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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MANUEL BANUELOS MACIAS, as an
aggrieved employee pursuant to the Private
Attorneys General Act ("PAGA"), on
behalf of the State of California and other
aggrieved employees,

Plaintiff,

vs.

FITNESS INTERNATIONAL, LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: **21STCV03796**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Manuel Banuelos Macias, as an aggrieved employee and on behalf of the
2 State of California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on November 24, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 **THE PARTIES**

10 6. Plaintiff Manuel Banuelos Macias is a resident of East Los Angeles, in Los
11 Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt
12 Janitor/Janitorial Personnel from approximately June 2019 to March 2020. Plaintiff worked
13 for Defendants at their gym located at 416 S. Atlantic Blvd., Building B, in Monterey Park,
14 California. During his employment, Plaintiff typically worked eight (8) hours or more per
15 day, five (5) days per week, from 3:00 p.m. to 12:00 a.m. At the time his employment ended,
16 Plaintiff earned approximately \$14.75 per hour. His job duties included, without limitation,
17 mopping floors; wiping down workout equipment; cleaning locker rooms; and replacing fresh
18 towels, paper towels, soap dispensers, and toilet paper.

19 7. On information and belief, Defendants required some employees, including
20 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
21 their hire or during their employment. On further information and belief, Defendants’ dispute
22 resolution policy and/or arbitration agreement was and is both procedurally and substantively
23 unconscionable. Specifically, Defendants presented new hires with an Arbitration of Claims
24 form (“Arbitration Agreement”) during the onboarding process, which had to be reviewed and
25 signed immediately. In fact, upon information and belief, the Arbitration Agreement was one
26 of several documents presented to new employees for signature during the orientation process,
27 including Notice of Employment Information and Company Policy Statement, among other
28 documents. Also, employees did not have a meaningful opportunity to negotiate the terms of

1 the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
2 sign on a take-it or leave-it basis at the time they were hired, along with other on-boarding
3 documents.

4 8. FITNESS INTERNATIONAL, LLC was and is, upon information and belief, a
5 California limited liability company, and at all times hereinafter mentioned, an employer
6 whose employees are engaged throughout this county and the State of California.

7 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
8 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
9 amend the complaint and serve such fictitiously named Defendants once their names and
10 capacities become known.

11 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
12 were the partners, agents, owners, or managers of FITNESS INTERNATIONAL, LLC at all
13 relevant times.

14 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
15 acts and omissions alleged herein was performed by, or is attributable to, FITNESS
16 INTERNATIONAL, LLC and/or DOES 1 through 10 (collectively, "Defendants" or "LA
17 FITNESS"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
18 in concert with, each of the other co-Defendants and was acting within the course and scope of
19 such agency, employment, joint venture, or concerted activity with legal authority to act on
20 the others' behalf. The acts of any and all Defendants were in accordance with, and represent,
21 the official policy of Defendants.

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

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

PAGA REPRESENTATIVE ALLEGATIONS

14. Defendants are a privately owned fitness chain operating over 700 gym locations in the United States (including at least 109 locations in California) and employing nearly 10,000 people nationwide. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Irvine, California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

15. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

16. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee’s employment ends.

17. Defendants continue to employ non-exempt or hourly paid employees in California.

18. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

3 19. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
4 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
5 were not recorded.

6 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive certain wages for overtime compensation and that they were not receiving certain
9 wages for overtime compensation.

10 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 receive at least minimum wages for compensation and that they were not receiving at least
13 minimum wages for work that was required to be done off-the-clock. In violation of the
14 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
15 least minimum wages for work done off-the-clock.

16 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
19 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
20 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
21 not provided with all meal periods or payment of one (1) additional hour of pay at their
22 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
23 period.

24 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
27 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
28 and permitted to take a compliant rest period. In violation of the California Labor Code,

1 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
2 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
3 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
4 they were not authorized and permitted to take a compliant rest period.

5 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 receive complete and accurate wage statements in accordance with California law. In
8 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
9 were not provided complete and accurate wage statements.

10 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that they had a duty to maintain accurate and complete payroll records in
12 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
13 and intentionally failed to do so.

14 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of all wages earned upon termination of employment. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
18 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
19 and/or meal and rest period premiums, within permissible time periods.

20 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
22 timely payment of wages during their employment. In violation of the California Labor Code,
23 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
24 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
25 premiums, within permissible time periods.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 receive reimbursement for all business-related expenses and costs they incurred during the

1 course and scope of their employment and that they did not receive reimbursement of
2 applicable business-related expenses and costs incurred.

3 29. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, Defendants knew or should have known that they had a duty to compensate
5 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants
6 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
7 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
8 that they were properly denied wages, all in order to increase Defendants' profits.

