statutory civil penalty is not provided for
10 failing to comply with Labor Code sections 201, 202, 203, 204, 218.6, 226, 226.3, 226.7, 246,
11 248.5, 256, 510, 512, 558, 558.1, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
12 2800, 2802, 2810.5.

13 h. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
14 to any restitution recovery;

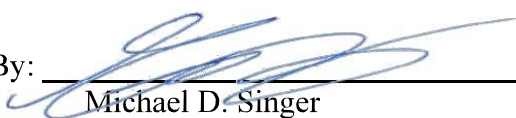
15 i. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
16 California Labor Code sections 218.5, 226(e), 1194, the PAGA, and/or Code of Civil Procedure
17 section 1021.5 on a public benefit theory; and all other applicable state laws;

18 j. For injunctive relief; and

19 k. Such other legal equitable relief as this Court deems necessary, just, equitable
20 and proper.

21 COHELAN KHOURY & SINGER

22 Dated: April 4, 2023

23 By: 

Michael D. Singer

Marta Manus

Counsel for Plaintiff EMILY FERRER

26 HAIG B. KAZANDJIAN LAWYERS, APC

27 Dated: April 4, 2023

28 By: 

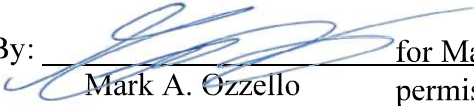
Haig B. Kazandjian

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Cathy Gonzalez
Melissa R. Robinson
Counsel for Plaintiff ELIJAH WESTCOTT

CAPSTONE LAW APC

Dated: April 4, 2023

By:  for Mark Ozzello with
Mark A. Ozzello permission
Brandon K. Brouillette
Joseph Hakakian
Counsel for Plaintiff MANUEL BANUELOS MACIAS

1 **PROOF OF SERVICE**

2 *Ferrer v. Fitness International, LLC*

3 S.D.S.C. Case No. 37-2020-00044088-CU-OE-CTL

4 I, Amber Worden, declare as follows:

5 I am employed in the County of San Diego, State of California. I am over the age of 18 and not a
6 party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

7 I further declare that I am readily familiar with the business' practice for collection and processing
8 of correspondence for mailing with United States Postal Service; and that the correspondence shall be
9 deposited with United States Postal Service this same day in the ordinary course of business.

10 On April 4, 2023, I instituted service of the forgoing document(s) described as:

11 **FIRST AMENDED COMPLAINT**

12 by placing a true copy of each document in a separate envelope addressed as follows:

13 **Counsel for Defendant**

14 Julie R. Trotter, Esq.
15 Jeffrey M. David, Esq.
16 CALL & JENSEN
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

Counsel for Plaintiff Elijah Westcott

Haig B. Kazandjian, Esq.
Cathy Gonzalez, Esq.
Melissa Robinson, Esq.
HAIG B. KAZANDJIAN LAWYERS, APC
801 North Brand Boulevard, Suite 970
Glendale, CA 91203

Counsel for Plaintiff Manuel B. Macias

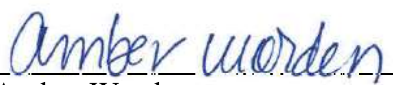
17 Mark A. Ozzello, Esq.
18 Brandon K. Brouillette, Esq.
19 Joseph Hakakian, Esq.
20 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067

21 I then caused service of each document in the manner described below:

22 **[XX] BY MAIL:** I placed each for deposit in the United States Postal Service this same day, at my
23 business address shown above, following ordinary business practices.

24 **[XX] STATE:** I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed April 4, 2023, at San Diego, California.

27 
28 Amber Worden