9 30. At all times herein set forth, PAGA provides that any provision of law under
10 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
11 assessed and collected by the LWDA for violations of the California Labor Code and
12 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
13 civil action brought on behalf of themselves and other current or former employees pursuant
14 to procedures outlined in California Labor Code section 2699.3.

15 31. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
16 person who was employed by the alleged violator and against whom one or more of the
17 alleged violations was committed."

18 32. Plaintiff and other current and former employees of Defendants are "aggrieved
19 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
20 or former employees and one or more of the alleged violations were committed against them.

21 33. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
22 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
23 following requirements have been met:

- 24 (a) The aggrieved employee shall give written notice by online filing
25 (hereinafter "Employee's Notice") to the LWDA and by certified mail
26 to the employer of the specific provisions of the California Labor Code
27 alleged to have been violated, including the facts and theories to support
28 the alleged violations.

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(a) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
5 employer and the aggrieved employee by certified mail that it does not
6 intend to investigate the alleged violation within sixty (60) calendar
7 days of the postmark date of the Employee's Notice. Upon receipt of
8 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
9 five (65) calendar days of the postmark date of the Employee's Notice,
10 the aggrieved employee may commence a civil action pursuant to
11 California Labor Code section 2699 to recover civil penalties in addition
12 to any other penalties to which the employee may be entitled.

13 34. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
14 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
15 provision other than those listed in Section 2699.5 after the following requirements have been
16 met:

- 17 (a) The aggrieved employee or representative shall give written notice by
18 online filing to the LWDA and by certified mail to the employer of the
19 specific provisions of the California Labor Code alleged to have been
20 violated (other than those listed in Section 2699.5), including the facts
21 and theories to support the alleged violation.
- 22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(c) and any employer response to that notice shall be
24 accompanied by a filing fee of seventy-five dollars (\$75).
- 25 (c) The employer may cure the alleged violation within thirty-three (33)
26 calendar days of the postmark date of the notice. The employer shall
27 give written notice by certified mail within that period of time to the
28 aggrieved employee or representative and the agency if the alleged

1 violation is cured, including a description of actions taken, and no civil
2 action pursuant to Section 2699 may commence. If the alleged violation
3 is not cured within the 33-day period, the employee may commence a
4 civil action pursuant to Section 2699.

5 35. On November 24, 2020, Plaintiff provided written notice by online filing to the
6 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
7 Code alleged to have been violated, including facts and theories to support the alleged
8 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
9 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
10 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
11 Plaintiff PAGA Case Number LWDA-CM-813533-20. A true and correct copy of Plaintiff's
12 written notice to the LWDA and Defendants dated November 24, 2020, is attached hereto as
13 "Exhibit 1."

14 36. As of the filing date of this complaint, over 65 days have passed since Plaintiff
15 sent the initial LWDA Notice described above, and the LWDA has not responded that it
16 intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

17 37. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
20 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

21 38. Labor Code section 558(a) provides "[a]ny employer or other person acting on
22 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
23 provision regulating hours and days of work in any order of the Industrial Welfare
24 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
25 dollars (\$50) for each underpaid employee for each pay period for which the employee was
26 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
27 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
28 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition

1 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
2 as a private attorney general, seeks assessment and collection of civil penalties under Labor
3 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
4 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
5 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private
6 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
7 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
8 applicable IWC wage order.

9 39. Defendants, at all times relevant to this complaint, were employers or persons
10 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
11 Employees’ rights by violating various sections of the California Labor Code as set forth
12 above.

13 40. As set forth below, Defendants have violated numerous provisions of both the
14 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
15 Order.

16 41. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
17 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
18 private attorney general, seeks assessment and collection of civil penalties for himself, all
19 other non-party Aggrieved Employees, and the State of California against Defendants for
20 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
21 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

22 **FIRST CAUSE OF ACTION**

23 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

24 **(Against all Defendants)**

25 42. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
26 and every allegation set forth above.

27 43. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
28 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code

1 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
2 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
3 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
4 those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

5 44. Defendants' conduct, as alleged herein, violates numerous sections of the
6 California Labor Code, including, but not limited to, the following:

- 7 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
8 wage order for Defendants' failure to compensate Plaintiff and other
9 non-party Aggrieved Employees with all required overtime pay, as set
10 forth below;
- 11 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
12 applicable IWC wage order for Defendants' failure to compensate
13 Plaintiff and other non-party Aggrieved Employees with at least
14 minimum wages for all hours worked, as set forth below;
- 15 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
16 applicable IWC wage order for Defendants' failure to provide Plaintiff
17 and other non-party Aggrieved Employees with meal periods, as set
18 forth below;
- 19 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
20 IWC wage order for Defendants' failure to authorize and permit
21 Plaintiff and other non-party Aggrieved Employees to take rest periods,
22 as set forth below;
- 23 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
24 wage order for failure to provide accurate and complete wage statements
25 to Plaintiff and other non-party Aggrieved Employees, as set forth
26 below;
- 27 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
28 IWC wage order for failure to maintain payroll records, as set forth

below;

- (g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as set forth below;
- (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination, as set forth below; and
- (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

45. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

46. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person’s regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

48. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on

1 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

2 49. California Labor Code section 510 codifies the right to overtime compensation
3 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
4 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
5 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
6 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
7 in a day on the seventh (7th) day of work.

8 50. During the relevant time period, Defendants willfully failed to pay all overtime
9 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
10 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
11 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
12 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
13 not recorded.

14 51. First, during the relevant period, Defendants had, and continue to have, a
15 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
16 party Aggrieved Employees from recording hours worked that were outside of their scheduled
17 shifts. Plaintiff and other non-party Aggrieved Employees were forced to work off-the-clock
18 performing tasks outside of their scheduled shift times, but were not provided a means by
19 Defendants to account for this time. For example, approximately four (4) times per week,
20 Plaintiff arrived to work 10-15 minutes before the beginning of his shift in order to get started
21 on his workload and assist other janitorial employees or supervisors with job duties, but was
22 not permitted to clock in until his scheduled shift start-time. At all times, Plaintiff and other
23 non-party Aggrieved Employees remained under the control of Defendants. This off-the-
24 clock work could have been recorded by Defendants, but they refused to do so to avoid
25 payment of additional wages to Plaintiff and other non-party Aggrieved Employees.

26 52. Second, on information and belief, Defendants had, and continue to have, a
27 company-wide policy of staffing their gym locations based on the labor hours allocated by
28 each location's labor or payroll budget, which has resulted in, and continues to result in,

1 chronic understaffing and a lack of adequate meal period coverage, because there were too
2 few employees on duty to handle the workload. For example, Defendants only scheduled one
3 (1) male janitorial employee and one (1) female janitorial employee per shift, resulting in little
4 or no coverage for Plaintiff and other non-party Aggrieved Employees to take timely,
5 compliant meal periods. Thus, Plaintiff and other non-party Aggrieved Employees had their
6 meal periods cut short, interrupted, and/or missed in order to attend to their heavy workload.
7 Moreover, Defendants had a practice of failing to schedule meal periods, which further caused
8 Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for
9 compliant meal periods. As a result of this inadequate meal period coverage, Plaintiff and
10 other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
11 periods during shifts when they were entitled to receive a meal period. Consequently,
12 Plaintiff and other non-party Aggrieved Employees performed work during meal periods for
13 which they were not paid.

14 53. Defendants knew or should have known that, as a result of these company-wide
15 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
16 their assigned duties during meal periods and while off-the-clock, and were suffered or
17 permitted to perform work for which they were not paid. Because Plaintiff and other non-
18 party Aggrieved Employees occasionally worked shifts of eight (8) hours a day or more or
19 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
20 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
21 overtime wages for all of the overtime hours they actually worked.

22 54. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
23 the balance of overtime compensation as required by California law, violates the provisions of
24 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
25 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
26 2699(a), (f), and (g).

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1 **FAILURE TO PAY MINIMUM WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

3 55. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
5 to be paid to employees, and the payment of a wage less than the minimum so fixed is
6 unlawful. Compensable work time is defined by the applicable wage order as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
9 Regs. tit. 8, § 11020(2)(G) (defining “Hours Worked”).

10 56. As set forth above, during the relevant time period, Defendants systematically
11 failed to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked
12 before scheduled shifts, because these hours were not accurately recorded. Additionally, as
13 set forth above, due to Defendants’ uniform practice of utilizing labor budgets, resultant
14 understaffing, failure to schedule meal periods, and a lack of meal period coverage, Plaintiff
15 and other non-party Aggrieved Employees were impeded from taking all uninterrupted meal
16 periods to which they were entitled and were required to work off-the-clock.

17 57. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
18 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
19 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
20 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
21 1194, 1197, and 1198.

22 58. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
23 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
24 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
25 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

27 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

28 59. At all relevant times herein set forth, the applicable IWC Wage Order(s) and

California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and non-party Aggrieved Employees' employment by Defendants.

60. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

61. At all relevant times herein set forth, California Labor Code sections 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee to work during any meal period mandated by an applicable order of the IWC.

62. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

63. As stated, Defendants have, and continue to have, a uniform policy and/or practice of understaffing their gym locations due to labor budgeting, which resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, Defendants had a practice of failing to schedule meal periods, which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal periods. As a result, Plaintiff and other non-party Aggrieved Employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait

1 extended periods of time before taking meal periods. For example, during his employment,
2 Plaintiff was not scheduled for meal periods, resulting in him taking meal periods late,
3 sometimes after his sixth hour of work, due to a lack of coverage. As a further example, twice
4 per week, Plaintiff would have his meal periods cut short to keep up with his heavy workload.

5 64. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
6 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
7 hours in one day. For example, Plaintiff worked shifts in excess of ten (10) hours without
8 receiving an uninterrupted second 30-minute meal period. Plaintiff and other non-party
9 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
10 to meal periods and were not relieved of all duties.

11 65. Defendants knew or should have known that as a result of their company-wide
12 policies and/or practices, that Plaintiff and other non-party Aggrieved Employees were not
13 actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further
14 knew or should have known that they did not pay Plaintiff and other non-party Aggrieved
15 Employees meal period premium wages when meal periods were missed, late, short, and/or
16 interrupted.

17 66. Defendants also have engaged in a company-wide practice and/or policy of not
18 paying meal period premiums owed when compliant meal periods are not provided. Because
19 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
20 received premium pay for missed, interrupted, or late meal periods.

21 67. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
22 Employees compliant meal periods and failed to pay the full meal period premiums due.
23 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
24 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
25 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
26 (g).

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FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

68. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other non-party Aggrieved Employees' employment by Defendants.

69. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

70. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

71. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

72. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide labor budget policies and resultant understaffing prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take

1 compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with
2 Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and other
3 non-party Aggrieved Employees not being authorized and permitted to take rest periods.

4 73. Furthermore, Defendants maintained and implemented a company-wide on-
5 premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved
6 Employees remain on the work premises during their rest periods. Defendants' company-
7 wide on-premises rest period policy prevented Plaintiff and other non-party Aggrieved
8 Employees from being relieved of all duties for rest periods and caused them to perform work
9 during rest periods.

10 74. As a result of Defendants' practices and policies, Plaintiff and other non-party
11 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
12 excess of 10 hours without receiving all ten (10) minute rest periods to which they were
13 entitled. For example, throughout his employment, Plaintiff worked through his shifts without
14 taking his 10-minute rest periods due to the workload, lack of coverage, and failure to
15 schedule rest periods. Plaintiff would also have his rest periods interrupted by supervisors'
16 requests over the gym loudspeakers to attend to job duties, such as replacing paper towels.

17 75. Defendants also have engaged in a company-wide practice and/or policy of not
18 paying all rest period premiums owed when compliant rest periods are not authorized or
19 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
20 Employees have not received premium pay for all missed rest periods.

21 76. Defendants' conduct violates the applicable IWC Wage Order and California
22 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
26 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

27 77. At all relevant times herein, California Labor Code section 226(a) provides that
28 every employer shall furnish each of his or her employees an accurate and complete itemized

1 wage statement in writing, including, but not limited to, the name and address of the legal
2 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
3 applicable rates of pay.

4 78. During the relevant time period, Defendants have knowingly and intentionally
5 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
6 inaccurate wage statements. For example, Defendants issued uniform wage statements to
7 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
8 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
9 the pay period, including overtime rates of pay, and the corresponding number of hours
10 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
11 226(a)(5), and 226(a)(9).

12 79. Because Defendants did not record the time Plaintiff and other non-party
13 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
14 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
15 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
16 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
17 Employees in violation of section 226(a)(2), and failed to list the applicable hourly rates of
18 pay in effect during the pay period and corresponding accurate number of work hours worked
19 at each hourly rate in violation of section 226(a)(9).

20 80. The wage statement deficiencies also include, without limitation, failing to list
21 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
22 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
23 only the last four digits of his or her social security number or an employee identification
24 number other than a social security number; failing to list the name and address of the legal
25 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
26 employees were paid; and/or failing to state all hours worked as a result of not recording or
27 stating hours worked off-the-clock. In addition, Defendants failed to provide Plaintiff and
28 other non-party Aggrieved Employees the option to elect to receive hard copies of their wage

1 statements at any time and/or failed to provide them with the ability to easily access the
2 information and convert the electronic wage statements into hard copies at no expense to
3 them.

4 81. California Labor Code section 1198 provides that the maximum hours of work
5 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
6 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
7 employment of any employees for longer hours than those fixed by the order or under
8 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
9 Wage Order, employers are required to keep accurate time records showing when the
10 employee begins and ends each work period and meal period. During the relevant time
11 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
12 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
13 in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff
14 and other non-party Aggrieved Employees with second 30-minute meal periods to which they
15 were entitled, Defendants kept no records of meal start and end times for second meal periods.

16 82. California Labor Code section 1174(d) provides that “[e]very person employing
17 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
18 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
19 plants or establishments at which employees are employed, payroll records showing the hours
20 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
21 applicable piece rate paid to, employees employed at the respective plants or
22 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
23 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
24 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
25 as a result of failing to record the off-the-clock hours that they worked.

26 83. Because Defendants’ violations of 226(a) and 1174(d) were committed against
27 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
28 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,

1 1174.5, and/or 2699(a), (f), and (g).

2 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

3 **VIOLATION OF LABOR CODE SECTION 204**

4 84. At all relevant times herein set forth, California Labor Code section 204
5 requires that all wages earned by any person in any employment between the 1st and the 15th
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the 16th and the 26th day of the month during which
8 the labor was performed. Labor Code section 204 further provides that all wages earned by
9 any person in any employment between the 16th and the last day, inclusive, of any calendar
10 month, other than those wages due upon termination of an employee, are due and payable
11 between the 1st and the 10th day of the following month.

12 85. At all relevant times herein, California Labor Code section 204 also requires
13 that all wages earned for labor in excess of the normal work period shall be paid no later than
14 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
15 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
16 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
17 more than seven (7) calendar days following the close of the payroll period.

18 86. During the relevant time period, Defendants willfully failed to pay Plaintiff and
19 other non-party Aggrieved Employees all wages due to them within any time period specified
20 by California Labor Code section 204 including, but not limited to, overtime wages, minimum
21 wages, and/or meal and rest period premium wages.

22 87. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
23 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

24 **FAILURE TO PAY WAGES UPON TERMINATION**

25 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

26 88. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
27 that if an employer discharges an employee, the wages earned and unpaid at the time of
28 discharge are due and payable immediately, and that if an employee voluntarily leaves his or

1 her employment, his or her wages shall become due and payable not later than seventy-two
2 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
3 his or her intention to quit, in which case the employee is entitled to his or her wages at the
4 time of quitting.

5 89. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
6 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
7 above, including but not limited to, overtime wages, minimum wages, and/or meal and rest
8 period premium wages, either at the time of discharge, or within seventy-two (72) hours of
9 their leaving Defendants' employ.

10 90. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
11 who are no longer employed by Defendants their wages earned and unpaid at the time of
12 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
13 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
14 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
15 2699(a), (f), and (g).

16 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

17 **VIOLATION OF LABOR CODE SECTION 2802**

18 91. At all times herein set forth, California Labor Code section 2802 provides that
19 an employer must reimburse employees for all necessary expenditures and losses incurred by
20 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
21 to prevent employers from passing off their cost of doing business and operating expenses on
22 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
23 (2014). The applicable wage order, IWC Wage Order 2-2001, provides that: "[w]hen the
24 employer requires the use of tools or equipment or they are necessary to the performance of a
25 job, such tools and equipment shall be provided and maintained by the employer, except that
26 an employee whose wages are at least two (2) times the minimum wage may provide and
27 maintain hand tools and equipment customarily required by the particular trade or craft."

28 92. During the relevant time period, Defendants had a company-wide policy of

1 requiring Plaintiff and other non-party Aggrieved Employees to utilize their own personal
2 vehicles for work purposes, such as picking up cleaning supplies from other gym locations,
3 but failed to reimburse them for all costs of travel, including mileage. For example, Plaintiff
4 drove to Defendants' gyms in Rosemead and Montebello to obtain cleaning materials, such as
5 jugs of soap and boxes of paper towels, as instructed by his supervisors. Although Defendants
6 required Plaintiff and other non-party Aggrieved Employees to utilize their own vehicles to
7 travel to and from other gym locations for work purposes, Defendants did not reimburse them
8 for all of their travel expenses.

9 93. Additionally, Defendants, on a company-wide basis, required Plaintiff and
10 other non-party Aggrieved Employees to report to work wearing clean uniforms, including
11 uniform black shirts emblazoned with Defendants' logo, but only provided their employees
12 with two (2) uniform shirts. This forced Plaintiff and other non-party Aggrieved Employees
13 to launder their uniforms frequently and incur expenses in doing so. Thus, Defendants failed
14 to provide Plaintiff and other non-party Aggrieved Employees with an adequate number of
15 uniforms in relation to their scheduled shifts and for the tasks they were required to perform,
16 forcing Plaintiff and other non-party Aggrieved Employees to incur laundry expenses for the
17 upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming
18 sweaty and/or dirty. For example, Plaintiff washed his uniform shirts after each shift,
19 incurring additional laundry expenses, in order to meet Defendants' policies and expectations
20 for employee appearance.

21 94. Defendants could have provided Plaintiff and other non-party Aggrieved
22 Employees with the actual tools for use on the job, including company vehicles and an
23 adequate number of uniforms and/or access to laundering services. Or, Defendants could have
24 reimbursed employees for their mileage, travel, and laundering costs. Instead, Defendants
25 passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At
26 all relevant times, Plaintiff and other non-party Aggrieved Employees did not earn at least two
27 (2) times the minimum wage.

28 95. Defendants' company-wide policy and/or practice of passing on their operating

costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other non-party Aggrieved Employees for necessary business-related expenses and costs.

96. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); and 2802 (by failing to reimburse business expenses).

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,

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1194, 1197, 1198, and 2802;

5. For pre-judgment and post-judgment interest as provided by law; and

6. For such other and further relief as the Court may deem equitable and appropriate.

Dated: January 29, 2021

Respectfully submitted,

Capstone Law APC

By:  
Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Manuel Banuelos Macias

EXHIBIT 1



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November 24, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Manuel Banuelos Macias v. Fitness International, LLC*

Dear PAGA Administrator:

This office represents Manuel Banuelos Macias in connection with his claims under the California Labor Code. Mr. Banuelos Macias was an employee of FITNESS INTERNATIONAL, LLC ("LA FITNESS").

The employer may be contacted directly at the address below:

FITNESS INTERNATIONAL, LLC
3161 MICHELSON DR. STE. 600
IRVINE CA 92612

Mr. Banuelos Macias intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Banuelos Macias seeks relief on behalf of himself, the State of California, and other persons who are or were employed by LA FITNESS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

LA FITNESS employed Mr. Banuelos Macias as an hourly paid, non-exempt employee from approximately June 2019 to March 2020. Mr. Banuelos Macias worked for LA FITNESS as a Janitor/Janitorial Personnel at its gym located at 416 S. Atlantic Blvd., Building B, in Monterey Park, California. During his employment, Mr. Banuelos Macias typically worked eight (8) hours or more per day, five (5) days per week, typically from 3:00 p.m. to 12:00 a.m. At the time Mr. Banuelos Macias's employment with LA FITNESS ended, he earned approximately \$14.75 per hour. His job duties included, without limitation, mopping floors; wiping down workout equipment; cleaning locker rooms; and replacing fresh towels, paper towels, soap dispensers, and toilet paper.

LA FITNESS committed one or more of the following Labor Code violations against Mr. Banuelos Macias, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

LA FITNESS’s Company-Wide and Uniform Payroll and HR Practices

FITNESS INTERNATIONAL, LLC is a California limited liability company and a privately owned fitness chain operating over 700 gym locations in the United States (including at least 109 locations in California) and employing nearly 10,000 people nationwide. Upon information and belief, LA FITNESS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Irvine, California, for all non-exempt, hourly paid employees working for LA FITNESS in California, including Mr. Banuelos Macias and other aggrieved employees. At all relevant times, LA FITNESS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Banuelos Macias and other aggrieved employees, regardless of its location or position.

Upon information and belief, LA FITNESS maintains a centralized Payroll department at its corporate headquarters in Irvine, California, which processes payroll for all non-exempt, hourly paid employees working for LA FITNESS in California, including Mr. Banuelos Macias and other aggrieved employees. Further, LA FITNESS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Banuelos Macias and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, LA FITNESS utilized the same methods and formulas when calculating wages due to Mr. Banuelos Macias and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

LA FITNESS willfully failed to pay all overtime wages owed to Mr. Banuelos Macias and other aggrieved employees. During the relevant time period, Mr. Banuelos Macias and other aggrieved

¹ These facts, theories, and claims are based on Mr. Banuelos Macias’s experience and counsel’s review of those records currently available relating to Mr. Banuelos Macias’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Banuelos Macias reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, LA FITNESS had, and continues to have, a company-wide policy of discouraging and impeding Mr. Banuelos Macias and other aggrieved employees from recording hours worked that were outside of their scheduled shifts. Mr. Banuelos Macias and other aggrieved employees were forced to work off-the-clock performing tasks outside of their scheduled shift times, but were not provided a means by LA FITNESS to account for this time. For example, approximately four (4) times per week, Mr. Banuelos Macias arrived to work 10-15 minutes before the beginning of his shift in order to get started on his workload and assist other janitorial employees or supervisors with job duties, but was not permitted to clock in until his scheduled shift start-time. At all times, Mr. Banuelos Macias and other aggrieved employees remained under the control of LA FITNESS. This off-the-clock work could have been recorded by LA FITNESS, but it refused to do so to avoid payment of additional wages to Mr. Banuelos Macias and other aggrieved employees.

Second, on information and belief, LA FITNESS had, and continues to have, a company-wide policy strictly staffing its gym locations based on the labor hours allocated by each location's labor or payroll budget, which has resulted in, and continues to result in, chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload. For example, LA FITNESS only scheduled one (1) male janitorial employee and one (1) female janitorial employee per shift, resulting in little or no coverage for Mr. Banuelos Macias and other aggrieved employees to take timely, compliant meal periods. Thus, Mr. Banuelos Macias and other aggrieved employees had their meal periods cut short, interrupted, and/or missed in order to attend to their heavy workload. Moreover, LA FITNESS had a practice of failing to schedule meal periods, which further caused Mr. Banuelos Macias and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Mr. Banuelos Macias and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Mr. Banuelos Macias and other aggrieved employees performed work during meal periods for which they were not paid.

LA FITNESS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Banuelos Macias and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Banuelos Macias and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Banuelos Macias and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, LA FITNESS did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, LA FITNESS paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, LA FITNESS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, LA FITNESS failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 2 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11020(2)(G) (defining "Hours Worked").

As stated above, LA FITNESS systematically failed to pay Mr. Banuelos Macias and other aggrieved employees for actual hours worked before scheduled shifts, because these hours were not accurately recorded. Additionally, as set forth above, due to LA FITNESS's uniform practice of utilizing labor budgets, resultant understaffing, failure to schedule meal periods, and a lack of meal period coverage, Mr. Banuelos Macias and/or other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock.

Thus, LA FITNESS did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, LA FITNESS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, LA FITNESS regularly failed to pay at least minimum wages to Mr. Banuelos Macias and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Banuelos Macias and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than

twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As set forth above, during the relevant time period, LA FITNESS had, and continues to have, a company-wide policy and/or practice of understaffing its gym locations due to labor budgeting, which resulted in a lack of adequate meal period coverage and prevented Mr. Banuelos Macias and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, LA FITNESS had a practice of failing to schedule meal periods, which further caused Mr. Banuelos Macias and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Banuelos Macias and other aggrieved employees had to work through part or all of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, during his employment, Mr. Banuelos Macias was not scheduled for meal periods, resulting in him taking meal periods late, sometimes after his sixth hour of work, due to a lack of coverage. As a further example, twice per week, Mr. Banuelos Macias would have his meal periods cut short to keep up with his heavy workload.

In addition, during the relevant time period, Mr. Banuelos Macias and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, Mr. Banuelos Macias worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Banuelos Macias and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

LA FITNESS knew or should have known that as a result of its policies and practices, that Mr. Banuelos Macias and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. LA FITNESS further knew or should have known that it did not pay Mr. Banuelos Macias and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, LA FITNESS engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Banuelos Macias and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that LA FITNESS did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, LA FITNESS did not pay other aggrieved employees at the correct rate of pay for premium wages because LA FITNESS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LA FITNESS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Banuelos Macias and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the

employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, LA FITNESS regularly failed to authorize and permit Mr. Banuelos Macias and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, LA FITNESS's company-wide labor budget policies and resultant understaffing, prevented Mr. Banuelos Macias and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. LA FITNESS also failed to schedule rest periods, which, coupled with LA FITNESS's failure to provide adequate rest period coverage, further led to Mr. Banuelos Macias and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, LA FITNESS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Banuelos Macias and other aggrieved employees remain on the work premises during their rest periods. Upon information and belief, LA FITNESS's company-wide on-premises rest period policy prevented Mr. Banuelos Macias and other aggrieved employees from being relieved of all duties for rest periods and caused them to perform work during rest periods.

As a result, Mr. Banuelos Macias and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, Mr. Banuelos Macias worked through his shifts without taking his 10-minute rest periods due to the workload, lack of coverage, and failure to schedule rest periods. Mr. Banuelos Macias would also have his rest periods interrupted by supervisors' requests over the gym loudspeakers to attend to job duties, such as replacing paper towels.

LA FITNESS also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that LA FITNESS did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, LA FITNESS did not pay other aggrieved employees at the correct rate of pay for premium wages because LA FITNESS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, LA FITNESS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Banuelos Macias and other aggrieved employees are

entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. LA FITNESS has not provided Mr. Banuelos Macias and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, LA FITNESS has knowingly and intentionally provided Mr. Banuelos Macias and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, LA FITNESS issued uniform wage statements to Mr. Banuelos Macias and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, LA FITNESS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because LA FITNESS did not record the time Mr. Banuelos Macias and other aggrieved employees spent working off-the-clock, LA FITNESS did not list the correct amount of gross wages and net wages earned by Mr. Banuelos Macias and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, LA FITNESS failed to accurately list the total number of hours worked by Mr. Banuelos Macias and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because LA FITNESS did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, LA FITNESS did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, LA FITNESS also failed to list the correct amount of net wages in violation of section 226(a)(5). LA FITNESS also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[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. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), LA FITNESS willfully failed to maintain accurate payroll records for Mr. Banuelos Macias and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, LA FITNESS failed, on a company-wide basis, to keep accurate records of work and meal period start and stop times for Mr. Banuelos Macias and other aggrieved employees, in violation of section 1198. Furthermore, in light of LA FITNESS’s failure to provide Mr. Banuelos Macias and other aggrieved employees with second 30-minute meal periods to which they were entitled, LA FITNESS kept no records of meal start and end times for second meal periods.

Because LA FITNESS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Banuelos Macias and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Banuelos Macias and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are

deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, LA FITNESS failed to pay Mr. Banuelos Macias and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

LA FITNESS willfully failed to pay Mr. Banuelos Macias and other aggrieved employees who are no longer employed by LA FITNESS all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving LA FITNESS's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 2-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, LA FITNESS had a company-wide policy of requiring Mr. Banuelos Macias and other aggrieved employees to utilize their own personal vehicles for work purposes, such as picking up cleaning supplies from other gym locations, but failed to reimburse them for all costs of travel, including mileage. For example, Mr. Banuelos Macias drove to LA FITNESS's gyms in Rosemead and Montebello to obtain cleaning materials, such as jugs of soap and boxes of paper towels, as instructed by his supervisors. Although LA FITNESS required Mr. Banuelos Macias and

other aggrieved employees to utilize their own vehicles to travel to and from other LA FITNESS gym locations, LA FITNESS did not reimburse them for all of their travel expenses.

Additionally, LA FITNESS, on a company-wide basis, required Mr. Banuelos Macias and other aggrieved employees to report to work wearing clean uniforms, including uniform black shirts emblazoned with LA FITNESS's logo, on a daily basis, but only provided their employees with two (2) uniform shirts. This forced Mr. Banuelos Macias and other aggrieved employees to clean their uniforms frequently and incur expenses for doing so. Thus, LA FITNESS failed to provide Mr. Banuelos Macias and other aggrieved employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, forcing Mr. Banuelos Macias and other aggrieved employees to incur laundry expenses for the upkeep of their uniforms, as the nature of their work resulted in their uniforms becoming sweaty, dirty, and/or exposed to cleaning chemicals. For example, Mr. Banuelos Macias washed his uniform shirts after each shift, incurring additional laundry expenses, in order to meet LA FITNESS's policies and expectations for employee appearance.

LA FITNESS could have provided Mr. Banuelos Macias and other aggrieved employees with the actual tools required for use on the job, including company vehicles and an adequate number of uniforms and/or access to laundering services. Or, LA FITNESS could have reimbursed employees for their mileage, travel, and laundering costs. Instead, LA FITNESS passed these operating costs off onto Mr. Banuelos Macias and other aggrieved employees. At all relevant times, Mr. Banuelos Macias and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, LA FITNESS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Banuelos Macias and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." LA FITNESS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Banuelos Macias's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Banuelos Macias seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Banuelos Macias, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against LA FITNESS for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Banuelos Macias seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Banuelos Macias's reasonable attempt to settle his dispute with LA FITNESS prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform LA FITNESS of Mr. Banuelos Macias's aforementioned grievances and the proposed remedies as detailed below, while affording LA FITNESS a reasonable opportunity to satisfy Mr. Banuelos Macias's demands.

Demand is hereby made that LA FITNESS shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. LA FITNESS shall pay Mr. Banuelos Macias and all other aggrieved employees employed by LA FITNESS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. LA FITNESS shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. LA FITNESS shall conduct a survey or interview all current and former aggrieved employees in California who worked for LA FITNESS in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel, uniform maintenance expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. LA FITNESS shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. LA FITNESS also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. LA FITNESS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for LA FITNESS's benefit, including, but not limited to, costs of travel, uniform maintenance, or laundering costs, as required by Labor Code section 2802.
6. LA FITNESS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. LA FITNESS shall provide Mr. Banuelos Macias and all aggrieved employees employed by LA FITNESS at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. LA FITNESS shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. LA FITNESS shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 2-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: FITNESS INTERNATIONAL, LLC (via U.S. Certified Mail)